

From: Barbara Cooper, Corporate Director of Growth, Environment and Transport

To: Susan Carey, Cabinet Member for Environment

Subject: Adoption of Household Waste Recycling Centre Enforcement Policy

Decision No: 19/00091

Summary: The purpose of the Enforcement Policy is to determine good practice and to demonstrate clarity and consistency in the delivery of environmental enforcement duties and powers relevant to Kent County Council's delivery of the Household Waste Recycling Centre (HWRC) service. The intended audience of the Enforcement Policy is members of the public, and our partners, in order to help ensure that KCC's approach to enforcement at the HWRCs is open and fair. The Policy has been reviewed and approved by Invicta Law.

The policy addresses several issues which can occur at HWRCs including: Abuse of staff and other customers, trade waste abuse, theft of materials, fly-tipping outside the sites, and non-adherence to HWRC policy.

The Enforcement Policy is largely an aggregation of existing policies. There are no substantive changes to policies already agreed by Members, however, as this document may need to be disclosed or called upon in legal proceedings, a Key Decision is required to approve the Policy.

The Enforcement Policy aims to clarify procedures that may be taken to ensure compliance with existing KCC HWRC operating policies by site users.

Recommendation:

The Cabinet Member for Environment is asked to take a decision to introduce an Enforcement Policy which will support KCC and their contracted HWRC Providers in the effective, transparent and permitted delivery of HWRC waste enforcement practices.

1. Background

- 1.1 KCC Waste Management operates a network of 18 HWRCs for Kent's 1.6m residents to dispose of their household waste. KCC has a statutory requirement to provide HWRCs for Kent residents to deposit their own household waste, as set out in the Environmental Protection Act 1990 (EPA 1990 part 2, 51b). It is unlawful for trade/commercial waste to be disposed of at any of KCC's HWRCs.
- 1.2 Kent's HWRCs are currently managed by 3 private waste management companies (Commercial Services Kent Limited, FCC and Biffa). These organisations manage the day-to-day operation of the HWRCs on behalf of KCC.

1.3 There are several policies and procedures in place which aim to prevent unlawful activity at the HWRCs, namely abuse of staff and other customers, trade waste abuse, theft of materials, fly-tipping outside the sites, and non-adherence to HWRC policy. However, there is not a published policy which states the actions that can be taken by KCC and its partners to enforce against these unlawful activities. The Enforcement Policy has therefore been prepared which can be disclosed or called upon in Legal proceedings.

2. Enforcement Policy

2.1 The Enforcement Policy allows KCC and its partners to:

- Carry out enforcement in a fair, practical and consistent manner
- Meet enforcement objectives through the provision of advice and information to individuals and businesses. Where there is a degree of risk or impact to residents, businesses, the Council, or where the law demands a robust approach, then the actions identified in the Enforcement Policy will be utilised.

2.2 Enforcement is any formal or informal action taken to prevent or rectify infringements of legislation or policy. The enforcement options may differ where different areas of legislation are used, but the principles of application should remain consistent.

2.3 Enforcement includes visits, inspections, verbal and written advice, assistance with compliance, written warnings, the serving of statutory notices, issuing of fixed penalty notices (through relevant district/ borough council), formal cautions, prosecutions, and liaison and co-operation with other enforcement authorities and organisations where appropriate.

2.4 There are no financial implications to the introduction of this policy, however greater enforcement practices should ensure HWRC policies are upheld and deter non-adherence, therefore providing savings to the service.

2.5 Appendix B shows the detail of the full HWRC Enforcement Policy document. However, in summary, the Enforcement Policy details the actions which can be taken to address the following issues which may occur at HWRCs:

2.6 Abuse of staff and other customers

This relates to instances where a member of staff, or indeed another customer(s) is subjected to harassment, physical harm or verbal abuse by a site user.

All staff are expected to be able to work in safe conditions and experience no harassment or physical abuse. Harassment is unwanted or unjustified behaviour which affects the dignity of anyone in the workplace, and which the recipient finds threatening, demeaning or offensive as set out in the Health and Safety at Work Act 1974.

