

HEADING Review of Environmental Fixed Penalties

Submitted by: Head of Environmental Health

Portfolio: Environment & Recycling

Wards Affected: All

Purpose of the Report

Committee is being requested to consider the current/planned fixed penalty values and either agree them, or stipulate how they should be changed.

Recommendations

Members are requested to confirm the penalty values proposed and approve the groups of staff who will be authorised to issue penalties.

Reasons

To enable officers to make appropriate use of the enforcement options offered within statute and ensure that the values agreed for penalties remain valid.

1. Background

- 1.1. In December 2018 Public Protection Committee agreed the adoption of fixed penalty controls in respect of fly tipping and litter from vehicles and set penalty values.
- 1.2. There are a number of other similar offences where issuing a fixed penalty can be a valid option and this approach is endorsed by the councils adopted enforcement policy (2018-2022). In many cases, the use of a fixed penalty, as an alternative to prosecution, can be both an effective deterrent and a cost effective enforcement tool.
- 1.3. The authority is obliged to periodically review the values it has set for penalties. Committee is now being requested to consider penalty values for a range of other environmental offences.

2. Issues

- 2.1. Legislation generally sets minimum and maximum acceptable values for a range of penalties. In some cases statute may also specify a period in which a penalty may be paid. In other cases this time limit can be set by the authority. Where payment has not been made by the deadline, the option to discharge liability by payment of penalty ends and the authority can escalate matters to the courts.
- 2.2. It is generally considered good practice to agree a 'lesser sum' for many penalties. It is accepted that this encourages acceptance and payment of penalties and reduces the number of cases which need to proceed to prosecution. Whilst penalties need to be a deterrent, setting values too high may reduce the number which are accepted and increase cases which go the court, where potentially a lower fine may be awarded.
- 2.3. The authority is obliged to ensure that the penalty values it sets remain valid. For a number of penalties The Environmental Offences (Fixed Penalties) (England) Regulations 2017 place new limits for minimum and maximum penalties from 1st April 2019.
- 2.4. Procedurally it is for Public Protection to agree values, which would then be formally set as part of the Fees and Charges process by Council.

3. Recommendation

3.1. The following penalty values are proposed. A summary of this information is included as Appendix One.

3.2. Littering.

The council has issued fixed penalties for littering offences for a number of years and currently offers a lesser sum if the penalty is paid within 10 days. This penalty is generally issued by the council's Litter Enforcement Officer as part of routine uniformed patrols of the town centre and periodic checks on other areas including Madeley, Silverdale and Chesterton. Litter fixed penalties can be issued by a range of Environmental Health and Operations officers.

It is proposed to raise the lesser sum from £50 to £75 (0-10 days), and the full penalty value from £75 to £100 (11-14 days) the recommended default value. The maximum penalty which could be set is £150. The change is to align these values with other similar offences.

3.3. Waste Receptacles.

The council has the power to require residents to place waste in receptacles of a type and number it sets. A penalty may be issued where containers provided are misused or where an unacceptable amount of additional household waste is left for collection. It can also be used where receptacles are left obstructing pavements. Similar provisions apply to waste from businesses. The use of this penalty would be subject to an operating procedure agreed with the relevant portfolio holder and will follow government guidance: [Household waste bins: when and how councils may issue fixed penalties](#).

Penalties can be issued by a range of Environmental Health and Recycling officers. It is proposed to the lesser sum of £75 (0-10 days), and the full penalty value of £100 (11-14 days) which is the recommended default value are unchanged. The maxim penalty which could be set is £110. The proposal aligns this with a number of other environmental penalties.

3.4. Waste Transfer Notes

A waste transfer note is a legal document which must be filled in every time waste is taken from a business premises by a licensed waste carrier. The note details what the waste is and its approximate weight, how the waste is contained and the place and date of transfer. Businesses need to keep the note for 2 years and produce it to enforcement officers from the council or Environment Agency. The records enable waste disposal arrangements to be audited to establish the waste has been correctly handled and ultimately correctly disposed of.

