



WIRRAL COUNCIL ENFORCEMENT POLICY

2014

EXECUTIVE SUMMARY

Wirral Council's primary objective is to achieve regulatory compliance. We will seek to promote advice, guidance, and support to assist businesses and individuals to comply, but where it becomes necessary to take enforcement action, we will do so. There is a wide range of enforcement tools available to us as an authority to deal with non-compliance, which include:

- Compliance Advice, Guidance and Support
- Voluntary Undertakings
- Statutory (Legal) Notices
- Financial Penalties
- Injunctive Actions / Enforcement Orders etc.
- Simple Caution
- Prosecution
- Refusal / Suspension / Revocation of Licences

Wirral Council will always choose an enforcement method that is relevant and proportionate to the offence or contravention.

This policy sets out the Council's approach to dealing with non-compliance in the following areas:

- Licensing
- Trading Standards
- Environmental Health
- Planning
- Building Control
- Housing Standards
- Waste and Environment

This policy provides guidance to officers, businesses and the general public on the range of options that are available to achieve compliance with legislation enforced by the above services. It is designed to help you understand our objectives and methods for achieving compliance and the criteria we consider when deciding the most appropriate response to a breach of legislation.

Wirral Council's decisions relating to which action to take will have regard to current statutory guidance and codes of practice, particularly the Regulators' Code, The Code for Crown Prosecutors and the Human Rights Act 1998.

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INTRODUCTION

1.1 Wirral Council is committed to avoiding unnecessary regulatory burdens on businesses or individuals and seeks to encourage and promote compliance. Wirral Council recognises that decisions about enforcement action can have serious implications for all involved. The purpose of this policy is to ensure that:

- Decisions about enforcement action are fair, proportionate and consistent
- Officers apply current Government guidance and relevant codes of practice
- Everyone understands the principles that are applied when enforcement action is considered

LEGAL STATUS OF THE ENFORCEMENT POLICY

2.1 This policy is intended to provide guidance for officers, businesses, and individuals. It does not affect the discretion of the Council to take legal proceedings where this is considered to be in the public interest. Officers of Wirral Council will act in accordance with this policy.

SCOPE AND MEANING OF ENFORCEMENT

3.1 This policy is based on the following statutory principles of good regulation:

- Transparency
- Accountability
- Proportionality
- Consistency
- Targeted action where it is needed

3.2 This policy applies to the legislation enforced by officers in:

- Licensing
- Trading Standards
- Environmental Health
- Planning
- Building Control
- Housing Standards
- Waste and Environment

3.3 'Enforcement' includes any action taken by officers aimed at ensuring that businesses and individuals comply with the law. This includes guidance as well as formal action.

GENERAL PRINCIPLES

- 4.1 Wirral Council aims to support businesses and individuals to comply with the Law and grow within the Borough. Where appropriate, positive feedback will be provided to those it regulates to encourage and reinforce good practice. Wirral Council will encourage and promote compliance through clear advice and guidance, and will share information within our organisation and with other regulators regarding compliance where appropriate and lawful to do so.
- 4.2 Where we consider that formal action is necessary each case will be considered on its own merits. However, the general principles that apply to the way each case will be approached are set out in this policy.
- 4.3 Wirral Council is a public authority for the purposes of the Human Rights Act 1998. We will, therefore, apply the principles of the European Convention for the Protection of Human Rights, and will undertake its duties in accordance with the Equality Act 2010.
- 4.4 This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulators' Code.
- 4.5 In certain instances we may conclude that a provision in the Regulators' Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the code will be properly reasoned, based on material evidence and documented.
- 4.6 Wirral Council is committed to ensuring that officers have the necessary knowledge and skills to support businesses and individuals to be regulated in accordance with this policy.

