

Report to Portfolio Holder for Public Protection

Subject: Introduction of Fixed Penalty Notices for contraventions of the Environmental Protection Act 1990 s 34(2A) relating to household waste

Date: 1 September 2021

Author: Community Protection Manager

Wards Affected

The whole Borough will be affected

Purpose

The Portfolio Holder approves the use of fixed penalty notices for offences under section 34(2A) of the Environmental Protection Act 1990 and for the Portfolio Holder to set the monetary level for fixed penalties which may be issued for offences under section 34 (2A) of the Environmental Protection Act 1990 relating to household duty of care fixed penalty notices

Key Decision

This is NOT a key decision

Recommendation(s)

THAT the Portfolio Holder

1. Approves the use of fixed penalty notices for house hold duty of care offences under Section 34(2A) of the Environmental Protection Act 1990.
2. Sets the level of the fixed penalty notice under section 34 (2A) of the Environmental Protection Act 1990 at £200 which is the default penalty.
3. Approves a reduction of the fixed penalty notice to £120 where the penalty is paid within ten (10) working day of the service of the fixed penalty notice which is the minimum discounted penalty.

1 Background

- 1.1 Section 34(2A) of the Environmental Protection Act 1990 (EPA 1990) imposes a duty of care on the occupier of any domestic property in England to take all such measures available to him as are reasonable in the circumstances to secure that any transfer by him of household waste produced on the property is only to an authorised person or to a person for authorised transport purposes. Failure to comply with this duty of care is an offence under the EPA punishable by prosecution.
- 1.2 The Environmental Protection (Miscellaneous Amendments) (England and Wales) Regulation 2018 came into force and amended the EPA 1990. These regulations amend the EPA 1990 to make it possible to serve a fixed penalty notice for a duty of care fly tipping offence under section 34(2A).
- 1.3 The fixed penalty notice (FPN) for breaches of the household waste duty of care provides an alternative to prosecution. FPN's give offenders the opportunity discharge liability for the offence by payment of a financial penalty to the Council within 14 days. There is no obligation to offer an alleged offender the option to discharge liability through an FPN. However, depending on circumstances it can be more proportionate than prosecution through the courts.
- 1.4 The Council's Public Protection service already issue FPN's for a number of offences including fly tipping and littering. Each matter is assessed on its own merits when deciding whether an FPN is appropriate. FPN's are signed by authorised managers within Public Protection these managers have discretion to not issue a FPN where it is felt that prosecution through the courts is more appropriate. Examples of this may be for the deliberate transfer of waste to an unauthorised person in the knowledge that it would be fly-tipped, or when someone is a persistent offender with a record of not paying fixed penalties for environmental offences.
- 1.5 Issuing FPN's for offences under Section 34(2A) will focus on occupiers domestic properties who, as a result of not meeting their duty of care, enable their waste to be fly-tipped or otherwise inappropriately disposed of although prosecution will still be considered where the offending is deliberate and serious..

- 1.6 Section 34ZA of the EPA 1990 states that amount of the FPN payable to the council is the amount specified by the authority. If no amount is specified by the authority then the FPN is to be £200. Section 34ZA (8) provides guidance on setting a FPN amount in that the amount of the FPN must not be less than £150 or more than £400.
- 1.7 Section 34ZA (9) provides for a reduction in the fine if paid within 10 days of the FPN being issued. Enforcement authorities may accept a lesser amount of £120 if the FPN is paid within 10 days. If the FPN is not paid within 10 days then the full amount is due.

2 Proposal

- 2.1 It is proposed that the Portfolio holder for Public Protection approves the issuing of fixed penalty notices for duty of care offences under Section 34(2A) of the Environmental Protection Act 1990.
- 2.2 It is proposed that the level of the fixed penalty notice for offences under section 34 (2A) of the Environmental Protection Act 1990 is set at £200.
- 2.3 It is proposed that the level of reduction of the fixed penalty notice is set at £120 where the penalty is paid within ten (10) days of the service of the fixed penalty.

3 Alternative Options

- 3.1 Not to approve the issuing of fixed penalty notices for duty of care offences. However this places a greater burden on the Councils Public Protection and Legal services as all duty of care offences will need to be referred for prosecution through the Courts.
- 3.2 Not to set the fixed penalty amount at £200 and to instead adopt a figure for the fixed penalty notice of up to £400, which is the maximum penalty set out in the legislation however it is felt that this amount may cause unnecessary hardship and lead to a higher number of unpaid fixed penalties. Or to adopt a figure for the fixed penalty notice of £150 which is the minimum set out in the legislation. However it is felt that this lower amount does not reflect the seriousness of the offence as well as the costs associated with any investigations.
- 3.3 Not to adopt the reduction in fixed penalty amount for early payment of the fine. However it is felt that the early payment reduction is likely to result in early payment which will save time and costs progressing the matter to prosecution.

4 Financial Implications

- 4.1 The annual income from the use of fixed penalty notices is likely to be around £1000. This is estimated from the number of previous prosecutions for duty of care cases which would have been suitable for a penalty notice had the option been available. A fixed penalty notice will only be issued where there is sufficient evidence to prosecute.

5 Legal Implications

- 5.1 The duty of care offence at Section 34(2A) is an either way offence meaning it can be tried summarily at the Magistrates Court or in front of a jury at Crown Court. The sanction in either Court is to a fine.
- 5.2 The EPA 1990 contains specific details that must be included in an FPN issued for duty of care offences which will be considered and included in any notice prior to issue by Public Protection.
- 5.1 Each case will need to be assessed on its own merits however the process of issuing fixed penalty notices for lower level offending is a proportionate response and likely in most cases to be in the public interest over a prosecution.

6 Equalities Implications

- 6.1 None

7 Carbon Reduction/Environmental Sustainability Implications

- 7.1 None

8 Appendices

- 8.1 None

9 Background Papers

- 9.1 None

10 Reasons for Recommendations

- 10.1 To introduce the use of fixed penalty notices for household fly tipping duty of care offences. At present the only enforcement option available to the Council is to prosecute all duty of care offences. Prosecutions can be quite burdensome in terms of investigation, file preparation and court attendance as such the proposed process will reduce time spend by neighbourhood wardens preparing prosecution files and the need for members of the legal team to attend court.

10.2 To set the level of the fixed penalty notice at such a rate discourage the offence of not complying with the duty of care set out in the EPA 1990 and reflect the costs associated with investigation and clearance but to offer some incentive for early payment

Statutory Officer approval

Approved by:

Date:

On behalf of the Chief Financial Officer

Approved by:

Date:

On behalf of the Monitoring Officer