Failing to provide waste transfer notes within 14 days currently has a penalty tariff of £300. Whilst it is not proposed to change this fee, it is recommended that a lesser sum of £180 is introduced if the penalty is paid within 10 days.

3.5. Waste Carrier Licence

Anyone who transports waste, buys, sells or disposes of waste or arrange for someone else to buy, sell or dispose of waste must apply to the Environment Agency for a Waste Carrier's licence. The cost of a registration is currently £154.

Waste carrier licence details need to be provided on request to enforcement officers from the council or Environment Agency.

Failing to provide waste transfer notes within 14 days currently has a penalty tariff of £300. Whilst it is not proposed to change this fee, it is recommended that a lesser sum of £180 is introduced if the penalty is paid within 10 days.

3.6. Unauthorised distribution of literature on designated land.

A person commits an offence if he distributes any free printed material, without the consent of the council on land where the council has adopted controls. Literature relating to charities, for political purposes and linked to a religion or belief is exempt.

- The council is yet to formally designate land, a process which is prescribed within [Schedule 3A, section 2 of the Environmental Protection Act 1990](#), as amended, although it has previously set a value for this penalty. It is proposed to bring a further report to Committee recommending land for designation.

Enforcement would be by the council's Environmental Health or Operations teams. It is proposed to raise the lesser sum (0-10 days) from £50 to £75, and the full penalty value (11-14 days) from £75 to £100 the recommended default value. The maximum penalty which could be set is £150. The change is to align these values with other similar offences and to meet the requirement of The Environmental Offences (Fixed Penalties) (England) Regulations 2017.

3.7. Failure to comply with a Community Protection Notice (CPN) or Public Spaces Protection Order (PSPO)

These provisions relate to penalties for a range of antisocial behaviour offences byelaw type provisions. Detailed reports have been submitted previously and the current values set by Cabinet. Enforcement is by a range of council officers including staff from Environmental Health, Operations, Partnerships and by Staffordshire Police. No changes are proposed.

3.8. Graffiti and Fly Posting.

Graffiti and flyposting are both offences prescribed in the Anti-social Behaviour Act 2003. Where there is evidence that a person has committed an offence a penalty can be offered. This is a new provision.

Enforcement would be by the council's Environmental Health or Operations teams. It is proposed that a penalty (0-14 days) is set at £100, the default value recommended by statute. No lesser fee is proposed, because any sum less than £100 would mean the council's clean-up costs would be greater than the penalty being accepted. The maximum permissible value is £150

3.9. **Industrial and Commercial Waste Offences.**

The authority has the power to intervene where it identifies that waste at a commercial or industrial premise is not stored appropriately and is likely to cause a nuisance of adversely impact others. It can stipulate the size, construction, location and collection location / time. If the requirements are not followed a penalty can be issued. This is a new provision.

Enforcement would be by the council's Environmental Health teams.

It is proposed that a penalty (0-14 days) is set at £100, the default value recommended by statute. No lesser fee is proposed. Whilst provisions enable a lesser fee as low as £60 to be set, any sum less than £100 would mean the council's enforcement costs would be greater than the penalty being accepted.

3.10. **Abandoned Vehicles.**

Abandoning a motor vehicle on any land open to the air, road, or highway is an offence. A maximum penalty of £200 is set by statute and cannot be amended by the local authority. Whilst provisions enable a lesser fee as low as £120 to be set, any sum less than £200 would mean the council's enforcement costs would be greater than the penalty being accepted.

Established practice is to offer up to 28 days for the payment of the penalty, after which arrangements are made to remove the vehicle.

Enforcement is by the council's Operations team.

3.11. **Vehicle Repair and Sale Offences**

It is an offence to leave two or more motor vehicles parked within 500 metres of each other on a road or roads where they are exposed or advertised for sale. It is also unlawful to repair, maintain, service, improve (including installing parts or accessories) or dismantle a motor vehicle on a road – unless the person can show that they were not part of a business, for gain, or reward.

This is a new provision.

Enforcement would be by the council's Environmental Health teams.

