



**Prosperous Communities
Committee**

Tuesday 29th October 2024

Subject: Review of Fixed Penalty Notice charges (FPNs)

Report by:	Director of Change Management, ICT & Regulatory Services
Contact Officer:	Andy Gray Housing & Environmental Enforcement Manager andy.gray@west-lindsey.gov.uk
Purpose / Summary:	To review the current FPN amounts for littering, fly-tipping and household waste duty of care.

RECOMMENDATION(S):

Committee are asked to:

- a) Determine and agree fixed penalty notice amounts for littering, graffiti, fly-tipping and household waste duty of care
- b) Agree that for littering and graffiti FPNs a £250 charge for a single item, with an early payment of £75. Along with a £350 charge for a larger item/s with an early payment of £150.
- c) Agree that for fly-tipping FPNS matrix set out in section 6 is adopted with a fee range from £1000 to £250.
- d) Agree that for household waste duty of care FPNs that the matrix set out in section 7 is adopted with a fee range of £600 to £250.
- e) Recommend that the agreed amounts (if amended) are included in the quarter two monitoring report due at Corporate Policy and Resources Committee in November 2024 for approval.

IMPLICATIONS

Legal:

The Statutory Instrument to bring about these changes was laid on the 31st of July 2023 and can be found here

https://www.legislation.gov.uk/ukSI/2023/770/pdfs/uksiem_20230770_en_001.pdf

Legal advice has been received by all local authorities in September 2024 regarding the maximum limit of the littering FPN which currently sits at £500.

Financial: FIN/83/25/MT

Fixed Penalty Notices (FPNs) provide an additional income for the Council, which helps to offset some of the costs incurred in delivering the services that are relevant within this report. The additional income gained via any approved increase of fees will only further help the Council to cover additional costs that are incurred.

There is no impact on the Medium Term Financial Plan, as the FPNs are not factored into the overall budgets within the service and there is no in year target as such for the issuing of these.

Where non-payment of an FPN occurs, the Council has the option to take the non-payer to court. Any fine issued by the court is not paid to the Council, it can only recover costs that are awarded.

Staffing:

Existing Enforcement Officers would be delegated to issue FPNs at the amounts agreed. Any increase in FPN amounts is not proposed to increase the number of employees that are available to issue them.

Equality and Diversity including Human Rights:

Any FPNs issued would be done so in line with the relevant legislation and the Councils Corporate Enforcement Policy. Any equality, diversity and human rights issues would be addressed on a case-by-case basis in line with the offence occurred.

Data Protection Implications:

None noted.

Climate Related Risks and Opportunities:

A CESIA assessment was completed within the report that went to Prosperous Communities Committee in September 2023 and is not impacted because of this review paper.

Section 17 Crime and Disorder Considerations:

The receipt of an FPN is not a criminal offence, however if left unpaid the Council can take action to recover the costs via the Court through what is known as the “Single Justice Procedure”. Where it is a fly-tipping offence any non-payment would be dealt with in open court.

Health Implications:

Reducing the amount of fly-tipped waste, litter and graffiti in the district helps to ensure that it continues to remain a place that residents can be proud of and enjoy without disturbance. In some cases, fly-tipped waste can pose an immediate health risk and the steps that the Council takes to deal with this help to ensure that this is significantly minimised.

Title and Location of any Background Papers used in the preparation of this report:

Prosperous Communities Committee, September 2023 <https://democracy.west-lindsey.gov.uk/ieListDocuments.aspx?CId=176&MId=3432&Ver=4>

Risk Assessment:

Call in and Urgency:

Is the decision one which Rule 14.7 of the Scrutiny Procedure Rules apply?

i.e. is the report exempt from being called in due to urgency (in consultation with C&I chairman)

Yes

No

Key Decision:

A matter which affects two or more wards, or has significant financial implications

Yes

No

Executive Summary

- a) The Council revised its FPN amounts in September 2023 when provision was made by Government to increase these for littering, graffiti and fly-tipping offences.
- b) Since the introduction of these revised FPN amounts, a legal opinion has been provided by the Council’s instructed legal services that

suggests that littering FPN of £500 is not proportionate, nor in the public interest to recover if there is non-payment.

- c) Alongside this, it is also advised that the £1,000 FPN amount for fly-tipping, should not be applied to all fly-tips, but should be determined based on the type of fly-tip that has occurred.
- d) Non-payment of any FPN is dealt with by the court and is likely to result in a fine that is lower than the FPN that has been issued if it remains at the current amount. This means that the prosecuting of any non-payment will be at a significant cost to the Council and is likely to result in only a small amount of costs being recovered.
- e) In the current cost of living climate, it is felt prudent to revisit these FPN amounts, particularly for littering. Examples of what other local authorities charge are included in this report.
- f) This report seeks to put in place a more proportionate amount for fixed penalty notices for littering and graffiti and to introduce a tariff type system for fly-tipping offences.
- g) It is recommended that the FPN for littering and graffiti be set at a level of £250, with an early payment amount of £150. With larger items being set at £350 with an early payment of £250.
- h) For fly-tipping it is proposed to use a matrix as set out in section 7 ranging from £1,000 to £250 depending on the size and harm of the fly-tip.
- i) Household waste duty of care, like fly-tipping, would use a matrix ranging from £600 to £250.
- j) Committee are entitled to determine amounts different to the above or to continue with the current tariff if they wish but should do this with full awareness of the legal advice and future risks.

