

Cabinet – 20 March 2024

Law change in relation to fixed penalty notice levels for littering and certain waste offences

Portfolio: Councillor Perry – Deputy Leader & Resilient Communities

Related portfolios: Councillor Murphy – Street Pride

Service: Community Safety & Enforcement

Wards: All

Key decision: No

Forward plan: Yes

1. Aim

- 1.1. In March 2023 the Government published an Anti-Social Behaviour Action Plan stating that acts of anti-social behaviour are unacceptable and that the Anti-Social Behaviour Action Plan was ‘not just words, but a plan to stamp out anti-social behaviour’.
- 1.2. One of the key actions the government set out was to ‘Give the police and other agencies the tools they need to discourage anti-social behaviour, including higher on-the-spot fines’. On 31 July 2023 the Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023 came into force giving local authorities the option to increase the fines issued under fixed penalty notices for littering, fly tipping and duty of care for household waste.
- 1.3. This report considers the level fly tipping, litter and duty of care fixed penalties should be set with the aim of promoting pride in the borough, meeting the aspirations of Walsall 2040 and reducing the financial burden on public services from these anti-social activities.

2. Recommendations

- 2.1. That Cabinet approve the following maximum levels for fixed penalty notices for litter, household duty of care and fly tipping:

Offence	Maximum Fixed Penalty Notice Level
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Litter	£500
Household Duty of Care	£600
Fly Tipping	£1000

- 2.2. That Cabinet set a date of 1 April 2024 as the commencement date for the implementation of the new levels.
- 2.3. That Cabinet delegates authority to the Executive Director for Economy, Environment and Communities in consultation with the Deputy Leader (Resilient Communities) and the Portfolio Holder for Street Pride, to agree appropriate levels for discounted charges.

3. Report detail – know

Context

- 3.1. It is well documented that dealing with littering and fly tipping places a significant burden on local councils, money which could be invested in other local services. Indeed, locally it is reported that dealing with such deposit's costs Walsall Council an estimated £500,000 and the cost to communities in terms of feelings of dissatisfaction, feeling unsafe or environmental decline are less easy to quantify but no less significant.
- 3.2. Walsall Council through its Walsall 2040 consultation found that it 'is more important than ever that we recognise what matters most to Walsall residents, communities, businesses, and investors to meet the scale of challenges to come and create a borough that is strong, resilient, and able to thrive'. In the section Proud of our Borough it states that 'We will enforce to curb fly tipping, dog fouling, unauthorised commercial activities that can impact the environment and eliminate unsafe behaviours that negatively affect our neighbourhoods'
- 3.3. The Code of Practice for Litter and Refuse Part 1A Effective Enforcement (the Code) states 'Fixed penalties provide enforcing authorities with an effective and visible way of responding to environmental crimes and provide a lower-cost alternative to prosecution in the magistrates' courts. There is no obligation on an enforcing authority to offer an alleged offender the option of paying a fixed penalty. Equally, as a fixed penalty offers an option to discharge liability for an offence, an alleged offender may choose not to accept or pay a fixed penalty and choose instead to defend the case in court (at the risk of being liable for a potentially higher penalty on conviction).

Since issuing a fixed penalty notice is an alternative to prosecution, if an alleged offender does not pay a fixed penalty, the enforcing authority should be prepared to prosecute them for the original offence. Failure to follow up on unpaid fixed penalty notices will undermine their effectiveness as an

enforcement tool. Therefore, the authority must ensure it collects sufficient evidence which can be used in court, is reliable and credible’.

- 3.4. The Code also recommends that ‘To encourage prompt payment, enforcing authorities may offer recipients a reduction in the penalty if paid before this deadline. The period during which a discount for early payment is offered must be no more than 14 days and to avoid confusion, it is recommended that it should not be more than 10 days.
- 3.5. Fixed penalties can only be issued for specific offences as outlined in legislation. In some instances, the legislation specifies the amount of the penalty notice and there is no discretion to vary it. However, in some cases, the legislation provides that local authorities can set the levels of many fixed penalty notices within prescribed limits.
- 3.6. In March 2019 a report was brought to Cabinet recommending that the levels of Fixed Penalty Notice in Walsall were set as follows

Offence	Recommended penalty	
	Discounted penalty	Full penalty
Littering	£120	£150
Fly Tipping	£350	£400
Household Duty of Care	£350	£400

These levels were agreed and implemented from 15 April 2019.

- 3.7. The new legislation allows for the Fixed Penalty Notice fee to be set as follows.