WIRRAL COUNCIL'S APPROACH TO DEALING WITH NON-COMPLIANCE

- 5.1 Wirral Council is committed to:
 - clearly explaining the non-compliance and any advice given, actions required or decisions taken, with reasons for these
 - provide an opportunity for dialogue in relation to advice given, actions required or decisions taken in relation to non-compliance
- 5.2 Wirral Council will:
 - provide details of who is responsible for managing investigations and making decisions on enforcement action in accordance with its scheme of delegation which is available via its website (www.wirral.gov.uk)
 - communicate with businesses or individuals in the most appropriate means which may include telephone, face to face, email, or letter
 - ensure that officers register any conflicts of interest to ensure that decisions made are fair and transparent
 - work with other enforcement agencies and will share information where appropriate and in accordance with the law
 - ensure that all those it regulates will be treated fairly and with respect

- in certain circumstances, seek to raise awareness and increase compliance levels by publicising unlawful practices or criminal activity. Where appropriate the results of specific court cases may be published.
- 5.3 The action that Wirral Council chooses to take depends upon the particular circumstances and the conduct of the business or individual in respect of the breach.
- 5.4 Wirral Council is committed to deal firmly with those that deliberately or persistently fail to comply.
- 5.5 Wirral Council is committed to ensuring that, where appropriate, those regulated are able to request advice on non-compliance without automatically triggering enforcement action, particularly where action to resolve non-compliance is being taken.
- 5.6 If we receive information that may lead to enforcement action against a business or individual we will notify that business or individual as soon as is practicable of any intended enforcement action, unless this could impede an investigation or pose a safety risk to those concerned or the general public.
- 5.7 During the progression of enforcement investigations/actions, businesses or individuals and witnesses will be kept informed of progress. Confidentiality will be maintained and personal information about individuals will only be released to a Court or other enforcement agencies when required and/or in accordance with the Data Protection Act 1998 and subject to other statutory provisions.
- 5.8 Wirral Council will respond appropriately to all complaints of non-compliance, subject to any risk-based prioritisation scheme used by the investigating department.
- 5.9 All investigations will be carried out lawfully having regard to the following legislation and in accordance with any associated guidance or codes of practice, in so far as they relate to Wirral Council:
- Police and Criminal Evidence Act 1984
 - Criminal Procedure and Investigations Act 1996
 - Regulation of Investigatory Powers Act 2000
 - Criminal Justice and Police Act 2001
 - Human Rights Act 1998

These Acts and associated guidance control how evidence is collected and used and give a range of protections to citizens and potential defendants.

Our authorised officers will also comply with the requirements of the particular legislation under which they are acting, and with any associated guidance or codes of practice.

DECIDING WHAT LEVEL OF ENFORCEMENT ACTION IS APPROPRIATE

- 6.1 In assessing what enforcement action is necessary and proportionate, consideration will be given to:
- The seriousness of compliance failure

- The past performance of a business or individual
- The current practice of a business or individual
- The risks being controlled
- Legal, official or professional guidance
- Local priorities of the Council

6.2 There are a number of potential enforcement options available to Wirral Council. The action taken varies from advice through to proceedings in Court. Examples of the main types of action that can be considered are:

- Compliance Advice, Guidance and Support
- Voluntary Undertakings
- Statutory (Legal) Notices
- Financial Penalties
- Injunctive Actions / Enforcement Orders etc.
- Simple Caution
- Prosecution
- Refusal / Suspension / Revocation of Licences

6.2.1 Compliance Advice, Guidance and Support

Wirral Council uses compliance advice, guidance and support as a first response in the case of many breaches of legislation that are identified. Advice is provided, sometimes in the form of a warning letter, to assist individuals and businesses in rectifying breaches as quickly and efficiently as possible, avoiding the need for further enforcement action. A warning letter will set out what should be done to rectify the breach and to prevent re-occurrence. If a similar breach is identified in the future, this letter will be persuasive in considering the most appropriate enforcement action to take on that occasion. Such a letter cannot be cited in court as a previous conviction but it may be presented in evidence.

Wirral Council recognises that where a business has entered into a partnership with a Primary Authority, the Primary Authority will provide compliance advice and support, and Wirral Council will take such advice into account when considering the most appropriate enforcement action for it to take. It may discuss any need for compliance advice and support with the Primary Authority.

