



Corporate Enforcement Policy

Approved by Full Council 29th September 2014

Version 1.0

| <i>Key information on this document</i> | |
|---|--|
| Purpose | This policy is a general statement of the approaches to be taken regarding enforcement and will assist in making decisions |
| Intended target | Authorised Officers, regulated entities |
| Status | Fully open |
| Owned by | Heads of Service |
| Review arrangements | Periodic review and update in response to new legislation, guidance or other relevant information |

CONTENTS

| | |
|---|-----------|
| Summary | 3 |
| 1.0 Scope | 5 |
| 2.0 Background | 6 |
| 3.0 Enforcement Precepts | 6 |
| 4.0 Levels of Enforcement Action..... | 9 |
| 5.0 Investigation of Offences | 11 |
| 6.0 Formal Enforcement Options..... | 15 |
| 7.0 General..... | 19 |
| 8.0 Monitoring and Review | 20 |
| 9.0 Training | 20 |
| 10.0 Complaints..... | 20 |
| 11. Statutory right(s) of appeal | 22 |
| Appendix A. Example data protection request form..... | 23 |
| Appendix B. Example enforcement peer review sheet..... | 24 |

Summary

This policy is applicable to the work of the following council service areas:

| | |
|------------------------|--------------------------------|
| Environmental Health | Building control |
| Licensing | Taxis and private hire |
| Environment | Council Tax/non domestic rates |
| Private Sector Housing | Debt Recovery |

This policy is based on the statutory principles of good regulation¹, namely:

| | |
|-----------------|--------------|
| Proportionality | Transparency |
| Accountability | Targeted |
| Consistency | |

The council has various enforcement tools ranging from informal approaches and advice through to statutory legal notices, prosecutions, licence suspensions and revocations. However the council will try to avoid imposing unnecessary regulatory burdens and before taking enforcement action will generally assess whether similar social, environmental or economic outcomes could be achieved by means other than formal enforcement.

When dealing with non compliance, enforcement officers will clearly explain what is wrong and what needs to be done to put it right. A clear distinction will be made between legal requirements and advice. Unless it is necessary to prevent or respond to a serious breach, an opportunity for dialogue will be provided in relation to the advice, requirements or decisions, with a view to ensuring that the officer is acting in a way which is proportionate and consistent.

The council can prosecute offences. This decision will always take into account the criteria laid down in the Code for Crown Prosecutors². Proceedings will only be brought when to do so is considered to be in the public interest.

Complaints or observations regarding the content or application of this enforcement policy can be made to the council or other bodies.

In some cases there may be a formal right of appeal against enforcement action taken by the Council for example to a Court or Tribunal. Such appeals are separate to complaints made to the Council or other bodies. It is the responsibility of person being enforced against to seek their own legal advice including assistance in making any such appeals in the timescales allowed by law.

¹ These are provided in the Legislative and Regulatory Reform Act 2006, s21.

² Copy available at http://www.cps.gov.uk/publications/code_for_crown_prosecutors/

Table acronyms and abbreviations used in the main text

| Acronym/abbreviation | Meaning or definition |
|-----------------------------|--|
| PACE | Police and Criminal Evidence Act |
| NDR | Non Domestic Rates |
| RIPA | Regulation of Investigatory Powers Act |
| HSE | Health and Safety Executive |
| The Code | The Code for Crown Prosecutors |
| LA | Local Authority |
| LGO | Local Government Ombudsman |

1.0 Scope

1.1 This policy is applicable to enforcement of the following areas of legislation by the Council, its Officers or contractors:

- Environmental Health (including food safety, pollution control, health and safety at work)
- Licensing
- Taxis and private hire
- Environment
- Building control
- Private Sector Housing
- Debt Recovery
- Council Tax/non domestic rates (NDR)

Other Council services with an enforcement function rely on their own separate enforcement policies; (e.g. planning use the Planning Enforcement Policy (PEP)).

1.2 This policy provides guidance to Authorised Officers³ and information to Elected Members and the public.

1.3 This policy is applicable to all Council employees working in the above areas and those from other service areas who support the delivery of these functions. It is also applicable to agency/contract staff working on behalf of the Council.

1.4 Where this policy refers to legislation, codes of practice, guidance and similar; that reference includes any subsequent amendments/updates to such legislation, codes of practice or guidance.

1.5 In carrying out enforcement work, we will follow relevant legislation and have regard to associated guidance, codes of practice and similar.

1.6 This policy is a general statement of the approaches to be taken regarding enforcement and will assist in making decisions; individual service areas may have their own operational procedures and guidance which set out how the various enforcement tools available to the council may be used.

1.7 The Council constitution sets out the scheme of delegation and the enforcement remit and responsibilities of individual officers and committees.

