

REPORT FOR: **CABINET**

Date of Meeting:	18 September 2014
Subject:	Fixed Penalty Notices for Environmental Crime Enforcement
Key Decision:	Yes
Responsible Officer:	Caroline Bruce, Corporate Director of Environment and Enterprise
Portfolio Holder:	Councillor Varsha Parmar, Portfolio Holder for Environment, Crime and Community Safety
Exempt:	No
Decision subject to Call-in:	Yes
Wards affected:	All
Enclosures:	Appendix A - Fixed Penalty Notice Survey Results Appendix B - Equality Impact Assessment Appendix C - DEFRA Guidance on Fixed Penalty Notices

Section 1 – Summary and Recommendations

This report seeks approval to use Fixed Penalty Notices (FPNs) as an enforcement tool for certain types of environmental crime and outlines its benefits.

Recommendations:

Cabinet:

- a. Approve the use of Fixed Penalty Notices and their fine levels for the offences listed in this report.
- b. Delegate authority to the Corporate Director (E&E) to issue Fixed Penalty Notices.

- c. Delegate authority to the Corporate Director (E&E) to authorise persons not directly employed by the Council to issue Fixed Penalty Notices.
- d. Authorise the Corporate Director (E&E), following consultation with the Portfolio Holder, to undertake the necessary procurement and operational work required to introduce the use of the Fixed Penalty Notices as outlined in this report.
- e. Authorise the Corporate Director (E&E) to implement a communication and publicity campaign to publicise the use of Fixed Penalty Notices.
- f. Delegate authority to the Corporate Director (E&E) to develop, in conjunction with the Portfolio Holder, operational guidance for the use of FPNs and note that a further report will be provided to Cabinet in due course about designating land for the purposes of issuing FPNs in respect of the offence of 'unauthorised distribution of free printed matter on designated land'.
- g. Note that a further report will be provided to Cabinet in due course for approval of an environmental offences enforcement policy.
- h. Note that a further report will be provided to Cabinet in 2015 to provide feedback on the use of Fixed Penalty Notices.

Reason: (For recommendation)

The use of Fixed Penalty Notices would be a helpful and efficient tool for enforcement as an alternative to prosecution in matters of low level environmental crime offences

Section 2 – Report

INTRODUCTION

1. The implementation of FPNs delivers a firm commitment made in the corporate plan to introduce on the spot fines for littering in our streets to help clean up Harrow. This will make a difference for communities and local businesses by addressing environmental crime and improving Harrow for its residents, visitors and supporting a vibrant business environment.

OPTIONS CONSIDERED

- Option 1:** To continue as is, carrying out prosecutions for low level crime issues where feasible. In other words not introduce the use of Fixed Penalty Notices as a method of enforcement.
- Option 2:** The introduction of the following Fixed Penalty Notices and fees:

OFFENCES WITH LOCAL LEVEL SETTING AND DISCOUNTING ALLOWED:

Description of Offence	Act	Section of Act	Allowable Penalty	Fee, to be paid within 14 days	Fee if paid within 10 days
Depositing litter (includes spitting out chewing gum or cigarettes etc)	Environmental Protection Act 1990, as amended by section 19 of the CNEA 2005	87/88	Locally set between £50 and £80	£75	£50
Unauthorised distribution of free printed matter on designated land	Environmental Protection Act 1990, as amended by section 23 of the CNEA 2005	Schedule 3A, para 7(2)	Locally set between £50 and £80	£75	£50
Graffiti and Flyposting	Anti-Social Behaviour Act 2003, as amended by section 28 of the CNEA 2005	43	Locally set between £50 and £80	£75	£50
Failure to comply with a waste receptacle notice	Environmental Protection Act 1990, as amended by section 48 of the CNEA 2005	46/47/47ZA/47ZB	Locally set between £75 and £110	£100	£60
Failure to comply with a street litter control notice and failure to comply with a litter clearing notice	Environmental Protection Act 1990, as amended by section 22 of the CNEA 2005	92C/94/94A	Locally set between £75 and £110	£100	£60

OFFENCES WITH NO LOCAL LEVEL SETTING AND DISCOUNTING ALLOWED:

