

Report subject	<b>Review of the approach to Waste Enforcement and Waste Offences Enforcement Policy</b>
Meeting date	5 February 2025
Status	Public Report
Executive summary	<p>Waste offences such as littering and flytipping occur within the BCP Council area, with the Council and its contractor's undertaking education, engagement and enforcement through the use of fixed penalty notices and/or prosecution.</p> <p>Following updated government guidance and changes to legislation prescribing fixed penalty amounts in 2023, the Council increased fixed penalty notice fines in May 2024. A 6-month review of the impact of this change including consideration of the number of reports of waste offences, public opinion on the new fine levels and compliance with the legislation, has been undertaken.</p> <p>This review has highlighted the need for a more detailed published policy as well as consideration around a proportionate approach to smaller residential flytipping. The current Waste Enforcement Policy is due for renewal and is proposed as appended, to include changes following the review and to align to the updated guidance.</p>
Recommendations	<p><b>It is RECOMMENDED that Cabinet:</b></p> <p><b>(a) Approve the updated Enforcement of Waste Offences policy at Appendix B</b></p> <p><b>(b) Approve the revision of the fixed penalty notices as detailed in Section 36.</b></p>
Reason for recommendations	<p>The previous 2019 policy is due for review and should be aligned to the new statutory guidance issued by the Department of Environment, Food and Rural Affairs (DEFRA) in October 2023. A clear policy supports the education of stakeholders on the Council's approach and supports a proportionate but robust enforcement approach.</p>

	A six-month review following the increase in relevant fixed penalty notice fines has been conducted and recommends that a revised approach to flytipping is deemed proportionate to support enhanced compliance with the legislation. This approach will be supported by enhanced communication to ensure stakeholders are aware of the offences, penalties and approach by the local authority and its contractors.
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Wards	Council-wide
Classification	For Recommendation

## Background

### Legislative and Strategic Context

1. Waste offences such as littering, graffiti, flytipping, flyposting are detrimental to our local environments and the neighbourhoods in which we live, work and visit. In December 2023, the Government issued a research briefing titled "Flytipping: the illegal dumping of waste" which estimated fly-tipping to cost £392 million per annum, with the cost of clearance to local authorities in England in 2021/22 being £10.7 million. A research briefing by DEFRA updated in January 2022 further estimated that in 2018 to 2019 it cost local authorities £699 million or £30 per household to keep our streets clean. The BCP annual budget for street cleansing is £3.7million, which includes the removal of flytipped waste.
2. BCP Council's Corporate Strategy highlights the Council's ambitions for 'Our Place and Environment,' specifically that "Our communities have pride in our streets, neighbourhoods and public spaces." The effective enforcement of environmental crime offences is key to this ambition and as such a key performance measure for the Council's corporate strategy is to 'increase the number of fixed penalty notices issued for littering and flytipping offences'.
3. For the purposes of this report and policy the following criminal offences are included:
  - Littering, contrary to Sections 87 and 88 Environmental Protection Act 1990
  - Flyposting, contrary to Section 43 Anti-Social Behaviour Act 2003 and Section 224 Town and Country Planning Act 1990

- Flytipping, contrary to Section 33 Environmental Protection Act 1990
  - Unauthorised distribution of free literature, contrary to Section 94B and Paragraph 1 to Schedule 3A Environmental Protection Act 1990. [Section 94B and Paragraph 7 to Schedule 3A of the Environmental Protection Act 1990].
  - Waste Duty of Care offences, contrary to Section 34 Environmental Protection Act 1990.
  - Failure to provide a Waste Transfer Note, contrary to Section 34 Environmental Protection Act 1990.
  - Public Spaces Protection Order (PSPO) offences, contrary to Section 63 or Section 67 Anti-Social Behaviour, Crime and Policing Act 2014.
4. A fixed penalty notice is an alternative route to prosecution to manage waste offences, however, the Council can also choose to take prosecution action where it deems appropriate, including in the event of non-payment of the fixed penalty notice. A fixed penalty notice can be issued on receipt of sufficient evidence, at the time of the offence or as soon as reasonably practicable. The income from the receipt of the fixed penalty notice is retained by the local authority, or its appointed contractor, and must be used for functions specified within the statutory guidance.
  5. BCP Council contract Wise Ltd to enforce environmental crime through Council delegated powers. The contract specifies that enforcement cannot be incentivised to ensure compliance with national guidance. BCP Council also delegate powers to specified Council staff. The income from fixed penalty notices is used on functions relating to litter and refuse (including keeping land and highways clear of litter and refuse, and enforcement against littering and littering from vehicles); graffiti and fly-posting; controlling and enforcing against the unauthorised distribution of free literature, and in the case of flytipping and waste duty of care, income will be used for functions relating to waste on land. This will include enforcement and clearance functions.