1.8 This policy is the council food law enforcement policy and the health and safety enforcement policy.

³ In this document the term "authorised officer" is used to mean an officer of the Council authorised in writing to carry out enforcement activities on behalf of the Council. It includes other designations such as "inspector", "appointed officer", "designated person" and similar terms as well as a committee or sub-committee of the Council acting under delegated powers to enforce a particular provision on behalf of the Council

2.0 Background

- 2.1 Previously various Council service areas have had service specific enforcement policies. This is the first version of the corporate Enforcement Policy applying to multiple service areas. Service areas may also have their own service specific procedures/protocols regarding enforcement to which they may have regard when carrying out their regulatory work.
- 2.2 This policy sets out the steps Welwyn Hatfield Borough Council will use to secure compliance with the law while minimising the burden on individuals, businesses and the Council.
- 2.3 This policy is based on the statutory principles of good regulation⁴, namely:
- **Proportionality:** to ensure that action taken relates directly to the actual or potential risk (for example to health, safety or the environment.)
 - **Accountability:** to a number of interested parties. This may include Welwyn Hatfield Council elected members, local and national businesses, members of the public and national regulatory bodies.
 - **Consistency:** to ensure that similar issues are dealt with in the same way, having regard to and making full use of guidance produced by Government and other national agencies.
 - **Transparency:** to ensure enforcement action to be taken by the Council is easily understood. Clear distinctions will be made between legal requirements and recommendations about good practice which are not compulsory.
 - **Targeted:** regulation will only take place in cases where action is needed
- 2.4 In carrying out its function as a regulator the Council will try to avoid imposing unnecessary regulatory burdens. Before undertaking enforcement action the Council will generally assess whether similar social environmental or economic outcomes could be achieved by means other than formal enforcement.

3.0 Enforcement Precepts

3.1 Immediate enforcement actions

The Council will generally welcome pre-enforcement dialogue with regulated entities or individuals to ensure requirements and enforcement matters are understood and that action is proportionate and consistent. However, where immediate action is required to prevent or respond to a serious breach or where providing an opportunity for enforcement dialogue would be likely to defeat the purpose of enforcement, the Council may take relevant action without necessarily discussing it in advance.

⁴ These are provided in the Legislative and Regulatory Reform Act 2006, s21.

3.2 Decisions will be made on the basis of risk

In undertaking enforcement functions the Council will ensure that enforcement action is undertaken on the basis of risk. We will take an evidence based approach to determining priority risks and will allocate resources to where they would be most effective in addressing priority risks. Risks will be considered at every stage of the enforcement decision making process, including when choosing the most appropriate type of intervention or enforcement action. Risk assessment may include an evaluation of hazards, risks, compliance history and other relevant data. The Council will generally use risk assessment methodologies provided by central government but may on occasion design in house systems and where practical these will be subject to consultation.

3.3 Objectivity and Equality:

We will ensure that enforcement decisions are not influenced by a person's age, disability, race (including nationality), religion or belief, sex, sexual orientation, gender re-assignment, marriage and civil partnership, pregnancy or maternity status. Proportionate enforcement actions will be considered having regard to business size and capacity.

3.4 Regulators Compliance Code

This enforcement policy has been made having regard to the Regulators' code issued by the Department for Business Innovation and Skills.

3.5 Clarity on what is required

In undertaking enforcement activities enforcement officers will clearly differentiate between what is required and what is recommended. This means that when providing advice and guidance, legal requirements will be distinguished from suggested good practice and the impact of the advice or guidance will be considered so that it does not impose unnecessary burdens in itself. Regulated entities are welcome to discuss and seek clarity on what is required if it is not clear.

3.6 Shared Enforcement

The range of enforcement matters dealt with by the Council is such that there may well be occasions when there is a need to work with other departments and agencies to maximise effective enforcement. For example the work related death protocol facilitates joint working in case of fatalities, other examples would include working with the Police, Fire Service, Health and Safety Executive, Environment Agency, Gambling Commission, immigration and county Council services. Where necessary, appropriate information sharing agreements will be put in place to share data in a timely and appropriate way having due regard to the requirements of the Data Protection Act. This will include trying to use the "collect once, use many" principle of data capture.

3.7 Access to enforcement services

The Council is committed to ensuring fair, timely and effective enforcement and access to services. In relation to enforcement the following arrangements are in place:

- All enforcement related documents will be produced in appropriate plain English; we may however need to use specific legal words or phrases where their meaning is important. The onus is on the recipient of any document to ensure they understand its meaning and any implications for them.
- Where necessary, attempts will be made for the use of interpreters or translations. This may include during sub-committee hearings, or during interviews. Any person wishing to use an interpreter is expected to make this clear early on in any investigation so arrangements can be made.
- Welwyn Hatfield Borough Council provides a limited range of services outside of office hours. Arrangements are in place to respond to genuine emergencies through a duty officer system on a 24-7 basis.
- Where necessary, appropriate and possible in order to support investigation and enforcement, visits may be made outside normal office hours.
- The Council will consider the impact their regulatory interventions may have on economic progress; including thorough consideration of the costs, effectiveness and perceptions of fairness of regulation.

3.8 Customer expectation and service standards

The Council has a customer service charter which sets out general standards applicable to customer service. Additionally the Council has published a clear set of service standards applicable to enforcement activity which is available on the Council website.