1. Introduction

1.1. On 7th June 2023 the Department for the Environment, Food and Rural Affairs (Defra) announced that on the spot fines for litter, graffiti and fly-tipping are set to rise <https://www.gov.uk/government/news/bigger-fines-possible-for-littering-and-fly-tipping>

1.2. To help equip councils with everything they need and strengthen their arm, government laid a statutory instrument increasing the upper limits

for various fixed penalty notices (FPNs) on Monday 10 July 2023. This means:

- The maximum amount those caught fly-tipping could be fined will increase from a range of £400 to £1,000.
- The maximum amount those who litter or graffiti could be fined will increase from a range of £150 to £500.
- The maximum amount those who breach their household waste duty of care could be fined will increase from a range of £400 to £600.

1.3. On 21st September 2023, Prosperous Communities Committee agreed that;

- a) The fixed penalty charge for fly-tipping is increased to £1,000, with no reduction offered for early payment.
- b) The fixed penalty charge for a household waste duty of care offence is increased to £600, with no reduction for early payment.
- c) The fixed penalty charge for a littering or graffiti offence is increased to £500, with no reduction for early payment.
- d) That the amended charges will come into effect from 1st October 2023.

1.4. These revised charges have now been in place for around a year and due for various reasons it is considered that they should be reviewed. These are set out in the report below and relate to legal advice received, proportionality and public interest.

2. Context

2.1. The consideration for review is driven by the proportionality of the fees in relation to the offence and the public interest consideration when dealing with non-payment of fees. These factors are ones that must be considered by the Council as a public enforcement body in line with our Corporate Enforcement Policy. That policy intends to ensure that enforcement of the Council's powers will be carried out in a way which is transparent, accountable, proportionate consistent and targeted only at cases in which action is needed.

2.2. Consideration should also be given regarding any offenders ability to make payment as a way of discharging the offence received (i.e. any payment amount should be one that the person receiving it should be in a position to pay).

2.3. The Council also needs to consider the reputational context, particularly for the £500 littering fine, which would be issued if a person were caught dropping a single piece of litter such as a cigarette butt or crisp packet. In the current financial climate, this is a significant amount of money and may appear to be contradictory in regard to the Council's broader work on the current cost of living.

3. Current Position

- 3.1. Since the implementation of the revised charges fixed penalty notices have been issued accordingly. Fly – tipping FPNs have been paid at the higher amount.
- 3.2. The main concern relating to the issuing of littering FPNs has been in relation to the £500 maximum, with no early payment reduction.
- 3.3. Since the revised charges were introduced there have been 3 fly-tipping FPNs issued. 1 has been paid and 2 have not been paid. There have been 6 littering FPNs issued, 4 have been paid and 2 have not been paid. One of the unpaid littering FPNs will be taken through the Single Justice Procedure (SJP) imminently in an attempt to deal with the matter.
- 3.4. The Single Justice Procedure (SJP) is a legal process whereby the matter can be discharged without it going to full court. The Council advised the court and the perpetrator that the FPN is unpaid and this is then dealt with via paper representations, considered and determined by a Magistrate. It is seen as a way of dealing with more minor matters instead of using full court proceedings.

4. Legal View

- 4.1. After receiving a legal view from the Council's Solicitor at Lincs Legal who is experienced in prosecuting cases such as this the opinion provided is that the fine of £500 for littering, is disproportionate and that the £1,000 fine for fly-tipping is deemed not proportionate in all cases. It is also felt that any Court will heavily push back against a case where the FPN for littering is £500 on this basis.
- 4.2. The typical lower level fine received for non-payment of existing FPNs in court is £220 plus costs and victim surcharge, which totals around £400. This is less than the current FPN amount. The court will deal with the matter based on a person's ability to pay, which means that in most cases the Council will not be able to recover its costs and would not see an income from any given fine as this is collected by the Court.
- 4.3. When an FPN is issued and paid, this comes in full to the Council. A court fine is collected by the court and goes to the treasury. The Council then receive any costs award from the court who have collected it on our behalf. This is sometimes paid in full or can be paid in smaller amounts over a longer period of time.
- 4.4. The above context regarding costs to the Council brings to light the public interest conflict regarding the current littering FPN amount of £500. Alongside this, non-payment of FPNs for fly-tipping dealt with at court have brought about a fine less than the £400 initial FPN amount.
- 4.5. Across Lincolnshire within the Environmental Crime Partnership, this same advice has been relayed to all districts regarding littering, with a proposed maximum of £150 and for a matrix to be introduced for fly-

tipping to enable a range of charges. For example, £200 to £300 for a small fly-tip, £400 to £600 for several bags of waste and £600 to £1,000 for large fly-tips. These amounts can be prescribed locally and refined.

