

MERTHYR TYDFIL COUNTY BOROUGH COUNCIL



Cyngor Bwrdeistref Sirol
MERTHYR TUDFUL

MERTHYR TYDFIL
County Borough Council

WASTE MANAGEMENT OPERATIONAL ENFORCEMENT POLICY REFUSE & RECYCLING

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Principles and Procedures for Dealing with Non-compliance with the Authority's Refuse and Recycling Policies

The Operational Policy

The Operational Policy translates the overarching Enforcement Strategy into a framework within which the Authorised Officers and Managers will work.

In accordance with DEFRA guidance, the Operational Policy will be developed under the recommended headings as discussed below.

Overview

The key strategic aim of the Authority in relation to waste management is as follows: -

- Reduce the impact of waste in Merthyr Tydfil by making sure we have the right facilities to collect and treat our waste and by encouraging all householders, schools and businesses to minimise, reuse and recycle their waste

In April 2011, the Authority approved the Refuse and Recycling Collection Policies <https://www.merthyr.gov.uk/resident/bins-and-recycling/waste-policies/?lang=en-GB&> to support the introduction of fortnightly refuse collections. They include a range of provisions concerning bin size, type and allocations, allocation of larger bins, collection arrangements, assisted collections, non-collection of side waste except at Christmas, bin lids closed and contamination of all waste containers.

During the roll out of fortnightly refuse collections and subsequently, it is to be hoped that any problems arising as a result of householders not complying with the provisions of the policies can be dealt with by persuasion and education. However, unfortunately and inevitably, there will always be a limited number of individuals who are not prepared to comply voluntarily with the policies. This document sets out the principles and procedures for dealing with these situations.

Active enforcement is in use by Authorities. However, now that comprehensive kerbside recycling schemes have been introduced and given time to perform, the policies are used as a means to encourage householders to recycle through a

process of education and communication in the first instance. It is the intention of the Authority to apply Fixed Penalty Notices (FPN) as a last resort.

As the pressure to recycle more waste increases, the emphasis has and will continue to be very much on communicating with the public and using Waste Advisors as a means of education on the ground. As previously stated, enforcement and fixed penalty notices are very much a final option.

Working Practices

Authorisation

The Authority's Waste Services Department employs a small team of authorised Waste Advisors with powers to issue FPNs for waste related offences. These posts within the Waste Services Department are individually authorised in writing to issue FPNs on behalf of the Local Authority. All Authorised Officers are required to carry with them, at all times, their "Letter of Authorisation"/"Warrant Card". This document is signed by the relevant Head of Service or Director and details the Acts and Sections under which the individual officer is entitled to carry out enforcement. Officers are also required to wear their photographic Authority identification card which lists the officer's name and job title as well as an expiry date – it must be clearly visible at all times.

Professional Approach

Waste Advisors are the face of the Local Authority undertaking what can be a challenging role. Officers are expected to maintain high standards and be well presented. Officers must also ensure that they are knowledgeable in the legislation and practises in relation to the duties, which they perform. Information will be provided in plain language on the rules the Authority applies and will confirm in writing on request. Any remedial work necessary will be explained and a time scale given. Officers will provide a courteous and efficient service and always identify themselves by name. Officers will carry out their duties in a fair, equitable and consistent manner. While Officers are expected to exercise judgement in individual cases, the provisions of the Enforcement Concordat and Regulators Compliance Code promote consistency.

The “Enforcement Concordat”

The Enforcement Concordat sets out what businesses and others being regulated can expect from Waste Advisors. Waste Management staff aim to conform to the principles outlined in the Concordat as illustrated in Table 1.

1.	Procedures	<p>Advice from officers will be clear and simple and will, on request, be confirmed in writing, explaining why any remedial works may be necessary and stating the timescale for progress and completion. A clear distinction will be made between legal requirements and the best or most desirable practice. Before formal action is taken, the opportunity may be provided to discuss the circumstances of the case and, if possible, resolve points of difference unless immediate action is required (for example, in the interests of health and safety, environmental protection or to prevent evidence from being destroyed).</p> <p>In circumstances where immediate action is necessary, an explanation of why such action was required will be given at the time or, if this is not practical, within 7 working days.</p> <p>Where there are rights of appeal against specific actions, advice on the mechanism to be followed will be given in writing. Wherever possible, this will be included with the Enforcement Notice or other documentation.</p>
2.	Transparency/Openness	<p>Information and advice will be published in plain language concerning the legislation that the Authority is applying. Officers will be open about the work required, including any financial costs in complying, and consultation will take place as appropriate.</p> <p>Discussion will take place concerning general enforcement issues, specific compliance failures or problems with anyone who is experiencing difficulties.</p>
3.	Helpfulness	<p>Officers will provide a courteous and efficient enforcement service and individual Officers will identify themselves by name.</p> <p>A contact telephone number will be provided for</p>

		on-going discussions. Businesses and individuals will be actively encouraged to seek advice and information relating to the Department's enforcement role.
4.	Complaints About Service	If business operators or members of the public indicate that they wish to complain about any aspect of enforcement work, officers will ensure that the mechanism for doing so is clearly explained.
5.	Proportionality	Costs of compliance are to be minimised to ensure that any actions required by the Authority is proportional to the risks involved. Where the law allows, officers will take account of the circumstances of a case and the attitude of the operator when considering the level of enforcement action.
6.	Consistency	<p>Consistency means taking a similar approach in similar circumstances to achieve similar ends. The aim is to achieve consistency in the advice given, the response to incidents and the ways in which statutory powers are used.</p> <p>Consistency does not mean simple uniformity and officers will need to take account of many variables such as the scale of the risk, the attitude and actions of those involved and any history of compliance, whether positive or negative.</p> <p>Decisions on enforcement action are a matter of professional judgment and officers will frequently be required to use discretion. Efforts will continue in order to develop arrangements for promoting consistency, including effective arrangements for liaison with neighbouring Authorities and other enforcing agencies.</p> <p>Every effort will be made to ensure consistent enforcement standards between Local Authorities. However, local circumstances may preclude an entirely uniform approach on all issues.</p>

Table 1 – Enforcement Concordat Principles

How Enforcement is Undertaken

The Waste Advisors work in front of the refuse collection crews working alone complying with the Authority's Lone Working Procedure.

The flow processes for issuing FPNs are attached at Appendix 1.

Uniform

Waste Advisors are provided with uniforms, which they are required to wear at all times while carrying out their duties on behalf of the Authority. All Officers are provided with full Personal Protective Clothing to carry out the duties for which they are employed. These ensure their safety when employed on the street as well as legitimising their presence and making the public aware that the problems are being tackled.

The Law in Respect of Waste Collection

Under current legislation, Authorities can use powers to make householders comply with waste policy, and if necessary, enforce that policy.

The main pieces of legislation that will be used are the Environmental Protection Act 1990 and the Clean Neighbourhoods and Environment Act 2005.

Section 45 of the Environmental Protection Act 1990 confers a duty on a local Authority to arrange for the collection of household waste (it should be noted that garden waste is classified as household waste, but the Local Authority may charge for collection).

Under Section 46 of the 1990 Act, the Authority may, by notice served on the occupier, require them to place waste for collection in receptacles of a kind and number specified. The Authority is entitled to specify that separate receptacles are used for waste to be recycled and waste which is not.

The Authority is no longer obliged to collect household waste that is placed for collection in contravention of a requirement under Section 46 of the EPA 1990. The Authority is entitled to specify that separate receptacles are used for waste to be recycled and waste which is not.

By virtue of Section 46(6) of the 1990 Act a person who fails without reasonable excuse to comply with the requirements of Section 46 will be liable to a fine on summary conviction. The fine will not exceed level 3 on the standard scale of fines, currently £1000.

Section 48 of the Clean Neighbourhoods and Environment Act 2005 has inserted Section 47ZA into the 1990 Act. This section allows a Local Authority to issue a fixed penalty notice for offences under sections 46 and 47 of the Environmental Protection Act 1990.

It is outside the scope of this enforcement policy to discuss in detail specific legislation relating to the various regulatory sanctions available to the Authority, however, extracts of the relevant legislation are attached at Appendix 2.

The waste enforcement procedures will be used to cover issuing of Fixed Penalty Notices for:

- Not presenting waste for collection in the stipulated containers
- Side waste (waste not contained in closed lid grey wheeled bin)
- Top hatting (waste placed in grey wheeled bin forcing the lid open – non containment)
- Deliberate contamination of recycling and food waste containers
- Ban on garden waste in the residual bin (where a household has been offered a kerbside collection of garden waste)
- Ban on recyclable items/food being placed in the residual bin (where a household has been offered a kerbside recycling service)
- Trade abuse of household bins

There are a range of issues that may lead to non-compliance with the Authority's Refuse and Recycling Policies and/or the legislation. The offence(s) committed are detailed below.