Each service area covered by this policy is responsible for producing a set of service standards appropriate for their regulatory activities. The standards will set out what those they regulate should expect from them and:

- how the service communicates with those they regulate and how the service can be contacted
- the service's approaches to providing information, guidance and advice
- the service's approach to checks on compliance, including details of any risk assessment framework(s) used, and protocols for staff conduct
- reference to this enforcement policy in dealing with matters of regulatory non compliance
- how to comment or complain about the service provided and routes to any appeal that may be available

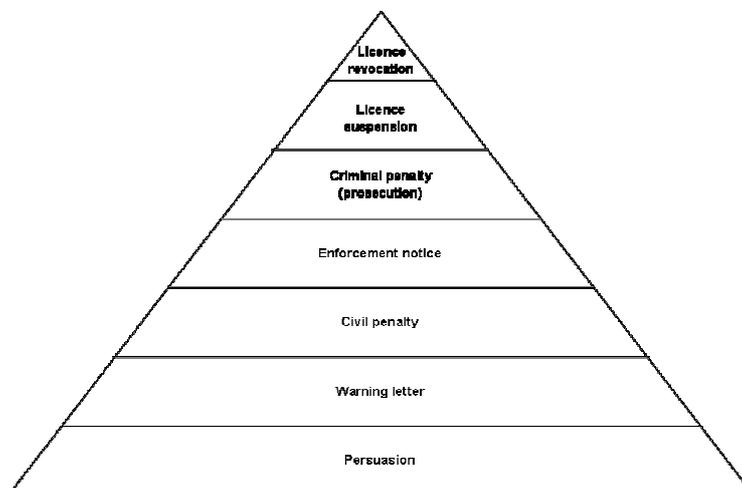
Monitoring of these service standards will take place and will be reported to the appropriate committee.

The service standards and a copy of this enforcement policy will be placed on the Council website.

4.0 Levels of Enforcement Action

- 4.1 In responding to non compliance, enforcement officers will clearly explain what the non compliant item or activity is, the advice that is being given, actions required or decisions taken and the reasons for these. An opportunity for dialogue will be provided in relation to the advice, requirements or decisions, with a view to ensuring that the officer is acting in a way which is proportionate and consistent. However, this need not be the case where the enforcement action is required to prevent or respond to a serious breach or where providing such an opportunity for dialogue would be likely to defeat the purpose of the proposed enforcement action.
- 4.2 Officers will comply with the Human Rights Act wherever it applies. Officers will ensure that all enforcement action is justified, auditable, proportionate, authorised, and necessary having regard to the circumstances of the individual case.

As a regulator, the Council recognises that there are a range of enforcement tools, sanctioning and penalty powers available. These range from informal approaches through to formal action such as notices, prosecutions, suspensions and revocations. The pyramid of enforcement options⁵ set out below shows in a general way the relative severity of enforcement options. At the top of the pyramid are those sanctions which potentially affect a person's liberty or ability to earn a living. The exact enforcement tools available will vary with the offence under consideration.



The Council's Authorised Officers will usually choose which level to start at depending upon the offence, the seriousness of the situation and the level of intent of the offender. They will seek compliance with legislation by one or a combination of methods set out below having carefully considered the relevant legislation, circumstances of the case, risks, tools available and the outcome intended.

⁵ Based on Macrory (2006) Regulatory Justice: Making Sanctions Effective p102

4.3 In general, and as shown below this means that enforcement will move from level 1 through to level 3, although in serious cases (as judged on the particular circumstances of that case) it may be appropriate to commence at level 3.

4.4 However, for some Environment offences, though the offence may be considered to be of a minor nature, the offence may require an immediate response at level 3 for an effective deterrent and outcome.

The offences of a minor nature that come under this consideration are as follows:

- Littering, that is dropping of litter, including parts of a cigarette or cigar;
- Littering, such as allowing a dog to foul in a public place and not clearing up the fouling in an appropriate or timely manner;
- Abandonment of a shopping trolley;
- Graffiti and other defacement

It is recognised that on occasions to follow the first two levels of enforcement options will not assist in the compliance of legislation. It is considered that the above offences can at the discretion of the enforcement officer start at the formal level 3: an issuance of a “Fixed Penalty Notice” (FPN).

Range of enforcement measures used by Welwyn Hatfield Council

| Enforcement level | | Enforcement options |
|-------------------|---------------------|--|
| LEVEL 1 | Advice and guidance | To assist individuals, existing and prospective businesses and other organisations to comply with their legal obligations and support economic growth. This will be achieved by a variety of suitable methods. |
| LEVEL 2 | Informal | To be used to reinforce advice and guidance where minor breaches of the law may have been discovered but it was not thought appropriate to take formal action. This may include informal warnings. These warnings can be oral or written and can be the most appropriate course of action when minor contraventions are discovered. Where warnings are issued, follow-up visits will normally be made to ensure steps are being taken to rectify the problem. Warnings issued in respect of more significant breaches of the law will include timescales within which the breaches should be remedied and will always result in follow-up visits to ensure compliance. |
| LEVEL 3 | Formal | Including the use of statutory (legal) notices, seizure, detention and render safe, simple cautions, prosecution, licence suspension and revocation |

The Council has a number of enforcement “tools” available. Examples include:

- Request to provide information
- Fixed penalty notices
- Improvement notices
- Prohibition notices
- Stop notices
- Seizure and destruction powers
- Work in default and cost recovery
- Simple caution
- Prosecution
- Licence suspension or revocation

5.0 Investigation of Offences

Legislation provides Council Authorised Officers with a wide variety of investigatory powers to assist them in their work. Officers will at all times have regard to the guiding principles of this policy and other relevant guidance when exercising their investigatory powers.

