

Report to CABINET

Changes to Discretionary Fixed Penalty Charge Levels

Portfolio Holders:

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Reason for Decision

There are a number of legislative powers to control negative behaviours which impact upon the environment and communities, which the local authority is able to enforce through the issue of Fixed Penalty Notices (FPNs) as an alternative to prosecution.

Within the respective legislation the maximum values for Fixed Penalty Charges in respect of each of the offences is prescribed, however the local authority is able to set the values at any level up to the maximum allowed and is also able to offer further reductions through the provision of an early payment scheme.

The local authority can seek prosecution if the Fixed Penalty Charges are not paid.

Historically the locally authority has set local values at significantly lower levels than the maximum allowed.

The current low value levels are believed to be a contributory factor in continuing negative behaviours, and it is believed that an increase in the values will deter individuals and organisations from such conduct.

There is also an existing power to issue FPNs for fly-tipping and breach of the household waste duty of care, which the local authority does not currently exercise. At the current

time all fly-tipping and duty of care enforcement is undertaken through prosecution, however this can be resource intensive and can be disproportionate. The ability to use FPNs as an alternative allows for officer discretion according to the circumstances of the case.

Recommendations

1. To approve the proposed increases to the Fixed Penalty Charge Levels.
2. To approve the use of Fixed Penalty Notices for offences of fly-tipping and breach of the household waste duty of care.

Proposed Changes to Discretionary Fixed Penalty Charge Levels

1 Background

- 1.1 There are a number of legislative powers to control negative behaviours which impact upon the environment and communities, which the local authority can enforce through the issue of Fixed Penalty Notices (FPNs) as an alternative to prosecution.
- 1.2 Historically the locally authority has set local values at significantly lower levels than the maximum allowed. The current low value levels are believed to be a contributory factor in continuing negative behaviours, and it is believed that an increase in the values will deter individuals and organisations from such conduct.
- 1.3 The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 came into force on the 9th May 2016. They give local authorities the option of issuing a Fixed Penalty Notice for the offence of fly tipping where appropriate. Prior to these regulations Councils could only deal with fly-tipping offences through prosecution. These new regulations allow a Fixed Penalty Notice to be issued for small scale fly-tipping offences reducing Officer time spent on producing prosecution files and allowing a more efficient and proportionate response to these incidents.
- 1.4 The Environmental Protection (Miscellaneous Amendments) (England and Wales) Regulations 2018 amended the Environmental Protection Act 1990 and section 34ZA allows an FPN to be issued for a duty of care offence relating to the passing on of household waste that is found fly tipped. Prior to these regulations Councils could only deal with duty of care offences through prosecution. These new regulations allow a Fixed Penalty Notice to be issued to householders who pass on their waste to unlicensed waste carriers, and where that waste is later found fly tipped. This reduces officer time spent on producing prosecution files and allowing a more efficient and proportionate response to these incidents
- 1.5 The amount of the Fixed Penalty Charge may not exceed £400.00 or be less than £150.00. The minimum discounted rate for early payment must be £120.00 An early payment option encourages people to pay quickly reducing the time spent by officers chasing payments.
- 1.6 The use of the Fixed Penalty Notice does not allow the cost of recovery of the waste, however the monies received from the Charge would contribute to this.

2 Current Position

- 2.1 The table below shows the maximum Fixed Penalty Charge values allowed for each respective offence within the legislative framework, and the current values set by the local authority, including the reduced values as part of the early payment scheme. The table also includes the proposed new local values.
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Offence and Legislation	Maximum Level	Local Level	Early Payment Level	Proposed New Level	Proposed Early Payment Level
Depositing Litter s.88(1) Environmental Protection Act 1990	£150.00	£80.00	£50.00	£100.00	£70.00
Littering from vehicles Part 2 para 4 (1)The Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018	£150.00	£80.00	£50.00	£100.00	£70.00
Smoke Free: Failure to display No-Smoking signs. s.6 Health Act 2006	£1000.00	£200.00 <i>29 days</i>	£150.00 <i>15 days</i>	£200.00	£150.00
Smoke Free: Smoking in a Smoke free Place. s.7 Health Act 2006	£200.00	£50.00 <i>29 days</i>	£30.00 <i>15 days</i>	£80.00	£50.00
Fly posting (Painting or affixing things to structures on the highway etc.) s. 43(1) Anti-Social Behaviour Act 2003	£150.00	£80.00	£50.00	£100.00	£70.00
Graffiti s. 43(1) Anti-Social Behaviour Act 2003	£150.00	£80.00	£50.00	£100.00	£70.00
Failure to comply with a Public Spaces Protection Order s.67 Anti-Social Behaviour, Crime and Policing Act 2014	£100.00	£90.00	£60.00	£100.00	£70.00
Failure to comply with a Community Protection Notice s.48 Anti-Social Behaviour, Crime and Policing Act 2014	£100.00	£90.00	£60.00	£100.00	£70.00
Failure to produce waste transfer document s.34A Environmental Protection Act 1990	£300	£300.00	£200.00	£300.00 (same)	£200.00 (same)
Unauthorised distribution of free printed matter s.3A paras 1(1) and 7Environmental Protection Act 1990	£150.00	£80.00	£50.00	£100.00	£70.00
Abandoning a vehicle s.10 2A 3 Clean Neighbourhoods and Environment Act 2005 section 10 2A 3	£200.00	N/A	N/A	£200.00	£120.00
Domestic waste receptacle offences s.47ZA Environmental Protection Act 1990	£80.00	£60.00	N/A	80.00	N/A
Industrial and commercial waste receptacle offences s.47ZA Environmental Protection Act 1990	£110.00	£100.00	N/A	£100.00	N/A
Nuisance parking Part 2 section 6(1Clean Neighbourhoods and Environment Act 2005	£100.00	N/A	N/A	£100.00	N/A
Alarm noise: failure to nominate key holder or to notify local authority of key-holder's details s.73 Clean Neighbourhoods and Environment Act 2005	£80.00	N/A	N/A	£80.00	N/A
Noise exceeding permitted level – domestic premises s.8 Noise Act 1996	£110.00	N/A	N/A	£110.00	£85.00
Noise exceeding permitted level – licensed premises s.8 Noise Act 1996	£500.00	£500.00	£500.00	£500.00	£500.00 No discount allowed

