

CABINET MEMBER DELEGATED DECISION 31 JULY 2019

Report title: Increase Fixed Penalty Charges for Littering and Abandoned Vehicles

Wards: All

Portfolio: Deputy Leader (Environment and Clean Air), Councillor Claire Holland

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Report summary

This report outlines recent government changes to the statutory fixed penalty charge levels for littering and vehicle related offences. This report outlines recent government changes to the statutory fixed penalty charge levels for littering and vehicle related offences. The changes are linked to the introduction of the Environmental Offences (Fixed Penalties) (England) Regulations 2017, which were laid before parliament on the 1 November 2017. The Council's key performance indicator for street cleanliness has been declining for the last 12 months as a result of increased littering on our streets. This report outlines a proposal to increase the relevant fixed penalty charge levels currently applied in order to reiterate Lambeth's 'zero tolerance' approach towards environmental crime and so as to support the delivery of a range of behavioural change initiatives that align with our Equalities Streets objectives and our ambition to make our borough a safer, cleaner place for people to work in, visit and live in.

This report seeks approval for us to charge for environmental crime offences at the top end of the sanction limits available, to bring Lambeth in line with other neighbouring London Boroughs, in order to influence citizen behaviour positively towards a cleaner and safer borough.

Finance summary

The changes outlined within the Environmental Offences (Fixed Penalties) (England) Regulations 2017 outline the government's intention to strengthen the current enviro-crime enforcement regime by increasing the default penalty levels. This report recommends increasing fine levels for littering from the current limit of not less than £50 and no more than £80, to not less than £100 and no more than £150. The cost of removing abandoned vehicles from the highway has been increasing over the last few years with the Council bearing the cost of removal and disposal. FPNs for abandoned vehicles would also be introduced and the fine levels would be set at not less than £150 with a maximum of £200.

The annual cost of street sweeping and litter collection is approximately £7M. Any increase in income derived from the increase in FPN charge levels will be used to fund the street sweeping and litter collection services.

Recommendations.

1. To agree the proposed Fixed Penalty Notice price increases. This is outlined in section 2 demonstrated in table 2.1
2. To agree to the use of FPN powers to enforce against abandoned vehicles.

1. CONTEXT

- 1.1 All local Authorities in England have extended powers to enable enforcement of certain environmental legislation intended to protect both the individual and the community as a whole. The statutory Fixed Penalty Notice (FPN) levels outlined within legislation such as the Environmental Protection Act 1990 and the Control of Pollution (Amendment) Act 1989 are set by central government via regulations approved by parliament.
- 1.2 In 2017 the government completed a broad ranging consultation exercise on the effectiveness of fixed penalties relating to enviro-crime offences such as littering. The consultation focused on fines not having been changed since 2006. The consultation feedback confirmed that fixed penalties continue to be viewed positively by local authorities, the majority of which regard FPN powers as a key part of the enviro-crime enforcement tool-kit.
- 1.3 The Environmental Offences (Fixed Penalties) (England) Regulations 2017 was laid before parliament on the 1 November 2017. The vast majority of the penalty changes came into effect on the 1 April 2018. However, from 1st April 2019, it is proposed that all relevant penalty levels must, by law, be increased to the default amount as outlined in table below in section 2. This change in the legislation enables the Council to shape customer behaviour, fund the street cleaning services and brings the council one step closer to fulfilling our efforts to have *strong and sustainable neighbourhoods*.
- 1.4 The changes outlined within the Environmental Offences (Fixed Penalties) (England) Regulations 2017 outline the government's intention to strengthen the current enviro-crime enforcement regime by increasing the default penalty levels. The increase in penalty levels is intended to respond to public concern about the impact of enviro-crime on environmental quality and deliver positive behavioural change by deterring offending behaviour.
- 1.5 In previous years environmental crime such as skips and low level highways offences and related fixed penalty levels were aligned across London via the London Councils Technical Enforcement Committee. This system establishes a standardised approach towards enviro-crime FPN amount and enforcement policy. London Councils has not developed any proposals in respect of the Environmental Offences (Fixed Penalties) (England) Regulations 2017. As a result, we do not have a set amount that all London Councils would charge for the higher rate of fine and the amounts specified may vary from local authority to local authority based. However, most London authorities tend to be organically aligned in their maximum payment levels.
- 1.6 Lambeth's stance on enviro-crime related fines currently is at the highest end of the payment level in line with original legislation. Full payment level for a littering fine is currently £80 and this report proposes that it would continue to be aligned with the highest end of the payment level, by increasing it to £150 if a payment is not made within 10 days. Similarly, the current early discounted amount is £50 and would be increased to £100 if this proposal is agreed. This minimum payment applies where an offender makes payment for a fine within 10 days from the issue. The changes in the legislation,

