

Subject:	Fixed Penalty Notice (FPN) Fines	Status:	For Publication
Report to:	Cabinet	Date:	5 th June 2024
Report of:	Public Protection Manger	Lead Member:	Environment & Corporate Services
Key Decision:	<input checked="" type="checkbox"/> Forward Plan <input checked="" type="checkbox"/>	General Exception <input type="checkbox"/>	Special Urgency <input type="checkbox"/>
Equality Impact Assessment:	Required: No	Attached:	No
Biodiversity Impact Assessment:	Required: No	Attached:	No
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1. RECOMMENDATION

1.1 Agree and adopt the revised FPN fines to address the Government change to increase the upper limits of FPNs for fly-tipping, littering and failure in householder duty of care.

2. EXECUTIVE SUMMARY

- Environmental crime is a problem for communities.
- The cleanliness of the environment has a significant impact on the quality of life, enjoyment and perception of those who live, work and visit the Borough.
- Government expressed an intention for local authorities to adopt a stronger stance in the enforcement of environmental offences.
- Statutory instrument has increased FPN upper limits in respect of fly-tipping, littering and household waste duty of care.

3. BACKGROUND

3.1 Environmental offences, notably fly-tipping and littering, have far-reaching consequences on our communities. They not only degrade the natural beauty of our surroundings but also pose serious health risks. Accumulations of waste can attract vermin, contribute to pollution, and become breeding grounds for disease. Moreover, the financial burden of cleaning up illegally dumped waste diverts funds from other essential services.

3.2 Fly-tipping is a particularly egregious offence that remains a challenge for all local authorities. It blights landscapes, harms wildlife, and can lead to severe environmental pollution. The act of fly-tipping shows a blatant disregard for the community and the environment, and its detection and prosecution are fraught with challenges. The transient nature of this crime further complicates enforcement efforts, as evidence can be scarce and the identification of offenders challenging.

3.3 FPN's provide local authorities with a visible and effective way of responding to environmental crime and harm.

3.4 FPN's sit between the lowest form of sanction, a 'Simple Caution', and a prosecution.

3.5 The government has expressed its intention for local authorities to adopt a stronger stance in addressing waste crime and to enhance existing deterrents to encourage behavioural change.

3.6 This was expressed by statutory instrument (The Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023), commencing 31st July 2023, which raised the upper limits for FPN's in respect of the following environmental offences:

3.6.1 Fly-Tipping

3.6.2 Failure in Householder Duty of Care

3.6.3 Littering

3.7 To that end, Government laid a statutory instrument to raise the upper limit of FPN's as follows:

3.7.1 Fly-tipping upper limit increased from £400 to £1,000

3.7.2 Litter or graffiti upper limit increased from £150 to £500

3.7.3 Household waste duty of care upper limit increased from £400 to £600.

3.8 In raising the upper limit of fines in relation to the offences at paragraph 3,7, the Environment Minister said that it would deter people from harming our public spaces in the first place, and ensure that those who continue to offend face tougher consequences.

3.9 It is important to note that the level for a fixed penalty should be appropriate for the individual offence. FPNs that are too high could lead to substantial non-payment rates and will be counter-productive for the Council through increased officer time and legal costs which might not be recovered at court.

3.10 A fixed penalty notice will only be issued in cases which comply with the Code of Crown Prosecutors with regard to the evidential and public interest test. An FPN is issued, in the first instance, as an alternative to a prosecution and due consideration is always given to prosecuting for the offence if they decide not to pay the fine.

4. DETAILS

4.1 In light of this, it seems prudent to review FPN fines across the board and ensure that they are set at appropriate levels and are consistent across the offences.

4.2 The table appended at **Appendix A** outlines the current fine levels in the lower and upper columns and the proposed new levels in the relevant columns.

5. RISK

5.1 Increasing the maximum fine levels may mean that offenders will not make payment of the fine or may be unable to afford the fine. This may increase the number of cases referred to the Magistrates Court for prosecution, however, in many cases, this is mitigated by having an early payment fee (lower limit).

