

**20th March 2019**

**Environment and Enforcement Committee**

**Household Waste Duty of Care Fixed Penalty Notices**

**Report of:** *David Carter – Environmental Health Manager*

**Wards Affected:** *All*

**This report is:** *Public*

**1. Executive Summary**

- 1.1 The Government has recently introduced the fixed penalty notice (FPN) for breaches of the household waste duty of care as an alternative to prosecution. Guidance, which local authorities should follow, has been issued.
- 1.2 There is no obligation to offer an alleged offender the option to discharge liability through an FPN. However, it can be more proportionate than prosecution through the courts.
- 1.3 The duty of care requires occupiers of domestic property to take all reasonable measures available to them in the circumstances to ensure that they only transfer household waste produced on that property to an authorised person. This reduces the chance of waste ending up in the hands of those who would fly-tip it.
- 1.4 This report sets out the proposed level of fixed penalty notices and summarises the powers available to authorised officers to issue penalties.

**2. Recommendation(s)**

- 2.1 Members approve the new recommended maximum penalty levels set out at 4.5**
- 2.2 Members consider whether to additionally approve the discounted levels for early payment also contained in the table at 4.5**
- 2.3 Members agree to delegate authority to the Chief Executive, Director of Operations, the General Manager Corporate Enforcement and to such officers of the Council that are nominated by any of them to issue Fixed Penalty Notices under the relevant legislation**

### **3. Introduction and Background**

3.1 Fixed penalty notices can 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, e.g.

- where fly-tipped waste can be traced back to an individual who is found to have failed to take reasonable steps to ensure that they transferred the waste to an authorised person
- where an unauthorised carrier is found to be carrying household waste that was directly 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 exemption

An individual should be given an opportunity to demonstrate that they took reasonable steps to determine the person that took their waste was authorised to do so. If fly-tipped waste is traced to an individual and they are unable to identify who took their waste, or the carrier they identify is unauthorised, then it is reasonable to believe their duty of care was not met.

3.2 Enforcement should focus on those who, as a result of not meeting their duty of care, enable their waste to be fly-tipped or otherwise inappropriately disposed of.

3.3 The principles of the Regulators Code apply to the enforcement of the household waste duty of care. Under the Legislative and Regulatory Reform Act 2006, the Council has a duty to carry out regulatory activities in a way which is transparent, accountable, proportionate and consistent, and for them to be targeted only at cases in which action is needed. In no circumstances should enforcement be used as a means to generate income.

3.4 FPNs should not be given where prosecution through the courts is more appropriate, for example the deliberate transfer of waste to an unauthorised person in the knowledge that it would be fly-tipped, or where someone is a persistent offender with a record of not paying fixed penalties for environmental offences.

- 3.5 We should also consider whether the evidence provided by an individual investigated for breach of the household waste duty of care enables investigation or prosecution of the fly-tipper.
- 3.6 Recommendation 2.3 is to delegate power to authorise officers to issue fixed penalty notices where they are not already authorised and have undertaken the appropriate training.

#### 4. Issue, Options and Analysis of Options

- 4.1 Local authorities have the discretion to set penalties within the limits set out in legislation:

Default penalty	Minimum full penalty	Maximum full penalty	Minimum discounted penalty
£200	£150	£400	£120

- 4.2 For fly tipping offences, the Council has already set the levels at the maximum £400 with no early payment discount.
- 4.3 It is recommended that Members consider whether to apply the same level of penalties already set for fly-tipping and whether to allow a discount for early payment.
- 4.4 The recommended level of penalty is therefore **£400, with no discount for early payment.**
- 4.5 As the FPN offers an option to discharge liability for the offence, an alleged offender may choose not to accept or pay a fixed penalty. They may also provide evidence at any time that they did not commit the offence.
- 4.6 Where an individual does not pay an FPN we are expected to take the case to prosecution. As such, detailed evidence gathering will be carried out at the start of the investigation before an FPN is given to ensure prosecution can take place if needed. Failure to follow up an unpaid FPN with prosecution for the original offence will discredit the use of fixed penalties and the duty of care itself.
- 4.7 The Council will follow the guidance issued by the Government in the policy paper 'Guidance for local authorities on household waste duty of care fixed penalty notices' when dealing with cases.

#### 5. Reasons for Recommendation

- 5.1 The penalty is recommended at the maximum level in order to reflect the Council's intention to ensure that enforcement action is effective; these penalties are offered as an alternative to prosecution and should therefore reflect the serious nature of the offence.

## **6. Consultation**

- 6.1 The Government has already carried out a full public consultation over the proposed level of penalties and has produced the values set out in the table at 4.1.

## **7. References to Corporate Plan**

### **7.1 Environment and Housing Management**

Encourage residents to work with us to take responsibility for the environment, and improve the cleanliness of our streets

### **7.2 Community and Health**

Provide advice, support, guidance and enforcement

## **8. Implications**

### **Financial Implications**

**Name & Title: Jacqueline Vanmellaerts Interim Chief Finance Officer**

**Tel & Email: 01277 312829**

[jacqueline.vanmellaerts@brentwood.gov.uk](mailto:jacqueline.vanmellaerts@brentwood.gov.uk)

- 8.1 Income received through Fixed Penalty Notices are accounted for in the relevant service area and will offset resources required to mitigate the offenses. Annual budget setting processes will apply when reviewing this charge.

### **Legal Implications**

**Name & Title: Daniel Toohey, Head of Legal Services and Monitoring Officer**

**Tel & Email: 01277 312860**

[daniel.toohey@brentwood.gov.uk](mailto:daniel.toohey@brentwood.gov.uk)

- 8.2 A fixed penalty notice may be given when an individual fails to comply with the duty of care under section 34 (2A) Environmental Protection Act 1990. Under the Legislative and Regulatory Reform Act 2006 local authorities have a duty to carry out regulatory duties in a way which is transparent, accountable, proportionate and consistent and take action

only in cases where it is needed. The section therefore must be read on this basis.

**9. Background Papers**

- 9.1 Policy paper – Guidance for local authorities on household waste duty of care fixed penalty notices  
Department for Environment Food & Rural Affairs

**10. Appendices to this report**

- None

**Report Author Contact Details:**

**Name:** David Carter

Environmental Health Manager & Deputy GM Corporate Enforcement

**Telephone:** 01277 312509

**E-mail:** david.carter@brentwood.gov.uk