Tougher Sentences, Stronger Deterrents: Are Current Fly-tipping Penalties Failing Councils?

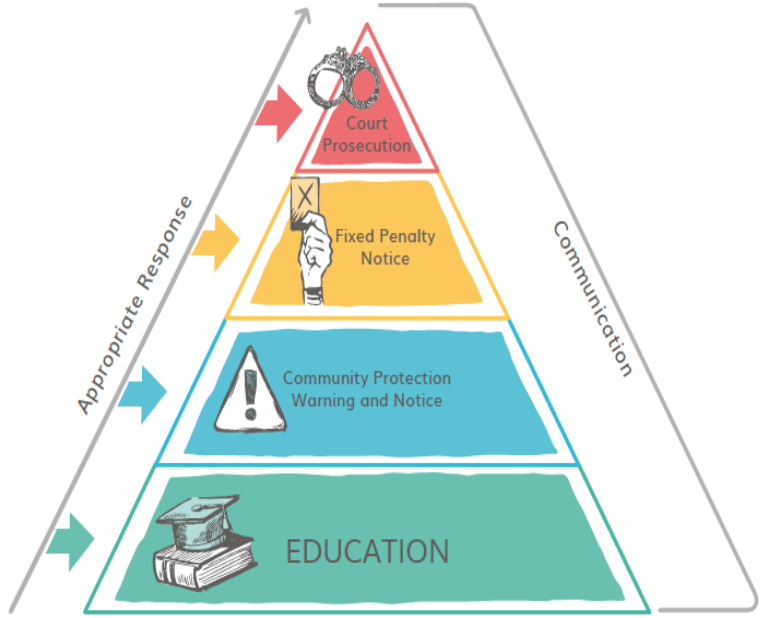
- From Investigation to Prosecution
- When the Sentence Doesn't Fit the Crime.
- The Case for Reform – What changes to sentencing, enforcement powers and national policy are needed to better protect communities, recover clean-up costs and strengthen the fight against fly-tipping.



Speaker: Tim Harris, Environmental Enforcement Team Manager, Gravesham Borough Council

Why do we prosecute?

- Lower levels of enforcement have proved unsuccessful.
- The defendant is a repeat offender.
- Failure to pay Fixed Penalty fines.
- The seriousness of the offence is such that only court prosecution can deliver an appropriate penalty.
- Legislation dictates that prosecution is the only option.
- Deter offending.



When all else fails court prosecution is the local authorities 'big stick'

Challenges faced by local authorities when prosecuting.

Prosecutions are not undertaken lightly.

- Cost.
- Officer and legal team time.
- Court delays.
- Current difficulties with the court system.
- A perception of triviality.
- Inconsistency of sentencing.



The Fixed Penalty Dilemma.

- There must be a consequence for not paying a fixed penalty fine and the only local authority recourse is a court prosecution.
- Failure to escalate non-payment of fines undermines the whole system.
- Many of the fixed penalty fines are for smaller scale offences.
- By nature, many of these are committed by individuals who either cannot or will not pay a fine.
- Recent increases in fixed penalty fines will result in a larger number of cases sent to court.
- There is a perception that prosecution of these offences is petty and not proportionate.
- Prosecutions at court for offences where fixed penalty fines have not been paid often result in lower fines than the fixed penalties themselves.

When the Sentence Doesn't Fit the Crime.

Case #1 Gravesham Borough Council V Darren Divall.

In October 2022 Gravesham Borough Council were contacted by Kent Police following an incident at an unoccupied industrial unit in Gravesend.

On a Saturday morning Police Officers had attended a call to a fly tipping in progress and found Divall in the yard, in a tipper truck fully loaded with processed waste. He gave the police a spurious story and after interview for road traffic offences was released.

Divall and his accomplices had already deposited around 120 tons of waste before he was caught. Had they not been discovered there is no doubt that over the space of the weekend the yard would have been filled with controlled waste.

The fly tipping case was passed to Gravesham Borough Council for investigation.





- The waste took 4 officers 3 days to search.
- The investigation took several months.
- Clearance cost to the landowner was £19,000.
- It was established that the truck Divall was driving had already made 3 trips to the location to deposit waste on the day.
- He had no permits, no driving licence, no insurance and the truck was registered to a false owner.
- He failed to cooperate with the authority, failed to respond to notices served on him and refused to be interviewed.
- He pleaded Not Guilty and his trial took place in September 2026, nearly 4 years after the offence.





Darren Divall Trial Note - 21st Sept 2026

Entered guilty plea to s34 (carrying controlled waste)

Judge Remarks to Divall:
One offence pleaded- Failure in Duty of Care. S.34 EPA.

“Fly tipping is an eyesore and causes damage to environment, so waste management is regulated and you had no licence or permits and **gave no information to the authorities**.”

