



## **ENVIRONMENTAL HEALTH**

## **ENFORCEMENT POLICY 2008**

Worcester City Council

Enforcement Policy for Environmental Health (2008)

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## **EXECUTIVE SUMMARY**

This enforcement policy provides guidance to officers, businesses and the general public on the range of options that are available to achieve compliance with legislation enforced by the Environmental Health Section of Worcester City Council. The policy was approved by Cabinet on 15<sup>th</sup> October 2008 and Licensing Committee on 17<sup>th</sup> September 2008.

Our primary objective is to achieve regulatory compliance. We recognise that prevention is better than cure, but where it becomes necessary to take formal action against a business, or member of the public, we will do so. There is a wide range of tools available to us as an enforcement agency, with prosecution being the most serious. We will always choose an enforcement method that is relevant and proportionate to the offence or contravention. We will also take account of an individual's or a business's past history when making our decision.

The policy is built around a process of escalation. We will only prosecute in circumstances where a defendant has acted wilfully or negligently and /or where their actions or omissions are likely to cause material loss or harm to others, or where they have ignored written warnings or formal notices, endangered, to a serious degree, the health, safety or well being of people, animals or the environment, or assaulted or obstructed an officer in the course of their duties.

The policy is designed to help you understand our objectives and methods for achieving compliance and the criteria we consider when deciding what the most appropriate response is to a breach of legislation.

All our decisions will have regard to current statutory guidance and codes of practice, particularly the Regulators' Compliance Code, the Code for Crown Prosecutors and the Human Rights Act.

## **1.0 Introduction**

1.1 Fair and effective enforcement is essential to protect the health and safety and economic interests of the public, businesses and the environment. Decisions about enforcement action and in particular the decision to prosecute have serious implications for all involved.

1.2 In drafting this policy consideration has been given to, and officers will be expected to comply with, the following:

- Statutory Code of Practice for Regulator's (Compliance Code)
- Statutory Codes of Practice
- Home Office Guidelines
- The Code for Crown Prosecutors
- Human Rights, PACE and RIPA legislation and guidance
- Joint enforcement protocols agreed with partner organisations
- Internal procedures and policies as documented in our quality manual

## **2.0 Legal Status of the Enforcement Policy**

2.1 The Cabinet of Worcester City Council approved this policy on 15<sup>th</sup> October 2008 and the Licensing Committee approved it on 17<sup>th</sup> September 2008.

2.2 This policy is intended to provide guidance for officers, businesses, consumers and the public. It does not affect the discretion of the Council to take legal proceedings where this is considered to be in the public interest.

## **3.0 Scope and Meaning of 'Enforcement'**

3.1 This Policy applies to all the legislation enforced by Officers of Environmental Health.

3.2 'Enforcement' includes any action taken by officers aimed at ensuring that individuals or businesses comply with the law. This is not limited to formal enforcement action such as prosecution.

3.3 In certain circumstances we will seek to raise awareness and increase compliance levels by publicising unlawful trade practices or criminal activity. Where appropriate the results of specific court cases may also be published.

## **4.0 How to obtain a copy of the Policy or make comments**

4.1 This Policy is available on the City Council's websites:

[www.worcester.gov.uk](http://www.worcester.gov.uk)

If you would like a paper copy of the Policy and/or you would like to comment on the Policy, please contact us by:

- telephoning 01905 733322;
- e-mailing customerservices@worcester.gov.uk;
- writing to the Head of Cleaner and Greener Service Area, The Guildhall, High Street, Worcester WR1 2EY

4.2 On request, this Policy will be made available on tape, in Braille, large type, or in a language other than English.

## **5.0 General Principles**

5.1 Prevention is better than cure and our role therefore involves actively working with businesses to advise on and assist with compliance.

5.2 Where we consider that formal action is necessary each case will be considered on its own merits. However, there are general principles that apply to the way each case must be approached. These are set out in this Policy and in the Regulators' Compliance Code. For more information about the Regulators' Compliance Code visit: <http://www.berr.gov.uk/files/file45019.pdf>

5.3 Enforcement decisions will be fair, independent and objective and will not be influenced by issues such as ethnicity or national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender. Such decisions will not be affected by improper or undue pressure from any source.

5.4 We will take into account the views of any victim, injured party or relevant person to establish the nature and extent of any harm or loss, and its significance, in making the decision to take formal action.

