

Enforcement Policy



Oldham
Council

1. Introduction

1.1 Policy Statement

This document lays out the generic principles for good enforcement. This document sets out what business and others can expect from Oldham Council's regulatory services and its officers. It commits the Council to good enforcement policies and procedures. This includes carrying out our activities in a robust but fair way that supports those we regulate to comply and grow, avoiding imposing unnecessary regulatory burdens, and assessing whether similar social, environmental and economic outcomes could be achieved by less burdensome means. It is supplemented where necessary by other documents, which set out in greater detail the specific policies, procedures and standards of service, which apply to particular regulatory services. The Enforcement Policy is not exhaustive in its application. It is recognised that some regulatory services will have specific policies (which may be statutory in nature), that will either coexist alongside this policy, or in certain circumstances supersede it. This policy takes effect from the **16th of July 2024**.

1.2 Purpose

The primary function of local government regulatory activity is to protect the public, the environment and the local economy. There is a wide range of tools available to us as an enforcement authority and by delivering on these commitments we shall help to maintain a fair and safe living and trading environment to promote the local economy, social cohesion and protection of public and environmental health.

This document seeks to communicate and explain the approach of the Council's regulatory services towards enforcement and dealing with non-compliance. It sets out the enforcement options ranging from no action to prosecution. It provides guidance on the range of options that are available to help the public achieve compliance with the legislation that we enforce and how discretionary powers may be used to regulate and raise standards in various sectors.

Section 6 of the Better Regulation Delivery Office's (Department for Business, Innovation and Skills) Regulators' Code sets out the Government's expectation that local authorities will ensure their approach to their regulatory activities is transparent. The provisions of section 6 include an expectation that local authorities will publish a clear set of service standards, setting out what those they regulate should expect from them. This enforcement policy explains how the Council will implement the Regulators' Code and what individuals, households, businesses and other agencies can expect from our enforcement activities.

This Enforcement Policy commits us to:

- Protecting residents, visitors, workers, consumers, businesses, the Council's financial position and the environment of the area
- Protecting against the spread of infectious diseases in the area
- Equitable and consistent enforcement actions
- Fostering an environment which encourages economic progress in our districts
- Helping businesses and others to understand and meet their legal obligations
- Reducing unnecessary burdens on businesses and individuals
- Responding proportionately to the seriousness of regulatory breaches
- Taking firm action, including legal action where appropriate, against those who fail to change their behaviour, flout the law or act negligently or deliberately seek to distort the market place.

1.3 Scope

Oldham Council has enforcement teams relating to the following areas of compliance:

- Trading standards
- Licensing
- Food safety
- Health and safety
- Nuisance, contaminated land and environmental matters
- Pest control
- Crime reduction/Anti-social behaviour
- Animal Health & Welfare
- Littering and Fly tipping
- Private Housing
- Internal Audit & Counter Fraud: Council Tax Reduction/Discount, Business Rates, Blue Badge including any other fraud perpetrated against the Council
- Education
- Planning
- Building Control
- Highways Authority
- Parking Services

Some areas of discreet regulatory activity may also have further policy statements setting out in greater detail the methodologies of enforcement activity that will be adopted.

1.4 Policy Consistent with Best Practice and Statutory Requirement

This Enforcement Policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens on business and others subject to regulation. This Policy has been developed with due regard to the **Principles of Good Enforcement** set out in the following guidance documents:

- **The Regulators' Code**, a code issued under the Legislative and Regulatory Reform Act 2006 in respect of certain specified Council regulatory functions.
- **The Code for Crown Prosecutors** issued by the Director of Public Prosecutions under the Prosecution of Offenders Act 1985.
- **The Enforcement Policy Statement of the Health and Safety Executive and the National Local Authority Enforcement Code Health and Safety at Work England, Scotland and Wales, April 2013**, which the Council's Health and Safety Enforcement Officers should follow.
- **The Food Standard Agency's Regulators' Code**, which came into force in April 2014.

In certain circumstances we may conclude that a provision contained in one or more of these codes is either not relevant or is outweighed by another provision or relevant factor. We will ensure that any decision to depart from relevant policy guidelines will be properly reasoned and based on material evidence.

The Secretary of State's Statutory Guidance to Local Authorities on the Civil Enforcement of Parking Contraventions, November 2015 details the policy framework on how to approach, carry out and review civil parking enforcement.