Description of Offence	Act	Section of Act	Allowable Penalty	Fee, to be paid within 14 days	Fee if paid within 10 days
Nuisance parking	CNEA 2005	s.6(1)	£100	£100	£60
Abandoning a vehicle	Refuse Disposal (Amenity) Act 1978, as amended by section 10 of the CNEA 2005	Schedule 2A (1)	£200	£200	£120
Failure to furnish documentation (waste carrier's licence)	Environmental Protection Act 1990, as amended by section 45 of the CNEA 2005	s.34A(2)	£300	£300	£180
Failure to produce authority (waste transfer notes)	Control of Pollution (Amendment) Act 1989, as amended by section 38 of the CNEA 2005	s.5B(2)	£300	£300	£180

2. In relation to the offence of unauthorised distribution of free printed matter on designated land, FPNs will not be issued until after Cabinet has approved the area(s) to be 'designated land' and an order made in accordance with legislation. A further report to Cabinet about this will be provided in due course.
3. Discount levels for fixed penalty notices are determined by the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2007 (regulation 3). Details are given in the DEFRA Guidance in Appendix C

BACKGROUND

CURRENT SITUATION

4. Issues such as litter, graffiti and abandoned cars are matters that are frequently raised by residents throughout the Borough and through Ward Councillors and MPs.
5. These areas are enforced, but such enforcement is limited and time consuming.
6. The current Administration has committed to tackle these types of anti-social behaviours through the use of Fixed Penalty Notices (FPNs) as one of its five key pledges. The aim is to ensure that residents and others increasingly take control of their own behaviour to the benefit of the wider community.

WHY CHANGE IS NEEDED

7. The Clean Neighbourhoods and Environment Act 2005 widened the types of offences for which FPNs can be used and the persons that can issue them.
8. Fixed Penalty Notices for the offences noted in this report are not currently used in Harrow and enviro-crime enforcement is currently confined to taking informal action or prosecuting. As a result, issues such as littering do not get the enforcement they need due to time and resources, leading to increased environmental degradation.
9. The introduction of FPNs allows low level environmental crime in the Borough to be tackled, using a more cost effective and proportionate response to these offences. The FPN level is set to provide a deterrent aspect which goes towards the need to educate not just enforce.
10. It is intended that the implementation will commence from 1st October, 2014 by way of a communication and education campaign to raise awareness, followed by commencement of issuing Fixed Penalty Notices from 1st January, 2015.

IMPLICATIONS OF THE RECOMMENDATIONS

RESOURCES AND COSTS

11. Council has previously agreed a sum of £50,000 budget to cover any administration costs of employing a third party company to patrol and issue FPNs as appropriate; to advertise the scheme in the local media and Harrow Webpage; to provide necessary equipment; and to train staff within the service on issuing FPNs.

STAFFING AND WORKFORCE

12. The success of Fixed Penalty Notices as part of a joint education and enforcement option is dependant on maximising publicity and use. To this end, the Council would seek to maximise use of FPNs by four different means:
 - a. Authorisation of the current Environmental Compliance Officers (7 in total) to issue FPNs for environmental crime offences they already enforce. This will be in addition to the normal duties they conduct, and not as their sole purpose;
 - b. Authorisation of other council officers associated with dealing with enviro-crime aspects as appropriate, and agreed by the Corporate Director;
 - c. Use of a 3rd Party company (contractor) initially for a six month period to maximise publicity, instigate enforcement and provide a uniformed enforcement aspect to maximise effect to a short timescale;
 - d. Liaise with the Police (Safer Neighbourhood Teams) to seek their agreement to use PCSOs to issue FPNs where permitted and other accredited persons;
13. Under Schedule 4 of the Police Reform Act 2002 Police Community Support Officers (PCSOs) have the power to issue fixed penalty notices for littering without any requirement for the Council's permission or authorisation.
14. Authorisation of any person to issue FPNs would follow confirmation of background checks and training. All officers, internal and external, would be required to meet all Council procedures related to this.
15. The following FPNs are allowed by legislation to be delegated to officers other than those directly employed by the Council:
 - Litter
 - Unauthorised distribution of literature on designated land
 - Graffiti and Fly Posting

16. The engagement of a 3rd Party Company as noted in paragraph 12(c) above will be done in accordance with procurement procedures.
17. The 3rd Party Company will provide a uniformed presence in the main shopping areas to promote a visual approach. They will work alongside Council staff and be required to approach people directly on witnessing a relevant offence, assumed that this will mainly be littering, and highlight the issue. This will continue for a period of 3 months (up to 1st January 2015) to act as an educational approach to the impact of the actions of the offender. They will then start issuing FPNs where appropriate from 1st January 2015.
18. On approval of the use of FPNs as detailed in this report, consultation will take place with the Police Borough Commander for Harrow and relevant Police Authorities to address whether police constables will also assist in the issuing of FPNs.

