

# **Department of adult services, health and housing**

## **Croydon landlord services**

### **Fixed Penalty Notices**

#### **Operational policy**

##### **Link to strategy**

This policy is linked to Croydon landlord services' enforcement strategy and this policy will be subordinate to it.

##### **2. Introduction**

Under section 55 of the clean neighbourhoods and environment act 2005, the council has created dog control orders on all council housing land and other land for which the council is responsible and intends to carry out enforcement to ensure that people comply with the orders.

Consequently, the neighbourhood wardens (NWs) have been given delegated authority to issue fixed penalty notices (FPNs) for the following offences:

- (a) failing to remove dog faeces;
- (b) not keeping a dog on a lead;
- (c) not putting, and keeping, a dog on a lead when directed to do so by an authorised officer;
- (d) permitting a dog to enter land from which dogs are excluded;
- (e) taking more than four dogs onto land.

In addition the NWs have delegated authority to issue to issue FPNs for litter offences under section 88 of the Environmental Protection Act 1990.

##### **3. Scope**

###### **3.1 Housing land**

The power to issue the fixed penalty notice extends to all areas within the borough of Croydon that have dog control orders. However, the primary focus for the neighbourhood wardens will be housing land and adjacent highways and parks. The aim is for the Council to have a seamless enforcement programme and avoid demarcation lines that the public would find difficult to comprehend.

### **3.2 Land accessible to the public**

For offences under both the dog control orders and for litter, enforcement can only be carried out on land which is open to the air and to which the public are entitled or permitted to have access (with or without payment). Land is 'open to the air' if it is open to the air on at least one side, whether covered or not.

This is important as it means that the following areas are excluded:

- The internal communal areas of blocks of flats which have a communal entry door;
- Enclosed courtyards, drying areas, gardens etc., which may be open to the air, but to which the public will not have direct access.

If offences occur in these areas then it will be viewed as anti social behaviour and must be reported to the tenancy officer who will deal with it.

### **3.3 What is litter**

There is no statutory definition of litter, however the EPA states that litter is *'anything that is dropped, thrown, left or deposited that causes defacement, in a public place'*

Generally, litter would not be fly tips or anything larger than a small bag of rubbish.

### **3.4 Whose dog is it?**

It is the person in charge of the dog who is committing the offence and the first step is to establish who is in charge of the dog.

## **4. Taking action**

### **4.1 When to issue a fixed penalty notice**

1. an offence has clearly been committed and there is sufficient supporting evidence to support prosecution should the fixed penalty notice go unpaid;
2. the alleged offender is compliant and understands why they have been challenged;
3. the issuing enforcement officer believes that the alleged offender has offered their correct name and address; and
4. there are no aggravating circumstances.

### **4.2 When not to issue a fixed penalty notice**

1. When the person alleged to have committed an offence is aged under ten, or under the age at which an authority issues fixed penalty notices and in Croydon that will be anyone under 18;

2. You cannot issue to someone who is of no fixed abode, in other words they are unable to provide you with any address or an address that they will not be at for more than 14-28days.
3. If the alleged offender, when approached, is obstructive and non-cooperative; aggressive.
4. When it is suspected that an alleged offender has failed to offer their correct name and address
5. A second offence (if known) within 12 months; and
6. When an alleged offender seems confused, either through some form of impairment or through drugs or alcohol. In this instance you are advised to seek support from the relevant agency and the issuing of a fixed penalty notice should be seen as very much a secondary issue.

In respect of items 3 to 5 above, you should gather as much evidence as possible and discuss with your manager the need to start criminal proceedings.

## **5. How to issue a fixed penalty notice**

This can be on the spot or you can deliver via the post. However, on the spot should be considered the first option and the postal option is mostly to be used for those who refuse to accept the notice provided you are satisfied that they have given the correct name and address.

Complete the fixed penalty notice form and issue to the offender.

## **6. The collection of evidence**

We should take the view that in every case where we issue a fixed penalty notice it will end up in court. Accordingly, the collection of good quality evidence is vital if it is to be used later in a court of law. You must:

1. Make appropriate notes in your notebook detailing the facts of the incident
  - Date
  - Time
  - Location
  - Weather and light conditions
  - Offence committed
  - Name and address of offender
  - Age of the offender.

- Ethnicity of offender.
- Serial No. of notice issued.

