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| Agenda Item No: | 6 |  |
| Committee: | Cabinet | |
| Date: | 30 September 2024 | |
| Report Title: | Review of fixed penalty notices for environmental crime | |

1 Purpose / Summary

- 1.1 The report provides information about the new Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023 and sets out an option for increasing Fixed Penalty Notice fines for enviro-crime offences as permitted by these Regulations.

2 Key Issues

- 2.1 In the 2023 Anti-social Behaviour Action Plan, the Government explained that it wanted to see councils take a much tougher approach to these forms of anti-social behaviour (environmental crimes such as fly tipping) and set out new upper limits for fixed penalties notices.
- 2.2 The Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023 increased the upper limit for the fixed penalties that can be issued for these offences.
- 2.3 Littering, graffiti, flyposting and fly-tipping blight communities, impose avoidable costs on the public purse and can harm the environment, with fly-tipping being aggravated by householders giving waste to unauthorised carriers. Fixed penalty notices provide the Council as an enforcing authority with an effective and visible way of responding to these environmental crimes.
- 2.4 Enforcement activity to tackle these offences is subject to government scrutiny with the number of actions taken, fines served, and prosecutions taken being published each year. As a council we have increased our activity in this area over many years and our performance is in keeping with councils of a similar make up and geography.
- 2.5 Ensuring robust fines will support this ongoing activity and provide appropriate messaging as to the seriousness of these offences. The income from fines is used to support the cost of street cleansing across Fenland.

3 Recommendations

- 3.1 That Cabinet approve the proposed changes in fine levels as enabled by the Environmental Offences Regulations.

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| Wards Affected | ALL |
| Forward Plan Reference | N/A |
| Portfolio Holder(s) | Councillor Peter Murphy – Portfolio holder for Environment |
| Report Originator(s) | Annabel Tighe – Head of Environmental Health |
| Contact Officer(s) | Layna Warren – Streetscene and Markets Team Leader lwarren@fenland.gov.uk Annabel Tighe – Head of Environmental Health atighe@fenland.gov.uk Carol Pilson – Corporate Director cpilson@fenland.gov.uk |
| Background Papers | Corporate Enforcement Policy Corporate Enforcement Policy 2014 (fenland.gov.uk) |

1 BACKGROUND AND INTENDED OUTCOMES

- 1.1 The Council's enforcement policy sets out the framework to the various enforcement actions associated with the council's legal powers and duties. One enforcement action is the service of fixed penalty notices (FPN). The FPN provides an opportunity to avoid prosecution for the alleged criminal offence.
- 1.2 Fly-tipping significantly impacts on local communities, blighting our neighbourhoods and places a significant financial burden upon the council (or the landowner where rubbish is fly tipped on private land). In addition, the actions of unscrupulous waste operators undercut legitimate businesses which are operating within the law.
- 1.3 The Environmental Protection Act 1990 created an offence of fly tipping (depositing, knowingly causing or knowingly permitting the deposit of controlled waste or extractive waste on land without, or other than in accordance with, an environmental permit). Fixed Penalty Notices (FPN's) for Fly Tipping are issued the Environmental Protection Act 1990 for this offence.
- 1.4 Littering is also (the deposition of one bag of waste) an offence under the Environmental Protection Act 1990 for which a FPN can be issued.
- 1.5 Household Duty of Care offences are commonly identified and include scenarios such as handing over waste to a non-authorized waste carrier who subsequently fly tips the waste. An FPN can be issued when an individual appears to have failed to comply with their duty of care under the Environmental Protection Act 1990.

For example:

- a. Where fly tipped waste can be traced back to an individual who is found to have failed to take reasonable steps to ensure that they transferred the waste to an authorised person.

