

## **Guidance on the Use of Fines, Notices and other Civil Sanctions by Derbyshire County Council Trading Standards When Enforcing:**

- **The Environmental Protection** (Plastic Plates etc. and Polystyrene Containers etc) (England) Regulations 2023
- **The Environmental Protection** (Plastic Straws, Cotton Buds and Stirrers) (England) Regulations 2020
- **The Environmental Protection (Microbeads)** (England) Regulations 2017

### **Introduction**

Derbyshire County Council is a regulator for the purposes of enforcing the above legislation (referred to as the Regulations in this guidance). As a regulator the council is required to publish guidance on our use of the fines, notices and other penalties contained in the Regulations.

This guidance should be read in conjunction with the Regulations and with Derbyshire County Council Trading Standards compliance policy.

As stated in our enforcement policy Derbyshire County Council Trading Standards may take the following actions or civil sanctions while enforcing restrictions set out in the above legislation.

### **FIXED MONETARY PENALTIES**

A Fixed Monetary Penalty (FMP) is a low-level fixed fine that can be imposed as a penalty. Any sums received by us in the form of:

- a fixed penalty charge or a non-compliance penalty under these Regulations,
- any interest or other financial penalty for late payment of such a penalty, or
- a sum paid in discharge of liability to a fixed monetary penalty,

must be paid into the HM Treasury Consolidated Fund. The amount of the charge will first be transferred to Department of Environment, Food and Rural Affairs (DEFRA). This will be managed via standard invoicing procedures.

Businesses that are cooperative will usually not be given an FMP.

An FMP cannot be combined with any other sanction. Once an FMP has been imposed, no other formal enforcement proceedings can be used against the business for the same act or omission (other than to recover any penalty that remains unpaid).

If an FMP is paid within 28 days beginning on the day the notice is received, then the amount reduces from £200 to £100.

## **COMPLIANCE NOTICES**

A compliance notice corrects a specific issue, within a specified period and tells a business the steps it must take to fix the issue to ensure that the offence does not continue or recur.

If the business is uncooperative in informal discussions, we may go straight to issuing an FMP.

A compliance notice may not be imposed on a person on more than one occasion in relation to the same act or omission.

Compliance notices cannot be issued with FMPs.

## **NON-COMPLIANCE PENALTIES**

A Non-Compliance Penalty (NCP) is a fine that we can impose when a business fails to comply with a compliance notice or a third-party undertaking. We may serve a notice on that person imposing a monetary penalty (a “non-compliance penalty”) in respect of the same offence, irrespective of whether a fixed monetary penalty was also imposed in respect of that offence.

The business does not have to pay an NCP if it completes the steps required by the compliance notice or third-party undertaking within the time specified for paying it.

### **How we calculate Non-compliance penalties**

The amount of the penalty must be determined by the regulator and must be a percentage of the costs of fulfilling the remaining requirements of the compliance notice or third-party undertaking.

The percentage must be determined by the regulator having regard to all the circumstances of the case and may, if appropriate, be 100%.

If the requirements of the compliance notice are complied with or the third-party undertaking is fulfilled before the time set for payment of the non-compliance penalty, the penalty is not payable.

## **THIRD-PARTY UNDERTAKING**

A person on whom a notice of intent is served may offer an undertaking as to action to be taken by that person (including the payment of a sum of money) to benefit any third party affected by the offence.

We may accept or reject any such third-party undertaking.

## **STOP NOTICE**

A “stop notice” is a notice prohibiting a person from carrying on an activity specified in the notice until the person has taken the steps specified in the notice.

The activity as carried on by that person is causing, or presents a significant risk of causing, or the person is likely to carry on the activity, which will cause, or will present a significant risk of causing, serious harm to the environment (including the health of animals) and the activity as carried on by that person involves or is likely to involve the commission of an offence these Regulations.

## What happens when we take action?

### NOTICE OF INTENT

Businesses are first sent a 'notice of intent' if we are going to use a civil sanction against them. A notice of intent states:

- how much the penalty is
- why the penalty or compliance notice has been given
- what the business must do to avoid the penalty or comply and how much time it has to do this (in the case of a compliance notice)
- the business' right to make written representations and objections within 28 days
- when a local authority can't impose a penalty or compliance notice
- how to pay the penalty
- Businesses have 28 days from the date they get the notice of intent to either
- pay the penalty (FMP or NCP)
- offer a third-party undertaking
- make a written representation or objection

The 28-day period runs from the date on which the business receives the notice of intent.

If the business doesn't pay or comply

After 28 days, we consider any representations or objections made and decide whether to impose the penalty or requirement.

We can't impose a penalty if:

- the business makes a discharge payment within 28 days of receiving the notice of intent
- the business has previously made a payment in relation to the same issue
- we're not satisfied beyond a reasonable doubt that the rules have been broken

### FINAL NOTICE

We send a 'final notice' if we decide to impose a penalty or compliance notice. The final notice states:

- why the penalty or compliance notice is imposed
- our response to any representations and objections we have received
- steps the business must take and when it must take them (for compliance notices)
- the business' right of appeal
- the consequences of failing to comply with the notice
- In the case of a fixed monetary penalty, the final notice states:
- how much the business must pay
- how the business can pay
- that the business has not less than 28 days to pay

- that the business gets a 50% discount if the fine is paid within 28 days
- the consequences of failing to comply with the notice

If a business appeals against a final notice and it fails or the amount of a penalty is changed, it then has 28 days to make any payments.

We may, at any time:

- withdraw a notice of intent or final notice
- reduce the amount of a monetary penalty or enforcement costs
- change the steps a business must take to comply with a compliance notice

We try to speak with the business before taking any of these steps and then write to tell the business about it.

### **How we recover our costs**

We can take action to recover the costs of imposing an FMP, an NCP or compliance notice including:

- investigation costs
- administration costs
- costs of obtaining expert advice (including legal advice)

When recovering costs, we send an 'enforcement costs recovery notice', which states:

- how much the business must pay
- how to pay
- when to pay (within 28 days or more from when the business receives the notice)
- the business' right of appeal
- the consequences of failure to pay by the due date.

We must be able to provide a detailed breakdown of the costs. A business does not have to pay those it can show to have been unnecessary.

If an appeal is made against a final notice and it fails, or the amount is changed, a business then has 28 days to make any payments.

### **Appeals against final notices**

A business can appeal against a final notice or an enforcement costs recovery notice by applying to the First-tier Tribunal on any grounds. These include if the penalty or compliance notice requirements are based on an error, wrong in law or unreasonable, or if the recovery costs were incurred unnecessarily.

The tribunal needs to receive an appeal within 28 days of the notice being sent. The notice is suspended during the appeal.

If the First-tier Tribunal finds in favour of the local authority, we do not have to register a claim for the unpaid amount in the courts and can enforce it straight away.

## **How we enforce payments**

We may choose to recover unpaid penalties as a civil debt (by registering a claim in court), or by applying to a court for an order so we can enforce the payment through:

- a warrant of control, allowing a county court bailiff to take control of goods or money to the value of the amount being recovered
- a charging order, placing a charge on property so that the debt due is paid from the proceeds of sale before the debtor receives them
- a third-party debt order, requiring a third-party to pay the outstanding debt directly to the creditor from the debtor's money.

Court fees can also be recovered from the debtor.