

REPORT TO:	ENVIRONMENTAL AND DEVELOPMENT SERVICES COMMITTEE	AGENDA ITEM: 11
DATE OF MEETING:	17th APRIL 2019	CATEGORY: RECOMMENDED
REPORT FROM:	STRATEGIC DIRECTOR (SERVICE DELIVERY)	OPEN
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SUBJECT:	FIXED PENALTY NOTICES FOR HOUSEHOLD DUTY OF CARE OFFENCES	
WARD(S) AFFECTED:	ALL	TERMS OF REFERENCE: EDS14

1. Recommendations

- 1.1. That the Committee approves the use of Fixed Penalty Notices, where appropriate, to take enforcement action against household duty of care offences.
- 1.2. That the Committee approves that the Fixed Penalty Notice charge be set at £400, with an early payment reduced charge of £280.

2. Purpose of the Report

- 2.1. To seek approval for the use and level of fixed penalty to be imposed in the event of the issue of Fixed Penalty Notices for household duty of care offences.

3. Detail

Background

- 3.1. Councils have been given progressively increasing ability to deal with offences for relatively low levels of environmental crime (often described as 'enviro-crime') through the use of Fixed Penalty Notices (FPNs). The use of FPNs for low level criminal offences enables cases to be dealt with proportionately, quickly and consistently without the need to take cases to court.
- 3.2. In January 2019, the government extended the use of fixed penalties to give local authorities the option to use them to deal with breaches of the household duty of care.
- 3.3. The household duty of care requires occupiers of domestic property to take all reasonable measures available to them 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. The legal detail of the offences is covered in section 34 of the Environmental Protection Act 1990.

- 3.4. The Council has already adopted a power to issue fixed penalties to commercial organisations which breach the duty of care.
- 3.5. Currently when dealing with household duty of care offences if an authorised officer is satisfied that an offence has been committed, they have the option of taking a range of further regulatory actions. This form of intervention could involve issuing a verbal warning; through to a written warning; issuing of a formal caution or taking prosecution proceedings.
- 3.6. In many instances the issuing of a warning or a formal caution has been considered by officers to be the most appropriate action. However, in a small number of cases a further sanction has been considered. The adoption of this power would potentially enable officers to offer offenders a fixed penalty rather than taking a prosecution.

Considerations Before Issuing Fixed Penalties

- 3.7. It is important that the use of the household duty of care power is proportionate, consistent, transparent and accountable. Therefore, the use of a fixed penalty will not generally be used in the following situations:
 - Where the offence was minor and did not lead to waste being inappropriately disposed of;
 - Solely as a means to generate income;
 - Where the investigating officer considers that the offender is clearly a victim of fraud or other similar offence in relation to the duty of care breach;
 - Where the investigating officer considers that offender is 'vulnerable' with reference to Section 59 of the [Safeguarding Vulnerable Groups Act 2006](#);
 - Where an individual has given their waste to a family or friend to dispose of;
 - Where the waste has been left out for collection by the local authority refuse collection service or properly disposed of at a recycling centre;
- 3.8. In each of the situations described above the investigating officer will apply the evidential test and public interest test detailed in the Council's Corporate Enforcement Policy to determine the most appropriate form of action.
- 3.9. Typically these cases come to light when fly-tipped waste is traced back to an individual who can be shown to have transferred the waste to third party who has taken payment to dispose of the waste on the householders behalf. In most cases of this type officers will seek to take legal action where possible against the fly-tipping offender. In such cases the householder is a key witness for the Council and no further action would be taken provided that they co-operate fully with the investigation.
- 3.10. Generally the issuing of a fixed penalty will only be considered after a full investigation and after the suspected offender has been given an interview under caution in accordance with the Police and Criminal Evidence Act (PACE).
- 3.11. Officers do not anticipate issuing fixed penalties of this type on a regular basis. The only recent situations where officers would have considered using the power have been during fly-tipping investigations where the householder has refused to co-operate with investigating officers and has refused to provide the details of the person to whom they transferred their waste.
- 3.12. It should be noted that a fixed penalty can only be issued where the recipient has admitted to the offence and has agreed to pay the fixed penalty to discharge their liability for the offence. Anyone who the Council consider guilty of an offence and who denies it can only be subject to further action by way of a prosecution.

