

**OFFICER DELEGATION SCHEME  
RECORD OF DECISION**

<b>Date:</b> 15 July 2022	<b>Ref No:</b> 728
<b>Responsible Officer:</b> Ben Thomson Head of Public Protection Melanie Walsh Unit Manager Neighbourhoods Enforcement	
<b>Title/Subject matter:</b>  Introduction of a fixed penalty notice (FPN) and penalty charge regime under section 34(Z)(A) Environmental Protection Act 1990 (EPA) in relation to householder's waste duty of care introduced under section 34(2)(A) Environmental Protection Act 1990. (EPA)  Duty of care provides for the safe management of waste to protect health and the environment.  A householder must carry out all reasonable checks to ensure that any waste they pass to another person is only passed to a company/person that is authorised to take it. If the householder's waste is later fly tipped and they have failed in their duty of care an offence has been committed by the householder.	
<b>Budget/Strategy/Policy/Compliance:</b>	
(i) Is the decision within an Approved Budget?	Yes
(ii) Is the decision in conflict with the council's policies, strategies or relevant service plans?	No
(iii) Does the decision amend existing or raise new policy issues?	Yes <i>This enforcement power has not been used before</i>
(iv) Is the decision a non-key decision (below £100,000, outside the MO definitions)	No
Is publication still required? (see guidance)	Yes

## **Summary:**

### **Background**

Fly tipping is a criminal offence and is the most common form of anti-social behaviour that poses a significant environmental, social and financial problem nationally and in Bury. The most common form of waste fly tipped is household items and refuse. Part of this problem arises as a result of householders passing their waste to unregistered waste carriers, who then unlawfully deposit the waste.

Householders have a duty of care to ensure the safe management of their waste, to protect health and the environment. It is an obligation placed on householders to ensure that anyone they pass their waste to is authorised to take it. A householder must carry out reasonable checks to ensure that anyone they pass their waste to is authorised to take their waste.

When an individual fails to comply with this duty of care, they have committed an offence under section 34(2)(A) of the Environmental Protection Act 1990.

The Council can prosecute where there is evidence that a householder has failed to comply with their duty of care. This is a lengthy, time and resource consuming process with current delays within the Courts of around 18 months before cases are being heard. The Council must also have regard for the public interest test in determining whether a matter should be brought forward for a prosecution.

In November 2018 The Environmental Protection (Miscellaneous Amendments) (England and Wales) Regulations 2018 were laid before parliament. Part 2 of these regulations amend the Environmental Protection Act 1990 so that fixed penalty notices can be issued under section 34(Z)(A) for householders who fail in exercising their duty of care.

This legislation is a tool in influencing change in behaviour and enables action towards householders whose decision leads to fly tipping.

To comply with householder duty of care the following checks should be undertaken by householders by asking waste carriers to:

- provide you with their full address and telephone number.
- see their waste carrier licence - if they don't have one, don't use them; and
- check where your waste will be taken to - it must be a licensed waste disposal site.

A householder can carry out a free instant Waste Carrier Validation Check free of charge via the Environment Agency. [Check online at the Environment Agency website](#)

Legislation for householders' duty of care is used as an important legislative tool to combat fly tipping.

### **The National Picture**

Figures on fly tipping incidents nationally, released in February 2021 show that in 2019/2020 there were 976,000 fly tipping incidents reported across the UK, an increase of 2% from 2018/19.

There has been a national increasing trend where unlicensed waste carriers advertise on social media. This results in the public using unregistered waste carriers to take waste, which is then fly tipped.

### **The Local Picture**

Over the past three years, reports of fly tipping in Bury have gradually increased.

There has been an increasing trend in recent years of unregistered waste carriers advertising on social media and disposing of waste illegally. These individuals usually fly tip in stealth and in most cases, there is no further information available for Officers to pursue the fly tipper.

Bury Council employed 2 Fly Tipping Enforcement Officers in July 2021. Their role focuses on fly tipping investigations and taking enforcement action, where applicable. This includes the issuing of Fly Tipping fixed penalty notices.

To date Officers have issued 35 Fly Tipping FPNs, 27 littering FPNs and 3 commercial waste duty of care FPNs. Several prosecutions have been prepared and are awaiting trial for fly tipping and littering offences.

Since July 2021 there have been 13 contraventions of Householders Duty Of Care. Officers have been unable to trace the fly tipper in most of these cases.