It is the right of persons to have legal representation in their dealings with the council if they so wish.

The work of the Council as a regulator, including investigations, will be subject to prioritisation on the basis of risk. Once started, investigations will be conducted in a timely manner, in accordance with the requirements of relevant legislation, including Police and Criminal Evidence Act, Regulation of Investigatory Powers Act, Criminal Procedures Investigation Act and Human Rights Act. Regard will be had to the requirements of associated Codes of Practice and guidance. Investigations will be brought to a timely conclusion.

The Council will not generally act on anonymous complaints/requests for service and will require all people contacting the Council to provide basic minimum information to assist the investigation. Failure of an individual who requests service to co-operate with the investigation team may limit the ability of the Council to resolve a particular case, particularly if a person is unwilling to provide statements or other evidence or attend Court as a witness on behalf of the Council.

The Council cannot assist in the negotiation for compensation from third parties on behalf of an individual or organisation.

5.1 Production of Authority

Authorised Officers have been provided with a Council Employee Identification Card, a warrant style card summarising the powers they are able to exercise, and certified copies of their official authorisation documents (the so called “instrument of appointment”). These all contain a picture of the officer. Upon request, or where statute demands, officers will produce appropriate and necessary identification. The original copies of all such documents will be kept securely for use in legal proceedings and will therefore not routinely be carried by officers.

The Council is aware of the Local Government Association “Cold Calling Protocol” and, where appropriate, officers will attempt to make an appointment before attending domestic premises, unless this would hinder or prejudice the progress of the investigation. Verification of an officer’s name and status may be obtained by telephoning the number on the officer’s identification card.

5.2 Surveillance

It may be necessary to undertake surveillance to assist with an investigation. Any surveillance covered by the definitions contained in the Regulation of Investigatory Powers Act (RIPA) will be conducted in accordance with that Act,

appropriate guidance, corporate policy and Codes of Practice. Covert Surveillance will only be undertaken where:

- it is in relation to an offence carrying a minimum term of 6 months imprisonment or a specified offence relating to tobacco or alcohol control
- it is in the interests of preventing crime
- the use of covert surveillance is necessary and proportionate to the potential offence being investigated
- it has been authorised by a Council authorising officer and the authorisation has been brought into effect by a magistrate.

The Director (Governance), Head of Public Health and Protection and Principal Governance Officer are the Council's appointed authorising officers for covert surveillance. Authorisations for surveillance where confidential information (as defined in the RIPA codes of practice) may be obtained can only be granted by the Chief Executive. Further details are contained in the Council Corporate surveillance (RIPA) policies.

5.3 Searches

It may be necessary to conduct a search as part of an investigation. A search is different from an inspection. Where appropriate, subject to the relevant Codes of Practice where a search is undertaken a "notice of powers and rights" (often referred to as a PACE⁶ Code B Notice) should be served if:

- The officer is on someone's property and
- There are reasonable grounds for suspecting an offence and
- The officer is gathering evidence (including taking photographs)

This includes searches conducted by authority of a warrant or by the exercise of statutory powers.

5.4 Interviews with Suspects

It may be necessary to conduct an interview under caution with a person (or duly authorised representative of a corporate body) suspected of committing an offence. These interviews will be conducted in accordance with the Police and Criminal Evidence Act Codes of Practice. Wherever possible, recorded interviews will generally take place at the Council Offices. So called "interviews by letter" may be undertaken, but each case will be judged on its own merits.

5.5 Serious Incident Liaison

The investigation of certain workplace incidents can be a complex issue and the primacy (taking the lead role) for such will vary depending on the premises where the incident took place and circumstances found at the time of the incident. It is the intention that there will be a single point of contact for the victim's family. This person will be different to the lead investigating officer.

⁶ Police and Criminal Evidence Act 1984 (as amended) and Associated Codes of Practice

People react to grief in different ways and this policy recognises that it is essential that the victim's family are kept informed throughout such a traumatic time. A liaison bridge between the investigation team and the victim's family will be established for every fatality investigated by the Council.

The family of any victim of a workplace fatality investigated by the Council will be kept appropriately informed, particularly with regard to:

- The progress of the investigation
- Enforcement options available and actions taken
- Consequences of enforcement actions
- Penalties/ other legal remedies available

It is the responsibility of the lead investigating officer to ensure that there is documented contact with the victim's family:

- At the start of the investigation – explaining the process, roles and names of key officers
- After any enforcement assessment has been made but before action is taken, thereby giving the victim's family an opportunity to make their views known; unless enforcement action is urgently needed to address an imminent risk.
- Once any information has been laid, the exact nature of the offences should be notified and explained.
- Between the information being laid and the first hearing if any new information comes to light/course of action previously described needs to be modified.
- Before each hearing (including hearings at HM Coroners' Court)
- After the verdict – with a view to explaining the situation and providing closure

Investigations in relation to workplace fatalities will be conducted in accordance with the Association of Chief Police Officers (ACPO) joint protocol for liaison⁷ and investigators guide.