(a) Non-compliance with waste and recycling policies

(b) Non-compliance with statutory requirements:

- The placing of side waste in whatever form – bags, boxes, bulky waste - being left by the waste receptacle except at Christmas.
- Top hatting. All grey-wheeled bins should be placed for collection with lids closed.
- Placing more than one refuse bin out for collection

- Contamination of recyclable waste. Only the following items can be recycled through the current system – glass bottles & jars; food and drink cans; plastic bottles and containers; junk mail; newspaper; magazines; cardboard; tetra pac (cartons); metals (e.g., kitchen utensils), small electrical items (SDA), textiles and household batteries. – Any other materials will lead to the rejection of containers at the kerbside.
- Contamination of food waste. All types of cooked and uncooked food are collected and placed either in newspaper/paper towels or starch liners. Any other waste found in the food waste container (including plastic bags) could lead to the possible rejection of loads at the food waste treatment facility.
- Contamination of the refuse bin with recyclable materials or other prohibited items.
- Failure to place the correct waste container out in relation to the collection day/week.
- Failure to place the waste container at the edge of the property or at a location agreed with the waste collection Authority, except where assisted collection arrangements are in place.

It is important for the effective running of fortnightly refuse collections that we achieve maximum compliance with these requirements otherwise, this may lead to the refuse crews not achieving the collection of the rounds.

It is also essential, in the context of any potential enforcement action, that the Local Authority be seen to have acted reasonably, to have provided sufficient waste containers for the needs of the household and to have provided any necessary advice to enable householders to deal with their waste properly.

Procedure for dealing with non-compliance

There will be a staged approach (it is not intended to introduce the refuse and recycling policies on a blanket “zero tolerance” approach) to achieving compliance with the various policies and legislation as follows: -

General

It is the intention of the Authority to involve all householders in the recycling of household waste by raising awareness and persuasion and they will take measures as outlined within the policy document to achieve this. However, where there is persistent non-compliance with the waste

and recycling policies, the Authority will use the available statutory action and penalties to achieve compliance in the interests of all its householders.

Failure to place the relevant container at the boundary of the property or at a location agreed by the waste collection Authority (except where there is an assisted collection in place); placing the wrong container out for the collection week; will result in non-collection. In the case of non-collection, a red tag will be affixed to the offending item advising of the reason for non-collection and a contact number given for help or advice.

Where there are recurrent incidents of non-compliance that interfere with operational arrangements that cannot be effectively dealt with by non-collection alone the Authority reserves the right to take formal action including the service of a notice under section 46 of the Environmental Protection Act 1990 requiring the householder to comply with the relevant parts of the waste and recycling policies, and the serving of a fixed penalty notice where appropriate. Subsequent collections will be dealt with by a formal warning letter should any incidences of non-compliance arise.

In extreme cases of recurrent non-compliance with the policies, consideration will be given to formal court action. This approach will require the establishment of appropriate reporting mechanisms and formal procedures to comply with the legislation and adequate resources to implement the processes.

Refuse

- . Placing side waste by the bin; placing a bin with an open lid (top hatting) for collection will result in the bin being emptied but surplus waste being placed inside the bin for the following collection. It will be the householder's responsibility to dispose of any uncollected waste at the Household Waste & Recycling Centre or to wait for the next collection.
- . Placing an additional unauthorised bin out for collection will result in non-collection of that bin's waste. It will be the householder's responsibility to dispose of any uncollected waste at the Household Waste & Recycling Centre. If the unauthorised bin is in the ownership of the Authority, it will be collected during the following collection day. In the case of non-collection of the unauthorised bin, a red tag will be affixed to the offending item advising of the reason for non-collection and a contact number given for help or advice. Each crew charge-hand will have the responsibility of contacting the supervisor with this misdemeanour.
- . To monitor the refuse service, the refuse crews will be supported by Waste Advisors whose role is to identify any incidence of non-compliance

and liaise with the householders to persuade and educate/provide them with advice and information on how to manage the waste/recycling system. Written confirmation of any visit and advice given will be delivered to the householder.

- . The crew and Waste Advisors will make use of red tags for the first incidence of non-compliance to advise the householder of problems or situations that will lead to non-collection of their refuse. The red tag will indicate the need for the householder to contact the Waste Advisor to discuss the problem. If there is still a problem at the address the Waste Advisors will instigate enforcement proceedings as follows: -

1st collection – problems encountered – Letter issued to householder (by hand or through the post)

2nd collection – problems remain – S.46 Notice issued to householder (by hand or through the post)

3rd collection – problems remain – Fixed Penalty Notice issued to householder (by hand or through the post)

Specific Flow Processes for waste enforcement procedures to cover issuing FPNs are attached at Appendix 1.

Recycling

- . Initially, incidences of minor contamination of recycling boxes with non-recyclables will not result in non-collection. Collection crews will empty the box(s) but will leave the contamination in the box(s). A tag will be affixed to the box(s)/bags which will explain that the bin has been emptied on this occasion, but subsequent contamination will result in non-collection. A contact number will be given for help or advice.
- . Any incidence of major contamination of a recycling box with non-recyclables will immediately result in non-collection. A tag will be affixed to the box advising the householder of reason(s) for non-collection and a contact number will be given for help or advice.
- . Where householders are not participating in the recycling of waste, they will be visited by a Waste Advisor in an attempt to persuade them as to the value of participation. Where this proves unsuccessful, the householder will be informed that only one refuse bin will be emptied every fortnight as per policy. There is a risk of a Fixed Penalty Notice being served for not presenting waste for collection in the stipulated containers.

Food Waste

- . Any incidence of contamination of food waste containers with non-food waste will immediately result in non-collection. A tag will be affixed to the container advising the householder of action to be taken and a contact number will be given for help or advice.

A description of the offences, fines and relevant legislation applicable are illustrated below.

HOUSEHOLDS				
Offence	Penalty	Example	Action to be taken	Time span between infringement and penalty issue and no. of contacts
Side Waste				
S33	Imprisonment not exceeding 12 months or fine of up to £50,000 or both	Waste put out on the street or near bin (not contained in wheeled bin)	<p>The refuse crews will be supported by Waste Advisors whose role will be to identify any incidence of non-compliance and liaise with the householders to persuade and educate/provide them with advice and information on how to manage the system. They will make use of red tags to advise the householder of problems or situations that will lead to non-collection. A staged approach to non-compliance will be adopted. This process may lead to a FPN or prosecution.</p> <p>Side waste will be placed inside the emptied bin by the collection crew either to await the next refuse collection or the Householder will be advised of the option to take it to the Household Waste & Recycling Centre.</p>	Collection - Waste Advisors/crew – red sticker process (Waste Advisor to wait for the householder to contact the office before arranging a home visit)
S.46	<p>Fine not exceeding Level 3 on the standard scale</p> <p>Can be set at a local level (between Default £150</p>			<p>1st collection – visit/bin audit/diary Letter re issues and advice on future non-compliance proceedings</p> <p>2nd collection – S.46 Notice issued 14 days compliance</p>
S.87	Fine not exceeding Level 4 on the standard scale			3 rd collection – Fixed Penalty Notice issued 14 days compliance from the date of issue
S88(1) (6&7)	FPN £75			
Environmental Protection Act 1990	(See appendix 2 for further details)			

HOUSEHOLDS				
Offence	Penalty	Example	Action to be taken	Time span between infringement and penalty issue and no. of contacts
Contamination of Recycling Containers; Food Waste Containers and Refuse Bin S.46 Environmental Protection Act 1990	Fine not exceeding Level 3 on the standard scale *Can be set at a local level Default £150	All waste containers; recycling; food and refuse waste containers continually contaminated with the wrong material even after literature has been issued and requests for compliance Residents who have a genuine reason for causing contamination e.g. mental health problems will not be prosecuted	Following an educational and supportive process, continuously contaminated containers will result in warning letters and visits from a Waste Advisor. If these are ignored then a S.46 Notice will be issued, a breach of which may result in a Fixed Penalty Notice being issued. Contaminated containers will not be emptied.	Collection - Waste Advisors/crew – red sticker process (Waste Advisor to wait for the householder to contact the office before arranging a home visit) 1 st collection – visit/bin audit/diary Letter re issues and advice on future non-compliance proceedings 2 nd collection – S.46 Notice issued 14 days compliance 3 rd collection – Fixed Penalty Notice issued 14 days compliance from the date of issue

HOUSEHOLDS				
Offence	Penalty	Example	Action to be taken	Time span between infringement and penalty issue and no. of contacts
Top Hatting S.33(1)(c) S.46 Environmental Protection Act 1990	Imprisonment not exceeding 12 months or fine of up to £50,000 or both Fine not exceeding Level 3 on the standard scale *Can be set at a local level Default £150	Grey wheeled bins are presented for collection with additional waste placed on top so that the lid of the bin is forced open.	<p>Following the 2-week supportive process, if top hatting is still an issue, crews will remove the “top hatting” bag and replace it in the emptied wheeled bin.</p> <p>If bins are overflowing with loose waste, a red tag will be affixed to the bin explaining reasons for non-collection. Waste Advisors will visit these householders to provide support and advice on waste minimisation and recycling.</p> <p>If no recycling is apparent, then a FPN may be issued in the event of continuous side waste being presented for collection.</p> <p>If recycling activity is evidenced, and surplus waste is continuously being generated then an application for a 240 litre bin may be submitted to the LA for consideration.</p>	<p>Collection - Waste Advisors/crew – red sticker process (Waste Advisor to wait for the householder to contact the office before arranging a home visit)</p> <p>1st collection – visit/bin audit/diary Letter re issues and advice on future non-compliance proceedings</p> <p>2nd collection – S.46 Notice issued 14 days compliance</p> <p>3rd collection – Fixed Penalty Notice issued 14 days compliance from the date of issue</p>

