

Draft Waste Enforcement Policy






for Street-Level Properties



1. Introduction and background

- 1.1 We are facing a climate emergency and we all have a responsibility to reduce our impact on the environment and to tackle global heating. One way to do this is to use less, reuse items where possible and recycle more, which reduces carbon emissions from landfill and means we use fewer natural resources and produce fewer emissions to make new products.
- 1.2 Research tells us that over half the waste thrown away in the non-recyclable collection in Hackney is recyclable and we therefore need to encourage people to use less and recycle more.
- 1.3 Hackney Council provides comprehensive weekly recycling services and to encourage our residents to use these services Hackney will no longer be collecting non-recyclables on a weekly basis from street-level properties. By reducing non-recyclable waste collections, other London boroughs have increased recycling by over 4%.
- 1.4 Non-recyclables will now be collected from one 180 litre wheelie bin where space is available at the property, and from Council-issued sacks where space is not available (recycling containment will remain unchanged). To ensure that the new containment is adhered to the Council has produced this Domestic Waste Management: Enforcement Procedures and Guidelines document.
- 1.5 The aim of this document is to provide clarity around the Council's waste management enforcement duties and powers, outline good practice in the delivery of these enforcement duties and to ensure a consistent approach is taken throughout.
- 1.6 Section 2 of this document outlines the new collection service for street-level properties. Sections 3 and 4 introduce the principles of enforcement and the relevant legislation, and Section 5 explains how the Council will use its enforcement powers in relation to residential waste management.

2. Hackney Waste & Recycling Service Policy

2.1 Hackney Council has developed a new Domestic Waste and Recycling Policy for street-level properties which can be found in full on our website and summarised below.

General Waste*	Space in front or to the rear of property for a 180 litre wheelie bin	Space in front of property but obstructions present	No space at all outside of the property
	 A single 180 litre wheelie bin stored on own property collected once per fortnight	 Up to two 90-litre dustbins collected once per fortnight	 A single 180 litre wheelie bin stored on street* collected once per fortnight
Mixed dry recycling	All properties		
Collected every week	 Weekly unlimited green sacks		
Food recycling	Space for 23 litre caddy		No space for 23 litre caddy
	 Weekly food waste collection, additional caddies on request		Contact council for alternative solutions

Garden waste Collected every week	Space for 140 litre bin	No space for 140 litre bin
		

** the bin will need to be kept tight against the property boundary to ensure sufficient space to pass. Where this isn't upheld or where other factors mean pass space is limited, alternative arrangements will need to be made.*

3. Enforcement and the law

3.1 Enforcement is any formal or informal action taken to prevent or rectify infringements of the law. The Enforcement options may differ where different areas of legislation are applicable but the principles of application should remain in line with service standards.

3.2 The Council has adopted two sets of standards to guide its enforcement activities:

- The Regulatory Compliance Code
- The Enforcement Concordat (adopted by the Council in 1998)

3.3 The Council and its employees explicitly authorised to undertake enforcement duties will be guided by these standards to ensure that:

- the right person is identified
- the correct legislation will be used and explained
- officers show fairness, independence and objectiveness
- a balance is struck between the risk and rights of the individual
- actions are consistent
- enough evidence is obtained
- action taken is in the public interest
- individual circumstances are considered
- any written correspondence both advisory and legal will comply with legislative and Council customer care guidelines i.e. clear, jargon free etc.

3.4 Enforcement includes visits, inspections, verbal and written advice or information on legal requirements and good practice, assistance with compliance, written warnings, the servicing of statutory notices, issuing fixed penalty notices, formal cautions, prosecution, seizure and detention, works in default and injunctions.

