

BIRMINGHAM CITY COUNCIL

**REPORT OF THE DIRECTOR OF REGULATION AND ENFORCEMENT
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

15 NOVEMBER 2023

ALL WARDS

**REVIEW OF FIXED PENALTY NOTICE TARIFFS FOR LITTERING, FLY-TIPPING,
DUTY OF CARE, FLY-POSTING AND GRAFFITI**

1. Summary

- 1.1 The Corporate Charging Policy and Financial Regulations requires that fees and charges levied by the Licensing and Public Protection Committee are reviewed on, at least, an annual basis. This fixed penalty notice tariff review is normally undertaken as part of the annual fees and charges reports, the last one being at 18th January 2023 committee.
- 1.2 It is proposed that fixed penalty notices for the offences of littering, fly-tipping, duty of care, graffiti and fly-posting be reviewed having consideration to new legislation which came into force on 31st July 2023 increasing the maximum tariff for these fixed penalty notices.

2. Recommendations

- 2.1 That the proposed tariff for fixed penalty notices relating to littering, fly-tipping, duty of care, graffiti and fly-posting be reviewed and that the recommendations put forward by your Officers be approved.
- 2.2 Subject to the agreement of this Committee, it is proposed that the new tariffs commence on the 1st January 2024.

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3. Background

3.1 In March 2023, Government introduced an Anti-Social Behaviour (ASB) Action Plan aimed at tackling a range of anti-social behaviour including littering, fly-posting, graffiti and fly-tipping. As part of the action plan Government sort to provide agencies with the tools they needed to discourage such anti-social behaviour. This included higher on the spot fines for offences in the form of Fixed Penalty Notices. These increased tariffs were enacted under The Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023 which came into force on the 31st July 2023.

3.2 This report set out a review of these Fixed Penalty Notices and makes a number of recommendations where tariffs should be increased in light of the new legislation.

4. Proposed fixed penalty notice tariffs for 2023/2024

The proposed new Fixed Penalty Notice tariffs are tabulated below. Subject to the agreement of this Committee, it is proposed that the new tariffs commence on the 1st January 2024.

4.1 Out of all of the fixed penalty notices identified in this report, the vast majority are issued for the offence of littering. In recent years your Officers have encountered an increasing number of citizens who are advising that they are experiencing difficulties in paying fixed penalty notices issued for littering offences. As such citizens who identify themselves as suffering from financial hardship are offered a 12-week extension period in which to make payment (statutory payment period is 14 days). Increasing the tariff for littering offences is also likely to increase this pressure and will put further pressures on the service to undertake even more prosecutions for non-payment and there are insufficient staff to affect this. As such an increase in the penalty for the offence of littering at this stage is not recommended by Officers.

4.2 Committee can consider varying the tariff for FPNs and if so minded can increase or reduce any FPN tariff within the specified range.

4.3 Early repayment discounts were discontinued as few people took note of the timelines and most paid the lower payments significantly after the expiry of the discounted period. This led to inequalities and administration difficulties. It is your Officer's recommendation that Committee do not reinstate early payment rates unless committee is minded to increase the FPN tariff significantly higher than what is recommended by your officers.

FIXED PENALTY NOTICE (FPN) TARIFFS

OFFENCE	LEGISLATION	PREVIOUS TARIFF RANGE	EXISTING TARIFF	NEW TARIFF RANGE	NEW TARIFF
Unauthorised deposit of waste (fly-tipping)	S.33ZA Environmental Protection Act 1990	Between £150 and £400 Minimum discount for early payment £120	£400	Between £150 and £1,000 Minimum discount for early payment £120	£400 – from a domestic premises £1,000 – From a commercial or industrial premises.
Domestic Duty of Care	Section 34ZA Environmental Protection Act 1990	Between £150 to £400 Discount can be set between £120 & £150	£200 No discount for early payment	Between £150 to £600 Discount can be set between £120 & £150	£200
Graffiti and fly-posting	S.43(1)(a) Anti-Social Behaviour Act 2003	Between £65 - £150 Minimum discount for early payment £65.	£150 No discount for early payment	Between £65 - £500 Minimum discount for early payment £65.	£500
Litter	S.88(6A)(a) Environmental Protection Act 1990	Between £65 - £150 Minimum discount for early payment £65.	£150 No discount for early payment	Between £65 - £500 Minimum discount for early payment £65.	£150

