



Wyre Council Environmental Services

Enforcement Policy

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Contents

Wyre Council Environmental Services..... 1

 Enforcement Policy..... 1

 Introduction 3

 Purpose and Method of Enforcement 3

 Responsibility and Authorisation..... 4

 Diversity and the Human Rights Act..... 4

 Regulators Compliance Code..... 5

 Principles of Enforcement..... 5

 Enforcement Options..... 8

 Prosecution..... 9

 Simple cautions 9

 Court Proceedings 9

 Accepting Guilty Pleas 10

 Promotion, Prevention and Publicity..... 10

 Liaison and Working with other Regulators 10

 Complaints/Reporting..... 11

 Departure from the Enforcement Policy..... 11

 Availability of the Enforcement Policy..... 11

 Environmental Enforcement..... 11

 Environment Services Enforcement Policy Fixed Penalty Policy 13

 Wyre Borough Council Environment Services Unit Enforcement Decision Sheet
 15

 Code of Crown Prosecutors The Full Code Test 16

Introduction

Wyre is a place where everyone can prosper. We want everyone in Wyre to have access to jobs and share the benefits of economic growth; live in thriving, safe, aesthetically appealing and welcoming communities; which contributes toward residents remaining healthier and independent for longer.

The Environmental Enforcement Team (EET) work alongside central government and other regulators to help ensure coherent regulation, working with voluntary or community groups and non-governmental organisations to achieve corporate goals, recognising that proportionate and effective enforcement is essential to protect the interests of local communities, with Environmental Enforcement actions and decision making potentially having significant impact on all involved; the general public, businesses, tenants, landlords, victims, witnesses and defendants.

The EET applies this policy to ensure a consistent approach to enforcement is achieved, whilst maintaining regard to the Regulatory Compliance Code made under the provisions of section 23 of the Legislative and Regulatory Reform Act 2006.

Wyre Council adopts a prevention is better than cure approach, with the EET offering information and advice to those it regulates, and works co-operatively, avoiding bureaucracy, ensuring efficient legislative compliance, while minimising the burden on businesses, individuals, organisations and the Council itself, by encouraging individuals and businesses to adhere to those guidelines.

This policy sets out the general principles, the EET follow, in relation to enforcement and prosecution. The implementation and effectiveness of the policy will be reviewed and where necessary modified on an annual basis, or subject to legislative changes, to ensure guidelines are followed.

Purpose and Method of Enforcement

Effective regulation is essential in promoting fairness and protection, but to achieve this aim, all regulation and enforcement must be proportionate and flexible enough to allow or even encourage individuals to follow those regulations. The aim of the service is to undertake enforcement duties to improve outcomes without imposing unnecessary burdens on the general public, businesses or other regulators.

EET will adopt a positive and proactive approach towards ensuring compliance by:

- helping and encouraging those being regulated to appreciate their responsibilities to adhere to regulatory guidelines
- respond proportionately to regulatory breaches

The council do not promote unnecessary enforcement action or a punitive response to minor/technical contraventions of legislation. However, the council

expects full voluntary compliance with relevant legislative requirements and will not hesitate to use its enforcement powers where necessary.

Wyre Council recognises that enforcement activity will depend on prevailing circumstances, with the EET treating everyone fairly and with respect for their privacy and dignity, with individual circumstances, particularly those with special needs, will all be considered, to ensure the adverse effects of enforcement activity on legitimate businesses and individuals is minimised.

Responsibility and Authorisation

Responsibility for implementation of the policy rests with Corporate Management Team. Authorised officers within the EET carry out day-to-day enforcement activities. Officers are authorised in accordance with relevant code of practice or National Guidance to carry out investigations, complaint processes, deal with requests for service and where necessary, offer advice. The relevant service manager is responsible for the planning, organising and subsequent monitoring of all aspects of the policy.

All officers are authorised and only officers who are competently trained will be authorised to undertake enforcement action. Such officers are authorised in writing by the Director of Environment who will specify the legal provisions under which they are entitled to act.

