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Reply to:  
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My Ref: FTG-SC0-02  
Your Ref:  
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Dear Sir,

### **Review of the Environmental Sentencing Guidelines 2014**

We are writing to you as the Executive Members responsible for waste and fly tipping issues in our respective resource and waste partnerships covering Hampshire, Hertfordshire and Kent.

Between us we cover 37 local authorities working in partnership to reduce the menace of fly tipping including its associated significant costs. Our Partnerships have been working with various stakeholders including the National Fly Tipping Prevention Group for some time now to identify potential changes to the legislative framework to better address fly tipping. Part of this work has also given consideration to the penalties given to those found guilty of fly-tipping.

Whilst the Environmental Offences Definitive Guideline gives consideration to the culpability of the defendant and the harm caused by the offence, it is widely agreed that sentences handed down do not always match the severity of the offence committed; fairly reflect the costs incurred by the public purse; or therefore act as a suitable deterrent. Under this context we would like to highlight the following areas for the Sentencing Council to consider with respect to a possible review of the 2014 the Environmental Sentencing Guidelines.

### **Court imposed fines and costs versus Fixed Penalty Notices**

Recent experience in Hampshire, Hertfordshire and Kent and anecdotally across England and Wales indicates a propensity for courts to issue fines for fly tipping below the level of a fixed penalty notice (FPN) for the same offence. Indeed in Hertfordshire during 2018/19 and 2019/20 the average fine for fly tipping issued by the courts was £341 and £365 respectively versus a potential maximum FPN of £400.

As you will be aware FPNs were introduced partly to alleviate pressure on the courts. However, current practice is having the opposite effect. This appears to be due to current guidance which instructs magistrates to ignore the availability of an FPN compounded by anecdotal evidence which suggests solicitors are aware that courts regularly render fines less than the FPN and therefore advise clients to go to court rather than pay the FPN.

It must be considered that the purpose of an FPN is to discharge the defendant's liability to prosecution, as well as the prospect of a higher financial penalty through a correctly functioning court system. As such, if a defendant chooses to go to court as is their right, then we believe it is only reasonable that the potential consequences of such a choice are considered.

Taking the above into account we suggest that in cases where a defendant opts to go to court and loses, then it seems logical that in order to encourage the use of FPNs and reduce pressures on the courts, the combined total of any fines, costs and surcharges imposed by the court should exceed the maximum FPN available currently set in legislation at £400 as well as any other costs incurred by the public purse in bringing the case to court including local authority related costs as well as any costs incurred by the police especially where warrants for arrest have had to be issued for previous no shows. In addition we would suggest that when relevant aggravating factors related to fly tipping on private including aspects such as costs related to clear and restoration of the land incurred by land owners should also a default be reflected in any such judgements.

### **Introduce stronger means testing, and Court Fine “maximum payment periods”**

Whilst we understand the role that means testing has to play, it would appear that its primary purpose is to determine the level of fine. However, we would submit that there is little evidence to suggest whether means declarations are being adequately tested by the courts.

If someone does not have the ability to pay a fine in full then 'payment plans' should not be used to tacitly discharge their liability to the extent that the defendant incurs no practical significant inconvenience or penalty that would hopefully motivate correct behaviours in the future.

At the moment such plans often have the practical consequence of relieving defendants of their responsibility for the negative impacts of their actions. A situation which is then exacerbated when defendants choose to stop paying, with the 'court system' unwilling to pursue such matters when the costs of doing so quickly outweigh the level of fine(s) and cost(s) involved. As a result the courts often look 'soft' on fly tipping, which can only encourage more defendants to opt for the court route as opposed to accepting an FPN.

We suggest that fly tipping offences should be looked at as *the offence* in the *first* instance, not the person who committed it, or their ability to pay. Arguably, all fines could be set like this i.e. in line with the Guidelines but before a means test. Based on this approach we would suggest means testing should therefore be used to ascertain what *type* of fine(s) to give, and never how much. See comments below.

### **Community Based Sentences**

If a defendant cannot pay the fine in full, or in part, then we strongly recommend much wider use of community based sentences as a matter of redress; such as the recent example in April of this year from Basingstoke where the defendant was ordered to pay £784 in costs and was also given a community punishment order requiring 80 hours of community service (*case brought by Basingstoke and Deane Borough Council*).

Whilst we appreciate that the Sentencing Guidelines have the practical consequence of creating bespoke judgements for individual cases, logic would suggest that the Guidelines could be updated in way that community orders become available in all offence categories and penalty ranges. We would therefore urge the Sentencing Council to review the Guidelines to support much wider use of community sentences in circumstances where the defendant claims a lack of means.

We believe such an approach would do three things.

- Firstly it would send a clear message about the willingness of the courts to seek redress from defendants who claim a lack of means likely leading to a greater willingness to settle financial penalties as opposed to the longer term 'inconvenience' of a community based sentence.
- Secondly from a practical standpoint using money and time as sanctions should in turn lead to a perception that going to court is unlikely to be seen as the better option leading to a greater willingness on the part of defendants to pay an FPN if available, therefore relieving pressure on the courts as original intended.
- Thirdly, properly executed, community based sentences should relieve the courts and other agencies from getting involved in ensuring 'payment plans' for fines are paid or chased up when payments are not made as agreed.

Thank you for taking the time to read our joint letter. Officers from all 3 partnerships stand ready to assist with any further queries you may have in preparation for responding to our suggestions as noted above.

Yours sincerely,

Cllr xxxxx xxxxxx  
Hampshire – Project Integra

Cllr xxxxx xxxxxx  
Chair - Hertfordshire Waste Partnership

Cllr xxxxx xxxxxx  
Chair – Kent Resource Partnership