

# Householders' Waste Duty of Care

## Summary

This report provides information regarding the waste duty of care that applies to occupiers of domestic property.

It also seeks approval for the Fixed Penalty Notice (FPN) amount to be charged where a householder has failed in their duty of care together with the discounted sum if the FPN amount is paid within 10 days of the FPN being served.

## Portfolio: Planning and People

**Date Portfolio Holder consulted: 3 November 2020**

**Wards Affected: All**

## Recommendation

The Executive is asked to RESOLVE that

- (i) the Fixed Penalty Charge (FPN) be applied where the occupier of a residential premises has failed in their waste duty of care;
- (ii) The Fixed Penalty Charge be set at £400; and
- (iii) no discounted penalty be agreed for any Fixed Penalty Notices paid within 10 days.

## 1. Background

- 1.1 Fly tipping and waste offences are an on-going problem within Surrey Heath. The corporate enforcement team use a broad range of powers to deal with these offences. Householders disposing of waste inappropriately is part of this problem.
- 1.2 Under section 34(2A) of the Environmental Protection Act 1990 the occupiers of domestic property disposing of household waste have a duty of care for the disposal of that waste.
- 1.3 The duty of care requires householders to ensure that they take all reasonable measures available to ensure that they only transfer household waste produced on their property to an authorised person.
- 1.4 Household waste is any waste produced within the property and includes for example old mattresses, furniture and household appliances.

- 1.5 Waste may be removed using the local authority waste collection service or where this is not an option householders can:
- Take the refuse to a Household Waste Recycling centre
  - Use the local authority's special collection service if appropriate
  - Use a private business that provides a waste collection service
  - Take their waste to a site run by a private business with the appropriate authorisations.
- 1.6 Anyone transferring household waste should check whether a person or business is authorised to take the waste.
- 1.7 An authorised 'person' includes
- The local authority that provides the normal waste collection service
  - Someone who has a valid registration as a carrier, broker or dealer of waste
  - An operator of a waste site with an appropriate environmental permit or exemption.
- 1.8 Failure to meet the householder's duty of care is a criminal offence which could result in prosecution. As an alternative, a fixed penalty notice may be given, prosecution would only then occur if the fixed penalty sum remains unpaid.
- 1.9 In most cases it would be appropriate for a FPN to be served, however FPNs should not be given where prosecution through the courts is more appropriate. This includes where someone is a persistent offender.
- 1.10 Penalties should be set within the limits in legislation as follows:

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

## 2. Resource Implications

- 2.1 There is no additional revenue or capital resource implications arising from this report.
- 2.2 Any income received from FPNs may be used for carrying out functions under Part 11 of the Environmental Protection Act 1990.

### **3. Options**

- 3.1.1 The Executive may approve the FPN sum after having regard to government guidelines and limits as set out in this report.

### **4. Proposals**

- 4.1 The Executive is advised to approve the Fixed Penalty sums to be applied as follows:

<b>Full Penalty</b>	<b>Discounted Penalty – if paid within 10 days.</b>
£400	None

- 4.2 It is not proposed to apply a discount to the FPN if it is paid within 10 days. This recognises the seriousness of the offence and this is in line with other FPNs applied by the Council.

### **5. Supporting Information**

- 5.1 This is set out in the appendix.

### **6. Corporate Objectives And Key Priorities**

- 6.1 The use of FPNs supports the Council's objectives as set out in the Annual Plan, it aims to play a part in maintaining and improving the Borough to make it an even better place to live, work and enjoy.

### **7. Legal Issues**

- 7.1 A FPN will only be served where the available evidence supports prosecution should the FPN remain unpaid. Prosecution will be recommended where FPNs remain unpaid
- 7.2 The Head of Legal Services is authorised to institute legal proceedings in respect of enforcement activity. Before deciding to prosecute we will have regard to the Attorney General's Code for Crown Prosecutors.
- 7.3 This includes a consideration of whether the standard of evidence is sufficient for there to be a realistic prospect of conviction and whether the prosecution is in the public interest.

### **8. Governance**

- 8.1 Officers must have regard to both the Council's Corporate Enforcement policy and the Council's Scheme of Delegation to ensure that a fair, consistent and transparent approach to enforcement is applied when considering the service of FPNs for duty of care offences.

### **9. Risk Management**

9.1 There are no direct risks to the Council, the benefits of being able to deal with offenders in this way could be significant.

## **10. Equalities Impact**

10.1 An equality Impact assessment will be completed in due course.

## **11. Environmental Impact**

11.1 Fly-tipping is an ongoing problem in the borough which has a detrimental impact on the environment. The enforcement of this sends a strong message about the Council's commitment to ensure a clean, green and safe borough and protect the environment.

## **12. Human Rights**

12.1 This is a key consideration when considering whether enforcement is appropriate. It should not however prevent action where there is a clear breach of legislation with evidence to support action being taken.

12.2 Officers will have regard to the principles of good regulation as set out in the Corporate Enforcement Policy which follows the principles of the Regulators Code when considering whether to serve a FPN.

12.3 Enforcement will be carried out in a transparent, accountable, proportionate and consistent way and not as a way to generate income.

## **13. Consultation**

13.1 There is no requirement to consult on this matter, however we may need to review our approach in due course taking into account feedback from residents and other interested parties.

## **14. PR And Marketing**

14.1 Work will be undertaken with the Council's Marketing and Communications team to publicise the FPN prior to its implementation.

14.2 It is recommended that the Council reports regularly and consistently on its use of FPNs to help the public understand its approach to enforcement. This in turn may act as a deterrent to potential offenders. This recommendation applies to all FPNs used for a wide range of offences.

14.3 The use of FPNS will be reported annually; details of the reporting arrangements will be forthcoming in due course.

<b>Annexes</b>	None
<b>Background Papers</b>	<p>Waste duty of care: code of practice. <a href="http://www.gov.uk/government/publications/waste-duty-of-care-code-of-practice">www.gov.uk/government/publications/waste-duty-of-care-code-of-practice</a></p> <p>Guidance for local authorities on household waste duty of care fixed penalty notices. <a href="http://www.gov.uk/government/publications/household-waste-duty-of-care-fixed-penalty-notice-guidance">www.gov.uk/government/publications/household-waste-duty-of-care-fixed-penalty-notice-guidance</a></p>
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