



WATFORD BOROUGH COUNCIL

Environmental Health and Licensing Services

COMPLIANCE POLICY 2016 – 2021

1. Introduction

- 1.1 This document provides detailed information on the approach, expectations and aims of officers from the environmental health and licensing services at Watford Borough Council when dealing with compliance issues.
- 1.2 Officers will work with members of the public and business to encourage compliance with legislation and regulations. The document details the reasoning behind this approach, the methods available to assist officers and customers, and the expected outcomes of this approach.
- 1.3 This document clearly explains what customers can expect from compliance teams and how customers can engage in the compliance process.
- 1.4 Watford Borough Council are committed to continuously improving our approach to regulation in line with guidance issued by:

Business,
Regulatory Delivery Office (part of the Government Department for

Innovation and Skills),

<https://www.gov.uk/government/organisations/regulatory-delivery>

Hertfordshire Better Business For All partnership program (BBfA)

<http://www.hertfordshirelep.com/Better-Regulation.aspx>

and by following the Regulators Code,

<https://www.gov.uk/government/publications/regulators-code>

- 1.5 In particular, the document sets out our approach on how we encourage compliance with a range of legislation in the public interest, including but not limited to:
 - abandoned vehicles
 - alcohol, entertainment and late-night refreshment
 - animal welfare
 - anti-social behaviour
 - charity collections
 - dog fouling
 - drainage
 - environmental protection and pollution
 - filthy and verminous premises
 - food hygiene

- gambling
- health and safety at work
- houses in multiple occupation
- housing standards
- infectious diseases
- littering, fly-tipping and other environmental crimes
- pest control
- smoke-free legislation
- statutory nuisances such as noise, odours, vibration and light
- street trading
- taxis and private hire vehicles

1.6 By following this compliance policy the Council aims to facilitate the growth of Watford and to support the corporate aims of working in a bold and progressive way to:

- identify ways to manage the borough's housing needs
- champion smart growth and economic prosperity
- provide for our vulnerable and disadvantaged communities
- deliver a digital Watford to empower our community
- secure our own financial future

In day-to-day business we recognise the importance of three key areas in making us an effective organisation, in touch with our residents and delivering in a way that they expect. These are:

- effective two way engagement and communication
- sound management and high performance
- improving the town's environment.

1.7 In developing this policy we have had regard to:

- the Human Rights Act 1988
- the statutory Regulators' Code issued under the Regulatory and Effective Sanctions Act 2008 and
- the Code for Crown Prosecutors (see section 6)
- the Equalities Act 2010

1.8 All decisions will be fair, independent and objective. They will not be influenced by age, ethnicity, national origin, gender, religious or political belief, disabilities or sexual orientation. Due regard will be taken when dealing with juveniles or other vulnerable people. Decisions will not be affected by improper or undue pressure from any source, including councillors.

- 1.9 We are committed to accountable and proportionate practices with clear policies supported by effective procedures. We will ensure officers are competent, apply compliance measures consistently and proportionately through training, suitable qualifications, and experience. Officers will consolidate their knowledge and experience through attendance on training course, sharing best practice and keeping up to date with national guidance covering compliance.
- 1.10 We will have regard to evolving best practice in compliance and enforcement will take account of any relevant specialist guidance, for example the Better Regulation Delivery Office publication on ethical business regulation which can be found here:

<https://www.gov.uk/government/publications/ethical-business-regulation>

2 Approval, review and exercise of powers

- 2.1 We are consulting businesses and residents on this policy between 15 July and 19 August 2016 .
- 2.2 All enforcement powers are delegated to the Head of Service who in turn authorises officers on the basis of competency. The Section Head and Team Managers are authorised to issue a simple caution and, in the case of certain housing offences, the application for a Rent Repayment Order and/or issuing of a financial penalty as an alternative to prosecution. They, in consultation with the Legal Services Head of Service, may authorise a prosecution. In cases of doubt as to a particular course of action the Head of Service for Environmental Health and Licensing service shall make the final decision.
- 2.3 We will review our policies and procedures on a regular basis and in the light of changes in legislation, case-law or best practice.

