

Bromsgrove and Redditch Environmental Crime Enforcement Policy.

1. Introduction

- 1.1 Since June 2024, Worcestershire Regulatory Services (WRS) has delivered some environmental crime functions on behalf of Bromsgrove and Redditch Councils. This enforcement policy outlines the approach to be taken to tackle those environmental crimes that the shared service has been asked to address.
- 1.2 The following legislative provisions contain provisions that create criminal offences and provide local authorities and their officers with powers to tackle these. Legislation includes the Environmental Protection Act 1990, Control of Pollution Act 1989, Clean Neighborhoods and Environment Act 2005; Environment Act 1995 and Anti-Social Behavior Crime and Policing Act 2014. The common specific offences included are:
 - **Littering** to include the offence of dropping litter as and litter escaping from a business to include offences relating to public and private land.
 - **Fly tipping** from a single bin bag or mattress to large scale lorry-loads of waste. Most of the fly tipping in Redditch is single domestic waste items whereas Bromsgrove, being more rural, is more impacted by fly tipping by commercial enterprises.
 - **Failure to dispose of Waste appropriately** to include householder's and business's duty of care for how they manage and dispose of their waste. This includes any requirement to hold waste carriers licensing or requirements for waste transfer notes. The Duty of Care is a legal requirement for those dealing with certain kinds of waste to take all reasonable steps to keep it safe. It applies to anyone who is a holder of household, industrial and commercial waste, known as controlled waste.
 - **Dog Fouling** in public open spaces.
- 1.3 This policy supersedes the Joint Environmental Enforcement Strategy for Bromsgrove District Council and Redditch Borough Council except for elements relating to abandoned and nuisance vehicles, and to the enforcement of graffiti and fly posting, which are outside of the scope of shared service activity and therefore also of this revision of the enforcement policy. These elements remain enforced by the Environmental Services team serving the two councils.
- 1.4 This Enforcement Policy explains how the Service will carry out its enforcement duties and, in addition, what business and citizens in the Bromsgrove and Redditch areas can expect. It will be applied by officers in relation to the functions listed in 1.2 above. It is distinct from any general Enforcement Policies of the individual local authority partners, which apply to other regulatory functions provided by them such as planning,

and from the general enforcement policy operated by the shared service covering its activities on behalf of the six district councils.

- 1.5 The primary outcome from service activities in this area is to ensure residents and businesses comply with legislation so that members of the public, businesses and their employees, and the environment are protected. The work should also ensure a level playing field for those involved in the commercial collection and disposal of waste. Fair, proportionate, and effective enforcement is essential to protecting the health, safety, and economic interests of all concerned, and there are a range of tools available to the Service to achieve this. Whilst in the main compliance will be achieved using advice and where needed, lower-level formal sanctions and actions, there will be a need to take people and businesses through the court process in some circumstances. These are outlined further in the policy.
- 1.6 In delivering these activities, the Service must also have regard to the various general duties imposed on the partner authorities e.g., section 17 of the Crime and Disorder Act, and the general powers given to local government for the promotion of well-being under the various Local Government Acts. Officers are also obliged to ensure that their actions are in-line with provisions in the Human Rights Act 1998 when taking decisions relating to enforcement action.

2. Policy Scope

- 2.1 The shared service is committed to providing an effective service with officers carrying out their duties in an equitable, practical, and consistent manner. To achieve this, officers and the service will have regard to the principles in a number of documents that provide guidance or act as codes of practice which must be given due regard. These include:
 - The Regulators Code (DBaT)
 - Local Government Regulation's Home Authority Principle,
 - Office for Product Safety and Standards' (OPSS) Primary Authority Principle
 - The Crown Prosecution Service Code for Crown Prosecutors (as amended.)
 - Human Rights Act 1998 and the European Convention on Human Rights.
- 2.2 The Policy applies to actions in relation to all the relevant legislation enforced by the Service. Enforcement action for the purposes of this policy includes any action taken by officers aimed at ensuring that individuals or businesses comply with the law and goes beyond just formal enforcement action such as prosecution.

