

Decision Pathway – Report



PURPOSE: Key decision

MEETING: Cabinet

DATE: 09 April 2024

TITLE	Increase in Fixed Penalty Notice Rates for Graffiti, Fly Posting and Fly Tipping	
Ward(s)	City Wide	
Author: Kurt James	Job title: Neighbourhood Enforcement and Street Scene Manager	
Cabinet lead: Councillor Marley Bennett, Cabinet Member for Waste, Climate, Ecology and Just Transition	Executive Director lead: John Smith, Interim Executive Director Growth and Regeneration	
Proposal origin: Councillor		
Decision maker: Cabinet Member Decision forum: Cabinet		
<p>Purpose of Report: To seek approval to:</p> <ol style="list-style-type: none"> 1. Increase the fixed penalty notice for graffiti and flyposting to £500 which is the maximum permitted under the legislation. 2. Increase the fixed penalty notice for fly tipping to £1,000 which is the maximum permitted under the legislation and introduce an early payment rate of £500. 		
<p>Evidence Base:</p> <ol style="list-style-type: none"> 1. The mayor has made a pledge that Bristol will be measurably cleaner, and the Clean Streets plan which underpins the pledge is designed to change the behaviour of people in Bristol to reduce litter, dog fouling, fly tipping, graffiti, and other environmental crimes, which will be done through: <ol style="list-style-type: none"> a. Sending a clear message about expected behaviour. b. Cleaning the city, and c. Delivering a robust approach to enforcement. 2. Although the cleanliness of the city has improved in many parts as measured by our independent Local Environmental Quality scoring, more work still needs to be done particularly in relation to behaviour change. 3. Bristol’s Quality of Life Survey 2023 tells us the percentage of people who think street litter is a problem locally has gone up slightly to 84% citywide and to 94% in the most deprived areas. 4. Environmental issues are often a key topic for resident groups and cause people to contact their ward councillors. 5. Environmental crime has a significant, detrimental, impact on the wellbeing of people of Bristol and visitors to the city. 6. The cost of environmental crime to the city is high. In 22/23 there were 10,181 clearances of fly tipping by Bristol Waste Company (BWC). Removing and enforcing fly tipping costs the council approximately £740k in the last year so increasing the penalty rates for offences sends a clear message. <p>Changes to fixed penalty rates</p> <ol style="list-style-type: none"> 7. The Environmental Offences (Fixed Penalties) (England) Regulations 2017 came into effect on 1 April 2018 increasing rates for fixed penalties payable in respect of certain environmental offences. The change in 		

legislation automatically increased the rates of some fixed penalty notices from 1 April 2018 to a default level set by the legislation.

8. The Domestic Duty of Care Fixed Penalty S34 (2A) Environmental Protection Act came into force on 7 January 2019. This enables local authorities to issue a fixed penalty notice to a person who has failed to comply with the duty relating to the transfer of household waste. The range of the penalty is £150- £400, with the default rate set at £200.
9. On 7 May 2019 Bristol City Council Cabinet agreed to set its fixed penalty notice rates at the maximum for all offences except littering, which was set at £100 with an early payment rate of £65, and the household waste duty of care which was kept at the default rate of £200. Early repayment rates were removed for other offences including fly posting and graffiti.
10. On 6 June 2023 Bristol City Council Cabinet agreed to increase its fixed penalty notice for littering to the maximum of £150 with an early payment rate of £75, and the household waste duty of care fixed penalty notice was increased to the maximum of £400.
11. The Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023 came into effect on 31 July 2023 increasing the upper limit of fixed penalty notices for littering, graffiti, and fly-posting offences from £150 to £500; for household waste duty of care offences from £400 to £600; and for fly-tipping offences from £400 to £1,000.
12. To support our need to deter more people from committing environmental offences, it is proposed to:
 - a. Increase the fixed penalty for graffiti and fly posting to £500.
 - b. Increase the fixed penalty for fly tipping to £1,000 and introduce an early payment rate of £500.
 - c. Keep the rate for littering at £150, and the rate for household waste duty of care offences at £400.
13. The rate increases will commence on Wednesday 17 April 2024.

