



City of Westminster Cabinet Member Report

Meeting / Decision Maker:	Cabinet Member for Public Protection
Date:	16 September 2016
Classification:	General Release
Title:	Review of Waste Enforcement
Wards Affected:	All
City for All 2 Summary	<p>Inform businesses, residents and visitors of their responsibilities, target those acting irresponsibly (CITY FOR ALL - CHOICE)</p> <p>Support every neighbourhood to remain a great place to live, work and visit. (CITY FOR ALL - HERITAGE)</p>
Key Decision:	Approval required for the proposed enforcement approach and charging structure for Fixed Penalty Notices under the Environmental Protection Act 1990 as amended
Report of:	Sara Sutton, Director, Public Protection and Licensing

1. **Executive Summary**

- 1.1 This briefing provides options for the City's future waste enforcement approach, and proposals for a new Fixed Penalty Notice (FPN) fee structure. Options have considered various recent amendments to legislation.
- 1.2 The Unauthorised Deposit of Waste (Fixed Penalties) Regulations came into effect in May 2016. These regulations introduced new FPN provisions for fly-tipping instead of enforcement solely through prosecution, which was previously the case. Fine levels were also introduced with a minimum fine of £150, and maximum of £400. Early repayment is also possible.
- 1.3 The Deregulation Act 2015 has amended section 46 of the Environmental Protection Act (EPA) 1990 – it introduces a warning notice and FPNs where residents fail to

dispose of waste as specified by their local authority. It also decriminalises this offence.

- 1.4 Our overall aim is to improve compliance, and to encourage residents and businesses to work with us to promote a cleaner and greener environment. Compliance will be achieved through providing good, accurate information on arrangements and options for waste disposal. Enforcement will be focused, ensuring best use of resources and effective use of legislation against those who act irresponsibly, or who persistently offend.
- 1.5 Enforcement will continue to align with the Authority's Enforcement Concordat; ensuring processes are fair and transparent. The Authority's enforcement policy has been reviewed to ensure clear and relevant information regarding waste disposal is provided. The policy will be made available on the website and will cover all aspects of waste enforcement including Bags off Street, collection times, legislation, prosecutions and appeals. Policy details can be found at **Appendix One (attached)**.

2 The Legal Framework

2.1 Enforcement options available within the EPA are detailed below:

- **Section 87/88** – this section relates to **littering offences**, specifically materials often associated with smoking, eating and drinking, including cigarette butts and chewing gum. FPNs are payable at a fee of £80, with a reduction to £50 for early payment. Westminster, as with some other authorities, has chosen to use this section for fly-tipping offences in the past. Non-payment of a littering FPN may result in a prosecution for the original offence.
- **Section 33** – this section relates to **fly-tipping**, that is, illegal dumping of waste. This section provides for a FPN for fly-tipping offences. The minimum level for a FPN is £150.00 and the maximum is £400.00. There is discretion to reduce this payment to a minimum of £120, if payment is made within ten days. Previously there was no FPN for the offence of fly-tipping, and authorities could only prosecute. Non-payment of a fly-tipping FPN may result in a prosecution for the original offence.
- **Section 34** – this section covers a general 'duty of care' which is placed upon businesses. Businesses are required to have arrangements in place with a registered waste carrier to collect their waste. Failure to provide two years evidence of waste management arrangements within a specified time period will result in a FPN of £300. There is discretion to reduce this payment to £180, if payment is made within ten days. Failure to meet 'duty of care' can result in prosecution.

- **Section 46** – this section requires residents to place their waste in receptacles for collection, as specified by the local authority. Where an offence occurs, a **warning notice** must be served on the resident initially, and this is valid for one year. Any further offences within the one year period can result in a FPN, with a payment of £110, with a reduction to £75 for early repayment.

Amendment to the EPA by the Deregulation Act 2015 means that any failure to pay does not result in prosecution - it would have to be repaid as a civil debt.

- **Section 47** – this section requires businesses to place their waste in receptacles for collection as specified by the local authority. Failure to do so can result in a FPN, with a payment of £110, and a reduction to £75 for early repayment. In this case, failure to pay may result in prosecution for the original offence.

3 **Right to appeal**

- 3.1 Under the Environmental Protection Act 1990 there is no formal right of appeal against a FPN, other than via the courts. We propose to introduce an informal representation process allowing customers the opportunity to provide mitigation in writing for consideration. Decisions regarding the validity of all representations will be made during this process.

4. **Key Points to note**

- 4.1 All commercial activity must have legitimate waste disposal arrangements in place, within s.34 of the EPA. Our aim is to focus on those businesses which are failing to meet this general duty of care, and who subsequently also fly-tip. By continuing to carry out waste activities illegally they not only blight their local environment, but do so at a cost to others within their local community. Alternatively, they bring their waste into the City, and create blight away from their main area of activity.

Our approach is to ensure these businesses experience substantial cost as a result, from the outset. FPNs payable for businesses have therefore been set at the maximum level, compared to resident fees. This is to reflect the responsibility placed upon them, and to act as a realistic deterrent, before prosecution becomes the appropriate sanction.

- 4.2 Residents who place their waste outside of collection times specified by the Council, will be subject to a warning notice initially, which lasts for one year. Subsequent offences within the one year period will result in a FPN. This will be supported by on-going educational work to encourage and reinforce behavioural change.
- 4.3 FPNs are considered as a deterrent to those offending, and alongside on-going education, support a reduction in the number of incidents of small scale fly-tipping. However, FPNs are not considered the appropriate sanction for larger scale offences, or for repeat offenders.

