

**Forest Heath District Council  
St Edmundsbury Borough Council**

**WEST SUFFOLK WASTE  
AND STREET SCENE  
SERVICES JOINT  
COMMITTEE**

**23 MARCH 2012**

**REPORT NO**

**C404**

**Report of the Strategic Director (Services) (FHDC)  
and the Corporate Director (Economy & Environment)  
(SEBC)**

**AMENDING THE POWERS OF LOCAL AUTHORITIES REGARDING PRESENTATION  
OF WASTE FOR COLLECTION: RESPONSE TO THE GOVERNMENT  
CONSULTATION**

**Synopsis:**

The purpose of this report is to update members on the consultation of the Environmental Protection Act (Section 46) and the powers of Councils to enforce how residents use the waste collection service provided.

**Background**

1. Under the Environmental Protection Act 1990 (EPA), Forest Heath District Council (FHDC) and St Edmundsbury Borough Council (SEBC) are Waste Collection Authorities (WCA) and are required to make arrangements for the collection of household waste arising in their area. From 31 December 2010, this duty was extended to the recycling and composting of at least two types of household waste.
2. Section 46 of the EPA, prescribes the powers of Waste Collection Authorities to determine how household waste is to be collected. The main provisions relate to:-
  - (a) receptacle(s) provided to collect waste;
  - (b) placing of the receptacles for emptying; and
  - (c) types of waste to be placed in the receptacle(s).
3. Under current arrangements, a householder who fails, without reasonable excuse, to comply with the above requirements, can be either:-
  - (a) prosecuted and be liable on summary conviction to a fine not exceeding level 3 on the standard scale. This equates to a criminal conviction with a fine up to £1,000; or
  - (b) issued with a Fixed Penalty fine, in lieu of criminal proceedings, up to £100.

4. Early payment discounts are possible, but the payment cannot be less than £60. There is no right of appeal, but if an individual does not pay the financial penalty then they may be prosecuted under Section 46 (6) and go to court. The Council is entitled to keep receipts from the fixed penalties.

### **Current service provided**

5. At present, both Councils deliver their waste collection duty through the provision of a kerbside collection of residual waste, recyclables and green kitchen and garden waste. Section 46 of the EPA refers to the use of all three bins.
6. Both Councils have also adopted an Enforcement Policy which sets out the enforcement approach to all the legislation within their control. Officers are authorised to enforce the legislation and as part of this they investigate Section 46 offences. A graduated approach is adopted, commencing with education and informal visits, with very limited reliance on formal prosecution and fixed penalty fines. In terms of recycling bin misuse, a system of red and yellow stickers has also been adopted across Suffolk to encourage and enforce correct waste separation.
7. Whilst, there has been very limited reliance on formal prosecution and fines by FHDC and SEBC, warning letters have been issued on occasions when informal methods have proved unsuccessful. This has normally resulted in the required behaviour change but there is a minority of residents who fail to comply with formal and informal approaches.

### **Current Proposals in the Consultation**

8. The purpose of the consultation is to seek views on proposed amendments to Section 46 of the Environmental Protection Act 1990, which sets out the penalties which local authorities can apply to householders who present their waste incorrectly for collection. These amendments are to form the main part of a series of Government measures to ensure a fairer system of penalties that respect individuals' civil liberties, while dealing effectively with behaviours that have a negative impact on residents' local neighbourhoods. The Government also believes that the level of fines and fixed penalties is disproportionate and would like to see penalties brought more into line with other offences, such as shoplifting and parking offences.
9. The key features of the proposed amendments are:-
  - (a) the criminal offence provided for in Section 46 and the £1,000 fine will be abolished. This will mean that householders will no longer face the threat of a £1,000 fine and a criminal conviction because they have failed to comply with a Section 46 notice from the Council;
  - (b) a new civil sanction will replace the criminal offence;
  - (c) Councils will continue to be able to issue Fixed Penalty Fines to those householders whose failure to present their waste properly is harming the quality of the local area for their neighbours;

- (d) “Harm to local amenity” will be introduced as a test before a civil penalty can be imposed. This test fundamentally changes the basis under which Councils can issue fixed penalties. The test aims to ensure that penalties are targeted at those who behave in a way which reduces the quality of their neighbours’ surroundings. In other words, penalties might be appropriate when bin bags are left on the street for days on end, for example, but not when someone does not close their bin lid properly, leaves it out for an hour too long, or mistakenly puts something in the wrong bin; and
  - (e) the maximum level of penalties applying under the current fixed penalty regime will be reduced as an interim measure within the next six months.
10. The consultation offers two key options in terms of the powers Councils will retain:-

**Option 1: Civil penalties with an underpinning criminal offence**

- (i) Those who put out their rubbish incorrectly receive a Section 46 Notice: the vast majority of those who do not comply with that notice will face civil penalties;
- (ii) Councils must apply a “harm to local amenity test” to ensure that penalties and criminal sanctions are targeted at the worst offenders; and
- (iii) Criminal conviction would be available only in the most extreme cases.

