

**REPORT TO:** Executive Board

**DATE:** 16 March 2017

**REPORTING OFFICER:** Strategic Director – Enterprise, Community and Resources

**SUBJECT:** Fixed Penalty Notices for Fly-Tipping Offences

**PORTFOLIO:** Environmental Services

**WARDS:** Borough-wide

## **1.0 PURPOSE OF THE REPORT**

1.1 The purpose of this report is to provide Members with details of the new powers which enable Council's to issue Fixed Penalty Notices for fly-tipping offences and asks Members to endorse proposals in respect of the suggested approach to the use of these new powers in Halton.

## **2.0 RECOMMENDATION: That**

- 1) Members endorse the Council's approach to dealing with fly-tipping as set out in the report; and**
- 2) Executive Board approve that the Council's Fixed Penalty Notice level for fly-tipping offences be set at £400 and reduced to £300 if paid within 10 days.**

## **3.0 BACKGROUND**

3.1 Local environmental quality is important as it impacts on the whole community and is consistently rated as one of the most important issues for local people. An integral aspect of ensuring that we maintain clean and safe neighbourhoods and public open spaces is the prevention of environmental crime and the enforcement of illegal waste activity, such as fly-tipping.

3.2 Fly-tipping offences are committed by householders, businesses and waste operators. Householders who fly-tip waste have a complete disregard for the impact that their actions will have upon their neighbours or their local environment and do so due to laziness and the attitude that 'someone else will clear it up'. Unscrupulous operators that fly-tip waste do so as it provides the opportunity for financial gain from the avoidance of paying waste disposal fees. It also provides the opportunity to undercut legitimate waste businesses that operate within the law.

- 3.3 Nationally, statistics indicate that fly-tipping is on the increase. Table 1 below shows Halton has experienced similar increases over recent years.

**Table 1 – Halton Fly-Tipping Incident Statistics**

Ward	2013/14	2014/15	2015/16	2016/17 (Apr – Dec)
Farnworth	21	20	22	14
Appleton	112	126	183	162
Halton View	26	42	37	35
Kingsway	31	48	44	27
Riverside	59	75	104	97
Broadheath	19	28	39	25
Ditton	23	22	21	13
Hough Green	36	15	33	25
Hale	12	13	27	15
Mersey	100	108	137	95
Heath	8	25	19	14
Halton Brook	14	22	27	26
Grange	17	20	22	23
Halton Castle	23	37	45	48
Beechwood	9	7	12	6
Halton Lea	23	26	26	19
Norton North	19	19	30	22
Windmill Hill	4	12	15	8
Daresbury	27	14	21	21
Birchfield	9	4	10	6
Norton South	10	41	30	22
<b>Total</b>	<b>602</b>	<b>724</b>	<b>904</b>	<b>723</b>

- 3.4 Using the Government's Waste Data Flow (Formerly FlyCapture) method of calculation, the Council's estimated cost associated with the removal of fly-tipping is set out in Table 2 below;

**Table 2 – Cost of Fly-tipping Clearance**

Year	2013/14	2014/15	2015/16	2016/17 (Apr – Dec)
<b>Estimated cost of fly-tipping clearance</b>	£34,626	£40,013	£46,295	£38,466

- 3.5 The information in Table 1 above shows that the three Wards suffering the highest number of fly-tipping incidents are Appleton, Riverside and Mersey. This is due to on-going and increasing problems being experienced in 'Terraced Property' areas within those Wards caused by householders fly-tipping in rear entries.

- 3.6 Officer's efforts to reduce incidents of fly-tipping and tackle those responsible include;
- On-going investigations into all reported incidents of fly-tipping;
  - Working closely with Housing Associations and delivering joint initiatives;
  - Targeted campaigns in areas identified as experiencing high levels of fly-tipping and other forms of environmental nuisance;
  - Joint patrols with Police Officers in areas where residents were causing unacceptable levels of nuisance due to fly-tipping rubbish and not complying with the Council's Waste Collection Policy.
- 3.7 At their meeting of 8<sup>th</sup> February 2017, Members of the Environment & Urban Renewal Policy and Performance Board received a report containing details of new Powers available to Local Authorities for the issuing of Fixed Penalty Notices for fly-tipping offences. Having considered the contents of the report, Members endorsed Officers' proposed approach to dealing with fly-tipping incidents and agreed that a report be presented to the Executive Board containing recommendations in respect of the Council's Fixed Penalty Notice levels for fly-tipping offences. This report sets out details of the new Powers and asks Executive Board to agree the levels to be set for Fixed Penalty Notices for fly-tipping offences in Halton.

