



<b>REPORT TO:</b>	Environment and Performance Committee
<b>DATE:</b>	31 <sup>st</sup> October 2023
<b>SUBJECT:</b>	Review of Fixed Penalty Notices for Environmental Crime Offences
<b>PURPOSE:</b>	To advise Committee on the new Regulations allowing Councils to increase Fixed Penalty Notice (FPN) fines for littering, fly-tipping, graffiti, flyposting and household waste duty of care offences and to allow Committee to make recommendations to Cabinet.
<b>KEY DECISION:</b>	Yes
<b>PORTFOLIO HOLDER:</b>	Cllr Callum Butler – Portfolio Holder for Environmental Services
<b>REPORT OF:</b>	Christian Allen – Assistant Director Regulatory
<b>REPORT AUTHOR:</b>	Donna Hall – Group Manager Public Protection
<b>WARD(S) AFFECTED:</b>	All
<b>EXEMPT REPORT?</b>	No

#### **SUMMARY**

**The report provides information about the new Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023 and sets out an option for increasing Fixed Penalty Notice fines for enviro-crime offences as permitted by these Regulations.**

#### **RECOMMENDATIONS**

1. That the Environment and Performance Committee consider the option for increasing fixed penalty rates for the enviro-crime offences as set out in the report and make a recommendation to Cabinet.

## **REASONS FOR RECOMMENDATIONS**

The new Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023 which came into force on 31<sup>st</sup> July 2023, have increased the upper fixed penalty limit for the specified offences. The Regulations were introduced as part of the Governments Anti-Social Behaviour Action Plan launched earlier this year, supporting Councils in tackling environmental crime offences.

## **OTHER OPTIONS CONSIDERED**

Identify alternative levels of fines that fall within the statutory limitations or do nothing.

## **1. BACKGROUND**

**1.1** Boston Borough Council has been pro-active in tackling environmental crime and recognises the negative impact these crimes have on communities, amenities, businesses, and the natural environment. Work undertaken recently includes enforcement and education campaigns, intelligence led patrols and use of surveillance cameras. Information about the enviro-crime offences under consideration in this report is provided below.

### **1.2 Littering**

1.2.1 Littering is the most common enviro-crime offence in Boston, with cigarette litter being one of the most common materials discarded irresponsibly.

1.2.2 FPNs for litter are issued under section 87 and 88 of the Environmental Protection Act 1990. Littering is often classed as general litter, cigarettes, spitting, chewing gum, urinating and defecating.

### **1.3 Fly-Tipping**

1.3.1 Fly-tipping significantly impacts on local communities, blighting our neighbourhoods and rural communities and places a significant financial burden upon the council (or the landowner where rubbish is fly tipped on private land). In addition, the actions of unscrupulous waste operators undercut legitimate businesses which are operating within the law.

1.3.2 FPN's for Fly Tipping are issued under s33ZA of the Environmental Protection Act 1990. Section 33 (1)(a) of the Environmental Protection Act 1990 created the offence of depositing, knowingly causing or knowingly permitting the deposit of controlled waste or extractive waste on land without, or other than in accordance with, an environmental permit.

## **1.4 Household Waste Duty of Care**

- 1.4.1 Under Section 34 of the Environmental Protection Act 1990, all occupiers of domestic properties are required to take reasonable measures to ensure that waste produced on their property is only transferred to an authorised person for proper disposal.
- 1.4.2 An FPN can be issued under section 34(6) when an individual appears to have failed to comply with their duty of care under section 34(2A) of the Environmental Protection Act 1990. For example:
- a. Where fly tipped waste can be traced back to an individual who is found to have failed to take reasonable steps to ensure that they transferred the waste to an authorised person
  - b. Where an unauthorised carrier is found to be carrying household waste that was directly transferred to them by the occupier of a domestic property
  - c. Where an individual is found to have transferred their household waste to an unauthorised person at a site that does not have a permit or exemption
- 1.4.3 The duty of care requires occupiers of a domestic property to take all reasonable measures available to them in the circumstances to ensure that they only transfer household waste produced on that property to an authorised person. This reduces the chance of waste ending up in the hands of those who would fly tip.
- 1.4.4 An authorised person may still fly tip waste so tracing fly tipped waste to a household does not necessarily demonstrate a breach of the duty of care. An individual should be given an opportunity to demonstrate that they took reasonable steps to determine the person that took their waste was authorised to do so. If fly tipped waste is traced to an individual and they are unable to identify who took their waste, or the carrier they identify is unauthorised, then it is reasonable to believe their duty of care was not met.

