



**REPORT TO CABINET  
TO BE HELD ON  
14 FEBRUARY 2017**

	<b>Key Decision</b> <b>YES</b>
	<b>Forward Plan Ref</b> <b>No</b>
<b>Corporate Priority: ALL</b>	<b>Cabinet Portfolio</b> <b>Cllr. Bill Chatt</b> <b>Holder</b>

**REPORT OF THE DIRECTOR (LD) – 17/36**

**WARDS AFFECTED: ALL**

**SUBJECT: ENVIRONMENTAL OFFENCES – FIXED  
PENALTY NOTICES**

**RECOMMENDATION(S):**

Cabinet;

1. Recommend that Council:
  - (a) approve the use of fixed penalty notices for fly-tipping offences;
  - (b) approve that the penalty for fly-tipping offences be £400;
  - (c) delegate authority to the Directors;
    - (i) to issue fixed penalty notices for fly-tipping offences;
    - (ii) to authorise in writing any Officer of the Council to issue fixed penalty-notices for fly tipping offences;
  - (d) review and re-affirm the use of fixed penalty notices for the following types of environmental offence;
    - (i) littering;
    - (ii) fly-posting;
    - (iii) failure to comply with a notice to place waste for collection in

receptacles of a kind and number specified;

- (iv) abandoning a vehicle;
- (v) failure to produce waste documents;
- (e) remove the discounted penalty for payment within 10 days and confirm the penalty levels in relation to the offences set out in paragraph 1(d) above;
- (f) in relation to the environmental offences set out in paragraph 1(d) above, review and re-affirm delegation of authority to the Directors;
  - (i) to issue fixed penalty notices;
  - (ii) to authorise in writing any Officer of the Council to issue fixed penalty notices;

2. Note that;

- (a) separate reports are being brought to Cabinet concerning dog control legislation and fixed penalty notices;
- (b) further reports will be provided in due course seeking approval of a revised corporate enforcement policy.

## **REASON FOR RECOMMENDATION(S):**

To update Members on the changes to legislation permitting the use of fixed penalty notices for fly-tipping offences; to seek appropriate permissions and delegations to do so; and to allow opportunity for Members to review and re-affirm the use of fixed penalty notices in relation to a number of other environmental offences.

## **HIGHLIGHTED RISKS**

Failure to approve the use of fixed penalty notices for fly tipping offences will likely equate to a missed opportunity to reduce the cost to and the impact upon the resources of the Council whilst maintaining a suitable deterrent factor. It would also be at odds with Central Government's stated aims behind the introduction of fixed penalty notices.

### **1. INTRODUCTION:**

- 1.1 Following the coming into force of The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 ('the Regulations'), Councils now have the power to issue fixed penalty notices ('FPNs') for lower level fly-tipping offences.

- 1.2 It is also best practice for the Council to keep under review the use of FPNs (and corresponding levels of penalty) for all types of environmental offence for which they are presently used.

## **2. CORPORATE AIMS/PRIORITIES AND THE COMMUNITY PLAN**

- 2.1 This report supports all of the corporate aims and the community plan.

## **3. BACKGROUND AND ISSUES**

### **Fly-tipping**

- 3.1 National statistics show that incidences of fly-tipping are increasing. The Department for Environment, Food and Rural Affairs (DEFRA) state that:

*'Fly tipping is a significant blight on local environments; a source of pollution; a potential danger to public health and hazard to wildlife. It also undermines legitimate waste businesses where unscrupulous operators undercut those operating within the law.'*

- 3.2 In addition, the Parliamentary Under Secretary of State for Communities and Local Government (Mr Marcus Jones) has described litter and fly-tipping as:

*"...antisocial environmental crimes that pose a risk to human health and animal welfare, spoil relationships between neighbours and their wider community, and affect the way people feel about the place that they call home."*

- 3.3 In 2014/15, the estimated cost of clearance of fly-tipping to local authorities in England was nearly £50 million.

- 3.4 In its report on Litter and Fly-Tipping in England, the Communities and Local Government Select Committee stated:

*'Fly-tipping is a serious problem for local authorities and private land owners, and it is increasing. There is therefore a need for local councils to increase their efforts both to deter fly-tipping and to penalise those who engage in it. We accept that prosecution is often difficult and costly and as a result the number of convictions for fly-tipping is low. The Government should introduce a national fixed penalty notice for small amounts of fly-tipping.'*

- 3.5 The Government undertook a consultation on proposals to enhance measures to tackle waste crime, and the Conservative Party Manifesto 2015 contained a commitment to allow councils to tackle small scale fly-tipping through FPNs.

