

MAIDSTONE BOROUGH COUNCIL

RECORD OF DECISION OF THE CABINET

Decision Made: 20 September 2023

Waste Crime Fixed Penalty Notices

Issue for Decision

To approve an increase of Fixed Penalty Notice (FPN) charges in Maidstone for fly tipping, littering, graffiti and duty of care offences following the Government's increase in the maximum value.

Decision Made

1. Option 4 of the report, namely the two-tiered Fixed Penalty Notice charges with early payment discounts for level 1 littering and fly tipping, be agreed;
2. The Waste Crime Fixed Penalty Notice Policy included in Appendix A of the report be agreed.

Reasons for Decision

The Waste Crime Team are responsible for the investigation and enforcement of all waste related crimes including fly tipping and littering.

Enforcement of waste crimes can take various forms from a warning letter to criminal prosecution. The investigating team determine the action to be taken based on the evidence obtained, the impact of the crime, repeated or multiple offences and any mitigating circumstances.

Criminal prosecutions require significant investigative work and compilation of the legal file. Since the pandemic it also takes a long time for such cases to get to Court. Any fines determined by the Court go to the Treasury and are therefore not available to support any clear up costs.

Fixed Penalty Notices (FPNs) offer offenders the opportunity to avoid prosecution and pay a fine directly to the Council. The Council retains this charge, which is ring-fenced to support the cleansing and enforcement services. Therefore, in the first instance the Council will often issue FPNs for the offences and only pursue prosecution if the FPN is not paid or for repeated or large-scale offences.

The current FPN charges are shown in the table below. The majority of these are at the statutory maximum, except for littering which was based on local affordability, and graffiti.

| FPN | Value |
|---------------------------------|-------------------------------|
| Littering | £120 (£90 if paid in 14 days) |
| Fly tipping | £400 |
| Duty of Care (Commercial Waste) | £300 |
| Waste Transfer | £300 |
| Duty of Care (Household Waste) | £300 |

| | |
|-----------------------------|------|
| Abandoned Vehicle | £100 |
| Community Protection Notice | £100 |
| Section 46 | £100 |
| Fly posting | £80 |
| Graffiti | £75 |

In 2021-22, the team issued 154 FPNs for waste crime offences including littering, fly tipping and duty of care offences.

In July, the Government laid down the Statutory Instrument to increase several of the FPNs, enabling the Council to consider the charges it currently levies. The table below shows Maidstone's current value and the new maximum value set by Government.

| | Current Value | Maximum |
|-----------------------------------|----------------------|----------------|
| Littering | £120 (£90) | £500 |
| Graffiti | £75 | £500 |
| Duty of Care (Household Waste) | £300 | £600 |
| Fly tipping | £400 | £1,000 |

The FPN levels are usually set through the annual Fees and Charges report, however given the changes made by Government, the Council has made a decision on revising the charges sooner than this process.

The Housing, Health and Environment Policy Advisory Committee considered the matter on 18 September 2023 and the Committee recommended that the Cabinet approve the recommendations.

Alternatives considered and why rejected

Option 1: The Council could decide to retain the current charges and not increase them following the change by Government to the maximum values

Option 2: The Council could decide to increase the FPNs to the maximum amount allowed as per the table in 2.7. This option will create the maximum deterrent for these offences, however there is a significant risk of non-payment due to the high costs which will result in an increase in prosecutions. Setting the highest charge also does not demonstrate that the local circumstances have been considered. Court-levied fines are determined on affordability of the offender so there is a risk that these could be lower than the FPN value. If prosecutions are not sought, this will undermine the FPN process and further increase non-payment.

Option 3: The Council could decide to increase the FPN's to a middle value with the option to further increase once the impact of the rise is determined. This would still act as a deterrent whilst remaining more affordable to maximise payment rates.

Background Papers

None.

I have read and approved the above decision for the reasons
(including possible alternative options rejected) as set out above.



Signed: _____

Councillor David Burton, Leader of the Council

Full details of both the report for the decision taken above and any consideration by the relevant Policy Advisory Committee can be found at the following area of the [website](#)

Call-In: Should you be concerned about this decision and wish to call it in, please submit a call-in form signed by any three Members to the Proper Officer by: **5pm Friday 29 September 2023**