

**COMMUNITY SAFETY SERVICES**

**ENVIRONMENTAL ENFORCEMENT POLICY**

**1.0 Introduction**

- 1.1 The Government have identified that Local Authorities need to have documented procedures and policies in place to ensure consistency and conformity of enforcement and has issued guidance in this respect. This Policy document reflects that guidance and is intended to meet this need and act as the focus for all environmental enforcement actions carried out under the delegated authority granted by the Council. It is designed to reflect the content of the Enforcement Concordat that the Service has signed up to and relevant best practice guidance, codes of practice and central government guidance.
- 1.2 The policy covers all the principal environmental crime types of fly tipping, littering, graffiti and commercial waste provision and disposal (duty of care) and seeks to assist officers in the decision process when dealing with enforcement issues. It sets out a consistent approach regarding the use of formal and informal mechanisms at their disposal to achieve effective and efficient compliance with relevant statutes and sets and agreed Policy in terms of the course of action to be taken as regards the environmental crime types.
- 1.3 Officers should have regard to the Departmental Enforcement Policy, which is the overriding Policy, the standard procedures for enforcement for each crime type and statutory guidance when considering issues that fall within these areas.

**2.0 Aim of the Policy**

- 2.1 The aim of the policy is:
- (a) To ensure that a consistent approach is maintained in deciding whether to use informal or formal means of enforcement to achieve consistent, fair, effective and efficient compliance with the relevant legislation which is proportional to the risk to public health or contravention whilst minimising the burden to the public, local business and the authority.
  - (b) To provide Officers with guidelines to assist in the decision process when dealing with enforcement issues.
  - (c) To set out the criteria to determine the competency of officers for authorisation purposes.
  - (d) To maintain the level of enforcement activity according to the standards of service laid down in the Service Standards and Performance Indicators Policy document.
  - (e) To ensure that enforcement is informed by the principles of proportionality in applying the law and securing compliance; consistency of approach, targeting of enforcement action and transparency about how the regulator operates and what those regulated may expect.

### 3.0 **Enforcement Policy**

- 3.1 The Service Standards and Performance Indicators for Community Safety services identify the quantified aims and objectives against which the service can be measured and lays down the service standards and the performance criteria to which the service will seek to perform. This is supported by detailed procedures and guidance for the enforcement of each crime type held within this service quality manual.
- 3.2 All officers will follow this enforcement policy. Any departure from the policy must be exceptional, capable of justification and be approved by the relevant Service Manager in consultation with the Head of Service. Where the issue has potentially significant ramifications the Head of Service and Portfolio Holder must be consulted where and must be informed of all formal action taken.
- 3.3 In all cases the investigation of complaints, inspections and contravention's of legislation and the gathering of evidence in relation to these will be carried out in accordance with the relevant PACE codes of practice and comply with the standard evidential rules.
- 3.4 All officers must have regard to the Authorities Corporate Policy on Racial Equality at all times in undertaking their duties and in the investigation of complaints, inspections and contravention's of legislation and the gathering of evidence in relation to these must be carried out in accordance with this policy.
- 3.5 All officers must have regard to the provisions of the Human Rights Act 1998 at all times in undertaking their duties and in the investigation of complaints, inspections and contravention's of legislation and the gathering of evidence in relation to these must be carried out in accordance with this Act. The enforcement decision making process should have regard to the Checklist for Human Rights Convention Rights
- 3.6 All officers must have regard to the of the provisions of the Data Protection Act 1998 at all times in undertaking their duties and in the investigation of complaints, inspections and contravention's of legislation and the gathering of evidence in relation to these must be carried out in accordance with this Act.
- 3.7 If applicable the requirements of the Regulation of Investigatory Powers Act 2000 shall be taken into account during investigations. The Act works in conjunction with existing legislation e.g. Human Rights Act 1998. The councils RIPA procedures must be complied with at all times and the authorisation must be formally recorded within the corporate systems.
- 3.8 The Code for Crown Prosecutors (Prosecutors employed by the Crown Prosecution Service) is referred to by Local Authority solicitors in ensuring that fair and consistent decisions about prosecutions are made. Officers shall refer to this code when considering the merits and public interest of pursuing a prosecution.

