

Wigan Council

Enforcement Policy



INTRODUCTION

One of the main functions of the Council is to act as a regulator and an enforcement agency for a large range of legal duties and powers applied by Acts of Parliament, and the Regulations and Orders made under them (including various bylaws).

The legislation which the Council is responsible for enforcing is extensive and cannot be listed here, but the following exemplify the range and diversity:-

- Education (school attendance, child employment);
- Environmental Protection;
- Finance (collection of local taxation and statutory fees);
- Health and Safety;
- Highways and Drainage;
- Housing (mainly private sector);
- Licensing;
- Planning and Development Control (including Building Control);
- Public Health (including Food Safety);
- Social Services (inspection unit functions);
- Trading Standards.

This policy sets out the standards and guidance that will be applied by the Council when acting in its role as regulator and enforcement agency across a range of its relevant legal powers and duties.

The policy applies to enforcement and regulation affecting members of the public, (eg. residents and visitors) and businesses, (eg. proprietors, employers and employees).

However, whilst the policy is intended to be reasonably comprehensive, it cannot cover every situation, especially where there are specific national or local codes or standards which have to be met, for example when dealing with child protection, special educational needs, mental health provisions and benefit fraud. Neither will the policy apply to actions of the Council in dealing with matters of contract (including rents, tenancy agreements and leases) or the collection of penalties, debts or fines. The Council will however endeavour to apply the same general principles as described in the policy wherever possible.

OVERALL AIM

The Council's aim is to undertake its regulatory and enforcement role in a fair, open and consistent manner. In doing this it will act in accordance with the guidance and standards set out in this policy, and in any supplementary Departmental policies.

In particular the Council will:-

- ❖ Consult with parties subject to regulation and enforcement by the Council about the standards it sets in undertaking this role;
- ❖ Work with individuals and businesses to assist them in complying with their legal duties and obligations;
- ❖ Ensure its staff are appropriately trained and apply the policy and standards professionally and consistently;
- ❖ Make information about the policy and the standards widely available to the public and businesses within the Borough;
- ❖ Monitor compliance with the policy and review it from time to time in consultation with parties subject to its application.
- ❖ Be a signatory to and act in accordance with the Government's Enforcement Concordat.

GUIDING PRINCIPLES

In undertaking its regulatory and enforcement role the Council will have regard to the following Guiding Principles:-

- ❖ Any decision regarding enforcement action will be impartial and objective, and will not be affected by race, politics, gender, sexual orientation or religious beliefs of any alleged offender, victim or witness;
- ❖ The Council believes the vast majority of individuals and businesses wish to comply with the legal requirements placed upon them and should be assisted in doing so;
- ❖ In dealing with any enforcement situation, the Council's actions will be proportionate to the scale, seriousness and intentionality of any non-compliance;
- ❖ There will be consistency of enforcement whilst recognising individual circumstances which may modify the appropriate action to be taken in each case;
- ❖ Except in the most serious cases or where advice / warnings have not been heeded, adequate opportunity will normally be given to rectify non-compliance before formal legal action is commenced;

- ❖ Enforcement is seen as a final means of securing compliance with the appropriate standards, and not as an end in itself;
- ❖ Prosecution will normally only be considered where it is in the public interest to do so and in serious or blatant cases, or where other approaches have failed;
- ❖ Regard shall be had to the relevant legislation and codes of practice which protect the rights of the individual and guide enforcement action, (eg. Human Rights Act 1998, Code for Crown Prosecutors);
- ❖ Regard shall be had to the Council's Equal Opportunities and Customer Care Policies.

STANDARDS

The Council will always endeavour to meet the highest standards of service in undertaking its regulatory and enforcement function. The following specific level of service standards will be applied:-

- ❖ Matters relating to enforcement and regulation will be dealt with promptly with enquiries and complaints receiving a response or acknowledgement within ten working days;
- ❖ Except in the case of necessary and approved covert investigations, (eg. the making of test purchases by Trading Standards Officers), officers will announce themselves on arrival at premises and show identification unless they are already well known to the person;
- ❖ Officers will provide their name and contact details to those persons or businesses with whom they are in contact concerning a regulatory or enforcement matter;
- ❖ Complaints relating to enforcement or regulatory matters will normally only be dealt with if the name and address of the complainant is given. Any such identification will be treated in confidence, but may need to be disclosed (with prior consent) should formal legal proceedings be taken against the person or business to which the complaint relates. Anonymous complaints may however be investigated if they relate to benefit fraud, protection of children or other vulnerable groups, or matters relating to serious health, safety or environmental issues etc.
- ❖ Officers will not be able to act as consultants or legal advisors to individuals or businesses, but will be available (by appointment if necessary) to discuss general issues or matters of specific enforcement with the aim of assisting or guiding compliance;
- ❖ Officers will be professional, courteous and helpful in their conduct of regulatory or enforcement matters, and wherever possible will seek to work with individuals and businesses towards compliance;

