



Mr Steve Wade
Head of the Office of the
Sentencing Council
EB16 East Block
Royal Courts of Justice
Strand
London
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Reply to:
Mr Duncan Jones
Herts Fly Tipping Group
c/o Hertfordshire County Council
Postal Point CHN104
County Hall
Pegs Lane
Hertford
SG13 8DN

e-mail: duncan.jones@hertfordshire.gov.uk
My Ref: FTG-SC-02
Your Ref:
Date: 2nd August 2021

Dear Mr Wade,

Review of the Environmental Offences Definitive Guideline (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 Bedfordshire, Buckinghamshire, Cambridgeshire, Devon, Hampshire, Hertfordshire, Kent, Lancashire, Lincolnshire, Merseyside, Norfolk, Oxfordshire, Somerset, Staffordshire, Suffolk and Warwickshire. Together with a number of other local authorities and other organisations who have co-signed this letter (see pages 6 – 13) we are experiencing significant challenges in relation to sentences handed down by the courts for offences under Section 33 of the Environmental Protection Act ('fly tipping offences') resulting in a lack of any serious deterrent arising from the justice system.

Between us we cover 158 local authorities and 10 professional bodies working in partnership to reduce the menace of fly tipping including its associated significant costs and damage to the environment. Our partnerships have been working with various stakeholders including the National Fly Tipping Prevention Group for some time to identify potential changes to the legislative framework to better address fly tipping. Part of this work has considered the penalties given to those found guilty of fly tipping; a matter which is also a concern for both the National Farmers' Union and the CLA, whose members are often directly affected by the illegal depositing of waste on their land and with whom we continue to work closely on this issue.

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. This has become particularly noticeable following a surge in fly tipping and littering during the pandemic combined with a much wider use and appreciation of outdoor spaces. The media and public reaction to this has seriously questioned the existing level of deterrence. It seems that fly tipping has become a far more attractive option for criminals.

Under this context we would like to highlight the following areas for the Sentencing Council to consider with a view to reviewing and possibly updating the Definitive Guideline (2014) as needed.

Court imposed fines and costs versus Fixed Penalty Notices

Recent experience in the local authorities who have contributed to this letter indicates a propensity for courts to issue fines for fly tipping below the level of a fixed penalty notice (FPN) for the same offence. For example in Hertfordshire during 2018/19, 2019/20 and 2020/21 the average fine for fly tipping issued by the courts was £341, £365 and £297 respectively versus a potential maximum FPN of £400. Linked to this at the other end of the scale in Buckinghamshire from 56 cases successfully prosecuted for fly tipping and duty of care offences (March 2020-Feb 2021) the average fine imposed was £738, with the highest fine imposed being £3500.

Further analysis demonstrates it is usual for fly tipping offences to be designated to incur 'minor' or risk of 'minor' environmental harm. Yet the Guideline for such an offence is a fine with starting point of Band F, which is 600% of weekly earnings. If we take the average UK earnings (£514 a week), then a Band F fine would be £3,084; anecdotally much larger than most of the fines issued by the courts. This would be a very welcome fine in our experience, and we believe it would go some way to restoring public confidence.

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 the current Guideline 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.

As such the signatories to this letter believe it is vital that the Guideline allows for a strong deterrence factor to be built into court judgements where cases for fly tipping are successfully prosecuted. With deterrent sentencing FPN levels should be less of an issue as paying the FPN would be seen as the better option. Linked to this whilst we appreciate FPNs may be an issue for local authorities to deal with, our suggestions are based on the reasonable assumption that we agree the need to work together to ensure that fly tipping offences are dealt with fairly, consistently and as efficiently as possible by the justice system.