#### 4.0 **Qualifications and Authorisation of Officers** **Environmental Health General**

- 4.1 The Head of Community Safety Services holds the delegated authority to authorise Council staff to exercise the powers and duties under environmental legislation. These delegated powers for officers will only be exercised in accordance with this enforcement policy.
- 4.2 No officer shall carry out any enforcement duties unless suitably trained and experienced and authorised in writing by the Head of Community Safety Services. Service Managers in conjunction with Principal Officers will satisfy themselves that officers authorised for specific powers meet the standards of competence outlined in any appropriate guidance.
- 4.3 Officers on Out of Hours duty will under normal circumstances only take action up to the level of their assessed competence and training. Where the action required goes beyond their level of assessed competence they will attempt to contact an officer who has been assessed as competent in the relevant area.
- 4.4 Statutory Notices, Improvement Notices and Prohibition Notices may only be served by officers who are suitably qualified and specifically authorised for this purpose by the council in accordance with appropriate guidance. The delegated authority to prosecute lies with the Head of Service, or in their absence the Service Manager, who will formally authorise all prosecutions.
- 4.5 A commitment to training will be provided for all enforcement officers as and when required to meet changes in legislation and enforcement procedures. As part of this process records of training and/or assessment will be maintained and held in a confidential file by the Service Manager and/or Personnel Section as appropriate.

#### 5.0 **Enforcement Options**

- 5.1 All officers will follow the documented standard procedures and refer to any relevant guidance in the Statutory Codes of Practice or guidance notes issued under the relevant statutes or by a recognised body and which are accepted as providing a national standard. The aim of this approach is to ensure that enforcement decisions are always consistent, balanced, fair and relate to common standards to ensure the public is adequately protected.
- 5.2 It is considered that there are essentially four steps of enforcement relevant to environmental enforcement. These steps provide the framework that officers employed by the Council should follow when carrying out their duties. These steps are described broadly as, Prevention, Informal Action, Formal Action and Prosecution.
- 5.3 Officers will try to ensure that members of the public and businesses do not unnecessarily expose themselves to the possibility of formal action through lack of information or understanding. Officers will target the advice and information issued to residents, the public and specific businesses and premises for which particular statutes apply and endeavour to ensure from their contact with these people that they understand the requirements placed upon them. The objective will be to secure a positive relationship between enforcer and those whose activities are subject to regulation.

- 5.4 The action taken by the officer should be proportionate to the risk to public health and safety and protection of the environment arising from any contravention identified. In deciding the enforcement action to be taken the officer should have regard to:
- (a) The seriousness of the offence.
  - (b) The individual or businesses past history of compliance.
  - (c) The confidence in the individual or management of a business i.e., the willingness to rectify and/or improve conditions.
  - (d) The consequence of non compliance.
  - (e) The likely effectiveness of the various enforcement options.
  - (f) The risk to public health, safety and welfare.
  - (g) Any significant local factor or circumstance.
  - (h) The evidence available.

## 6.0 **Preventative Action**

- 6.1 Officers will seek to raise awareness about the need to comply with legislation using an educational approach to promote good practice on environmental and safety issues. This will not be considered as an option where any significant breach of relevant legislation is identified.
- 6.2 Promotion will be carried out by contact with the various business groups, residents and individuals who are complained of by members of the public. The dissemination of information will be by way of leaflets, publications, recognised courses, seminars and by word of mouth during informal contact or inspection and investigative visits.
- 6.3 The objective is to achieve a climate of legislative awareness and co-operation from possible offenders but is not for use where contravention of relevant legislation has already been identified.

## 7.0 **Informal Action**

- 7.1 The objective of informal action will be to secure compliance where breaches of statutory requirements or compliance with regulations or statutes that the council is delegated to take action under. Where the council is required to enforce legislation by statute or the act or omission is considered serious or presents a significant risk to the environment, members of the public or an employed person the officer will proceed to the Formal Action stage immediately.
- 7.2 Informal action includes offering advice, verbal warnings and requests for action, the use of informal letters and inspection reports.
- 7.3 Informal action should be considered according to one or more of the following circumstances when informal action as described above will be deemed appropriate:

- (a) The act or omission is not serious enough to warrant formal action and does not pose a significant risk to the environment, public health, safety or welfare.
- (b) The individual or company's past history are such that it can be reasonably expected that the informal action will achieve compliance.
- (c) The officer has high confidence in the individual or management's ability to correct a defect or contravention and undertake any works that may be required.
- (d) Standards in general are good suggesting a high level of awareness of statutory responsibilities.
- (e) The consequences of non-compliance are acceptable, e.g. minor matters, or the time period allowed to seek compliance does not present a risk to the environment, public health, safety or welfare.

