

Changes to the statutory Instrument governing the level of fines for fly tipping & Breach of Duty of care

Extraordinary Cabinet	29th February 2024
Report Author	Eden Geddes Enforcement & Multi-agency Task Force Manager
Portfolio Holder	Cllr Keen, Cabinet Member for Neighbourhoods
Status	For Decision
Classification:	Unrestricted
Key Decision	Yes
Reasons for Key	Significant effect on communities
Ward:	All

Executive Summary:

Having a clean and well-maintained environment remains important to the council. 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. This report requests the cabinet consider a proposed increase in the level of fines.

Recommendation(s):

That Cabinet agree to the following:

1. To increase the penalty limit for fly tipping offences from £400 to £1000;
2. To increase the early payment option for fly tipping from £300 to £400;
3. To increase the penalty limit for breaches of care notices in relation to waste from £400 to £600;
4. To increase the early payment option for breaches of care notices from £300 to £400.

Corporate Implications

Financial and Value for Money:

Infrastructure in relation to the issue of FPNs is in place 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 relevant legislation is set out in the body of this report. The Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023 came into force on the 31st July 2023 and allow the Council to increase fixed penalty fines in the manner proposed in 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.

Equality Act 2010 & Public Sector Equality Duty

Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to the aims of the Duty at the time the decision is taken. The aims of the Duty are: (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people who share a protected characteristic and people who do not share it, and (iii) foster good relations between people who share a protected characteristic and people who do not share it.

Protected characteristics: age, sex, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy & maternity. Only aim (i) of the Duty applies to Marriage & civil partnership.

This report relates to the following aim of the equality duty: -

- *To foster good relations between people who share a protected characteristic and people who do not share it.*

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.

An equalities Impact screening has been undertaken and there are no significant matters arising from this proposal at this time. The council is sensitive to socio-economic and inclusion impacts upon individuals. FPNs represent proportionate enforcement against illegal activity as a remedy opposed to criminal prosecution. Individual economic activity can adversely be impacted by the issue of an FPN. An FPN can be declined and decided via alternate legal process or payment of an FPN can be facilitated via the sundry debtors

system to reduce the economic impact.

Corporate Priorities

This report relates to the following corporate priorities: -

- To keep our district safe and clean
- To protect our environment
- To work efficiently for you

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.
- 1.3 An FPN may only be issued once for fly tipping offences and is issued as an alternative to prosecution. By paying the FPN an individual may discharge their liability for the offence removing a requirement for a prosecution. The FPN remedy is a preferred alternative to a criminal prosecution undertaken by the authority due to cost and the current backlog within the court system which currently delays hearings by 12- 24 months.
- 1.4 The council operates a sundry debtors system where those who have admitted the offence but struggle to pay the balance of the FPN may be able to discharge the debt over a number of months. This approach is only undertaken after careful consideration.
- 1.5 Compliance and education will always be the preferred approach and the council have previously supported the Keep Britain Tidy's crime not to care campaign and Kent Resource Partnerships Lets Scrap Fly Tipping campaign and annual duty of care "Your rubbish, your responsibility" campaigns. Despite this, year on year Thanet as well as the rest of the UK are experiencing increased fly tipping, dumped rubbish and duty of care breaches.

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 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 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.
- 2.5 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.

Types of comparable FPN fines issued by Street Scene Enforcement and Other areas of the council:

- Littering – Section 87/88, Environmental Protection Act 1990 – £100
- Fly Tipping – Section 33, Environmental Protection Act 1990 – £400 (early payment £300)
- Household Waste Duty Of Care – Section 34, Environmental Protection Act 1990 – £400 (early payment £300)
- Breach of Community Protection Notice – Anti Social Crime and Policing Act 2014 – £100
- Breach of Public Space Protection Order – Anti Social Crime and Policing Act 2014 – £100
- Failure to comply with a waste receptacle notice. £110 (early payment fee of £75)
- Failure to produce waste documents. – Section 34 (5) Environmental Protection act 1990 – £300 (early payment fee of £200)
- Failure to produce authority to transport waste – 5/5B Control of pollution act 1989 – £300 (early Payment fee of £200)
- Abandoned vehicles – Section 2, The Refuse Disposal (Amenity) Act 1978 – £200 (early payment fee of £120)
- Smoking in a smoke-free place – Section 7, Health Act 2006 – £50 (early payment fee of £30)
- Failure to display a 'no smoking' sign in a smoke-free place – Section 6, Health Act 2006 – £200 (early payment fee £150)

Throughout 2022 the council's Street Scene Enforcement team investigated 2881 fly tipping complaints and issued 82 penalty notices.

3.0 Potential Options

3.1 Option 1 - To approve the recommendations for Increasing the penalty limit for both fly tipping and duty of care offences. Throughout 2022 the council investigated 2881 fly tipping complaints. This equates to almost 8 fly tipping incidents a day. Increasing the upper limit to the maximum allowed is in line with government guidance and is envisaged to be a strong deterrent as well as contributing to offsetting clearance costs. Our nearest Neighbours in Canterbury agreed the level of increase in December 2023. Anecdotally other councils across Kent seem likely to increase level throughout 2024.

3.2 Option 2 - To amend the recommendations for Increasing the penalty limit for both fly tipping and duty of care offences. Guidance for councils sets the upper

threshold for penalty limits but affords flexibility for setting levels. ONS data for 2021-20122 for fly tipping incidents by district indicate that Thanet is 07th in the county as to volume. There is a concern that by taking a decision to apply penalty rates at a lower threshold than other districts could be perceived by those engaging in fly tipping that Thanet presents a lower financial risk for undertaking illicit activities.

3.3 Option 3 - To reject the proposed increases and recommendations. There is no requirement placed upon the council to increase the level of FPN rates. For 2022 FPN/prosecution approach had around a 78% success rate. However, fly tipping volumes continue to increase and if we do nothing this is likely to reduce compliance whilst volumes increase.

4.0 Preferred Option

Option 1, set out above, is recommended.

This option is recommended as it is to be considered reasonable and proportionate. The current level of fines are not acting as the intended deterrent. 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.

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Annex List

Annex 1: Customer impact assessment

[w](#) *Sept 2023 Fly Tipping Customer Impact Assessment.docx PSPO Town.docx*

Corporate Consultation

Finance: *Chris Blundell (Director of Corporate Services - Section 151)*

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