HOUSEHOLDS				
Offence	Penalty	Example	Action to be taken	Time span between infringement and penalty issue and no. of contacts
<p>Placing more than one refuse bin out for collection</p> <p>S46 Environmental Protection Act 1990</p>	<p>Fine not exceeding Level 3 on the standard scale</p> <p>*Can be set at a local level Default £150</p>	<p>One bin per property is the LA's standard allocation. Additional refuse bin(s) or other waste container (purchased by householder or otherwise) being presented for collection.</p>	<p>Only one bin per property will be emptied per fortnight. Additional wheeled bins present for collection will not be emptied. Crew will contact the Supervisor to arrange collection of LA owned surplus bins and the Waste Advisors who will visit/send letter to householder explaining the policy and provide the relevant advice.</p> <p>Non-compliance will result in a FPN being issued.</p>	<p>Collection - Waste Advisors/crew – red sticker process (Waste Advisor to wait for the householder to contact the office before arranging a home visit)</p> <p>1st collection – visit/bin audit/diary Letter re issues and advice on future non-compliance proceedings</p> <p>2nd collection – S.46 Notice issued 14 days compliance</p> <p>3rd collection – Fixed Penalty Notice issued 14 days compliance from the date of issue</p>

HOUSEHOLDS				
Offence	Penalty	Example	Action to be taken	Time span between infringement and penalty issue and no. of contacts
<p>Failure to place the correct waste container out in relation to the collection day/week</p> <p>S46 Environmental Protection Act 1990</p>	<p>Fine not exceeding Level 3 on the standard scale</p> <p>*Can be set at a local level Default £150</p>	<p>Refuse bin being put out on non-collection week. Recycling containers or refuse bins being put out on wrong day.</p>	<p>Crew will contact Supervisor/Waste Advisors if householders continuously present waste/recycling for collection on the wrong days. If a problem is confirmed, then the householder will be issued with a Warning Letter explaining the offence and providing the relevant advice. If the letter is ignored, then a FPN will be issued.</p>	<p>Collection - Waste Advisors/crew – red sticker process (Waste Advisor to wait for the householder to contact the office before arranging a home visit)</p> <p>1st collection – visit/bin audit/diary Letter re issues and advice on future non-compliance proceedings</p> <p>2nd collection – S.46 Notice issued 14 days compliance</p> <p>3rd collection – Fixed Penalty Notice issued 14 days compliance from the date of issue</p>

HOUSEHOLDS				
Offence	Penalty	Example	Action to be taken	Time span between infringement and penalty issue and no. of contacts
<p>Failure to place the waste container at the edge of the property or at a location agreed by the waste collection Authority, except where assisted collection arrangements are in place</p> <p>S46 Environmental Protection Act 1990</p>	<p>Fine not exceeding Level 3 on the standard scale</p> <p>*Can be set at a local level Default £150</p>	<p>Containers left in un-designated areas/collection points not agreed for refuse/recycling collections</p>	<p>Crew will contact Supervisor/Waste Advisors if householders continuously present waste/recycling for collection in undesignated areas. If a problem is confirmed, then the householder will be issued with a Warning Letter explaining the offence and providing the relevant advice. If the letter is ignored, then a FPN will be issued.</p> <p>Containers continuously placed in an undesignated collection area will not be emptied.</p>	<p>Collection - Waste Advisors/crew – red sticker process (Waste Advisor to wait for the householder to contact the office before arranging a home visit)</p> <p>1st collection – visit/bin audit/diary Letter re issues and advice on future non-compliance proceedings</p> <p>2nd collection – S.46 Notice issued 14 days compliance</p> <p>3rd collection – Fixed Penalty Notice issued 14 days compliance from the date of issue</p>

TRADERS (MTCBC Contracted Customers Only)				
Offence	Penalty	Example	Action to be taken	Time span between infringement and penalty issue and no. of contacts
Trade abuse of household bins S33 S34 S47 Environmental Protection Act 1990		Mixed hereditaments sharing the household waste bin	<p>Traders have a legal obligation to ensure that their trade waste is contained and transferred to an authorised person. Traders must not place trade waste in household waste bins.</p> <p>Waste advisors/crews/householders will report the offence to the Trade Waste Officer (TO). TO investigate and identify the owner of the waste.</p> <ul style="list-style-type: none"> • If the waste is identified as belonging to a MTCBC customer TO will visit to advise on correct practice. If there is a re-occurrence, then a Notice/FPN will be served. Further re-occurrence will be dealt with under the contract T&Cs or other appropriate action taken. • If not MTCBC customer TO to inform Public Health. 	Waste Advisors/TO; Crews; Householders Visit – advice/letter - 7 days compliance Monitor situation Cancellation of contract

TRADERS (MTCBC Contracted Customers Only)				
Offence	Penalty	Example	Action to be taken	Time span between infringement and penalty issue and no. of contacts
Household abuse of trade bins S.46 Environmental Protection Act 1990	Fine not exceeding Level 3 on the standard scale *Can be set at a local level Default £150	Mixed hereditaments sharing the communal waste bin collection point with traders	Waste advisors/Crews/Trader Reported to TO. TO identify if MTCBC customer. If they are then TO to visit and investigate. Complaint passed to Wardens. If evidence proves that the offender (householder) can be identified Wardens to deal with from the offset and treat as side waste offence.	Collection - Waste Advisors/crew – red sticker process (Waste Advisor to wait for the householder to contact the office before arranging a home visit) 1 st collection – visit/bin audit/diary Letter re issues and advice on future non-compliance proceedings 2 nd collection – S.46 Notice issued 14 days compliance 3 rd collection – Fixed Penalty Notice issued 14 days compliance from the date of issue

TRADERS (MTCBC Contracted Customers Only)				
Offence	Penalty	Example	Action to be taken	Time span between infringement and penalty issue and no. of contacts
Trade Breach of Contract Terms & Conditions		Top Hatting Side Waste Not presenting waste or recycling as per MTCBC requirements	Reported to TO. TO identify if MTCBC customer. If they are then TO to visit and investigate. If not an MTCBC customer, pass to Environmental Services for action.	Visit/advise Letter Letter/Notice Cancel contract

*If an Authority does not make use of its power to specify the amount of a fixed penalty, a standard default amount of either £100 or £150 applies. When a LA decides to set its own fixed penalty amounts, these must fall within the ranges set out in the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2007 (Regulation 2). The ranges are from £100 to £150 for those offences with a default amount of £100 and from £100 to £150 for offences with a default amount of £100.

FIXED PENALTY NOTICES

Fixed Penalty Notice Forms

It is a legal requirement that any FPN states:

- the full amount of the fixed penalty
- that no proceedings for the offence will be taken if it is paid within 14 days
- the name and address to which payment may be made by post (without ruling out other methods of payment)

See Appendix 3 for DEFRA April 2006 – Fixed Penalty Notice Form model.

Notices also state prominently that non-payment is likely to result in prosecution for the alleged offence and the maximum fine payable on conviction. For not complying with the Authority's requirements to present waste in the stipulated containers may result in a £1,000 fine and for littering as much as £2,500.

When to Issue an FPN

Where available the issue of FPNs may be considered as an alternative to any other form of enforcement action e.g.

- to deal quickly and simply with less serious offences
- to divert less serious cases away from the court process
- to deter repeat offences

It is considered appropriate to issue a FPN when the Authorised Officer can ensure that: -

- an offence has clearly been committed and there is sufficient supporting evidence to support prosecution should the fixed penalty notice go unpaid
- the alleged offender is compliant and understands why they have been challenged
- the issuing Waste Advisor believes that the alleged offender has offered their correct name and address
- there are no aggravating circumstances

When Not to Issue an FPN

It is considered inappropriate to issue an FPN: -

- When the person alleged to have committed an offence is aged under 10
- If the alleged offender, when approached, is obstructive and non-cooperative. In these circumstances the Waste Advisor will return to serve the notice with a Waste Advisor colleague or the Police
- When it is suspected that an alleged offender has failed to offer their correct name and address. In these instances, a verbal warning will be given with details of the offender being kept on file
- When an alleged offender seems confused, either through some form of impairment or through drugs or alcohol. In this instance any Waste Advisor is advised to seek support from the relevant agency and the issuing of a fixed penalty notice should be seen as very much a secondary issue
- When the offence committed is so small or trivial in its effect that action might not be in the public interest – use discretion.
- When the offence committed is considered too serious to merit a FPN – prosecution proceedings will be initiated.
- When the person in question is in some way 'vulnerable' such as the mentally impaired
- Those exempted within the law
- When the offence is committed by someone that has previously received a FPN for the same offence (REPEAT OFFENDERS – seek to prosecute repeat offenders through the court)

How to issue

DEFRA's two golden rules of FPN enforcement: -

Rule 1 – assume every offence for which a FPN is issued will end in the Magistrates Court

Rule 2 – where there is not sufficient evidence a FPN should not be issued

A FPN can be issued either on the spot or through the mail. Advantages and disadvantages of both approaches are illustrated in Table 3.