5.5 Worcester City Council is a public authority for the purposes of the Human Rights Act 1998. We will, therefore, apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

5.6 This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulator's Compliance Code.

5.7 In certain instances we may conclude that a provision in the code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

5.8 In accordance with the Regulators Compliance Code we will:

### **5.8.1 Support Economic Progress**

We will seek to support businesses and others by:

- Providing easily accessible and understandable information and advice relating to legal requirements and best practice, to existing and new businesses and others
- Considering the burdens that regulatory sanctions impose on individual businesses and others, and reducing the burden to the minimum level consistent with achieving compliance
- Regularly reviewing our approach to regulatory activities and interventions so as to remove unnecessary burdens

## 5.8.2 Risk assessment

5.8.2.1 We will ensure that our resources are targeted where they will be most effective in reducing risk. This applies across all of our service areas – food safety, licensing, pollution control, health and safety at work, dog warden, pest control services etc.

5.8.2.2 No inspections will be carried out without a reason. We will follow national inspection programmes where appropriate including those developed by the Food Standards Agency, Health and Safety Executive and Defra. Intelligence – led inspections may also be carried out, as will inspections as a result of a complaint or a request from the business operator or householder.

5.8.2.3 In the absence of nationally recognised inspection programmes we will give consideration to the following factors when considering the frequency and type of interventions we will employ:

- compliance history and potential future risks
- the existence of effective management systems
- evidence of recognised external accreditation
- management competence and willingness to comply

5.8.2.4 Details of our inspection programmes and other planned regulatory activities are held in service level procedures, plans and policies and will be made available, where appropriate, on our website.

## 5.8.3 Advice and guidance

5.8.3.1 We will provide general information, advice and guidance to make it easier for businesses and others to understand and meet their legal responsibilities. It will be provided promptly, and in clear, concise and accessible language by officers in person, in writing and/ or via our website. Where there are significant changes in legislation we will seek to provide information in the most direct way possible (e.g. by mail shot to those affected).

5.8.3.2 Where appropriate advice exists in a variety of languages we will endeavour to make these versions available or signpost their location to those who need them. Where the information is only available in English (e.g. a statutory notice or report) we will tell the recipient about the services available through Ethnic Access link.

5.8.3.3 When offering guidance on compliance with the law we will distinguish between statutory requirements and guidance on best practice which go beyond the legal minimum.

5.8.3.4 Except in cases of immediate risk we will ensure that advice and guidance can be accessed without triggering enforcement action.

#### 5.8.4 Inspections and other visits

5.8.4.1 When developing our inspection programmes and procedures we will ensure that no inspection takes place without a reason. Inspections will result either as part of a risk based programme, as a result of intelligence received, a complaint or on request.

5.8.4.2 We will focus our efforts on those businesses and organisations where evidence shows that:

- one or more contraventions would lead to a serious risk,
- there is a high likelihood of non-compliance

and where we find examples of good practice we will acknowledge it and where possible share the information with other organisations. Where possible, we will work with other regulators to reduce inspection burdens and to share information to reduce risk.

#### 5.8.5 Information requirements

5.8.5.1 We will normally require only that information required by statute from businesses and others e.g. food registration, completed application forms and submission of appropriate returns.

5.8.5.2 Before requiring businesses and others to provide information beyond that required above we will consider the costs of providing that data and will balance the benefits of the data to us against the cost of providing it. We will also consider whether the information we require is already available from another source.

5.8.5.3 We will ensure that effective mechanisms are in place to share data (within the legal boundaries of data protection law) with other regulators so as to reduce the burden of providing such data. Where possible we will allow and facilitate electronic submission of data, minimise frequency of collection and request only data which is justified on the basis of risk.

## **6.0 Notifying Alleged Offenders**

6.1 If we receive information [for example from a complainant] that may lead to enforcement action against a business or individual we will notify that business or individual as soon as is practicable of any intended enforcement action, unless this could impede an investigation or pose a safety risk to those concerned or the general public.

6.2 During the progression of enforcement investigations/actions, business proprietors or individuals and witnesses will be kept informed of progress. Confidentiality will be maintained and personal information about individuals will only be released to a Court when required and/or in accordance with the Data Protection Act 1998.

### **7.0 Deciding what level of enforcement action is appropriate**

A number of factors are considered when determining what enforcement action to take:

7.1. In assessing what enforcement action is necessary and proportionate, consideration will be given to:

- The seriousness of compliance failure;
- The business's past performance and its current practice;
- The risks being controlled;
- Legal, official or professional guidance;

7.2 Local priorities of the City Council. There are a large number of potential enforcement options. The level of the action taken varies from no action through to proceedings in Court. Examples of the main types of action that can be considered are shown below:

- No action;
- Informal Action and Advice;
- Fixed penalty Notices;
- Penalty Charge Notices;
- Formal Notice;
- Formal closure
- Seizure of goods/equipment;
- Injunctive Actions;
- Refusal/revocation of a licence;
- Simple Caution;
- Prosecution.

7.3 Where the law has been contravened, there is a range of enforcement options available to seek compliance with the law. Under normal circumstances, a process of escalation will be used until compliance is reached. Exceptions would be where there is a serious risk to public safety or the environment or the offences have been committed deliberately or negligently or involve deception, or where there is significant economic detriment.