Officers who undertake criminal investigations will be conversant with the provisions of the Police and Criminal Evidence Act 1984 (PACE), the Criminal Procedure and Investigations Act 1996 (CPIA), the Data Protection Act 1998, the Human Rights Act 1998, the Disability Discrimination Act 1995 and the Regulation of Investigatory Powers Act 2000. All staff will recognise and comply with the Council's Equality and Diversity Strategy and equalities legislation.

Whilst undertaking enforcement activities, all members of the EET will be fair, independent and objective and deal with all individuals in the same manner regardless of ethnic or national origin, sex, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender.

Members of the EET will not allow the suspect, victim, witness or offender to influence their decisions, and will undertake their duties without fear or favour, and will not be affected by improper or undue pressure from any source.

All statutory notices will be authorised and signed by the Waste, Recycling and Environmental Enforcement Manager unless specific authorisation has been granted to another authorised officer.

Diversity and the Human Rights Act

In all enforcement actions we will be objective to ensure that decisions are not influenced by the gender, ethnic origin, religious or political beliefs, disability or sexual preferences of an alleged offender. The directorate will comply with the legislation and codes of practice.

The EET is a public authority for the purposes of the Human Rights Act 1998. Environment Services staff will therefore apply the principles of the European Convention on Human Rights in accordance with the Act.

The Human Rights Act places everyone under a duty to interpret all legislation compatibly with the Convention Rights incorporated by the act and requires Wyre Borough Council, as a public authority, to act in accordance with the convention rights. Authorised Officers will, accordingly, ensure that respect for human rights is at the core of their day-to-day work. This covers all aspects of the Borough Council's activities including:

- Internal staff and personnel issues
- Administrative procedures
- Decision making
- Policy implementation
- Interaction with members of the public.

Regulators Compliance Code

The Environment Services Unit will have regard to the principles contained within the Regulators Compliance Code made under the provisions of section 23 of the Legislative and Regulatory Reform Act 2006. This code encompasses the recommendations arising out of the Hampton Report on better regulation.

The code lays down the following principles which should be considered in any enforcement policy: -

- Economic progress
- Risk assessment
- Advice and Guidance
- Investigations and associated visits
- Information requirements
- Compliance & enforcement action
- Accountability

Principles of Enforcement

Economic Progress

The Environment Enforcement Service recognise that a key element of their activity will be to allow dialogue prior to deciding on a particular regulatory regime and will consider the outcomes, effectiveness and perceptions of fairness of regulation, and only adopt a particular approach when the results justify the outcomes, while achieving our objectives.

Risk Assessment

The EET will use local knowledge and other intelligence data to concentrate resources into the areas that need them most and undertake dynamic risk assessments as a measurement of their safety and an evaluation of the likelihood of the occurrence of harm. By basing the regulatory work of the service on the risks to regulatory outcomes, we can target our resources where they will be most effective. This principle will be applied to:

- investigation processes,
- advice and support
- enforcement sanctions
- the potential impact of non-compliance on regulatory outcomes
- the likelihood of non-compliance

The service will regularly update the risk assessments using laid down methodology.

Advice and Guidance

The service recognises the difficulties individuals and organisations have in easily obtaining authoritative, accessible advice on regulatory requirements, and EET's will generally offer advice and guidance prior enforcement action, but usually only in the first instance.

Advice and guidance will be available by the following means:

- face to face interactions
- telephone enquiries
- leaflets and guidance notes
- on-line guidance via the Councils website
- referral to other on-line resources
- referral to external stakeholders

Information Requirements

The EET require individuals and businesses to relay information on request when pursuing an active environmental crime, while adhering with the restrictions relating to the Data Protection Act.

The service will endeavour to ensure that all information concerning an individual stakeholder on a shared database is kept to a minimum and meets the requirement for unnecessary data collection.

Compliance and Enforcement Actions

Anyone knowingly break regulations will be identified and will face meaningful and proportionate and regulated sanctions.

Any enforcement action undertaken by the service will seek to:

- Change the behaviour/culture of the offender
- Eliminate any financial gain or benefit from non-compliance
- Consider what the appropriate and proportionate sanction for a particular offence/offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction
- Be proportionate to the nature of the offence and the concern caused
- Resolution to any distress the offence may have caused
- Deter future non-compliance.

The choice of the most appropriate enforcement action will be determined by principles detailed in the following sections of this policy.

