

Neighbourhood Services Committee



Date of meeting 9 September 2021

Title	Household Waste Duty of Care
Purpose of the report	To make a Key Decision
Report Author	Jackie Taylor - Group Head of Neighbourhood Services Martin Cole - Community Safety Manager
Ward(s) Affected	All Wards
Exempt	No
Exemption Reason	n/a
Corporate Priority	Clean and Safe Environment
Recommendations	Committee is asked to: 1. Agree that Spelthorne Officers will use additional enforcement powers granted under the amended Environmental Protection Act 1990, to issue Fixed Penalty Notices to individuals where there is evidence that they have breached their duty of care for disposal of household waste. 2. Delegate authority to the Group Head of Neighbourhood Services to authorise appropriate officers to issue Fixed Penalty Notices under section 34(2)(a) of the Environmental Protection Act 1990 to persons whom the officer has reason to believe has failed to comply with their duty of care in the disposal of controlled waste.
Reason for Recommendation	The implementation of a Fixed Penalty Charge of £200 for the failure to comply with the duty of care (household) will contribute to the Council's commitment to a stronger approach to enforcement.

1. Key issues

- 1.1 Fly-tipping is the illegal and unauthorised dumping of waste, and it is a significant problem to local communities and a risk to the environment. Dealing with all aspects of fly-tipping is a drain on Council resources and undermines legitimate waste businesses. The problem of fly-tipping is greatly added to by householders failing in their duty of care as to how their household waste is disposed of. The number of fly tipping incidents has risen in Spelthorne as can be seen from the table below, which shows a sharp increase since 2014/15 and particularly in the last year. It is accepted that

some of this increase may be due to the issues related to the pandemic and the waste transfer station being closed but are an excuse for anyone to fly tip their own waste or allow others to do so on their behalf.

Year	Total number of reported Incidents	Number of Household Incidents
2014/15	382	208
2015/16	439	174
2016/17	772	436
2017/18	995	555
2018/19	994	455
2019/20	1016	533
2020/21	2311	1264

- 1.2 Fly-tipping significantly impacts on local communities, blighting our neighbourhoods and rural communities, and places a significant financial burden upon the Council (or the landowner where waste is fly tipped on private land). In addition, the actions of unscrupulous waste operators undercut legitimate businesses which are operating within the law.
- 1.3 The cost of the removal and disposal of fly-tipped waste is borne by Surrey County Council however, the cost of all fly-tip investigations is borne by Spelthorne Borough Council. The costs for disposal and investigation are shown below. You can also see from the above chart that at least half of all fly-tipped waste dealt with by Spelthorne officers is household related waste.

Year	Cost of removal and disposal	Investigation Costs
-	SCC Cost	SBC Cost
2015/16	£63,554	£19,272
2017/18	£98,057	£39,208
2018/19	£84,549	£38,656
2019/20	£68,911	£44,719
2020/21	£140,749	£84,383
2021/22 1 st Quarter	£26,545	£19,107

- 1.4 The high levels of household waste currently being illegally disposed of has led the UK Government to introduce the new offence of Household breach of duty. Under Section 34(2)(a) of the Environmental Protection Act 1990 (EPA), all occupiers of domestic properties are required to take reasonable measures to ensure that waste produced on their property is only transferred to an authorised person for proper disposal. Nationally, two thirds of fly-tipping incidents involve household waste, often because of an individual breaching their duty of care to ensure their waste is taken away by an authorised carrier. The household waste duty of care Fixed Penalty Notice (FPN) is intended to reduce the flow of waste to those who would go on to dispose of this illegally or fly tip it.
- 1.5 The household breach of duty of care offence is in addition to current offences for which a householder can be dealt with and these include littering and fly-tipping offences for which Fixed Penalty Notices can be issued.
- 1.6 Persons who purport to be commercial waste carriers are subject to the requirements to be in possession of a current Environment Agency upper or lower tier waste licence (depending on the level of waste carried), they must also issue waste transfer notices to clients (explains how and where the waste is disposed of). Any carrier who does not have a waste licence and or fails to issue a waste transfer notice is currently liable to be issued a £300 FPN for each offence. In addition, they would also be liable for a £400 FPN for fly-tipping, again for each offence.
- 1.7 Illegal waste carriers would be prosecuted provided that the householder whose rubbish was taken co-operated by providing a full statement. The penalty for the waste licencing offences is a fine up to £5,000 and the fly-tipping offences a maximum of £50,000- or 1-year imprisonment if dealt with in the Magistrates Court and an unlimited fine and/or a maximum of 5 years imprisonment in the Crown Court.
- 1.8 Section 34(2)(a) of the EPA 1990 creates the offence of failing to comply with their duty of care in the disposal of controlled waste:
- “It shall be the duty of the occupier of any domestic property in England or Wales 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. Depositing controlled waste or knowingly permitting controlled waste to be deposited on any land unless the person has a valid permit.”***
- 1.9 Examples of where the household waste duty of care has been breached include (but are not limited to): -
- Where fly tipped waste can be traced back to an individual, who is found to have failed to take reasonable steps to ensure that they have transferred the waste to an authorised person.
 - Where an unauthorised carrier is found to be carrying household waste that was directly transferred to them by the occupier of a domestic property; or

