

Kent County Council Household Waste Recycling Centres

Enforcement Policy



Version 3 Updated June 2022



1.0 Background, purpose and aims of the document

1.1 Background

Kent County Council (KCC) operate 19 Household Waste Recycling Centres (HWRCs) within Kent for Kent residents to dispose of their household waste. In addition, 6 of these sites also operate Waste Transfer Stations (WTS) for the deposit and bulk loading of waste materials collected and delivered by the District and Borough Councils of Kent, as well as trade waste from businesses at some of the sites.

KCC has a statutory requirement to provide HWRCs for Kent residents to deposit their own household waste, as set out in the Environmental Protection Act 1990 (EPA 1990 part 2, 51b).

Kent's 19 HWRCs are currently managed by 2 private waste management companies. These organisations manage the day-to-day operation of the HWRCs on behalf of KCC:

Facility	Managed by
Allington HWRC	FCC Environment
Ashford HWRC & WTS	FCC Environment
Canterbury HWRC	FCC Environment
Dartford HWRC	Commercial Services Kent Limited
Deal HWRC	FCC Environment
Dover HWRC & WTS	FCC Environment
Faversham HWRC	FCC Environment
Folkestone HWRC	FCC Environment
Gravesham/Dartford HWRC & WTS	FCC Environment
Herne Bay HWRC	FCC Environment
Margate HWRC	FCC Environment
Maidstone HWRC	Commercial Services Kent Limited
New Romney HWRC	FCC Environment
Sandwich HWRC (Richborough)	FCC Environment
Sevenoaks HWRC & WTS	Commercial Services Kent Limited
Sittingbourne HWRC & WTS	FCC Environment
Sheerness HWRC	FCC Environment
Swanley HWRC	Commercial Services Kent Limited
Tunbridge Wells HWRC & WTS	Commercial Services Kent Limited

1.2 Purpose of the document

The purpose of this enforcement policy is to determine good practice and to demonstrate clarity and consistency in the delivery of those environmental enforcement duties and powers relevant to KCC's functions to deliver a HWRC service.

This relates to the following issues which can occur at the HWRCs:

1. **Trade waste abuse** – where a person deposits, or attempts to deposit, trade or commercial waste (waste emanating from a business) at a HWRC.
2. **Theft of materials** – where a person or persons other than those contracted to do so, removes waste materials from the HWRCs/WTSs without permission.
3. **Fly-tipping** – Waste is sometimes left at the entrance to the HWRC
4. **Abuse of staff and other customers** – where a member of staff or any other HWRC user/ customer is subjected to harassment, physical harm, or verbal abuse by a site user.
5. **Non-adherence to HWRC policy** – where a person disregards site management policy e.g., limits and/or charging for specific material streams, type of vehicle used to access sites, and health and safety policies.

The intended audience of this enforcement policy is members of the public and any other interested parties to help ensure that KCC's approach to enforcement at the HWRCs is as open and fair as possible. It will be published on the KCC website.

1.3 Aims

This policy document aims to:

- Carry out enforcement in a fair, practical and consistent manner
- Meet enforcement objectives through the provision of advice and information to individuals and businesses and where the degree of risk or impact to residents, businesses, the Council, or the law demands a robust approach, then these actions will also be utilised.

2.0 Definition of enforcement

Enforcement is any formal or informal action taken to prevent or rectify infringements of legislation or policy. The enforcement options may differ where different areas of legislation are used, but the principles of application should remain consistent.

Enforcement includes visits, inspections, verbal and written advice, assistance with compliance, written warnings, the servicing of statutory notices, issuing of fixed penalty notices (through relevant district/ borough council), formal cautions, prosecutions, and liaison and co-operation with other enforcement authorities and organisations where appropriate.

KCC aims to carry out its waste enforcement policy in a fair, equitable and consistent manner.

3.0 Legislation

In order to investigate financial crime within the Waste Disposal Authority, KCC can investigate offences under the Environmental Protection Act 1990, The Fraud Act 2006, The Theft Act 1968 and 1978 and various other legislations.

