

Sentencing of fly-tipping offenders

[REDACTED]

The 2016/17 statistics show that over 50% of all fines from courts for fly-tipping were between £51 and £200 and around 90% of fines were under £500.

[REDACTED]

The maximum fine available in legislation for a fly-tipping offence is potentially unlimited. In accordance with the Environmental Protection Act 1990 (EPA 1990) the penalties are on summary conviction: imprisonment for a term not exceeding 12 months or a fine or both; and on conviction on indictment: imprisonment for a term not exceeding 5 years or an unlimited fine. The removal in 2015 of the £5,000 cap for maximum fines that magistrates' courts can impose, means that the maximum fine is potentially unlimited in either court setting.

There is no minimum fine set out in the EPA 1990 for a fly-tipping offence. Fines set out in legislation generally do not include a minimum, because the level of the fine is aligned to the individual or organisation's financial circumstances. [REDACTED] Prison sentences can include a minimum term for very serious offences, for example, grievously bodily harm or manslaughter.

Local authorities can issue a FPN of between £150 and £400 for small scale fly-tipping. It is for the local authority to choose the level to set. The FPN was introduced in May 2016 and an additional 20,000 FPNs were issued in 2016/17 for fly-tipping offences. The maximum possible level of the FPN was set at £400 [REDACTED].

The Sentencing Guideline for Environmental Offences sets out a 12 step process to determine the sentence for a fly-tipping offender. Each offence is given an 'offence category', which is assigned a fine band (table 1 overleaf). The fine bands range from A (low) to F (high) and the level of the fine in each band aligns to a proportion of a person's weekly income. It would be possible for the Sentencing Council to amend the fine levels in the Guideline so that lower offence categories are assigned higher fine bands. For example, the lowest offence category would be assigned a Band C fine, rather than a Band A as it is currently. This would increase the level of fines for each fly-tipping offender.

The Sentencing Council is responsible for all sentencing guidelines. The Sentencing Council reviewed the Environmental Offences Guideline in 2014. This aimed to increase the fines for more serious offences, but not the level of fines in less serious offences in magistrates' courts because the Sentencing Council considered the fine bands for lower offence categories were fair, consistent and proportionate.

[REDACTED]

Table 1: Sentences for each offence category¹

Offence category	Starting Point	Range
Deliberate		
Category 1	18 months' custody	1 – 3 years' custody
Category 2	1 year's custody	26 weeks' – 18 months' custody

¹ https://www.sentencingcouncil.org.uk/wp-content/uploads/Final_Environmental_Offences_Definitive_Guideline_web1.pdf

Category 3	Band F fine	Band E fine or medium level community order – 26 weeks' custody
Category 4	Band E fine	Band D fine or low level community order – Band E fine
Reckless		
Category 1	26 weeks' custody	Band F fine or high level community order – 12 months' custody
Category 2	Band F fine	Band E fine or medium level community order – 26 weeks' custody
Category 3	Band E fine	Band D fine or low level community order – Band E fine
Category 4	Band D fine	Band C fine – Band D fine
Negligent		
Category 1	Band F fine	Band E fine or medium level community order – 26 weeks' custody
Category 2	Band E fine	Band D fine or low level community order – Band E fine
Category 3	Band D fine	Band C fine – Band D fine
Category 4	Band C fine	Band B fine – Band C fine
Low / No culpability		
Category 1	Band D fine	Band C fine – Band D fine
Category 2	Band C fine	Band B fine – Band C fine
Category 3	Band B fine	Band A fine – Band B fine
Category 4	Band A fine	Conditional discharge – Band A fine

[REDACTED]

During the review of the Environmental Offences Guideline the Sentencing Council flagged that the lack of exposure of fly-tipping cases in the courts, in particular in magistrates' courts, limited the level of sentences being handed down. There were 1,571 prosecution cases before the courts in 2016/17. This is a small proportion in relation to other offences and the number of magistrates' courts across the country. A single magistrate's court may only rule on a handful of cases a year. The Judicial Office is responsible for ensuring magistrates are suitably trained to use the Environmental Offences Guideline and are aware of the increase in prevalence of fly-tipping across the country.

[REDACTED]