#### 7.4. No Action

7.4.1 In certain circumstances, contraventions of the law may not warrant any action. This can be where the cost of compliance to the offender outweighs the detrimental impact of the contravention, or the cost of the required enforcement action to the City Council outweighs the detrimental impact of the contravention on the community. A decision of *no action* may also be taken where formal enforcement is inappropriate in the circumstances, such as where a trader has ceased to trade, or the

offender is elderly and frail and formal action would seriously damage their wellbeing. In such cases we will advise the offender and where appropriate, the complainant, of the reasons for taking no action.

## 7.5 Informal Action and Advice

7.5.1 For minor breaches of the law we will give written advice in the form of a 'report of visit'. We will clearly identify any contraventions of the law and give advice on how to put them right, including a deadline by which this must be done. The time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of the non-compliance.

7.5.2 Where ever possible we will advise offenders about 'good practice', but we will clearly distinguish between what they *must do* to comply with the law and what is advice only.

7.5.3 Failure to comply could result in an escalation of enforcement action.

## 7.6. Fixed Penalty Notices

7.6.1 Certain offences are subject to fixed penalty notices where prescribed by legislation. They are recognised as a low-level enforcement tool and avoid a criminal record for the defendant. Where legislation permits an offence to be dealt with by way of a Fixed Penalty Notice (FPN), we may chose to administer a FPN on a first occasion, without issuing a warning.

## 7.7 Penalty Charge Notices

7.7.1 Penalty Charge Notices (PCN) are prescribed by certain legislation as a method of enforcement by which the offender pays an amount of money to the enforcer in recognition of the breach. Failure to pay the PCN will result in the offender being pursued in the County Court for non-payment of the debt. A PCN does not create a criminal record and we may chose to issue a PCN without first issuing a warning.

## 7.8 Formal Notice

7.8.1 Certain legislation allows notices to be served requiring offenders to take specific actions or cease certain activities. Notices may require activities to cease immediately where the circumstances relating to public health, safety, environmental damage or nuisance demand. In other circumstances, the time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of the non-compliance.

7.8.2 All notices issued will include details of any applicable *Appeals Procedures*.

7.8.3 Certain types of notice allow works to be carried out in default. This means that if a notice is not complied with [a breach of the notice] we may carry out any necessary works to satisfy the requirements of the notice ourselves. Where the law allows, we may then charge the person/business served with the notice for any cost we incur in carrying out the work.

## 7.9 Formal Closure

7.9.1 In certain circumstances e.g. under the provisions of food safety legislation, where an authorised officer is satisfied that there is an imminent risk of injury to health from the condition of the premises, the officer may serve notice to close the premises followed by an application to a Magistrates Court to confirm the closure.

## 7.10 Seizure and Detention

7.10.1 Certain legislation enables authorised Officers to seize goods, equipment or documents for example unsafe food, sound equipment that is being used to cause a statutory noise nuisance, unsafe products or any goods that may be required as evidence for possible future court proceedings. When we seize goods we will give the person from whom the goods are taken an appropriate receipt.

## 7.11 Injunctive Actions

7.11.1 In certain circumstances, for example, where offenders are repeatedly found guilty of similar offences or where it is considered that injunctive action is the most appropriate course of enforcement, then injunctive actions may be used to deal with repeat offenders, dangerous circumstances or significant consumer detriment.

7.11.2 Anti Social Behaviour Orders and Criminal Anti Social Behaviour Orders: Where the non-compliance under investigation amounts to anti-social behaviour such as persistent targeting of an individual or a group of individuals in a particular area then, following liaison with the Council's Anti-Social Behaviour Unit where appropriate, an ASBO or CRASBO will be sought to stop the activity.

## 7.12 Refusal, Suspension and Revocation of Licence

7.12.1 Where there is a requirement for a business to be licensed by the local authority, the licence may be granted unless representations or objections are received against the application. In such cases the Licensing Committee or Sub-Committee will hear the case and decide to grant, grant with conditions, or refuse the licence application.

7.12.2 In addition to the above, in relation to the Gambling Act 2005, applications for premises Licence, the Licensing Committee can exclude a condition of licence.

## 7.13 Simple Caution

7.13.1 A Simple Caution is an admission of guilt, but is not a form of sentence, nor is it a criminal conviction.

7.13.2 For a Simple Caution to be issued a number of criteria must be satisfied:

- Sufficient evidence must be available to prove the case;
- The offender must admit the offence;
- It must be in the public interest to use a Simple Caution;
- The offender must be 18 years or over.

For details on the Home Office guidance (Circular 30/2005) visit: [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk)

7.13.3 When making our decision, the offender should not have received a simple caution for a similar offence within the last 2 years.

