

Agenda Item No: 10
Report To: Cabinet
Date of Meeting: 11 July 2019
Report Title: Householder Duty of Care Fixed Penalty Notice
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Portfolio Holder: Cllr. Andrew Buchanan
Portfolio Holder for: Environment and Land Management



Summary: Following a Defra consultation in January 2018, Duty of Care obligations have been altered with regards to householders.

Duty of care provides for the safe management of waste to protect health and the environment. It is an obligation to ensure that controlled waste is correctly disposed and not fly tipped.

When an individual appears to have failed to comply with their duty of care under section 34(2A) of the Environmental Protection Act, Local Authorities are empowered to issue a fixed penalty notice (FPN).

This legislation is a tool in influencing change in behaviour, and enables action towards householders whose decision leads to fly tipping. This report provides options for the amount of fine to be applied towards offenders.

Fly tipping can be an activity conducted by serious organised crime gangs. Householders can unwittingly use their services when engaging waste disposal representatives without checking their credibility.

Key Decision: Yes

Significantly Affected Wards: All wards in the Ashford Borough

Recommendations:

- I. **That a maximum level of default be applied for a fixed penalty notice for a householder failing to comply with their duty of care responsibilities (£400) and that a discounted amount (£300) be applied if payment is received inside 14 days.**

Policy Overview: Ashford, as an authority in enforcement of environmental offences, has the principal responsibility for enforcement of environmental crime. Currently this includes the Fly Tipping

Policy adopted 16/02/17.

Financial Implications:

Payment by recipients will be managed through the fixed penalty notice (FPN) management system.

Council is permitted to retain any revenue from fixed penalty notices paid. This revenue will be retained within Environment & Land Management Services for education and enforcement activities.

Legal Implications:

Officers within Environmental and Land Management will be delegated to issue FPN in accordance with legal process.

Stages of legal process will be managed through the fixed penalty management system.

Legal Services will provide prosecution services for recipients who fail to pay and remove their liability from prosecution, or elect to have the matter heard in court.

Equalities Impact Assessment:

An Equalities Impact Assessment is not required for this report.

Exempt from Publication:

Relevant Papers:

Waste Duty of Care Code of Practice

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Introduction and Background

1. In January 2018, Defra published a consultation on “Proposals to tackle crime and poor performance in the waste sector & introduce a new fixed penalty for the waste duty of care”. The consultation was held between 15 January and 26 March 2018, with the summary of responses published on 3 July 2018.
2. Amongst other waste permitting issues, it considered introducing a fixed penalty notice (FPN) for breaches of the householder waste duty of care. The Environmental Protection Act already places obligations in Duty of Care requirements towards the practices of businesses for which a fixed penalty notice is available for non-compliance (currently £300). Until now householders have not had the same level of influence towards them. Fly tipping is an activity conducted by serious organised crime gangs. The impacts of fly tipping are well known.
3. Duty of care is the requirement for the producer of waste and user of a waste carrier to ensure the person/business is authorised, and that the waste is properly disposed. Businesses meet this requirement through conducting the checks and providing documentation (waste transfer notes) that identifies who carried the waste away and the location of disposal.
4. An FPN may be issued when an individual appears to have failed to comply with their duty of care under section 34(2A) of the Environmental Protection Act 1990 for example,
 - Where fly-tipped waste can be traced to a householder who is found to have failed to take reasonable steps to ensure they transferred the waste to an authorised person.
 - Where an unauthorised carrier is found to be carrying household waste that was transferred to them by the occupier of a domestic property.
 - Where an individual is found to have transferred their household waste to an unauthorised person at a site that does not have a permit or waste exemption.
5. A failure to comply by a householder in the above circumstances differs from that of a business. A business or carrier breaches a requirement in not presenting documents that prove they meet their duty of care. A householder would be approached as part of an investigation of a fly tip with evidence connecting them to the offence. It is due to this circumstance that officers recommend that Council consider the maximum of £400 be applied towards an offender.
6. Defra identify that two-thirds of fly-tipping incidents involve household waste. Frequently this is not disposed of by the individual but by the person whom

they engaged to dispose the waste. It is envisaged that reducing household waste to unauthorised carriers will lead to reduction in fly tipping and improvement in proper management of waste.

7. This legislation does not apply to residents who place their household waste or recycling out for collection by Council.
8. Defra have provided access to a summary of responses to the consultation available at:

<https://www.gov.uk/government/consultations/reducing-crime-at-sites-handling-waste-and-introducing-fixed-penalties-for-waste-duty-of-care/outcome/government-response>
9. To support implementation of the fixed penalty notice, Defra produced a revised version of the Waste Duty of Care Code of Practice to provide clearer guidance to householders.

