

**To:** City Executive Board

**Date:** 1 September 2010 **Item No:** 8

**Report of:** Head of Environmental Development

**Title of Report:** Fixed Penalty Notice Policy for Young People aged 10-17 years.

### **Summary and Recommendations**

**Purpose of report:**

To agree an amendment to the Enforcement Strategy to include a policy for the issuing of fixed penalty notices to those less than 18 years of age.

**Key decision** No

**Executive lead member:** John Tanner

**Report approved by:**

**Finance:** Gillian Chandler

**Legal:** Jeremy Franklin

**Policy Framework:** Corporate objective of reducing crime and anti-social behaviour

**Recommendation(s):**

CEB is asked to adopt the policy for issuing Fixed Penalty Notices (for littering offences) to those under 18 years of age as set out in Appendix 1 of this report.

## **1.0 Introduction**

- 1.1 In November 2009 Oxford City Council adopted a zero-tolerance approach to litter enforcement in conjunction with the launch of Cleaner Greener Oxford in the City Centre. A further campaign in Blackbird Leys also identified the need to tackle under 18's for the offence of littering.
- 1.2 The implementation of a policy for Fixed Penalty Notice Enforcement on Young People aged 10 – 17 will allow the Council to take this zero-tolerance approach further to tackle under 18's in a controlled way.
- 1.3.1 The Council does not currently have a policy for issuing Fixed Penalty Notices to persons under 18, and therefore does not issue any. The lack of such a policy has meant that in the recent Cleaner Greener Campaigns, enforcement against young people for littering offences could not be undertaken. Currently young people are given a warning and repeat offenders are not identified.

## **Duty upon the Council**

- 1.4 When deciding upon a policy the Council has a duty to ensure that it is acting in accordance with the Children Act 2004. This requires children's service authorities, including Local Authorities, 'to discharge their functions having regard to the need to safeguard and uphold the welfare of children'. The Council is also expected to follow current guidance issued by Government (see para 3.1 below).
- 1.5 Any enforcement against young people under the age of 18 is a complex and often bureaucratic process. This is necessary in order prevent the system from criminalising young people.

## **2.0 Impact of lack of policy**

- 2.1 The Cleaner Greener Campaigns which have already been undertaken have brought about a real improvement of cleanliness within the City. Whilst this is not just about enforcement it is clear that enforcement of littering offences has started to change behaviour in these areas.
- 2.2 Three Fixed Penalty Notices have been cancelled as the recipients subsequently produced evidence to show that they were under 18 years of age. A further five verbal warnings have been issued to offenders under the age of 18.

## **3.0 Government Guidance**

- 3.1 The Department for Environment, Food Rural Affairs (Defra) has published guidance on the subject.  
[http://www.defra.gov.uk/environment/quality/local/legislation/cnea/documents/young\\_people.pdf](http://www.defra.gov.uk/environment/quality/local/legislation/cnea/documents/young_people.pdf)

3.2 Defra recommends that local authorities adopt a formal policy for issuing Fixed Penalty Notice's to young offenders. Such policies should be developed with the local youth offending teams. The proposed policy document in Appendix 1 incorporates this advice.

#### **4.0 Thames Valley Police**

4.1 Thames Valley Police is currently using a new system for dealing with low level crime. This system is designed to deal with the problem on the spot using the judgement of the officer and using Restorative Disposals. For young offenders, Thames Valley Police use Youth Restorative Disposals (YRDs).

4.2 Effectively this means that for a young person, the courts are used as a last resort by Thames Valley Police and alternative courses of action are often considered more immediate and more appropriate.

4.3 Having consulted with the Thames Valley Police Youth Justice Unit and the Oxford Youth Offending Service, it was identified that an extremely robust process is already in place to deal with young offenders. This process is designed to tackle young offenders of minor crimes at an early stage before they go on to commit more serious crimes, thereby diverting the young people from the criminal justice system.

4.4 It is proposed that Oxford City Council's Enforcement Officers feed into this process by following the procedure within the attached policy.

#### **5.0 Proposed Policy and Enforcement Procedure**

5.1 The action taken against a young person breaching littering legislation will depend on where they are in the justice system. In all cases the young person's identity will be recorded by the enforcing officer and they will be offered the chance to make amends for the offence by picking up the litter and disposing of it correctly. They will be advised that their details will be passed on to the Youth Offending Team at Thames Valley Police and should they offend again in the future that they could face a fine of £80.

