

Enforcement of waste offences policy

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Housing and Communities

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1. Purpose Statement

- 1.1 This policy is to ensure a consistent approach to the use of fixed penalty notices issued for environmental crimes and waste offences and the formal prosecution of those offences. The policy details the legal framework around the issuing of fixed penalty notices for qualifying offences and where the Council may choose to prosecute cases as a first enforcement action.
- 1.2 It is important for local authorities to have an enforcement policy to ensure consistency of approach among Council Officers and for members of the public to know what to expect from the service. An enforcement policy also provides clarity if the Council takes legal proceedings, or if enforcement action is appealed.
- 1.3 The principles of the Regulator's Code apply to enforcement action carried out by local authorities. The code advises that effective enforcement regimes are consistent, proportionate, targeted, transparent and accountable. This policy supports the Council's adherence to this code.
- 1.4 Our aim is to reduce environmental crime throughout Bournemouth, Christchurch and Poole, working with residents, visitors, businesses and stakeholders to achieve this through engagement and education. However, it is recognised that if the law is broken, then enforcement action may be necessary to protect the public and the environment.
- 1.5 This policy is based on the application of relevant statutory legislations and guidance and is approved by the Council's Cabinet. Relevant trained Council officers are authorised through the Council's Scheme of Delegation to apply the legislation as per the policy detail.
- 1.6 This policy supports the Council's Corporate Strategy objectives, namely 'our communities have pride in our streets, neighbourhoods and public spaces.'

2. Who the policy applies to

- 2.1 This policy applies to all residents, visitors, businesses, Councillors and stakeholders. The application and enforcement of legislation applies to all officers who are authorised through the Council's Scheme of Delegation.

3. This policy replaces

- 3.1 This policy replaces the Policy for Environmental Enforcement through Fixed Penalty Notices, November 2019.

4. Approval process

- 4.1 The policy is approved by BCP Council's Cabinet. The lead cabinet member for this policy is the Portfolio Holder for Housing and Regulatory Services.

5. Links to Council Strategies

- 5.1 During the preparation of this policy document due consideration has been given to the following Key Council Strategies:
 - Corporate Strategy
 - Equality & Diversity Policy

6. Introduction

6.2 The Policy for the Enforcement of Waste Offences outlines the Council's general approach to enforcement through fixed penalty notices and prosecution across specific environmental crimes. This policy provides details of the Council's specific approach in Bournemouth, Christchurch and Poole.

6.3 The Policy confirms that:

- The Council will communicate whenever possible to the public, businesses and organisations to help them meet their legal obligations in relation to the relevant legislation in conjunction with embarking on the enforcement process.
- The Council is committed to carrying out its duties in a fair and consistent manner, ensuring that enforcement action is proportionate to the seriousness of failure to comply with statutory legislation.
- The decision to use enforcement action will depend on the severity of the non-compliance.
- Education, engagement and enforcement are key to supporting long term behaviour change and supporting correct waste disposal and management.
- The Council are compliant with the Regulators Code and relevant statutory guidance.

7. The Policy

7.1 What are environmental crime and waste offences?

There are a range of offences covered within this policy that constitute environmental crime and waste offences. All offences detailed are criminal offences that can be discharged through the use of fixed penalty notices. All offences can also be prosecuted, with maximum fines set out in Section 7.10.

Littering: A person is guilty of a littering if they throw down, drop or otherwise deposit, and then leave, any litter in any open air place, including private land and land covered by water. Throwing litter from vehicles is also a littering offence under section 87 of the Environmental Protection Act 1990.

Flytipping: A person is guilty of flytipping if they illegally deposit waste on land that does not have a licence to receive it. In short, flytipping is the illegal dumping of unwanted items. This can be large scale dumping such as by illegal waste carriers or even smaller scale dumping such as leaving items of furniture on the public highway.

Flyposting: Fly-posting is the display of advertising material on buildings and street furniture without consent of the owner.

