



# Cabinet (Resources) Panel

## 17 December 2013

<b>Report title</b>	Review and approval of fixed penalty notices	
<b>Decision designation</b>	AMBER	
<b>Cabinet member with lead responsibility</b>	Councillor John Reynolds Cabinet Member for City Services	
<b>Key decision</b>	No	
<b>In forward plan</b>	No	
<b>Wards affected</b>	All	
<b>Accountable director</b>	Tim Johnson, Education and Enterprise	
<b>Originating service</b>	Regulatory Services	
<b>Accountable officer(s)</b>	Steve Barlow	Environmental Health (Public Protection) Manager
	Tel	01902 554350
	Email	steve.barlow@wolverhampton.gov.uk
<b>Report to be/has been considered by</b>	N/A	

---

### Recommendation(s) for action or decision:

The Cabinet (Resources) Panel is recommended to:

1. Approve the introduction of revised fixed penalties as detailed in the table below:

Penalty	Current	Proposed
Nuisance parking	£75	No change
Vehicle abandonment	£120	£120 plus costs
Litter	£50	No change
(Street) litter control	£60	£100
Unauthorised literature distribution	£50	£75
Graffiti and flyposting	£50	£50 per poster up to five then one additional FPN for every ten posters there after

Failure to produce waste transfer notes	£180	£300
Failure to produce waste carrier registration documents	£180	£300
Offences in relation to waste receptacles	£60	£100
Offences under dog control orders	£50	£75
Failure to nominate key-holder (within an alarm notification area)	£50	£50
Noise from dwellings	£60	£60
Noise from licensed premises	£500	£500
Failure to display no smoking signs	£200 reduced to £150 if paid in 15 days	£200
Smoking in a smoke free environment	£50 reduced to £30 if paid in 15 days	£50
Supply of alcohol by a club to a person under 18	Not yet formalised in Wolverhampton	To discuss with West Midlands Police. If agreed will adhere to their level of FPN fines.
Sale of alcohol anywhere to a person under 18		
Buys alcohol on behalf of person under 18		
Buys alcohol for consumption on relevant premises for person under 18		
Delivery of alcohol to person under 18		

2. Approve the extension of fixed penalty provisions introduced by new legislation, namely in respect of the production of energy performance certificates and underage sales of alcohol.

**Recommendations for noting:**

The Cabinet (Resources) Panel is asked to note:

1. That various Acts under which fixed penalties are issued enable local authorities to use their fixed penalty receipts only to help meet the cost of certain specified functions

## **1.0 Purpose of the report.**

### **1.1 The report is intended to:-**

- Update Councillors on the current use of fixed penalty notices (FPNs) and seek approval for the introduction of revised penalty levels as detailed in Appendix 1.
- Seek approval for the extension of fixed penalty provisions as described in section 3 and detailed in Appendix 1; namely the production of energy performance certificates and underage sales of alcohol.
- Seek approval to engage with the Chief Officer of West Midlands Police to explore the introduction of FPNs currently utilised by Police Officers for certain offences also enforced by the Local Authority.
- Seek approval for the principle of annual increases to fixed penalty levels in line with the RPI.

## **2.0 Background**

- 2.1 Regeneration of the City is aided by a robust approach to environmental crime. Tackling environmental crime is important if we are to improve the quality of life for local communities where it is shown to be a problem. Left unchecked, such crime can cause blight to local areas and lead to an environment where other crime, disorder and anti-social behaviour can take hold, creating a strong deterrent to possible inward investment to the area.
- 2.2 Further to this the issues of littering, dog fouling and other environmental crimes are highlighted as being a significant priority in the last resident's survey.
- 2.3 The option to deal with such crimes without having to resort to court processes has been encouraged by successive Governments and is also generally welcomed by residents and the wider public who wish to see a proportionate but robust approach taken to such matters.
- 2.4 The use of FPNs can provide enforcement agencies such as the Council with an effective, visible and expedient way of responding to low-level environmental crimes. Wolverhampton City Council has utilised FPNs for such purposes since the 2006 implementation of the Clean Neighbourhoods and Environment Act.
- 2.5 Although the penalty for FPNs is smaller than the potential fine should the matter be considered by the courts, their use serves as a potentially significant deterrent to the types of crime they are intended to address. In addition, the process involved in issuing an FPN is far less resource intensive than preparing a case for prosecution.
- 2.6 Payment of an FPN discharges the individual's liability for an offence without them attending court and potentially obtaining a criminal record. This could have a detrimental effect on their future employment opportunities. Court convictions may also be regarded as disproportionate for "low-level" crime.