7.4 Officers will inform the individual or company verbally, as soon as reasonably practical, of any circumstance that they consider constitutes non-compliance with the relevant statute, breaches of statutory requirements and the necessary works or action needed to comply with the regulations as the first stage of informal action. Officers will state a specific time period for the individual or company to comply with the relevant legislation. At this stage a formal written warning of the possibility of formal action will be given if the informal action is not complied with.

7.5 Where informal action is taken involving verbal confirmation of non compliance and the offence or non compliance is serious or where there are a number of items which require attention, and in all cases where a statutory requirement is made, a letter shall be sent confirming the contravention/non compliance found, the Act to which the comments apply within established response times. The informal notice will make clear:

- (a) The findings of the inspection or investigation.
- (b) The action that the inspecting/investigating officer intends to take providing an opportunity to discuss this action.
- (c) The works/actions that the recipient will be required/advised to undertake and a specific time period within which they must be completed.
- (d) Relevant advice regarding how the works/actions may be achieved containing sufficient information to understand the work which is required and why it is necessary.
- (e) The differentiation between legal requirements and recommendations of good practice.
- (f) Where necessary the specific legislative requirement/s contravened.
- (g) The means by which a complaint or representation may be made regarding the works required, or any other matter regarding the inspection/investigation or its outcome, including the contact details of the inspecting officer, their manager and details of the complaints procedure.

Any time limit stated will relate to the risks or potential health problems that may result. A reasonable time must be allowed for works to be carried out. An extension of time will be considered only where representations are made to the Council. Any extension will be dealt with on an individual basis depending on the circumstance as to why the works have not been completed.

- 7.6 If raised by way of complaint the complainant will be informed of the findings of the inspection/investigation, the action taken and the time limit given for compliance.
- 7.7 The letter must also clearly indicate the willingness of the Council to resolve the matter without recourse to formal action so long as there is adequate response to the initial informal approach. Persons in receipt of an informal notice “verbal or written” will be given every opportunity to discuss the requirements with the officer and agree an appropriate programme and timetable of work. Encouragement will be given to recipients to seek advice at each stage of the process where this is applicable.

## 8.0 **Formal Action**

- 8.1 Formal action will consist of the use of formal mechanisms to achieve compliance where informal action has either been unsuccessful or is not deemed appropriate. Formal action will include the use of formal Notices, legal action of any nature or prosecution.

Formal action will normally only be contemplated if the Council is satisfied that all reasonable steps have been taken to achieve compliance through informal action or where one or more of the following apply:

- (a) There is a risk of serious pollution, environmental damage or blight or hazard to health safety or welfare or visual or material damage to the environment
- (b) There is a clear disregard of responsibilities under the legislation enforced by the Council.
- (c) The offences are of such nature or gravity that other forms of action are inappropriate.
- (d) There is a legislative requirement to take action regardless of the circumstance.
- (e) There is a reasonable prospect of defending the action taken in the case of an appeal against the action taken or of successful prosecution.
- (f) Statutory works required in an informal notice have not been complied with within the stated time period and there are no reasonable grounds on which to extend the relevant time period.
- (g) The Policies outlined in section 13 of this report relating to each offence type dictate and set a precedence of formal action in the first instance.

- 8.2 An important element of formal action is proportionality and consistency. Proportionality demands that Local Authorities exercise their discretion to ensure that:
- (a) Resources are targeted according to risk, and
  - (b) There is appropriate interpretation of what is reasonably practical, so that expenditure is proportionate to benefit gained.

However, where serious breaches of legislation are discovered or risks to members of the public are high, then formal action will be recommended immediately.

- 8.3 Where formal action is contemplated against an organisation or business outside Harrow Borough regard must be had to the information received from the home authority/lead authority where appropriate, relevant case law and the previous history. Where the action will have national significance it must be taken into account whether the action is in accordance with national guidelines.

It is important that in determining what formal action is to be taken the correct decision is adopted. Enforcement action will take the form of either:

- (a) Informal action (verbal warning or informal letter). (See section 7.0 above)
- (b) The use of Statutory Notice
- (c) The use of Fixed Penalty Notices.
- (d) The use of Formal Cautions.
- (e) The instigation of legal proceedings.

## 9.0 **Statutory Notices and Formal Action**

- 9.1 A Statutory Notice, including Fixed Penalty Notices, will normally be the first formal sanction issued by the council. This paragraph refers to those Notices specified in any Act, the enforcement of which is delegated to the Head of Community safety Services within the terms of the current scheme of delegation.

- 9.2 The circumstances in which a Notice will be served include one or more of the following criteria:

### Improvement Notice

- (a) There is a significant contravention of legislation.
- (b) There is a lack of confidence in the successful outcome of an informal approach.
- (c) There is a history of non-compliance with informal action.
- (d) Standards are generally poor with little management awareness of statutory requirements.

