

<b>Cabinet</b>  27 March 2024	 <b>TOWER HAMLETS</b>
<b>Report of:</b> Simon Baxter Corporate Director, Communities	<b>Classification:</b> Open (Unrestricted)
<b>Fixed Penalty Notice Increase for Environmental Crime</b>	

<b>Lead Member</b>	<b>Councillor Kabir Hussain, Cabinet Member for Environment and the Climate Emergency</b>
<b>Originating Officer(s)</b>	Ashraf Ali, (Interim Director Public Realm)
<b>Wards affected</b>	(All Wards);
<b>Key Decision?</b>	Yes
<b>Reason for Key Decision</b>	Significant impact on wards
<b>Forward Plan Notice Published</b>	22/11/2023
<b>Exempt information</b>	N/A
<b>Strategic Plan Priority / Outcome</b>	All priorities

### Executive Summary

To help reduce environmental crimes of fly-tipping, littering, graffiti, and flyposting local authorities have new powers from July 2023 to increase the maximum fixed penalty levels for these offences. This will act as a more effective deterrent to reduce this type of illegal and antisocial behaviour.

This report sets out options and recommendations for these penalties, including early payment discounts. In setting penalties, we are expected to consider the negative impact of offences, the need for tougher action to drive behavior change and an appropriate level that takes account of local circumstances, including ability to pay.

These changes support wider plans to improve waste, recycling and cleansing across the borough, with increased focus on education, advice and community engagement alongside enforcement action.

## Recommendations:

The Mayor in Cabinet is recommended to:

1. Adopt new levels for fixed penalty notices (FPNs) for offences related to littering, graffiti/fly-posting, fly-tipping, and breach of the household waste duty of care and to set discount levels and periods as detailed in the table below.

Description of offence	Proposed FPN level	Proposed discounted FPN level (payable within ten days of issue)
Depositing litter	£500	£250
Graffiti and fly-posting	£500	£250
Household waste duty of care offences	£600	£300
Fly-tipping	£1,000	£500

### **3 REASONS FOR THE DECISIONS**

- 3.1 Environmental crimes of fly-tipping, littering, graffiti and flyposting continue to have a negative impact on the cleanliness, environmental quality and quality of life across the borough.
- 3.2 These crimes costs the council extra money on clean-up costs, reduce environmental quality and cause environmental damage.
- 3.3 Our 2023 resident survey highlights a decrease in satisfaction with street cleansing. From 58% to 54% of respondents reporting cleanliness in the borough as good. Given that nearly half of reported problems about cleansing relate to fly tipping this remains a high priority to improve.
- 3.4 We are committed to improve our waste and recycling services as well as to help people manage their waste. However, whilst we help people with improved education, advice and more effective community engagement, increased fixed penalties will support more effective and efficient enforcement to drive compliance.
- 3.5 The FPN provides an alternative to other enforcement options and prosecution. It allows an individual to discharge their liability for the relevant offence by payment of a financial penalty. There is no obligation for the Council to offer an offender the option to discharge liability through an FPN. However, for some cases and offences, it can be more proportionate than proceeding with a prosecution through the courts. An FPN is offered as an alternative to prosecution for a variety of offences and the proposed penalty levels can vary. The legislation itself provides the levels or ranges at which an FPN must be set.
- 3.6 The aim of increasing the FPN to the maximum amounts with a 50% discount acts as a deterrent to offending, encourages payment and reflects local

economic circumstances across the borough. It offers the following advantages/disadvantages

Advantages:

- The higher level of FPN may act as a deterrent to offending.
- The increase would demonstrate to the public and businesses that the Council is determined to reduce offending and improve the cleanliness.
- Offering the 50% discount is an incentive to pay and reflects local circumstances, including ability to pay.

Disadvantages:

- Offenders may not be able to afford the higher level of FPN or opt to risk a lower level of fine if prosecuted.
- Increase in offenders challenging the FPN through the representation process, resulting in additional work for officers.
- The resources required in waste enforcement and legal services to prepare and take prosecutions may increase, thus increasing the cost to the Council in bringing cases to court. It should be noted that the Council will often recover a reasonable proportion of its costs, in the event of a prosecution.