Detailed information on the workings of Primary Authorities may be found at the [Better Regulation Delivery Office](#) website.

Where more formal enforcement action is taken, such as a simple caution or prosecution, Wirral Council recognises that there is likely to be an ongoing need for compliance advice and support, to prevent further breaches.

6.2.2 Voluntary Undertakings

Wirral Council may accept voluntary undertakings that breaches will be rectified and/or recurrences prevented. Wirral Council will take any failure to honour voluntary undertakings very seriously and enforcement action is likely to result.

6.2.3 Statutory (Legal) Notices

In respect of many breaches Wirral Council has powers to issue statutory notices. These include Stop Notices, Prohibition Notices, Emergency Prohibition Notices, Improvement Notices, and Abatement Notices. Such notices are legally binding. Failure to comply with a statutory notice can be a criminal offence and may lead to prosecution and/ or, where appropriate, the carrying out of work in default.

A statutory notice will clearly set out actions which must be taken and the timescale within which they must be taken. It is likely to require that any breach is rectified and/or prevented from recurring. It may also prohibit specified activities until the breach has been rectified and/or safeguards have been put in place to prevent future breaches.

Some notices issued in respect of premises may be affixed to the premises and/or registered as local land charges or with Land Registry. Where appropriate and legal to do so, notices may be made available in the public domain.

Certain types of notice allow works to be carried out in default. This means that if a notice is not complied with (i.e. a breach of the notice) Wirral Council may carry out any necessary works to satisfy the requirements of the notice. Where the law allows, we may then charge the business or individual served with the notice for any cost we incur in carrying out the work, including administrative and supervisory costs. In some instances where the business or individual charged for such costs fails to pay within the specified time limit, where the law allows, these charges can be registered against their property with the sale of such property enforced to recover costs due to Wirral Council.

6.2.4 Financial penalties

Wirral Council has powers to issue fixed penalty notices in respect of some breaches. A fixed penalty notice is not a criminal fine, and does not appear on an individual's criminal record. If a fixed penalty is not paid, Wirral Council may commence criminal proceedings or take other enforcement action in respect of the breach.

If a fixed penalty is paid in respect of a breach Wirral Council will not take any further enforcement action in respect of that breach. Payment of a fixed penalty does not provide immunity from prosecution in respect of similar or recurrent breaches.

Wirral Council is only able to issue fixed penalty notices where it has specific powers to do so. If fixed penalty notices are available, their issue is at Wirral Council's discretion. In some circumstances, in particular where breaches are serious or recurrent, it may be that prosecution is more appropriate than the issue of a fixed penalty notice.

6.2.5 Penalty Charge Notices

Penalty Charge Notices (PCNs) are prescribed by certain legislation as a method of enforcement by which the offender pays an amount of money to the enforcer 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 appear on a person's criminal record and we may choose to issue a PCN without first issuing a warning.

6.2.6 Injunctive Actions, Enforcement Orders etc.

In some circumstances Wirral Council may seek a direction from the court (in the form of an order or an injunction) that a breach is rectified and/or prevented from recurring. The court may also direct that specified activities be suspended until the breach has been rectified and/or safeguards have been put in place to prevent future breaches.

Failure to comply with a court order constitutes contempt of court, a serious offence which may lead to imprisonment.

Wirral Council is required to seek enforcement orders after issuing some enforcement notices, providing the court with an opportunity to confirm the restrictions imposed by the notice. Otherwise, Wirral Council will usually only seek a court order if it has serious concerns about compliance with voluntary undertakings or a notice.

6.2.7 Seizure Proceedings

Certain legislation enables authorised Officers to seize goods, for example unsafe food, documents, sound equipment that is being used to cause a statutory noise nuisance, unsafe products or any goods that may be required as evidence for possible future court proceedings. When we seize goods we will give the person from whom the goods are taken an appropriate receipt.

