



WASTE MANAGEMENT ENFORCEMENT POLICY

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1.0 INTRODUCTION

The aim of this policy is to determine good practice and to demonstrate clarity and consistency in the delivery of those environmental enforcement duties and powers relevant to the Council's Waste Management Functions.

1.1 In order to offer a more inclusive strategy and enforcement policy, many of the functions undertaken will be carried out in partnership with other partners such as the Police, Environment Agency, DVLA and other local councils and agencies, where possible.

1.2 These core functions relate to enforcement for:-

- a) Abandoned vehicles
- b) Untaxed motor vehicles
- c) Fly tipping
- d) Litter
- e) Dog fouling
- f) Accumulations of waste

1.3 Further details relating to procedures for dealing with these issues are contained in the relevant sections in this document.

1.4 The details contained in this document will offer guidance and assistance to officers involved in enforcement activities in Waste Enforcement.

1.5 Enforcement action taken against an individual or organisation will be consistent with the council's commitment to equality and diversity.

1.6 Duly authorised officers in accordance with this policy will carry out all enforcement action.

- 1.7 The policy is available to interested parties in order to help ensure that the Council's approach to enforcement is as open and fair as possible. It will be published on the corporate internet website.

The objectives of this policy are set out below:-

2.0 **AIMS**

- 2.1 The policy reflects the Council's corporate aims and objectives. In particular it aims to:-
- Carry out enforcement in a fair, practical and consistent manner.
 - Meet enforcement objectives through the provision of advice and information. Where the degree of risk or prejudice to residents, consumers, businesses, or the law demands a robust approach, statutory remedies will be used.

3.0 **PRINCIPLES OF ENFORCEMENT - DEFINITION**

- 3.1 Enforcement is any formal or informal action taken to prevent or rectify infringements of legislation. The Enforcement options may differ where different areas of legislation are used, but the principles of application should remain constant and consistent.
- 3.2 Enforcement includes visits, inspections, verbal and written advice on legal requirements and good practice, assistance with compliance, written warnings, the servicing of statutory notices, issuing fixed penalty notices, formal cautions, prosecution, seizure and detention, works in default, injunctions and liaison and co-operation with other enforcement authorities and organisations where appropriate.
- 3.3 The Council aims to carry out its waste enforcement policy in a fair, equitable and consistent manner.

4.0 SCOPE OF THE POLICY

4.1 The Council has key legislation, under the Environmental Protection Act 1990 and the Clean Neighbourhoods Act 2005 and under other legislation relating to the environment. These offer a wide range of powers to enable the Council it to fulfil the duties for which it is responsible.

5.0 OPTIONS

5.1 The method of enforcement used should be balanced to produce the highest reasonable standards of compliance within the least time.

5.2 Enforcement Options Available

- ii) informal action & advice - written or oral – where appropriate
- iii) mediation
- iv) formal caution
- v) prosecution
- vi) formal statutory notice
- vii) execution of work in default i.e., required by a statutory notice where the recipient has not complied with a notice
- viii) fixed penalty notices for specific offences where these are available and have been approved by the Council (when necessary).
- ix) no action – where there is insufficient evidence to pursue action, or where it may not be cost effective to continue, or in the public interest.

6.0 INFORMAL ENFORCEMENT

6.1 Many persons, having had a problem for which they are responsible drawn to their attention, will be anxious to comply with their statutory obligations. In

such cases the enforcement officer's role will be to guide and support. In most cases the first contact with a person reported to the Council or believed to be causing or permitting an offence, will be by advisory letter or verbal communication.

- 6.2 If written observations, suggestion or requirements are appropriate such written guidance will clearly identify the nature of the complaint or problem and any remedial works that are required. The officers will, with due regard to technical accuracy and scientific convention, express requirements or suggestions in a manner that is clear and readily understandable.
- 6.3 Any requirements made verbally or in writing will clearly identify whether they are mandatory or advisory in nature. If the requirements are mandatory, a timescale for compliance will be specified.
- 6.4 Informal written warnings may be issued to make clear that it will view any further breaches of legislation will be treated seriously and that these may be subject to enforcement action. Written advice on good practice, industry guidance or technical information may be provided where there is a need to assist the person in meeting requirements.
- 6.5 Referral will be made to any circumstance where a statutory time-scale for compliance is specified.