while limiting the minimum amount a Council may charge for FPNs, gives the Council the option to choose whether to apply the full payment level.

- 1.7 Lambeth 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 keeping the streets and local environment clear of litter and obstructions which could pose health hazards or encourage anti-social behaviour.
- 1.8 A random sample test of 50 FPNs issued since 1st February alone confirms that 84% of all FPNs issued are to offenders who reside outside of the borough.

Abandoned Vehicle Enforcement

- 1.9 In 2015 there were a total of 762 abandoned vehicles in the borough which increased to 1333 in 16/17 and 1365 in 17/18. There is a widespread problem with abandoned vehicles across the borough and there is a need to shape behaviours of people who believe they can abandon a vehicle on the highway instead of disposing of their vehicle safely and appropriately. We are currently spending on average £7000 a month on additional vehicle pound storage costs due to an increase in abandoned vehicles.
- 1.10 It’s important to note that not all abandoned vehicles can be issued with a FPN. This is due to the fact that some citizens remove the registration plates from the vehicles to deter enforcement actions. However, over 80% of the vehicles that are abandoned on the highway still have the vehicle registration plates attached to the vehicle.
- 1.11 By issuing FPNs where possible to vehicles that are abandoned, as well as enforcing the recovery of costs associated with removing these vehicles from the highway by the Parking Service, we envisage that we will encourage behaviour and attitudes to change in regard to abandoning vehicles in the borough and as a result it is anticipated that there will a reduction in this type of offence due to this enforcement option.
- 1.12 The enviro-crime fixed penalties and penalties issued for abandoned vehicles provide suspected offenders with an opportunity to discharge liability (for prosecution) via the Magistrates Courts. The payment of the fixed penalty negates the possibility of further legal action being taken by the relevant local authority. Unpaid fixed penalties are routinely referred to the local Magistrates in the event of a guilty verdict of plea these can range from up to £1000 in the cases of nuisance vehicles and up to £2500 for littering.

2. PROPOSAL AND REASONS

- 2.1 The table below outlines the proposed changes to Lambeth enviro-crime fixed penalty levels. It is proposed to increase the current FPN levels in line with the legislation and apply the maximum penalty available for each of the offences.

Offence	Current FPN level	Proposed FPN level	Legislation
Litter	<ul style="list-style-type: none"> • £80 • £50 – early payment reduction (if paid within 10 days) 	<ul style="list-style-type: none"> • £150 • £100 – Early payment reduction • £100 - *Default amount 	Section 88(6A)(a) of the Environmental Protection Act 1990

Abandoned Vehicles	Vehicles are removed but there is no enforcement action	<ul style="list-style-type: none"> • £200 • £150 – Early payment reduction • £200 – *Default amount 	Section 2A(10) of the Refuse Disposal (Amenity) Act 1978
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***Default amount** - This means that should the Council not specify its FPN levels for these offences, then a default penalty automatically applies.

2.2 The amended fixed penalty regulations provide scope for litter related fixed penalties to be increased to £150. Our proposal aligns us with other London Boroughs and also our neighbouring boroughs.

2.3 The benchmarking shown in 2.4 below indicates that of the 10 boroughs reviewed, eight of them will charge the full amount of £150 in the next financial year. It also shows that only four of them plan on offering a discounted rate. It's also notable that four of the Councils have already applied the changes in line with the new legislation and applied the full amount of £150.

