

TITLE: Environmental Crime Fixed Penalty Notices Charging Structure 2023

Committee: Operational Services Committee

Date: 13th November 2023

Author: Senior Environmental Health officer

Report No: Y87

Contact Officer: Karen See, Senior EHO

Karen.see@eastcambs.gov.uk

01353 616358

SF308 The Grange, Ely

1.0 ISSUE

1.1. To adopt new financial penalties for Fixed Penalty Notices (FPN's).

2.0 RECOMMENDATION(S)

Members to approve.

- (1) Adoption of the matrix and associated Environmental Crime FPN Charges contained in Appendix 1 and 2 of the Report, to allow individual charges to be levied up to the maximum penalty levels contained in the Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023, and
- (2) Remain with the current policy of no percentage reduction for early payment of all environmental crime penalties.
- (3) A date for implementation of the new penalty charges of January 2024.

3.0 BACKGROUND

- 3.1. FPN's are a civil enforcement sanction and are used by Local Authorities as an alternative to prosecution for certain offences such as fly tipping, dog fouling, littering, graffiti, fly posting etc.
- 3.2. A fixed penalty is not a fine. Payment of the penalty by the recipient discharges their liability to conviction for the offence for which the FPN was issued. It does not constitute an admission of guilt but removes the possibility of the creation of a record of criminal conviction.
- 3.3. Primary legislation and their associated regulations such as The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 and the Environmental Offences (Fixed Penalties) (England) Regulations 2017 allowed Local Authorities to set their own penalty charges, within maximum and minimum parameters, as

laid down by Statute. They also allowed Local Authorities to offer reduced charges for early payment of FPN.

- 3.4. The Council's current adopted charging structure and those set by the new regulations is as follows:

Environmental Offence	ECDC adopted Fixed Penalty Charge.	Range set by Regulations (prior to July 2023).	Range set by The Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023
Illegal Waste Deposit	£400	£120- £400	£120 - £1000
Failure to produce a waste carriers' licence or waste transfer documentation	£300	£180 - £300	No change
Breach of householder duty of care	£200 (default charge)	£120 - £400	£120 - £600
Abandoning a vehicle	£200	£120 - £200	No change
Nuisance parking	£100	£60 - £100	No change
Alarm noise	£80	£50 - £80	No change
Littering	£150	£65 - £150	£65 - £500
Graffiti	£150	£65 - £150	£65 - £500
Fly Posting	£150	£65 - £150	£65 - £500
Unauthorised distribution of free literature on designated land	£150	£65 - £150	No change
Breach of the Public Space Protection Order (e.g. failure to clear up dog fouling)	£80	£80	No change

Members agreed in 2017 and 2018 not to adopt discounts for early payment of penalty charges, therefore the table above has not included the lesser penalty amounts allowed by the previous Regulations, and about which the new Regulations are silent.

- 3.5. From 31st July 2023 the upper limit of fixed penalty notices for littering, graffiti and fly posting offences increased from £150 to £500; for household waste duty of care offences from £400 to £600; and for fly tipping offences from £400 to £1,000. Penalties for other offences remain unchanged.
- 3.6. A charging policy that recognises the impacts of environmental crime and which robustly tackles those who continue to damage the environment by failing to properly dispose of their waste is key.
- 3.7. The council must use its enforcement powers in a manner which is proportionate to risk, expedient and efficient as well as consistent and fair.
- 3.8. As previously agreed by Members in 2017 and 2018 the adoption of the maximum charge levels for all offences with no reduction for early payment would on the face of it seem appropriate. The cost to the Council of investigating incidents, prosecution case management, and clearing fly tips is significant.
- 3.9. There is however a risk when charging the max fixed penalty for every incident where the evidence is sufficient to allow us to do so, and not offering a discount

for early payment, that greater numbers of people refuse to accept the FPN and opt for their case to be heard through the Courts. This will significantly impact the resources required by the local authority in taking such prosecutions.