**Option 2: Civil penalties with NO underpinning criminal offence**

- (i) As Option 1 but removing the Criminal offence.

11. The purpose for the change is the Government’s concern that under the current arrangements, householders are receiving letters, called Section 46 Notices, from Councils, which threaten the possibility of a £1,000 fine and criminal conviction, even if they have made genuine mistakes or this is the first time they have got their bin use wrong. Whilst the Government does not believe that convictions are often pursued, they consider the threat to be unnecessarily severe. (For noting, the letter from the Council, sometimes followed by a visit or telephone call, is usually sufficient to change behaviours.)

**Response to the consultation**

12. The response to the consultation from FHDC and SEBC is attached in Appendices 1 and 2. Appendix 1 refers to the interim Fixed Penalty Fines, and Appendix 2 is the response to the range of Consultation questions amending Section 46.
13. The response was submitted to DEFRA on 9 March 2012 as a joint response for FHDC and SEBC. The response was also submitted as the joint response of the Suffolk Waste Partnership, with the necessary amendments to incorporate the wider number of Councils involved. (i.e. all District/Borough Councils and the County Council).

### **Finance/Budget/Resource Implications**

14. There are no significant financial implications as a result of the consultation. One of the proposals is, however, looking into whether Councils retain 100% of the receipt from Fixed Penalty Fines.

### **Environmental Impact and Sustainability**

15. The Government is committed to fostering sustainable, low carbon and resource efficient patterns of consumption and production. This includes working towards a Zero Waste Economy, where products and services are designed, produced, used and disposed of in ways that minimise carbon emissions, waste and the use of non-renewable resources.
16. The powers to Councils under Section 46 support the proper management of waste and enable the Council to take action against those who fail to take responsibility for managing their waste correctly.

### **Policy Compliance/Power**

17. The Government, in its Waste Policy Review, published on 14 June 2011 indicated that they intended to remove the prospect of criminal sanctions for householders who present their waste for collection incorrectly and replace them with civil sanctions and appropriate fines.
18. The full extent of the proposals will not be known until DEFRA have reviewed the consultation responses and announced the final proposals. However, in their current form, there will be an impact on the Councils' policies in terms of:-
  - (a) the amounts of Fixed Penalty Fines; and
  - (b) removal of the threat of criminal prosecution and the £1,000 fine.

### **Performance Management Implications**

19. It is expected that there will be limited performance management implications. Whilst a key implication of the changes may involve a perception among certain residents that the Council has less "power" to determine how they present their waste and use their recycling service (blue bin), it is anticipated that this will be a minor impact.

### **Legal Implications**

20. There are no legal implications as both Councils will operate within the permitted legislative regime.

### **Human Rights Act and Diversity Implications**

21. There are no human rights and diversity implications from the proposals.
22. The proposals will apply to all residents and involve the right of Appeal against Council decisions.

### **Crosscutting Implications**

23. There are no crosscutting implications associated with the proposals. Waste Management Officers will coordinate with Environmental Health Officers on proposed changes.

### **Risk Assessment**

24. There are no significant risks associated with the consultation.

### **Council Priorities**

25. The effective management of waste supports the following Council priorities:-

#### **Forest Heath:**

- (a) Community safety; and
- (b) Street scene and environment.

#### **St Edmundsbury:**

- (a) Raise standards and corporate efficiency;
- (b) Improve the safety and well being of the community; and
- (c) Secure a sustainable and attractive environment.

### **Recommendation:**

26. It is recommended that Members **NOTE** the response to the consultation that was submitted to DEFRA on 9 March 2012.

### **Documents Attached**

Appendix 1: Response to stage 1 of the Consultation.

Appendix 2: Response to stage 2 of the Consultation

### **Background Papers**

None

Nigel McCurdy / Sandra Pell  
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**Date:** 16 February 2012

Dear Lord Taylor

**INTERIM CHANGES TO LOCAL AUTHORITY ENFORCEMENT POWERS (HOUSEHOLD WASTE COLLECTION)**

Thank you for the opportunity to express views on the interim changes to local authority enforcement powers. This is a joint response on behalf of Forest Heath District Council (FHDC) and St Edmundsbury Borough Council (SEBC).

We acknowledge the importance placed on waste collection services and accept that household waste collection is considered by residents as one of the most visible and important services they receive. In the delivery of our duty as Waste Collection Authorities, both FHDC and SEBC have implemented and deliver an alternate week collection of residual and recyclable wastes using three wheeled bins. Service participation rates are high and the combined recycling performance achieved is around 50%. Our joint high level of success is proportional to the importance we place on customer participation and satisfaction.

