



# **Uttlesford District Council**

## **Environmental Health Services**

### **Enforcement Policy & Operational Procedures for Offences subject to Fixed Penalty Notices**

**Version 1.0**

*Key information on this document*

Purpose: This policy is a general statement of the approaches to be taken regarding specific enforcement activities concerning waste, littering and other environmental offences. It relates to Corporate Enforcement Policy & associated Service Standards.

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### Part 1 Overview

#### 1. Introduction

1.1 Uttlesford District Council's (UDC) Environmental Health Service is responsible for the enforcement of a wide range of law (or statutory provisions) which is centred mostly on securing public health and safety, the regulation of the trading environment and the protection of the environment.

1.2 This Policy outlines the service's approach for dealing specifically with waste and street scene legislation and links with the Council's corporate vision to protect and enhance the unique character of the district

1.3 This enforcement policy contributes to a number of the key actions to improve the local environment and enhance the street scene by:

- I. Conducting education and enforcement operations to reduce fly-tipping, fouling and littering offences*
- II. Issuing fixed penalty notices for waste-related offences and prosecuting those where it is in the public's interest to do so.*
- III. Working with different agencies to reduce the number of illegal waste carriers that operate in the district.*
- IV. Using CCTV monitoring equipment (both overt and covert) to identify littering and fly-tipping offences.*

1.4 This document has regard to UDC's Corporate Enforcement Policy and complies with the Principles of Good Enforcement as laid out within the Regulatory Reform Act 2006. The Policies and operational procedures outlined within this document relate specifically to the following offences

- Littering
- Fly-tipping (depositing controlled waste on land without the authority of an environmental permit
- Unauthorised waste carriers/transfers of waste
- Failure to comply with a notice relating to a waste receptacle
- Failure to furnish documents ( waste transfer documents) agreements
- Failing to produce authority to transport controlled waste
- Dog fouling
- Smoking in public buildings/vehicles
- Failure to display no smoking signs in smoke free premises or vehicles
- Untaxed and abandoned vehicles
- Graffiti
- Unauthorised distribution of fliers
- Flyposting

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- Failure to comply with a Community Protection Notice (Low level ASB)
- Failure to comply with Offences under the Council's Dog Control Order / Public Spaces Protection Order

1.5 In general, the Environmental Health Service aims to educate local residents, businesses and visitors to UDC about how to manage their refuse and recycling properly. This includes advice to commercial and industrial waste producers about how to comply with their "*Duty of Care*" to manage their refuse responsibly under section 34 of the Environmental Protection Act 1990. It also involves encouraging them to use the guidance available from the Government and the Council.

1.6 In general, where education has been provided, offenders claiming ignorance of the law should not expect to be given a second chance before enforcement action is taken. The Council will normally take enforcement action if it is supported by an assessment of the factors listed within section 7 of the Council's Corporate Enforcement Policy and there is no general requirement to have first provided education.

1.7 Where an offence has been committed, but it is not been possible to identify the perpetrator, the Council will organise a leaflet drop or write to premises within the vicinity to ensure that businesses and residents are aware of the problem and their duty of care responsibilities.

## **2. Partnership Working**

2.1 It is acknowledged that environmental crime, particularly fly tipping, does not recognise administrative boundaries and that for authorities to deal with it effectively co-operation is necessary with other agencies and neighbouring authorities. Where possible the service will take a multi- agency approach for dealing with environmental related policy

## **3. Authorisation and delegation**

3.1 In relation to the legislation, part 3 of the Council's constitution sets out the delegated authority to:

- commence a prosecution
- authorise named officers for enforcement

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#### **4. Training**

- 4.1 The Council will provide appropriate initial and updated training to all Enforcement Officers and others authorised to undertake environmental enforcement as is deemed necessary to enable them to carry out their duties efficiently and effectively. This will include the following:
- (a) Minimum update training of 5 hours per year for continual professional training.
  - (b) Minimum of 10 hours revision training for authorised officers returning to environmental enforcement.
  - (c) Minimum of three months monitoring of newly qualified or appointed Officers or Officers returning to environmental enforcement duties after an absence of more than 3 years.

#### **5. Types of Enforcement Action**

- 5.1 The law allows for different types of enforcement action dependant on the nature and severity of the offence and the quality of the evidence available. Details of the various enforcement options are given within UDCs Corporate Enforcement Policy.