### **Increase to Applicable Penalties in May 2024**

6. In July 2023, central government introduced a statutory instrument to allow local authorities to increase financial penalties for fixed penalty notices served for certain waste offences. The Governments 2023 Anti-Social Behaviour Action Plan called for local authorities “to take a much tougher approach” to waste enforcement and further created the statutory instrument to support this. In October 2023, the Department for Environment, Food and Rural Affairs (DEFRA) updated their statutory guidance to reflect this statutory instrument and ensure that fixed penalty notice receipts were used to support local authority functions around litter and waste.
7. The statutory instrument details that “littering, graffiti, fly-posting and fly-tipping blight communities, impose avoidable costs on the public purse and can harm the environment, with fly-tipping being aggravated by householders giving waste to unauthorised carriers. Fixed penalty notices provide the relevant enforcing authorities with an effective and visible way of responding to these environmental crimes and a lower-cost alternative to prosecution.”
8. In response to the government direction and statutory instrument, in May 2024, BCP Council increased the fixed penalty notice amounts for flytipping, litter and waste duty of care offences. A copy of this officer decision record, taken in consultation with the Portfolio Holder, is attached at Appendix A. The fixed penalty notice amounts were set as follows:

Offence	Fixed penalty notice amount	Early payment amount
Flytipping	1000	500
Littering including graffiti	200	100
Waste Duty of Care	600	300
Flyposting	150	75
Unauthorised Distribution of Free Literature	100	75
Failure to provide a Waste Transfer note	300	180
Public Spaces Protection Order	100	75

9. Following the changes to fixed penalty notice amounts a six month review of the approach has been undertaken and is outlined in this report along with recommendations.

### **BCP Contractual Arrangements**

10. BCP Council contract WISE Ltd to undertake enforcement of waste and PSPO offences. This contract has been in place since March 2023, with an expiry of March 2026, unless extended. WISE Ltd officers are delegated powers by the Council to undertake enforcement and issue fixed penalty notices. The Council manage the contract and undertake formal prosecution where appropriate. Some Council officers, in community safety or place-based roles also hold delegated powers for the enforcement of relevant offences and the approach to this enforcement is consistent across both parties.
11. Fixed penalty notices are issued once the legal threshold for the offence is met. Evidence collation can include witnessing the offence, statements, use of CCTV, witness statements, legal questionnaires or interviews held under Police and Criminal Evidence Act 1984 principles. Enforcement will be reasonable, proportionate and consider both vulnerability and discretion as per the statutory guidance.
12. The contract and performance of WISE Ltd is regularly reviewed between the BCP Head of Public Protection and the Operational Director for WISE. Reviews consider performance, payment rates, allocation of staff and hotspot areas.

### **Review of the Approach to Waste Enforcement**

13. The current policy for the Enforcement of Environmental Offences through the use of Fixed Penalty Notices was approved in November 2019. This policy pre-dates the introduction of the WISE Ltd contract as well as the updated legislation and statutory

guidance. The policy contained broad principles but lacked in the detail outlined within the October 2023 guidance.

14. The current approach to waste offences was set in 2023. This included a robust enforcement approach, contract specification that detailed where enforcement would be taken and where discretion would be applied and set the fixed penalty notice limits. Although the 2019 policy was published, the contract specification following the procurement of WISE Ltd was not, therefore the methods of complaint management, review of fixed penalty notices and areas of discretion were unclear to the public.
15. A review of the Council's compliance with the updated statutory guidance, as well as a review on the service demand and associated enforcement, education and engagement approach was undertaken by the Head of Public Protection in October 2024.
16. Between 1 April 2023 and 31 March 2024 there were 1820 complaints of flytipping reported. Between 1 April and 27 November 2024 there were 2474 complaints of flytipping reported. Complaints are submitted through the Council's website or through the Council's customer services team, where they are submitted to WISE Ltd for investigation. Where complaints are received directly through wider Council teams, such as environmental health, they are passed to WISE where suitable to do so.
17. Litter enforcement is pro-active and the Council set the hotspot locations for patrols based on cleansing, footfall and stakeholder information. This is also the case for flyposting.