6.2.8 Voluntary Deprivation

Voluntary Deprivation allows for the owner of (or another person possessing rights to) illegal goods, property, equipment etc. to voluntarily surrender them to Wirral Council. In doing so, the owner of the items thereby renounces all rights, claims and ownership of the said items. Wirral Council will then be responsible for the disposal of the said items. This process is used to prevent illegal items from re-entering the market place or being used in such a way that may cause further problems.

6.2.9 Forfeiture Proceedings

This procedure may be used in conjunction with seizure and/or prosecution where there is a need to dispose of goods in order to prevent them re-entering the market place or being used to cause a further problem. In appropriate circumstances, we will make an application for forfeiture to the Magistrates Courts.

6.2.10 Simple Caution

Wirral Council has the power to issue simple cautions as an alternative to prosecution for some less serious offences, where a person admits an offence and consents to the simple caution. Where a simple caution is offered and declined, Wirral Council is likely to consider prosecution.

A simple caution may appear on the offender's criminal record. It is likely to influence how Wirral Council and others deal with any similar breaches in the future, and may be cited in court if the offender is subsequently prosecuted for a similar offence. If a simple caution is issued to an individual (rather than a corporation) it may have consequences if that individual seeks certain types of employment.

Simple cautions will be used in accordance with Home Office Circular 016/2008 and other relevant guidance.

6.2.11 Prosecution

Wirral Council may prosecute in respect of serious or recurrent breaches, or where other enforcement actions, such as voluntary undertakings or statutory notices have failed to secure compliance. When deciding whether to prosecute Wirral Council has regard to the provisions of The Code for Crown Prosecutors as issued by the Director of Public Prosecutions.

Prosecution will only be considered where Wirral Council is satisfied that it has sufficient evidence to provide a realistic prospect of conviction against the defendant(s), and it is in the public interest.

The public interest must be considered in each case where sufficient evidence is present. Wirral Council will 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 defendant. Some factors may increase the need to prosecute but others may suggest that another course of action would be more suitable.

Before deciding that prosecution is appropriate, Wirral Council will consider all relevant circumstances carefully and will have regard to the following public interest criteria:

- The prevalence of the type of offence
- The need for a suitable deterrent
- The risk of danger or injury to the public
- The failure to comply with a statutory notice or to respond to advice about legal requirements
- The disregard of legal requirements for financial reward
- Significant financial loss, potential or actually, to a third party
- A history of similar offences
- Persistent breaches of legislation
- Where fraud, guilty knowledge or negligence is a factor

A successful prosecution will result in a criminal record. The court may impose a fine and in respect of particularly serious breaches a prison sentence. The court may order the forfeiture and disposal of non-compliant goods and/or the confiscation of any profits which have resulted from the breach. Prosecution may also lead, in some circumstances, to the disqualification of individuals from acting as company directors.

6.2.12 Proceeds of Crime Applications

Applications may be made under the Proceeds of Crime Act for confiscation of assets. Their purpose is to recover the financial benefit that the offender has obtained from his criminal conduct. Applications are made after a conviction has been secured.

6.2.13 Refusal/Suspension/Revocation of Licences

Wirral Council issues a number of licences, consents, and permits and has a role to play in ensuring that appropriate standards are met in relation to those issued by other agencies. Most licences, consents, and permits include conditions which require the licence holder to take steps to ensure that, for example, a business is properly run. Breach of these conditions may lead to a review of the licence which may result in its revocation or amendment.

When considering future licence applications, Wirral Council will take previous breaches and enforcement action into account.

6.2.14 Use of Other Legal Powers

Certain Enforcement Officers have additional powers that enable them to carry out their duties: for example take photographs, leave a workplace undisturbed as part of an accident investigation, and take samples or measurements. These powers are to allow Wirral Council to carry out its duties. Where these powers are exercised by officers they will be carried out lawfully and in accordance with statutory codes of practice and with due regard to guidance and best practice.