#### **4 ALTERNATIVE OPTIONS**

4.1 Amend the proposed levels of FPN and/or discount periods.

4.2 Retain the current levels of FPN.

#### **5 DETAILS OF THE REPORT**

##### **Duties and responsibilities**

- 5.1 Local authorities have a statutory duty to keep land they are responsible for clear of litter and refuse. We do this via our waste, recycling and cleansing services.
- 5.2 We are also responsible for taking enforcement action to tackle environmental crime, such as fly tipping, litter, graffiti and flyposting. In carrying out this work we are expected to comply with national guidelines. To combine enforcement with education in order to change behavior.
- 5.3 Our Environmental Services Officers and Tower Hamlets Enforcement Officers (THEO's) are responsible for this enforcement work. They operate on shift and rota's to ensure we provide adequate resources 7 days per week, inside and outside of normal working hours.
- 5.4 Our teams deal with reported problems as well as targeting hotspots via patrols and improved use of CCTV cameras to allow 24-hour monitoring of problem locations.

- 5.5 We respond to offences with a variety of education, advice and enforcement actions. Investigations lead to issuing of warning letters, follow up inspections, issuing of statutory notices, fixed penalty notices and prosecutions.
- 5.6 Fixed penalties provide enforcing authorities with an effective and visible way of responding to environmental crimes, and provide a lower-cost alternative to prosecution in the magistrates' courts.
- 5.7 Many local authorities have found taking cases to court has cost significant time and resources without adequate fines being issued by magistrates. National studies (by the LGA) highlight that a court fine for fly-tipping should amount to over £3,600 but the average fine for 2020/2021 was just £335.

### Enforcement made easier

- 5.8 To help tackle antisocial behavior and waste crime, central government increased the upper limits for various FPNs from 31 July 2023.
- 5.9 This is aimed at helping improve enforcement carried out by local authorities. It supports improved education, awareness and enforcement penalties that are more likely to drive behavior change and compliance.
- 5.10 The upper limit on fines for fly-tipping can rise from £400 to £1000. The maximum fine for littering from £150 to £500. Fines handed out to those who breach their household waste duty, by allowing unregistered waste carriers to remove and potentially dump waste can also increase from £400 to £600.
- 5.11 The table below details the current LBTH levels, previous penalty levels and the level of penalty under the new regulations.

Offence Code	Description of offence	LBTH		Previous Government Penalty Levels				New Government limits for Penalty Levels			
		Current Full Penalty	Current Discounted Penalty	Minimum Penalty	Default Penalty	Maximum Penalty	Minimum Discounted Penalty	Minimum Penalty	Default Penalty	Maximum Penalty	Minimum Discounted Penalty
CN1	Depositing litter	£80	£50	£65	£100	£150	£50	£65	£100	<b>£500</b>	£50
CN4	Graffiti and fly-posting	£80	£50	£65	£100	£150	£50	£65	£100	<b>£500</b>	£50
EP1	Household waste duty of care offences	£200	n/a	£150	£200	£400	£120	£150	£200	<b>£600</b>	£120
F1	Fly-tipping	£400	n/a	£150	£200	£400	£120	£150	£200	<b>£1,000</b>	£120

### Benchmarking

- 5.12 Officers have reviewed the proposed FPN amounts being considered by other local authorities, through discussions with the North London Enforcement Managers forum. In addition to reviewing levels set by other Council's within London and England.

5.13 Through the benchmarking exercise carried out, new FPN ranges being considered for littering are between £300-£500, Graffiti/Fly-posting are between £250-£500, Fly-tipping is between £600-£1,000, and Household duty of care is between £400-£600.

5.14 The table below show only two other neighbouring Council's who have set their new environmental FPN amounts and one other London Council who have set the FPN rates. Other councils are either going through the process or not currently changing their FPN levels.