- 3.6 In October 2015 the Conservative Government then published its response to the consultation, confirming that DEFRA would introduce legislation introducing FPNs:

*'The Government welcomes the high level of support for the introduction of FPNs for fly-tipping. We agree that they should only be used for small scale fly-tipping and enforcement bodies should continue to bring prosecutions in serious cases.'*

- 3.7 The Regulations were brought into operation during May 2016, allowing local authorities in England to issue FPNs for small scale fly-tipping offences.
- 3.8 The level of penalty is set by the Council but must be between a minimum of £150 and a maximum of £400. Where no level is set by the Council the default level is £200.
- 3.9 The Regulations also allow the Council to adopt an early payment discount for payment made within 10 days. The reduced level cannot be lower than £120. It is entirely at the discretion of the Council whether a discounted level is adopted or not.

### **Other Environmental Offences**

- 3.10 The Council already makes use of FPNs for other environmental offences as permitted by various pieces of legislation. Set out below is a summary of those instances, detailing the offence, the minimum and maximum penalty level allowable by law, the minimum level for early payment allowable by law, and the level of penalty presently adopted by the Council (including details of the reduced penalty the Council has adopted for payment within 10 days).

<b>Offence</b>	<b>Allowable penalty (min-max)</b>	<b>Allowable minimum penalty for payment within 10 days</b>	<b>Full amount of SBC penalty</b>	<b>SBC penalty if paid within 10 days</b>
Littering	£50-£80	£50	£80	£60
Fly-posting	£50-£80	£50	£80	£60
Failure to comply with a notice to place waste for collection in receptacles of a kind and number specified	£75-£110	£60	£100	£60
Abandoning a vehicle	£200 (no local level setting)	£120	£200	£150
Failure to produce waste documents	£300 (no local level setting)	£180	£300	£200

- 3.11 The Council also makes use of FPNs for breach of Dog Control Orders, however a separate report is being brought in relation to this.

- 3.10 Work is also underway to produce a Council-wide enforcement policy, which will be brought to Cabinet and Full Council for consideration and adoption once finalised.

#### **4. CONSULTATION**

- 4.1 Following discussion at the Yorkshire and Humber Environmental Enforcement Managers Group, a consensus was reached in relation to the level of penalty for fly tipping FPNs, as well as the various other types of environmental offences for which this Council uses FPNs.
- 4.2 The rationale behind reaching consensus across the Yorkshire and Humber region was that an offence committed in one area should not carry with it a different level of penalty simply because of the location in which the offence takes place.
- 4.3 The levels of penalty were also discussed internally with the Portfolio Holder for Public Health and Housing.

#### **5. ASSESSMENT**

- 5.1 In relation to fly-tipping FPNs, the legislation allows the penalty to be between £150 and £400, which must be paid within 14 days of service of the FPN. Should the Council not specify a level the default sum is £200.
- 5.2 A lesser penalty can be imposed for early payment and it is for each authority to determine what that level should be, however it cannot be less than £120.
- 5.3 As noted above, the level of penalty for both fly-tipping and other offences has been subject to discussion at the Yorkshire and Humber Environmental Enforcement Managers Group.
- 5.4 The Group reached consensus that for fly-tipping the maximum level of £400 should apply across the region as this was not only the most appropriate penalty, but would also act as a deterrent.
- 5.5 Consensus was also reached that there should be no reduced sum for early payment.

5.6 The below table sets out the consensus of the Group for all of the offences concerned:

<b>Offence</b>	<b>Full amount of penalty</b>	<b>If paid within 10 days</b>
Littering	£80	no reduction
Fly-posting	£80	no reduction
Failure to comply with a notice to place commercial or industrial waste for collection in receptacles of a kind and number specified	£100	no reduction
Abandoning a vehicle	£200	no reduction
Failure to produce waste documents	£300	no reduction
Fly-tipping	£400	no reduction

5.7 In support of the consensus that there should be no reduction for early payment of an FPN (which has been put into operation by a majority of Councils), the Group were of the view that allowing early payment options:

- (a) causes a considerable administrative burden and does not deliver the expected outcome of early and prompt payment;
- (b) reduces the deterrent impact of the FPN regime;
- (c) produces inequality between those who could afford, and those who may not be able to afford such penalties due to their economic background and circumstances, rather than willingness to pay the fixed penalty.

5.8 This Council has for a number of years allowed for a discounted rate for early payment, however Officers from the environmental service state that this has created a significant administrative burden. They advise that what tends to happen is that individuals will try and pay the reduced amount long after the discounted period has expired, resulting in the Council having to issue a credit prior to taking further proceedings if appropriate.

