



Report Reference Number: E/19/29

To: Executive
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Status: Key Decision
Ward(s) Affected: All
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Title: Introduction of Fixed Penalty Notices for Householders Duty of Care Offences and Fly Tipping Offences

1. Summary:

Selby currently do not have an approved system of Fixed Penalty Notices (FPN's) for fly tipping offences that can be issued to householders or fly tipping offenders. On 7th January 2019 the Environmental Protection (Misc. Amendments)(E&W) Regs 2018 came into effect allowing for a FPN to be issued for Householder Duty of Care Offences as an alternative to prosecution to Householders. Also Section 33 and 34 of the Environmental Protection Act 1990 provide the powers to levy a FPN for the offence of fly tipping to offenders.

This report provides the legal and operational background for the Executive to consider and to make an informed decision on the proposal to introduce a system of FPN's for offences relating to fly tipping by the householder or the fly tipper.

2. Recommendations:

- i. That the Executive approves the introduction of a system of FPN's for Householder Duty of Care Offences with an FPN level of £400, with an early payment discount to £300 if paid within 28 days.
- ii. The Executive approves the introduction of a system of FPN's for fly tipping offences with an FPN level of £400 with an early payment discount to £300 if paid within 28 days.

- iii. To review annually the level of FPN charges to ensure consistency with other local authorities and ensure proportionality is maintained.

3. Reasons for recommendation

At the moment Selby District Council Enforcement Officers do not have powers or provision to issue FPN's for fly tipping or Householder Duty of Care. These powers and provisions do not currently exist within the enforcement procedures of Selby District Council. All neighbouring authorities currently use these powers and issue FPNs on a regular basis.

In 2017/2018 and 2018/2019 the Council received 658 and 614 reports of fly tipping incidents respectively. Each incident is investigated for evidence of the perpetrator resulting in 43 and 42 incidents where evidence was obtained. However, the only enforcement options available to Selby currently are to issue a formal warning letter, issue a littering fixed penalty of £50 maximum or formally prosecute. A formal prosecution requires strong evidence, legal resources and no guarantee of winning the case or the level of fine imposed.

Set out below is a summary of the outcomes of the incidents where evidence was gathered.

	Formal warnings	Littering FPN's	Prosecutions	Passed to legal – NFA (not in the public interest to prosecute)
2017/18	23	13	5	2
2018/19	19	16	7	0

Approval of FPN's for Householder Duty of Care at the level recommended coupled with a publicity campaign would increase awareness and act as a deterrent to householders and put Selby District Council in line with other Local Authorities in the area and all the North Yorkshire Districts.

Analysis of the above data and case files has identified that if the legislation had been in place from 2017 and the Council had implemented a system of FPN's a number of cases where formal warnings were issued would have resulted in the issue of an FPN. In 2017/2018 out of the 23 warning letters issued 11 would have resulted in an FPN. For 2018/2019 9 warning letters would have resulted in the issue of an FPN.

It is believed actively publicising the number of FPN's could also have resulted in reductions in the incidents of fly tipping through raising public awareness of their responsibilities for ensuring waste is disposed of legally.

4. Report

Nationally there has been a year on year increase in fly tipping offences. Over a third of the waste involved in illegal fly-tipping is from households, resulting in waste crime

costing the UK economy around £600 million every year, according to the Environment Agency.

The Householders Duty of Care under Section 34(2A) of the Environmental Protection Act 1990 requires occupiers of a domestic property to take all reasonable measures available to them to ensure that they only transfer household waste to an authorised person. This includes:

- Details of the business and of any vehicle used which can be linked to an authorised operator;
- A record of the operators registration or permit;
- A receipt for the transaction which includes the business details of a registered operator;
- A copy of the carrier's waste license or site's permit.

If an unauthorised waste carrier is found to be carrying waste and/or the waste is subsequently fly tipped and can be directly linked back to the householder, the householder has committed an offence under the Householder Duty of Care, if the householder cannot demonstrate that they took the above mentioned reasonable measures.

Changes in the law mean that householders are being held more accountable for their household waste and where it ends up. If householders are found to have disposed of waste with someone who is going to illegally dispose of it, they can be prosecuted or offered a duty of care FPN.

Prior to 2019 the only options open to the Council were to prosecute, issue a littering FPN of £50 or issue formal cautions for householder duty of care offences.

However, prosecutions are costly for the Council and for the Courts, and also result in householders being left with a criminal record. Having the option of a FPN can avoid unnecessary criminal prosecutions, maximise the use of limited resources and be more effective at changing behaviour. It is hoped that these changes will encourage householders to think about who is collecting their waste and where it will end up.

Fly-tipping investigations of household waste have identified an increasing trend amongst unlicensed waste operators who are now targeting householders via social media, local advertising and door-to-door sales pitches. They tempt people with cheap prices for the removal of large items of waste, including furniture, building waste and white goods which inevitably end up dumped on highways or land often just a few streets away.

It is often the householder that unwittingly finds themselves the victim of unscrupulous waste carriers who have charged householders for taking waste away only to dump it in a lay-by. These traders rely on householders not asking questions as to whether or not they are registered to carry and dispose of waste.

