

Cabinet – 20 March, 2019

Environmental Enforcement and Amendments to Penalty Notice Levels

Portfolio: Councillor G Perry, Community, Leisure and Culture

Related portfolios: Councillor L Harrison, Clean & Green

Service: Community Protection, Clean & Green

Wards: All

Key decision: No

Forward plan: No

1. Summary

- 1.1 Dealing with littering and fly tipping places a significant burden on local councils and costs the tax payer hundreds of millions of pounds per year at a national level, money which could be invested in other local services.
- 1.2 This report outlines the impact that environmental crime has on communities and outlines the work that has been undertaken to tackle fly tipping and environmental offences. It recommends setting the penalty levels where fixed penalty notices (FPNs) are issued to those who breach the legislation at the statutory maximum with discounts offered to encourage early payment. Setting levels as outlined in this report sends a clear message that this behaviour is not acceptable in Walsall and supports the Corporate Plan Priorities.
- 1.3 It also outlines the need to re-tender the environmental enforcement contract to operate on a partnership basis with the contractor and include the penalties covered in this report.

2. Recommendations

- 1.1 That Cabinet set the levels for penalty notices as detailed below:

Offence	Existing Penalty	Recommended Penalties	
		Full Penalty	Discounted Penalty
Littering	£80	£150	£120
Littering from vehicles		£150	£120
Failure to produce a waste transfer note		£300	£250
Domestic waste receptacle offences		£80	£60
Industrial and commercial waste receptacle offences		£110	£90
Household Waste Duty of Care Offences		£400	£350
Graffiti		£150	£120
Fly Posting		£150	£120
Fly Tipping	£400 £350 for early payment	Remain at current £400	Remain at current £350

- 1.2 That Cabinet sets 15 April 2019 as the commencement date for the implementation of the new levels.
- 1.3 That Cabinet approve the re-tendering of the Environmental Enforcement contract using a partnership model to include reference to offences for littering, fly tipping and dog fouling, littering from vehicles, domestic waste receptacle offences, household waste duty of care offences, graffiti and fly posting.

2. Report detail

- 3.1 Dealing with littering and fly tipping places a significant burden on local councils and costs the tax payer hundreds of millions of pounds per year at a national level, money which could be invested in other local services. Locally, a number of initiatives are currently underway to tackle fly tipping and litter, including “Walsall’s most Wanted” -webpages used to identify people suspected of committing fly tipping offences and trials of the provision of community skips, free bulky waste collections and the extension of the opening hours at the Household Waste Recycling Centres. The latter three initiatives were approved by Cabinet on 5 September 2019. The Household Waste Recycling Centres trial is the last of the three trials. It will commence on 1 April 2019 and, until 30 June 2019, both sites will be open 7 days a week, with each site also being open until 8pm on one day of the week.
- 3.2 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. To further support local authorities in delivering the Litter Strategy the upper limit for fixed penalty notices for littering and certain other environmental offences was increased from 1 April 2018. Further the ability to use penalty notices has been extended to additional offences.
- 3.3 The current penalty levels have not been amended for many years. When setting levels for penalties, a number of factors need to be taken into account, including the deterrent effect, the costs of enforcement and street cleaning, the ability of people in the area to pay etc. Walsall residents are now used to FPNs being issued for littering offences and members may consider that it is appropriate to review the penalty levels to reinforce the crack down on such anti-social crimes and whether a discounted level for early payment is set. Currently the penalty notice level for fly tipping is set at the maximum £400 with an early payment level of £350. Unless people to whom they are issued request a payment plan, they do generally pay during the early payment period.
- 3.4 The current levels of penalty notices are outlined in Table 1 along with the prescribed range of penalty and the proposed level that Walsall should set. Although a higher penalty level can have a more significant impact on people with lower incomes, these are penalties for breaches of legislation which people can avoid paying by not committing the offences in the first place.