Under Section 222 of the Local Government Act 1972, KCC can undertake prosecutions if the local authority considers it expedient for the promotion or protection of the interests of the inhabitants of their area. They may prosecute or defend or appear in any legal proceedings and, in the case of civil proceedings, may institute them in their own name.

Working in partnership with the Kent District and Borough Councils, KCC can also investigate under delegated powers, offences under the Environmental Protection Act 1990.

These offer a wide range of powers to enable KCC to fulfil the duties for which it is responsible.

4.0 Enforcement options

Where action is required, a formal decision will need to be made on a case-by-case basis. This will require the prosecuting authority to conduct a test under the Code for Crown Prosecutors. This is a two-tier test- 1) Public Interest 2) Evidential Test. Both tests will need to be satisfied for the prosecuting authority to bring a prosecution. The [Code for Crown Prosecutors](#) explains the criteria that the prosecuting authority will need to satisfy, but individuals are recommended to obtain independent legal advice on the code if necessary.

In all cases the priority will be to resolve the situation, rectify any problems and recoup any losses to the authority. Other options will be considered and implemented if deemed appropriate to fulfil the purpose. The range of enforcement options available includes the following:

No action or advice provided

In certain circumstances, e.g., where the risk to, or detrimental impact on the community, Kent County Council, it's contractors or environment is small, contravention of the law or HWRC operating policies may not warrant any action. However, those in question will be provided with sufficient information in identifying their wrong-doing and actions to undertake to avoid further instances of wrong-doing. Providing advice can also be used in circumstances where an individual or group may be unaware of their non-compliance with the law or policies.

Indirect action

This may include referring the issue to another body for enforcement action, e.g., Trading Standards, the Police, or a District/ Borough council.

Written warning

If deemed appropriate, for some waste related issues we will write to the individual setting out the concerns of the authority, and the relevant legislation/policies. This may apply where an offence has been committed but it is not thought appropriate to take any further action, in which case the suggested corrective action and a timescale will be given together

with access to clear advice and guidance. Failure to comply with the advice or the deadline could result in further enforcement action being taken.

Waste Disposal Costs

There may be occasions where KCC or its HWRC contractor have paid for the disposal of waste incurred from illegal activity e.g., the disposal of trade waste or non-payment of chargeable materials. In this case, KCC can issue an invoice or request payment to seek to recover these disposal costs. If this payment remains unpaid by the offender, KCC can undertake debt recovery and may be preferable to court proceedings. In all cases it is important to ensure that proof of illegal disposal is clear.

Statutory Notice

These are used as appropriate in accordance with relevant legislation (they usually require offenders/ individuals to take specific action or to cease certain activities) e.g., to behave in a way which is not anti-social, nor cause a nuisance to any other user or staff member of the site. Should the individual not comply, KCC reserves the right to withdraw permission of entry to all HWRCs in Kent and to call the Police to assist with removal from site. Restricting access to sites could range from restriction of the HWRC site/ time/ day of access, to a time limited ban from all KCC HWRCs.

Simple Caution

This is used to deal quickly and simply with less serious offences and to avoid appearances in criminal courts. A formal or simple caution may be given to an offender who has admitted the offending.

KCC will consider a formal caution in the following circumstances:

- if there is sufficient evidence to prove the case
- if the offender has admitted the offence
- if the offender has agreed to be cautioned
- if the offence has not been committed by the offender before.

Prosecution

The process for bringing a prosecution has already been explained above.

Where it is necessary to carry out a full investigation, the case will be progressed without undue delay. All investigations into alleged breaches of legislation will be conducted in compliance with statutory powers and all other relevant legislation (and relevant Codes of Practice), including the requirements of:

- Police and Criminal Evidence Act 1984 (PACE)
- Criminal Procedure and Investigations Act 1996 (CPIA)
- Regulation of Investigatory Powers Act 2000 (RIPA)
- Human Rights Act 1998 (HRA)

As part of the investigation process, persons suspected of breaching legal requirements will, wherever possible,

- Be requested to attend a formal interview in accordance with PACE
Be given the opportunity to provide an explanation or make any additional comments about the breach
- Be entitled to be accompanied by their legal representative

Before a decision to prosecute is taken, the alleged offence(s) will be fully investigated, a report compiled by the investigating officer for review by a manager and legal services.