3 Policy objectives

- 3.1 Our approach is intended to:
- protect individuals, the community and the environment from harm
 - change the behaviour of individuals and businesses who breach legislation
 - eliminate any financial gain or benefit from non-compliance
 - protect those affected by non-compliance
 - be responsive and consider what is appropriate in the particular circumstances
 - be proportionate to the nature of the offence and the harm caused
 - deter future non-compliance.

4 Key principles

4.1 Wherever possible our officers will adopt an approach of informal resolution. This will involve clearly identifying the nature of any actual or potential legislative breach and giving the party responsible for the breach the opportunity to remedy it. We recognise that this is not always possible in some one-off circumstances in which it may be difficult to identify repeated breaches. These may include for example (but not be limited to) offences such as dog-fouling, littering, or plying for hire where it is necessary, reasonable and proportionate.

4.2 Although each case shall be considered on its own facts and on its own merits, there are general principles set out in section 7 that apply to the way in which we approach every case.

4.3 ***Standards***

We will always make clear when there is a legal requirement to be followed, and under which legislation it is required. We will always make clear the difference between legal requirements and recommended best practice.

4.3.1 All investigations will follow best professional practice and legal requirements. Where necessary as part of the investigation process (for example, where formal legal action is possible), the party responsible for the breach may be formally interviewed under the Police and Criminal Evidence Act 1984, be given the opportunity to establish a statutory defence, and have the opportunity to give an explanation or make any additional comments about the allegations. Evidence will be gathered and used in accordance with the Criminal Procedure and Investigations Act 1996 and not kept for longer than required under the Act's code of practice.

4.4 ***Openness***

We recognise the need to maintain public confidence in our ability to protect and to regulate. This is achieved by promoting consistency, proportionality and accountability. We will also aim to work in order of priority and direct our work accordingly, using national risk assessment schemes, local intelligence and the priorities of the Council and its partners. We will clearly explain to those affected by breaches of legislation the action we take or why we are unable to take action. We will also make clear the difference between statutory requirements or advice, or guidance about what is desirable or good practice but not compulsory

4.4.1 Where action is necessary to comply with legislative requirements, it will be clearly explained as far as reasonably practicable in writing and verbally why the action is necessary and when it must be carried out by. We will discuss what is needed

before taking formal action, apart from when urgent action is required to protect public health, public safety or the environment, or evidence to support enforcement action would be otherwise lost.

4.4.2 We will publicise the results of prosecutions and simple cautions when it helpful to do so, although we will not publicise an individual's personal details when a simple caution has been accepted. If we receive information that may lead to formal legal action we will notify the source of that complaint as soon as is practicable of any intended enforcement action, unless this could impede an investigation or pose a safety risk.

4.4.3 All parties concerned will be kept informed of progress during our investigations and any enforcement action. Confidentiality will be maintained and personal information only released in accordance with legal requirements or in accordance with the Data Protection Act 1998.

4.5 ***Helpfulness***

We believe that prevention is better than cure. We will offer information and advice to those whom we regulate and seek to secure compliance without bureaucracy and excessive cost. We will encourage individuals and businesses to put community, public health, public safety and the environment first. We will ensure that, wherever practicable, our compliance services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

4.5.1 When a breach has been identified that does not present an immediate risk to health, safety or the environment, we may arrange follow-up visits to allow the business owner or individual time to comply with their legal obligations. Where immediate action is not needed, we will consider agreeing an action plan to assist the business or individual to work towards compliance, and a time scale for the successful implementation and completion of this action plan.

4.6 ***Complaints***

Written explanation of any rights of appeal against formal legal action will be given at the time action is taken. We cannot advise on the merits or details of any appeal. Please see section 9 below about how to complain about the service we provide.

4.7 ***Proportionality***

We will balance action taken against risks and costs. Actions to achieve compliance will be proportionate to any risks to public health and safety, and the seriousness of any breach. Therefore, an informal warning is unlikely to be a suitable disposal for a significant infringement leading to serious injury just as a

prosecution is generally unsuitable for a minor administrative or technical oversight. Proportionate action also involves judging the extent to which individuals or businesses have gone to in order to comply with the law.

4.8 Consistency

Our officers will endeavour to take a similar approach in similar circumstances to achieve similar ends; consistency does not mean taking exactly the same approach concerning each breach. We will endeavour to be consistent in the advice we give, whether over time to the same business, or to different businesses.