- (e) The consequences of non-compliance could be potentially serious to public health, safety or welfare.
- (f) Effective action needs to be taken quickly in order to remedy conditions that are serious or deteriorating.
- (g) There is a legal requirement for the Council to take action.
- (h) Where there is a direct contravention of legislation, defect or condition affecting the health and safety or welfare of any person for which no alternative solution has been selected which would otherwise lead to an early resolution of the matter.
- (i) Statutory works required in an informal notice have not been complied with within the stated time period and reasonable grounds on which to extend the relevant time period.

#### Prohibition Notice

- (a) The consequences of not taking immediate and decisive action to protect health, safety or welfare would be unacceptable.
- (b) An imminent risk of injury or to health, safety or welfare can be demonstrated.
- (c) The requirements of the relevant Statutory Codes of Practice regarding the use of such Notices are fulfilled.
- (d) The proprietor of the business or individual is unprepared to voluntarily close their premises or cease to use any equipment, process, treatment or activity associated with imminent risk.
- (e) Where there is a direct contravention of legislation, defect or condition affecting the health and safety or welfare of any person for which no alternative solution has been selected which would otherwise lead to an early resolution of the matter.

#### Abatement Notice

- (a) There are serious risks of pollution or imminent risks to public health, safety or welfare.
- (b) All efforts to effect an agreed solution to a Statutory Nuisance by informal means have failed.

#### Fixed Penalty Notice

Fixed Penalty Notices will be issued under specified legislation and in appropriate cases discounts applied where the payments are received within an early payment period. If a fixed penalty is not paid within the prescribed period legal proceedings shall be considered in accordance with the requirements of the legislation.



## Carry out Work in Default

Work required in the interests of public health, safety or the environment may be undertaken by the Authority in default, and the costs recovered in accordance with specific legislation. This may be appropriate when:

- It is necessary to carry out the work in the public interest and/or the costs are not prohibitive.
- There is a failure to carry out work covered by a statutory notice.
- Immediate action is required.
- It is unlikely that the work will be carried out unless done in default.

## Refusal/Revocation of Licence/ Approval/ Authorisation

Licences, Approvals and Authorisations are issued under specific legislation and will only be refused or revoked following appropriate procedures and consideration of all relevant evidence. Legislation often details the grounds for objection and officers in determining the approach to the case will use these grounds.

In the absence of established grounds for objection to a particular application, in order to warrant refusal/revocation of a Licence, Approval, or Authorisation the individual or organisation must meet one or more of the following criteria:

- engage in fraudulent activity,
- deliberately or persistently breach legal obligations
- deliberately or persistently ignore written warnings or formal notices
- endanger to a serious degree the health, safety or well being of people, animals or the environment

## Injunctions

In exceptional cases where action under the relevant legislation is deemed likely to be ineffective, where there is serious imminent risk to public health or the environment, and immediate action is considered necessary, injunctive proceedings may be instituted.

## Other Orders and Notices:

Other enforcement options will be considered where there is a direct contravention of legislation, defect or condition affecting the health, safety and welfare of any person or is giving rise to environmental blight or damage and for which no agreed alternative solution has been accepted which would otherwise lead to an early resolution of the matter.

- 9.3 Officers will follow procedures set out in relevant codes of practice and guidance notes. Time limits specified in the notice must be realistic and where possible the requirements of the notice will be discussed in advance with the recipient. The Notice will be served as a matter of priority following identification of the relevant contravention. All notices will be accompanied by information clearly describing the mechanisms to seek further information or to appeal against requirements of the Notice.
- 9.4 Authorised officers may serve a notice immediately out of hours or where the circumstances are such that consultation would delay unnecessarily the purpose of the action or expose people to immediate risk. The Service Manager and/or Head of Service should be informed as soon as practicable. In cases where the service of a fixed penalty notice is appropriate, the notice will be served immediately or as soon as possible after the investigation of the offence.
- 9.5 Officers with delegated authority to issue Notices will only exercise this power after giving full consideration to the circumstances. Notices will be served after all alternative remedies have been exhausted, or have been evaluated to be inappropriate, or are within the procedures for the issue of fixed penalty notices and officers will follow any procedures set out in relevant Codes of Practice or Guidance Notes. Time limits specified in the Notice must be realistic and where possible requirements of the Notice should be discussed in advance including any necessary consultation with the Council's Legal Advisors.
- 9.6 If action is being contemplated as result of a service request the complainant will be informed that a Notice has been served and the time given for compliance.
- 9.7 The service of Notice does not preclude the taking of a prosecution at the same time where such action is considered necessary and appropriate in the circumstances.