18. The following fixed penalty notices have been issued:

Offence	1 April 2023- 31 March 2024	1 April 2024- 27 November 2024
Flytipping	32	50
Commercial Waste	18	11
Waste Duty of Care	34	42
Flyposting	4	1
Littering	2566	2263

19. Of the fines issued between 1 April 2023- 31 March 2024, payment rate sat at 68%. Of the fixed penalty notices issued since the fixed penalty amounts have increased on 9 May 2024, payment rate sat at 58%, a decrease of 10%.
20. Flytipping enforcement is challenging as the enforcing officer must be satisfied beyond all reasonable doubt that an individual has knowingly tipped the waste. With many offences being reported to the authority after the fact, evidence collation relies on witness statements, CCTV or proof of identity within the waste.
21. Practices have become more sophisticated. For example, flytipping in rural areas, at times where witnesses aren't present, and away from public spaces CCTV. WISE Ltd and the Council have been working together to support wider evidence collation to tackle this evidential gap. Joint working with the environment agency, stronger working relationships with the Council's CCTV service including utilising additional cameras installed through Safer Streets 5 grant funding, introduction of additional Public Spaces Protection Orders to tackle key negative behaviours in Coastal and

Open Spaces and ongoing joint working with Dorset Police to include the identification of vehicle ownership.

22. BCP Council are currently developing 'in-cab' technology to support more efficient identification and removal of flytipped items, to ensure streets are kept clean and free of obstruction. Work is ongoing to ensure timely investigation of flytipping, in order to deter future offences, as well as efficient removal of waste. Reports of flytipping will go to the Environment team in the first instance and passed for formal investigation where criteria is met. The Council will continue to review the most efficient and effective approach to balance clean streets and robust enforcement.
23. In Summer 2024, following the issue of a number of fixed penalty notices for flytipping of items left outside residential premises, there has been media coverage of the Council's increased penalty notice amounts at both regional and national level, with further localised social media coverage from residents. Opinions on this approach have varied, with some residents supporting a robust approach, and some residents feeling the £1000 fines is disproportionate to the offence. Residents have expressed desire to support free-cycling of good quality items and the lack of knowledge around what constitutes an offence. Feedback also details the challenges of obstructions on the highways for access to prams and mobility aids.
24. Following the 6-month review of the number of reports, levels of enforcement taken, payment rates and the public voice on the increased to permitted fixed penalty notice amounts, the Council have considered a revision of the approach and fine amounts.
25. Under the statutory guidance, a Council can set the full fixed penalty level for flytipping offences as any amount between £150 and £1000, with the lowest discounted penalty amount set at £120. Given BCP Council's current and previous fixed penalty notice amounts and the outcomes of the review, the most appropriate options available to the Council are as follows:
  - a) Retain the £1000 fixed penalty notice for any flytipping offence
  - b) Revert to the previous fixed penalty notice amount of £400 for any flytipping offence
  - c) Introduce different fine levels for small flytipping outside a person's own residential premises which does not create a significant highway obstruction, flytipping outside a person's own residential premises that does create a significant highway obstruction, and larger or deliberate flytips. This would create three fixed penalty notice levels with an accompanying specification to differentiate the circumstances for the application of each level.
  - d) If option c were to be introduced, ensuring other waste offence penalty levels were proportionate to this approach, for example that Waste Duty of Care was not higher than the lower level flytipping fixed penalty notice.
26. The recommended option is Option C which would provide a more proportionate approach to small flytips directly outside a person's residential address, whilst retaining robust enforcement for deliberate and large flytipping or where significant highway obstruction is present. Option C would be accompanied by fixed penalty notice considerations in Option D as well as an ongoing communications plan.
27. The assessment of what would be considered a significant obstruction can be taken from the Disability Discrimination Act 1995 which recommends that a minimum of 1200mm width of footway should be kept free of obstructions. Any flytipped item

that does not leave 1.2m of the pavement free of obstructions would be considered significant and attract a higher level of fixed penalty notice.

