

Operational Policy Subject: **GRAFITTI & FLY POSTING**
Approved by: NEIGHBOURHOOD SERVICES CABINET MEMBER
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Graffiti and Fly-posting

Written words, tags, 'art' and fly-posters are usually put up without the consent of the wall / building / street furniture owner or occupier. Graffiti and fly-posters may cause offence and generally target a minority audience to the detriment of the majority and the amenity of an area.

Objective

To seek an improvement in the visual street / built environment by reducing the amount of graffiti and fly-posting and the removal thereof.

Link to council priorities

By ensuring the area is thriving and that individuals can see a difference this will enhance the visual appearance of town and country.

Background

Fixed Penalty Notices (FPNs) can provide enforcement agencies with an effective and visible way of responding to low-level environmental crimes, and the Government wishes to encourage their use by local councils and other agencies. Experience has shown that the public generally welcomes the use of FPNs, provided that they are issued sensibly, enforced evenhandedly and are seen as a response to genuine problems.

The availability and level of FPNs for environmental crimes reflect the impact of the offence. However, due to the severity and impact on the environment those responsible for repeat / continuing offences of the foregoing will normally be prosecuted (and upon conviction) punished in the courts.

It is essential, therefore, that FPNs are only issued where there is adequate evidence to support a prosecution if a notice is not paid, and that unpaid notices are followed up. Failure to pursue unpaid notices through the courts will discredit the use of fixed penalties in the locality, and will lead to declining rates of payment.

Defacement Removal Notices may be served on the owners, occupiers, operators of surfaces, including street furniture, statutory undertakers and educational establishments whose property is defaced with graffiti and / or fly-posting.

Application of the enforcement policy

Paragraph 16 of the Waste Management Enforcement & Prosecution Policy applies to the problem of graffiti and fly-posting. Enforcement action will therefore be taken on the first occasion an offence is committed due to the extreme improbability that that person will be witnessed committing the offence again.

Paragraph 29 of the Waste Management Enforcement & Prosecution Policy allows for the use of FPNs where the legislation allows. This will be used in respect of graffiti and fly-posting.

Legislation

Anti Social Behaviour Act 2003 (adopted by full council on 6 June 2006 – minute 1322)

Section 43 – where an authorised officer has reason to believe that a person has committed a relevant offence he may give that person an FPN offering them the opportunity to discharge any liability and conviction for that offence by paying the penalty – currently £80. However, a FPN may not be used if the graffiti or fly-posters is racially or religiously motivated.

Sections 48, 49, 50, 51 and 52 of the Anti-Social behaviour Act 2003 (as amended by section 31 of, and paragraphs 16 – 19 of schedule 4 to, the Clean Neighbourhoods and Environment Act 2005) enable a local council to serve a Defacement Removal Notice on the owners, occupiers, operators (such as telecommunications companies and outdoor advertising companies) of relevant surfaces (including street furniture), statutory undertakers and educational establishments whose property is defaced with graffiti and / or fly-posting.

Policy

The elements of proof highlighted in paragraph 21 of the Waste Management Enforcement & Prosecution Policy are required to demonstrate the offence. In every case where the action of graffiti and / or fly-posting has been witnessed or there is other firm evidence the presumption will be to issue a FPN or prosecute. This reflects the zero tolerance approach being taken to tackle this problem.

This policy applies to graffiti and / or fly-posting in any place in North Lincolnshire. The FPN is issued as an alternative to the person being prosecuted through the courts, with a potential maximum fine not exceeding £2,500. Failure to pay will result in prosecution. A FPN will be issued by mail or face to face. Offences observed on town centre CCTV, private CCTV and council covert CCTV systems will be pursued where identity can be obtained.

Payment of FPN by instalments will not normally be accepted. Instalments will only be allowed at the discretion of the Head of Neighbourhood & Environmental Services where demonstrable hardship is proven and prosecution is likely to result in a conditional / absolute discharge. Failure to pay will result in prosecution.

All age groups will be approached, but fixed penalty notices only issued to people above the age of ten.

Upon admission of an offence of graffiti and / or fly-posting, and once a £80 fixed penalty notice has been issued, a council cannot prosecute for the offence if the fixed penalty is paid in full within 14 days. The Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2006 specify that early payment of an £80 fixed penalty notice – within 10 days of date of issue – will allow a discount so that the fixed penalty notices is reduced to £50. It is therefore in offender's interests to pay any fixed penalty notice served at the earliest opportunity.

