



COMMUNITY AND CUSTOMER SERVICES

Environmental Health and Licensing Service

ENFORCEMENT POLICY 2014 – 2019

Comments are invited on this policy to:

Head of Community and Customer Services
Watford Borough Council
Town Hall

1. Introduction

1.1 This document sets out what members of the public and businesses can expect from enforcement officers in the Environmental Health and Licensing team of Community and Customer Services at Watford Borough Council.

1.2 It sets out our approach on how we regulate and enforce a range of legislation in the public interest:

- 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

1.3 We enforce a range of legislation in the public interest and to support the Council's corporate aims between 2014 and 2018 of creating a town to be proud of, where people will always choose to live, work and visit by

- making Watford a better place to live in
- to provide the strategic lead for Watford's sustainable economic growth
- promoting an active, cohesive and well-informed town
- operating the council effectively and efficiently

1.4 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

1.5 All enforcement 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.

1.6 We are committed to accountable and proportionate practices with clear policies supported by effective procedures. We will ensure enforcement officers are competent, apply enforcement measures consistently and proportionately through training, suitable qualifications, and experience. Officers will consolidate their knowledge and experience through continuing professional education

2 Approval, review and exercise of powers

2.1 We consulted businesses and residents on this policy between 27 June 2011 and 8 August 2011. It was adopted by the Licensing Committee on 15 June 2011,. It was reviewed by the Licensing Committee in July 2014 and the revisions contained in this version come into effect from 14 August 2014.

2.2 All enforcement powers are delegated to the Head of Community and Customer Services. The Environmental Health and Licensing Section Head and team managers may authorise the issue of a simple caution. They, in

consultation with the Legal Services Head Section, may authorise a prosecution. In cases of doubt as to a particular course of action the Head of Community and Customer Services 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 policies are intended to:

- protect individuals, the community and the environment from harm
- change the behaviour of perpetrators
- 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 a policy of informal resolution. This will involve clearly identifying the nature of any actual or potential legislative breach and giving the perpetrator 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. As part of the investigation process, perpetrators will wherever possible 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 practise.

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 enforcement action is required, 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 enforcement 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 co-operation 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 enforcement 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 perpetrator time to comply with their legal obligations. Where immediate action is not needed, we will consider agreeing a time-scale within which compliance, or steps towards compliance, should be met.

4.6 ***Complaints***

Written explanation of any rights of appeal against formal enforcement will be given at the time action is taken, where we are required to do so. 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 enforcement action 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 perpetrators 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 enforcement arrangements to share consistency amongst other regulators and enforcers. Where an investigation reveals facts of an offence enforced by other agencies, we will cooperate and coordinate with any relevant body to maximise the effectiveness of any enforcement.
- 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 enforcement 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 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

6 Bringing enforcement action

We will take account of different factors when considering the appropriate enforcement response, 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 perpetrator's attitude 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 to the next stage of enforcement action.

6.4 *Offering a simple caution*

Cautions will be considered in line with the Home Office guidance in circular 16/2008 with the perpetrators' consent 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 perpetrator must be over the age of 18.

6.4.2 We will also take into account whether the perpetrator has received a simple caution within the previous two years. We will also take account of previous simple cautions received within the previous two years when considering any other enforcement action in the following two years, during which period it may also be cited in court during any prosecution.

6.4.3 The refusal of a perpetrator 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 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 perpetrator's approach 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 perpetrator 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 perpetrator, 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 perpetrator
- the likelihood of the offence being continued, repeated or escalated;

- any remedial action taken by the alleged perpetrator, (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, including the likely costs of pursuing a prosecution.

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 perpetrator 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 perpetrator appears to have established a statutory defence as it is for the perpetrator 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 perpetrators 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 2013 and similar legislation with our statutory partners in order to protect the community.

6.6.2 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 being used for 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 *Issuing a fixed penalty notice (FPN)*

Fixed penalty notices are available as an alternative to prosecution for some low-level environmental 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.

- 6.9.1 Failure to pay a FPN will be a material consideration in considering whether to institute a criminal prosecution.

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, we will take licensing decisions when all other enforcement powers short of cautions or prosecutions have been exhausted. This can 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. How we exercise our professional discretion in such cases will generally be guided by:

- whether the perpetrator's actions 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 perpetrators' ability to continue operating their licensable activity
- in some cases, 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.

6.10.2 We have a specific policy in relation to hackney carriage and private hire vehicle drivers:

- our investigation into complaints will look for evidence to either prove or disprove alleged offences – this will always include a discussion with the driver
- we will not take account of a driver's previous history during the investigation process
- If there is no evidence, or insufficient evidence, to prove the complaint no further action shall be taken
- we will notify drivers of all complaints received against them whether proven or not so that they can be discussed
- if an offence is proven, the offence shall be considered and action taken in accordance with the principles in this enforcement policy
- all proven complaints will be considered in future enforcement or licensing decisions

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

6.10.4 Proven serious offences by drivers concerning

- dishonesty
- breach of trust
- violence
- aggression
- putting a member of the public in danger, or
- putting a member of the public in an unsafe position

may result in the suspension of the driver's licence for a maximum of two days, or in prosecution. The driver's previous history will be taken into account when making this decision along with other factors such as the attitude of the driver, the impact of the offence etc.

6.10.5 Except in exceptional circumstances on the grounds of public safety, no suspension of a drivers licence will take effect until at least 21 days after the suspension notice has been served. During this time, the driver has the right to appeal against the suspension notice by applying to the magistrates' court.

6.10.6 Drivers who receive repeated written warnings or show a history of similar offences will be invited to attend a Case Review. This is a meeting with the Section Head for Environmental Health and Licensing to discuss their conduct.

6.10.7 Any driver who re-offends after suspension or a successful prosecution, or commits a very serious first offence, will be referred to the Head of Community and Customer Services. A Case Review can also recommend that a driver be considered by the Head of Community and Customer Services (after consultation with the Chair of the Licensing Committee) who will consider if the driver is still fit and proper to hold a licence, and if their licence should be revoked or (as the case may be) not renewed.

6.10.8 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 *Confiscation of Assets*

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.

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 We have signed the Hertfordshire Licensing Enforcement Protocol with other statutory authorities concerning the Licensing Act 2003, and a Partnership Agreement with Hertfordshire Fire & Rescue Service. Copies of these documents are available on request.
- 7.3 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 enforcement action as each agency may decide a different 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 <http://www.watford.gov.uk/ccm/content/strategic-services/customer-standards---putting-our-customers-first.en> or ask one of our officers for a copy