

# OWBC

## Environmental and Licensing Enforcement Policy

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## Contents Page

1.0	Introduction
1.1	The Council's Vision and Corporate Plan Priorities
1.2	Scope of the Policy
2.0	Regulatory Framework
3.0	Equalities Statement
4.0	The Enforcement Concordat - General Principles
4.1	The Enforcement Concordat
4.2	Standards
4.3	Openness
4.4	Helpfulness
4.5	Complaints about Service
4.6	Proportionality
4.7	Consistency
4.8	Transparency
5.0	Who Does the Policy Apply to?
5.1	Making a Service Request for investigation by the Department
6.0	The Responses to Environmental Crime
6.1	Education, Publicity and Marketing
7.0	Enforcement Options
7.1	Take No Action
7.2	No Action Continued – Extenuating Circumstances - Mental or Physical Health
7.3	Verbal Warnings and Advice
7.4	Formal Notice and Advice
7.5	Formal Notice
7.6	Simple Caution
7.7	Works in Default
7.8	Fixed Penalty Notices
7.8.1	Timescales
7.8.2	Repeat Offenders
7.8.3	Instalments
7.8.4	Fixed Penalty Notice Levels
7.8.5	Early/Discount Payments
7.8.6	Issuing Fixed Penalties on Private Land
7.9	Duty of Care Education Awareness Policy



- 8.0 Enforcement and Young People
  - 8.1 Overview
  - 8.2 Procedure for Enforcing Against 10-17 Year Olds without Formal Action
  - 8.3 Restorative Justice
  - 8.4 Procedure for Enforcing Against 10-15 Year Olds Using FPN's
  - 8.5 Procedure for Enforcing Against 16 and 17 Year Olds Using FPN's
- 9.0 Prosecution
  - 9.1 Purpose
  - 9.2 Sufficiency of Evidence
  - 9.3 Public Interest Factors
  - 9.4 Instigating Legal Proceedings
  - 9.5 Regulation of Investigatory Powers Act 2000 (RIPA)
  - 9.6 Recovery of Costs
    - 9.6.1 Recovery of Costs upon Conviction
    - 9.6.2 Notices and Orders
    - 9.6.3 Emergency Remedial Action (Work in Default)
  - 9.7 Levels of Enforcement Action to Take
  - 9.8 Companies and Individuals
  - 9.9 Referrals to Another Agency
- 10.0 Enforcement and Young People
  - 10.1 Overview
  - 10.2 Procedure for Enforcing Against 12-17 Year Olds
- 11.0 Partnership Working
- 12.0 Health and Safety – Lone Worker Procedure
  - 12.1 Site Visits
- 13.0 Human Rights
- 14.0 Complaints against the Councils' Decision
  - 14.1 Informal Complaints
  - 14.2 Formal Complaints



## 1.0 Introduction

This document sets out what residents, businesses and the community as a whole can expect from the Environment and Licensing Enforcement Officers. It commits us to good enforcement policies and procedures and to the provision of the principles of good regulation.

The primary function of the Environment and Licensing Enforcement Officers enforcement work is to protect the public and the environment. Our priorities are to improve the cleanliness of the district and promote a safer, cleaner, greener environment.

We recognise that the effectiveness of legislation depends upon the compliance of those regulated and that most individuals and businesses want to comply with the law. We will therefore assist and advise and educate wherever possible, whilst taking firm action against those who flout the law, act irresponsibly or cause or permit others to do so.

Oadby and Wigston Borough Council's Community Service has formally adopted the Government's Concordat on Good Enforcement; we thereby commit ourselves to the following policies and procedures:

### 1.1 The Council's Vision and Corporate Plan Priorities

Our vision – What we want to achieve:

We want to create a positive image of the Borough which supports people, businesses and investment in the area, and improves confidence, pride and dignity so that everyone can enjoy a good quality of life in their neighbourhood.

Our values – The way we will work **Quality • Respect • Openness**

**Two of Oadby and Wigston Borough Council's Corporate Priorities which relate to the work undertaken by the Environmental Health and Licensing Teams are:**

Reduce Crime and Disorder; and  
Protecting the Environment.

### 1.2 Scope of the Policy

This policy supports the Council's corporate priorities: the reduction of crime and disorder and protecting the environment by providing a framework for undertaking various levels of enforcement as a means of reducing environmental crime and tackling crime and disorder.

Research suggests that there are strong links between the environment and quality of life and it has also been acknowledged that if left unchecked, low-level environmental crime can escalate to more serious criminal activity.