5.2 The Youth Offending Team will keep the records of the young person and of the offence and will take suitable action based upon previous offences and any other incidents in which they have been involved. These actions could include writing to the young person's parents, or for more serious repeat offences inviting the parents in for a meeting.

5.2 By working with the Thames Valley Polices' process for young offenders, repeat offenders will be identified and it can be demonstrated that all action possible, to divert the young person from

court, before taking formal action has been taken. This will vastly improve the success of any prosecutions that need to be taken.

5.3 Following consultation with the Youth Offending Team, if it considered that an Fixed Penalty Notice is to be issued this will be undertaken as soon as practicable. Any person under 18 risks prosecution for not paying an Fixed Penalty Notice. He/she would be prosecuted in the youth court.

5.4 It is the role of the magistrates in youth court to decide any punishment. If a local authority wants to secure a conviction it must be demonstrated that all steps to keep the young person out of court have been taken e.g. education, warnings, and alternatives to prosecution.

## **6.0 Level of Risk**

6.1 Corporate risk Register attached as appendix 3.

## **7.0 Climate Change/Environmental Impact**

7.1 Any enforcement to tackle environmental crimes should have a positive impact on the environment by reducing incidents of littering.

## **8.0 Equalities Impact**

8.1 Having a policy for fixed penalty notice enforcement of young people will ensure that a fair and measured approach is taken for young people in line with the existing Enforcement Policy and that all offenders are treated consistently and that we do not criminalise young people unnecessarily for minor offences

## **9.0 Financial Implications**

9.1 There are no anticipated financial implications.

## **10.0 Legal Implications**

10.1 Adopting a formal policy for fixed penalty notice enforcement on young people will go to demonstrate that all steps have been taken to keep young people out of court and that prosecution is the last resort.

10.2 It is hoped that the steps taken before court action will be adequate in changing attitudes and behaviours of young people toward environmental crime and it is not anticipated that a large number of young person cases will be taken to court.

10.3 Breaches of environmental crime such as littering are not reportable crimes. Any data kept by Thames Valley Police as a result of the proposed enforcement process will not be reported to the Criminal

Records Bureau and will not effect any future job applications by the young people who have entered the process.

## **11.0 Recommendations**

**11.1** CEB adopts the policy for issuing Fixed Penalty Notices (for littering offences) to those under 18 years of age as set out in Appendix 1 of this report

### **Name and contact details of author:**

**Graham Eagle**

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### **List of background papers:**

Thames Valley Police Operational Guide for Youth Restorative Disposals

Appendix 1 – Policy for Fixed Penalty Notice Enforcement on Young People aged Between 10 and 17 Years of Age

Appendix 2 – Risk Register

Appendix 3 – Equalities Impact Assessment

**Version number:** 1.1

# Policy for Fixed Penalty Notice Enforcement on Young People aged Between 10 and 17 Years of Age

## **1 Introduction**

- 1.1 Enforcing against people aged under 18, and in particular issuing fixed penalty notices, is not as straightforward as dealing with those aged 18 and over.
- 1.2 The Council has a duty to ensure that it is acting in accordance with the Children Act 2004; this requires children's service authorities, including Local Authorities, 'to discharge their functions having regard to the need to safeguard and uphold the welfare of children'.
- 1.3 Alongside this, it needs to be remembered that under the youth justice system prosecution is a measure of last resort. In practice, magistrates are often reluctant to give a young person a criminal record, particularly for the more minor of offences.
- 1.4 There is no common policy between local authorities across the country for taking enforcement action against young people however the Department for Environment, Food Rural Affairs (Defra) has published guidance on the subject.

## **2 Legislation**

- 2.1 The minimum age of criminal responsibility is 10 years old, and authorised officers can legally issue fixed penalty notices to offenders from this age.
- 2.2 Parents and guardians are not responsible in law for paying a fixed penalty notice issued to a young person in their care. If, however, a young person is successfully prosecuted in youth court and they are punished with a fine, the parent or guardian becomes responsible for payment of the fine.
- 2.3 Nationally, under the youth justice system, prosecution is a measure of last resort, after other interventions have failed, so it is likely to be difficult to prosecute a young offender if a fixed penalty is not paid unless it can be demonstrated that reasonable steps have been taken to avoid this situation.

