
Meeting of the Executive Member for Neighbourhood Services and Advisory Panel

4th December 2008

Report of the Director of Neighbourhood Services

Tackling Environmental Crime – Litter Enforcement against Young People

Summary

1. To advise members on new guidance produced by the Department of Environment, Food and Rural Affairs (DEFRA) on the use of Fixed Penalty Notices (FPNs) and to recommend amendments to the current Street environment Service litter enforcement policy, to ensure that procedures are in keeping with best practice when using fixed penalty notice (FPN) enforcement against young people.

Background

2. York's current litter enforcement policy was agreed by members on 14 January 2004. The policy was launched with a successful education campaign in April 2004. Details of the legal interpretation of litter and the authority's procedure for enforcement can be found in Annex 1.
3. In 2005, the Clean Neighbourhoods and Environment Act extended the use of fixed penalty notices across a range of environmental offences, to enable local authorities to deal more efficiently with first-time offenders; and those who commit offences at the more minor end of the scale. To assist local authorities on the appropriate use and enforcement of FPNs, guidance was published in 2007 entitled 'Local environmental enforcement -Guidance on the use of fixed penalty notices'.
4. The guide should be used by those already using the FPN powers "*to ensure that they are used in a way that minimises risk and builds credibility in the system...and above all else are used in such a way so they help achieve the broader aim that we are all seeking to realise; namely, cleaner, safer and greener places to live*".
5. Section Four of the guidance deals specifically with the use of FPN enforcement against young people. This was produced in addition to DEFRA guidance "Issuing Fixed Penalty Notices to Juveniles" in 2006.
6. A 'juvenile' or 'young person' is someone between the age of 10 and 17 years of age, inclusive.
7. This report highlights current council procedure in relation to young people, compared against best practice taken from the two guidance documents. Direct quotes from the guidance is given in *italics*. Recommendations are

then put to members on how the current enforcement policy can be amended to bring it in line with best practice, detailed in Annex 2 and 3.

Litter Enforcement and Juveniles

8. Current council policy states the following in relation to issuing FPNs to young people, point 22:-
- i) Fixed Penalty notices be issued under section 88(1) Environmental Protection Act 1990 by Street Environment Officers, for the offence of littering as defined by section 87, EPA 1990.
 - ii) On payment of the FPN, within 14 days, no further legal action will be taken by the local authority.
 - iii) For non-payment of the FPN formal legal action will ensue. Where this is the first offence formal cautions will be used if the offender admits the offence.
 - iv) Subsequent offences committed by the same person shall result in summary proceedings in Magistrates' Court, rather than issuing a further FPN.
 - v) In the case of minors FPN will be issued on those aged 14 or more. Action will be taken as necessary as detailed in (i)-(iv) above. (Note that summary proceedings will be taken in Youth Court).
 - vi) FPN will be issued to children between 10 and 13 if it is demonstrated that they have been subject to education to make them aware of the offence.
 - vii) FPN will not be issued for under 10's. Should a minor of this age commit an offence an informal letter will be issued to the parents and the child.

(Tackling Environmental Crime – Litter Enforcement, 14 January 2004).

9. In 2005, a second report to Members approved adopting the revised FPN charge of £75.00, which is reduced to £50.00 if paid within 10 days of receipt of the notice.

DEFRA Guidance 2007

10. DEFRA guidance states *it is considered sensible practice to develop separate approaches to those aged 10-15 years of age, and those aged 16 and 17.*

11. The difference between these age groups is that with young people below 15 years of age, a parent or legal guardian should be informed at the earliest opportunity, ideally by letter, explaining the action taken, and to give the opportunity to discuss the case with an officer. With both age groups, the Youth Offending Team (YOT) should be consulted on what is the best course of action for that young person ideally before an FPN is issued.

York Policy

12. In 2007, the authority's current strategy was amended to ensure that appropriate work was undertaken with YOT when considering to issue an FPN to someone under 18, to ensure that the young person is not already within the judicial system and if so, to consider whether an FPN would be the best course of action. Following this consultation, the young person's parent/guardian is then contacted in writing to arrange for issue of the FPN by post or in writing.
13. York's policy does not differentiate between the two age groups as all FPNs are issued either in the presence of a parent or guardian, or a copy letter sent to them.

