

Decision Session: Executive Member Housing &  
Community Safety

**20 March 2019**

Report of the Assistant Director - Housing and Community Safety

## **Introduction of a Fixed Penalty Notice for Domestic Waste Duty of Care Offences**

### **Summary**

1. This report asks the Executive Member to decide if the Neighbourhood Enforcement team should be authorised to issue Fixed Penalty Notices for household waste duty of care offences. In addition, should the FPN be agreed, it recommends the fine level.

### **Recommendation**

2. The executive member is asked:
  - To authorise the Neighbourhood Enforcement team to issue Fixed Penalty Notices for household waste duty of care offences.
  - To approve a fine level of £250.00 with a reduced fee of £150.00 for early repayment within 10 days of issue.

### **Reason**

3. To act as a deterrent against fly-tipping.

### **Background**

4. Fixed Penalty Notices for this offence were introduced by Government in January 2019 as an alternative to prosecution.
5. The introduction of the Fixed Penalty Notice contributes towards a range of initiatives currently being undertaken by the Neighbourhood Enforcement Team to combat fly-tipping across the City of York Council boundary.

6. Latest performance figures show that the number of service calls related to fly-tipping reduced from 2276 in 2016-17 to 2151 in 2017-18. Estimated figures for 2018-19 show a further reduction in calls received. Conversely, the number of warning letters, FPNs, formal cautions and prosecutions issued by the Neighbourhood Enforcement team for fly-tipping has increased significantly between 2016-17 and 2017-18.
7. The household waste duty of care requires occupiers of domestic property to take all reasonable measures available to them to ensure that they only transfer household waste to a licensed person for removal and disposal. This reduces the chance of waste being removed by unscrupulous carriers who may then go on to fly-tip it.
8. Previously, the only enforcement action available for this offence was via the prosecution route. This seemed disproportionate in the majority of cases, particularly as in the past many householders have been unaware of their duty of care responsibilities and assumed that as they had paid for someone to take away their waste that it would be lawfully disposed of.
9. Payment of the FPN allows individuals to discharge liability for prosecution but they retain the option not to pay and allow their case to progress to court if they so wish.

### **Consultation**

10. None

### **Options**

11. **Option 1**
  - To authorise the Neighbourhood Enforcement team to issue Fixed Penalty Notices for household waste duty of care offences.
  - To approve a fine level of £250.00 with a reduced fee of £150 for early repayment within 10 days of issue.
12. **Option 2**
  - Not to authorise the Neighbourhood Enforcement team to issue Fixed Penalty Notices for household waste duty of care offences.

## **Analysis**

### **Issuing of FPNs**

13. FPNs will be issued:
  - 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 waste to an authorised person.
  - Where an unauthorised carrier is found to be carrying domestic 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.
14. An authorised person may still fly-tip waste, therefore tracing fly-tipped waste to a household does not necessarily demonstrate a breach of the duty of care. An individual should be given the opportunity to demonstrate that they took all 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.
15. FPNs should not be given where prosecution through the court is more appropriate, e.g. the deliberate transfer of waste to an unauthorised person in the knowledge it would be fly-tipped, or where someone is a persistent offender with a record of not paying FPNs for environmental offences.
16. Where an individual does not pay the FPN the case will be progressed to prosecution.

### **Awareness Raising**

17. In January 2018, the Neighbourhood Enforcement team launched the Crime Not to Care campaign in partnership with Keep Britain Tidy. The purpose of the campaign was to educate the public about their duty of care responsibilities. The campaign continues to be widely promoted via social media, in flyers included in

correspondence sent out by the team, on the council's website and on council refuse vehicles.

18. A dedicated section on Waste is currently being incorporated into the Safer York Partnership website in order to provide advice and guidance regarding to issues dealt with by the Neighbourhood Enforcement Team.
19. Neighbourhood Enforcement Team regularly use Twitter to highlight their work in tackling waste and to remind residents of their duties.

### **Wider initiatives to combat fly-tipping**

20. The introduction of the FPN contributes towards a range of initiatives developed by the Neighbourhood Enforcement team to combat fly-tipping. In addition to the Crime Not to Care campaign, these include:
  - the development of Operation Eyeball; Together with North Yorkshire Police, the Neighbourhood Enforcement team has led on the development of cross-border working with local authorities across North Yorkshire and the East Riding in addition to: the Environment Agency, Network Rail and NFU, to share information, intelligence and best practice.
  - Regular Stop and Search operations with North Yorkshire Police, targeting unlicensed waste carriers and scrap metal dealers.
  - Issuing of Fixed Penalty Notices and prosecuting those who commit fly-tipping within the City of York boundary.
  - Ensuring that prosecution results are publicised via local and social media with the aim of deterring others from committing such offences.

### **Fine Level**

21. The Government has asked local authorities to set fine levels between £400 and £150 for this offence, with a minimum amount of £120 for early repayment.

22. It is recommended that City of York Council sets a maximum fine level of £250, reduced by 60% to £150 for early repayment (within 10 days). The rationale for this is that:

- The proposed fine is less than our current £400 FPN for small-scale fly-tipping, given that duty of care offences can be seen as less serious than those of fly-tipping.
- The proposed fine is less than the £300 FPN for commercial duty of care offences, given that domestic offences can be seen as less serious and are usually on a smaller scale.
- There is still the potential for residents to be unaware of their duty of care responsibilities, and unknowingly transfer waste, while trying to do the right thing.
- Those who commit duty of care offences are often helpful in the investigation of fly-tippers, through the provision of evidence and/or witness statements.
- We are working with regional colleagues via the Yorkshire Environmental Enforcement Group (YEEG) to set a consistent fine level across local authorities, wherever possible.

### **Impact of non-introduction of the FPN**

23. If the Fixed Penalty Notice was not introduced, prosecution or the issuing of an informal written warning would be the only options available to officers. The FPN provides a mid-way more proportionate response. The prosecution route is work intensive for officers and would result in the individual receiving a criminal record. An informal warning may not be adequate to deter future offences.

### **Council Plan**

24. Contributes towards the Council Plan objective: A Focus On Front-line Services through ensuring that the city centre, villages and neighbourhoods are clean and safe environments.

## Implications

- **Financial** Income from fines can only be used to support functions related to Part II of the Environmental Protection Act 1990, 'Waste on Land'. These are wide-ranging including: the collection, disposal and treatment of controlled waste, licensing and regulatory functions and the enforcement of fly-tipping, duty of care and waste presentation offences.
- **Human Resources (HR)** There are no HR implications
- **Equalities** There are no Equalities implications
- **Legal** Legal Services are aware of the contents of this report and support the view that introduction of an FPN for household waste Duty of Care offences improves the proportionality of enforcement action that can be taken for this offence.
- **Crime and Disorder** Contributes towards the Tackling Anti-Social Behaviour priority within the Community Safety Plan 2017-20.
- **Information Technology (IT)** There are no IT implications
- **Property** There are no Property implications
- **Other** There are no other implications

## Risk Management

There are no identified risks associated with this proposal.

## Contact Details

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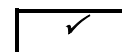
Report  
Approved



Date

Tuesday 5  
March 2019

All



**Wards Affected:** *List wards or tick box to indicate all*

**For further information please contact the author of the report**