

Agenda



Delegated Decisions - Joint Cabinet Member

Date: Tuesday, 28 January 2020

To: Councillors R Jeavons, R Truman

Item		Wards Affected
1	<u>Introduction of Fixed Penalty Notice Charges for Waste Duty of Care Offences</u> (Pages 3 - 14)	All Wards

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Date of Issue: 20 January 2020

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Report

Cabinet Member for City Services Cabinet Member for Licensing and Regulation

Part 1

Date: 29 January 2019

Subject Introduction of Fixed Penalty Notice Charges for Waste Duty of Care Offences

Purpose To seek approval from the Cabinet Member for Licensing & Regulation and the Cabinet Member for Streetscene on the proposed charges for fixed penalty notices in relation to Duty of Care waste offences under relevant legislation enforced by officers employed by Newport City Council and to seek approval to continue not offering a discount for early payment.

Author Cleansing Team Manager

Ward City wide

Summary In February 2019, new powers have been given to local authorities to issue Fixed Penalty Notices for breaches of duty of care in relation to fly-tipped waste where a third party was employed, using a third party that do not have a Waste Carriers Licence and domestic fly-tipping (where a householder has directly deposited waste on a site that does not have a permit or exemption).

Proposal That the Cabinet Members approve the Fixed Penalty Notice charge and support the continued use of **fixed penalty notices for waste offences as an additional and alternative enforcement option. Also that the Cabinet Members approve the position of not offering discounts for early payment for these offences.**

Action by Head of Law and Regulation
Head of Streetscene and City Services

Timetable Immediate

Signed

Background

Within Newport City Council waste offences fly tipping complaints are investigated by the Waste Management team within City Services (waste on public land and adopted highways) and by the Noise & Neighbourhood team within Law & Regulation (waste on private land). The teams work closely together to tackle the issues around fly tipping within the district. Both public and private land owners are picking up the cost to clear waste deposited in this manner. This type of behaviour also has a detrimental impact on communities; it makes them unsightly, attracts anti-social behaviour, attracts further flytipping, and depending on the nature of the waste could harbour and attract rodents.

For the work of both teams to be as effective as possible it is essential that they can use all tools available, including the use of fixed penalty notices for waste offences as an additional and alternative enforcement option.

In February 2019, new powers have been given to local authorities to issue Fixed Penalty Notices for breaches of duty of care in relation to fly-tipped waste where a third party was employed, using a third party that do not have a Waste Carriers Licence and domestic flytipping (where a householder has directly deposited waste on a site that does not have a permit or exemption). This new Fixed Penalty Notice charge has to be approved so it can be incorporated to the enforcement activity.

Financial Summary

This proposal has no additional costs involved over the current cost of delivering this enforcement action. The new Fixed Penalty Notice for Duty of Care will not increase the amount of work completed on this enforcement area; it will provide another enforcement tool that may be an effective deterrent to future offenders and may reduce the costs of enforcement to the Council compared with prosecution action which was the only enforcement action available previously. Fixed Penalty receipts are required by the legislation to be used to deliver further regulatory activity in this area.

Risks

You will need to complete the following Risk table

Risk	Impact of Risk if it occurs* (H/M/L)	Probability of risk occurring (H/M/L)	What is the Council doing or what has it done to avoid the risk or reduce its effect	Who is responsible for dealing with the risk?
Fewer payments due to no discount for early payment being offered leading to resource intensive legal proceedings.	M	L	The Council will continue to use reminder letters to encourage offenders to pay the Fixed Penalty Notice charge to reduce the risk of higher numbers of cases requiring prosecution action.	Principal Environmental Health Officer/Waste Enforcement Manager

Links to Council Policies and Priorities

Protecting the environment and managing resources sustainably so that future generations may benefit from them is a key strategic driver for the Local Authority and this is expressed through the Council's Well-being Objectives and the Well-being Plan.

This measure is aimed to tackle serious issues impacting our communities; by reducing flytipping the Council would be contributing to the main priority in the Corporate Plan 2017-2022 – Improving People's

lives. Moreover, the proposal has clear links with working towards improved environment and community safety and cohesion.

Options Available and considered

A) Support the proposal of:

- a) Introducing the £300 Fixed Penalty Notice charge for Duty of Care offences.
- b) Continuing not to offer a discount for early payment for offences under the legislation listed.

B) Not to support either of the options at A above.

