

OXFORD CITY COUNCIL
ENVIRONMENTAL DEVELOPMENT
ENFORCEMENT POLICY

EXECUTIVE SUMMARY

Oxford City Council believes that the regulatory role provided by the Environmental Development Service is key for delivering corporate priorities and that enforcement action should be taken whenever it is appropriate.

This enforcement policy provides guidance to officers, businesses and the public about how Oxford City Council's Environmental Development Service carries out its enforcement activities. Environmental Development will take a positive and proactive approach towards ensuring compliance with relevant legislation.

Our objective is to achieve regulatory compliance and we recognise that by providing help, advice and encouragement, businesses and the public will understand and meet regulatory requirements more easily.

However, where it is necessary, we will take formal action against businesses or members of the public.

Enforcement action will be based on an assessment of risk to health or the environment. The method of enforcement that we choose will be proportionate to the offence or contravention.

If you would like to comment on this policy please contact us by –

Telephone: 01865 249811

E-mail: enforcement@oxford.gov.uk

Website: <http://www.oxford.gov.uk/>

Writing to: Oxford City Council, Environmental Development, St Aldates Chambers, 109 St Aldates, Oxford OX1 1DS

1 INTRODUCTION

1.1 The enforcement policy provides guidance to officers, businesses and the public about how Oxford City Council's Environmental Development Service carries out its enforcement activities.

1.2 *"It is the policy of Environmental Development to strive to ensure that the health, safety, wellbeing and environment of Oxford's residents, visitors, employees and employers are protected and improved wherever possible."*

1.3 Our objective is to achieve regulatory compliance and we recognise that by providing help, advice and encouragement, businesses and the public will understand and meet regulatory requirements more easily. In accordance with the Regulators' Compliance Code we will provide value for money, authoritative and easily accessible advice. Where it is necessary however, we will take formal action against businesses or members of the public. The Service will at all time use the enforcement approach that places the minimum burden on the business as long as it secures compliance.

1.4 In accordance with the Regulators' Compliance Code we will consider the impact that any regulatory intervention, inspection or enforcement may have on economic progress of businesses and the business community and only take action where there is an improvement in regulatory outcomes without imposing unnecessary burdens.

1.5 In accordance with the Regulators' Compliance Code, our regulatory activities will be based on risk assessment principles.

1.6 It is our policy that enforcement action, be it verbal warnings, the issue of fixed penalties, written warnings, statutory notices, or prosecution, is primarily based upon an assessment of risk to public health or the environment, i.e. the probability of harm to health, safety, wellbeing or environment occurring due to non-compliance with the law. Enforcement action should be consistent with this policy and should not, therefore, constitute a punitive response to minor technical contraventions of legislation.

1.7 In reaching an enforcement decision, we will make reference to relevant legislation, guidance, Codes of Practice, Corporate Priorities and other relevant arrangements such as Memorandums of Understanding. Reference in particular shall be made to the Regulator's Compliance Code.

1.8 All authorised officers when making enforcement decisions shall abide by this policy. Any departure from the policy must be exceptional, capable of justification and be fully considered by relevant senior managers before a decision is taken, unless there is a significant risk to the public in delaying the decision.

2 LEGAL STATUS OF THE ENFORCEMENT POLICY

2.1 The policy received approval from the City Executive Board on the .

2.2 In certain circumstances we may decide to depart from this enforcement policy where it is considered to be in the public interest. Where we do this, any decision will be properly reasoned based on material evidence, documented, and approved by a senior manager.

3 AUTHORISATIONS

3.1 Under the Constitution the Head of Environmental Development has delegated powers to authorise officers to take enforcement action. Only officers with suitable qualifications, competence and experience will be authorised under the relevant legislation to carry out enforcement functions.

3.2 All authorised officers must comply with this policy when taking enforcement decisions.

4 COMPLAINTS, COMPLIMENTS AND COMMENTS ABOUT THE SERVICE

4.1 We will provide well publicised, effective and timely complaints, compliments and comments procedures that are easily accessible to business, the public, employees and consumer groups. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely timescales involved.

