

Frequently Asked Questions

Why have I been given a fixed penalty notice?

Birmingham residents regularly say they want their streets to be free of litter. Every year the Council has to spend millions of pounds picking up litter that is just thrown on the floor. From cigarette ends to chip wrappers; it all costs money to clear up. Issuing fixed penalty notices is just one of the ways the Council is trying to reduce litter on our street.

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 the criminal offence of littering. In essence this means that if you agree that an offence has been committed by you then by paying the fixed penalty you buy off your liability to prosecution by the City 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. In 2017/2018 the average fine and costs awarded by the Court in Birmingham was £344.89. The maximum penalty which can be imposed by the Courts for littering is £2,500.

What if I don't agree that I committed the offence?

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. It should, however, be noted that the financial penalty imposed by the Courts can be significantly greater than the amount of the original fixed penalty and you are likely to receive a criminal record.

I don't see why I should pay if there are no signs about littering in the area?

The City Council is not required to place signs in every street, road, highway or open park space to inform people not to litter or to inform them that litter patrols are operating in the area. Litter legislation has been in force many years and littering in many parts of the UK is at such levels that Councils right across the country are now actively issuing FPN's to people who inappropriately discard their rubbish.

Why should I pay a Fixed Penalty Notice when there were no litter bins nearby at the time?

As with signage it is not feasible for the council to put litter bins in every street, road and highway though of course every effort is made to place bins where they are most needed such as in town centres and parks and open spaces. Where bins are not available then it is up to everyone to act responsibly and make arrangements to either take their litter home or carry it until a litter bin is available.

I received a Fixed Penalty Notice for dropping a cigarette butt, surely that can't be considered littering?

Litter includes not only cigarette butts and associated materials but chewing gum also. In many ways these items are more problematic and more expensive to clean up than other items of rubbish.

Cigarette butts cannot be placed in litter bins because they will catch fire to them. What else should I do?

Smokers are responsible for ensuring that they completely extinguish their cigarettes before placing them in the bin. Cigarette waste is considered the same as any other waste in terms of litter laws and you can be issued with an FPN for not disposing of cigarette butts properly.

Care should be taken to avoid any risk of fire and in particular cigarette butts should be completely extinguished before being thrown into the bin. There are also a number of portable ashtrays available on the market that can be purchased and used to store cigarette butts until they can be disposed of safely and legally.

I wasn't given a warning, surely that is not fair?

The offence of littering is a criminal offence and is something that used to only be dealt with by referral to courts. Government brought in FPNs as a way to avoid prosecutions and criminal records unnecessarily. We have tried warning people but this did not have any effect. Once litter patrols commenced in the city we found that we had to empty litter bins more often and this shows that the patrols do make the city cleaner for all. There are still some people who do not think, can't be bothered or litter because they believe someone else will clean it up. Our enforcement policy, once the offence has been committed and witnessed, is to issue an FPN rather than prosecute every offence. This effectively is a warning.

Why was I given a fixed penalty when I offered to pick up the litter?

It is important to realise that the littering offence relates to the dropping of litter and walking away once you have dropped it. So, whether or not you volunteer to pick up your litter afterwards, you have committed an offence and will be issued with a fixed penalty.

Where do the Enforcement Officers patrol?

The Officers are tasked to areas of highest demand and will patrol wherever there is evidence of littering. It has been shown that Town Centres are hotspot areas and cigarette butts are the most common litter issue.

If I put it down a drain is that an offence?

Placing a cigarette end down a drain or in a stream is still an offence and will result in the issuing of an fixed penalty notice.

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

You will be prosecuted for the offence. On conviction in the Magistrates Court the offence of littering can carry a fine of up to £2,500 and you are likely to receive a criminal conviction.

Can I complain about the Enforcement Officers conduct?

No. As this relates to a criminal offence of littering any material matters need to be brought up at court as part of your evidence or mitigation.

Once the legal matters are completed:

- the FPN is paid or
- the offence has been tried at court and you have been found guilty or not guilty **and** the appeal period has expired

then you can make a complaint.

The courts are only interested in the offence and whether or not the littering offence was committed. If the conduct of the officer occurred after the offence and when the officer gained your details, then is therefore not a material consideration.

Can I pay by instalments?

The City Council does not accept payments by instalments for fixed penalty notices. In the case of financial hardship the City Council may be able to offer an extended period of time in which to pay the

fixed penalty. Should you wish to apply for an extension you can do so by writing to the address on your fixed penalty or by emailing fixedpenalty@birmingham.gov.uk. It should be noted that the maximum extension the City Council can offer is 7 weeks.

Why was my encounter with the Enforcement Officer being recorded and can I obtain a copy of the footage?

Encounters between members of the public and our Officers are recorded using Body Worn Video Cameras. These cameras are not used to record the offences themselves but are used to record the subsequent encounters with members of the public. Whilst the matter remains outstanding, either by way of payment of the fixed penalty or a pending criminal prosecution, then there is no legal right to obtain a copy of the footage under a Subject Access Request (Part 3 of the Data Protection Act 2018). The City Council will of course comply with its legal requirements for disclosure under Criminal Procedure Investigations Act 1996 should a case go to criminal trial.

Should you wish to obtain a copy of the footage of your encounter **after you have paid a fixed penalty notice or on conclusion of legal proceedings** then you can do so making a subject access request to the City Council. More information about making a subject access request can be found on the City Council's website at https://www.birmingham.gov.uk/downloads/file/1514/subject_access_request_form.

Is there a discount if I pay my fixed penalty early?

Fixed penalties are set by the Licencing and Public Protection Committee of the City Council in accordance with government guidance. The City Council does not offer any discounts for early payment and Officers are unable to offer any reduction in the price of the fixed penalty.

I dropped my litter on privately owned land, surely the City Council cannot issue a fixed penalty for this?

Under the littering legislation, The Environmental Protection Act 1990, it is an offence to drop litter on any land which is open to the air to which the public have access. This is irrespective of whether or not the land is in public (Council) or private ownership. There is, however, a statutory defence where a person can show that their litter was dropped with the consent of the owner, occupier or other person having control of the land on which the litter was deposited. Where a person wishes to explore this defence then they must provide the City Council with written evidence from the land owner of their consent to deposit litter on their land. In practice the City Council have found very few landowners who have been willing to allow litter to be dropped on their land.

I did not know it was an offence to drop litter. It was an accident, if I had known it was an offence I would not have done it.

Government guidance refers to the term "accidental littering" and recommends that Officers do not issue fixed penalty notices in cases of accidental littering. The term "accidental littering" applies to circumstances where litter is dropped without intent e.g. something falls from a person's pocket whilst they are walking along a street without their knowledge. This term does not apply to circumstances where a person did not know that littering was an offence e.g. "I did not know that a cigarette butt was litter. I would not have dropped it if I had known this." Officers are trained to assess whether or not litter was dropped accidentally or intentionally. In cases of accidental littering Officers will make member of the public aware of incident littering and will give them an opportunity to rectify the matter. Where members of the public disregard Officers request and fail to pick up their litter then a fixed penalty notice may be issued.