Offence	Minimum discounted penalty	Minimum penalty	Default penalty	Maximum penalty
Littering	£50	£65	£100	£500
Household Duty of Care	£120	£150	£200	£600
Fly Tipping	£120	£150	£200	£1000

Walsall have already set their penalties at the statutory maximum as it existed at the time of the report and since January 2023, 631 fixed penalty notices have been served as follows.

Type	No of FPNs	Payment discount rate	Payment at max level	Non payment	Success rate for payment
Litter	609	423	71	115	80%

Fly Tipping	22	20	1	1	95%

Seven litter cases have been prosecuted with ten awaiting a court hearing. The outstanding fly tipping case will be reported to legal services for a court hearing. There will always be occasions where due to administrative and procedural issues, evidential matters or public interest matters that cases are closed without further action. The council will always strive to keep these to a minimum so as not to bring the process of enforcement into disrepute.

- 3.8 It is felt appropriate to raise the levels of the relevant fixed penalty notices to the statutory maximum as a deterrent to those who would casually litter or fly tip and also to suitably punish those who deliberately litter or fly tip for financial or some other gain.
- 3.9 The council reserves the right to prosecute where the littering or fly tipping is of such a callous, malicious or substantial level that a fixed penalty notice may not be sufficient punishment in its own right.
- 3.10 The current cost of living crisis has put strain on many people financially and a careful balance ought to be weighed between the desire to appropriately punish people for committing offences and the genuine ability of those people to pay. There is concern that by raising the level to a much higher level that payment rates will fall to a lower level which could create additional burdens on enforcement staff and legal services by increasing the amount of prosecution and therefore court work required. This is in no way saying that those who litter or fly tip are being 'let off' by allowing a discounted payment but is a pragmatic approach balancing punishment against efficient use of resource.
- 3.11 Local authorities in the West Midlands and wider region have largely kept their FPN levels under review but stopped short of recommending an increase at this time. They share similar concerns to Walsall that increasing the penalties may mean the FPNs become unaffordable, and people will risk not paying and going before the Court where they may be means tested before sentencing. All authorities agree litter and fly tipping is a significant burden and needs to be tackled robustly however less FPN payments resulting in greater numbers of court appearances could be administratively burdensome for all authorities.

Council Plan priorities

- 3.12 The councils aim is:

'Inequalities are reduced and all potential is maximised. Together we are committed to developing a healthier, cleaner and safer Borough and creating an environment that provides opportunities for all residents, communities and businesses to fulfil their potential and thrive.'

One of the key areas of focus is to 'Empower our communities so that they feel they are connected and belong in Walsall, creating safe and healthy places whilst building a strong sense of community.'

Outcomes of this area of focus include:-

- The people of Walsall feel safe in a cleaner, greener Borough
- The Borough's streets are clean, green and welcoming, with more waste recycled and less going to landfill
- People feel safe in their local area and antisocial behaviour and crime – particularly environmental crime is reduced

Having a robust enforcement regime helps provide a healthier, safer and cleaner borough and should assist in helping reduce environmental crime.

Risk management

- 3.13 The fixed penalty regime is designed to release the authority and courts from the administrative burden of large numbers of court cases. It also allows individuals the opportunity to admit guilt and pay a financial penalty without fear of having a criminal record. However, individuals are entitled to defend themselves in a court of law if they wish to. Such cases whilst rare in Walsall can lead to additional expense particularly when they are heard in Crown Court and a Barrister needs to be employed. Should the authority's stance on issuing fixed penalty notices be successfully challenged in court it could lead to multiple claims by those who have had fixed penalties served in similar circumstances. These risks can be mitigated by having appropriately trained staff, having regard to government guidance and following the authority's enforcement policy correctly.

Financial implications

- 3.14 The annual direct cost of illegally deposited waste from Walsall streets is estimated at £500,000. There are other indirect costs associated with waste clearance and enforcement too, including the pro rata time of contact centre staff, management within relevant teams, environmental operatives, enforcement staff, solicitors and finance officers.
- 3.15 Income derived from issuing FPNs should be invested back into those services tackling environmental crimes. In the final quarter of 2023/4 and into 2024/5 work with finance will take place to identify income 'targets' and how receipts from fixed penalties can be used positively. The environmental crime scene project is one such example of a project that needs continuing investment if it is to continue.

Legal implications

- 3.16 Walsall Council has statutory responsibilities under the Environmental Protection Act 1990 to ensure that the appropriate collection and disposal of waste generated or deposited in its area is undertaken.
- 3.17 Leaving litter is an offence under section 87 of the Environmental Protection Act 1990; the unauthorised deposit of waste ("fly-tipping") and failure to comply with the household waste duty of care are offences under sections 33 and 34 of the

Environmental Protection Act 1990. The existing levels for fixed penalties for litter, were set by the Environmental Offences (Fixed Penalties) (England) Regulations 2017 to the current minimum, default and maximum fixed penalty rates of £65, £100 and £150 respectively.

