

---

<b>REPORT TO:</b>	<b>ENVIRONMENT &amp; DEVELOPMENT SERVICES</b>	<b>AGENDA ITEM: 6</b>
<b>DATE OF MEETING:</b>	<b>30 MAY 2024</b>	<b>CATEGORY: RECOMMENDED</b>
<b>REPORT FROM:</b>	<b>CHIEF EXECUTIVE</b>	<b>OPEN</b>
<b>MEMBERS' CONTACT POINT:</b>	<b>EMMA MCHUGH</b> 01283 228745 <a href="mailto:emma.mchugh@southderbyshire.gov.uk">emma.mchugh@southderbyshire.gov.uk</a>	<b>DOC:</b>
<b>SUBJECT:</b>	<b>FIXED PENALTY NOTICES FOR ANIMAL WELFARE OFFENCES</b>	
<b>WARD(S) AFFECTED:</b>	<b>ALL</b>	<b>TERMS OF REFERENCE: EDS14</b>

---

### **Recommendations**

- 1.1 That the Committee notes the new power to issue Fixed Penalty Notices for Animal Welfare Cases.
- 1.2 The Committee agrees the amounts to settle Fixed Penalty Notices as detailed in paragraph 3.9 of the Report.
- 1.3 The Committee delegates authority to Authorised Officers in the Licensing Service and Environmental Health to issue Fixed Penalty Notices.

### **Purpose of the Report**

- 2.1 To seek approval in the issue of Fixed Penalty Notices (FPN) for animal welfare offences.

### **Detail**

- 3.1 The Licensing Authority issue licences for various types of animal activities such as dog breeding, boarding, hiring out horses, selling animals as pets and keeping or training animals for exhibition under the Animal Welfare (Licensing of Animal Activities) Regulations 2018. The Licensing Authority also issues licences under the Dangerous Wild Animal Act 1976. In addition to the issuing of licences, Officers will undertake compliance and enforcement action against unlicensed persons offering any of the above activities and/or licence holders breaching their licence and conditions. Officers are authorised Inspectors under the Animal Welfare Act 2006.
- 3.3 In dealing with unlicensed persons or breaches of conditions, each case is decided on its own merits in line with the Council's Corporate Enforcement Policy however the sanctions currently available to Officers are warning letters, improvement

notices, suspension or revocation of the licence and prosecution for unlicensed activities.

- 3.4 The Animal (Penalty Notices) Act 2022 gives power to the Council to issue fixed penalty notices when they are satisfied beyond all reasonable doubt that a person has committed a relevant offence.
- 3.5 Relevant Offences are defined under the Animals (Penalty Notices) (England) Regulations 2023 which came into force on 1<sup>st</sup> January 2024. The relevant offences for this Licensing Authority are:
- Dangerous Wild Animal Act 1976 – breach of licence, operating without a licence and obstructing an officer;
  - Animal Welfare Act 2006 – operating without a licence and duty of a person responsible for an animal to ensure welfare;
  - Animal Welfare (Licensing of Animal Activities) Regulations 2018 – breach of licence conditions, obstructing an officer and failing to assist in their duty to provide a sample.
- 3.6 In addition, Environmental Health will also investigate offences under the Animal Welfare Act 2006 where a responsible person fails in their duty to ensure the welfare of an animal.
- 3.7 The issuing of a FPN is not intended for minor breaches or for very serious offences. It is intended a fixed penalty notice will be issued if a person continues to trade without a licence, continues to breach their licence conditions or obstructs an officer. The use of FPNs for low level criminal offences enables cases to be dealt with proportionately, quickly and consistently without the need to take cases to court. There does not need to be an admission of guilt from the offender for a FPN to be issued.
- 3.8 For the above the offences, the maximum amount specified in a fixed penalty may not exceed £5000. The actual amount of each FPN is determined on an individual basis based on criteria stipulated in the Statutory Guidance issued by the Secretary of State.
- 3.9 Each individual FPN will be calculated by the Investigating Officer, in conjunction with their Senior Officer, after determining the culpability and harm caused by the offence using the factors detailed in the Statutory Guidance. Once the culpability and harm has been assessed, the Investigating Officer will adjust the amount of the FPN if there are any aggravating or mitigating factors to the offence to take into consideration. The total of the FPN will be confirmed by the Legal Department before issuing. The following table will be used to determine the amount of the FPN:

<b>Low Culpability</b>			
<b>Harm Factor</b>	<b>Starting Point</b>	<b>Minimum Amount</b>	<b>Maximum Amount</b>
Lesser Harm	£400	£350	£1000
Greater Harm	£750	£600	£1250
<b>Low to Medium Culpability</b>			
<b>Harm Factor</b>	<b>Starting Point</b>	<b>Minimum Amount</b>	<b>Maximum Amount</b>
Lesser Harm	£1500	£1250	£2000
Greater Harm	£2000	£1500	£3000

<b>Medium to High Culpability</b>			
<b>Harm Factor</b>	<b>Starting Point</b>	<b>Minimum Amount</b>	<b>Maximum Amount</b>
Lesser Harm	£2500	£2000	£4000
Greater Harm	£3500	£3000	£5000

- 3.10 The amount of the FPN must be paid within 28 days of issue. The amount of the FPN will be reduced by 50% if paid within 14 days of the date of the issue. The FPN cannot be paid in instalments. If the FPN is unpaid, the offender can be prosecuted for the offence.
- 3.11 The money from the FPN must be paid into the Consolidated Fund. Before paying into the Consolidated Fund, the costs of investigating the offences and issuing the FPN can be deducted from the total amount of the FPN. When calculating the amount of the FPN, the Investigating Officer will calculate the cost of investigating the offence and issuing the notice.

### **Financial Implications**

- 4.1 None

### **Corporate Implications**

#### **Employment Implications**

- 5.1 None.

### **Legal Implications**

- 5.2 The new power under The Animal (Penalty Notices) Act 2022 gives power to the Council to issue fixed penalty notices when they are satisfied beyond all reasonable doubt that a person has committed a relevant offence. The Council is required to set the amounts of the FPN and delegate the power to Authorised Officers to issue FPNs. The issuing and settling of FPNs should be in accordance with the Council's other relevant policies including its Enforcement Policy.

### **Corporate Plan Implications**

- 5.3 The proposals align with the 'Our People' theme to "*Help tackle anti-social behaviour & crime through strong and proportionate action*".

### **Risk Impact**

- 5.4 None

### **Community Impact**

#### **Consultation**

- 6.1 None.

### **Equality and Diversity Impact**

- 6.2 None. Equality and diversity issues are given due consideration during the investigation process and are factors which are considered in the public interest test when deciding on the most appropriate regulatory sanction. This is therefore already embedded in the existing process.

## **Social Value Impact**

6.3 None

## **Environmental Sustainability**

6.4 None.

## **Background Papers**

Animals (Penalty Notices) Act 2022

The Animals (Penalty Notice) Regulations 2023

Statutory Guidance on the Use of Penalty Notices for Animal Health and Welfare Offences