### **Part II Fixed Penalty Notices**

#### **1. Introduction**

- 1.1** Notices of opportunity to pay a fixed penalty / fixed penalty notices (referred to as FPNs) can be issued by local authority officers, police officers and police community support officers for certain offences where the legislation permits and where the officer is authorised to do so. These notices provide a quick, visible and effective way of dealing with low-level straightforward offences, and an alternative to prosecution.
- 1.2** A fixed penalty is not a fine. Payment of the penalty by the recipient discharges their liability to conviction for the offence for which the FPN was issued. It does not constitute an admission of guilt, but removes the possibility of the creation of a record of criminal conviction.

#### **2. Grounds for Issuing a FPN**

- 2.1** A FPN may only be issued where an officer has reason to believe a person has committed a penalty offence and there is sufficient evidence to support a successful prosecution.
- 2.2** An officer may issue a FPN where the offence is of a nature suitable for being dealt with by a FPN. FPNs are designed to deal with low-level offending. When considering a case, officers should consider the nature and seriousness of the offence. For example, the use of a FPN is appropriate for most types of littering offences, but, in the case of graffiti and fly-posting, a FPN is only going to be appropriate for offences at the minor end of the scale. The specific offences and the circumstances in which an FPN is appropriate are discussed at Section 9 of this document.
- 2.3** Normally offences resulting in a FPN will be witnessed directly by the officer. However, an officer may consider it appropriate to issue a FPN to a suspect if they have not directly witnessed the offence, but have reliable witness testimony.
- 2.4** Any interview and questioning must be consistent with the practice and procedures established by the Police and Criminal Evidence Act 1984, Code C.

#### **3. The Offender**

##### **3.1 A FPN should be issued only where,**

- the alleged offender is compliant and able to understand what is going on, and

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- there is sufficient evidence as to his/her identity and place of residence.
- 3.2** A FPN will be appropriate for first-time offenders and ‘one-off’ incidents as it is a low-level disposal and the recipient can avoid obtaining a conviction. Issuing a FPN will also be appropriate because of the extreme improbability that a person once seen committing an offence would be seen on a subsequent occasion, and in such an event, that there would be any accessible record of a previous warning which may have been given by another agency.
- 3.3** A FPN is a means of changing offending behaviour and may be an appropriate response where a warning or a caution might have been considered.
- 3.4** Where a suspect is not co-operative, consideration should be given to an alternative disposal (e.g. prosecution and/or police involvement). FPNs must be issued to *and* received by the suspect. If an intended recipient of a FPN refuses, after being warned, to give a correct name and address, and identity can be established through other means, i.e. by the police, he/she should be reported for prosecution, rather than given a FPN. It is a specific offence for a person to whom an officer proposes to issue a litter or fly-posting FPN, to fail to provide the officer with their name and address, or to give false details.
- 3.5** A FPN *will not* be appropriate:
- Where a penalty offence is known to have been committed in association with another non-fixed penalty offence. Both offences should be charged together.
  - Where an offender is **threatening, abusive or violent** to the officer. Where an alleged offender becomes aggressive or violent, the officer should ensure their own safety and seek help from the police. The offender would be dealt with by way of prosecution, either by the police or the Authority.
- 3.6** FPN *may not* be appropriate:
- Where a suspect appears to be unable to understand what is being offered to them (for example, where the suspect is deaf), or there is doubt about their ability to understand English. Where such circumstances arise every effort should be made to solicit/impart the required information.
  - Where the officer has reason to believe that the person is impaired by the influence of drugs or alcohol. If the officer is satisfied as to a person’s identity and place of residence, it may be appropriate to consider giving FPN at a later time. (Police should consider the appropriateness of exercising powers under section 24 of the Police and Criminal Evidence Act 1984).
  - Where no satisfactory address exists for enforcement purposes. This may be where the officer has reason to believe that the suspect is homeless or

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sleeping rough, or where the suspect is a non-resident foreign national (i.e. not British or Northern Irish).

- Where the suspect's behaviour suggests they have learning disabilities or mental disorder. The officer should question whether issuing a FPN and (as it will probably go unpaid) prosecution is in the public interest. (Note the effect of section 77 of the Police and Criminal Evidence Act 1984).
- Where it is known that the suspect has a previous relevant conviction or caution, or has previously been issued with an FPN (for the offence), particularly if they have not paid. The officer should inform the offender that (s)he will be reported with a view to prosecution.

**3.7** Where possible, FPNs should be issued on the spot, however, they can be issued by post where it is appropriate to do so.