Circumstances most likely to lead to immediate prosecution will include the following:

- Multiple offences or repeat offenders i.e. will not be given the opportunity to discharge liability via a FPN
- Large scale fly-tipping
- Hazardous waste
- Duty of Care – no registered waste carrier or evidence of such (payment of FPNs without producing a valid Waste Transfer Note)
- Non control of waste (spillages etc)

4.4 There will be opportunity to make an early repayment for all FPNs issued.

4.5 A new informal representation process will be introduced.

4.6 The proposed commencement date for the new fee structure and approach is 3rd October 2016

5. Financial Implications

5.1 Whilst implementation of the proposals will have the incidental effect of generating additional revenue, it is difficult to assess the level of change in customer behaviour, and any subsequent financial impact arising from the revised enforcement approach and fee structure. A financial review will take place post implementation and any resulting impacts will be considered during the future years' budget planning cycles.

5.2 A more focused, robust approach towards prosecution may increase legal costs incurred. Legal processes will be reviewed to ensure prosecutions are expedited in the most cost effective way. It is difficult to assess any increase in legal costs at this stage, and the ability for cost total recovery. Legal costs will therefore be reviewed post implementation to assess impact.

6. Staffing

6.1 City Inspectors will continue to undertake enforcement duties as before. The profile of offences and associated numbers may change over time, depending on change in customer behaviour. No changes in City Inspectors are anticipated at this time. Training will be arranged to ensure City Inspectors are fully informed of any agreed changes in procedures and charges levied.

7. Consultation

7.1 Proposals are based on requirements of the EPA and associated statutory guidance. All fee recommendations are within limits set. No consultation is proposed, however all ward councillors will be sent a briefing summarising the main points prior to implementation.

8. Recommendations

- 8.1 That the Cabinet Member for Public Protection approves the proposed approaches to waste enforcement and fee structure as set out in **Appendix two**.

If you have any queries about this Report or wish to inspect any of the Background Papers please contact:

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APPENDIX TWO

Offence Type	Description	Level of Penalty Charge	
		RESIDENT	COMMERCIAL
EPA s87	Littering - detritus from eating /drinking/gum/cigarette butts	£80 with a reduction to £50 for early repayment	N/A
EPA s33	<p>Fly-tipping – illegal dumping of waste.</p> <p>To apply to : one bag (incl recycling bags) or more, large items, white goods, cardboard on the public highway and waste found alongside Big Black Bins and Micro Recycling Centres.</p>	<p>First offence for household waste – FPN £200 with a reduction to £120 for early repayment</p> <p>Second Offence – FPN £400 with a reduction to £240 for early repayment</p> <p>Subsequent offences - prosecution</p>	<p>First offence for Trade/business waste – FPN £400 with a reduction to £240 for early repayment</p> <p>Subsequent offences – prosecution</p>
EPA s34	<p>‘Duty of Care’ –</p> <p>Applies to all (residents and businesses). The duty of care; is a legal requirement, to prevent the escape of controlled waste. Controlled waste is household, industrial and commercial waste.</p> <p>Failure to take all reasonable steps to ensure that waste is disposed of safely and correctly under this section can result in prosecution for persistent offenders irrespective of paid or unpaid fixed penalty notices or production of waste transfer note</p>	<p>Level of charge will be dependent on the original offence e.g. £80 for littering FPN or £200 for fly-tipping plus possibility of prosecution</p>	<p>Level of charge will be dependent on the original offence e.g. £80 for littering FPN or £200 for fly-tipping plus possibility of prosecution</p>

EPA s34 (A)	<p>‘Duty of Care’ – requirement to provide evidence of waste management arrangements within specified time period (7 days)</p>	N/A	<p>Failure to provide evidence results in a FPN £300 with a reduction to £180 for early repayment</p> <p>Payment of a FPN does not discharge the need to prove a registered waste carrier. Continued failure to provide evidence will result in prosecution.</p>
EPA s46	<p>Requirement for household waste to be placed in appropriate receptacles and at specified collection times</p>	<p>First offence - Warning notice valid for 1 year.</p> <p>Subsequent offences – FPN £110 with a reduction to £75 for early repayment.</p> <p>No prosecution permitted civil debt recovery only.</p>	N/A
EPA s47	<p>Requirement for commercial waste to be placed in appropriate receptacles and at specified collection times</p>	N/A	<p>First and second offences – FPN £110 with a reduction to £75 for early repayment.</p> <p>Subsequent offences can lead to prosecution.</p>

NB: For individual Cabinet Member reports only

For completion by the **Cabinet Member** for Public Protection

Declaration of Interest

I have <no interest to declare / to declare an interest> in respect of this report

Signed: _____ Date: _____

NAME: _____

State nature of interest if any

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(N.B: If you have an interest you should seek advice as to whether it is appropriate to make a decision in relation to this matter)

For the reasons set out above, I agree the recommendation(s) in the report entitled **Review of Waste Enforcement** and reject any alternative options which are referred to but not recommended.

Signed

Cabinet Member for Public Protection

Date

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment:

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If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, the Director of Law , Chief Operating Officer and, if there are resources implications, the Director of Human Resources (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Cabinet Member: Your decision will now be published and copied to the Members of the relevant Policy & Scrutiny Committee. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication to allow the Policy & Scrutiny Committee to decide whether it wishes to call the matter in.