

Report to: Cabinet

Date of meeting: 4th March 2024

Report author: Nicholas Egerton – Environmental Health Manager – Environment

Report sponsor: Justine Hoy – Associate Director – Health and Wellbeing

Portfolio holder: Cllr Kennedy Rodrigues

Report title: A review of fines for fixed penalty notices

Nature of report: Discussion and recommendation for referral to PH/Cabinet or Council for decision

1.0 Executive Summary

1.1 The [Environmental Offences \(Fixed Penalties\) \(Amendment\) \(England\) Regulations 2023 \(SI 2023/770\)](#) were made on 6 July 2023 and come into force on 31 July 2023. They are accompanied by an [explanatory memorandum](#). The Regulations amend the Environmental Offences (Fixed Penalties) (England) Regulations 2017 (SI 2017/1050) and the Environmental Protection Act 1990 to increase the upper limit of fixed penalty notices.

1.2 The Regulations allow local authorities to increase the maximum upper levels and the changes also affect the default values. This report recommends changes to fine levels to reflect the new regulations and priorities of the council.

2.0 Recommendations

It is recommended that we set FPNs at the following levels from 1st April 2024

Offence	Early repayment fine level	Full FPN
Littering	£75	£250
Duty of Care Residential	£250	£600
Fly tipping Offences	£250	£600

3.0 Report pathway

3.1 Next review body: *Not applicable:*

3.1.1 Indicative date: TBC

3.2 Final review body: *Cabinet*

3.2.1 Indicative date: 4 March 2024

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Reviewed and signed off by: Justine Hoy- Associate Director – Housing &
Wellbeing.

4.0 Detailed proposal

4.1 The Council investigate complaints and proactively visit hot spot areas where criminal offences such as littering, fly tipping and waste accumulation are an issue. Responding to offences they issue FPNs, prosecute, issue formal cautions and use informal warnings and advice depending on the scale and nature of the offence.

4.2 These offences are normally defined as:

- Littering - Litter is most commonly assumed to include materials, often associated with smoking, eating and drinking, that are improperly discarded, however can be considered to include any waste up to 1 black bag.
- Fly-tipping is the 'illegal deposit of waste onto land that does not have a licence to accept it'. Anything illegally dumped that is larger than a single black bag of waste is accepted to be a fly tip, this would exclude waste that has been put out for collection as part of the councils weekly/fortnightly collections. This means, that apart from domestic waste which is collected by the council, residents have to ensure that they dispose of their other waste lawfully by either taking it themselves to a legal household recycling centre, or arranging for it to be collected by a waste carrier licensed by the Environment Agency. There are stricter controls in place with regard to waste produced by businesses. FPNs are only available for low level (small) fly tips. Larger fly tips should be dealt with via prosecution.
- Duty of Care is a legal requirement that requires residents and businesses to take all reasonable steps to ensure that waste is correctly disposed of in accordance with the Environmental Protection Act 1990. If you fail to dispose of, or carry out suitable checks for the disposal of your waste you may have failed in your duties.

- 4.3 Prior to May 2016 Enforcement options were limited to either prosecution at magistrates court with a maximum sentence of 12 months imprisonment and/or a fine of £50,000, or issuing a £75 fixed penalty notice for littering which could be applied for a small fly tip of a single black bag or less.
- 4.4 In May 2016 the Government introduced ‘The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016’ to address small scale fly tips, which historically make up the bulk of the incidents reported to local authorities in England and Wales. The Regulations amend Section 33 of the Environmental Protection Act 1990 permitting Waste Collection Authorities to issue a “Fixed Penalty Notice” (FPN) for fly tipping offences where the authority believes an FPN is more appropriate than undertaking a prosecution.
- 4.5 The Environmental Offences (Fixed Penalties) (England) Regulations 2017 set maximum levels of fines.
- 4.6 The estimated national cost of fly-tipping to England’s economy keeps on rising having risen from £209 million in 2015 to £392 million in 2018/19. Street cleansing, including clearing up litter and fly-tipping, cost local authorities in England £743 million in 2021/22.
- 4.7 The 2017 regulations have been amended by the [Environmental Offences \(Fixed Penalties\) \(Amendment\) \(England\) Regulations 2023 \(SI 2023/770\)](#) which were made on 6 July 2023 and come into force on 31 July 2023.

The changes are as follows:

	Environmental Offences (Fixed Penalties) (England) Regulations 2017 (Min/Max fines (excluding early repayment)	Environmental Offences (Fixed Penalties) (England) Regulations 2023 (Min/Max fines (excluding early repayment)	Watford Borough Council current fees (Min/Max fines Minimum used for early repayment only)
Littering	£65-£150 (Default £75)	£65- £500 (default £100)	£50/£75
Duty of Care Residential	£200/£400	£120/£600 (Default (£200)	£200/£300
Fly tipping Offences	£150 /£400	£120/£1000 (Default £200)	£150/£300