- 3.10. Penalty charges must be set at a level where the perpetrator learns from their actions, is appropriately punished, but ultimately accepts responsibility and pays for the charge, thereby discharging their responsibility to attend court. It would be counterproductive for all charges to be at levels which persons are unable to afford, and which encourages persons to take their case to court.
- 3.11. Fixed penalty charge levels are irrelevant to any fine likely to be imposed by a Court, as at the point of sentencing the court must consider the Sentencing Council Guidelines. They must consider all mitigating circumstances including an individual's financial status. In some case fines can be considerably lower than the original FPN.
- 3.12. Some other local authorities have taken the approach of setting tiered bands for level of penalty charge, but with a focus on the amount of waste fly tipped. The risk with a policy that adopts a blanket approach would be 2 bags of hazardous waste such as asbestos being fly tipped would have to attract the same penalty as 2 bags of inert waste.
- 3.13. One option is to adopt a penalty charge structure which allows the enforcement officers to consider the motive of the offender as well as the degree of harm. This can be achieved with a penalty matrix that identifies the range of charges that are appropriate for different scenarios and setting the charge accordingly, on a case-by-case basis but remaining within formal bands.
- 3.14. The adoption of a matrix will formalise the parameters of the penalty structure and aid consistency of decision making. The proposed matrix is produced in Appendix 1. The table in Appendix 2 summarises the banding of levels to be charged.
- 3.15. There is no saving to the council in offering a reduced charge for early payment. The council costs are the same if the perpetrator pays early or at the end of the payment period. It could however be argued that an early payment discount may encourage more people to pay the FPN, particularly if the penalty charges being levied have significantly increased. The 2022/23 recovery rate for payment of FPN's at East Cambridgeshire, even without the early payment option, is currently high at 91%.
- 3.16. The council does offer in certain circumstances a payment plan option and take up of this facility has proved successful in recovering the full payment amount in most cases.
- 3.17. It will be key to maintain an overview of the number of non-payments and impact on resources with adoption of higher penalties and continuing without the option for reduced early payment. The option to implement further changes in the future remains.

- 3.18. The proposed introduction date for adoption of the new penalty charges is January 2024. This will allow time for the administration changes to be implemented and to provide an opportunity to advertise the new penalties, to warn potential offenders of the risks they will be taking for failing to comply. A January implementation will provide an opportunity to target information and promotions on post-Christmas fly tipping offences.

4.0 ARGUMENTS/CONCLUSION(S)

- 4.1. East Cambs has had a good response to payment of FPN's in their current format. In 2022/23 18 FPN's were issued and paid. Those currently outstanding are paying via a payment plan ranging from £20 per month for a £400 fly tipping fixed penalty to £100 per month for 3 FPN's of £200 each, therefore totalling £600, that was accepted by a resident under the householder waste duty of care offence. Both examples of payment plan agreements relate to individuals of limited means.
- 4.2. Taking these example cases to Court because of non-payment of the new proposed maximum penalties of £600 for each householder duty of care offence (which would result in a £1800 penalty charge in the above example) and £1000 for the fly tipping offence may result in a lower court fine being applied. This is anticipated as the original non-payment would likely be because of un-affordability claims. Council's do not receive court fines, only costs agreed as appropriate by the Court. The risk for councils with such a scenario is that a blanket use of the maximum penalty charge may increase the numbers opting for prosecution, thereby increasing council legal costs, and reducing any penalty income.
- 4.3. The proposal for consideration is that individual cases and the charge penalty to be applied should be viewed on a case-by-case basis, up to the maximum level, but within parameters set by the Local Authority which are transparent and proportionate to the circumstances. For example, identification of a business making a profit from the practice of fly tipping and/or the waste being hazardous or large scale, would attract the highest penalty of £1000 compared to a householder who fly tips smaller scale and inert items of household waste next to a bin attracting a likely penalty of £400.
- 4.4. A further example of the need to consider whether a blanket approach of applying the maximum penalty charge is appropriate, is in the relationship between littering and dog fouling penalties. Up to £100 for failing to pick up after your dog, compared to £500 for any item of litter dropped, may seem disproportionate. A blanket approach to setting the maximum fixed penalty would not allow degrees of harm and individual culpability to be considered.
- 4.5. The council will continue to prosecute the most serious or repeat offenders rather than serve an FPN.
- 4.6. Any level of early payment reduction would increase the burden on the council, in monitoring and administration of the different payments being received relating to the two different time periods. It also seems incongruous that having considered

the environmental harm caused and the culpability of the individual offence we are then suggesting if they can afford to pay early, there is a lesser penalty charge.

- 4.7. To provide clarity for the public on the Council's policy, should the view be that early repayment reductions are now applicable, would require its application to all penalty charges where this option is expressly offered within existing regulations, including those offence penalties that have not been increased by the 2023 Regulations.

