Appendix A - Briefing Report

PLYMOUTH CITY COUNCIL

1. Executive Summary

The purposes of this report are:

- To inform the Cabinet Member of the revised fixed penalty notice (FPN) levels for environmental crimes, namely fly-tipping, littering, household waste duty of care, graffiti, and flyposting, effective from 31st July 2023 under The Environmental Offences (Fixed Penalties) (England) Regulations 2023 ("the Regulations").

- To seek authority to revise the current FPN's for offences related to environmental enforcement, namely, littering, fly-tipping, household waste duty of care, graffiti and flyposting to new levels; and to introduce a sliding scale of Fixed Penalty charges, based on criteria of amount/type of waste deposited or whether there is a repeated offence.

2. Background

2.1. Littering, graffiti, fly-posting and fly-tipping blight communities, impose avoidable costs on the public purse and can harm the environment, with fly-tipping being aggravated by householders giving waste to unauthorised carriers. Fixed penalty notices (FPN's) provide the relevant enforcing authorities with an effective and visible way of responding to these environmental crimes and a lower-cost alternative to prosecution. For some time, the Council have taken a firm approach to enforcement and have issued FPN's for various offences.

2.2 In the 2023 Anti-social Behaviour Action Plan, the Government explained that it wanted to see councils take a much tougher approach to these forms of anti-social behaviour and set out new upper limits for FPN's. This instrument increases the upper limit for the fixed penalties that can be issued for these offences.

2.3. The Environmental Protection Act 1990 (EPA90) is the primary legislation dealing with waste on land (fly-tipping and littering) and the Anti-Social Behaviour Act 2003 for dealing with anti-social behaviour, including graffiti and fly-posting, both providing prosecutions for breaches of the legislation. FPN's were introduced in specific cases as an alternative to prosecution, dealing with situations where liability was accepted from the perpetrator thus saving Local Authorities time and money prosecuting.

2.4 The powers to increase the upper limits for these offences are derived from specific legislative provisions. For littering offences, the authority is granted under section 97A of the EPA 1990, while for graffiti and fly-posting offences, the relevant powers are found in section 43A of the Anti-social Behaviour Act 2003. For fly-tipping and breaches of

household waste duty of care, the powers were introduced through amendments to section 34ZA(9A) and (10A) of the EPA 1990 by the Environment Act 2021. It is for the Local Authority to decide the levels of its FPNs within a minimum and maximum range, and if no fee is set, then it will remain at a default level. The revised maximum FPN levels available are shown in Table 1.

Table 1.

Offence	Current FPN in Plymouth	New Maximum
Littering	£150	£500
Fly tipping	£400	£1000
Household Duty of Care	£400	£600
Graffiti	£150	£500
Flyposting	£150	£500

2.5. The Council previously adopted upper limit levels for FPN's prior to this change in regulations, however it is proposed to introduce a sliding scale of charges to reflect the size/scale/type of the deposited litter/waste, with the maximum level of FPN being applied to the more serious cases/larger volumes for both littering and fly tipping. The information within Table 2 will dictate how the amount of FPN will be decided. As with all FPN's if the recipient chooses not to discharge their liability for the offence by paying the FPN, the case will be reviewed for prosecution and the Court will have jurisdiction to set an appropriate fine, if the offender is found guilty. There is no legal route of appeal for an FPN.

2.6 The amounts proposed have been considered carefully to draw a distinction between the size/type of waste/litter deposited, and in relation to graffiti and flyposting, the frequency of the event in determining the level of FPN that is applicable. Alternatives considered having one set amount for each offence but the sliding scale reflects the scale of the offence. The amounts also act as a deterrent, and encourage everyone to dispose of waste appropriately, or act in a way that does not have an impact on the local environment.

2.7 In relation to littering, it is proposed to implement different levels of FPN amounts dependent on the size of the litter deposited, meaning smaller single items will be subject to a £200 FPN, whereas large and or hazardous/ deposits of litter will be subject to the maximum of £500.

2.8 In relation to the unauthorised deposit of waste, (commonly referred to as fly tipping), the range of FPN varies between £600 to £1000, dependent on the size of the deposit. The local authority can decide not to issue an FPN in more serious cases and refer the matter straight to prosecution.

2.9 The household duty of care legislation requires occupiers of domestic properties to take all reasonable measures that are available to them in the circumstances, to make sure that they only transfer household waste produced on their property to an authorised person. This reduces the chance of waste ending up in the hands of those who would fly-tip it.

Whilst this is set at a maximum level of £600 in the new regulations, it is proposed to keep this at £400 for smaller quantities of waste that are subsequently found fly tipped or £600 for larger amounts of deposited waste.

2.10 For fly-posting and graffiti, it is intended to issue a lower FPN for one off instances, or a higher FPN where multiple instances have occurred or there are repeated occurrences.

Table 2.

Offence	Proposed FPN
Litter (scale to max £500)	
Single small item – for example, cigarette butt, chewing gum, vape, fast food wrapper, litter from vehicles, a single cardboard box	£200
Single larger item- for example a bin bag	£300
2-4 bin bags or equivalent,	£400
Multiple items (either in one or multiple locations) - for example 5-10 bin bags or equivalent, or waste clearly not for household waste collections, for example small item of furniture (office chair, bedside table, TV stand)	£500
Repeat Offender (previous FPN)	£500
Fly-tipping (scale to max £1000)	
Large items/car boot load (larger single item of furniture (eg bed, sofa, gate) or 10 or more bin bags) deposited by an individual	£600
Any business waste that is deposited of any size or van load or requires special disposal deposited by an individual (for example fridge, or suspected asbestos/chemicals)	£1000
Repeat offender (previous FPN)	£1000
Duty of Care (scale to £600)	
Household waste duty of care- individual item	£400
Household waste duty of care -multiple items	£600
Graffiti (up to £500)	
Single location	£250
Repeat offender/ multiple locations	£500
Flyposting (up to £500)	
Single location	£250

Repeat Offender/ multiple location	£500

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2.11 The local authority can decide not to issue an FPN in more serious cases and refer the matter straight to prosecution. Each case will be considered on an individual basis including any previous history, the environmental impact of the waste or location of dumped waste. FPNs are offered to offenders as a means of discharging liability for the offence. There is no legal appeal to being issued an FPN, but if a person chooses not to pay the FPN, Councils should take steps to prosecute for the offence committed.

3. Financial Implications and risks

3.1. There is a risk that with higher amounts of FPN's, that recipients will be unable to pay the FPN within the specified timescale of 14 days.

3.2 Where offenders cannot afford to pay, it is for the Court to consider their financial means in any subsequent prosecution, and if the person is found guilty, the court can consider any relevant penalty applicable taking into account their financial status.

3.3 Income from FPNs must be spent on specified enforcement functions related to litter, and fly-tipping. Enforcement functions include employing officers authorised to issue FPNs for littering, fly-tipping and breach of household waste duty of care.

4.0 Timescales

4.1 It is intended that should the report be approved, (subject to any democratic process) the changes will be implemented within one month of sign off.