1.5 What we mean by 'Regulatory' and 'Enforcement'

Although these terms are not specifically defined in legislation:

- **'Regulatory'** encompasses the Council's numerous powers and duties enabling the behaviour of individuals and/or organisations to be controlled in the public interest.
- **'Enforcement'** includes any action carried out in the exercise of, or against the background of, statutory powers and duties of regulation. This is not limited to formal enforcement action such as prosecution in the criminal Courts or the giving of Notices. It also includes, among other things, the inspection of premises for the purpose of checking compliance with regulations or conditions, the imposition of conditions on any licence, consent or similar formal permission, the issue of fixed penalty notices, the giving of Home Office cautions and the making of applications to the Courts for Orders to control the conduct of individuals and/or organisations.

1.6 Legal Obligations

All enforcement activities, including investigations and formal actions, will always be conducted in compliance with the Council's statutory obligations. Council enforcement officers should act within the scope of their delegated authority and with due regard to all relevant legislation, such as:

- Health and Safety at Work etc. Act 1974
- Police and Criminal Evidence Act 1984,
- Criminal Procedure and Investigations Act 1996,
- Human Rights Act 1998,
- Crime and Disorder Act 1998 (s17)
- Regulation of Investigatory Powers Act 2000,
- Criminal Justice and Police Act 2001,
- Legislative and Regulatory Reform Act 2006,
- Regulatory Enforcement and Sanctions Act 2008
- Equality Act 2010
- Home Office Code of Practice on Powers of Entry
- Protection of Freedoms Act 2012
- Data Protection Act 2018

This is not an exhaustive list. Officers will have due regard to any relevant formal procedures and codes of practice made under such legislation and will be guided in their work by the principles laid down in legislation and underpinning this policy.

2. Our Enforcement Principles

We aim to apply the principles set down in the Legislative and Regulatory Reform Act 2006 to all of our regulatory activities, including, but not limited to, those that are specified in regulations made under the Act. The principles are that:

- Regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent;
- Regulatory activities should be targeted only at cases in which action is needed.

The following paragraphs set out how we aim to make this happen in practice.

2.1 Helping Businesses and Others to Compliance – Supporting Economic Progress

The effectiveness of legislation in protecting consumers, other businesses and the community depends crucially on the compliance of those regulated. We recognise that most people and most businesses want to comply with the law. We will, therefore, take care to help businesses and others meet their legal obligations without unnecessary expense.

We will strive to ensure that when information is needed from businesses that it is assessed to avoid duplication of requests and amended where necessary.

Whenever practicable we will promote positive incentives for businesses that comply, such as the National Food Hygiene Rating Scheme, and Rent with Confidence Scheme. We will, where practicable and appropriate, feedback to business when there are changes in business risk ratings as a result of their performance.

2.2 Openness through Clear, Accessible Guidance

Any information and advice about the legislation that we enforce shall be provided in plain language where practicable including on the Council website at www.oldham.gov.uk

Within any limits imposed by law, we will be open about how we carry out our work, including any charges that we make for services.

2.3 Helpfulness through Clear, Accessible Guidance

We believe that it is in the interests both of regulated businesses and the wider public to get things 'right first time'. Our enforcement role should involve actively working with all those subject to regulation, especially small and medium sized businesses, to guide and assist with compliance. We will provide a courteous and efficient service and our staff will identify themselves by name and carry proof of their identity. We will provide a contact point and telephone number for further dealings with us and we will encourage businesses and others to seek guidance or information from us. All requests for service, including applications for approval of establishments, licences, registrations, etc, will be dealt with efficiently and promptly within the resources available. We will ensure that, wherever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

2.4 Meeting the Needs of All Our Service Users

As far as it is reasonable to do, we will make provision for the particular interests of our service users, including businesses, their employees and the public e.g. access requirements and plain English. We are committed to providing equality of access to all the services that we provide. Full regard will be paid to different abilities and officers will be committed to ensuring that no one is discriminated against on the basis of their age, disability, employment status, ethnic or national origins, race or colour, marital status, religious or political beliefs, responsibilities for children or dependents, gender or gender reassignment, sexuality, social class, or unrelated criminal convictions. In line with the Council's published equalities policy, we will ensure that we provide services that are fair and accessible and make reasonable provision for particular needs for services.