Occasionally, residents unintentionally or intentionally use our waste service incorrectly and we consider it important, as part of our service provision, to balance the needs of the individual household with those of both the public realm and our ability to maintain efficient services. As a general observation, whilst we acknowledge that the existing powers and penalties are part of a wider toolkit, it is important that the penalty levels are subject to periodic review to ensure that they deliver their desired purpose and positively change behaviour to reduce harm to the local amenity.

With regard to your letter dated 16<sup>th</sup> January 2012, please accept the following responses to your proposed interim measures to change the level of penalties:

**Proposal 1:** *We propose to reduce the range of the level of fixed penalties applying in relation to section 46 EPA from £75 - £110 to £60 - £80.*

**Joint Response:** AGREE



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**Proposal 2:** *Early payment discounts are currently possible under the fixed penalty notice system but cannot be less than £60. We propose that it would be proportionate to amend this amount to £40.*

**Joint Response:** AGREE

**Proposal 3:** *If local authorities do not specify the amount of the penalty under the fixed penalty notice, the default amount is currently set at £100. As we are reducing the maximum penalty that authorities can set to below £100, we propose that it would be proportionate to reduce the default amount to £60.*

**Joint Response:** AGREE

We also agree to the repeal of minor criminal offences where civil penalties would be more effective.

For note, our response solely relates to Section 46 of the Environmental Protection Act 1990. Furthermore, we intend to submit a response to the associated *Consultation on amending the powers of Local Authorities regarding presentation of household waste for collection*, which closes on 9<sup>th</sup> March 2012.

Yours sincerely



David Burnip  
**Chief Executive**  
**Forest Heath District Council**



Geoff Rivers  
**Chief Executive**  
**St Edmundsbury Borough Council**

## APPENDIX 2: Response to stage 2 of the Consultation



### A response to the consultation on amending the powers of Local Authorities regarding presentation of household waste for collection

<b>Consultation Document:</b>	Consultation on amending the powers of Local Authorities regarding presentation of household waste for collection
<b>Response Submission:</b>	
<b>To:</b>	Defra Local Authority Enforcement Powers Consultation, Household and Local Authority Waste Team, 6D Ergon House, 17 Smith Square, London, SW1P 3JR
	<b>Email:</b> <a href="mailto:household.waste@defra.gsi.gov.uk">household.waste@defra.gsi.gov.uk</a>
<b>Deadline:</b>	9 March 2012
<b>Response Version:</b>	Final
<b>Response Author(s):</b>	Forest Heath District Council and St Edmundsbury Borough Council
<b>Approved by:</b>	Forest Heath District Council and St Edmundsbury Borough Council
<b>Approval Date:</b>	7 March 2012



Question	Proposed Response
Question 1	<p data-bbox="374 225 1805 260"><b><i>Which Option do you consider to be the best? Please provide evidence to support your views.</i></b></p> <p data-bbox="374 300 2060 443">In terms of the purpose of the Consultation document, the document itself refers to Section 46 of the Environmental Protection Act 1990 and the penalties that Councils can impose on householders “<i>who present their waste incorrectly for collection.</i>” Reviewing Section 46, this would appear to refer to three main issues of importance to Waste Collection Authorities, namely:</p> <ul data-bbox="421 488 1375 600" style="list-style-type: none"> <li data-bbox="421 488 1003 523">• Receptacle location - Section 46 (4b);</li> <li data-bbox="421 528 1196 563">• Incorrect receptacle contents - Section 46 (4d); and</li> <li data-bbox="421 568 1375 600">• Waste not being contained within the receptacle - Section 46 (1)</li> </ul> <p data-bbox="374 639 2060 783">Section 3.1 of the consultation also suggests that if the legislation remains unchanged, Waste Collection Authorities will still have the power to serve notices under section 46 of the EPA. If there is a suggestion that the duties placed on householders is removed or reduced from the current wording, <b>then both Forest Heath District Council (FHDC) and St Edmundsbury Borough Council (SEBC) disagree with the change.</b></p> <p data-bbox="374 823 1756 858"><b>If the change is limited to the level and types of sanctions, then our response is as follows:</b></p> <p data-bbox="374 898 2060 1042">In terms of both options, it is recognised by FHDC and SEBC that the serving of a Section 46 notice should not be the first approach to the management of Section 46 offences. A change in behaviour is required and can often be achieved informally. However there are occasions where the severity of the threat is the only means of effecting this change, in line with the principles of the Regulatory Enforcement and Sanctions Act 2008.</p> <p data-bbox="374 1082 2060 1337">Sanctions are a condemnation of inappropriate actions, acting as a deterrent to the household against future breaches and sending a wider message to society. Both Councils use various approaches to enforcement activity, depending on the circumstances, level of risk, political will and other influences. We prefer to adopt a balance of techniques and approaches in order to ensure the well-being of the public and of the environment. We also believe that assisting compliance is every bit as important as detecting non-compliance. The targeting of resources is of prime importance to us and we must be able to apply the most appropriate resolution where they are most effective and in areas of highest risk.</p>

As part of our wider enforcement activity, both Councils utilise a range of pre-enforcement warnings as part of the enforcement process. These range from verbal advice to formal written guidance and they offer considerable advantages as they can be effective in promoting compliance without extensive administrative resources.

