

Report for: **Cabinet**

Date of Meeting:	21 st January 2021
Subject:	Consolidation of Fixed Penalty Notices for Environmental Crime Enforcement
Key Decision:	Yes - the issuing of FPNs affects the whole Borough
Responsible Officer:	Paul Walker, Corporate Director (Community)
Portfolio Holder:	Cllr Varsha Parmar, Portfolio Holder for Environment
Exempt:	No
Decision subject to Call-in:	Yes
Wards affected:	All wards
Enclosures:	Appendix A – List of FPNs to be approved with fine levels Appendix B – Equalities Impact Assessment (EqIA)

Section 1 – Summary and Recommendations

This report sets out to consolidate all of the FPNs that can be issued for environmental reasons, set out clearly all offences FPNs can be used for, and to get agreed levels for each in line with legislation.

Recommendations:

Cabinet is requested to:

To approve the Fixed Penalty Notices set out in Appendix A including the fine levels.

Reason: (for recommendations)

To consolidate all FPNs to allow maximum use to provide safer and cleaner borough

Section 2 – Report

2.1 Introduction & Background

2.1.1 FPN's have now well known for their use in the enforcement of road traffic, parking and smoking offences. The development of the government's Local Environmental Quality (Cleaner Safer Greener) programme had resulted in legislation such as the Antisocial Behaviour Act 2003 and the Clean Neighbourhoods and Environment Act 2005 (CNE05) allowing the use of FPNs to address non-compliance.

2.1.2 Since this time, numerous other legislative instruments have come into play to allow the use of FPNs, including those around street trading, fly tipping, duty of care and ASB, Crime and Policing. Some of these had been approved separately by Cabinet previously, but the recent contract with Barnet and Ealing around FPNs and use of on street enforcement gives the opportunity to consolidate and ensure a consistent approach and allowance of all potential FPNs where applicable to provide the tools to officers to tackle low level environmental issues and seek compliance.

2.1.3 Appendix A shows the FPN's and the fine levels proposed, as well as current levels where previously set.

2.2 FPN's as an enforcement tool

2.2.1 The term 'enforcement' can mean everything from a written warning in a letter, a statutory notice, a Formal Caution, prosecution, taking an injunction, prohibition or restriction, works in default, seizure, anti-social behaviour orders and the like.

2.2.2 FPN's are a valuable addition to the enforcement toolkit. Benefits are:-

- Appropriate and proportional means of dealing with low-level offending.
- Deal with infringements in a swift, simple, effective and cost-effective way.

- Reduces demands on officer time such as preparing reports, carrying out interviews, preparing case files, attending court when an FPN can be issued instead of a prosecution
- Reserve courts cases for the more serious and / or persistent offenders, reducing demand on legal support services.
- Financial penalty is a deterrent and sufficient to induce behaviour change, and similar to the fine the court might impose for minor offences.
- Some FPN's could be served by a variety of other persons as well as Council officers. These include Police Community Support Officers (PCSO's), Police and Council contractor staff.

There are some limitations: -

- FPN's 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.
- FPN's can be considered suitable for dealing with persons under 18 years old, and this is specifically covered in the Operational Procedure for Fixed Penalty Notices.

2.3 Enforcement Policy considerations

2.3.1 In utilising FPN's, their place in the enforcement toolkit needs to be clear, to enable officers to choose the most appropriate effective and consistent enforcement action for a particular offence. Whilst each enforcement case must be treated on its merits, it is reasonable to set general guidelines.

2.3.2 An "Environmental Compliance Enforcement Policy" that took into account legislation, Regulators Code of Conduct and other guidance is already in place since the introduction of FPNs in 2014/15. It will continue to act as an overarching policy, with more detailed policies on various topics underneath it as necessary, and be subject to updating if the fixed penalty notices stated in Appendix A are approved

2.3.3 Additionally a "Fixed Penalty Notice Operational Guidance" is also in place. It should be noted an officer's decision to use a FPN will be based on the overall assessment of these factors, as several but not necessarily all will be present in an individual case. The individual case details, nature of the offence, the type of FPN involved will also be factors.

2.4 Fixed Penalty Notice Penalty Level

2.4.1 The legislation enabling FPNs also covers the level of penalty associated with them.

2.4.2 Appendix A sets out the FPN levels proposed for Harrow in Appendix A fall within these. Where feasible, the DEFRA default levels are set, or

in line with the London Councils Transport and Environment Committee (TEC) levels to ensure consistency. TEC is a statutory committee and acts as the “joint committee” required by the London Local Authorities Act 2004, Section 17(7) for Fixed Penalty Notices

- 2.4.3 Discount levels for fixed penalty notices are determined by the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2006 (regulation 3) where applicable. Those fees set by the London Councils Transport and Environment Committee (TEC) are also taken into consideration in line with their powers under the London Local Authorities Act 2004 and 2007
- 2.4.4 All fixed penalty notices are set at the maximum amount to ensure maximum deterrent to prevent the offences occurring in the first place. Additionally, discounts are removed as there is no viable evidence to show that these have any impact on the compliance or payment rates, but only increase the administrative burden on the Authority to manage different levels.

