

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