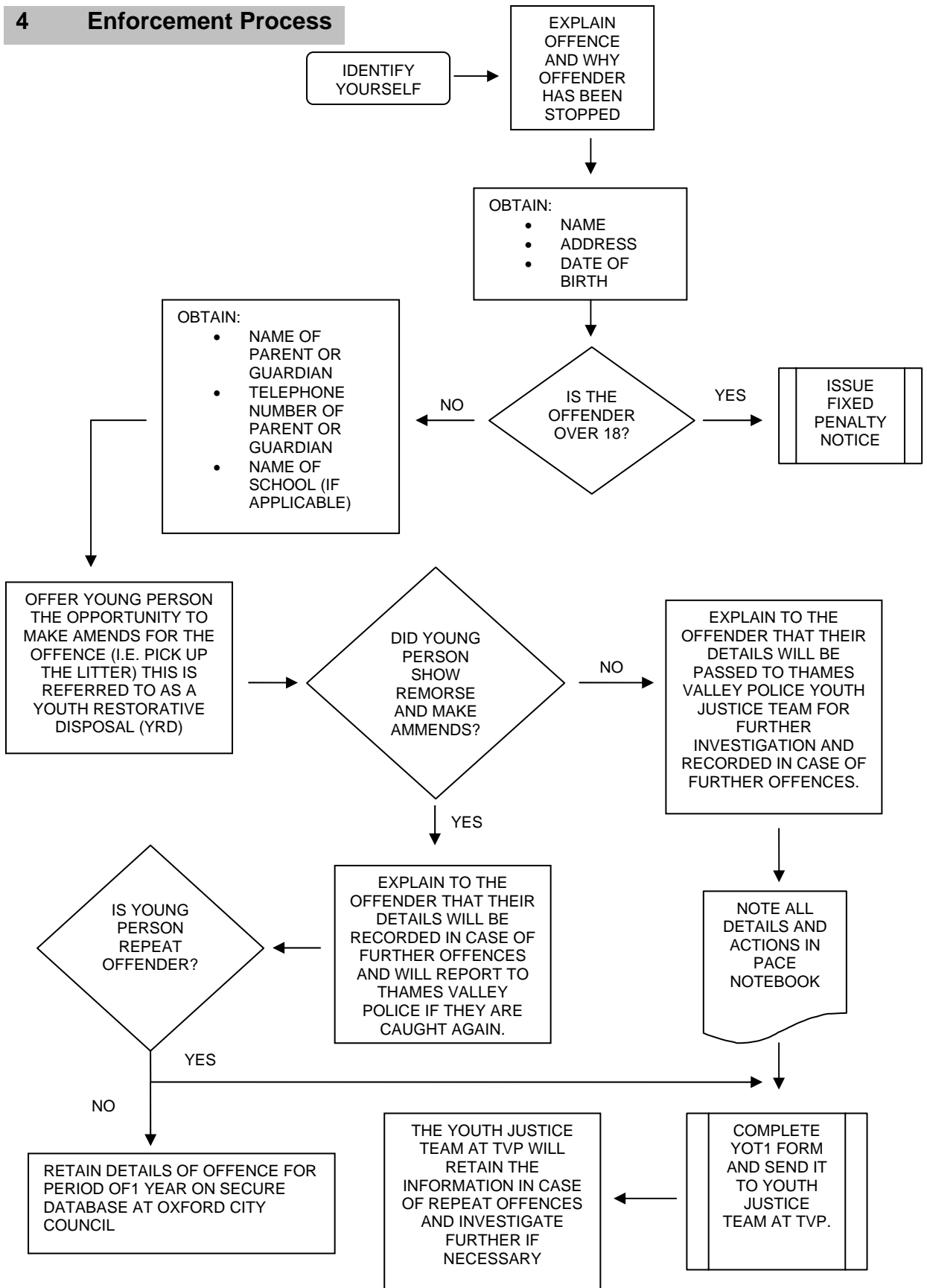
### 3.0 Defra Guidance on Different Age Groups

3.1 Defra has published guidance on the use of fixed penalty notices and how approaches should change based on the age of the offender. The following table is an extract from the full guidance.