4.6. For littering, the £500 charged is deemed not to be proportionate and as you can see in section 5, is far beyond what other Local Authorities set as an FPN amount.

4.7. Recently, the Council have dealt with the non-payment of two Public Space Protection Orders in Court, via the SJP, where the FPNs issued were for £100 each. The Court issued a fine of £220, with a victim surcharge of £88 and a further £89.79 in costs. A total of £397.79.

5. Charges set by other Local Authorities.

5.1. The table below shows the amounts set by other Local Authorities for some of the FPNs within this report.

LA	Littering	Fly - Tipping
Boston	£250 £150 early pay	£1,000 £550 early pay
Lincoln	£75 £50 early pay	£400 £200 early pay
East Lindsey	£250 £150 early pay	£1,000 £550 early pay
North Lincs	£200 £100 early pay	£1,000 £700 early pay
Bassetlaw	£100	£400
South Holland	£150 £100 early pay	£400
Newark and Sherwood	£150 £75 early pay	£400 £200 early pay

6. Proposed Options for Littering and Graffiti FPN

6.1. There are several options available for committee consideration in relation to the littering and graffiti FPN options, these are set out below.

Option	Detail	Considerations
1	Remain at £500. No early payment incentive	- Legal advice on proportionality - Higher level of dispute and non-payment - Reputationally a risk

		- Level of income maximised
2	Remain at £500 with early payment incentive of £150	- As per option 1 - Provides early payment incentive - Reputational risk with higher amount remaining
3	£150 with early payment incentive of £100	- In line with other authorities - Reduces reputational and legal risk - Increases likelihood of payment - Appears proportionate
4	£250 with early payment of £150	- Within range of court fines - Higher amount relatively
5	Single item (i.e. cigarette butt or crisp packet) – £250 with early payment of £75 Larger item/s (i.e. fast food bag out of a vehicle) - £350 with early payment of £150	- Provides a fee range for different scenarios. - Remains in line with court advice and within range of court fines. - Provides difference between single and larger items.

6.2. Committee may also consider any other options that are not stated above.

7. Proposals for Fly-Tipping FPN

7.1. It is believed that a matrix to determine the fly-tipping offence amount is the most appropriate way forward. It is proposed that the matrix looks as follows.

Amount	Description
£1,000 with early payment of £750	Large fly-tip – transit van or tipper load or larger, or any fly-tip which creates significant harm or risk i.e. where it impacts upon persons or a highway or is hazardous material.
£500 with early payment of £375	Medium fly-tip – less than a transit van, but more than a single bag of waste.
£350 with early payment of £250	Small fly-tip – single bag/s of waste or similar (e.g. waste left by public waste bins or recycling bins)
£1000 - £250	Repeat offenders to be moved through the increasing scales accordingly regardless of the amount of waste that is fly tipped.

7.2. Any small fly-tip items would be considered in line with any policy on side waste that the Council had in place.

7.3. Councillors also have the option to leave the fly-tipping fine at £1,000 as it currently stands for all offences and may consider an early payment reduction also.

7.4. The Council will also continue to consider prosecutions in court for fly-tipping offences that are serious, repeat or where it is in the public interest to do so.

8. Proposals for Household Waste Duty of Care FPN

8.1. FPNs are issued in relation to duty of care when a person who is originally responsible for waste that is fly tipped has not taken the necessary steps to ensure that it is disposed of in the proper manner.

8.2. It is proposed that the charge for this is aligned with the matrix that is set for fly-tipping offences as is shown below.

Amount	Description
£600 with early payment of £450	Where duty of care relates to a large fly-tip or any fly-tip which creates significant harm or risk i.e. where it impacts upon persons or a highway or is hazardous material.
£450 with early payment of £300	Where duty of care relates to a medium fly-tip.
£350 with early payment of £250	Where duty of care relates to a small fly-tip.

9. Preferred Approach

9.1. For littering, it is proposed that option 5 is approved a £250 charge for a single item, with an early payment of £75. Along with a £350 charge for a larger item/s with an early payment of £150.

9.2. For fly-tipping, it is proposed that the matrix set out in section 6 is adopted and recommended to Committee for approval.

9.3. For household waste duty of care, it is proposed that the matrix set out in section 7 is recommended to Committee for approval.

9.4. If approved, the decision will need to be recommended for approval from Corporate Policy and Resources Committee and would be added into the quarter 2 budget monitoring report for that committee on the 14th of November 2024.