#### **4. Issuing the FPN**

**4.1** The officer will approach the alleged offender, identify him/herself and tell the person, in simple terms that they have been seen committing an offence. The person will then be spoken with to obtain their name, address and date of birth. These details will be verified as far as practicable, and the FPN will then be issued. Documentary evidence of identity and place of residence will be requested, but not demanded, and will be preferable to non-physical checks such as the electoral register. Failure to identify a suspect prior to issue could invalidate enforcement. Police assistance will be sought where necessary. The officer must record the suspect's forename, surname, address, post-code and date of birth on the FPN. These are required for processing purposes.

**4.2** Prior to issuing, the Officer of the Council must have all information available in the form of PACE notes, statements, images and any other supporting evidence to justify service as this information may be called upon and be subject to scrutiny should the matter progress to court

**4.3** It is anticipated to avoid confrontation that the FPN will be posted to the offender. When the FPN is issued, the officer should explain that it provides an opportunity to avoid liability to prosecution, and will draw the person's attention to the relevant points about making payment. The officer will advise the recipient of the FPN that in the event of non-payment, they will be prosecuted for the offence.

**4.4** A person who refuses to accept a FPN from the officer must be informed that (s)he will be reported for the offence in question and may be prosecuted.

**4.5** Officers will not accept payment of a fixed penalty anywhere other than at the offices of Uttlesford District Council in Saffron Walden.



## **5. Disputes about Enforcement**

- 5.1** Once a FPN has been issued the recipient may decide to phone or write in pleading mitigation or contesting the fact that a FPN was issued. An alleged offender contesting a FPN should be advised that there is no obligation to pay a fixed penalty and there is no formal appeal procedure. A FPN is an invitation for someone to cancel their liability to prosecution by paying a fixed penalty within the suspended enforcement period.
- 5.2** Whilst the Authority should review the facts of a particular case when invited, the opportunity to challenge the allegation and plead not guilty to the alleged offence at an independent hearing is open to the recipient of the FPN. This will be by way of prosecution and trial in a magistrates' court.
- 5.3** Any person wishing to complain about the FPN must do so in writing. Such letters may help identify any issues that need resolving or investigating before a case comes to court. Arguments over the law, the amount of the fixed penalty, etc. will not be relevant, but claims that a defence applies will.
- 5.4** Only in occasional circumstances will it be appropriate to withdraw a FPN or not proceed to summons on non-payment. This may be when information that was not available at the time the FPN was issued becomes available and it is determined that the offence to which the notice relates was not committed, that it would not be in the public interest to prosecute, or that the notice should not have been issued to the person who is named in the notice.
- 5.5** Payment of a fixed penalty by instalments will not be accepted. In cases of demonstrable hardship, consideration may be given by a senior officer to extending the suspended enforcement period and delaying the issue of summons, although there is no legal basis for this.

## **6. Issuing Fixed Penalty Notices to Young Persons Aged 10 – 17**

- 6.1** A local authority FPN can be issued to anyone over the age of 10. Parents and guardians are not responsible in law for paying fixed penalties issued to young offenders (in this respect FPNs differ from police issued penalty notices for disorder (PNDs)). However, a court before which a young person appears can order the parent/guardian to pay any fine it may impose.
- 6.2** Children's service authorities, including local authorities and police, are under a duty under the Children Act 2004 to discharge their functions having regard to the need to safeguard and uphold the welfare of children. In the youth justice system, prosecution is a measure of last resort, and usually follows a reprimand and final warning.

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- 6.3** A FPN *will not* be appropriate where a young person's behaviour suggests they have learning disabilities, or they suffer from a vulnerability that impairs his or her understanding of what goes on. In such cases the matter should be referred to the Youth Offending Team and Children's Services. Any action in respect of the alleged offence can be decided on later.
- 6.4** The following guidance (6.5 to 6.10) does not extend to criminal damage offences committed by young persons or any indictable offences. The disposal in those cases should be determined in conjunction with the police. The following paragraphs do apply to littering, fly-posting and offences under public space protection orders (including dog fouling).
- 6.5** The officer will establish the identity of the alleged offender and details of the offender's home and parents or legal guardians.. On further enquiry it will be decided whether to issue a FPN or refer the youth to a Youth Offending Team (YOT) diversion programme. The latter may be suitable where the youth and his family have limited means of income and the youth is at risk of getting involved in further anti-social behaviour. A FPN **must not** be issued to anyone who is under 10 years of age as they are below the age of criminal responsibility.
- 6.6** Subject to paragraph 6.7 below, if the 10 to 17 year old is a first-time offender a warning letter will be sent to him/her and his/her parent/guardian. If the offence is the youth's second offence, a FPN will be issued.
- 6.7** Sometimes the behaviour of someone under 18 years of age may warrant more than a mere warning. Examples may include being abusive or antagonistic behaviour to the authorised officer. Alternatively, the alleged offender may be known (for example following an address check by police) to be involved in other criminal activity and a letter would not effectively challenge their conduct. A FPN, or with police involvement, a Police Reprimand or Final Warning, should be considered instead. Where a FPN is issued and the matter is not referred to the police, the officer should complete a confidential report to be attached to the FPN explaining why he/she came to the decision to issue a FPN. This may include details based on local knowledge or aggravating factors, or knowledge of previous offending by an individual
- 6.8** In the case of a 16 or 17 year old, the FPN may be issued at the scene where it would be in accordance with this policy. The officer or administration will notify the offender's parent or legal guardian by letter.
- 6.9** FPNs issued to under 16s will be either issued in person with a parent or legal guardian present, or sent to the alleged offender under cover of a letter, which will also be copied to the parent/guardian. FPNs for under 16s will not be issued on the spot.
- 6.10** Only on non-payment of a FPN, on a further occasion being caught littering, or where paragraph 6.7 above applies, would prosecution of a youth under 18 years of age be considered.