- b. Where an unauthorised carrier is found to be carrying household waste that was directly transferred to them by the occupier of a domestic property.
 - c. Where an individual is found to have transferred their household waste to an unauthorised person at a site that does not have a permit or exemption.
- 1.6 Graffiti and Flyposting are two environmental offences which can be addressed using an FPN served using powers within the Anti-Social Behaviour act 2003.
- 1.7 Fly tipping, littering, graffiti and flyposting blight communities, impose avoidable costs on the public purse and can harm the environment, with fly-tipping being aggravated by householders giving waste to unauthorised carriers. Fixed penalty notices provide the Council as an enforcing authority with an effective and visible way of responding to these environmental crimes.
- 1.8 FPN's provide an alternative to prosecution. They allow an individual to discharge liability for an offence by payment of a financial penalty. The council is not obliged to offer an alleged offender the option to discharge liability through an FPN however, it can be deemed more proportionate than prosecution through the courts in some cases.
- 1.9 In the 2023 Anti-social Behaviour Action Plan, the Government explained that it wanted to see councils take a much tougher approach to these forms of anti-social behaviour and set out new upper limits for fixed penalties notices. The Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023 increased the upper limit for the fixed penalties that can be issued for these offences.
- 1.10 This report invites members to consider the new maximum FPN levels and whether to apply them to the penalties issued in the council's area.
- 1.11 In determining the appropriate level of an FPN, the council needs to consider the deterrent effect of different levels, peoples' readiness to pay and the levels of fines currently imposed in the magistrates' courts. FPNs that are set too high for local conditions or are likely to be higher than a Court imposed fine in the event of non-payment therefore consideration of these factors is important when setting a local fine level. It is recommended that a lower amount be offered also.
- 1.12 FPNs are not appropriate for repeat offenders or those responsible for large-scale environmental offences. In these situations, the Council may prosecute as an alternative to issuing an FPN, in line with its Corporate Enforcement Policy.
- 1.13 Offenders do not have to accept an FPN offered to them (which discharges their liability to conviction for the offence) and the Council cannot make anyone pay an FPN. There is no right of appeal to any FPNs, but offenders retain the right to not pay any FPN issued to them.
- 1.14 DEFRA Part 1A - Effective Enforcement Code of Practice for Litter and Refuse September 2019 (updated February 2022) recognises that issuing a fixed penalty notice is an alternative to prosecution. If an alleged offender does not pay a fixed penalty, the enforcing authority should be prepared to prosecute them for the original offence.

1.15 In increasing the level for FPNs it may create the perception that this could be used to generate income for the council. The guidance is clear that FPNs should not be used in this way, and in accordance with legislation income received by the Council must be spent on specified cleansing and environmental functions.

1.16 Table 1 below sets out the current Council agreed maximum FPN levels and the proposed new Council maximum FPN levels being recommended to Cabinet and the statutory maximum limit that could be set.

Table 2 details the number of FPN's served, the number paid, cancelled or referred for prosecution between 2018 and 2023.

Table 1

| Offence | Current FDC Fine level | Proposed New Fine level |
|-------------------------------------|---|---|
| Littering | £150 | £300 Reduced to £250 if paid within 10 days. (Statutory maximum £500) |
| Fly Tipping | £400 | Tier 1 - For small low-level offences Fine level - £600 Reduced to £450 if paid within 10 days. Tier 2 large scale offences Fine Level £1000 Reduced to £850 if paid within 10 days. (Statutory maximum (£1000)) |
| Household waste duty of care | £400 *Reduced to £250 if paid within 21 days | Fine level - £600 Reduced to £450 if paid within 10 days. (Statutory maximum £600) |
| Graffiti | N/A | £300 Reduced to £250 if paid within 10 days. (Statutory maximum £500) |
| Fly Posting | N/A | £300 Reduced to £250 if paid within 10 days. |

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| | | (Statutory maximum £500) |
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Table 2

| Year | Payment rate | Number issued | No cancelled | No referred for prosecuted |
|-------------|---------------------|----------------------|---------------------|-----------------------------------|
| 2018 | 87% | 15 | 1 | 1 |
| 2019 | 88% | 22 | 2 | 1 |
| 2020 | 84% | 12 | 0 | 2 |
| 2021 | 80% | 10 | 0 | 2 |
| 2022 | 50% | 14 | 4 | 3 |
| 2023 | 85% | 14 | 2 | 3 |

- 1.17 If an FPN is not settled within the relevant period or no request for payment by instalment is made the case will be referred for prosecution through usual council procedures. In some cases, it is not possible to locate the recipient of the notice, even though due diligence was followed during the investigation, and these notices are cancelled. During the period noted above 12 cases were referred for prosecution, 10 have been considered by the courts and 2 are awaiting hearing. All those heard were found guilty. Each case was fined by the court, these fines varied based on circumstances but all were in the region of £600 to £15,000.

