

# Transport and Environment Committee

10am, Tuesday, 12 January 2016

## Enforcement of Fixed Penalty Notices for Littering and Fly Tipping

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|-------------------|-----|
| Item number       | 7.2 |
| Report number     |     |
| Executive/routine |     |
| Wards             | All |

### Executive summary

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On 1 April 2014, the Fixed Penalty Notice (FPN) amounts for both littering and fly tipping increased from £50 to £80, and from £50 to £200 respectively.

This report summarises the outcome of discussions held with the Procurator Fiscal in relation to the enforcement of those FPNs, as requested by the Transport and Environment Committee on 2 June 2015.

### Links

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|                          |              |
|--------------------------|--------------|
| Coalition pledges        | P44          |
| Council outcomes         | CO17<br>CO19 |
| Single Outcome Agreement | SOA4         |

## Enforcement of Fixed Penalty Notices for Littering and Fly Tipping

### Recommendations

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It is recommended that Committee:

- 1.1 notes the content of this report; and
- 1.2 discharges the remit from 2 June 2015 to report to the Transport and Environment Committee on discussions with the Procurator Fiscal in relation to the enforcement of FPNs.

### Background

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- 2.1 On 1 April 2014, the FPN amount for littering increased from £50 to £80. The FPN amount for fly tipping also increased, from £50 to £200.
- 2.2 Following the increase in 2014, revenue obtained from those FPNs increased in 2014/15 when compared with 2013/14. Although the proportion of littering FPNs paid increased slightly from 65.8% in 2013/14 to 67.4% in 2014/15, there was a drop in the proportion of fly tipping FPNs paid.
- 2.3 The proportion of paid FPNs for domestic fly tipping fell from 53.3% in 2013/14 to 35.4% in 2014/15. For trade fly tipping, the proportion paid fell from 72.0% in 2013/14 to 58.7% in 2014/15.
- 2.4 The Council reports non-payment of FPNs to the Procurator Fiscal (PF) for prosecution. To ensure that the follow up measures to address non-payment of FPNs remain robust and fit for purpose, discussions between the PF and managers from the Council's Environmental Warden and Community Protection Teams took place.
- 2.5 These discussions focussed on ways to improve FPN payment outcomes through increasing the number of prosecutions taken forward for non-payment. The discussions and PF requirements are summarised below in the main report.

### Main report

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- 3.1 Discussions with the PF considered ways in which the outcomes for non-payment of FPNs could be improved, by increasing the number of prosecutions taken forward.
- 3.2 To support an increase in prosecutions, the PF has clarified the prosecution criteria required to be met in order to secure the best possible chance of taking a case forward.

3.3 This includes ensuring that the standard of evidence gathered and available to the prosecution is of the highest standard, and meets the essential requirements which are that:

- The offence was committed; and
- The offence was committed (or commissioned) by the accused.

Both requirements must be corroborated, and the burden of proving these beyond a reasonable doubt, lies with the prosecution.

3.4 The importance of corroboration is a unique feature of Scots criminal law in that the requirement for corroborating evidence means that at least two different and independent sources of evidence are required in support of each crucial fact, before a defendant can be convicted of a crime.

3.5 Therefore, before the Environmental Wardens submit a report to the PF for non-payment of an FPN, they must be satisfied that both requirements are met in that the offence was committed, and that they have actually witnessed the offence take place. This is the case when issuing a FPN for littering, but not always for fly tipping, where evidence that the offence was committed by the accused may be obtained after the fact.

3.6 The impact of adhering to the additional evidence requirement of witnessing the offence take place, is reflected in the number of reports submitted to the PF for non-payment of fly tipping FPNs, as both requirements are unlikely to be met in most cases.

3.7 To increase the likelihood of obtaining sufficient evidence, in particular where a fly tipping hotspot is identified, targeted enforcement activity could be used to help resolve the issue, and enable the retrospective issuing of fly tipping FPNs. Additional measures to consider could include, for example, the use of mobile CCTV, targeted Environmental Warden patrols, or encouraging the public to report any fly tipping witnessed.

3.8 It is unlikely that the additional evidence requirements of the PF will impact negatively on the number of prosecutions for non-payment of littering FPNs taken forward.

3.9 To ensure the prosecution criteria is met, a new template for reporting non-payment of FPNs to the PF has been agreed. The template facilitates the additional information required by the PF, as it is accompanied by clear guidelines for its completion.

3.10 The report is required to be checked and authorised at both Team Leader and Senior Management level before being submitted to the PF. This is to ensure that the standard of reports received by the PF is high, and the quality of supporting evidence meets the essential requirements.

- 3.11 The Council's Environmental Warden and Community Protection teams will continue to monitor the proportion of FPNs paid, and the impact of the additional requirements on the number of unpaid fly tipping cases being referred to the PF for prosecution.

### Measures of success

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- 4.1 Reports for the PF use the new template, and the standard of reports submitted is improved.
- 4.2 The proportion of cases considered by the PF and subsequently put forward for prosecution is increased.

### Financial Impact

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- 5.1 The increase in FPN amounts has resulted in an increase in revenue received from paid FPNs for littering and fly tipping in 2014/15, compared with 2013/14.

### Risk, policy, compliance and governance impact

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- 6.1 The PF requirements may impact negatively on the number of cases taken forward for non-payment of fly tipping FPNs.

### Equalities impact

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- 7.1 An Equalities and Rights Impact Assessment is not required, as this report provides an update to previous reports.

### Sustainability impact

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- 8.1 The Council's commitment to submit reports to the PF for all unpaid FPNs contributes towards environmental sustainability, by ensuring that littering and fly tipping offences are followed up robustly.

### Consultation and engagement

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- 9.1 The Environmental Warden and Community Protection Teams consulted with the PF on their reporting requirements, and agreed a way forward using a new template and improved standard of evidence.

### Background reading/external references

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[Impact of the Increase to Fixed Penalty Notice Amounts – Report to Transport and Environment Committee – 2 June 2015](#)

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## Links

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|---------------------------------|---|
| <b>Coalition pledges</b>        | P44 – Prioritise keeping our streets clean and attractive   |
| <b>Council outcomes</b>         | CO17 – Clean – Edinburgh’s streets and open spaces are clean and free of litter and graffiti<br>CO19 – Attractive Places and Well Maintained – Edinburgh remains an attractive city through the development of high quality buildings and places and the delivery of high standards |
| <b>Single Outcome Agreement</b> | SOA4 – Edinburgh’s communities are safer and have improved physical and social fabric   |
| <b>Appendices</b>               | N/A   |