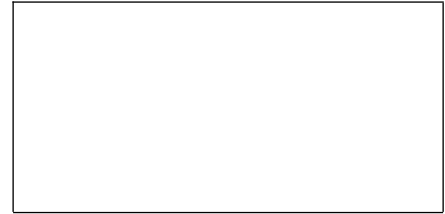


Calderdale MBC

Wards Affected All

Cabinet 10th July 2023

Review of Fixed Penalty Notice Charges



Report of the Director, Public Services

1. Purpose of Report

- 1.1 To seek Cabinet approval for a review of Fixed Penalty Notice (FPN) charges and associated penalty tariffs in relation to dealing with environmental offences including littering, fly-tipping and dog fouling, Public Space Protection Orders (PSPOs) and Community Protection Notices (CPNs)

2. Need for a decision

- 2.1 This review is being submitted to Cabinet as it is not within the existing policy framework and will need to go before full Council.

3. Recommendation

- 3.1 That:
- 3.2 Cabinet recommend to Council the review of the Fixed Penalty Notice Charges set out in this report having regard to guidance issued by DEFRA on the use of fixed penalties.
- 3.2 Cabinet recommend to Council the tariffs for Fixed Penalty Notices and the associated discounts for early payment listed in Appendix 1.
- 3.3 Cabinet delegate responsibility for reviewing Fixed Penalty Notice Charges to the Director of Public Services, in consultation with the Cabinet member with responsibility for Public Services and Communities.

4. Background and details

- 4.1 The Council recognises the importance of the local environment to everyone in Calderdale as reflected in our Vision 2024. Following the Council's Enforcement Review in 2018 the serving of Fixed Penalty Notices (FPNs) for anti-social behaviour and most nuisance and environmental offences has been undertaken by the Community Protection Team.
- 4.2 As the FPN strategy has been in place for 13 years, and new areas of enforcement added it is appropriate that a review is undertaken of the level of fines that Calderdale Council impose for the various behaviours.
- 4.3 Having a commitment to a high quality environment, the Council spends a large proportion of its resources on cleaning streets and open spaces, aiming to keep them free of litter, waste (including fly-tipping), dog fouling and graffiti.
- 4.4 Members will be aware that the Council's approach to the 'Safer, Cleaner, Greener' agenda has developed considerably over the last 10-15 years. These organisational structures are linked to a wider enforcement approach based on an 'Educate, Engage, Enforce' philosophy and 'right resources at the right place at the right time'. This approach looks to involve residents and businesses in taking an active role in caring for, respecting, and improving their environment- Initially the focus is certainly on education and encouragement. Inevitably however, the Council also needs to take appropriate enforcement action where these methods are not appropriate, or these tactics have been exhausted.
- 4.5 Following the Enforcement Review of 2018, the Community Safety Warden and Community Safety Enforcement Officer service were created within the Community Protection Team this has, over the last 5 years, enabled the Council to have a more co-ordinated approach to issuing of fines. This alongside the fact that the Environmental Health team also sit within the same service has allowed for a wide body of Officers to be authorised to issue FPNs for the offences listed in Appendix 1. A degree of discretion is important in considering the best response but often the serving of a Fixed Penalty Notice (FPN) is appropriate.
- 4.6 Fixed Penalty Notices offer a means by which the Council can deal efficiently with first time offenders who commit offences. They offer the means by which a perpetrator of a crime can discharge their liability to prosecution by payment of the fixed penalty. With many offences if the fixed penalty is not paid within a certain time then the offender can be prosecuted for the original offence. Fixed Penalty Notices offer one solution to the Council in its ongoing desire to keep Calderdale's Communities safe.
- 4.7 Fixed Penalty Notices were first introduced in Calderdale in 1999 to deal with the offences of littering and dog fouling. Since then, the government have introduced further legislation to deal with other aspects of environmental crime and nuisance such as Clean Neighbourhoods and Environment Act 2005, the Anti-social Behaviour, Crime and Policing Act 2014.
- 4.8 Calderdale Council has used the powers conferred to local authorities within the Anti-social Behaviour, Crime and Policing Act 2014 to introduce seven Public Space Protection Orders (PSPOs) -these are orders where certain directions apply. These include the drinking of alcohol, control of dogs, and the lighting of fires on moorland areas
- 4.9 Government guidance suggests that all local authorities should have an effectively planned, resourced and endorsed Fixed Penalty Strategy which should lie above operational procedural policies. This review allows for the strategy to be updated and fit for purpose in 2023.