4. Legislation

- 4.1 The Environmental Protection Act 1990 Section 45(1)(a) states that it is the duty of each Waste Collection Authority (WCA) to arrange for the collection of household waste in its geographical area provided it is absolutely clear that the items are being presented for collection by the waste authority. To ensure that it is clear the Council can require the waste to be presented in the appropriate container (and the Council is permitted to stipulate the size of that container).
- 4.2 As a householder, you have a duty to take all reasonable measures available to you in the circumstances to ensure that you only transfer household waste produced on your property to an authorised person- in the case of regular black bag domestic waste the authorised person is the Council.
- 4.3 Furthermore residents must take all reasonable steps to:
- prevent unauthorised or harmful deposit, treatment or disposal of waste
 - prevent the escape of waste from your control
- 4.4 It is the responsibility of the Council to ensure that residents comply with this duty and the main legislation that can be applicable with regard to resident waste enforcement includes:
- Environment Protection Act 1990 (EPA)
 - Control of Pollution (Amendment) Act 1989
 - Controlled Waste Regulations 1992/ 2012
 - Clean Neighbourhoods and Environment Act 2005
 - Police and Criminal Evidence Act 1984
 - Criminal Procedure and Investigations Act 1996
 - Regulations of Investigatory Powers Act 2000
 - Refuse Disposal (Amenity) Act 1978
 - Town and Country Planning Act 1990
 - Prevention of Damage by Pests Act 1949
 - Anti-social Behaviour, Crime and Policing Act 2014
- 4.5 The central legislation that the Council will employ to ensure domestic waste is managed correctly is Section 46 of the Environmental Protection Act (1990). Under section 46 (1) Where a waste collection authority has a duty by virtue of section 45(1)(a) above to arrange for the collection of household waste from any premises, the authority may, by notice served on him, require the occupier to place the waste for collection in receptacles of a kind and number specified.

4.6 In making these requirements the authority may dictate:

- the size, construction and maintenance of the receptacles;
- the placing of the receptacles for the purpose of facilitating the emptying of them, and access to the receptacles for that purpose;
- the placing of the receptacles for that purpose on highways;
- the substances or articles which may or may not be put into the receptacles or compartments of receptacles of any description and the precautions to be taken where particular substances or articles are put into them;
- the steps to be taken by occupiers of premises to facilitate the collection of waste from the receptacles;
- the removal of the receptacles placed for the purpose of facilitating the emptying of them; and
- the time when the receptacles must be placed for that purpose and removed.

4.7 A waste collection authority is not obliged to collect household waste that is placed for collection in contravention of a requirement under this section; this means that if waste is not presented in line with the policy set by Hackney Council then the Council is not required to collect it. Furthermore, as per section 4.1 above, if the waste is not presented as required then the Council cannot be absolutely sure that the items are being presented for collection by the waste authority.

5. Enforcement

5.1 Hackney Council will apply a measured and balanced approach to enforcement of residential waste issues and will ensure that householders are not penalised for minor breaches of waste bin rules (except where they are intentionally repeated).

5.2 In line with good practice Hackney Council will inform and educate residents in the first instance and only where this approach fails will penalty notices be considered. Our education and enforcement process is described below.



5.3 **Stage 1: Educate & Encourage**

During the transition period from weekly to fortnightly waste collections the emphasis will be on encouraging residents to review their waste production and separation behaviours and to identify any areas that can be improved. Hackney will ensure that information and support is available when required and instructions explained in a simple and straightforward manner.

5.4 **Stage 2: Letter or leaflet to all residents**

Residents will be contacted by letter/leaflet when they are due to transition to fortnightly collections with a final reminder of the instructions for the new service. At this time any new bins and liners will be available to ensure that residents have everything they need to successfully minimise their waste and increase their recycling.

5.5 **Stage 3: Warning letter to offenders**

A written warning may be given where an authorised officer of the Council is satisfied that a person has failed, without reasonable excuse, to comply with a requirement about the presentation for collection of household waste, and satisfied on reasonable grounds that, (a) the conduct of the individual or body is having a detrimental effect, of a persistent or continuing nature, on the quality of life of those in the locality, and (b) the conduct is unreasonable.

Where this situation arises the household will receive a Community Protection Warning letter and, where possible, this letter will be accompanied by a visit from an officer from the Behaviour Change Team. The letter will explain:

- how they have broken the waste collection rules;
- how this has (or is likely to) cause a nuisance or have a negative effect on local amenities;
- what they must do and how long they've got to fix the problem;
- what will happen if they don't comply.