2.5 Accountability – How to Make a Complaint about our Service

We want to sort your complaint out as soon as possible. If you have a problem with a Council service, please talk to a member of staff or contact the Manager of the service concerned. They may be able to resolve the issue straight away. If you are unsatisfied with the service from the Council, you can make a complaint under our Complaints and Feedback procedure:

customer.feedback@oldham.gov.uk

2.6 Targeted, Proportionate and Risk-based Enforcement

We will minimise the costs of compliance for businesses and the public by ensuring that any action we require is proportionate to the risks. We will adopt a risk-based approach to target resources where most needed. In line with the codes referred to above, we will take account of the circumstances of the case and the response of those subject to regulation when considering action. At the same time we will use intelligence and direct resources to identify those who flout the law or act irresponsibly and take firm action against them, including prosecution where appropriate.

2.7 Consistent Enforcement

We will carry out our duties in a fair, equitable and consistent manner. While officers are expected to exercise judgement in individual cases and to treat each case on its own merits, we will have arrangements in place to promote consistency. Any actions taken should therefore:

- aim to change the behaviour of the offender;
- aim to eliminate any financial gain or benefit from non-compliance;
- be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
- be proportionate to the nature of the offence and the harm caused;
- aim to restore the harm caused by non-compliance, where appropriate; and,
- aim to deter future non-compliance.

We support and will promote arrangements for effective liaison with other authorities and enforcement bodies through schemes such as the Home Authority principle, the Lead Authority principle and the Primary Authority principle.

www.gov.uk/government/publications/primary-authority-overview

2.8 Working with Other Enforcement Agencies

Some regulatory activity involves consultation with other agencies before deciding on the most appropriate course of action. Sometimes there is more than one agency that can act in response to a problem. If there is a shared enforcement role with other agencies, whenever possible our enforcement activities will be co-ordinated with these agencies in order to minimise unnecessary duplication or delays and to increase our overall effectiveness:

- Wherever we have a statutory duty to report regulatory matters to another body or agency, we will have procedures in place to ensure that this happens;
- If we become aware of an enforcement issue that would be of legitimate interest to, or more properly be dealt with by, another enforcement agency, we will ensure that the information is passed to that agency in good time. Equally we will take referrals from other agencies when appropriate to do so.

2.9 Adopting Good Enforcement Procedures

Guidance from an officer will be put clearly and simply, explaining why any remedial work or action is considered to be necessary and over what time-scale. Such guidance will make sure that legal requirements are clearly distinguished from best practice advice and will be usually confirmed in writing.

3. How We Take Enforcement Action

3.1 Unless immediate action is necessary and proportionate (such as the need to immediately prohibit an activity in order to avoid imminent harm to health and safety, or the need to resolve reported nuisance where we cannot find the person responsible, or to reduce capacity at a sports ground to protect spectators), the Council will afford an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference. Wherever possible, officers will seek to find solutions that are arrived at by agreement and co-operation and will keep in mind the maxim that prevention is better than cure.

3.2 Where there are statutory rights of appeal against formal action, information about those appeal rights will be given, either with the Notice governing the action taken or, where this is not appropriate or practicable, in a letter following the action to be sent as soon as reasonably practicable.

3.3 Enforcement Actions

Whenever enforcement officers deal with matters that could constitute a criminal offence, and for which legal proceedings may be taken against an individual and / or a company, such allegations will be properly investigated unless a Fixed Penalty Notice (FPN) is going to be issued (see 3.5 below). Depending on the offence and function, officers have varying powers delegated to them.

3.4 At the conclusion of an officer's enquiries, a decision will be made as to whether or not it is believed that an offence has in fact been committed, and, if this is the case, whether to deal with the matter informally, or whether to pursue a more formal course of action. The enforcement action that the local authority chooses to take will depend upon the particular circumstances and the approach of the business or regulated person to dealing with the breach. Although the general rule will be to levy the minimum level of enforcement required to reach a satisfactory solution the Council will deal firmly with those that deliberately or persistently fail to comply or who target vulnerable persons, deprive the public purse or compromise public safety where there is an overwhelming public interest to take formal action.