The reasons for any enforcement action will be relayed to the offender prior to any action being taken.

Accountability

The service will encourage effective consultation and feedback from stakeholders to foster continuing cooperative relationships, and remain accountable for the efficiency and effectiveness of any actions whilst remaining independent in the decision-making process, and undertaking regulatory activities in an open and transparent way, to ensure:

- When remedial action is required, it is clearly explained (and confirmed in writing, if requested) why the action is necessary and when it must be carried out, a clear distinction will always be made between legal requirements and best practice advice.
- Opportunity is provided to discuss the circumstances of a case, clarity on what requirements are necessary to comply with legislation prior to formal enforcement action is taken, unless urgent action is required, for example, to preserve evidence being destroyed.
- If urgent action was required, a written explanation will be given explaining the rights of appeal against formal enforcement action, which must include and explain any appeal procedure, and where an appeal can be lodged.

Every effort will be made to ensure that information and advice is provided in plain language without abbreviations and is distributed as widely as possible. Details of the ways in which the service operates will be made freely available.

All officers employed by the service will comply with the council's Code of Conduct for Officers and will give a courteous and efficient service to all stakeholders.

All complaints regarding any activity undertaken by the EET will be fully investigated in line with the Council's Complaint Procedure.

Enforcement Options

Enforcement options available include prosecution, fixed penalty notices, enforcement notices, prohibition notices (where there is an imminent or serious risk), seizure, suspension or revocation of licences, variation of licence conditions, injunctions and the carrying out of works in default as well as verbal or written warnings and advice. A hierarchical approach, as set out in the Enforcement Action Decision Sheet at [Appendix 1](#), will be adopted in selecting the most appropriate enforcement sanctions. Although decisions will clearly vary with circumstances, non-criminal sanctions will always be considered before criminal sanctions.

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 and schedules of work, including those generated on premises following an inspection. Where necessary, such information will be provided in an appropriate language or format.

Such enforcement action may be appropriate in any of the following circumstances:

- The act or omission is not serious enough to warrant formal action.
- From the individual's/enterprise's history, it can be reasonably expected that informal action will achieve compliance.
- Confidence in the individual or enterprise's management is high.
- The consequences of non-compliance will not pose a significant risk to public health and safety.
- Even where some of the above criteria are not met, there may be circumstances in which informal action will be more effective than a formal approach (this may, for example, apply to enterprises associated with voluntary organisations using volunteers).

The clear distinction between legal requirements and matters, which are recommended as good practice in all enforcement action, even if only giving verbal advice, is vitally important.

As a general rule, a prosecution will not be undertaken without the offender being given a reasonable opportunity to comply with the law. It is recognised, however, that there are circumstances where a contravention is particularly serious or there is a blatant or reckless disregard for the law and it is right to prosecute without a warning. Failure to comply with a statutory notice will normally result in a prosecution, except in cases where works in default may be more appropriate.

When deciding upon the best course of action, the council will give regard to the specific guidance on enforcement action contained in various Codes of Practice guidelines and Guidance Documents issued by the relevant co-ordinating bodies and the Crown Prosecution Service.

Where a criminal offence has been committed, in addition to any other enforcement action, the Environment Services Officer will consider instituting a prosecution or administering a simple caution.

Prosecution

It is recognised that initiating court proceedings is an important part of the enforcement process and is taken after full consideration of the implications and consequences. Decisions about prosecution will take account of council policies and procedures, legal advice/opinion and the Code for Crown Prosecutors. Where appropriate, decisions to prosecute should be taken at the most appropriate opportunity.

The council will only initiate a prosecution when the case has passed both stages of the full code test detailed in the Code for Crown Prosecutors (see [Appendix 2](#)), and will depend on the circumstances of each case to make an overall assessment.

Where necessary, criminal proceedings will be taken against those persons responsible for an offence. Where a company is involved, it will be usual practice to prosecute the company where the offence resulted from the company's activities. Action may also be taken against such officers (as well as the company) where it can be shown that the offence was committed with their consent was due to their neglect or they chose to ignore the offence or the circumstances leading to it. In appropriate cases, consideration will be given to seeking the prohibition of the business proprietor under the appropriate specific statutes.

All cases will be kept under review and any changes in circumstances will be considered.