- 4.8.1 We will participate in county-wide and regional compliance arrangements to encourage consistency amongst other regulators and to share best practice. Where an investigation reveals information that could lead to further investigation by other agencies, we will cooperate and coordinate with the relevant agency to maximise the effectiveness of our advice, assistance or formal legal action..
- 4.8.2 We participate in the Primary Authority scheme as part of the Regulatory Enforcement and Sanctions Act 2008, and follow any inspection plans issued by Primary Authorities as part of those arrangements. We will give notice of proposed legal action to relevant Primary Authorities before action is taken against organisations registered under the scheme, apart from specific urgent cases where this is not required.

5 Compliance techniques

We use a range of techniques to encourage and secure compliance with legal obligations, including:

- informal advisory visits and meetings
- mediation
- education, awareness-raising and advice
- formal training
- risk-based inspections
- proactive and reactive visits
- direct observation
- test baiting of vermin
- test purchasing
- sampling
- auditing.

We are committed to working proactively and positively to encourage risks to be managed and compliance achieved and we will consult service users on the best approach to doing this.

6 Bringing legal action

We will take account of different factors when considering the appropriate approach to achieve compliance, including:

- any actual or potential harm or loss to an individual
- the risk that non-compliance poses to public health, public safety or the environment
- the attitude of individuals or businesses to compliance, such as failing to follow previous advice or comply with statutory notices
- evidence of pre-meditation
- obstruction of officers
- national and local priorities for enforcement, including where the offence is widespread throughout the Borough but is not itself serious
- statutory guidance and codes of practise
- legal advice
- any commercial benefit accrued because of the non-compliance.

6.1 The following actions are available to us in the event of any contravention:

6.2 *No further action, taking informal action or giving advice*

This may apply where an investigation reveals no offence has occurred or where the offending party makes a ready admission of the breach, takes immediate steps to remedy it presenting no risks to public safety, public health or the environment. No further action will be appropriate where the evidence is inadequate or where formal enforcement is inappropriate because the contravener is elderly, frail, has poor mental or serious ill health, and to pursue the case would be detrimental to their wellbeing. All persons involved will be advised as to why no further action is being taken

6.2.1 We may give verbal or written advice where we have a high degree of confidence the breach will be properly remedied or not repeated. We will clearly identify any contraventions of the law and give advice on how to correct them, including a reasonable deadline (agreed where possible) for when this should be completed. This will take into account the seriousness of the contravention and the implications for non-compliance.

6.3 *Issuing warnings*

We may give verbal or written warnings. The fact that a verbal warning has been given may be recorded in a case file for future reference. Written warnings are normally final, and failure to comply or repeated breaches of the same or a similar contravention are likely to result in an escalation in the approach to achieving compliance.

6.4 *Offering a simple caution*

Cautions will be considered in line with the Home Office guidance in circular 16/2008 with the consent of the person responsible for a breach and where a prosecution would otherwise be justified. Although an admission of guilt, a caution is not a sentence or a criminal conviction.

6.4.1 Before offering a simple caution, we must be satisfied that:

- there is sufficient evidence to prove the case before a court
- there has been a free and voluntary admission of guilt
- it must be in the public interest to use a simple caution to dispose of the offence
- the individual or business owner is over the age of 18.

6.4.2 We will also take into account whether the person responsible for a breach has received a simple caution within the previous two years.

6.4.3 The refusal of a person responsible for a breach to be cautioned, despite admitting their guilt, does not preclude a summons being issued for prosecution although a prosecution cannot be brought once a simple caution has been accepted for that offence. A failure to accept a caution may be material consideration when deciding whether to institute a prosecution.

6.5 *Bringing a prosecution*

Where circumstances warrant it, we will prosecute without giving any opportunity for the remedy of the situation and without any prior warning. Prosecutions will be considered where:

- it is appropriate in the circumstances as a way to draw general attention to the need for compliance with legal duties
- there is a risk to community health and safety or of environmental damage as a consequence of the breach

- the breach was as a result of a deliberate, reckless or negligent act
- the approach of the individual or business through repeated breaches, persistent poor standards or ignoring formal advice and warnings warrants it .