DEFRA Guidance: Safeguarding Child Welfare

14. When taking enforcement action against young people, DEFRA guidance states *authorities have a duty to ensure that they are acting in accordance with the Children Act 2004; this requires local authorities to discharge their functions having regard to the need to safeguard and uphold the welfare of children.*
15. This has bearing on the approach that officers should take having witnessed a young person committing a littering offence. Best practice states that *staff should always be in uniform, officers should never physically touch a young person, approach should be made from in front of a young person, and not behind, the officer should identify themselves and offer identification at the earliest opportunity and should work in pairs. Officers must provide an enhanced Criminal Records Bureau Certificate.*

York's Practice

16. Officers comply with all elements of best practice detailed at point 15.

DEFRA Guidance: Issuing Fixed Penalties

17. DEFRA guidance states that *it is important for an authority to think about the circumstances when it will issue FPNs so that should prosecution be required they will be able to show that the action they are taking is an action of last resort. To achieve this the LA may want to consider the following additional steps; before and after issuing the FPN:-*
 - *Take school assemblies explaining the laws and consequences;*
 - *In the instance of a first offence, offer a warning; and/or*
 - *If an offence is committed, ask the alleged offender to pick it up*

York's Practice

18. Although we have carried out school visits in the past, many schools choose not to have SEO presentations, leaving the service reliant on school's educating against litter themselves, which is not clearly reported back to the service. In November 2007 all schools were written to asking them to raise awareness of the litter law, and we offered our services to attend. However, only two schools took up this offer.
19. In order to ensure that education is continually carried out and that all school children are made aware that littering is wrong and liable to a fine, it is

considered best practice to carry out educational visits every year, at all secondary schools. Consideration could also be given to interventions with primary and junior schools, thereby educating at a younger age. However it is unlikely that this level of education could be taken into consideration, once the young person is over the age of 11.

20. Street Environment Service are in the process of developing a DVD training aid to assist with delivery of education in the secondary schools. It is believed that schools will be more interested in assembly talks if the Service can offer a professional presentation.
21. Displays in schools could also be devised to provide a focal point for several weeks to reiterate the anti-litter message. A proposal could be to carry out this initiative each September and to make this an annual occurrence. Posters designed by young people to engage with the target audience could be developed through competitions, raising media interest and helping to more widely promote the educational message.
22. With regard to warnings or asking the offender to pick up the litter, York currently does not include either steps in its enforcement policy. We are therefore heavily reliant on a good educational programme in the schools.

DEFRA Guidance: Paying for an FPN

23. *The guidance states that parents and guardians are not responsible in law for paying an FPN issued to a young person in their care. However, if non payment is successfully prosecuted in the youth court, and they are punished with a fine, the parent or guardian does become responsible for payment.*
24. *Alternative means of payment should be considered by:
Allowing payment by instalments
Allowing a longer payment window
Offering an alternative to the payment such as a litter pick*
25. *If the additional steps, set out above, are undertaken or offered, it is easier to demonstrate in the youth court, should a prosecution be taken, that it was in fact a last resort.*

York's Practice

26. A parent may choose to pay an FPN to keep their child from entering the judicial system and if a parent is required to pay a fine in court, both situations could result in the young person learning nothing from their punishment.
27. To overcome this, the Street Environment Service does arrange instalments and longer payment windows. To date we have accepted payment by instalment for 22 FPNs and all were paid in full, of these 4 were under 18 years. However, we do not currently arrange reparation.
28. The authority is a member of the Yorkshire and Humberside Environmental Enforcement Group, the majority of these authorities offer 2-3 hour litter picking as a form of reparation, via their warden service (akin to Street Environment Service) or via YOT.

