Worcestershire
Regulatory Services
Supporting and protecting you

Worcestershire Regulatory Services Enforcement Policy

1. Introduction

Worcestershire Regulatory Services (WRS,) is a shared service that is part of the six district councils in Worcestershire (Bromsgrove District Council, Malvern Hills District Council, Redditch Borough Council, Worcester City Council, Wychavon District Council and Wyre Forest District Council.) WRS delivers Environmental Health functions, including Food Safety, Health and Safety, many aspects of Pollution Control, and Licensing administration and enforcement on behalf of the six partner authorities. It reports to a Joint Board of the six authorities which means it is constitutionally part of each council.

This Enforcement Policy is a statement of how the Service will carry out its enforcement duties and, in addition, what business and citizens in Worcestershire can expect from our enforcement staff. It will be applied by WRS in relation to the functions it discharges on behalf of the six local authorities, and it has been adopted by each of them. 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.

The primary aim of WRS is to ensure businesses comply with the legislative framework within which they operate so that, consumers, businesses, employees, individuals, and the environment are protected, and transactions are fair and equitable. Fair, proportionate, and effective enforcement is essential to protecting the health, safety, and economic interests of all concerned, and there is a range of tools available to the Service to achieve this. Whilst in the main compliance will be achieved using advice and 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.

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. WRS is obliged to comply with the Human Rights Act 1998, so will take its provisions into account when taking decisions relating to enforcement action.

2. Policy Scope

WRS 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 the following documents:

- The Regulators Code (Department of Business and Trade)

- 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.)
- The Food Safety Act 1990 Code of Practice
- Human Rights Act 1998 and the European Convention on Human Rights.

The Policy applies to actions in relation to all the legislation enforced by the Service on behalf of all six District Councils*. Enforcement action 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.

* For Planning Enforcement and Enviro-crime functions undertaken by WRS on behalf of Bromsgrove and Redditch Councils only, there are separate Enforcement Policies in place.

3. General Principles

Prevention is generally better than cure and WRS's role therefore involves actively working with businesses to advise on and assist with compliance. 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.

Most cases involving regulatory matters will relate to businesses, however, there will be some cases put before the Courts that relate to individual members of the public, particularly those involving nuisance. These cases will be treated in the same way as those involving businesses and the general principles outlined around proportionality of action, for example trying informal approaches before resorting to formal action and the Courts, will be followed unless the law mandates that an authority must act in certain circumstances, for example where a statutory nuisance is identified. Even then, the service will use the discretion that all local authorities have as to the timeliness of taking formal action.

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.

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

We will ensure that our resources are targeted where they will be most effective. We will ensure that work is intelligence-led, and that risk assessment informs all aspects of our approach to regulatory activity, including:

- Data collection and other information requirements.
- Inspection programmes.
- Advice and support programmes.
- Enforcement activity and sanctions.

We will normally use the appropriate risk assessment scheme developed either by government or recognised professional bodies to inform any inspection programme. In the absence of these, it is unlikely that routine inspection processes will inform activity. Instead, an intelligence-led approach will be taken, and interventions will be driven by the risk and threat that comes from the assessment of intelligence. Decisions on tactical actions to be taken will be influenced by, in the absence of other factors:

- Compliance history and potential future risks
- The existence of effective management systems
- Evidence of recognised external accreditation
- Management competence and willingness to comply

Intelligence will be used to direct inspection-based projects, targeting goods or business 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

We will provide general information, advice, and guidance to make it easier for 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 regulatory activities, as well as changes to legal requirements. Where changes are of great significance, we will look at the best ways of informing businesses of these changes e.g., through newsletters, mailshots, or seminars.

WRS will promote self service via our website and, where possible, provide targeted and practical advice with a focus on encouraging this engagement through Primary Authority relationships. When offering advice, 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.

Where a business knows it has a problem and seeks advice to remedy the situation, this will not normally trigger enforcement action. 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.

Where possible, the service will provide advisory services free of charge; however, WRS reserves the right to charge a reasonable fee for services beyond the most basic advice and guidance necessary to help ensure compliance. In saying this, the service would take account of the needs and circumstances of smaller businesses and others in need of help and support in deciding whether to charge. Charging will be in line with any guidance issued by the OPSS in relation to the Primary Authority principle.