Simple Cautions

In cases where a prosecution is deemed as an inappropriate course of action, the issue of a simple caution will be considered as an alternative, depending on the circumstances and severity of the offence.

A simple caution is the written acceptance by an offender that they have committed an offence and may only be used where a prosecution could properly have been brought. It will be brought to the court's attention if the offender is convicted of a subsequent offence.

As with a prosecution, additional enforcement mechanisms may also be used in conjunction with a simple caution.

(See Home Office Circular 16/2008 Cautioning of Adult Offenders) [[ARCHIVED CONTENT](#)] [Simple cautioning of adult offenders | Home Office](#)

Court Proceedings

Where circumstances allow, consideration will be given to requesting the magistrates to refer the case to the Crown Court. The same factors as listed in

section 8 (above) will be used, as well as consideration of the sentencing powers of the Magistrates' Court.

The existing law gives the courts considerable scope to punish offenders and to deter others. Unlimited fines and, in some cases, imprisonment may be imposed by the higher courts. The council will continue to raise the awareness of the courts to the gravity of specific offences brought before them and will encourage the courts to make full use of their powers.

The service will always seek to recover the costs of investigation and court proceedings.

Accepting Guilty Pleas

Defendants may want to plead guilty to some but not all of the charges. Alternatively, they may want to plead guilty to a different, possibly less serious, charge because they are admitting only part of the offence. The officer responsible for the case, in conjunction with the council's legal team, should only accept the defendant's plea if they think the court is able to pass a sentence that matches the seriousness of the offending. A guilty plea must never be accepted because it is convenient to do so.

In cases where a defendant pleads guilty to the charges but on the basis of facts that are different from the prosecution case, and where this may significantly affect sentence, the court should be invited to hear evidence to determine what happened and then sentence on that basis.

Promotion, Prevention and Publicity

Promotion is an essential part of the policy as it raises awareness of the service, informs people of their legal responsibilities and encourages co-operation between officers, individuals and businesses.

Wyre Council will, where possible, following a successful prosecution, name companies and individuals that have been convicted in the previous 12 months of breaking the law. Media attention will, where appropriate, be drawn to any impending prosecution or any successful prosecution to draw attention to the need to comply with specific legal requirements, or deter anyone tempted to disregard their duties and responsibilities.

Liaison and Working with other Regulators

Every effort will be made to co-ordinate enforcement activity and avoid duplicating work that is the responsibility of other authorities or internal service units. The EET will not normally investigate or take enforcement action in areas where more specific legislation is already enforced by another regulatory body or service. Instead, it will liaise with those bodies to ensure effective coordination, so that any action is taken by the most appropriate authority and under the most

relevant legislation. The service will operate in accordance with any Memorandum of Understanding agreed with the relevant agencies.

Complaints/Reporting

Wyre Council has a corporate system for dealing with complaints. Where a member of the public or business can make a complaint or expresses dissatisfaction with a service provided, or any action taken. The officer receiving the complaint will notify the appropriate line manager as expediently as possible, with the complaint being recorded on the corporate feedback system (CXM).

On receipt of a complaint, the service manager will impartially investigate all relevant facts and give feedback to the complainant within 3 working days and if a written response is required, it must be sent within 10 working days.

If the complainant is not satisfied with the initial response, they may ask the Customer Feedback Co-ordinator to arrange for a further investigation. This will be undertaken by a senior manager who has had no previous dealings with the complaint. Wherever possible a full response should be given within 15 working days.

Departure from the Enforcement Policy

All authorised officers will abide by this policy when making enforcement decisions.

Any departure from the policy will only be accepted in exceptional circumstances, capable of justification, and only after full consideration and authorisation by the service manager or a designated alternative officer.

Instances of non-compliance with this policy will be recorded and reported directly to the Director of Environment, who will instigate appropriate action.

Availability of the Enforcement Policy

This policy will be made available on the council's web site. Hardcopy versions will also be available on request through Connect Wyre ([01253 891000](tel:01253891000)), this policy will also be made available in another language or format.

Environmental Enforcement

Introduction

The Environmental Enforcement Service are responsible for enforcing a wide range of statutory provisions relating to Environmental Crime and breaches of Public Space Protection Orders (PSPO's). Our legal duties are conducted by

carrying out patrols of beach ban areas including areas of park and open spaces whilst also responding to complaints and offering advice.