#### **4.0 SUPPORTING INFORMATION**

##### Fixed Penalty Notices for Fly-Tipping Offences

- 4.1 The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 has amended the provisions of Section 33 of The Environmental Protection Act 1990 to allow for the imposition of FPNs. This has given Local Authorities additional powers to tackle environmental crime by issuing Fixed Penalty Notices (FPNs) for fly-tipping.
- 4.2 Currently, fly-tipping offences are dealt with by prosecution only, which involves the production of a detailed investigation report and may require officers to attend court to give evidence. Securing prosecutions is therefore a relatively costly and resource-intensive method of dealing with offences which may not be proportionate for all fly-tipping incidents.
- 4.3 Although fly-tipping is generally considered to be a serious offence, punishable by a fine of up to £50,000 or 12 months in prison on conviction, there are often differences in the scale or level of offending. The ability to use Fixed Penalty Notices for fly-tipping offences provides the opportunity to deal with incidents in a more efficient, cost-effective and proportionate manner whilst still ensuring that a substantial financial sanction can be imposed upon an individual for their actions. Setting a

high penalty amount will also ensure that FPNs can act as a deterrent to offenders and Councils using them are expected to see a decrease or a slow-down in growth in the number of fly-tipping incidents.

- 4.4 A Fixed Penalty Notice provides an individual the opportunity of discharging any liability to conviction for an offence that they have committed. However, should an individual fail to pay the Penalty Notice issued to them the matter would be referred to the Magistrates Court where the Council would pursue prosecution for the original offence. Therefore, whilst the issuing of an FPN provides a less resource-intensive method of dealing with an offence, the initial evidence gathered must be sufficient to support a prosecution, as any case may ultimately be dealt with in this way in the event of non-payment.
- 4.5 Like most offences for which the Council may issue an FPN, discretion is given under the new regulations to set the level of the FPN between a prescribed upper and lower limit. The Regulations also give Councils discretion to offer a discount for early payment of an FPN. There are prescribed minimum penalty levels that the discounted penalty must not fall below; set out in the 2016 Regulations.
- 4.6 Legislation has set a standard payment period for an FPN of fourteen days and the Council has previously approved the time period for early payment discount as being within ten days. If an FPN has not been paid within fourteen days the Council will pursue a prosecution for the original offence.
- 4.7 The legislation provides that the Council can set the FPN level at an amount between £150 and £400. In addition, the legislation allows for reduction in the FPN amount (of no less than £120) as an incentive for early payment. The Council is allowed to retain the receipts from FPN payments.
- 4.8 Under the legislation, should a Local Authority not set a minimum or maximum FPN level it will be set at £200 (instead of the possible £150 to £400 range). Furthermore, if it doesn't specify a lesser rate for early payment it will not be able to use that provision.
- 4.9 The costs of investigating, bringing prosecutions and ultimately clearance and disposal of fly-tipping are considerable. Where fines are issued as a result of successful prosecutions, they are paid to the Court and prosecuting authorities must seek to recover their costs as a separate process.
- 4.10 Whilst significant penalties exist for offenders found guilty of fly-tipping, and costs incurred by Councils pursuing prosecution can be recovered, the financial burden and resource commitments often outweigh the benefits and do not always provide a sufficient deterrent. The new FPN provision introduces a less costly option to deal with fly-tipping incidents than the conventional route of prosecuting offenders in Courts; although

in the more serious cases or in cases where the recipient of an FPN fails to pay the penalty, prosecution still remains an option.

- 4.11 Not all local authorities have set fly-tipping FPN levels, however, as part of the scrutiny of this matter by the Waste Working Party, information has been gathered from a number of those who have and this is set out in Table 3 below.