7.0 **FORMAL ENFORCEMENT**

- 7.1 Enforcement may be used where the Council has exhausted all informal enforcement provisions. This may include the issue of a statutory enforcement notice of some description which may oblige the recipient to undertake a certain course of remedial action in order to avoid legal proceedings.

The Council would consider formal action where:

- a) an informal approach has already failed
- b) the legislation specifies that the Council must serve a notice and the offence is of a serious nature
- c) Compliance by individuals served may not be possible due to the need for others jointly served to cooperate and agree in carrying out works and sharing costs etc.

7.2 Where there are rights of appeal against the issue of a notice, the Service will, at the time the Authority takes action, issue clear written advice on how to appeal. Whenever possible, the type of advice or information will be issued with the enforcement notice.

7.3 In certain cases, the Council may consider the service of a prohibition notice to stop a prescribed process if it involves an imminent risk of serious pollution of the environment.

8.0 **WORKS IN DEFAULT**

8.1 Where the requirements of the notice are not carried out, in many instances the Council is empowered to do whatever is necessary in execution of that notice and recover the costs of doing so from the person responsible. The Council will generally carry out work in default when:

- a) the person served with an abatement notice has failed to comply with the requirements of the notice
- b) there has been no appeal against the terms of the notice or any appeal made has not been upheld
- c) the Council regard work in default as likely to be a more appropriate or effective remedy than prosecution, or a successful prosecution has already been taken but the problem remains

8.2 The Council may also carry out work in default on behalf of the person responsible where a written request and an undertaking to pay is received from them.

8.3 In deciding whether to carry out work in default, the Council will consider:

a) the urgency of the need to rectify the nuisance or public health hazard to protect the health and safety of local residents

b) the wishes of the person responsible for the problem

c) whether the evidence available provides a realistic prospect of defending the Council's action in the event that recovery of costs is contested by the person responsible.

8.4 All works in default need to follow the requirements and procedures detailed in current Council Standing Orders for commissioning goods and services.

8.5 The Council may recover the costs of the work from the person responsible as a civil debt or by placing a charge on the property, where legislation permits this. Such charges may be repaid by instalments but will accrue interest at such reasonable rate as the Council may determine.

9.0 **FIXED PENALTY NOTICES**

9.1 In certain circumstances it may be appropriate to issue a fixed penalty notice for the relevant offence. The fixed penalty will allow the offender to discharge responsibility for the offence and avoid action through the Magistrates Court.

9.2 These should be issued in accordance with relevant legislation.

a) Issuing fixed penalty notices to young people under the age of 15 is difficult. Primarily, this is because it is hard to ensure payment as the FPN's do not have any parental liability, if a fine is not paid the matter would have to be referred through the youth courts, which can be difficult, time consuming and not always in the public interest.

b) Also there is the stigma of criminalising someone at an early age for a minor offence of littering. The issue has been discussed in great length with the Legal department who have expressed concerns about prosecuting people below this age.

9.3 DEFRA have offered guidelines, for dealing with young offenders. These include keeping parents or guardians involved throughout the process and letting them know as soon as possible when an offence has been committed, working closely with schools, including schools-based education, which would include going into schools to talk to pupils about litter and what can happen if they are caught dropping litter.

It is proposed to adopt the following approach to deal with juveniles:

9.4. Juveniles between the ages of 16 and 18 can be issued with a fixed penalty in the same way that an adult would be. However, consideration would have to be given to their ability to pay a FPN, because of their limited income they will be offered the opportunity to pay a lower level fine of £50.00 and to pay by agreed fixed instalments where appropriate. This will reflect their income and ability to pay a Fixed Penalty.

9.5. In the case of juveniles between the ages of 10 and 15 they will in the first instance be issued with a written warning which will be kept on file for 6 months. A copy of the warning and pro-forma will be sent to the parents or guardian of the juvenile.