In exercising their duties officers will adopt an assertive stance, and will be open, consistent and helpful, with enforcement action being compliant with relevant legislation and guidelines and adhering to the principles of good enforcement outlined within the officer Keep Britain Tidy (KBT) accredited training.

Enforcement in the context of this policy is not limited to formal enforcement action such as prosecution, but includes for example, the inspection of premises for the purposes of checking waste compliance with legislation and the provision of advice.

This policy seeks to support the council's corporate aims, objectives and strategies with respect to building pride in our communities by ensuring our town centres and neighbourhoods are clean, attractive and well maintained.

The EET are responsible for a range of offences including (but not exhaustive):

- Fly tipping
- Fly posting/graffiti
- Abandoned vehicles
- Depositing of litter
- Dog related Public Space Protection Orders (PSPO)
- Duty of Care (businesses)
- Failure to produce authority (waste carriers' licence)
- Failure to furnish document (waste transfer note)
- Section 46/47 Notice, relating to waste receptacles
- Beach of Community Protection Notice

Environment Services Enforcement Policy Fixed Penalty Policy

- 1.1 Wyre Council ('the Council') has approved and instigated the use of fixed penalty notices (FPN's) for certain offences as contained in schedule A(s) to this addendum.
- 1.2 All authorised officers and Police Community support officers issuing on behalf of the Council may issue FPS's without further approval from a more senior officer.
- 1.3 All such persons as listed at 1.2 above will receive training in the use and issue of FPN's as well as the underpinning legislation.
- 1.4 A fixed penalty will not be issued to any person under the age of 18 and in these cases recourse may be adopted (including multi agency problem solving).
- 1.5 A fixed penalty notice will only be issued if the evidence is sufficient for a prosecution to be undertaken, as any default of payment will result in Court action for the original offence.
- 1.6 Authorised council officers, can use discretion where appropriate and give cautions, details of which will be recorded.
- 1.7 The council will, upon payment not being received, pursue the original offence via the Courts having examined the facts of each case.
- 1.8 A FPN will only be issued when;
 - an offence has clearly been committed and there is sufficient supporting evidence to support prosecution should the fixed penalty notice go unpaid
 - the alleged offender is compliant and understands why they have been challenged
 - the issuing enforcement officer believes that the alleged offender has offered their correct name and address; and
 - there are no aggravating circumstances.
- 1.9 It is not appropriate to issue a fixed penalty notice
 - when the person alleged to have committed an offence is aged under 18 (which is the age at which an authority issues fixed penalty notices)
 - if the alleged offender, when approached, is obstructive and non-co-operative
 - when it is suspected that an alleged offender has failed to offer their correct name and address; and when an alleged offender seems confused, either through some form of impairment or through drugs or alcohol. In this instance any enforcement officer is advised to seek support from the relevant agency and the issuing of a fixed penalty notice should be seen as very much as secondary.
- 2.0 When not to issue fixed penalty notices
 - Fixed penalty notices should not be issued where there is insufficient evidence to support prosecution in the Magistrates' Court for the original offence should a fixed penalty notice go unpaid.

Alongside this, there are other circumstances when it is considered inappropriate to issue fixed penalty notices, these include:

- when the person in question is in some way 'vulnerable' such as the mentally impaired
- when the offence that has been committed is considered too serious in scale or adversely affects the merit of a fixed penalty notice
- when the offence that has been committed is disproportionate, and the issuing of a FPN may not be in the public interest
- those exempted within the law, for example the dog fouling offence, such as the blind or disabled people (not including the deaf) in respect of a dog on which they rely for assistance
- when the person challenged is either non-co-operative, aggressive or violent