- ❖ Officers will endeavour to provide advice in a clear and simple manner and where any corrective or remedial work is necessary, an explanation will be given as to why it is necessary, and over what time scale it is required. Where non-compliance may result in further enforcement action or prosecution the matter will normally be confirmed in writing within ten working days, and any legal requirements will be identified separately from best practice advice;
- ❖ Officers will generally seek an informal resolution to cases of non-compliance except where immediate formal enforcement action is required, (eg. serious issues relating to Health and Safety, Environmental Protection, evidence gathering etc);
- ❖ Where there are rights of appeal against formal action, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken, (eg. when the enforcement notice is served);
- ❖ Where there is known to be an involvement of any other enforcement agency, or any case involves joint enforcement arrangements, the Council will consult with that other agency prior to taking any formal enforcement action.
- ❖ Where any charges or fees are to be levied for a service, individuals and businesses will be informed of the cost or rate of charge prior to the service being provided;
- ❖ Any dissatisfaction with the actions of an officer of the Council will be dealt with under the Council Complaints Procedure, copies of which are available from offices of the Council, by accessing the Council's Web site (www.wiganmbc.gov.uk) or by telephoning the Council on 01942 244991 and asking for the appropriate Department, (see back page for list of Departments) .

CONSISTENT ENFORCEMENT ACTIONS

Consistent enforcement action is desirable, but absolute uniformity would be unfair by failing to recognise individual circumstances which may modify action to be taken. Consistency of approach whilst allowing a degree of discretion will be encouraged by:-

- ❖ Appropriate training and supervision of enforcement officers;
- ❖ Ensuring there is compliance with the standards set out in this policy by all enforcement officers of the Council;
- ❖ Recognition of defences that would be available at law and exercising appropriate discretion where formal action is unwarranted;
- ❖ Recognition that we should not normally take formal enforcement action or prosecution in the case of minor infringements;
- ❖ Recognition that in some situations, (eg. pursuing legal action when a statutory nuisance, such as excessive noise is identified and confirmed, or a fixed penalty fine notice is issued as in the case of a parking ticket), we have no legal discretion

but to serve a formal legal notice, take formal legal action, or pursue the collection of a fine.

- ❖ Taking into consideration guidance published by recognised bodies such as LACORS, Food Standards Agency, Health and Safety Commission.

ASSESSING APPROPRIATE ACTION IN CASES OF INFRINGEMENT

Internal guidance provides consistent starting points for action to be taken in particular circumstances. Final action taken will depend on any modifying or mitigating factors present, and account will be taken of any national or local guidance available.

Formal action will normally be instigated where one or more of the following apply:-

- ❖ It is prescribed by law as obligatory;
- ❖ Informal approaches have failed;
- ❖ The matter is of such seriousness or urgency that informal action is inappropriate;
- ❖ Enforcement is necessary to remedy an unsatisfactory condition relating to health, safety, amenity or the environment;
- ❖ There is a need to ensure a decision or policy of the Council is enforced (including planning policy).

Prosecution will normally only be considered where one or more of the following Public Interest criteria are satisfied:

- ❖ a conviction is likely to result in a significant sentence;
- ❖ a conviction is likely to result in a confiscation or any other order;
- ❖ violence was threatened or used during the commission of the offence;
- ❖ the offence was committed against a person serving the public;
- ❖ the defendant was in a position of authority or trust;
- ❖ the evidence shows that the defendant was a ringleader or an organiser of the offence;
- ❖ there is evidence that the offence was premeditated;
- ❖ there is evidence that the offence was carried out by a group;
- ❖ the victim of the offence was vulnerable, has been put in considerable fear, or suffered personal damage or disturbance;
- ❖ the offence was committed in the presence of, or in close proximity to, a child;

- ❖ the offence was motivated by any form of discrimination against the victim's ethnic or national origin, disability, sex, religious beliefs, political views or sexual orientation;
- ❖ there is a marked difference between the actual or mental ages of the defendant and the victim, or if there is any element of corruption;
- ❖ the defendant's previous convictions or cautions are relevant to the present offence;
- ❖ the defendant is alleged to have committed the offence while under an order of the court;
- ❖ there are grounds for believing that the offence is likely to be continued or repeated, for example, by a history of recurring conduct;
- ❖ the offence, although not serious in itself, is widespread in the area where it was committed, or
- ❖ a prosecution would have a significant impact on maintaining community confidence.

