

**Anti-Social Behaviour, Crime & Policing Act 2014:
Fixed Penalty Notice Charges for Non-Compliance
with Community Protection Notices
21 March 2017**

Report of Chief Officer (Health & Housing)

PURPOSE OF REPORT			
To seek decisions for the level at which Fixed Penalty Notice (FPN) charges will be set for failure to comply with Community Protection Notices under the Anti-Social Behaviour, Crime & Policing Act 2014.			
Key Decision	<input type="checkbox"/>	Non-Key Decision	<input type="checkbox"/>
			Referral from Officer
			X
Date of notice of forthcoming key decision	N/A		
This report is public.			

RECOMMENDATIONS OF**Karen Leytham, Cabinet Member – Health & Housing****Brendan Hughes, Cabinet Member – Community Safety & Clean & Green**

- (1) That the level of charge for Fixed Penalty Notices (FPNs) issued for breach of Community Protection Notices under the Anti-Social Behaviour, Crime & Policing Act 2014 be set at £100 and payment be required within 21 days.
- (2) That the amount payable is reduced to £65 if payment is received within 14 days of the date of issue.

1.0 Introduction

- 1.1 The council carries out a range of enforcement activities using FPNs. FPNs offer a faster, more efficient alternative to prosecution and one that is generally well accepted. It is generally a matter for individual local authorities to determine the level of penalty charge for enforcement of non-compliance with FPNs.
- 1.2 At this stage, this report is only seeking a decision about the level of charge for an FPN, however, this is to be viewed in the context that officers are working to develop an anti-social behaviour strategy in partnership with the police to maximise the outcomes from our limited resources.
- 1.3 The council is strengthening its operational capacity to tackle anti-social behaviour and intends to make strong use of Community Protection Notices (CPNs). CPNs were introduced by the Anti-Social Behaviour, Crime & Policing Act 2014 as an intervention/enforcement power. They can be issued to individuals, businesses or organisations responsible for anti-social behaviour affecting a community. The formal intervention process starts when an enforcement officer is satisfied that unacceptable anti-social behaviour has taken place for which it is legally appropriate to issue a CPN.

The pre-requisite in the 2014 Act is that a council must first issue a written Community Protection Warning. In cases where this warning is not complied with then a CPN can be issued. It is a criminal offence to fail to comply with the requirements of the CPN. Non-compliance is enforceable either by issuing a fixed penalty charge or by prosecuting in the Magistrates' Court. An appeal against a CPN can be made to a Magistrates' Court on a number of grounds within 21 days of the CPN being issued to the recipient.

- 1.4 Section 52 of the Anti-Social Behaviour, Crime & Policing Act 2014 specifies a maximum £100 level of charge for FPNs issued for non-compliance with CPNs. Subject to this legal maximum, the council has discretion as to the amount set and also the level of any reduced amount acceptable if paid within a specified period not exceeding 14 calendar days.
- 1.5 Anecdotal evidence from Blackpool Borough Council, where use of formal community protection warnings and CPNs is well established, indicates that in 90% of cases where warnings are issued (1,050 warnings in 2016) it has not been necessary to proceed further and issue a CPN. Where CPNs are issued they seem to be effective, only a small percentage being contravened and resulting in FPNs being issued.
- 1.6 The issue of a FPN is just one of three options available for breach of a CPN. The others are that the council can undertake remedial works (for example to clear rubbish in a back yard) or prosecution. The use of FPNs is most appropriate to deal with 'low level' issues that do not warrant taking up resource in prosecution or where there are no works outstanding.
- 1.7 The legislation allows for Authorised officers of the council and Police Officers (including PCSOs if delegated) to issue CPNs and FPNs for non-compliance with CPNs.
- 1.8 FPNs will be issued by suitably trained council officers including our Anti-Social Behaviour Officer, Environmental Health Officers, Environmental Health Technical Officers and Dog Wardens. As appropriate they may be issued by a broader range of enforcement functions, for example littering, fly tipping, etc.
- 1.9 It is intended that FPNs will be issued where CPNs have been breached in relation to relatively low level offences that do not justify the resources required to proceed with a prosecution. For example small scale burning of waste, waste accumulations and littering, noise disturbance, youths congregating, etc.
- 1.10 The penalty fees will be collected through the existing arrangements used to collect existing FPN charges (e.g. for dog fouling offences).

2.0 Proposal Details

- 2.1 That the level of penalty charge be set at the maximum amount of £100 to be paid within 21 days.
- 2.2 Additionally, the amount payable reduces to £65 if paid within 14 days.
- 2.3 This falls into alignment with the FPN level recently agreed for non-compliance with the requirements of the Lancaster Public Space Protection Order and the existing dog-related FPNs, in terms of both payment timescales and early payment reductions.