	Advantages	Disadvantages
On the Spot	<ul style="list-style-type: none">• Immediate response• More efficient• Keeps enforcement staff out on the frontline rather than back in the office dealing with paperwork• A visible response	<ul style="list-style-type: none">• Harder to check for previous offences• Harder to verify identity• Greater scope for error• Reduced opportunity for quality control• Could be more confrontational
Through the Mail	<ul style="list-style-type: none">• Better quality control• Evidence can be checked before FPN is issue• Names and addresses can be fully checked before FPN is issued• More opportunity to check for previous offences	<ul style="list-style-type: none">• More resource intensive and therefore more expensive• Risk that those who may have committed an offence might not understand the consequences of their actions at the time of challenge

THE COLLECTION OF EVIDENCE

The most important tool to be used for gathering evidence is the Enforcement Officer's Notebook. They can be used for recording all the details of any offence.

Any notebook should carry a clear number, be bound and have numbered pages. Any entries need to follow the guidelines below: -

- All notes should be made with a ball point pen
- Notes should be legible
- Any amendments that are made should be crossed out with a line so that they can still be read
- No gaps or spaces should be left and where they exist, they should be crossed out with a line
- All witness statements should be signed by both the Waste Advisor and any person giving a statement

At all times it must be remembered that a notebook can and will be seen by others, particularly if the case progresses to the magistrate's court.

Points to Prove

The points to prove include: -

- A description of the offence that is alleged to have taken place
- The view of the Waste Advisor that witnessed the offence
- The date
- The time
- The name and address of the offender
- The age of the offender
- A description of the offender and whether they will be recognised again
- The weather and light conditions at the time

There will be an extended set of questions derived from the above that the Waste Advisor will need to gather the information required to prove each strand of an offence.

Taking side waste as an example the additional points to prove may include: -

- Was the householder or other persons witnessed placing the side waste by the bin?
- How many bags of side waste were placed for collection?
- Was there any evidence that the side waste came from the householder's (offender's) address?
- Was the location where the side waste was deposited in an area, which is open to the air?
- Was the person of a suitable age to be issued with a fixed penalty notice?

Dealing with False Details

Waste Advisors have the power to require the name and address of a person they wish to issue with a FPN. Failing to supply these details or giving false details to an authorised officer is an offence for which a fine of level 3 on the standard scale may be given upon conviction.

If someone is non-cooperative, they should be reminded that failing to do so constitutes a further offence and should they fail to cooperate that they will be prosecuted in the Magistrates Court for the offence that they are alleged to have committed, along with the further offence of failing to provide their details. Only if/when they cooperate is it considered appropriate to issue a FPN.

If the Waste Advisor suspects that false information is being provided and if the householder persists, they must be informed that they are committing an obstruction offence. This is also relevant where the householder refuses to provide details. If this occurs, then Police assistance should be sought. If a

Police Officer requests details and they believe them to be false the Police can then arrest.

The Waste Advisor should try to see if it is possible to verify the individual's identity either at the time or at some later time. If the alleged offender was providing the correct details, then a FPN can be issued through the mail.

Dealing with Agitated or Threatening Behaviour

The Authority recognises the Health and Safety issues surrounding environmental enforcement. Officers have received relevant training on Conflict Management, Negotiating & Influencing and Lone Working.

Waste Advisors will be advised to comply with the Authority's Lone Working Policy in the first instance.

If the householder uses offensive or threatening language or behaviour, they should not be offered an FPN. If their identity can be secured without any risk to the Waste Advisor, it should be obtained. Record all details of the offence in readiness to pursue in the Magistrates Court where the events of any confrontation should be put before the court so that the Magistrates are aware of the aggravating circumstances.

For anyone who is violent a FPN should not be offered. In the first instance, the Waste Advisor must secure their own safety and then involve the Police.

Procedures for dealing with these conflict issues are: -

Wherever possible confrontation should be avoided. However, it is inevitable that whilst working in communities on such a large scale there is a high risk of a conflict situation occurring. In the interest of personal safety, Waste Advisors should be able to identify and manage potential conflict in a constructive manner and take positive steps to reduce the risk of a situation "getting out of hand".

Some useful points to consider: -

(a) Be Aware of the Environment

- Know what measures are in place when working in either a commercial building or in someone's home e.g., check out alarm systems and procedures, exits and entrances
- If a potentially violent situation occurs, be aware of what might be used as a weapon against you and of possible escape routes

(b) Be Aware of Yourself

- Think of your body language. What messages are you giving?
- Think about your tone of voice and choice of words. Avoid anything which could be seen as sarcastic or patronising
- Think about what you are wearing. Is it suitable for the task? Does it hamper your movement? What signals does it send out? In a potentially risky situation, does a scarf or tie offer an opportunity to an assailant?
- Be aware of your own triggers – the things that make you angry or upset

(c) Be Aware of other People

- Take note of their non-verbal signals
- Be aware of their triggers
- Don't crowd people – allow them space
- Don't make promises that can't be kept
- Is the person already angry or upset before you meet – for what reason?
- Listen to them and show you are listening

If you are satisfied that the situation is hostile, say, "Thank you very much for your time" and walk away. Make a note of the name (if available) and address of the person and follow Lone Working Policy instruction. In any situation, do not put yourself in danger. If you are concerned about a particular area/householder, then always work in pairs for reasons beyond Health & Safety implications which include: -

- Allowing Waste Advisors to back each other up
- Allowing for the interviewing of any witnesses at the same time as that of an alleged offender
- Less chance of an alleged offender denying that they committed an offence if they have been witnessed by two officers
- It's a better way of doing things
- Protecting officers from any malicious accusations

Understanding Why People Can be Difficult

Most people are situationally difficult - they behave as they do because they are under stress and do not have the skills to behave in a more effective way. Very few people are personally difficult - they are difficult in most situations because they have learnt that it works.

Avoiding Escalation

Rather than attempt to control their behaviour, you need to control your own.

Some key points are:

- Keep your perspective – know what really matters and what doesn't
- Know your own emotional trigger points
- Don't personalise the situation or the behaviour of the other person
- Keep your emotions in check and don't let them override your judgement
- Make rational decisions about how you are going to behave and stick to them in spite of strong, emotional feelings to do otherwise
- If you want the other person to change, change first
- Do the unexpected
- If it works, do more of the same, if it doesn't do something different

In any conflict situation, people are likely to take a firm stance position and tell you what they will or will not do. In order to move away from this, you need to look behind what they are saying to why they are saying it and respond to the why rather than the what.

Above all, be aware of how you look and sound:

- Is your stance confrontational or relaxed?
- Is your tone of voice patronising?
- Do you look as if you are listening?

Moving On

Check that you have understood their concerns and establish what it is that they want. Is it something you can do something about? Is it something anyone else can do something about? At this stage, you will need to use your negotiating skills to move the situation on towards an acceptable conclusion.

MANAGING AND MAINTAINING INFORMATION

The Tascomi reporting system will be used to record all household/property data.

The back-office system needs to be efficient and accurate. Each case needs to be properly indexed and logged and all information and evidence along with any action that is taken is properly managed.

Any system needs to allow for: -

- The management of individual case details – logged against a unique case number
- The recording of key dates
- An index of key information in relation to an individual case
- A log of any reminder letters that may have been sent
- Details of any appeals and the outcome
- Details of any alternative payment plans agreed
- Details of any payments received
- Key dates for follow up action

Any evidence that is collected needs to be stored in compliance with the Criminal Procedure and Investigations Act 1996. The Act requires: -

- Proper recording, retention and maintenance of all materials including statements, photographs, notices etc that are gathered as part of an investigation whether they are used in a prosecution or not.

Working practices in this respect have been developed in conjunction with the Legal Department.

EFFECTIVE DELEGATION

In the initial stages of the life cycle of a Fixed Penalty Notice, the Waste Advisors will be responsible for making the relevant decisions following discussion with the Waste Strategy Team Leader.

The Waste Strategy Team Leader will be the nominated Officer to decide if there are any reasons following a challenge to cancel a FPN before recourse to the court.

The Legal Department will have the final say as to whether an alleged offender is to be prosecuted for non-payment of an FPN.

TARGETING OF OFFENCES

The Waste Services Department has a number of Waste Advisors to cover the County Borough. If it is difficult to tackle offences across the whole of the Authority's area resources will be used to target problem areas in the first instance followed by approaching areas identified.

