


<p>Cabinet</p> <p>29 January 2020</p>	
<p>Report of: Ann Sutcliffe – Corporate Director, Place</p>	<p>Classification: Unrestricted</p>
<p>Adoption of fixed penalty notices for fly-tipping offences</p>	

Lead Member	Councillor David Edgar, Cabinet Member for Environment
Originating Officer(s)	Dan Jones, Divisional Director Public Realm Richard Williams. Business Manager Operational Services
Wards affected	All wards
Key Decision?	Yes
Forward Plan Notice Published	
Reason for Key Decision	Impact on Wards
Community Plan Theme	A Borough that are residents are proud of and love to live in

Executive Summary

Fly-tipping is the unauthorised dumping of waste and is a criminal offence under section 33 of the Environmental Protection Act, 1990. In Tower Hamlets this is a growing problem, particularly with illegally dumped business waste. This has a negative impact on local environmental quality, borough cleanliness and resident satisfaction.

From 2016 Local Authorities have had the power to issue fixed penalty notices (FPNs) for fly-tipping offences, with discretion to set the maximum value and level of early payment discount.

This report recommends adoption of the maximum £400 FPN for fly tipping offences, and asks the mayor in cabinet to consider and agree on the level of early payment discount in line with government guidelines. This will provide a more immediate, efficient and proportionate response to tackling fly-tipping across the borough.

The use of this new enforcement power will help tackle and reduce illegal fly tipping of business waste. It is not expected to be used to target residents who have mistakenly put waste out for collection at the wrong time.

Recommendations:

The Mayor in Cabinet is recommended to:

1. Adopt the power to charge a Fixed Penalty Notice (FPN) amount of £400 for fly-tipping offences with no early payment discount.
2. Delegate authority to the Director of Place to authorise appropriate officers to issue fixed penalty notices (FPNs), under section 33ZA of the Environmental Protection Act 1990 (EPA), to persons whom the officer has reason to believe have committed fly tipping offence.

1. REASONS FOR THE DECISIONS

- 1.1 Local authorities as “Principal Litter Authorities” have a duty under Section 89 (1) of the Environmental Protection Act 1990 to ensure that their land or land they are responsible for is, so far as practical, kept clear of litter and refuse.
- 1.2 Fly tipping is the illegal dumping of liquid or solid waste and local authorities must remove and dispose of all fly tipped waste if it is on their land, or land they are responsible for.
- 1.3 This is a growing problem costing the Council over £690,000 a year in removal and disposal costs, particularly with illegal disposal of business waste.
- 1.4 From May 2016, local authorities in England have had the power to issue FPN’s for small-scale fly-tipping offences under the Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016.
- 1.5 The legislation sets out a default payment level of £200 with a lesser amount of £120 being due if payment is made within 10 days. Councils can set their own levels of charge between £150 and £400 and the discounted penalty for early payment to a minimum of £120.
- 1.6 This new enforcement power will help reduce illegal fly tipping of business waste, and is not expected to be used to target residents who have put waste bags out for collection at the wrong time.
- 1.7 The Mayor in Cabinet is required to decide on the level of penalty and any early payment discount. This report recommends adoption of the maximum £400 FPN with no early payment discount, which is considered a more efficient and proportionate deterrent for tackling fly-tipping across the borough.
- 1.8 This commitment supports our waste strategy and strategic plan outcomes of “People living in a Borough that is clean and green” and where “People live in safer neighbourhoods where antisocial behaviour is tackled”

2. ALTERNATIVE OPTIONS

- 2.1 The council could decide not to adopt the new powers and continue to use the existing powers available to tackle fly tipping. However, it is officer's opinion that the existing powers do not offer a strong enough deterrent to persistent offenders and that using the Magistrates or Crown Court as a route for prosecution, which carries the threat of a custodial sentence and up to £50,000 fine, is not cost effective or successful in the first instance. Although it will still be used in the case of large scale persistent offenders.
- 2.2 Use the statutory default minimum penalty of £200 with an early payment discount of £120 if paid within 10days. If the recommended maximum amount of £400 is not adopted officers can still issue an FPN for fly-tipping at the default level. This is not considered to be enough of a deterrent to help reduce fly tipping across the borough.