## **1.5 Graffiti**

- 1.5.1 Graffiti is classed as criminal damage and the police, and authorised officers can issue FPNs to offenders.
- 1.5.2 Graffiti is not just a criminal offence, it can also have a negative impact on the lives of those whose neighbourhoods, parks, and property are affected by it and every year Councils have to spend taxpayers' money removing it.
- 1.5.3 The Council can currently issue FPNs for graffiti under section 43 of the Anti-Social Behaviour act 2003 for offences committed under section 44.

## **1.6 Flyposting**

- 1.6.1 Flyposting is illegal and involves placing unauthorised advertising on public or private property e.g. posters and stickers.
- 1.6.2 The Council can issue FPNs for fly-posting offences under section 43 of the Anti-Social Behaviour act 2003 for offences committed under section 44.

## 2. REPORT

- 2.1 Littering, graffiti, flyposting and fly-tipping blight communities, impose avoidable costs on the public purse and can harm the environment, with fly-tipping being aggravated by householders giving waste to unauthorised carriers. Fixed penalty notices provide the Council as an enforcing authority with an effective and visible way of responding to these environmental crimes.
- 2.2 Fixed Penalty Notices provide an alternative to prosecution. It allows an individual to discharge liability for an offence by payment of a financial penalty. The council is not obliged to offer an alleged offender the option to discharge liability through an FPN; however, it can be deemed more proportionate than prosecution through the courts in some cases.
- 2.3 In the 2023 Anti-social Behaviour Action Plan, the Government explained that it wanted to see councils take a much tougher approach to these forms of anti-social behaviour and set out new upper limits for fixed penalties notices. The Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023 increased the upper limit for the fixed penalties that can be issued for these offences.
- 2.4 **Table 1** below illustrates the previous maximum FPN levels and the new maximum FPN levels as set out in law.

**Table 1 Previous and New Maximum FPN Levels**

Offence	Previous Statutory Maximum FPN Level	New Statutory Maximum FPN Level	Statutory Minimum Penalty
Graffiti	£150	£500	£65
Flyposting	£150	£500	£65
Littering	£150	£500	£65
Fly tipping	£400	£1000	£150
Household waste duty of care	£400	£600	£150

- 2.5 This report invites members to consider the new maximum FPN levels and whether to apply them to the penalties issued in the Boston Borough Council area. The 2023 South and East Lincolnshire Councils Partnership Litter and Fly-Tipping Enforcement and Engagement

Strategy recognises that tackling enviro-crime is a local priority and the accompanying Action Plan committed to review fines and enforcement tools.

- 2.6** In determining the appropriate level of an FPN, the council needs to consider the deterrent effect of different levels, peoples' readiness to pay and the levels of fines currently imposed in the magistrates' courts. FPNs that are set too high for local conditions or are likely to be higher than a Court imposed fine in the event of non-payment, could lead to higher non-payment rates and may be counterproductive.
- 2.7** FPNs are not appropriate for repeat offenders or those responsible for large-scale environmental offences. In these situations, the Council may prosecute as an alternative to issuing an FPN, in line with its Corporate Enforcement Policy.
- 2.8** Offenders do not have to accept an FPN offered to them (which discharges their liability to conviction for the offence), and the Council cannot make anyone pay an FPN. There is no right of appeal to any FPNs, but offenders retain the right to not pay any FPN issued to them and can at any time (before making payment) opt to have their case heard through the court system. Offenders are also given the opportunity to make representations about the issuing of the FPN which are considered on a case by case basis by the Council's agents initially albeit the Council retains responsibility for the final decision.
- 2.9** DEFRA Part 1A - Effective Enforcement Code of Practice for Litter and Refuse September 2019 (updated February 2022) recognises that 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.
- 2.10** In increasing the level for FPNs it may create the perception that this could be used to generate income for the council. The guidance is clear that FPNs should not be used in this way, and in accordance with legislation income received by the Council must be spent on specified functions.
- 2.11** Table 2 below sets out the current fines and a proposal for increasing the fines under the new legislation, following consultation with the Portfolio Holder. Members may choose to set their own level of FPNs as long as they are within the statutory limitations. It is recommended that consideration is given to providing early payment discounts. Members may choose a different early payment discount than what is suggested, or may choose not to offer one. There are no recommended levels of early payment discounts or fines published in the legislation or guidance.
- 2.12** For illustrative purposes, East Lindsey do not offer early payment discounts currently. South Holland offer an early payment discount for littering offences. Research shows local authorities vary in their approach to early payment discounts, with some such as Cambridge City offering a £90 discount from a £150 FPN for littering, Leicester offering a £100 discount from a £150 fine, and Peterborough City Council choosing not to offer a discount. From October 2023 West Lindsey chose to increase the fines to the statutory maximums for litter, fly-tipping, graffiti and household waste duty of care offences, with no early payment reduction.