We will consider the views of any victim, injured party or relevant person to establish the nature and extent of any harm or loss, including potential harm and loss and its significance in making the decision.

Proceeds of Crime Actions

The purpose of the Proceeds of Crime (POC) action is to recover the financial benefit that the offender has obtained from the relevant criminal conduct. Applications may be made under the Proceeds of Crime Act 2002 for confiscation of assets in serious cases. Proceedings are conducted according to the civil standard of proof.

Prosecution costs

The council should always seek to recover the costs of the investigation and court proceedings as part of any prosecution. All investigations must be conducted in accordance with the requirements of PACE, (and Codes of Practice), the CPIA (and Codes of Practice) and other relevant enactments related to the conduct of such criminal investigations.

Enforcement technology

KCC utilises a range of technologies to support the day-to-day operation of the HWRCs. Some of this technology can also be used to help with enforcement at the sites. This includes CCTV, Automatic Number Plate Recognition (ANPR) and body worn camera/ videos. Please refer to the [HWRC Enforcement Equipment Privacy Notice](#) which describes the personal information we collect in order to undertake the enforcement activities.

5.0 Enforcement actions at HWRCs

5.1 Trade Waste

Household Waste Recycling Centres are provided for residents for the disposal of household waste only. It is unlawful for trade/commercial waste to be disposed of at any of KCC's HWRCs, which is a service provided for the disposal of household waste only by residents. As such, and due to the high cost for disposing of this waste, KCC has a number of policies in place to prevent trade waste from coming through its HWRCs, coupled with a reliance upon monitoring and enforcement. The HWRC contractors and KCC will work together to ensure trade waste is not being taken in to the HWRCs. The deposit of trade waste at a HWRC is

deemed illegal under Section 34 of the Environmental Protection Act 1990, Duty of Care. You need to be registered as a Waste Carrier with the Environment Agency (EA) to carry your own waste (Lower Tier waste carrier) or other people's waste (Upper Tier waste carrier).

Householders also have a [Duty of Care](#) to check that anyone they use to take away and dispose of their domestic waste is registered with the EA as a Waste Carrier. This includes persons advertising 'Tip Runs / Waste Removal services' on social media. Householders could be prosecuted for failing to comply with their Duty of Care if they fail to take reasonable measures to ensure their domestic waste is not handled by an unauthorised waste carrier. The unlawful deposit of trade waste at a HWRC could also be investigated under the Fraud Act 2006 if required.

What actions can KCC take?

1. If a site operative at the HWRC suspects that the waste you are depositing relates to a business, they will ask you to complete a non-commercial and non-industrial waste form, known as a trade waste form. This states that the waste is from your own household and not connected with a business.
2. Failure to cooperate with this request may lead to you being asked to leave the site. Further investigations will be made into the origin of the waste which could form part of a criminal investigation.
3. Photographs and body worn video of your waste and vehicle may be taken by the site operative as evidence in this matter
4. You may receive an advice letter, which will explain the terms and conditions of use of the HWRCs, and a business waste guide in the event you may require further information on how to deal with business waste
5. You may be required to attend a recorded interview to determine your use of the sites. This will enable you to provide your version of the events surrounding your visit to the HWRC. It will also enable the Council to offer you advice on how to handle your waste.
6. Investigations could result in no action being taken, referral to another body for action, a caution, recovery of waste disposal costs, or prosecution etc.

This is to ensure that the HWRCs are being used appropriately and that the tax payer is not paying for any business waste deposited.

5.2 Theft of materials

Theft of materials from the HWRC means where a person or persons other than those contracted to do so, removes waste materials or equipment without permission. The removal of materials or equipment without prior consent of the authority or site contractor is tantamount to theft. This could also relate to theft of materials from a KCC Waste Transfer Station.

