

**REPORT FOR:****CABINET**

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<b>Date of Meeting:</b>	19 February 2015
<b>Subject:</b>	Fixed Penalty Notices for Environmental Crime Enforcement – Policy, Operational Guidance and Procedural Matters
<b>Key Decision:</b>	Yes
<b>Responsible Officer:</b>	Caroline Bruce, Corporate Director of Environment and Enterprise
<b>Portfolio Holder:</b>	Councillor Varsha Parmar, Portfolio Holder for Environment, Crime and Community Safety
<b>Exempt:</b>	No
<b>Decision subject to Call-in:</b>	Yes
<b>Wards affected:</b>	All
<b>Enclosures:</b>	Appendix A – Environmental Compliance Enforcement Policy Appendix B – Fixed Penalty Operational Guidance Appendix C – Briefing Note ASB, Crime and Policing Act 2014 Appendix D – DEFRA Guidance – Litter and Refuse Appendix E – Equality Impact Assessment

## **Section 1 – Summary and Recommendations**

This report presents a) the Environmental Compliance Enforcement Policy, b) the associated Operational Guidance for officers, c) seeks approval of new fixed penalty notices as set out in the Anti Social Behaviour, Crime and Policing Act 2014 (which came into force 20<sup>th</sup> October 2014) and d) sets out the proposal to consult on whether to designate any areas within the Borough in terms of land associated with unauthorised leaflet distribution.

The enforcement policy and operational guidance are fundamental to the effective implementation of fixed penalty notices (FPNs) as they set out the policy environment in which FPNs operate as well as providing guidance to officers on implementation. In doing so, they support the decision made by Cabinet on the 18 September 2014 to introduce FPNs for environmental crime offences in Harrow.

### **Recommendations:**

Cabinet is requested to:

- a. Approve the Environmental Compliance Enforcement Policy for adoption.
- b. Note the FPN Operational Guidance for staff.
- c. Approve the two new Fixed Penalty Notices and their fine levels - failure to comply with Community Protection Notice and non-compliance of a Public Space Protection Order both at £100 discounted to £60 if paid within 10 days.
- d. Agree the proposal to publically consult on whether any areas in the Borough are defaced by discarded printed matter so that consideration can be given to designating the area(s) as detailed in this report.
- e. Delegate authority to the Corporate Director of Environment and Enterprise following consultation with the Portfolio Holder for Environment, Crime and Community Safety to make amendments to the current policy only when there have been changes of Government guidance or new legislation.

### **Reason: (For recommendation)**

Following the decision made by Cabinet on 18 September 2014 to introduce FPNs in Harrow, the detailed policy and operational guidance for staff have been updated. They support Members decision to roll-out FPNs for environmental crime offences. FPNs provide an alternative to prosecution in matters of low level environmental crime offences. They also support the Council's vision of "Working together to make a difference for Harrow".

In addition, new legislation supersedes some of the fixed penalty notices that were approved in September 2014 and cannot be used until approved. These are set out in this report.

Designated land must be identified, approved by the Authority and advertised before the Council can use Fixed Penalty Notices for unauthorised distribution of leaflets. Public consultation is required prior to designating the land and the report seek authority to consult.

## **Section 2 – Report**

### **1. Introduction**

- 1.1 Harrow Council is committed to maintaining a clean and safe environment for the benefit of everyone in the borough. The commitment recognises the Council's responsibility to keep the streets and local environment clear of litter and obstructions and deal with other local environmental quality issues.
- 1.2 All local authorities in England including Harrow Council now have extended powers to enable enforcement of certain environmental legislation intended to protect both the individual and community as a whole.
- 1.3 On 18 September 2014 Cabinet approved the use of Fixed Penalty Notices (FPNs) for environmental crime offences. Delegation and authority levels were also approved. Cabinet agreed at the time that a further report would be submitted to them for approval, setting out the environmental offences enforcement policy, operational procedure and designation of land in respect of the offence of 'unauthorised distribution of free printed matter on designated land'.
- 1.4 This report presents to Members the enforcement policy and operational guidance (appendices A and B). They include details of how the Council will use the legislation and powers to ensure an effective, consistent and clearer approach to street environment enforcement. This includes how spitting will be tackled in a robust and effective way.
- 1.5 In addition, since September 2014, the new Anti Social, Crime and Policing Act 2014 has come into place that revokes elements of fixed penalty notices previously agreed and replaces them with more generic enforcement options that, in themselves, have fixed penalty notice options. Therefore, these elements are also raised for approval in this report.
- 1.6 The new Anti Social Behaviour, Crime and Policing Act 2014 has introduced the use of a Public Space Protection Order (PSPO). The PSPO allows the Local Authority to identify a public place where activities are being carried on, which are detrimental to the quality of life of those in the locality and to subsequently prohibit or require specified things to be done in the restricted area. This order could therefore be used to restrict an area in the borough and have conditions applied to it, such as no spitting, and consequently to issue an FPN for non-compliance. Cabinet will be provided with evidence of various areas within the borough which may need to become restricted areas.