Bury Council already issue fixed penalty notices for other environmental crimes including fly tipping, littering, dog fouling and commercial duty of care. The introduction of FPNs for householders' duty of care would provide an additional option to deal with householders who do not check who their waste is being passed to. Action would be taken in line with the Councils Enforcement Policy.

Bury Council has advertised householders' duty of care using the Council webpage, newspaper, social media, verbally and via targeted leaflet drops during local initiatives in fly tipping hotspots to ensure residents are aware of their responsibility and will continue to do so..

### **Existing Penalties**

It is a criminal offence not to take all reasonable measures to meet your duty of care. If convicted in a Magistrates or Crown Court, the court can impose an unlimited fine.

Prior to recent new Regulations being introduced, the only formal sanctions available for such offences were a prosecution or a simple (formal) caution.

### **New Enforcement**

Under section 34 (2A) of The EPA 1990 a householder must carry out all reasonable checks to ensure that anyone they pass their waste to is authorised to take it.

In November 2018 The Environmental Protection (Misc Amendments) (England and Wales) Regulation's introduced Section 34 ZA of The Environmental Protection Act 1990. Under section 34 ZA an FPN can now be issued where a householder fails to carry out all reasonable checks to ensure that a person taking their waste is authorised to take it.

These regulations give Local Authorities new powers to issue FPN's for the offence Householders Duty of Care. This provides the Council with an alternative to prosecution.

Local Authorities can set the fixed penalty rate at a minimum of £150 and a maximum of £400 with a discount to £120 for early payment. The default payment is £200.

This report seeks authorisation to adopt the fixed penalty notice scheme and set the level of penalty charge for Householders Duty of Care at a maximum of £400 that has to be paid in 14 days and an early payment scheme of £280. This is comparable to other GM Authorities listed below

- Bolton Council £400 maximum and £300 early payment
- Rochdale £400 maximum and £175 early payment

- Oldham £400 maximum and £280 early payment
- Tameside £400 maximum.
- Bury Council already uses FPNs to deal with other environmental crimes such as fly tipping, littering and commercial duty of care and the introduction of FPNs for householders' duty of care strengthens the council's resilience to deal with fly tipping. Other FPN amounts are listed below
- Littering £75 maximum with £50 early payment
- Fly tipping £400 no early payment option
- Failing to produce waste carried license maximum £300 maximum and £180 early payment.

FPNs will be used to deal with householders' duty of care offences in line with the departments enforcement policy. They will only be issued where there is evidence of an offence. An FPN discharges liability to conviction. Nonpayment of the FPN will result in a prosecution file being prepared for the original offence.

More serious offences can still be dealt with by prosecution and there is still the option of a simple caution.

### **Background papers:**



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(Misc amendments)(



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### **Equality Impact Assessment**

The policy will apply to offences under section 34 (2A) Environmental Protection Act 1990 and there are no discriminatory factors

**Options considered:**

1. To Approve the use of FPNS set at £400 with an early payment of £280 to ensure it is a deterrent to offenders. The figure proposed is in line with other GM authorities
2. Not to approve the use of FPN's
3. To approve the use of FPN and set the fine at a lower level with or without an no early payment option.

**Decision:** The following decisions are recommended to allow the Council to take swifter action to deal with fly tipping in the borough and provide an alternative remedy to prosecutions where appropriate:

1. Approve the issue of Fixed Penalty Notices as provided for under section 34 The Environmental Protection Act 1990
2. Delegate authority to the Executive Director of Operations the power to authorise appropriate officers for the purposes of issuing FPN's pursuant to this regime.
3. Set the FPN level of maximum £400 with early payment option of £280.

<b>Decision made by:</b>	<b>Signature:</b>	<b>Date:</b>
Executive Director of Operations		19/07/22
Assistant Director		15/07/22
<b>Members Consulted (if applicable) [see note 1 below]</b>		
Cabinet Member		20/07/22
Lead Member		
Opposition Spokesperson		

**Notes**

1. Where, in accordance with the requirements of the Officer Delegation Scheme, a Chief Officer consults with the appropriate Cabinet Member they must sign the form so as to confirm that they have been consulted and that they agree with the proposed action. The signature of the Opposition Spokesperson should be obtained if required, to confirm that he/she has been consulted. Please refer to the MO Guidance.
2. **This form must not be used for urgent decisions.**
3. Where there is any doubt, Corporate Directors should err on the side of caution and seek advice from the Council's Monitoring Officer.