2.4 Other Lancashire district councils responding to a recent enquiry have set the level of penalty charge at the maximum £100. Specifically:

- Fylde B.C. - £100 (no early payment reduction)
- South Ribble B.C. - £100 (reduced to £50 if paid within 14 days)
- West Lancs D.C. - £100 (no early payment reduction)
- Wyre B.C. - £100 (no early payment reduction)
- Preston C.C. - £100 (reduced to £75 for early payment)
- Pendle B.C. - £100 (no early payment reduction)
- Chorley B.C. - not agreed yet but officers are recommending £100

3.0 Options and Options Analysis (including risk assessment)

	Option 1: Set FPN at £100 to be paid within 21 days (with no early payment reduction).	Option 2: Set FPN at £100 (with an early repayment reduction to £65 if paid within 14 days)	Option 3: Set FPN at a lower level (to be decided by Cabinet)	Option 4: No FPN level set.
Advantages	<ul style="list-style-type: none"> • Aligned with levels set by the <i>majority</i> of Lancashire councils noted in this report. • The £100 maximum level of fixed penalty charge would provide the maximum deterrent effect. • Demonstrates that the council is maximising impact of FPNs. 	<ul style="list-style-type: none"> • Consistent with Lancaster PSPO & Dog-related FPNs. • The £100 maximum level of fixed penalty charge would provide the maximum deterrent effect. • Policy of offering early payment reduction would be aligned with a minority of Lancashire councils. • Demonstrates that the council is maximising impact of FPNs but offering a less costly option to avoid further action. 	<ul style="list-style-type: none"> • More people might opt to pay a lower level of penalty rather than risk being prosecuted. 	<ul style="list-style-type: none"> • There is no obligation to issue FPNs for breaches of CPNs. Section 52 of ASBCPA 2014 states that an authorised person 'may' issue a FPN.
	<ul style="list-style-type: none"> • Inconsistent with PSPO & 		<ul style="list-style-type: none"> • Lower deterrent 	

Disadvantages	<p>Dog-related FPNs as both offer early payment discount.</p> <ul style="list-style-type: none"> • Could result in higher levels of non-payment, substantially increasing the amount and cost of prosecution work. 		<p>effect than would be provided by a higher level of charge.</p> <ul style="list-style-type: none"> • Inconsistent with both existing PSPO and levels set by other councils in Lancashire. 	
Risks	<ul style="list-style-type: none"> • Could be perceived as 'harsh' compared to the councils identified as having set a lower level or an early payment reduction • Resources tied up in prosecutions due to non-payment. 	<ul style="list-style-type: none"> • Council could be criticised for offering a 'cheap' way out of formal action. 	<ul style="list-style-type: none"> • Council could be criticised for offering a 'cheap' way out of formal action. 	<p>Completely undermines the purpose of the legislation and would make to issuing of CPNs redundant.</p>

4.0 Officer Preferred Option (and comments)

- 4.1 The officer recommendation is Option 2 - that the level of charge for Fixed Penalty Notices issued for breach of Community Protection Notices under the Anti-Social Behaviour, Crime & Policing Act 2014 is set at £100 payable within 21 days, and that the amount payable is reduced to £65 if payment is received within 14 calendar days of the date of issue.
- 4.2 This level of charge would provide the greatest deterrent available which complements the approach the council is taking to tackle ASB, whilst retaining an incentive to pay the FPN (and therefore avoid resource intensive court proceedings).

5.0 Conclusion

- 5.1 Setting the level of penalty charge for non-compliance with a CPN at the highest level available would:
- Send a clear message about how seriously the council is taking the issue of ASB seriously.
 - Provide the biggest available FPN penalty charge deterrent to perpetrators of ASB
 - Make the risk to an ASB perpetrator of receiving a CPN (and likely a

resulting penalty charge if they fail to comply) work as best it can for investigating and enforcement officers.

- 5.2 Aside from the message and deterrent effect that the amount of penalty charge would have, alternative levels of penalty charge below £100 would be equally enforceable.

RELATIONSHIP TO POLICY FRAMEWORK

Contributes to the Clean & Green Corporate Priority
Contributes to the Lancaster District Community Safety Strategy

CONCLUSION OF IMPACT ASSESSMENT

(including Health & Safety, Equality & Diversity, Human Rights, Community Safety, HR, Sustainability and Rural Proofing)

Health & Safety – None arising directly from this report.

Equality & Diversity –No foreseeable equality or diversity impacts either arising from the use of fixed penalty notices (as this will be undertaken in an equitable way as per the Council's Enforcement Policies, FPNs already being used by a variety of council functions) or arising from the proposed level of charge.

Human Rights – None arising directly from this report.

Community Safety – Enforcement of Anti-Social Behaviour through the use of fixed penalty notices and charges is expected to have a significant positive impact on community safety.

HR - None arising directly from this report.

Sustainability - None arising directly from this report.

Rural proofing - None arising directly from this report.

LEGAL IMPLICATIONS

No further implications other than those arising from the use of the legislation referred to throughout this report. Legal Services has been consulted on this report.

FINANCIAL IMPLICATIONS

It is not anticipated that there will be any significant financial implications arising as a result of the proposal. Fine income from FPN's is expected to be relatively low and will be used to cover the associated costs of implementing the proposal, i.e. CPN / FPN stationary costs with enforcement costs being met from within existing staff resources.

OTHER RESOURCE IMPLICATIONS

Human Resources:

None arising directly from this report.

Information Services:

None arising directly from this report.

Property:

None arising directly from this report.

Open Spaces:

None arising directly from this report.

SECTION 151 OFFICER'S COMMENTS

The Section 151 Officer has been consulted and has no comments to add.

MONITORING OFFICER'S COMMENTS

The Monitoring Officer has been consulted and has no further comments.

BACKGROUND PAPERS

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