Proposal/Current Position

10. Currently Ashford Borough Council does not issue a fixed penalty notice for this offence when breached by Householders.
11. The default amount for this fixed penalty notice is £200. Therefore without a Cabinet set level, this would be the amount applied.
12. The minimum amount for this fixed penalty notice is £150. It is considered that this amount will not deter householders from poor decision making.
13. The minimum default discounted amount for this fixed penalty notice allowed by statute is £120 if the fine is paid early. We have the ability to apply a discount or our choosing, and recommend a discount from £400 to £300 be applied if the fixed penalty notice is paid within 14 days.
14. The maximum full amount for this fixed penalty notice is £400. This is the recommended full amount which is in line with neighbouring authorities identified further below.
15. Ashford Borough Council currently has authority to issue fixed penalty notices for businesses that fail to comply with Duty of Care requirements, and for offenders identified disposing of controlled waste, 'fly tipping'.
16. An education phase has been conducted for Businesses and their responsibilities in duty of care. The same is being implemented for householders.
17. Online guidance has been provided by Government for local authorities in application of this law <https://www.gov.uk/government/publications/household-waste-duty-of-care-fixed-penalty-notice-guidance/guidance-for-local-authorities-on-household-waste-duty-of-care-fixed-penalty-notices> .
18. Information is being provided to residents on their obligations through a social media campaign and information to each household through 'Ashford for You'

Magazine.

19. Information is available on the council website with respect to householder duty of care.
20. Ashford Borough Council officers will conduct investigations into incidents gathering evidence including conducting interviews.
21. Ashford Borough Council will have the authority to determine whether or not to prosecute or issue a fixed penalty notice for a breach of legislation by a householder.

Implications and Risk Assessment

22. The primary aims of the fixed penalty notice will be to;
 - Ensure householders comply with the law
 - Deter future non-compliance by driving change in attitudes
 - Lead to reduction in environmental criminal activity
 - Provide a penalty commensurate with the level of involvement in a criminal activity
23. Assessment will be conducted upon completion of investigation as to the most appropriate level of legal action towards an alleged offender.
24. Deciding factors in direction in legal action can be but not limited to;
 - The volume of waste disposed
 - Hazardous and environmental impacts
 - Repeat offender.

Equalities Impact Assessment

25. The change to legislation does not impact on any particular equality group in our borough as it applies to all community members that are considered a householder under the Act.

Consultation Planned or Undertaken

26. DEFRA conducted public consultation.
27. The #Scrapflytipping campaign conducted Kent wide in November 2018 highlighted the need to apply duty of care.
28. The implementation of this approach to enforcement will be communicated to householders across the borough through social media and media release.
29. Clear information and guidance will be provided on the Ashford Borough Council website.

Reasons for Supporting Option Recommended

30. Without the approval of this recommendation Ashford Borough Council will be limited to the default amount of £200 when decision is made to issue a FPN as an alternative to prosecution.

31. Approving the maximum level will apply responsibility upon the householder commensurate with the level applied to the person disposing of the waste.
32. The following neighbouring districts have applied the respective amounts to this fixed penalty notice.
 - Dover District Council £400 reduce to £300 if paid within timeframe.
 - Swale Borough Council £400
 - Maidstone Borough Council £300
 - Thanet £200 no reduction – default position
 - Folkestone & Hythe £150 no reduction

Next Steps in Process

33. A webpage will be available (is developed) for residents to access this information similar to that currently provided for businesses.
34. A social media campaign will be launched and repeated to drive education.
35. Street Scene & Open Spaces Officers are authorised to issue a Fixed Penalty Notice (FPN) to offenders.
36. A FPN will not be used where prosecution through the courts is more appropriate.

Conclusion

37. The Cabinet is asked to agree the recommendation that a fixed penalty charge of £400 be applied for a householder duty of care offence and £300 be the default if paid inside 14 days.

Portfolio Holder's Views

38. The result of the Defra consultation identified in this report, has demonstrated both the need and expectation that a mechanism be implemented that drives accountability of householders in helping prevent occurrences of fly tipping. In this current environment it has never been more important that householders take responsibility and protect the environment. It also highlights that there is a true financial cost to managing waste. The size of the fine gives weight to how serious society takes the problem of fly tipping & protecting the environment.

If Residents engage with unscrupulous operators, this is supporting a criminal offence as well as damaging the countryside. It makes sense for authorities to take a tougher stance, in the belief that our residents will change their behaviours and conduct checks, to ensure those who they engage to dispose of their waste are properly licensed and can provide documents to prove their duty of care.

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