5 ENFORCEMENT OPTIONS

5.1 Enforcement decisions shall be proportionate, consistent, balanced, fair and transparent and relate to common standards that ensure the public is adequately protected. When deciding upon the method of enforcement action we will take into account:

- The history of a business or individual
- The existence of an adequate system for managing risks and/or evidence of recognised external accreditation
- The seriousness of the risk or harm likely to occur
- Legal, official or professional guidance
- Local priorities of Oxford City Council
- The likely effectiveness of the various enforcement options
- Whether previous warnings have been acted upon and the current practices of the business or individual

5.2 Officers considering enforcement action in accordance with this policy must have due regard to the provisions of the Human Rights Act 1998 and where appropriate the Regulation of Investigatory Powers Act 2000 concerning surveillance.

5.3 Enforcement decisions will be fair, proportionate, consistent, transparent, and have meaningful sanctions. They will not be influenced by issues such as ethnicity, origin, gender, religious beliefs, political views or sexual orientation of the suspect, victim, witness or offender.

5.4 The Environmental Development Service actively supports multi-agency working and recognises the strengths and advantages of co-ordinated enforcement approaches and interventions. Environmental Development Officers may choose to take limited action in circumstances where enforcement action or intervention by another service or agency is agreed to be the most appropriate. Normally this will be agreed in accordance with service level agreements, multi-agency protocols or individual case conference.

6 THE DECISION AS TO WHAT ENFORCEMENT ACTION TO TAKE

6.1 The decision to take enforcement action may be taken in consultation with the officer in charge of the case, Team Manager, Service Manager, Head of Service and where necessary, the Law and Governance Service (see also 17).

6.2 When deciding upon which enforcement action to take in relation to businesses, officers should consider the need to contact primary authorities, lead authorities and originating/home authorities in order to achieve consistent enforcement action.

6.3 This policy applies to all the legislation enforced by Environmental Development. Enforcement includes any action taken by officers aimed at ensuring that businesses or individuals comply with the law. This is not limited to formal enforcement action such as prosecution. Examples of the main types of action that can be considered are:

- No action
- Informal action and advice
- Fixed Penalty Notices

- Formal statutory notices
- Seizure of goods/equipment
- Forfeiture proceedings
- Carrying out works in default
- Injunctions
- Closure Orders and Representations
- Simple Caution
- Prosecution
- Seizure of assets gained through criminal activity

7 NO ACTION

7.1 There may be cases where contraventions of the law may not warrant any action. This could be where the costs of actions outweigh the benefits or for example where the offence is minor and the offender is elderly and frail and formal action would seriously damage their health. In such circumstances we will offer advice as stated below.

8 INFORMAL ACTION & ADVICE

8.1 Informal action to secure compliance with legislation includes offering advice, verbal warnings and requests for action, the use of letters and the issue of inspection reports, including those generated on site following an inspection. Examples of when informal action and advice may be taken include:

- Where the act or omission is not serious enough to warrant formal action
- From the history of the individual/enterprise, it can be reasonably expected that informal action will achieve compliance
- Confidence in the individual/enterprise's management is high
- The consequences of non-compliance will not pose a significant risk to public health/safety/wellbeing/environment
- Where informal action will be more effective than a formal approach, e.g. a business associated with voluntary organisations using volunteers
- Where the problem is widespread and other actions may be more effective, for example, publicity campaigns
- Where mediation between parties would produce a more effective outcome.

8.2 When an informal approach is used to secure compliance with legislation, any written documentation issued or served must:

- Contain all the information necessary to understand what action is required and why it is necessary
- Indicate the legislation involved, measures which will enable compliance with the legal requirements and that other means of achieving the same effect may be chosen; and
- Clearly indicate any recommendations under an appropriate heading to show that they are not a legal requirement.

8.3 Officers shall clearly differentiate between legal requirements and recommendations, even if only giving verbal advice.

9 FIXED PENALTY NOTICES

9.1 Certain offences can be dealt with by issuing a Fixed Penalty Notice (FPN) and we may choose to issue a FPN on a first occasion, without issuing a warning. Examples where FPNs may be used are littering and dog fouling offences.

