



ENFORCEMENT POLICY FOR ENVIRONMENTAL HEALTH AND LICENSING

1. GENERAL

- 1.1 The content of this Policy will be revised as necessary to meet changing circumstances and the Policy shall be reviewed by Officers at least every three years and proposed amendments shall be submitted to the Council for approval.
- 1.2 All relevant Officers of the Environmental Health and Licensing Section within the Planning, Health and Environmental Division are required to support and comply with the Enforcement Policy for Environmental Health and Licensing.
- 1.3 The Enforcement Policy takes into account and complies with the provisions of The Regulatory Compliance Code.
- 1.4 This Enforcement Policy takes into account the guidance set out in the 'Code for Crown Prosecutors'.
- 1.5 The Council recognises that there are many situations where there is a shared or complementary role with other agencies. All relevant officers of the Environmental Health and Licensing Section will work together with other agencies to ensure that the best possible outcome is achieved within the terms of this Policy. This will require actively seeking collaboration with agencies such as the Police, Fire Authority, Magistrates Courts, Trading Standards, Health and Safety Executive as well as internal colleagues of the Council such as Development Control, Building Control and the Legal and Democratic Services Division. This list of agencies is indicative but is by no means exhaustive.
- 1.6 This Policy is available to the public on request and is also available on the Council's website www.wyreforestdc.gov.uk
- 1.7 The Council has made provision for visits out of normal office including inspections of late night and weekend activities.
- 1.8 The Council agrees that effective and well targeted regulation is essential in promoting fairness and protection from harm. However,

the Council agrees that, in achieving these and other legitimate objectives, regulation and its enforcement should be proportionate and flexible enough to allow, or even encourage, economic progress.

1.9 This Policy is monitored for compliance by the Divisional Management Team and any deviation from the Policy will be reported to Cabinet.

1.10 Areas of enforcement where this Enforcement Policy applies are:

- Environmental Health
- Food Safety
- Pollution Control
- Licensing

and all further activities related to the above.

2. PURPOSE

2.1 To ensure that Enforcement decisions will be fair, consistent and undertaken in an open manner appropriate to the risk posed by non-compliance.

3. CHOICES FOR ACTION

3.1 The choices for action are:

- a) to take informal action by offering information, advice and support, either face to face, or in writing;
- b) to take more formal action through the issue of verbal warnings, requests for action and the issue of letters warning of non-compliance to try to ensure that business proprietors and residents do not, through lack of information or understanding, unnecessarily expose themselves to the possibility of formal action
- c) to use statutory notices to require compliance with the law. The statutory right of appeal against any notice served will be brought to the attention of the person served with the notice at the time of the service

and as a last resort:

- d) to use formal cautions in order to deal quickly and simply with less serious offences, drive the less serious offences away from the courts and to reduce the likelihood of a repeat offence
- e) to prosecute. The decision to prosecute an offender will only be taken in more serious cases and the decision to prosecute will be taken by the Head of Planning, Health and Environment or his/her nominated deputy in conjunction with the Head of Legal and Democratic Services.

3.2 The criteria to be considered before reaching a decision on the use of an appropriate enforcement action include:

- a) Has all informal action (where appropriate) to resolve the issue been exhausted
- b) Is there blatant disregard of responsibilities under the legislation
- c) The seriousness of the offence
- d) The history of previous compliance with legal requirements
- e) The confidence in an individual's or company's ability to meet legal requirements and restore the harm caused by non-compliance (where appropriate)
- f) The likely results of non-compliance (is there any financial gain?)
- g) The benefit to public health
- h) The likelihood of recurrence
- i) The risk of pollution of the environment or harm to health
- j) Where the offence causes public alarm and it is desirable to produce a public effect which reassures the public and deters other potential offenders

4. PRINCIPLES OF ENFORCEMENT

4.1 The Council's approach to Enforcement of the law will be informed by the principles of:

- Proportionality in applying the law and securing compliance
- Consistency of approach

- Transparency about how the Council, as a regulator, operates, and what those regulated may expect
- Targeting, using risk assessment, to channel resources into high risk areas
- Helpfulness, as the Council believe that prevention is better than cure and will attempt to alter the behaviour of offenders
- Standards to be drawn up in consultation with interested parties, setting out our service levels and expected performance
- Procedures to deal with complaints of poor, inappropriate or non-existent service; the procedure will be well publicised, effective and readily accessible to all
- It must be in the public interest to prosecute

PROPORTIONALITY

- 4.2 Proportionality means relating enforcement action to the risks. Those whom the law protects and those on whom it places duties can expect that action taken by the Council to achieve compliance will be proportionate to any risks to public health or the environment and to the seriousness of that risk.

CONSISTENCY

- 4.3 Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar aims. The Council will also work closely with other enforcement agencies in its efforts to achieve consistency.

TRANSPARENCY

- 4.4 Transparency means that the Council undertakes to help those regulated to understand what is expected of them and what they in turn can expect from the Council. It also means making clear to those regulated not only what they have to do but where this is relevant, what they don't have to do. In other words, the Council will distinguish clearly between statutory requirements and advice or guidance what is desirable but not compulsory.

General information and advice will be provided in clear and concise language using a range of appropriate formats and media.

TARGETING

- 4.5 Targeting means making sure that inspections are targeted primarily towards those activities where they would be most effective by assessing the risks to their regulatory outcomes. The Council will ensure that risk assessment proceeds and informs all aspects of its approach and regulatory activity, including:
- Data collection and other information requirements
 - Inspection programmes

- Advice and support programmes
- Enforcement and sanctions.

