

TEWKESBURY BOROUGH COUNCIL

Report to:	Executive Committee
Date of Meeting:	11 October 2017
Subject:	Fixed Penalty Policy and Fine Levels for Environmental Offences
Report of:	Principal Environmental Health Officer, Alastair Low
Corporate Lead:	Head of Community Services, Peter Tonge
Lead Members:	Lead Member for Clean and Green Environment, Councillor J R Mason
Number of Appendices:	One

Executive Summary:

Fixed penalty notices are available to the Council in connection with a variety of environmental offences including fly tipping, dog fouling and abandoned vehicles. The use of fixed penalty notices provides the Council with an efficient and proportionate means for the disposal of low level environmental offences without recourse to court action.

The statutes governing environmental offences prescribe a maximum fine level, minimum fine level and minimum discounted level. For some offences the Council has discretion to set the fine levels within the statutory maximum and minimum levels. The Council also has discretion over several operational and procedural elements relating to fixed penalty notices, such as the minimum age of persons on whom notices will be served, payment options and the offering of a non-statutory appeals process.

Recommendation:

- 1. That the Executive Committee APPROVES the recommended fixed penalty fine levels for environmental offences.**
- 2. That the Executive Committee APPROVES the Fixed Penalty Policy for Environmental Offences.**

Reasons for Recommendation:

The Environmental Health Section is committed to tackling environmental crime and has made good progress this year with a number of successful prosecutions. However prosecutions are resource intensive and the use of fixed penalty notices would be appropriate in many cases as an alternative to prosecution. The default fixed penalty fine level currently used by the Council for fly tipping is considered to be insufficient and legislation has now been introduced which allows the Council to significantly increase the maximum fine level.

The publication of a fixed penalty policy would help consolidate the Council's approach to the use of fixed penalty notices. This will help to ensure consistency amongst Enforcement Officers and provide clear information to members of the public regarding the offences for which the Council will use fixed penalty notices and the resulting penalty fine levels.

Resource Implications:

A very small financial outlay will be required to print carbon copy fixed penalty notice pads for

Enforcement Officers. There may also be a small financial commitment in connection with training Officers on use of fixed penalty notices.

Legal Implications:

Enforcement Officers who are expected to serve fixed penalty notices must be authorised in writing by the Council. All Enforcement Officers should also receive appropriate training, carry appropriate identification and a Police and Criminal Evidence Act (PACE) notebook.

The Managers within the Environmental Health Section will ensure that all Officers who are required to serve fixed penalty notices are suitably authorised. Should a fixed penalty not be paid then the matter may be referred to One Legal to consider prosecution proceedings.

Risk Management Implications:

The Council has an action plan to address the problem of environmental crime within Tewkesbury Borough. Progress with the plan is reported to the Overview and Scrutiny Committee. Failure to make progress with this plan or effectively use the statutory remedies available to combat environmental crime may represent a reputational risk to the Council.

Performance Management Follow-up:

Progress with the environmental crime action plan is monitored by the Overview and Scrutiny Committee. At Officer level progress with the plan and use of fixed penalty notices is reviewed at monthly team meetings under the direction of the Head of Community Services.

Environmental Implications:

The use of fixed penalty notices, together with publicity connected with the use of the notices, may serve as an effective deterrent against environmental crime. Therefore long term use of fixed penalty notices may have positive implications for environmental quality within Tewkesbury Borough.

1.0 INTRODUCTION/BACKGROUND

1.1 Fixed penalty notices are available as an enforcement option for the full range of environmental offences which are investigated by the Council's Environmental Health Section. Payment of a fixed penalty does not result in a criminal record and discharges the offender of criminal liability in connection with the offence. Fixed penalty notices provide the Council with a cost-effective and proportionate means of disposing of low level environmental offences without recourse to resource intensive prosecutions and court proceedings. This should benefit the Council by allowing Officers more time to devote to serious cases.

1.2 The level of a fixed penalty fine is set by the statute governing the particular offence. In some cases the Council has the discretion and flexibility to decide on the penalty level at any point between the maximum and minimum fine levels prescribed by the legislation. For some offences the Council also has power to set the level of discount that may be offered for early payment of a fixed penalty notice.