Both Councils approach section 46 breaches utilising a graduated process and in accordance with the recommendations of the Hampton Report (2005). We utilise visits and advice/guidance as a first step with warning letters as a second step for less serious cases. Warning letters are not issued lightly and normally follow previous discussions and informal warnings. However, they do give the resident an opportunity to respond and correct the issues before more formal proceedings are begun. In instances where there has been no intent or wilfulness relating to noncompliance, a criminal prosecution will be a disproportionate response, although a formal sanction rather than simply advice or a warning, may be appropriate and justified.

Both Councils are aware of and are guided by experiences which suggest that the outcome of criminal proceedings may not bring much benefit in terms of retribution or deterrence. When a criminal case reaches Court, on the basis that the Council can meet the relevant standard of proof – beyond reasonable doubt – there is variation in sentences imposed and a key factor is the judicial interpretation of the seriousness of the offence. What this shows is that, reliance on the criminal law as the main means of deterring and punishing unwanted behaviour may prove to be an expensive, uncertain and ineffective approach. In this regard this route should be an option to the Council rather than a direct route.

It is important to also stress that inducing compliance is not a matter that can or should be left to the enforcement regime alone. Both Councils consider sanctions to be important, but just as important is the overall design of the regulatory system; the combination of sanctions and powers available. In many cases and where possible, both Councils also attempt to recognise other factors that need to be addressed in the wider community such as in anti social behaviour instances where persistent and varied problems are encountered from the same residents.

To be effective however, initial advice, guidance and warnings have to be followed by a sufficient number of formal actions to be credible. If residents know that the most likely consequence of continued non-compliance is another warning, this is unlikely to have a positive effect on their behaviour. Moreover, Fixed Penalties Notices are appropriate and effective but only if they are paid. If payment of a fine is considered to be the “punishment” for an offence, certain residents will only appreciate that they have been punished if the fine is paid.

Furthermore, in the Macrory Review of Sanctions, the main principles of the sanction should amongst other things, aim to change the behaviour of the offender, eliminate financial gain, be proportionate and aim to deter future non

	<p>compliance. As a result, the main advantages of retaining the option of using criminal sanctions are:</p> <ol style="list-style-type: none"> <li>1. <b>Moral disapprobation:</b> criminalising the activity will send a strong signal that the conduct is not to be tolerated; and</li> <li>2. <b>Deterrence:</b> criminalising the activity may enhance the deterrent effect on those who do not want a criminal conviction. However, the low levels of fines imposed may reduce the deterrence effect in practice.</li> </ol> <p>Consequently, for all types of Sanctions to be effective, they must in some way deter further offences.</p> <p>In terms of utilising a wider range of powers to achieve the same outcome, this too is considered important by both Councils. However, whilst paragraph 3.16 of the consultation document considers it possible to utilise fly tipping and litter powers under the EPA 90 for placing out excess waste, these powers could not be used for residents placing the wrong waste in bins or to those who persistently leave out their bin. Furthermore, it is frustrating when non-compliance exists and is identified but no enforcement action is taken because the appropriate tool is not available or does not deal with the problem. It is our experience that where people have ignored an initial letter requesting that bins are removed off the street they often respond when a second letter detailing the £1,000 maximum penalty is sent. This is usually enough to resolve the situation without the need for any formal legal action or even Section 46 notice.</p> <p>There is also the issue of the Government wishing to decentralise decision making and provide both local accountability and decisions. In this regard it is important the local Council is given the ability and power to make local decisions and determine what the appropriate response is in specific enforcement cases.</p> <p><b>In view of the above, we consider Option 1 is preferable with the understanding that a criminal conviction would only be used as a last resort in extreme cases where all other approaches have failed.</b></p>
<p><b>Question 2</b></p>	<p><b><i>Do you think there should still be an underpinning criminal offence (and the possibility of a criminal conviction) for failing to comply with a Section 46 Notice?</i></b></p> <p>Research suggests that Regulations are introduced where Government cannot be confident that the whole of society will voluntarily comply with the standards or achieve the desired outcomes. Whilst it is important that advice and incentives should play a key role in ensuring compliance, an effective sanction regime plays an equally vital role in a successful regulatory regime. It underpins our advisory functions, and its existence will often act as an inducement to</p>

compliance without the need to invoke formal sanctions.