3. DETAILS OF THE REPORT

- 3.1 Fly-tipping is a significant and growing problem and a risk to the environment (See examples in Appendix 1). Some businesses in the borough routinely avoid paying for the legal disposal of their waste, choosing to fly tip this waste to be removed at the council and taxpayers expense.
- 3.2 More effective enforcement powers are required to deal with this problem, particularly with cases of persistent re-offending. Tackling this problem is directly linked to mayoral priorities to improve standards of environmental quality.
- 3.3 Within the Council's Waste Management Strategy 2018-2030 "Don't let our future go to waste" one of our six priorities is Priority 2 - We want more people to take responsibility for the waste they produce, to love their neighbourhood and help keep the borough clean and green by:
- Encouraging and enabling people to do the right thing with their waste.
 - Ensuring people take responsibility for their waste in order that it is managed more sustainably.
 - Ensuring waste management activities contribute to maintaining a clean and safe environment.
 - Taking corrective action against inappropriate behaviours; Taking a zero tolerance approach to littering and 'enviro crime'.
- 3.4 Numbers of reported incidents have been on the increase in recent years, with repeated illegal dumping of waste by businesses being a particular problem.

Year	Number of Incidents
2015/16	4555
2016/17	6287
2017/18	7465
2018/19	9228

- 3.5 Fly tipping or the deliberate dumping of waste to avoid disposal costs is a criminal offence under Section 33(1) (a) of the Environmental Protection Act 1990.
- 3.6 A person found guilty of illegal and unauthorised fly tipping is liable to prosecution. However, prosecutions are time consuming and expensive to pursue for both local authorities and magistrate's courts. Even if prosecutions are successful, full costs are not always granted or recovered.
- 3.7 At present, council officers enforce against fly-tipping using the same powers for the offence of leaving litter. Under section 88 of the Environmental Protection Act (1990), this includes up to 1 bag of domestic waste (or equivalent). The fixed penalty amount specified by the Council for this is £80, reduced to £50 if paid within 10 days. In the last two years from Jan 2018 to Dec 2019 we have issued 1,939 FPN's for these type of offences, with a 58% payment rate.
- 3.8 This current practice of using lower level FPN's does not provide a sufficient deterrent for tackling this growing problem. Some business have been issued with multiple £80 FPN's yet continue to fly tip when they think they can get away with it, to avoid costs of legal disposal
- 3.9 The use of new powers to issue FPN's for small-scale fly-tipping offences under the Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 provides this more effective enforcement approach.
- 3.10 In using this new fly tipping FPN the council is permitted to set its own penalty levels within the limits set by government of between £150 and £400, as well as any discount criteria. The current limits are set out in the table below.

Offence	Default penalty	Minimum full penalty	Maximum full penalty	Minimum discounted penalty	Maximum penalty via conviction
New fly-tipping FPN	£200	£150	£400	£120	£50,000

- 3.11 In June 2016, The London Councils Transport and Environment Committee (TEC) recommended a standard approach in using the maximum FPN of £400 for fly-tipping across London, with each borough deciding on the level of discount, if any for early payment of the penalty.
- 3.12 The maximum fixed penalty of £400, with no early payment discount is expected to provide a more effective deterrent. Helping to reduce commercial fly tipping by businesses avoiding the cost of commercial waste collections.
- 3.13 The receipts from fixed penalties for environmental offences can be spent on function related to waste management, street cleansing and enforcement.

Our approach to using this £400 Fly tipping Fixed Penalty Notice

- 3.14 Businesses and residents have duty of care to lawfully dispose of their waste under the Environmental Protection Act 1990. The authority is however left with the responsibility to clear waste resulting from residents and businesses who do not meet this duty of care.
- 3.15 Whilst dumped business waste is a big problem there is also a large amount of rubbish left out when it shouldn't be from residential properties. This Fly tipping FPN will be used to target illegal dumping by businesses and more persistent and serious fly tipping. It is not expected to be used to target residents who have put waste bags out for collection at the wrong time.
- 3.16 There will continue to be a focus on communication, education and advice to businesses about their duties and responsibilities regarding waste management, as well as landlords and residents, particularly those who rent or live in properties above shops without adequate provision for storage.

4. EQUALITIES IMPLICATIONS

- 4.1 The proposals contained in this report would apply across the whole Borough. The only equality issue could be affordability of the new Fixed Penalty Notice. However, a strong, simple, and consistent deterrent is needed to tackle this problem.
- 4.2 The use of this new enforcement power is expected to make a positive impact on the environment of the Borough, which will be beneficial for all regardless of their background.
- 4.3 An Equalities Analysis has been carried out in relation to the adoption of fixed penalty notices for fly-tipping offences to identify any evidence or views that suggests that different equality or other protected groups could be adversely and/or disproportionately impacted.

5. OTHER STATUTORY IMPLICATIONS

- 5.1 This section of the report highlights further specific statutory implications that are either not covered in the main body of the report or are required to be highlighted to ensure decision makers give them proper consideration.