Benchmarked new FPN amounts	Section 87/88 LITTERING		Section 43/44 ASB GRAFFITI/FLYPOSTING		Section 33za FLYTIPPING		Section 34 Domestic DUTY OF CARE	
	Full amount	Early payment discount	Full amount	Early payment discount	Full amount	Early payment discount	Full amount	Early payment discount
Tower Hamlets	£500	£250	£500	£250	£1,000	£500	£600	£300
Enfield	£500	£250	£500	£250	£1,000	£500	£600	£500
Waltham Forest	£300	£200	£300	£200	£750	£500	£600	£500
Wandsworth	£300	£150	n/a	n/a	£1,000	£500	n/a	n/a
Redbridge	£200	£150	£500	£300	£1,000	£500	n/a	n/a

### Setting a new level of penalty

5.15 The council has the discretion to set the FPN level up to the maximum permitted, and whether or not to set a discounted rate and, if so, at what level and the period within which the discounted rate may be paid.

5.16 The discounting of fixed penalty notices encourages quick payment and is accepted practice for a range of offences.

5.17 A discounted rate set at an appropriate level reduces the amount of cases progressing to court which is resource intensive, whilst still encouraging behaviour change to prevent recurrence of the offence. It is recommended that a discounted rate is adopted for fly-tipping and household duty of care, and for littering, graffiti/fly-posting FPNs, new discounted rates are set as recommended. It should be noted that in respect of the fly-tipping and breach of the household waste duty of care FPNs, the minimum discount is set by statute at £120.00.

5.18 If it is accepted that a discounted rate remains, it is the level of discounted rate that is important as the maximum rate will only be paid if the FPN is not dealt with in a timely manner. Therefore the maximum rate can be set at the proposed higher level.

## **Important considerations**

- 5.19 In the 2023 Anti-social Behaviour Action Plan, the government set out that it wanted councils to take a much tougher stance on these forms of environmental offences and therefore set out new upper limits for FPNs.
- 5.20 Fly tipping, breach of household waste duty of care, graffiti and fly-posting offences require clearing or cleaning at large expense to the council and other landowners. It is proposed that the FPN amount be set at the highest rate with a discount to make early payment attractive without diluting too much the financial penalty for such offences.
- 5.21 If the person issued with an FPN wishes to dispute the offence, they can choose not to pay it and the expectation is that a prosecution for the offence will follow. The risk of setting the FPN at the maximum amount is that the offender ends up in the court because they cannot afford to pay the FPN and not because they wish to object to the service of the fixed penalty notice. There is, therefore, a risk that people facing financial hardship could be disadvantaged by a high level of FPN. Heavily discounting the full amount of FPN for early payment would reduce the risk of this inequity, whilst still maintaining an effective financial penalty that encourages behavioural change.
- 5.22 The council does not accept payment by instalments or payment plans due to the associated costs with administering such a system. Payment for FPNs can only be accepted by the council for the relevant amount (either full or discounted rate depending on the time since it was issued). However, in cases of extreme financial difficulties, officers will continue to have discretion to be able to extend the lower threshold payment period (subject to legal restrictions) and will work together with those issued FPNs to avoid prosecution where possible. To ensure that there is suitable time for cases to go to court, officers will be allowed to extend payment periods for cases of littering, and fly-tipping and household waste duty of care in such cases.
- 5.23 Offenders do not have to pay an FPN given to them (which discharges their liability to conviction for the offence), and the council cannot make anyone pay an FPN. There is no right of appeal to any FPNs. However, where FPNs are not paid, the expectation is that a prosecution will follow.
- 5.24 Whilst there is no legal right of appeal to any FPNs, the council does have a representation process in place. This provides opportunity to recipients to highlight any material errors within the FPN documentation or why they should not have been issued with the FPN.

## **Definitions of offences and our approach to enforcement**

- 5.25 We will deliver improved education and advice to clarify our approach to tackling environmental crime. To help people understand what constitutes an environmental crime covered by these powers and our enforcement approach. We will make it clear through improved education and advice, what to do and want not to do and the consequences for being caught committing an offence.