“I consider it **deliberate**, and **aggravated** due to the costs of clean up and your **previous conviction**”

Discount for ‘early’ plea 20 percent reduction

Fine £525
Surcharge £208
Costs £1500

(Divall was dealt with for traffic offences in a separate prosecution by Kent Police.)

- Divall had already been convicted in relation to serious environmental crime.
- In 2023 he was found guilty of failing to provide information relating to his involvement in separate large scale fly tipping offences across Kent. He had been caught in a vehicle linked to multiple large scale fly tips.
- These offences involved the depositing of thousands of tons of contaminated controlled waste across multiple local authority areas. He had failed to cooperate with the investigation and refused to be interviewed.
- He was found guilty and was fined £20,000 by Sevenoaks Magistrates.
- It has been estimated that the organised crime group for which Divall worked/works made £3.5 million pounds from one illegal waste site alone,
- They are still involved in the illegal disposal of controlled waste throughout the UK and are under investigation by the Environment Agency.



Case #2 Gravesham Borough Council V Jamie Broadmore.

In 2022 Kent Fire and Rescue Service made Gravesham Borough Council Environmental Enforcement Team aware of a number of fires which had occurred in piles of controlled waste on land at Northfleet.

They had been confronted by the alleged owner of the land whilst extinguishing the fires and received threats. (The induvial later placed Calor gas cannisters I the waste when it was burned.)

EET officers attended and found over a hundred tons of controlled waste, including contaminated and medical waste.

A large pit had been dug, and waste was being brought to the site and systematically burnt.





An investigation which took several months established:

- The land actually belonged to National Highways and had been illegally taken over by Broadmore.
- He was connected to an organised crime group operating across the UK.
- The waste was being brought from across the South-East and several supposedly legitimate companies were involved (Two of which were prosecuted)
- Broadmore failed to cooperate with the investigation, refused to be interviewed and continued his activities after he became aware that an investigation was taking place.
- It cost National Highways **£155,000** to clear the waste.





Broadmore was prosecuted, pleaded not guilty and elected Crown Court trial.

The authority employed a barrister to prosecute, and the case finally reached trial in June 2026, four years after the offences took place. Broadmore pleaded guilty on the day to a charge under Section 33(1)(c) of the Environmental Protection Act 1990 - treating, keeping or disposing of controlled waste in a manner likely to cause pollution to the environment or harm to human health.

His sentence:

6 months custody **suspended** for 12 months.
10 Days RAR (rehabilitation activity requirement)
100 hours unpaid work.
£1000 compensation to be paid within 12 months.
Victim surcharge of £154?
No costs awarded.



Broadmore has multiple previous convictions covering 41 offences including assault, criminal damage, fraud, theft, burglary supply of class A drugs, drugged driving, bail offences, and numerous driving offences.

Organised Crime.

There is growing evidence that organised crime groups are moving away from ‘traditional’ forms of crime and into the waste industry. There is also evidence showing that profit from illegal waste disposal is being used to fund other criminality, especially drugs importation and supply.

The Organised Crime Group to which both Divall and Broadmore are linked is involved in large scale fraud, tax evasion, theft, drugs, firearms offences, human trafficking and modern-day slavery.

It is a huge network throughout the UK and it is clear that the group are using threats, violence and intimidation to increase there hold on the illegal waste ‘industry’.

In 2022 Waste Crime was estimated to have cost the UK economy an estimated £1 Billion a year. That figure is probably far lower than the reality and is increasing year upon year..

Illegal waste sites dealing in contaminated or mixed waste products allow unscrupulous waste companies to avoid land fill tax of £130.75 per tonne.







Crimes often linked to Organised Environmental offences.

Theft

Rogue Trading/Fraud

Exploitation/People trafficking

Money Laundering

Benefits fraud

Smuggling

Drugs supply



HMRC Fraud

Criminal damage.

Environmental Pollution

Illegal waste export

Extortion

The Case for Reform.

Are changes to sentencing, enforcement powers and national policy needed to better protect communities, recover clean-up costs and strengthen the fight against fly-tipping?

Sentencing Guidelines.

The guidelines for environmental offences were issued in 2014.

The world of environmental crime has changed beyond recognition since 2014 and the guidelines need updating. These guidelines were put in place before the rise of Organised Environmental Crime Groups and the huge profits to be made from avoiding land-fil tax, illegal waste collection, transport and depositing in 2026.