- 3.18 Fixed penalties for fly-tipping offences were introduced by the Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016, with fixed penalties for breaching the household waste duty of care introduced by the Environmental Protection (Miscellaneous Amendments) (England and Wales) Regulations 2018. For both offences the upper limit was set at £400, with a default of £200 and minimum of £150.
- 3.19 The Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023 amends the Environmental Offences (Fixed Penalties) (England) Regulations 2017 and the Environmental Protection Act 1990 to increase the upper limit of fixed penalty notices for littering, graffiti and fly-posting offences from £150 to £500; for household waste duty of care offences from £400 to £600; and for Flytipping offences from £400 to £1,000.
- 3.20 Powers to increase the upper limits for littering offences are found in the Environmental Protection Act 1990, section 97A. For fly-tipping and breach of household waste duty of care, these powers were introduced in the Environment Act 2021 by amendments to section 33ZA(10A) and 34ZA(9A) of the Environmental Protection Act 1990.

Procurement Implications/Social Value

- 3.21 There are no procurement or social value considerations as a result of this report.

Property implications

- 3.22 There are no property implications as a result of this report.

Health and wellbeing implications

- 3.23 The material found in fly tipping can pose a risk to health for example, asbestos, gas cylinders, putrescible waste, and clinical waste etc. Accumulations of such waste in residential areas in particular can lead to a deterioration in standards which can in turn have a detrimental effect on mental health.

Reducing Inequalities

- 3.24 Fly tipping can affect deprived areas more than more affluent areas and further exacerbate inequalities in communities. Affluent areas particularly near the countryside do tend to see a lot of fly tipping particularly large tips from commercial vehicles as there is more cover for them to operate in privacy.
- 3.25 Language barriers for residents do cause issues as residents are unable to communicate effectively with staff or understand what they are required to do. A way to offer effective communication for all would need to be looked at via the

website, leaflets or possibly QR codes to help residents access the information that is relevant to them.

Staffing implications

- 3.26 There are no procurement or social value considerations as a result of this report.

Climate Impact

- 3.27 The correct disposal; of waste through legitimate operators will ensure waste has a lesser impact on the environment than waste illegally disposed of.

Consultation

- 3.28 No consultation has been undertaken as a result of this report apart from those aspects mentioned as part of Walsall 20240 which support the community safety priorities of the council.

4. Decide

- 4.1. Cabinet could decide to stay with the current levels of fixed penalty notice as success has been achieved in issuing notices and receiving excellent levels of payment. However, despite these FPNs being issued fly tipping and litter are still significant issues in the borough and so staying at the existing level may be considered an acceptance of the current situation.
- 4.2. The key strategies used to tackle fly tipping in the borough are set out below:
- **Enhanced Enforcement:** The council work closely with local law enforcement agencies, waste management teams, and community protection officers to strengthen enforcement against environmental crimes. This will include increased surveillance, intelligence-gathering, and prosecution of offenders.
 - **Community Engagement:** recognising the importance of community involvement in combating environmental crimes. The project will aim to raise public awareness through various campaigns, workshops, and educational programs. Additionally, the council will encourage residents to report suspicious activities and provide them with avenues to safely dispose of waste.
 - **Prompt Response and Cleanup:** prioritising swift response and cleanup of environmental crime scenes to minimize their negative impact. This will involve coordinated efforts between waste management teams, enforcement agencies, and relevant authorities to ensure that affected areas are promptly restored.
- 4.3 Robust fixed penalty notice levels will help with providing both an effective deterrent against those who carelessly fly tipping or litter. It will also provide a robust punishment for those who deliberately fly tip and litter ensuring money is ploughed back into council services where it is sorely needed.

5. Respond

- 5.1. Any recommendations made by cabinet can be fed back to the fly tipping working group for their consideration and implementation.

6. Review

- 6.1. The results of enforcement activity are regularly fed back to the Portfolio Holder for Resilient Communities and Deputy Leader for consideration and is also reported to the Strategy, Policy, and Performance team for the quarterly Corporate Performance Update. The results of the introduction of these new levels should also be fed back to the Portfolio Holder and performance teams regularly to monitor progress with compliance.

Appendices

None.

Background papers

- HM Government Anti-Social Behaviour Action Plan
- Part 1A - Effective enforcement Code of practice for litter and refuse

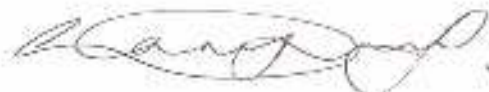
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