- 1.7 In terms of designated land for unauthorised leaflet distribution, it is a requirement to approve the proposal and suitably advertise to allow proper consultation prior to issuing FPNs for leaflet distribution.
- 1.8 The above will all assist in making a difference for communities and local businesses by allowing the issuing of FPNs to address environmental crime and improving Harrow for its residents, visitors and supporting a vibrant business environment.
- 1.9 The introduction of the new FPNs widens the effectiveness to also protect communities and vulnerable affected by matters of Anti Social Behaviour, classed as anything causing distress, annoyance or nuisance.

## **2. Options considered**

- 2.1 The policy and operational guidance is needed in order to facilitate the roll out of FPNs as previously agreed by Cabinet, hence there are no further options being considered for this element of the report.
- 2.2 The charges for the new FPNs were considered and set at a level to deter offenders. Not introducing these new FPNs limits the Council's ability to enforce following the changes to Anti Social Behaviour, Crime and Policing Act 2014 (which came into force 20<sup>th</sup> October 2014)
- 2.3 Designating land with a formal Order allows the Council to enforce against unauthorised leaflet distribution. Consideration was given on whether or not to designate land and it was deemed important in order to stop the Borough being defaced with discarded leaflets.

### **Environmental Compliance Enforcement Policy & FPN Operational Guidance**

- 2.4 The principles of Fixed Penalty Notices were set out in the report to Cabinet on 18<sup>th</sup> September 2014 and are not repeated in this report. This report sets out the detailed policy and operational guidance in Appendices A and B respectively.
- 2.5 The policy document sets out the enforcement policy of Harrow Council and how the Council uses legislation and powers to ensure an effective, consistent and clear approach to street environment enforcement.
- 2.6 It covers the following offences:
  - Littering
  - Waste
  - Dog fouling
  - Noise nuisance
  - Distributing of free literature without consent

Failure to produce authority (certificate of registration) to transport controlled waste  
Failure to produce transfer notices  
Street litter notice  
Abandoned vehicles  
Graffiti and fly posting  
Nuisance vehicles

- 2.7 These services enforce a wide range of legislation that aims to protect the interests and rights of people in relation to the environment that they use.
- 2.8 Within this legislative framework and to promote a clean environment, fixed penalty notices (FPN) can be used. An FPN is a financial penalty that officers can issue directly to offenders once their offence has been established. Payment of the FPN discharges the offender from any consequent legal action regarding the offence. However if the FPN isn't paid then the offender may face legal proceedings.
- 2.9 The implementation of FPNs delivers a firm commitment made in the Council's 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 and visitors and supporting a vibrant business environment.
- 2.10 The FPN for Environmental Offences - Operational Guidance sets out the relevant legislation and the FPN actions that officers can take.
- 2.11 FPNs are a valuable addition to the enforcement toolkit. Benefits include:-
- Having an appropriate and proportionate means of dealing with low-level offending.
  - Dealing with infringements in a swift, simple, efficient and cost-effective way.
  - Reducing demand on officer time such as preparing for prosecutions when an FPN can be issued instead.
  - Reserving court cases for the more serious and / or persistent offenders, reducing demand on legal support services.
  - Inducing behaviour change through financial penalty, often similar to the fine the court might impose for minor offences.
  - Serving FPN's by a variety of other persons as well as Council officers. These include Police Community Support Officers (PCSOs), Police and Council contractor staff.
- 2.12 However, it should be noted that there are some limitations, such as:-
- FPNs should only be used when there is sufficient evidence to prosecute, which needs to happen for non-payment to maintain credibility of enforcement.

- An 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 is to be used.