7.13.4 A record of the Caution will be sent to the Office of Fair Trading and the Local Authority Coordinating Body for Regulatory Services (LACORS) if appropriate, and will be kept on file for 2 years. If the offender commits a further offence, the Caution may influence our decision to take a prosecution. If during the time the Caution is in force the offender pleads guilty to, or is found guilty of, committing another offence anywhere in England and Wales, the Caution may be cited in court, and this may influence the severity of the sentence that the court imposes.

## 7.14 Prosecution

7.14.1 A prosecution will normally ensue where the individual or organization meets one or more of the following criteria:

- Deliberately, negligently or persistently breached legal obligations, which were likely to cause material loss or harm to others;
- Deliberately or persistently ignored written warnings or formal notices;
- Endangered, to a serious degree, the health, safety or well being of people, animals or the environment;
- Assaulted or obstructed an Officer in the course of their duties.

## 7.15 Proceeds of Crime Applications

7.15.1 Applications may be made under the Proceeds of Crime Act 2002 for confiscation of assets in serious cases. Their purpose is to recover the financial benefit that the offender has obtained from his criminal conduct. Proceedings are conducted according to the civil standard of proof. Applications are made after a conviction has been secured.

## 8.0 Determining Appropriate Enforcement Action

8.1 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 risk/benefit to public health
- h) The likelihood of recurrence
- i) The risk of pollution of the environment or harm to health

8.2 We will seek to use the full range of enforcement options detailed above to:

- Aim to change the behaviour of offenders
- Aim to eliminate any financial gain or benefit from non-compliance
- Be responsive and consider what is appropriate for each combination of offender and offence, including the consideration of the effect of the stigma associated with criminal convictions
- Take action that is proportionate to the nature of the offence and the harm caused
- Aim to restore the harm caused by non-compliance where appropriate, and
- Aim to deter future non-compliance

8.3 Determining whether a Prosecution or Simple Caution is viable and appropriate:

8.3.1 We apply two 'tests' to determine whether a Prosecution or Caution is viable and appropriate. We follow guidance set by the Crown Prosecution Service when applying the tests:

For more information about the 'Code for Crown Prosecutors' visit:

[http://www.cps.gov.uk/victims\\_witnesses/code.html](http://www.cps.gov.uk/victims_witnesses/code.html)

8.3.2 A Caution or Prosecution proceedings will only be progressed when the case has passed both the evidential test and the public interest test. The principles outlined apply equally to the other types of formal enforcement action that are available.

8.3.3 The Evidential Test:

We must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. A realistic prospect of conviction is an objective test that means that a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a separate test from the one that the criminal courts themselves must apply. A jury or Magistrates' Court should only convict if it is sure of a defendant's guilt.

#### 8.3.4 The Public Interest Test:

The public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. We will balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the suspect. Some factors may increase the need to prosecute but others may suggest that another course of action would be better.

8.3.5 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.

### **9.0 Who decides what enforcement action is taken**

9.1 Decisions about the most appropriate enforcement action to be taken are based upon professional judgment, legal guidelines, statutory codes of practice and priorities set by the City Council and/or Central Government.

9.2 Where appropriate, decisions about enforcement will involve consultation between or approval from:

- Head of Cleaner and Greener City;
- Investigating Officer(s);
- Senior managers from Environmental Health;
- City Council Solicitors

### **10.0 Liaison with other regulatory bodies and enforcement agencies**

10.1 Where appropriate, enforcement activities within Environmental Health will be coordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement.

10.2 Where an enforcement matter affects a wide geographical area beyond the City boundaries, or involves enforcement by one or more other local authorities or organisations; where appropriate all relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activity coordinated with them.

10.3 Environmental Health will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies, and examples include:

- Government Agencies
- Police Forces
- Fire Authorities
- Statutory Undertakers
- Local Authorities

### **11.0 Considering the views of those affected by offences**

11.1 Environmental Health undertakes enforcement on behalf of the public at large and not just in the interests of any particular individual or group. However, when considering the public interest test, the consequences for those affected by the offence, and any views expressed by those affected will, where appropriate, be taken into account when making enforcement decisions.

### **12.0 Protection of Human Rights**

12.1 This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is had to the following:

- Right to a fair trial;
- Right to respect for private and family life, home and correspondence.

### **13.0 Accountability**

13.1 We will set clear standards and targets for our service and publish them in the form of an annual Service Plan. In setting the standards and targets we will take into account all feedback received from users of our service and the public. This can be in the form of unsolicited feedback (both complimentary and complaints) and solicited feedback as the result of satisfaction surveys.

13.2 Where appropriate we will consult with those affected before changing policies, procedures and plans, and will carry out any necessary impact assessments before making our decisions.

### **14.0 Review of the Enforcement Policy**

14.1 This Policy will be reviewed annually.