Age Group	Action
All Young People	<p>On approach, following an alleged offence, the name, address age and date of birth of the alleged offender should be obtained, together with the name and address of his or her parents or legal guardian.</p> <p>They should be informed that this information will be shared with the local youth offending team.</p> <p>No caution should be given or interview undertaken without the presence of a 'responsible' adult unless the young person is 17 or under. (a further explanation is given below).</p>
10-15 year olds	<p>Where an offence is straightforward and clear cut (such as a littering offence) and a formal interview is not required, a fixed penalty notice may be issued.</p> <p>However, in lieu of an alternative arrangement, it is considered best practice to consult the youth offending team before any fixed penalty notice is issued. If this practice is accepted, the implication is that any fixed penalty notice would be issued at a later date i.e. through the mail, after a discussion with the youth offending team.</p> <p>In all instances a young person's parents or legal guardian of this age group should be informed at the earliest opportunity, ideally by letter, explaining the action taken, and to give the opportunity to discuss the case with a relevant officer of authority.</p> <p>If the youth offending team is not consulted on the issuing of a fixed penalty notice, it should be informed that one has been issued and given the chance to comment, where appropriate, on any follow-up action that might be appropriate.</p>
16-17 year olds	<p>Once the age of the alleged offender has been ascertained, fixed penalty notices can be issued to this age group.</p> <p>However, if there are any doubts over the alleged offender's age i.e. they could be aged under 16, the procedures set out above for 10-15 year olds should be followed.</p> <p>As with 10-15 year olds, where an offence is straightforward and 'clear cut' and a formal interview is not required, a fixed penalty notice may be issued, however, again it is considered good practice to issue a fixed penalty notice after consultation with the youth offending team.</p> <p>The local youth offending team should be informed of the offence and given the chance to comment, where appropriate, on the action to be taken.</p>



## 4 Enforcement Process



## **5 Keeping of Data on Young People**

- 5.1 Oxford City Council will keep a record of first time offenders on a secure database for a period of 1 year or until the offender turns 18 years of age depending on which is sooner.
- 5.2 If a young person offends for a second time within a year the details will be passed onto Thames Valley Police and removed from the local database.
- 5.3 All data will be kept fully in accordance with the Data Protection Act 1990 and will not be used for any purpose other than identifying repeat offenders as outlined in this policy.

## **6 Reporting Information to Thames Valley Police**

- 6.1 All information obtained on an offence by a young person must be reported to Thames Valley Police by completing a YOT1 Form and emailing it to [youthjusticeoxfordshire@thamesvalley.pnn.police.uk](mailto:youthjusticeoxfordshire@thamesvalley.pnn.police.uk)
- 6.2 The Youth Justice Team will retain the information in case of repeat offences and investigate further if necessary.
- 6.3 If further investigation is necessary the Team will keep the Enforcement Officer informed and if the outcome is to serve a Fixed Penalty Notice this will be done by the Enforcement officer with support by Thames Valley Police.

## **7 Definitions**

- 7.1 A young person is a person aged between 10 and 17 years of age.
- 7.2 YRD or Youth Restorative Disposal is a way for a young person to make reparation for the offence they have committed. For example, by cleaning up the litter they have dropped.

## Appendix 2 - Risk Register

Risk Score **Impact Score:** 1 =Insignificant; 2 = Minor; 3 = Moderate; 4 = Major; 5 = Catastrophic **Probability Score:** 1 = Rare; 2 = Unlikely; 3 = Possible; 4 = Likely; 5 = Almost Certain

No.	Risk Description Link to Corporate Obj	Gross Risk		Cause of Risk	Mitigation	Net Risk		Further Management of Risk: Transfer/Accept/Reduce/Avoid		Monitoring Effectiveness				Current Risk		
		I	P			I	P	Action: Action Owner:	Outcome required: Milestone Date:	Q 1	Q 2	Q 3	Q 4	I	P	
					Mitigating Control: Level of Effectiveness: (HML)			Action: Action Owner:  Mitigating Control: Control Owner:			☹	☹	☹	☹		
1	Unable to tackle inequalities and support communities due to imposing financial penalties on young people from potential low-income families	3	3	Issuing fines on young people from low-income families	<p>Make every effort to offer alternatives to enforcement action such as warnings &amp; education before issuing a fine.</p> <p>Consult with Youth Offending Team before taking formal action</p> <p>Effectiveness - L</p>	3	2	<p>Action: Reduce Action Owner: G Eagle</p> <p>Make every effort to offer alternatives to enforcement action such as warnings &amp; education before issuing a fine. Control Owner: G Eagle</p> <p>Consult with Youth Offending Team before taking formal action Control Owner: G Eagle</p>	<p>All young offenders offered alternatives to enforcement to ensure legal action is a last resort</p> <p>31<sup>st</sup> March 2011</p>							