28. From the review it was a clear that communication around waste offences: what it constitutes, what the penalties are and what the impact is, had been limited since 2023 and a need for more robust and regular communications is required. Residents have remarked on the desire to 'freecycle' items on public land and it is key the Council make the law clear and give advice on the best way to support recycling of items.
29. In the October 2023 guidance issued by DEFRA, the requirement of a robust, accessible and clear policy on the approach to environmental crimes was outlined. BCP Council's current environmental enforcement policy is dated November 2019, and although the authority complies with the guidance set by DEFRA, an updated policy that reflected the new guidance, is required.
30. Elements that needed further detail included:
  - the way to request an internal review of a fixed penalty notice, which was previously unclear on the notice itself.
  - The approach to enforcement where young people have committed an offence
  - Discretion on cases, as defined within the guidance
  - Clear detail on the use of fixed penalty notice receipts
  - Complaints process
31. Taking in to account the findings of the review, recommended option and the new Guidance, a new policy on the Council's approach to Enforcement of Waste Offences is attached at Appendix B.
32. The policy outlines the offences, the consistent approach applied across WISE Ltd and delegated Council officers, the use of fixed penalty notice receipts for both the Council and their contractors, the prosecution considerations and discretion. This policy has been reviewed by the Council's legal services team and is compliant with the DEFRA guidance.
33. The policy also clearly details the fixed penalty notice amounts, both at the full rate and the discounted rates for early payment. A specification sits within the policy to further detail the specific approaches to certain circumstances. This will support the public understanding and approach to environmental crime offences.
34. The key changes are the implementation of the recommended option: a revised approach to flytipping enforcement and therefore issuing of fixed penalty notices. This considers the scale of the obstruction of a highway when assessing "residential" flytipping, where items are placed outside a persons home address versus flytipped items away from a home address, deliberate or large flytipping offences. A lower fine amount has been applied to the "residential" cases where there is not a significant obstruction of the highway, a mid rate fine has been applied to the "residential" cases where there *is* a significant obstruction of the highway and a higher rate fine amount applied to large or non-residential flytips. Further details of the specifics of the approach can be found in Appendix A of the policy.
35. The new flytipping lower fixed penalty amount is proposed at £300 and as such, Waste Duty of Care is also proposed to align to the same amount of £300. The

offences are similar in nature, with Waste Duty of Care ensuring waste is correctly disposed of using suitable contracts or waste receptacles. The cost of waste bins are £45 for refuse and £55 for recycling, therefore the lower penalty amount should sit above this cost in order to deter future offences.

36. The new proposed fixed penalty notice amounts are:

<b>Offence</b>	<b>Full payment amount</b>	<b>Discount amount (paid within 14 days)</b>	<b>Previous full payment amount for comparison</b>
Littering (to include graffiti)	£200	£100	£200
Flyposting	£100	£75	£100
Flytipping (items directly outside the offender's residential premises only, where there <b>is not</b> a significant obstruction of the highway*)	£300	£150	£1000
Flytipping (items directly outside the offender's residential premises only, where there <b>is</b> a significant obstruction of the highway*)	£600	£300	£1000
Flytipping (all other offences)	£1000	£500	£1000
Unauthorised distribution of free literature	£100	£75	£100
Waste duty of care offences	£300	£150	£600
Failing to provide a Waste Transfer Note	£300	£180	£300
Public Spaces Protection Order (PSPO) offences	£100	£75	£100

\* A 'significant highway obstruction' is where there is less than 1.2m of footway free from obstruction. The Disability Discrimination Act 1995 recommends that 1.2m of footway is free from obstruction to allow access for all footway users.

37. The policy is supported by a full equality impact assessment. This highlights that there is no perceived negative impact to the new policy and approach and details that a robust communication plan will be created to ensure continued education of



residents, visitors and business to the Council's approach and the issues environmental crime create.