2.7 The use of FPNs is referred to in the Regeneration Compliance and Regulatory Policy endorsed by Cabinet Member for City Services, Cabinet Member for Economic Regeneration and Prosperity, Chair of Licensing Committee and Assistant Director Regeneration in December 2012.

2.8 In 2010 the existing two tier approach to payments, allowing a lower penalty payment to be accepted if the payment was made early was replaced by a single tier system

### **3.0 Review of FPNs and level of fines**

3.1 Since the introduction of FPNs following Cabinet approval in 2006, the authority has undergone significant change and faces new challenges with limited resources. This has prompted a review of how aspects of services can be delivered in a more efficient manner.

3.2 The current levels for penalties associated with FPNs was established in 2006 and reviewed in 2010. However in view of the changes described above, a further review of the FPN process and associated levels for penalties has been undertaken.

3.3 The visual impact of the environmental crime, the number of complaints received, the resources required to investigate such issues and, more importantly, the potential health impact of such offences have all been taken into consideration in this review.

3.4 The attached Appendix 1 provides a summary of the review and includes:-

- the legislation which permits the issuing of a FPN,
- details of current, maximum and proposed levels of penalty, and
- a brief explanation for the proposal.

3.5 New legislation, namely the Energy Performance of Buildings (England and Wales) Regulations 2012 has been identified as a further piece of legislation where the issuing of a FPN can be utilised by a Local Authority to deal with certain offences. Specifically, the failure of landlords and owners of buildings to hold and/or display and/or produce upon request, an energy performance certificate is considered to be an area where the appropriate use of FPNs could bring about improvements within the sector.

3.6 In addition, through joint exercises with West Midlands Police especially in regard to underage sales of alcohol, it became evident that there were provisions available, upon the authority of the Chief Officer of the Police, for Trading Standards Officers to issue FPNs for some types of offence associated with underage alcohol sales.

### **4.0 Issues for consideration/note.**

4.1 Although FPNs expedite the investigatory process there is the risk that any increase in the level of penalties could lead to an increase in the number of non-payments requiring further resources to bring the case to court. However, this is a potential issue whenever a FPN is issued and one role of the FPNs is to act as an effective deterrent to enhance the

environment we live and work in. Furthermore, although the level of penalty is increasing, it will still be more cost effective and convenient for individuals to pay the penalty than to attend court.

- 4.2 The introduction of any new FPN provisions will be supported by a policy to ensure the process is fair and equitable to all. There is currently a mechanism where individuals in receipt of an FPN can request a review by a senior manager. This would be continued and extended to all FPNs issued.
- 4.3 Regeneration's Compliance and Regulatory Policy states that in the majority of cases of non-payment, the normal course of action would be to prosecute. The reasons for this approach are that a failure to follow up such non-payment would seriously undermine the Service's authority and potentially jeopardise future enforcement work. Further to this, as FPNs are not appropriate for persistent offending, the Council would, in accordance with the above Policy, also normally seek to prosecute repeat offenders.
- 4.4 The various Acts under which fixed penalties are issued enable local authorities to use their fixed penalty receipts only to help meet the cost of certain specified functions. For example receipts for the low-level environmental crime can only be used in functions to investigate, educate and enforce under that legislation.
- 4.5 The issue of any statutory notice, including an FPN is already tightly controlled within Regulatory Services and only those officers with sufficient experience and appropriate qualification are authorised to issue them.
- 4.6 Although the proposals within the report are to increase penalty levels and extend the provisions of the FPN process to new areas, it is not possible to accurately predict the impact on penalty receipts. It is anticipated however, that there may be a marginal increase and this could provide some limited support for existing compliance and regulatory activity.