- 4.10 The offence of Fly-tipping has not previously had a set fee for a FPN in previous strategies- the proposal within this document is that due to the high fine value (up to £400) that can be imposed on those responsible for fly-tipping that this be introduced. The recommendation is that first time offenders responsible for non-commercial or non-hazardous tipping be considered suitable for FPN as an alternative to a prosecution case. The rationale for pursuing this course of action is that this will be more cost and resource effective and importantly deliver swift justice. However, all fly-tipping which does not sit within the above criteria will be pursued as a prosecution case through Magistrates Court.
- 4.11 Appendix 1 contains a full list of all the various Fixed Penalty Notices available for use by the Council. It includes details of the particular Fixed Penalty Notice and existing levels of fine where notices are currently used. It also includes proposals in relation to new levels of fine, in some cases, which it is recommended the Council introduces.
- 4.12 Powers also exist to allow Local Authorities to offer discount for early payment of a fixed penalty. The standard payment period set in legislation is 14 days. Once a Fixed Penalty Notice has been issued and paid within this period then the authority cannot prosecute for the original offence.
- 4.13 It is proposed that the offer of a discount for early payment does not apply to those offences:
- (i) That the Council is committed to reducing for example fly-tipping and other offences that cause environmental blight,
 - (ii) Where the FPN is an alternative to prosecution and/or remedial action for example breach of Public Space Protection Order or Community Protection Notice
 - (iii) Where there are viable alternatives such as our waste service, bulky waste collection etc

The schedule in Appendix 1 identifies where a discount for early payment is offered.

- 4.14 It is proposed that the level of fines and discounts for early payments as recommended in Appendix 1 are agreed for Calderdale. This will signal the priority which the Council attaches to this agenda whilst giving some recognition to the benefits of early payment.
- 4.15 Some fine levels are already fixed by the Environmental Regulations 2006 or must be set within a prescribed band, again following national regulations. The proposed tariffs as set out in Appendix 1 comply with these regulations.
- 4.16 From an operational perspective the Community Protection Team within the Public Services Directorate are responsible for administering the fixed penalty regime for all the different types of fixed penalty notices. This includes formulating strategic and operational procedures, recording notices, taking payments, dealing with queries, training of officers and prosecutions in the event of non-payment of fines.

5. Options considered

The options are:

- 5.1 To approve and endorse the review as written, or
- 5.2 Recommend amendments to the document.

6. Financial implications

6.1 There is no expectation that there will be any financial implications of this review.

7. Legal Implications

7.1 There are no further legal implications in addition to those dealt with in the report.

8. Human Resources and Organisational Development Implications

8.1 There are not currently any Human Resources or Organisational Development implications expected as it is anticipated that implementation will be achieved with existing resources.

9. Consultation

9.1 No specific consultation has been undertaken however, due regard has been given to advice in the Enforcement Concordat, Regulator's Compliance Code, the Code of Practice for Crown Prosecutors and the cross-council Enforcement Review 2018.

10. Environment, Health and Economic Implications

10.1 A robust approach to enforcement will protect the environment and impact positively on the quality of life of those affected by nuisance and anti-social behaviour. Similarly, there will be health and well-being benefits for all including residents, visitors to Calderdale and businesses as community confidence and feelings of safety increase.

10.2 Additionally, a place that is perceived as clean, safe and welcoming will find it easier to attract visitors and new residents, thereby generating further economic vibrancy.

11. Equality and Diversity

11.1 This document advocates robust enforcement based on the principles of engagement, education and enforcement and has been formulated on this basis to ensure fair, consistent and proportionate enforcement in the use of fixed penalty notices.

11.2 An Equality Impact Assessment is attached as Appendix 2

12. Summary and Recommendations

12.1 This Review provides a framework which will assist the ongoing use of Fixed Penalty Notices for the Community Protection Team

12.2 Approval of the Strategy by the Council will:

- (i) Signal the commitment of the Council to protect the Environment and tackle the harm caused by anti-social behaviour by using fixed penalties to deal with anti-social behaviour, environmental nuisance and crime in the Borough.
- (ii) Improve service delivery in an area that the public regard as important.