5.26 **Littering** - A person is guilty of an offence if he throws down, drops or otherwise deposits any litter in any place open to the air to which the public have access without authorisation and leaves it. The council operates a zero-tolerance approach to litter and has done so for many years.

5.27 As shown in the recent 2023 annual residents survey, litter/dirt in street is the third highest personal concern for 30% of residents, up by 2% from the previous 2019 survey.

5.28 The number of littering FPNs issued by the council is shown below:

Year	No. of Littering (CN1) FPNs issued:	No. of FPNs Paid:	% of FPNs paid	No of Representation received	Reps received %	Total FPNs cancelled / withdrawn	% of FPNs Cancelled / Withdrawn	no Un F pros
2020/21 total	250	188	75.20%	28	11.20%	4	1.60%	
2021/22 total	111	77	69.40%	6	5.41%	1	0.90%	
2022/23 total	47	14	29.79%	5	10.64%	7	14.89%	
2023/24 total	145	93	64.14%	0	0.00%	0	0.00%	

5.29 **Household waste duty of care:** Under the Environmental Protection Act 1990, all occupiers of domestic properties are required to take reasonable measures to ensure that waste produced on their property is only transferred to an authorised person. An authorised person is defined in law and includes the council waste collection service (i.e. bulky waste collection), a registered waste carrier (i.e., an authorised skip company) or an operator of a registered site. This reduces the risk of domestic waste ending up in the hands of those who would fly-tip it.

5.30 Nationally two thirds of fly-tipping incidents involve household waste, often as a result of an individual breaching their duty of care to ensure their waste is taken away by an authorised carrier. The household waste duty of care FPN is intended to reduce the flow of waste to those, who would go on to dispose of it illegally or fly-tip it. The FPN allows a more proportionate approach to enforcement, both for the council in costs of enforcement, and for householders in size of penalty and avoiding a criminal record.

5.31 Examples of where the household waste duty of care has been breached include (but is not limited to):

- a. Where fly-tipped waste can be traced back to an individual, who is found to have failed to take reasonable steps to ensure that they have transferred the waste to an authorised person.
- b. Where an unauthorised carrier is found to be carrying household waste that was directly transferred to them by the occupier of a domestic property; or

- c. Where an individual is found to have transferred their household waste to an unauthorised person, at a site that does not have a permit or exemption.
- 5.32 When household waste is fly-tipped (illegally dumped), individuals have a chance to show they made a good effort to find a licensed waste carrier. This means checking if the carrier has a valid license and ensuring they handle the waste properly. If the fly-tipped waste is linked back to someone and they can't identify the carrier, or the carrier they name isn't authorised, then it's likely they haven't fulfilled their duty of care responsibilities.
- 5.33 Examples of evidence which can be used to demonstrate an occupier of a domestic property met their duty of care can include, but is not limited to:
- a. Details of business and of any vehicle used which can be linked to an authorised operator.
  - b. A record of checks made, including operators' registration, permit or exemption number.
  - c. A receipt for the transaction which includes the businesses details of a registered operator; or
  - d. A copy of photograph of the carrier's waste license or site permit.
- 5.34 For the household waste duty of care FPNs there is no right of appeal (which is the case for the other environmental FPNs issued by the council). However, with the household waste duty of care FPN, there is the right to challenge the appropriateness of the enforcement; or to dispute the alleged offence. An alleged offender, issued an FPN, would be entitled to make representations, which the council will be required to consider, in conjunction with the evidence of the case. Any such representations would be considered in line with the council's existing FPN representation process. This process would remain in place with the changes made.
- 5.35 **Fly-tipping** is defined as the 'illegal deposit of any waste onto land or water that does not have a licence to accept it'. This includes household, industrial and commercial waste. The waste can be liquid or solid.
- 5.36 Whilst the impact and unacceptability of littering is more widely understood, research by Keep Britain Tidy highlights confusion over fly tipping. Nearly half of reported or observed incidents are from residential properties.
- 5.37 Anything illegally dumped from a single black sack, mattress or old fridge to any commercial waste is accepted to be a fly tip. This would exclude waste that has been put out for collection as part of the council's scheduled collection.
- 5.38 Apart from domestic waste which is collected by the council, residents have to ensure that they dispose of their other waste lawfully by either taking it themselves to a legal household recycling centre, or arranging for it to be collected by a waste carrier licensed by the Environment Agency. There are stricter controls in place with regard to waste produced by businesses. FPNs are only available for low level (small) fly tips. Larger fly tips should be dealt with via prosecution.