## 10.0 **Prosecutions**

- 10.1 Prosecution should only be considered when the following advice has been considered having full regard to the following principles:
- (a) Reasonableness – is the proposed course of action reasonable in terms of cost, likely outcome and appropriateness to the offence?
  - (b) Ultra Vires – does legal authority exist for the proposed course of action and is it vested in the Council, the Head of Community Safety Services or any individual officer concerned. If formal action is contemplated, have all the requirements of the Police and Criminal Evidence Act been met?
  - (c) The Crown Prosecution Service Code – this code sets out two clear principles or tests that should be considered before any prosecution is embarked upon. These are the evidential tests and the public interest test. The evidential test requires that there be a “realistic prospect of conviction” based on reliable and admissible evidence. The public interest test is concerned with balancing the possible “for” and “against” factors that may exist.

This may mean balancing the cost of legal action against the likely outcome, the seriousness of the offence against a possible disproportionately harmful effect on the defendant, and so on.

- 10.2 The decision to initiate prosecution proceedings will be taken by the Head of Service, or in their absence a Service Manager, taking into consideration the guidelines contained in relevant Codes of Practice or Guidance Notes. This decision will be formally recorded using the standard approval form for prosecution.
- 10.3 The investigating officer must be able to clearly show there is relevant and admissible evidence to support legal action. The Council's legal advisor will be consulted to determine compliance with the evidential test where there is doubt or legal opinion is required. Full regard must be had to the availability of the "Due Diligence" and other defences. The final decision to proceed will be taken by the Head of Service when they are satisfied that these tests have been met but in all cases there must be a realistic prospect of a conviction being gained.
- 10.4 Prosecutions will in general be restricted to those who blatantly disregard the law, refuse to achieve a basic minimum requirement or who place any person at risk. The circumstance in which prosecution will normally be considered are according to one of more of the following:
- (a) Where the alleged offence involves a significant breach of the law such that public health, safety and well being is put at risk or significant environmental damage or blight is being caused. The significance of the alleged offence will take into regard the risks or harm to public health, identifiable victims, environmental damage or blight caused or disregard of public health for financial reward.
  - (b) Where the alleged offence involves a failure to correct and identify a serious risk and the offender has been given a reasonable opportunity to comply with the lawful requirements of an enforcement officer.
  - (c) Where the offence involves the failure to comply in full or in part with the requirements of a Statutory Notice.
  - (d) Where there is a history of similar offences related to environmental damage or blight, risk of public health, safety or welfare.
  - (e) Where the perpetrator gained the advantage sought from a single commission.
  - (f) Where the offence involves the threat of violence.
  - (g) Where prosecution would be in the public interest, having regard particularly to the Councils duty to enforce the law.
  - (h) Where there are overriding local factors that must be taken into account.
  - (i) In accordance with the Policy statements as regards each environmental crime type in section 13 below where there is a risk of serious pollution, environmental damage or blight or hazard to health safety or welfare or visual or material damage to the environment
- 10.4 There will be no hard and fast rule with regard to the restraint to the decision to prosecute. Every case will be considered on its merits, including the need to prosecute first time offenders.

10.5 Where prosecution is as a result of a service request, the complainant will be informed of the decision to prosecute and kept informed of the progress of the action proposed including the final court decision.

10.6 Where a complainant is required to give evidence in support of a prosecution they will be given all suitable support and advice to enable them to do so effectively and with the minimum of burden.

#### 11.0 **Formal Cautions**

11.1 The “formal caution” may be used as an alternative to prosecution. As with prosecutions, the Council’s legal advisor will be consulted to determine compliance with the evidential test where there is doubt or legal advice is required on a point of law. The final decision to proceed will be taken by the Head of Service, or in their absence a Service Manager, in conjunction with the Council’s Legal Advisor and any other relevant person. A Formal Caution will only be issued by an officer with the delegated authority to do so.

11.2 The Home Office Circular states the purpose of a formal caution is:

- (a) To deal quickly and simply with less serious offences.
- (b) To divert less serious offences away from the Courts.
- (c) To reduce the chances of repeat offences.

11.3 The formal caution maybe used in place of court proceedings when:

- (a) The interest of justice will not be served by court action.
- (b) For offences of a minor nature not actioned following service of a Statutory Notice and where there is no risk to public health or the environment.
- (c) A “technical offence” has been committed and there is a need for the offence to be formally recorded.