- (iii) Continue to ensure that the Fixed Penalties Notice regime in Calderdale is delivered in accordance with DEFRA guidance

For further information on this report, contact:

Derek Benn

Community Safety Partnership Manager

Telephone:

01422 393130

E-mail:

Derek.Benn@calderdale.gov.uk

The documents used in the preparation of this report are:

1. Enforcement Review 2018
2. Equality Impact Assessment

The documents are available for inspection at:

Halifax Town Hall, Crossley Street, Halifax, West Yorkshire, HX1 1UJ

Appendix 1: Schedule of offences, existing and proposed levels of fine

Ref No.	Offence	Legislation	What is the Council is trying to achieve by using fixed penalty powers?	Existing level	Proposed level
1	Nuisance parking	S 6(1) Clean Neighbourhoods and Environment Act 2005	Deal with nuisance associated with vehicle repairs & the sale of vehicles on a highway.	£100	£100 Reduced to £50 for payment within 10 days
2	Abandoning a vehicle	Refuse Disposal (Amenity) Act 1978	Removing the dangers and hazards associated with abandoned vehicles. This provides an effective alternative to prosecution for people who abandoned vehicles.	£200	£200
3	Failure to switch of vehicle engine – (Engine idling)	The Road Traffic (Vehicle Emissions) (Fixed Penalty) (England) Regulations 2002	Supporting the Council's adoption of the climate emergency	£40	£40 - Amount is set in legislation
4	Duty Of Care (waste)	Environmental Protection Act 1990	Cleaner streets and public places	£100	£150
5	Fly-tipping (non-commercial/ non repeat Offender/ non-hazardous)	Environmental Protection Act 1990	Cleaner streets and public places	Previously not included in the schedule	£400 (Max tariff within legislation at present)
6	Dropping litter	Environmental Protection Act 1990	Cleaner streets and public places demonstrated in part by an improved National Indicator, NI195 score. Also increasing public awareness by publicity associated with fixed penalty.	£50	£100
7	Breach of a Street Litter Control Notice or Litter Clearing Notice	Environmental Protection Act 1990	Cleaner streets and public places by strengthening existing powers to require business to help clear litter they generate (street litter control notices). Also gives LA powers to require businesses and individuals to clear their land (litter clearing notices).	£100 Can be set at local level between £75- £110.	£110

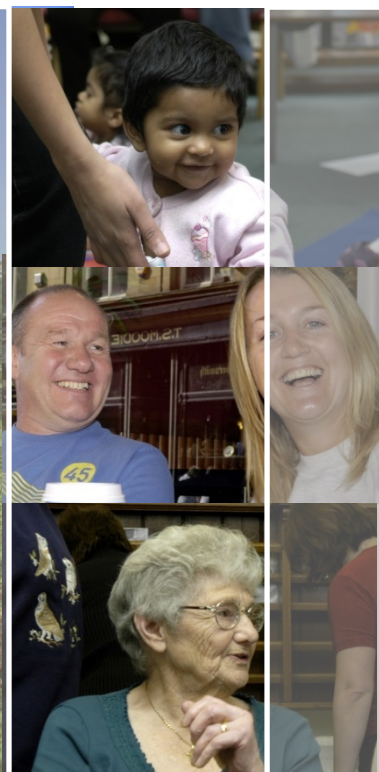
8	Unauthorised distribution of literature	Schedule 3A paragraph 7(2) Environmental Protection Act 1990	Cleaner streets and public places by restricting the distribution of flyers, handouts and pamphlets which often end up as litter on the streets.	£50 Can be set at local level between £50- £80.	£80 Discount to £50 if paid within 10 days
9	Graffiti and Fly-posting	S 43 Anti-social Behaviour Act 2003	Cleaner buildings and structures by strengthen the powers to deal with graffiti removal and fly-posting	£50 Can be set at local level between £50- £80.	£80
10	Failure to produce waste carriers licence	S 5B(2) Control of Pollution (Amendment) Act 1989	Reduce illegal waste disposal by targeting illegal waste carriers who may fly-tip their load or dispose of it unlawfully thereby preventing harm to the environment.	£300	£300.
11	Failure to provide waste documents	S 34A(2) Environmental Protection Act 1990	Identifying business operators and the public who transfer their waste irresponsibility which may lead to unlawful disposal or fly-tipping.	£300	£300
12	Offences related to waste receptacles	S 47ZA(2) Environmental Protection Act 1990	Attempting to resolve waste storage and collection issues on commercial premises which can give rise to odours and rats. In the domestic situation encourage participation in the Council's recycling service.	£100	£300
13	penalties for failure to comply with requirements relating to household waste receptacles	S 46A Environmental Protection Act 1990	Attempting to resolve waste storage and collection issues on residential premises which can give rise to odours and rats and encourage participation in the Council's recycling service.	£100	£110
14	Breach of Public Space Protection Order (PSPO)	Anti-social Behaviour, Crime and Policing Act 2014	Reduce Anti-social behaviour and increase Community Safety	£100	£100
15	Breach Of CPN	Anti-social Behaviour, Crime and Policing Act 2014	Reduce Anti-social behaviour, protect the environment and increase Community Safety	£100	£100
16	Noise from dwellings	S 8 Noise Act 1996	Reduce the problems of noise from domestic premises by increasing powers available to deal with burglar alarms and also greater flexibility when dealing with noise nuisance.	£100 Can be set at local level between £75- £110.	£110 Discounted to £75 if paid within 10 days