Preferred Option and Why

The preferred option is Option A to implement the changes proposed:

- Flytipping is a very serious offence that has a significant negative impact in our environment and our communities, and the Council dedicates significant resources to dealing with them
- It is believed that to tackle this issue, together with other actions such as community engagement, the Council needs to adopt a zero tolerance policy towards offenders
- By applying the maximum amounts included in the relevant legislation, and not offering an early payment discount the Council would be sending a clear message on the matter, whilst still enabling other activities such as engagement to continue as before.

Comments of Chief Financial Officer

The introduction of fixed penalty notice charges for waste Duty of Care offences by third parties will have no adverse budgetary impact as all associated work would be carried out using existing budgets and staffing structure. The application of fixed penalty notices in this area will create another method of enforcement which should reduce the prosecution costs for this type of offence.

There is an inherent risk in any type of increase to penalties that payments will reduce but this could be balanced with the prospect of a more effective deterrent to offences in the first instance.

Comments of Monitoring Officer

The proposed fixed penalty charges are in accordance with the Council's legal powers under the Household Waste Duty of Care (Fixed Penalties) (Wales) Regulations 2019. The Regulations introduced new powers to allow the Council to issue fixed penalty notices to householders who breach their waste duty of care. Previously, the only enforcement power available to the Council was to prosecute householders in the magistrates court for criminal offences and, in many cases, this was not cost-effective or proportionate to the offence. The new FPN powers will provide a more direct and effective deterrent for these types of offences. The FPN charge of £300 is fixed by the Regulations but the Council has a discretion to offer a discounted penalty of £150 for early payment. The Council does not currently offer any discount for early payment and it is proposed that this practice should continue in order to deter offences.

Comments of Head of People and Business Change

This proposal to change fixed penalty notice charges for waste offences has fully considered the Well-being of Future Generations (Wales) Act 2015. How this proposal links to the council well-being objectives and the Local Well-being Plan is reflected in the report and all five ways of working of the sustainable development principle have been detailed in the appropriate section.

As required a fairness and equality impact assessment has been completed which fully assesses the impacts on different sections of the community.

Finally, from an HR perspective there are no direct staffing implications to this proposal.

Local issues

N/A

Scrutiny Committees

N/A

Equalities Impact Assessment and the Equalities Act 2010

This proposal could potentially have both positive and negative impacts on the protected characteristic of 'Race', as there is correlation between areas of low income within the city and higher proportions of ethnic minority groups. However these areas are also more likely to be 'fly tipping hot spots' and therefore more likely to see the benefits in any reduction in littering and fly tipping. Therefore the proposal has a deterrent effect which will help tackle these issues, and long term will have a positive impact on hotspot areas, which have also been identified as linked to these target groups.

FPN's are not issued to under 18's, those that have age related illnesses and those with physical or mental disabilities.

Full Fairness & Equalities Impact Assessment included as Appendix A

Children and Families (Wales) Measure

The proposals set out in this report are not relevant to the aims of the Children and Families (Wales) Measure.

Wellbeing of Future Generations (Wales) Act 2015

- Long term: flytipping, littering and flyposting are behavioural issues; any long term strategy needs education and engagement programs in place; however part of the behavioural change will necessarily come from enforcement action –this will motivate change in some sectors of the population and will serve as example so engagement activities are more effective.
- Prevention: The issue of Fixed Penalty Notices has proven to have a very strong deterrent effect in the past, thus preventing other people from doing the same, with an overall reduction in the number of offences
- Integration: Enforcement activities are part of wider communications, engagement and educational programmes to avoid flytipping, littering and antisocial behaviour also adds to this. They also contribute to make our city a more attractive place to live, work and invest and to act on deprived communities where local environment quality is poorest (littering and flytipping spots). There is an overall contribution to some of the WFG goals: healthier, more equal and globally responsible Wales.
- Involvement: wider engagement activities are delivered in partnership with other organisations/community groups

Crime and Disorder Act 1998

Section 17(1) of the Crime and Disorder Act 1998 imposes a duty on the Local Authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.

Consultation

N/A

Background Papers

Relevant legislation cited above

Dated: 20/01/2020

Appendix

A: Fairness and Equalities Impact Assessment

Fairness and Equalities Impact Assessment (FEIA)

Version 3.6 May 2017

The purpose of this assessment is to provide balanced information to support decision making and to promote better ways of working in line with equalities (Equalities Act 2010), Welsh language promotion (The Welsh Language (Wales) Measure 2011), sustainable development (Wellbeing of Future Generations (Wales) Act 2015), and the four parameters of debate about fairness identified by the Newport Fairness Commission (NFC Full Report to Council 2013).