Reducing environmental crime is also vital to mitigating the 'broken window' effect, where environmental issues can attract an increasing deterioration through littering, abandoned vehicles, fly tipping of waste, fly posting, graffiti, vandalism, arson and other forms of anti-social behaviour.

Enviro-crime can also have a detrimental effect on the local economy and on tourism.

Accordingly, this policy details how the Council will address the following issues:-

- Fly Tipping (illegal deposit of waste)
- Duty of Care offences
- Litter (on both public and private land)
- Dog related offences
- Graffiti
- Nuisance Vehicles (commercial sales and street repairs)
- Abandoned Vehicles (not poorly parked vehicles)
- Illegal Signs (on street furniture)
- Compliance with Waste Transfer Legislation and Duty of Care (commercial and domestic)
- Encouraging compliance to Voluntary Codes of Practice regarding litter from businesses.
- Unauthorised transportation of controlled waste
- Smoking in a smoke free place
- Failure to display no smoking signage
- Breaches of Public Space Protection Orders and other bye-laws

## 2.0 Regulatory Framework

All enforcement activity will be undertaken with due regard to the provisions of the relevant legislation as may be amended by statute:

1. Environmental Protection Act 1990, Part II, Section 33, 34, 46, 47, 47ZA, 47ZB and 59
2. Environmental Protection Act 1990 – Part III Control of Statutory Nuisances
3. Environmental Protection Act 1990 – Part IV – Litter, Section 87(1), Section 88(1)
4. Environment Act 1995 – Section 108
5. Control of Pollution Act 1974, Section 91
6. Control of Pollution (Amendment) Act 1989, Section 5 and 5B
7. Refuse Disposal (Amenity) Act 1978, Section 6 and 8
8. Health Act 2006, Section 6(5), 7 and 9
9. Anti-Social Behaviour Act 2003, Section 43, 43a and 43b
10. Clean Neighbourhood and Environment Act 2005 Section 55(1), (3) or (4)
11. Clean Neighbourhood and Environment Act 2005 Section 3, 4 and 6(1)
12. Crime & Disorder Act 1998
13. ASB Crime and Policing Act 2014, S43-S75
14. Also, any Regulations, Orders, Bylaws or other subsidiary legislation made under the above and any enactments amending or replacing the same.
15. Authorisation to issue Fixed Penalty Notices (FPN's) for the following:
  - i. Nuisance Parking
  - ii. Litter
  - iii. Failure to comply with CPN
  - iv. Failure to comply with PSPO
  - v. Graffiti and Fly-posting
  - vi. Failure to Produce Authority (Waste Transfer Note)
  - vii. Failure to Furnish Documentation (Waste Carriers License)
  - viii. Offences in relation to Waste Receptacles
  - ix. Offences under Dog Control Orders
  - x. Smoking in a smoke free place
  - xi. Failure to display no smoking signs



### **3.0 Equalities Statement**

At Oadby and Wigston Borough Council we are committed to equality and diversity in everything we do and this policy will be administrated in accordance with this.

The Council strives to provide the best possible services to the diverse communities of Oadby and Wigston Borough. We aim to be a community leader and an effective corporate body which recognises and responds to the different needs of our community - those who visit, live or work in our district. To meet those needs we aim to develop and maintain a safe and sustainable community for everyone.

Oadby and Wigston Borough Council uses the Equality Framework for Local Government as a tool to ensure its continuous development in providing fair and equitable services and also meet its legal duty under the Equality Act 2010

The Corporate Equality and Inclusion policy states that the Council is committed to ensuring that individuals and groups representative of the 'Protected Characteristics' are not discriminated against and that there is equality of opportunity for all people taking into account their individual needs.

### **4.0 The Enforcement Concordat - General Principles**

The Enforcement Concordat has been written and developed in accordance with the Cabinet Office, Enforcement Concordat (1998).

#### **4.1 The Enforcement Concordat**

The National Enforcement Concordat seeks to disseminate good practice and the principles of good enforcement. It is, therefore, incumbent upon any enforcing officer or agency to adopt these principles during all enforcement actions.

A summary of the provisions are as follows:-

#### **4.2 Standards**

In consultation with the three citizen's panels, community groups, partners and other interested parties, we will draw up clear standards setting out the level of service and performance that the public and businesses can expect to receive. We will publish these standards and our annual performance against our service plan.

#### **4.3 Openness**

We will provide accessible information and advice, in plain language, on the legislation that we enforce. We will be open about how we set about our work, consulting local residents, business, community groups, partners and other interested parties.