Table 1 Penalty Notice Levels

Offence	Existing Penalty	Revised Penalties				Recommended Penalties	
		Default Penalty	Minimum Full Penalty	Maximum Full Penalty	Minimum Discounted Penalty	Full Penalty	Discounted Penalty
Littering S88 Environmental Protection Act 1990 Reg 5 Environmental Offences (Fixed Penalties) (England) Regulations 2017	£80	£100	£65	£150	£50	£150	£120
Littering from vehicles S.88 A Reg 6 – amount is amount under s88)(6A)(a) Civil penalty		£100	£65	£150	£50	£150	£120
Failure to produce a waste transfer note 34A EPA Breach 34(5)		£300	£300	£300	£180	£300	£250
Domestic waste receptacle Civil Penalty s46B EPA 1990		£60	£60	£80	£40	£80	£60
Industrial and commercial waste receptacle offences s47ZB EPA 1990		£100	£75	£110	£60	£110	£90
Household Waste Duty of Care Offences 34(2A) and 34ZA In force 07/01/2019		£200	£150	£400	£120	£400	£350
Graffiti s43(1) ASB A 2003		£100	£50	£150	£50	£150	£120
Fly Posting s43(1) ASB A 2003		£100	£50	£150	£50	£150	£120
Fly Tipping 33ZA EPA 1990	£400 £350 for early payment	£200	£150	£400	£120	Remain at current £400	Remain at current £350

3.5 Government guidance is clear that fixed penalties should only be issued when it is in the public interest to do so, and when it is proportionate to do so. Under no circumstances should councils view the use of fixed penalties as a means to generate income. Any income that is generated should be reinvested in appropriate environmental and enforcement services. Guidance also says that education and information campaigns should also be delivered so people are aware of the penalty levels, and the correct procedures, eg how to dispose of rubbish, the availability of waste amenity sites, householder and commercial duty of care responsibilities etc so they can avoid falling foul of the legislation.

3.6 There are a wide range of offences which some people are talking about when they refer to fly tipping and are more appropriately classed as environmental crime. In 2018/19, Clean and Green have dealt with over 3700 reports of fly tipping costing circa £336k whilst Community Protection responded to 2500 complaints and enquiries relating to environmental crimes alone. This amounts to 33% of the team’s work by volume. These offences include:

- Fly tipping cases where someone takes waste to somewhere and deposits it on land which does not belong to them and for which they do not have permission from the land owner.
- Household waste which should be placed in domestic bins for collection but which is placed on the pavement at the side of the bin
- People inappropriately storing waste on their own property which has an adverse impact on and can cause a health hazard to their neighbours and the community.
- Commercial waste which should be placed in a bin and collected under a commercial waste contract but which is placed on the land or highway instead.
- Overgrown gardens
- Filthy and verminous properties
- Litter.

3.7 There are a range of tools and powers which Walsall Council utilises in the enforcement of such environmental offences.

a) **Litter patrols** carried out by the third party contractor. In 2018/19 these have resulted in the issue of 2583 (at Feb 2019) FPNs for litter, broken down as

Type of litter	No. tickets issued
Cigarettes	2447
Food	14
Spitting	88
Other	34
Total	2583

The FPNs paid in the same period have generated an income of £129k against a payment to the contractor of £107k.

b) **Advice to householders, tenants and businesses** is undertaken on an individual basis where an offence is isolated and committed in innocence or where there are extenuating circumstances, eg health conditions or age.

