



## **Response to Pre-Consultation Queries/ Comments in Relation to the Dog Control PSPO Review.**

### **Measure 1- Dog Fouling**

- 1. (a) Dog fouling – especially bagged dog waste has anecdotally increased and £100 is an appropriate ‘deterrent’ sum.**
- (b) This should include people who bag the waste but then leave it hanging in trees or on the floor.**

As soon as dog waste is bagged, this can be classed as litter and the fine for littering exceeds that of dog fouling. The Fixed Penalty for littering is £120.00.

- 2. On the spot fines? There are concerns that fines don’t get paid and an increase may increase the number of people who do not pay.**

Fixed Penalty Notices generate a higher rate of payment compliance as the penalty for non-payment is prosecution for the offence. We have a lot of experience of using FPNs and the payment rate has been very good. People who fail to pay will be prosecuted.

- 3. The existing £75 fine is adequate to get attention and an increase would attract the view that it is a revenue-earning device.  
In addition, the fine should only be applicable, as appropriate, where the Parish Council or, in non-parished areas, the representative body of local residents (but where no such local body exists, MBC) has opted into the scheme.**

This measure has been introduced up and down the country under PSPOs which replaced the previous legislation. The default FPN associated with a PSPO breach is defined as £100.00.

We are introducing the measures borough wide to ensure there is a consistent message we believe will be supported by the public.



## **Measure 2- Exclusion of dogs from play areas**

### **1. No problem with dogs entering play areas as long as they are well behaved and do not mess. Impossible to enforce.**

The provision will be used to encourage responsible behaviour and will be used against persistent offenders.

- 2. (a) No to point 1. The exclusion should apply only to fenced play areas**  
**(b) There should be further clarification that this is for fenced play areas only.**

The principal of the measure is the same whether there is a fence or not which is to protect the users of the equipment so that they may use it without fear of interference from dogs or risk of dog fouling. Unfenced play areas face a greater problem in comparison to fenced play areas due to lack of physical barrier and officers would offer advice in the first instance.

### **3. Gates must be spring loaded to shut. Dogs off lead have an uncanny knack of going through open gates. An appeal process should be in place for these instances.**

Noted. Sprung gate hinges would only be applicable to play areas which are fenced off. Dogs under proper control with proper training shouldn't be allowed into those play areas even if gates are open. Dogs not under proper control (i.e. off lead without proper training) should be on a lead anyway.

For any offence representations may be made by the person upon whom a FPN is served. This is not an appeal system but an opportunity for information to be presented to the authority whilst considering whether to proceed to prosecution.

### **4. We have said yes but are aware that families going to the play park may also take the dog for exercise. Some give and take will be required.**

The FAQ on the website will mention this topic in particular, but we advise the following:

"Dogs can be securely tied to fences, provided they do not pose a health and safety risk to other children and members of the public. Any dog foul must be picked up and securely disposed of in a suitable bin. Alternatively, your dog can be exercised at another time when you are not accessing a play site."

Officers would offer advice in the first instance.



**5. In principle I am in favour of measure 2. However we must have signage in place as a number of our unfenced play areas are easily accessed and have been so since they were installed.**

Thank you for your comment, this has been noted.

**6. A number of play areas are unfenced and in open fields which are also used for dog exercise. We would not wish dogs to be excluded from such open spaces.**

Dogs would not be expected to be excluded from these open spaces but instead be kept away from children's play areas. An owner with a dog under control should be able to keep their dog away from such areas off the lead. If they are unable to reasonably control their dog off lead then they should be keeping them on a lead anyway.

**7. Yes, but only if it is made subject to opt-in by, if appropriate, a Parish Council or, in non-parished areas, a representative body of local residents, but where no such local body exists, MBC.  
£75 fine.**

Thank you for your comment. This has been noted; however this would be a Borough wide measure to maintain consistency for all. An opt-in requirement would make it difficult for residents and visitors of the Borough to understand where would and wouldn't be covered by the PSPO. Work will be undertaken with parishes and our Parks and Open spaces team to ensure areas are clearly marked should the provision be included.



### **Measure 3- Exclusion of Dogs from Crematorium**

**1. (a) Whilst guide dogs may be covered by the wording 'unless prior agreement has been sought from the Bereavement Services Manager in special circumstances', we think that they should be detailed as an exception to this rule.**

**(b) Yes, apart from guide dogs.**

Certified working Assistance Dogs cannot be refused entry under the Equalities Act 2010. Assistance Dogs are permitted at the Crematorium and grounds without the need for permission provided they are working.

This will be made clear in both the survey and PSPO if implemented.