2.4 Benchmarking Data

Boroughs that responded to Consultation	Litter Fines before change in legislation (Pre-April 1st 2018)?	Penalties from April 1st 2018 to now	Penalties from April 1st 2019
Lambeth	£80 discounted to £50	£80 discounted to £50	Decision to be confirmed
Westminster	£80 discounted to £50	£150 discounted to £95	£150 discounted to £95
Wandsworth	£80 discounted to £50	£100 discounted to £50	Discussions of £150 no discount
Richmond	£80 discounted to £50	£100 discounted to £50	Discussions of £150 no discount
Redbridge	£80 no discount	£150 no discount	£150 no discount
Enfield	£80 no discount	£150 no discount	£150 no discount
Islington	£80 discounted to £50	No	£150 full rate planned
Croydon	£80 no discount	£150 discounted to £100	£150 discounted to £100
Camden	£80 discounted to £50	No	£150 discounted to £65 planned
Greenwich	£75 discounted to £50	£80 discounted to £60	Unable to confirm
Southwark	£80 discounted to £50	£80 discounted to £50	£150 discounted to £100

Justification

2.5 The proposed £150 for litter fixed penalty notice level with an early payment of £100 seeks to strike the right balance between:

- deterring offending behaviour
- keeping in line with the neighbouring boroughs fixed penalty levels

- maintaining payment rates
 - responding to the high levels of public support for enviro-crime enforcement activity
- 2.6 The Council currently spends approximately £7 million to keep our neighbourhoods clean, this includes removal of litter and waste from the public highway, parks and public spaces. The National Indicator 195 report for litter is 11% for the cleanliness standard against a target of 7% for Lambeth (the lower the better). This demonstrates the proposed changes in fees should help change user behaviour.
- 2.7 While our benchmarking data indicates that some boroughs are not proposing to have a discounted rate, we believe that some balance between a zero tolerance towards enforcement and affordability of fines is important, and that applying the discounted rate can still drive behaviour change.
- 2.8 All of the relevant fixed penalty levels would be increased under the proposals highlighting Lambeth's zero tolerance approach towards tackling anti-social behaviour and ensuring that we are keeping up to date and in line with legislative changes to confirm that we are fulfilling our legal obligations as a Council.
- 2.9 To help with keeping the highways clean we will encourage behaviour change through campaigns and will work in partnership with Keep Britain Tidy to build awareness and promote the use of ashtrays or bins to dispose of litter. Additional signage will be added outside the main transport hubs and areas with high enforcement levels and the website updated as necessary.

3. FINANCE

- 3.1 Due to the introduction of the Environmental Offences (Fixed Penalties) (England) Regulations 2017 this report recommends increasing fine levels for littering from the current limit of not less than £50 and no more than £80, to not less than £100 and no more than £150. FPNs for abandoned vehicles would also be introduced and the fine levels would be set at not less than £150 with a maximum of £200.
- 3.2 In October 2016 we entered into a working agreement with NSL Ltd. to deliver our environment enforcement activities, focusing entirely on offences covered under s87 of the Environment Protection Act 1990. This working arrangement ended in November 2018. All payments received in respect of FPNs that were issued by NSL Ltd. were used to pay for the cost of that working arrangement, making it a cost neutral offering for Lambeth. Similarly, we are currently working with APCOA under our existing enforcement contract, which covers both Parking Enforcement and Environmental Enforcement, to deliver this service, with payments associated with FPNs being used to cover the cost of having officers out on street to educate citizens around the damage their anti-social behaviour has on the environment, and where appropriate, to enforce environmental crime offences by citizens in the borough.
- 3.3 The tables below show the levels of FPN payment received over the last two years up to January 2019 and shows the estimated income that would be delivered if this proposal is approved.