Completed by: Scott Coughlan **Role:** Team Leader (Cleansing) Manager

Head of Service: Streetscene and City Services **Date:** 03/04/2019

I confirm that the above Head of Service has agreed the content of this assessment

Yes

When you complete this FEIA, it is your responsibility to submit it to

impact.assessments@newport.gov.uk

1. Name and description of the policy / proposal being assessed. Outline the policy's purpose.

Waste Offences (Duty of Care) New Fixed Penalty Powers

In February 2019, new powers have been given to local authorities to issue Fixed Penalty Notices for breaches of duty of care in relation to fly-tipped waste where a third party was employed, using a third party that do not have a Waste Carriers Licence and domestic fly-tipping (where a householder has directly deposited waste on a site that does not have a permit or exemption).

Up until February 2019, NCC currently prosecute through the courts or issue a caution for the offence. The only difference now is that NCC has a third enforcement option that would be more cost-effective and more proportionate to many offences. Large scale fly-tippers will still be able to be prosecuted through the courts if the size of the fly-tip is disproportionate to the FPN.

In summary, the proposal is the following:

- Introduce the new FPN under S.34 of The Environmental Protection Act
- Agree to apply fixed amounts in line with maximum penalties included in legislation as listed
- Not to offer a discount for early payment for offences under the legislation listed

Purpose of this policy is to help tackle waste offences and give NCC a choice of enforcement methods that would be proportionate to the offence.

2. Outline how you have/ will involve stakeholders who will be affected by the policy/proposal

The provision to use FPN derives from national legislation, and the introduction to changes to legislation always includes a consultation phase with all stakeholders before the new legislation gets approved.

During October/November 2018 the Council undertook a city wide survey on the waste and recycling services, which included a question on whether the Council should pro-actively issue FPN for litter/flytipping. Of a total of 1,066 residents answering this question, 1,014 responded favourably (95%), with only 19 (2%) saying no; this shows support from residents for the Council to act on offenders by issuing FPN is strongly supported.

A public consultation held by DEFRA on the introduction of the new FPN for flytipping revealed overwhelming support in favour of the new powers, see:

<https://consult.defra.gov.uk/waste/consultation-household-waste-duty-of-care/>

3. What information/evidence do you have on stakeholders? e.g. views, needs, service usage etc. Please include all the evidence you consider relevant.

We also get feedback on flytipping and littering issues from residents and other stakeholders via our contact centre, and statistics show these are some of the main issues residents complain about, so we know it's a worry that impacts our communities negatively

We also draw information from the Newport community well-being profiles, as they provide an overview of the population using data including population, diversity, households, health, education, housing, benefits and levels of deprivation. Full profiles:




<http://www.newport.gov.uk/atlas/en/Profiles/Newport-community-wellbeing-profiles.aspx>

4. Equalities and Welsh language impact

Protected characteristic	Impact:			Provide further details about the nature of the impact in the section below. Does it: 1. Promote equal opportunity 2. Promote community cohesion 3. Help eliminate unlawful discrimination/ harassment/ victimisation?
	Positive	Negative	Neither	
Age	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	The legislation states that FPN's are not to be issued to anyone that has any age related illnesses. Similarly NCC do not issue FPN's to under 18's.
Disability	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	The legislation states that FPN's are not to be issued to anyone that has any physical or mental disability.
Gender reassignment/ transgender	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	No impact

Protected characteristic	Impact:			Provide further details about the nature of the impact in the section below. Does it: 1. Promote equal opportunity 2. Promote community cohesion 3. Help eliminate unlawful discrimination/ harassment/ victimisation?
	Positive	Negative	Neither	
Marriage or civil partnership	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	No impact
Pregnancy or maternity	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	No impact
Race	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<p>Negative Despite being a fine and only incurred when an individual has engaged in illegal activity, it should be noted that an increase in penalty fees will have a proportionately greater impact on those with lower incomes. Newport's Community Wellbeing Profile suggests that there is strong correlation between areas of the city with lower incomes than the Newport average and areas with a higher than average number of residents from ethnic minority backgrounds. It is therefore reasonable to assume that any increase in fines will have a greater impact on the protected characteristic of race.</p> <p>Positive Conversely, it has also been identified that the areas where this proposal would have the greatest positive impact to the environment such as Pill and Maindee and city centre in general (as described in section 6 below), have higher proportion of residents from ethnic minority groups when compared to the rest of Newport, so potentially these groups could be impacted positively by the proposal</p>
Religion or Belief or non-belief	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No impact
Sex/ Gender Identity	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	No impact
Sexual Orientation	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	No impact
Welsh Language	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	No impact. FPN books available in Welsh.