The level of the fine should be set within the limits set out in legislation ranging from £150 to £400. If the Council doesn't determine a level the default level is £200.

Councils can offer an early payment discount and the minimum discounted penalty is £120.

Other regional Local Authorities have set the charges as set out in the table below. The regional enforcement group members have advised that most councils who currently charge less than £400 will be increasing the fine to this level for regional consistency.

Local Authority	FPN – level of fine
Bradford	£250 reduced to £200 for early payment
Doncaster	£250 fixed – no discount for early payment
Sheffield	£250 fixed – no discount for early payment
Kirklees	£250 reduced to £200 for early payment
East Riding	£250 fixed – no discount for early payment
York	£250 reduced to £150 for early payment
Leeds	£250 reduced to £200 for early payment
Craven	£250 reduced to £150 for early payment
Harrogate	£400 fixed – no discount for early payment
Scarborough	£400 fixed – no discount for early payment
Hambleton	£400 reduced to £200 for early payment

In Selby, it is proposed that the Council set the Householders Duty of Care fixed penalty at £400, reduced to £300 for early payment and set a Fly tipping fixed penalty at £400, reduced to £300 for early payment.

The rationale for the proposed level of FPN is to ensure Selby has a consistent approach and level of fine as other regional Local Authorities.

Before the introduction of the FPN it is proposed that an extensive communications campaign is carried out to raise awareness of the new FPN.

The FPN will allow householders to discharge their liability for the offence by payment of the FPN. This will result in fewer householders receiving a criminal record for minor waste offences. Any income generated through FPN payments will be retained by the Council. Where FPNs are not paid prosecution files will be prepared.

As an alternative to issuing a FPN the Council will reserve the right to prosecute offenders or issue formal cautions as appropriate.

It is planned that through targeted educational advertising and communication campaigns the Council can raise public awareness of the issues, effects, pitfalls and possible criminal outcomes of unknowingly providing an unlicensed waste carrier with household waste that is later fly-tipped across the Selby District.

An enforcement officer meeting with partner agencies (Leeds, Kirklees, Hambleton, Bradford, East Riding, South East Lincs, Barnsley, Harrogate, Calderdale, York,

Sheffield, Keep Britain Tidy and the Environment Agency) discussed the effectiveness of the implementation of a system of FPN's in their respective areas.

Although no figures are available showing the number of FPN's issued all of the agencies supported the legislation and have introduced FPN's. The legislation has been well received and authorities are making good use of the powers granted. It was also commented that a loophole had been closed where historically householders have stated that they have employed the services of " a man with a van" to dispose of household waste resulting in many cases with no further action being taken against the householder. This legislation firmly puts the onus on the householder to ensure that waste is disposed of correctly and that checks should be made on any person removing waste on behalf of a householder.

North Yorkshire Police, Fire and Crime Commissioner have issued a letter to all North Yorkshire Local Authorities raising the issue of environmental crime and supporting a consistency of enforcement including FPN's across North Yorkshire (copy at appendix A). and consistency of approach by each Local authority.

5. Implications

5.1 Legal Implications

On 7th January 2019 the Environmental Protection (Misc Amendments)(E&W) Regs 2018 came into effect allowing for an FPN to be issued for Householder Duty of Care Offences as an alternative to prosecution.

The Fly tipping legislation has been in use for a number of years and is covered by the Environmental Protection Act 1990 – Sections 33 & 34.

The level of the fine should be set within the limits set out in legislation ranging from £150 to £400. If the Council can't determine a level the default level is £200. Councils can offer an early payment discount and the minimum discounted penalty is £120.

5.2. Financial Implications

Issuing a FPN as an alternative to prosecution or formal cautions will save Legal Officer time in dealing with these types of offences. Income received from payments will be retained by the Council and will offset the enforcement, legal and waste removal costs as well as increasing awareness.

5.3 Policy and Risk Implications

There are no direct policy implications as a result of this report other than maintaining consistency of approach with other Local Authorities in the region. Maintaining the District Councils current approach to fly tipping enforcement runs the risk of the District becoming an easy target for fly tippers.

5.4 Corporate Plan Implications

This report directly supports the Corporate Plan priority of being a great place to be and the objectives of safer neighbourhoods and more attractive environment.

5.5 Resource Implications

Implementing the proposed system of FPN's will enable the limited resource in the Enforcement Team to improve their effectiveness and raise public awareness of their responsibilities. Removing some workload from Legal Services will improve the ability of the team to handle a high case load.

5.6 Other Implications

Removing the threat of criminal prosecution from householders by implementing a system of FPN's is seen as a more equitable approach to this issue.

5.7 Equalities Impact Assessment

The application of an FPN will consider individual circumstances on a case by case basis in a similar manner that is used currently.

6. Conclusion

The recommendations will ensure consistency of approach with other Local Authorities in the region, act as more of a deterrent and raise the profile of householders' responsibilities for legal waste disposal. It will also provide the basis for more efficient enforcement to maximise the use of limited resources.

7. Background Documents

None

8. Appendices

A. Letter from North Yorkshire Police, Fire and Crime Commissioner

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