



Dorset Waste Partnership Joint Committee

Date of Meeting	12 September 2016
Officer	Interim Head of Service (Strategy), Dorset Waste Partnership
Subject of Report	Fixed penalty notices (FPNs) for fly-tipping and use of an external company to issue FPNs
Executive Summary	<p>The area covered by the Dorset Waste Partnership is subject to fly-tipping and the number of incidences is increasing. On the 9th May 2016, legislation came into force which allows local authorities to serve fixed penalty notices (FPNs) on perpetrators as a cheaper and quicker alternative to prosecution. This paper seeks approval to set the level of fine at £400 for the new fly tipping FPNs.</p> <p>The second part of this paper details the current arrangements with regards to enforcement in Dorset, and seeks agreement to recruit the services of an external environmental enforcement company to issue FPNs for waste offences on behalf of the DWP. This will increase the level of environmental enforcement activities in the county and allow the DWP enforcement team to focus more on education/campaign work to prevent environmental crime.</p>
Impact Assessment:	<p>Equalities Impact Assessment:</p> <p>N/A</p>
	<p>Use of Evidence:</p> <p>The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016.</p>

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	<p>Budget:</p> <p>No direct impact on budget.</p> <hr/> <p>Risk Assessment:</p> <p>Having considered the risks associated with this decision using the County Council's approved risk management methodology, the level of risk has been identified as: Current Risk: LOW Residual Risk: LOW</p> <hr/> <p>Other Implications:</p> <p>None</p>
<p>Recommendation</p>	<p>It is recommended that</p> <p>(i) A charge level of £400 is set for fixed penalty notices made under The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016;</p> <p>(ii) The Director of the DWP is authorised to procure and appoint the external company;</p> <p>(iii) A 12 month pilot is carried out with an external company to issue FPN's for littering, fly-tipping and failure to produce duty of care documents on behalf of the DWP.</p>
<p>Reason for Recommendation</p>	<p>It is a legal requirement to specify a charge under the regulations. The recommended charge is the maximum amount set out in the legislation.</p> <p>The appointment of an external company will allow DWP to increase the level of enforcement activities undertaken within the current blend of education/advice and enforcement.</p>
<p>Appendices</p>	<p>Appendix 1: Background Information on Fly tipping Appendix 2: Background information on current DWP enforcement arrangements</p>
<p>Background Papers</p>	<p>Dorset Waste Partnership Enforcement Policy Dorset Waste Partnership Enforcement Scope of Work</p>
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1. Background information on fly-tipping

- 1.1 The Dorset Waste Partnership (DWP) is subject to persistent fly tipping and the number of incidences is on the increase. In 2015/16, there were 2,117 recorded incidents of fly-tipping, an increase from 1,746 in 2014/15 and 1,994 in 2013/14. The clearance of fly tipping costs the DWP approximately £110,000 per year.
- 1.2 The increase in fly-tipping in Dorset is following a national trend. More information and comparable statistics with neighbouring authorities can be seen in Appendix 1. It should be noted that this increase in fly-tipping might be, in part, due to the improved methods of reporting fly-tipping incidents.

2. The Unauthorised Deposit of Waste (Fixed Penalties) Regulations

- 2.1 The unauthorised depositing of waste commonly known as fly tipping is an offence under Section 33 of The Environmental Protection Act 1990. The legislation has recently been amended by The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 to allow fixed penalty notices (FPNs) to be served as an alternative to prosecution.
- 2.2 The legislation to allow FPNs to be served came into force on the 9th May 2016. This enables the enforcing authority to decide the amount of fixed penalty payable between a range of not less than £150 and not more than £400. If no level is set, then a default amount of £200 is automatically set. A reduced fee for early payment may also be considered.
- 2.3 The DWP have been delegated powers by Christchurch Borough Council, East Dorset District Council, North Dorset District Council, West Dorset District Council and Weymouth and Portland Borough Council to enforce this piece of legislation on their behalf. Purbeck District Council retained this service and conduct enforcement within the district council. On 14 June 2016, Purbeck District Council agreed to set the level of FPN at £400 with no reduction for early payment.
- 2.4 The DWP are recommending that the level of FPN set is £400 with a 50% reduction if paid within a 7 day period. There is a risk associated with setting the fine at this maximum amount that perpetrators will refuse to pay and the case will then have to be taken through the court proceedings.
- 2.5 An FPN should not be issued unless there is a full intention to follow-up non-payment through the courts. Formal proceedings take significant staff resources to complete and have a large cost associated with them. A fly-tipping case was taken to court by the DWP in June 2016, which took five months to prepare and cost £3,174. The perpetrator was found guilty and fined £265 costs, significantly less than the cost of taking it to court. Should it be decided to not take perpetrators to court for non-payment, this course of action may become widely known through the media, undermining the whole FPN approach and making it meaningless.