Taking the above into account we suggest that in cases where a defendant opts to go to court and loses, it seems logical that in order to encourage the use of FPNs and reduce pressure on the courts, court fines should exceed the maximum FPN available currently set in legislation at £400. Such an approach should also take into account 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 land are present including costs related to clear up and restoration these should be included as a default and therefore 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. A number of local authorities have found in practice that little is done by the courts to test means declarations beyond the defendant's sworn assurance and this is despite the Guideline stating:

“Obtaining financial information. In setting a fine, the court may conclude that the offender is able to pay any fine imposed unless the offender has supplied any financial information to the contrary. It is for the offender to disclose to the court such data relevant to their financial position as will enable it to assess what they can reasonably afford to pay. If necessary, the court may compel the disclosure of an individual offender’s financial circumstances pursuant to section 162 of the Criminal Justice Act 2003. In the absence of such disclosure, or where the court is not satisfied that it has been given sufficient reliable information, the court will be entitled to draw reasonable inferences as to the offender’s means from evidence it has heard and from all the circumstances of the case.”

Much more needs to be done to reinforce the need for courts to undertake robust checks of means declarations in line with the existing guidance above.

A number of local authorities have also observed that around 80% of people prosecuted for fly tipping offences already have previous varied court convictions underlining that their assumed integrity should not be taken for granted. The issue is further compounded by some defendants declaring low official income levels but often benefitting from large undeclared sums of the type that can be gained through fly tipping.

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 Guideline 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.

Under this context we also suggest that a review of the Definitive Guideline needs to consider how can a Section 33 (fly tipping) offence be anything but deliberate? A person may refer to “previous good character” in the Court, but they clearly did not act as such when the offence was committed so why should there be an option to reduce the fine? To this end it also needs to be considered that much of the time people also have “better character” when they are on trial as they are presenting themselves in Court and need to come across as well as possible – this underlines the need to go back to the principle suggested above – fly tipping offences should be looked at as *the offence* in the *first* instance.

Community Based Sentences

If a defendant cannot pay the fine in full, or in part, then we would ask that consideration is given to changing to the Guideline to allow for a 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 a 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 the Guideline has the practical consequence of creating bespoke judgements for individual cases, logic suggests that the Guideline could be updated in a way that community orders become available in all offence categories and penalty ranges. We would therefore urge the Sentencing Council to review the Guideline to support much wider use of community sentences in circumstances where the defendant claims a lack of means.

To this end a review may also conclude there is opportunity to align any revisions to the Guideline with wider anti-social behaviour legislation including specifically the use of criminal behaviour orders. When considering fly tipping and similar offences under such a context the courts are required to take into account the inherent distress arising from fly tipping to landowners and the public alike. Such an alignment would also support police and local authority duties and strategies under section 6 Crime and Disorder Act which places an emphasis upon harm to environment as matter of crime and disorder.

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 originally 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.

Under this context we further believe that the application of community sentences could be enhanced by introducing the principle of reparation where activities arising from community sentences are focused on clearing fly tips and litter as part of an overall rehabilitation strategy. Such an approach would likely be widely supported by the general public leading to greater recognition of the issue. Parallel discussions with Defra and the Ministry of Justice note that both departments support the use of community sentences especially where they involve training and rehabilitation for those carrying out unpaid work on probation, potentially further reducing the likelihood of reoffending.

Additionally, community based sentences address the issue of higher earners receiving greater fines, and vice versa. As we are suggesting sentencing based on the gravity of the offence, combining monetary fines and community sentences could enable the Courts to sentence more fairly. Just because someone has more money does not mean they should necessarily receive a greater punishment. Individuals should not be treated as businesses, where fine levels based on turnover makes sense; as the larger a company becomes, the more there is a reasonable expectation that responsibility and experience will encourage correct behaviours.

However, clearly individuals do not work like this and therefore the Guideline and the sentences arising from them should reflect this. Individuals should be dealt with on a level playing field, with all that separates them being the offence they may have committed, and the seriousness of that offence.