9.6 If there should be any further instances, then on that occasion a FPN would be issued with no recourse to a warning.

10.0 **FORMAL ENFORCEMENT- PROSECUTIONS**

- 10.1 The Council will exercise discretion in deciding whether to initiate a prosecution. Other approaches to enforcement may promote compliance with legislation more effectively (as previously detailed).
- 10.2 However, where the particular circumstances warrant it, prosecution without prior warning and recourse to alternative sanctions may be appropriate.
- 10.3 In addition, consideration will be given to Best Practice guidance and advice offered by the Council's Legal Directorate, Government Departments and Agencies, Local Authority Associations, the Local Authorities Coordinators of Regulatory Services and other relevant bodies.
- 10.4 Officers will, subject to their statutory duties, act in accordance with the Council's procedures when approaching individual cases or complaints and will initiate the type of enforcement action warranted by the nature and severity of the offence, nuisance and risk to public health.
- 10.5 Enforcement Officers will seek to help all members of the public and business community to understand their rights and obligations to comply with relevant legislation.
- 10.6 Officers will be aware that they are an important source of information and assistance to all persons living, working or trading in the Borough and will offer guidance and assistance wherever possible.
- 10.7 If an officer identifies any offence, nuisance, public health risk or contravention this will be drawn to the attention of the person responsible at that time or as soon as that person can be identified and contacted.

11.0 PROSECUTION POLICY

11.1 The Council will take legal proceedings if there is sufficient evidence to do so and where it is in the public interest to do so.

12.0 INSTITUTING LEGAL PROCEEDINGS

12.1 The Council, in relation to this policy, will have regard to the best use of resources and consider what is the best course of action in seeking compliance in an objective and fair manner.

12.2 In making the decision to prosecute, caution or pursue another remedy the following criteria or tests will be used.

13.0 THE EVIDENTIAL TEST-SUFFICIENCY OF EVIDENCE

13.1 In considering the institution of legal proceedings or the issuing of a caution whether formal or informal, the immediate consideration is the sufficiency of available, admissible evidence to substantiate the allegation that a criminal offence has been committed.

13.2 The test to be applied is whether there is a reasonable prospect of a conviction, bearing in mind any statutory defences available to the defendant, and any other factors, which would preclude a successful conviction.

13.3 In determining the sufficiency of evidence, consideration should be given to the following factors;

a) Availability of essential evidence;

b) Credibility of witnesses –

- o are they likely to be seen as credible witnesses
 - o are likely to be consistent and fair under cross-examination
 - o are they willing to attend as witnesses
 - o could they be `hostile' witnesses;
- c) Where the case depends in part on admissions or confessions, consideration should be made to their admissibility and whether interviews, statements and other evidence have been obtained in compliance with relevant legislation.
- d) In determining the admissibility of evidence, regard should be given to the requirements of the Police and Criminal Evidence Act 1984 and the Criminal Procedure and Investigations Act 1996, and associated Codes of Practice.
- e) If the case does not pass the evidential test it may not go ahead. If the case does meet the evidential test, the Council will decide if formal enforcement action is in the public interest.
- f) Guidance and advice will be taken from the Council's Legal Department where appropriate.

14.0 **THE PUBLIC INTEREST CRITERIA**

14.1 When satisfied that sufficient evidence is available, consideration must be given to whether the public interest requires a prosecution. Suspected offences should not automatically be the subject of prosecution, but that prosecution should follow wherever it appears that the offence or its circumstances is or are of such a character that a prosecution is required in the public interest.

14.2 The factors which can properly lead to a decision not to prosecute will vary from case to case, but generally, the more serious the offence, the less

likelihood there will be that the public interest will be served otherwise than by prosecution.

14.3 The following considerations should apply:-

- a) seriousness of the offence - the degree of detriment or potential detriment to local residents, consumers, employees or the environment. The likely penalty may be indicative as will current public attitudes to particular breaches of the law;
- b) the age of the offence - regard must be had not only to when the offence was committed, but also to the length of time likely to elapse before the matter can be brought to court. Less regard will be paid to the duration of the time period since the offence was committed if it has been contributed to by either the defendant themselves, the complexity of the case or the particular characteristics of the offence that have contributed to the delay in its emergence;
- c) the age, circumstances or mental state of the offender - the age, whether young or old, will have a bearing on the decision to prosecute, unless there is a real possibility of repetition or the offence is of a serious nature. One must also consider whether the defendant is likely to be fit enough to attend court ;
- d) complainant's attitude - in some cases it will be appropriate to consider the attitude of a complainant who later expresses a wish that no action be taken and has shown remorse for the offence, or offered to re-address the offence.
- e) the willingness of the offender to prevent a recurrence of the problem. If the circumstances that give rise to the offence have subsequently been rectified, and there is little likelihood of a recurrence, then the case may be dealt with more appropriately by other means;

- f) the 'newness' of the legislation transgressed, especially where the offence is of a technical nature, and future compliance may be obtained by less formal means;
- g) any important but uncertain legal points, which may have to be tested by way of prosecution;
- h) advice offered by the Council's Legal Advisor's (Solicitors).