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- 6.11** The YOT will be informed of all FPNs and warning letters issued to under 18s. Officers will inform the offender that information will be shared with their local YOT.

## **7. Unpaid or Challenge Fixed Penalty Notices**

- 7.1** If the person either refuses to accept a FPN or, having accepted such a notice, does not pay before the end of suspended enforcement period (14 days), a final reminder letter will be issued giving a further seven days' notice. If the fixed penalty remains unpaid, the matter will result in prosecution (unless there is good reason otherwise). To ensure the credibility of a FPN scheme, the assumption will be that all cases involving non-payment will be referred to court.
- 7.2** Where a fixed penalty is refused, not paid, or challenged, the process defaults to a standard prosecution and the officer who issued the FPN will be notified.
- 7.3** It is the responsibility of the officer who issued the FPN to ensure that all witness statements and exhibits, including any record of interview, are sent to the relevant administration officer. This should be done within two weeks of notification.
- 7.4** Each case will be reviewed by senior officers, and if necessary solicitors, applying the evidential and public interest tests before a prosecution is commenced.

## **8. Dealing with the non-cooperative, aggressive or violent persons**

### **8.1 The non-cooperative**

If someone is non-cooperative, for example is unwilling to give their details, they should be reminded that failing to do so constitutes a further offence and could be prosecuted in the magistrates' court for the offence that they are alleged to have committed, along with the further offence of failing to provide their details.

### **8.2 The aggressive**

Those who are aggressive, use offensive or threatening language or behaviour should not be offered a FPN. If their identity can be secured, without the enforcing officer putting themselves at risk, this should be obtained.

The details of the offence, along with a full account of the exchange that took place when challenged, should be recorded in the officer's notebook (as well as any incident form) and prosecution pursued in the magistrates' court where the events of the 'confrontation' should be put before the court so that the magistrates are aware of the aggravating circumstances.

#### **8.3 The violent**

An alleged offender who is violent towards an officer will not be offered a FPN. The officer should secure their own safety, and police should be involved. Prosecution will follow for charges that suitably reflect the offense.

#### **9. Dealing with offenders who refuse to give details or who give false details**

Offences involving obstruction of officers are normally dealt with by way of prosecution. In terms of fixed penalty offences, officers should note the following guidance:

- I. Offender refuses to give details or gives false details, but provides correct details after being warned, or before police arrive – it is considered appropriate to offer and issue an FPN.
- II. Offender gives correct details only after being required to do so by a police officer – report for summons for the original offence and for the offence of failing to give details or giving false details.
- III. Offender gives false/inaccurate details, FPN is issued at time, and is subsequently paid – no further action.
- IV. Offender gives false/inaccurate details, FPN is issued at time and not paid, and enquiries identify the offender – report for summons for the original offence and for the offence of giving false details.

### Part III Operational Procedures

#### 1. Introduction

- 1.1 The following outlined operational procedures / strategies will be employed to tackle the environmental issues identified within the district. These will be updated on a regular basis to ensure we are up to date with the best practice and are in line with national campaigns and guidance. In line with the corporate enforcement policy a graduated approach to enforcement will be adopted and each case will be considered on its own merits.