2.5 Scheme of Delegation issues

- 2.5.1 In line with previous delegations, there is a need to clearly ensure all relevant powers are properly delegated through the Council’s Scheme of Delegation, and to ensure officers are properly authorised to act and serve FPN’s. There is also the need to take account of the new corporate structure.
- 2.5.2 The Managers and relevant Principal Officers within the Community & Public Protection Team, or Network Management Team, depending on the type of FPN involved, have the authority to determine whether any representation against prosecution for failure to pay a fixed penalty notice is entertained.
- 2.5.3 The Head of Community & Public Protection or equivalent shall have the authority to cancel fixed penalty notices.

3 Options considered

- 3.1 **Approve Appendix A**, to allow the appropriate use of all possible tools to tackle low level environmental issues in a consistent manner. This is the recommended option
- 3.2 **Reject Appendix A**, and stick to the ones delegated already, and fine levels set, leaving some gaps in areas where FPNs could be used
- 3.3 **Approve Appendix A with changes** to fine levels within the confines of any restrictions. This is not recommended, as will lead to potential confusion and inconsistency across boroughs.

4 Current situation

- 4.1 A number of FPNs have been authorised over the years for various aspects of environmental legislative compliance, but these have been done on a “as and when” basis rather than have one constant list
- 4.2 As a result, the levels set are inconsistent and not all possible FPNs are available for staff to use as an immediate address of issues found

5 Why a change is needed

- 5.1 To make available an additional enforcement tool to tackle environmental crime in the Borough, using a more cost effective and proportionate response to low level offences.
- 5.2 To tackle low level environmental and highway crimes in a cost effective, efficient means
- 5.3 To have a consistent approach in line with the tri-borough on street enforcement contract

6 Resources, costs and risks

- 6.1 The FPN Scheme will operate on a financial penalty basis; however it must be stressed that the FPN Scheme will not be operated as a revenue or income generator for the London Borough of Harrow. FPNs will only be issued where they have most benefit.
- 6.2 Ultimately, the purpose of the FPN is to reduce environmental crime within the Borough. Fixed penalties should be part of a wider enforcement strategy, designed to address all aspects of environmental crime. Their use is aimed to ensure that resources are focused on priority areas and that an appropriate balance is struck between resources devoted to fixed penalties and those spent on prosecutions, both for non-payment of fixed penalties and for more serious incidents.
- 6.3 Resource wise, the tri-borough contract has consolidated the presence of Local Authority Services (previously Kingdom) officers to carry out low level enforcement on the borough. There is also a move, with the introduction of Window 10 tablets and a new database being procured, to get more officers on to the street directly into the areas the issues are occurring to then take such action as necessary.

7 Staffing and workforce

- 7.1 The approval of the FPNs would enable a clearer means for the Community & Public Protection Service to issue them for environmental crime offences already being enforced.

- 7.2 To maximise their effectiveness as a low cost, proportionate remedy to low level environmental crime, the intention is that the FPNs set out in Appendix A continue to be delegated to a third party company initially to implement in line with Council policies and procedures, including proper authorisation of individuals and back ground checks.
- 7.4 Under Part 4 of the Police Reform Act 2002 Police Community Support Officers (PCSOs) have the power to issue fixed penalty notices for littering under section 88 of the Environmental Protection Act 1990 and offences under dog control orders under section 59 of Clean Neighbourhoods and Environment Act 2005 without any requirement for the Council's permission or authorisation.
- 7.5 Police are also authorised to issue FPNs under the ASB, Crime and Policing Act 2014, and a clear process has been developed with the Council to ensure this takes place as and when required
- 7.6 All FPNs will be administered through the Council, who will take prosecution for any non-payment. The obligation will rest with all parties to gather sufficient evidence at the time of the offence to enable a successful prosecution to take place.
- 7.7 It should be noted that the function of issuing FPNs remain with the Council primarily, with the initial use of a private company to carry out the initial work. It should be noted that the selection of this private company will take into account the ethical reputation of the company, as well as adherence to Council Policies and Procedures which should remove concerns that such a scheme is purely for income generation.
- 7.8 The scheme is there to seek compliance and to improve the highways and environment, not as a money maker. All FPN receipts will be used to supplement the Community & Public Protection service in covering ongoing costs associated with the scheme, and to meet the council's environment agenda.

8 Equalities Impact considerations

- 8.1 A separate equalities impact screening assessment has been completed for this report. The screening assessment followed the screening methodology recommended in the Councils Equalities Impact Assessment.

9 Financial Implications

- 9.1 The code of practice clearly states that the FPN regime is not intended as an additional source of income for authorities. The

authority should therefore not expect any net proceeds. On that basis no assumptions are made about the impact any income may have on current revenue budgets and are not factored into any future Medium-Term Financial Saving (MTFS) or set as any income target.