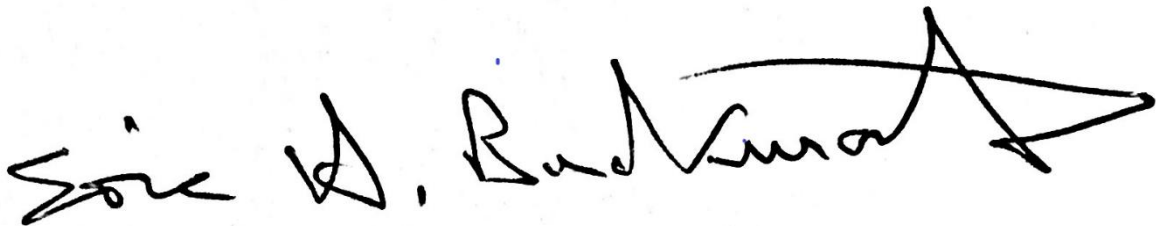
Use of More Suspended Sentences

Evidence arising from 793 convictions secured in Buckinghamshire suggests the single most effective deterrent to reoffending by even the most aggressive serial fly-tippers has been a suspended prison sentence with Buckinghamshire suggesting that such an approach has prevented 20 case offenders from reoffending.

More specifically it is suggested that whilst a 24 month suspension is preferable to 12 months, the prospect of possible incarceration works as a worthwhile deterrent. As such we suggest that anyone convicted of a fly tipping offence for a second time is not given another suspended sentence.

Thank you for taking the time to consider the views expressed above. The local authorities and other organisations who have contributed to this letter stand ready to assist with any further queries you may have in preparation for responding to our suggestions as noted.

Yours sincerely,

A handwritten signature in black ink, reading "Eric W. Buckmaster". The signature is written in a cursive style with a large, sweeping flourish at the end.

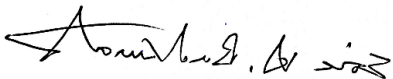
Cllr Eric Buckmaster
Chair – Hertfordshire Waste Partnership

Please see overleaf for a list of signatories:

CC: DEFRA – Under Secretary of State Rebecca Pow MP
DEFRA – National Fly Tipping Prevention Group (Thomas Parrot / Pippa Harper)
Chartered Institution of Wastes Management (Ray Parmenter / Tina Benfield)
Environment Agency (Peter Kellet / Lee Rawlinson / Simon Hawkins / Alex Chown)
HM Courts & Tribunals Service (South East) (Suzanne Gadd)
Keep Britain Tidy (Rachel Scarisbrick)
London Councils (Katharina Winbeck)
Magistrates Association (Tom Franklin)
National Farmers Union (Philippa Arnold / Rosalind David)
Members of Parliament (as determined by each co-signing local authority / organisation)
Natural Resources Wales
Welsh Government – Environment Quality Department


On behalf of:

Waste Partnerships & Authorities

	<p>Cambridge City Council East Cambridgeshire DC Fenland District Council Huntingdonshire DC Peterborough City Council South Cambridgeshire DC Cambridgeshire CC</p>	 <p>Cllr Peter Murphy RECAP Partnership</p>
<p>Devon Authorities Strategic Waste Committee (DASWC)</p>	<p>East Devon District Council Exeter City Council Mid Devon District Council North Devon District Council South Hams District Council Teignbridge District Council Torbay Council Torridge District Council West Devon Borough Council Devon County Council</p>	 <p>Councillor Geoff Jung Chairman DASWC</p>
	<p>Broxbourne Borough Council Dacorum Borough Council East Hertfordshire DC Hertsmere Borough Council North Hertfordshire DC St Albans District Council Stevenage Borough Council Three Rivers District Council Watford Borough Council Welwyn Hatfield BC Hertfordshire County Council</p>	 <p>Cllr Eric Buckmaster Chair - Hertfordshire Waste Partnership</p>
	<p>Ashford Borough Council Canterbury City Council Dartford Borough Council Dover District Council Folkestone & Hythe DC Gravesham Borough Council Maidstone Borough Council Sevenoaks District Council Swale Borough Council Thanet District Council Tonbridge & Malling BC Tunbridge Wells BC Kent County Council</p>	 <p>Cllr Nick Kenton Chair – Kent Resource Partnership</p>