- 5.39 Fly-tipping in the borough remains a problem that our residents are concerned about. The table below shows crew reported fly tips and reports from the public. Whilst the crew reported fly tips doubled between 2021-22 and 2022-23, this was due because we reviewed data collection methods. However, the number of public reported fly-tips and crew reported incidents are on the decrease as a result of an increase in enforcement action by the Environmental Services Team.

<b>Fly-tipping Incidents</b>	<b>Crew Reported</b>	<b>Public Reported</b>	<b>Enforcement Action</b>
2021-22	<b>8,199</b>	<b>8,937</b>	<b>9,277</b>
2022-23	<b>15,861</b>	<b>6,609</b>	<b>20,366</b>
23-24 (Q1 - Q3)	<b>5,111</b>	<b>4,508</b>	<b>18,876</b>

- 5.40 According to the data collected over the last two years, more than half the waste investigated is domestic waste. This means that more than half the waste found out on the highway has been put out for collection. Often at the wrong time. This is often reported as fly-tipping by members of the public. The table below shows a breakdown of investigation data:

<b>Waste Investigations</b>	<b>Trade</b>	<b>Domestic</b>	<b>Mix</b>	<b>Total</b>
2022/2023	7,791	6,578	1,429	15,798
	49%	42%	9%	
2023/2024 Q1-3	6,955	7,663	2,371	16,989
	41%	45%	14%	

- 5.41 Most of the waste investigated does not result in further enforcement action because of a lack of evidence. To support enforcement further, a number of actions are being taken. The Council has acquired further deployable CCTV cameras for temporary deployment in fly tip hot spot locations around the borough, whilst also utilising static CCTV to aid in the detection of fly-tipping, and gathering evidence. The cameras will also allow the officers to gather evidence against residents and businesses presenting waste for collection outside of prescribed time. This is proving to be an effective deterrent, and aid to catching people in the act.
- 5.42 The deployable CCTV cameras will be erected for temporary periods and signs will be put up to warn people of their use. This will act as a deterrent but capture any fly-tipping offences and may also capture other anti-social behaviour in the area. The cameras will be operated by Environmental Services Team and the use of the cameras may also be shared with the Community Safety Team for the detection of ASB.
- 5.43 More communication advising residents of the correct time and place to present their waste for collection is planned for the New Year. This will be accompanied by an increase in duty of care visits to businesses to ensure they have the appropriate contract in place to dispose of their waste lawfully.

- 5.44 **Graffiti and fly-posting** are significant problems within the borough, which suffers from lots of tagging and street art. Vandals target street furniture and shop shutters, walls etc. Tower Hamlets for years have attracted professional and international graffiti artists. Graffiti is mainly concentrated on the West side of the borough, though the presence of graffiti and fly-posting can be seen throughout.
- 5.45 FPNs can be issued to individuals who are caught in the acts of committing graffiti or erecting flyposting. These activities have significant and detrimental impact on the local community within Tower Hamlets. The proposed level of FPN should act as a deterrent for taggers. The preferred course of action in more serious instances of graffiti and serial vandals would be to prosecute for the offences as this enables the recovery of removal costs.
- 5.46 The increase in FPN amounts will be communicated through the council's website, social media platforms, and other media. Officers will continue to educate and warn residents and businesses through door knocking, duty of care visits, issue leaflets and advice on how to present their waste lawfully.

### **Timetable for Implementation**

- 5.47 The changes to the maximum available level of FPNs came in to force on 31 July 2023. The proposal is for Tower Hamlets to adopt its new level of FPNs and changes to payment schedule from 1<sup>st</sup> May 2024. This is to allow one month of intense communication campaign to publicise the increase in FPN amounts for environmental crime offences.