14.4 if having weighed the factors above which are relevant, there is still doubt as to whether proceedings should be instituted, consider the attitude of the local community and the prevalence of the offence locally or nationally. If there is still some doubt then in the final analysis it is for the Court to decide and a prosecution will be taken.

15.0 **TARGETING**

15.1 The Council's enforcement resources are limited and where appropriate they should be focused on those persons, premises, companies or locations whose activities give rise to the greater risks, which are most serious or least well controlled.

15.2 Enforcement is informed through intelligence gathered or arising from investigation of complaints and planned projects, special surveys and enforcement initiatives – some may result in departures from the programme of inspections.

16.0 **TRAINING AND QUALIFICATIONS OF ENFORCEMENT OFFICERS**

16.1 No officer will carry out enforcement duties unless suitably trained, experienced and authorized. This will be by relevant qualification and/or experience and necessary delegated authority.

16.2 Prosecution will only be authorised following review of the case prepared by the Investigating Officer / appropriate Senior Manager.

16.3 Training will be provided for all enforcement officers, as required, to meet changes in legislation and enforcement procedures.

17.0 **COMPLAINTS ABOUT THE SERVICE**

17.1 The Service will provide well-publicised, effective and timely complaints procedures easily accessible to business, the public, and consumer groups.

17.2 In cases where disputes cannot be resolved, any right of complaint, appeal will be explained, with details of the process and the likely time-scales involved.

18.0 **EQUAL AND FAIR TREATMENT**

18.1 Enforcement practices will be constantly monitored and reviewed to ensure that they are fair and equitable.

18.2 Leaflets and other guidance will be made available in appropriate languages, whenever possible, and translation services will be made available when necessary.

19.0 **MONITORING OF POLICY**

19.1 The implications and effectiveness of this Policy will be constantly monitored and reviewed as necessary.

19.2 Any cases where decisions are made on the merits of the case, but which may fall outside of the current policy, will be recorded and taken account of in subsequent reviews of this document. In any case where action is taken in such circumstances the person against whom the action is taken will be

written to promptly with a clear explanation as to why the action is considered necessary in the particular circumstances of the case.

19.3 This will also be true of new legislation coming into effect, which may introduce new types of powers and possible actions which enforcement officers may be able to take.

19.4 All cases resulting in prosecution will be reviewed both by the investigating officer and the Section Manager prior to any file being referred to Legal Services. A further review of the file will take place by the Council's solicitor when further evidence, or advice may be sought or given.

20.0 **HUMAN RIGHTS**

20.1 All enforcement action and investigations will be carried out in a manner, that complies with the requirements of legislation and codes of practice governing the collection of evidence and investigatory powers.

20.2 This will include any surveillance activity which will comply with both the Regulation of Investigatory Powers Act 2000 and the corporate policy document on this specific area, and also the Data Protection Act 1998.

20.3 Consideration will be given to ensure that any actions do not contravene rights conferred by The Human Rights Act 1998 or any other legislation.

21.0 **REFERRALS AND JOINT ENFORCEMENT**

21.1 The Council will routinely consult and work with other agencies in respect of this policy, including:

21.2 The West Midlands Metropolitan Police Service on issues concerning, littering, abandoned vehicles, untaxed vehicles, fly tipping and dog fouling offences.

- 21.3 The Environment Agency on issues concerning fly tipping and a range of other environmental issues.
- 21.4 The DVLA (Driver Vehicles Licensing Authority) on issues concerning Abandoned and Untaxed Vehicles.
- 21.6 Other Council departments/Divisions (e.g. Social Services, Finance and Property, Community Safety, and with other neighbouring authorities
- 21.7 Information of allegations outside the remit of this Service may be referred to the other Councils or Enforcement Agencies which will include written statements, evidence, background information and witness contact details (if witness agrees), to enable that agency to investigate the allegation.