6. Inspection and other market surveillance tactics

WRS business activity will be driven by intelligence. Inspection and other forms of market surveillance will provide a good flow of intelligence about specific outlets but also, when aggregated, will help paint a picture of broader trends within business sectors. The service will ensure that any routine inspections and similar programmed visits to businesses only occur in accordance with a risk assessment methodology and the relevant intelligence picture. Other visits may be requested by businesses or will result from relevant intelligence so this will not apply in such circumstances.

WRS will focus its efforts on businesses where intelligence and risk assessment show there is a higher likelihood of non-compliance or those which pose a more serious risk to regulatory outcomes. Some processes by their nature present a greater risk to health or the environment, or due to their complexity, may make it more difficult to ensure compliance. These are the areas where we will focus our proactive market surveillance activities including inspection.

Where appropriate, and where required by legislation, including the Protection of Freedoms Act, WRS officers will give a minimum of 48 hours notice prior to a routine inspection unless to do so would undermine the purpose of the visit. For example, where giving notice might lead to additional work being done to hide non-compliance or offending, temporary behaviour changes or evidence being removed, no notice will be given. It should also be noted, however, that there is a general requirement in some Codes of Practice e.g., Food Standards Agency Food Law Code of Practice, that notice is not provided prior to a routine inspection. Where this is the case, notice will not be given unless it is necessary to achieve the service's ends, for example, if the presence of a particular manager is essential at a manufacturing facility.

When officers visit or carry out inspections, they will give feedback to businesses to encourage and reinforce good practice. They will also share information about good practice amongst businesses, and with other regulators. Where serious non-compliances are identified during an inspection that require some formal action, feedback on minor issues may be delayed until the serious issues are resolved.

Where WRS and another regulator have a shared interest in a business, officers will seek to work together with relevant colleagues to ensure that activities can be rationalised to minimise the burden on the business, where such action is of benefit to the business and does not harm the standard of enforcement for either regulator. 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. Information Requirements

Worcestershire Regulatory Services do not require large quantities of information from businesses on a routine basis. When determining what data we may require, we will consider the costs and benefits of data requests to businesses and,

- Limit the data that we request to that which is either appropriate, or required by statute e.g., food registration, licensing applications, etc,
- Minimise the frequency of collection and seek the information from other sources where relevant and possible.

We will work with our fellow local regulators to minimise the information we request from businesses, and we will seek to maximise our data sharing within the provisions of the Data Protection Act. We will seek to use compatible collection methods to give consistency.

We will involve businesses in vetting data requirements and form design for clarity and simplification. We will also ensure that, where possible, data can be returned electronically.

8.0 Enforcement Action

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 (when such powers are made available.)

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.

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, (unless immediate action is required to prevent or respond to a serious breach or where to do so would be likely to defeat the purpose of the proposed enforcement action.) 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.

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.

8.1 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 business's past performance and its current practice.
- The risks being controlled.
- Legal, official or professional guidance.

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.
- Fixed Penalty Notices.
- Penalty Charge Notices.
- Statutory Notice.
- Formal closure
- Seizure of goods/equipment.
- Injunctive Actions.
- Refusal/revocation of a licence.
- Simple Caution.
- Prosecution.

8.2 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. Domestic nuisance issues may be best resolved by the neighbours entering dialogue without the direct intervention of officers. 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.

8.3 Informal Action and Written Advice

For minor breaches of the law, 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.

8.4 Statutory Notices

Officers of the Service have the power under various pieces of legislation, or through delegation, to issue notices that:

- Prohibit the sale or distribution of goods where relevant provisions may have been breached,
- Require a business to take specific actions to remedy an identified problem,
- Require a business to desist from particular activities that may not comply with legal requirements.
- Require any person to take action to ameliorate or stop nuisances being caused by their actions

Notices may require immediate action where, for example, there are risks to public health or safety, or an immediate risk of environmental damage or serious nuisance. In other circumstances, a reasonable amount of time will be given, depending on the circumstances, to rectify the problem.