The wording of section 1.4 of the consultation document does not represent the current approach within West Suffolk and in some way trivialises and undermines the positive approach that both Councils adopt. We have not served nor are we likely to serve a notice when a bin lid is not closed properly or if the bin is left out too long. Moreover, in section 2 of the consultation document, there appears to be a view expressed which suggests the inappropriate use of enforcement powers by Councils. However, whilst reference is made to “genuine mistakes” and those “who persistently cause problems for their neighbours”, our real concern is with cases where they are not genuine mistakes, evidenced by a history of Council interventions, and in circumstances where it may not directly cause problems for neighbours, for example by consistently using recycling bins incorrectly, and therefore the “harm to the amenity” test would be difficult to apply.

FHDC and SEBC do not resort to regulatory sanctions that are inappropriate and we do base our enforcement approach on the key principles of enforcement. We understand the case for removing low-level criminal offences if civil measures will do an effective job, in terms of punishment and deterrence and they can avoid the procedural complications of criminal proceedings and the burden of proof is lower. However, If civil sanctions are to be effective, the procedures have to allow for the Council to take actions expeditiously and the sanctions imposed must be effective. It is this latter issue which is crucial to this question and whether civil penalties are appropriate for dealing with the full range and the number of offences within Section 46. For example, issuing a FPN will be proportional and targeted. However what if the breach occurs regularly by the same offender? If non compliance continues, it would demonstrate that the sanction is inappropriate, in the eyes of those committing the offence.

The current approach to regulatory compliance, premised as it is on the threat of criminal prosecution, would not in isolation adequately accommodate a breach of Section 46, which in most instances would probably require a more proportionate response, in terms of the moral condemnation applied and the financial penalty imposed. An initial criminal approach alone would appear unnecessarily dogmatic and relying heavily on criminal enforcement can undermine the concept of criminality and require a disproportionate standard of proof in terms of costs, time and resources.

Fortunately, section 46 allows the use of monetary penalties as an alternative and this appears well suited to deal with intentional and unintentional behaviour which causes damage to the environment. They will enhance the use of non-criminal actions such as warning letters and enforcement notices, by providing a more 'hard hitting' but not overly harsh means of further recourse in the event of continued non-compliance. The main practical benefit for the Council is the application of the reduced civil standard of proof, which should drive enforcement activity through this route by the

	<p>sheer ease of application, in comparison to the criminal standard.</p> <p>It is appropriate that the “crime” must be high if the criminal law is to be invoked. However, it would also seem appropriate that the criminal law should only be employed to deal with those in society whose actions deserve the stigma associated with criminal conviction because they have engaged in unacceptable conduct. The important issue is that criminal sanctions are not used as the primary means of promoting objectives in Section 46.</p> <p><b>In view of this, it may be appropriate to continue to utilise civil penalties but retain the use of criminal sanctions at the discretion of the Council, dependent on the seriousness of the offence and the circumstances. This will also support the government’s desire for the decentralisation of decision making and enable locally based decisions to be made by Councils based on the relevant circumstances.</b></p>
<p><b>Question 3</b></p>	<p><b><i>Do you think local authorities should write to householders before taking action under Section 46? Is there anything else they should do before issuing a fixed penalty notice?</i></b></p> <p>Sanctions demonstrate that non-compliance will not be tolerated and that there will be a consequence that will put the resident in a worse position than those that comply. It is important for Government to ensure that Councils have a flexible and proportionate sanctioning toolkit which should provide appropriate options to handle the residents that intentionally and knowingly fail to comply on time. Following the passing of the Regulatory Enforcement and Sanctions Act 2008, there are clearer duties on to warn offenders or potential offenders that sanctions or other measures may be imposed.</p> <p>Contrary to paragraph 1.6 of the consultation document, neither FHDC nor SEBC issue FPNs nor pursue criminal proceedings with residents who have made “genuine mistakes”. Nor do we pursue a direct route using the regulatory framework at our disposal. Both Councils have adopted an Enforcement Policy to ensure that the principles of enforcement (transparency, targeting, consistency, proportionality and accountability) are integrated into service delivery. The overall aim of the policy is to deliver improved regulatory outcomes, whilst reducing unnecessary burdens on compliant persons and businesses. This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulator’s Compliance Code.</p> <p>All Officers of the Council involved in enforcement activities are required to be authorised by the Council to undertake such work. The authorisations are specific to sections of Acts or Regulations which Officers have been given responsibility for. Many statutory provisions place duties on authorised Officers to produce a copy of the authorisation if</p>