10 FORMAL STATUTORY NOTICES

10.1 Formal statutory notices are an important tool to secure compliance. They give duty holders clear direction on what action is required by law, the timescales for compliance and provide a formal appeal mechanism should they disagree with the requirements of the notice. Officers will consider the issue of statutory notices, including Improvement Notices, where one or more of the following criteria apply:

- There is/are significant contravention(s) of legislation.
- There is a lack of confidence in the person responsible to respond to an informal approach.
- There is a history of non-compliance with informal action.
- Standards are generally poor with little awareness of statutory requirements.
- The consequences of non-compliance could be potentially serious to public health/safety/wellbeing/environment.
- Although it is intended to prosecute, effective action also needs to be taken as quickly as possible to remedy conditions that are serious or deteriorating.

10.2 The use of statutory notices shall, in general, be related to the risk posed. It is not appropriate, for example, to issue Improvement Notices for minor contraventions which are of a trivial nature.

10.3 Statutory notices shall only be issued by officers who have been authorised by the Head of Environmental Development.

10.4 Where statutory notices are served, any means of appeal against the notice will be notified to the recipient of the notice.

10.5 The failure to comply with a statutory notice will, in general, result in Court proceedings. Officers must therefore have sufficient evidence available to justify issue of the notice, be prepared to pursue non-compliance in the Courts and be satisfied that proceedings are likely to succeed.

10.6 A charge as specified in the Council's current Fees and Charges report will be made if the following notices are served under the Housing Act 2004:

- a) Housing Act - section 11(Improvement Notices)
- b) Housing Act - section 12
- c) Housing Act - section 20(Prohibition Orders)
- d) Housing Act - section 21
- e) Housing Act - section 41(Emergency Remedial Action)
- f) Housing Act - section 43 (Emergency Prohibition)

10.7 Written notification will be given, where practicable to a recipient of a notice requiring non emergency works. In case of emergency works, every reasonable effort will be made to contact the recipient before action is taken.

10.8 No charge will be made for Hazard Awareness Notices served under the Housing Act 2004.

11 SEIZURE OF GOODS/EQUIPMENT

11.1 Certain legislation enables authorised officers to seize goods, equipment or documents. Cases where this may take place are where there is unsafe food, sound equipment that is being used to cause a statutory noise nuisance or evidence that is for possible future court proceedings. When equipment or goods are seized we will give a receipt to the person from whom the goods are taken.

12 FORFEITURE PROCEEDINGS

12.1 Where there is a need to dispose of goods in order to prevent them from being used to cause a further problem, the forfeiture procedure may be used in conjunction with seizure and/or prosecution. Where this is considered appropriate we will make an application to the Magistrates' Courts.

13 WORKS IN DEFAULT

13.1 In some circumstances it may be necessary for officers to carry out works to remedy the effects of an offence; such cases would include where there are emergency repairs required to a dwelling, defective drainage to a property, activated intruder alarms, or inadequately secured properties. All reasonably incurred costs of carrying out the works will be recouped from the responsible person or placed as a charge on the property where this is an available option.

14 INJUNCTIONS

14.1 The local authority may go to the High Court to obtain an injunction to prevent or reduce the effects of an offence. This decision will not be taken lightly. An injunction will be considered, for example, where an offender is repeatedly found guilty of similar offences, where there are extreme or dangerous circumstances, or where there is significant customer detriment.

15 CLOSURE ORDERS AND REPRESENTATIONS

15.1 The local authority will consider the use of a closure order to close premises associated with persistent disorder or serious anti-social behaviour. This includes excessive noise and rowdy behaviour related to frequent drunken parties, or where any anti-social residents are intimidating and threatening their neighbours. The decision to close premises will not be taken lightly and will be done so in consultation with The Police, and any other relevant partner agencies/services.

15.2 The Environmental Development Service is also a Responsible Authority for the purposes of the Licensing Act 2003. A Representation to the Licensing Authority for a review will be considered where:

The Responsible Authority has specific evidence in connection with a failure or failures in the premises connected to the licensing objectives, and

The matters are either serious or there has been a failure to address the matters after they have been raised with the Premises Licence Holder by the Responsible Authority.

