

REPORT OF Environmental Health and Community Safety Manager

To: Community and Resources Committee

Subject: Litter and Fly tipping Enforcement

Date: 15th October 2018

Reference: CEP2

PURPOSE OF REPORT: For committee to consider increasing the fixed penalty levels for littering and fly tipping offences.

1. INTRODUCTION

1. The maximum level of fine which a local authority is permitted to set for fixed penalty notices (FPN's) for littering has been increased. The top level of fine has gone from £80 to a maximum of £150. The increase in permitted penalty levels has come into force at the same time as changes to the responsibilities around littering from vehicles. The new fine rate will be applicable to this offence also.
2. In November 2016 Committee approved the setting of the FPN for fly tipping at £300, within the given range of penalty level of £150 to £400. It is proposed that this be increased to the maximum penalty of £400, to be proportionate to the revised littering penalty and in line with the penalty set elsewhere in Devon and Cornwall.
3. Fixed penalty notices for littering and fly tipping offences are issued by TDC Enforcement Team only, we do not employ external agents for enforcement work of this type.

2. REPORT

1. **Litter offences fine increase** - The relevant offence is under section 87 Environmental Protection Act, 1990. Under section 88, we can issue a FPN as a disposal option. Section 97(a) of the EPA, 1990 allows regulations to be made which limit the size of the penalty. We can choose the penalty from within the prescribed range or use the given default rate. The previous regulations set the range from £50 (min) to £80 (max) with a default of £75. Newly introduced regulations, the Environmental Offences (Fixed Penalties) (England) Regulations 2017 which took effect on 1 April, 2018 increase the range to between £50 and £150. The option under section 88(7) for us to allow for payment of a lesser sum for prompt payment is unchanged. In order to encourage offenders to pay the fine, and reduce the expensive and time consuming process of taking offenders to court for non payment, we can offer a reduction for early payment – it is recommended that this is set at £100 for payment within 10 days. The maximum penalty on conviction for a littering offence is £2500.
2. **Litter from vehicles** - The Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018 (SI 2018 No.171) has now been introduced. This



creates a civil (not criminal) FPN regime where the keeper of the vehicle is held responsible for the offence and this is enforced through the civil court instead of the Magistrates Court. This deals with the difficulties experienced up to now where we have evidence that litter has been dropped from a vehicle but we don't know the identity of the person responsible, (there is no legal provision requiring, say, an employer to tell us who was in the vehicle at the time of the offence). As littering from vehicles is now a civil penalty, there is no route to convict for the offence.

3. The regulations expressly provides for the use of evidence from a camera, where the camera can provide a record that a vehicle is on land in our district and give the date and time. The FPN has to be given within 35 days of the littering offence. With the prevalence of dash cams we intend to publicise this provision and purchase units for our enforcement officer vehicles, from the proceeds of any fixed penalty income.
4. To summarise the proposals:

	Current FPN level	Proposed FPN level
Littering	£75/ £50 if paid within 10 days	£150/ £100 if paid within 10 days
Littering from vehicles	N/A	£150 fine to be paid in 28 days reduced to £100 if paid within 14 days
Fly tipping	£300/ £180 if paid within 10 days	£400/ £250 if paid within 10 days

3. IMPLICATIONS

Legal Implications

The changes reflect the robustness with which Regulatory Services tackles waste offences and should act as a deterrent to offenders.

Financial Implications

All income from fixed penalties is used to support our enforcement functions.

Human Resources Implications

None

Sustainability/Biodiversity Implications

None

Equality/Diversity

Enforcement activity will always be in line with all requirements of equality legislation and standards.



Risk Management

None

Compliance with Policies and Strategies

All enforcement activities will be in accordance with our Corporate Enforcement Policy.

3. CONCLUSIONS

The Government has given us the opportunity to increase the fixed penalty notice levels as a method of highlighting littering and fly tipping issues and sending out a clear message that these activities will not be tolerated by the local authority in our communities.

4. RECOMMENDATIONS

That the fixed penalty for littering and fly tipping, along with the discounts for early payment, as given in this report, are approved.

SUPPORTING INFORMATION

Members Consulted: Cllr James

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Background Papers: None