11.4 To safeguard the suspected offender’s interest the following conditions must be fulfilled:

- (a) There is sufficient evidence to secure a conviction.
- (b) The suspected offender must admit the offence.
- (c) The suspected offender must understand the significance of a formal caution and agree to being cautioned.
- (d) The suspected offenders Human Rights must not have been contravened by the issue of the caution.

- 11.5 The Head of Service with the Service Manager and investigating officer will determine if a formal caution is the most appropriate form of sanction following consultation with the Legal and Democratic Service. Unless there are particular reasons not to, refusal of a formal caution will be followed by a prosecution for the alleged offence. It is important therefore to ensure that before a formal caution is offered, the case satisfies all of the tests and requirements for a prosecution.
- 11.6 The Office of Fair Trading, Home or Lead Authority where appropriate must be advised of any formal caution issued by the Council.
- 11.7 Any formal caution issued by the Council under the above will not be sited in relation to an offence committed more than three years after the caution is issued.

## 12.0 **Power to Enter Premises, Land and Vehicles**

- 12.1 The power to enter private premises, land or a vehicle will vary depending upon the legislation that is relevant to the situation. In general, enforcement officers are legally empowered to enter commercial premises and vehicles during normal operating hours in order to determine whether the law is being complied with. In the case of domestic premises, the law usually requires reasonable notice to be given to the occupier before an officer has a right to enter.
- 12.2 A person refusing an officer entry risks committing the serious offence of obstruction and is liable to prosecution by the Council.
- 12.3 An officer who wishes to gain entry to private areas of a property will, where circumstances permit, explain who they are and the purpose of their visit. The officer will also show their official identification and will seek permission to enter. Persons in charge of premises are encouraged to refuse access to officers who are unable to show any official identification until their identity and authority has been confirmed, in order to prevent access by people imitating Council officers.
- 12.4 Enforcement officers may take other persons into premises in order to assist, for example, a police officer or an expert in the field of the investigation.
- 12.5 Persons in charge of premises will be invited to accompany enforcement officers whilst on the premises and officers will carry out their duties in a way that minimises detrimental effects on the legal activities at the premises. Nevertheless, it may be necessary to enter businesses during busy periods if it is suspected that contraventions will take place then.

## 13.0 **The Council Policy on Environmental Crime Enforcement**

- 13.1 The following sets out the council's policy to the enforcement of three main types of environmental crime encompassing Fly tipping, littering, Duty of Care for Commercial Waste and Graffiti.

### **Education**

- 13.2 While ignorance of the law is no defence, in addition to purely pursuing enforcement options the council does much to promote compliance with the law. We provide advice through letters, leaflets, self-assessments and booklets. We also use our

website, the Harrow People, booklets sent with council tax information and various promotional events such as Junior Citizen and Under One Sky, to draw attention to the law and to promote compliance. However the nature of the environmental crimes in this policy are widely recognised as offences and only in cases where the circumstances warrant the use of an educative approach would this be used as an alternative to formal enforcement actions (which may range from a warning letter to prosecution).

13.3 As guidance to officers, an educative approach is only used where the action of a potential offender:

- Appeared genuinely accidental or inadvertent, and
- Immediate action had been taken by, or on behalf of the offender to rectify the situation, and
- The action had been completely effective at rectifying the circumstances of the offence.

It is unlikely that this discretion to use an educative approach will be used in situations involving commercial waste, or commercial Duty of Care. Note – the council will soon complete a programme to distribute Duty of Care information to all commercial premises in high street locations in the borough.

## **Flytipping, littering and the unlawful deposit of waste.**

Main legislation –

Environmental Protection Act 1990  
Including s33, 59, 87 and 88.

London Local Authorities Act 2007

Clean Neighbourhoods and Environment Act 2005

### **Sanction**

#### **Prosecution**

The Policy of Harrow Council is that fly tipping, littering and unlawful deposit of waste is considered to be a wholly avoidable action, which in most instances is premeditated or wilful disregard for the relevant legislation.

In all cases the council will seek to Prosecute those responsible, including on the first offence, where the evidence is available to support this course of action.

### **Related Criteria - Offender Action or Behaviour**

- Flytipping – the deposit, storage or placement of waste (one black bag or more, or its equivalent).
- Repeated littering – the deposit, storage or placement of waste (less than one black bag).
- Littering where aggravated by the potential adverse environmental impact of the waste, examples may include asbestos containing materials, oils, chemicals, toxic materials and other materials with similar environmental impacts.