Accompanying this Community Protection Warning letter will be a section 46 (Environmental Protection Act 1990) notice which will detail exactly what should be done with each waste stream, including containment instructions.

It is hoped that the information provided at Stage 3 will address the majority of issues and further formal enforcement will not be necessary.

5.6 **Stage 4: Final formal warning- Community Protection Notice**

Where a Community Protection Warning letter has been given in respect of a failure to comply with the domestic waste and recycling policy and a further failure is recorded by the same household within 12 months*, then an officer from the Behaviour Change Team will visit the household to explain the details of the offence, and attempt to work with the household to put in place measures that will avoid any further incident of non-compliance and to avoid any further enforcement action.

The household will also be served with a final formal warning in the form of a Community Protection Notice served under the Anti-social Behaviour, Crime and Policing Act 2014. The Community Protection Notice may impose (a) a requirement to stop doing specified things; and/or (b) a requirement to do specified things; and/or (c) a requirement to take reasonable steps to achieve specified results. These requirements will be reasonable in order (a) to prevent the detrimental effect from continuing or recurring, and/or (b) to reduce that detrimental effect or to reduce the risk of its continuance or recurrence. The Community Protection Notice will also explain that any breach of the notice will result in financial penalty as well as detail the grounds and process by which the recipient may appeal it.

*If the offence is not within 12 months of the last offence, or there are new occupiers of the property, then a Community Protection Warning will be served as per Stage 3.

5.7 **Stage 5: Fixed penalty notice**

A person issued with a Community Protection Notice that fails to comply commits an offence under section 48 of the Anti-social Behaviour, Crime and Policing Act 2014. A person shall be guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 (currently £2,500) on the standard scale (or an unlimited fine in the case of a body rather than an individual).

A person does not commit an offence under this section if (a) the person took all reasonable steps to comply with the notice, or (b) there is some other reasonable excuse for the failure to comply.

Under Section 52 of the same legislation an authorised person may issue a fixed penalty notice (FPN) to anyone who that person has reason to believe has committed an offence under section 48. The fixed penalty notice is a notice offering the person the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty notice to a local authority specified in the notice. The issuance of this Community Protection FPN will be at the discretion of the Council and will depend on the particulars of each case.

5.8 **Stage 6: Prosecution for Persistent Offenders**

Any households who repeatedly fail to comply with the Community Protection Notice will be subject to prosecution action and will not be offered the opportunity to discharge their liability by payment of a fixed penalty.

6 **Maintaining the Streetscene**

It is important that the service change does not have a negative long-term impact on the streetscene and there is legislation available to the Council to address this.

6.1 *Section 33 Environmental Protection Act - Fly Tipping*

Dumping of waste on the highway will be investigated by enforcement officers and where there is sufficient evidence that waste has been illegally deposited contrary to section 33 of the Environmental Protection Act 1990, then the perpetrator may be prosecuted. Where a section 33 offence has occurred the Council also has the option to serve a Section 33ZA offering the perpetrator the opportunity to discharge any liability to conviction for the above offence by payment of a fixed penalty (which at the time of writing is £400). This also includes the dumping of waste in or around bins other than your own.

6.2 *Prevention of Damage by Pests Act 1949*

If it appears to the local authority that steps should be taken to keep land free from rats, mice and other pests, they may serve on the owner or occupier of the land a notice requiring him to take necessary action within a reasonable period that may be specified in the notice.

6.3 Houses with Multiple Occupancy (HMOs)

Where it is appropriate some HMOs will receive fortnightly collections. It will be the responsibility of both the tenants and the landlord to ensure waste is presented correctly for collection (and as such both will be served with a section 46 notice). If there are more than 4 occupants in a HMO then they can apply for an assessment that works the same way as the 'Large Family' policy. The outcome will be dependent on the assessment but it is likely that for households with more than 8 individuals we would provide shared facilities.

Frequently Asked Questions

As the waste authority aren't you obliged to take my waste?