5.6 Liaison with Primary, Home or Lead authorities

Where it has been established that the subject of potential enforcement action has entered into a Primary Authority (including Home or Lead Authority Partnership or Scheme) with another local authority, unless the matter is one of extreme urgency, the council will notify the primary authority of the proposed enforcement action.

Where an inspection plan has been produced by the Primary Authority in connection with a regulated entity then officers are required to exercise their inspection function in accordance with any primary authority inspection plan.

5.7 [not used]

⁷ <http://www.hse.gov.uk/pubns/wrdp1.pdf>

5.8 Data Protection

The Council will share information with other statutory enforcement agencies, subject to the relevant legal provisions. Before information is shared with an external third party, unless the Council is specifically able to do so by statute, the consent of the person providing the information will be obtained. Where the Council requests information to be provided by another organisation it may do so via service of data protection request notice; example provided in appendix A.

5.9 Freedom of Information and access to information

The Council will comply with the Freedom of Information Act and Access to Environmental Information Regulations. Requests for access to information will be dealt with in a timely manner and with reference to appropriate guidance and the Council Legal Team. Requests will initially be passed to the Council's Freedom of Information Officer for action. Documents will be held on file for the required retention periods⁸ and then will be disposed of appropriately.

Subject to the provisions of the Freedom of Information Act, the Data Protection Act and the Access to Environmental Information Regulations the Council can make no guarantees regarding confidentiality. Ongoing investigations may be subject to exemptions regarding disclosure but closed cases may be subject to partial or full disclosure.

5.10 Record keeping

All Authorised Officers and support officers are responsible for keeping accurate and appropriate notes relating to their investigations and enforcement activities. This includes computer logs and paper/written notes. The Council will provide appropriate notebooks and software for this purpose. In particular Authorised Officers should ensure that both actions and key decisions affecting the direction of the investigation are recorded.

5.11 Collection of Evidence

Where physical evidence is collected as part of an investigation the officers involved in the case will ensure the evidence is stored and handled in appropriate way whilst it is in the Council's possession. This policy recognises that an investigation may be compromised by the inappropriate handling of evidence or the lack of evidential continuity as regards a particular piece of evidence. Once evidence is in the possession of the Council it will not generally be released to third parties (including the press) except for the purposes of laboratory or other technical examination.

- **Photographs, digital images and videos**

Sometimes it may be necessary or helpful to make digital images or take photographs or video to assist an investigation. The authority will provide training and equipment for this purpose and procedures are in place to ensure the evidential continuity of any images made.

⁸ In accordance with the current Document Retention Protocols

- **Measurements and recordings**

Sometimes it may be necessary or helpful to make measurements or recordings to assist with an investigation. The authority will provide appropriate training and equipment for such purposes and will ensure any equipment receives necessary periodic calibration.

5.12 Enforcement Decision Records

All Level 3 Enforcement Decisions made by employees will be peer reviewed. Each service area is responsible for producing a suitable document (paper or electronic) for their own needs, having regard to the legislation that they enforce and their own operational procedures. An example is provided at appendix B. In exceptional circumstances such as an emergency, out of hours or in response to a matter of evident concern found during an inspection, this policy recognises that such peer review may not be possible. The purpose of such a peer review is to provide a second opinion, check for errors and to aid consistency.

5.13 Liaison with Interested Parties

Where appropriate when enforcement action is being considered, liaison may take place with interested parties. For example, if enforcement action was being considered in connection with private sector housing, then liaison would take place with the landlord and/or managing agent.

6.0 Formal Enforcement Options

Enforcement will normally move from level 1 through to level 3, although in serious cases it may be appropriate to commence at level 3. The points below are general and apply to all service areas in the scope of this policy; specific enforcement information for particular services may be set out in their operational documents.

The seriousness of a particular case will be judged against criteria such as the nature of the offence⁹, the consequences, the level of risk or harm which could or has occurred and the level of intent of the offender¹⁰.

The following sections provide guidance to officers where formal enforcement options (level 3) are being considered. In some cases the enforcement action will be taken by the officer acting under delegated authority, in other cases the matter may be referred to a Council committee or subcommittee. Delegation arrangements are set out in the Council constitution.

6.1 Statutory (legal) Notices

Some legislation provides for the service of statutory notices which require a person, business or organisation to comply with specific requirements. Some

⁹ In some cases formal enforcement may be appropriate to remedy multiple minor offences or for repeat offences

¹⁰ This could include using formal tools such as the health and safety enforcement management model or the housing health and safety rating system.

notices may require works to be undertaken, others may impose a prohibition which prevents actions from starting or continuing. In some circumstances the use of a notice is a power available to the authority; other times it is a statutory duty. Where the service of a notice is a power, that decision will usually be taken by an appropriate authorised officer. Except in exceptional or emergency situations, all notices will be peer reviewed prior to service (template in appendix B). Prior to the service of the notice the authorised officer concerned must ensure that the situation to which the notice relates has not been remedied.