Offence	Section/Act	Early Payment £	Existing Full £	Proposed Full £
Graffiti and fly posting	S1/Criminal Damage Act 1971. S43/Anti-social Behaviour Act 2003.	N/A	£150	£500
Fly Tipping	S43/EPA 90	N/A existing/£500 (proposed)	£400	£1,000

Offences

14. In the UK, a graffiti offence falls under the broader category of criminal damage as defined by the Criminal Damage Act 1971. Graffiti, which involves defacing property without the owner's permission by marking, painting, writing, or otherwise, is considered an act of vandalism and thus a criminal offence under this act. There are specific legal provisions and penalties for graffiti-related offences in the UK:
 - a. Criminal Damage Act 1971: This Act makes it an offence to destroy or damage property intentionally or recklessly without lawful excuse. Under this Act, individuals caught creating graffiti can be charged with criminal damage.
 - b. Anti-social Behaviour Act 2003: This Act introduced specific measures to address graffiti and other defacements. Local authorities are given powers to issue fixed penalty notices for graffiti and flyposting. The Act also allows for the sale of spray paint to persons under 16 to be an offence, recognising the link between spray paint and graffiti vandalism.
15. Flyposting is an illegal activity that involves the unauthorised placement of advertising materials on buildings, street furniture, and other public and private properties without the permission of the owner. This can include posters, stickers, banners, and other forms of advertising. Fly-posting offences are primarily dealt with under the following legal frameworks:
 - a. Town and Country Planning Act 1990: Under this Act, displaying advertisements without the necessary consent is an offence.

- b. Anti-social Behaviour Act 2003: This Act specifically addresses the issue of flyposting by giving local authorities the power to issue fixed penalty notices to individuals or companies engaging in flyposting.

16. Under the Environmental Protection Act 1990, Section 33, it is an offence to deposit waste on any land not in accordance with a licence, or to allow others to do so. The legislation applies to all forms of waste, ranging from small bags of rubbish to larger quantities of waste dumped from lorries. The law covers the illegal dumping of all types of waste, including household, industrial, and commercial waste. Penalties can include fines, imprisonment, the seizure of vehicles and the recovery of costs of removing and disposing of the dumped waste.

Enforcement

17. Since 2017 Bristol City Council has issued over 30,000 fixed penalty notices for environmental offences such as littering, fly tipping or dog control, and 3,000 people have been taken to court for non-payment.
18. Over the last year the council has investigated 1,032 fly tips, issued 265 fixed penalty notices for fly tipping, seized 6 vehicles used by fly tippers, and crushed three of them.
19. The council has run publicity campaigns to discourage environmental offences on social media, buses, billboards, street bins and bins in city parks, and on electronic bus stop signs.
20. To reinforce behaviour change the council will increase its communication about environmental crime fines and prosecutions.
21. In line with the Waste Enforcement (Fixed Penalty Receipts) (Amendment) (England and Wales) Regulations 2024 any returns generated from fixed penalty notices will fund efforts to deliver clean streets. This will include the employment and engagement of enforcement officers, and activities and initiatives to address, deter, clean or clear littering, graffiti, fly posting, and waste on land issues such as fly tipping and household waste duty of care, as part of the clean street's strategy and in agreement with the Cabinet Member.

Cabinet Member / Officer Recommendations:

That Cabinet:

1. Approve the increase in the fixed penalty for graffiti and fly posting to £500 noting the rate increases will commence on Wednesday 17 April 2024.
2. Approve the increase in the fixed penalty for fly tipping to £1,000 and the introduction of an early payment rate of £500 noting the rate increases will commence on Wednesday 17 April 2024.
3. Authorise the Executive Director Growth and Regeneration in consultation with the Cabinet Member for Waste, Climate, Ecology and Just Transition to take all steps required to implement the increases.

Corporate Strategy alignment:

1. ENV 3 A Cleaner, low-waste city
 - Create a cleaner city and become a national leader in reducing waste.
 - The Clean Streets Campaign will be a focus to help us improve the cleanliness of the city and focus our resources on the areas of highest need.
 - Satisfaction was lower in more deprived parts of the city, and the proportion of residents who thought street litter was a problem remains high city-wide (84% - updated).
 - Creating a pleasant environment – building on the aspirations of our Clean Streets programme – remains important to us, but waste is not only about cleanliness and improving the appearance of the city.

City Benefits:

1. Improving the environment contributes to improving the mental health and wellbeing of residents reducing demand for mental health services and increase emotional wellbeing.

