



Buckinghamshire Council

Littering Enforcement Policy

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1. Introduction

Littering is defined as the unauthorised distribution of free printed material, graffiti, fly-posting, and breach of a Public Spaces Protection Order (PSPO) and are all criminal offences, for which enforcing authorities may bring prosecutions in the magistrates' courts or may issue fixed penalties in lieu of prosecution.

Fixed penalties can provide enforcing authorities with an effective and visible way of responding to environmental crimes and provide a lower-cost alternative to prosecution in the magistrates' courts.

The offence of leaving litter, defined in section 87 of the Environmental Protection Act 1990 as 'if any person throws down, drops or otherwise deposits in, into or from any place to which this section applies (which is any place in the open air to which public have access without payment and any covered place open on one side to a highway maintained at the public expense), and leaves it'.

This document sets out the Buckinghamshire Council Littering Enforcement Policy ("the Policy") which details what residents, businesses, and individuals of Buckinghamshire can expect from Buckinghamshire Council ("the Council") when it carries out its regulatory and enforcement functions.

This Policy takes into account current principal legislation, including: -

- (a) The European Convention on Human Rights and,
- (b) The Human Rights Act 1998,
- (c) The Regulation of Investigatory Powers Act 2000,
- (d) The Police and Criminal Evidence Act 1984,
- (e) Criminal Procedure and Investigations Act 1996,
- (f) The Regulatory Enforcement and Sanctions Act 2008, and

- (g) Equality Act 2010.

In applying this Policy, the Council will take account of the Buckinghamshire Council overarching Regulatory Enforcement Policy, any new relevant legislation that applies any amendments to existing legislation and guidance policies from the secretary of state.

This Policy also takes into account current statutory guidance or schemes, including: -

- (a) The Regulators' Code,
- (b) The Code for Crown Prosecutors, and
- (c) Primary Authority Principle.
- (d) The Code of Practice on Litter and Refuse for England (updated 2019)

2. Scope

This Policy applies to all legislation included in Parts 3 and 4 the Schedule to the Legislative and Regulatory Reform (Regulatory Functions) Order 2007, as amended from time to time, and including the following list of Statutes and successor legislation: -

- (a) Local Government Act 1972
- (b) Control of Pollution (Amendment) Act 1989,
- (c) Environmental Protection Act 1990,
- (d) Clean Neighbourhoods and Environment Act 2005,
- (e) Environment Act 2021

This Policy is underpinned by the Buckinghamshire Council Enforcement Policy, which sets out Buckinghamshire Council's approach to enforcement activities.

3. Guiding Principles of Legislative and Regulatory Enforcement

The Council is committed to the principle of good enforcement as set out in the Legislative and Regulatory Reform Act 2006 and believes that the purpose of enforcement action should be to achieve compliance with legislation enforced by the Council.

The Council believes that the majority of businesses, individuals, consumers and residents of Buckinghamshire wish to comply with the law. The aim of this Policy is: -

- (a) To protect those businesses, individuals, consumers and residents from unlawful activity,

- (b) To work with them to promote economic growth in Buckinghamshire, and
- (c) To ensure that the small number of businesses and individuals who intentionally or repeatedly engage in unlawful activity are subject to appropriate enforcement activity.

The Council will deliver regulatory services in a way which is: -

- (a) **Transparent:** The Council will give advice and information in plain language and ensure that those it regulates are able to understand what is expected of them. The Council will distinguish between legal requirements and good practice recommendations,
- (b) **Accountable:** The Council's activities will be open to public scrutiny, with clear and accessible policies, and a fair and efficient complaints procedure,
- (c) **Consistent:** The Council will carry out its duties in line with relevant service standards where possible and will endeavor to ensure that enforcement action is applied consistently within Buckinghamshire and, where appropriate, in similar ways to other local authorities,
- (d) **Proportionate:** Enforcement activities will reflect the risk and harm in particular to the environment, alongside victims (whether to businesses, individuals, consumers and residents of the area or the wider community) and will reflect the seriousness of the breaches and any previous action taken by the Council or any other organisation

Our primary objective is to secure legislative and regulatory compliance for littering within Buckinghamshire. The Council aims to use the most appropriate approach from the available enforcement responses and take proportionate and effective enforcement action against littering. Those responses will range from advice and guidance through to litigation depending on the individual circumstances of the breach. The Council will target its enforcement activity based on threat, risk, harm and intelligence information in order to address those areas causing greatest detriment or concern to businesses, individuals, consumers, residents and other users of services in the area, or which address national priorities impacting on these groups.

Where a business or an individual is found to be in breach of legislation the Council will work with that business or individual and any other person to put right the problem, including any education in order to change behaviour, which remains targeted and proportionate. However, it is recognised that, in the majority of cases, formal enforcement action will be taken.

In exceptional circumstances, or where required by legislation, the Council may depart from this Policy. Any decision to do so will be properly rationalised, based on the evidence and fully documented.