Mitigating factors could include the examples below, but these should always be balanced against the seriousness of the offence and the likelihood of it being repeated:-

- ❖ the court is likely to impose a nominal penalty;
- ❖ the defendant has already been made the subject of a sentence and any further conviction would be unlikely to result in the imposition of an additional sentence of order, unless the nature of the particular offence requires a prosecution or the defendant withdraws consent to have an offence taken into consideration during sentencing;
- ❖ the offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence);
- ❖ the loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement;
- ❖ there has been a long delay between the offence taking place and the date of the trial, unless:
 - the offence is serious;
 - the delay has been caused in part by the defendant;
 - the offence has only recently come to light; or
 - the complexity of the offence has meant that there has been a long investigation;
- ❖ a prosecution is likely to have a bad effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence;

- ❖ the defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is real possibility that it may be repeated. The Council will, where necessary, apply Home Office guidelines about how to deal with mentally disordered offenders in order to balance the desirability of diverting a defendant who is suffering from significant mental or physical ill health with the need to safeguard the general public;
- ❖ the defendant has put right the loss or harm that was caused (but defendants must not avoid prosecution or diversion solely because they pay compensation); or
- ❖ details may be made public that could harm sources of information, international relations or national security.

MONITORING

Producing policies is all very well, but they are not likely to be effective unless they are continually and consistently applied. To ensure this happens and to provide feedback on the effectiveness of its application, it is intended that various monitoring regimes are undertaken and fed back to businesses and the public on an annual basis. The following monitoring and feedback mechanisms will therefore be undertaken:-

- ❖ Opportunities for businesses and members of the public comment on the policy;
- ❖ Sample surveys undertaken on the perception of service users of particular aspects of the policy, following contact with one of the Council's enforcement services;
- ❖ Periodic consultation with Business representatives such as members of Wigan Borough Partnership and the Chamber of Commerce;
- ❖ Production and making public the results of monitoring, together with any improvements or changes to the policy or its implementation.

ENFORCEMENT ACTIONS AVAILABLE

We take a wide view of this term which includes provision of advice and guidance. Examples of the actions we can take are:-

<u>ACTION AVAILABLE</u>	<u>EXPLANATION</u>
Advice	Advice on how to comply with the law, typically following a request for advice, a programmed inspection or complaint.
Warning letter	Warning that recurrence or continuation of an infringement will result in legal action.
Enforcement notice	A wide range of legal powers to require persons to perform some act or desist from a course of conduct. In some cases we have the power to close businesses or execute work in default. There are often appeals procedures or a requirement to have emergency action confirmed by a Magistrates' Court. (We provide details of those appeals procedures at the same time as the notice.) Failure to comply with the notice will often result in prosecution.
Official caution (often called 'Home Office Cautions')	<p>A special form of recordable warning which can only be given if:-</p> <ul style="list-style-type: none"> ◆ An offence has been committed. ◆ The person liable admits the offence. ◆ A prosecution could be taken. ◆ There are mitigating factors suggesting an official caution is the more appropriate course of action.
Fixed penalty notice	Legislation enables the Council to issue fixed penalty notices for various offences such as littering, dog fouling etc.
Prosecution	Prosecution in Magistrates or Crown Court. There are very strict controls to ensure this only happens in serious cases or when other approaches have failed. Depending on the circumstances, we do not always warn or issue a statutory notice before taking prosecutions.

DEPARTMENTS AND SENIOR OFFICERS:-

Chief Executive's Department, Town Hall, Library Street, Wigan, WN1 1YN

Chief Executive: Joyce Redfearn

Deputy Chief Executive: Frank Costello

Children & Young Peoples Services, Progress House, Westward Park Drive, Wigan WN3 4HH

Director of Education: Ged Rowney

Department of Adult Services, Civic Centre, Millgate, Wigan, WN1 1AZ

Director of Adult Services: Bernard Walker

Environmental Services Department, Civic Buildings, New Market Street, Wigan, WN1 1RP

Director of Environmental Services: Martin Kimber

Finance & Information Technology Department, Civic Centre, Millgate, Wigan, WN1 1DD

Director of Finance & IT: David Smith

Legal and Property Services, Town Hall, Library Street, Wigan, WN1 1YN

Director of Legal and Property Services: Susan Lowe

NPS North West Ltd, Municipal Buildings, Hewlett Street, Wigan, WN1 1HQ

Managing Director: Mike Hussey

Wigan and Leigh Housing, Unity House, Westward Park Drive, Wigan WN3 4H3

Chief Executive: Ashley Crumbley

Wigan Leisure & Culture Trust, Indoor Sports Centre, Loire Drive, Robin Park, Wigan WN5 0UL

Chief Executive: Rodney Hill

Contact:

General switchboard: 01942 244991 (ask for appropriate Department)

E-mail: comments@wiganmbc.gov.uk

Web site: www.wiganmbc.gov.uk

[In any communication relating to this Policy, please indicate your contact is regarding the 'Enforcement Policy']