- Where an individual is found to have transferred their household waste to an unauthorised person at a site that does not have a permit or exemption.
- 1.10 In all investigations of breaches of household waste duty of care, fly-tipping offences, individuals will be invited into the Council offices for a formal Police and Criminal Evidence Act 1984 (PACE) interview under caution which is recorded. At these interviews the evidence recovered is produced to the individual and they are invited to comment, they will then be given the opportunity to demonstrate that they took reasonable steps to determine that the person who took their waste was authorised to do so.
- 1.11 In all such circumstances, the Council will consider the proportionate case disposal in individual circumstances and will also consider any mitigating circumstances. Currently the options that are available to investigating officers are no further action, education regarding their responsibilities and the issuing of either a verbal or written warning. If the circumstances warrant it then currently an £80 FPN for littering or £400 FPN for fly-tipping could be issued and the final sanction could be that an individual may be prosecuted under the relevant section of the EPA 1990.
- 1.12 Therefore, if a person was found to have contravened this new provision, then they would be dealt with as shown above in para 1.10 and 1.11 albeit that for this new offence the FPN charge would be different.
- 1.13 From February 2019, it has been possible for local authorities to introduce FPNs for breaches of the householder duty of care, which is provided by Section 34(2)(a) of the EPA 1990 (inserted by the Household Waste Duty of Care Regulations 2005). The regulations introduce new powers for local authorities to issue FPNs for the household breach of duty of care, providing Councils with an alternative remedy to prosecutions.
- 1.14 This change provides local authorities with a more immediate, efficient, and proportionate response to fly tipping. The householder's involvement and the introduction of these FPNs would provide an additional tool for Spelthorne to tackle fly-tipping. The new FPNs for householder breach of duty of care would not be appropriate for minor breaches which do not lead to environmental harm. Nor would it be appropriate where an individual intends for waste to be collected by the local authority collection service, for instance where this is put out in household waste or recycling bins.

See - Government Guidance on Fixed penalty notices: issuing and enforcement by councils:

<https://www.gov.uk/government/publications/household-waste-duty-of-care-fixed-penalty-notice-guidance/guidance-for-local-authorities-on-household-waste-duty-of-care-fixed-penalty-notices>

- 1.15 Under these new Regulations Spelthorne is permitted to set its own penalty levels within the limits set by the Government, i.e., between £150 and £400, as well as any discount criteria, as shown in the table below:

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

Breach of duty of care				
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1.16 The statutory minimum fine is £150 with an early payment discount of £120 if paid within 7 days. **Officers consider that imposing the default penalty £200 fine, with no early payment discount would be the greatest deterrent.** The intention is that this will lead to a decrease in the number of small-scale household breach of duty of care offences that are currently driving up the fly-tipping incidents in Spelthorne, thereby helping the borough to remain clean and safe. The control of fly-tipping is managed by the Council's Neighbourhood Services division and the Joint Enforcement Team (JET). The issuing of these additional FPNs would be undertaken by the Councils JET officers.

1.17 Fly-tips, and therefore the amount of household waste, can vary hugely in their scale, impact on the environment and cost of clearing, and it is useful to have a range of sanctions available to us which can be implemented in proportion to the severity of the offence. This gives the option to issue a penalty without the need to allocate the time to prepare prosecution papers and attend court.

2. Options analysis and proposal

2.1 The Government introduced the household breach of duty of care to stem the amount of household waste being fly tipped and ensure that residents are required to take more care about what happens to their waste.

2.2 The duty of care requires householders to take all reasonable measures available to them in the circumstances to ensure that they only transfer household waste produced on their property to an authorised person. This reduces the chance of waste ending up in the hands of those who would fly-tip.

2.3 Currently Spelthorne can issue an FPN for littering of £80 or for fly-tipping of £400, but in each case the evidence needs to be sufficient for a prosecution to be brought should the FPN remain unpaid.