5.9 Officers are strongly in support of removing the discretionary early payment discount, which will simplify the system, strengthen the deterrent factor, reduce burden upon resources, and accord with the Council's neighbouring authorities across the region.

5.10 It is to be noted that where fines are issued by the Court following prosecution, they are paid to and retained by the Court, and prosecuting authorities must seek to recover their costs as a separate process.

5.11 Central Government have acknowledged as part of their rationale for allowing the use of FPNs that whilst significant penalties exist for offenders found guilty of fly-tipping, and authorities can apply to the Court for the payment of their

costs (which is at the discretion of the Court and is reliant on the defendant's means in any case), the financial burden and resource commitments often outweigh the benefits and do not always provide a sufficient deterrent.

- 5.12 The new power is intended to provide a more cost effective alternative to prosecution for small scale fly-tipping offences, and it is anticipated that larger scale and more serious incidents would still be subject to prosecution, as would serial offenders.
- 5.13 Any fines paid under FPNs are retained by the Council and can be used to offset the costs of enforcement.

## **6. IMPLICATIONS**

- 6.1 All relevant implications have been considered in the body of this report.



**Lisa Dixon**  
**Director**

### **Author:**

David Kitson – Solicitor, Deputy Monitoring Officer, Regulatory and Governance Manager

### **Background Papers:**

N/A

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT OR WISH TO INSPECT ANY OF THE BACKGROUND PAPERS, PLEASE CONTACT David Kitson ON 01723 232323 or e-mail [david.kitson@scarborough.gov.uk](mailto:david.kitson@scarborough.gov.uk)

## Risk Matrix

Risk Ref	Risk	Consequences	Mitigation	Current Risk Score	Target Score	Service Unit Manager/ Responsible Officer	Action Plan
1	Not making use of FPNs for low level fly-tipping	<p>Prosecution remains the only option, which can be time consuming and resource intensive.</p> <p>Public perception may be that the Council is not responding robustly to fly-tipping offences.</p> <p>Magistrates' Courts may challenge prosecution for low level fly-tipping as being disproportionate.</p> <p>Short of prosecution, cautions and written warnings do not have the same effect as a FPN, and are not likely to provide suitable deterrent.</p> <p>At odds with Central Government policy and intention behind making FPNs available.</p>	Approving use of FPNs for low level fly tipping	D3	B1	PT DPK	
2	Failure to review current use and levels of FPNs	Uncertainty regarding whether use and levels are appropriate.	Review and re-affirm use and levels.	C2	A1	PT DPK	

<b>Risk Ref</b>	<b>Risk</b>	<b>Consequences</b>	<b>Mitigation</b>	<b>Current Risk Score</b>	<b>Target Score</b>	<b>Service Unit Manager/ Responsible Officer</b>	<b>Action Plan</b>
3	Continuing to allow discounted levels of penalty for early payment.	Continuing administrative burden on Council.  Potential inequality between defendants of different means.  Reduced deterrent factor.  At odds with other authorities within the region.	Remove all discounted levels of penalty for early payment.	D3	A1	PT DPK	
4	Failure to delegate authority for fly-tipping FPNs to Directors.	Inability to make use of FPNs for fly-tipping offences.	Delegate authority to Directors.	D3	B1	PT DPK	
5	Failure to review and re-affirm delegation of authority for other FPNs to Directors.	Uncertainty as to whether use of FPNs for those offences is appropriate.	Review and re-affirm delegation to Directors.	C2	A1	PT DPK	

## Glossary of Terms

Risk	An event which may prevent the Council achieving its objectives
Consequences	The outcome if the risk materialised
Mitigation	The processes and procedures that are in place to reduce the risk
Current Risk Score	The likelihood and impact score with the current mitigation measures in place
Corporate Objectives	An assessment of the Corporate Objectives that are affected by the risk identified.
Target Risk Score	The likelihood and impact score that the Council is aiming to achieve
Service Unit Manager	The Service Unit or Officer responsible for managing the risk
Action Plan	The proposed actions to be implemented in order to reduce the risk to the target score

## Risk Scoring

Impact	5					
	4					
	3					
	2					
	1					
		A	B	C	D	E
	Likelihood					

### Likelihood:

A = Very Low  
 B = Not Likely  
 C = Likely  
 D = Very Likely  
 E = Almost Certain

### Impact

1 = Low  
 2 = Minor  
 3 = Medium  
 4 = Major  
 5 = Disaster

