

**Report to:** Cabinet  
**Date of Meeting:** 5 February 2020  
**Public Document:** Yes  
**Exemption:** None  
**Review date for release:** None



**Subject:** **Update on fly tipping and littering enforcement and the introduction of the additional fixed penalty provision for householder duty of care.**

**Purpose of report:** To update members on recent successes by the Environmental Health team in enforcement and request that they approve the introduction of an additional fixed penalty fine under S34(2A) of the Environmental Protection Act 1990. These fines would be issued against a householder or business who has breached their duty of care in respect of how their waste has been disposed of.

**Recommendation:** That members approve the introduction of the additional fixed penalty fine and set the fine in line with existing fly tipping penalties as follows:

- a) £200 fine (reduced to £120 if paid within 10 days of service of the notice) for small fly tips of 180 litres (a standard wheeled bin) or less:
- b) £400 fine (reduced to £200 if paid within 10 days of service of the notice) for medium and large fly tips.

**Reason for recommendation:** To enable Officers from both the Environmental Health and Streetscene teams to issue a fixed penalty notice to a person who has breached their duty of care by not ensuring that their waste has been properly disposed of.

**Officer:** Andrew Ennis, Service Lead, Environmental Health & Car Parks and Andrew Hancock, Service Lead, Streetscene.

**Financial implications:** Financial implications are contained within the report.

**Legal implications:** The approach advocated is permissible under the legislation and the rationale for the tiered process seems logical. It is for Members to determine the level of fine (and reduced level for prompt payment) but, again, the advocated levels seems sensible. There are no other legal implications arising.

**Equalities impact:** Low Impact

**Risk:** Low Risk

**Links to background information:** .

**Link to Council Plan:** Outstanding Homes and Communities  
Outstanding Place and Environment

## Report

1. The purpose of this report is to advise members of recent successes in the investigation and enforcement of fly tipping offences, and to request their approval of an additional fixed penalty introduced by regulation in January 2019.
2. During the last two years the Environmental Protection team has investigated 49 littering and fly tipping cases and issued 25 fixed penalty notices. They have collected £3,460 in fines, and £1,263 in clean-up reimbursement costs. Enforcement is only possible in cases where sufficient evidence is obtained, and this is gathered by the Streetscene REACT team, landowners and members of the public. There has been one successful prosecution.
3. In any case where REACT are able to find information relating to the potential origin of fly tipped waste they take photographs at the scene of a fly tip and refer their evidence and a statement of their findings to the Environmental Protection team.
4. The Environmental Protection team officers then carry out extensive further enquiries to enable them to assemble an enforcement file. This will include tracing and contacting the householder responsible for generating the waste, locating any third parties involved and preparation of a file with evidence sufficient to refer for a prosecution in the Magistrates Court if required. The team often liaise closely and share intelligence with colleagues at Exeter City Council and other local authorities.
5. Depending on the circumstances of the case, officers will issue one of 5 different fixed penalty notices.
6. If the penalty is paid then no further action is taken other than to issue an invoice covering the costs incurred for collection and disposal of the waste. If the penalty is not paid the team make every effort to secure payment before referring the matter to the legal team for prosecution.
7. For example there was one fly tip which occurred in Exmouth. The householder involved deposited a significant quantity of household waste in the service lane behind her property. She refused to pay either the fine or clear up costs and this case was successfully prosecuted in the Magistrates Court. The householder was required to pay £1500 in fines and costs.
8. Commercial carriers of waste must hold a licence and officers from Streetscene or Environmental Health will serve fixed penalty notices where waste has not been carried or disposed of in accordance with a licence. These fixed penalties are set by regulation at £300 and have been in use for some years.
9. Some of the fly-tips investigated have involved a significant quantity of material or large items such as mattresses and white goods, but many of them amounted to just two or three black bags, fast food packaging or one or two small electrical items.
10. All of the fixed penalty offences available for our use to date are really designed to be used against an actual fly-tipper. However for several years councils have lobbied Government to introduce an additional provision which enables action to be taken against a householder from whom waste may or may not have been taken by a third party. The intention of this new provision is to encourage householders to think carefully and to choose a waste carrier who is able to confirm that they hold a waste carriers' licence and that they do in fact use approved disposal facilities. In our experience unlicensed carriers tend to be typically "a man and a van" operation often found through advertising on social media or even plying their trade from door to door in an area.
11. During their investigations our officers will usually interview the originator of the waste (if that person can be identified) in order to ascertain how their waste came to be found as a fly tip. In most cases we are finding that the originator, usually a householder, cannot demonstrate that they have acted responsibly and for example they will not be able to give us any information about the person who they say removed their waste. It therefore seems reasonable that responsibility for the final disposal remains with the householder and now regulations require that waste originators are actually responsible for ensuring that their waste is ultimately disposed of properly (for example by using the council collection facilities or the recycling centres).
12. Since January 2019 this new regulation has enabled us to plug this gap in the fixed penalty suite and the council must simply decide to adopt this provision in order for Officers to be able to issue these new householder fixed penalties.

13. We are therefore asking Members to approve a 2-tier system for fixed penalties for householder Duty of Care offences. The proposed fines would align with the fly tipping fixed penalties already adopted by this Council. We propose the following definition to avoid any misunderstandings:
- (i) A fixed penalty of £400 (reduced to £200 if paid within 10 days) for medium and large fly tips.
  - (ii) A lower fixed penalty amount of £200 (reduced to £120 if paid within 10 days) for small fly tips (defined as less than 180litres in volume, this is roughly the amount which would fill a standard wheeled bin).
14. A fixed penalty notice will generally be used only in response to a first (or in exceptional circumstances a second) offence committed by an individual or company. Even a £120 penalty plus clean-up costs (of £50 to £180) will act as a proportionate punishment and deterrent in most cases. Prosecution proceedings in the Magistrates Court are likely to be in the public interest in response to repeated offenders or non-payment of the penalty.