Unauthorised distribution of free literature: A person commits an offence if they know that an area is designated, and they then distribute any free printed matter in that area without the consent of the Council. A person also commits an offence if they cause another person to distribute any free printed matter without the consent of the Council.

Waste Duty of Care: The Duty of Care is a legal requirement for those dealing with certain kinds of waste to take all reasonable steps to keep it safe. It applies to anyone who is a holder of household, industrial and commercial waste, known as controlled waste.

Public Spaces Protection Order (PSPO): PSPO's can be introduced for a number of issues where behaviours are persistent and detrimental. For the purpose of this policy, a PSPO breach could be considered both an environmental crime and an anti-social behaviour crime. PSPO's require people to adhere to certain restrictions in prescribed areas. Failure to adhere to the specific requirements is an offence.

7.2 What is a fixed penalty notice?

A fixed penalty notice is a way in which the local authority can offer an offender of an offence the chance to discharge liability for a qualifying offence, instead of the matter proceeding to a Court hearing. Only certain offences can be managed in this way and the Local Authority have the option of issuing a fixed penalty notice in lieu of a prosecution or immediately opting for a Court prosecution. A fixed penalty notice is a financial penalty, which is payable to the Local Authority or its delegated agent/contractor, following a relevant offence being committed and the criminal burden of proof being established. Non-payment of this fine may lead to formal action in the form of a formal prosecution.

7.3 What can a fixed penalty notice be used for?

A fixed penalty notice can be used for a range of environmental crime offences committed on public land. BCP Council's environmental crime enforcement contractor, community safety patrol officers or other delegated officers will consider the usage of a fixed penalty notice for the following offences:

- Littering, contrary to Sections 87 and 88 Environmental Protection Act 1990
<http://www.legislation.gov.uk/ukpga/1990/43/section/87>
- Flyposting, contrary to Section 43 Anti-Social Behaviour Act 2003 and Section 224 Town and Country Planning Act 1990
<http://www.legislation.gov.uk/ukpga/2003/38/part/6/crossheading/penalty-notices-for-graffiti-and-flyposting>
<http://www.legislation.gov.uk/ukpga/1990/8/section/224>
<http://www.legislation.gov.uk/ukpga/2003/38/section/43>
- Flytipping, contrary to Section 33 Environmental Protection Act 1990
<http://www.legislation.gov.uk/ukpga/1990/43/section/33>
- 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].
<http://www.legislation.gov.uk/ukpga/1990/43/section/94>
- Waste Duty of Care offences, contrary to Section 34 Environmental Protection Act 1990. www.legislation.gov.uk/ukpga/1990/43/section/34
- Failure to provide a Waste Transfer Note,
www.legislation.gov.uk/ukpga/1990/43/section/34
- Public Spaces Protection Order offences, contrary to Section 63 or Section 67 Anti-Social Behaviour, Crime and Policing Act 2014.
www.legislation.gov.uk/ukpga/2014/12/section/67
www.legislation.gov.uk/ukpga/2014/12/section/63

The financial penalty associated with a fixed penalty notice maybe specified within relevant legislation and any associated guidance¹ although some of the Acts referred to above allow the Local Authority to determine the financial penalty. When an amount is specified in the Act, the decision on scale of any Financial Penalty lies with the local authority. Further information on the value of a financial penalty and early payment discounts is found in Section 7.9.

7.4 Who can issue a fixed penalty notice?

BCP Council delegates its statutory powers to trained, relevant officers in order to discharge relevant statutory duties. Any delegated officer for the investigation and

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/834449/part1a-enforcement-guidance1.pdf
[guidance-for-local-authorities-on-household-waste-duty-of-care-fixed-penalty-notices.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/834449/part1a-enforcement-guidance-for-local-authorities-on-household-waste-duty-of-care-fixed-penalty-notices.pdf)

enforcement of each statute can serve a fixed penalty notice. BCP Council also delegates powers to a contracted company to undertake environmental enforcement. The contracted company will ensure that officers are suitably trained in the legislation and guidance, issue of fixed penalty notices for suitable offences and all officers will be checked under Disclosure and Barring Service.

