

Corporate Enforcement Policy

1. INTRODUCTION

- 1.1 This document sets out what businesses and others can expect from Oldham Council and its officers when enforcement action is being taken. It commits the Council to good enforcement practices and procedures. The document has been prepared with regard to current legislation and specific policies which detail standards to which the Council must adhere.
- 1.2 The Council has enforcement responsibilities to protect the public, the environment, and groups such as residents, tenants, consumers and businesses. It is important that these enforcement functions are carried out in an equitable, practical and consistent manner, and that those subject to regulation are aware of the Council's enforcement policy.
- 1.3 The enforcement policy has been prepared having regard to:
 - The Enforcement Concordat: Good Practice Guide for England and Wales
 - The Police and Criminal Evidence Act 1984
 - The Human Rights Act 1998
 - The Code for Crown Prosecutors
 - The Legislative and Regulatory Reforms Act 2006 (LRRA)
 - The Regulatory Enforcement and Sanctions Act 2008
 - The Regulators' Compliance Code

In some cases we may consider that a provision contained in one or more of these codes is not applicable or is outweighed by another provision or relevant factor.

2 OUR ENFORCEMENT PRINCIPLES

- 2.1 This policy applies to all legislation enforced by enforcement officers with delegated powers within the Council.
- 2.2 Enforcement includes any criminal or civil action taken by enforcement officers aimed at ensuring that individuals or businesses comply with the law.
- 2.3 The effectiveness of an enforcement service generally depends on the attitude of those being regulated. We acknowledge that prevention is better than cure and we will actively work with those wishing to comply with the law to advise on, and assist with, compliance.

- 2.4 We will provide information and advice in plain language on the legislation that we enforce. We will circulate this as widely as possible using all media means which are deemed to be appropriate.
- 2.5 Officers will announce themselves on arrival at premises and show their identification upon request or if legally required so to do.
- 2.6 Officers will be objective and ensure that decisions are not influenced by gender, ethnic origin, religious or political beliefs etc.
- 2.7 Officers will act with integrity at all times in the interests of preserving the integrity of the criminal justice system, including being objective, adhering to the relevant laws and methods for investigating offences (including Regulation of Investigatory Powers Act, Police and Criminal Evidence Act and Criminal Procedure and Investigations Act), reporting attempts to “bribe” officers and declaring where they may have a conflict of interest in order that the case can be handled by another officer.
- 2.8 In regulating businesses we will use an enforcement approach which will, so far as is possible, avoid duplication of visits or overlap. This is in pursuance of delivering a more efficient service and reducing burdens on business.
- 2.9 Some regulatory activities involve consultation with other agencies before deciding on the most appropriate course of action. Sometimes there will be more than one agency that can act in response to a problem. If there is a shared role with other agencies, wherever possible, our enforcement activity will be co-ordinated to minimise unnecessary duplication, delays or to increase effectiveness.
- 2.10 We may achieve compliance but consider that it is still in the public interest to take enforcement action, however a decision to take action in these circumstances will be properly reasoned and based on all material facts
- 2.11 Advice on rights of appeal against formal action, such as statutory notices or fixed penalty/penalty charge notices will be clearly set out in writing at the time the action is taken.
- 2.12 The Council supports the LRRRA 5 Principles of Good Regulation and our enforcement activities should be carried out in a way which is:
 - (i) **Proportionate:** Proportionate means taking into account the enforcement action with regards to the seriousness of any breach. We will take account of the circumstances of the case and the response of those subject to regulation when considering action.
 - (ii) **Accountable:** The Council has its own service standards and in some case national standards to adhere to. Service managers carry out checks on quality to ensure a satisfactory service is being delivered. If a service user is dissatisfied with the service we provide, they may make a complaint or comment through our Customer Liaison Team:

Customer Liaison Team
PO Box 33
Civic Centre
West St, OL1 1UG
Phone: 0161 770 8122 (Monday to Friday between 9.00am and 5.00pm)
Email: customer.feedback@oldham.gov.uk
Online:
http://www.oldham.gov.uk/contact_us/complaints_and_comments.htm