- 9.2 It is likely that some income will be generated initially from the implementation of the regime as this has been demonstrated in other London Boroughs that operate FPNs. However, the levels of income are variable and affected by offence rates. In general, as the success of any FPN is advertised, the public becomes more compliant and fewer offences are committed and less income received. This is the main intention of the policy.
- 9.3 Any income will be used to offset costs associated with issuing the fixed penalty notices which will be met from existing budgets. To this end the income shall be ring fenced to the environmental compliance team for this purpose.

10 Environmental Impact

- 10.1 The aspects seeking approval are expected to have a hugely positive impact on the Environment, by allowing swift and efficient enforcement of environmental offences.
- 10.2 The majority of the fixed penalty notices are specifically addressing environmental aspect such as littering, fly tipping and matters that will positively address matters that detrimentally affect the environment

11 Performance Issues

- 11.1 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.

12 Risk Management Implications

- 12.1 Risks included on corporate or directorate risk register? **No**
- 12.2 Separate risk register in place? **No**
- 12.3 The relevant risks from the risk register are attached/summarised below. **N/A**
- 12.4 The following key risks should be taken onto account when agreeing the recommendations in this report:

Risk Description	Mitigations	RAG Status
Bad publicity due to level of fine issued	<ul style="list-style-type: none"> ▪ Levels have been set in line with London Councils Transport and Environment Committee set levels ▪ Majority already in place ▪ Those at high level (e.g. fly tipping, littering) are aligned to key priorities of Council ▪ New fines at high level (e.g. noise) will be issued following opportunities to comply (e.g. Notices) ▪ Communication in place and will be continued to seek compliance prior to need for fines to be issued 	
Poor payment of fines, therefore limited impact	<ul style="list-style-type: none"> ▪ Work has taken place with legal about streamlining prosecution process for non-payment including standardising templates ▪ More emphasis put on initial messaging to those receiving fines about consequences, as well as better follow up 	
Lack of resources to take these fines forward	<ul style="list-style-type: none"> ▪ 3rd Party on street enforcement team in place, working 7 days a week ▪ Training of staff to incorporate into normal work (e.g. compliance visits for food hygiene will pick up shop front trade offences) ▪ Re-investment of fines to increase capacity if needed 	
Lack of evidence to support follow up action	<ul style="list-style-type: none"> ▪ All Officers are required to provide statements to support offence as well as attend court ▪ Use of bodyworn cameras by 3rd party enforcement officers ▪ Quality assurance checks carried out by Management ▪ Contract with 3rd party company results in payment only for each successfully paid fine 	
Inconsistent approach to issuing, leading to loss of reputation	<ul style="list-style-type: none"> ▪ Operational policy in place around fixed penalty notices ▪ Training of officers issuing tickets ▪ Monthly performance checks to understand what has been issued by whom and why 	
Cost of administering the scheme outweighs the benefits	<ul style="list-style-type: none"> ▪ Contract with 3rd party company results in payment only for each successfully paid fine ▪ Systems set up to minimise cost of the scheme, including on line payment system 	
3 rd party officers fail to follow council policies and procedures, leading to loss of reputation	<ul style="list-style-type: none"> ▪ Clear contract in place with 3rd party ▪ Monthly performance and monitoring meetings ▪ Team leader conducts regular 1-2-1 meetings, team meetings and checks 	
Proposal not agreed leading to limitations of action by officers	<ul style="list-style-type: none"> ▪ Offences would have to be pursued through notice or prosecution ▪ Those FPNs already in place could still be enforced at the levels already set 	

13 Data Protection Implications

13.1 There are none, as an appropriate Data Protection Assessment has been conducted for both the Councils and Local Authority Services systems

14. Procurement Implications

14.1 There are no procurement implications

15. Legal Implications

15.1 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

15.2 The legislation that allows the introduction of the relevant Fixed Penalty Notices is included in Appendix A, and the levels set are set in compliance with amounts allowed under such legislation and in line with a consistent approach across London.

Council Priorities

The use of FPNs sought directly impact the following Council priority:

1. **Improving the environment and addressing climate change**

Section 3 - Statutory Officer Clearance

Statutory Officer: Jessie Man

Signed on behalf of the Chief Financial Officer

Date: 31st November 2020

Statutory Officer: Isha Prince
Signed on behalf of the Monitoring Officer
Date: 3rd December 2020

Statutory Officer: Nimesh Mehta
Signed by the Head of Procurement
Date: 26th November 2020

Statutory Officer: Paul Walker
Signed by the Corporate Director
Date: 8th January 2021

Statutory Officer: Susan Dixon
Signed on by the Head of Internal Audit
Date: 6th January 2021

Mandatory Checks

Ward Councillors notified: NO, as it impacts on all Wards

EqlA carried out: YES

EqlA cleared by: Dave Corby

Section 4 - Contact Details and Background Papers

Contact: Richard Le-Brun, Head of Community and Public Protection, 020 8424 6267, Richard.lebrun@harrow.gov.uk

Background Papers: None

Call-in waived by the Chair of Overview and Scrutiny Committee

NO