

Environmental Enforcement Framework

1. Purpose

The purpose of the Environmental Enforcement Framework is to address anti-social and illegal behaviour to improve the environment and minimise waste clean-up and disposal costs.

Environmental enforcement is delivered by authorised Enforcement Officers patrolling Brighton & Hove. Enforcement action includes the issuing of Fixed Penalty Notices (FPNs), the issuing of Community Protection Notices (CPNs) and prosecution.

This Framework sets out the standards that will be applied when issuing FPNs for environmental offences and what residents, businesses, and visitors can expect from Brighton & Hove City Council.

2. Introduction

Brighton & Hove City Council is committed to combatting fly tipping and littering and ensuring the city remains attractive and enjoyable for all those living and working here as well as those visiting the area.

The council will take a fair and proportionate approach to issuing fines for environmental offences to ensure that those spoiling the environment for others are made accountable for their actions.

The council will issue FPNs to enforce environmental crimes under the following legislation:

- Sections 33, 34, 47, 87, 88 and 94b of the Environmental Protection Act 1990
- Section 43 of the Anti-Social Behaviour Act 2003
- Sections 55 to 67 of the Fouling of Land by Dogs, Clean Neighbourhoods and Environmental Act 2005
- Section 68 of the Anti-Social Behaviour, Crime and Policing Act 2014.

FPNs provide a quick, visible and effective way of dealing with low-level straightforward environmental crimes, and an alternative to prosecution.

This Framework complements the Highways Policy and the Delegated Powers assigned to Field Officers, which both deal with other areas of environmental enforcement.

3. Issuing of FPNs

All FPNs will be issued in line with government guidance:

<https://www.gov.uk/guidance/enforcement-officers-issuing-fixed-penalty-notices>.

Details about when a FPN would and would not be issued are detailed below.

When a FPN will be issued	<p>A FPN will only be issued when all of the following apply:</p>	<ul style="list-style-type: none"> • an offence has been committed (see section 5) • a FPN is a proportionate response • there is evidence to support prosecution if the offender does not pay the FPN • the offender understands why the FPN is being issued • the Enforcement Officer believes that the name and address offered by the offender are correct
When a FPN will not be issued	<p>A FPN will not be issued if any of the following apply:</p> <ul style="list-style-type: none"> • there is no criminal liability 	<ul style="list-style-type: none"> • the person in question is exempt, e.g. a blind person whose dog has fouled in an area where a dog control order applies • the offender is a child under the age of 10, when the child's parents or guardian may be informed
<ul style="list-style-type: none"> • enforcement action is inappropriate or would be disproportionate for the offence 	<ul style="list-style-type: none"> • it is not in the public interest to do so • the offender is vulnerable; for example, someone who is a rough sleeper or suffers from a mental impediment; this list is not exhaustive 	
<ul style="list-style-type: none"> • prosecution is more suitable 	<ul style="list-style-type: none"> • the offence is major, e.g. deliberate smashing of glass, racist graffiti, or where an extensive quantity of waste is fly tipped or where the content of the waste is hazardous. • the offence is committed by a persistent offender • the offender is violent or aggressive <p>In these cases, evidence will be referred to officers in City Environment to determine whether the case should be referred to council's legal team.</p>	
<ul style="list-style-type: none"> • littering is done accidentally 	<ul style="list-style-type: none"> • accidental: for example, something falls out of someone's pocket (as opposed to intentional where, for example, litter is dropped and the offender walks away, including the discarding of cigarettes). <p>Where there is doubt over intent, the Enforcement Officer will challenge the offender, stating they have seen them drop something and ask them to pick it up. Should the person refuse</p>	

		to pick up the litter, they may be issued with an FPN.
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The FPN gives the alleged offender an opportunity to avoid prosecution by payment of the penalty. An FPN is therefore only issued where there is adequate evidence to support a prosecution, if a notice is not paid.

FPNs will not be issued to under 18s but if an Enforcement Officer witnesses an under 18 committing an environmental offence, they will have an informal discussion with them about it and may write to their parent or guardian.

