



West Wiltshire District Council

Corporate Enforcement Policy

WEST WILTSHIRE DISTRICT COUNCIL
CORPORATE ENFORCEMENT POLICY

1 **Introduction**

- 1.1 This policy deals with the practical application of the Council's enforcement procedures to provide a fair and effective approach to enforcement action by officers of the authority.
- 1.2 Any enforcement action must be compliant with relevant legislation and guidelines, and be fair, clear, consistent, and robust.

2 **Purpose of enforcement**

- 2.1 The Council supports the judicious use of its statutory enforcement powers as an effective means of ensuring that local premises, practices and activities comply with statutory requirements and do not put the health and safety, well being or amenity of the general public, employees or consumers at risk. We will assist and advise those who are willing to abide by the law but take firm action against those who flout the law or act irresponsibly.

3 **Scope**

- 3.1 This policy applies to any enforcement activities taken by the Council.
- 3.2 This policy should be read in the context of any service specific enforcement policies and national guidance on enforcement issues. It does not apply to legislative debt recovery.
- 3.3 Enforcement, in the context of this policy, includes action carried out in the exercise of, or against the background of, statutory enforcement powers. This is not limited to formal enforcement action such as prosecution, but includes, for example, the inspection of premises for the purposes of checking compliance with legislation and the provision of advice and the use of fixed penalty notices.
- 3.4 In the event of imminent danger or urgent investigations, officers will endeavour to follow the principles established in this policy, but may not be able to comply in every detail.
- 3.5 It is recognised that there may be circumstances where shared or complementary enforcement action may be taken with other agencies. In these cases, the decision on enforcement options shall have regard to the relevant policies and procedures of the other agency.
- 3.6 This policy seeks to support the Council's corporate aims, objectives and approved strategies.

4 Aim of the Policy

- 4.1 The Council believes that most individuals and businesses are law abiding. We will assist and advise wherever possible, but take firm action against those who flout the law or act irresponsibly.
- 4.2 The Council has signed up to the Government's 1998 Enforcement Concordat which establishes principles of good enforcement. The Concordat sets out what businesses and others being regulated can expect from enforcement officers. The primary function of central and local government enforcement work is to protect the public, the environment and groups such as consumers and workers whilst ensuring enforcement functions are carried out in an equitable, practical and consistent manner.
- 4.3 The aim of the policy is to ensure all enforcement actions comply with the following 3 principles:
- Consistency
 - Proportionality
 - Openness
- 4.4 Consistency means taking a similar approach in similar circumstances to achieve similar ends. It does not mean uniformity, as officers will take into account many variables such as the level of risk, the history of compliance and the attitude and actions of those involved.
- 4.5 Proportionality means relating enforcement action to the risks and severity of the breach of the law involved. This will ensure that the most serious risks are targeted first.
- 4.6 Openness means explaining our actions clearly in plain language and explaining to others what is expected of them by the legislation, and what to expect from us. A clear distinction will be made between statutory requirements (what must be done) and best practice guidance (what is desirable). In addition those making, and subject to, an allegation will be kept informed of the progress of the investigation.

Where action is needed:

- It should be clearly explained to the relevant parties in writing, and if requested and in a language that is readily understood, why it is necessary and when it should be carried out.
 - Where appropriate an opportunity will be given to discuss what is required before formal enforcement action is taken (unless urgent action is required to reduce immediate risks).
 - A written explanation will be given of any rights of appeal at the time enforcement action is taken or as soon as is practicable afterwards.
- 4.7 Advice and guidance should be offered in line with the Council's developing customer response standards.

- 4.8 Where significant enforcement action is taken and it is anticipated it may attract publicity, the investigating officer or their service manager should notify the relevant portfolio holder and local member indicating that the information is confidential. Policy and communications may also be informed.
- 4.9 Publicising enforcement action (so called naming and shaming) is an issue with significant human rights and data protection implications. Publicising the outcome of prosecutions will be considered where a criminal conviction has been gained in either a major incident or for persistent offending. This will include only general details of individuals or businesses (name, age and general locality). Administrative penalties, including fixed penalty notices, are not criminal convictions and will not be subject to such publication.
- 4.10 When regulating businesses, the relevant services within the Council will adopt the principles outlined in the Hampton Report "Reducing administrative burdens: effective inspection and enforcement", and any subsequent legislation. These principles are:
- regulators, and the regulatory system as a whole, should use a comprehensive risk assessment to concentrate resources on the areas that need them most;
 - regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take;
 - no inspection should take place without a reason;
 - businesses should not have to give unnecessary information, nor give the same piece of information twice;
 - the few businesses that persistently break regulations should be identified quickly;
 - regulators should provide authoritative, accessible advice easily and cheaply; and
 - regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection.
- 4.11 Enforcement action will be in accordance with the Regulator's Compliance Code.