## **5.0 Financial implications**

- 5.1 Existing enforcement actions are delivered within agreed resource provisions.
- 5.2 The payment of fixed penalties provides an income stream which, where permissible, will continue to be utilised in further resourcing the delivery of the service. Statute states that the income may only be used for prescribed purposes.
- 5.3 The continued and wider use of FPNs may provide a more efficient and effective use of officer resources which in turn could help maintain capacity to address priority complaints and issues.
- 5.4 The FPN process is already in situ within Regulatory Services and therefore can easily be extended and knowledge shared with other services looking to implement the FPN process.

5.5 The recommendations contained in this report may result in a marginal change in FPN income. The primary purpose of the report, however, is to ensure that the Council continues to comply with existing legislation. [TK/12112013/R]

## **6.0 Legal implications**

6.1 The legal implications are contained within the body of the report. [JH/081113/M]

## **7.0 Equalities implications**

7.1 There are no direct equalities implications however measures to mitigate any indirect equalities implications are detailed below.

7.2 All enforcement activity undertaken by Regulatory Services is based on a consideration of the facts of the case and whether it passes the evidential and public interest tests as set out in the Code for Crown Prosecutors. It also considers Regeneration Compliance and Regulatory Policy.

7.3 The use of FPNs would be considered appropriate for low-level environmental crimes, first offences etc and permits the offender to discharge their liability without the need to attend court. This approach would be applied fairly in accordance with Council policies.

7.4 Where individuals or businesses feel aggrieved against the issue of the FPN there is a mechanism where they can request a review of the evidence by a person at appropriate management level.

7.5 A number of the penalty levels are statutorily set and there is no scope for adjustment.

## **8.0 Environmental implications**

8.1 The main use of FPNs to date has been to tackle low-level environmental crime and is aimed at improving the local environmental quality of neighbourhoods and communities within Wolverhampton. Their use acts as a deterrent to such crimes.

8.2 As detailed in section 3 tackling environmental crime is an important issue for residents of the City and can also assist in regeneration of the City.

## **9.0 Schedule of background papers**

DASO report – Enforcement options for dealing with littering and fly tipping – 27 April 2001

R&E GDN – Penalties and proceedings in relation to the issue of fixed penalty notices – 3 April 2006

Cabinet report – Modernising enforcement decisions in Environmental Services – 6 September 2006

Sustainable Communities Scrutiny Panel – Enforcement policy guidance note: issuing fixed penalty notices to young people – 4 December 2007

**Appendix A**

**Current and Proposed FPN Levels / Provisions**

Description of Offence	Legislation	Existing FPN penalty	Max FPN level/court fine	Proposed new FPN level	Comments
Nuisance Parking	CNEA 2005 s.6	£75	Max £100/ court £2,500	£75	No change. Comparative to other LA's. Working with Highways on this issue
Abandoning a vehicle	RD (Amenity) Act 1978 s.2A	£120	Max £200/ court £2,500	£120 + costs incurred	No increase just added costs incurred to make the service cost neutral
Litter	EPA 1990 s. 88	£50	Max £80/ court £2,500	£50	Often low level environmental crime, deemed sufficient deterrent in relation to type of litter.
Street Litter Control Notices & Litter Control Notices	EPA 1990 s.94A	£60	Max £110/ court £2,500	£100	Often larger scale litter from or involving businesses. Costly to investigate. Would be used if the business failed to act following engagement by officers. Level proposed is the default amount set by legislation.
Unauthorised distribution of literature	EPA 1990 Schedule 3A para.7(2)	£50	Max £80/ court £2,500	£75	Focus on City Centre. Drive to improve city centre therefore supports this objective. Level proposed is the default amount set by legislation.
Graffiti & fly-posting	ASBA 2003 s.43	£50	Max £80/ court £2,500	£50 per poster up to 5 then 1 additional FPN for every 10 posters there after	Tiered scheme to address wide scale, prolific problem which blight the city. This scale of fly-posting is costly to remove and very visual.