COMMUNITY IMPLICATIONS

19. Communication about Environmental Offences has already started, with the Council website spitting petition at the start of 2014, showing support of over 3000 people. The introduction on Fixed Penalty Notices will help deal with spitting.
20. A day of action in the Town Centre on the 29th August 2014 focused on pigeon feeding was used to promote the possible use of FPNs, and opportunities at Under One Sky in September 2014 are being explored. Future educational type events will be supported by any income from FPNs, and show a more sustainable, educational aspect.
21. A specific consultation on the use of Fixed Penalty Notices was conducted between 15th August and the 5th September 2014. This was by an on-line survey supported by self-completion questionnaires. The Community Engagement Team publicised the web-link and distributed questionnaires at events, to community groups and to Community Champions. A total of 327 surveys were completed. The results of the survey are shown in Appendix A.
22. The majority of respondents said there was a problem with the environmental issues raised. This ranged from 94% for litter to 59% for abandoned cars. Around 9 out of 10 respondents agreed that these matters should be dealt with by way of fixed penalty notice enforcement. The figures range from 94% for litter to 85% for leaflets.
23. An educational campaign plan shall be developed with the communications team to ensure maximum awareness and understanding of the new approach. This will include the use of leaflets, press releases, warnings and other publicity for a period of approximately 3 months after approval of use of Fixed Penalty Notices, and before issuing the first FPN. This will seek to ensure maximum awareness and acceptance of the new approach.
24. The use of a 3rd party company will also require an identifiable uniformed enforcement presence with the capacity to advise and educate the general public in relation to environmental awareness. Consideration of whether body

cameras can be used will also be considered for the purposes of evidence gathering.

25. The 3rd party company would be used for a dual role of education and enforcement, carrying out contact with offenders and warning them about their behaviour and drawing attention to the use of FPNs during the 3 month period of education and thereafter issuing them.
26. The above will be in line with DEFRA Guidance on the use of FPNs . This states “It is recommended that authorities considering issuing fixed penalty notices for the first time allow a well-publicised lead-in period before any notices are issued. This should help ensure public support for fixed penalties. During this time, when an offence is committed, enforcement officers should not issue any fixed penalties; if the offence is serious they should report the offender with a view to prosecution; in other cases they should issue a warning that in future similar offences may lead to fixed penalty notices (or prosecution). This will help raise awareness within the community and should help manage the public’s perception.”

BENEFITS AND LIMITATIONS

27. FPNs are a valuable addition to the enforcement toolkit. Benefits are:-
 - Appropriate and proportionate means of dealing with low-level offending.
 - Ability to deal with infringements in a swift, simple, effective and cost-effective way.
 - Reduces demands on officer time such as preparing for prosecutions when an FPN can be issued instead.
 - Reserves court cases for the more serious and / or persistent offenders.
 - The financial penalty is a deterrent and sufficient to induce behaviour change, and similar to the fine the court might impose for minor offences.
 - Some FPNs could be served by authorised non-Council officers. These include Police Community Support Officers (PCSOs), Police and Council contractors engaged by the Council for the purpose of issuing FPNs.
28. There are some limitations:-
 - FPNs should only be used when there is sufficient evidence to prosecute, which needs to happen for non-payment to maintain credibility on enforcement
 - A FPN cannot be recovered as a civil debt, again emphasising the need to be able to prosecute in the case of non-payment.
 - FPNs should not be used for fly tipping due to the seriousness of the offence, and prosecution should be used

LEGAL IMPLICATIONS

29. Various legislation provide for the use of fixed penalty notices (FPN) in relation to environmental offences, and the Clean Neighbourhoods and Environment Act 2005 widened the types of offences for which FPNs can be used and the persons that can issue them.