	<p>requested. Authorisations are important written documents signed and dated by the Head of Service that give powers to Officers to carryout specific activities. No Officer can undertake any enforcement activity unless they are suitably authorised in writing.</p> <p>As part of our approach, enforcement should always be graduated and begin with education before any formal action is taken. Householders will be written to in the first instance concerning the issue in order to achieve a level of understanding and cooperation with the resident. We would also consider whether or not we were dealing with vulnerable or diverse households where additional support would be required.</p> <p>In addition to direct contact with residents, we have also, for example, introduced a specific process to assist in the management of recycling bin contamination. In West Suffolk, a colour coded system of bin stickers is used to advise residents what can be put in the bin with a policy of not emptying the bin if it contains waste that is not permitted e.g. general rubbish mixed with recyclable waste. The vast majority of our residents understand the permitted contents for each bin but on occasions, where genuine mistakes are made, advice is provided. We do encounter occasions where these simple messages prove ineffective in changing behaviour. This occurs with specific households who do not participate in recycling and simply wish to dispose of their waste, and also with residents who share bins with neighbours living at the same location, such as Houses in Multiple Occupancy, flats etc. Our experience suggests that only graduating our actions has the desired effect although there are some occasions where even this proves ineffective.</p> <p>Both Councils will use fines as a last resort, and it is very important that we continue to have the necessary powers to take action against those who spoil the local environment.</p> <p><b>In view of the above, FHDC and SEBC support the use of early interventions before pursuing actions under Section 46.</b></p>
<p><b>Question 4</b></p>	<p><b><i>What kinds of actions would you consider to cause sufficient nuisance to others (the “harm to local amenity test”) to warrant a financial penalty?</i></b></p> <p>It is not appropriate to rely on financial penalties and criminal sanctions <b>only</b> if the “harm to local amenity” test can be proved. For example, in the case of recycling, we have already informed residents of the behaviour expected e.g. what can be put in the bin. This test would suggest that we can only take action if the residents’ act was also providing “harm to the local environment”. The term does not adequately deal with impacts against the efficiency of waste collection and disposal services, the moral expectation from society to participate in recycling – to do the right thing, persistent</p>

wrongful behaviour or where waste could not be sent to recycling because it was contaminated by householders using their bins incorrectly, thus exerting a cost to the Waste Collection Authority and Waste Disposal Authority.

Whilst it may be possible to apply the Test as outlined in the Consultation document for bin lid and bins left out instances, it may not be easily applied to certain other actions. For example, for situations where residents are intentionally using their bins incorrectly even though they do not put out additional waste beside their bin nor do they put their bin out incorrectly in terms of day and time.

The main concern with the test is the ability of the Council to deliver effective services and to intervene proportionately when nuisance occurs. Restricting our actions by a Test to deter inappropriate behaviour could undermine extensive efforts by FHDC, SEBC and householders in recent years to improve recycling quality and realise the maximum environmental and economic benefits.

We believe that fewer penalties and fines could be issued because of complexities or potential inappropriateness of the definition of “harm to the amenity” rather than because there are fewer instances of inappropriate behaviours occurring. The Government should not fear for the indiscriminate use of penalties but should focus on how they can support Councils to deal effectively with behaviours inconsistent with the protection of the local environment, the principles of civic pride and big society.

We agree with the government’s desire expressed to section 3.9 of the consultation document, not to see “penalties applied indiscriminately.” In terms of ensuring a consistent and proportionate use of sanctions, the process must be simple and the Test defined unambiguously. If the “Test” is not defined correctly, it may not achieve the desired effect, which should be a change in behaviour.

The definition of the Test needs to capture the full range of duties placed on householders under section 46 and also have reference to factors such as persistence or occurrence of the offending activity, financial impact of resolution, environmental impact, public interest, local opinion etc. The public interest test will cover the expectations of society in terms of the behaviours and action accepted. Moreover, it is unclear how this Test would interact with the two tests currently employed for prosecutions, namely the Evidence Test and the Public Interest Test, nor how it will be moderated by the burden of proof being restricted to the “balance of probabilities”?

Furthermore, are similar offences such as shoplifting subject to a “test” or are they absolute on the basis that they are applied for a wrongful act and are only restricted on Appeal?

