

Cherwell District Council

Executive Committee

10 January 2022

Fixed Penalty Notices

Report of Assistant Director – Regulatory Services and Community Safety

This report is public

Purpose of report

To review and agree the fixed penalty notice fines that can be charged for various environmental crimes.

1.0 Recommendations

The meeting is recommended:

- 1.1 To consider and determine the fixed penalty notice fine levels for certain environmental crimes enforced by the council.

2.0 Introduction

- 2.1 The Environmental Protection Act 1990 provides that local authorities can issue a fixed penalty notice to a person believed to have committed specified environmental offences. Fixed penalties can be an effective and visible way of responding to environmental crimes and provide a quicker and proportionate alternative to prosecution through the courts. They allow the person believed to have committed an offence the opportunity to discharge their liability to conviction for that offence by payment of a fixed penalty. However, if an alleged offender does not pay a fixed penalty fine the matter would be put forward for prosecution for the original offence.
- 2.2 The receipts from fixed penalties can be retained by the council and used to support the investigation of environmental offences.
- 2.3 The current fixed penalty fine levels are attached at Appendix 1.

3.0 Report Details

- 3.1 For fly tipping the legislation provides that the Council can set the fixed penalty level at an amount between £150 and £400. The legislation also allows for a reduction in

the amount as an incentive for early payment. Where a local authority has not determined the level of penalty to be applied the fixed penalty amount is set by the legislation as £250, with the reduced early payment level being £150

- 3.2 Our fixed penalty level for this offence is the lowest in the County. All the other Oxfordshire Councils have set their fine level at the maximum of £400 with a reduction of between £200 to £240 for early payment within 10 days.
- 3.3 To reflect the seriousness with which the Council takes this type of environmental crime and also the cost of clearing up fly tipped waste, it is recommended that the fine level be increased to £400, the maximum possible, with a reduction to £240 for early payment within 10 days. This would also bring our fine level for this offence in line with the other Oxfordshire councils.
- 3.4. Householders have a duty of care to take all reasonable measures to ensure they only transfer household waste produced on their property to an authorised person, business, or organisation. Many fly tips are the result of householders paying an unauthorised person to take their waste who then subsequently fly tips the waste.
- 3.5 Again, the legislation provides that the Council can set the fixed penalty level for this offence at an amount between £150 and £400, with a reduction as an incentive for early payment. Our fixed penalty level for this offence is the lowest in the County; West Oxfordshire District Council set theirs at the maximum level (£400 and £200 for early payment), South and Vale District Councils at £300 and £180, and Oxford City Council at £250 and £150. South and Vale set a level of £300 in line with the fixed penalty fine levels for failing to furnish commercial waste transfer notes and failing to produce authority (Waste Carriers Licence) as they see it as a similar type of offence.
- 3.6 To maximise deterrence and to be consistent with the fixed penalty fine level recommended for fly tipping, the fine level for this offence could be increased to £400 with a reduction to £240 for early payment within 10 days. However, as most householders are not aware of their duty of care responsibilities it is suggested that the fee should be set below the maximum but above our current level, and a fine level of £300 reduced to £180 (similar to the South and Vale) is recommended.
- 3.7 To make householders more aware of their responsibilities and the steps they need to take to meet the duty of care requirements, information about this, and also fly tipping, is published on the council's website and could be publicised in a future issue of the Cherwell Link.
- 3.8 The legislation does not set a maximum or minimum amount for the fixed penalty fine levels for depositing litter or failing to remove dog faeces, but if the council does not set a level then they default to £100. Our current fixed penalty fine levels for these offences have been set at £75 and £50 respectively (see Appendix 1) and are the lowest in the County. For depositing litter West Oxfordshire DC, and South and Vale DCs have set a level of £80 (£50 for early payment) and Oxford City £150 (£75 for early payment). For failing to remove dog faeces West Oxfordshire DC and South and Vale DCs have set a level of £50 (no discount for early payment) and Oxford City £100 (£75 for early payment).
- 3.9 As the public should now be more than aware that it is an offence to drop litter and not pick up after your dog it is recommended that the fine levels for these offences

be increased to £100. This is similar to our fixed penalty fine levels for failing to comply with a Community Protection Notice and failing to comply with a Public Space Protection Order, but with a reduction to £75 for early payment within 10 days.

4.0 Conclusion and Reasons for Recommendations

4.1 It is recommended that the Executive agree to increase the fixed penalty fines for the offences outlined to the levels specified in the table below for the reasons stated above. Alternatively, the Executive are asked to agree another amount above the current fine level if preferred.

Description of offence	Penalty	Penalty if paid within 10 days
Unauthorised deposit of waste (fly tipping)	£400	£240
Failure in household duty of care	£300	£180
Depositing litter	£100	£75
Failure to remove dog faeces from designated land	£100	£75

(See Appendix 1 for the current fixed penalty fine levels)

5.0 Consultation

5.1 None required.

6.0 Alternative Options and Reasons for Rejection

6.1 The following alternative options have been identified and rejected for the reasons as set out below.

Option 1: To leave the fixed penalty fine levels unchanged at current levels. This option was rejected as the current fine levels do not reflect the seriousness of the offences or the Council's costs for investigating the offences.

Option 2: To not issue fixed penalty notices but to proceed with prosecutions. This option was rejected because issuing a fixed penalty notice is a proportionate approach for dealing with lesser offences in accordance with the Council's Enforcement Policy. The income from fixed penalties can be also be retained by the council and used to support the investigation of environmental offences.

7.0 Implications

Financial and Resource Implications

7.1 The Council is allowed to retain the receipts from fixed penalty payments. Funds raised from penalty notices can be used to support the investigation of environmental offences.

Comments checked by:
Kelly Wheeler, Finance Business Partner 01295 221570
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Legal Implications

- 7.2 Investigations and enforcement actions for environmental crime offences will be conducted in accordance with the Councils Enforcement Policy. Failure to accept or pay a fixed penalty notice could result in prosecution.

Comments checked by:
Colin Evans, Solicitor, 01295 753701, colin.evans@cherwell-dc.gov.uk

Risk Implications

- 7.3 Provisions for the use of fixed penalty notices are already in place, therefore there is no additional risk in adopting the recommendations of this report

Comments checked by:
Celia Prado, Performance Team Leader,
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Equalities and Inclusion Implications

- 7.4 An ECIA has been completed and no implications were identified with regard to equality and diversity issues as a result of adopting the recommendations of this report.

Comments checked by:
Steven Fairhurst Jones, Acting Policy Team Leader,
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Sustainability Implications

- 7.5 An ECIA has been completed and no implications were identified with regard to sustainability or Climate Action as a result of adopting the recommendations of this report.

Comments checked by:
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8.0 Decision Information

Key Decision:

Financial Threshold Met: No

Community Impact Threshold Met: No

Wards Affected

All

Links to Corporate Plan and Policy Framework

The work contributes to the following strategic priority within the Council's 2021-22 Business Plan:

- An enterprising economy with strong and vibrant local centres

Lead Councillor

Councillor Dan Sames, Lead Member for Clan and Green

Document Information

Appendix number and title

- Appendix 1 Current fixed penalty fine levels

Background papers

None

Report Author and contact details

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