Certain types of notice allow works to be carried out in default. This means that if a notice is not complied with (a breach of the notice) the service may commission the carrying out of any necessary works to satisfy the requirements of the notice. Where the law allows, the partner council may then charge the person/business served with the notice for any costs WRS incurs in carrying out the work.

In certain limited circumstances i.e., under the provisions of food safety legislation, where an authorised officer is satisfied that there is an imminent risk of injury to health from the condition of the premises, the officer may serve notice to close the premises. This would be immediately followed by an application to a Magistrates Court to confirm the closure.

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

8.5 Fixed Penalty Notices

A few offences prescribed by legislation relevant to WRS are subject to fixed penalty notices. These notices 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.

8.6 Penalty Charge Notices

Penalty Charge Notices (PCNs) are prescribed by limited amounts of legislation relevant to WRS, as a method of enforcement by which the offender pays an amount of money in recognition of the breach. Failure to pay the PCN will result in the offender being pursued in the County Court for non-payment of the debt. A PCN does not create a criminal record and we may choose to issue a PCN without first issuing a warning in appropriate circumstances.

8.7 Institution of Legal Proceedings

Once an officer has completed his/ her enquiries, they will submit a case report 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 on 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 the business,

- The offender acted dishonestly, wilfully, or negligently.
- The product or service was aimed at a vulnerable group or person.
- The product or service has caused or had the potential to cause physical or mental injury or suffering, significant harm, or loss.
- 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 loss or harm could be described as minor and was because of a single incident, particularly if it was caused by a failure of judgment.
- The offender put right the loss or harm caused prior to the intervention of the Service.
- Prior to the Service's intervention, the offender had introduced adequate steps to prevent further similar offences.
- 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.

8.8 Proceeds of Crime Applications

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.

8.9 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.

8.10 Injunctions

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.

8.11 Other Orders available

There are a range of orders available in law under various provisions that can be used to tackle what is widely described as “anti-social behaviour.” Where these provisions offer a suitable way of dealing with an issue, the service has sufficient resource to deal with the matter and has delegated authority from the relevant partner, the service will take them forward with the support of the relevant partner legal service. The service may refer such matters back to the relevant partner where there is another enforcement team better placed to deal with the issue.

8.12 Refusal, Suspension and Revocation of Licence/ Permit

Where there is a requirement for a business to be licensed or permitted by the local authority, the licence/ permit may be granted under delegated authority unless representations or objections are received against the application. In most such cases, a Licensing Committee or Sub-Committee will hear the case and decide to grant, grant with conditions, or refuse the licence application. In addition, in relation to the Gambling Act 2005, applications for premises Licence, the Licensing Committee can exclude a condition of licence.

Some Licensing or permitting regimes are based on specialist knowledge and have detailed guidance that would make decision making by a lay-person difficult. In such circumstances officers may have delegated authority to refuse, suspend or revoke such licenses. Where this occurs, the applicant/ licensee will be told why and provided with details of any available appeal process.

In most circumstances, a licence/ permit may be considered for suspension, revocation, or the application of further conditions, where officers become aware of either the commission of offences relating to the conduct of the business, or breaches of existing conditions or similar controls. In most cases, these matters will be heard before the Licensing Committee (or a Sub-Committee,) of the relevant partner Authority, and the

elected members will determine what action should be taken unless it is one of the matters mentioned above where officers can make a decision under delegated authority. In relation to the more specialised regimes where officers have full delegated responsibility for decision making, explanations of why further conditions/ suspension or revocation are necessary will be provided to the license/ permit holder along with any routes of appeal that are available.

9.0 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.

9.1 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 businesses. We will enable them to interpret and apply relevant legal requirements and ensure that they enforce requirements fairly and consistently between like-businesses in similar situations. We will take account of comments from businesses and other interested parties regarding the behaviour and activity of our staff.

9.2 Liaison with other regulatory bodies and enforcement agencies

Where appropriate, enforcement activities within Worcestershire Regulatory Services 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 County boundaries or 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.

Worcestershire Regulatory Services 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

9.3 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