

# Delegated Decision Making Form

REF NO  
PH/WC/O

## Decision Type

	Portfolio Holder		Ward Councillor	X	Officer
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## Department

Commercial & Operations  
Community Protection

## Subject

Fixed Penalty Notices – Specification of Amounts (Fly-tipping & Community Protection Notices)

## Decision

This is not a key decision because it does not result in the Council incurring expenditure or making income or savings of more than £1 million revenue or capital, taking into account the overall impact of the decision, and does not significantly affect communities in 2 or more wards	Subject to call-in: No
	Total Value of Decision: Estimated £11,250 over first year  Estimate based on 75 x FPNs for breach of CPN @ £70 each = £5,250 plus 20 x FPNs for Fly-tipping @£300 each = £6,000. Total £11,250
	Revenue or Capital: Revenue

### Decision taken

To note the amendment of the Environmental Protection Act 1990 (EPA) by the insertion of Section 33ZA, and the consequent introduction of a Fixed Penalty Notice (FPN) for waste deposit (fly-tipping) offences contrary to Section 33 (1) (a) of the EPA.

In accordance with Sections 33ZA (9) and 33ZA (10) of the EPA to specify the amount of the FPN for waste deposit offences contrary to Section 33(1)(a) of the EPA at £300 with no reduction for early payment.

To note the provisions of Section 52 of the ASB, Crime and Policing Act 2014 (ASB Act) which give authorised officers the ability to issue FPNs to anyone who that person reasonably believes has committed an offence under Section 48 of the ASB Act (breach of a Community Protection Notice)

In accordance with Sections 52 (7) and 52 (8) of the ASB Act, to specify the amount of the FPN for offences under Section 48 of the ASB Act at £70 with a reduction of the amount payable to £35 if paid within 10 days.

To note the provisions of Section 59 of the ASB Act which gives local authorities the power to make Public Spaces Protection Orders (PSPOs) and the provisions of Section 68 of the ASB Act which give authorised officers the ability to issue FPNs for an amount of not more than £100 to anyone who that person has reason to believe has breached the provisions of a PSPO.

To note that the amount of the FPN payable for breach of an individual PSPO will be set as part of the decision making process for each individual PSPO.

## Options Considered

(with reasons for rejecting options not favoured)

### FPNs for Waste Deposit Offences

Section 33ZA of the EPA allows the FPN for waste deposit offences to be set at not less than £150 and at not more than £400. If no amount is specified the default sum is £200. Section 33ZA also allows a lesser amount of not less than £120 to be specified for any early payment.

One option is to do nothing. In the absence of making a formal decision the amount of the Fixed Penalty Notice will be set at £200.

Further options would allow specifying the amount of the FPN at either the minimum or maximum amounts permissible or any point within the prescribed scale.

Having given consideration to all monetary amounts within the prescribed scale, it is felt that setting the amount of the FPN at £300 with no reduction for early payment best reflects the seriousness of the offence of fly-tipping, the significant detrimental impact it has on the amenity of Nottingham and its neighbourhoods and the significant cost to the Council of clearing fly-tips. It also allows subsequent review of the impact of the FPN upon behaviours with the possibility of either increase or reduction of the FPN amount as may be deemed necessary by such review.

### FPNs for breach of Community Protection Notices

Section 52 of the ASB Act states that any FPN issued for offences under Section 48 of the ASB Act shall specify an amount payable of no more than £100. It also allows two amounts to be specified and specify that if the lower of those amounts is paid within a specified period of less than 14 days that will be the amount of the fixed penalty.

The wording of Section 52 of the ASB Act allows the Council the option of setting the FPN amount at any sum between £0-£100 with or without a rebate for early payment.

As Community Protection Notices are intended to tackle low level anti-social behaviour it is felt appropriate that the FPN amount, and early rebate opportunity, be consistent with other FPNs tackling low level anti-social behaviour such as littering and be set at £70 with a reduction to £35 if paid within 10 days.