30. A fixed penalty notice is one tool of enforcement available to an authority to deal with environmental offences and gives the person to whom it is issued the opportunity to avoid prosecution. For this reason, FPNs should not be issued if there is not sufficient evidence to support a prosecution for the offence.
31. To ensure consistency of approach (as noted in the recommendations section of this report) in relation to the use of FPNs, an operational guide is to be created for officers tasked with the role of issuing and dealing with FPNs, and additionally an environmental offences enforcement policy.
32. Subject to Cabinet agreeing recommendations (b) and (c) of this report to allow the Corporate Director (Environment & Enterprise) to issue FPNs, she will then further sub-delegate this as appropriate to relevant officers of the department.

FINANCIAL IMPLICATIONS

33. It is not intended that the FPN regime acts as an additional source of income for the authority and use of the receipts of FPNs is set out in legislation.
34. In general, as the success of any FPN is advertised, the public should become more compliant and fewer offences should be committed and less money will be received. This is the main intention of the policy – i.e. educating and reducing offences.
35. Any income will be used to offset costs associated with issuing the fixed penalty notices which will be met from existing budgets, as well as environmental campaigns to increase education and compliance. To this end the income will be used to offset the costs of implementation. As the aim of this initiative is to ensure residents increasingly take control of their behaviour and thereby reduce these anti-social offences, the numbers of FPNs issued is expected to decline as awareness of the scheme increases. Therefore after an initial settling in period, money from FPNs is expected to be minimal.

PERFORMANCE ISSUES

36. The introduction of fixed penalty notices will enable the Council to increase the number of enforcement actions against those individuals who disregard the environment. This in turn will improve the efficiency of the Environmental Compliance Team in tackling low level environmental crime and contribute to improving the National Indicator 195 relating to litter. The numbers of Fixed Penalty Notices issued will be monitored.

ENVIRONMENTAL IMPACT

37. The policy is expected to have a positive impact on the Environment, by allowing a more cost effective, quick remedy to low level environmental crime and ultimately improve the environment.

38. Approving this policy does not require an Environmental Impact Assessment.

RISK MANAGEMENT IMPLICATIONS

39. The introduction of FPNs is not included on the Directorate or any other corporate risk register as it is a straightforward operational issue.

EQUALITIES IMPACT CONSIDERATIONS

40. An Equalities Impact Assessment (EqIA) has been completed in relation to the introduction of FPNs (see Appendix B).

41. Based on initial considerations it was thought possible that there could be a disproportionate adverse impact on two protected characteristic groups (age and race) and hence a full EqIA was carried out. Having assessed the impacts and analysed the results it was concluded that neither of the characteristics were disproportionately affected. Therefore no significant mitigation measures are required.

42. Nevertheless, two items have been included in the improvement plan which involves the education campaign mention above and monitoring the use of FPNs as far as practicable to see if any further action could assist any protected characteristic group.

COUNCIL PRIORITIES

43. The implementation of FPNs delivers a firm commitment made in the corporate plan to introduce on the spot fines for littering in our streets to help clean up Harrow.

44. **Making a difference for communities:** by addressing environmental crime and improving an area for its residents, visitors and businesses.

45. **Making a difference for local businesses:** The tackling of environmental crime fits supports a vibrant business environment.

Section 3 - Statutory Officer Clearance

Name: Jessie Man	<input checked="" type="checkbox"/>	on behalf of the Chief Financial Officer
Date: 2 September 2014		
Name: Paresh Mehta	<input checked="" type="checkbox"/>	on behalf of the Monitoring Officer
Date: 8 September 2014		

Section 4 – Performance Officer Clearance

Name: Alex Dewsnap



Divisional Director
Strategic
Commissioning

Date: 3 September 2014

Section 5 – Environmental Impact Officer Clearance

Name: Hanif Islam



on behalf of
Corporate Director
Environment and
Enterprise

Date: 2 September 2014

Section 6 - Contact Details and Background Papers

Contact and Author: Richard LeBrun, Environmental Services Manager
(Public Protection)
Tel: 020 8736 6267

Background Papers:

Fixed Penalty Notice Survey Results (see enclosure)
DEFRA Guidance on the Fixed Penalty Notice Provisions (see enclosure)

**Call-In Waived by the
Chairman of Overview
and Scrutiny
Committee**

NOT APPLICABLE

[Call-in applies]