2.1 Repeat offenders

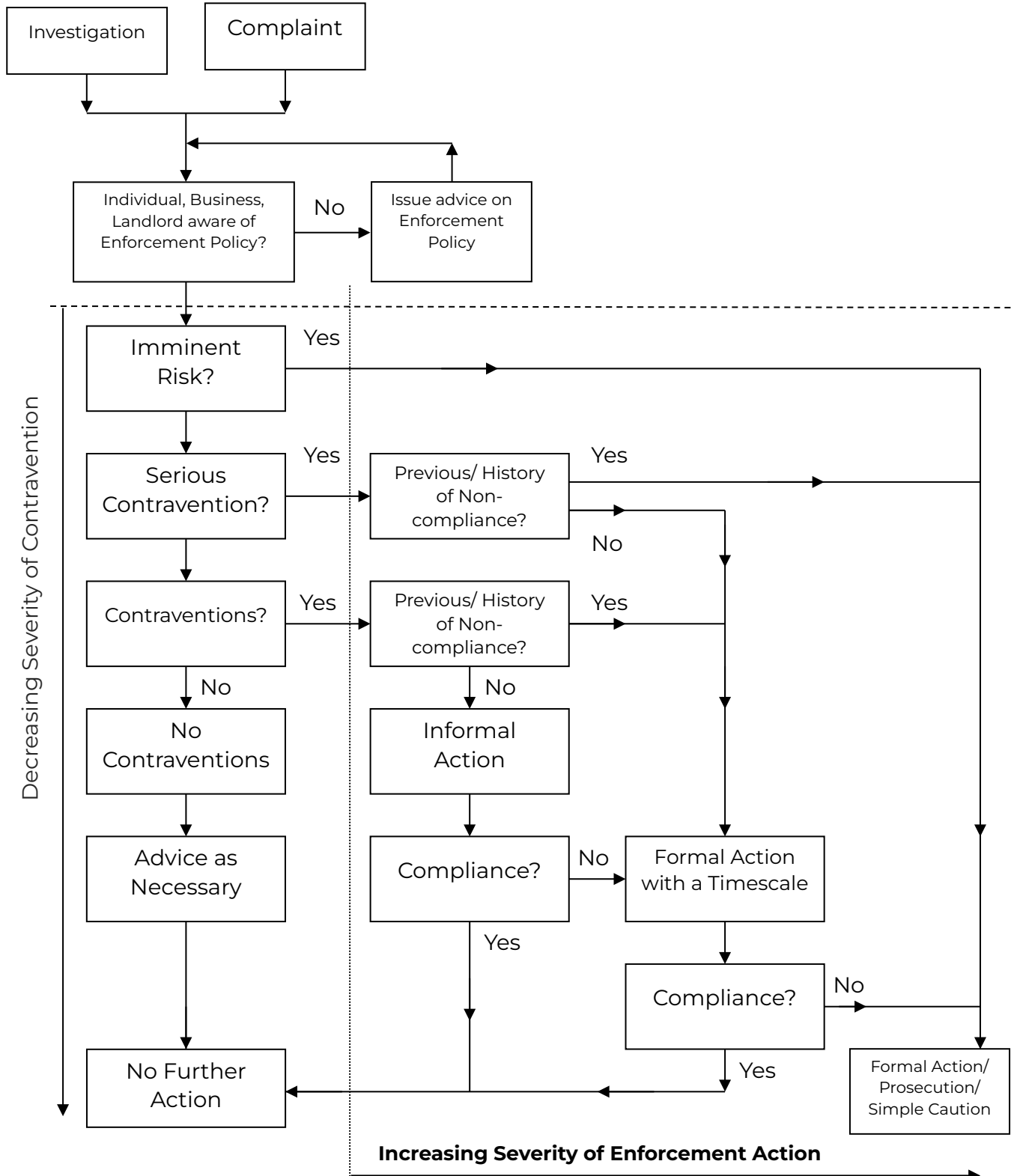
Individuals who have previously received a fixed penalty notice fail to modify their behaviour and go on to commit the same offence should be prosecuted, as a FPN should only be offered once.

FPN's are a means to change offending behaviour, so if an individual commits the same offence, having previously been issued with a FPN, it demonstrates that the original FPN failed to change that behaviour, with the only acceptable action being for the council to further enforcement action by prosecuting the alleged offender in the Magistrates' Court.

