

Waste Crime Fixed Penalty Notices

Timetable	
Meeting	Date
Housing, Health and Environment PAC	Thursday 7 September 2023
Cabinet	Wednesday 20 September 2023

Will this be a Key Decision?	No
Urgency	Not Applicable
Final Decision-Maker	Cabinet
Lead Head of Service	William Cornall, Director of Regeneration and Place
Lead Officer and Report Author	Jennifer Stevens, Head of Environment and Public Realm
Classification	Public
Wards affected	All

Executive Summary

In July 2023, the UK Government laid down the Statutory Instrument to increase Fixed Penalty Notice (FPN) charges for fly tipping, littering, graffiti and duty of care offences. Supporting guidance confirms that fees should be set at an appropriate level to reflect local circumstances, including local ability to pay. This report sets out the proposed charges for Maidstone for the Policy Advisory Committee to consider before the decision is taken by Cabinet.

Purpose of Report

Discussion

This report asks the Committee to consider the following recommendation to the Cabinet;

1. To agree the two-tiered Fixed Penalty Notice charges as set out in 3.4 with early payment discounts for level 1 littering and fly tipping;
2. To agree the Waste Crime Fixed Penalty Notice Policy included in Appendix A;

Waste Crime Fixed Penalty Notices

1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	<p>The four Strategic Plan objectives are:</p> <ul style="list-style-type: none"> • Embracing Growth and Enabling Infrastructure • Safe, Clean and Green • Homes and Communities • A Thriving Place <p>The Council's 'zero-tolerance' approach to waste crime supports the objective for a <i>Safe, Clean and Green</i> borough. Increasing the value of the fixed penalty notices is intended to deter waste crime offenders from operating in the Borough and to deal with their waste responsibly.</p>	Head of Environment and Public Realm
Cross Cutting Objectives	<p>The four cross-cutting objectives are:</p> <ul style="list-style-type: none"> • Heritage is Respected • Health Inequalities are Addressed and Reduced • Deprivation and Social Mobility is Improved • Biodiversity and Environmental Sustainability is respected <p>The recommendation supports the objective of <i>Environmental Sustainability</i> through ensuring waste is dealt with responsibly. Whilst there is a risk of increase deprivation by increasing the fines for waste crime, this is to act as a deterrent. The council offers cost-effective services for residents and businesses to dispose of their waste responsibly.</p>	Head of Environment and Public Realm
Risk Management	The risks associated with the recommendations of this report are set out in Section 5.	Head of Environment and Public Realm
Financial	The increased fixed penalty notice charges are intended to deter waste crime offences and	Section 151 Officer &

	are not intended to increase income. However, any increase in income from FPNs is ring-fenced for delivering the service and will be reinvested in equipment and resources to deter fly tipping, dog fouling and littering as well as rectifying the impact to the environment of such actions.	Finance Team
Staffing	We will deliver the recommendations with our current staffing.	Head of Environment and Public Realm
Legal	Fixed Penalty Notices are available for a range of offences in particular, for the purposes of this report, the Environmental Protection Act 1990 and the Anti Social Behaviour Act 2003. There is no statutory requirement to have a Fixed Penalty Notice Policy however doing so supports consistency and transparency in decision making. The authority can set its own fixed penalty amounts within a specified range set out in the relevant legislation, which has recently been amended by the Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023.	Mid Kent Legal Services
Information Governance	The recommendations do not impact personal information (as defined in UK GDPR and Data Protection Act 2018) the Council Processes.	Information Governance Team
Equalities	If new charges are implemented as part of the recommendation an EqIA may need to be completed, as MBC has now adopted 'Poverty' a protected characteristic.	Equalities & Communities Officer
Public Health	We recognise that the recommendations will not negatively impact on population health or that of individuals.	Head of Environment and Public Realm
Crime and Disorder	The recommendation is intended to reduce waste crimes through deterrent, financially impacting the offender and disrupting commercial fly tippers through vehicle seizures.	Head of Environment and Public Realm
Procurement	Not required	Head of Environment and Public Realm

Biodiversity and Climate Change	The implications of this report on biodiversity and climate change have been considered and are; <ul style="list-style-type: none"> • There are no implications on biodiversity and climate change. 	Biodiversity and Climate Change Officer
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2. INTRODUCTION AND BACKGROUND

- 2.1 The Waste Crime Team are responsible for the investigation and enforcement of all waste related crimes including fly tipping and littering.
- 2.2 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.
- 2.3 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.
- 2.4 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.
- 2.5 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 (Household Waste)	£100
Fly posting	£80
Graffiti	£75

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

2.7 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

2.8 The FPN levels are usually set through the annual Fees and Charges report, however given the changes made by Government, it is recommended that the Council consider revising the charges sooner than this process.