- (iii) **Consistent:** We will carry out our duties in a fair and equitable manner. Officers will always aim for consistent enforcement action but absolute uniformity will never be expected as individual circumstances may aggravate or mitigate action to be taken. In pursuance of consistency we support effective training and supervision of officers. We liaise with other agencies and support such schemes as the Home Authority and Primary Authority Principle.
- (iv) **Transparent:** We will make clear what action must be taken and why and by when. . Advice from officers must be put clearly and simply and be confirmed in writing upon request. We will make clear in our communications what is a legal requirement and what constitutes good practice.
- (iv) **Targeted:** Targeted means making sure that the enforcement is aimed primarily at those whose activities give rise to the most serious risk, or where the hazards are least controlled. The enforcement teams have systems in place to prioritise actions according to where they are most likely to be needed.

3. ENFORCEMENT ACTION

- 3.1 The enforcement options available can range from no action to taking proceedings in Court. When considering formal enforcement action, the respective Council service will, where appropriate and where practicable, discuss the circumstances with those suspected of a breach and take these into account when deciding on the best approach. Where immediate action is required and is justified in responding to a breach this paragraph will not apply.
- 3.2 The range of enforcement actions available to the Council includes those identified in the following paragraphs. Not all enforcement actions are available in every instance and the choice of action, will depend on the relevant law, the nature of the offence, the seriousness of the offence and whether previous actions, informal or formal, have failed.
- 3.3 **Informal Action:** Advice or Warning. For minor breaches of the law we may give verbal or written advice. We will give instruction on how to remedy the identified contravention and the time allowed to rectify matters. The time allowed will be reasonable and take into account the seriousness of the

contravention and the implications of the non-compliance. Where appropriate we will give advice about 'good practice' but we will distinguish between what is required by law, and what is deemed good practice.

- 3.4 **Fixed Penalty Notice/Penalty Charge Notice:** These notices may be used in relation to certain offences. They provide an opportunity for a defendant to discharge liability by way of paying an instant penalty without having to go through court and receive a criminal record.
- 3.5 **Statutory Notice:** When the powers of the officer permit, an officer may issue a statutory notice requiring activities to be stopped or certain actions to be carried out within a given timescale.
- 3.6 **Seizure/Forfeiture:** certain legislation enables enforcement officers to seize items. When we seize items we will give the person from whom they were seized an appropriate receipt. Items may be forfeited following seizure with or without an associated prosecution. Forfeiture can be granted by the Courts or volunteered by the alleged offender.
- 3.7 **Injunctive Action:** Certain legislation allows the council to take injunctive action, obtain court orders or take civil remedies as an alternative or in addition to criminal prosecutions. These actions will be in the form of:
 - Informal undertakings
 - Formal undertakings
 - Interim orders
 - Court orders
 - Contempt proceedings
- 3.8 **Refusal, Suspension, Modification and Revocation of Licence:** These may be used in accordance with policy set by the licensing committee for the grant, variation, refusal or review of any licence, permit or registration within its remit.
- 3.9 **Simple Caution:** In appropriate circumstances, with the consent of the offender, a simple caution can be administered instead of a prosecution. This is an admission of guilt, not a conviction or sentence. For a caution to be offered, there must be sufficient evidence to prove the case, the offender must admit the offence and the offender must be aged 18 or over. A simple caution will be kept on file for 2 years. Certain national databases may be made aware that a simple caution has been administered. The simple caution will comply with Home Office circular 016/2008.
- 3.10 **Prosecution:** The institution of criminal proceedings at the appropriate Court. When considering whether to prosecute, the principles set out in The Code for Crown Prosecutors will be followed. The Code for Crown Prosecutors requires two tests to be applied.
 - Evidential Test - Is there enough evidence to 'provide a realistic prospect of conviction'?

- Public Interest Test - Is it in the public interest for the prosecution to take place?

