



PENRYN TOWN COUNCIL

Fixed Penalty Enforcement Policy

Introduction

Penryn Town Council is committed to encouraging a clean and safe environment and to achieve this will use an 'educate, engage, enforce' approach where the emphasis is on education and encouragement in the first instance, but where this approach fails, the Town Council is prepared to use its enforcement powers to fulfil this ambition. Fair, proportionate and consistent enforcement of all legislation is essential and this document sets out the Council's policy in relation to fixed penalty notices.

Fixed penalty notices are a means by which the perpetrator of relatively minor crime can discharge their liability to prosecution for the offence. If the penalty is not paid, the perpetrator can generally be prosecuted for the original offence. Fixed penalty notices offer one solution to the Town Council in its attempt to make Penryn a cleaner, safer place. Fixed penalty notices will only be served where there is sufficient evidence, to a criminal standard of proof, to enable a prosecution to be brought for the original offence, should the fixed penalty not be paid.

This Policy has been produced having regard to DEFRA guidance on the use of fixed penalty notices under the provisions of the Clean Neighbourhoods and Environment Act 2005.

In relation to fixed penalty notices, the Town Council will:

- publish clear standards and guidance;
- publish performance statistics;
- provide information in plain English, or any other language, or format, upon request to those affected by its enforcement work;
- investigate complaints only in relation to the process of issuing fixed penalty notices;
- refer disputes over the commission of offences to the Magistrates' Court; and
- aim to be consistent in its approach at all times.

Objectives

The Council may deal with all the following matters, as identified in the Clean Neighbourhoods and Environment Act 2005, by way of fixed penalty notice:

- Dropping litter
- Graffiti and fly-posting
- Failure to comply with a Dog Control Order

Powers to be used

The offences that can be dealt with by way of a fixed penalty notice are set out in Table 1 below:

Penryn Town Council will only use its powers where there is a local need or there is a problem which warrants their use.

The Council has recognised the changes introduced in the Clean Neighbourhoods and Environment Act 2005 in relation to fixed penalty amounts and the opportunity for local authorities to offer discounts for early payment. The Council will implement these powers in relation to some fixed penalty notices. The details of the level of fines are shown in Table 1 below.

Delegation

The Town Clerk is empowered to authorise suitably trained staff within the Council and volunteer Community Wardens to serve fixed penalty notices where there is a legal power to do so. In authorising an officer or volunteer the Town Clerk will give consideration to the training and experience of staff and volunteers in relation to fixed penalty notices.

The administration of the scheme, including all queries with regard to fixed penalty notices, will be undertaken and dealt with by Cornwall Council. Cornwall Council will also be responsible for instituting legal proceedings in relation to prosecutions arising from failure to pay a fixed penalty notice.

Levels of fixed penalty fine

Table 1 contains a list of the various fixed penalty notices available to the Council for use in relation to environmental crime, including details of the particular fixed penalty notice, present levels of fine, and discounts that the Council will offer for early payment.

One of the provisions of the Clean Neighbourhoods and Environment Act 2005 introduced powers to offer discounts for early payments of some fixed penalties. The standard payment period set in legislation is 14 days. Once a fixed penalty notice has been issued and paid within this period, the authority cannot prosecute for the original offence. For this reason, the period for which a discount can be offered should be less than 14 days and guidance recommends that it should be not more than 10 days. The Council will offer discount for early payments if paid within 10 days for the offences outlined in Table 1.

Table 1 – List of offences and levels of fine

Offence	Legislation	Objective	Fine
Dropping litter	S88(1) Environmental Protection Act 1990	Cleaner streets and public places and increasing public awareness by publicity associated with fixed penalty.	£80 reduced to £50 if paid within 10 days
Graffiti and fly-posting	S43 Anti-social Behaviour Act 2003	Cleaner buildings and structures by strengthening the powers to deal with graffiti and fly-posting removal.	£80 reduced to £50 if paid within 10 days
Breach of Dog Control Orders	The Fouling of Land by Dogs (Cornwall) Order 01/2010 (attached as Appendix 1)	Increased awareness of the problems caused by dog fouling and the need to reduce the number of incidents of dog fouling in Penryn which will result in cleaner streets and public places and reduction in serious public health risk.	£80 reduced to £50 if paid within 10 days

Targeting of offences

The Council adopts a responsive approach when dealing with the various offences which can be dealt with by the fixed penalty regime. This approach is influenced by complaints received, concerns expressed at Council meetings and other public forums, and by information gathered from inspections of the local environment.

In addition, the Council intends to develop a wider number of Community Wardens empowered to issue notices which will enable the development of a more proactive publicised approach to addressing environmental crime, particularly dog fouling and litter, which have featured highly in responses to the Neighbourhood Plan's initial questionnaire as issues to prioritise.