	<p>If we consider the case of public nuisance e.g. noise, the authorised Council officer is considered the professional expert witness and their professional judgement is the standard of proof required. It may be that a similar approach is suitable for Section 46.</p> <p><b>FHDC and SEBC consider it appropriate to allow local determination of what is acceptable and appropriate.</b></p>
<p><b>Question 5</b></p>	<p><b><i>What level of financial penalty would you consider to be correct for failing the “harm to local amenity test” – the current fixed penalty (£75 - £110)? £60 - £80? A lower amount?</i></b></p> <p>In his report on Local Government in March 2007, Sir Michael Lyons identified rising costs of waste management as one of the central problems facing local authorities in the short and longer term. Methods of collection may vary widely between neighbouring areas, but when it comes to financial pressures, as Sir Michael noted, “the issues and challenges described by my case study interviewees showed more consistency than any other service area.”</p> <p>Waste collection and disposal together are the third largest local government services in terms of spend after education and social care. The Local Government Association suggests that the costs, excluding capital investment, are likely to increase from £3.4 billion in 2010 -11 to £4.3 billion by 2014 -15 nationally. Waste disposal costs have risen very steeply, driven by a six-fold increase in landfill tax over 12 years.</p> <p>Waste management is an expensive service and the ability to deliver cost effective services that rely on inexpensive waste treatment is very important. Consequently it is important for Councils to provide acceptable services and for service recipients to use these services correctly and to some extent accept the responsibility for the waste that they produce.</p> <p>The optimal level of fine depends in part on what the imposition of the fine is aiming to achieve and the ‘price’ of the non-compliant behaviour in relation to the harm caused - the ‘polluter-pays’ principle. As a result, Fixed Monetary Penalties will be appropriate where advice and guidance has failed to secure necessary improvements. Whilst it is inappropriate to levy a high fine for leaving a bin lid open, it may be appropriate for persistent misuse of bins or persistent dumping and leaving of rubbish in the street.</p> <p>A key consideration on the level is surely not to simply ensure that the penalties are no higher than those for shoplifting and parking offences, but in how effective those penalties are in changing behaviour and securing payment. Therefore, with reference to paragraph 3.11 of the consultation document, it may be prudent for the government to determine if the level of penalty for shoplifting is appropriate rather than use this as a benchmark to assess the appropriate levels of</p>



	<p>penalties applicable to Section 46 offences.</p> <p>Whatever the penalty levels are, they must achieve the desired effect otherwise the impact of the penalty is avoided by those receiving it. Low fines may undermine the effectiveness of action as an enforcement tool by undermining prosecution as a deterrent, trivialising the offence or removing any sense of moral duty.</p> <p><b>On the basis that they act as an effective deterrent, are procedurally simpler than criminal fines and require less regulatory resource, we support an £80 FPN, reducing to £60 for early payment (as this is consistent with other offences that affect the local amenity such as littering and graffiti).</b></p> <p><b>However, it is important that the penalties are subject to periodic review based on their effectiveness to implement the polluter pays principle and we do not support a reduction in the FPN level below this level.</b></p>
<p><b>Question 6</b></p>	<p><b><i>Under current arrangements, local authorities retain the receipts from any Fixed Penalty Notices issued. What are your views on local authorities only keeping their processing costs, rather than the full amount of the penalty, under a new civil sanction regime?</i></b></p> <p>In terms of keeping the receipts from penalties, the Government has not outlined what is meant by processing cost.</p> <p>A civil sanction itself is a fine for non compliance rather than associated with the cost of taking the enforcement action or reversing/restoring the impact of the offence. The enforcement action taken is still part of a graduated and targeted approach, which will have already incurred a cost to the Council to pursue, which may also have to be defended, subject to appeal. As the use of a civil sanction will not permit the securing of restoration costs, then the fine must be retained by the Council to contribute to some extent towards the enforcement costs and any restoration of environmental damage.</p> <p><b>We consider that Councils should retain all monies generated as a result of issuing FPNs.</b></p>
<p><b>Question 7</b></p>	<p><b><i>What would be the right level of fine under the underpinning criminal offence (if retained) for failure to comply with a Section 46 Notice (currently this is up to £1000)?</i></b></p> <p>It should be recognised that the fine is set as a maximum level and is subject to variation to a lower amount based on the discretion of the Judge ruling in a particular prosecution.</p>

	<p><b>In this regard there seems little reason to change the current financial ceiling on the basis that it would prove disproportionate for a higher amount to be levied, based on the nature of the offences in Section 46.</b></p>
<p><b>Question 8</b></p>	<p><b><i>Do you think householders should be able to appeal against penalties under Section 46?</i></b></p> <p><b>Yes, albeit with the following caveat.</b></p> <p>The appeal process must be proportionate to the level of FPN and not incur significant processing costs that would simply deter the use of this regulatory option.</p>
<p><b>Question 9</b></p>	<p><b><i>Do you use your current powers to impose fixed penalties under Section 46? If so, how many penalties do you issue a year?</i></b></p> <p>We have not issued any fixed penalties under the current Section 46 powers as we have not had a situation which we were unable to resolve by use of the initial stages of graduated enforcement.</p>
<p><b>Question 10</b></p>	<p><b><i>What do you think the impacts of these Options would be for you in your waste management and budget-holding roles?</i></b></p> <p>If the criminal offence is removed, it will remove a significant deterrent of non compliance and indirectly affect the Council's capacity for changing behaviours of more persistent offenders.</p> <p>Both Councils are under increasing environmental and financial pressures to maximise recycling. The proposed changes, if incorrectly implemented, may make it harder to tackle households that refuse to recycle or deliberately fail to use the bin collection scheme correctly. It is important to note that efficient bin collections involve collecting the correct waste in the correct bin and we rely on direct cooperation with residents to achieve this. The financial benefits of efficient and effective waste recycling collections for example are used to offset service costs to the benefit of all residents. It is important therefore to ensure that all residents support this.</p>
<p><b>Question 11</b></p>	<p><b><i>Are there any other points you would like us to consider related to these two Options?</i></b></p>

West Suffolk has a focused and proficient track record in delivering sustainable waste management locally, which has encapsulated and implemented national and regional waste management principles into local priorities and action. This has been effected and linked to improving local environmental quality by ensuring that waste and street scene services are delivered collectively rather in isolation.