**Table 3 – Examples of FPN Levels set by other Local Authorities**

<b>Local Authority</b>	<b>Fly-tipping FPN amount</b>	<b>Early Payment Discounted Amount</b>
Cambridge	£400	£160
Cannock	£400	No discount
Cheshire East	£400	No discount
Knowsley	Not yet introduced	-
Liverpool	£400	No discount
Sefton	£400	£240
St Helens	£400	No discount
Warrington	Not yet introduced	-
Wirral	Not yet introduced	-

- 4.12 Having considered the options available it is recommended that the Council's Fixed Penalty Notices for fly-tipping offences be set at the maximum level of £400 with a discounted amount of £300 if paid within 10 days.
- 4.13 Setting the FPN level at the highest possible amount allowable under legislation is intended to send out a strong message that fly-tipping in Halton will not be tolerated and that any individual committing such an offence will face the maximum permitted financial sanction.
- 4.14 Whilst some authorities have not applied a discount for early payment, the recommendation for Halton to do so is intended to encourage and incentivise payment of the FPN to avoid the need to pursue prosecution proceedings. £300 is higher than the level set by those authorities who have agreed a discount and will also ensure that the penalty for fly-tipping offences, even at a reduced level, continues to act as an effective deterrent and will cover the costs of clearing the fly-tipped materials and the enforcement costs incurred.

## Framework for Dealing with Incidents of Fly-Tipping

- 4.15 In accordance with the underlying principles of the Council's Enforcement Policy, any action taken to deal with a fly-tipping offence will be proportionate and take into account the severity of any incident, the risk to health, safety or the environment and the seriousness of any breach of law. To this end, when deciding upon the best course of action to be taken, the Council will consider each incident on a case by case basis. Therefore, whilst these new powers are seen as a further valuable tool to help deter fly-tipping, the issuing of an FPN will only be considered as an alternative to prosecution where the nature of a particular fly-tipping incident means that this would be the most appropriate course of action. A Framework has been developed which sets out a proposed approach to dealing with fly-tipping incidents. Members are asked to consider and endorse this Framework, which is set out in paragraphs 4.15.1 to 4.15.4 below.

### 4.15.1 Informal Action

Investigations might reveal that a resident has deposited waste in circumstances that could be deemed to be fly-tipping but may have done so due to a genuine lack of understanding of the Council's Waste Collection Policies or what is considered unacceptable or illegal behaviour. An example of this could be where a householder places bags of waste out in a rear entry as they were unaware that all waste must be contained within wheeled bins and that no additional bagged waste should be stored in the entry or left out for collection. In circumstances of this nature, it is likely that an FPN would not be issued. Instead, the resident would be made aware of the Council's Policies and legal requirements and may be issued a warning in respect of future behaviour.

### 4.15.2 Littering Fixed Penalty Notice

Guidance issued by the Department for Environment, Food and Rural Affairs (DEFRA) recognises that whilst litter Fixed Penalties should not normally be used to deal with illegal waste deposits, a litter Fixed Penalty may be appropriate for dealing with small-scale fly-tipping incidents, such as illegally disposing of a single plastic sack of rubbish. In accordance with this guidance Officers have issued a number of litter FPNs to residents found to have knowingly committed illegal acts by fly-tipping single bags of rubbish. It is proposed to continue to deal with such small-scale fly-tipping incidents as littering offences.

#### 4.15.3 Fly-Tipping Fixed Penalty Notice

The issuing of fly-tipping FPNs will be determined by the type and volume of waste deposited or its hazardous nature. Examples of waste categories where fly-tipping FPNs would be used include single or multiple household items (such as a fridge, cooker or 3 piece suite), car boot loads or small/medium sized van loads.

#### 4.15.4 Prosecution

Prosecution will generally be initiated in circumstances where there appears to be a blatant disregard for the law by a business, or due to the seriousness and scale of the fly-tipping offence. Circumstances that are likely to warrant prosecution include offences committed by businesses, fly-tipping of hazardous material, large scale deposits of waste or significant multiple loads. Prosecution will also be pursued where an offender has refused to accept an FPN or has failed to pay one issued to them, or to repeat offender who have previously been issued with a Fixed Penalty Notice for a separate fly-tipping offence.

#### Appeals

- 4.16 Members are advised that there are no formal grounds of appeal against the issuing of a Fixed Penalty Notice and if an individual does not agree that they have committed an offence they can refuse to pay the fixed penalty and the matter will then be dealt with through the Magistrates Court. It is at this stage that an individual would have the opportunity to challenge the Penalty Notice issued to them or offer mitigating circumstances to the Court. It will then be up to the Court to determine whether or not an offence was committed and whether or not a Penalty should be imposed. If the Court finds in favour of the Council the offender may be liable to a higher fine, have costs awarded against them and receive a criminal record.