Please read in conjunction with Appendix 1

5. Consultation

5.1 Officers from the City Council Waste Management's Waste Enforcement Unit have been consulted and are in agreement with this proposal.

6. Implication for Resources

6.1 There is a potential for increased FPN tariffs to lead to an increased instances of non-payment. This in turn would increase the number of cases referred to the Magistrate Courts. Any significant rise in prosecutions means there would be insufficient officers and solicitors to accommodate this increase prosecution rate.

7. Implications for Policy Priorities

7.1 The recommendations are in accordance with Financial Regulations, budget requirements and Corporate Charging Policy.

8. Public Sector Equality Duty

8.1 There are no specific implications identified.

DIRECTOR OF REGULATION AND ENFORCEMENT

Appendix 1

Unauthorised deposit of waste (fly-tipping) - FPNs are used in cases of small-scale fly-tipping (for example 2 or more bags of domestic waste). Where there is equivalent of less than one bag of domestic waste has been fly-tipped then this can be dealt with by way of a littering FPN. Where significant amounts of waste have been fly-tipped or the waste is identified as hazardous, then a fixed penalty notice would not be offered, and these incidents would be reported directly for prosecution. The average fine awarded for fly-tipping offences in 2022/2023 were £697.56 and £544 costs. Any fines and costs awarded by the Courts have to have regards to the Sentencing Council guidelines which take into account level of culpability together with the level of harm caused. The Courts also have to take into account means to pay and have to give a 33% discount in the case of an early guilty plea.

Domestic, Commercial and Industrial Waste – is as defined in Sec 75 of the Environmental Protection Act 1990 (and regulations made under the Act).

Domestic duty of care - this relates to a householders duty to ensure that any waste that they dispose of is transferred to an authorised person or a person who is authorised to transport waste. There is a lack of knowledge amongst the wider community about this legal responsibility. Whilst in some cases there may be a degree of culpability by householders e.g. employing a company offering to dispose of waste for unrealistically low cost, there may also be instances where a householder has in good faith believed that they were employing a reputable company without making suitable background enquiries or asking for evidence of the companies credentials. As such it is recommended that the FPN is held at the current rate to reflect this. Where the level of culpability is high, this does not negate the Council's ability to prosecute for the offence rather than offer a fixed penalty notice.

Graffiti and fly-posting – FPNs can be issued to individuals who are caught in the act of committing acts of committing graffiti or flyposting offences. Given significant and detrimental impact these activities have on the local community the preferred course of action in most instances would be to prosecute for the offences.

Litter – The City Council issues in the region of 7,000-8,000 fixed penalty notices across the city each year for littering. The majority of the fixed penalty notices that are issued are for cigarette ends. Previous increases in FPN tariffs have shown a decrease in payment rates leading to additional pressures on the City Council's Legal Services Department in progressing prosecution. In 2022/2023, 992 people were prosecuted for the offence of littering after failing to discharge their liability to the offence by way of a fixed penalty notice. This led to an average fine of £220.20 (retained by the Courts) and costs of £133.79 (payable to the Council). Benchmarking though the Department's FPN Enforcement Contractor has shown that BCC already has the highest FPN tariff for sites that they operate. Officers have advised that they are receiving increased aggression from offenders on the street and difficulty in obtaining name and address details. Officers have no ability to detain offenders who

may choose to walk off without providing their details. This creates an additional pressure on Officers in attempting to confirm details and in some instances requires the intervention of Officers from West Midlands Police. Any increase in FPN tariff is likely to increase the number of walk offs.