#### 2. Littering Offences

- 2.1 Tackling littering and dog fouling is a priority for the Council. In line with the Litter Strategy for England, the Council wants to create a culture where it is totally unacceptable to drop litter and allow dogs to foul without cleaning up the mess. The following approach will typically be used for dealing with these complaints
- 2.2 The offence under s.87 of the Environmental Protection Act 1990, as amended in 2005, applies to all places that are open to the air, including private open land, and land covered by water.
- 2.3 A person does not commit a littering offence if they leave litter on their own land or if they have the permission of the landowner to leave litter.
- 2.4 **Litter** is not defined, but **includes** cans, bottles, confectionary wrappers, food and drink containers, chewing gum, plastic bags, till receipts, leftover food, cigarette and cigar ends and flyers.
- 2.5 The authorised officer must be satisfied that the two elements of the offence have been committed, namely that a person has thrown down, dropped or otherwise deposited any litter, and left it. The offence is made out when a person intentionally discards something and walks away.
- 2.6 Hot spots will be identified through complaints received from residents, feedback from surveys and officer inspections.
- 2.7 Officers will inspect to ensure that adequate signage is provided and fouling bins are in the vicinity. Appropriate additional or temporary signage may be sought

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- 2.8 Where appropriate “report it” cards will be delivered to local residents asking for their co-operation in bringing about a reduction in fouling. This will include the collection of intelligence from local residents to identify perpetrators.
- 2.9 Where justified and subject to resource being made available, overt surveillance may be adopted. This may be in the form of deployed mobile cameras and / or officer patrols.
- 2.10 When appropriate, PACE interviews will be conducted from evidence received from a third party, FPNs will be issued for first offences where the witness statement and evidence is robust and conviction would be likely should prosecution prove necessary.
- 2.11 When an incident of dog fouling or littering is observed in the course of normal duties, for first offences a FPN will be issued.
- 2.12 Where complaints are received relating private land / property, the use of community Protection Warnings and Notices will be pursued under the Anti-Social Behaviour Crime & Policing Act 2014.
- 2.13 Offenders who litter from vehicles often do so in a neighbourhood which is not their own. Registration details will be taken and driver details will be established. Action will be pursued where possible.

### **3. Fly Tipping and Duty of Care**

- 3.1 Section 33(1)(a) of the Environmental Protection Act 1990 prohibits a person from depositing controlled waste or extractive waste in or on any land unless in accordance with an environmental permit.
- 3.2 As per guidance from the Department of Environment, Food and Rural Affairs, a FPN is not appropriate for operators in the waste management industry, repeat offenders, or those responsible for large-scale fly-tipping or the fly-tipping of hazardous waste.
- 3.3 A FPN may be appropriate where the offence is one involving low ‘criminality’ and very limited adverse effects on the local environment and on amenity value. Officers will therefore consider culpability and harm and make a determination on whether a FPN, caution or prosecution is appropriate in all the circumstances. A FPN is most likely to be offered for offences committed negligently or recklessly and not where someone has deliberately driven somewhere to fly-tip. The decision will be made in conjunction with the investigating officers’ supervision.
- 3.4 A FPN may therefore be appropriate in the following circumstances:
  - Household waste deposited on the highway outside the property, and the origin is easily identified;

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- Domestic DIY waste or items of furniture where no 'special' collection has been arranged and no skip is in use;
- Small quantities of trade waste from a micro-enterprise (i.e. four bags or less) where there is no trade waste agreement in place or where the waste collection contract is insufficient and accordingly the waste is not collected by the contractor;
- Small quantities of waste (i.e. four bags or less of domestic waste) deposited in, for example the grounds of a void property, near to the place of production;
- Small quantities of un-bagged garden waste deposited on, for example, a railway embankment, adjoining the place of production;
- Waste deposited in someone else's skip on the highway without the hirer's permission.
- Garden waste deposited onto land adjoining the garden;
- Deposits at household waste recycling sites that would be in contravention of the conditions of the site's authorisation (environmental permit

3.5 A FPN will not (normally) be considered where:

- the person has a relevant conviction or caution;
- the person is a holder of an environmental permit or registration or is otherwise purporting to be operating a business handling waste, whether authorised or not;
- a person has fly-tipped waste from a vehicle;
- the waste in question is liquid, hazardous or clinical waste;
- waste has entered a watercourse;
- waste has affected land with value in terms of recreational or agricultural use, or of historical, landscape or nature conservation interest

3.6 All fly tips will be investigated to try to establish the source. Where any evidence is found, it will be fully investigated and where appropriate the offender will be issued with a FPN or prosecuted.

3.7 In most cases suspected persons or those considered responsible will be invited in for a PACE interview as part of the investigation.

3.8 Signs will be placed at hot spots to inform residents / visitors that offenders will be prosecuted

3.10 Following exercises to educate businesses, Duty of Care inspections will be made to establish premises have correct procedures for dealing with trade waste.

