

Meeting date: 27th September 2018
Report to: Cabinet Member for Stronger Communities and Partnerships



Subject/report title: Fixed Penalty Notices for certain Environmental Offences
Report from: Alison McGrory: Assistant Director – Stronger Communities
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Wards affected:

All Wards | Bickenhill | Blythe | Castle Bromwich | Chelmsley Wood |
 Dorridge/Hockley Heath | Elmdon | Kingshurst/Fordbridge | Knowle |
 Lyndon | Meriden | Olton | Shirley East | Shirley South |
 Shirley West | Silhill | Smith's Wood | St Alphege

Public/private report: Public

Exempt by virtue of paragraph: N/A

1. Purpose of Report

1.1 To seek the approval of the Cabinet Member to initiate a number of changes in respect of fixed penalty notices as a consequence of legislative change.

2. Decision(s) recommended

2.1 To approve the increase in the level of the fixed penalties for environmental offences to £100 (reduced to £75 if paid within 7 days).

2.2 To adopt the ability to issue civil penalties in relation to littering from vehicles.

2.3 To approve the level at which the fixed penalty is set for breaching a Public Space Protection Order at £100 (reduced to £75 if paid within 7 days).

3. What is the issue?

3.1 A fixed penalty notice (FPN) is a sanction in criminal law and failure to pay could result in a prosecution through the criminal courts. A civil penalty is a sanction under civil law and failure to pay could result in pursuit through the County Court. The range of what a local authority can charge for a FPN is set by statute and in 2007 this range was between £50 to £80.

- 3.2 In April 2018 the legislation was amended to increase the amount that could be changed from a range of £50 up to £150. If we did not set a FPN level the Government has a default level of £100. Our current fixed penalties are set at the pre-April 2018 Government default level of £75.
- 3.3 We are proposing to increase the fixed penalty notice fees for Environmental Offences relating to litter, graffiti, fly-posting and the unauthorised distribution of free printed matter from £75 to £100 in line with the Government's default level from 1st October 2018. If a fixed penalty notice is paid within 7 days we are proposing that it is reduced to £75.00
- 3.4 Historically it has proved extremely difficult to levy a penalty to a person who throws litter from a vehicle. The legislation now allows councils to issue a civil penalty to the registered keeper of the vehicle and this means that we do not have to prove who the person was who threw the litter. We are proposing to implement this change from the 1st October 2018 and set the levy at the same rate as a FPN at £100.
- 3.5 In addition to the increase of FPN we are also proposing to align the fee for breaching a Public Space Protection Order (PSPO). Breaching a PSPO is a criminal offence and one potential sanction is the issuing of an FPN. The Government has allowed local authorities to set the level of this FPN to a maximum of £100. We currently only have one PSPO in force for not clearing up after your dog.

4. What options have been considered and what is the evidence telling us about them?

- 4.1 The option not to initiate these changes contravenes Government policy.

5. Reasons for recommending preferred option

- 5.1 The Government is committed to increasing the level of littering fixed penalties in order to increase the level of deterrent to prevent people thinking about committing a littering offence.
- 5.2 To increase the level of the fixed penalty to £100 is in line with the default amount set by the Government.
- 5.3 The existing level of £75 set in 2007, taking into account inflation, would equate to slightly more than £100 in 2018.
- 5.4 With limited recent experience of using FPNs, but with more extensive use planned, to increase the level of the littering FPN to the maximum (£150) provides limited future options.
- 5.5 It has been a frustration that where litter has been thrown out of the window of a car the chances of ever identifying the person who threw it is very low. The adoption of the power to issue civil penalties increases the responsibility of the keeper of the vehicle to ensure that all those using the vehicle comply with littering legislation. The use of civil penalties rather than a fixed penalty means that failure to pay does not result in a criminal record for the keeper.
- 5.6 Setting the level of the fixed penalty for breaching a PSPO at £100 aligns it to the

recommended increase in the penalty for other environmental offences. In addition, given that the level of the FPN for dog fouling set in 2007 was £75, the inflationary increase stated in 5.3, provides for a figure of slightly more than £100.

6. Implications and Considerations

6.1 Delivery of key themes in the Council Plan:

How will the options/proposals in this report contribute to the delivery of the key themes in the Council Plan?

- Improve Health and Wellbeing – Poor local environmental quality is a psychosocial stressor and can cause fear, anxiety, depression and isolation all of which can manifest in physiological ill health. This report contributes to the protection of the local environmental quality.
- Deliver Value – This report assists the Council in supporting the polluter pays the principle of environmental law.

6.2 Implications for children and young people, vulnerable groups and particular communities:

6.2.1 There are no negative implications for children and young people, vulnerable group or communities. Environmental enforcement will serve to improve the environmental for all.

6.3 Consultation and Scrutiny:

6.3.1 This report has not gone to Scrutiny, however, it is linked to the previous cabinet report relating to the “Employment of an external contractor to carry out an Environmental Enforcement trial.”

6.4 Financial implications:

6.4.1 If someone fails to pay a civil penalty it becomes a civil debt which we will seek to recover through our sundry income team.

6.4.2 As a result, although it is not anticipated that many such civil penalties will be issued, there is likely to be an increased demand on the work of the sundry income team.

6.5 Legal implications:

6.5.1 Fixed penalty notices should only be issued in circumstances where there is sufficient evidence for the recipient to be prosecuted through the criminal court if they fail to pay.

6.5.2 As a result we should be in a position both evidentially and in terms of policy to prosecute those who fail to pay an FPN through the criminal courts.

6.6 Risk implications:

6.6.1 Reputational risk-fixed penalties issued inappropriately will affect the reputation of the Council.

6.7 Statutory Equality:

6.7.1 There are no direct statutory equality implications as a result of this report.

7. List of appendices referred to

7.1 None

8. Background papers used to compile this report

8.1 None

9. List of other relevant documents

9.1 None