

HEADING Extended use of Fixed Penalty Notices

Submitted by: Head of Environmental Health

Portfolio: Environment & Recycling

Wards Affected: All

Purpose of the Report

To seek Committee's support to increase the number of environmental offences where enforcement may be delivered through issuing of penalty notices as an alternative to prosecution and support for the recommended new charges.

Recommendations

That Public Protection Committee agrees to increase the range of penalty notices which can be issued to include a) small scale fly tipping and b) littering from vehicles.

That committee recommends a charge of £400 in respect of fly tipping fixed penalties, reduced to £350 if paid within 10 days, and a charge of £100 in respect of littering from vehicles penalty charge notices, reduced to £75 if paid within 14 days

Reasons

Litter is recognised as a significant problem nationally with new enforcement powers devised to assist local authorities. There is an expectation that appropriate powers will be used where circumstances permit and that enforcement will be undertaken efficiently and consistently.

1. Background

1.1. More than one million cases of illegally deposited waste are reported to local authorities each year. Two thirds involve household waste. Across England the cost of clearing waste was approximately £60 million. About half of the reported cases in some way require enforcement action and nationally some 69,000 fixed penalty notices (FPNs) are issued.

1.2. The importance of tackling litter has been recognised in the government's Litter Strategy for England 2017 which committed, amongst other things to:

“Improve enforcement against offenders, including:

- *delivering on our Manifesto commitment to review the case for increasing fixed penalties for littering and related offences;*
- *introducing new regulations to help councils tackle littering from vehicles*
- *providing improved guidance for councils on how to use their enforcement powers proportionately and appropriately, and*
- *raising councils' and magistrates' awareness of the range of sanctions available to tackle littering and fly-tipping.”*

1.3. From 9 May 2016, local authorities in England have been able to issue fixed penalty notices between £150 to £400 for small-scale fly-tipping offences pursuant to the [Unauthorised Deposit of Waste \(Fixed Penalties\) Regulations 2016](#). This may be served as a criminal penalty in lieu of prosecution for a criminal offence – providing the authority can meet the criminal standard of proof (“beyond reasonable doubt”).

- 1.4. There is no specific definition of fly-tipping other than in the offences set out in section 33 of the Environmental Protection Act 1990, including the deposit or disposal of controlled waste without a waste management licence, or its disposal in a manner likely to cause pollution of the environment or harm to human health.
- 1.5. From 1st April 2018 [The Littering From Vehicles Outside London \(Keepers: Civil Penalties\) Regulations 2018](#) gave district councils in England (outside London) the power to require the keeper of a vehicle to pay a civil Penalty Charge Notice (PCN) if there is reason to believe that a littering offence has been committed from the vehicle. Evidence must satisfy the civil test (“on the balance of probabilities”).
- 1.6. To date the council has used FPNs for offences including: littering; breach of Community Protection Notices; and breach of Public Spaces Protection Orders, but not for Fly-tipping, opting instead to take such offences to the courts, where a larger fine could be imposed and the council’s costs recovered. PCNs have been used for matters such as parking offences.

2. Issues

- 2.1. There is an expectation that where enforcement powers and options are available that they should be adopted and used in appropriate circumstances.

Policy Publicity & Transparency

- 2.2. The authority is obliged to promote its enforcement strategy and make it clear which offences may be dealt with by means of a FPN or PCN. To this end the council’s current enforcement policy 2018-2022 states:

4.1.3 Fixed Penalty Notices

“Certain offences may be dealt with by fixed penalty notices (FPN) where prescribed by legislation. They are recognised as a low-level enforcement tool and avoid a criminal record for the defendant. Where legislation permits an offence to be dealt with by way of a Fixed Penalty Notice we may choose to administer one on a first occasion, without issuing a warning. Such matters may include dog fouling, littering, waste disposal activities, breach of a PSPO (Public Space Protection Order), and alcohol consumption in a defined area; however, this list is not exhaustive.

The alleged offender’s choice to not cooperate with the officer (e.g. refuse to give a name and address), to dispute or not pay the FPN will result in the case being escalated to the Magistrates Court.

We will only offer a FPN where we have robust evidence that an offence has been committed by the individual. This may be evidence gathered directly by Council Officers, or that passed to officers by partners documented in a form admissible to the courts.”

4.1.4 Penalty Charge Notices

Penalty Charge Notices (PCNs) (e.g. parking tickets) are prescribed by certain legislation as a method of enforcement by which the offender pays an amount of money to the enforcer in recognition of the breach. Failure to pay the PCN will result in the offender being pursued in the County Court for non-payment of the debt. A PCN does not create a criminal record and we may choose to issue a PCN without first issuing a warning.

- 2.3. Although no specific change would be required to the enforcement strategy or public consultation needed, the authority will ensure that it explains how any newly adopted penalties will be used on its public website if agreed.

- 2.4. DEFRA consulted on proposed modification to the 2006 Code of Practice on Litter and Refuse between April and June 2018. On 6th November 2018 it announced its intention to issue a revised code of practice on litter and refuse. No timescale is proposed. Accordingly there is currently no specific statutory guidance on either the use of Fly tipping FPNs or Litter from Vehicle PCNs.

Fly-tipping (Criminal Penalty)

- 2.5. Where a fixed penalty is offered and paid the defendant discharges their liability to criminal prosecution. In the context of fly tipping, until guidance confirms otherwise, this means the authority can no longer require them to remove deposited items, nor charge any costs it had incurred. The payment of a fixed penalty is therefore considered to remove any obligation they have for the waste.
- 2.6. The authority needs to carefully consider the penalty charge it sets, and the extent of fly tips where it offers a FPN. A low figure, for extensive fly tips could potentially be cheaper for the defendant than correct disposal charges. Similarly setting too high a penalty charge would reduce the number of cases where the penalty was accepted and commit the authority to seeking prosecutions, potentially with unrecoverable court costs.