3.11 Officers will target premises for duty of care inspections where a particular type of waste is fly tipped. Waste transfer notes will be requested and FPN's may be issued if records are not accurate or businesses have failed to take responsibility for the correct disposal of their trade waste.

3.12 Where appropriate Officers will participate in joint investigations and exercises with other appropriate agencies such as the Police & Environment Agency to target suspected offenders or high priority premises. This could include stop and search measures, vehicle seizures etc. by the appropriate authority

#### **4. Community Protection Notice**

4.1 The Anti-social Behaviour, Crime and Policing Act 2014 (ASBCPA) consolidates and simplifies a number of tools available to the Police and Councils to counter anti-social behaviour. Part 4 allows the Council or Police to stop a person or body to stop conduct which unacceptably affects the community.

4.2 If the Council concludes that an issue is persistent, unreasonable and has a detrimental effect on the quality of life of those in the locality a Community Protection Warning (CPW), followed by a Community Protection Notice (CPN) can be served. The Notice can require them to

- Stop doing specific things and/or
- To do specific things and/or
- To take reasonable steps to achieve a specified result

4.3 Failure to comply with a CPN can result in a FPN or prosecution

4.4 Some issues which may fall under this behaviour may include

- Untidy land
- Rubbish and other waste related matters
- Anti-social behaviour
- On-going issues with stray dogs.
- Graffiti
- Noise

4.5 The investigating officer must first establish that it meets the criteria above; this could be by way of receiving a complaint from a member of the public.

4.6 When reasonably satisfied that the behaviour is unreasonable and is having a detrimental effect on the quality of life of those in the locality a CPW would be sent to the person/persons causing the unreasonable behaviour. The warning notice would set out clear guidance on what changes needed to be made and, depending on the issue, would allow a reasonable amount of time to complete the request

4.7 If the warning notice period ends and the actions haven't been completed the officer would then obtain the relevant evidence to establish that the issue is still meets the tests of a CPN. Suitable evidence will be sought to justify service based on balance of possibilities. Once satisfied that this is the case they would



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then serve a CPN. The notice allows a further reasonable time frame to complete the requested work and clearly sets out what the next action would be.

- 4.8 For non-compliance, the default position would be to issue an FPN unless there are good reasons to prosecute.
- 4.9 Officers shall have reference to the ASBCPA 2014 statutory guidance at all times.

## **5. Public Space Protection Order / Dog Control Orders**

- 5.1 Dog Control Orders were made under the Clean Neighbourhoods and Environment Act 2005 that has now been repealed and replaced by the Anti-social Behaviour, Crime and Policing Act 2014. Dog Control Orders will automatically become PSPOs in October 2017.
- 5.2 Currently, UDC has no designated PSPOs but the Council does have the following orders in place under the Dog Control Order Regulations
  - 1. Removal of Dog Faeces from land forthwith
  - 2. Keeping of Dogs on leads by directions
  - 3. Exclusion of Dogs from Land
- 5.3 Points 1 and 2 apply to all land within the district of Uttlesford, which is open to the air and to which the public are entitled or permitted to have access. Point 3, in the main, applies to recreational and children's play areas.
- 5.4 In general the approach to tackle breaches of PSPOs & Dog Control Orders is outlined below.
- 5.5 Complaints shall be responded to within 3 working days.
- 5.6 Signage will be checked and if necessary additional signage put up highlighting restrictions.
- 5.7 Where appropriate "Report it\*" cards will be delivered to local residents asking for their co-operation. This will include the collection of intelligence from local residents to identify perpetrators
- 5.8 Where resources allow, Officers will monitor activity at the site.
- 5.9 If problems continue and where resources allow, the use of surveillance cameras will be considered to catch offenders. More prolonged and sustained monitoring of the site will also be conducted.

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- 5.10 PACE interviews will be conducted using evidence received from a third party, for first offences FPN's will be issued where the evidence is robust and conviction would be likely should prosecution prove necessary.
- 5.11 When a breach of the Order is observed in the course of normal duties then a FPN will be issued for the first occasion. For repeat offences, consideration will be given to prosecute, should it meet the public's interest tests.
- 5.12 If the recipient of the FPN is non co-operative and unlikely to be deterred and/or who has been issued with a FPN in the past, a prosecution may be appropriate.
- 5.13 If a person decides to clear up the dog faeces after the intervention of an officer, it will not be sufficient for an FPN not to be issued. Such action would be recorded and noted in the event of a subsequent prosecution. The requirement is to remove the faeces forthwith, i.e. immediately. The offence does not apply to persons who are registered blind or to a person who has a disability which affects his/her mobility, manual dexterity, physical co-ordination or ability to lift, carry or move everyday objects, in respect of a dog trained by a prescribed charity and upon which (s)he relies for assistance.
- 5.14 It should be noted that a person who habitually has a dog in his/her 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. Therefore a FPN may be issued to the head of the house in the case of a stray.