Officers will have sufficient training and understanding of Brighton & Hove City Council's Environmental Enforcement Framework and their area of work to ensure a consistent approach to their duties. Enforcement Officers will carry identification picture cards at all times whilst on duty. Enforcement Officer will never take payment for FPNs. Information about how to pay is included on the FPN.

4. FPN fines

FPN fines are as follows:

Offence	BHCC penalty	BHCC early payment
Littering	£75	£55
Littering from vehicles	£75	£55
Spitting, urinating or defecating	£75	N/A
Dog fouling	£75	N/A
Graffiti	£75	N/A
Fly posting	£75	N/A
Unauthorised flyering	£75	N/A
Industrial and commercial waste receptacle offence	£110	N/A
Fly-tipping	£300	N/A
Disposing of commercial waste illegally	£300	N/A
Failure to produce a Waste Transfer Note or Duty of Care Certificate or non-compliance with Certificate	£300	N/A

Fines are set in line with DEFRA guidance available at:

<https://www.gov.uk/guidance/fixed-penalty-notices-issuing-and-enforcement-by-councils>

The fine for littering is £75 with an early payment discount reducing it to £55, if it is paid within 10 days. This is below the default proposed by Central Government of £100.

There are no early payment discounts for other offences because Brighton & Hove City Council is taking a hard stance on these offences with the penalty set accordingly.

The cost of FPNs will be reviewed annually to enable Brighton & Hove City Council to target particular environmental offences when needed and ensure appropriate costs of the service are met,

Payment of an FPN in instalments is not possible.

5. FPN offences

FPNs will be issued in a fair and proportional manner so those who are spoiling the environment for others are made accountable.

- **Littering**

Littering is an offence under section 87 of the Environmental Protection Act 1990. The act states that an offence is committed if anything is dropped, thrown, left or deposited that causes defacement, in any place open to the air that the public have access to with or without payment. This includes any deposit on land or water and the statutory definition of litter specifically includes cigarette butts and chewing gum.

When issuing FPNs for littering, a distinction will be made between intentional littering and accidental littering:

- Intentional: for example, litter is dropped and the offender walks away, including the discarding of cigarettes.
- Accidental: for example, something falls out of someone's pocket.

Where littering is considered to be accidental (with no intent to drop litter) an FPN will not be issued.

- **Littering from vehicles**

Littering from vehicles is an offence under section 87 of the Environmental Protection Act 1990. As with general littering, littering from vehicles is a nuisance and is detrimental to the environment. Vehicle owners are responsible for ensuring whoever is travelling in their vehicle does not litter from the vehicle. FPNs for littering from vehicles will be issued to registered vehicle owners when the person who actually littered cannot be identified. In cases where the registered vehicle owner is fined, the FPN must be issued within 35 days of the alleged offence.

- **Spitting, urinating and defecating**

FPNs for spitting, urinating and defecating are issued under section 87 of the Environmental Protection Act 1990.

Spitting, urinating and defecating in public places are anti-social habits and can have a number of health implications. An FPN will be issued when spitting, urinating or defecating occurs on public surfaces, roads, pavements or streets.

- **Dog fouling**

FPNs for dog fouling are issued under section 68 of the Anti-Social Behaviour, Crime and Policing Act 2014.

Dog fouling adversely affects the environment and the enjoyment of it.

- **Graffiti**

FPNs for graffiti are issued under section 43 of the Anti-Social Behaviour Act 2003.

Graffiti is classed as criminal damage and defined as any informal or illegal marks, drawings or paintings that have been deliberately made by anyone on any physical element in the outdoor environment. Graffiti is difficult and costly to remove.

Before issuing a FPN for graffiti, the Enforcement Office will speak to the owner of the building to ascertain whether permission has been granted to graffiti the physical element question.

City Environment will work with the Safer Communities Team to ensure that enforcement action does not impact on any legally created graffiti art and does not contradict any graffiti strategy produced by the council.

- **Fly posting**

FPNs for fly posting are issued under section 43 of the Anti-Social Behaviour Act 2003.

Fly posting is putting up posters or stickers on properties, lamp posts, telephone boxes or other structures on the street such without consent from the owner.