In all cases the council will seek to recover all costs, including the cost of investigation, associated with the action.

- Where there is non-compliance with a notice, or where non-compliance is reasonably anticipated.

## Notices

### **Fixed Penalty Notices**

Where the offence meets the criteria for Prosecution the Policy of the council is to prosecute.

Where prosecution is not available as a first option and the use of a fixed Penalty Notice sanction is available a Fixed penalty Notice will be issued to the responsible person according to the statutory guidance and process.

- Littering - unless meeting the criteria for prosecution above. This littering includes deposit of smoker's materials and waste, fast foods and materials, confectionary and wrappers, chewing gum, etc.

## Other Sanctions

### **Formal Warnings**

Due to the current extent of fly tipping and littering, the use of informal enforcement options to substitute for prosecution or the issue of a Fixed Penalty Notice is not considered appropriate.

However, where the evidence does not exist to support these routes as a minimum a Formal Warning letter will be sent and recorded for use as evidence to support future actions if required. See notes on Education, above.

### **Formal Caution**

A formal caution will be considered as the appropriate course of action only in accordance with this Policy.

A formal caution will only be considered appropriate where it enables the council to deal quickly and simply with less serious offences, to divert less serious offences away from the Courts or to reduce the chances of repeat offences.

## **Work in Default**

Where the power is available to undertake work in default and charge the cost of works to the person responsible the council will undertake works in default to obtain prompt action in cases of adverse environmental or amenity impact is being caused.

In all cases the council will seek to recover all costs associated with the works in default, if necessary through formal action in the courts through our standard procedures.

## **Seizure and disposal of vehicles**

Where the power to seize a vehicle exists under the Clean Neighbourhoods Act, i.e. a vehicle used for the commission of fly tipping, the council will on all occasions seek to formally seize the vehicle and will apply to the court to obtain approval for its disposal.

## **Commercial Duty of Care**

### **Covering the storage, handling and disposal of commercial waste.**

Main legislation –

Environmental Protection Act 1990  
Including s34.

Clean Neighbourhoods and Environment Act 2005

## **Sanction**

### **Prosecution**

The Policy of Harrow Council is that duty of care cases, as described in the right-hand column, are considered to be a wholly avoidable action, which in most instances is premeditated or wilful disregard for the relevant legislation.

In all cases the council will seek to Prosecute those responsible, including on the first offence, where the evidence is available to support this course of action.

## **Related Criteria - Offender Action or Behaviour**

- Contravention of duty of care provisions with the waste subsequently appearing as a flytip (one black bag or more), or littering (less than one black bag).
- Contravention of duty of care provisions leading to the diversion, or attempted diversion into other waste streams, such as but not exclusively,



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## Other Sanctions

### **Formal Warnings**

Due to the current extent of the diversion of commercial waste into illegal methods of disposal, the use of other enforcement options to substitute for prosecution or the issue of a Fixed Penalty Notice is not considered appropriate.

However, where the evidence does not exist to support these routes as a minimum a Formal Warning letter will be sent and recorded for use as evidence to support future actions if required. See notes on Education, above.

domestic, recycling, 'green' and street cleaning wastes.

- Contravention of duty of care provisions leading to waste arising in the disposal arrangements of other parties (which would include vehicles, bins, skips and premises).
- Where there is non-compliance with a notice, or where non-compliance is reasonably anticipated.
- Unable to provide waste disposal documentation.
- Contravention of duty of care arrangements for the containment of waste.
- Contravention of duty of care waste arrangements with the likelihood of the spread of waste materials.
- A notice to produce may be used where compliance with duty of care provisions is considered likely, but waste disposal documents are not immediately available on site.

## **Formal Caution**

A formal caution will be considered as the appropriate course of action only in accordance with this Policy. A formal caution will only be considered appropriate where it enables the council to deal quickly and simply with less serious offences, to divert less serious offences away from the Courts or to reduce the chances of repeat offences.

## **Work in Default**

Where the power is available to undertake work in default and charge the cost of works to the person responsible the council will undertake works in default to obtain prompt action in cases of adverse environmental or amenity impact is being caused i.e. the clearance of accumulated waste.

In all cases the council will seek to recover all costs associated with the works in default, if necessary through formal action in the courts through our standard procedures.

## **Graffiti**

Main legislation –

Anti Social Behaviour Act 2003.