The Environmental Protection Act (EPA) 1990 Section 45(1)(a) states that it is the duty of each Waste Collection Authority (WCA) to arrange for the collection of household waste in its geographical area provided it is absolutely clear that the items are being presented for collection by the waste authority. To ensure that it is clear we require the waste be presented in the appropriate container (and the Council is permitted to stipulate the size of that container).

How do I know what is appropriate containment?

There will be information sent out during the roll-out of fortnightly collections and all details are available on our website. We will also be sending out Section 46 (of the Environmental Protection Act 1990) notices which is an administrative notice formally explaining how you should present your waste for collection.

What if residents appeal the Section 46 notices?

There is no right of appeal where the local authority provides the receptacles; it can only be challenged by a judicial review in the High Court. However, the notices are primarily there to educate the recipient on how to present their waste for collection; we will not take enforcement action on the back of these notices and so there shouldn't be any reason to appeal them. If there is a mistake on the notice then please let us know and we'll correct it.

What if I don't want to recycle my waste, you can't force me to?

Through section 46 EPA (1990) we are able to state what receptacles we will collect waste and recycling in and at what frequency they will be collected. We are under no obligation to collect any waste that is not contained within these receptacles (nor would we have any way of knowing whether uncontained waste was intended to be collected by us). If you don't recycle then you will overproduce general waste and you will need to find an alternative legal way of disposing of it rather than your standard fortnightly Council collection.

What will you do to ensure my neighbourhood won't become a mess?

We will have a dedicated Behaviour Change Team that will work with residents leading up to and after the introduction of fortnightly collections. Part of the remit of this team will be to ensure that neighbourhoods don't suffer in the long-term. Where possible, the team will investigate any reports of dumping received from residents and our waste crews, as well as making proactive patrols themselves. Perpetrators of dumping will be educated and where this is unsuccessful repeat offenders will be subject to enforcement action.

We will not permit build up of waste on land and have the enforcement powers to require householders/landlords to remove waste within strict timescales.

How will you avoid fining people for genuine mistakes?

Residents will have been educated several times about their waste collections, including at least one face-to-face visit by an officer from the Behaviour Change Team, before they potentially face a penalty notice.

The legal correspondence you have sent is not in a language I understand

When asked we will always provide residents with assistance to understand correspondence where possible, however there is no obligation on the Council to provide letters and notices into any other language than English.

Aren't Community Protection Notices for businesses?

The Litter Strategy for England 2017 section 4.1.4 advocates the use of CPNs as a replacement for litter clearance notices (section 92 and section 93 of the Environmental Protection Act). This therefore makes them appropriate for residents and businesses, and in fact the Litter Strategy further states that they are primarily for residential use.

Can I appeal my Community Protection Notice and/or Fixed Penalty Notice?

A right of appeal against a Community Protection Notice or its terms lies to a Magistrates' Court within 21 days of issue.

A failure to comply with a Community Protection Notice without reasonable excuse is a summary offence carrying a maximum penalty on conviction of a fine of up to level 4 for individuals. Alternatively, an Authorised Person may issue a Fixed Penalty Notice (max £100) conferring immunity from prosecution for that offence if paid within 14 days. If this FPN is served and remains unpaid, any appeal or trial will be referred to the Magistrates Court.

I pay my council tax, you can't charge me to collect my waste.

The Controlled Waste Regulations 2012 Schedule 1 section 4 provides a table of household waste for which collection and disposal charges may be made. One such waste type is 'Any article of waste which does not fit or cannot be fitted into (a) a receptacle for household waste provided in accordance with section 46 of the Act'. Therefore if we supply a household with containment and state in a section 46 notice that that alone must be used, then we can charge for any waste that does not fit into the stated containment.

However, we do not intend to charge residents to collect their waste. If a household overproduces waste then the preferred option is that they transport the waste to a Household Waste and Recycling Centre and dispose of it for free. Nonetheless the Council feel that it is in the best interests of residents to have a special collection service available for one-off collections (which will be administered through the bulky waste collection service). We will only charge for the collection, never for the disposal.