#### Education and Awareness Raising

- 4.17 Whilst recognising that enforcement action must be taken where appropriate, the Council has always believed that prevention is better than cure and its approach to dealing with fly-tipping and other forms of environmental crime is that education and awareness raising should always come before any formal actions. The Council acknowledges the importance of ensuring that members of Halton's community know and understand what standards are expected of them, what is deemed unacceptable behaviour and the consequences of failing to comply with the Council's Policies or environmental legislation.
- 4.19 Officers take a proactive approach to preventing environmental crime and deliver both targeted campaigns; in areas where specific or significant problems are identified as being experienced, and borough-wide campaigns; when general information or specific messages on waste matters are required to be provided to residents across the

borough. Pertinent to this report is the need to provide all householders with details of their domestic waste 'Duty of Care' responsibilities; details of which are set out below.

#### Householder's Responsibility

- 4.20 Any person who transports waste, either in the course of their business or in any other way for profit, must register as a 'Carrier of Controlled Waste' with the Environment Agency. Under the domestic waste 'Duty of Care', householders are responsible for ensuring that if they pass on waste to someone to dispose of (other than the local authority), then they must ensure that their waste is only passed onto an authorised Waste Carrier.
- 4.21 Some people pose as legitimate Waste Carriers and then fly-tip rubbish that they have been paid to dispose of properly. If any fly-tipped waste is traced back to the household from where it came, and the householder has failed to make sufficient checks with the person that they have passed their waste onto, the householder could face a fine of up to £5,000. Most householders will not be aware of their 'Duty of Care' responsibilities and that they could face a fine for not carrying out proper checks. Therefore, in order to safeguard householders who pass on waste in good faith and fail to carry out checks through ignorance rather than wilful neglect, Officers will be undertaking a borough-wide campaign to raise awareness of this matter. It is hoped that this will in turn lead to a reduction in the number of incidents of fly-tipping.

#### Recommendations

- 4.22 Following recommendations by the Environment and Urban Renewal Policy and Performance Board, the Executive Board are asked to endorse the proposed approach for dealing with incidents of fly-tipping in Halton and approve the Fixed Penalty Notice levels as set out in this report.

### **5.0 FINANCIAL AND RESOURCE IMPLICATIONS**

- 5.1 There can be considerable costs involved in prosecuting individuals. Whilst the Council would still instigate criminal proceedings in certain cases, there are many actions of individuals, which do not warrant prosecution but do nonetheless warrant some other sanction. The use of FPNs provides the Council with a viable and effective alternative to prosecution in such circumstances and will help reduce the staff and financial resources required to undertake court proceedings.



## **6.0 POLICY IMPLICATIONS**

- 6.1 There are no new policy implications as a result of this report as the issuing of a Fixed Penalty Notice a means of dealing with an offence is in accordance with the Council's adopted Enforcement Policy.

## **7.0 IMPLICATIONS FOR THE COUNCIL'S PRIORITIES**

### **7.1 Children and Young People in Halton**

No direct impact.

### **7.2 Employment, Learning and Skills in Halton**

No direct impact.

### **7.3 A Healthy Halton**

By enhancing its ability to deter and prevent fly-tipping, the Council will be making a positive contribution towards improving the local environment and the appearance of the borough, which shall in turn have an overall beneficial effect on health and wellbeing as it will encourage more residents of all ages to make use of the Council's parks and public open spaces.

### **7.4 A Safer Halton**

Making use of the new powers under the Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 will demonstrate that the Council is committed to dealing with environment crime. It is hoped that the use of FPNs will act as a deterrent and help reduce the number of fly-tipping incidents in the borough, leading to a cleaner safer environment. A cleaner well-used area creates a perception that it is 'cared-for' and safe, and helps discourage anti-social behaviour and serious crime.

### **7.5 Halton's Urban Renewal**

No direct impact, but overall environmental benefits should make the borough a more attractive location for investment. Planning controls will be utilised to ensure adequate receptacles are provided in appropriate circumstances.

## **8.0 RISK ANALYSIS**

- 8.1 The Council has new legislative powers available to deal with environmental crime. Failure to make best use of these powers to improve the local environment may lead to criticism of the Council; thereby damaging its reputation.

## **9.0 EQUALITY AND DIVERSITY ISSUES**

9.1 The Council aims to be consistent and evenhanded in all regards. Taking enforcement action to deal with environmental crime is not intended to have either a positive or negative impact upon equality and diversity or apply differently to any particular group.

## **10.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972**

<b>Document</b>	<b>Place of Inspection</b>	<b>Contact Officer</b>
Environment and Urban Renewal Policy and Performance Board Report 8 <sup>th</sup> February 2017 - Fixed Penalty Notices for Fly-Tipping Offences	Municipal Building Kingsway	Angela Scott