Generally, the notice will explain:

- what is wrong
- what is required to put things right
- the timescale in which to put things right
- what will happen if the notice is not complied with

In some circumstances where a formal notice has been served there may be a right of appeal against the Council's decision. Aside from the general appeal procedures in respect of Human Rights issues, there are certain notices which allow a more specific and direct route of appeal through the local courts or other tribunal. In such cases, an explanation of the method of appeal will be provided at the time the notice is issued.

It is anticipated that individuals, organisations or businesses who do not comply with a properly written and served statutory notice will be considered for prosecution in line with the Code for Crown Prosecutors.

6.2 Work in default

Sometimes a further possible action after the service of a notice is the carrying out of "work in default". Where appropriate, this will be considered. The decision to carry out work in default will be governed by the urgency of the situation and the risk benefit which is to be achieved. Every effort will be made to ensure that work is carried out competently and that recharges are not unnecessarily high. Recharges may include costs to cover staff time expended after the service of a statutory notice. Outstanding debts will be passed to the Council's legal services for recovery.

It may be necessary for the Council to take steps to remove unauthorised campers from land either in the ownership of the Council or at the request of another land owner. The Council's internal procedures will be followed in this regard. Where a request is received from the owner of a third party land the Council will not always act on their behalf, but may request the landowner to take their own action to secure possession of the land.

6.3 Fixed penalty notices

There are specific offences where these notices may be considered as an enforcement option. Fixed Penalty Notices are an alternative to prosecution. They allow the offender to prevent the prosecution process taking place by paying a financial penalty. Fixed Penalty Notices will not be used for repeat

offenders or where there is previous record of a Fixed Penalty Notice being served for that offence.

If the penalty is unpaid then the offender will be prosecuted for the original offence. A Fixed Penalty Notice will therefore only be issued where there is enough evidence to support a prosecution. Unpaid notices will be followed up with prosecution to ensure their use is not discredited. Government guidance is clear that not prosecuting in the case of unpaid notices is unacceptable.

6.4 Penalty Notice for Disorder

These may only be used when an officer has been accredited under the Hertfordshire Constabulary Community Accreditation Scheme. Accredited persons when on duty in the relevant police area may exercise the following powers:

- The power to require the giving of name and address from a person for:
 - A relevant fixed penalty offence
 - An offence causing injury, alarm or distress
 - An offence causing damage/loss to another's property.
 - Anti social behaviour
- Confiscation of:
 - Alcohol in a designated public place
 - Alcohol from young persons
 - Tobacco from young persons
- Power to issue fixed penalty notices for:
 - Sale of alcohol to a person under 18
 - Purchase of alcohol for a person under 18
 - Buying or attempting to buy alcohol by a person under 18

Officers may issue a penalty notice only where:

- They have reason to believe a person has committed a penalty offence and there is sufficient evidence to bring a charge;
- The offence is not too serious and is of a nature suitable for being dealt with by a penalty notice;
- The suspect is suitable, compliant and able to understand what is being said to them;
- There is no other more serious or non- penalty notice offence(s) known to be involved;
- The offence(s) involve(s) no one below the age of 16;
- Sufficient evidence as to the suspect's age, identity and place of residence exists.

6.5 Simple Cautions

As an alternative to the prosecution of summary offences where the person admits their guilt, a simple caution may be considered. Senior Officers of the Council (usually a Head of Service or Director) have delegated authority to issue simple cautions. The Council will follow guidelines from the Ministry of Justice.

Simple cautions will not usually be considered where the offender has a previous record of enforcement action at level 2 or 3 for the offence under consideration.

6.6 Injunctions

In some cases an injunction may provide a more appropriate remedy. The advice of the Council's legal service will be taken in this regard.

6.7 Prosecution

Discretion will be used in deciding whether to initiate a prosecution. The Welwyn Hatfield Borough Council Constitution sets out the delegated arrangements for initiating a prosecution. This may be to a senior officer, a committee, or in certain cases the case officer.

The decision to prosecute will always take into account the criteria laid down in the Code for Crown Prosecutors¹¹ (the Code). This includes two "tests" which the case must be subjected to – the evidential test and the public interest test. Proceedings will only be brought when to do so is considered to be in the public interest.

- **The Evidential Test**

The first stage in deciding whether to prosecute is the consideration of the evidence. If a particular case does not pass this stage then a prosecution should not go ahead. Officers need to satisfy themselves and the Council's legal advisor(s) that the evidence can be used in Court, that it is reliable and that there is a realistic prospect of a conviction. If the case satisfies the evidential test then it must proceed to the second stage to decide if a prosecution for the particular offence is in the public interest.