1.3 The use of fixed penalty notices does not necessarily have to be confined to the Environmental Health Section. Moving forward there is a corporate intention for all employees to act as "eyes and ears" regarding environmental crime and to extend training on the use of fixed penalty notices to front line Officers across other services.

2.0 FIXED PENALTY FINE LEVELS

2.1 The table below outlines the statutory default fine level, together with the minimum, maximum and discount fine levels which are prescribed for the range of environmental offences where a

fixed penalty option is available to the Council:

Offence	Statutory Default Penalty	Statutory Minimum full Penalty	Statutory Maximum full Penalty	Minimum Discounted Penalty	Recommended Penalty Level for Tewkesbury Borough Council
Littering Environmental Protection Act 1990, (Section 88)	£75	£50	£80	£50	£75 Full £50 Discounted
Dog Fouling Dog Fouling of Land Act 1996 (Section 4)	£50	£50	£50	No discount available	£50 Full
Fly Tipping Environmental Protection Act 1990 (Section 33)	£200	£150	£400	£120	£400 Full £200 Discounted
Failure to produce waste transfer note. Environmental Protection Act 1990 (Section 34)	£300	£300	£300	£180	£300 Full £180 Discounted
Failure to produce waste carriers registration details Control of pollution (Amendment) Act (Section 5B)	£300	£300	£300	£180	£300 Full £180 Discounted
Abandoning a vehicle. Clean Neighbourhood and Environment Act 1995 (Section 10)	£200	£200	£200	£120	£200 Full £120 Discounted
Fly posting and graffiti Anti-social Behaviour Act 2003 (Section 43)	£75	£50	£80	£50	£75 Full £50 Discounted
Nuisance parking Clean Neighbourhood and Environment Act 2005 (Section 6)	£100	£100	£100	£60	£100 Full £60 Discounted
Domestic waste receptacle offences Environmental Protection Act 1990 (Section 47ZA)	£60	£60	£80	£40	£60 Full £40 Discounted
Commercial waste receptacle offences Environmental Protection Act 1990 (Section 47ZA)	£100	£75	£110	£60	£100 Full £60 Discounted
Noise exceeding permitted level (Domestic premises)	£100	£75	£110	£60	£100 Full

Noise Act 1996 (Section 8)					£60 Discounted
Noise exceeding permitted level (Licensed Premises) Noise Act 1996 (Section 8)	£500	£500	£500	No discount available	£500 Full
Alarm noise Clean Neighbourhoods and Environment Act 2005 (Section 73)	£75	£50	£80	£50	£75 Full £50 Discount
Breach of a Community Protection Notice Anti-Social Behaviour Crime and Policing Act 2014 (Section 52)	Not Specified	Not Specified	£100	Not Specified	£100 Full £60 Discounted
Breach of a Public Space Protection Order Anti-Social Behaviour Crime and Policing Act 2014 (Section 68)	Not Specified	Not Specified	£100	Not Specified	£100 Full £60 Discounted
Smoking in a smoke free place The Health Act 2006 (Section 7)	£50	£50	£50	£30	£50 Full £30 Discounted
Failure to display no smoking signs The Health Act 2006 (Section 6)	£200	£200	£200	£150	£200 Full £150 Discounted

2.2 The Council currently applies the statutory default penalty to fixed penalty notices. In 2015 legislation was introduced which allows the Council to increase the maximum penalty for fly tipping up to a maximum of £400. Fly tipping continues to blight several communities within Tewkesbury Borough. Therefore it is recommended that the fixed penalty for fly tipping offences is increased from the current default of £200 up to the £400 maximum fine permitted under the legislation and to provide for a discounted fine of £200.

3.0 FIXED PENALTY POLICY

3.1 A proposed fixed penalty policy for the Council is provided in the appendix to this report. The policy outlines the Council's approach to the use of fixed penalty notices and clarifies the Council's position on several key operational matters relating to the use of fixed penalty notices.