## **6. Graffiti**

- 6.1 UDC does not have a significant problem with incidents of graffiti, however, graffiti is considered to be criminal damage and the Council will take robust action where perpetrators are identified.
- 6.2 Where non offensive graffiti is on private land or property, a 28 day notice (to remove graffiti will be issued to the person responsible for the property. This notice is given under the Anti-Social Behaviour Act 2003.
- 6.3 Graffiti will be photographed and frequently seen tags will be referred to the Community Safety Team who will work with local schools and the police to identify offenders.
- 6.4 FPN's may be issues in accordance with the guidelines provided within Part II.
- 6.5 Where an officer has reason to suspect a person of causing graffiti, but has no direct evidence a warning notice will be issued under Part 4 of the Anti-social behaviour, Crime and Policing Act 2014.

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#### **7. Abandoned Vehicles & Untaxed Vehicles**

- 7.1 To develop a more effective service UDC Enforcement Officers have been authorised by the DVLA to identify and take action to remove abandoned and untaxed vehicles from the highway and council owned public car parks.
- 7.2 Reports of abandoned vehicles will be investigated within 5 working days. Officers will determine if the vehicle is abandoned through DVLA registration checks, locality of keeper relative to vehicle, state of vehicle, length of time in place.
- 7.3 Burnt out and dangerous vehicles will be removed within 24 hours
- 7.4 If the vehicle appears to be abandoned, a notice of the council's intention to remove is attached to each vehicle. This notice will usually require removal within 15 days. A letter will be sent to the registered keeper of the vehicle informing him/her of the notice.
- 7.5 Failure to remove the vehicle will result in the council removing the vehicle.
- 7.6 Officers will investigate who has abandoned the vehicle and where appropriate (first offence only) issue a FPN on the registered keeper.
- 7.7 Where appropriate, registered keeper of the vehicle will be invited in for an interview under caution
- 7.8 If the vehicle has not been claimed by the registered keeper or his/her representative then the vehicle will be scrapped after 7days.
- 7.9 If a vehicle is reported as untaxed, the officer will follow the rules set out by the DVLA to establish how and when it will be removed.

#### **8 Fly Posting**

- 81 Random and unauthorised advertising on lamp posts, highway infrastructure such as traffic lights, telecoms cabinets is known as 'flyposting'. Flyposting is illegal, unsightly and can make areas look unsafe and uncared for. A-boards and signage installed into highway verges are enforced by Essex County Council who are the Highway Authority.
- 82 Therefore the following approach will be used in relation to reducing incidents of fly posting.

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- 83 All fly posters will be removed immediately when they are seen or within five working days of being reported. This will not include charitable events or signage which has been granted permission to be installed by Essex County Council.
- 84 All fly posting will be investigated, warning letters will be issued where possible advising offenders of further action, which could include a FPN being issued for each fly posting incident (i.e. for each poster).
- 85 Where offenders are witnessed installing a fly poster, officers will have discretion over the appropriateness and level of enforcement action impact on the offence. The default position will be to issue a FPN for first offences. A statement will be required if the offence is witnessed by a third party. This could then lead to a FPN being issued.
- 86 Where signs are fixed to private property the owner will be consulted /asked to remove them.

#### **9 Unauthorised distribution of printed matter**

- 91 Examples would include leaflets handed out on the street or placed under car windscreen wipers.
- 92 All first occasion offences witnessed shall be followed up with a Community Protection Warning and consideration will be given to issuing a FPN under schedule 3A of the EPA 90, depending on the response of the alleged offender and severity of the offence.
- 93 Community Protection Warning notices will be issued where an offence has been committed but not witnessed.
- 94 Where printed matter continues to be distributed an FPN & Community Protection Warning notice may be issued for first offences even if the distribution has not been witnessed.

#### **10. Nuisance Vehicles**

- 10.1 It is illegal to sell two or more vehicles on the road within 500 metres of each other as part of a business. These are considered to be nuisance vehicles. Repairing vehicles on the highway can also be deemed to be a nuisance. Therefore the following approach will be used:
- 10.2 At the initial visit, where appropriate owners will be educated on the law. A letter and Community Protection Warning Notice may be issued.