3 General Principles

- 3.1 Prevention is generally better than cure and the shared service's role therefore can involve actively working with householders and businesses to provide advice on and assist with achieving compliance. In line with its business methodology, where data

and intelligence identify a need for widespread educational or informative action to improve compliance, such actions will be delivered and prioritised as informal preventative measures. Where the service considers that formal action is necessary, each case will be considered on its own merits. However, there are general principles that apply to the way in which each case will be approached. These are set out in this Policy.

- 3.2 Regulatory matters will relate to both businesses and individuals. Both types of case will be treated in the same way and the general principles outlined around proportionality of action will be applied. Informal resolution will be tried before resorting to formal action and potentially the Courts, unless the law mandates that an authority must act in certain circumstances, or the circumstances are so serious that anything other than immediate formal action would be inappropriate. Even then, the service can use the discretion that all local authorities have as to the timeliness of taking formal action.
- 3.3 Enforcement decisions will be fair, independent, and objective and will not be influenced by issues such as ethnicity or national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness, or offender. Such decisions will not be affected by improper or undue pressure from any source. We will consider the views of any victim, injured party, or relevant person to establish the nature and extent of any harm or loss, and its significance, in making the decision to take formal action.
- 3.4 This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens on business. We recognise the positive impact that the service can have on economic progress and growth in the local economy and see it as part of our role to encourage and support the growth of legitimate business activity within the legal framework provided by central government.

4 Intelligence and Risk

- 4.1 We will ensure that our resources are targeted where they will be most effective. We use intelligence, alongside the assessment of risk, to inform all aspects of our regulatory activity including:
- Data collection and other information requirements.
 - Programmes of Inspection, Advice and support.
 - Enforcement activity and various forms of sanction.
- 4.2 Our approach to environmental crime will be intelligence-led and interventions will be driven by the assessment of data and information. Decisions on tactical actions will be influenced by:

- Compliance history (i.e., are there repeat offenders involved)
- Potential future risks (is there a likelihood of reoffending)
- Scale and severity (the size of incident, its wider impact, significance of the offence)

4.3 Intelligence will be used to direct inspection-based projects, targeting commercial sectors or businesses where there are known issues. Obviously, a complaint may also trigger a visit if that is the most appropriate response. We will review our approach to regulatory activities from time to time, to remove any unnecessary burdens from businesses.

5 Advice and Guidance

- 5.1 We will provide general information, advice, and guidance to make it easier for householders and businesses to understand and meet their obligations in clear, concise, and accessible language, using a range of appropriate formats and media. Information will cover all legal requirements relating to our activities, as well as changes to legal requirements. We will continue to ensure householders and businesses are aware of their legal obligations and where changes are of great significance, we will look at the best ways of informing householders and businesses of these changes e.g., through press releases, newsletters, social media, community groups or letter drops.
- 5.2 WRS will promote self service via Bromsgrove and Redditch's website to report environmental crimes, and an acknowledgement will be provided. When offering advice to businesses, the service will clearly distinguish between statutory requirements and advice/ guidance, aimed at improvements above minimum legal standards. WRS recognises its advice should help achieve compliance but impose the minimum burden required on the business concerned. Advice will be confirmed in writing, if requested.
- 5.3 Where a business knows it has a problem and seeks advice to remedy the situation; this will not normally trigger enforcement action unless the impacts on the environment or the public are severe. Where appropriate WRS will seek to support the remedial action to prevent future problems however must reserve the right to take enforcement action in serious cases.

6 Inspection and other surveillance tactics

- 6.1 WRS activity will be driven by intelligence. Inspection and other forms of market surveillance will inform us about problem areas or paint a picture of broader trends to help inform the deployment of resources.

- 6.2 WRS will focus its efforts where the assessment of intelligence or risk show there are areas where non-compliance is more likely or non-compliance poses a more serious risk to regulatory outcomes.
- 6.3 Where WRS and another law enforcement agency have a shared interest in an individual or business, we will seek to work together to tackle environmental crime. We will also share intelligence with other law enforcement bodies, where appropriate, to support regulatory outcomes. The service will also take account of the circumstances of smaller businesses, including any difficulties they may have in achieving compliance unless the non-compliance in question creates a serious risk.