4. Enforcement actions

There is a wide range of advice, guidance and enforcement actions available to the Council which range from those intended to inform and support those it regulates, to formal legal proceedings with the potential for a financial penalty. These include, but are not limited to, the following:

Advice and Guidance

(a) **Verbal & Written Advice**

The objective of this action is to assist individuals and businesses to comply without the need to resort to more formal action. The Council will utilise advice as appropriate and necessary in relation to compliance and guidance. As and where appropriate at the Council's discretion will seek to take appropriate and not disproportionate enforcement action.

Formal Enforcement Actions

(a) **Simple Cautions**

A Simple Caution may be offered as an alternative to prosecution for some less serious offences, or for first time offences, to a business or individual where there is a realistic prospect of conviction, and where that business or individual has admitted the offence. Where a Simple Caution is declined, a prosecution will normally be instituted.

(b) **Fixed Penalty Notices ("FPN's")**

Environmental Enforcement Officers should only issue a Fixed Penalty Notice (FPN) of £150.00 preceding prosecution on failure to pay where deemed appropriate as authorised by the Enforcement Manager when all of the following apply:

- an offence (littering by a person or littering from a vehicle, Environmental Protection Act, 1990) has been committed
- a FPN is a proportionate response
- there is evidence to support prosecution if the offender does not pay the fixed penalty
- the offender understands why the FPN is being issued
- it is believed that the name and address offered by the offender are correct.

All FPNs must be issued in a manner proportionate to the situation and in accordance with this policy. A reasonable approach should be taken which may result in giving a warning rather than issuing a FPN. Warnings should be recorded detailing the reasoning behind the decision taken.

Anyone under the age of 17 will not be prosecuted and will be managed through the appropriate cautions and/or formal warnings.

(c) **Civil Penalties**

The Littering from Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018 enable councils in England (outside London) to issue a civil penalty notice to the keeper of a vehicle from which litter is thrown. Civil penalties have been considered but will not be enforced at this time due to limited MTFP funding and resource back-office requirements to process appeals, etc. **Guidance:**

The Department for Environment, Food and Rural Affairs (DEFRA) provides guidance on the effective enforcement of litter and refuse, Further information on the issuing of FPNs is available on the following links:

[Code of practice on litter and refuse](#)

[Code of practice on litter and refuse – Part 1: enforcement guidance](#)

The codes of practice suggest that enforcing authorities *may* offer recipients a reduction in the penalty to encourage prompt payment. The period during which a discount for early payment is offered must be no more than 14 days and to avoid confusion, it is recommended that it should not be more than 10 days.

Offence	Default penalty	Minimum full penalty	Maximum full penalty	Minimum discounted penalty
Littering	£100	£65	£150	£50

Buckinghamshire Council acknowledges this guidance, however, does not offer early payment or discount options for a FPN, instead opting for the maximum full penalty of £150.00. This is consistent with our stance against refuse-related environmental crime and supports the recuperation of officer cost to the taxpayer.

All payment arrangements will be issued to the offender electronically via a secure online system.

The Council intends to utilize the income from FPN's to offset the cost of the service against the authority. Officer time costs the taxpayer approximately £45.00/hour with an average low-level investigation taking approximately 3 hours to complete. The issuing of a fixed penalty would balance this cost.

In all cases any FPN where there hasn't been a payment, the matter will be referred to the Council's legal services for consideration of prosecution.

Prosecution

A prosecution for a littering offence will result in a criminal record and may result in a fine of up to £2,500. Buckinghamshire Council will seek full cost recovery, including officer time, legal costs and any clearance costs incurred, and will only prosecute where it is in the public interest to do so.

Appeals

An FPN is offered in lieu of prosecution, and as such, there is no formal right of appeal. If an alleged offender does not accept their liability for the offence, there is no requirement on them to pay the fixed penalty. The assumption should always be that if a fixed penalty is unpaid, the case should be prosecuted, giving the alleged offender the opportunity to defend their case in court. This is consistent with schedule 11N.14 of the DEFRA Codes of Practice on Litter & Refuse. 5. The interests of Council stakeholders.

The Council does not want its enforcement activities to have a negative effect on businesses or individuals who comply with the law. The Council will undertake its work to ensure, as far as possible, that the circumstances of each case are taken into consideration to make sure that compliant businesses or individuals are not affected.

6. Enforcement Policy implementation

This policy will be implemented from 1st April 2022 and will be reviewed as appropriate.

It is available for viewing on the Council's website. Braille, large type, audio recording or other language versions will be considered on request.

7. Information Sharing

Personal and business information held by the authority will only be shared and processed in accordance with the relevant information sharing protocol or legislation. Individuals or businesses that are successfully prosecuted will be publicised through appropriate communication methods to promote the enforcement activity taken by Buckinghamshire Council.

The authority will take a proactive approach to data matching and the sharing of information via agreed secure mechanisms with other regulatory agencies and local authorities about businesses and individuals to help target resources and activities and to minimise duplication of enforcement activity. Any sharing of information will be in compliance with the previous paragraph and the authority's data sharing procedures.

8. Comments and complaints about enforcement activity

If you wish to comment on this Policy or make a complaint about enforcement activity, please contact the Council by emailing:

complimentsandcomplaints@buckinghamshire.gov.uk