

Fixed Penalty Notice Enforcement Charges for Fly Tipping & Waste Related Offences

24 April 2018

Report of Chief Officer (Health & Housing)

PURPOSE OF REPORT				
To establish Fixed Penalty Notice (FPN) enforcement for fly tipping and specific other waste related offences and set the levels for fixed penalty charges.				
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 ANDREW WARRINER AND BRENDAN HUGHES:

- (1) That enforcement by way of fixed penalty notices be established for fly tipping and waste disposal related offences as described in this report, in order to deter and deal efficiently with offending and ultimately to help improve the cleanliness of neighbourhoods and open spaces.
- (2) That the levels of fixed penalty charges be set at the maximum permitted with early payment reductions if paid within 10 days as set out in the report.

1 Introduction

- 1.1 In 2016/17 local authorities in England reported more than a million incidents of fly tipping costing taxpayers an estimated £58 million to clear. Nationally that year a reported 1,602 prosecutions were taken for fly tipping and 56,000 fixed penalty notices (FPN's) were issued.
- 1.2 Also in 2016/17 the council dealt with 3,765 unlawful deposits of wastes on land. Most commonly wastes were placed in back alleys and on footpaths and highways. However wastes were also transported and dumped in open spaces, on other people's land and in rural areas. 83% of incidents involved domestic waste and 17% involved wastes from non-domestic sources. 1,655 incidents involved quantities ranging from single black bags to no more than a car boot load, whilst 2,110 involved quantities ranging from a small van or transit load up to a tipper lorry load. In addition to deliberate fly tipping of wastes, offending behaviours range from repeatedly putting bags and bins out on the wrong day or time, neglecting or abandoning deposited wastes, and businesses unlawfully depositing or disposing of their wastes. This council took 1,418 enforcement-related actions for wastes offending during 2016/17, including 20 prosecutions and around 15 FPN's for littering. Prosecuting for fly tipping offences led to fines typically of around £1,000 including costs
- 1.3 This financial year, the council collected 396 tons of fly tipped waste up to

December 2017 with a full year projected total of 528 tons costing around £250,000 just for waste removal and disposal. The true cost to the council including responding to an incident and undertaking appropriate investigation and enforcement, combined with the costs of administering and publicising environmental enforcement, are substantially greater.

- 1.4 The council's Environmental Enforcement team transferred from Environmental Services to Health & Housing's Public Protection service group in November 2017. In December 2017 a new Lead Environmental Enforcement Officer was appointed. In February 2018 two growth bids were approved working closely in combination:
- a) a third environmental enforcement officer being employed fixed-term over 23 months to help transform enforcement – this highly responsive post will working closely with affected communities and deliver fixed penalty notice enforcement
 - b) a range of transformative waste collection and street cleansing approaches to fundamentally and lastingly improve cleanliness of neighbourhoods and public places
- 1.5 A range of legal instruments is provided to regulate the storage, handling, transportation, treatment and disposal of wastes. Fundamentally, any person producing or for the time being holding any waste has a 'duty of care' to prevent waste-related problems and to ensure waste is properly and lawfully transferred to its ultimate point of disposal. In view of the challenges involved in detecting and dealing with offenders who unlawfully dispose of their wastes and pass on to someone else the problem and clean-up/disposal cost, the burden of proof rests in law with a producer and holder of any waste to demonstrate their legal compliance. Section 3 below outlines the offences relevant to the FPN enforcement sanctions proposed in this report.
- 1.6 On 2 April 2018 the council launched Operation Peregrine which is a new fly-tipping reduction strategy. Making use of existing and new techniques, tactics and problem-solving models, the aim of Operation Peregrine is to reduce fly tipping across the Lancaster district by deterring, disrupting and preventing offending. Delivery of this the strategy will involve:
- education and awareness-raising initiatives
 - engagement and empowerment of communities in support of the city council addressing a problem that blights their neighbourhoods
 - applying the full range of enforcement sanctions in appropriate cases

Officers will monitor, review and report to Members on the future progress, performance and effectiveness of Operation Peregrine.