3.5 Guidance for issuing Fixed Penalty Notices:

Officers and their representatives will follow this guidance to determine if it is appropriate to issue a FPN:

<https://www.gov.uk/guidance/enforcement-officers-issuing-fixed-penalty-notices>

3.6 Informal Action – Advice or Warning

Minor infringements are generally dealt with by means of informal action and would involve the officer drawing the matter to the attention of the individual or to the owner of the business or to an appropriate employee and giving appropriate guidance. Where appropriate a report will be left at the time of the visit or contained within a written letter of advice or warning. Rarely will a minor or technical infringement result in more formal action being taken, particularly if it is capable of immediate rectification. A follow-up visit will usually be made, where circumstances demand, to ensure minor matters have been rectified. However, if previous advice has been ignored, or if there is another factor that warrants a formal response, the Council may choose to treat the incident in a formal way.

3.7 Formal Action – Statutory Notice

Depending on the powers of the officer under the applicable legislation, and the remedy that best protects the public from harm, the officer may issue a statutory notice requiring that certain actions should be carried out within a given timescale. It is the responsibility of the recipient to comply with the notice. Failure to do so may result in criminal action being taken.

3.8 Formal Action – Investigation

In other cases, we will conduct an investigation in order to decide the appropriate course of action. You will be told who the investigating officer is.

3.9 We give suspected offenders the opportunity to give an explanation of the circumstances surrounding the commission of any alleged offence including, where provided for by the legislation, of any statutory defences. Officers may decide to do this by inviting the suspect to attend a formal interview.

3.10 Any formal interview about offences will be conducted having regard to the Codes issued under the Police and Criminal Evidence Act 1984 (PACE) and an appropriate record will be made. Suspected offenders will be given the opportunity to seek legal advice prior to such an interview taking place and may be accompanied by a legal representative at the interview itself.

Some matters may not proceed to a full criminal investigation but may instead be dealt with by way of a committee hearing e.g., taxi drivers and premises licence holders in order to assess their suitability to continue to hold such licence.

3.11 Formal Action - Criteria for Assessing Action on Suspected Offences

The Council takes care to ensure an independent and consistent approach is taken to prosecution decisions. In most cases where the investigating officer recommends prosecution the Council's delegated officer within Legal Services makes the decision whether or not to begin such proceedings. In those minority of cases where other Council officers are responsible for making the decision, any advice provided by the Head of Legal Services will be taken into account.

In all cases the appropriate course of action to take is decided having regard to relevant policies and the current **Code for Crown Prosecutors**, which involves a two-stage decision making process:

- Firstly, an **evidential test** to ensure that there is enough evidence to provide a 'realistic prospect of conviction'. If this is lacking, then no prosecution or alternative means of disposal of criminal offences will be taken.
- Secondly, a **public interest test**, which will determine whether it is in the public interest for a prosecution to be taken.

We will also take into account any other relevant codes of practice for example the Feed Code of Practice when enforcing animal feed law and the Food Code of Practice when enforcing Food law.

3.12 Public interest criteria

The Council will consider all relevant circumstances carefully and will have regard to the following public interest criteria:

- the gravity of an alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender;
- whether there has been a reckless disregard of regulatory requirements;
- whether there have been repeated breaches giving rise to significant risk, or persistent and significant poor compliance;
- whether there has been a failure to honour voluntary undertakings or comply with statutory notices; or there has been a repetition of a breach that was subject to a simple caution;
- whether false information has been supplied wilfully, or there has been an intent to deceive, in relation to a matter which gives rise to significant risk;
- whether authorised officers have been intentionally obstructed in the lawful course of their duties.

This is not an exhaustive list. Where we consider that formal enforcement action is necessary each case will be considered on its own merits.

3.13 The Code for Crown Prosecutors test insofar as it relates to the Council requires the consideration of the following questions:

a) How serious is the offence committed?

- The more serious the offence, the more likely it is that a prosecution is required.
- When assessing the seriousness of an offence, prosecutors should include in their consideration the suspect's culpability and the harm caused, by asking themselves the questions at b) and c).

b) What is the level of culpability of the suspect?

- The greater the suspect's level of culpability, the more likely it is that a prosecution is required.
- Culpability is likely to be determined by:
 - i. the suspect's level of involvement;
 - ii. the extent to which the offending was premeditated and/or planned;
 - iii. the extent to which the suspect has benefitted from criminal conduct;
 - iv. Whether the suspect has previous criminal convictions and/or out-of-court disposals and any offending whilst on bail or whilst subject to a court order;
 - v. whether the offending was or is likely to be continued, repeated or escalated;
 - vi. The suspect's age and maturity (see paragraph d below).
- A suspect is likely to have a much lower level of culpability if the suspect has been compelled, coerced or exploited, particularly if they are the victim of a crime that is linked to their offending.
- Prosecutors should also have regard to whether the suspect is, or was at the time of the offence, affected by any significant mental or physical ill health or disability, as in some circumstances this may mean that it is less likely that a prosecution is required. However, prosecutors will also need to consider how serious the offence was, whether the suspect is likely to re-offend and the need to safeguard the public or those providing care to such persons.

c) What are the circumstances of and the harm caused to the victim?

