

Enforcement Policy

1. Introduction

This document outlines the overarching Enforcement Policy of the Dorset Waste Partnership (DWP) and is to be used in conjunction with related Enforcement Procedures and Guidelines document.

It provides information on:

- the purpose of our enforcement policy
- our principles of enforcement
- our enforcement actions
- what you can expect of us
- our accessibility/advice details
- our policy review period

'Enforcement' includes any formal or informal action taken by officers aimed at ensuring that businesses or individuals comply with the law. These actions will range from offering information, advice, issuing public warnings, formal cautions and instituting legal proceedings and prosecutions.

Enforcement decisions will be fair, impartial, 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. Decisions will not be influenced by improper or undue pressure from any source.

The DWP enforces various waste legislation throughout the county of Dorset, excluding the Purbeck District Council area. This Enforcement Policy statement sets out the general principles and approach that the DWP will follow when enforcing waste legislation. It will be used in conjunction with guidance issued from the Department for the Environment and Rural Affairs (DEFRA) and other professional bodies.

The DWP Enforcement Policy, as set out in this document, refers to offences dealing with waste that can be refuse or rubbish including domestic, commercial and industrial waste and/or litter derived from the public either individually or from organised gatherings. It also includes abandoned vehicles, fly tipped waste, poor management of waste including poor storage of waste, illegal dumping of waste, transfer of waste to unauthorised persons or without the correct documentation and placing waste out for collection too early. All of the above offences can lead to a detrimental effect on the quality of the local environment and how an area is perceived.

The above will be achieved primarily by providing information, advice and education. Where it is deemed that an accumulation of non-compliance has not been averted by reason with an offender, evidenced in no change in attitude or behaviour by the individual/household or the seriousness of a single offence is such, only then would enforcement of regulations be considered.

Securing compliance with statutory requirements and using enforcement powers, including prosecution is an important part of this enforcement policy.

The DWP will ensure that all appointed officers are competent, authorised and are trained in the use of this policy. The DWP will work with the other Local Authorities, professional bodies and DEFRA to ensure coherent regulation.

2. Background Documents

The DWP Enforcement Policy has been produced having regard to three principal documents:

The Enforcement Concordat

<http://webarchive.nationalarchives.gov.uk/+http://www.berr.gov.uk/files/file10150.pdf>

The Concordat is a Code of Practice between Government and local Councils. It sets out what businesses and others being regulated can expect from the Council's enforcement services. Dorset County Council as the host authority for the DWP has signed the Concordat. This means all Services provided by the DWP are committed to good enforcement practices and procedures.

The Code for Crown Prosecutors

https://www.cps.gov.uk/publications/code_for_crown_prosecutors/

The code for Crown Prosecutors sets out general principles to be applied when making decisions about prosecutions. As a regulatory body the DWP also follows the principles of the guide when considering enforcement action.

The Regulators' Compliance Code

<https://www.gov.uk/government/publications/regulators-code>

The Regulators' Compliance Code (the Code) is made under Legislative and Regulatory Reform Act 2006. The code sets out that Regulators must *have regard* to the provisions of the Code when determining general policies and principles or when setting standards or giving general guidance about the exercise of general functions. It does not apply to the work of individual inspectors.

The Legislative and Regulatory Reform (Regulatory Functions) Order 2007 (specifically part 3) sets out those regulatory functions by local authorities to which the Code applies. This Enforcement Policy has included those aspects of the Code which are relevant to our activities. The intention of the DWP is to help to promote an efficient and effective approach to inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens.

3. Principles of Enforcement

Targeting

The aim of the DWP is to, above all, deter future non-compliance and in doing so prioritise and direct the regulatory effort proportionally and effectively.

Action will be primarily focused on breaches of the law or those directly responsible for the risk and who are best placed to control it.

Proportionality

The DWP will ensure that enforcement action is proportionate to the nature and seriousness of the offence, harm to the environment and risks involved, and that the sanctions applied are meaningful.

Accountability

The DWP will be accountable for the efficiency and effectiveness of enforcement activities.

Fairness and Consistency

The DWP will treat all service users and businesses fairly. The DWP will ensure that enforcement practices are consistent. This means the adoption of a similar approach in similar circumstances to achieve similar ends.

The DWP will have regard to national guidelines in the decision-making processes.

Openness and Transparency

The DWP is committed to the open provision of information and advice in a format that is accessible and easily understood. The DWP ensure that there is always a clear distinction between those actions necessary to comply with the law, and those which we recommend as best practice but which are not compulsory.

Reducing enforcement burdens

If there is a shared enforcement role with other agencies, e.g. the Environment Agency or the Police, the DWP will consider co-ordinating with these agencies to minimise unnecessary overlaps or time delays and to maximise overall effectiveness.