5.2 Best Value Implications

- 5.3 The total estimated cost of fly tipping removal is estimated at over £690,000 per year. The current practice of using lower level FPN's or taking offenders to court does not offer a cost effective, or efficient enforcement route to tackling this growing problem. The recommended change to increase the penalty for fly-tipping will provide an additional tool for LB Tower Hamlets to tackle fly-tipping. The increased amount will be a more effective deterrent to fly-tippers, saving the Council waste clearance and disposal costs. The receipts from

fixed penalties for environmental offences can be spent on function related to street cleansing and enforcement.

5.5 Environmental (including air quality)

5.6 The reduction in illegal and antisocial fly-tipping through more effective education, advice and enforcement is a key step in delivering environmental improvements across the borough. This will assist in driving a positive change in behaviour and encourage more responsible waste management practices by businesses, residents and visitors to the borough.

5.9 Risk Management

5.10 Lack of clear policy and action on tackling fly-tipping across the borough would lead to an ever worsening situation with waste dumped on streets impacting on overall cleanliness and quality of the local environment. The lack of a clear approach would risk our ability to deliver on priority outcomes for the borough - "People living in a borough that is clean and green" and where "People live in safer neighbourhoods and antisocial behaviour is tackled".

5.11 Crime Reduction

5.12 The Council's activities for tackling litter, fly tipping, removal of graffiti and flyposting that are incorporated into the Waste Management Strategy. This work contributes to the Council's efforts in managing anti-social behaviour within the Borough. The new Environmental Services Team will incorporate the new fly-tipping FPN into their enforcement toolbox.

6. COMMENTS OF THE CHIEF FINANCE OFFICER

6.1 The purpose of the fixed penalty charge for fly tipping is to maintain and improve the cleanliness of the streets and is therefore not primarily a financial decision. However, the Council currently spends £690,000 per annum as a result of fly tipping. These costs are being absorbed within existing budgetary provision and put pressure on the budgets.

6.2 A fixed penalty fine of £400 is proposed to be introduced as a deterrent for fly tipping. This charge will cover the costs of policing fly tipping and legal challenge where fixed penalty notices are issued. Where FPN's are not paid, further legal costs will arise, however this is considered a more cost effective and efficient enforcement route, when compared to pursuing multiple cases through the courts.

7. COMMENTS OF LEGAL SERVICES

7.1 Section 33(1)(a) of the Environmental Protection Act 1990 ("the Act "creates the offence of depositing controlled waste or knowingly permitting controlled waste to be deposited on any land unless the person has a valid permit (otherwise known as fly tipping).

- 7.2 DEFRA introduced penalties to support enforcement of offences relating to fly tipping. The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 gives the statutory basis for local authorities to issue FPNs for fly tipping, allowing an authorised officer to issue an FPN where they believe a person has committed a waste deposit offence (as referred to in 7.1. above).
- 7.3 The Council is able to charge an amount of not less than £150 and not more than £400 under Section 33ZA(9) of the Act if specified in the notice. If no amount is specified, then the fixed penalty payable is £200.
- 7.4 If the FPN is not paid, the offender can be prosecuted. On conviction, a fine of up to £50,000 or an unlimited fine and/or 12 months imprisonment can be imposed in a Magistrates' Court. In the Crown Court an unlimited fine and/or up to 5 years imprisonment can be imposed.
- 7.5 When introducing the FPN's and any related policy, the Council must consider the public sector equality duty to have due regard to consider the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who do not. An equality impact assessment has been undertaken, with details included in Appendix 2.

Linked Reports, Appendices and Background Documents

Linked Report

- NONE

Appendices

- Appendix 1 – Fly tipping examples
- Appendix 2- Equalities Impact Assessment (draft to be finalised)

Officer contact details for documents:

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Appendix 1- Typical examples of fly tipping impacting on local environmental quality





Equality Analysis (EA)

Financial Year
2019/20

Section 1 – General Information (Aims and Objectives)

Name of the proposal including aims, objectives and purpose

(Please note – for the purpose of this doc, 'proposal' refers to a policy, function, strategy or project)

Increase Fixed Penalty Notice charge to businesses

Recommends the application of the maximum allowable £400 fixed penalty for businesses guilty of fly-tipping offences with low or no early payment discount.

Aims to improve effectiveness of enforcement and increase deterrence.

**See
Appendix A**

Current decision
rating



Conclusion - To be completed at the end of the Equality Analysis process

As a result of performing the analysis, this proposal does not appear to have any adverse effects on people who share Protected Characteristics and no further actions are recommended at this stage.