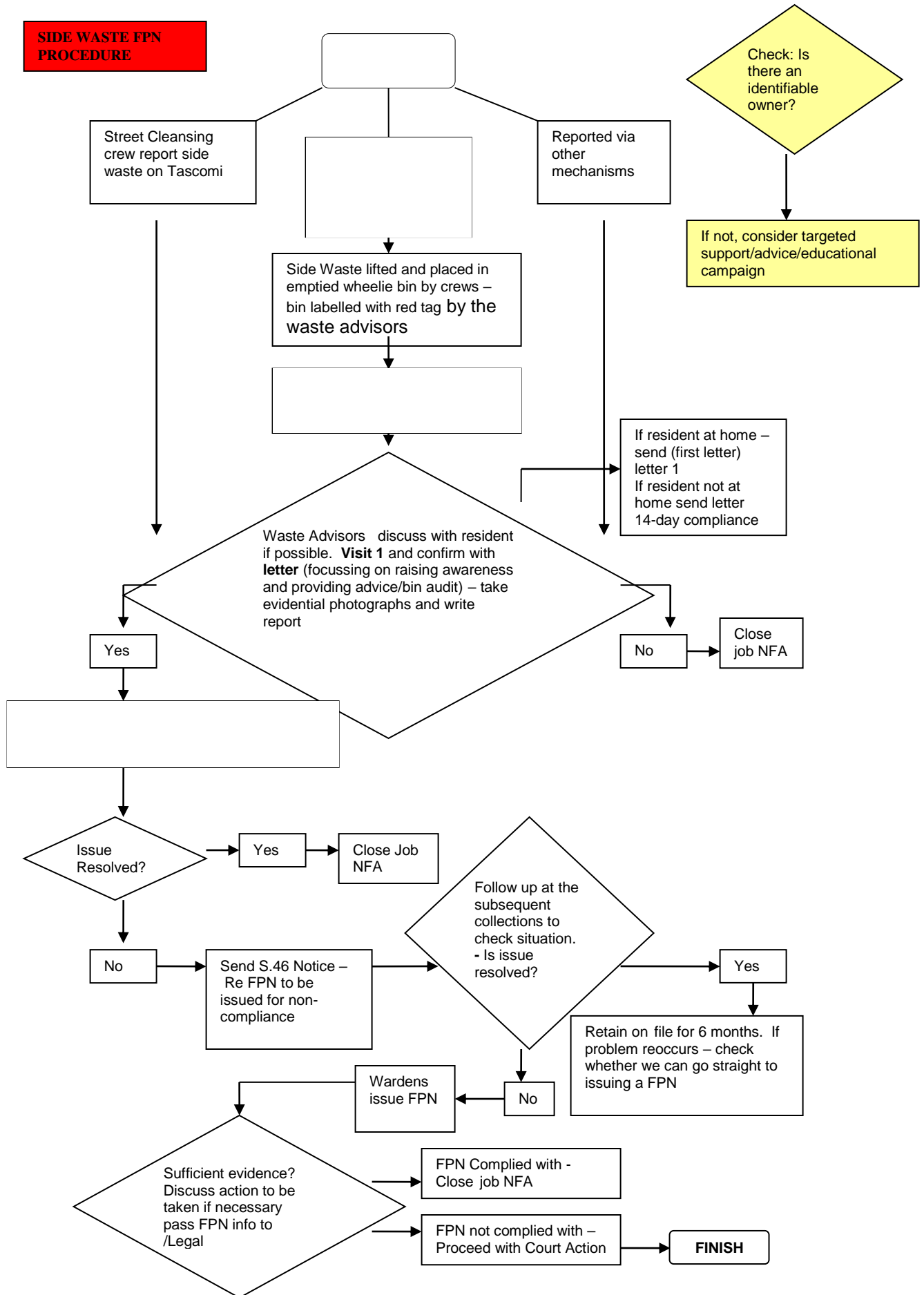
REFERENCE DOCUMENTS

- | | |
|-------|--|
| DEFRA | Local Environmental Enforcement – Guidance on the use of Fixed Penalty Notices |
| DEFRA | Fixed Penalty Notices |
| DEFRA | Issuing Fixed Penalty Notices to Juveniles |
| DTI | Enforcement Concordat – Good Practice Guide for England and Wales |