2	Unable to improve the local environment, economy and quality of life due to a more lenient approach to young people compared to adults	3	3	Enforcement may be seen as ineffective by young people as less likely to get a ticket	Change attitudes towards Environmental Crime through education and structured enforcement  Effectiveness - L	3	3	Action: Accept Action Owner: G Eagle  Change attitudes towards Environmental Crime through education and structured enforcement Control Owner: G Eagle	Develop programme of education about environmental crime for schools and colleges  31 <sup>st</sup> March 2011						
3	Unable to reduce crime and anti-social behaviour due to a more lenient approach to young people compared to adults	3	3	Enforcement may be seen as ineffective by young people as less likely to get a ticket	Change attitudes towards Environmental Crime through education and structured enforcement  Effectiveness - L	3	3	Action: Accept Action Owner: G Eagle  Change attitudes towards Environmental Crime through education and structured enforcement Control Owner: G Eagle	Develop programme of education about environmental crime for schools and colleges  31 <sup>st</sup> March 2011						
4	Criminalisation of young people	4	3	Young people could be criminalised by enforcement action	Policy will put measures in place to tackle young people early and prevent re-offending  Information on offenders will only be kept at local level and is not declared on background or CEB checks.	4	1	Action: Reduce Action Owner: G Eagle  Policy will put measures in place to tackle young people early and prevent re-offending. Control Owner: G Eagle  Information on offenders will only be kept at local level and is not declared on background or CEB checks. Control Owner: G Eagle	Adopt Policy 1 <sup>st</sup> Sept 2010  No Action Required. This is an existing TVP Policy						

				<p>Policy will ensure that only persistent offenders will be issued with a fine.</p> <p>Offenders will only enter the justice system if they do not pay the fine and are taken to court.</p> <p>Effectiveness: H</p>			<p>Policy will ensure that only persistent offenders will be issued with a fine. Control Owner: G Eagle</p> <p>Offenders will only enter the justice system if they do not pay the fine and are taken to court. Control Owner: G Eagle</p>	<p>Adopt Policy</p> <p>Train enforcement officers on how to tackle young people who commit environmental crimes</p> <p>31<sup>st</sup> March 2011</p>							
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## Appendix 3 – Equality Impact Assessment

<b>Service Area:</b> Environmental Development	<b>Section:</b> Pubic Health	<b>Key person responsible for the assessment:</b> G. Eagle	<b>Date of Assessment:</b> 03.08.10	
<b>Is this assessment in the Corporate Equality Impact assessment Timetable for 2008-11?</b>			Yes	<b><u>No</u></b>
<b>Name of the Policy to be assessed:</b> Fixed Penalty Enforcement on Young People aged 10 – 17 years of age.			<b>Is this a new or existing policy</b>	New
<b>1. Briefly describe the aims, objectives and purpose of the policy</b>		The aim of the policy is to ensure that the Council can increase the scope of the Cleaner Greener Oxford campaign to under 18's whilst ensuring that young people are not criminalised and that only persistent young offenders are tackled.		
<b>2. Are there any associated objectives of the policy, please explain</b>				

<b>3. Who is intended to benefit from the policy and in what way</b>	<p>The general public are the main beneficiary of the policy. There should be an improvement in the environment through the reduction of litter on the streets.</p> <p>Young people will see a benefit in that the policy will ensure that they are not criminalised by the enforcement process.</p>		
<b>4. What outcomes are wanted from this policy?</b> Reduce the amount of litter in the City Ensure that repeat offenders are highlighted and tackled. Ensure that young people are not criminalised.			
<b>5. What factors/forces could contribute/detract from the outcomes?</b>	Staffing resource will have a direct effect on the amount of enforcement.		
<b>6. Who are the key people in relation to the policy?</b>	Young People aged 10 – 17. City Council Staff tasked with enforcement of litter offences (Environmental Development, Parks & Leisure, Community Safety) Thames Valley Police	<b>7. Who implements the policy and who is responsible for the policy?</b>	Graham Eagle Ian Wright
<b>8. Could the policy have a differential impact on racial groups?</b>	Y	<u>NO</u>	It is not felt that there will be any differential impact on racial groups.
<b>What existing evidence (either presumed or otherwise) do you have for this?</b>	The implementation of the policy will provide clear guidelines on how to treat offenders based on their age and therefore allow officers to demonstrate that approaches are consistent offenders from every ethnic background.		
<b>9. Could the policy have a differential impact on people due to their gender?</b>	Y	<u>NO</u>	It is not felt that there will be any differential impact on people due to their gender.
<b>What existing evidence (either presumed or otherwise) do you have for this?</b>	The implementation of the policy will provide clear guidelines on how to treat offenders based on their age and therefore allow officers to demonstrate that approaches are consistent for both males and females.		

