

REPORT TO: Environment & Urban Renewal Policy and Performance Board

DATE: 27th February 2019

REPORTING OFFICER: Strategic Director – Enterprise, Community and Resources

SUBJECT: Household Waste Duty of Care

WARD(S): Borough-wide

1. PURPOSE OF REPORT

- 1.1 This report sets out details of householders' legal "duty of care" to ensure they only give their waste to a licensed waste carrier and asks Members to consider the level of Fixed Penalty Notices for any failure by a householder to comply with their legal obligations.

2. RECOMMENDED: That

- 1) Members receive and comment upon the report;**
- 2) Members recommend to Executive Board the Fixed Penalty Notice amount and the discount for early payment that should be set for household waste 'duty of care' offences, and;**
- 3) A report be presented to the Executive Board recommending that the level of Fixed Penalty Notice and discount for early payment for household waste 'duty of care' offences be set at the amounts endorsed by Members of the Board.**

3. BACKGROUND

- 3.1 Under the Waste (Household Waste) Duty of Care (England and Wales) Regulations 2005, householders are required to take reasonable measures to ensure that household waste produced on their property is passed onto an 'authorised person'. An authorised person is defined in legislation but is normally a local authority or a registered waste carrier.
- 3.2 A householder's legal duty is set out in the 'Waste Duty of Care Code of Practice' issued by DEFRA. Failure to comply with the legal obligations is a criminal offence and the primary circumstances where a householder would be deemed to have done so are;

- Where an individual passes waste to an unauthorised waste carrier, and;
- Where fly-tipped waste is traced back to an individual who is found to have failed to take reasonable steps to ensure that they transferred the waste to an authorised waste carrier.

3.3 Those found breaching their duty of care obligations face prosecution and a fine of up to £5,000 in a Magistrates Court. Until recently, the only option for local authorities to address breaches of the duty of care Regulations was to take the offender to court. However, new Regulations were introduced in November 2018 which allows Fixed Penalty Notices (FPNs) to be issued as an alternative to prosecution. FPNs allow a more proportionate approach to deal with householders who breach their duty of care and provide an opportunity for an individual to discharge all liability for the duty of care offence by payment of a financial penalty.

4. SUPPORTING INFORMATION

Fixed Penalty Notices

4.1 Penalties for offences relating to breaches of duty of care obligations are required to be set within limits set by legislation as per the table below.

Default penalty	Minimum full penalty	Maximum full penalty	Minimum discounted penalty
£200	£150	£400	£120

4.2 Members will note that legislation sets a default penalty level of £200. This means that should the Council not specify its FPN levels for duty of care offences, the default penalty of £200 is automatically applied. Members are asked to consider whether the default penalty level of £200 should level be retained, or whether an alternative level should be set within the limits set by legislation.

4.3 In considering the FPN amount that should be set, Members' attention is drawn to the current FPN level for fly-tipping offences; which is £400. This is the maximum amount allowable under legislation and was approved by the Executive Board in March 2017. Setting the FPN level for duty of care offences at £400 would therefore mean that a householder who failed to comply with their legal obligations would face the same financial penalty as an individual who intentionally committed a fly-tipping offence; which many would perceive to be a more serious crime. Setting the FPN level at the highest allowable amount would however send a message to strongly encourage householders to ensure that they meet their legal obligations.

- 4.4 Setting the FPN level too low could result in the financial penalty for non-compliance being cheaper than the costs of paying an unauthorised individual to remove waste; with costs then being incurred by the Council or private landowners for clearing waste that may become fly-tipped. Setting the FPN level too low may also be seen by some that the Council is not providing enough of a deterrent to those who are aware of their legal obligations but choose to deliberately fail to comply with them.
- 4.5 With regards to the level of discount for early payment of an FPN issued for a duty of care offence, Members are asked to consider the currently endorsed full amount for FPNs for littering offences and the amount if paid within 10 days; which are £100 and £75 respectively. This means that currently, the Council's endorsed approach is to apply a 25% reduction for early payment.