7.0 Enforcement Action

- 7.1 In accordance with good practice, we will:

- Publish our Enforcement Policy,
- Report on our enforcement activities year on year to interested parties through an Annual Report,
- Follow-up enforcement actions where appropriate,
- Be transparent in the way in which we enforce requirements and, apply and determine penalties /sanctions/ formal actions (when such powers are made available.)

- 7.2 When considering what action should be taken, we will look to:

- Be proportionate to the nature of the offence and the harm caused,
- Change the behaviour of the offender,
- Eliminate any financial gain or benefit from non-compliance,
- Address the harm caused by regulatory non-compliance, where appropriate,
- Deter future non-compliance,
- Be responsive and consider what is appropriate for the particular offender and regulatory issue, and
- Avoid perverse incentives that might influence the choice of sanctioning response.

- 7.3 When considering formal enforcement action, we will, when appropriate, discuss the circumstances with those suspected of a breach and take these comments into account when deciding on the best approach, this will routinely form part of any investigation. Where a prosecution may be an option, the offender is likely to be offered an interview under the provisions of the Police and Criminal Evidence Act 1984, which will give an opportunity for the alleged offender to give their side of the story.

- 7.4 Where the outcome is a decision to send a file to the relevant legal service for them to consider prosecution, this will be reported to the potential defendants. For lesser

disposals, an explanation of the need for the action will be provided as soon as is reasonably practicable after the intervention.

7.5 Deciding what enforcement action is appropriate

In assessing what enforcement action is necessary and proportionate, consideration will be given to:

- The seriousness of compliance failure or offence.
- The individual or business's past compliance i.e. if this is a reoccurring issue.
- The scale and extent of the offence.
- The culpability of those involved i.e., was there guilty knowledge in the actions taken,
- Any official or professional guidance, legal opinions or case law.

7.6 Enforcement Options

There are many potential enforcement options in some legislative areas. The level of action taken will vary from no action/ verbal advice & assistance through to proceedings in Court. Examples of the main types of action that can be considered are shown below:

- No action/ verbal advice & assistance.
- Informal Action and Written Advice.
- Community Protection Warning
- Community Protection Notice
- Statutory Notice to produce information
- Fixed Penalty Notices
- Seizure of goods/equipment
- Simple Caution
- Prosecution
- Other Actions

7.7 No Action/ Verbal Advice or assistance

There will be circumstances where a contravention may not warrant action, or it may be inappropriate. Many minor contraventions can be dealt with via advice and/ or assistance. Where this is not appropriate, due to the behaviour of one party or where the complainant is from a vulnerable group, the service will consider the best option for intervention depending on the circumstances.

7.8 Informal Action and Written Advice

For minor breaches, we will give advice on how to put them right, including a deadline by which this must be done. The time allowed will be reasonable and take into account the seriousness of the contravention and the implications of the non-compliance.

Where the advice required is detailed, or there are potentially serious implications from the failure, the advice will be provided in writing. Failure to comply could result in further enforcement action.

Wherever possible we will advise alleged offenders about ‘good practice’, but we will clearly distinguish between what they must do to comply with the law and what is recommended best practice.

7.9 Community Protection Warning (CPW)

Issued under Part 4 of the Anti-social Behaviour, Crime and Policing Act 2014, CPW’s are intended to address anti-social behaviour which unacceptably affects victims and the community. They act as a warning and must be issued prior to a Community Protection Notice (CPN) advising them to stop doing / do specific things and to take reasonable steps to achieve a specified result. A CPW or CPN can be served on an individual or a body such as a business. Failure to heed the warning contained within a CPW after giving a specified time frame where the effect continues may lead to service of a CPN. The purpose of a CPW is to prevent or reduce the effect of the conduct and the likelihood of it continuing or reoccurring.