- c) **Education initiatives and campaigns** are carried out targeted at the public as a whole or in hot spot locations. For example, in areas where there are high levels of non-compliance with the rules on presenting household waste, joint visits are carried out by Clean & Green and Community Protection. Where there are high levels of new migrant communities in an area, translators from organisations such as Nash Dom CIC will accompany officers and leaflets are converted to picture format, rather than relying heavily on text.
- d) **Serving legal notices** requiring land owners to clear waste from their land. If these are not complied with, the authority can carry out the work in default and in certain circumstances, reclaim the cost from the land owner. Prior to service of a formal notice, the land owner is given the opportunity to clear the land themselves initially, however, 140 such notices were served in 2018/19 under legislation such as the Prevention of Damage By Pests Act 1949 and the Environmental Protection Act 1990. A number of long standing challenging locations were successfully cleared with the use of Community Protection Notices issued under the Anti-social Behaviour Crime and Policing Act 2014.
- e) **The use of CCTV cameras** in hot spot locations. Covert cameras have been deployed for a number of years hidden in undergrowth and vegetation. Recently 5 column mounted cameras have been purchased to target fly tipping in more urban areas which are not suitable for the covert cameras. These will catch fly tippers and an additional benefit is that they have a deterrent effect. Whilst the cameras were on trial prior to purchase, one was successful in capturing a fly tipper in action for which successful enforcement action was taken.
- f) **Formal investigations** are conducted where there is prima facie evidence of an offence and a likelihood of identifying the suspect. There are strict legal controls on the conduct of investigations which have to be adhered to. In some cases, the investigations have to be aborted where the evidence is not sufficient to meet the legal threshold, enforcement policy and public interest test. In some of these instances there is sufficient to send a warning letter to the subject as to their future conduct and the details are on file in case the suspect comes to the Authority's attention again. The outcome of an investigation may include a warning letter, a Simple Caution (previously known as a formal caution or Home Office caution) which remains on file and can be cited if there are subsequent convictions, the issue of a fixed penalty notice or a prosecution. During 2018/19 70 cases have been investigated with 39 currently live investigations. One case is with legal services for prosecution in court and successful enforcement action has been taken in 13 further cases during the year. If a prosecution case is successful in court, then offenders can face unlimited fines or even imprisonment. In one such high profile case, the offender was sentenced to six months imprisonment and disqualified from driving for two years. This was one of the first custodial sentences for fly tipping in the region.
- g) In 2018 **Walsall's Most Wanted** was launched. On 5 September 2018, Cabinet approved an increase to the level of reward leading to successful prosecutions for fly-tipping from £100 to £500. Along with the reward of £500 offered for information leading to a successful prosecution, images and video of three suspects captured on the covert cameras were released resulting in two positive identifications. Reports are being prepared with a view to prosecuting the suspects.

- 3.8 There is an existing Environmental Enforcement contract which is managed by Clean and Green. It commenced in April 2017 for one year, with the option to extend for a further year. In April 2018 an extension was agreed and the contract was due to end in March 2019.
- 3.9 A Contract Novation/Variation Approval Report has been signed by the Executive Director, Economy and Environment, to implement the extension to the contract to 30 September 2019. A contract variation letter required to implement the proposed changes will be sent to the contractor. They will be required to consent to these changes.
- 3.10 Under the existing contract FPNs can be issued for littering, minor fly tipping and dog fouling. The scope of the new contract may be increased to include issuing FPNs for:
- Littering from vehicles.
 - Domestic waste receptacle offences.
 - Household waste Duty of Care offences.
 - Graffiti.
 - Fly posting.
- 3.11 The current contract operates on an hourly rate basis under which Clean and Green pay for the number of hours the enforcement officers work. The income from paid FPNs is collected by the contractor and transferred to the Authority.
- 3.12 The new contract will take effect on 1 October 2019 and may operate on a partnership basis. Under this model the income from paid FPNs is collected by the contractor and shared with the authority. There are several variations to partnership models but common models include:
- a) The collected revenue is offset against the costs incurred by the contractor and the remaining income is shared 50/50 between the authority and the contractor. This arrangement is more target driven as it allows contractors to maximise their income and generates revenue for the Council that must be reinvested in appropriate environmental services.
 - b) The income from FPNs is collected by the contractor who retains a fixed fee for every paid FPN. The remaining income from paid FPNs is transferred to the authority.

4. Council Corporate Plan priorities

- 4.1 Environmental crime has a significant impact on communities. Setting levels as outlined in this report sends a clear message that this behaviour is not acceptable in Walsall and supports the Corporate Plan Priorities:
- Communities are prospering and resilient with all housing needs met in safe and healthy places that build a strong sense of belonging and cohesion.

- People have increased independence, improved health and can positively contribute to their communities.

5. Risk management

- 5.1 There is a risk of adverse publicity in increasing the penalty levels, especially where they are issued to the elderly and vulnerable. This can be managed by a clear information and education plan which outlines that the purpose of increasing the penalty levels is the deterrent effect and any income generated is to offset costs and support proactive initiatives. Robust internal appeal procedures will enable notices to be rescinded where they are given to people who are vulnerable or where there are other mitigating circumstances. There is a risk that increased penalty levels will lead to an increase in the number of people who do not pay resulting in more cases going to prosecution. The use of the Single Justice Procedure (SJP), mitigates the impact on Council Services. The increased penalty levels may have the effect on reducing the amount of litter dropped.