6.5.1 Prosecutions will always be considered where:

- there has been a blatant disregard for the law
- there is a refusal to achieve minimum legal requirements
- the offence involves a risk to public health, safety or wellbeing, harm to the environment or where an unacceptable business advantage is gained
- the individual or business has failed to correct potential risks after being given a reasonable opportunity to do so.
- the offence involves failure to comply with a statutory notice
- evidence suggests the offence was premeditated
- there is a history of similar offences
- an officer was intentionally obstructed or deceived in the course of their duties
- any of the factors set out in paragraph 6 apply.

6.5.2 The decision to prosecute will take account of the evidential and public interest tests in the Code for Crown Prosecutors issued under the Prosecution of Offences Act 1985 by the Director of Public Prosecutions. These include:

- the seriousness of the offence. A prosecution is more likely to be required where an offence is more serious
- the level of culpability by the person responsible for a breach, such as their level of involvement; whether the offence was premeditated or planned; or if they have previous convictions or cautions;
- the age and state of mental or physical health of the person responsible for a breach
- the likelihood of the offence being continued, repeated or escalated;
- any remedial action taken by the person responsible for a breach, (although an offer to pay compensation to a victim or take similar action will never by itself preclude a prosecution)
- whether a prosecution is a proportionate response to the likely outcome.

6.5.3 We will not prosecute unless we are satisfied there is credible, admissible and reliable evidence that the offence has been committed by the individual or business and there is a realistic prospect of conviction.

6.5.4 Prosecutions will only be commenced if it is in the public interest to do so. Factors which may be taken into account in deciding whether a prosecution is in the public interest are those in paragraph set out in paragraph 6.5.2.

6.5.5 The courts often have a large discretion in the penalties they can impose, and many offences benefit from a statutory defence. We will not be generally deterred from bringing a prosecution when it is right to do so solely because the courts are likely to issue a nominal penalty following a conviction, or solely because the individual or business appears to have established a statutory defence as it is for the individual or business to demonstrate to the court why they should benefit from that defence.

6.5.6 We will always seek to recover our costs in investigating and prosecuting offences.

6.5.7 People should be able to rely on decisions taken by us. Normally, if we tell a defendant that there will not be a prosecution, or that the prosecution has been stopped, the case will not start again. Occasionally there are reasons why we will overturn a decision not to prosecute or to deal with the case by way of an out-of-court disposal or when it will restart the prosecution, particularly if the case is serious.

6.5.8 These reasons include:

- cases where a new look at the original decision shows that it was wrong and, in order to maintain confidence in the criminal justice system, a prosecution should be brought despite the earlier decision;
- cases which are stopped so that more evidence (which is likely to become available in the fairly near future) can be collected and prepared. In these cases, we will tell the defendant that the prosecution may well start again;
- cases which are stopped because of a lack of evidence but where more significant evidence is discovered later.

6.6 *Civil law remedies*

Where individuals or businesses have been found guilty on more than two occasions, or where it is considered to be more appropriate to restrain further breaches of the law, we will consider applying for an injunction.

6.6.1 We will also use our powers where appropriate to apply for orders under the Anti-Social Behaviour Act 2014 and similar legislation with our statutory partners in order to protect the community.

The following actions are only available to us in relation to certain specific contraventions:

6.7 *Seizure of goods or equipment*

Goods, equipment and documents may be seized under certain legislation relating to unsafe food, or sound equipment that, through its use, creates a statutory noise nuisance. We may also use powers under the Police and Criminal Evidence Act 1984 relating to the voluntary surrender of items in the course of an investigation.

6.8 *Issuing statutory notices*

We may serve notices under various legislation requiring specific actions to be taken or certain activities to cease. Notices may require activities to cease immediately where there is an imminent or immediate threat to health, safety, environmental damage or nuisance. In other circumstances notices will be issued with a reasonable time for compliance, agreed wherever possible with the recipient of the notice, taking into account the seriousness of the contravention, setting out the remedial actions need to comply with the notice, the implications of non-compliance and the appeal period for that notice. Notices will generally be issued if previous warnings or advice has been ignored.

6.8.1 All notices will be expressed in plain language, make clear the consequences of failing to comply, and include details of any applicable appeals procedure. All notices will be signed and served by appropriately authorised officers.