### FPNS for breach of PSPOs

Section 68 of the ASB Act states that any FPN issued for offences under Section 63 or Section 67 of the ASB Act (breach of PSPO) shall specify an amount payable of no more than £100. It also allows two amounts to be specified and specify that if the lower of those amounts is paid within a specified period of less than 14 days that will be the amount of the fixed penalty.

One option would be to specify one set amount and one set early payment rebate for all FPNs for breaches of PSPOs. However, individual PSPOs that are introduced will tackle different issues i.e. city wide dog control, ASB in a specific area etc. and will each be subject to a formal decision making process before the PSPO is introduced.

Accordingly it is felt more appropriate that the amount of the FPN for breach of a PSPO is considered as part of the decision making process for that PSPO. This will enable the amount specify to best reflect the seriousness of the behaviour that the PSPO is aimed at tackling.

## Reasons for Decision(s)

### FPNs for Waste Deposit Offences

The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016, which came into force on 9 May 2016, amended the EPA by inserting Section 33ZA after the current Section 33.

Section 33ZA allows an authorised officer who has reason to believe that a person has committed a waste deposit (fly-tipping) offence in the area of the authority to give that person a FPN i.e. a notice offering the opportunity of discharging any liability to conviction by payment of a fixed penalty.

Section 33ZA (9) of the EPA states that the fixed penalty payable for a waste deposit offence is an amount not less than £150 and not more than £400 as may be specified by the waste collection authority whose authorised officer gave the notice. If no amount is specified by that authority the amount payable will be £200.

Section 33ZA (10) of the EPA states that the authority to whom a fixed penalty is payable may make provision for treating the fixed penalty as having been paid if a lesser amount of not less than £120 is paid before a period of 10 days following the date of the notice.

Fly-tipping has a significant impact of the visual amenity of Nottingham and its neighbourhoods, and detrimentally affects citizens' feelings of safety and well-being. It also costs Nottingham City Council a significant amount to clear up.

Accordingly it is felt that setting the amount of the fixed penalty available for such offences at £300, with no rebate for early payment, best reflects the seriousness of the offence. It is also consistent with the current FPN available for breach of Section 34 (5) of the EPA (which relates to failure to furnish documentation evidencing compliance with the waste duty of care) which is also set at £300.

It also allows subsequent review of the impact of the FPN upon behaviours and the increase or reduction of the FPN amount as may be deemed necessary by any such review.

### FPNs for breach of Community Protection Notices

Section 43 of the ASB Act gives authorised officers the power to issue a Community Protection Notice (CPN) to an individual aged 16 years or over, or a body, if satisfied on reasonable grounds that their conduct is (a) having a detrimental effect of a persistent or continuing nature on the quality of life of those in the locality and (b) the conduct is unreasonable.

Section 48 of the ASB Act states that any person issued with a CPN who fails to comply commits an offence. Section 52 (1) of the ASB Act allows an authorised officer to issue a FPN to any person they have reason to believe has committed an offence under Section 48.

Section 52 (6) of the ASB Act states that any FPN issued must specify the amount of the fixed penalty payable. Section 52 (7) and 52 (8) state that the amount specified must not be more than £100 and allows a FPN to specify two amounts and specify that if the lower of those amounts is paid within a specified period of less than 14 days that is the amount of the FPN.

As CPNs are intended to tackle low level anti-social behaviour it is felt appropriate that the FPN amount, and early rebate opportunity, be consistent with other FPNs tackling low level anti-social behaviour such as littering and be set at £70 with a reduction to £35 if paid within 10 days.

