



## The Starlight Trust

63, Tharp Road, Wallington, Surrey, SM6 8LG

[www.starlighttrust.org.uk](http://www.starlighttrust.org.uk)

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To: NSL Ltd  
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Re: FPN Reference Number 0203771071607123

Dear Sirs

I am writing to you to express our organisation's deep concern at the treatment of one of our volunteers by officers of NSL Ltd on 12 July 2016.

The Starlight Trust is a charitable organisation engaged in, amongst other activities, the rescue of abandoned pets and injured wildlife. On this day one of our volunteers, Sarah Argrave, was running personal errands in Sutton High Street when she saw several pigeons with damaged feet. Sarah purchased a small bag of bird seed from Wilkinsons, moved to a quiet area, and used the food to encourage the birds over to her with the intention of capturing and treating any affected birds. This is something Sarah and our other volunteers have done in this and other locations many times with considerable success.

For example, here are the feet of Eden, rescued from Kingston town centre with string around his feet.





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Here's Arty rescued from Carshalton Ponds with a broken leg



And Eddie found in Carshalton Ponds with string round his feet



We could go on...we've looked after about 15 pigeons so far this year with string injuries, gunshot wounds, broken legs, viruses etc...in each case, the key to catching them to enable treatment is to attract them with food.

On this occasion Sarah observed the birds and saw that most were older injuries which could not be treated. For example, one bird with an entirely missing leg, others with partially missing toes. Sarah was not able to lure any birds which had a reasonable prospect of improvement with treatment close enough to capture. She spent probably close to 10 minutes feeding and observing the birds, waited for them to finish all the seed she had distributed and then left the area.

At this point Sarah was approached by a man who didn't identify himself but said environment officers were on the way to 'talk to her'. As Sarah is someone who has been



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working with wildlife for over 20 years she declined to stay for a lecture on the wrongs of feeding 'vermin' and carried on with her errands. Several minutes later she and her husband were approached by uniformed officers who accused her of littering! Despite challenging this absurd claim, Sarah was issued with a ticket threatening her with a £2500 fine!

As Sarah was undertaking legitimate activities in her capacity as a volunteer with The Starlight Trust we would seek to strongly challenge this on the following grounds.

- 1) The Environmental Protection Act, under which Sarah is accused of an offence, states "A person is guilty of an offence if he throws down, drops or otherwise deposits any litter in any place to which this section applies and leaves it." The key phrase here which is not being given due consideration is 'and leaves it'. The notice with which Sarah was issued claims she 'did purposely litter food on to ground opposite Waterstones and walked away leaving it on pavement'. In fact, Sarah fed the birds and waited until the food had been consumed before leaving. Given the purpose with which Sarah was feeding the birds – to attract them close to her to rescue any sick or injured birds – it makes no sense to suggest she would deposit the food and leave it and this is absolutely not what happened. When Sarah left the area there was no food left and therefore no offence was committed.
- 2) The Environmental Protection Act further states "If any person throws down, drops or otherwise deposits in, into or from any place to which this section applies, and leaves, anything whatsoever in such circumstances as to cause, or contribute to, or tend to lead to, the defacement by litter of any place to which this section applies, he shall, subject to subsection (2) below, be guilty of an offence." The bird seed could not possibly contribute to defacement of the area since it was immediately and completely consumed by the birds.
- 3) The guidelines at <https://www.gov.uk/guidance/enforcement-officers-issuing-fixed-penalty-notices> state an officer should only issue a fixed penalty notice when all of the following apply
  - an offence has been committed
  - an FPN is a proportionate response
  - there's evidence to support prosecution if the offender doesn't pay the fixed penalty
  - the offender understands why the FPN is being issued
  - you believe that the name and address offered by the offender are correct

Aside from disputing that an offence had taken place, it seems unimaginable that, given the particular circumstances, this could be considered a proportionate response. The individual who spoke to Sarah initially had, it transpired, been observing Sarah feed the



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birds for some time. At no point did he, or anyone else, approach her and ask her to stop. It is clear that this was a cynical attempt to increase revenue by targeting Sarah rather than a genuine attempt to resolve a 'littering' issue.