2 Fixed Penalty Notice enforcement

- 2.1 The council carries out a range of enforcement activities using FPNs. The use of FPNs for a first time small-scale offences, sometimes where the offender has immediately accepted responsibility, is an expedient and effective enforcement method often preventing the need for significant administrative and enforcement costs of investigation, file building and prosecution in the Magistrates Court. Being the personal subject of FPN enforcement is uncomfortable, however payment is optional and it enables offenders to avoid entering the criminal justice system unnecessarily. FPN enforcement also releases enforcement staffing capacity to cover a greater number of cases. Blighted communities tend to be supportive of quick and simple enforcement against offending behaviours.
- 2.2 It is intended that FPNs will be issued for relatively low level offences such as first-time opportunist fly tipping and (in combination with awareness-raising) failure by a trade/commercial/industrial waste holder to exercise responsibility such that their wastes become a community concern.

- 2.3 It is generally a matter for individual local authorities to determine the level of penalty charge for a FPN, usually within maximum levels determined by legislation.
- 2.4 Nationally and within the Lancaster district around 95% of FPN's are accepted and the charges paid by offender at the earliest opportunity. The FPN's and charges proposed in this report would be administered proportionately, fairly and firmly as per existing FPN powers. The purpose would be to help deliver the council's neighbourhood cleanliness aims. FPN issuing, administration and payment collection or enforcement would be provided through existing arrangements used for example when dealing with dog fouling offences.

3 Offences

3.1 Fly tipping offences

- 3.1.1 It is an offence to deposit controlled waste on land, or knowingly cause or permit its deposit, otherwise than in accordance with a permit, licence or legally granted exemption (Section 33 of the Environmental Protection Act 1990). The common term for most such wastes offending that the council encounters under section 33 is Fly Tipping. In response to public concern about fly-tipping and the appropriateness of the sanctions available to deal with it, the Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 came into law on 9 May 2016. These Regulations introduced a new power in section 33ZA of the Environmental Protection Act 1990, permitting an authorised officer of a waste collection authority to serve a fixed penalty notice on a person they have reason to believe committed an offence under section 33(1)(a) including fly tipping.
- 3.1.2 The average cost to a local authority of dealing with a fly tipping incident can exceed £200. It is therefore considered important when setting the level of a fixed penalty charge that it should at least cover this cost.
- 3.1.3 A significant number of local authorities across the UK have adopted Fixed Penalty Notice enforcement for lower level fly tipping in view of its advantages outlined in section 2 of this report. It is intended that this council would apply fly tipping FPN enforcement in appropriate cases to both domestic and trade/commercial/industrial offenders. The latter will also be subject to the enforcement options at 3.2 and 3.3 below in this report.

3.2 'Duty of care' offences relating to transfer of wastes

- 3.2.1 Under section 34 of the Environmental Protection Act 1990 imposes a legal 'duty of care' on any person who imports, produces, carries, keeps, treats or disposes of controlled waste or, is a broker for it. The duty of care requirements include that the transfer of any waste must be secured only to an authorised person/authorised transport and that a written description of the waste must accompany its transfer. The typical paper format is known as a 'waste transfer note' although there are electronic and season ticket type equivalents.
- 3.2.2 With the exception of a householder originating and transporting their own domestic waste, unless the appropriate documentation is in place then waste cannot be accepted at a lawful collection and disposal point. Checking waste documentation notes enables the rapid confirmation of legal compliance. It also leaves offenders with nowhere to hide or give enforcing authorities the run-around. It is an offence under section 34 of the Environmental Protection Act 1990 to fail to comply with 'duty of care' waste documentation. Commonly, this will involve failure to produce a Waste Transfer Note when so required by a relevant enforcing authority such as this council. The power to issue FPNs for such offences is provided in section 34A of the same legislation.
- 3.2.2 FPN's and charges offer a particularly efficient enforcement tactic when people

(other than domestic householders transporting their own waste lawfully) are found to be committing such offences. Raising trade and business awareness and proactively checking compliance in the Lancaster district will be a very strong and successful tactic in preventing fly tipping crime. The tactical option is very useful for business types that present risk - takeaways, builders and trades people, particularly when a suspected source to Fly Tipping is identified to the team through intelligence.