6. Financial implications

- 6.1 The environmental enforcement contract is due for retender in 2019 and the revised penalty levels will be reflected in that. The current contract is based on a fixed payment to the contractor with all income from penalty tickets being paid to the Council. For the period of extension, changes in penalty levels will not affect the income received by or paid to the contractor.
- 6.2 Under no circumstances should councils view the use of fixed penalties as a means to generate income. Legally, any income that is generated must be only used for specified environmental services, education and enforcement.
- 6.3 Increasing the penalty levels and changing the contract model used may lead to an increase in income, but this has to be directed to appropriate activity as outlined above. However, one of the aims of increasing penalty levels is to increase the deterrent factor and prevent these offences from being committed in the first place. If this objective is achieved, then income levels may not increase significantly and may even fall.

7. Legal implications

- 7.1 It is essential to ensure that any enforcement activity and decisions on action taken are made in accordance with the Black Country Regulatory Services Enforcement Policy and the Code of Practice for Crown Prosecutors. All legislation and requirements governing the investigative process must be followed. The Authority should also adhere to Best Practice guidance on undertaking information and education programmes. The issue of FPNs is only one outcome from investigations and where appropriate in line with the Enforcement Policy, other options, including cautions, and prosecutions should be considered.
- 7.2 The Single Justice Procedure enables certain offences to be heard by the magistrates' court by reference to the paperwork submitted by the prosecution and any written mitigation submitted by the defendant. The procedure was designed to process high volume low level offences more efficiently. However, some of the offences for which penalty notices may be issued do not qualify for this procedure. These are offences which carry a custodial sentence or which are triable either

way (can be tried in Crown Court). Such offences include fly tipping and the s24 duty of care offences for commercial and domestic premises.

8. Procurement implications/Social Value

- 8.1 The current contract expires on 31 March 2019 and the option to extend for six months has been exercised. The existing specification requires revision to increase the range of offences FPNs can be issued for and to incorporate changes in legislation.
- 8.2 Advice has been sought from Procurement about the possibility of further extending the contract with the existing supplier for an interim period of six months whilst a new specification is prepared and the contract procured.
- 8.3 Procurement have provided a draft Procurement Advice Note advising that “Under the dispensation allowed by Regulation 72 (1) (e) of The Public Contracts Regulations 2015, Clean and Green apply for internal approval for a contract modification by way of a transitional / interim 6 month contract, should they require the additional time to prepare for a significantly different service”.
- 8.4 The incumbent contractor, Kingdom, has already indicated a willingness to further extend the contract. It is proposed to extend the contract with Kingdom under Regulation 72 of the Public Contract Regulations for six months, until 30 September 2019, while the specification is revised and the contract procured.

9. Property implications

- 9.1 None

10. Health and wellbeing implications

- 10.1 Environmental crime reduces the civic amenity and hence can restrict the health benefits of such amenities. Communities blighted by environmental crime can have reduced pride in their area and there is often a long term impact on the economy.

11. Staffing implications

- 11.1 If the number of FPNs issued increases, there will inevitably be an increase in the number which are not paid. This will create resource implications for legal services as they have to process the SJP files or prosecution files. Penalty Charge Notices for litter from vehicles which are not paid do not go to legal services.

12. Reducing inequalities

- 12.1 An Equality Impact Assessment (EqIA) will be required once the content and format of the contract has been agreed.

13. Consultation

- 13.1 Relevant internal services have been consulted on this report. There are no external consultation implications.

Background papers

Cabinet – 5 September 2018 - Addressing fly-tipping in Walsall

Authors

Lorraine Boothman
Regulatory Services Manager

☎ 653065

✉ lorraine.boothman@walsall.gov.uk

Barbara Watt
Director of Public Health

☎ 653752

✉ barbara.watt@walsall.gov.uk

Mark Holden
Head of Clean and Green

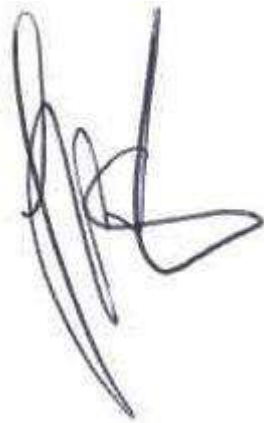
☎ 654201

✉ mark.holden@walsall.gov.uk

Joanne Cockbill
Environmental Resources Manager

☎ 654233

✉ joanne.cockbill@walsall.gov.uk



Simon Neilson
Executive Director

13 March 2019



Councillor Perry
Portfolio holder Communities Leisure and
Culture

13 March 2019



Councillor Harrison

Portfolio Holder Clean and Green

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