5 How has your proposal embedded and prioritised the sustainable development principle in its development?

Sustainable Development Principle	Does your proposal demonstrate you have met this principle? Describe how.
 <p>Long Term</p> <p>Balancing short term need with long term needs</p>	<p>Flytipping, littering and flyposting are behavioural issues; any long term strategy needs education and engagement programs in place; however part of the behavioural change will necessarily come from enforcement action –this will motivate change in some sectors of the population and will serve as example so engagement activities are more effective.</p>
 <p>Collaboration</p> <p>Working together to deliver objectives</p>	<p>We have involvement with several community groups across Newport and work in partnership with agencies such as police and fire brigade or Keep Wales Tidy. We also have the Pride in Newport Campaign where we try to raise awareness on issues linked to littering, flytipping and antisocial behaviour, in partnership with South Wales Argus and organisations such as Newport City Homes. We also work with businesses so they can pledge to help keep our communities litter free</p>
 <p>Involvement</p> <p>Involving those with an interest and seeking their views</p>	<p>We keep our engagement campaign via Pride in Newport and direct contact with community groups; also liaise with residents on an ongoing basis via our Contact Centre to solve their requests/complaints. We also take part in consultation campaigns held nation-wide.</p>
 <p>Prevention</p> <p>Putting resources into preventing problems occurring or getting worse</p>	<p>The causes of the wider problem have been considered, and although this is a behavioural issue that can only be changed long-term via a continued engagement activity, the issue of Fixed Penalty Notices has proven to have a very strong deterrent effect in the past, thus preventing other people from doing the same, with an overall reduction in the number of offences. This is therefore seen as part of a “carrot and stick” approach were only combined activities will have the expected result.</p>
 <p>Integration</p> <p>Considering impact on all wellbeing goals together and on other bodies</p>	<p>Enforcement activities are part of wider communications, engagement and educational programmes to avoid flytipping, littering and antisocial behaviour also adds to this. They also contribute to make our city a more attractive place to live, work and invest and to act on deprived communities where local environment quality is poorest (littering and flytipping spots). There is an overall contribution to some of the WFG goals: healthier, more equal and globally responsible Wales.</p>

Will the proposal/policy have a disproportionate impact on a specific geographical area of Newport?

We have identified certain areas that can be classed as hotspots for flytipping – they are Pill ward in general and more specifically Commercial Road, also Maindee car park, Tregwilym Road recycling station and some rural locations such as the Wentloog and Caldicot levels (where we predominantly see commercial flytipping).

This information has allowed us to get some insight into the specific characteristics of the main areas thanks to the information provided in the Newport wellbeing profiles mentioned above. The areas where we see resident's litter/flytipping (Maindee, Pill and city centre in general), which will experience a higher impact of this proposal, have a population with a lower income profile and tend to rank higher in the deprivation index, and also have a preponderance ethnic minority groups as stated above

6 How does the proposal/policy relate to the parameters of debate about Fairness identified by the Newport Fairness Commission

The 4 parameters of fairness have been considered in relation with this proposal:

Equal treatment while recognising difference: the proposal would be applicable to all people regardless their background, as it has to do with law infringement- in this regards we cannot take into account differences as law abidance is equally applicable and we could not treat different groups of people differently. (Note the exceptions stated above). We do however take certain circumstances into account when preparing wider engagement campaigns – for instance we are aware that people from different race may, depending on their background, have additional difficulties in understanding legal requirements issued in English, so we issue instructions on how to deal with waste in other languages and work with pictorial designs to ensure the message gets across.

Mutual obligations between citizens and LA: residents and businesses have a duty of care for waste generated by them an obligation not to litter/flytip, as these are illegal activities that can be prosecuted, and the Council has both power to enforce on these activities and also the duty to improve the environment to ensure it is safe and healthy for its communities, and to provide green and clean spaces. By issuing FPN we ensure duty of care is observed and by having a deterrent effect help keep our streets and leisure areas clean.