2.7 Trade Waste

HWRCs are provided for residents for the disposal of household waste only. It is unlawful for trade/commercial waste to be disposed of at any of KCC's HWRCs. As such, and due to the high cost for disposing of this waste, KCC has several policies in place to prevent trade waste from coming through its HWRCs, coupled with a reliance upon monitoring and enforcement. The HWRC contractors and KCC will

work together to ensure trade waste is not being taken in to the HWRCs. The deposit of trade waste at a HWRC is deemed illegal under Section 34 of the Environmental Protection Act 1990, Duty of Care.

2.8 Theft of materials

Theft of materials from the HWRCs means where a person or persons other than those contracted to do so, removes waste materials or equipment without permission. The removal of materials or equipment without prior consent of the authority or site contractor is theft. This could also relate to theft of materials from a KCC Waste Transfer Station.

2.9 Fly-tipping

Any waste left at the entrance of our HWRCs is classed as fly-tipping. Any person suspected of committing fly-tipping at the entrance of our HWRCs, can be investigated further under Section 33 of the Environmental Protection Act 1990.

2.10 Non-adherence to HWRC policy

KCC has various operating policies in force at all HWRCs. Non-adherence is where a person disregards site management policy e.g. limits and/or charging for specific material streams, type of vehicle used to access sites, and health and safety policies. For details of current policies please see the HWRC Operating Policies at www.kent.gov.uk/waste. Any enforcement action will be undertaken by KCC with support from HWRC Contractors. Failure to comply with the terms and conditions of KCC's operating policies may lead to further action and investigations.

3. Legislation

- 3.1 In order to investigate financial crime within the Waste Disposal Authority, KCC can investigate offences under the Environmental Protection Act 1990, The Fraud Act 2006, The Theft Act 1968 and 1978 and various other legislations
- 3.2 Under section 222 of the Local Government Act 1972, KCC can undertake prosecutions if the local authority considers it expedient for the promotion or protection of the interests of the inhabitants of their area. They prosecute or defend or appear in any legal proceedings and, in the case of civil proceedings, may institute them in their own name.
- 3.3 Working in partnership with the Kent District and Borough Councils, KCC can also investigate under delegated powers, offences under the Environmental Protection Act 1990.
- 3.4 These offer a wide range of powers to enable KCC to fulfil the duties for which it is responsible.

4. Equalities and Data Protection implications

- 4.1 An Equality Impact Assessment (EqIA) was completed to ensure consideration was given to the impact of introducing this policy. This initial assessment indicated that any impact on users could be reasonably mitigated.

4.2 A Data Privacy Impact Assessment (DPIA) initial screening was undertaken which found that a DPIA is not necessary as no personal data is collected, shared, used or processed as part of the production of the HWRC Enforcement Policy itself or as a result of the policy. It did recognise that DPIAs may be required for individual enforcement activities which arise as a result of implementation of the policy.

5. Next Steps

5.1 Following consideration of the recommendations by Environment and Transport Cabinet Committee (ETCC), a final decision will be taken by the Cabinet Member for Environment on whether to introduce the HWRC Enforcement Policy.

6. Conclusion

6.1 KCC has several policies and procedures currently in place to combat abuse of the HWRC service. Clear and transparent enforcement of existing policies along with targeted communications will encourage responsible behaviours and avoid wrongdoing, as well as making financial savings and reducing demand/capacity at the HWRCs. The introduction of this policy will strengthen enforcement procedures, helping to protect the HWRC service and making it more accessible for residents. The Policy will be published on kent.gov.uk.

6.2 The Enforcement Policy will be reviewed and updated as and when substantial changes occur. New legislation or changes to HWRC operating policy may introduce new types of powers and possible enforcement actions which may also require updates to the document.

7. Recommendations

The Cabinet Member for Environment is asked to take a decision to introduce an Enforcement Policy which will support KCC and their contracted HWRC Providers in the effective, transparent and permitted delivery of HWRC waste enforcement practices.

8. Background Documents

- 8.1 Appendix A: PROD KCC Household Waste Recycling Centre Enforcement Policy
- 8.2 Appendix B: KCC Household Waste Recycling Centre Enforcement Policy
- 8.3 Appendix C: Equalities Impact Assessment

9. Contact details

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