3. AVAILABLE OPTIONS

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

3.2 *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.

3.3 *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.

3.4 *Option 4:* The Council could decide to create two levels of FPN charges based on the impact and severity of the offence. This would require two fly tipping FPNs to be created – one for low level fly tipping such as a single item and one for larger fly tips involving mixed or hazardous waste, or that obstruct access. The same would be proposed for littering. The recommended charges are shown in the table below:

FPN	Level 1	Level 2
Littering	Single item e.g. cigarette end	Repeated offence Multiple items Rural / high-speed roads (difficult to cleanse)

	£250 <i>£200 if paid in 14 days</i>	£500
Fly tipping	Single item / black sack (excluding hazardous) £600 <i>£520 is paid in 14 days</i>	Multiple items Multiple locations Hazardous waste £1,000
Graffiti	£250	N/A
Duty of Care (Household Waste)	£500	N/A

3.5 It is also recommended that the current option of early payment discount continues to be offered for the Level 1 offences only. This would reduce the littering FPN to £200 and fly tipping FPN to £520 if paid within 14 days.

4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 4.1 It is recommended that Option 4 is agreed, including the application of early payment discounts if the FPN is paid within 14 days.
- 4.2 As set out above, this option ensures the maximum deterrent whilst considering the severity of the offence, impact on the environment and cost to the taxpayer of clearing up the waste. Offering two levels of FPN for these offences ensures that the consequences are proportionate to the offence.
- 4.3 Offering the early payment options helps with the affordability of the penalties and encourages payment of the charge, reducing the likelihood of the offence having to be pursued through prosecution.
- 4.4 Due to the higher risk of legal challenge on the two-tiered approach, given the element of discretion involved and as identified in the risks below, it is recommended that the Waste Crime Fixed Penalty Notice Policy, attached in Appendix 1, is adopted. This policy provides the basis for the charging, reducing the risk of challenge and ensuring the decisions taken are objective.

5. RISK

- 5.1 The sizeable increase in maximum value for waste crime FPNs indicates that the Government is determined to take a tough stance on these offences.
- 5.2 There is a risk that the FPNs are increased to such a level that most offenders are unable to afford payment, resulting in more offences going to prosecution which will incur more officer time, cost and doesn't support the reinvestment of fines in the service. Securing court time will also be

challenging for higher levels of waste crime prosecutions, and if prosecution cannot be achieved it will undermine the enforcement process.

- 5.3 However, if the FPNs are not increased sufficiently, particularly for fly tipping, they will not deter offenders. This will be especially significant if the fines are lower than neighbouring authorities, as the offenders are also likely to consider the risks of getting caught.
- 5.4 With the two-tiered approach there is a risk of challenge from offenders as to why they were given the higher FPN as opposed to the lower one. However, the adoption of a clear policy around the circumstances of the offences and when each level will be applied will remove any element of subjectivity and reduce the risk of challenge.

6. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

- 6.1 Annual updates have been taken to the Communities, Housing and Environment Committee since 2018 when the team was first created. During this time feedback has been received about the focus of the team and the importance of a "zero-tolerance" approach to waste crime.
- 6.2 This report has considered previous feedback from the Committee and Ward Members about the impact waste crime has on communities and the need to take a proactive approach to targeting, disrupting and enforcing against fly tippers.

7. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 7.1 If the recommendation is agreed, the increase in charge and application of the new Waste Crime Fixed Penalty Notice Policy will be applied from 1 October 2023.
- 7.2 All current signage does not specify the value of FPNs so this will not require replacement. However, information available on the website will be updated.
- 7.3 A communications campaign will be run on social media to highlight the increased fines and promote responsible waste management. This will include highlighting the need to get duty of care paperwork and check for waste carrier's licence if using a private contractor to dispose of waste.

8. REPORT APPENDICES

Appendix A – Waste Crime Fixed Penalty Notice Policy

9. BACKGROUND PAPERS

None