5.2 The risk is further mitigated in that the increase in fine levels will act as a strong deterrent for this anti-social behavior.

6. FINANCE

6.1 Increasing the fine levels is intended to discourage potential offenders and support the costs of dealing with illegal waste disposal. Income received from the issuing of FPN's can only be used for environmental schemes and income will vary depending on the type of offence and whether full recovery is achieved.

7. LEGAL

7.1 The various pieces of legislation defines the fine level range that Councils can set. These levels are within those as the Council cannot set fine levels outside the ranges specified.

8. POLICY AND EQUALITIES IMPLICATIONS

8.1 The recommendations of this report have no particular impact on any of the protected Equalities groups. It does not introduce a new service or policy requiring an accompanying EIA.

9. REASON FOR DECISION

9.1 Fly-tipping is an environmental hazard which can destroy habitats and can be poisonous to humans and wildlife. Measures to reduce fly-tipping and other environmental crimes will have a positive ecological impact on the environment.

9.2 The FPN fine levels are intended to discourage the anti-social behaviour that blights our Borough and undermines the broader community enjoyment of the environment.

9.3 The FPN fine levels are a response to the Government’s call for stronger action to tackle environmental offences.

Background Papers	
Document	Place of Inspection
Appendix A – Table of Fines	Attached

Fixed Penalty Notice Fines– Environmental Offences

Appendix A

Offence	Provision	Lower	Upper	Minimum/Maximum	Proposed Lower	Proposed Upper	Notes
Abandoning a vehicle	Section 2A(1) Refuse Disposal Amenity Act	£120	£200		£120	£200	No change
Breach of PSPO (Alcohol & Nuisance Vehicles)	Section 67 Anti-Social Behaviour Crime & Policing Act 2014	£60	£100		N/A	£100	Nuisance vehicles are a particular problem. Offence should not be discounted.
Breach of PSPO (Dog Control)	Section 67 Anti-Social Behaviour Crime & Policing Act 2014	£75	£90		N/A	£100	Remove lower. Change upper
Breach of CPN	Section 48 Anti-Social Behaviour Crime & Policing Act 2014	£50	£100		N/A	£100	Remove lower. No discount for early payment.
Duty of Care (Business)	Section 34(1) Environmental Protection Act 1990	£180	£300		£180	£300	No change
Duty of Care (Domestic)	Section 34(2A) Environmental Protection Act 1990	£180	£300	150/600	£200	£600	Maximum upper permitted is £600
Duty of Care (Waste Notes)	Section 34(1) Environmental Protection Act 1990	£180	£300	150/600	£200	£600	Maximum upper permitted is £600
Fly tipping	Section 33(1)(a) Environmental Protection Act 1990	£120	£400	Upper 1,000	£400	1,000	Fly-tipping is a hard to eradicate blight on the landscape. Lower is currently less than most other environmental offences and this is disproportionate.
Carrying controlled waste without registration	Section 1(1) Control of Pollution (Amendment) Act 1989	£180	£300		£180	£300	No change
Failure to produce waste carrier's licence	Section 5B(2) Environmental Protection Act 1990	£180	£300		£180	£300	No change
Industrial & commercial offences connected with waste receptacles	Section 47ZA(2) Environmental Protection Act 1990	£60	£100	75/110	£75	£110	Change lower and upper

Offence	Provision	Lower	Upper	Minimum/ Maximum	Proposed Lower	Proposed Upper	Notes
Domestic offences connected with waste receptacles	Section 47ZA(2) Environmental Protection Act 1990	£40	£80	75/110	£75	£110	Change lower and upper
Smoking in a smoke free zone	Section 7 Health Act 2006	£30	£50		£30	£50	No change
Person having the management or control of smokefree vehicle fails to stop a person from smoking there (driver)	Section 8(4) Health Act 2006	£30	£50		£30	£50	New addition
Littering	Section 87 Environmental Protection Act 1990	£75	£90	65/500	£75	£250	Change upper to £250
Flyposting or graffiti	Section 43(1) Anti-Social Behaviour Act 2003	£50	£75		£50	£80	Change the upper level