3.3 Waste Carrier registration offences

3.3.1 The legal requirement for Waste Carrier registration was introduced to enable effective regulation, to provide ready checking on the lawfulness of waste carriers, and to facilitate the detection of unregistered waste carriers. An unregistered waste carrier cannot legally transport controlled waste in a course of business or for a profit and is therefore unlikely to deposit wastes in a lawful place. It is an offence under Section 5 of the Control of Pollution (Amendment) Act 1989 if a person transporting waste fails to produce a Waste Carrier's registration documentation when reasonably required to do so by an authorised officer. The power to issue FPNs for such offences is provided in section 5B of the same legislation.

3.3.2 This is another area where FPN enforcement provides an expedient sanction for dealing with unlawfulness. Promoting awareness of positive business compliance is anticipated to leave only those with unlawful intentions. Some simply try to avoid the costs of trade refuse collection by personally disposing of their wastes (in public litter bins, other people's paid for bins, or by burning or taking it home and putting it out for domestic collections). Enforcement officers will particularly target rogue waste carriers who are operating in Lancaster district. It is evident that a significant number of the fly tipping offences are committed by unscrupulous rogue waste carriers - taking household rubbish for cash, no questions asked and going on to fly tip that waste.

3.4 Other sanctions

3.4.1 In addition to FPN enforcement other regulatory sanctions are available and the council's strategy will be to make use of these where circumstances are appropriate, for example section 5 of the Control of Pollution (Amendment) Act 1989 provides the power to seize a vehicle suspected of being involved in waste crime and section 146 of the Powers of Criminal Courts (Sentencing) Act 2000 enables enforcing authorities to apply to the courts for an order for the defendant to be disqualified from driving for a period of time. These sanctions would be used in the more extreme cases.

3.4.2 Officers will also be using the full range of investigatory tools, including authorised CCTV surveillance targeted to catch offenders efficiently.

4 Proposal Details

4.1 In view of the problems posed to our communities by wastes-related offending, and the costs to the tax payer of clean-up and disposal, it is proposed that this council adopts the strongest position possible in relation to the fixed penalty charge levels. Doing so conveys the most deterrent message to offenders and potential offenders. Setting lower levels of fixed penalty charge would reduce the impact of our environmental enforcement services and our new strategy under Operation Peregrine.

4.2 The proposed amounts of fixed penalty charge dealing with each specific offence described in section 3 above is as follows. In line with the council's existing FPN arrangements (for example dog fouling, anti-social behaviour Community Protection Notices, Public Space Protection Orders), early payment reduced

charges are also proposed below. Early payment rates dramatically reduce the need for expensive and time consuming prosecutions to be mounted.

Offence	Legislation	Maximum permitted amount of fixed penalty charge	Proposed amount of early payment option
Fly Tipping	s33a EPA 1990	£400	£300 if paid within 10 days
Failure by non-domestic person to comply with their duty of care (including the failure to produce a sufficient record/note of waste being transferred)	s34 EPA 1990	£300	£200 if paid within 10 days
Failure by non-domestic person to produce full and proper legal documentation of Waste Carrier's registration	s5B(s) Control of Pollution (Amendment) Act 1989	£300	£200 if paid within 10 days

4.3 To inform decision making, the following information has been sought and the responses are presented on prevailing levels of fly tipping fixed penalty charges enforced by other local authorities in Lancashire.

- Ribble Valley - £400, no information about early repayment discount
- Blackpool - £400, reduced to £250 if paid within 10 days
- Fylde - £400, reduced to £200 if paid within 14 days
- Blackburn - £400, reduced to £300 if paid within 10 days
- Chorley - £400, reduced to £200 (no information about time)

It can be seen from this information that the proposed full level of fly tipping FPN charge is highly consistent with the named other Lancashire authorities. The proposed level of early payment charge payment at £300 exceeds those in a number of authorities. The reason for this is to set early payment discounts at a level covering more of the enforcement, clean-up and disposal cost of each offence.

