

# FlyTipping and duty of care FPNs briefing

**Overview and Scrutiny Panel** 15 February 2024

<b>Report Author</b>	Eden Geddes, Enforcement & Multi Agency Task Force Manager
<b>Portfolio Holder</b>	Cllr Keen, Cabinet Member for Neighbourhoods
<b>Status</b>	For Recommendation
<b>Classification:</b>	Unrestricted
<b>Key Decision</b>	Yes
<b>Reasons for Key</b>	Significant effect on communities
<b>Ward:</b>	All Wards

## Executive Summary:

Having a clean and well-maintained environment remains important to us. We will be clear with our residents on what we will do and what our asks of residents are – cultivating a shared responsibility approach. Delivering a clean and accessible living environment, maintaining an emphasis on prevention but where necessary we will use an enforcement approach.

The Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023 that came into force on the 31st July 2023 has given local authorities the option to increase the fines issued under fixed penalty notices for fly tipping and waste and duty of care.

## Recommendation(s):

The council is recommending the following changes in relation to both Fixed Penalty Notices (FPN's) in relation to Fly Tipping Offences and Household Waste Duty of Care Offences be adopted;

- Increasing the penalty limit for fly tipping offences from £400 to £1000
- Increasing early payment option for fly tipping from £300 to £400
- Increasing the penalty limit for breaches of care notices in relation to waste from £400 to £600
- Increasing the early payment option for breaches of care notices from £300 to £400

The council is recommending the adoption of this increase in FPNs as it is to be considered reasonable and proportionate. The current level of fines are not acting as the deterrent intended. The early payment for fly tipping will be on par with the previous maximum penalty amount. The increase in the duty of care fine is proportionate and the early repayment is set to match the fly tipping as a strong

deterrent. This option is also pursuant with the corporate priority of keeping our district safe and clean and has the advantage of keeping us in line with what ultimately will be the direction most if not all districts will take.

In a previous CMT briefing the requirement for a communications plan was discussed. This will be developed around a zero tolerance approach to fly tipping offences in the district.

Therefore members of the Overview and Scrutiny Panel are asked to:

1. Note and scrutinise the report and consider any representations to Cabinet in advance of its meeting on 29th February 2024

## **Corporate Implications**

### **Financial and Value for Money**

Infrastructure in relation to the issue of FPNs is already adopted and changes will come from within existing budgets and resources. There will be some impact on the time of internal services such as finance in order to change payment setups, however this is considered normal business.

There may potentially be future legal costs for enforcement of Fixed Penalty Notices via court process however this will be covered within the existing Enforcement legal budget.

### **Legal**

The Environmental Protection Act 1990 has recently been updated to increase the amount of money that can be levied to a fixed penalty notice to certain offences under the act.

Whilst the Increasing the scale of Penalty Notices includes consideration of legal matters in as far as they relate to risks to the council, there are no legal implications for the recommendation required by this report.

### **Risk Management**

The council operates a robust process around the issue of penalty notices as an alternative to prosecution.

The issue of Penalty notice is a remedy offered as an alternative to prosecution There is a low risk of error in the issue of these types of penalty notices which may have a disproportionate impact upon different groups within society. Legislative guidance around the issue of penalty notices of this type allows for a mechanism for appeal and an ability to challenge the issue at a judicial level if the issue of an FPN is either believed incorrect or issued in error.

### **Corporate**

The recommendations support The Council's Core Business Objectives in areas of Environment: Maintain strong enforcement action in the areas of planning, building control and parking. Strengthening our already tough response to fly-tipping and maintaining the zero-tolerance policy towards littering.

## **Equality Act 2010 & Public Sector Equality Duty**

It is not felt that the adoption of the new guidance under the statutory instrument should have any negative impact in respect of protected characteristics and the public sector equality duty.

A customer Impact screening has been undertaken and there are no matters arising from this proposal at this time.

## **Corporate Priorities**

- Environment: Maintain strong enforcement action in the areas of planning, building control and parking. Strengthening our already tough response to fly-tipping and maintaining the zero-tolerance policy towards littering.

## **1.0 Introduction and Background**

- 1.1 The Environmental Protection Act 1990 allows local authorities to offer Fixed Penalty Notices (FPN's) for: Depositing or knowingly causing or permitting the deposit of waste on land where no environmental permit is in place, commonly known as fly-tipping. Householders who fail to comply with their duty of care when passing their waste to a third party and those who; drops, throws, deposits or leaves anything so as to cause defacement in any land open to the air
- 1.2 The government has developed a national action plan targeting elements of anti-social behaviour. Contained within the plan are a number of changes to existing ASB legislation envisaged to strengthen police and local authority responses to varying incidences of anti social behaviour. A number of these are relevant to the council's street scene enforcement activities.

## **2.0 The Current Situation**

- 2.1 As of the 10th July 2023, the Government has introduced a statutory instrument (SI) increasing the upper limits for various fixed penalty notices (FPNs), which includes an option to change fly-tipping fines that more than doubles the maximum penalty for offenders.
- 2.2 A Fixed Penalty Notice (FPN) is a notice issued to a person who has committed an offence. FPNs may be issued on the spot or through the post. An FPN is issued as an alternative to prosecution. By paying the FPN an individual may discharge their liability for the offence and no further action will be taken.
- 2.2 Under the changes, the upper limit for fines in relation to fly-tipping has risen from £400 to £1000. The maximum fine for those who breach their duty of care as to household waste has risen from £400 to £600.
- 2.4 Currently of the 12 Kent districts, Maidstone & Canterbury have raised the FPN to the maximum rate of £1000. Throughout 2022 the councils Street Scene Enforcement

team investigated over 5000 reports 2881 of which were fly tipping complaints. This equates to almost 8 fly tipping incidents a day.

### **3.0 Options –**

- 3.1 Consider any representations to Cabinet in advance of its meeting on 29th February 2024.

### **4.0 Next Steps**

- 4.1 This will now be taken to the 29th February 2024 Cabinet meeting for adoption.

Contact Officer: Eden Geddes (Enforcement & Multi Agency Task Force Manager)  
Reporting to: Penny Button Head of Neighbourhoods

#### **Annex List**

#### **Background Papers**

#### **Corporate Consultation**

**Finance:** Greg Dungan (Finance Manager)

**Legal:** Ingrid Brown (Head of Legal and Democracy & Monitoring Officer)