7.10 Community Protection Notice (CPN)

Issued under the same legislation above, a CPN may be the next enforcement action should the warning of a CPW not be heeded. A CPN is appropriate where there are reasonable grounds to believe that a person or business’s conduct:

- is having a detrimental effect on the quality of life of those in the locality, and
- is unreasonable, and
- the behaviour is of a persistent or continuing nature.

A CPN outlines what steps must or must be taken in a given time frame. Failure to comply with a CPN without reasonable excuse may result in the issue of a Fixed Penalty Notice (FPN) with the fine being £100 for failing to comply with the requirements of the CPN. Alternatively, a FPN may not be appropriate, and the situation deemed severe enough to proceed straight to Court depending on the impact and in consideration with the principles of this enforcement policy. Items used in the commission of the offence may be seized. There is a right to appeal a CPN to a Magistrates Court within 21 days of issue.

7.11 Statutory notice to produce information

Officers of the Service have the power under various pieces of legislation, or through delegation, to issue notices that require information to assist in their investigations. This could include but is not limited to waste carriers license and waste transfer notes.

Failure to respond and produce the requested documents could result in FPN or prosecution.

All notices issued will contain details of any Appeals process that may be available to the recipient.

7.12 Fixed Penalty Notices (FPN's)

FPN's can be issued for the following offences:

- Littering - Depositing Litter (section 87/88 - Environmental Protection Act 1990)
- Failure to produce authority (Waste Carrier's Licence) (Section 5/5B Control of Pollution (Amendment) Act 1989)
- Failure to produce documentation (Waste Transfer Notes) (Section 34(5) and regulations made under it 34/ (6)/34A Environmental Protection Act 1990)
- Breach of Waste Duty of Care (section 34 Environmental Protection Act 1990)
- Fly Tipping - Depositing Controlled Waste (Section 34(1)(a) and Section 33(Z)(a) Environmental Protection Act 1990)
- Breach of Community Protection Notice (Section 52 of Anti-Social Behaviour, Crime and Policing Act 2014)

FPN's are recognised as a low-level enforcement tool and avoid the defendant obtaining a criminal record. They will only be used in appropriate circumstances to give a fast and measured response to a situation. Where legislation permits an offence to be dealt with by way of a Fixed Penalty Notice (FPN), we may choose to administer a FPN on a first occasion, without issuing a warning. We will only issue a FPN if we are satisfied that there is enough evidence to consider prosecuting an individual for the offence the FPN is offered for as an opportunity to discharge their liability and avoid the risk of a criminal record. There may also be circumstances where it is considered that the offence is so severe and public interest tests (see later in 7.15 Institution of legal proceedings) require a case to be considered without the issue of an FPN.

7.13 Seizure of goods/equipment

We can seize a vehicle, trailer or mobile plant and their contents if it's believed it is being, has been or will be used to commit a waste crime such as fly-tipping. Vehicles and their contents can be seized under the Control of Pollution (Amendment) Act 1989 or the Environmental Protection Act 1990. A vehicle can be seized:

- If it is used in fly-tipping;
- If it is driven by somebody who is not registered as a waste carrier;
- If it is used to transfer waste to somebody who is not registered as the waste carrier;
- If it is being used at a site that is breaking the rules of an environmental permit;

There are also provisions in Section 51 of the Anti-social Behaviour, Crime and Policing Act 2014 to seize items used in the commission of offence. This legislation applies to the breaching of a CPN and can be undertaken prior to prosecution.

In both incidences such action is considered a last resort option where compliance has repeatedly not been achieved by other means and there are strict process measures that must be followed when carrying out this action.

7.14 The use of Simple Cautions

Where the public interest justifies it, the senior officer reviewing a case will consider offering a Simple Caution (or Reprimand/ Final Written Warning if the offender is below the age of 18.) In offering a Simple Caution, we will take account of the Home Office Guidelines in relation to the cautioning of offenders, and the Code for Crown Prosecutors. Where the offender is under 18 and a formal approach is being considered, appropriate bodies such as the Youth Offending Team will be consulted.

A Simple Caution requires an admission of guilt on behalf of the offender, however there is no sentence and there is no recorded conviction. A caution will remain on record for a period of 2 years and may be cited in Court should a further offence be committed and prosecuted during that time.