17	Noise from licensed premises	S 8 Noise Act 1996	Reduce the problems of noise from licensed premises by increasing powers available to the local authorities deal with night time noise.	£500	Amount fixed at £500 . Discounted to £300 if paid within 10 days
18	Smoking in a smokefree work place (Taxis)	Health Act 2006 Section 7		Not previously included in a schedule	£50 Discounted to £30 for early payment within 15 days* * this is an exception in that 5 additional days are offered at a discounted rate



Appendix 2: Equality Impact Assessment

Everyone different,
everyone matters



Equality & Community Cohesion Impact Assessment (EIA)

<p>Directorate: Public Services</p> <p>Service Area: Neighbourhoods</p>	<p>Lead Officer: Derek Benn</p> <p>Date completed: 8th June 2023</p>
<p>Service / Policy / Function or Procedure to be assessed:</p> <p>The Application for the Review of Fixed Penalty Notice Charges</p>	
<p>Is this: New / Proposed <input type="checkbox"/></p> <p>Existing/Review <input type="checkbox"/></p> <p>Changing <input checked="" type="checkbox"/></p> <p>(Please tick appropriate box)</p>	<p>Review date: June 2026</p>

Part A - Initial Assessment to determine if a full Impact Assessment is required

What are the aims and objectives/purpose of this service, policy, function or procedure?

The Council's 2018 budget included a commitment to carry out a Council-wide review of enforcement. The review set out a number of recommendations designed to not only achieve better outcomes in terms of dealing swiftly and effectively with offenders. As part of this review the use of Fixed Penalty Notices were brought into the Community Protection Team- since the last review of Fixed Penalty Notice charges in 2011 there has been changes in legislation and also a need to simplify the fines to ensure a standard approach across the board when issuing FPN fines. It was felt that it was timey that a review of this Policy was required.

The key principle running through the review is to intervene as early as possible and to use the most cost-effective resources. This is encapsulated in the operational mantra of "*the right resource at the right time*". Essentially, it is about investing in a dynamic front-line response for early intervention in order to stop issues escalating/becoming more costly.

The review is simply about making sure the Council can deal quickly, firmly, transparently and appropriately with people who think laws, regulations and conventions apply to everyone but them. If left unchecked, this behaviour can have a corrosive impact on the quality of life of law-abiding citizens, whether that's through littering, fly-tipping, abandoned vehicles other forms of anti-social behaviour and enforcement of Community Protection Notices and Public Space Protection Orders.

Members, residents, businesses and visitors want the Council to address offending that blights the environment and impacts on the quality of life in a timely manner with swift conclusions- the use of Fixed Penalty Notices is an efficient and effective tool to carry out this function as part of the Council's 3 Es (Education, Engagement and Enforcement) Principals.

Please indicate its relevance to equality by selecting yes or no

	Yes	No
Eliminating unlawful discrimination, victimisation and harassment	X	
Advancing equality of opportunity	X	
Fostering good community relations	X	

If not relevant and this is agreed by your Head of Service, the Impact Assessment is now complete - please send a copy to your Directorate Equality Champion & to the Cohesion and Equality Team. **If relevant**, a full Impact Assessment needs to be undertaken (PART B below).