- **The Public Interest Test**

Public Interest factors can affect the decision to prosecute or not to prosecute. These factors are set out in the Code and may include the seriousness of the offence, the level of culpability of the suspect, the circumstances and any harm caused, whether the offender is over 18 years old, the impact on the community, whether a prosecution is a proportionate response and whether any sources of information require protecting. Some factors may increase the need to prosecute but others may suggest that another course of action may be more appropriate. It is quite possible that one public interest factor alone may outweigh a number of other factors which tend in the opposite direction. Although there may be public interest factors tending against prosecution in a particular case, the Council will consider whether nonetheless a prosecution should go ahead and those factors put to the court for consideration when sentence is passed.

¹¹ Copy available at http://www.cps.gov.uk/publications/code_for_crown_prosecutors/

6.8 Endorsement, suspension and revocation of Licences

Following the conviction for certain offences, it may be appropriate to endorse a licence issued by the Council. In some cases the revocation of a licence is an enforcement option (which may or may not require the holder to have been convicted of an offence). This policy recognises that endorsement, suspension and revocation of licences can have a serious impact on an individual's livelihood and such decisions will only be taken having full regard to the human rights issues regarding the removal of such a licence drawing upon appropriate legal advice.

7.0 General

7.1 Considering the Views of those affected by Offences

Enforcement is undertaken on behalf of the public and not just in the interests of any particular individual or group. However, when considering the public interest test, where appropriate the consequences for those affected by the offence and any views expressed by those directly affected may be sought and may be taken into account.

7.2 Re-starting a Prosecution

People should be able to rely on enforcement decisions taken by Officers. Normally, if a suspect or defendant is advised that there will not be a prosecution or that the enforcement action has been stopped the case will not start again. Occasionally, there are special reasons why enforcement action will re-start, particularly if the case is serious. These reasons include:

- Rare cases where a "new look" at the original decision shows that it was clearly wrong and should not be allowed to stand;
- Cases which are stopped, so that more evidence can be collected and prepared, provided it is likely to become available in the fairly near future. In these cases, the defendant will be told that the enforcement action may well start again;
- Cases which are stopped because of a lack of evidence but where more significant evidence is discovered later.

Where possible, an offender will be told as soon as sufficient evidence is obtained that a prosecution may follow. Prosecutions will be brought without unnecessary delay.

7.3 Indemnity of Inspectors

Section 26 of the Health and Safety at Work etc. Act 1974 allows local authorities to indemnify Inspectors appointed under that Act under specified circumstances. It is the policy of the Council to indemnify Inspectors appointed under that Act against the whole of any damages and costs or expenses which may be involved, if the council is satisfied that the Inspector honestly believed that the act complained of was within their powers and that their duty as an Inspector entitled them to do it, providing the Inspector was not wilfully acting against instructions.

8.0 Monitoring and Review

This policy will be periodically reviewed and will be updated in response to new legislation, guidance or other relevant information. The reviewed policy will be approved by the relevant committee and cabinet and if significant changes are required to the policy, then it will undergo a consultation process involving the public and business community.

Customer feedback can be made direct to the Council officers, via its website, email or using the corporate complaints, compliments and comments system.

9.0 Training

The Council will put in place and resource a scheme of relevant training and continuous professional development for all staff engaged in regulatory activities. This may include training in general enforcement and service specific matters.

10.0 Complaints

10.1 General complaints

Complaints or observations regarding the content or application of this enforcement policy, should be made in writing to the relevant Head of Service at the address below. The name of the relevant head of service can be found from the Council website or by contacting the Council offices:

Welwyn Hatfield Borough Council
Council Offices
The Campus
Welwyn Garden City
Hertfordshire
AL8 6AE

Email contact-whc@welhat.gov.uk or customerservice@welhat.gov.uk

Or the Chief Executive, at the address given above.

Alternatively, complaints may be made direct on the Council's website at www.welhat.gov.uk

Complaints will not be investigated by the officers who took the decision or actions against which the complaint is being made.

10.2 Complaints regarding health and safety enforcement

Complaints regarding the enforcement of health and safety at work legislation may be made to the Independent Regulatory Challenge panel. The Independent Regulatory Challenge Panel provides an independent means for any person (whether companies or individuals) to complain about the actions of Health and Safety Executive (HSE) or Local Authority (LA) health and safety regulators. Complaints may only be referred to the Panel if they have first been raised locally and it has not been possible to resolve the matter.

The Panel will consider complaints from companies or individuals who have been visited by HSE or LA health and safety inspector and who believe that the visit was not justified as being in accordance with a risk based approach to targeting proactive inspections; or where the advice given by the HSE or LA health and safety regulator is incorrect or not proportionate to the risks.

The Panel will not consider complaints from companies or individuals subject to statutory notices or prosecution by HSE or LA health and safety regulators as they have recourse to employment tribunals or the courts respectively, which provide such an established and proper mechanism of appeal. Equally it will not deal with determinations on enforcement action subject to Primary Authority arrangements as there is an existing process to follow.