 <p>LANCASHIRE WASTE PARTNERSHIP</p>	<p>Blackpool Council Blackburn with Darwen BC Burnley Borough Council Chorley Council Fylde Council Hyndburn Borough Council Lancaster City Council Pendle Borough Council Preston City Council Ribble Valley BC Rossendale Borough Council South Ribble Borough Council West Lancashire BC Wyre Council Lancaster County Council</p>	 <p>Cllr Shaun Turner Cabinet Member for Environment and Climate Change Chair of the Lancashire Waste Partnership.</p>
 <p>CLEANER GREENER today tomorrow <small>Lincolnshire Waste Partnership Tackling waste together</small></p>	<p>Boston Borough Council City of Lincoln Council East Lindsey District Council North Kesteven DC North East Lincolnshire Council North Lincolnshire Council South Holland District Council South Kesteven DC West Lindsey District Council Lincolnshire County Council</p>	 <p>Cllr Danny McNally Chair Lincolnshire Waste Partnership</p>
 <p>MRWA MERSEYSIDE RECYCLING & WASTE AUTHORITY</p>	<p>Merseyside and Halton Waste Partnership:</p> <p>Liverpool City Council Halton Council Knowsley Council Sefton Council St Helens Council Wirral Council Halton Council</p>	 <p>Carl Beer - Chief Executive Merseyside Recycling and Waste Authority</p>
 <p>Norfolk Waste Partnership</p>	<p>Breckland District Council Broadland District Council Great Yarmouth BC Kings Lynn & West Norfolk DC Norwich City Council North Norfolk District Council South Norfolk District Council Norfolk County Council</p>	 <p>Cllr Andy Grant Chair – Norfolk Waste Partnership</p>
<p>Oxfordshire Resources & Waste Partnership</p>	<p>Cherwell District Council Oxford City Council South Oxfordshire DC Vale of White Horse DC West Oxfordshire DC Oxfordshire County Council</p>	<p>Cllr Lubna Arshad, Chair – Oxfordshire Resources & Waste Partnership</p>

 	<p>Basingstoke & Deane BC East Hampshire DC Eastleigh Borough Council Fareham Borough Council Gosport Borough Council Hart District Council Havant Borough Council New Forest District Council Portsmouth City Council Rushmoor Borough Council Southampton City Council Test Valley Borough Council Winchester City Council Hampshire County Council</p>	<p>Cllr Eachus Chair – Project Integra</p>  <p>Cllr Rob Humby Deputy Leader of Hampshire County Council, Executive Lead Member for Economy, Transport and Environment</p>
	<p>Mendip District Council Sedgemoor District Council Somerset West & Taunton South Somerset DC Somerset County Council</p>	 <p>Cllr Sarah Dyke – Chair Somerset Waste Partnership</p>
	<p>Cannock Chase DC East Staffordshire BC Lichfield District Council Newcastle under Lyme BC Stafford Borough Council Staffordshire Moorland DC South Staffordshire DC Tamworth Borough Council Stoke on Trent City Council Staffordshire County Council</p>	 <p>Cllr Jonathan Price – Chair Joint Waste Management Board Somerset Waste Partnership</p>
	<p>Babergh District Council East Suffolk Council Ipswich Borough Council Mid Suffolk District Council West Suffolk Council Suffolk County Council</p>	 <p>Cllr James Mallinder Chair - Suffolk Waste Partnership</p>
	<p>Elmbridge Borough Council Epsom & Ewell BC Guildford Borough Council Mole Valley District Council Reigate & Banstead BC Runnymede Borough Council Spelthorne Borough Council Surrey Heath BC Tandridge District Council Waverley Borough Council Woking Borough Council Surrey County Council</p>	 <p>Cllr Neil Dallen Chair – Surrey Environment Partnership</p>

	<p>North Warwickshire BC Nuneaton & Bedworth BC Rugby Borough Council Stratford District Council Warwick District Council Warwickshire County Council</p>	<p><i>Heather Timms</i></p> <p>Cllr Heather Timms Chair – Warwickshire Waste Partnership</p>
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On behalf of:

Individual local authorities:

	<p><i>C. Lamb</i></p> <p><i>J. Platts</i></p> <p>Cllr Chris Lamb / Cllr Jenny Platts Barnsley Council</p>
	<p><i>Charles Royden</i></p> <p>Cllr Charles Royden Deputy Mayor & Portfolio Holder for Environment, Highways and Transport</p>
	<p><i>W. Schmitt</i></p> <p>Cabinet Member, Environment Braintree District Council</p>
	<p><i>Maria Pearson</i></p> <p>Cllr Maria Pearson Chair of Environment, Enforcement and Housing Committee</p>
	<p>Cllr Peter Strachan – Portfolio Holder for Environment & Climate Change Buckinghamshire Council</p>

 <p>Central Bedfordshire</p>	 <p>Cllr Ian Dalgarno Executive Member for Community Services</p>
 <p>Chelmsford City Council</p>	 <p>Councillor Rose Moore Cabinet Member for Greener and Safer Chelmsford</p>
 <p>Devon County Council</p>	 <p>Cllr Roger Croad Devon County Council</p>
 <p>Doncaster Metropolitan Borough Council</p>	 <p>Cllr Joe Blackman Cabinet Member for Highways, Infrastructure and Enforcement Doncaster Borough Council</p>
 <p>Dorset Council</p>	 <p>Cllr Jill Haynes Cabinet Member for Customers Services & Community Dorset Council</p>
 <p>Epping Forest District Council www.eppingforestdc.gov.uk</p>	 <p>James Warwick / Cllr Nigel Avey Service Director – Contracts / Portfolio Holder Environmental and Technical Epping Forest District Council</p>
 <p>Essex County Council</p>	 <p>Cllr Malcolm Buckley (Cabinet Member for Waste Reduction and Recycling)</p>

	 <p>Cllr Abbas Hussain Portfolio Holder – Neighbourhood Services</p>
	 <p>Cllr Sarah Rouse Leader of Malvern Hills District Council</p>
	 <p>Cllr Wendy Stamp Leader – Maldon District Council</p>
	 <p>Cllr Heather Shearer Portfolio holder for Community Health Services</p>
	 <p>Cllr Dominic Beck Portfolio Holder for Transport & Environment Rotherham Metropolitan Borough Council</p>
	 <p>Cllr Paul Wood Executive Member for Housing, Roads and Waste Management</p>
	 <p>Cllr Bradley Thomas Leader of Wychavon District Council</p>

On behalf of:

Professional Bodies

 <p>Association of Directors of Environment, Economy, Planning & Transport</p>	 <p>Steve Palfrey Chair of ADEPT Waste Group</p>
 <p>Association of London Cleansing Officers</p>	 <p>Neil Carret – Chair Association of London Street Cleansing Officers</p>
	 <p>Mark Tufnell CLA Deputy President</p>
	 <p>Jacob Hayler Executive Director Environmental Services Association</p>
 <p>www.hertfordshire.gov.uk/flytipping</p>	 <p>Duncan Jones – Chair Hertfordshire Fly Tipping Group</p>
 <p>Local Authority Recycling Advisory Committee</p>	 <p>Carole Taylor - Chair Local Authority Recycling Advisory Committee</p>
<p>London Environment Directors' Network</p> 	 <p>Chair London Environment Directors Network</p>

<p>LINCOLNSHIRE Environmental Crime Partnership</p> 	<p><i>A. Kirkham.</i></p> <p>Ayeisha Kirkham (MCIEH; CEnvH) Chair – Lincolnshire Environmental Crime Partnership</p>
 <p>Local Government Association</p>	<p><i>David Renard</i></p> <p>Cllr David Renard Leader, Swindon Council Haydon Wick Ward (Conservative)</p> <p>Chairman - Economy, Environment, Housing and Transport Board Local Government Association (LGA)</p>
 <p>NAWDO NATIONAL ASSOCIATION OF WASTE DISPOSAL OFFICERS</p>	<p><i>Emma Beal</i></p> <p>Emma Beal – Chair National Association of Waste Disposal Officers</p>

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