2 REASONS FOR RECOMMENDATIONS

- 2.1 The new Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023 which came into force on 31st July 2023, have increased the upper fixed penalty limit for the specified offences. The Regulations were introduced as part of the Governments Anti-Social Behaviour Action Plan, supporting Councils in tackling environmental crime offences.
- 2.2 Introducing these recommended changes provides the council with a more up to date reflection of the cost to the public of these offences, is in keeping with neighbouring councils and operates as a deterrent to these priority environmental crimes.

3 CONSULTATION

- 3.1 Consultation is not required however benchmarking has been undertaken to compare like for like offences and fine levels implemented by similar and neighbouring councils.

4 ALTERNATIVE OPTIONS CONSIDERED

- 4.1 The use of fixed penalty notices is detailed within the corporate enforcement policy as an enforcement option.
- 4.2 Consideration has been given to keeping the fine levels the same however to be in keeping with neighbouring councils, to meet the rising cost of combating fly tipping and associated environmental crimes and implementing government guidance, this option was discounted.
- 4.3 The use of prosecution is considered for each case and is used for significant offences however is not a cost-effective immediate action for more minor offences.
- 4.4 Where fixed penalty notices are not paid a referral for prosecution is then made.

5 IMPLICATIONS

5.1 Legal Implications

- 5.2 The proposals set out in this Report reflect changes to legislation and propose variations to existing arrangements which are legally permissible.

5.3 Financial Implications

- 5.4 The income from these fines is used to undertake more awareness campaigns and to support the councils cleansing service costs. This is a requirement of the legislation, and the council cannot use these funds for other reasons.
- 5.5 The number of referrals for prosecution may increase due to unpaid fixed penalty notices however this has been considered within the fine level setting process and is considered a low risk.

5.6 Equality Implications

- 5.7 The equality impact assessment for this area of work is shown in appendix 1.

5.8 Other Relevant Implications

- 5.9 The use of fixed penalty notices to address environmental crimes is reported upon by Defra each year and local authorities are subject to scrutiny of their activity to tackle various offences.



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Customer Impact Assessment

Name and brief description of policy being analysed
 Briefly summarise the policy including any key information such as aims, context etc; note timescales and milestones for new policies; use plain language – NO JARGON; refer to other documents if required

Environmental Health and Street Scene – Enforcement, Investigatory and Educational Work

The teams may need to undertake proportional enforcement work where, promotional or investigatory work has not resolved an issue, and where it is in the public interest. Enforcement work may include issuing fixed penalty notices, cautions/formal warnings, PACE interviews, serving of statutory notices (Abate, prohibit, improve, restrict), seizure of assets, hearings, taking samples, seizure, detention or destroying food items, closures of businesses, revocations, suspension or variation of licenses, prosecutions.

Information used for customer analysis

Note relevant consultation; who took part and key findings; refer to, or attach other documents if needed; include dates where possible
 These functions are statutory duties set out in relevant legislation, including Environmental Protection Act 1990, Anti-Social Behaviour Act 2014, Food Safety Act 1990, Food Safety and Hygiene (England) 2013, Health and Safety at Work Act 1974, Licensing Act 2003, Animal Welfare Regs 2018.
 Note Enforcement Work by external agencies has been considered in a specific CIA.

| ✓ | Could particularly benefit | Neutral | May adversely impact | Explanations | Is action possible or required? | Details of actions or explanations if actions are not possible Please note details of any actions to be placed in your Service Plan |
|------|----------------------------|---------|--------------------------|---|---------------------------------|--|
| Race | <input type="checkbox"/> | ✓ | <input type="checkbox"/> | Officers have access to language line to offer translation services where required. Promotional and educational work is preceded with a communication plan to ensure that target audiences have access to the information. | Y | To use customer feedback and 3c's procedure to monitor that this is being used appropriately. Service standards and performance targets are used to measure the success of promotional work. Publicity material is produced in |