Once materials have been deposited at the HWRCs/Waste Transfer Stations it is the property of the authority or the waste management contractor and therefore removal of this waste without consent is considered theft under Section 1 of the Theft Act 1968, which KCC and the contractor will gather evidence and work with Kent Police to investigate and prosecute as required.

What actions can KCC take?

1. Details of any person suspected of stealing from our HWRCs or Waste Transfer Stations will be reported to the Police.
2. HWRC site staff and KCC will fully support the Police in their investigations and supply the required evidence, including Body Worn Camera footage, CCTV footage and Automatic Number Plate Recognition (ANPR) evidence. This could result in prosecution by the Police.

5.3 Flytipping

If waste is left at the entrance of our HWRCs this is classed as fly tipping. Any person suspected of committing fly tipping by the entrances to our HWRC's, will be investigated further under Section 33 of the Environmental Protection Act 1990.

What actions can KCC take?

1. KCC (together with the relevant district/ borough council as appropriate) will investigate instances of fly tipping outside the HWRC
2. This could lead to the issue of a Fixed Penalty Notice, possible seizure of your vehicle or court action.

5.4 Abuse of staff and other customers

This relates to instances where a member of staff, or indeed another customer(s) is subjected to harassment, physical harm, or verbal abuse by a site user.

All staff are expected to be able to work in safe conditions and experience no harassment or physical abuse. Harassment is unwanted or unjustified behaviour which affects the dignity of anyone in the workplace, and which the recipient finds threatening, demeaning, or offensive as set out in the Health and Safety at Work Act 1974.

KCC expects customers who are using their HWRCs to behave in a way which is not anti-social, nor cause a nuisance to any other user or staff member of the site.

The HWRCs have site operatives and supervisors employed directly by the HWRC contractors, and from time to time agency staff, who are responsible for the smooth and successful operation of the sites. This policy will also apply to any other visitors to the HWRCs.

It should be noted all site users should also expect the site staff to be polite, courteous, helpful, and professional at all times. In the event that this is not the case, this should be reported to the HWRC Contractor in the first instance as a complaint, and they will be required to investigate the incident. If a satisfactory response is not received, the complainant should then contact KCC who will undertake its own investigation.

The KCC HWRC Customer Charter can be found in Appendix A.

What actions can KCC take?

1. The first action will be for site staff to take any health and safety actions as necessary (i.e., administer first aid, complete an incident book entry, report to KCC, call the police).

2. All instances and injuries resulting from abuse, violence, and aggression at the HWRCs will be reported to Kent Police. The Police will undertake their own investigations.
3. Photographs and body worn video, CCTV and ANPR may be used as evidence in investigations
4. If the Police do not act, consideration should be given to seeking other routes for protection. This could be a warning or, if necessary, a ban from site. The ban will be applied for by KCC, via the courts by way of an injunction, and if not complied with, enforced by civil action. Such orders could also have a penal notice attached to them, a breach of which would amount to contempt of court and result in imprisonment. An Injunction may be obtained in a number of ways, including trespass to land where they have been banned or where a warning has been given (verbally and recorded on a body worn video or in writing) that breaching rules will lead to them being banned. KCC can also apply for an Anti-Social Behaviour Order under the Anti-Social Behaviour, Crime and Policing Act 2014 The final decision will sit with KCC, will never be taken lightly and may not be permanent.

5.5 Non-adherence to HWRC policy

KCC have various operating policies in force at all our HWRCs. Non-adherence is where a person disregards site management policy e.g., limits and/or charging for specific material streams, type of vehicle used to access sites, adherence to the HWRC booking system and health and safety policies.

For details of current policies please see the HWRC Operating Policies at [KCC Website](#).

This relates to policies set by KCC and therefore any enforcement action will be undertaken by KCC with support from HWRC Contractors. Failure to comply with the terms and conditions of KCC's operating policies may lead to further action and investigations.

What actions can KCC take?