#### **4.4 Helpfulness**

We believe that education plays a big part in the work that we do; we will actively work with local schools, community groups and businesses to advice on, and assist with, compliance. We will provide a courteous and efficient service, and our staff will identify themselves by name. We will offer a contact point and telephone number to encourage further liaison. Requests for service, enquiries and complaints will be dealt with efficiently and promptly. We will strive to ensure that wherever practicable, our activities are effectively co-ordinated to avoid unnecessary overlaps and/or delays.



#### **4.5 Complaints about Service**

We will maintain our informal and formal complaints procedures, which are easily accessible to all service users, and which explain all rights of complaint and appeal, including the likely time-scales involved.

#### **4.6 Proportionality**

We will take into account the costs of compliance, by way of offering restorative justice including litter picks for juveniles. We will also facilitate payment plans for fixed penalty notices. We will, as far as the law allows, work with businesses so that they can meet their legal obligations, without unnecessary expense. We will also gauge our activities to reflect the proportionality principles of OWBC's Corporate Enforcement Policy.

#### **4.7 Consistency**

We will carry out our duties in a fair, equitable and consistent manner. Whilst officers necessarily exercise judgement in individual cases, we will have arrangements in place to promote consistency, including liaison with other authorities and enforcement bodies.

### **5.0 Who does the Policy apply to?**

This policy applies to any Authorised Officer of Oadby and Wigston Borough Council.

The Council approved the on 19<sup>th</sup> July 2017:

- delegated authority to the Director of Services to authorise officers to enforce the provision of the Clean Neighbourhoods and Environment Act 2005, where appropriate:
- delegated authority to the Director of Services to authorise officers to issue Fixed Penalty Notices (FPN's) as specified in Table 1.
- Furthermore, Council approved that an FPN may be issued by an employee of the Authority who is authorised in writing to do so by the authority.
- FPN's can be issued by any person who is authorised to do so by Oadby and Wigston Borough Council. This includes outside bodies such as contractors, Police Officers, Police Community Support Officers and other accredited persons.

Additionally, all Council employees and partner agencies are encouraged to report any environmental crime they witness to the Environmental Health Team at the Borough Council. When the Council receives an environmental crime complaint from a 'lay person' a judgement will be made by an Authorised Officer as to whether there is a 'Public Interest' and it is proportionate and appropriate to pursue any further action.

#### **5.1 Making a Service Request for Investigation by the Department**

Allegations of a complaint can be made to the Council's Customer Service Centre (CSC) by calling 0116 288 8961 or by visiting the CSC at 40 Bell Street, Wigston, Leicestershire, LE18 1AD or completing the online [complaints form](#)



Information that must be provided for an investigation to be explored into the allegation of nuisance comes under the Regulation of Investigatory Powers Act 2000 and a person must:

- Provide their name and address. This information will be used in assessing the effect of the alleged nuisance, but will not be disclosed until the issue is heard in Court
- provide details of the allegation, including dates and times of the occurrence and how they are being affected
- have made all reasonable enquiries as to the origin of the alleged complaint and provide that information with the alleged complaint

## **6.0 The Responses to Environmental Crime**

The following sections outline the various responses to tackling environmental crime.

### **6.1 Education, Publicity and Marketing**

The Council will always seek to publicise the importance of environmental legislation to the general public and business community in order to seek compliance before taking formal enforcement action. The community must know and understand what standards are expected of them so that they can operate to these levels. Examples of raising awareness may include:-

- direct marketing to households and businesses, through, newspaper articles and leaflets;
- directly promoting householders 'duty of care' through awareness campaigns and education programs and leaflets;
- building relationships with schools and supporting environmental awareness within the curriculum;
- attending community events to promote environmentally responsible behaviour;
- publicising the link between environmental crime, quality of life and more serious offences (The Broken Window Effect);
- publicising the costs of tackling environmental crime;
- arranging and publicising targeted campaigns, enforcement actions and prosecutions in the local media;
- conducting road shows in public areas and at community events;
- encouraging local residents to report environmental crime to the appropriate authority;
- providing promotional 'give-aways' where appropriate to help reduce the potential for environmental crime – e.g. personal ashtrays, gum disposal pouches, dog 'poop scoop' bags;
- liaising with County Council Officers to promote activities and initiatives across the County;
- work with partnership agencies within the Council to promote a co-ordinated response to environmental crime (e.g. days and weeks of action);
- utilise advertising space in prominent locations;
- provide up to date information on the Council's website;
- provision of informal advice, guidance and support;
- liaise with partners, businesses and landowners to design out areas that are repeatedly subject to fly tipping;





## 7.0 Enforcement Options

Unfortunately, education and informal advice do not always achieve voluntary compliance. Accordingly, it may be necessary for the Council to undertake enforcement action in some cases.