2.4 The fixed penalty notice (FPN) for breaches of the household waste duty of care provides an alternative option for enforcement. There is no obligation to offer an alleged offender an FPN. However, it can be more proportionate than prosecution through the courts.

2.5 Option 1

Do nothing - If we do nothing the cases and relevant costs to remove the domestic waste being fly-tipped will increase.

2.6 Option 2

Preferred option - The Household Waste Duty of Care Regulations 2005 allows the fine for a FPN to be set between £150 and £400. The existing fine for small fly-tips in Spelthorne is set at the maximum £400 and the FPN for littering at £80. Taking these two existing fines into account, the proposed middle payment of £200 would send a strong message to householders about how they dispose of their waste. It would also allow for the more stringent £400 to be issued if there is evidence of the householder having fly-tipped the rubbish themselves. **Setting the level at the default penalty £200 with no**

reduction for early payment is appropriate and is the preferred and recommended option.

Option 3

There is an option to set an alternative level of fine and/or a discount for early payment as outlined in **1.15** above. The maximum fine being £400, the minimum £150 and the default payment set at £200. A discounted penalty of a minimum of £120 could also be set provided payment was made within 7 days as opposed to the 14 days normally allowed.

This option would require an upgrade to the Councils payment system before any discounted payments could be accepted.

Financial implications

- 2.7 In accordance with the EPA 1990 and the new supporting Regulations, any income received by the Council from FPNs would be a cost recovery exercise **(see 1.3 above for costs incurred)** and any monies in excess would have to be spent on functions relating to litter, dog fouling and cleansing. It could not be used as a means of generating income for other uses. It is proposed that part of this income would be used to widely communicate the potential consequences when residents do not carry out their duty of care in arranging for disposal of the waste generated from their property.
- 2.8 The introduction and issuing of the new fixed penalties for offences of household breach of duty of care will be managed within existing resources.

3. Other considerations

- 3.1 The ability to issue FPNs for breach of the household duty of care in relation to fly tipping on the public highway and Council land should have a positive impact on the health and well-being of all residents of the borough including vulnerable adults and children.
- 3.2 Communication of this additional FPN for breach of household duty of care in cases of fly tipping is key to ensuring that our residents are equipped with the relevant information on how to safeguard themselves from becoming a victim of illegitimate waste carriers. Whilst much information has been publicised by both Spelthorne Council and Surrey County Council, we will continue to highlight this issue via social media and the Bulletin, commencing with an article in the next Spelthorne Bulletin.
- 3.3 We will not view our enforcement regime in isolation. In addition to taking enforcement action, we aim to reduce breaches of the household waste duty of care through clear, well-designed communications and communicate to the community our reasons for the use of the FPN and make it clear that enforcement is about preventing waste crime.

4. Equality and Diversity

- 4.1 The Council aims to be consistent and even-handed in all regards. Taking enforcement action to deal with breach of duty of care offences is not intended to have either a positive or negative impact upon equality or diversity or apply differently to any group.
- 4.2 Spelthorne treats all its residents on a balanced and equal basis and will be fair and proportionate in its investigations and any potential prosecutions into fly tipping occurrences.

5. Sustainability/Climate Change Implications

- 5.1 As a Council we want a clean, green, and sustainable borough where we are all aware of what we need to do to tackle climate change and reduce pollution, waste, fly-tipping, and graffiti.
- 5.2 Fly-tipping is unsightly, impacts on the environment in terms of pollution and poses a danger to wildlife. Areas where the problem persists look neglected and give the impression that residents do not care about their local environment. Obviously, this is not the case and together we need to get the message out that we are not willing to tolerate this illegal behaviour.

6. Timetable for implementation

- 6.1 If approved, we would be able to implement these proposals with immediate effect. The current FPN books already accommodate the issue of FPNs for the Household Waste Duty of Care.
- 6.2 To ensure that residents are fully aware and engaged with the introduction of this new FPN a media campaign will be undertaken. We would allow a four week grace period whereby a warning letter would be sent if an offence is detected. Thereafter we would issue the FPN or consider prosecution depending on the severity of the matter.
- 6.3 **Background papers:**

The Waste (Household Waste Duty of Care) (England and Wales) Regulations.
<https://www.legislation.gov.uk/ukxi/2005/2900/made>

Explanatory Memorandum to the Waste (Household Waste Duty of Care) (England and Wales) Regulations 2005.
<https://www.gov.uk/government/publications/household-waste-duty-of-care-fixed-penalty-notice-guidance/guidance-for-local-authorities-on-household-waste-duty-of-care-fixed-penalty-notices>