We would also question what evidence there would be to support a prosecution. The alleged offence was not witnessed by the 'Environmental Enforcement Officer' and, since the birds immediately ate all the seeds, there can be no evidence of the 'litter' being on the ground.

4) The guidance at <https://www.gov.uk/guidance/enforcement-officers-issuing-fixed-penalty-notices> further states that a fixed penalty notice should not be issued if

- there's no criminal liability
- enforcement action is inappropriate or would be disproportionate for the offence
- prosecution is more suitable
- littering is done accidentally

As stated, we do not feel that the action taken is proportionate in this instance. Whilst we strongly dispute that the actions constituted littering, any such consequence in this regard would have been entirely accidental. Sarah is a passionate advocate for wildlife and regularly sees first-hand the consequences of littering. To suggest that Sarah would ever deliberately litter when she is someone who regularly picks up beer rings, elastic bands etc from the streets is absurd and is absolutely not supported by evidence.

- 5) On the subject of elastic bands, while the officers were talking to Sarah, her husband witnessed a child deliberately drop several elastic bands on the floor just a few feet away. When they challenged the officer, they were told there was nothing they could do as the child was under 18. Actually a quick google has shown this is untrue and further shows that the intention of the officers was to victimise Sarah rather than tackle genuine littering.
- 6) The officer also tried to claim feeding the pigeons was an offence as pigeons were classed as vermin. Sarah was the wrong person to make this claim to as she has spent considerable amounts of time studying wildlife law and advising on ecological methods of resolving wildlife conflicts. No wildlife is 'classed' as vermin – this is a term which is meaningless in law. This is another example of the officer attempting to intimidate Sarah in order to meet his targets without knowledge or concern for what the law actually states.
- 7) The guidance at <https://www.gov.uk/guidance/enforcement-officers-issuing-fixed-penalty-notices> further advises not to issue an FPN in the following cases:
- it's not in the public interest to do so
  - the offender is vulnerable
  - the offence is trivial



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We would question how it is possibly in the public interest to prosecute a charity volunteer for attempting to rescue injured birds? Given the seed was entirely eaten by the birds, any offence committed is most certainly trivial. There was absolutely no lasting negative effect of Sarah's actions whatsoever.

- 8) The guidance at <https://www.gov.uk/guidance/enforcement-officers-issuing-fixed-penalty-notices> goes on to state officer should only issue FPNs where there is evidence of intent to drop litter. It was not Sarah's intention to drop litter, indeed she is an experienced volunteer who knows how to read a flock to ensure that only the necessary amount of food is distributed. There can be absolutely no evidence of any intent to drop litter.
- 9) Finally, the guidance at <https://www.gov.uk/guidance/enforcement-officers-issuing-fixed-penalty-notices> recommends that officers give offenders the chance to pick up litter before [issuing] an FPN and warn them that [they] will issue an FPN if they don't. Sarah was observed feeding the birds and at no point was she approached and asked to stop or given the opportunity to stop. Indeed, it seems that she was deliberately allowed to continue in order to 'justify' the issuing of a penalty notice.

As a charity whose areas of concern include wildlife protection, there can be no doubt as to our lack of tolerance for littering. However, it seems clear that NSL, working for Sutton Council, have knowingly misinterpreted legislation and ignored published guidelines in order to increase revenues through bullying people into paying on the spot fines. To claim that a material which is immediately consumed by wildlife leaving no residue or defacement could be considered littering is absurd. To target a volunteer engaged in legitimate, compassionate activities without giving her any warning is extremely disproportionate.

Consequently, we urge Sutton Council and NSL to cancel the fixed penalty notice issued to our volunteer and cease any further action against her.

Kind regards

The Trustees  
The Starlight Trust