When the Council receives a complaint a judgement is made by an Authorised Officer as to whether there is a 'Public Interest' in pursuing any further action.

When deciding whether to prosecute, the Officer will have regard to the principles of the CPS Code for Prosecutors. This will include an evidential as well as public interest test. Where enforcement action is felt to be appropriate, the Council has the following options available:-

- Take no action
- Verbal warnings and advice
- Formal notice/warnings and advice
- Referrals to education programme
- Simple Caution
- Carry out work in default
- Seizures
- Issue a Fixed Penalty Notice
- Prosecution

### 7.1 Take No Action

In exceptional circumstances, contraventions may not warrant any action. This may be where the cost of compliance to the offender outweighs the detrimental impact of the contravention on the community, or the cost of the required enforcement action to the Council outweighs the detrimental impact of the contravention on the community.

A decision of 'no action' may also be taken where formal enforcement is inappropriate and/or disproportionate in the circumstances, such as where a trader has ceased to trade, or where it would seriously damage the well-being of the perpetrator. Ultimately, each case will be assessed on its own merits, with due consideration given to health, safety, environmental and nuisance factors prior to a decision being made.

### 7.2 No Action Continued – Extenuating Circumstances - Mental or Physical Health

Enforcement action may not be appropriate where the person is suffering from a physical or mental-health related illness.

If an Officer has reasonable grounds to suspect an individual has committed an offence and the individual fits the criteria stated above they will:-

- use their professional judgement to decide which approach to undertake
- if appropriate take provisional enforcement action until further enquires have been made into the individual's health condition (medical or other evidence may be requested to confirm and should be provided by the individual in these circumstances)

- the offender (or carer) will be asked to provide any documentation which confirms this condition
- the Investigating Officer will then communicate to the offender and will consider appropriate disposal taking into account the alleged offence and medical evidence
- in such cases, enforcement action can be withdrawn or suspended
- where the Investigating Officer deems it appropriate, communication with the alleged offender will be with the assistance of an 'appropriate adult'.

### **7.3 Verbal Warnings and Advice**

These will be used where appropriate as a means of resolving minor offences and technical infringements that are capable of immediate rectification and are unlikely to be repeated. Failure to heed verbal warnings or advice may result in more serious enforcement action being taken (see below). These warnings will be recorded and kept on record to assist 'repeat offending' decisions.

### **7.4 Formal Notice and Advice**

For some contraventions, under the Antisocial Behaviour, Crime and Policing Act 2014, the offender will be sent a Community Protection Warning letter clearly identifying the offence, giving advice on how to put the issue right and a deadline by which to do it. Failure to comply with written warnings or advice could result in more serious enforcement action being taken. Time allowed for rectifying infringements must be reasonable, but must recognise the health, safety, environmental and nuisance implications of the contravention.

#### **7.4.1 CPN and EPA Action**

A 'nuisance' means something different to 'bothersome' or an 'annoyance'. The assessment of nuisance is an objective test, taking into account a range of factors and is based on what is reasonable for the 'average' person. 'Prejudicial to health' means 'injurious or likely to cause injury to health' under Section 79(7) of the Environmental Protection Act 1990. While a CPN can be issued for behaviour that may constitute a statutory nuisance, the interaction between the two powers should be considered. It remains a principle of law that a specific power should be used in preference to a general one.

### **7.5 Formal Notice**

A Statutory Notice or a Community Protection Notice can be served to require offenders to cease contravening activities, or to give them reasonable time to rectify a contravention. The time allowed putting things right must be reasonable, but will depend on any health, safety, environmental or nuisance factors. Notices may require immediate cessation of infringing activities where these are particularly aggravating. This can be issued by means of a Community Protection Notice or via court injunctions.

### **7.6 Simple Caution**



A Simple Caution can be considered as an alternative to prosecution. A Simple Caution will only be considered when all the appropriate criteria for a prosecution case are met, and the circumstances surrounding the offence are such that a more lenient approach than prosecuting is appropriate.

A Simple Caution must follow the criteria as laid down in the Home Office Guidelines. If a decision to offer a Simple Caution is rejected by the alleged offender, then the case shall be forwarded to the Head of Service with a recommendation to prosecute.