5.0 FINANCIAL IMPLICATIONS / EQUALITY IMPACT STATEMENT / CARBON IMPACT ASSESSMENT

- 5.1. There may be increased cost to the council from taking more prosecution cases to court. This may be balanced by the income from payment of fixed penalties and the option for charging higher penalties for the more serious incidents.
- 5.2. Equality Impact Assessment (EIA) not required.
- 5.3. Carbon Impact Assessment (CIA) completed. The threat of higher penalty charges may decrease the number of fly tips and littering that occurs within the district, thereby decreasing the number of officer inspections (and corresponding vehicle usage) required to investigate dumped waste and supporting a decrease in the associated vehicle movements required to clear and dispose of the waste. A reduction in environmental crime will also deliver an increase in the quality of the local environment, a reduction in associated environmental pollution and contamination and associated improvements in public perception of the local environment.

6.0 APPENDICES

Appendix 1 - Fixed Penalty Notice Charge Matrix
Appendix 2 - Fixed Penalty Notice Charges.

Background Documents:

Environmental Protection Act 1990

Anti-Social Behaviour Act 2003

ASB, Crime and Policing Act 2014

The Environmental Offences (Fixed Penalties) (England) Regulations 2017,

The Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023 SI 2023/770

Appendix 1 – Fixed Penalty Notice Charge Matrix

Step 1 - Consideration of culpability factors

LEVEL	DESCRIPTION EXAMPLES
Maximum	Where the individual has intentionally and seriously breached, or seriously and flagrantly disregarded the law and knew their actions were unlawful.
Medium	Breach committed through an act or omission which a person exercising reasonable care would not commit.
Minimum	Person has taken reasonable care but is not fully compliant with Regulation standards.

Step 2 - Consideration of harm outcomes

LEVEL	EXAMPLES
High	<p>High likelihood of harm</p> <ul style="list-style-type: none"> • Serious adverse effects on environment and/or having widespread impact due to the nature and/or scale of the waste. • Waste deposited in the road causing a road safety hazard. • Graffiti of an offensive nature.
Medium	<p>Medium likelihood of harm</p> <ul style="list-style-type: none"> • Adverse effect on environment • Medium risk of an adverse effect on individuals for example hindering a farmer's access to fields, or impacts on users of a Byway etc.
Low	<p>Low likelihood of harm</p> <ul style="list-style-type: none"> • Low risk of an adverse effect on environment. • Unsightly and likely to be viewed negatively by the public, but low level of harm.

Step 3 - Use of culpability and harm to provide a point scale for the fixed penalty range.

	CLASS OF HARM		
CULPABILITY	HIGH	MEDIUM	LOW
MAXIMUM	5	4	3
MEDIUM	4	3	2
MINIMUM	3	2	1

Step 4 - The scale point is then used to provide the penalty banding as below:

1. < £100 but refer to Step 6 below
2. £101 - £200
3. £201 - £400
4. £401 - £600
5. £600 - £1000

Step 5 – Charges shall be set to the maximum point within each band (or at the maximum allowed by the regulations, if the banding maximum calculated results in a level higher than that permitted). If there are relevant mitigating circumstances a downward adjustment within the banding will be considered.

Step 6 - If the banding calculation falls within Level 1 then alternative action, rather than a FPN is likely to be applicable, for example a warning (either verbal or written), education, providing the individual with the option for immediate removal and making good etc.

Step 7 - Fixed Penalty Notices will not be a suitable sanction in all circumstances, either due to the nature of the incident, insufficient evidence being available etc. There will also be occasions where prosecution is considered the correct option. All decisions as to the most appropriate course of action will be in accordance with the guidance contained within the Environmental Crime Enforcement Policy 2023.

Step 8 – East Cambridgeshire’s Public Space Protection Order (PSPO) – Dog Fouling remains in place until January 2025 and identifies the FPN level to be £80. An increase in the FPN charge to a maximum of £100 will be proposed when the PSPO is renewed.

Appendix 2 – 2023 Fixed Penalty Notice Charges

Environmental Offence	Range of fixed penalty notice charge
Illegal Waste Deposit	£400 - £1000
Failure to produce a waste carriers' licence or waste transfer documentation	£300
Breach of householder duty of care	£400 - £600
Abandoning a vehicle	£200
Nuisance parking	£100
Alarm noise	£80
Littering	£150 - £500
Graffiti	£150 - £500
Fly Posting	£150 - £500
Unauthorised distribution of free literature on designated land	£150
Breach of the Public Space Protection Order (failure to clear up dog fouling)	£80