Sentencing Guidelines for Environmental Offences (Unauthorised or Harmful Deposit, Treatment or Disposal of Waste)

Culpability Levels

Deliberate

- Intentional breach of or flagrant disregard for the law

Reckless

- Actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken

Negligent

- Offence committed through act or omission which a person exercising reasonable care would not commit

Low or no culpability

- Little fault on the part of the offender
- Offence was beyond the control of the offender

Harm Categories

Category 1

- Polluting material of a dangerous nature
- Major adverse effect on air or water quality, amenity value or animal health or flora

+1 more

Category 2

- Significant adverse effect or risk of adverse effect on air or water quality, amenity value or animal health or flora
- Significant costs of clean up

Category 3

- Minor adverse effect or risk of minor adverse effect on air or water quality, amenity value or animal health or flora
- Low costs of clean up

Category 4

- Risk of harm is low
- Minimal or no adverse effect

Sentencing Guidelines Matrix

Culpability	Harm	Starting Point	Range
Deliberate	Cat 1	**3 years custody**	2 - 5 years
Deliberate	Cat 2	**18 months custody**	1 - 3 years
Deliberate	Cat 3	**6 months custody**	High-level community order - 18 months
Reckless	Cat 1	**18 months custody**	1 - 3 years
Reckless	Cat 2	**6 months custody**	High-level community order - 18 months
Reckless	Cat 3	**High-level community order**	Medium-level community order - 6 months
Negligent	Cat 1	**6 months custody**	High-level community order - 18 months
Negligent	Cat 2	**High-level community order**	Medium-level community order - 6 months
Negligent	Cat 3	**Medium-level community order**	Band B fine - High-level community order

Aggravating Factors

+ Previous convictions
+ Persistent offending over a long period
+ Financial gain
+ Obstruction of justice
+ Ignoring advice or warnings
+ Risk of disease
+ Committed in or near area of natural significance

Mitigating Factors

- No previous convictions
- Steps taken to remedy problem
- Good cooperation with regulators
- Good environmental record
- Effective compliance systems in place

Costs, Compensation, Convictions and Consistency.

The current guidelines state that the court should address costs and compensation before setting a fine.

- As a result, courts often impose minimal fines on offenders after compensation and costs are considered. Whilst this ensures that a local authority investigation costs are, on occasions, reimbursed it is not a punishment for the offence.
- If the offence had not been committed the authority would not have incurred costs. The compensation paid by offenders will normally equate or be less than the cost to them had they disposed of the waste lawfully.
- We need a consistent response to environmental crime from the courts.
- A conviction and criminal record is seldom a deterrent.



Legislation

Much of the legislation used to enforce environmental crime is dated and does not reflect the current environmental crime landscape.
For example:

Environmental Protection Act 1990.

Environmental Enforcement Act 1995.

The Control of Pollution (Amendment) Act 1989.

Some legislation is complicated for the practitioner and puts restrictions on which agency can and can't use it.

Do Local authorities need their own powers to restrict and shut down illegal waste sites quickly?



Education of those responsible for sentencing and a societal change in attitude to environmental crime.

- There is ignorance regarding the impact of environmental crime and the profits to be made by those involved.
- Education of those responsible for sentencing is needed.
- We need to promote and encourage a change in our society's attitude to environmental crime. There is a lack of education and understanding of such crimes and in some case a tolerance towards offenders and offending.
- Fly tipping and lesser environmental offences are often seen as victimless.

Fixed Penalty fines.

- Local Authority fixed penalty fines need to be flexible and reflect the scale and circumstances of offending.
- Maximum fixed penalty fines for fly tipping have increased to a maximum of £5000.
- Failure in Household waste Duty of Care has remained at £600. Offenders routinely blame someone else for their fly tipping and have to be dealt with for failure in duty of care, saving themselves possibly £4400 in fines.
- Carriage of waste without permit and failure to produce transfer notes are both still set at £300.
- These fines need to be increased to reflect the profits to be made from illegal waste carriage and deposit.



How can we ensure the best outcomes of prosecutions?

- Ensure that we only prosecute cases when it is necessary, proportionate and in the public interest.
- Provide the best possible evidence to ensure conviction.
- Provide evidence of community and victim impact.
- Seek adequate compensation for victims and local authorities.
- Encourage and support landowners to take civil action to obtain compensation.
- Engage and educate at every opportunity.

Partnership Working, Intelligence sharing and local authority policies.

- Whilst Partnership working has improved there is still a huge amount of work to be done which will allow National and local agencies and authorities to work together.
- Sharing of intelligence is slow and, in some cases, non-existent. Local authority environmental enforcement teams have no access to national criminal databases.
- Local authority internal teams need to take a joined up and holistic approach to tackling environmental crime. There needs to be greater collaboration between local authority planning, environmental enforcement and community safety teams. Information sharing should be written into policy.



Prevention.

- High Visibility proactive enforcement
- Engagement with internal and external teams to create an awareness of the issues.
- Engage with the public and landowners to raise awareness through media campaigns and meetings to encourage reporting and physical preventative measures.
- Early identification of offences and appropriate enforcement action with partner agencies.
- Publication of ‘positive’ enforcement action and court results.*

(*Publication of poor court results in order to draw attention to sentencing failures.)

