

Public
Key Decision - No*

HUNTINGDONSHIRE DISTRICT COUNCIL

Title/Subject Matter: Duty of Care, Section 34(2A)
Environmental Protection Act 1990

Meeting/Date: Licencing and Protection Committee - 11 March
2020

Executive Portfolio: Councillor Keith Prentice - Executive Councillor
for Regulation and Operations

Report by: Community Resilience Manager

Ward(s) affected: All

Executive Summary:

This report is seeking approval for identified officers to be delegated the new power contained under Section 34(2A) of the Environmental Protection Act 1990, enabling them to issue Fixed Penalty Notices of up to £400 to a resident responsible for not ensuring their household waste was transferred to a authorised waste carrier.

The Fixed Penalty Notice (FPN) for breach of the household waste duty of care provides an alternative to prosecution. It allows an individual to discharge liability for the duty of care offence by payment of a financial penalty. 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.

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.

Recommendation(s):

That the Licencing and Protection Committee approve that:

- 1. Delegated officers of the District Council have authority to issue Fixed Penalty Notices for the offence of Duty of Care for incorrectly disposing of household waste under Section 34(2A) of the Environmental Protection Act 1990.**

- 2. The level of Fixed Penalty Notice be set at £250, the maximum amount for this offence is £400. The District Council already has the authority to issue an FPN of £400 to those found to be Fly Tipping and we therefore believe an FPN of £250 for Duty of Care to be proportionate.**
- 3. Authority is given to the District Council's Chief Operating Officer to delegate responsibility to identified Officers to issue Fixed Penalty Notices for Resident Duty of Care Offences from 1st April 2020.**

1. PURPOSE OF THE REPORT

- 1.1 The purpose of this report is to obtain the Committee's permission to utilise the power available under the Environmental Protection Act 1990 in relation to Duty of Care and for the fine level to be set at £250 with no lesser amount for early payment offered.

2. WHY IS THIS REPORT NECESSARY/ BACKGROUND

- 2.1 Fly Tipping continues to have an impact across the District and incidents are reported on a daily basis. They can vary from one bag of rubbish to several tonnes of waste.

- 2.2 Fly-tipping is the illegal disposal of household, industrial, commercial or other 'controlled' waste by a business or person/s not in possession of a waste management licence. The waste can be liquid or solid. Controlled waste includes garden refuse and larger domestic items such as fridges and mattresses.

- 2.3 Two-thirds of fly-tipped items originate from household waste. The Government has highlighted concerns that some householders allow unauthorised persons to take their waste away without checking whether they have permission to do so. This then results in the waste being illegally fly tipped.

- 2.4 A consultation led by the Government in January 2018 sought views on introducing a Fixed Penalty Notice (FPN) for household Waste Duty of Care offences for fly-tipping, where a householder had not checked that they were disposing of their waste with an authorised waste carrier.

- 2.5 In England, the Environmental Protection (Miscellaneous Amendments) (England and Wales) Regulations 2018 (SI 1227), provided that from 7 January 2019 the Environment Agency or local authorities can impose an FPN for a breach of the household waste Duty of Care in England.

- 2.6 HM Government proposed to tackle crime and poor performance in the waste sector and introduce a new Fixed Penalty under **Section 34B of the Environmental Protection Act 1990** for the Waste Duty of Care, January 2018.

- 2.7 The Fixed Penalty payable to an enforcement authority under this section is:

- (a) the amount specified by the authority in respect of the offence; or
- (b) if no amount is specified by the authority, £200.

The amount specified by an authority in respect of the offence under subsection (7)(a) must not be less than £150 or more than £400.

3. OPTIONS CONSIDERED/ANALYSIS

- 3.1 In 2017 following a restructure, a new team was created, this being the Community Protection and Enforcement Team. The team is made up of

a senior officer and 3.5FTE Community Protection Enforcement Officers. The team has responsibility for investigating complaints in relation to littering, fly-tipping, abandoned vehicles, dog fouling and anti-social behaviour. Since the implementation of this team, incidents of fly-tipping have increased significantly. This has led to a number of successful prosecutions, but it is evident that our residents are not taking reasonable steps to ensure that their waste is being transported and disposed of legally.

3.2 Calls for service in relation to incidents of fly-tipping and the action taken since 2017:

No. of Reported Fly-Tips	No. visited by CP&E	No. of FPNs issued (excludes Littering)	No. of Prosecutions
2018 - 956	402	3	1 complete & 1 out for warrant
2019 – To be advised at the meeting.	426	4	3 complete & 1 out for warrant
2020 - No data to date	85 to date	1 to date	2 complete & 2 Pending trial

4. KEY IMPACTS / RISKS

- 4.1 It is important to manage reputational risk by ensuring that residents understand their responsibilities in relation to the correct collection and disposal of their waste. We plan to do this by introducing a communication strategy that will provide advice and guidance to residents wishing to have waste removed. This will run for 28 days prior to the implementation of the legislation.
- 4.2 The messages that will be given have been designed as part of the Eastern Region RECAP S.C.R.A.P campaign which a number of neighbouring authorities have also signed up to.