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- 2.2 The Council can currently only deal with fly-tipping by prosecution which involves hours of officer time preparing files and attending court.
 - 2.3 Most of the fly-tipping incidents that the department deal with are small scale dumping of household waste.
 - 2.4 The fines that are often given on conviction are not much more than the proposed Charge level for the Fixed Penalty Notice and the fines go to the courts. The Council can recover their costs through the prosecution process, but these are not always fully recovered due to an offender's financial circumstances.
 - 2.5 As can be seen from the table above Officers already use Fixed Penalty Notices to deal with other environmental crimes such as littering and fly-posting.

3 **Options/Alternatives**

- 3.1 To approve the proposed changes to the values of the Fixed Penalty Charges and to approve the use of Fixed Penalty Notices for fly-tipping and breach of the household waste duty of care with the level set at the maximum £400.00 with an option to pay a reduced rate of £280.00 for early payment.
- 3.2 To approve the proposed changes to the values of the Fixed Penalty Charges and to approve the use of Fixed Penalty Notices for fly-tipping and breach of the household waste duty of care but set alternative Charge levels.
- 3.3 To retain the existing levels of Fixed Penalty Charges (not recommended). This option would not improve the deterrent aspect of the Fixed Penalty Charge levels and is like to result in no behaviour changes by individuals and/or organisations.
- 3.4 To retain prosecution action only for fly-tipping and breach of the household waste duty of care (not recommended). This option would result in the continued significant demand on Officers and Council resources, and action being taken which may be disproportionate to the circumstances of the offence.

4 **Preferred Option**

- 4.1 To approve the proposed changes to the values of the Fixed Penalty Charges and to approve the use of Fixed Penalty Notices for fly-tipping and breach of the household waste duty of care with the level set at the maximum £400.00 with an option to pay a reduced rate of £280.00 for early payment.
- 4.2 The decision is appropriate for the legislative framework.

5 **Consultation**

- 5.1 There is no statutory requirement to carry out an external consultation exercise prior to changing discretionary Fixed Penalty Charge levels.

6. **Financial Implications**

- 6.1 The preferred option outlined in 4.1 is to increase the fixed penalty charges (FPN's) to the maximum of £400. The maximum charge is in line with government directives.
 - 6.1 As per the published government guidance, all income received through the FPN's has to be reinvested back into the services in which the FPN is issued i.e. Public Protection and Community Safety Services.
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- 6.2 It is not possible to quantify the income received from FPN's as they are issued when an offence occurs. (Jenny Howarth and Nicola Harrop)
- 7 **Legal Services Comments**
- 7.1 None (A Evans)
8. **Co-operative Agenda**
- 8.1 The increase in the Fixed Penalty Charge values and the introduction of the use of the Fixed Penalty Notice for fly-tipping and breach of the household waste duty of care is fully aligned with the Council's Co-operative agenda in creating clean and safe neighbourhoods and promoting socially responsible behaviours.
- 9 **Human Resources Comments**
- 9.1 N/A
- 10 **Risk Assessments**
- 10.1 No specific risk comments. (M. Stenson)
- 11 **IT Implications**
- 11.1 There are no IT implications.
- 12 **Property Implications**
- 12.1 There are no property implications
- 13 **Procurement Implications**
- 13.1 There are no procurement implications.
- 14 **Environmental and Health & Safety Implications**
- 14.1 The increased Charge levels and use of a Fixed Penalty Notice for fly-tipping and breach of the household waste duty of care will deter environmental crime and community safety related incidents, along with small scale fly-tipping in the Borough, improving the environment and making communities cleaner and safer.
- 15 **Equality, community cohesion and crime implications**
- 15.1 The increased Charge levels and use of a Fixed Penalty Notice for fly-tipping and breach of the household waste duty of care will promote social responsibility, allow offenders to be dealt with equally and residents to see that offenders are being dealt with.
- 16 **Equality Impact Assessment Completed?**
- 16.1 No. A specific EIA has not been completed. The increased Fixed Penalty Charge levels and use of a Fixed Penalty Notice for fly-tipping and breach of the household waste duty of care will not disproportionately impact upon persons with protected characteristics as defined within the Equality Act 2010.
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17 **Key Decision**

17.1 No

18 **Key Decision Reference**

18.1 N/A

19 **Background Papers**

19.1 The following is a list of background papers on which this report is based in accordance with the requirements of Section 100(1) of the Local Government Act 1972. It does not include documents which would disclose exempt or confidential information as defined by the Act:

File Ref : EM/CSS//19/01

Name of File : Supporting Legislation (Environmental Protection Act 1990, The Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018, Anti-Social Behaviour Act 2003, Anti-Social Behaviour, Crime and Policing Act 2014, Clean Neighbourhoods and Environment Act 2005)

Records held in Environmental Health and Community Safety Services

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