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| | | | | | | <p>a number of languages where the need is justified.</p> <p>Translation services have made contacting customers much easier and make sure that language is not a barrier for enforcement work.</p> |
| Sex | <input type="checkbox"/> | ✓ | <input type="checkbox"/> | Male and female officers cover all aspects of the enforcement, educational and investigatory work. | Y | To use customer feedback and 3c's procedure to monitor that no gender is treated unfairly in our processes. |
| Gender reassignment | <input type="checkbox"/> | ✓ | <input type="checkbox"/> | We would not be aware of a person's gender reassignment. If made aware we can take the persons individual needs into consideration where required. | Y | To use customer feedback and 3c's procedure to monitor that there is no discrimination, and all customers are treated fairly. |
| Disability | <input type="checkbox"/> | ✓ | <input type="checkbox"/> | <p>Access is considered when requesting customers to visit council offices for hearings, interviews, meetings or training sessions.</p> <p>Normally there is access to meet at the four market towns closest the customer. However, access to facilities limited due to lockdown restrictions. We can still provide access to March and Wisbech to continue this service.</p> <p>Where known, a person's abilities</p> | Y | <p>To use customer feedback and 3c's procedure to monitor that this is being used appropriately.</p> <p>Hearing loops available if needed. Braille and large print available on request.</p> <p>Access to disabled friendly interview room & facilities if needed.</p> <p>Implementation of which elements of our formal interviews will be carried out by</p> |

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| | | | | or disabilities are considered when requesting a person uses monitoring equipment, completes log sheets or is requested to gather information. Our procedures are customer focused to adapt to a person's needs, i.e. setting remote triggers to noise monitoring equipment, using simplified tick sheet log sheets or providing in person monitoring. | | letters to also benefit those with mobility issues/anxiety etc. |
| Age | <input type="checkbox"/> | ✓ | <input type="checkbox"/> | <p>Enforcement work will exclude those below the criminal age of responsibility.</p> <p>Communication plans preceding any information or educations are designed to be inclusive, so all ages can access local authority. i.e., Tidy Fenland Campaign using children's artwork from school's competition, working with Age UK to ensure access to services.</p> | Y | To use customer feedback and 3c's procedure to monitor that this is being used appropriately. |
| Sexual orientation | <input type="checkbox"/> | ✓ | <input type="checkbox"/> | We would not be aware of a person's sexual orientation. If made aware we can take the persons individual needs into consideration where required. | Y | To use customer feedback and 3c's procedure to monitor that this is being used appropriately. |
| Religion or belief | <input type="checkbox"/> | ✓ | <input type="checkbox"/> | Male and female officers are available, and consideration is undertaken of people's race and religion. | Y | To use customer feedback and 3c's procedure to monitor that this is being used appropriately. |

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| | | | | Training, interviews and meetings times can be tailored around religious holidays and prayer timing if required. | | |
| Pregnancy & maternity | <input type="checkbox"/> | ✓ | <input type="checkbox"/> | We would not be aware of a person's pregnancy or maternity. If made aware we can take the persons individual needs into consideration where required. | Y | To use customer feedback and 3c's procedure to monitor that this is being used appropriately. |
| Marriage & civil partnership | <input type="checkbox"/> | ✓ | <input type="checkbox"/> | We would not be aware of a person's marital status. If made aware we can take the persons individual needs into consideration where required. | Y | To use customer feedback and 3c's procedure to monitor that this is being used appropriately. |
| Human Rights | ✓ | <input type="checkbox"/> | <input type="checkbox"/> | <p>The undertaking of enforcement work is to protect the wider community. Examples such as protecting the community from statutory nuisances, unfit food entering the food chain, and the environmental impact on communities from enviro-crime positively impacts on the whole communities' lives.</p> <p>Enforcement work benefits the wider community by providing safer neighbourhoods, safe places to work, safe productions of foods, and protects the community's health and well-being by regulating air quality, contaminated land,</p> | Y | <p>Enforcement action may result in prosecution and restriction of an individual's actives and occupations. All notices or action is accompanied with details of how a person may appeal these measures.</p> <p>If enforcement action reaches prosecution stage, human rights are assessed by the courts to ensure that Human Rights are not breached, and appeals may be made.</p> <p>Investigations have found other impeaches of human rights – such as modern day slavery and</p> |