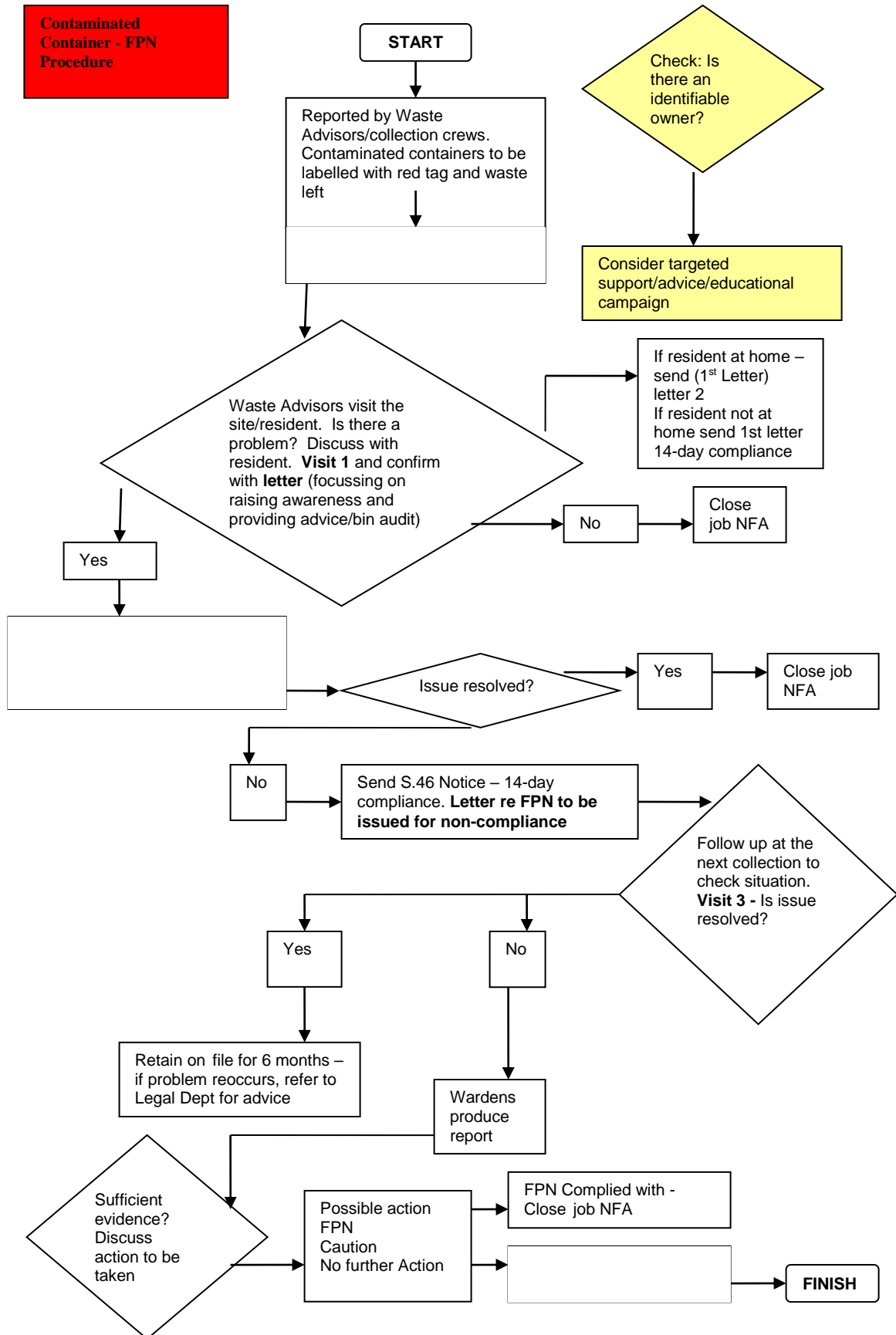
APPENDIX 1

Flow Processes for Issuing Fixed Penalty Notices

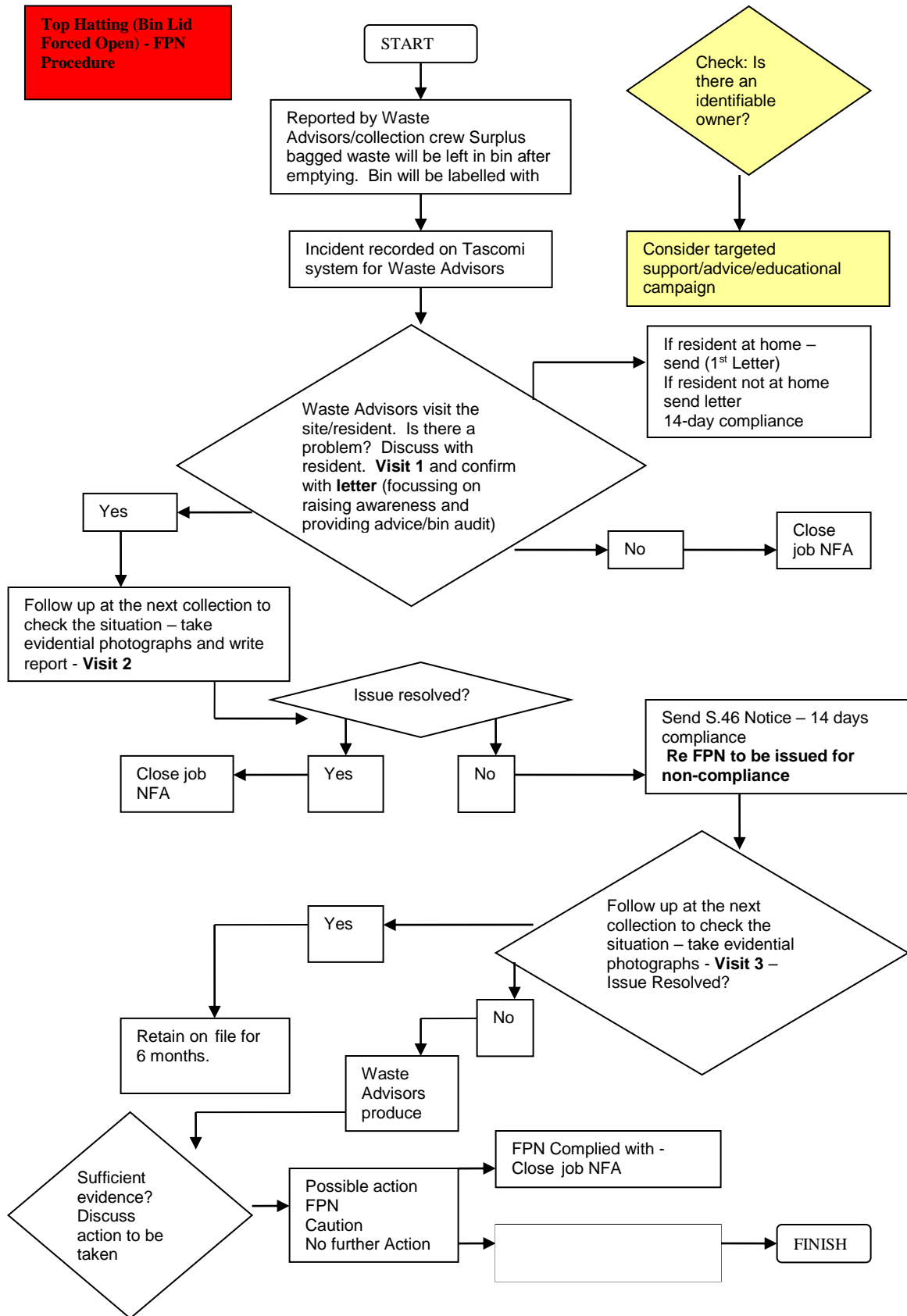
SIDE WASTE FPN PROCEDURE

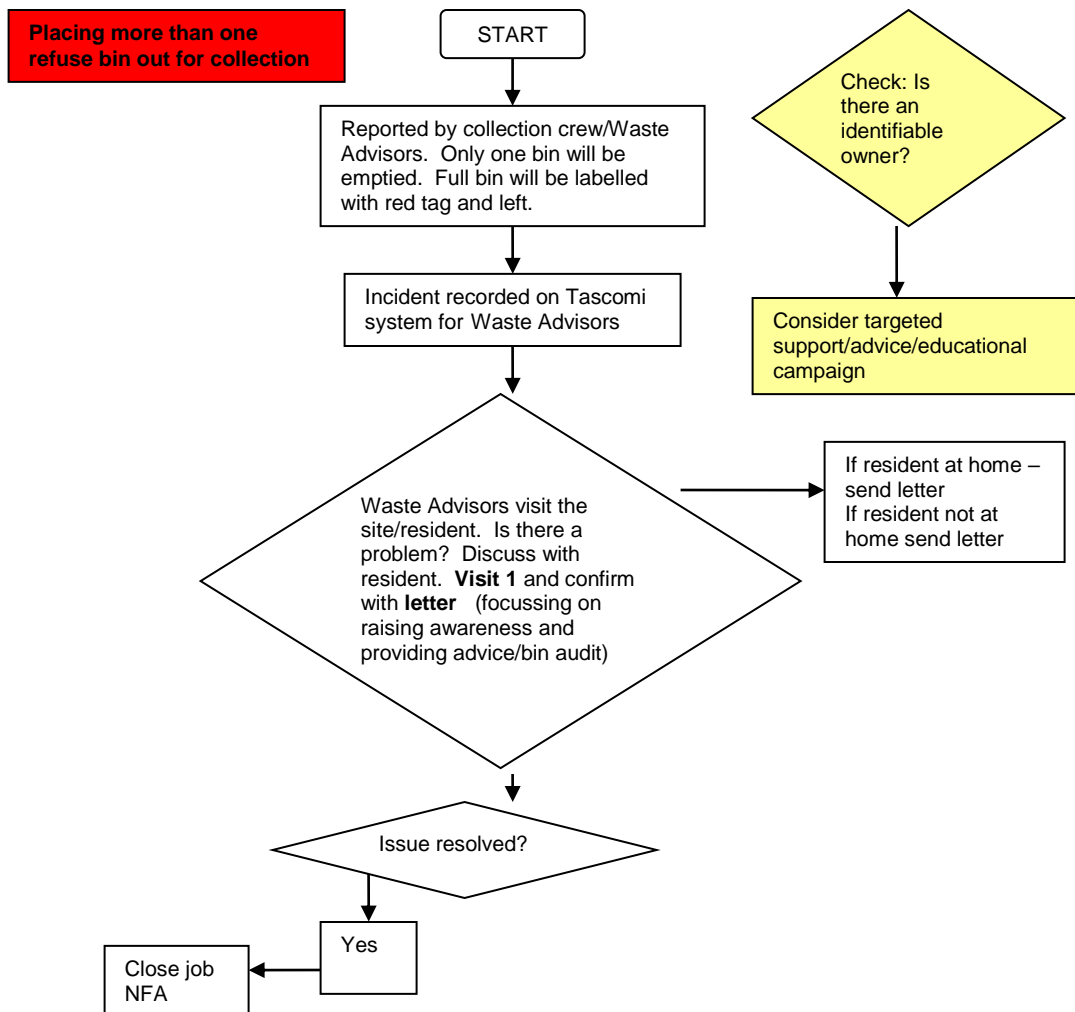


**Contaminated
Container - FPN
Procedure**

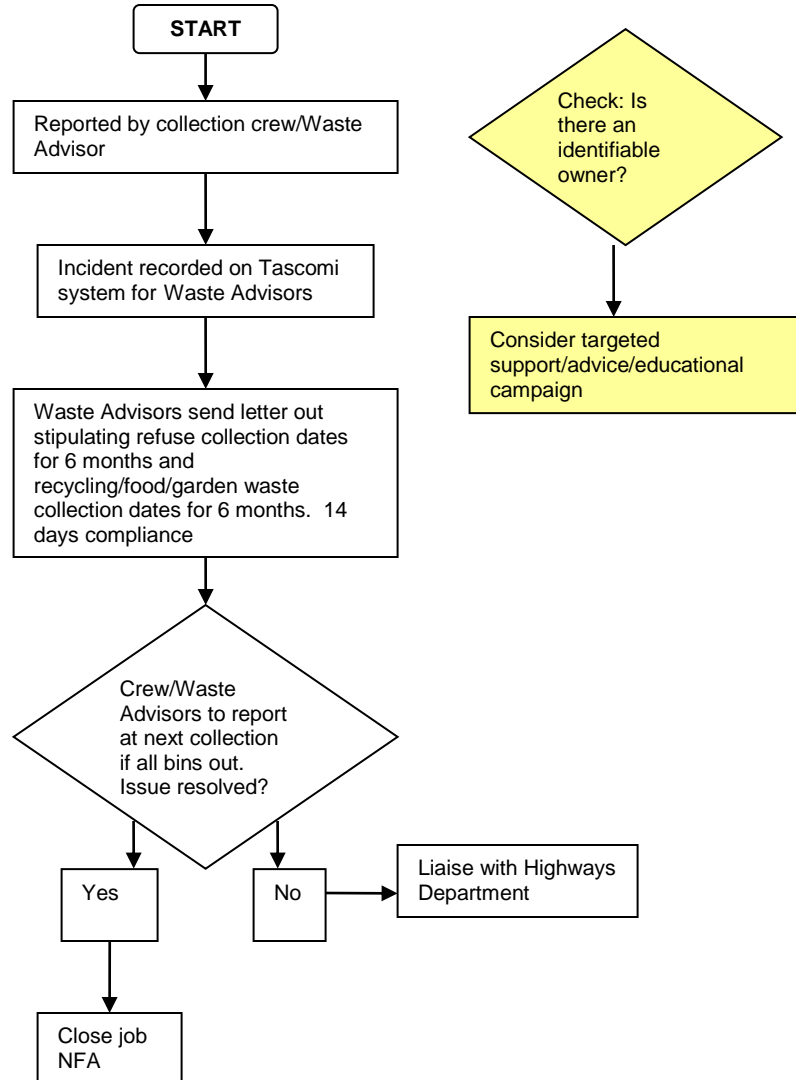


Top Hatting (Bin Lid Forced Open) - FPN Procedure

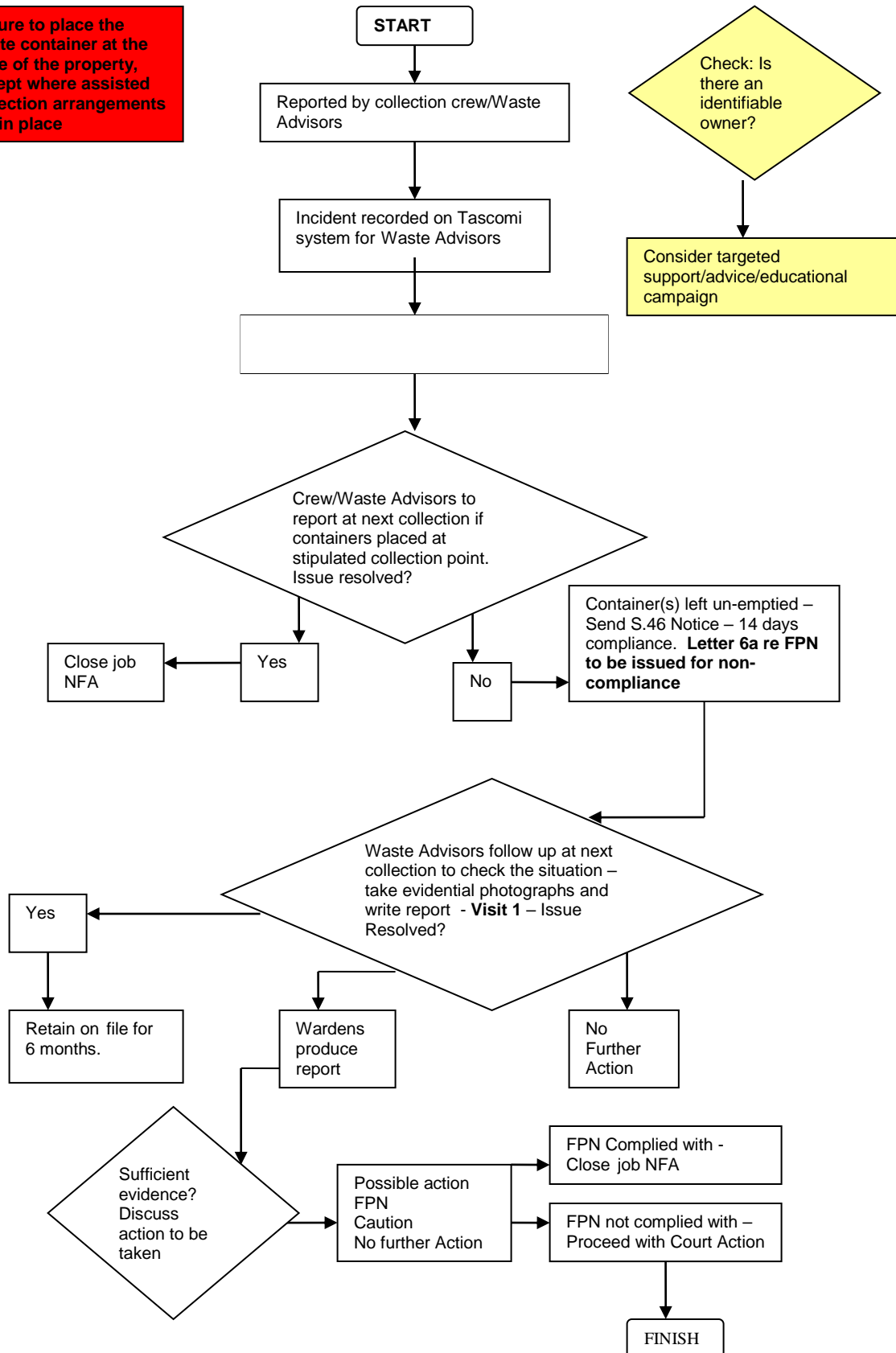




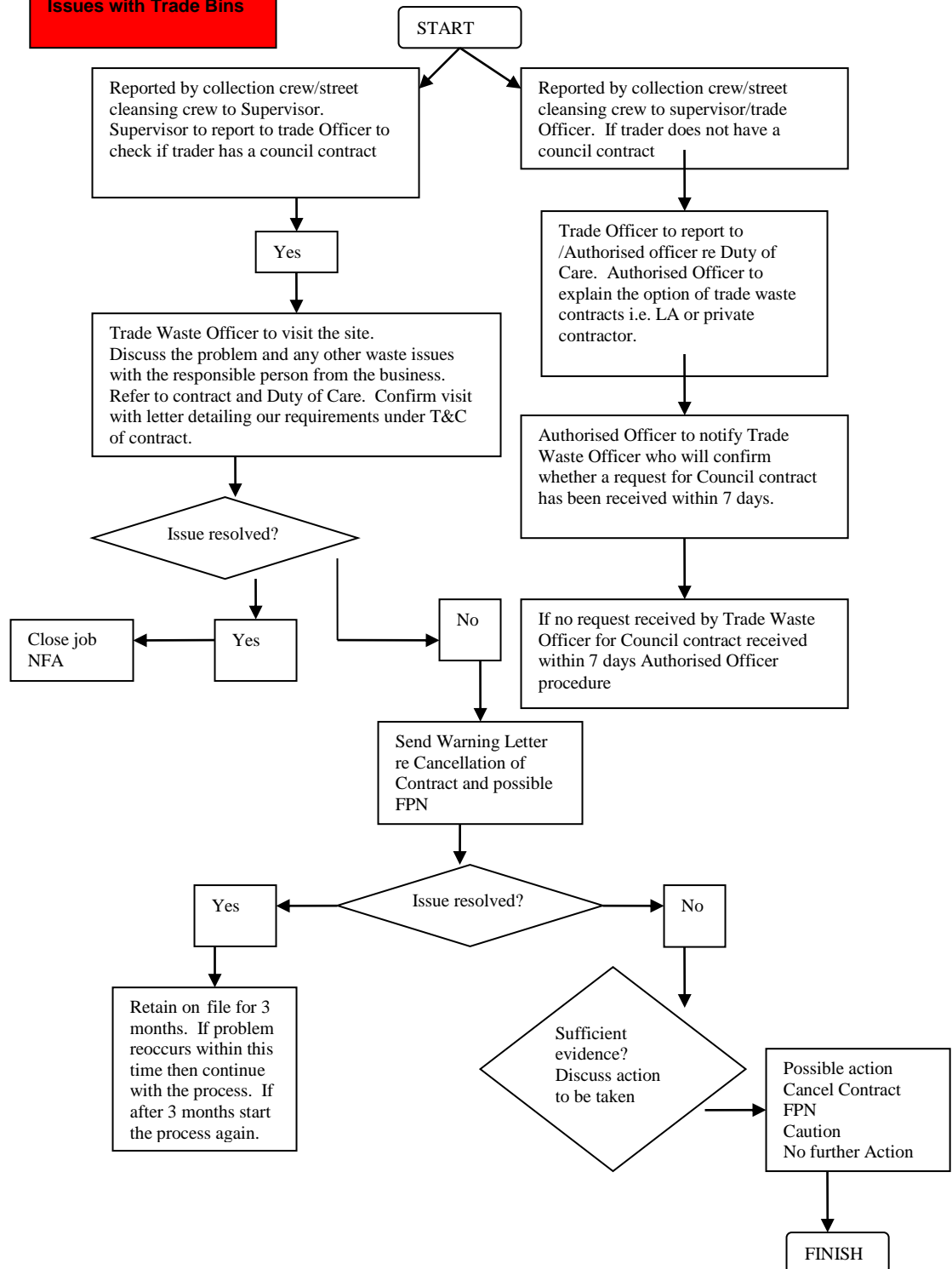
Failure to place the correct waste container out in relation to the collection week



Failure to place the waste container at the edge of the property, except where assisted collection arrangements are in place



Issues with Trade Bins



APPENDIX 2

Extracts of Relevant Legislation

An Extract of the relevant legislation applicable is: -

Environmental Protection Act 1990

Section 33 - Prohibition of unauthorised or harmful deposit, treatment or disposal etc. of waste.

- (1) Subject to **[F1]**subsections (1A), (1B), (2) and (3) below] and, in relation to Scotland, to section 54 below, a person shall not—
- (a) deposit controlled waste **[F2]**or extractive waste], or knowingly cause or knowingly permit controlled waste **[F2]**or extractive waste] to be deposited in or on any land unless **[F3]**an environmental permit] authorising the deposit is in force and the deposit is in accordance with the licence;
- [F4]**(b) submit controlled waste, or knowingly cause or knowingly permit controlled waste to be submitted, to any listed operation (other than an operation within subsection (1)(a)) that—
- (i) is carried out in or on any land, or by means of any mobile plant, and
- (ii) is not carried out under and in accordance with an environmental permit.]
- (c) treat keep or dispose of controlled waste **[F5]**or extractive waste] in a manner likely to cause pollution of the environment or harm to human health.

Section 45 Collection of Controlled Waste

- (1) It shall be the duty of each waste collection Authority—
- (a) to arrange for the collection of household waste in its area except waste—
- (i) which is situated at a place which in the opinion of the Authority is so isolated or inaccessible that the cost of collecting it would be unreasonably high, and

- (ii) as to which the Authority is satisfied that adequate arrangements for its disposal have been or can reasonably be expected to be made by a person who controls the waste; **[F1]**and]
- (b) if requested by the occupier of premises in its area to collect any commercial waste from the premises, to arrange for the collection of the waste.**[F2]**; and
- (c) if requested by the occupier of premises in its area to collect from the premises dry recyclable waste or food waste presented for collection in accordance with section 34(2E) or (2F), to arrange for the collection of the waste.]

Section 46 Receptacles for Household Waste

- (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.