6.8.2 Failure to comply with certain notices will enable the Council to do the work instead, commonly referred to as “works in default “. We may issue these notices when all other attempts to secure compliance have been exhausted, and will give warning of our intention to issue a notice except where this is impractical in order to protect public health and safety or the environment. We will then charge the recipient of the notice for any costs incurred in carrying out the work, and this may lead to a charge being applied against the future sale of the property. The Council may still prosecute for not complying with the original statutory notice as well as carrying out the works.

6.9 *Alternatives to Prosecution*

6.9.1 Fixed penalty notices (FPN) are available as an alternative to prosecution for some offences. A recipient of an FPN does not accept criminal liability by paying the associated fine, which brings an end to the matter. Where the law allows FPNs to be issued, we may choose to administer those on a first occasion without issuing a warning. However, a failure to pay an FPN will result in an escalation of

enforcement action including prosecution for the original offence to preserve the integrity of the regulatory regime.

- 6.9.2 Failure to pay a FPN will be a material consideration in considering whether to institute a criminal prosecution.
- 6.9.3 For certain housing offences as set out in law, such as failure to comply with an improvement or overcrowding notice or operating an unlicensed House in Multiple Occupation (HMO), a financial penalty may be imposed as an alternative to prosecution. In such cases, a notice of intention to impose a financial penalty will be given setting out the amount of the proposed penalty, reasons for imposing it and information about the right to make written representation before a decision is made to issue a final penalty notice. Where a final penalty notice is issued, there will be a right of appeal to a First Tier Tribunal.

6.10 *Licensing decisions*

Many of the licences and permissions we issue contain powers to revoke, refuse, vary or review them in the event of non-compliance with obligations in those authorisations, or following a conviction for certain offences.

- 6.10.1 As a general rule and in line with this compliance policy we will take licensing decisions when all other approaches to assist compliance, short of cautions or prosecutions, have been exhausted. This may include suspending licences in the event of a breach, or refusing a licence when activities have been carried on without the requisite licence being in place. Whether we take a licensing decision before, after or as an alternative to a prosecution or caution will depend on the legal powers available to us and the risks presented by the situation. How we exercise our professional discretion in such cases will generally be guided by:

- whether the actions of the individual or business are so serious they ought to face trial in court
- the impact that a licensing decision will have in correcting any breach
- the impact that a licensing decision may have on the individual or business and the impact on their ability to continue operating their licensable activity
- the Council's Guidelines for the grant, suspension and revocation of Hackney Carriage Driver, Private Hire Driver and Operator Licences.

- 6.10.2 Licensing decisions and prosecutions serve different purposes – licensing decisions about hackney carriage drivers, for example, concern their fitness and propriety to hold a licence, whilst a prosecution serves the objectives outlined in section 6.5 above. Similarly, reviews under the Licensing Act 2003 and Gambling Act 2005 are

designed to be more corrective than punitive in nature, which should be a matter reserved for the courts.

6.10.3 Alongside the general compliance principles contained in this policy we have additional specific approaches agreed in relation to licensed hackney carriage and private hire drivers, proprietors and operators:

- Our investigation into intelligence reports and/or complaints will look for evidence to either prove or disprove alleged offences – this will usually include a discussion with the licence holder. On occasion, for the protection of the identity of a complainant in cases involving sensitive matters such as allegations of a sexual nature, it may not be right to discuss the details of the complaint with the licence holder directly in the first instance;
- We will not take account of a licence holder's previous history during the investigation process;
- If there is no evidence, or insufficient evidence, to prove the complaint a decision on further action shall be taken based on the nature and severity of the alleged offence and whether or not supporting evidence by way of previous reports, how many such reports and the source of the reports are available documenting the same or similar behaviour
- We will notify licence holders of complaints received against them whether proven or not so that they can be discussed if it is safe to do so;
- If an offence is proven, the offence shall be considered and action taken in accordance with the principles in this enforcement policy and/or the policy considerations contained within the Guidelines for the grant, suspension and revocation of hackney carriage and private hire drivers and operators licences;
- All proven complaints will be considered in future enforcement or licensing decisions.

6.10.4 For all proven offences licence holders will at least be informed of the offence and we will explain how to prevent further offences. Generally, where an offence is as a result of a complaint licence holders can expect to receive at least a formal written warning.