**Affected Wards**

All

**Advice Sought**

(Any advice sought and considered by the decision maker **must** be attached to this form, with the **name of the person that provided the advice and the date that it was provided**)(If this is a Ward Councillor Decision with a value of over £1500 advice **must** be sought from the Voluntary and Community Sector Grants Team)

	Yes	No
Legal	<input checked="" type="checkbox"/>	
Finance	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Human Resources	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Corporate Procurement	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Equality & Community Relations Team	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Voluntary and Community Sector Grants Team	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Other (please specify)	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**Legal Advice**Legal Comments on Delegated Decision

Delegation 1 of the Council's Constitution includes the power to do anything which falls within the relevant person's remit, and this arguably allows the relevant person to set the amount for a fixed penalty notice where there is a provision in legislation for the amount to be set locally. This issue is to be clarified in the Council's Constitution in the near future.

The proposed decision appears to be in accordance with the relevant legislation, which is detailed in the body of the Delegated Decision.

Advice provided by: Tamazin Wilson, Solicitor, Nottingham City Council

Advice provided on: 4 August 2016

**Finance Advice**Financial Comments for DDM – Fixed Penalty Notices

The cost of this decision is based on an estimate that a predicted amount of FPN's will be issued and charged at a predicted amount.

This figure may alter each year. FPN income is only recognised in the accounts when the FPN has actually been paid by the offender.

There is a risk that the level of FPN's has been over estimated.

There's a risk that FPN's may be issued but not paid by the offender, therefore, until a pattern is known, permanent spend/saving should not be aligned to this decision at this stage

Advice provided by: Michelle Pullen, Senior Finance Assistant, Nottingham City Council

Advice provided on: 24 June 2016

## Consultations

- Portfolio Holder Decision – You must consult all relevant consultees from the table below any Portfolio Holder and Corporate Director other than those taking the decision whose remit of responsibility may be affected by the decision. If the decision comes within the remit of more than one Portfolio, only the signature of the principal Portfolio Holder is required. However, consultation must take place with the other affected Portfolio Holder(s) and a record of their approval must be recorded below.
- Ward Councillor Decision – You must consult Councillors in the ward and the relevant Locality Manager (Please tick other on the table below and record the name of the Locality Manager)
- Officer decision – You should consider consulting the relevant Portfolio Holder and Minority Group spokesperson(s) if it is felt appropriate for your decision.
- Reasons for not consulting an individual or body must be given i.e. because they are not directly affected by the proposals

### Details of Consultations undertaken

	Yes	No	
Portfolio Holder	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Councillor Heaton 19.4.16
Ward Councillors	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____
Area Committee	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____
Other Council Bodies	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____
Corp. Directors Affected	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____
Trades Unions	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____
Minority Group	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____
Others (Specify)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____
<b>Reasons for not consulting</b>			
The decisions are within the remit of Cllr Heaton as Portfolio Holder for Community Safety. Those not consulted are not impacted by the decision.			
<b>Consultation Outcomes</b>			
Consultation with Cllr Heaton confirmed agreement with the fixed penalty amounts set out in this Delegated Decision.			

## Background to the decision

(either add in the detail of the decision in the space provided or attach as a separate sheet)

As indicated above, the Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 have amended the EPA and introduced FPNs for waste deposit (fly-tipping) offences.

The amended EPA sets the default amount for the FPN for fly-tipping at £200 but allows local authorities to specify a different amount for the FPN for such offences between £150 and £400 should it wish to do so. The legislation also gives local authorities the opportunity to stipulate a lesser sum that will be accepted in settlement of the fixed penalty if paid

As stated above the ASB Act introduces CPNs and FPNs for their breach. The legislation states that a fixed penalty issued for breach of a CPN must specify the amount to be paid and also gives the local authority the opportunity to specify in the FPN a lesser sum that it will accept in settlement of the fixed penalty if paid early.

FPNs issued within Nottingham for breach of CPNs currently identify the amount of the fixed penalty as £70 with a reduction to £35 if paid within 10 days. However, it is felt prudent that these amounts be confirmed by a formal decision.

The ASB Act also introduces PSPOs and FPNs for their breach. The legislation states that the fixed penalty issued for breach of a PSPO must specify the amount to be paid and also gives the local authority the opportunity to specify in the FPN a lesser sum that it will accept in settlement of the fixed penalty if paid early.