London Local Authorities Acts, 1995 and 2007

Highways Act 1980

Criminal Damage act 1971 (as amended by the Crime and Disorder Act 1998 in respect of religious or racially aggravated crime)

Clean Neighbourhoods and Environment Act 2005

## **Sanction**

### **Prosecution**

The Policy of Harrow Council is that graffiti cases as described in the right-hand column, is considered to be a wholly avoidable premeditated act. In all cases the council will seek to Prosecute those responsible,

## **Related Criteria - Offender Action or Behaviour**

- Commission of graffiti offences, but if small scale and a first offence use FPN.
- Commission of graffiti offences with

including on the first offence, where the evidence is available to support this course of action.

In all cases the council will seek to recover all costs, including the cost of investigation, and removal of graffiti associated with the action.

The council will, in conjunction with the police, maintain a formal evidential record of all instances of graffiti, including 'Tags' and wider graffiti types. Where a person is identified as responsible for a graffiti offence we will seek to link all previous instances which can be linked through an identifiable 'Tag' or other identifiable characteristic and prosecute for all offences recorded through the formal log.

## Notices

### **Fixed Penalty Notices**

Where the offence meets the criteria for Prosecution the Policy of the council is to prosecute.

Where prosecution is not available as a first option and the use of a Fixed Penalty Notice sanction is available a Fixed penalty Notice will be issued to the responsible person according to the statutory guidance and process.

### **Notice**

Where the occupier of a property fails to remove graffiti, which is considered to be detrimental to the amenity of the area, from the surface of a building a Notice requiring removal will be served requiring the Graffiti to be removed.

## Other Sanctions

### **Formal Warnings**

Due to the current extent of graffiti and the negative impact on the environment, the use of other enforcement options to substitute for

racial or religious aggravation.

- Defacing the highway or highway structures sufficient to cause damage.
- Where there is non-compliance with a fixed penalty notice.

- Small scale graffiti, with no religious or racial aggravation and a first offence.

- Notice on the occupier of a property to remove graffiti from the surface of a building if it is considered to be detrimental to the amenity of the area.

prosecution or the issue of a Fixed Penalty Notice is not considered appropriate.

However, where the evidence does not exist to support these routes as a minimum a Formal Warning letter will be sent and recorded for use as evidence to support future actions if required. See notes on Education, above.

### **Formal Caution**

A formal caution will be considered as the appropriate course of action only in accordance with this Policy. A formal caution will only be considered appropriate where it enables the council to deal quickly and simply with less serious offences, to divert less serious offences away from the Courts or to reduce the chances of repeat offences.

### **Work in Default**

Where the power is available to undertake work in default and charge the cost of works to the person responsible the council will undertake works in default to obtain prompt action in cases of adverse environmental or amenity impact is being caused i.e. the clearance of accumulated waste.

- Work in default following failure to remove graffiti following a notice served on the occupier of a property, where the circumstances are justified by lack of action to remove or address graffiti affecting the amenity of the area.

In all cases the council will seek to recover all costs associated with the works in default, if necessary through formal action in the courts through our standard procedures.

- 13.4 In the cases where a decision has been made in accordance with this policy to proceed with an enforcement action, and such action is against a person under the age of 18, a further review of the case will be made. Depending on the age of the person, this may involve Childrens Services, Young Offenders, Youth Justice, or other agencies as appropriate.
- 13.5 The council will seek to recover all costs incurred through investigation and legal action, work in default, waste clearance, waste stabilisation, waste disposal, graffiti removal, pollution control, site remediation, environmental monitoring, damage to council property or land, etc. The recovery of costs will be pursued by any available means.
- 13.5 The council will work with other agencies including the Environment Agency and Police on enforcement issues. In cases where both the council and another agency have enforcement powers, an opportunity will be given to that agency to investigate.

The Environment Agency is most likely to seek involvement in major flytips, or organised commercial flytipping. If, following investigation, the Agency decide not to take enforcement action, to avoid allegations of over prosecution, the council will not take enforcement action if it is based on precisely the same legislation and the same evidence.

#### 14. **The Keeping and Disclosure of Information**

14.1 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. In appropriate cases this information will include decisions taken about the choice of enforcement options.

14.2 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.

14.3 Personal data held manually or as computer records will be handled in accordance with the with the Data Protection Act 1998 (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 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 *Joint Protocol on the Sharing of Information*, through the Council's designated officer.

14.4 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*). Some exemptions to the Council providing information can be found in the Act, Regulations and the Council's publication scheme.

#### 15.0 **Review**

15.1 This Enforcement Policy will be reviewed as appropriate and at least annually and where amendments, which reflect legislative changes, administrative or operational developments or other matters are necessary, will be referred to the Portfolio Holder or Cabinet for approval.