DEFRA Guidance: Non Payment

29. *Under the youth justice system prosecution is a measure of last resort, this can make prosecution of young people for minor environmental crimes in the court problematic.*
30. *Given that potentially every FPN that is issued to young people could end in prosecution in the youth court, any authority that plans to issue FPNS to young people needs to consider their approach carefully.*
31. In addition to DEFRA guidance, the new suite of national indicators includes a measure for all local authorities (and the police) to reduce the number of first time entries into the criminal justice system by young people (up to the age of 17), known as NPI 111. This measure is a local indicator in the current Local Area Agreement. It is therefore essential that everyone involved in working with young people within the council, are working in the same way.
32. DEFRA recognises that the decision to use FPN enforcement against juveniles is a political decision. However they do view that *any enforcement against young people, is carried out in a way that does not damage the credibility of the system.*
33. *It is considered good practice for an authority to meet the magistrates or the clerk of the youth court when preparing its own policy in this area and to get their views on the approach the authority plans to take in relation to issuing FPNS to young people.*

York's Practice

34. Since adopting the FPN powers, we have not had a single non payment by a juvenile. Courts are unlikely to want to see young people with no previous criminal record being brought to court for dropping a sweet wrapper. Nor do we want to be associated with giving a young person a criminal record and ruining their prospects of employment or being able to apply for travel VISAs.
35. Experience from other authorities has found that courts tend to give conditional discharges or small fines. A Youth Court cannot award the prosecutor with costs above the maximum penalty for the offence, in this case £75.00. Therefore, the work carried out by the officers to bring the case before the courts is likely to go unrecovered.
36. A meeting took place in July 2008 with the Clerk to York's Youth Court and York Magistrates' Court Chief Clerk to discuss the new guidance. Their advice was that DEFRA guidance should be followed and that all available measures should be taken before bringing a young person to court for a littering offence. These measures should include education, warnings and alternative means to payment via reparation.

Recommendations to York's current Litter Enforcement Policy

37. Annex 2 and 3 contain a revised procedure for Litter enforcement against young people, taking DEFRA guidance into consideration. Annex 2 covers young people aged between 10-15 years, and Annex 3 covers young people aged 16-17 years inclusive.

Consultation

38. Consultation has been held with York Magistrates Court Chief Clerk and Youth Court Clerk.
39. City of York Council Children's Services were consulted on the changes to policy and are in support of the educational campaign in schools.
40. City of York Council's Youth Offending Team were consulted on the changes to policy.

Options

41. Members could decide to support the revised policy in Annex 2 and 3, in their entirety, with any of the proposed steps set out being amended or removed, or decide to keep the current enforcement policy unchanged.

Analysis

42. No analysis is required.

Corporate Priorities

43. This proposal supports the following corporate priorities:

- *To reduce the actual and perceived impact of violent, aggressive and nuisance behaviour on people in York;*
- *To improve the actual and perceived condition and appearance of the city's streets, housing estates and public spaces.*

Implications

Financial

44. Since November 2003, local authorities have been permitted to retain receipts from FPN's for litter offences, under section 119 of the Local Government Act 2003. Local authorities are permitted to use the sums of money it received only for functions under Part IV of the EPA 1990, i.e. in relation to litter enforcement. By issuing warnings in lieu of FPNs the income generated would be reduced.

Other Implications

45. There are no significant HR, equalities, legal, crime and disorder, IT, property or other implications other than those set out in the body of this report.

Risk Management

46. There are minimal risks associated with the recommendations of this report.

Recommendations

47. That the Advisory Panel advise the Executive Member to agree to the changes in policy highlighted in Annexes two and three of this report.

Reason: To ensure that the authority's litter enforcement policy and procedures are compliant with DEFRA's best practice on the issuing of FPNs to young people.

Contact Details

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Report Approved Date 6/11/08

Wards Affected:

All

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Background Papers:

1. Environmental Protection Act 1990
2. Clean Neighbourhoods and Environment Act 2005
3. Tackling Environmental Crime – Litter Enforcement, 14 January 2004
4. Local environmental enforcement -Guidance on the use of fixed penalty notices. DEFRA, 2007.
5. Issuing Fixed Penalty Notices to Juveniles. DEFRA, 2006.

Annexes:

Annex 1 The Legislative Framework

Annex 2 Proposed new procedure for young people aged between 10 and 15 years of age

Annex 3 Proposed new procedure for young people aged 16 and 17 years of age

Annex 4 Warnings Proforma