6.10.5 Licence holders who receive repeated written warnings or show a history of similar offences, proven or unproven, will be invited to attend a Case Review. This is a meeting with the Section Head for Environmental Health and Licensing Services to discuss a licence holder's conduct, to encourage behaviour change, to understand barriers to this and to clearly explain the consequences of continued non-compliance. A case review may result in the following actions although this is not an exhaustive list of options available:

- no further action
- further investigation

- written advice
- formal warning
- simple caution
- referral for prosecution
- suspension of licence
- recommendation to the Head of Service for revocation of licence

6.10.6 Where deemed appropriate we may suspend or revoke a licence. Where a suspension of the licence is deemed a proportionate response to the offence, the suspension will be for a maximum of two days. The licence holder's previous history will be taken into account when making this decision along with other factors such as the attitude of the licence holder, the impact of the offence etc.

Action may also be taken in accordance with the council's Guidelines for the grant, suspension and revocation of hackney carriage and private hire drivers and operators licences.

6.10.7 Except in cases where it appears that in the interests of public safety require it, no suspension or revocation of a licence will take effect until at least 21 days after the suspension notice has been served. During this time, the licence holder has the right to appeal against the suspension or revocation notice by applying to the magistrates' court.

6.10.8 Any driver, proprietor or operator who re-offends after suspension or a successful prosecution, or commits a first offence which gives sufficient cause for concern, will be referred to the Head of Service or Section Head for Environmental Health and Licensing Services. This referral may take place without the licence holder first attending a case review. This referral will allow for immediate consideration of the continued fitness and propriety of the licence holder. Any licence holder who is referred in this way will be given an opportunity to make written representations against any recommendation to revoke before a final decision is made.

6.10.9 In cases where it is appropriate, for example where an investigation or prosecution has been undertaken by another authority and guilt established, an officer may refer a licence holder directly to the Head of Service or Section Head for Environmental Health and Licensing Services.

6.10.10 Appeals against revocation or the refusal to renew a licence are made to the magistrates' court within 21 days of being notified of our decision.

6.11 ***Repayment of Monies***

We believe that people should not profit from their criminal behaviour. When people have been convicted of offences and it can be shown that they have made money from their criminal lifestyle, we may seek Confiscation Orders under the Proceeds of Crime Act 2002.

- 6.12 Where a landlord has committed certain housing offences (whether or not they have been convicted), a First Tier Tribunal has the power to make a Rent Payment Order (RRO) to require a landlord to repay back to the Council an amount of universal credit, including housing benefit, in respect of rent under the tenancy. Where the law allows, such as failure to comply with an improvement notice or prohibition order or operating an unlicensed HMO, we will first issue a notice of intention to apply for a RRO to the landlord, setting out the amount we are seeking to recover and giving a right to make written representation before a decision is made to apply for an RRO. Once we have considered any representations, then an application for a RRO can be made to the First Tier Tribunal.

7 **Other policies**

We are required to have enforcement policies setting out how we enforce food safety legislation, and the Health and Safety at Work etc Act 1974. Our statutory policy under the Licensing Act 2003 lays out our approach to enforcement action when licences under that legislation are reviewed. Our statutory policy under the Gambling Act 2005 sets out our approach to compliance and enforcement within gambling premises.

- 7.1 We have published minimum standards for tackling anti-social behaviour in conjunction with our partners.
- 7.2 This policy should be read in conjunction with those documents, and will take precedence in the event of any conflict.

8 **Other enforcement partners**

Some investigations will reveal offences that are solely or jointly enforced by other agencies. These can include other local authorities, the police, fire service, trading standards, Gambling Commission, HM Revenues & Customs, UK Border Agency, Health & Safety Executive or the Environment Agency.

- 8.1 Where two offences arise out of the same set of facts but are enforced by two agencies, we will agree on a case-by-case basis the most appropriate action as each agency may decide a different approach and/or disposal is justified.

- 8.2 We will share information with our enforcement agencies where legislation permits, in accordance with agreed protocols and in accordance with the Data Protection Act 1988.

9 Customer standards and Complaints (inc ombudsman)

For details of our customer standards about how you can expect us to treat you, please visit

https://www.watford.gov.uk/info/20016/the_council/119/customer_standards or ask one of our officers for a copy.

Comments are invited on this policy to:

EH Manager (Business)
Environmental Health
Watford Borough Council
Town Hall
Watford
Herts
WD17 3EX
Envhealth@watford.gov.uk