Examples of this are:

- Sticking posters onto boarded up shops advertising a gig
- Attaching a poster to a lamp post advertising a business
- Putting stickers onto road signs showing political statements

- **Unauthorised flyering**

FPNs for unauthorised flyering are issued under section 94b of the Environmental Protection Act 1990.

Flyering can cause lots of litter and Brighton & Hove City Council restricts where and when free flyers can be distributed. This includes printed materials to advertise things like events, businesses or product promotions.

Anyone wishing to distribute free printed material within a designated area must apply for a flyering licence from the council. The flyering licence covers the cost of the extra work required to clear the additional litter generated as some people will just drop flyers on the floor.

Any person distributing matter by or on behalf of a charity or for political or religious purposes are exempt from this rule. To reduce confusion, the council encourages charities to make an application. There will not be a charge for the licence in these cases.

FPNs for flyering without a license will be issued to the individual and not the organisation they are flyering for. One fine will be issued to each person distributing the flyers, regardless if a group is distributing the same flyers.

Flyering materials will be confiscated until the owners of the materials have arranged for a flyering licence.

Details about where a licence is required and how to apply for a flyering licence are available on the council's website: www.brighton-hove.gov.uk/flyering

- **Industrial and commercial waste receptacle offences**

FPNs for receptacle offences are issued under section 47 Environmental Protection Act 1990.

Businesses have a duty to ensure that their waste is stored, presented and disposed of in accordance with the waste Duty of Care. FPNs will be issued after a notice has been issued and when the waste is likely to cause a nuisance or be detrimental to the amenities of the locality. This includes:

- Bins left on the pavement outside of agreed collection days and times
- Bins blocking the highway
- Bins with size, construction or maintenance issues

- **Fly tipping**

FPNs for flytipping are issued under section 33 of the Environmental Protection Act 1990.

Flytipping is the illegal dumping of waste, items or materials. This includes anything from putting a TV on the pavement to dumping a van's contents in the countryside. Flytipping is unattractive, can cause obstructions and can lead to a build-up of other waste. The following are all examples of flytipping:

- Putting items, including furniture, electrical items and appliances on the public highway and on the pavement for others to pick up and reuse.

- Putting items including furniture, electrical items and appliances by communal refuse or recycling bins, wheelie bins, refuse areas, bring sites or litter bins. If a bin is full, items should be taken to the next nearest bin or taken home until there is capacity in a bin.
- Putting refuse into communal recycling bins.
- Putting bulky items in refuse or recycling bins.

If someone else flytips an individual's waste, the individual may still be held responsible.

Any company carrying or disposing of waste must have a waste carriers licence and individuals can check they have this through the Environment Agency's waste carrier's public register.

Unwanted items, such as electrical items, furniture, appliances etc. cannot be collected with normal household refuse and must be reused, recycled or disposed of in a legal and safe way. Options include:

- Keeping these goods on an individual's property and advertised through signs, newspapers or websites
- Using a company or charity that collects items for free
- Taking items to a Household Waste Recycling Site
- For a fee, using the council's bulky waste collection service.

More details are available on the Brighton & Hove City Council website:

www.brighton-hove.gov.uk/bulkywaste

- **Disposing of commercial waste illegally**

FPNs for disposing of commercial waste illegally are issued under section 33 of the Environmental Protection Act 1990.

Any waste that comes from a commercial activity is business waste, including waste produced as a result of an individual running their business from home. Businesses cannot use domestic waste and recycling bins, and the collection of commercial waste is not covered by business rates.

Businesses are responsible for:

- All recycling and refuse they create
- Ensuring waste is stored and disposed of in a safe and legal way
- Using a registered waste contractor or a business waste site to dispose of their waste
- Avoiding any disruption to the public when storing and disposing of their waste.

Any business found to be not adhering to these responsibilities, may be issued with a FPN.

- **Failure to produce a Waste Transfer Note or Duty of Care Certificate or non-compliance with the Certificate**

FPNs for failure to produce a Waste Transfer Note or Duty of Care Certificate or non-compliance with the Certificate are issued under section 34 of the Environmental Protection Act 1990.