Wirral Council may seek to recover costs of any enforcement action against a business or individual subject to the enforcement action, where appropriate and legal to do so.

6.2.15 No Action

In certain circumstances, contravention of the law may not warrant any action. This can be where there is insufficient evidence or it is not in the public interest to proceed. Some areas of legislation only allow the Council to take action where it is expedient to do so, taking into account the level of harm caused by the contravention. In certain cases it may not be considered expedient to take enforcement action. All such decisions will be made transparently.

HOW DECISIONS ARE MADE ON ENFORCEMENT ACTION

7.1 In determining the most appropriate enforcement action, based on professional judgement, legal guidance, statutory codes, and having regard to the 'Regulatory Justice: Making Sanctions Effective Report' (Macrory Review 2006), Wirral Council will:

- aim to change the behaviour of the offender
- aim to eliminate any financial gain or benefit from non-compliance

- consider what is appropriate for the particular offender and regulatory issue.
- be proportionate to the nature of the offence and the harm caused
- aim to restore the harm caused by regulatory non-compliance, where appropriate
- aim to deter future non-compliance

Senior Managers will monitor and review decisions taken against this policy.

WHO DECIDES WHAT ENFORCEMENT ACTION IS TAKEN

- 8.1 Decisions about the most appropriate enforcement action to be taken are based upon professional judgement, legal guidelines, statutory codes of practice and priorities set by the Council and/or Central Government. This will be further reinforced, where considered necessary, by the introduction of practice and procedure notes which will seek to guide officers in the appropriate line of action to take.
- 8.2 Where appropriate, decisions about enforcement will involve consultation between or approval from:
- Investigating Officer(s)
 - Managers
 - Council Solicitors or Counsel
 - Elected Members of Wirral Council

Businesses and individuals will be provided with a timely explanation in writing of any rights to representations or rights to appeal, and practical information on the process involved.

APPEALS

- 9.1 In some circumstances a business or individual subject to Enforcement Action taken by Wirral Council may have a right to appeal the decision. Where such a right exists the business or individual will be advised in writing of that right, including details of how to exercise that right.

LIAISON WITH OTHER REGULATORY BODIES AND ENFORCEMENT AGENCIES

- 10.1 Where appropriate, enforcement activities will be co-ordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement.
- 10.2 Where an enforcement matter affects a wide geographical area beyond the Council's 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 co-ordinated with them.
- 10.3 Where appropriate, and in accordance with the law, Wirral Council will share intelligence with other regulatory bodies and enforcement agencies, examples including:
- Government Agencies
 - Police Forces
 - Fire Authority
 - Other Local Authorities

CONSIDERING THE VIEWS OF THOSE AFFECTED BY OFFENCES

- 11.1 Wirral Council undertakes enforcement on behalf of the public at large and not just in the interest of any particular individual or group. However, when considering the public interest test, the consequences for those affected by the offence, and any views expressed by those affected will, where appropriate, be taken into account when making enforcement decision.

REVIEW OF THE ENFORCEMENT POLICY

- 12.1 This policy will be reviewed every three years.

COMMENTS OR COMPLAINTS

- 13.1 Wirral Council want to give the best possible service, so we need to know when we are doing something well and when things can be improved.
- 13.2 If you wish to contact Wirral Council regarding the application of this policy please use the contact details below. When contacting Wirral Council please state clearly whether you wish to make a comment, compliment or complaint. Wirral Council operates a formal complaints procedure which assists in resolving complaints as quickly as possible.

web : www.wirral.gov.uk

email : comments@wirral.gov.uk

post : Information & Advice Team
Wirral Council
P.O. Box No. 2
Birkenhead
Wirral
CH41 6BU

telephone : 0151 606 2020

- 13.3 This policy is available on the Council's website.
- 13.2 If you would like a paper copy of the policy please contact us using the details above.
- 13.3 Wirral Council is committed to making information accessible to everyone. You can use the above contact details or visit your local One Stop Shop for support and advice if you need information translated or in another format such as large print, braille or audio.