5. WHAT ACTIONS WILL BE TAKEN/TIMETABLE FOR IMPLEMENTATION

- 5.1 Following a successful prosecution for fly-tipping in September 2019, we introduced The Duty of Care awareness project. The aim of which has been to regularly utilise social media and other promotional opportunities to advise what a resident should do before agreeing to hand over their waste.
- 5.2 Should authority be given to utilise this legislation, the following media campaign is planned to highlight a resident's Duty of Care around the removal of waste:
- Local paper

- Social media
- Town and Parish Conference
- Countywide media
- Channel 5 TV (Part of the District Council's input to the series)

5.3 Following the campaign, officers will have authority to utilise the power to issue Fixed Penalty Notices where they deem it to be appropriate and necessary.

6. LINK TO THE CORPORATE PLAN, STRATEGIC PRIORITIES AND/OR CORPORATE OBJECTIVES

6.1 One of the strategic objectives of the Corporate Plan is Enabling Communities. The aim of the Enabling Communities strand of the Plan is to make Huntingdonshire a better place to live, to improve health and well-being and for communities to get involved with local decision making. Part of the work programme includes:

- Create, protect and enhance our safe and clean built and green environment; and
- Develop stronger and more resilient communities to enable people to help themselves

6.2 In February 2018, Huntingdonshire District Council approved a Corporate Enforcement Policy. This policy enables delegated Council Officers to apply the policy and matrix toolkit to ensure suspected breaches are investigated and resolved in a prioritised and proportionate manner. The issuing of Fixed Penalty Notices features as part of the delivery of this policy and in turn, will help the Council meet their strategic priorities and objectives as detailed within the Corporate Plan.

7. LEGAL IMPLICATIONS

7.1 By an individual paying the FPN, this discharges their responsibility in relation to the offence. Failure to pay the FPN in the time given will result in a file being prepared and submitted for prosecution. This service will be provided by 3C Legal whom already support the Community Protection and Enforcement Team in court related matters.

8. RESOURCE IMPLICATIONS

8.1 It is believed that there will be minimal resource implications because delegated officers of the District Council already issue Fixed Penalty Notices. The only implications relate to the media campaign and the need to produce amended Fixed Penalty Notices to reflect the alterations to the fine level.

8.2 Littering and associated environmental offences such as dog fouling blight our communities and impose avoidable costs on the public purse, meaning that the money is not being spent on the services that genuinely need it. Huntingdonshire District Council recognises the impact that environmental crime has on our communities and has already

demonstrated that this type of behaviour will not be tolerated and in all cases, appropriate action will be taken.

- 8.3 The intention is that by adopting the new power and setting the fine level that is proportionate to the offence and not offering an early payment option, will encourage our communities to think seriously before allowing illegal waste transfers to take place. In turn, this could reduce the amount of fly-tipped waste across the district, which will allow the Operations Division to target their resources at other more important issues.

9. REASONS FOR THE RECOMMENDED DECISIONS

- 9.1 Over the last 3 years, there has been an increase in the number of reported incidents of fly-tipping across Huntingdonshire. We have strongly demonstrated that this is not a behaviour that will be tolerated by investigating and taking appropriate action against those found to be responsible. This has resulted in a number of FPNs being issued as well as successful prosecutions that have left the perpetrators with a fine as well as criminal record.

- 9.2 When incidents of fly-tips are being investigated, all too often residents will claim that they were unaware of their responsibility to ensure that the person disposing of their waste has the correct license. With the development of social media and free advertising, it is all too easy for scrupulous individuals to advertise as being a 'man with a van' who in turn collects household waste for cash and then fly-tips it a few miles down the road.

- 9.3 It is therefore important that residents understand their responsibilities when identifying and instructing an individual or business to collect and dispose of their waste. We believe that the implementation of a media campaign, followed by the use of FPNs will ensure that our residents are informed about their rights and responsibilities.

10. LIST OF APPENDICES INCLUDED

Environmental Protection Act 1990. Section 34(2A)

<http://www.legislation.gov.uk/ukpga/1990/43/section/34>

Corporate Enforcement Policy

<https://www.huntingdonshire.gov.uk/media/3595/corporate-enforcement-policy.pdf>

11. BACKGROUND PAPERS

The Environmental Offences (Fixed Penalties) (England) Regulations 2017

CONTACT OFFICER

Claudia Deeth, Community Resilience Manager
claudia.deeth@huntingdonshire.gov.uk
01480 388233