**2.13** When an FPN has been issued, the Council cannot prosecute for the alleged offence if the FPN is paid within 14 days of it being issued. For this reason, the period during which a discount for early payment is offered is currently set at less than 14 days, and it is recommended it is set at 10 days as it stands currently for some offences.

**2.14** The Council may also choose not to increase the current FPN levels.

**Table 2 Proposal for Amending FPN Levels**

<b>OFFENCE</b>	<b>CURRENT FPN BOSTON BOROUGH COUNCIL</b>	<b>OPTION FOR CONSIDERATION</b>	<b>NEW MAXIMUM FINE AVAILABLE</b>
<b>Graffiti</b>	£150 or £100 if paid within 10 days	£300 or £200 if paid within 10 days	£500
<b>Flyposting</b>	£150 or £100 if paid within 10 days	£300 or £200 if paid within 10 days	£500
<b>Littering</b>	£150 or £100 if paid within 10 days	£250 or £150 if paid within 10 days	£500
<b>Fly tipping</b>	£400 No early payment reduction	£800 or £550 if paid within 10 days	£1000
<b>Household waste duty of care</b>	£400 No early payment reduction	£600 or £400 if paid within 10 days	£600

**2.15** Consultation has taken place with the Enviro-Crime contractors for enforcement and surveillance cameras. Feedback has been provided to support the use of early payment discounts, with evidence suggesting that higher discounts tend to result in increased payment rates. This is important, as non-payment of FPNs usually leads to prosecution in the courts which can be costly and time-consuming. Feedback, however, also suggests that a large proportion of people pay within the discounted period, and many that don't, request an extension of the payment period. This suggests that affordability is a key factor in making payments, and consideration should be given to not penalising those who are financially less stable.

**2.16** Where cases have been taken to court in Boston and found guilty, it is notable that the fines issued by the court in recent years have been variable. In some cases, the fine issued by the court was less than the value of the FPN (£400), however costs and a surcharge are usually also awarded on top of the fine. It should be noted that a conviction in court for these offences results in a criminal record. The courts are required to take into account the financial circumstances of the offender as well as the seriousness of the offence, when

setting the fine. The Local Government Association (LGA) published an article in August 2022 highlighting their concern about the leniency of fines for fly-tipping issued by courts. They noted that “Fly-tippers prosecuted in court for the worst waste dumping offences were handed an average fine of just £335 in 2020/21”.

### **3. CONCLUSION**

**3.1** Table 2 above provides an option for reviewing the levels of FPNs. Alternatively, members may elect to do nothing, or select different levels within the statutory thresholds. It is recommended that consideration is given to increasing the fines as recommended by the government with the introduction of the new legislation.

**3.2** Committee are asked to provide feedback on this report for consideration by Cabinet.

### **EXPECTED BENEFITS TO THE PARTNERSHIP**

Each sovereign Council has the ability to set fines and take legal action independently, allowing the Council to take a tougher stance on those issues impacting their own communities. Enviro-crime activities are co-ordinated closely across the partnership, enabling consistency and joined up working wherever possible.

### **IMPLICATIONS**

#### **SOUTH AND EAST LINCOLNSHIRE COUNCILS PARTNERSHIP**

None

#### **CORPORATE PRIORITIES**

Supports the following aims within the 2020-2024 Corporate Strategy:

- A place where people want to live, work and visit.
- Proactively educate and enforce against environmental crime.

#### **STAFFING**

None

#### **WORKFORCE CAPACITY IMPLICATIONS**

None

#### **CONSTITUTIONAL AND LEGAL IMPLICATIONS**

The recommendations and decision making are in line with the Council’s Constitution.