Factors for Prosecution. A prosecution is more likely to be taken if:

- a conviction is likely to result in a significant sentence;
- a conviction is likely to result in an order of the court in excess of that which a prosecutor is able to secure through a conditional caution;
- the offence involved the use of a weapon or the threat of violence;
- the offence was committed against a person serving the public;
- the offence was premeditated;
- the offence was carried out by a group;
- the offence was committed in the presence of, or in close proximity to, a child;
- the offence was motivated by any form of discrimination against the victim's ethnic or national origin, gender, disability, age, religion or belief, political views, sexual orientation or gender identity; or the suspect demonstrated hostility towards the victim based on any of those characteristics;
- the offence was committed in order to facilitate more serious offending;
- the victim of the offence was in a vulnerable situation and the suspect took advantage of this;
- there was an element of corruption of the victim in the way the offence was committed;
- there was a marked difference in the ages of the suspect and the victim and the suspect took advantage of this;
- there was a marked difference in the levels of understanding of the suspect and the victim and the suspect took advantage of this;
- the suspect was in a position of authority or trust and he or she took advantage of this;
- the suspect was a ringleader or an organiser of the offence;
- the suspect's previous convictions or the previous out-of-court disposals which he or she has received are relevant to the present offence;
- the suspect is alleged to have committed the offence in breach of an order of the court;
- a prosecution would have a significant positive impact on maintaining community confidence;
- there are grounds for believing that the offence is likely to be continued or repeated.

Factors against Prosecution. A prosecution is less likely to be needed if:

- the court is likely to impose a nominal penalty;
- the seriousness and the consequences of the offending can be appropriately dealt with by an out-of-court disposal which the suspect accepts and with which he or she complies;
- the suspect has been subject to any appropriate regulatory proceedings, or any punitive or relevant civil penalty which remains in place or which

- has been satisfactorily discharged, which adequately addresses the seriousness of the offending and any breach of trust involved;
- the offence was committed as a result of a genuine mistake or misunderstanding;
- the loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement;
- there has been a long delay between the offence taking place and the date of the trial, unless:
 - the offence is serious;
 - the delay has been caused wholly or in part by the suspect;
 - the offence has only recently come to light;
 - the complexity of the offence has meant that there has been a long investigation; or
 - new investigative techniques have been used to re-examine previously unsolved crimes and, as a result, a suspect has been identified.
- a prosecution is likely to have an adverse effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence and the views of the victim about the effect of a prosecution on his or her physical or mental health;
- the suspect played a minor role in the commission of the offence;
- the suspect has put right the loss or harm that was caused (but a suspect must not avoid prosecution or an out-of-court disposal solely because he or she pays compensation or repays the sum of money he or she unlawfully obtained);
- the suspect is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is a real possibility that it may be repeated. Prosecutors apply Home Office guidelines about how to deal with mentally disordered offenders and must balance a suspect's mental or physical ill health with the need to safeguard the public or those providing care services to such persons;
- a prosecution may require details to be made public that could harm sources of information, international relations or national security.

Deciding on the public interest is not simply a matter of adding up the number of factors on each side. Council Prosecutors must decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

3.11 Proceeds of Crime Applications: The Council, either through its own enforcement officers or in cooperation with an authorised body, may make application under the Proceeds of Crime Act 2002 to restrain or confiscate the assets of an offender. The purpose of any such proceedings is to recover the financial benefit that the offender has obtained from his criminal conduct. Proceedings are conducted according to the civil standard of proof.

4. IMPLEMENTATION

- 4.1 Following adoption of this policy, we will disseminate to all officers authorised to undertake statutory enforcement activities..
- 4.2 This policy will be made available to all businesses, consumers and residents. It will be published on the Council's website. It will also be made available in other formats upon request.
- 4.3 It shall be a duty for all managers of enforcement officers covered by this policy to ensure their current policies and procedures are consistent with this document. It will also be their responsibility to ensure its practical application.
- 4.4 This policy shall be regularly reviewed, taking into consideration any changes in legislation. Such changes will be submitted to Cabinet for formal approval.
- 4.5 The Council welcomes feedback from service users regarding this policy. Anyone wishing to make a complaint, compliment or comment may do so through our Customer Liaison Team:

Customer Liaison Team
PO Box 33
Civic Centre
West St, OL1 1UG
Phone: 0161 770 8122 (Monday to Friday between 9.00am and 5.00pm)
Email: customer.feedback@oldham.gov.uk
Online:
http://www.oldham.gov.uk/contact_us/complaints_and_comments.htm