Reciprocity and interdependency within relationships – we have a moral obligation to provide green spaces, and by doing so we contribute to improve our communities. They in turn come to us to help deal with issues arising, so we have stablished good relationships within the community, which also helps build mutual trust and strengthens the Council-community ties and builds up on synergies. Enforcement activity is often welcome by the wider community as people are aware of the negative impact activities such as flytipping have in their areas and helps set up an example when developing wider engagement/education campaigns.

Transparency and accountability – by undertaking this assessment we are being open and transparent about the council policies and their impact on the communities; we are communicating the rise in the fines to be applied and the intention to continue not applying early payment discounts. This can have a detrimental impact on those sectors of the population on the lower income spectrum but it is believed the impact of the enforcement activity in the community as a whole will be beneficial and outweigh these potential negative impacts.

7 Taking this assessment as a whole, what could be done to mitigate any negative impacts of your policy and better contribute to positive impacts?

The potential negative impact on certain groups as identified in this assessment cannot be easily mitigated within the enforcement activity background, as the proposal would be applied to all offenders regardless of their background (Note exceptions above). However, it has to be taken into account that the adoption of a tough stance against flytipping goes a long way in tackling this issue; the adoption of lower fines could therefore have a negative impact on those same groups, as a less successful Council strategy to deal with flytipping will impact the target areas the most, resulting in residents living in worse conditions as a result of excessive littering, flytipping etc. However the Council has other mitigation steps already in place to ensure minimisation of flytipping and littering and to enhance engagement and limit enforcement action. For instance, we ensure we issue communications with text translated into other languages (as an example, see Wastesavers' website with info on recycling in several languages <http://wastesavers.co.uk/at-home/>) or use pictorial leaflets so there is no language barrier when it comes to. We also ensure people have alternatives to dispose of their waste, so in addition to standard collections (weekly or fortnightly) and the provision of a Household Waste Recycling Centre, all of them free of charge, the Council offers a special collections service where residents can receive a booked collection where they can get rid of bulky items, house clearances etc., for a small fee.

So in a sense, although potentially negative to certain groups, this proposal will also lead to better conditions for all groups in the longer term, plus additional activities are in place to ensure people have enough information and council services to dispose of their waste by using the right channels.

8 Monitoring, evaluating and reviewing

This proposal is driven by external factors due to changes in legislation; however we monitor the number of flytipping incidents and number of enforcement actions, including the issue of FPN, as part of our performance monitoring regime; it also gets reported nationally by inputting figures into the flytipping national database. We will therefore be able to assess the impact on this proposal.

9 Involvement

This change is being considered due to new powers to issue FPN's using existing legislation, which needs to be considered as part of our statutory obligations. All this comes as part of the Council standard procedures so no communications campaign has been considered. However the Council issues statements etc. on the negative impact of littering and flytipping regularly, see attached latest statements from the relevant Cabinet Member on the use of Fixed Penalty Notices, as an example.



Comment on litter for
Argus 6 August (2).docx



Council gets tough
on litter louts - march

10 Summary of Impact (for inclusion in any report)

Equality Act 2010 AND Welsh Language

This proposal could potentially have both positive and negative impacts on the protected characteristic of 'Race', as there is correlation between areas of low income within the city and higher proportions of ethnic minority groups. However these areas are also more likely to be 'fly tipping hot spots' and therefore more likely to see the benefits in any reduction in littering and fly tipping. Therefore the proposal has a deterrent effect which will help tackle these issues, and long term will have a positive impact on hotspot areas, which have also been identified as linked to these target groups.

Wellbeing of Future Generations (Wales) Act 2015

- Long term: Flytipping is a behavioural issue; any long term strategy needs education and engagement programs in place; however part of the behavioural change will necessarily come from enforcement action –this will motivate change in some sectors of the population and will serve as example so engagement activities are more effective.
- Prevention: The issue of Fixed Penalty Notices has proven to have a very strong deterrent effect in the past, thus preventing other people from doing the same, with an overall reduction in the number of offences.
- Integration: Enforcement activities are part of wider communications, engagement and educational programmes to avoid flytipping, littering and antisocial behaviour also adds to this. They also contribute to make our city a more attractive place to live, work and invest and to act on deprived communities where local environment quality is poorest (littering and flytipping spots). There is an overall contribution to some of the WFG goals: healthier, more equal and globally responsible Wales.
- Collaboration: n/a
- Involvement: wider engagement activities are delivered in partnership with other organisations/community groups

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