<p><b>10. Could the policy have a differential impact on people due to their disability?</b></p>	<p>Y</p>	<p><b><u>NO</u></b></p>	<p>It is not felt that there will be any differential impact on people due to their disability.</p>
<p><b>What existing evidence (either presumed or otherwise) do you have for this?</b></p> <p>The implementation of the policy will provide clear guidelines on how to treat offenders based on their age. Enforcement Officers take disability into account when taking enforcement action. For example a person who is partially sighted may not have seen the litter fall from their person or a person in a wheelchair may not be able to pick the litter up when dropped.</p>			
<p><b>11. Could the policy have a differential impact on people due to their sexual orientation?</b></p>	<p>Y</p>	<p><b><u>NO</u></b></p>	<p>It is not felt that there will be any differential impact on people due to their sexual orientation.</p>
<p><b>What existing evidence (either presumed or otherwise) do you have for this?</b></p> <p>The implementation of the policy will provide clear guidelines on how to treat offenders based on their age and therefore allow officers to demonstrate that approaches are consistent regardless of sexual orientation.</p>			
<p><b>12. Could the policy have a differential impact on people due to their age?</b></p>	<p><b><u>YES</u></b></p>	<p>N</p>	<p>There is a clear disparity in the way people are treated based on their age.</p>
<p><b>What existing evidence (either presumed or otherwise) do you have for this?</b></p> <p>Oxford City Council has adopted a zero tolerance approach for litter offences. The implementation of the policy will allow the Council to continue this approach with young people aged 10 – 17 whilst taking on board DEFRA guidance for this age group.</p>			
<p><b>13. Could the policy have a differential impact on people due to their religious belief?</b></p>	<p>Y</p>	<p><b><u>NO</u></b></p>	<p>It is not felt that there will be any differential impact on people due to their religious belief.</p>
<p><b>What existing evidence (either presumed or otherwise) do you have for this?</b></p> <p>The implementation of the policy will provide clear guidelines on how to treat offenders based on their age and therefore allow officers to demonstrate that approaches are consistent regardless of their religious beliefs.</p>			



<b>14. Could the <u>negative</u> impact identified in 8-13 create the potential for the policy to discriminate against certain groups?</b>	Y	<b><u>NO</u></b>	It could be perceived that adults are discriminated against because they are not offered the opportunity to make up for the offence as young people are.			
<b>15. Can this adverse impact be justified on the grounds of promoting equality of opportunity for one group? Or any other reason</b>	Y	<b><u>NO</u></b>	The perceived negative impact on adults can be justified because the policy is clearly following the guidance set out by DEFRA for tackling 10 – 17 years olds in a different way to adults.			
<b>16. Should the policy proceed to a partial impact assessment</b>	Y	<b><u>NO</u></b>	<b>If Yes, is there enough evidence to proceed to a full EIA</b>	Y	N	
			<b>Date on which Partial or Full impact assessment to be completed by</b>			
<b>17. Are there implications for the Service Plans?</b>	Y	<b><u>NO</u></b>	<b>18. Date the Service Plan will be updated</b>	N/A	<b>19. Date copy sent to Equalities Officer in Policy, Performance and Communication</b>	N/A
<b>20. Date reported to Equalities Board:</b>		N/A	<b>Date to Scrutiny and EB</b>	N/A	<b>21. Date published</b>	N/A

Signed (completing officer) \_\_\_\_\_

Signed (Lead Officer) \_\_\_\_\_

**Please list the team members and service areas that were involved in this process:**

G. Eagle      Public Health Team Leader