

Fixed Penalty Notices for fly tipping

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Purpose of the Report

For Members to agree an appropriate level at which to set the fine for new fixed penalty notices available for persons committing an offence of the unlawful disposal of waste (fly tipping).

Forward Plan

This report appeared on the District Executive Forward Plan with an anticipated Committee date of 2nd June 2016.

Public Interest

One of the pieces of legislation enforced by Environmental Health relates to the illegal deposit of waste, usually referred to as fly-tipping. If individuals or companies are believed to have committed an offence under this law then council officers can prosecute them. If they are found guilty in court then they can be given a fine of up to £50,000 or sent to prison for up to 12 months. In reality the fines nationally are rarely anywhere near the maximum.

From 9th May 2016 the law is changing to give the Council the option of offering a fixed penalty notice (FPN) to those guilty of fly-tipping. Other enforcement options, including prosecution will still remain the same.

If an FPN is accepted and paid then no further action is taken in relation to that offence.

This reports relates to the level at which the Council will set the fixed penalty. The law allows the level to be set anywhere between £150 and £400.

Recommendations

That the District Executive agree to set the level for fixed penalty notices for offences under Section 33 of the Environmental Protection Act 1990 at £200 with a reduction to £150 if paid within 10 days of the date of issue.

Background

Dumping waste illegally is an offence under Section 33 of the Environmental Protection Act 1990. This offence is known commonly as fly-tipping.

Environmental Health enforcement officers investigate reports of fly tips to try and find evidence of who has dumped the waste. Unfortunately in the majority of cases nothing can be found. In these cases Streetscene Services are responsible for clearing up any fly tips on public land. An element of the clear up cost is re-imbursed through the Somerset Waste

Partnership. This is to cover potential additional flytips that may have resulted from changes at the waste and recycling facilities. Last year this amounted to £3,600

However, if evidence is found that identifies who may have been responsible for the fly tip, then the enforcement officers will undertake further investigation. If sufficient evidence can be gathered to prove who dumped the waste then officers can bring a prosecution against the offender under the provisions of section 33 of the Environmental Protection Act 1990.

To date the only formal sanctions available for such offences are a prosecution or a simple (formal) caution.

Report Detail

The Unauthorised Deposit of Waste (Fixed Penalty) Regulations 2016 came into force on 9th May 2016. The new regulations introduce the ability to issue an FPN to persons believed to have committed an offence of fly tipping. FPNs offer a person the opportunity to discharge their liability to conviction for the offence by the payment of a fixed penalty. A number of other fixed penalties already exist within Environmental Health for environmental crime offences, including dog fouling and littering. The level of fixed penalty for this offence can be set anywhere between £150 and £400.

Fly tips can vary hugely in their scale, impact on the environment and cost of clearing. It is therefore useful to have a range of sanctions available which can be implemented in proportion to the severity of the offence. It gives the option to issue a penalty without the time needed to go to court, where this is more appropriate to the offence committed.

This is particularly useful given the difficulties that can be experienced in taking enforcement action. During the past 12 months it has only been possible to bring one successful prosecution and issue one formal caution. There are a number of other investigations ongoing, a couple of which are very involved and taking considerable resource. The option of an FPN will provide a more effective and efficient remedy in some circumstances.

All formal action taken will follow the principles set out in the SSDC Regulatory Services Enforcement Policy and must have regard to the public interest test. It is anticipated that FPNs will only be used where these public interest test consideration indicate that it is a more proportionate and reasonable penalty in the circumstances. For example for a very small scale fly tip, by an individual with no prior history of this offence, who is co-operative with the investigation, then an FPN may be the most suitable course of action.

Given that FPNs are likely to only be offered in these type of circumstances, it is believed that a level of £200 is an appropriate and sufficient penalty to make it clear that an offence has been committed and also to act as a deterrent against further offending. Offering a reduced rate for early payment is in line with the policy set for other FPNs issued by the Council. This encourages prompt payment. For comparison the cost of clearing up a small fly tip is approximately £115.

Should an FPN not be paid, officers are still able to continue with a prosecution instead.

For more serious or recurring offences prosecution is likely to still be the recommended course of action. Each case will of course be considered in turn and in consultation with legal services where necessary.

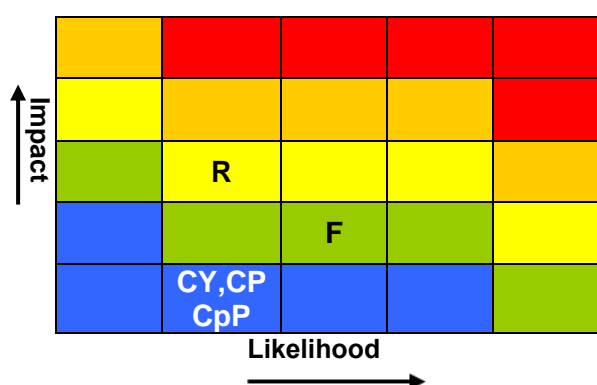
It is therefore proposed that the level of penalty be set at £200 with reduction to £150 if paid within 10 days.

Financial Implications

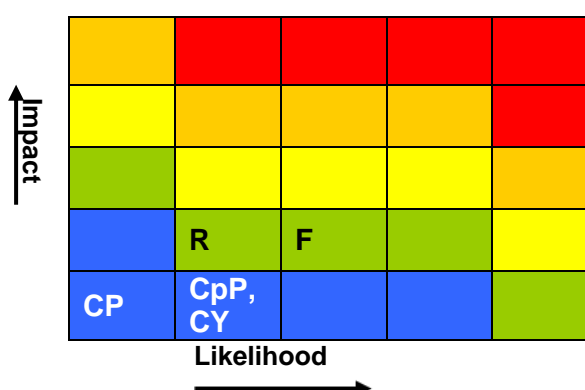
Receipts from fixed penalty notices are retained by the authority to which they are paid. Any FPNs paid will therefore go a small way to help offset the costs to the Council of enforcing and clearing fly tips. It is not anticipated however that there will be significant numbers of FPNs issued due the difficulties in obtaining evidence as outlined above. (It is not anticipated that more than 2 to 3 FPNs will be issued a year resulting in receipts of between £300 to £1,200)

Risk Matrix

Risk Profile before officer recommendations



Risk Profile after officer recommendations



Key

Categories	Colours (for further detail please refer to Risk management strategy)
R = Reputation	Red = High impact and high probability
CpP = Corporate Plan Priorities	Orange = Major impact and major probability
CP = Community Priorities	Yellow = Moderate impact and moderate probability
CY = Capacity	Green = Minor impact and minor probability
F = Financial	Blue = Insignificant impact and insignificant probability

Council Plan Implications

This report supports the following priorities in the Council Plan 2016-2021

Environment

To keep South Somerset clean, green and attractive we will:

- Keep streets and neighbour-hoods clean and attractive.

Health and communities

- Help keep our communities safe.

Carbon Emissions and Climate Change Implications

The report has no adverse climate change implications. Any actions to help ensure the proper and responsible disposal of waste will have positive implications for the wider environment.

Equality and Diversity Implications

An equality impact assessment has been completed. The report has no equality and diversity implications.

Privacy Impact Assessment

There are no new implications for any personal data. The existing provisions for enforcement of the relevant legislation will remain the same.

Background Papers

None applicable