Use of Simple Cautions should be used in line with the Ministry of Justice Guidance Nov/2013. The Guidance states the purpose of a simple caution is:-

- i) to deal quickly and simply with less serious offences
- ii) to divert less serious offences away from the Courts
- iii) to reduce the chances of repeat offences

The Simple Caution may be used in place of court proceedings when:-

- i) the interests of justice will not be served by court action;
- ii) for offences of a minor nature and actioned following service of a Statutory Notice and where there is no risk to public health or to the environment;
- iii) a 'technical offence' has been committed and there is a need for the offence to be formally recorded

To safeguard the suspected offender's interests the following conditions must be fulfilled:-

- i) there is sufficient evidence to secure a conviction
- ii) the suspected offender must admit the offence
- iii) the suspected offender must understand the significance of a Simple Caution and agree to being cautioned

Offender's personal data will be held by Oadby and Wigston Borough Council and managed in accordance with the Data Protection Act 1998.

The Simple Caution will be kept on file for five years and may be shared within Oadby and Wigston Borough Council and with other Local Authorities in accordance with the above Act.

A Simple Caution can be taken into account when investigating the same offender for further offences and may be cited in a court of law should the offender be prosecuted in the future.

## **7.7 Works in Default**

Local Authorities have delegated powers from Parliament to enforce Statutory Notices. If they have failed to comply with it, one of these powers allows the authority to carry out works "in default" of the person(s) on whom the Notice has been served.

If the works necessary to comply with the notice are not being carried out within a reasonable time, or to a high enough standard; the Council can arrange for the works to be undertaken. The Authorised Officer will specify the work needed, and then obtain a quote for the work to be undertaken.

The Officer will then make all necessary arrangements to have the work carried out. Once the work is satisfactorily completed, the Council will serve a demand (a bill) on the person or persons responsible and any required notices contained in law, to recover monies. The Council will pursue non payment through the courts if necessary.

## **7.8 Fixed Penalty Notices**

The issuing of a Fixed Penalty Notices (FPN) for an offence represents an opportunity for the offender to discharge any liability of conviction for the offence alleged once it is paid.

In the majority of cases, where an Authorised Officer witnesses an offence for which an FPN can be issued, this will be done in the first instance.

A decision to issue an FPN is at the discretion of the Authorised Officer. Offences with aggregating features may not be appropriate for an FPN.

### **7.8.1 Timescales**

After an FPN has been issued the offender has fourteen days to pay in full, unless payment by instalments has been agreed with the Council (see 7.8.3 below for details). If the Council does not receive payment within fourteen days then a final seven day warning letter is sent to the offender. Allowances will be made for Bank Holidays and other extenuating circumstances.

If the FPN remains unpaid the case will be sent to the Council's Legal Section who may initiate proceedings to prosecute for the original offence. The Council will always seek to pursue non-payment of FPN's through the courts where possible.

### **7.8.2 Repeat Offenders**

FPN's are not appropriate for persistent offending. The Council may seek to prosecute repeat offenders through the Courts.

### **7.8.3 Instalments**

If payment by instalment is agreed with the finance department, then the first instalment for a payment on an FPN must be paid within one month after the FPN has been issued.

If there is a failure to complete the instalment plan agreed with Finance. The case will be returned to Environmental Health and Licensing departments to instigate legal proceedings for none payment of an FPN and prosecution of the original offence.

### **7.8.4 Fixed Penalty Notice Levels**

For offences (listed in Table 1) the various Acts enable the Council to specify the amount of a fixed penalty. The amount of a fixed penalty is dependent upon the offence for which it has been issued and can be £50, £75, £100, £200 and £300.

### **7.8.5 Early/Discount Payments**

The Health Act 2006 offers a discount for early payment of an FPN.



There is a standard period for payment of fixed penalties served under this legislation set at 28 days, if paid within 15 days a discount is available. Once an FPN has been issued, an authority cannot prosecute for the alleged offence if the FPN is paid within this period, and is stated on the notice itself.

### **7.8.6 Issuing Fixed Penalties on Private Land**

Authorised Officers are required to gain the permission from the landowner or occupier before they can enter private land. Upon consented entry FPN's may be issued.

This also applies in respect of privately-owned land to which the public are entitled to have access. Oadby and Wigston Borough Council is not permitted to issue FPN's on private land where permission has not been granted or has been refused.

## **8.0 Education (Householders Duty of Care)**

Where an Authorised Officer of the Council investigated a breach of householder's duty of care, the option is available to offer an education programme instead of seeking to prosecute. Strict criteria of who is offered the course must be complied with to ensure consistency of those offered the diversionary course and those put forward to prosecution.