38. The communications plan will include publication of prosecution, regular publication of enforcement action taken as well as educational effectiveness. A social media campaign will be undertaken to detail the effects of environmental crime and the penalties for these offences. The Council will explore working with Keep Britain Tidy to promote their educational materials in high footfall locations.
39. These communications will be ongoing, supported further by WISE Ltd social value campaign that delivers advice into education settings and support of local charities through donations and litter picks.
40. The new approach seeks to educate and engage with residents, but yet still remain robust on environmental crime offences. A proportionate but escalating approach is applied to residential flytipping, allowing for consistency and awareness.

### **Summary of financial implications**

41. BCP Council retain 100% of any fixed penalty notice receipts issued by delegated BCP Council officers. BCP Council retain 17.5% of all fixed penalty notice receipts issued by WISE Ltd. These receipts are required to be used in line with the guidance. This income is reinvested into communications, management of the contract and supports waste collection and enforcement. WISE Ltd have the same requirements of the use of fixed penalty notice receipts and utilise this for further enforcement and social value campaigns.
42. With a robust and clear policy that is suitably communicated, it is perceived payment rates will increase. Prosecution action will be considered in the event of non-payment and this will further support the payment of fixed penalty notices.
43. There are no perceived negative implications to this approach.

### **Summary of legal implications**

44. The introduction of a revised approach to flytipping is within the Council's legal ability to introduce. All other fixed penalty notice amounts sit within the levels prescribed in the legislation.
45. The policy has been drafted in consultation with legal services and aligns to the statutory guidance.
46. The policy will be reviewed in three years, or if further government guidance is issued, whichever falls sooner.
47. The prescription of a review process for the issue of a fixed penalty notice within the policy, ensures the correct legal issue of fixed penalty notice in line with the legal evidential threshold. Where a fixed penalty notice is unpaid, or in cases where it is deemed prosecution is the most suitable course of first action, cases will be fully reviewed by the Council's litigation team prior to court action.

### **Summary of human resources implications**

48. There are no human resource implications.

## **Summary of environmental impact**

- 49. The update to a robust policy on tackling environmental crimes and consistent approach to education, engagement and enforcement will have a positive impact on the environmental issues created by these offences.
- 50. Reduction in environmental crime offences should reduce costs incurred from cleansing and waste collection, further supporting the positive environmental impact.

## **Summary of public health implications**

- 51. There are no public health implications

## **Summary of equality implications**

- 52. A full equality impact assessment has been undertaken for the policy. There are no perceived negative impacts and mitigation is in place to support those with socio economic challenges.

## **Summary of risk assessment**

- 53. The policy is compliant with the legislation and the guidance. The approach is proportionate, however, supports the governments direction of a robust approach to enforcement.
- 54. A clear, concise policy that outlines the Council's approach supports engagement, education and enforcement as well as supporting any necessary prosecution.
- 55. The specification within the policy supports the application of the necessary fixed penalty notice fine.

## **Appendices**

Appendix A- Officer Decision Record: Fine increase for environmental enforcement

Appendix B- Enforcement of Waste Offences Policy 2024

Appendix C- Equalities Impact Assessment

## **Background Reading**

[The Environmental Offences \(Fixed Penalties\) \(Amendment\) \(England\) Regulations 2023](#)

<http://www.legislation.gov.uk/ukpga/2003/38/part/6/crossheading/penalty-notices-for-graffiti-and-flyposting>  
[Code of practice for litter and refuse Part 1A.pdf](#)

<http://www.legislation.gov.uk/ukpga/1990/8/section/224>

<http://www.legislation.gov.uk/ukpga/2003/38/section/43>

<http://www.legislation.gov.uk/ukpga/1990/43/section/87>

<http://www.legislation.gov.uk/ukpga/1990/43/section/33>

[www.legislation.gov.uk/ukpga/1990/43/section/34](http://www.legislation.gov.uk/ukpga/1990/43/section/34)

<http://www.legislation.gov.uk/ukpga/1990/43/section/94>

[www.legislation.gov.uk/ukpga/2014/12/section/67](http://www.legislation.gov.uk/ukpga/2014/12/section/67)

[www.legislation.gov.uk/ukpga/2014/12/section/63](http://www.legislation.gov.uk/ukpga/2014/12/section/63)

[SN05672.pdf](#)