Risk assessments will be carried out according to the principles contained within 'The Regulators Compliance Code'.

HELPFULNESS

- 4.6 The Council believes that part of its role is working actively with any person affected by its services to advise on and assist with compliance. The Council will provide a friendly, courteous, easily contactable, effective service which will deal promptly with service requests whilst minimising unnecessary overlaps and time delays.

STANDARDS

- 4.6 In consultation with interested parties, the Council will draw up clear standards setting out the level of service and performance which the public and business proprietors can expect to receive.

PROCEDURE

- 4.7 The Council has published details of its Corporate Complaints Procedure and all staff have been trained in its application. The procedure is aimed at dealing effectively with complaints of poor, inappropriate or non-existent service. This means making the procedure readily accessible to all service users including those regulated. The Corporate Complaints Procedure applies to all Council services, not just to the Environmental Health and Licensing Section. The Corporate Complaints Procedure forms part of the Council's performance monitoring system to assist in continuous improvements of the services which the Council provides. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely timescales involved.

PUBLIC INTEREST

- 4.8 When formal action is necessary, the person responsible for creating the risk must be held to account for it. However, it must still be in the wider public interest that enforcement action is taken.

5. ENFORCEMENT OPTIONS

- 5.1 Advice from an Enforcement Officer will be clear, readily understandable and confirmed in writing on request. Before formal action is taken, an opportunity will be given to discuss the circumstances of the case unless there is need for immediate action due to the severity of the situation or to prevent evidence being destroyed. Where immediate action is considered necessary an explanation will be given as soon as possible and, in no later than 10

days, confirmed in writing. Any written documentation issued will contain all the information needed to understand what work is required, why it is needed and shall state the legislation contravened and measures to enable compliance with the legal requirements.

Details will be given of all rights of appeal, whether to Wyre Forest District Council or to external bodies.

When conducting formal investigations, Officers will adhere to Police and Criminal Evidence (P.A.C.E.), Codes of Practice and will comply with the Criminal Procedures and Investigation Act (C.P.I.A.), Code of Practice on Disclosure of Information.

INFORMAL ACTION

5.2 Informal action to secure compliance with legislation includes advice, verbal warnings and requests for action, the use of letters and inspection reports. The circumstances when it is appropriate to consider using informal action are as follows:

- The act was not sufficiently serious to require formal action
- From past history, it can be reasonably expected that informal action will achieve compliance
- The result of non-compliance will not cause a significant risk to public health, safety, wellbeing or the environment
- Where informal action will be more effective than formal action

STATUTORY NOTICES

5.3 enforcement Officers will only consider the use of statutory notices, where one or more of the following apply:

- There is/are significant contravention(s) of legislation
- There is a lack of confidence in a response to an informal approach
- There is a history of non-compliance with informal action
- There is evidence of little knowledge of statutory requirements
- The result of non-compliance could be potentially serious to public health, safety, wellbeing or the environment

Statutory Notices will only be issued by Officers who have been authorised by Wyre Forest District Council and are considered competent

The failure to comply with a Statutory Notice served under e.g. the Environmental Protection Act 1990 may result in Court Proceedings where the circumstances fulfil the criteria in the Enforcement Policy.

Where appropriate Home/Lead Authorities will be consulted before taking action.

If a right of appeal exists, details will be included with the Notice.

It should be noted that some Notices are served in order to obtain specific information and, as such, do not represent enforcement action.

FORMAL CAUTIONS

- 5.4 Formal Cautions, where appropriate, will be issued in accordance with Home Office guidelines. A Formal Caution may be issued where there is sufficient evidence to provide a realistic prospect of conviction but because of the attitude, history and willingness to co-operate, it is considered inappropriate to prosecute.

To issue a Formal Caution, the Council must be satisfied that the offender has admitted to the offence in writing and has agreed to be cautioned.

Formal Cautions issued may be cited when considering any similar offences within three subsequent years.

PROSECUTION

- 5.5 Circumstances likely to warrant prosecution may be characterised by one or more of the following:

- Where the offence involves a significant breach of the law such that public health, safety, wellbeing or the environment is or has been put at risk
- Where the alleged offence involves a failure by the suspected offender to correct an identified potential risk having been given the opportunity to comply with the lawful requirements of an authorised Officer
- Where the offence involves a failure to comply in full or in part with the requirements of a Statutory Notice
- Where there is a history of similar offences related to risk to public health, safety, wellbeing or the environment.

Before a prosecution goes ahead, the officer responsible for deciding on the enforcement action and the Head of Legal and Democratic Services will be satisfied that there is relevant, substantial and reliable evidence that an offence has been committed.

ACCOUNTABILITY

- 5.6 The Environmental Health and Licensing Section will regularly consult on the service it provides and comments received will be used to change procedures where appropriate.

IF YOU HAVE ANY COMMENTS ABOUT THE CONTENTS OF THIS POLICY, PLEASE CONTACT THE HEAD OF ENVIRONMENTAL HEALTH AND LICENSING

Head of Environmental Health and Licensing
Wyre Forest District Council, Planning, Health and Environment Division,
Duke House, Clensmore Street, Kidderminster, Worcs. DY10 2JX
Mark.Kay@wyreforestdc.gov.uk