**2. I would need more info on this. Is there a lot of dog-walking on site?**

This measure was implemented previously to address an issue with dogs being walked on site. This was historical, but in consultation with the Bereavement Services Manager we believe it would be sensible to protect the site against future issues.

**3. Unless prior agreement has been sought from the Bereavement Services manager.**

**This Exemption is absolutely necessary in order for it to gain my support.**

Thank you for your comment. This has been noted.

**4. Dogs should be allowed into Crematorium as companion animals as long as they are kept on lead.**

Thank you for your comment. This has been noted.

**5. It should be by prior arrangement.**

The PSPO states that only certified assistance dogs are permitted on site and permission should be sought from the Bereavement Services Manager if someone wishes to bring any other dog on site.

**6. This feels over-the-top, especially for somebody visiting the grounds to pay respects, accompanied by the family pet. Perhaps a requirement to be on a lead. £75 fine, in line with elsewhere.**

As explained, prior arrangement can be made with the Bereavement Services Manager, however there are people with loved ones laid to rest at the Crematorium who would not appreciate dogs to walking over the plots/ grounds.

This is an existing restriction which has not generated any concerns to date.



#### **Measure 4- Dogs on Leads by Direction**

**1. What are the practical measures to be taken by an officer if a person fails to provide their details?**

**Wouldn't it require the Police to be called? Are officers equipped with suitable communications equipment?**

Failure to provide details will also be an offence for all PSPOs. This concern forms part of officers training and how they interact with the customer. Ultimately it might involve support from Kent Police; however the skill of the officer in using their experience can enable an officer to trace the culprit without necessarily needing the Police. All officers are equipped with mobile telephones.

**2. Yes, but there must be good, stated reason, mainly that the dog is running around creating a nuisance. Otherwise, too heavy-handed and susceptible to abuse by the officer.**

**Again, £75, in line with above.**

All authorised officers must justify their actions. FPNs would not be issued without good cause to do so because if an FPN fails to be paid then the alleged offender would be prosecuted instead and a court would have to be satisfied that the officers' actions were reasonable and proportionate under the circumstances.

Officers would always look to offer advice in the first instance unless there was an imminent risk of harm.



### **Measure 5- Dogs on Leads at the Sutton Road Cemetery**

**1. If they are banned from the crematorium it's inconsistent to allow them in the cemetery apart of course from guide dogs.**

Thank you for your comment, this has been noted. The crematorium and the cemetery are actually very different pieces of land and the cemetery is more often used by people visiting with their dogs whilst walking. In consultation with the Bereavement Services Manager, owing to some incidents in the past, it is felt this is the most proportionate response.

**2. Measures 4&5 are not outlined correctly; however I presume that the question relates to the paragraph immediately preceding the question.**

These questions were outlined in the same way as the others. Potential issue with the way information was displayed on the form when completing.

- 3. (a) This should apply to all cemeteries in the Borough not just Maidstone.**  
**(b) Can this be extended to all cemeteries in Maidstone Borough that are owned by Parish Councils?**

Thank you for your comments, these have been noted. There have been specific incidents involving loose running dogs at the cemetery to help evidence the need for this provision. This provision will enable us to respond to incidents as necessary, but we do not have the resources to actively monitor all cemeteries. If Parishes have a specific issue they can contact us and we can look at what options are available. Parishes can display a dogs on lead sign at their cemeteries to advise visitors.

**4. Again, this feels over-the-top, especially for somebody visiting the grounds to pay respects, accompanied by the family pet. Perhaps a requirement to be on a lead.  
£75 fine, in line with elsewhere.**

This measure is in relation to requiring dogs to be kept on a lead at the Cemetery. There is no mention of exclusion within this measure. The measure is in response to reports from staff of dogs running loose in the cemetery over graves and amongst other guests without control.



## **Measure 6- Stray Dogs**

**1. A dog may get out of a property by accident, which will require help to catch it. Being given a Fixed Penalty as though you have committed a crime seems harsh. Any dog owner would be happy to pay a collection fee if they get their dog back. It may not necessary be a stray, how will this be determined?**

There is no formal definition of a stray dog in law. A dog may reasonably be treated as a stray if it is roaming freely and not under the control of any person, irrespective of whether it has a home. This applies whether or not the dog wears a collar with identification or is microchipped.

Being a responsible dog owner means incidents like this should not happen because an owner would be reasonably expected to keep their property secure to prevent escape. We also actively encourage people to ensure that their dog wears a collar and tag with their address and contact details. This is a requirement of law which has been affected by misconceptions that finding addresses on tags would lead to burglaries because the dog wasn't there. If a dog is wearing a collar the first person to find a dog will know where it is from and will return it, so no fines are issued. Microchips rely on specialist equipment and checks that are undertaken at the kennels. At this point costs have been incurred and an FPN will be issued.