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10.3 If the request has not been complied with then a FPN under .6(1) Clean Neighbourhoods and Environment Act 2005 may be issued for first offence. A Community Protection Notice shall also be issued.

#### **11. Failing to produce authority -**

11.1 Under the Control of Pollution (Amendment) Act 1989, section 5B it is an offence to carry waste without the necessary authority for transporting waste. Anyone that transfers waste for business purposes must have a waste carrier's licence. The licence holder will issue a waste transfer note to anyone that instructs them to take away controlled waste

11.2 A FPN will be the normal disposal for an offence of failing to produce an authority (certificate of registration) to transport controlled waste.

11.3 If a person fails to produce an authority because he is not registered as a carrier of controlled waste (and is neither exempt nor excluded from the need to be so registered), the Authority will, subject to below, consider prosecution of that person.

11.4 A caution will be offered where:

- The person genuinely appears to be unaware of the requirement to register, and
- After being advised that he or she was required to be registered as a carrier of controlled waste, makes an application to the Environment Agency to become registered within the 7-day period provided by the section 5 'producer' notice.

11.5 A FPN may be offered where there has been no communication from the carrier within the 7-day period.

11.6 A FPN or caution will not be considered where:

- the person has a relevant conviction or caution;
- the person has had their registration revoked or refused;
- the waste being carried is liquid, hazardous or clinical waste;
- the person has previously been issued with an FPN for this offence;
- there is concern over where the waste was disposed of.

#### **12. Failing to produce transfer notes**

12.1 Under section 34(6) of Environmental Protection Act 1990, it is an offence to fail to produce waste transfer notes – An FPN will be the normal disposal route for a first-time offence of failing to produce documents (waste transfer notes) as required by a notice under the Waste (England and Wales) Regulations 2011.

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- 12.2 A FPN *will not* be appropriate in cases where the offence is symptomatic of repeated regulatory breaches or part of a series of offences. In cases where this offence is associated with another offence for which prosecution would normally be considered, both offences should be charged together. For example where waste is found fly-tipped by unknown persons and on enquiry the producer is identified and subsequently fails to produce transfer notes.
- 12.3 A FPN or caution will not be issued where:
- the person has a relevant conviction or caution, or has previously been issued with an FPN for this offence;
  - the waste produced is hazardous or clinical waste;
  - over a long time, large amounts of waste are involved from a medium to large enterprise

### **13. Failing to comply with notice relating to waste receptacle (S.46 & S.47**

- 13.1 Under s.46 or 47 of the Environmental Protection Act 1990 concerning the presentation of waste for collection.
- 13.2 Under S.47 This offence only applies to an occupier of a premise who produces commercial or industrial waste and is subject to a notice under section 47 of the EPA. Section 46 relates to the displaying of waste for domestic households.
- 13.3 If it appears to a waste collection authority that there is likely to be situated, on any premises in its area, commercial waste or industrial waste of a kind which, if the waste is not stored in receptacles of a particular kind, is likely to cause a nuisance or to be detrimental to the amenities of the locality, the authority may, by notice served on him, require the occupier of the premises to provide at the premises receptacles for the storage of such waste of a kind and number specified
- 13.4 Section 46 provides that, where a waste collection authority has a duty by virtue of section 45(1)(a) to arrange for the collection of household waste the authority may require the occupier to place the waste for collection in receptacles of a kind and number specified. This applies to all household waste where there is a collection duty, not just domestic waste.
- 13.5 Section 46 is an administrative rather than enforcement provision. Accordingly, an authority can serve a notice specifying how waste has to be contained in i.e. bins or bags and when to display waste.. There does not have to have been a problem with waste at the premises.

### **14. Smoke free**

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- 14.1 Provisions under the Health Act 2006, to seek to protect people working in or visiting enclosed or substantial enclosed workplaces and public places from exposure to second hand smoke.
- 14.2 FPNs can be issued for the following offences under the provisions of the Health Act 2006, namely:
- Failure to display no-smoking sign in a smoke free premise or vehicle (to be issued to the occupier or manager)
  - A person who smokes in a smoke free place or vehicle
  - A person having management control of a smoke free premises or vehicle who fails to stop a person from smoking there ( manager or person in control)
- 14.3 FPNs will be issue, unless the person charged could show that (s)he did not know and could not reasonably have expected to know that the premises/place/vehicle were smoke free. In the case of failure to display no smoking signs, that they did not know and could not reasonably have been expected to know, that no smoking signs were complying with the requirements were not being displayed in accordance with the requirements. For the management offence that they took reasonable steps to cause that person in question to stop smoking.