It is essential for Enforcement Officers have ready access to enforcement records to ensure the appropriate checks can be carried out

Appendix 1

Wyre Borough Council Environment Services Unit Enforcement Decision Sheet



Appendix 2

Code of Crown Prosecutors

The Full Code Test

The Full Code Test has two stages. The first stage is consideration of the evidence. If the case does not pass the evidential stage, it must not go ahead no matter how important or serious it may be. If the case does pass the evidential stage, Crown Prosecutors must proceed to the second stage and decide if a prosecution is within the public interest to pursue. The evidential and public interest stages are explained below.

The Evidential Stage

Crown Prosecutors must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. They must consider what the defence case may be, and how that is likely to affect the prosecution case.

A realistic prospect of conviction is an objective test. It means that a jury or bench of magistrates or judge hearing a case alone, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a separate test from the one that the criminal courts themselves must apply. A court should only convict if satisfied so that it is sure of a defendant's guilt.

When deciding whether there is enough evidence to prosecute, Crown Prosecutors must consider whether the evidence can be used and is reliable. There will be many cases in which the evidence does not give any cause for concern. But there will also be cases in which the evidence may not be as strong as it first appears. Crown Prosecutors must ask themselves the following questions:

Can the evidence be used in court?

- (a) Is it likely that the evidence will be excluded by the court? There are certain legal rules which might mean that evidence which seems relevant cannot be given at a trial. For example, is it likely that the evidence will be excluded because of the way in which it was gathered? If so, is there enough other evidence for a realistic prospect of conviction?

Is the evidence reliable?

- (b) Is there evidence which might support or detract from the reliability of a confession? Is the reliability affected by factors such as the defendant's age, intelligence or level of understanding?
- (c) What explanation has the defendant given? Is a court likely to find it credible in the light of the evidence as a whole? Does it support an innocent explanation?

- (d) If the identity of the defendant is likely to be questioned, is the evidence about this strong enough?
- (e) Is the witness's background likely to weaken the prosecution case? For example, does the witness have any motive that may affect his or her attitude to the case, or a relevant previous conviction?
- (f) Are there concerns over the accuracy or credibility of a witness? Are these concerns based on evidence or simply information with nothing to support it? Is there further evidence which the police should be asked to seek out which may support or detract from the account of the witness?

Crown Prosecutors should not ignore evidence because they are not sure that it can be used or is reliable. But they should look closely at it when deciding if there is a realistic prospect of conviction.

The Public Interest Stage

In 1951, Lord Shawcross, who was Attorney General, made the classic statement on public interest, which has been supported by Attorneys General ever since: "It has never been the rule in this country - I hope it never will be - that suspected criminal offences must automatically be the subject of prosecution". (House of Commons Debates, volume 483, column 681, 29 January 1951.)

The public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. Although there may be public interest factors against prosecution in a particular case, often the prosecution should go ahead, and those factors should be put to the court for consideration when sentence is being passed. A prosecution will usually take place unless there are public interest factors tending against prosecution which clearly outweigh those tending in favour, or it appears more appropriate in all the circumstances of the case to divert the person from prosecution.

Crown Prosecutors must balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the suspect. Some factors may increase the need to prosecute but others may suggest that another course of action would be better.

The following lists of some common public interest factors, both for and against prosecution, are not exhaustive. The factors that apply will depend on the facts in each case.

Some common public interest factors in favour of prosecution

The more serious the offence, the more likely it is that a prosecution will be needed in the public interest. A prosecution is likely to be needed if:

- (a) a conviction is likely to result in a significant sanction
- (b) a conviction is likely to result in a confiscation or any other order
- (c) the defendant was in a position of authority or trust

- (d) the evidence shows that the defendant was a ringleader or an organiser of the offence
- (e) there is evidence that the offence was carried out by an organised group
- (f) the victim of the offence was vulnerable, has been put in considerable fear, or suffered personal attack, damage or disturbance
- (g) the offence was in close proximity to individuals or properties
- (h) the defendant's previous convictions or cautions are relevant to the present offence
- (i) the defendant is alleged to have committed the offence while under an order of the court
- (j) there are grounds for believing that the offence is likely to be continued or repeated, for example, by a history of recurring conduct
- (k) the offence, although not serious in itself, is widespread in the area where it was committed
- (l) a prosecution would have a significant positive impact on maintaining community confidence.