1. All breaches of KCC HWRC policies will be investigated by KCC. Advice will be given in the first instance to ensure the customer is fully aware of the policy and to ascertain the reasons behind the breach.
2. Continued abuse of the policies will result in further action being taken.
3. You may be required to leave the site and not allowed to deposit your waste.
4. A formal written warning may be issued.
5. Failure to pay the relevant fees for disposing of the waste will be treated as a dishonest act and may amount to Theft under the Theft Act 1978, making off without payment or Fraud under the Fraud Act 2006.

6.0 Complaints

All complaints should be directed to KCC who can be contacted as follows:

Kent County Council
Waste Management
First Floor
Invicta House
Maidstone
Kent
ME14 1XX

Tel: 03000 41 73 73

Email: wastesupport@kent.gov.uk

7.0 Equal and Fair Treatment

Enforcement practices will be constantly monitored and reviewed to ensure that they are fair and equitable. Leaflets and other guidance will be made available in appropriate languages, wherever possible, and translation services will be made available when necessary.

8.0 Monitoring of Policy

This policy will be reviewed and updated as and when substantial changes occur. There may be cases where decisions are made which fall out of scope of the current policy document, and this will be recorded and taken account of in subsequent reviews of the document. New legislation or changes to HWRC operating policy may introduce new types of powers and possible enforcement actions which will also require updates to this document.

This Waste Enforcement Policy has been considered by the Environment & Transport Cabinet Committee and a Member Decision taken thereafter.

Appendix A – Kent HWRC Customer Charter

Context

Kent County Council wants our residents' visits to the Household Waste Recycling Centres (HWRCs) to be a positive experience.

In order to achieve this, we ask you to follow a few simple guidelines as laid down in our Customer Charter.

General

We would ask residents to bring their household waste to the HWRCs in loads they can comfortably manage to carry themselves. At some HWRCs this may involve negotiating steps to access the relevant container. Wherever possible, residents should bring someone with them if they need help with bulky or heavier items.

The operators at the HWRCs will assist members of the public with their waste on request, however, they cannot be held responsible for any damage to residents' vehicles when doing so and will not be able to assist with items that may put them at risk of personal injury.

All District and Borough Councils provide a chargeable bulky collection service for heavier household items of furniture.

What you can expect from us

- Our HWRCs to be clean and tidy.
- Our HWRCs to be safe, hazard free and to comply with relevant health and safety standards.
- The operators at our HWRCs to take responsibility for their own safety and ensure they do not do anything to endanger the safety of others on site.
- The operators at our HWRCs to be polite, courteous, helpful and professional.
- The operators at the HWRCs to direct members of the public to the correct recycling containers with their waste.
- The operators at the HWRCs to manage any complaints in a professional and courteous manner.

What we expect from you

- To make a booking before visiting the HWRC
- To separate and recycle as much of your waste as possible in the appropriate containers.
- Please treat site staff with respect. They are here to help you.
- To park in the designated marked parking areas and adhere to the speed limit and traffic signs.
- It is not permitted to park outside the site and carry waste in.
- All waste should be a size and weight that is manageable so that you can easily lift it into the containers.
- To take responsibility for your own safety and ensure that you do not do anything to endanger the safety of yourself or others on site.

- Please follow any instructions given by the operators regarding health and safety.
- Please wear appropriate clothing and footwear, and wear safety or gardening gloves.
- To walk in the marked walkways and use the pedestrian crossings, where available.
- Report to an operator if you have hazardous waste e.g., chemicals, asbestos etc, or chargeable waste (soil, rubble, hardcore, plasterboard and tyres).
- To keep children under the age of 16 and animals in your vehicle at all times.
- To take care when depositing items into containers, especially the compactors.
- To not lean over into the containers.
- Notify an operator immediately if you spill anything on site e.g. paint, oil etc.
- To take extra care in wet, icy, and snowy weather, particularly on the steps to the containers.
- To take responsibility for the safety of your personal items such as keys, handbags, and mobile phones.
- You cannot take items or materials that have been deposited at these sites by others.
- To adhere to all other HWRC policies.

Non compliances with site rules and policies may lead to enforcement action being taken against you.