PART B: Full Impact Assessment

Step 1 – Identifying outcomes and delivery mechanisms (in relation to what you are assessing)

<p>What outcomes are sought and for whom?</p>	<p>The review addresses the need for a robust, timely enforcement approach issues head-on and aims to deliver “better with less”, whilst also articulating a clear cross-Council commitment to enforcement, which can be summarised as being “<i>robust but fair and proportionate</i>”, and which will be carried out in a way that is “<i>transparent, responsive and joined-up</i>”.</p> <p>The outcomes sought by the review can be summarised as follows:</p> <ul style="list-style-type: none"> • Residents and visitors feel safe and protected; • Our communities are resilient and cohesive where people from different backgrounds get on together; • Calderdale has a thriving day and night-time economy that supports the Council’s wider objectives around growing the economy and ensuring a sustainable future; • Our environment is protected and respected; and Calderdale has a high quality public realm which promotes and sustains vibrant and viable town centres. • Swift justice is served in a timely manner for behaviour which threatens the environment and residents of Calderdale through anti-social behaviour
<p>Are there any associated policies, functions, services or procedures?</p>	<p>There are numerous legislative and statutory duties as well as national, regional and local policies and strategies that relate to this review.</p> <p>The key legislations are:</p>

	<ul style="list-style-type: none"> • Crime & Disorder Act 1998 • Licensing Act 2003 • Environmental Protection Act 1990 • Anti-Social behaviour, Crime and Policing Act 2014 • Noise Act 1996 • Regulation of Investigatory Powers Act 2000 • Health Act 2006
How will this service be delivered? (e.g. direct service delivery, commissioned/outsourced etc)	This service will be directly delivered from within the Community Protection Team.
If partners (including external partners) are involved in delivering the service, who are they?	N/a

Step 2 – What does the information you have collected, or that you have available, tell you?

What evidence/data already exists about the service and its users? (in terms of its impact on the ‘equality strands’, i.e. age, disability, gender identity, race, religion or belief, sex, sexual orientation, maternity/pregnancy, marriage/civil partnership and other socially excluded communities or groups) and **what does the data tell you?** e.g. are there any significant gaps?

The data collected when issuing Fixed penalty Notice charges does not include details regarding any of the ‘equality strands’ – The fines are only issued to those who fail to follow Government legislation.

Has there been any consultation with, or input from, service users, staff or other stakeholders? If so, with whom, how were they consulted and what did they say? If you haven’t consulted yet and are intending to do so, please list which specific groups or communities you are going to consult with and when.

Other neighbouring local authorities have been communicated with and the fines set out in their policies are in most cases the same, or in some cases similar, to those proposed within the review. Government guidance and advice has been used to inform tariff’s proposed by this review

Are there any complaints, compliments, satisfaction surveys or customer feedback that could help inform this assessment? If yes, what do these tell you?

The Community Protection Team records all cases that are reported to the Council in respect to Community Safety and Environmental Protection including where a fixed penalty ticket has been issued and who to. This information can be used to inform the assessment. Other information such as feedback to the Council, complaints and compliments can also be used.

The West Yorkshire Mayor also has a perception survey "Your Views" which provides information as to how Calderdale residents feel about the way that the Council and its partners such as the police are tackling issues that matter most to them. Although this information is anonymous it does provide a picture as to how residents feel within the borough and it can be broken down into wards. This can provide useful context for the on-going assessment.

Step 3 – Identifying the impact

a. Is there any impact on individuals or groups in the community?

(think about age, disability, gender identity, race, religion or belief, sex, sexual orientation, maternity/pregnancy, marriage/civil partnership and other socially excluded communities or groups)

Barriers:

What are the potential or known barriers/impacts for the different 'equality strands' set out below? Consider:

- **Where** you provide your service, e.g. the facilities/premises;
- **Who** provides it, e.g. are staff trained and representative of the local population/users?
- **How** it is provided, e.g. do people come to you or do you go to them? Do any rules or requirements prevent certain people accessing the service?
- **When** it is provided, e.g. opening hours?
- **What** is provided, e.g. does the service meet everyone's needs? How do you know?

* Some barriers are justified, e.g. for health or safety reasons, or might actually be designed to promote equality, e.g. single sex swimming/exercise sessions, or cannot be removed without excessive cost. If you believe any of the barriers identified to be justified then please indicate which they are and why.

Solutions:

What can be done to minimise or remove these barriers to make sure everyone has equal access to the service or to reduce adverse impact? Consider:

- Other arrangements that can be made to ensure people's diverse needs are met;
- How your actions might help to promote good relations between communities;
- How you might prevent any unintentional future discrimination.