7.5 How is a fixed penalty notice issued?

A fixed penalty notice is likely to be issued by the witnessing officer at the time of the offence through the use of a handheld printer. Where this is not possible or further investigation is required, fixed penalty notices will be issued by first class post to the verified address of the offender. They may be times when situations arise that Fixed Penalty Notices are issued by other means.

7.6 Why do we issue a fixed penalty notice?

The offences which officers may consider issuing a fixed penalty notice for, are criminal offences, therefore successful prosecution would lead to a criminal record. BCP Council considers the proportionality of this to the offence committed when deciding whether to offer the offender an opportunity to discharge liability for the offence by way of a Fixed Penalty. The fixed penalty notice process is an efficient and less intrusive option when considering relevant breaches of legislation. Prosecution will still be considered for a range of factors to include unacceptable behaviour towards authorised officers, scale of the offence committed, repeat offenders and non-payment of fixed penalty notice. A fixed penalty notice will be considered where a relevant offence has been witnessed by an authorised officer or there is sufficient evidence to establish an offence has been committed and that the person to be issued the fine is responsible for the commissioning of that offence.

7.7 What is the burden of proof and how is it established?

The relevant offences hold a criminal burden of proof; therefore evidence must lead the issuing officer to believe beyond reasonable doubt that both an offence has been committed and that the person to be issued the fixed penalty notice was involved in the commissioning of said offence. It is a further offence in relation to some of the offending to fail to provide relevant details to an officer when requested and officers are delegated authority to require name and offence where they believe an offence has been committed. This allows correct identification of the person suspected of the offence. Further tools to establish the criminal burden of proof include, but are not limited to: questionnaires sent with a relevant caution on the offence, body camera footage, witness statements, CCTV evidence, formal interviews and officer statements. Where an officer believes that an offence has been committed and the criminal burden of proof has been met, the authorised officer will make the decision whether it is appropriate to discharge the offence by way of a fixed penalty notice or to collate evidence for formal prosecution.

7.8 How is a fixed penalty notice paid?

A fixed penalty notice may be issued by the officer on the spot at the time of the offence or as soon as reasonably practical if the officer is unable to establish the identity of the offender at the time of the offence, or further investigation is required. The fixed penalty notice can be paid by debit or credit card via the instructions on the notice. Discounts may be offered for qualifying offences if penalty notices are paid within 14 days, details of this discount and whether this applies to the offence can be found on the penalty notice. Penalty notices paid outside of the early discount period, where applicable, will be chargeable at the full amount. Payment plans can be considered where applicable, the penalty recipient will review personal circumstances to support around affordable arrangements.

7.9 Details of fixed penalty notice amounts, and discounted payment options are listed below:

Offence	Full payment amount	Discount amount (paid within 14 days)	Previous full payment amount for comparison
Littering (to include graffiti)	£200	£100	£200
Flyposting	£100	£75	£100
Flytipping (items directly outside the offender's residential premises only, where there is not a significant obstruction of the highway*)	£300	£150	£1000
Flytipping (items directly outside the offender's residential premises only, where there is 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.

For flytipping offences, a specification on scenarios and fixed penalty notice amounts is attached at Appendix A.

7.10 Non-payment of a fixed penalty notice

Where an offender fails to make payment for the fixed penalty notice issued to them, further action may be taken. Payment reminder letters may be sent by post to the verified address of the offender following the expiry of the early and full payment term, and further action will be considered 28 days following the final reminder. Formal action will be in the form of formal prosecution at Magistrates Court for the offence committed, where applicable. Prosecutions will be conducted by the BCP Legal Services team and notification will be sent by post to the registered address of the person subject to the

penalty notice. Prosecutions must be issued at the magistrates' court within 6 months of the date of the initial offence, although due to the way Court Listings work the hearing may be outside of this time.