Name:

(signed off by)

Date signed off:

(approved)

Service area:

Public Realm

Team name:

Place

Service manager:

Richard Williams

Name and role of the officer completing the EA:

Hamzah Foreman – Projects Coordinator

Section 2 – Evidence (Consideration of Data and Information)

What initial evidence do we have which may help us think about the impacts or likely impacts on service users or staff?

According to successive annual Tower Hamlets Resident Surveys over the last three years (2016-2019), borough wide street-scene cleanliness is a high priority concern for residents. Fly tipping, or the illegal dumping of waste, particularly by businesses, contributes negatively to local street and environmental cleanliness and concomitantly, human health. Higher penalty charges (FPNs) have been shown to indiscriminately deter such negligence in lieu of prosecution

Section 3 – Assessing the Impacts on the 9 Groups

Please refer to the guidance notes below and evidence how you're proposal impact upon the nine Protected Characteristics in the table on page 3?

For the nine protected characteristics detailed in the table below please consider:-

- **What is the equality profile of service users or beneficiaries that will or are likely to be affected?**

Use the Council's approved diversity monitoring categories and provide data by target group of users or beneficiaries to determine whether the service user profile reflects the local population or relevant target group or if there is over or under representation of these groups

- **What qualitative or quantitative data do we have?**

List all examples of quantitative and qualitative data available
(include information where appropriate from other directorates, Census 2001 etc)
- *Data trends – how does current practice ensure equality*

- **Equalities profile of staff?**

Indicate profile by target groups and assess relevance to policy aims and objectives e.g. Workforce to Reflect the Community. Identify staff responsible for delivering the service including where they are not directly employed by the council.

- **Barriers?**

What are the potential or known barriers to participation for the different equality target groups? E.g. communication, access, locality etc.

- **Recent consultation exercises carried out?**

Detail consultation with relevant interest groups, other public bodies, voluntary organisations, community groups, trade unions, focus groups and other groups, surveys and questionnaires undertaken etc. Focus in particular on the findings of views expressed by the equality target groups. Such consultation exercises should be appropriate and proportionate and may range from assembling focus groups to a one to one meeting.

- **Additional factors which may influence disproportionate or adverse impact?**

Management Arrangements - How is the Service managed, are there any management arrangements which may have a disproportionate impact on the equality target groups

- **The Process of Service Delivery?**

In particular look at the arrangements for the service being provided including opening times, custom and practice, awareness of the service to local people, communication

Please also consider how the proposal will impact upon the 3 One Tower Hamlets objectives:-

- Reduce inequalities
- Ensure strong community cohesion

- Strengthen community leadership.

Please Note -

Reports/stats/data can be added as Appendix

Target Groups	Impact – Positive or Adverse	Reason(s)
Race	Positive	<p>No racial group will suffer any adverse impacts from this proposal. People of all races in the borough will be able to enjoy cleaner streets and a healthier environment due to the long term impact that higher FPNs will have in reducing incidents of fly-tipping and other forms of environmental negligence.</p>
Disability	Positive	<p>Lowering the incidents of fly-tipping on Tower Hamlets streets through stronger enforcement deterrence will reduce the amount of pavement and highway clutter. This will not only improve street cleanliness, but will improve safety and ease of mobility by reducing thoroughfare impediments that many people with disabilities might experience due to the irresponsible and negligent dumping of waste.</p>

Gender	Positive - no differential impact	Men and women, residents and visitors will benefit from the cleaner streets and improved environmental quality brought about by stronger enforcement and deterrents against fly-tipping.
Gender Reassignment	Positive - no differential impact	No person of a particular gender will suffer adverse impacts from the proposal. People of all genders can enjoy the benefits of cleaner streets and a healthier environment. There is no reason that this proposal to increase the FPN amount to a maximum of £400 would have any differential impact in relation to this characteristic.
Sexual Orientation	Positive - no differential impact	No person of a particular sexual orientation will suffer adverse impacts from the proposal. People of all sexual orientations can enjoy the benefits of cleaner streets and a healthier environment. There is no reason that this proposal to increase the FPN amount to a maximum of £400 would have any differential impact in relation to this characteristic.
Religion or Belief	Positive - no differential impact	No religion or faith group will suffer adverse impacts from the proposed maximum Fixed Penalty Notice increase for fly-tipping. Most religions and faiths contain explicit teachings that the environment is important and should be cared for and kept clean.