A formal decision making process (including statutory consultation) will be undertaken on each occasion that a PSPO is introduced. This decision making process will be undertaken by the Council's Executive Board, or a Portfolio Holder or an Area Committee, dependant on the nature of the PSPO being considered and will allow opportunity for consideration of the appropriate amount of the FPN payable upon breach and whether it is appropriate to allow an early payment rebate.

## Declared colleague/ Councillor Interests

None

## Dispensation by Standards Committee

Date: Not Applicable

Dispensation Reference:  
Not Applicable

## Due Regard for Equality

(NOTE – equality impact **MUST** be assessed for:

- decisions relating to new or changing policies, services or functions;
- financial decisions which will have an effect on services;
- decisions on implementation of policies developed outside the Council

EIA guidance is available on the intranet

Has the equality impact of the decision been assessed?

No (EIA not required) ☒

(As per advice from Equality and Community Relations team dated 6 June 2016 – EIA disproportionate in this case)

Yes (EIA attached) ☐

**Social Value Implications**

The Public Services (Social Value) Act 2012 places a statutory obligation on the council when procuring services OR mixed contracts (where services is the main component of the procurement) OR a framework agreement to which the Public Contracts Regulations 2006 apply, to consider at the pre-procurement stage whether what is proposed to be procured might improve the economic, social and environmental well-being of its area and how, in conducting the procurement process, it might act with a view to achieving that objective. In identifying any social value considerations, regard should only be had to social value considerations which are relevant and proportionate to the subject matter of the contract. There is also a statutory requirement also at the pre-procurement stage to consider whether to undertake community consultation on these issues.

No Social Value implications have been identified with regards the content of this delegated decision.

**Crime and Disorder Implications**

Section 17 of the Crime and Disorder Act 1998 places a duty on Councils to do all they reasonably can to prevent crime and disorder.

FPNs are a valuable part of a range of tools and powers used within Nottingham to tackle anti-social behaviour and environmental crime. They can be offered as an alternative to prosecution for the speedy resolution of low level offences, avoiding the need for protracted court procedures which incur both officer time and significant cost.

**Background Papers**

None.

**Published Documents**

ASB, Crime and Policing Act 2014  
Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016  
Environmental Protection Act 1990  
Crime and Disorder Act 1998  
Public Services (Social Value) Act 2012

**Exempt/Confidential**

**report** (if 'yes', include the exempt or confidential material in an appendix and in this space explain the reason(s) why it is not in the public domain). See guidance on the intranet or ask for advice if in doubt

No

**Contact Person**

Steve Stott – ASB Manager,  
Community Protection

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101 x 3182738

Email:

stephen.stott6852@nottinghamshire.pnn.polic  
e.uk

For Officer delegated decisions only please provide the reference number from the Scheme of Delegation, or other source of delegation (eg Minutes of an Executive Board meeting) under which the decision is being taken.


**Scheme of Delegation Reference Number or other source of delegation**

Delegation Number 127

### AUTHORISED SIGNATORIES

- Portfolio Holder Decision – The signature of the relevant Portfolio Holder and Corporate Director is required. The Portfolio Holder and Corporate Director **must** both sign the form within 10 days of each other.
- Ward Councillor Decision – If the value of the decision is above £1500 the relevant Locality Manager, the Director of Neighbourhoods and Communities or Corporate Director of Communities can sign the decision. If it is below £1500 the relevant Neighbourhood Development Officer can sign in addition to the above.
- Officer decision – The signature of the relevant Corporate Director or colleague authorised in the Scheme of Delegation or elsewhere is required.

**The completed and signed form must be sent to Constitutional Services within 2 working days of the last signature(s).**

Corporate Director or authorised colleague (Print name)	A. ERRINGTON	Date:	9.8.16
Signature			
Portfolio Holder (Print name)	Date:		
Signature			
Date Published:		Last Date for Call-in:	

Attach any additional background information to this form.