	Barriers/Impacts identified	Solutions (ways in which you could mitigate the impact)
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Age (including children, young people and older people)	No specific barrier/ impact for the different equality strands	<p>Although the Council wants a robust approach to enforcement the fact that the review is one element within the 3 Es principles of engagement, education and enforcement which ensures that should action be required it will be proportionate, necessary and lawful.</p> <p>Part of training will focus on vulnerability risk assessment as well as the basics of communication, engagement and treating victims, witness and perpetrators with respect at all times.</p> <p>Victim/ Caller satisfaction with the way they have been treated and listened to will be a key indicator as to how well the service is delivering the outcomes required by the review.</p> <p>Some fine levels within the review are subject to an early payment discount which will allow for perpetrators to discharge the fines at costs which are more affordable</p>
Disability (including carers)	The outcomes sought by the Fixed Penalty Review are aimed at benefiting all communities regardless of age by creating safer neighbourhoods and protecting the environment.	
Race (including Gypsies & Travellers and Asylum Seekers)	There could be concerns that a robust approach to enforcement might be perceived as “heavy handed” to some, whereas there will still be sections of the community who feel the Council is still not maximising its powers and authorities to tackle issues.	
Religion or Belief (including people of no religion or belief)		
Gender Re-assignment (those that are going through transition: male to female or female to male)	The fact that Enforcing (including the issuing of fines to perpetrators as part of the 3 Es principles) looks at protecting the environment, tackling highway issues, (which include pavements and public place) will make the place more accessible and safer for all communities.	
Pregnancy and Maternity		
Sex (either male or female and including impact on men and women)	Clearly the inappropriate use of powers can impact on all communities therefore there will be appropriate training given to relevant staff as well as supervision and scrutiny of activity.	
Sexual orientation (including gay, lesbian, bisexual and heterosexual)	The ‘cost of living’ situation the country finds itself in has meant that it may be a possibility that sections of the community could struggle to pay FPN fines but the Council will be reasonable and supportive in how it responds to those who incur debt.	

b. Is there/will there be any impact on staff?

(think about the diversity of the workforce delivering the service and relevant training and development needs)

Employee Characteristic	Barriers/Impacts identified	Solutions (ways in which you could mitigate the impact)
Age	<p>The review and updating of the FPN fine levels will involve a number of fines changing which staff will need to understand-</p> <p>All staff will carry out training on the new fine levels.</p>	
Disability		
Gender reassignment		
Pregnancy & Maternity		
Marriage and Civil Partnership		
Race		
Religion or Belief		
Sex		
Sexual Orientation		

Step 4 – Changes or mitigating actions proposed or adopted

Having undertaken the assessment are there any changes necessary to the existing service, policy, function or procedure? What changes or mitigating actions are proposed?

No specific changes have been identified at this time however, this needs to be continually assessed as there is no doubt that there will be further changes whether this be created by legislation or new policies, customer/ victim feedback and experience as well as feedback from staff, elected members, communities and partners.

Step 5 – Monitoring

How are you going to monitor the existing service, policy, function or procedure?

Satisfaction surveys will be introduced for victims.

Through the community engagement events that take place within our neighbourhoods.

We will listen and act on advice from both our community based partnerships and statutory partnerships, the equality forum and the Hate Crime Partnership as well as Council Scrutiny.

Performance data such as crime/ incidents levels, investigation outcomes and confidence surveys will provide evidence as to how well the new approach is achieving the outcomes required.

We will analyse the information provide by the Mayor's "Your Views" survey

Part C - Action Plan

Barrier/s or improvement/s identified	Action Required	Lead Officer	Timescale
Training and understanding on new fine levels	Delivery of training/ awareness on: <ul style="list-style-type: none">• Refresher training on the FPN process for all affected staff• Training for all affected staff on the new FPN charges• principles of engagement, education and enforcement for all new starters within the Community Protection Team	Derek Benn	September 2023
Quality assurance	Appropriate management and quality assurance of updated enforcement activity	Derek Benn	On-going management responsibility from go-live date of new FPN charges

EIA approved by:

Relevant Head of Service: Andrew Pitts – Assistant Director, Public Services	Date: 13/6/23
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Please send an electronic copy of the EIA to the Cohesion and Equality Team and unless the EIA contains sensitive or confidential information ensure the document is uploaded to the EIA Register on the Intranet.

A brief summary of the EIA will be placed on the Council's website.

Shameem.Suleman@calderdale.gov.uk, Cohesion and Equality Team