The maximum penalties attached to each offence are as follows:

Offence	Maximum penalty
Littering (to include graffiti)	£2500
Flyposting	£2500
Flytipping	Unlimited Fine or 12 months imprisonment if convicted in a Magistrates' Court. The offence can attract an unlimited fine and up to 5 years imprisonment if convicted in a Crown Court.
Unauthorised distribution of free literature	£2500
Household Duty of Care	Unlimited fine
Failure to provide a waste transfer notice	Unlimited fine
PSPO	£1000

7.11 Appealing a fixed penalty notice

Where a person is issued a fixed penalty notice, a right of an internal review and contact details for the review may be offered on the rear of the notice. A request for a review must be in writing, within 14 days of the issue of the Fixed Penalty Notice. All requests for review must detail the number of the fixed penalty notice, reason for the review request and any qualifying evidence. Requests will be reviewed and responded to within 10 working days from the date of receipt and the outcome will be communicated in writing. Requests for reviews will be undertaken by a suitably trained manager with the authority to cancel, vary or uphold the fixed penalty notice. The decision made on a fixed penalty notice review will be final. Where a request review is received on a Fixed Penalty Notice, the notice will be placed on hold until the review is determined. Following the determination of this review, a further reduced rate period will be offered if the ticket is upheld.

7.12 Prosecution of relevant offences

Prosecution as a first action will be considered in the following circumstances:

- Where offences are committed by a repeat offender
- Where large scale Fly tipping offences are committed, as per Appendix A
- Where an offender fails to provide relevant identification details upon requests being made at the time.
- Cases considered appropriate by the Council's relevant Head of Service based on the scale, circumstance and conduct of an offence

Prosecution will also be considered where a fixed penalty notice for an offence remains unpaid more than 28 days after the full payment term has expired.

7.13 Discretion

Fines will not be issued in the following circumstances, and education will be provided:

- Individuals who are deemed vulnerable by the issuing officer
- Individuals with no fixed abode
- Individuals who accidentally drop litter based on the judgement of the issuing officer

- Individuals who leave two bags of waste of less than 50 litres each by the side of their waste receptacle will be educated in the event of a first offence, further offences will receive fixed penalty notices.
- Cases where the issue of a fixed penalty notice would not be in the public interest

7.14 Usage of fine income

Where an environmental crime contractor is used, the contract will specify that enforcement cannot be incentivised to ensure compliance with national guidance. In all cases, the income from fixed penalty notices will be 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. The relevant Head of Service will undertake a yearly review on the income from fixed penalty receipts and the usage of the fine income, to ensure compliance with the statutory guidance.

7.15 Information sharing

Where an offence is committed, information may be shared with relevant statutory bodies such as Dorset Police under Section 115 Crime and Disorder Act 1988. Further information on how personal information is held, retention period and information sharing can be found on the Housing and Communities Privacy Notice.²

7.16 Complaints

In the event of dissatisfaction with the service or process of a fixed penalty notice, complaints can be made through the Council's corporate complaints process.³ In the event the fixed penalty notice is issued by the Council's contractor, complaints will be passed to the contractor's senior manager for investigation at the first stage. Details of the responsible party for complaint investigation is printed on the reverse of the fixed penalty notice. Complaints that are further escalated will be dealt with by the Council's relevant service manager or Head of Service. Any complaints received will be investigated by an officer senior to the officer who has issued the fixed penalty notice.