There is a significant awareness of recycling in West Suffolk, and collectively we are recycling around 50% of waste, without resorting to specific financial incentives and penalties. In addition this supports the national shift towards greater recycling as evidenced in research undertaken in 2006 that found 57% of people could be classed “committed recyclers”.

The design and implementation of recycling within FHDC and SEBC was based on evidenced decision making, involving customer consultation, the test of affordability and performance. This has led to the development of alternate week collections, which as part of the design, has encouraged participation by restraining the extent to which recyclable waste can be put into residual waste bins and at the same time releasing resources of money, manpower and equipment to provide high quality recycling services.

The stimulus for us to secure higher performance in recycling has been driven by a number of factors, namely:

- Achieving recycling and composting targets, set as a percentage (by weight) of the total household waste stream.
- Obligations under the Waste and Emissions Trading (WET) Act and associated Landfill Allowances Schemes (LAS) for dealing with Biodegradable Municipal Waste (BMW).
- The Household Waste Recycling Act 2003 (requiring authorities to collect at least two materials from the kerbside for recycling by 2010).
- A general desire to reduce waste arisings in line with the waste management hierarchy.
- Pressure from residents to provide comprehensive and easy to use recycling services.
- Pressure to restrain the impact of increasing waste management costs on the Council Tax and our local community.
- Central Government targets for efficiency savings.

A key consideration for household waste is public acceptability. We are required to identify the most appropriate means to effect waste recovery, which is dependant on securing and sustaining public support for the collection scheme in order to maximise participation and overall scheme performance. We are confident that as part of our approach we have addressed specific barriers to recycling and our achievements and those of our residents reflect this. However we are also aware that we need when appropriate to deal with certain residents in a more formal way in order to

	<p>encourage behaviours that are supported generally within West Suffolk</p> <p>The service we provide is responsive to balancing the needs of all residents and the need for effective participation in the waste collection services:</p> <ul style="list-style-type: none"> <li>• Provision of assisted collections for vulnerable groups, particularly those with restricted mobility.</li> <li>• Reliable and responsive in-house operational collection services with minimal missed bin rates and kerbside vigilance to assist in the minimisation of bin contamination problems.</li> <li>• Provision of information in various formats to reflect both the diversity of understanding within the local community and the different preferences for accessing information.</li> <li>• Provision of community wide collections for a wide range of materials including paper, card, plastic, metal cans, uncooked kitchen waste and garden waste.</li> <li>• Provision of adequately sized wheeled bin containers and sacks to enable users to maximise diversion but to continue to be able to manage their waste effectively.</li> <li>• The provision of variable bins sizes to cater for households with restricted storage and access and those with larger or smaller numbers of inhabitants.</li> <li>• Provision of simple, clear information and instruction to all residents to ensure that waste is sorted appropriately and placed out for collection on the correct day and schedule. The effectiveness of the message is reflected in the high participation rates.</li> </ul> <p>The design, implementation and management of waste collection in West Suffolk has encouraged participation in recycling and composting by restraining the extent to which recyclable waste can be put into residual waste bins and at the same time releasing resources of money, manpower and equipment to provide high quality recycling services.</p> <p>The provision of information, advice, guidance and the option to graduate enforcement are effective interdependent tools to main and progress successful waste services in West Suffolk.</p>
<p><b>Appeals Question A1</b></p>	<p><b><i>Do you consider that the First-tier Tribunal is an appropriate destination for these appeals?</i></b></p> <p>It is important that any administrative penalty system incorporates the necessary and appropriate protections for any person served with a penalty notice.</p> <p>The Tribunal would provide the regulated community with a chance to have its say before an independent body in cases where there is disagreement over the imposition. It would also hold Councils accountable and ensure that we</p>

	<p>have followed our own enforcement policies and procedures when imposing sanctions.</p> <p>It is very important that the Appeal route is both effective and quick and proportional to the action taken.</p>
<p><b>Appeals Question A1</b></p>	<p><b><i>Do you consider that the General Regulatory Chamber Rules will suit the handling of these</i></b></p> <p>.No specific comment, although the ability to review the rules following their use would be beneficial.</p>

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