

<b>This report is public</b>	
<b>Fixed Penalty Notices</b>	
<b>Committee</b>	Executive
<b>Date of Committee</b>	4 March 2024
<b>Portfolio Holder presenting the report</b>	Portfolio Holder for Healthy and Safe Communities. Councillor Phil Chapman
<b>Date Portfolio Holder agreed report</b>	13 February 2024
<b>Report of</b>	Head of Regulatory Services and Community Safety, Tim Hughes

## **Purpose of report**

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

### **1. Recommendations**

The Executive resolves:

- 1.1 To approve the proposed increase to the fixed penalty fine levels for fly tipping, household duty of care, and littering offences or approve another amount above the current fine level if preferred.

### **2. Executive Summary**

- 2.1 The maximum fixed penalty fine levels that can be imposed for fly tipping, household duty of care, and littering offences have been increased. This report considers the changes and recommendations for increasing our fixed penalty fine levels.

## **Implications & Impact Assessments**

<b>Implications</b>	<b>Commentary</b>
<b>Finance</b>	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. Kelly Wheeler, Finance Business Partner
<b>Legal</b>	Prosecutions are costly and time consuming and if found guilty offenders will have a criminal record. Fines, where appropriate, are therefore likely to be a proportionate and reasonable response

	<p>to these offences. Failure to accept or pay a fixed penalty notice could result in prosecution. Any prosecutions need to be in line with the Councils Enforcement Policy.</p> <p>A consultation has taken place on ringfencing the income from these fines therefore it is important to keep informed of any developments in this regard as clear audit trails showing compliance with rules on spending may be required. This money is already to only be used for limited purposes but it may be limited further.</p> <p>It is important to make sure that the fines are not used as a way to raise revenue therefore clear guidance should be given on when fines are to be issued and when a warning or prosecution may be more appropriate.</p> <p>Alison Coles, Legal Services Operations Manager, Solicitor</p>			
<b>Risk Management</b>	<p>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. If any risk should arise in the future link to this activity, they will be managed through the service operational risk, and escalated to the Leadership Risk Register as and when necessary.</p> <p>Celia Prado-Teeling, Performance &amp; Insight Team Leader</p>			
<b>Impact Assessments</b>	Positive	Neutral	Negative	Commentary
<b>Equality Impact</b>		X		<p>There are no equalities or inclusion implications as a direct consequence to this report.</p> <p>Celia Prado-Teeling, Performance &amp; Insight Team Leader</p>
<b>A</b> Are there any aspects of the proposed decision, including how it is delivered or accessed, that could impact on inequality?		X		
<b>B</b> Will the proposed decision have an impact upon the lives of people with protected characteristics, including employees and service users?		X		
<b>Climate &amp; Environmental Impact</b>				Not applicable

<b>ICT &amp; Digital Impact</b>				Not applicable
<b>Data Impact</b>				Not applicable
<b>Procurement &amp; subsidy</b>				Not applicable
<b>Council Priorities</b>	Healthy, resilient and engaged communities. <ul style="list-style-type: none"> <li>• Work with partners to reduce crime and antisocial behaviour</li> </ul>			
<b>Human Resources</b>	Not Applicable.			
<b>Property</b>	Not Applicable.			
<b>Consultation &amp; Engagement</b>	None required.			

## Supporting Information

### 3. Background

- 3.1 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. If the person does not pay the fixed penalty fine the matter would be put forward for prosecution for the original offence.
- 3.2 The receipts from fixed penalties can be retained by the council and used to support the investigation of environmental offences.
- 3.3 The current fixed penalty fine levels the council charges are set out in the table below.