All age groups will be approached, but enforcement action (FPN, ASBO or prosecution) will only be taken against people above the age of ten. Wherever possible, when enforcement action is to be taken against a juvenile a parent, guardian, teacher or other responsible adult will be present to support them.

Procedural notes

An FPN can only be issued where the offender accepts his / her guilt. If they wish to challenge the offence, this is done in court as a prosecution. Subsequent conviction may result in a fine and costs being awarded.

Fly-posting - Offenders will be approached and spoken to. Officer identity will be shown from the outset and the offender advised of the offence. The offender will be interviewed to obtain their name, address, date of birth, who employed / instructed them (if applicable) and they will be given the opportunity to comment. Evidence of identity, e.g. driving licence etc, will be requested but not insisted upon. The offender will be asked to take steps to remove the fly-poster(s) voluntarily and stop their activity. The offender will be advised that they will be issued with a FPN and that contact will be made with their employer / person who instructed them. If North Lincolnshire Council removes the fly-posters the offender will be required to pay the council's costs in so doing.

Where the act of fly-posting is not witnessed the owner, manager, other appropriate person(s) whose details appear on the poster may be required to provide information by way of a declaration form or be PACE interviewed with a view to taking enforcement action and removal of the posters.

Graffiti - Offenders will be approached and spoken to. Officer identity will be shown from the outset and the offender advised of the offence. The offender will be interviewed to obtain their name, address, date of birth and they will be given the opportunity to comment. Evidence of identity, e.g. driving licence etc, will be requested. The offender will be asked to take steps to remove the graffiti voluntarily. The offender will be advised that they will be issued with a FPN. If North Lincolnshire Council removes the graffiti the offender will be required to pay the council's costs in so doing.

Where the act of graffiti is not witnessed the person(s) whose tag, name, other details appear may be required to provide information by way of a declaration form or be PACE interviewed with a view to taking enforcement action and removal of the graffiti.

If an offender refuses to give their details, or gives an authorised officer reason to believe they have given incorrect information, FPN provisions give authorised officers the power to require the name and address of a person they wish to issue with a FPN. In such cases, failing to supply these details, or giving a false name and address to an authorised officer is an offence for which a maximum fine of level 3 (£1,000) on the standard scale may be given upon conviction. Joint patrols with Police Officers and Police Community Support Officers will assist in situations where an alleged offender refuses to supply details.

Upon failure to provide their name and address, the officer will inform the person that this will be treated as obstruction and that they could be subject to detention by a Police Community Support Officer or Constable. A PACE caution should be issued at this point. If needed the officer should contact the Police for support and keep the offender under discreet and safe observation until support arrives. In the latter circumstance, the offender will not be given the opportunity of a FPN but will be prosecuted.

Where the act of graffiti or fly-posting is not witnessed the person(s) whose name, other details appear on any surface (wall, play equipment etc.) may be required to provide

information by way of a declaration form or be PACE interviewed with a view to taking enforcement action and removal of the graffiti or fly-posting.

Delivery strategy

£80 FPNs – subject to discount for early payment (reduction to £50) - may be issued for the above.

Prosecutions may be undertaken as per the requirements of the Code for Crown Prosecutors – paragraph 20 of the Waste Management Enforcement & Prosecution Policy.

Information in the council's *Direct* magazine, website and media releases will be prepared to inform the public of the above policy. Offenders will be approached by Enforcement Officers who will advise of the offence, seek names and addresses and then inform them of the fact that they will be reported for an offence.

Officers will have written authorisation to issue FPNs.

Delivered by

Neighbourhood Enforcement team (StreetRight) staff are authorised to give verbal warnings and issue FPNs. Other council staff may be authorised.

The Head of Neighbourhood & Environmental Services, or his nominated deputy, is authorised to instigate legal proceedings and issue Formal Cautions.

Partnerships outside North Lincolnshire Council

The public, businesses, Humberside Police, DVLA, North Lincolnshire Community Safety Partnership, HANWAG, Town and Parish Councils, Environment Agency, ENCAMS, Defra.