Litter from vehicles (Civil Penalty)

- 2.7. To issue a penalty the authority must have evidence to the civil standard of proof (the balance of probabilities) that litter was thrown from the vehicles onto the council's "relevant land". This will generally include:
- The circumstances alleged to constitute the littering offence, including the registration mark (if known) of the vehicle concerned.
 - The make of vehicle, model and colour
 - The opening from which the litter was thrown (e.g. driver's side window)
- 2.8. Drivers of Public service vehicles, taxis and private hire vehicles are exempt from liability for a civil penalty notice if the offence is committed by a passenger. Similar exclusions apply to those who hire vehicles.
- 2.9. If there is sufficient evidence and either a Section 9 witness statement or a report from a council employee, or other credible witness, then the DVLA WEE system will be accessed to obtain details of the registered keeper of the vehicle. The civil penalty notice will be issued to the registered keeper of the vehicle unless it can be proven that the vehicle was 'kept' by someone else at that time.
- 2.10. Registered keepers who receive a civil penalty charge notice (PCN) will have a right to first make representations to the council under a number of grounds set out in this instrument (e.g. that the person was not the keeper of the vehicle at the time of the offence, or that the offence was not committed etc.) If this does not resolve the matter to their satisfaction, they have a right to appeal to an independent adjudicator. The Traffic Penalty Tribunal England and Wales offers this service, but the authority will be required to make a payment to them for each penalty notice issued, irrespective as to whether it is appealed. In addition the authority may need to be a member of PATROL (Parking and Traffic Regulation Outside London)
- 2.11. The current fee levied by The Traffic Penalty Tribunal England and Wales, per ticket, is £0.75. The authority is already a member of PATROL.
- 2.12. The authority must ensure that they appoint a staff member to make decisions on challenges. This person should not be involved in the issuing or processing of PCNs Elected members and unauthorised staff should not play any part in deciding the outcome

of individual challenges or representations. The regulations set out 12 grounds on which representations may be made. Representations could be considered by a Customer Relations officer, or other team outside of Environmental Health.

- 2.13. Penalties are payable within 28 days. An early-payment incentive can be adopted which reduces the civil penalty to not less than £50 if paid within 14 days. If the penalty is still unpaid after 28 days (clock paused during any appeal proceedings), the penalty may be increased by 100% (ie doubled) and it becomes recoverable as a civil debt or payable under a county court order, if the county court so orders. There are resource and financial implications to the authority of attempting to recover civil debts.
- 2.14. Councils can choose to set the level for littering penalties, within a range of £65 to £150, with a default of £100. It is recommended that the littering from vehicles civil penalty is set at the same level as the criminal depositing of litter penalty, which for Newcastle is proposed to be £100 from April 2019.

3. Options Considered

- 3.1. The authority is under no obligation to offer fixed penalties for small scale fly tipping. It has existing powers to deal with these offences through prosecution.
- 3.2. Fly tipping fixed penalty notice are not be an appropriate sanction for operators in the waste management industry, repeat offenders or those responsible for large-scale fly-tipping or the fly-tipping of hazardous waste. These types of incident will continue to be enforced using prosecution powers.
- 3.3. If it can be proved which specific individual was responsible for littering from a vehicle, then criminal proceedings under the Environment Protection Act 1990 (EPA 1990) section 87 could be used as an alternative to a litter penalty charge notice.

4. Recommendation

- 4.1. That Public Protection Committee agrees to increase the range of penalty notices which can be issued to include a) small scale fly tipping and b) littering from vehicles.
- 4.2. That committee recommends a charge of £400 in respect of fly tipping fixed penalties, reduced to £350 if paid within 10 days, and a charge of £100 in respect of littering from vehicles penalty charge notices, reduced to £75 if paid within 14 days.

5. Decision Required

- 5.1. Committee is requested to support the recommendations above.

6. Outcomes Linked to Sustainable Community Strategy and Corporate Priorities

- 6.1. Litter and fly tipping are important issues for our residents and businesses. Adopting tools to enable effective enforcement aligns with the councils priority to deliver local services which work for local people

7. Legal and Statutory Implications

- 7.1. Specific rules are prescribed both for the issuing and escalation of Fixed Penalty Notices / Penalty Charge Notices. The authority is to ensure that it follows due process.

8. Equality Impact Assessment

- 8.1. No issues identified.

9. Financial and Resource Implications

- 9.1. The recommendations in this report do not commit the council to increasing the staff resource or budgets available for enforcement.
- 9.2. Whilst the aim of offering penalties is to conclude enforcement action promptly and efficiently without need for criminal court proceedings or civil debt recovery, where evidence is disputed or defendants uncooperative escalation will still be necessary.

10. Major Risks

- 10.1. No issues identified

11. Sustainability and Climate Change Implications

- 11.1. No issues identified

12. Key Decision Information

- 12.1. This is not considered to be a key decision.

13. Earlier Cabinet/Committee Resolutions

- 13.1. None

14. Background Papers

Litter Strategy for England, April 2017:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/630999/litter-strategy-for-england-2017-v2.pdf

Corporate Enforcement Policy 2018-21: <https://www.newcastle-staffs.gov.uk/all-services/your-council/policies-and-strategies-z/corporate-enforcement-policy>

DEFRA Fly-tipping statistics for England, 2017/18:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/756306/FlyTipping_201718_Statistical_Release_rev.pdf