

Duty of Care Offences (Commercial and Trade Waste), Frequently Asked Questions

Local authorities have agreed the introduction of Fixed Penalty Notices to cover the entire borough to enforce a variety of offences at a set rate. Local authorities are providing a uniformed presence of Environmental Enforcement Officers across the Borough. The officers have been issuing Fixed Penalty Notices (FPN's) for the offences of dropping litter, fly tipping, dog fouling offences and also Duty of Care offences (commercial and domestic). This includes failure to provide waste transfer notes to an authorised officer to show the legal disposal of commercial waste within businesses.

The law requires that occupiers of commercial premises make proper arrangements for the safe storage and disposal of their waste (Environmental Protection Act 1990). It also places a "duty of care" on such persons to ensure their waste is disposed of in a proper manner, and it is important therefore to employ only properly licensed bona fide contractors for such work. In some Local Authorities this duty of care includes ensuring trade bins are lockable and stored securely, please ensure you consult your individual Local Authority for any extra requirements required as a business to ensure compliance.

Can I appeal a Fixed Penalty Notice?

There are no formal grounds of appeal against a Fixed Penalty Notice. This is because a Fixed Penalty Notice is an invitation for you to effectively discharge your liability to prosecution. In essence this means that if you agree that an offence has been committed by you then by paying the sum of money specified no further action in the form of prosecution for the offence can be undertaken by the council.

This method of dealing with offences not only saves the time involved for everyone (including the offender) in prosecuting cases at court, but the cost associated with a Fixed Penalty Notice is likely to be substantially lower than any fine that can be imposed by the courts. The maximum penalty which can be imposed by the Courts:

But I don't agree that I committed the offence for which I have received a Fixed Penalty Notice

If you do not agree that you committed the offence then the matter will be dealt with through formal prosecution via the 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.

Effectively this means that the formal court route becomes the mechanism for those wishing to appeal a Fixed Penalty Notice it should be noted that the financial penalty imposed by the Courts can be significantly greater than that which is imposed through a Fixed Penalty Notice.

I didn't know that this was an offence, has the Council informed the public?

Local authorities have run a number of campaigns over recent years targeting littering, dog fouling and other enforceable offences.

Our education campaigns have been continual in recent years. Thousands of pounds of public money has been spent on publicity involving posters, advertising, and articles in the press.

We don't generate any waste so why do we need a waste transfer agreement?

Every single business generates waste. This includes everything from packaging, paperwork, lunch waste, tea bags and waste products (this list is not exhaustive) therefore regardless of quantities every business must have a waste transfer agreement in place.

What else should I do or be aware of?

Businesses have a duty of care to ensure that all commercial waste no matter how much is generated (this even includes tea bags, lunch break waste) is collected by a licenced contractor. The business should they retain all waste transfer notes on the business premises for the next 2 years, at any point a council enforcement officer or representative has a right to request to see these documents to ensure that the business is compliant with the law. Failure to do so will result in an FPN being issued for a Duty of Care offence, as a business has a responsibility to ensure all waste is collected and disposed of legally.

If you are a new business, please contact your Local Authority to arrange a collection arrangement with them if they provide this service or your they should be able to advise of an approved waste contractor so you can arrange a waste agreement.

What if I put it out with the residential collections?

This is a Duty of Care offence within itself as the residential collection is for residents not businesses. Should a business be found to dispose of its waste in a residential collection this will result in a Fixed Penalty Notice for a Duty of Care offence.

I wasn't given a warning or let off for a first time offence, surely that is not fair?

We will normally conduct a first visit and request the documentation, should the relevant documentation not be available on site we will revisit the business in 7 days. Should the required information still not be available an FPN will be issued. Once the second visit has taken place and there has been no documents provided to prove the legal disposal of the waste for the last 2 years and the officers are satisfied an offence has been committed our officers have to issue an FPN as this discharges the liability to be taken to court for the littering offence.

If I provide the waste transfer notes after the second visit, do I still receive a Fixed Penalty Notice?

Yes, as it is a legal requirement to retain the relevant waste transfer documents within the business premise. Failure to do so and provide them within the relevant time period stated is an offence in itself.

Where do the Enforcement Officers patrol?

The Officers are tasked to areas of highest demand but also aim to patrol any hotspot areas as well as the entire Borough.

What happens if I refuse to pay the fixed penalty notice?

You may be prosecuted for the offence.

Can I complain about the Enforcement Officers behaviour?

If you feel that any of our officer's behaviour was unacceptable, please write to the email address provided on you FPN and your complaint will be investigated.

You should be aware that making a complaint is treated separately to the issue of the FPN and as an offence is still alleged you remain liable to prosecution unless you choose to pay the FPN within the time specified

Can I pay by instalments?

We do not accept payments by instalments but if you are suffering from financial difficulty we may be able to offer an extension.