**New fixed penalty notices as set out in the Anti Social Behaviour, Crime and Policing Act 2014 (which came into force 20th October 2014)**

- 2.13 On 20<sup>th</sup> October 2014, the new Anti Social Behaviour, Crime and Policing Act 2014 came into force. This redefined anti social behaviour in general, to encompass a wider remit, and put in place new powers to deal with it. A consequence of this is that a number of previous legislative aspects under other acts were revoked, and included:

***Environmental Protection Act 1990 (c. 43)***

In the Environmental Protection Act 1990, sections 92 to 94A (litter abatement notices, litter clearing notices and street litter control notices) are repealed

***Clean Neighbourhoods and Environment Act 2005 (c. 16)***

Sections 55 to 64, 66 and 67 of the Clean Neighbourhoods and Environment Act 2005 are repealed. (Dog Fouling and Dog Control Orders)

***Anti-social Behaviour Act 2003 (c. 38)***

The following provisions of the Anti-social Behaviour Act 2003 are repealed:

- (a) Part 1 (closure of premises where drugs used unlawfully);
- (b) Part 1A (closure of premises associated with persistent disorder or nuisance);
- (c) Part 4 (dispersal of groups etc);
- (d) sections 40 and 41 (closure of noisy premises);
- (e) sections 48 to 52 (removal of graffiti and fly-posting) and the cross-heading before section 48.

- 2.14 There were 19 Anti Social Behaviour (ASB) powers in place which condensed down to 6 broader powers that will allow the addressing of a much wider remit of ASB. These are:
- Civic Injunction
  - Criminal Behaviour Order
  - Dispersal Power (Police)
  - **Community Protection Notice**
  - **Public Space Protection Order**
  - Closure Power
- 2.15 A briefing note is supplied as Appendix C, detailing the new legislation and the use of these powers.

- 2.16 In terms of the **Community Protection Notice**, failure to comply with its requirements can lead to prosecution, but also permits a fixed penalty notice to be served to expedite enforcement.
- 2.17 With regards the **Public Space Protection Order**, which now replaces matters such as dispersal zones, alcohol exclusion zones and dog control areas, a fixed penalty notice can also be issued on non-compliance to the Order.
- 2.18 These powers directly replace previously approved fixed penalty notices: failure to comply with a street litter notice and litter clearing notice.
- 2.19 As with the Fixed Penalty Notices approved by Cabinet in September 2014, the two new Fixed Penalty Notices have a maximum penalty allowed as set out below with the recommended level for approval:

Description of Offence	Act	Section of Act	Allowable Penalty	Fee (Paid within 14 days)	Fee (Paid within 10 days)
Failure to comply with a Community Protection Notice	Anti Social Behaviour, Crime and Policing Act 2014	48	£100	£100	£60
Failure to comply with a Public Space Protection Order	Anti Social Behaviour, Crime and Policing Act 2014	63 and 67	£100	£100	£60

## Resources

- 2.20 The approval of the new Fixed Penalty Notices and fees allows for a more effective and efficient addressing of matters previously requiring court time and expense. No additional resource implications result from adopting these powers of enforcement.
- 2.21 The Cabinet on September 18<sup>th</sup> 2014 gave delegated Authority to the Corporate Director of Environment and Enterprise to authorise persons not directly employed by the Council (i.e. Housing Associations) to issue Fixed Penalty Notices under this Act.

### **Designation of Land associated with Unauthorised Distribution of Leaflets**

- 2.22 On 18<sup>th</sup> September 2014, Cabinet approved the use of fixed penalty notices associated with the unauthorised distribution of leaflets. The Environment Protection Act 1990 as amended, section 94B makes it an

offence for anyone to distribute any free printed material without the consent of the principal litter authority on land which the authority has designated by order as being applicable to this section. This offence does not apply to registered charities or the distribution of material for political or religious purposes.

- 2.23 To designate land, the authority must be satisfied that the land is being defaced by the discarding of free literature that is being distributed in the area. This tends to be the main shopping areas and public transport hubs within a Borough where free literature tends to be distributed most.
- 2.24 The legislation gives authorities the power to consent to the distribution of free literature on designated land on an application basis. This consent is based on number of distributors for an area, the type of literature, dates and times and to what it is related. It does not apply to materials that are for the primary purpose of promoting official charities, for religious purposes or for political purposes.
- 2.25 The authority may also require the payment of a fee before giving consent.
- 2.26 The amount of this fee is not set by default but must not be more than is reasonable to cover the cost of operating and enforcing the consent.
- 2.27 The Department for Environment, Food and Rural Affairs (DEFRA) has previously issued guidance on the procedures to make an order to designate land for the control of distribution of free printed matter, being a three step approach:
1. Notification of proposal to make an order
  2. Consideration of objections
  3. Notification of an order
- 2.28 Cabinet is asked to approve the consultation for a borough wide designation of land proposal. This will be a minimum three months consultation, working with key partners including the Harrow Town Centre BID Team.
- 2.29 A report will then be produced detailing the consultation results and the steps forward to be approved dependent on the consultation.
- 2.30 A copy of the relevant DEFRA Guidance on this is set out in Appendix D.