Current Income levels for last 2 years

	FPNs Paid	Sum of Paid (£)	Estimated % Paid
At £50	8,011	400,550	86.16%
At £80	1,287	102,960	13.84%
Total paid	9,298	503,510	100.00%

4. LEGAL AND DEMOCRACY

- 4.1 The Environmental Offences (Fixed Penalties) (England) Regulations 2017 (“the 2017 Regulations”) came into effect on 1 April 2018 increasing rates for fixed penalties payable in respect of certain offences relating to the environment, detailed at regulations 2 to 10, including offences in relation to litter and abandoned vehicles. They replace the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2007 (except for regulation 2(2) (b) and 3(2) (b) of those Regulations) and revoke the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) (Amendment) Regulations 2012.
- 4.2 The 2017 Regulations enables the Council to specify the amount of a fixed penalty payable for certain environmental offences (detailed at Regulations 2 to 10) subject to statutorily prescribed minimum and maximum amounts. In the event of the Council not specifying the amount of the fixed penalty, a default penalty of £100 is automatically applied as from 1 April 2018.
- 4.3 The Council also has a discretion to provide for a discount to be applied to a penalty in the event of early repayment subject to our ensuring that the ultimate penalty payable in such cases does not fall below a statutorily prescribed minimum (specified at regulations 8 to 11).
- 4.4 Section 149 of the Equality Act 2010 sets out the new public sector equality duty replacing the previous duties in relation to race, sex and disability and extending the duty to all the protected characteristics i.e. race, sex, disability, age, sexual orientation, religion or belief, pregnancy or maternity, marriage or civil partnership and gender reassignment. The public sector equality duty requires public authorities to have due regard to the need to:
- Eliminate unlawful discrimination, harassment and victimisation
 - Advance equality of opportunity and
 - Foster good relations between those who share a protected characteristic and those who do not.
- 4.5 Part of the duty to have “due regard” where there is disproportionate impact will be to take steps to mitigate the impact and the Council must demonstrate that this has been done, and/or justify the decision, on the basis that it is a proportionate means of achieving a legitimate aim. Accordingly, there is an expectation that a decision maker will explore other means which have less of a disproportionate impact.
- 4.6 The Equality Duty must be complied with before and at the time that a particular policy is under consideration or decision is taken – that is, in the development of policy options, and in making a final decision. A public body cannot satisfy the Equality Duty by justifying a decision after it has been taken.
- 4.7 This proposed key decision was entered in the Forward Plan on 10 June 2019 and the necessary 28 clear days’ notice has been given. In addition, the Council’s Constitution requires the report to be published on the website for five clear days before the proposed decision is approved by the Cabinet Member. Any representations received during this period must be considered by the decision-maker before the decision is taken. A further period of five clear days - the call-in period – must then elapse before the decision is enacted. If the decision is called-in during this period, it cannot be enacted until the call-in has been considered and resolved.

5. CONSULTATION AND CO-PRODUCTION

- 5.1 We engaged with our community Safety Team on this change in legislation. We will work with them to ensure joint enforcement actions are taken where necessary to improve town centres and other pockets in Lambeth where coordinated approaches are required. We also benchmarked with other local authorities as seen above which would be important for our roads which borders other boroughs in the event of joint working we would have the same levels of fines when undertaking enforcement.

6. RISK MANAGEMENT

- 6.1 If a decision on how much the FPNs should be increased is not agreed, then Lambeth would be compelled to accept a default payment in which the legislation allows which is £100.
- 6.2 There could also be a reputational risk for not increasing the fine levels to the same as our neighbouring boroughs.
- 6.3 There is a risk that we would not be doing enough to achieve our targets to reduce waste in the borough by not making use of the appropriate available tools to shape citizen behaviour and encourage a positive shift away from anti-social habits. Our current performance data shows that Lambeth is not attaining the national indicators for street cleanliness and standards in terms of litter found in our roads and failure to address this issue could result in greater costs being incurred in having to cleanse areas of the borough where littering is a problem.