Businesses must have a registered waste carrier to collect and dispose of their waste. Businesses that have set up a waste collection with a registered waste contractor will receive a Duty of Care Certificate. This is proof that there are waste collection arrangements in place and it is being disposed of legally.

If a registered waste contractor does not supply a Duty of Care Certificate it may mean they are not registered. If this waste is then subsequently dumped or disposed of illegally, the business could be held responsible. For this reason, it is recommended that businesses check the waste contractor through the Environment Agency's waste carrier's public register.

If an Enforcement Officer requests a copy of a business's Duty of Care Certificate and the business is unable to provide one, the business will be given 14 days to produce a Duty of Care Certificate before an FPN is issued.

Enforcement Officers conduct regular checks across the city to make sure businesses have a Duty of Care Certificate. If a business does not have a legal method for disposing of waste, the business could receive a fine which could lead to prosecution.

Businesses have a duty to ensure that their waste is stored, presented and disposed of in accordance with the waste Duty of Care. FPNs will be issued when the waste is likely to cause a nuisance or be detrimental to the amenities of the locality, including overflowing bins meaning lids cannot be closed or side waste.

6. Appeals and disputes for FPNs

There is no formal right to appeal against an FPN. If an offender does not agree that an offence has been committed, then the matter will be dealt with through formal prosecution via the Magistrates courts. It will then be up to the court, on receiving evidence, to determine whether or not an offence was committed and therefore whether or not any penalty should be imposed.

If the offender believes an FPN has been issued incorrectly, they can put their complaint to City Environment in writing who will assess whether the correct procedure has been followed.

If City Environment has responded to a complaint about the way the FPN was issued to which the offender remains unsatisfied, the offender can raise a formal complaint with Brighton & Hove City Council by contacting customerfeedback@brighton-hove.gov.uk. Brighton & Hove City Council will investigate whether the FPN was issued in accordance with the appropriate procedures, the law and this framework.

7. Fine income

Income received from the issuing of FPNs is used for specific environmental purposes such as providing additional litter and dog bins and to fund environmental education for local schools.

8. Issuing of CPNs

The council can address offences which have a negative impact on a community's quality of life by serving a CPN in accordance with the Anti-Social Behaviour, Crime and Policing Act 2014. Any behaviour that is detrimental to a community's quality can result in a CPN. This can include offences such as noise nuisance, rubbish on private land, graffiti and antisocial behaviour.

A CPN can be issued to an individual aged 16 or over if an authorised person is satisfied that the behaviour:

- has a detrimental effect on the quality of life of those in the locality
- is unreasonable and
- is of a persistent nature.

Prior to the CPN, a written warning will be issued to an individual, business or organisation suspected of causing the problem. The warning will detail the impact on the community and that the behaviour should cease, or the reasonable steps that need to be taken to ensure the problem does not occur again. The warning will include the consequences of not addressing the behaviour and that a CPN will be issued.

Failure to comply with a CPN can lead to a court summons and, on conviction, can result in a fine of up to £2,500 for individuals, or £20,000 for businesses.

In some cases, an FPN may be issued instead of prosecution.

9. Appeals and disputes for CPNs

Any person issued with a CPN may appeal against it by making a Complaint to a Magistrates' Court within 21 days of its issue. An appeal may be made on any of the following substantive grounds:

- the specified conduct did not take place;
- the conduct has not had a detrimental effect on the quality of life of those in the locality;
- the conduct was not of a persistent or continuing nature;
- the conduct is not unreasonable;
- the conduct is that which the person cannot reasonably be expected to control or affect.

Details of how to appeal and the time limit will be included in the CPN.

10. CCTV

CCTV and bodycam footage will be used as appropriate to obtain evidence of offences, taking into account the following legislation:

- The Data Protection Act 1998
- The Human Rights Act 1998
- The Regulation of Investigatory Powers Act 2000
- The Freedom of Information Act 2000
- The Protection of Freedoms Act 2012

11. Equalities

All authorised Environmental Enforcement Officers involved in environmental enforcement will be made aware of their responsibilities under the Equalities Act 2010 and in particular the Public Sector Equality Duty. They will be expected to have regard to the needs of vulnerable people and protected groups and to apply this Framework in a manner that is consistent, transparent and proportionate.