## **Resources**

- 2.31 Costs are minimised and are centred on the consultation process, which is to include notice in a local paper, Council website and posting details around the Borough to which the proposed order/s is to apply.



- 2.32 The consultation shall be conducted between the Environmental Compliance Team and the Community Engagement team of Environment and Enterprise, and the costs of such action are contained within existing budgets.
- 2.33 Current staffing will be used, and there is no requirement for additional staffing for the purpose of the consultation process.

### **3. Community & Consultation**

- 3.1 Public awareness activity undertaken to date includes:
- Borough consultation
  - Activities in the Town Centre
  - Online surveys
  - Co-ordinated days of action
  - Initiatives such as “secure streets”
  - Ongoing visits and warnings to commercial premises
- 3.2 These activities have been Borough wide, and carried out by the Environmental Compliance Team.
- 3.3 Future public awareness activity includes:
- Enhanced street signage
  - Campaigns in the local paper
  - An identifiable uniformed enforcement presence (with the capacity to advise and educate the general public in relation to environmental awareness)
- 3.4 The education and publicity campaign will be a continuous process as the success of any such Fixed Penalty Scheme is based on reduced enforcement due to a culture change.
- 3.5 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.”
- 3.6 It should also be noted that awareness of people has increased due to a London Wide approach to Fixed Penalty Notices, with the Transport and Environment Committee of London Councils raising it on a broader level in December due to setting By Law FPN levels for such matters.

- 3.7 The public awareness campaign needed to be broader than originally anticipated and therefore FPNs will be ready for issue from 28<sup>th</sup> February 2015 using a phased approach. From April 2015 onwards, uniformed resources will be put in place to specifically target littering in main metropolitan areas.

## **4. Performance Issues**

- 4.1 The Environmental Compliance Enforcement Policy & FPN Operational Guidance will allow officers to effectively and efficiently enforce against a range of environmental offences. In particular, FPNs will allow swift and simple enforcement.
- 4.2 The use of the new powers under the Anti-Social Behaviour, Crime and Policing Act 2014, in conjunction with the fixed penalty notices, will aid the Council in addressing those matters that directly and adversely affect communities, local businesses, families and the vulnerable. It will lead to expedite addressing of matters of annoyance, nuisance and distress with delay. It will also be consistent with the Police, who additionally have these powers and sanctions, to ensure all partners can take the same approach.
- 4.3 The powers to issue fixed penalty notices for leafleting has already been enacted from September 2014 Cabinet, and therefore land must be designated to allow their use. The intention of such proposals is to improve the street scene within Harrow, and reduce levels of littering especially around the main metropolitan areas. It will ensure that distribution of leaflets is controlled, and cost for any littering that occurs as a result is not placed on the public purse.

## **5. Environmental Implications**

- 5.1 The aspects seeking approval are expected to have a positive impact on the Environment, by allowing swift and efficient enforcement of environmental offences.
- 5.2 The additional controls over free literature distribution and resulting littering that takes place will help to maintain a cleaner Harrow for residents, business and visitors.

## **6. Risk Management Implications**

- 6.1 This policy and operational guidance are not included on the Directorate or any other corporate risk register.
- 6.2 The policy and operational guidance is introduced to minimise legal risk. They help to ensure that the principles of regulatory conduct are adopted as part of fixed penalty notices as well as other sanctions.

## 7. Legal Implications

### ***Policy and Operational Guidance***

- 7.1 Along with all other local authorities in England, Harrow Council now has extended powers (including the issuing of Fixed Penalty Notices) to enable enforcement of legislation intended to protect both the individual and community as a whole. This activity is set within the following legislation:

Environmental Protection Act 1990 (as amended)  
Clean Neighbourhoods and Environment Act 2005  
Highways Act 1980  
Refuse Disposal (Amenity) Act 1978  
London Local Authorities Act(s) 1995-2007  
Town and Country Planning (Control of Advertisement) Regulations 1990 (as amended)  
Greater London Council (General Powers) Act 1982  
Criminal Justice and Public Order Act 1994  
Anti-Social Behaviour Act 2003 (as amended)