Description of Offence	Legislation	Existing FPN penalty	Max FPN level/court fine	Proposed new FPN level	Comments
Failure to produce waste transfer notes	COP (Amendment) Act 1989 s.5B	£180	Max £300/ court £5,000	£300	Applicable to those businesses who dispose of their waste by non-legitimate means. Often undertaken for financial gains. Problem with fly-tipping (especially of white goods) in the city. FPNs issued will be reported to Licensing Services to consider as part of the Scrap Metal Dealers Act 2012
Failure to produce waste carrier registration documents	EPA 1990 s.34	£180	Max £300/ court £5,000	£300	
Offences in relation to waste receptacles	EPA 1990 s.47ZA	£60	Max £110/ court £1,000	£100	Subject to a number of complaints, visual. Work with waste to educate public before any FPN issued. Level proposed is the default amount set by legislation
Offences under dog control orders	CNEA 2005 s.59	£50	Max £80/ court £1,000	£75	Dog fouling/stray dogs – big issue, resource intensive and health implications. Level proposed is the default amount set by legislation
Failure to nominate key-holder (within an alarm notification area)	CNEA 2005 s.73	£50	Max £80/ court £1,000	£50	Not frequently used. Use other legislation where significant problems exist.
Noise from dwellings	Noise Act 1996 s.8	£60	Max £110/ court £1,000	£60	Not frequently used. Use other legislation where significant problems exist.
Noise from licensed premises	Noise Act 1996 s.8	£500	Max £500/ court £5,000	£500	No change. Amount set by legislation.



Description of Offence	Legislation	Existing FPN penalty	Max FPN level/court fine	Proposed new FPN level	Comments
Failure to display no smoking signs	HA 2006 s.6 (5)	£200 reduced to £150 if paid in 15 days	Max £200/£1,000	£200	Two-tier system for payment removed for all other FPN's. Ample advice & education given to businesses over 7 years
Smoking in a smoke free environment	HA 2006 s 7 (2)	£50 reduced to £30 if paid in 15 days	Max £50/ court £200	£50	
Supply of alcohol by a club to a person under 18	LA 2003 s.146 (3)	Not yet formalised in Wolverhampton	To be discussed in conjunction with WMP	To discuss with West Midlands Police. If agreed will adhere to their level of FPN fines.	
Sale of alcohol anywhere to a person under 18	LA 2003 s. 146 (1)				
Buys alcohol on behalf of person under 18	LA 2003 s.149 (3)				
Buys alcohol for consumption on relevant premises for person under 18	LA 2003 s.149 (4)				
Delivery of alcohol to person under 18	LA 2003 s.151				

Description of Offence	Legislation	Existing FPN penalty	Max FPN level/court fine	Proposed new FPN level	Comments
Truancy	Education Act 1996 s.444A	£120 reduced to £60 if paid within 28 days	Currently FPN issued by PP on behalf of Education	As existing	To continue as per instructions from Education
Energy Performance Certificate	The Energy Performance of Buildings (England and Wales) Regulations 2012.	Not yet introduced	£200	£200	New legislation. The penalty charge is fixed and appeals via a county court

Key to statutes

CNEA 2005 – Clean Neighbourhoods and Environment Act 2005  
RD (Amenity) Act 1978 – Refuse Disposal (Amenity) Act 1978  
EPA 1990 – Environmental Protection Act 1990  
ASBA 2003 – Anti-social Behaviour Act 2003  
COP (Amendment) Act 1989 – Control of Pollution (Amendment) Act 1989  
HA 2006 – Health Act 2006  
LA 2003 – Licensing Act 2003