2. Evidence from the annual Quality of Life survey noted above indicates that equalities groups and people living in more deprived parts of the city currently tend to be more adversely affected by street scene issues than the population in general. These findings are supported by more general research by groups such as Keep Britain Tidy who have also noted that deprived areas tend to suffer the most from poor local environmental quality and that those living in more deprived areas are less likely to feel satisfied with the appearance of their local area than those living in more affluent areas.

Consultation Details

1. Informal consultation has taken place with the following:
 - a. Mayor briefings – regular updates on enforcement and its impact. The mayor continues to show support for this approach to environmental enforcement.
 - b. Cabinet member briefings – regular updates on enforcement pilot and its impact. The Cabinet Member with responsibility for Waste, Climate, Ecology, and Just Transition, and the mayor continue to show support for environmental enforcement and its expansion into more areas of Bristol and other environmental crime types.
2. Officer briefings – Property, Assets, and Infrastructure DMT, and regular updates on enforcement, its impact, and the future scope of enforcement.

Background Documents:

1. [Agenda item 11, Cabinet Report 7th May 2019: The Environmental Offences \(Fixed Penalties\) \(England\) Regulations 2017: Increase in Fixed Penalty Rates](#)
2. [June cabinet - Litter HDoC FPNs 4.pdf \(bristol.gov.uk\)](#)
3. [The Environmental Offences \(Fixed Penalties\) \(England\) Regulations 2017](#)
4. [The Domestic Duty of Care Fixed Penalty S34 \(2A\) Environmental Protection Act](#)
5. [The Environmental Offences \(Fixed Penalties\) \(Amendment\) \(England\) Regulations 2023 \(legislation.gov.uk\)](#)
6. [Clean Streets Enforcement Campaign \(bristol.gov.uk\)](#)
7. [Code of Practice - Waste Duty of Care](#)
8. [The Waste Enforcement \(Fixed Penalty Receipts\) \(Amendment\) \(England and Wales\) Regulations 2024](#)

Revenue Cost	£nil	Source of Revenue Funding	n/a
Capital Cost	£nil	Source of Capital Funding	n/a
One off cost <input type="checkbox"/>	Ongoing cost <input type="checkbox"/>	Saving Proposal <input type="checkbox"/>	Income generation proposal <input type="checkbox"/>

1. Finance Advice: This report seeks approval to substantially increase the fixed penalty notices for fly tipping, graffiti and flyposting to the maximum permitted under legislation. This aligns to the Council’s broader strategy on fees and charges which recommends inflationary increases of 6.7% as a minimum with larger increases to follow the appropriate decision pathway. The increases will likely lead to a significant change in this income in 2024-25 (though the bulk of costs will continue to be met by the Council) and, ideally, a significant reduction in the £700k per annum costs of addressing fly tipping in the city.

Finance Business Partner: Ben Hegarty, Finance Business Partner (Growth and Regeneration) 18 March 2024

2. Legal Advice: The proposals in the report are lawful. As there appears to be a lack of incentive to pay a reduced sum for flyposting and graffiti, this may lead to increase in non-payment which the decision maker should take into consideration. The cases are unlikely to attract a fine of £500 unless the offender has the means to pay.

Legal Team Leader: Legal Team Manager Anne Nugent in consultation with Specialist Regulatory Lawyer Lynne Harvey. 18 March 2024

3. Implications on IT: I can see no implications on IT in regard to this activity.

IT Team Leader: Alex Simpson – Lead Enterprise Architect 19 March 2024

4. HR Advice: There are no HR implications evident.

HR Partner: Celia Williams, HR Business Partner – Growth and Regeneration 19 March 2024

EDM Sign-off	John Smith, Interim Executive Director Growth and Regeneration	19 March 2024
Cabinet Member sign-off	Councillor Marley Bennett, Cabinet Member for Waste, Climate Ecology, and Just Transition	19 March 2024
For Key Decisions - Mayor's Office sign-off	Mayor's Office	4 March 2024

Appendix A – Further essential background / detail on the proposal	NO
Appendix B – Details of consultation carried out - internal and external	NO
Appendix C – Summary of any engagement with scrutiny	NO
Appendix D – Risk assessment	NO
Appendix E – Equalities screening / impact assessment of proposal	YES
Appendix F – Eco-impact screening/ impact assessment of proposal	YES
Appendix G – Financial Advice	NO
Appendix H – Legal Advice	NO
Appendix I – Exempt Information	NO
Appendix J – HR advice	NO
Appendix K – ICT	NO
Appendix L – Procurement	NO