3.2 Operational considerations for the Council in relation to fixed penalty notices include the minimum age of persons on whom notices will be served, whether or not to offer a non-statutory appeal option against a notice and whether a person in receipt of a notice can pay by instalments.

3.3 MINIMUM AGE FOR RECEIPT OF A FIXED PENALTY NOTICE

The statutory minimum age for receipt of a fixed penalty notice is 10 years old. However should a Local Authority wish to serve a fixed penalty notice on a young person then specific policies must be in place governing this. The Environmental Health Section is not aware that littering in the vicinity of schools represents a particular problem within Tewkesbury Borough. Therefore the draft fixed penalty policy states that the minimum age of a person on whom the Council will serve a fixed penalty notice will be 18 years old.

3.4 FIXED PENALTY NOTICE APPEAL OPTIONS

There is no automatic statutory right of appeal for fixed penalty notices and the Council has discretion to decide whether or not to offer a non-statutory appeal process. The draft fixed penalty policy states that an appeal facility will not be available for fixed penalty notices.

3.5 TIME PERIOD IN WHICH TO PAY A FIXED PENALTY NOTICE

The time period for payment of a fixed penalty notice must be at least 14 days. The Council has discretion to extend the length of the payment period beyond this point. The Council also has discretion to set the time period in which a fixed penalty must be paid in order for an offender to benefit from the specified discount. The draft fixed penalty policy states that the full penalty must be paid within 21 days from receipt of the notice, and within 10 days in order for the recipient to benefit from the discount.

3.6 FIXED PENALTY PAYMENT OPTIONS

Fixed penalty notices are usually paid in full by a single payment. The Council does have discretion to allow alternative payment options such as deferred payment or payment by instalments. Some of the offences for which the Council serves fixed penalty notices are summary offences and must be tried at a Magistrates Court within 6 months from the date of the offence. The provision of deferred payments may therefore compromise the Council's ability to prosecute the original offence should it wish to do so.

Furthermore the processing of sundry debtors in connection with instalment payments may result in administrative costs to the Council which exceed the cost of the fixed penalty. Therefore the draft policy states that the Council will not accept deferred payment or payment by instalments for fixed penalty notices. In the event that an offender suggests that they are unable to pay a fixed penalty notice then this matter will still be referred to One Legal for consideration.

The Council will be introducing new customer payment methods as part of its current digital strategy. This will include the facility to make payments at pay-points located in shops and post offices located throughout the Borough. It is expected that the new payment options that will be introduced as part of the digital strategy will be available for payment of fixed penalty notices. Fixed penalty notices served by the Council will be raised and recorded on the debtors system. Monitoring of progress with the payment of fixed penalty notices will be the responsibility of the Environmental Health Section. Instruction and training on the processing, monitoring and recording of fixed penalty notices will be provided to all relevant staff.

4.0 CONSULTATION

4.1 None.

5.0 OTHER OPTIONS CONSIDERED

5.1 None.

6.0 RELEVANT COUNCIL POLICIES/STRATEGIES

6.1 Tewkesbury Borough Council: Corporate Enforcement Policy.

7.0 RELEVANT GOVERNMENT POLICIES

7.1 Fixed Penalty Notices: Issuing and Enforcement by Councils

<https://www.gov.uk/guidance/fixed-penalty-notices-issuing-and-enforcement-by-councils>

8.0 RESOURCE IMPLICATIONS (Human/Property)

8.1 None.

9.0 SUSTAINABILITY IMPLICATIONS (Social/Community Safety/Cultural/ Economic/ Environment)

9.1 A commitment to the use of fixed penalty notices for environmental offences may over the long term reduce the prevalence of these offences within Tewkesbury Borough and therefore improve environmental quality.

10.0 IMPACT UPON (Value For Money/Equalities/E-Government/Human Rights/Health And Safety)

10.1 None.

11.0 RELATED DECISIONS AND ANY OTHER RELEVANT FACTS

11.1 None.

Background Papers: Enviro-crimes: Report to Overview and Scrutiny Committee, February 2017.

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Appendices: 1. Draft Fixed Penalty Notice Policy.