[F1](1A)Where—

- (a) subsection (1) applies to a waste collection Authority, and
- (b) a waste reduction scheme under Schedule 2AA to this Act is in operation in the Authority's area,

the Authority may require the occupier to place the waste for collection in receptacles identified by such means as may be specified.

- (1B) A requirement under subsection (1A)—

- (a) must be imposed by notice served on the occupier.
- (b) may be imposed instead of, or in addition to, any requirement imposed on the occupier under subsection (1).]

- (2) The kind and number of the receptacles required under subsection (1) above to be used shall be such only as are reasonable but, subject to that, separate receptacles or compartments of receptacles may be required to be used for **[F2]**waste which is to be recycled and waste which is

- not] [F2dry recyclable waste, any dry waste stream, food waste, or any other waste which is to be recycled].
- (3) In making requirements under subsection (1) above the Authority may, as respects the provision of the receptacles—
- (a) determine that they be provided by the Authority free of charge.
 - (b) propose that they be provided, if the occupier agrees, by the Authority on payment by him of such a single payment or such periodical payments as he agrees with the Authority.
 - (c) require the occupier to provide them if he does not enter into an agreement under paragraph (b) above within a specified period; or
 - (d) require the occupier to provide them.

Section 47 Receptacles for Commercial or Industrial Waste

- (1) A waste collection Authority may, at the request of any person, supply him with receptacles for commercial or industrial waste which he has requested the Authority to arrange to collect and shall make a reasonable charge for any receptacle supplied unless in the case of a receptacle for commercial waste the Authority considers it appropriate not to make a charge.
- (2) If it appears to a waste collection Authority that there is likely to be situated, on any premises in its area, commercial waste or industrial waste of a kind which, if the waste is not stored in receptacles of a particular kind, is likely to cause a nuisance or to be detrimental to the amenities of the locality, the Authority may, by notice served on him, require the occupier of the premises to provide at the premises receptacles for the storage of such waste of a kind and number specified.
- (3) The kind and number of the receptacles required under subsection (2) above to be used shall be such only as are reasonable.
- (4) In making requirements as respects receptacles under subsection (2) above, the Authority may, by the notice under that subsection, make provision with respect to—

- (a) the size, construction and maintenance of the receptacles.
- (b) the placing of the receptacles for the purpose of facilitating the emptying of them, and access to the receptacles for that purpose.
- (c) the placing of the receptacles for that purpose on highways or, in Scotland, roads.
- (d) the substances or articles which may or may not be put into the receptacles and the precautions to be taken where particular substances or articles are put into them; **[F1]**and]
- (e) the steps to be taken by occupiers of premises to facilitate the collection of waste from the receptacles.
- [F2]** (f) the removal of the receptacles placed for the purpose of facilitating the emptying of them; and]
- [F2]** (g) the time when the receptacles must be placed for that purpose and removed.]

47ZB Amount of fixed penalty under section 47ZA

[F1]

- (1) This section applies in relation to a fixed penalty payable to a waste collection Authority in pursuance of a notice under section 47ZA above.
- (2) The amount of the fixed penalty—
 - (a) is the amount specified by the waste collection Authority in relation to the Authority's area, or
 - (b) if no amount is so specified **[F2]**—

F3

- (i).
- (ii)**[F4...]** is £100.
- (3) The waste collection Authority may make provision for treating the fixed penalty as having been paid if a lesser amount is paid before the end of a period specified by the Authority.

- (4) The appropriate person may by regulations make provision in connection with the powers conferred on waste collection Authorities under subsections (2) (a) and (3) above.
- (5) Regulations under subsection (4) may (in particular)—
 - (a) require an amount specified under subsection (2)(a) above to fall within a range prescribed in the regulations.
 - (b) restrict the extent to which, and the circumstances in which, a waste collection Authority can make provision under subsection (3) above.
- (6) The appropriate person may by order substitute a different amount for the amount for the time being specified in subsection (2)(b) above.]

Section 87 - Offence of leaving litter

- [F1]**(1) A person is guilty of an offence if he throws down, drops or otherwise deposits any litter in any place to which this section applies and leaves it.
- (2) This section applies to any place in the area of a principal litter Authority which is open to the air, subject to subsection (3) below.
 - (3) This section does not apply to a place which is “open to the air” for the purposes of this Part by virtue of section 86(13) above if the public does not have access to it, with or without payment.
 - (4) It is immaterial for the purposes of this section whether the litter is deposited on land or in water.

Section 88 - Fixed penalty notices for leaving litter

- (1) Where on any occasion an authorised officer of a litter Authority finds a person who he has reason to believe has on that occasion committed an offence under section 87 above in the area of that Authority, he may give that person a notice offering him the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty.
- (2) Where a person is given a notice under this section in respect of an offence—

- (a) no proceedings shall be instituted for that offence before the expiration of fourteen days following the date of the notice: and
 - (b) he shall not be convicted of that offence if he pays the fixed penalty before the expiration of that period.
- (3) A notice under this section shall give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence and shall state—
 - (a) the period during which, by virtue of subsection (2) above, proceedings will not be taken for the offence.
 - (b) the amount of the fixed penalty; and
 - (c) the person to whom and the address at which the fixed penalty may be paid.

and, without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting to that person at that address a letter containing the amount of the penalty (in cash or otherwise).

- (4) Where a letter is sent in accordance with subsection (3) above payment shall be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.

Transcripts of legislation can be found at <http://www.legislation.gov.uk>

APPENDIX 3

Fixed Penalty Notice Forms Model

Fixed Penalty Notice Forms

The model form below is provided as an example only. There are no prescribed fixed penalty notice forms for the offences created or amended by the Clean Neighbourhoods and Environment Act 2005 (or Regulations). Local Authorities and parish councils should tailor the form to meet their own needs; in particular the list of offences contained in the *tick box* section on the reverse page/page 2 is for illustrative purposes only, and Authorities should adapt it as necessary suit their own requirements. It is up to Authorities to decide whether to produce a single form covering all fixed penalty offences or to have different forms for different categories of offences (for example those likely to be issued on the spot and those likely to be issued less frequently).

Any fixed penalty notice form, however, **must by law** state the following:

- the full amount of the fixed penalty.
- that no proceedings for the offence will be taken if it is paid within 14 days.
- the name and address to whom payment may be made by post (without ruling out other methods of payment).

Page 1

[Name of Council]

Fixed Penalty Notice

Alleged offender

Title.....

Surname.....

Forenames.....

Address.....

Postcode.....

Date of Birth (juveniles only).....

I,an authorised officer of [Name of Council] have reason to believe that on..... you committed the offence as marked overleaf, within the area of [Name of Council].

This notice offers you the opportunity to discharge any liability to conviction for the above offence by payment of a fixed penalty. If you pay the penalty of £..... within 14 days no further proceedings will be taken. If you do not pay the fixed penalty within that time, you may be prosecuted for the offence described above and, if convicted, could receive a much larger fine; the maximum for the offence is stated overleaf. [You may pay the lesser amount of £..... if you do so within 10 days of receiving this notice.]

Payment must be made to [Name/Title and Address of Officer to whom payments should be sent].

Authorised Officer

Name

Signature

Date

.....

SERIAL NO.

This slip must accompany your payment.

To: [Name/Title and Address]

I enclose with this letter the amount of £...

Signature

Date

Name (BLOCK LETTERS)

Address (BLOCK LETTERS)

Please make cheques payable to [Name of Council]. [Alternatively, you can pay by credit or with debit card:

Credit card / Debit Card

Card number

Start Date (if applicable)

Expiry Date

Issue no. (debit card only)

Signature of cardholder....]

Reverse page

Tick	Description of offence	Act	Amount of penalty if paid within 10 days	Full amount of penalty	Maximum penalty on conviction
	Depositing litter	Section 87/88 - Environmental Protection Act 1990	£50	£75	£2,500
	Failure to comply with a street litter control notice	Section 94/94A - Environmental Protection Act 1990	£60	£100	£2,500
	Failure to comply with a litter clearing notice	Section 92C/94A - Environmental Protection Act 1990	£60	£100	£2,500
	Failure to produce waste documents	Section 34(5) and Regulations made under it/34(6)/34A - Environmental Protection Act 1990	£180	£300	£5,000 (or, on indictment, an unlimited fine)
	Failure to produce Authority to transport waste	Section 5/5B - Control of Pollution (Amendment) Act 1989	£180	£300	£5,000
	Unauthorised distribution of free printed matter	Schedule 3A, paras. 1(1) and 7 - Environmental Protection Act 1990	£50	£75	£2,500
	Failure to comply with a waste receptacle notice	Section 46/47/47ZA/47Z B -Environmental Protection Act 1990	£100	£150	£1,000
	Failure to comply with a Dog Control Order	[Insert exact details of Order that created the offence when offence is committed]	£50	£75	£1,000

Back page

Statement of witness

Statement of:

Address:

Tel. No:

This statement, consisting of ... page(s) each signed by me, is true to the best of my knowledge and belief and I make it knowing that, if tendered in evidence, I shall be liable to prosecution if I have wilfully stated anything that I know to be false, or do not believe to be true.

Dated:

Signature:

Statement..... (Half page)

Signature of Authorised officer.....