<b>Description of offence</b>	<b>Penalty</b>	<b>Penalty if paid within 10 days</b>
Unauthorised deposit of waste (fly tipping)	£400	£240
Failure in household duty of care	£300	£180
Failure to produce commercial waste documents (waste transfer notes)	£300	No discount
Failure to produce authority to transport waste (waste carriers licence)	£300	No discount
Abandoning a vehicle	£200	No discount
Failure to comply with a waste receptacle notice	£100	No discount
Depositing litter	£100	£75
Failure to remove dog faeces from designated land	£100	£75
Failure to comply with a Community Protection Order	£100	No discount
Failure to comply with a Public Space Protection Order	£100	No discount

## 4. Details

- 4.1 The Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023 increased the upper limits for some fixed penalty notices as follows:
- The maximum amount those caught fly-tipping can be fined increased from £400 to £1,000
  - The maximum amount those who breach their household waste duty of care can be fined increased from £400 to £600
  - The maximum amount those who litter can be fined increased from £150 to £500
- 4.2 These increased fixed penalty fine levels have been discussed with the other Oxfordshire Councils at the County Waste Enforcement Group. West Oxfordshire District Council and South and Vale District Councils have, or will be increasing the fine levels for fly tipping and household duty of care to the new maximum level, but will be charging different amounts for littering offences. Oxford City Council have yet to decide on the levels they propose to charge.
- 4.3 To reflect the seriousness with which the Council takes fly tipping and also the cost of clearing up fly tipped waste, it is recommended that the fixed penalty fine level for this offence be increased to £1,000, the maximum possible, with a reduction of 50% for early payment within 10 days. West Oxfordshire District Council has already set theirs at the maximum level (£1,000 and £500 for early payment), and South and Vale District Councils are proposing to do the same.
- 4.4 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. For this offence it is recommended that the fixed penalty fine level be increased to £600, the maximum possible, with a reduction of 50% for early payment within 10 days. West Oxfordshire District Council has already set theirs at the maximum level (£600 and £300 for early payment), and South and Vale District Councils are proposing to do the same.
- 4.5 Litter is hard to define but is most commonly assumed to include materials, often associated with smoking, eating and drinking, that are improperly discarded and left by members of the public. West Oxfordshire District Council has already set their fixed penalty fine at the maximum level (£500 and £250 for early payment). However, as littering can include the discarding of a single cigarette end this fine level might seem a disproportionate response for the offence. South and Vale District Councils are therefore proposing to increase their fixed penalty fine level for littering to £150 (currently £80) with a reduction to £80 for early payment (currently £50).
- 4.6 Littering fixed penalty notices can also be served for fly tipping offences. If the fixed penalty fine level for this offence is increased to the maximum of £500 with a 50% reduction for early payment, it would be an effective and proportionate penalty for dealing with small fly tipping offences such as one or two black bags of waste. As we have only served four fixed penalty notices for littering in the last five years, one

in 2023 and three in 2019, and these were for dropping a cigarette end, anyone caught littering in the future could in the first instance be given a warning. If caught dropping litter a second time a fixed penalty fine of £500 with a 50% reduction for early payment would then not be a disproportionate response for the offence having already been warned. It is therefore recommended that the fixed penalty fine level for littering be increased to £500, the maximum possible, with a reduction of 50% for early payment within 10 days, similar to West Oxfordshire.

- 4.7 The number of fixed penalty notices served in the last three years for fly tipping, household duty of care and littering offences is shown in the table below.

<b>Description of offence</b>	<b>2023/24</b>	<b>2023/22</b>	<b>2022/21</b>
Unauthorised deposit of waste (fly tipping)	7	6	8
Failure in household duty of care	5	11	6
Depositing litter	1	0	0

## **5. Alternative Options and Reasons for Rejection**

- 5.1 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.

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.

Option 3: To remove the early payment discount. This option was rejected in order to encourage and provide an incentive for early payment.

## **6 Conclusion and Reasons for Recommendations**

- 6.1 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.

<b>Description of offence</b>	<b>Penalty</b>	<b>Penalty if paid within 10 days</b>
Unauthorised deposit of waste (fly tipping)	£1,000	£500
Failure in household duty of care	£600	£300
Depositing litter	£500	£250

## **Decision Information**

<b>Key Decision</b>	No
<b>Subject to Call in</b>	Yes
<b>If not, why not subject to call in</b>	Not applicable
<b>Ward(s) Affected</b>	All

## Document Information

<b>Appendices</b>	
<b>Appendix 1</b>	None
<b>Background Papers</b>	None
<b>Reference Papers</b>	None
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