### ***Anti Social Behaviour, Crime and Policing Act 2014***

- 7.2 New fixed penalty notices can be issued for the failure to comply with a Community Protection Notice or Public Space Protection Order as set out in the Anti Social Behaviour, Crime and Policing Act 2014 (which came into force 20th October 2014)

### ***Designating land for dealing with leaflet distribution***

- 7.3 Schedule 3A of the Environmental Protection Act 1990, as amended by the Clean Neighbourhoods and Environment Act 2005, sets out the offence regarding designated land.
- 7.4 Land designated must be land of the authority or highway for which the authority is responsible. As stated in the report, evidence will have to be shown of the land being defaced by the discarding of free printed matter distributed there.
- 7.5 The authority must carry out a statutory consultation by publishing notice of its intention in a local paper and on the land in question specifying the land, the date on which it is proposed that the order shall come into force (at least 28 days after the date of the Notice) and the fact that objections may be made including how they may be made and period in which they may be made (at least 14 days from the date of the Notice)
- 7.6 The authority must consider any objections made before making an order.

## 8. Financial Implications

### ***Fixed Penalty Notices***

- 8.1 The code of practice clearly states that the FPN regime is not intended as an additional source of income for authorities. Any income generated is designed to address all aspects of environmental crime.
- 8.2 In general, as the success of any FPN is advertised, the public become more compliant and fewer offences are committed and less income received. This is the main intention of the policy.
- 8.3 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 shall be initially ring fenced to the environmental compliance team for this purpose.

### ***Designated Land***

- 8.4 It is not anticipated that there will be any significant cost element to the designated land proposal, and can be met within budget.
- 8.5 The enforcement of the consent process, should the proposal proceed, shall be carried out within the Environmental Compliance Team. The application process shall be undertaken within the licensing regime and absorbed into their work.

## Equalities implications / Public Sector Equality Duty

The Equality Act 2010 outlines the provisions of the Public Sector Equality Duty which requires public authorities to have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it

The relevant protected characteristics are age, race, disability, gender reassignment, pregnancy and maternity, religion or belief, sex and sexual orientation. The duty also covers marriage and civil partnership, but to a limited extent.

The broad purpose of this duty is to integrate considerations of equality into day to day business and keep them under review in decision making, the design of policies and the delivery of services so that the potential impact on any protected groups is identified and steps taken to mitigate or remove them.

The EqIA carried out is attached to this report. Issues identified will form part of the education and promotion strategy to ensure that all parts of the Borough are informed of the introduction and use of FPNs.

The EqIA indicates that there may be a disproportionate adverse impact on the protected characteristics of age and race. There are however, steps being taken to mitigate against this by way of an education strategy, which shall address any concerns over language and age in particular, with all protected characteristics monitored as part of the introduction of FPNs and after the 6 month pilot.

The policies and procedures being introduced as part of this process address equalities and ensure a fair, balanced approach in line with statutory requirements and guidance.

## Council Priorities

The Council's vision:

### ***Working Together to Make a Difference for Harrow***

The control of distribution of free literature and the use of Fixed Penalty Notices, including those introduced as part of this report, aid in meeting all the priorities of the Council including:

**Making a difference to communities:** Fundamentally, links into this priority, by addressing environmental and highway crime, and improving an area for its residents, visitors and businesses especially in terms of litter and ASB.

**Making a difference to businesses:** The tackling of environmental and highway crime fits in with supporting businesses, ensuring a vibrant business environment.

## Section 3 - Statutory Officer Clearance

Name: Jessie Man	<input checked="" type="checkbox"/>	on behalf of the Chief Financial Officer
Date: 20 January 2015		
Name: Isha Prince	<input checked="" type="checkbox"/>	on behalf of the Monitoring Officer
Date: 5 February 2015		

<b>Ward Councillors notified:</b>	<b>NO, as it impacts on all Wards</b>
<b>EqIA carried out:</b>	<b>YES</b>
<b>EqIA cleared by:</b>	<b>Hanif Islam – EqIA Lead</b>

## **Section 4 - Contact Details and Background Papers**

**Contact:** Hanif Islam, Policy & Performance Manager, 020 8424 1548, Hanif.islam@harrow.gov.uk

**Background Papers:** [Report to Cabinet 18<sup>th</sup> September 2014](#)

<b>Call-In Waived by the Chairman of Overview and Scrutiny Committee</b>	<b>NOT APPLICABLE</b> <i>[Call-in applies]</i>
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