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| | | | | spread of infectious diseases and the impact of nuisances. | | we work closely with police and other partners to improve human rights. |
| Socio Economic | <input type="checkbox"/> | ✓ | <input type="checkbox"/> | <p>Enforcement encourages better business, support a production and sustainable local economy. Raising standards through regulation promotes and encourages better business. i.e., less sick days from staff due to poor health and safety, and better reputation of food businesses achieving high food hygiene ratings.</p> <p>Where enforcement action prevents an individual or organisation undertaking an activity, i.e., switching off noisy equipment to abatement of a noise nuisance, the impact of excessive cost to the business or individual and if the business is undertaking Best Practicable Means is considered in the public interest test before taking enforcement action.</p> <p>Enforcement action may adversely impact on those of socio-economic status that are unable to access legal or specialist advice.</p> | Y | To use customer feedback and 3c's procedure to monitor that this is being used appropriately. |

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| <p>Multiple/ Cross Cutting</p> | <p><input type="checkbox"/></p> | <p>✓</p> | <p><input type="checkbox"/></p> | <p>Specific officers are delegated with specific enforcement responsibilities dependant on the relevant experience, qualification, or competencies to undertake the regulatory functions.</p> <p>Initially legislation sets out where enforcement action may or shall be undertaken.</p> <p>Each regulatory function must fall within the requirements of the Councils Enforcement Policy.</p> <p>Systems are in place to ensure that decisions to undertake enforcement are proportional to the impact caused and within the public interest. These include a prosecution matrix and a public interest test.</p> <p>Where it is not in the public interest to undertake enforcement action, alternative interventions are used to support customers, such as referrals to agencies such as Stay Well (public health team), directing to official advice (i.e HSE, PHE, FSA), and signposting to agencies</p> | <p>Y</p> | <p>As regulation is reactive this will be assessed on an ongoing basis.</p> <p>Periodic review of enforcement delegation matrix and changes in legislation.</p> <p>If changes to legislation is likely to positively or negatively impact of and aspect of the community, i.e., by age, race, gender, sexual orientation, religious or belief or marital status and equality impact assessments details how we will ensure equality.</p> <p>Training and Staff development is reviewed on a yearly basis to ensure that officers are appropriately trained to undertake regulatory functions.</p> <p>Peer review and consistency exercises are undertaken to ensure proportionate decision making.</p> <p>Customer feedback is invited in all written communications to ensure people have an</p> |

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| | | | | <p>that can support people resolve their own issues such as Citizen Advice Bureau, Financial Support Agencies and Gang masters Support Agencies.</p> | <p>opportunity to air any complaints, compliments or correspondence.</p> <p>Officers attend working groups and are members of professional bodies to ensure that learning opportunities and knowledge sharing.</p> |
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| <p>Outcome(s) of customer analysis</p> <p>a) Will the policy/ procedure impact on the whole population of Fenland and/ or identified groups within the population; negative <input type="checkbox"/> neutral <input checked="" type="checkbox"/> positive <input type="checkbox"/></p> <p>No major change needed <input checked="" type="checkbox"/> Adjust the policy <input type="checkbox"/> Adverse impact but continue <input type="checkbox"/> Stop and remove / reconsider policy <input type="checkbox"/></p> | |
| <p>Arrangements for future monitoring: Twice yearly staff appraisals will assess for learning needs and training opportunities. Staff one to ones and twice yearly appraisals will review officer's core competencies and behaviours that includes equalities. Monthly review of 3c's (Complaints, compliments and correspondence) will review that procedures and systems are appropriate.</p> <p>All procedures are reviewed on a five yearly period or when changes to the organisation or legislations guides otherwise.</p> | |
| <p>Details of any data/ Research used (both FDC & Partners):</p> <p>None</p> | |
| <p>Completed by: Layna Warren - Street Scene & Markets Team Leader</p> | |
| <p>Date 17.01.2024</p> | |
| <p>Approved by (manager signature):</p> | <p>Date published:</p> |
| <p>Details of any Committee approved by (if applicable):</p> | <p>Date endorsed by Members if applicable:</p> |