8. Young people and fixed penalty notices

- 8.1 Authorised Officers will not issue a Fixed Penalty Notice on **young people** without discussion with the service manager or contract manager. Enforcement will be considered in line with social services involvement and advice, if appropriate. A young person in this context is aged 16 to 19 years old.
- 8.2 Fixed Penalty Notices will not be issued to anyone under the age of 16 years old.
- 8.3 Non-payment of fixed penalty notices will not usually be pursued via the Court for those for those under 18 years old, however, other sanctions may be considered in line with relevant agencies in order to deter future breaches of legislation.
- 8.4 Where Fixed Penalty Notices are issued to persons under 18, details will be taken of both the offender and a suitable parent/guardian. These details will be shared with the youth offending team. In the event an interview under caution is required, suitable Police and Criminal Evidence Act 1984 requirements will be followed, to include the presence of an appropriate adult.

9. Education and Engagement

² [Community enforcement, targeted enforcement and private sector housing enforcement privacy notice | BCP](#)

³ [Formal complaints | BCP](#)

- 9.1 Where the issue of a fixed penalty notice is not deemed appropriate due to discretion under Section 7.13, education on the correct disposal of waste will be issued.
- 9.2 A waste information leaflet will be issued to cases where enforcement is not appropriate.
- 9.3 The environmental crime contractor will engage with education teams to support with engagement and education events in suitable settings.
- 9.4 A ongoing communications campaign will be delivered by the local authority to educate stakeholders on the correct management of waste and disposal options.

10. Repeat offenders, late payment and case escalation

- 10.1 FPNs are typically used for minor infringements, for more serious offences the delegated officer should consider moving straight to prosecution.
- 10.2 Should a late payment of a FPN arrive after the 14 day expiry this may be accepted, as it may be both legal and pragmatic to do so, subject to a court date and costs not being incurred at the time of receipt of the request.
- 10.3 As per Section 7.6 payment plans can be considered on a case-by-case basis and the person in receipt of the fixed penalty notice should make contact as per the details on the rear of the notice to request this.
- 10.3 FPNs are not merely a fine but a tool to change behaviour. If someone commits further offences after having paid a FPN, this demonstrates a lack of change of their behaviour. In these cases, the delegated officer should consider prosecution for repeat offenders and also consider what other legal measures are available.

11. How to use this policy

- 11.1 This policy will be used in line with the statutory guidance⁴ for enforcement through the use of fixed penalty notices and Guidance for Local Authorities on Household Waste Duty of Care Fixed Penalty Notices.⁵

12. Roles and responsibilities

- 12.1 Portfolio Holder for Housing and Regulatory Services: lead elected member for the policy
- 12.2 Head of Public Protection: policy lead

Appendix A: Flytipping specification

Appendix B: Equality Impact Assessment

⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/834449/part1a-enforcement-guidance1.pdf

⁵ [guidance-for-local-authorities-on-household-waste-duty-of-care-fixed-penalty-notices.pdf](#)

Appendix A: Flytipping specification

The following scenarios and outcomes are shown for guidance purposes, the list is not exhaustive and discretion as per the policy will apply at all times.

Scenario	Outcome
Item left outside the offender's residential or commercial address on a temporary basis that does not cause a 'significant highway obstruction' is of good quality as assessed by the enforcing officer and is clearly marked for collection, recycling or 'free-cycling.'	Engagement on the first offence only
Item deposited outside of the offenders residential or commercial address that does not create a 'significant highway obstruction' (leaves <i>more</i> than 1.2m of footway free of obstruction*)	Fixed penalty notice £300
Item deposited outside of the offenders residential or commercial address does create a 'significant highway obstruction' (leaves <i>less</i> than 1.2m of footway free of obstruction*)	Fixed penalty notice £600
Item deposited outside of the offenders residential or commercial address regardless of obstruction caused (repeat offender)	Prosecution
Item/s deposited in an area away from the offenders residential or commercial address	Fixed penalty notice £1000
Large scale flytips as determined by the senior responsible officer	Prosecution
Item deposited in an area away from the offenders residential or commercial address (repeat offender)	Prosecution
Non-payment of fixed penalty notice	Prosecution

* 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.