5 Investigation Procedures

- 5.1 All investigations into alleged breaches of legislation will follow best professional practice and the requirements of the legislation listed below or successive legislation:
- The Human Rights Act 1998 (HRA) - Appendix 1
 - The Regulation of Investigatory Powers Act 2000 (RIPA) - Appendix 2
 - The Police & Criminal Evidence Act 1984 - Codes of Practice - Appendix 3
 - The Criminal Procedures & Investigations Act 1996 (CPIA) - Appendix 4
 - The Code for Crown Prosecutors - Appendix 5
 - Consideration of evidence - Appendix 6

- 5.2 Further checklists and details on the specific requirements of these pieces of legislation are given in the appendices to this policy. These appendices may change in response to subsequent changes in the law, and relevant guidance.
- 5.3 Non compliance with statutory requirements will be investigated and the decision taken in the case shall be recorded by the investigating officer in accordance with section 5 of this policy, and any other service specific guidance.
- 5.4 Investigating officers and their managers must have regard to health and safety issues throughout any investigations.

6 Deciding on What Action to Take

- 6.1 The Council has a staged approach to enforcement wherever possible to ensure solutions are initially sought through education, co-operation and agreement (Stage 1). Where this is not successful, or not appropriate, there will be cases where formal action will be necessary (Stage 2), which may ultimately lead to prosecution or other summary action (Stage 3). Enforcement action will be proportionate and appropriate to the degree of risk, level of harm (actual or potential), urgency and/or the availability of a suitable penalty.
- 6.2 The following range of actions may be taken under this approach.

Stage 1

- Advice
- Verbal warning
- Advisory letters
- Initial inspections and visits
- Minded to Notices

Stage 2

- Formal letters
- Written warnings
- Formal Notices (requiring remedial action)
- Administrative penalties including fixed penalty notices

Stage 3

- 'Simple caution'
- Seizure of assets and confiscation
- Warrants
- Revocation of licences and approvals
- Prosecution
- Injunction
- Works in default or direct action

Notices served as part of an investigation for information gathering are not included in this staged approach.

- 6.3 The action taken by the investigating officer should be proportionate to the risks or potential risks arising from any contravention identified. In deciding the enforcement action to be taken, the officer shall have regard to:
- Any significant local factors or circumstances
 - Confidence in the management or individual i.e. their willingness to rectify or improve, recklessness, or obstruction or assault involved
 - Consequences of non compliance
 - Evidence available
 - Likely effectiveness of various enforcement options
 - Past history of compliance
 - Provision of false information or intent to deceive
 - Resources available
 - Risk to public health, safety and welfare where appropriate
 - Seriousness of the infringement
 - Wider relevance of the infringement, including serious public concern
- 6.4 Administrative penalties, including fixed penalty notices (Stage 2) may be used without the need to go through stage 1 procedures, or as a result of Stage 3 actions.
- 6.5 Before any formal legal proceedings are started (Stage 3) legal advice should be requested.

7 Actions for Stage 1

- 7.1 Officers will comply with all legislation and procedures and policies relevant to each situation.
- 7.2 Officers will apply good enforcement principles.
- 7.3 Decisions to take these actions rest with the investigating officers.

8 Actions for Stage 2

- 8.1 Actions shall be taken in consultation with the relevant manager, except for the use of administrative penalties (see section 5.4) which will be delegated to suitable experienced and qualified officers.

9 Actions for Stage 3

- 9.1 Before deciding to prosecute there are two tests:
- The evidential test - to assess whether there is sufficient evidence of the offence and a realistic prospect of conviction.
 - The public interest test. This must be considered in each case which passes the evidential test.
- 9.2 A prosecution will take place unless there are public interest factors tending against prosecution which clearly outweigh those tending in favour.
- 9.3 The Council must 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 offender.

- 9.4 Factors for and against the public interest are listed in Section 6 of the Code for Crown Prosecutors (Appendix 5).
- 9.5 All factors, both for and against, must be considered in the circumstances of each case before making an overall assessment.
- 9.6 Where Stage 3 action is considered to be appropriate and proportionate, the following steps shall be taken:
- Incident fully investigated.
 - Investigating officer to compile a written report detailing the facts and relevant considerations in the case (see Section 4.1) using the form in Appendix 6.
 - A documented case discussion with the investigating officer and manager, or their deputy, will be held before any decision is taken.
- 9.7 Injunctions or other summary action will be sought (subject to sufficient evidence) where:
- positive or proactive action is required; or
 - prosecution is not considered to adequately protect the public interest.

10 Review

- 10.1 This Enforcement Policy will be reviewed bi-annually by the Enforcement Policy Working Group and approved by the relevant portfolio holder for legal matters. Any significant changes in the intervening period will be referred to the relevant portfolio holder.