Detail of the Panel are available at <http://www.hse.gov.uk/contact/challenge-panel.htm> and the terms of reference are at: <http://www.hse.gov.uk/contact/ircp-terms.pdf>

10.3 Complaints regarding technical food safety issues

Complaints and disputes regarding technical food safety matters arising from the councils work as a food law enforcement authority may be made to the Food Standards Agency Independent Business Appeals Panel. This route can only be used when the local authority complaints procedure has been exhausted, but has not resulted in agreement. The panel will not consider food hygiene rating scheme ratings, food hygiene inspection results or formal enforcement actions as these are already covered by existing appeal routes. The panel can be contacted on line at www.food.gov.uk/business-appeal

10.4 Right to request a review of an enforcement decision

Complaints about enforcement decisions, or failure of the Council to follow the regulators code should be made to the relevant Head of Service at the address below. The name of the relevant head of service can be found from the Council website or by contacting the Council offices:

Welwyn Hatfield Borough Council
Council Offices
The Campus
Welwyn Garden City
Hertfordshire
AL8 6AE

Email contact-whc@welhat.gov.uk or customerservice@welhat.gov.uk

Regulated entities and the recipients of enforcement action have a general right to have the enforcement action reviewed by an officer not involved in the case. This will generally be by an appropriate manager on a case by case basis. This right is separate to any right of appeal and it may not be appropriate for a review to take place until the enforcement action has been concluded. Requesting such a review does not stop or override any appeal which may have been made.

10.5 Complaints to the Local Government Ombudsman

The Local Government Ombudsman is able to deal with complaints of potential maladministration.

There are three Local Government Ombudsmen in England. Each of them deals with complaints from different parts of the country, but all new complaints go to the LGO Advice Team

LGO Advice Team: 0300 061 0614 or 0845 602 1983

The Local Government Ombudsman

PO Box 4771

Coventry CV4 0EH

Fax: 024 7682 0001

An enquiry can be made by email to advice@lgo.org.uk.

11. Statutory right(s) of appeal

In some cases there may be a formal right of appeal against enforcement action taken by the Council for example to a Court or Tribunal. This right will be explained as part of the enforcement action and may be governed by strict rules or timescales. Such appeals are separate to complaints made to the Council or other bodies. It is the responsibility of the regulated entity to seek their own legal advice and assistance in making any such appeals in the timescales allowed.

Appendix A. Example data protection request form

Destroy date: 7 years 121
(05/08)

WELWYN HATFIELD BOROUGH COUNCIL  **RESTRICTED**

To:
Attention of:
Position:

DATA PROTECTION ACT 1998 - SECTIONS 29(3), 31 and 35

I am making enquiries which are concerned with:

a) the prevention or detection of crime *Please tick*
b) the prosecution of offenders

I confirm that the personal data requested are needed for those purposes and failure to provide the information will, in my view, be likely to prejudice those matters.

DETAILS OF PERSON

Name Date of Birth:

Address

INFORMATION REQUIRED:

.....
.....
.....
.....
.....
.....
.....
.....
.....
.....

To be completed by personnel requesting information.

| | |
|---------------|-------------|
| Signed: | Date: |
| Name: | |
| Tel: | |

Appendix B. Example enforcement peer review sheet

**Appendix
EXAMPLE PEER REVIEW SHEET**

1.

| | |
|---|--|
| Enforcement action under consideration | |
| Name of case officer | |
| Name of reviewing officer | |
| Case reference | |

2. What steps have been taken to confirm the recipient of the action is the correct person/body for this action (specify what checks have been made)?

| |
|--|
| |
|--|

| 3. | Case officer (answer Yes, No or N/A) | Reviewing officer comments |
|--|---|-------------------------------|
| Has the relevant legal provision been clearly identified? | | |
| Is the proposed action in accordance with the Enforcement Policy? | | |
| Have the key decisions leading to this action been recorded? | | |
| In the case of health and safety has an EMM assessment been undertaken? | | |
| Is the proposed enforcement action taken on the basis of risk | | |
| Has pre-enforcement dialogue taken place with the recipient of the proposed enforcement action | | |
| Discussion has taken place with legal advisor to the case | | |
| Liaison with any Primary Authority has taken place appropriate | | |
| Is the action proportionate having regard to the business size & activity? | | |
| Has an enforcement decision record been completed? | | |

| 4. Human Rights Act 1998 | | |
|---|---|-------------------------------|
| | Case officer (answer Yes, No or N/A) | Reviewing officer comments |
| Is the proposed action justified | | |
| Is the proposed action authorised | | |
| Is the proposed action proportionate | | |
| Is the proposed action necessary | | |
| 5. Details on Notice | | |
| | Case officer (answer Yes, No or N/A) | Reviewing officer comments |
| Do the details on any notice or covering letter match info in 2 above | | |
| Has any notice been signed by officer witnessing contravention. | | |
| Are the details relating to the Regulation/Act contravened correct. | | |
| Reason is specified for contravention | | |
| Wording of notice clear & easily understood | | |
| Measures to be taken specified | | |
| Wording of any schedule clear & easily understood | | |
| Wording reflects any relevant guidance. | | |
| Acceptable and clear time limits for completion of works | | |
| Indication of works of equivalent effect/alternative routes to compliance have been explained | | |
| Details of Appeal procedure have been provided | | |
| Details of local court or tribunal provided | | |

Signed (Case Officer) Date:

Signed (Officer reviewing notice) Date