7. EQUALITIES IMPACT ASSESSMENT

- 7.1 An EIA has been completed and approved in line with current procedures. Taking enforcement action to deal with environmental crime is not intended to have either a positive or negative impact upon equality and diversity or apply differently to any particular group. However as with any increase in fees and charges there will be an impact on certain sectors of society such as low income families which have been identified in the assessment. There will be information on our website on how to dispose of cigarette butts and general litter properly to avoid receiving a fine. We will seek to make use of all engagement opportunities and campaigns to highlight the need for our citizens to be more conscious of their behaviour in terms of enviro-crime and anti-social behaviour. We are also seeking to retain an early payment discounted rate.

8. COMMUNITY SAFETY

- 8.1 With new powers to issuing FPNs for abandoned vehicles, this will help to deter vehicles being left abandoned on the public highway as this will now attract a fine as well as cost for the removal of a vehicle. We have seen where a vehicle being left abandoned for long periods attract other vehicles being abandoned nearby and lead to other ASB crimes. Vehicles being abandoned can also block access for emergency vehicles and street servicing vehicles.
- 8.2 Littering, urinating and spitting, although considered Low level ASB, contributes to other ASB issues. Cumulative impact of litter around town centres and high streets can impact the quality of the local environment.

9. ORGANISATIONAL IMPLICATIONS

9.1 Environmental

Cleaner and Greener is included in the Borough Plan and this proposed increase will help shape behaviours.

9.2 Staffing and accommodation - No Impact

9.3 Procurement - No Impact

9.4 Health

Smoking is one of the challenges and area of concern for the residents of Lambeth and is included in the Health and Wellbeing Strategy. Smoking is the most common form of respiratory conditions and enforcing against people who dispose of their cigarette litter inappropriately may deter smoking in certain areas and reduce the number of people smoking in public areas such as tube stations and town centres. Similarly spitting and dog fouling provide a range of health issues of their own and we need enforce against this behaviour to protect the health and wellbeing of citizens.

10. TIMETABLE FOR IMPLEMENTATION

10.1 A simple timetable to show the stages and deadlines for implementing the recommendations – preferably as a table.

Actions	Date
Implementation Plan	1 st April 2019
Communication Plan	25 th March 2019
Systems update	TBC

AUDIT TRAIL

Consultation

Name/Position	Lambeth directorate / department or partner	Date Sent	Date Received	Comments in paragraph:
Councillor Claire Holland	Deputy Leader (Environment and Clean Air)	12/03/19	21/03/19	
Bayo Dosunmu	Strategic Director, Resident Services	12/03/19	13/03/19	
Raj Misty, Director for Environment	Environment & Streetscene	25/02/19	27/02/19	
Derek Roopnarine, Finance	Finance and Investment	06/03/19	08/03/19	
Jean-Marc Moccarme, Legal Services	Legal and Governance	27/02/19	05/03/19	
Maria Burton, Democratic Services	Legal and Governance	08.03.19	12.03.19	4

REPORT HISTORY

Original discussion with Cabinet Member	21.03.19
Report deadline	N/A
Date final report sent	N/A
Part II Exempt from Disclosure/confidential accompanying report?	No
Key decision report	Yes
Date first appeared on forward plan	10.06.19
Key decision reasons	2. Expenditure, income or savings in excess of £500,000
Background information	Department for Environment Food & Rural Affairs Consultation document Environmental Offences (Fixed Penalties) (England) Regulations 2017
Appendices	Appendix 1 – EIA document

APPROVAL BY CABINET MEMBER OR OFFICER IN ACCORDANCE WITH SCHEME OF DELEGATION

I confirm I have consulted Finance, Legal, Democratic Services and the Procurement Board, and taken account of their advice and comments in completing the report for approval:

Signature: _____ **Date:** _____

Post: Neil Fenton Assistant Director for Parking and Highways

I confirm I have consulted the relevant Cabinet Members, including the Leader of the Council (if required), and approve the above recommendations:

Signature: _____ **Date:** _____

Post: Councillor Claire Holland, Deputy Leader (Environment and Clean Air)

Any declarations of interest (or exemptions granted): None

Any conflicts of interest: None

Any dispensations: None