7.15 Institution of Legal Proceedings

Once an officer has completed their enquiries, a case report will be submitted to a senior officer, independent of the investigation, who will decide the most appropriate course of action using amongst other things, the criteria identified below.

Where the law has been broken, there is a range of enforcement options available and, under normal circumstances, a process of escalation will be used until either compliance is reached or there is no option other than to instigate proceedings. This approach would not be appropriate where there is a serious risk to public safety or the health of the environment, or the offences have been committed deliberately or negligently or involve deception, or where there is significant economic detriment or potential detriment caused by the activity. Each case is unique and will be considered on its own facts and merits.

The senior officer will take into consideration the requirements of the Code for Crown Prosecutors and other relevant codes before deciding whether to pass the file to the relevant legal officer for their review and the formal consideration of whether to authorise the institution of legal proceedings.

Before doing this, the senior officer will have to be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each defendant for each offence



identified. They must have concluded that a jury or bench of Magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged based on the evidence before them. To this end, the senior officer will look at all the available evidence, reliability of witnesses, supporting documentation and any other matters relating to the investigation. Only when this evidential test has been satisfied will the public interest to proceed with the prosecution be considered.

In deciding whether a prosecution will serve the public interest, the senior officer will balance factors for and against the prosecution carefully, fairly, and impartially. Some factors may increase the justification to prosecute whereas others may militate against. Below are some of the matters to be taken into consideration for and against criminal proceedings. This is not an exhaustive list and, as such, each case is taken strictly on its own individual merits:

Factors in Favour of Prosecution

- The offender was in a position of control within a business;
- The offence was premeditated and/or planned;
- The offender acted dishonestly, wilfully, or negligently.
- The offender targeted a vulnerable group or person.
- The seriousness of the offence is significant;
- The offender has benefited from the criminal conduct;
- The offender has received advice or a warning concerning the circumstances of the offence or similar matters.
- The offender has previous convictions that are relevant.
- The offence, though not serious in itself, is widespread in the area where it was committed.
- There are grounds to believe that the offence is likely to be continued or repeated, for example by a history of recurring conduct.
- The outcome of a prosecution might serve an important, informative purpose or establish a legal precedent.

Factors which would mitigate against the need for a prosecution

- The offence was minor in nature and because of a genuine mistake or misunderstanding, which did not involve significant negligence.
- The offender is vulnerable, for example through age-related issues, or was at the time of the offence suffering from significant mental or physical ill health, which contributed to the commission of the offence, and the offence was neither serious nor likely to be repeated.
- The offender put right the loss or harm caused prior to the intervention of the Service.
- The defendant was a youth at the time of the offence.
- There has been a long delay between the offence and any potential court action, unless either:

- (i) The offence is serious,
- (ii) The delay has been caused by the defendant or his/ her legal representatives,
- (iii) The offence has only recently come to light, or
- (iv) The complexity of the offence meant that there has been a long investigation.

7.16 Other Actions

Injunctive action is a civil law process that may be used to ensure that person or business desists from a particular pattern of behaviour or action. Whilst these are not the norm in dealing with regulatory matters, seeking an injunction may be the most appropriate method of disposal for an issue. A decision to seek an injunction would be taken by the legal officer for the relevant partner council and is most likely to be relevant where the normal legal processes such as the issuing of notices and prosecution have not led to resolution of a problem. WRS officers will work with the relevant partner legal team to develop such cases and support them being taken through the Court process.

If a CPN is breached, we can apply for a Remedial Order which may require the defendant to carry out specific works in line with the CPN or allow the work to be carried out on our behalf to remedy the breach. Refusing consent amounts to a breach of the Order which could possibly lead to further proceedings for contempt of court.

Some cases taken by the service can lead to applications being made under the Proceeds of Crime Act 2002 (POCA) for confiscation of assets, or a POCA investigation may run

alongside an investigation into breaches. These are likely to be the most serious cases, where there is persistence of offending over a long period of time or where the offences are deemed to be "lifestyle crime" under POCA. Their purpose is to recover the financial benefit that the offender has obtained from his criminal conduct. WRS will look to use these provisions in an appropriate manner.