The course will be offered to those who have admitted to failing in their duty of care by not checking that they have a waste carriers licence but thinking they had paid someone to remove their waste correctly.

To be offered a place on the course the investigating/interviewing officers must be satisfied that they have given their waste to an unlicensed waste carrier which they were unaware was an offence. Proof of this should be given at the interview for example, phone number they contacted, leaflet used. Caution should be taken with those who state it was a "white van man" and provide no details as potentially, the offence may have been committed by themselves, their partner, friend or a family member. The course can be offered along with a Community Protection Warning Notice.

## **9.0 Prosecution**

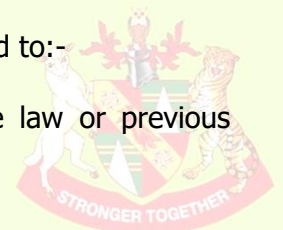
### **9.1 Purpose**

The use of the Criminal Justice System to instigate a prosecution is an important part of enforcement. It aims to punish criminal activity, to avoid a recurrence and to act as a deterrent to others.

The Council recognises that the initiation of a prosecution is a serious matter that should only be taken after full consideration of the implications and consequences. The Council adopts the Crown Prosecution Service's Codes of Practice when considering a case. Such decisions about whether to prosecute will be taken after full consultation with the Council's Legal Section.

Prosecution should in general (though not exclusively) be restricted to:-

- those persons or companies who blatantly disregard the law or previous warnings





- those persons who refuse to achieve the basic minimum requirements for legal compliance or where there are grossly inadequate conditions especially where previous warnings or advice had been given
- obstruction of Officers
- as a result of a serious breach of legislation
- when there is unwillingness on behalf of the company to adequately deal with identified legal contraventions
- failure to comply with statutory notices

## **9.2 Sufficiency of Evidence**

A prosecution will not be commenced or continued by the Council unless it is satisfied that there is a realistic prospect of conviction.

If the case does not pass this evidential test, the case will not go ahead to prosecution. Any prosecution should ensure any additional areas of legislation are actively pursued which offer further control measures. These could be Community Behaviour Orders (CBO) Proceeds of Crime Act (POCA) or other legislation deemed to be appropriate.

Where there is a realistic prospect of conviction, a prosecution will not be commenced or continued by the Council unless it is in the public interest to do so. Public interest factors that can affect the decision to prosecute will usually depend on the seriousness of the offence and/or the circumstances of the offender.

## **9.3 Public Interest Factors**

The Council will consider the following factors in deciding whether or not to prosecute:-

- environmental effect of the offence
- foreseeability of the offence or the circumstances leading to it and the offender's ability to understand the factors involved
- intent of the offender, individually and/or corporation
- history of offending
- attitude of the offender
- the deterrent factor as a result of prosecution
- personal circumstances of the offender

The factors are not exhaustive and those which apply will depend on the particular circumstances of each case. Deciding on the public interest is not simply a matter of adding up the number of factors on each side. The Council will decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

## **9.4 Instigating Legal Proceedings**

The Environmental Health Team Leader can instigate legal proceedings and issue Simple Cautions. Prior to initiating a prosecution, the Environmental Health Team Leader will consult with the appropriate Head of Service. The matter will then be passed to the Council Solicitor for consideration.

## **9.5 Regulation of Investigatory Powers Act 2000 (RIPA)**

This policy will adhere to the Council's RIPA Policy.

## **9.6 Recovery of Costs**





### **9.6.1 Recovery of Costs upon Conviction**

The Council will endeavour to recover reasonable costs through cases prosecuted. A schedule of cost will be prepared by the Enforcement Officers. Costs will be incurred from the point at when an offence has been identified and all costs from that point are recoverable. This would normally include file preparation, travel, and attendance at interviews under caution and clean up costs.

### **9.6.2 Notices and Orders**

The Council is entitled to make such charge as is considered appropriate to recover reasonable costs incurred in respect of certain formal enforcement actions for the making of notices and orders.

### **9.6.3 Emergency Remedial Action (Work in Default)**

Work in default is a power given to the Council, to ensure that work is carried out to a property. If the recipient of a statutory notice does not do the work required by the notice, the Council is able to employ a contractor to enter the property and carry out the work itself. If the Council has to do this, it will charge the appropriate person for the cost of the works together with the costs involved in arranging for the work to be done.

It should be noted that carrying out work in default does not preclude the Council from further formal action including issuing a Simple Caution or prosecuting the offender.