3. Appointment of a third party to issue FPN's for waste offences

3.1 Currently the DWP has two Enforcement Officer posts (one is currently vacant and being covered by agency staff). Due to the geographical size of the DWP area the Enforcement Team are limited in what they can achieve. Therefore, there are five key areas of work which are prioritised:

- Serious fly-tipping cases
- Abandoned vehicles
- Issuing of Fixed Penalty Notices

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- Duty of Care legal obligations
- Development of targeted campaigns followed by enforcement (use of FPN's)

3.2 Many other local authorities have recruited the services of an external enforcement company to increase their enforcement. The focus of these external companies is to provide a self-financing environmental enforcement service delivered at zero cost to the local authority. These private firms can offer services to enforce the offences of:

- S87 of the Environmental Protection Act 1990 - Littering
- S33 of the Environmental Protection Act 1990 - Fly tipping
- S34 of the Environmental Protection Act 1990 - Commercial Duty of Care
- S46 of the Environmental Protection Act 1990 - Domestic duty of care
- Other environmental crimes such as dog fouling.

3.3 DWP officers have met with two of the main providers of this service, 3GS and Kingdom, and they are able to offer a 12 month pilot scheme for the area. They would provide uniformed, trained officers to issue FPN's for the agreed offences. The company would then monitor payment of these FPN's and chase any non-payment and prepare case files for prosecution in court for any unpaid fine. Both firms claim to have an average repayment rate for FPN's of 75 – 80%. If it is agreed to use one of these companies, the DWP would agree a code of conduct for officers to ensure they exercise discretion when dealing with (for example) young and vulnerable people.

3.4 Any contractor providing these services would need to be competitively procured in accordance with the Contract Procedure Rules. The appointed contractor would work closely alongside the DWP Enforcement team to ensure activities are co-ordinated and in accordance with DWP policy and procedures. Littering enforcement actions would be targeted in areas with high footfall and where littering is prevalent, and particular action would be taken in relation to cigarette ends and chewing gum. Activities around fly-tipping and duty of care would be based on information and knowledge sharing with DWP officers as it notoriously difficult to catch perpetrators in the act of these crimes.

3.5 Based on our discussions with possible companies, the provision of this service would be cost neutral to the DWP. However, it must be noted that if the appointed contractor does not generate enough income to 'break even' then the DWP would be liable to some element of cost-sharing for the service. Monthly performance statistics would be monitored to provide an early warning of this so that any budget provision could be made from existing budgets.

3.6 Over 40 councils are currently using services provided by external enforcement companies for environmental crimes. Two examples from the South West are Torbay Council, which have 3 patrolling officers, and Bournemouth Borough Council who have 5 patrolling officers. Torbay have issued more than 600 FPN's for littering and dog fouling since September 2015 and Bournemouth issued 290 FPN's over the initial 3 month period of their on-going pilot. The public reaction to using this approach has been mixed in areas across England. Some view it as overly punitive, some as a crude way of generating income and some have welcomed it as a contribution to improving the environment and people's behaviour. If the pilot were to go ahead, then clear communication messages would be undertaken to inform residents of the activity.

3.7 Following consideration of the current staffing arrangements in the DWP Enforcement Team (Appendix 2), recommendations from the 'strategy review - task and finish group', and investigating what services external enforcement companies can offer; it is

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recommended that the following approach is taken for DWP enforcement for the next 12 months:

- Continue with one DWP employed Enforcement Officer and employ one temporary assistant for 12 months to work alongside this officer (funded by the vacant post salary budget).
- These 2 officers would focus on dealing with abandoned vehicles in the authorised areas and increasing the level of education/campaign work to prevent environmental crime (e.g. littering and fly-tipping) across the county.
- Procure an external contractor on a 12 month pilot to conduct targeted enforcement work for the issuing of FPN's for littering, fly-tipping and failure to produce duty of care documents.

3.8 On 12 July 2016, Weymouth & Portland Borough Council agreed to recruit the services of 3GS to undertake a 12 month pilot project to issue FPNs for littering and dog fouling in their borough. The pilot will commence in the autumn and will predominantly focus on the town centre of Weymouth. DWP officers have been in regular dialogue with officers at Weymouth and Portland Borough Council regarding this pilot and will use the results to inform the Dorset picture. Purbeck District Council has also indicated some interest in becoming involved with a pilot scheme for the DWP area.

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September 2016