It is also a legal requirement for a dog to wear an ID tag with an address on it, so neighbours can return the straying dog before it ends up in the care of the kennels. However, where a dog is collected as a stray the local authority has already incurred a fee from the contractor which needs to be recovered, whether that is accidental or not. Traditionally it has been very difficult to recover this money which means "accidents" are paid for by the public purse. This provision means that those responsible for the dog cover the costs we occur in a more effective way.

**2. Some dogs wander and very difficult to control them and will penalise urban residents rather than rural communities where the problem is most acute.**

Dogs should not wander. Allowing a dog to 'wander' or 'explore' is not responsible dog ownership if they are not kept under control with an owner or responsible person present then they may reasonably be treated as a stray. Wandering dogs will naturally defecate, approach/attack other animals and peoples. The law is very clear that dogs must be accompanied by a responsible person at all times when in public.

**3. As the owner of a rescue dog who is an 'escapee' this measure should only be used for those who have allowed their dog to stray.**

Dog owners should not allow their dogs to 'escape' and if the dog is known to 'escape' then reasonable action should be taken to prevent this from happening. There are too many associated risks both behaviourally and environmentally that



can be detrimental to the locality as a result of dogs straying (damage to livestock, road traffic accidents, dog fouling, risk of injury to humans or other animals). Ultimately the dog's life is at risk when it is not where it should be.

Owners should take all reasonable steps, including a dog collar, so the dog doesn't enter the system. The FPN is simply replacing the collection fee in a more collectable format for the cost the local authority incurs.

#### **4. Yes- Without the reduced fine element.**

Thank you for your comment, this has been noted.

#### **5. What is the legal difference between a collection fee and a fixed penalty notice?**

A collection fee is the recovery of the cost to the Council for the collection of the dog and taking it to the kennels and a statutory fine of £25. It is created as a debt which have proven difficult to collect.

A Fixed Penalty Notice is a fine for a breach of a PSPO. An FPN can be issued as an opportunity to discharge prosecution by way of a financial penalty rather than being prosecuted and receiving a criminal record for the offence. In this case it will replace the "debt" of a collection fee with a fine, but will mean that failure to pay becomes a court matter and not a debt recovery matter.

#### **6. Is there any way to require full payment before collection?**

Unfortunately our contractor does not have the processes or personnel in place to undertake this. There is also an increase risk to their staff in collecting the fee at point of collection when owners have to pay the associated kennel fees. The two phase approach allows us to spread the cost of the collection into two parts, the second part being the FPN and we can provide some flexibility to the terms of payment, including extensions where necessary. But the risk of not recovering the debt is managed.

#### **7. Why reduce the fine to £80 if paid within 14 days when there is no such reduction in the other categories?**

Thank you for your comment, this has been noted. The reduction fits with the current collection fee/fine.

#### **8. Definition of "stray" presumably to include no potential owner in sight. If one is, that person should be approached and, if the owner, the dog would not be a stray, but, depending on where and what the dog was doing, other sections of this PSPO may apply.**





**For a stray with a collar /tag, this may be work-able, but the FPN could only be issued, if that tag gives sufficient tracing details.  
£75, in line with above.**

There is no formal definition of a stray dog in law. A dog may reasonably be treated as a stray if it is roaming freely and not under the control of any person, irrespective of whether it has a home. This applies whether or not the dog wears a collar with identification or is microchipped.

Where a dog is not being kept under control and an owner or responsible person is present, the dog on lead by direction aspect of this PSPO can be applied.

If a stray dog is collected by the Council, it is taken to the Kennels where it is looked after until an owner claims the dog. If an owner comes forward to claim the dog then they receive the FPN at that stage. If a dog is unclaimed, it will be re-homed after 7 days.

### **General Comments**

**1. No additional measures. In fact, this already feels heavy-handed, with the added aspect of overly-enthusiastic application of this PSPO due to the prospect of enhanced revenue raising.**

Thank you for your comment. Provided dog owners are exercising appropriate responsibility for their canine companion then they will not be affected by the introduction of the proposed measures. These measures are proposed with the intent of challenging the irresponsible dog owners and encourage them to change their behaviour. With the exception of fouling and strays, officers will always look to educate first.

**The public consultation opens on Tuesday 12<sup>th</sup> May 2020 and closes on Wednesday 1<sup>st</sup> July 2020. Please make sure you have your say and please encourage residents and visitors to have their say too.**

Thank you for taking the time to get involved with the PSPO review despite the current circumstances around COVID-19.