Some common public interest factors against prosecution

A prosecution is less likely to be needed if

- (a) the court is likely to impose a nominal or no penalty
- (b) the defendant has already been made the subject of a sentence, and any further conviction would be unlikely to result in the imposition of an additional sentence or order, unless the nature of the particular offence requires a prosecution or the defendant withdraws consent to have an offence taken into consideration
- (c) the offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence)
- (d) the loss or harm can be described as minimal and was the result of a single incident, particularly if it was caused by a misjudgement
- (e) there has been a long delay between the offence taking place and the date of the trial, unless:
 - the offence is determined as an each-way offence
 - it can be proven the delay has been caused in part by the defendant
 - the offence has only recently come to light
 - the complexity of the offence required a prolonged investigation
- (f) the defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health, or there is real possibility that it may be repeated. The Crown Prosecution Service, where necessary, applies Home

Office guidelines about how to deal with mentally disordered offenders. Crown Prosecutors must balance the desirability of diverting a defendant who is suffering from significant mental or physical ill health with the need to safeguard the general public;

- (g) the defendant has put right the loss or harm that was caused (but defendants must not avoid prosecution or diversion solely because they pay compensation)
- (h) details may 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. Crown Prosecutors must decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

The relationship between the victim and the public interest

The Crown Prosecution Service does not act for victims or the families of victims in the same way as solicitors act for their clients. Crown Prosecutors act on behalf of the public and not just in the interests of any individual. However, when considering the public interest, Crown Prosecutors should always consider the consequences for the victim of whether to prosecute, and any views expressed by the victim or the victim's family.

It is important that a victim is told about a decision which makes a significant difference to the case in which they are involved. Crown Prosecutors should ensure that they follow any agreed procedures.

Prosecution checklist

A prosecution may only be considered if there is a Yes answer to one or more of the questions in Section 1.

Additionally, the responses to the questions in Section 2 must be considered and reviewed initially by the appropriate Head of Environment Services or manager and subsequently by the council's legal services to establish that there is sufficient and reliable evidence for a prosecution.

A copy of this checklist must be completed and retained on both the premises and prosecution files.

Name:	
Name of premises:	
Address of premises:	
Postcode:	
Officer:	
Date:	

Section 1

Circumstances where a prosecution may be warranted

#	Question	Yes	No
1a.	Has there been a flagrant breach of the law such that public health, safety and well-being or the environment is or has been put at risk?		
1b.	Has there been a failure by the suspected offender to correct an identified serious potential risk to the environment having previously been given a reasonable opportunity to comply with the lawful requirements of an authorised officer?		
1c.	Has there been a failure to comply in full or in part with the requirements of a statutory notice?		
1d.	Is there a history of similar offences related to risk to public health or the environment?		

Action approved by manager.

Signature:

Date:

Designation:

Section 2

Criteria for consideration prior to prosecution

The seriousness of the alleged offence

#	Question	Yes	No
2a.	Is there a risk or harm to public health or the environment?		
2b.	Are there identifiable victims?		
2c.	Has there been a failure to comply with a Statutory Notice served for a flagrant breach of legislation.		
2d.	Has there been any disregard of public health or for the environment for financial reward?		

The previous history of the party concerned (give details on attached sheet).

#	Question	Yes	No
3a.	Is there a history of similar offences?		
3b.	Has there been a failure to respond positively to past warnings?		
3c.	Has there been a failure to comply with Statutory Notices?		
4.	Is there sufficient evidence to provide a realistic prospect of conviction?		
5.	Is it in the public's interest to prosecute?		
6.	Is there sufficient relevant, admissible, substantial and reliable evidence that an offence has been committed by an identifiable person or company for a realistic prospect of conviction?		
7.	Are all witnesses willing to co-operate and give evidence?		
8.	Is there a willingness of the party to prevent a recurrence of the problem?		
9.	Is the case important in that there may be a public benefit in the prosecution which might establish a legal precedent?		
10.	Is there a likelihood of the defendant being able to establish a 'due diligence' defence?		
11.	Has the company or the suspected offender offered a satisfactory explanation?		
12a.	Head of Environment Services, or		
12b.	Environmental Enforcement Manager, or		
12c.	Team Leader/Section Head.		
13.	Is there sufficient evidence to provide a realistic prospect of conviction?		