Key policies

This section sets out the key policies in relation to fixed penalty notices.

Second and subsequent offences

Fixed penalty notices will normally be offered as an opportunity to discharge responsibility for offences that otherwise would be taken to court. They are normally a 'one time' offer. In cases where the offender has a history of committing the same or similar offence, and the payment of earlier fixed penalties or court fines has not deterred them from re-offending, then prosecution will normally follow.

The appropriate use of fixed penalties

Fixed penalties will be used for routine offences covered in Table 1 in this Policy. In cases where the nature or extent of the offence is serious and that the issuing of a fixed penalty notice would bring the system into disrepute, then prosecution will be considered. Examples could include cases where there is evidence of widespread and systematic offending, non-cooperation or obstruction with enquiries, intimidation of witnesses, or aggressive or violent conduct. Some discretion may be used in the opposite case where an officer feels the offence was unintentional and/or where the offender is willing to make reparation by picking up litter dropped, disposing of dog fouling, or removing fly posting or graffiti.

Vulnerable adults

If there is any doubt in the enforcement officer's opinion that the person who has committed the offence is not capable of understanding what they have done, or is seriously mentally impaired, the issuing of a fixed penalty would not be in the public interest and on-the-spot education will be considered. This may include asking the person to rectify their actions or explaining the consequences.

Young people

The Council does not wish to subject young people to criminal proceedings unnecessarily. The Council aims to take a holistic approach to the problem of young offenders, including education work through the schools and on the streets, and use of

young volunteers for litter picks etc. The Council will endeavor to adopt reparation and restorative justice approaches in appropriate circumstances.

Where enforcement action is considered to be the only available option, the Council will follow Cornwall Council's Juvenile Enforcement Policy.

Training

All front line staff and volunteers who are responsible for issuing fixed penalty notices, all back office staff who are responsible for administration of the scheme, and all managers associated with the scheme will be fully trained in the appropriate procedures, and in any other areas that are deemed appropriate.

Use of receipts

Penryn Town Council will use fixed penalty receipts in accordance with the guidance issued by DEFRA in 2006. Any funds raised by the fixed penalty regime will normally be used to help meet the costs of providing the services in a service area relevant to the offence.

Reporting

Successful prosecutions in relation to non-payment of fixed penalty notices will be publicised.

Appendix 1

THE CLEAN NEIGHBOURHOODS AND ENVIRONMENT ACT 2005

The Dog Control Orders (Prescribed Offences and Penalties, etc.) Regulations 2006 (S.I.2006/1059)

The Fouling of Land by Dogs (Cornwall) Order 01/2010

The Cornwall Council hereby makes the following Order:

1. This Order comes into force on the 16 July 2010
2. This Order applies to land specified in the Schedule

Offence

3. (1) If a dog defecates at any time on land to which this Order applies and a person who is in charge of the dog at that time fails to remove the faeces from the land forthwith, that person shall be guilty of an offence unless—
 - (a) he has a reasonable excuse for failing to do so; or
 - (b) the owner, occupier or other person or authority having control of the land has consented (generally or specifically) to his failing to do so.
- (2) Nothing in this article applies to a person who—
 - (a) is registered as a blind person in a register compiled under section 29 of the National Assistance Act 1948; or
 - (b) has a disability which affects his mobility, manual dexterity, physical co-ordination or ability to lift, carry or otherwise move everyday objects, in respect of a dog trained by a prescribed charity and upon which he relies for assistance.
- (3) For the purposes of this article—
 - (a) a person who habitually has a dog in his possession shall be taken to be in charge of the dog at any time unless at that time some other person is in charge of the dog;
 - (b) placing the faeces in a receptacle on the land which is provided for the purpose, or for the disposal of waste, shall be a sufficient removal from the land;
 - (c) being unaware of the defecation (whether by reason of not being in the vicinity or otherwise), or not having a device for or other suitable means of removing the faeces shall not be a reasonable excuse for failing to remove the faeces;
 - (d) each of the following is a “prescribed charity”—
 - (i) Dogs for the Disabled (registered charity number 700454);
 - (ii) Support Dogs (registered charity number 1088281);
 - (iii) Canine Partners for Independence (registered charity number 803680).

Penalty

4. A person who is guilty of an offence under article 3 shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Given the Common Seal of Cornwall Council

This day of 2010

THE COMMON SEAL OF)
THE CORNWALL COUNCIL)
was hereunto affixed in the)
presence of:-)

Authorised Officer

SCHEDULE

The Order shall apply to all land which is open to the air and to which the public are entitled or permitted to have access, with or without payment, within the County of Cornwall other than land which is placed at the disposal of the Forestry Commissioners under Section 39(1) of The Forestry Act 1967