It is proposed that a penalty (0-14 days) is set at £100, the default is set by statute and cannot be amended by the local authority. Whilst provisions enable a lesser fee as low as £60 to be set, any sum less than £100 would mean the council's enforcement costs would be greater than the penalty being accepted.

4. **Decision Required**

- 4.1. Committee is requested to confirm the penalty values proposed and the approve the groups of staff who will be authorised to issue penalties.

5. Outcomes Linked to Sustainable Community Strategy and Corporate Priorities

- 5.1. Environmental offences 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

6. Legal and Statutory Implications

- 6.1. 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.

7. Equality Impact Assessment

- 7.1. No issues identified.

8. Financial and Resource Implications

- 8.1. The recommendations in this report do not commit the council to increasing the staff resource or budgets available for enforcement.
- 8.2. 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.

9. Major Risks

- 9.1. No issues identified

10. Sustainability and Climate Change Implications

- 10.1. No issues identified

11. Key Decision Information

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

12. Earlier Cabinet/Committee Resolutions

- 12.1. None

13. Background Papers

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

Appendix One

Offence	Time Limit	Value 2018/19	Proposed 2019/20	Change	Delegation / Officers Enforcing Previous Decisions
Fly tipping The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016	0-10 days	NEW	350.00	NEW	Environmental Health Operations • Approved by Public Protection 11/12/18
	11-14 days	NEW	400.00	NEW	
Litter from Vehicles Littering from vehicles outside of London (Keepers: Civil Penalties) Regulations 2018, Regulation 6	0-10 days	NEW	75.00	NEW	Environmental Health Operations • Approved by Public Protection 11/12/18
	11-14 days	NEW	100.00	NEW	
Litter Section 88(1) Environmental Protection Act 1990	0-10 days	50.00	75.00 (min 50)	+25.00	Environmental Health Operations
	11-14 days	75.00	100.00 (default) (max 150)	+25.00	
Waste receptacles Section 47ZB(2)(a) Environmental Protection Act 1990	0-10 days	75.00	75.00 (min 75)		Recycling & Waste Team Environmental Health
	11-14 days	100.00	100.00 (max 110)		
Waste Transfer Notes Failure to produce authority Section 5B(11) Control of Pollution Act 1989	0-10 days	NEW	180.00 (min 180)	NEW	Environmental Health
	11-14 days	300.00	300.00 (max 300)		
Waste Carrier Licence Failure to furnish documentation Section 34A(11) Environmental Protection Act 1990	0-10 days	NEW	180.00 (min 180)	NEW	Environmental Health
	11-14 days	300.00	300.00 (max 300)		
Unauthorised distribution of literature on designated land Schedule 3A, para 9(4)(a) /7(4)(a) Environmental Protection Act 1990	0-10 days	50.00	75.00 (min 65)	+25.00	Environmental Health
	11-14 days	75.00	100.00 (default) (max 150)	+25.00	
Failure to comply with a Community Protection Notice (CPN) or Public Spaces Protection Order (PSPO) Antisocial Behaviour Crime & Policing Act 2014	0-10 days	75.00	75.00		Environmental Health Operations Antisocial Behaviour Team Staffordshire Police • Previously set by Cabinet
	11-14 days	100.00	100.00		
Graffiti and Fly Posting Section 43A(1)(a) Anti-social Behaviour Act 2003	0-14 days	NEW	100.00 (default) (min 65) (max 150)	NEW	Environmental Health Operations
Industrial and Commercial Waste Offences Section 47ZA Environmental Protection Act 1990	0-14 days	NEW	100.00 (max 110)	NEW	Environmental Health
Abandoned Vehicles Environmental Protection Act 1990 2A(10) of the Refuse Disposal (Amenity) Act 1978	0-28 days	200.00	200.00 (fixed)		Operations
Vehicle repair & sale offences Sections 3 & 4, 6(10) Clean Neighbourhoods and Environment Act 2005	0-14 days	NEW	100.00 (fixed)	NEW	Environmental Health