Proposed Fixed Penalty Charge

- 3.13. There are statutory limits on the minimum and maximum fines for this offence, namely £150 and £400 respectively.
- 3.14. To provide some context, the existing fixed penalty fines the Council has previously adopted for other similar offences are listed in Table 1 below.

Table 1 – Existing Fixed Penalty Notice Charges in South Derbyshire

Nature of Offence	Statute	Maximum Permitted Charge	SDDC Charge	Charge for early payment
Fly tipping	Environmental Protection Act 1990, s.34ZA	£400	£400	£280
Failure by waste carriers to produce a waste transfer note	Control of Pollution (Amendment) Act 1989, s.5B(2)	£300	£300	£210
Failure by a waste carrier to provide a waste carriers license	Environmental Protection Act 1990, s.34A(2)	£300	£300	£210
Littering	Environmental Protection Act 1990, s.88(1)	£80	£75	£50
Failing to comply with a Community Protection Notice	Anti-Social Behaviour Crime and Policing Act 2014 s.52(1)	£100	£100	£70
Failure to comply with a Public Spaces Protection Order	Anti-Social Behaviour Crime and Policing Act 2014 s.68(1)	£100	£100	£70

- 3.15. The proposed penalty for the household duty of care offence is set out in Table 2.

Table 2 – Existing Fixed Penalty Notice Charges in South Derbyshire

Nature of Offence	Statute	Maximum Permitted Charge	SDDC Charge	Charge for early payment
Household duty of care	Environmental Protection Act s.34 (2A)	£400	£400	£280

Challenges to Fixed Penalty Charges

- 3.16. There is no right of appeal against an FPN as they simply offer a means of discharging liability. However, an important part of the transparency of the Council process is for an alleged offence to be disputed or the appropriateness of enforcement to be challenged.
- 3.17. When issuing an FPN it will be made clear to the recipient how they are entitled to make such representations. Where any representations are considered to materially change the view of the Council then the fixed penalty may be withdrawn.

Representations will be considered by officers with no previous involvement with or knowledge of the case being considered.

4. Financial Implications

- 4.1. Minor beneficial. The introduction of the penalty notice is likely to generate income of approximately £1,000 per year based on previous occasions when the use of an FPN would have been appropriate.

5. Corporate Implications

Employment Implications

- 5.1. None. The duty to issue the fixed penalties will be given to the existing Community Safety Enforcement team, who already issues the fixed penalties described in Table 1.

Legal Implications

- 5.2. Minor. The Council already successfully utilises fixed penalty powers for low-level offences. Annually the Council issues approximately 80 fixed penalties per year.

Corporate Plan Implications

- 5.3. The proposals align with the 'Place' Corporate Plan theme and in particular Action PL2 "Deliver a programme of proactive interventions to reduce environmental crime and anti-social behaviour" and "Reduce anti-social behaviour (ASB) in Swadlincote Centre (Civic Way) Local Super Output Area" and Action PL5 "Provide clean and green streets, neighbourhoods and open spaces".

Risk Impact

- 5.4. The proposals will have a beneficial mitigating action against the corporate risk of "Managing the environmental impact of incidents across the District".

6. Community Impact

Consultation

- 6.1. None.

Equality and Diversity Impact

- 6.2. The potentially adverse impact of the proposals on vulnerable people has been considered and mitigation measures have been factored into the process by which the fixed penalties will be administered.

Social Value Impact

- 6.3. Minor beneficial.

Environmental Sustainability

- 6.4. Moderate beneficial.

7. Conclusions

- 7.1. The adoption of powers to enable Community Safety Enforcement Officers to issue fixed penalties will provide further options for officers when they are investigating and determining fly-tipping investigations.
- 7.2. The governance of the use of fixed penalties is already controlled by clear processes and procedures. An internal audit in February 2019 determined that the Council's processes provide 'comprehensive' assurances that robust procedures are in place, that they meet legal requirements and that they are being followed.

8. Background Papers

None