### **9.6.4 Methods of Recovery of Costs**

There are various methods by which the Council can recover the costs, including addition of interest, incurred in serving notices or orders or carrying out work in default including:

#### **a) Sundry Debtor Method**

Using this method the Council will send the appropriate person an invoice requesting payment. If this is not paid within three weeks, a reminder invoice is sent requesting payment immediately. If the invoice is not paid within two weeks of the reminder being sent, the matter, depending on the size of the debt, will be referred to a Debt Agency or to the Council's Legal Services Section for the consideration of County Court action.

#### **b) Charge on the Property**

In certain circumstances the Council will seek to put a charge on the property. This means that when the property is sold, the Council will expect to be paid the amount of the debt. This is not generally a preferred method as it is slow and depending on the equity in the property, the Council may not get its money back at all. Interest may also accrue on the outstanding debt. This method of debt recovery may be instigated when the debt is in excess of £1000.

## **9.7 Levels of Enforcement Action to Take**

## **9.8 Companies and Individuals**

Prosecutions will be considered against an individual responsible for the offence. Where a Company is involved, it will be general practice to prosecute the Company where the offence took place as a result of the Company's activities. However, the Council will also consider any involvement of the Company employee.

Action may also be taken against such companies (as well as their employees) where it can be shown that the offence was committed with their consent, was due to their neglect and / or they 'turned a blind eye' to the offence or the circumstances leading to it.

## **9.9 Referrals to Another Agency**

On occasion an investigation may be more appropriately dealt with by means of referral to another agency, e.g. The Environment Agency.

## **10.0 Enforcement and Young People**

### **10.1 Overview**

Under the Clean Neighbourhoods and Environment Act 2005, an FPN can be issued to anyone over the age of ten. However, in accordance with DEFRA guidance the Council will adopt special procedures for enforcing against young people.

This will ensure that the Council are acting in accordance with their duty under the Children Act 2004; which requires Children's Service Authorities, including Local Authorities and Police, to discharge their functions having regard to the need to safeguard and uphold the welfare of children.

### **10.2 Procedure for Enforcing Against 12-17 Year Olds**

Young people over the age of ten are legally liable for their actions. However Oadby and Wigston Borough Council's Authorised Officers will deal with juveniles aged 12 years and over in the way outlined in this policy when they see offences committed. It is important that the Authorised Officer obtains an accurate date of birth of the young person when issuing a FPN. For the purpose of this policy, juveniles are classed as anyone aged 17 and under.

For litter and graffiti offences juveniles will be offered a chance to attend a one hour supervised litter picking session or one hour graffiti removal session, as a way of discharging the FPN and thus negating the need for payment to be made.

This offer will be made once the FPN has been issued and returned to the Council. The administrator will send a letter to the parent/guardian of the juvenile with information of the date and time of the alleged offence and the allocated litter picking/graffiti removal session. The Council works with volunteer organisations and holds regular litter picking sessions at varying locations across the Borough.

Juveniles who are offered a litter pick/graffiti removal session and do not attend will be offered one second session as a final chance to undertake restorative justice before their details are referred to the Youth Offending Team for further action.

## **11.0 Partnership Working**

Key to successfully reducing enviro-crime is partnership working. Through partnership working the aims of this Policy can be shared and awareness raised, through consistent information and advice.

In order to seek the most effective operation of this Policy, the Council's Officers will work in partnership with, amongst others:-

- All Elected Members
- National Probation Service for Leicestershire
- Neighbourhood Wardens
- Local Schools
- Youth Offending Team
- Youth Services
- Oadby and Wigston Crime and Disorder Reduction Partnership
- Leicestershire Police
- Leicestershire Fire and Rescue
- Leicestershire Social Care
- Leicestershire County Council
- Residents Forums
- Trading Standards Team
- Environmental Health and Licensing Teams
- Safer Neighbourhood Teams
- Neighbouring Local Authorities
- Tidy Britain (Environmental Campaigns)
- Environment Agency
- Driving Vehicle Licensing Association (DVLA)
- Driver and Vehicle Standards Agency (DVSA)
- Network Rail
- Registered Social Landlords

## **12.0 Human Rights**

### **Human Rights Act 1998**

All potential enforcement activity will be considered with due regard to its legitimacy and proportionality and the provisions of the above legislation, which derives from the European Convention on Human Rights.