16 SIMPLE CAUTIONS

16.1 A simple caution may be used as an alternative to prosecution in certain circumstances. For example:

- To deal quickly and simply with less serious offences
- To divert less serious offences away from the Courts but at the same time reducing the chance of repeat offences
- Where the officer feels that a formal caution would be effective given the attitude and the history of the offender.
- Simple cautions can only be used where the offender is 18 years or older, where he/she admits the offence and is willing to accept a caution, and there is a realistic chance of a successful prosecution if he/she refuses to accept a caution.

16.2 Where a person declines the offer of a simple caution, unless there are very exceptional circumstances, there is no alternative but to prosecute.

17 PROSECUTION

17.1 The circumstances which are likely to warrant prosecution may be characterised by one or more of the following:

- Where the offence involves a flagrant breach of the law such that public health, safety, wellbeing or the environment is or has been put at risk.
- Where the alleged offence involves a failure by the suspected offender to correct an identified serious potential risk, having been given a reasonable opportunity to comply with the lawful requirements of an authorised officer.
- Where the offence involves a failure to comply in full or in part with the requirements of a statutory notice.
- Where there is a history of similar offences.

17.2 When circumstances have been identified which may warrant a prosecution, all relevant evidence and information must be considered to enable a consistent, fair and objective decision to be made.

17.3 Officers will consider the impact of potential enforcement action on witnesses who may as a result suffer repeat victimisation or harassment. In such circumstances, officers from Environmental Development will seek professional assistance, for example from Victim Support/ Witness Support Service.

17.4 Before a prosecution proceeds, the Service Manager responsible for deciding on enforcement action must be satisfied that there is relevant, admissible, substantial and reliable evidence that an offence has been committed by an identifiable person or company. There must be a realistic prospect of conviction; a bare prima facie case is not enough. With insufficient evidence to prosecute, other types of formal action, such as formal cautioning, are not alternatives.

17.5 In addition to being satisfied that there is sufficient evidence to provide a realistic prospect of conviction, there must be a positive decision, based on relevant criteria that it is in the public interest to prosecute. The Code for Crown Prosecutors provides guidance which should be considered, including relevant public interest criteria. The public interest test will also include reference to the Council's corporate priorities.

17.6 When decisions are being taken on whether to prosecute, the guidance contained in Code for Crown Prosecutors is relevant. Factors may include:

- The seriousness of the alleged offence.
- The previous history of the party concerned.
- The likelihood of the defendant being able to establish a defence.
- The ability of any important witnesses and their willingness to co-operate.
- The willingness of the party to prevent a recurrence of the problem.
- The probable public benefit of a prosecution and the importance of the case, eg whether it might establish a legal precedent.
- Whether other action, such as issuing a simple caution in accordance with Home Office Guidance or an Improvement Notice or imposing a prohibition, would be more appropriate or effective. (It is possible to prosecute as well as issue a notice; failure to comply with a notice would be an additional offence.)
- Any explanation offered by the suspected company or offender.
- Whether statutory notices and/or simple cautions have been issued during the previous 5 years for a similar offence.
- Where there have been continued and persistent failures to comply with the law previously.
- The ability of the individual to comprehend the seriousness of the prosecution against them, for example due to their age or if they are a vulnerable adult.

17.7 The effect of the Criminal Justice Act 1991 has meant that Magistrates have to consider the means of the defendant when determining the level of fine or whether or not to award costs. This is an additional factor to consider when deciding whether to prosecute and, where appropriate, due consideration should be given to the use of simple cautions.

17.8 Once a decision to instigate prosecution has been taken, the matter shall be referred without undue delay to the Law and Governance Service.

18 SEIZURE OF ASSETS GAINED THROUGH CRIMINAL ACTIVITY

18.1 Where the Authority considers that assets belonging to an individual have been obtained through criminal activities and the individual has committed an acquisitive crime, the authority will consider the use of powers given to us by the Proceeds of Crime Act 2002 to trace and recover those criminal assets.