8.0 Additional Information

The Senior Managers involved in making the more serious decisions will also have regard to legal advice from the relevant partner Head of Legal Services and will not instigate any legal proceedings without their authority.

8.1 Standards and Accountability

Where relevant WRS will create effective consultation and feedback opportunities to ensure we have continuing cooperative relationships with businesses and other interested parties. We will ensure our officers provide courteous and efficient services to residents and businesses. We will enable them to interpret and apply relevant legal requirements and ensure that they enforce requirements fairly and consistently in

similar situations. We will take account of comments from businesses and other interested parties regarding the behaviour and activity of our staff.

8.2 Liaison with other regulatory bodies and enforcement agencies

Where appropriate, enforcement activities within WRS will be coordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement.

Where an enforcement matter affects a wide geographical area beyond the boundaries of Bromsgrove and Redditch Council areas involves enforcement by one or more other local authorities or organisations; where appropriate all relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activity coordinated with them.

WRS will share intelligence relating to wider regulatory matters with colleagues within the partner authorities, other regulatory bodies and enforcement agencies, and examples include:

- Government Departments and Agencies
- Police Forces and Fire Authorities
- Other Statutory Bodies
- Other Local Authorities

8.3 Obstruction of Officers

The areas of legislation covered by this policy make it a clear, that it is an offence to obstruct authorised officers in carrying out their roles. This includes offering the officer reasonable assistance in the conduct of their duties and investigations / inspections.

Section 6 and 7 of the Clean Neighbourhoods and Environment Act 2005 and section 88 (8A) and (8B) of the Environmental Protection Act 1990 make it an offence to fail to provide name and address or provide false or inaccurate name and address if an authorised officer proposes to give that person a fixed penalty notice in respect of nuisance parking an littering, respectively. These will be enforced, with Police assistance as required, to ensure that offences are dealt with at the lowest level possible.

The council regards the obstruction of, or assaults (physical and/or verbal) on, staff whilst lawfully carrying out their duties as a serious matter. Any instances will be referred to senior managers to determine the next steps, which may lead to legal proceedings against the perpetrator. Any threat or assault will not be tolerated.

8.4 Storage and Disclosure of Information

Information collected or recorded as part of the council's enforcement activities will be securely retained in a paper and/or electronic format for a period defined by legislation or

required for future reference by the service. This information will include decisions taken about the choice of enforcement options.

The identity of a person providing the council with information about other people committing crime, will remain confidential unless prior agreement by the person is obtained, or its disclosure is authorised by law or by a court of law.

Personal data held manually or as computer records will be handled in accordance with the Data Protection Act 2018 (DPA). This information will be used in accordance with the council's

DPA registration. Exemptions to this include where information is disclosed to other agencies or used for another reason for the purposes of detecting or preventing crime. This will include the sharing of information between Council services and with the police and other enforcement agencies. Sharing of information relating to the Crime and Disorder Act will be undertaken in accordance with the appropriate information sharing protocol.

Right of access to information held by the council will be given on request, in accordance with the Freedom of Information Act 2000 and Environmental Information regulations 2004 unless the information is already publicly available (as described in the council's Publication Scheme). Exemptions can be found in the Act, Regulations and the council's publication scheme.

8.5 Appeals/Cancellation

There is no appeal process against the issuing of a Fixed Penalty Notice. Any dispute relating to the issue of a Fixed Penalty Notice may mean the appellant will be invited to attend an interview under caution in accordance with the Police and Criminal Evidence Act. In the event of refusal to pay, then the matter will be considered for prosecution.

The Team Manager not previously involved in the case shall have the authority to cancel fixed penalty notices, but only if the notice is shown to have been wrongly served.

8.6 Further Information

Anyone requiring further information on this policy should contact Worcestershire Regulatory Services by writing to:

Worcestershire Regulatory Services
Wyre Forest House
Finepoint Way,
Kidderminster,
Worcestershire
DY11 7WF
Or by e-mail to:
enquiries@worcsregservices.gov.uk