## **13.0 Complaints Against the Council Decision**

### **13.1 Informal Complaint**

To make an informal complaint against a decision by the Council or it's Officers you can contact us on **0116 257 2613** or email:

[http://www.oadby-wigston.gov.uk/contacts/customer\\_services](http://www.oadby-wigston.gov.uk/contacts/customer_services)

We will record your complaint and then the relevant Department/Service will look at your concerns and reply to you within 15 working days. This is often the quickest way to put things right.

Even if we are unable to resolve your concerns, perhaps because of the law, we will be able to explain the reason(s) for this.

If the department is unable to resolve a complaint to your satisfaction informally, then you can proceed with the formal procedure outlined below. In the first instance

if you have an issue with a neighbour. Attempt to explain the issues you have. Quite often a person or business may not be aware of the issue or the distress they may be causing. This approach creates good neighbourly relations and good relations. This is often the quickest way to put things right.

If this does not resolve a complaint to your satisfaction informally, then you can proceed with the formal procedure outlined below.

### **13.2 Formal Complaint**

The quickest and easiest way to make a **formal** complaint is to use our [online complaints form](#).

You can also email us, write to us or use one of our pre-printed complaints forms. These can be picked up from one of our offices, or we can send you one.

If you are unable to write or type, we can record the complaint in your own words for you.

We will acknowledge receipt of your formal complaint within five working days and we aim to reply in full within 15 working days.

**Formal - Stage 1:** The complaint is handled by a Head of Service, or nominated officer, who will investigate and reply to you.

**Formal - Stage 2:** If you remain dissatisfied after the Stage 1 reply the Director of Services will investigate and reply to you. If you remain unhappy following the Director of Service's reply, further progress depends on the nature of your complaint. Most complaints are referred to the [Local Government Ombudsman](#).

However, as a social housing provider some housing related complaints will be dealt with by the [Housing Ombudsman](#).

The Director of Service's reply will tell you how to take your complaint further.

Both the Local Government Ombudsman and the Housing Ombudsman expect you to have exhausted our complaints procedure before approaching them.

If your complaint is about a social housing issue, the Housing Ombudsman requires you to go through a Designated Person\* before referring your complaint. Otherwise, you have to wait eight weeks after a Stage 2 reply before the Housing Ombudsman will consider your complaint.

\*Designated Persons are defined in the Localism Act as an MP, a local councillor or a designated tenant panel.

**Data Protection:** The information you supply will be used to enable this request or notification to be carried out and will be handled in accordance with the Data Protection Act 1998. For more information please see our [privacy notice](#).



## Appendix 1- Fixed Penalty Notice Offences

Code	Offence	Legislation	Fixed Penalty	Reduction due to early payment payable within 7 days unless stated	Max Penalty on Conviction
OWBC1	Leaving Litter	S87(1)/S88(1) Environmental Protection Act 1990	£80 payable within 14 days of issue	£50	£2,500
OWBC2	Failure to comply with Public Space Protection and Dog Control Orders	S55(1), (3) or (4) Cleaner Neighbourhoods and Environment Act 2005 and S52 Anti-Social Behaviour Crime and Policing Act 2014	£80 payable within 14 days of issue	£50	£1000
OWBC3	Nuisance Parking	S3, S4 & S6(1) Clean Neighbourhoods Environment Act 2005	£100 payable within 14 days of issue	£60	£2,500
OWBC4	Fly-Posting or Graffiti	S43, S43A & S43B Anti-Social Behaviour Act 2003	£80 payable within 14 days of issue	£50	Variable
OWBC5	Failure to comply with CPN	S52 Anti-Social Behaviour Crime and Policing Act 2014	£100 payable within 28 days of issue	£75 payable within 14 days of issue	Variable
OWBC6	Failure to produce waste disposal documentation	S34(5), S34(6) & S34A Environmental Protection Act 1990 & EP. (Duty of Care) Regs 1991 as amended	£300 payable within 14 days of issue	£180	£5,000 (or, on indictment, an unlimited fine)
OWBC7	Failure to produce authority to transport controlled waste	S5/5B - Control of Pollution (Amendment) Act 1989	£300 payable within 14 days of issue	£180	£5,000
OWBC8	Failure to comply with waste disposal receptacles notice	S46/47/47ZA/47ZB Environmental Protection Act 1990	£100 payable within 14 days of issue	£60	£1,000
OWBC9	Smoking in Smoke Free Place	S7 & S9 Health Act 2006	£50 payable within 28 days of issue.	£30 if paid within 15 days	£200
OWBC10	Failure to display No Smoking signs	S6(5) Health Act 2006	£200 payable within 28 days of issue..	£150 if paid within 15 days	£200