Age	Positive - no differential impact	No person of a particular age will suffer adverse impacts from the proposal. People of all ages can enjoy the benefits of cleaner streets and a healthier environment.
Marriage and Civil Partnerships.	Positive - no differential impact	No particular relationship status will be adversely affected by the proposal. People using areas of high footfall and high numbers of businesses can enjoy cleaner streets with businesses encouraged to dispose of their waste more responsibly. There is no reason that this proposal to increase the FPN amount to a maximum of £400 would have any differential impact in relation to this characteristic.
Pregnancy and Maternity	Positive - no differential impact	Improved street cleanliness and reduced pavement and highway clutter through stronger enforcement deterrence of fly-tipping will improve safety and ease of mobility that pregnant women and people with children might experience due to the irresponsible and negligent dumping of waste.
Other Socio-economic Carers	Positive - no differential impact	Carers will not be adversely affected by the proposal and those who regularly use areas of high footfall and high numbers of businesses can enjoy cleaner streets with businesses encouraged to dispose of their waste more responsibly.

Section 4 – Mitigating Impacts and Alternative Options

From the analysis and interpretation of evidence in section 2 and 3 - Is there any evidence or view that suggests that different equality or other protected groups (inc' staff) could be adversely and/or disproportionately impacted by the proposal?

Yes? No?

If yes, please detail below how evidence influenced and formed the proposal? For example, why parts of the proposal were added / removed?

(Please note – a key part of the EA process is to show that we have made reasonable and informed attempts to mitigate any negative impacts. An EA is a service improvement tool and as such you may wish to consider a number of alternative options or mitigation in terms of the proposal.)

Where you believe the proposal discriminates but not unlawfully, you must set out below your objective justification for continuing with the proposal, without mitigating action.

Section 5 – Quality Assurance and Monitoring

Have monitoring systems been put in place to check the implementation of the proposal and recommendations?

Yes? No?

How will the monitoring systems further assess the impact on the equality target groups?

Tower Hamlets Council's priority approach is to encourage businesses through education and information to 'do the right thing' with their waste and manage it in accordance with their duty of care responsibilities, established by the EPA (2010) and their trade waste collections contract. Written warnings are given to offending businesses before fixed penalty notices are issued in the clearest possible terms. The process of issuing FPNs to businesses only discriminate in terms of contravention of the law and are issued for no other reason, including with regards to any of the equalities characteristics mentioned above. Council enforcement officers undergo equalities training as part of their client facing role.

Does the policy/function comply with equalities legislation?
(Please consider the [OTH objectives](#) and [Public Sector Equality Duty](#) criteria)

Yes? X

No?

If there are gaps in information or areas for further improvement, please list them below:

The Council does not currently have a framework for collecting equality data for residents and businesses that are caught fly tipping.

How will the results of this Equality Analysis feed into the performance planning process?

The Council will consider establishing a system to enable the collection of equalities data related to people caught fly tipping so that we are better able to assess whether this policy has any disproportionate effects on any particular group.

Section 6 - Action Plan

*As a result of these conclusions and recommendations what actions (if any) **will** be included in your business planning and wider review processes (team plan)? Please consider any gaps or areas needing further attention in the table below the example.*




Recommendation	Key activity	Progress milestones including target dates for either completion or progress	Officer responsible	Progress

Recommendation	Key activity	Progress milestones including target dates for either completion or progress	Officer responsible	Progress

Consider consulting widely with other services in the council to develop a framework for monitoring equality characteristics related to Tower Hamlets businesses.				

Appendix A

(Sample) Equality Assessment Criteria

Decision	Action	Risk
<p>As a result of performing the analysis, it is evident that a risk of discrimination exists (direct, indirect, unintentional or otherwise) to one or more of the nine groups of people who share <i>Protected Characteristics</i>. It is recommended that the use of the policy be suspended until further work or analysis is performed.</p>	<p>Suspend – Further Work Required</p>	<p>Red</p> 
<p>As a result of performing the analysis, it is evident that a risk of discrimination exists (direct, indirect, unintentional or otherwise) to one or more of the nine groups of people who share <i>Protected Characteristics</i>. However, a genuine determining reason may exist that could legitimise or justify the use of this policy.</p>	<p>Further (specialist) advice should be taken</p>	<p>Red Amber</p> 
<p>As a result of performing the analysis, it is evident that a risk of discrimination (as described above) exists and this risk may be removed or reduced by implementing the actions detailed within the <i>Action Planning</i> section of this document.</p>	<p>Proceed pending agreement of mitigating action</p>	<p>Amber</p> 
<p>As a result of performing the analysis, the policy, project or function does not appear to have any adverse effects on people who share <i>Protected Characteristics</i> and no further actions are recommended at this stage.</p>	<p>Proceed with implementation</p>	<p>Green:</p> 