Householder Awareness

- 4.6 Whilst the duty of care Regulations provide for formal enforcement action to be taken in cases of non-compliance, this is not deemed to be the primary intention for the Legislation. Instead, they provide an opportunity for the Council to work with householders to help ensure that waste is dealt with properly and responsibly and does not get into the hands of unauthorised waste carriers, or other irresponsible individuals, who may then resort to fly-tipping.
- 4.7 Waste is often not fly-tipped by the individual that produced it but by the person or business they used to take it away. Some people pose as legitimate waste carriers and then fly-tip waste and there are incidences of householders paying a "man in a van" to take away their unwanted waste only for it to be fly-tipped or disposed of at an unlicensed site. Reducing the flow of household waste to unauthorised carriers or irresponsible individuals will help the Council in its efforts to reduce incidents of fly-tipping or other illegal waste disposal practices.
- 4.8 It is likely that many householders will be unaware of their legal obligations under the 'Duty of Care' Regulations or of the consequences of failing to take reasonable steps to determine the person that took their waste was authorised to do so. To this end, whilst enforcement action would be considered where appropriate, the Council will aim to reduce breaches of the household waste duty of care by ensuring that householders are fully aware of their legal obligations. There are an increasing number of individuals offering services to take away waste and provide 'tip runs', particularly on social media, and it is vitally important that the Council does all it can to ensure that householders are fully aware of their duty of care requirements to help them avoid falling victim to fly tippers, and running the risk of action being taken against them as result.

- 4.9 An authorised waste carrier may still fly-tip waste so it is important that individuals gather as much detail as possible about a person who is taking their waste away; not only to meet their legal obligations, but also because if the waste is found fly-tipped the information can be used to help the Council identify the offender.
- 4.10 Officers will take the opportunity to inform householders of their duty of care obligations in a number of ways; including information leaflets, social media and by placing information on the Council's website. It is also planned that information is featured in an edition of the 'Inside Halton' magazine.
- 4.11 Information provided will advise householders who are looking to use a private contractor, or any other person to remove waste from their property, that they can meet their legal obligations by carrying out checks beforehand to establish that they are a genuine and reputable company or individual. Actions that householders will be advised to perform will include;
- Ensuring that the individual or company is a registered waste carrier and making a note of their waste carrier number (This can be done by asking to see their waste carrier licence issued by the Environment Agency or checking online on the Environment Agency website);
 - Asking the waste carrier to provide their full address and telephone number;
 - Asking for details of where they are proposing to take their waste;
 - Recording the registration number of any vehicle removing waste from their home, and;
 - Not being afraid to ask questions as a reputable collector will happily provide any information requested.
- 4.12 Members are asked to consider the Fixed Penalty Notice amount and discount for early payment for household waste duty of care offences and endorse that such amounts be presented to the Executive Board for consideration and approval.

5.0 FINANCIAL AND RESOURCE IMPLICATIONS

- 5.1 There are no new financial implications as a result of this report. However, the use of FPNs to deal with duty of care offences could help avoid the costs involved in prosecuting individuals who commit such offences.

6.0 POLICY IMPLICATIONS

6.1 The new provisions can be accommodated within existing Policy.

7.0 IMPLICATIONS FOR THE COUNCIL'S PRIORITIES

7.1 Children and Young People in Halton

No direct impact.

7.2 Employment, Learning and Skills in Halton

No direct impact.

7.3 A Healthy Halton

By enhancing its ability to reduce incidents of fly-tipping, the Council will be making a positive contribution towards improving the local environment and the appearance of the borough; which shall in turn have an overall beneficial effect on health and wellbeing.

7.4 A Safer Halton

Effective use of its regulatory powers will demonstrate that the Council is committed to dealing with environmental crime. The Council's efforts to improve environmental standards and reduce environmental crime will have a positive impact upon the Safer Halton Priority.

7.5 Halton's Urban Renewal

No direct impact, but overall environmental benefits from reducing incidents of fly-tipping can help make the borough a more attractive location for investment.

8.0 RISK ANALYSIS

8.1 Failure to make full use of legislative powers available to deal with duty of care offences may lead to criticism of the Council; thereby damaging its reputation.

9.0 EQUALITY AND DIVERSITY ISSUES

9.1 The Council aims to be consistent and even-handed in all regards. Taking enforcement action to deal with duty of care offences is not intended to have either a positive or negative impact upon equality and diversity or apply differently to any particular group.

10.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972

10.1 There are no background papers within the meaning of the Act.