The notebook entry should be completed as follows:

- all notes should be made with a black ball point pen;
  - notes should be legible;
  - any mistakes that are made should be crossed out with a single line and initialled so that they can still be read;
  - no gaps or spaces should be left, and where they exist they should be crossed out with a line; and
  - all witness statements should be signed by both the enforcement officer and any person giving a statement.
2. Ensure that your work partner makes appropriate notes in his/her notebook and completes a witness statement.
  3. Complete the section 9 statement which provides more detail of the incident and records the basic facts
  4. Complete the enforcement report form.
  5. Take photographic evidence if this is necessary, print the photo and attach it to the section 9 statement.

## **7. Some advice on carrying out enforcement**

- Remember, this is not just about issuing fixed penalty notices. This is only a part of the process.
- The objective is to have clean estates, free of litter, dog fouling and dogs running loose and causing a nuisance.
- If someone complies with the request to pick up the litter, clear the dog fouling or put the dog on the lead, then you must inform them that a repeat of this will result in the issue of fixed penalty notice which is a fine of £75. You should make a report of the incident for future reference giving the same level of detail as you would for issuing the fixed penalty notice.
- When you first observe that someone is committing an offence make sure that your work partner is also observing as they will be the key witness.
- Establish that someone has committed the offence by asking questions:  
 "I have just seen you dropping litter, are you aware that it is an offence?"

“Are you responsible for that dog and are you aware that it is an offence to let it off the lead or foul the estate?”

- Always have your warrant card and ID whilst on duty. You may be asked to show it.
- Know the legislation (This will also be on your warrant card):

Dog control orders – Clean Neighbourhoods and Environment act 2005

Litter – Environmental Protection Act 1990

## **8. Dealing with false details**

When asking for the name and address watch for any hesitation as this may indicate that the person is giving a false name and/or address. In such cases, you should remind people that it is an offence to give a false name. For litter this is section 88 (8A-8C) of the environmental protection act 1990 and for dog control order offences this is section 61 of the clean neighbourhoods and environment act 2005.

Officers of the council cannot detain people who refuse to give their name and address.

However, officers can and should record where the person goes.

If this is into a council housing property, then record the address and as much detail as possible so that the tenancy team can take further action.

If the person leaves the estate it may not be possible to follow so record as much detail as possible in your report. You can report this to the police. It is worthwhile returning to the same location at the same time on other days to see if the person returns. If they do, you can take a photograph as evidence for the police. You can speak to the safer neighbourhood team who may be able to attend and then we can carry out enforcement. In such a case we would not issue a fixed penalty notice as we would prosecute for the original offence and the offence of not giving name and address.

## **9. Dealing with agitated or threatening behaviour**

Before approaching any person committing an offence, you should be confident from your observations that they have committed or are committing an offence.

When you approach someone, you will need to engage them in conversation to make them aware that they have committed or are committing an offence. This initial approach will set the tone of the conversation. You should follow the guidelines of the training you receive. The objective will be, in many cases, to request them to comply with the law and there will be no need to take the matter

further apart from informing the person that a repeat of the offence will result in the issue of a penalty notice for £75.

Many people will be aware that they are in the wrong and will want to comply with your request or accept the fixed penalty notice.

Some people may argue or in some other way attempt to justify themselves and to dissuade you from carrying out the enforcement. Your knowledge of the law will be sufficient to counter any such arguments.

However, you will need to judge at which point the encounter may go beyond an exchange of views and develop into a confrontation that may lead to a more heated argument or verbal abuse or the threat of violence.

If this occurs you can try to calm them. If this approach does not succeed you should, if possible, inform the person that their behaviour is such that you are no longer continuing and you will be informing the police that they have committed an offence. You should then withdraw to a safe distance (which may be completely off the estate).

In all cases you and your work partner must use their judgement and follow the guidelines in the risk assessment.

## **10. After issuing the fixed penalty notice**

When you have issued a fixed penalty notice you should ensure that all the paperwork is accurately completed:

- The fixed penalty notice is fully completed. Any omissions, such as not recording the person's full name and address may mean that we cannot progress any non payment. If you have made an error you must inform your manager immediately as it may be necessary to cancel the penalty notice.
- Your written statement contains all the relevant information about the issuing of the notice.
- The witness statement of your work partner is likewise accurate.
- Your note book entry and that of your work partner records the same details as the written statement and witness statement and that there are no inaccuracies which could potentially undermine any subsequent legal action e.g. you record the incident as occurring at 3.30pm and your work partner records it at 4.30pm.

Following this, you should give your manager the following so that they can arrange for the fixed penalty notice to be properly recorded:

- A copy of the fixed penalty notice

- The section 9 statement from the person issuing the FPN and the work partner.
- The witness statement (if any).