## **6 EQUALITIES IMPLICATIONS**

- 6.1 Under equality legislation, the Council has a legal duty to pay 'due regard' to the need to eliminate discrimination and promote equality in relation to:
- Race
  - Disability
  - Gender, including gender reassignment.
  - Age
  - Sexual Orientation
  - Pregnancy and maternity
  - Religion or belief
- 6.2 An equality impact analysis screening has been completed and has not identified any negative impacts on people within the protected characteristics. It only changes FPN levels, and does not introduce a new service or policy requiring an accompanying EQIA. However, if people feel they are negatively impacted by the issuing of an FPN these concerns can be considered as part of the representation process.

## **7 OTHER STATUTORY IMPLICATIONS**

- 7.1 This section of the report is used to highlight 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. Examples of other implications may be:

- Best Value Implications,
- Consultations,
- Environmental (including air quality),
- Risk Management,
- Crime Reduction,
- Safeguarding.
- Data Protection / Privacy Impact Assessment.

7.2 These recommendations support delivery of the council's statutory functions to improve environmental quality, value for money and crime reduction.

7.3 This decision should have a positive impact on crime and disorder as it will act as a deterrent to people to commit crimes and enables the Council to issue penalties to those who do commit environmental crimes.

## **8 COMMENTS OF THE CHIEF FINANCE OFFICER**

8.1 The report is seeking approval of a new fee structure for fixed penalty notices for environmental crimes, namely fly-tipping, littering, household waste duty of care, graffiti, and flyposting, which came into force under The Environmental Offences (Fixed Penalties) (England) Regulations 2023 ("the Regulations") on the 31st July 2023. These revised charges outlined in para. 6.1 are proposed following the Government increasing the cap for such fines.

8.2 The proposed fines represent the maximum fine that could be imposed.

8.3 It is difficult to accurately calculate the impact on income from the fines, as it is dependent on levels of enforcement activity and collection rates. There is a potential that there could be a reduction in income, with the larger penalties being a deterrent to committing environmental crimes. The impact on budgets will be monitored throughout the year.

## **9 COMMENTS OF LEGAL SERVICES**

9.1 Fixed Penalty Notices (FPNs) have long been used as a statutory alternative to prosecution for a number of offences although it is only relatively recently that the use of FPNs has been extended to offences such as fly-tipping or breach of the waste duty of care.

9.2 The use of FPNs for environmental offences allows for authorities to deal with less serious offences in a proportionate manner. Fly-tipping, for example, can cover a wide variety of scenarios, ranging from one black bag of waste improperly deposited on the highway to a large-scale dump of building waste on the highway. The use of FPNs means that only those cases that warrant a prosecution will be prosecuted and that the less serious offences can be dealt with in a more proportionate manner.

- 9.3 The Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023 (“the Regulations”) amend the FPN levels in relation to offences of fly-tipping, breach of the household waste duty of care, littering, and graffiti. In respect of fly-tipping and breach of the household waste duty of care, the lower limit of the FPN remains fixed at £150.00. The maximum amount has been increased to £1,000.00 for fly-tipping and to £600.00 for breach of the household waste duty of care. These are substantially lower than the potential fines that can be imposed by the courts.
- 9.4 For littering offences and graffiti offences, the range is £65.00 to £500.00.
- 9.5 It is common for an FPN provision to allow a discounted rate for early payment. This acts as an incentive to the recipient to pay at the earliest opportunity. The authority may also be permitted to specify the period within which payment of a discounted rate will be accepted. In some instances, the statute may also address the discounted amount. In the case of an FPN issued for fly-tipping or breach of the household waste duty of care, the statute provides that the discount cannot be less than £120.00.

### **Linked Reports, Appendices and Background Documents**

#### **Linked Report**

- NONE

#### **Appendices**

- NONE.

#### **Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012**

- NONE.

#### **Officer contact details for documents:**

Simon Baxter, (Interim Director Public Realm)