#### **DATA PROTECTION**

None

#### **FINANCIAL**

It is anticipated that an increase in the level of fines may lead to a small increase in income for the Council, however these monies are put back into tackling enviro-crime.

## **RISK MANAGEMENT**

None

## **STAKEHOLDER / CONSULTATION / TIMESCALES**

The Assistant Director and Service Manager for Environmental Services have been consulted as has the Portfolio Holder for Environmental Services. Contractors working with the Council for enviro-crime enforcement have also been consulted.

Public consultation has not been undertaken as the proposed fines are within the levels set out in legislation.

## **REPUTATION**

The Government has recently introduced this legislation and actively encouraged local authorities to review their FPN levels in order to take robust action against enviro-crime. Boston Borough Council has been pro-active in this area of work, and reputationally it is important that the Council reviews their fines to ensure they are continuing to be effective.

## **CONTRACTS**

There are no contractual implications arising from this report. Contractual partners engaged in enviro-crime enforcement with the Council have been consulted.

## **CRIME AND DISORDER**

The issuing of Fixed Penalty Notices is an established and effective tool to tackle environmental crime. The Council will continue to investigate and take enforcement action as appropriate.

## **EQUALITY AND DIVERSITY/ HUMAN RIGHTS/ SAFEGUARDING**

The Environmental Crime Enforcement contract details compliance with Council policy in relation to Equality, Diversity, Human Rights and Safeguarding. There are no new implications arising from this report.

## **HEALTH AND WELL BEING**

Tackling environmental crime helps to maintain a clean and safe environment which is proven to be important for people's health and well-being.

## **CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS**

The recommendations in this report strengthen the Council's position in tackling enviro-crime and promoting a clean and safe environment.

## **LINKS TO 12 MISSIONS IN THE LEVELLING UP WHITE PAPER**

<b>MISSIONS</b>	
<b>This paper contributes to the Missions outlined in the Government's Levelling Up White paper. See highlighted statements</b>	
<b>Health</b>	By 2030, the gap in Healthy Life Expectancy (HLE) between local areas where it is highest and lowest will have narrowed, and by 2035 HLE will rise by 5 years.



<b>Wellbeing</b>	By 2030, well-being will have improved in every area of the UK, with the gap between top performing and other areas closing.
<b>Pride in Place</b>	By 2030, pride in place, such as people’s satisfaction with their town centre and engagement in local culture and community, will have risen in every area of the UK, with the gap between the top performing and other areas closing.
<b>Crime</b>	By 2030, homicide, serious violence, and neighbourhood crime will have fallen, focused on the worst-affected areas.

## ACRONYMS

FPN – Fixed Penalty Notice

DEFRA – Department for the Environment Food and Rural Affairs

LGA – Local Government Association

<b>APPENDICES</b>
None

<b>BACKGROUND PAPERS</b>	
Background papers used in the production of this report are listed below: -	
<b>Document title</b>	<b>Where the document can be viewed</b>
The Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023	<a href="https://www.legislation.gov.uk/uksi/2023/770/contents/made">https://www.legislation.gov.uk/uksi/2023/770/contents/made</a>
Home Office Anti-Social Behaviour Action Plan	<a href="https://www.gov.uk/government/publications/anti-social-behaviour-action-plan">https://www.gov.uk/government/publications/anti-social-behaviour-action-plan</a>
DEFRA Part 1A - Effective Enforcement Code of Practice for Litter and Refuse	<a href="https://assets.publishing.service.gov.uk/media/6204fd7ae90e077f7392d450/Part_1A_-_Effective_enforcement.pdf">https://assets.publishing.service.gov.uk/media/6204fd7ae90e077f7392d450/Part_1A_-_Effective_enforcement.pdf</a>

September 2019 (updated February 2022)	
LGA Report on Fly-tipping Fines 2022	<a href="#">Lenient guidelines leading to low fly tipping fines, councils warn   Local Government Association</a>

#### **CHRONOLOGICAL HISTORY OF THIS REPORT**

A report on this item has not been previously considered by a Council body.

#### **REPORT APPROVAL**

Report author:	Donna Hall, Group Manager Public Protection
Signed off by:	Christian Allen, Assistant Director Regulatory
Approved for publication:	Cllr Callum Butler, Portfolio Holder Environmental Services