4. Enforcement Actions

The range of enforcement options available are set out in the following:

No action

In certain circumstances such as dropping of a single piece of litter may still be in contravention of the law but may not warrant any action.

Indirect action

Including referral to another authority or agency for information or action.

Verbal Warning

A verbal warning may be used where the offender complies with the direction they have been given but are resistant to the rationale behind it. The offender should be aware of the possible seriousness of the offence and that they have been warned as to their future conduct and that repeating the behaviour may lead to more serious consequences.

Where a verbal warning has been given the details of the offender should be recorded and stored in accordance with the Data Protection Act 1998.

Should an offender show any signs of violence or aggression then the verbal warning shall be confirmed by a written warning.

Written Warnings

Written warnings can be used where;

- A verbal warning or relevant advice has been previously given but ignored and/or the offence has continued or repeated;
- It is not possible to make contact with the offender in person, e.g. if it is a company and the warning is to the director(s);
- The offender is known to be violent or aggressive;
- English is not the offender's first language.

Formal Caution

In cases where it is deemed that the offence is continual but not persistent or a moderately high serious nature, to deal with the offender quickly and simply avoiding unnecessary appearances in criminal courts a formal caution may be appropriate.

A caution is an admission of guilt but it is not a form of sentence, nor is it a criminal conviction –although it may be cited in court in certain circumstances. A record of the caution will be sent to the Office of Fair Trading and to other bodies that are required to be notified.

Fixed Penalty Notices

A Fixed Penalty Notice (FPN) will be issued to persons who are alleged to have committed an offence where it is considered that a formal caution is not appropriate. This gives the alleged offender the opportunity of discharging any liability to conviction for any offence by payment of a FPN

It is essential for the issuing of a FPN that the authorised officer collects adequate evidence to support any legal proceedings if the notice is returned unpaid.

Prosecution

A prosecution will only be undertaken for persistent non-compliance and/or of a serious nature when the evidence passes the 'Evidential Test' and when it is in the public interest to do so. The DWP will have regard to the Crown Prosecution Service Code of Practice which is available at: https://www.cps.gov.uk/publications/docs/code_2013_accessible_english.pdf

Prosecution is more likely when:

- Harm to the local amenity or environment or threat to public safety has occurred
- The offender has deliberately set out to cause harm or deceive
- There is a history or pattern of offending
- The offender has previously been formally cautioned for similar offences
- It is in the public interest to take formal action
- There has been no genuine mistake or misunderstanding

Where it is necessary to carry out a full investigation, the case will be progressed without undue delay. All investigations into alleged breaches of legislation will be conducted in compliance with statutory powers and all other relevant legislation (and relevant Codes of Practice), including the requirements of:

- Police and Criminal Evidence Act (PACE)
- Criminal Procedure and Investigations Act (CPIA)
- Regulation of Investigatory Powers Act (RIPA)
- Human Rights Act (HRA).

As part of the investigation process, persons suspected of breaching legal requirements will, wherever possible:

- Be formally interviewed in accordance with PACE
- Be given the opportunity to demonstrate that a statutory defence is available
- Have the opportunity to give an explanation or make any additional comments about the alleged breach.

Before a decision to prosecute is taken, the alleged offence(s) will be:

- Fully investigated including legal review and advice
- A report compiled by the Investigating Officer
- The file reviewed by a member of the Senior Manager Team (SMT)

- The decision to prosecute approved by SMT

The DWP will take into account the views of any victim, injured party or relevant person to establish the nature and extent of the offence including potential harm and loss and its significance in making the decision to take formal action.

5. Engagement with the public

The Enforcement Officers will engage with the public in a number of ways including telephone calls, letters, emails, requests for consumer and business advice and inspection of business premises. Responses will be made in accordance with Dorset County Councils customer service standards guide. Residents, complainants and businesses will be informed on unresolved issues at no longer than monthly intervals.

At all times, officers will:

- be courteous and helpful
- identify themselves by name and produce identification if requested
- provide a contact point for any further dealings
- give clear and simple advice
- confirm advice in writing on request, explaining why action is required and over what time-scale
- clearly distinguish between what must be undertaken to comply with the law and what is recommended as best practice
- minimise the cost of compliance by requiring proportionate action
- give reasonable time to comply (unless immediate action is necessary in the interest of health, safety or to prevent evidence being lost)
- give notification if the matter is to be reported for legal proceedings
- advise of the procedure for making a complaint or representations in cases of dispute
- maintain confidentiality

Before any legal action is taken there will be an opportunity to discuss the case, although if we are considering a prosecution it will be a formal interview.

Where a right of appeal against a formal action exists other than through the courts, advice on the appeal mechanism will be clearly set out in writing at the time the action was taken.