5 Options and Options Analysis (including risk assessment)

	Option 1: Set FPN charges at the maximum permitted to be paid within 21 days (with no early payment reduction).	Option 2: Set FPN charges at the maximum permitted (with early payment if paid within 10 days at the amount proposed at paragraph 4.2)	Option 3: Set FPN charges at lower levels (to be decided by the Cabinet meeting)	Option 4: Decide not to implement FPN enforcement for these offences at this time.
	<ul style="list-style-type: none"> • Full charge levels aligned with those of the other Lancashire councils noted in this report. 	<ul style="list-style-type: none"> • Full charge levels aligned with those of the other Lancashire councils noted 	<ul style="list-style-type: none"> • More people might opt to pay a lower level of penalty rather than 	<ul style="list-style-type: none"> • There is no obligation to issue FPNs for offences, as regulations state that an

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Advantages	<ul style="list-style-type: none"> • The maximum level of fixed penalty charge would provide the maximum deterrent effect. • Demonstrates that the council is maximising impact of FPNs. 	<p>in this report.</p> <ul style="list-style-type: none"> • The maximum level of fixed penalty charge would provide the maximum deterrent effect. • Consistent with Lancaster PSPO & Dog-related FPNs in terms of early payment discount and timescales. • Policy of offering early payment reduction would be aligned largely with other Lancashire councils. • Demonstrates a strong enforcement sanction maximising impact of FPNs whilst offering a less costly option to avoid further action. This can be seen as a balanced approach, speeding up resolution and reducing the need and staffing implications of avoidable prosecutions. • The receipts from early payment charges would 	<p>risk being prosecuted. This would benefit staffing capacity in the council's Legal team.</p>	<p>authorised officer 'may' issue a FPN.</p> <ul style="list-style-type: none"> • No FPN administration requirements

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		still help to cover the council's clean-up and disposal costs.		
Disadvantages	<ul style="list-style-type: none"> • Inconsistent with ASB, PSPO & Dog-related FPN enforcement which offers early payment discounted charges. • Likely to result in higher levels of non-payment, substantially increasing the quantity and burden of prosecution work. 		<ul style="list-style-type: none"> • Lower deterrent effect than would be provided by a higher level of charge. • Inconsistent with both existing PSPO and levels set by other councils in Lancashire. 	<ul style="list-style-type: none"> • The benefits of FPM enforcement would be missed.
Risks	<ul style="list-style-type: none"> • Could be perceived as 'harsh' compared to those councils having set lower charge levels of for early payment • More 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 to some degree as insufficiently strong on enforcement sanctions. 	<ul style="list-style-type: none"> • Undermines the reach, impact and efficiency of the proposed enforcement. • Would not in relation to enforceable offences recover the Council's average costs of removing fly tipped waste.

6 Officer Preferred Option (and comments)

- a. The officer recommendation is Option 2 - that the level of charge for Fixed Penalty Notices is set at the maximum permitted level payable within 21 days, and that the amount payable is reduced as set out in paragraph 4.2 where payment is received within 10 calendar days of the date of issue.
- b. The levels of charge in Option 2 provide the greatest deterrent available which complementing the approach the council is taking to tackle fly tipping, and providing an incentive to pay FPNs early (minimising the requirement

for court proceedings).

7 Conclusion

- 7.1 Approving FPN enforcement and setting the level of penalty charge for offences at the highest level available sends a clear message about how seriously the council is taking the issue of fly tipping. It provides the biggest available FPN penalty charge deterrent to perpetrators of fly tipping.
- 7.2 Alternative levels of penalty charge below the maximum £400 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 fly tipping and waste disposal related offences 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

The legal background to the Council's power to issue FPNs has been set out in the body of this report. The failure to discharge a FPN may lead to Prosecution and the Council's legal services department will have to deal with such cases.

FINANCIAL IMPLICATIONS

It is not expected that there will be any significant financial implications arising as a result of the report recommendations. It is difficult to predict levels of fine income at this stage but it is expected to be relatively low, i.e. around £900 to £1,200 in the current year based on 3 FPN's being issued. This may be used to cover associated surveillance and equipment costs, if appropriate, and any enforcement costs would need to be met within existing staff resources.

Any updates to the maximum FPN charges in future years and the associated early payment charges would be implemented under existing officer delegations.

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 further comments.

MONITORING OFFICER'S COMMENTS

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

BACKGROUND PAPERS

Legislation specified in the body of this report

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