- 4.8 As can be seen from the above there is the potential to increase the levels of fines significantly. However increasing the level of fines too much may have negative impacts on recovery rates given the current pressures on household and business finances. A balance must be achieved that recognises the significant impact environmental crimes have on our community and acts as sufficient deterrent, but equally the rates needs to be reasonable enough to encourage payment and not opting for a court hearing. Appeals against FPNs exist, and so are considered if those receiving them do not think they are warranted.
- 4.9 Watford Borough Council currently has a very high rate of payment for FPN's. Most people choose to pay the reduced early repayment fee ensuring we receive payment within 7 days. The lower level of fine reduces resources required to chase fees, and also reduces the risks of non-payment. If we significantly increase fees, in particular early repayment, it is likely to require more resources with increased legal action (prosecution) for non-payment. We would strongly recommend that we maintain a relatively low early repayment option. Experience shows that courts are highly unlikely to award fines much in excess of the maximum fine level and costs awarded rarely cover the council costs in taking cases.
- 4.10 Appendix C the number of FPN's issued verses the number of incidents. As can be seen in 2022/23 the number of FPNs issued by WBC for fly tipping was the highest in Hertfordshire. WBC was also the 2nd best performing authority when comparing the number of FPN's issued compared to the number of reported incidents. We have seen a decrease in the number of notices served for littering in the town centre and the general standards within the town have been much improved over recent years. This has been as a result of target education and targeted groups such as the college, businesses, charity shops along with other factors such as the reduction in the nighttime economy and improvements to the bin facilities within the town centre.
- 4.11 There is currently an anomaly with our current FPN's that there is a lower cost for fly-tipping early repayments than for Duty of Care offences. This is an opportunity to resolve this as it is counter intuitive.
- 4.12 Appendix A & B show FPN levels currently set within Hertfordshire. This data show that Watford Borough Council has currently amongst the lowest fine levels in the county as a result of recent increases across areas to reflect the new regulations.
- 4.13 We would recommend an increase to all fines. Proportionately increasing the full FPN amount higher than the early payment amount will enable us to

publicise the highest rate acting as a deterrent without compromising the payment rates and overall impact on council costs of administering the regime. This proposal is shown in the recommendations below.

Offence	Current national fine levels (Min/Max)	Current fine level (early repayment/M ax.)	Proposed Early repayment fine level	Proposed Full FPN fine level
Littering	£65- £500 (default £100)	£50/£75	£75	£250
Duty of Care Residential	£120/£600 (Default (£200))	£200/£300	£250	£600
Fly-tipping Offences	£120/£1000 (Default £200)	£150/£300	£250	£600

5.0 Implications

5.1 Financial

5.1.1 The Chief Finance Officer comments that FPNs are intended to contribute to the Council's costs in dealing with offences and provide a deterrent to the commitment of offences. The proposed increases reflect the Council's rising costs.

5.2 Legal issues (Monitoring Officer)

5.2.1 The Group Head of Democracy and Governance comments that the legal implications are contained within the body of the report.

5.3 Risks

Nature of risk	Consequence	Suggested control measure	Response (treat, tolerate, terminate, transfer)	Risk rating (combination of severity and likelihood)
Public perception that FPN's would be a money	Negative perception for council	Positive press release	Tolerate	4

making opportunity for WBC				
Increased FPN levels may increase the number of unpaid fines.	We may end up with greater resources required if further legal action (attending court is required)	Publication/Promotion of changes. Consider fine levels to ensure best balance of fine vs payment.	Tolerate	4
Failing to increase the fine levels may result in more non compliance and it may be more cost effective to be fined than to pay to legally dispose of items.	Increased clearance costs.	Increase fine levels as recommended	Treat	2

5.4 Equalities, Human Rights and Data Protection

5.4.1 Equalities

5.4.1.1 The recommendations in this report recommend minor changes to existing procedures and processes with the only change limited to the fine levels. All new legislation should include an equalities review before enactment to ensure it does not significantly impact on any of the protected characteristics. Watford Council is implementing changes within the existing legal framework. There are no adverse impacts or concerns are identified and therefore a full EqIA is not required

5.4.2 Human Rights

5.4.2.1 Enforcement of the Environmental Protection Act 1990 to prevent littering and fly tipping will have minor impacts on a persons human rights, however will the benefits of taking action against offenders and the improvements to the environmental outweigh any detriment to them.

5.4.3 Data Protection Impact Assessment

5.4.3.1 Having had regard to the council's obligations under the General Data Protection Regulation (GDPR) 2018, it is considered that officers are not

required to undertake a Data Processing Impact Assessment (DPIA) for this report.

5.5 Sustainability

No additional sustainability implications identified.

5.6 People Implications

No additional people implications, including training and resources identified.

5.7 Community Safety/Crime and Disorder

Section 17 of the Crime and Disorder Act 1998 requires the council to give due regard to the likely effect of the exercise of its functions on crime and disorder in its area and to do all it reasonably can to prevent these. This report aims to increase fine levels for fixed penalty notices which should act as a greater deterrent against crime.

5.8 Property

This report should not have any implications for council-owned property or assets.

6.0 Next steps should recommendations be approved

6.1 Review and change all associated information and documents (Website, FPN pads, signage, posters etc.

6.2 Promote changes via coms.

7.0 Appendices

Appendix A – Showing current FPN levels at Hertfordshire authorities for S33 and S34 Offences

Appendix B- Showing current FPN levels at Hertfordshire authorities littering Offences

Appendix C – Showing number of fly tipping incidents and number of FPN's issued per authority.