- The circumstances of the victim are highly relevant. The more vulnerable the victim's situation, or the greater the perceived vulnerability of the victim, the more likely it is that a prosecution is required.
- This includes where a position of trust or authority exists between the suspect and victim.
- A prosecution is also more likely if the offence has been committed against a victim who was at the time a person serving the public.
- It is more likely that prosecution is required if the offence was motivated by any form of prejudice against the victim's actual or presumed ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity; or if the suspect targeted or exploited the victim, or demonstrated hostility towards the victim, based on any of those characteristics.

- Prosecutors also need to consider if a prosecution is likely to have an adverse effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence, the availability of special measures and the possibility of a prosecution without the participation of the victim.
 - Prosecutors should take into account the views expressed by the victim about the impact that the offence has had. In appropriate cases, this may also include the views of the victim's family.
 - However, the Council does not act for victims or their families in the same way as solicitors act for their clients, and prosecutors must form an overall view of the public interest.
- d) What was the suspect's age and maturity at the time of the offence?

Persons under the age of 18

Prevention and diversion activity is a key aim of the Council's response, working with partners, to young people identified as involved in, or at risk of anti-social behaviour and criminality. Where appropriate, prevention and diversionary action will be undertaken; however, prosecution remains an option for persons under the age of 18 where significant harm is being caused to individuals or communities.

Prosecutors should consider the suspect's maturity, as well as their chronological age, as young adults will continue to mature into their mid-twenties.

- As a starting point, the younger the suspect, the less likely it is that a prosecution is required.

e) What is the impact on the community?

- The greater the impact of the offending on the community, the more likely it is that a prosecution is required.
- The prevalence of an offence in a community may cause particular harm to that community, increasing the seriousness of the offending.
- Community is not restricted to communities defined by location and may relate to a group of people who share certain characteristics, experiences or backgrounds, including an occupational group.
- Evidence of impact on a community may be obtained by way of a Community Impact Statement.

f) Is prosecution a proportionate response?

- In considering whether prosecution is proportionate to the likely outcome, the following may be relevant:

i. The cost to the Council and the wider criminal justice system, especially where it could be regarded as excessive when weighed against any likely penalty. Prosecutors should not decide the public interest on the basis of this factor alone. It is essential that regard is also given to the public interest factors identified when considering the other questions, but cost can be a relevant factor when making an overall assessment of the public interest.

ii. Cases should be prosecuted in accordance with principles of effective case management. For example, in a case involving multiple suspects, prosecution might be reserved for the main participants in order to avoid excessively long and complex proceedings.

3.14 Prosecutions related to Health and Safety

The Council will normally prosecute where one or more of the following circumstances are found to apply:

- Death was a result of a breach of the legislation.
- The gravity of the alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender warrants it.
- There has been reckless disregard of health and safety requirements.
- There have been repeated breaches giving rise to significant risk, or persistent and significant poor compliance.
- Work has been carried out without or in serious non-compliance with an appropriate licence.
- The standard of management of health and safety is found to be far below legal requirements and to give rise to significant risk.
- Failure to comply with an improvement or prohibition notice.
- False information has been supplied wilfully in relation to a matter which gives rise to significant risk.
- Inspectors have been obstructed in the course of their duties.

Where there has been a work-related death, enforcement officers will follow the National Work-related Death Protocol in liaising with the police to consider whether the circumstances of the case might justify a charge of manslaughter.

3.15 Formal Actions following conclusion of the criminal investigation

The eventual course of action taken may be one of the following: -

- a) No action
- b) Verbal or Written Advice or Warning
- c) Undertakings & Injunctive action
- d) Formal Notice
- e) Work in Default
- f) Simple Caution in accordance with current Home Office guidance
- g) Fixed Penalty Notice
- h) Civil or Financial Penalty Notice
- i) Prosecution
- j) Refusal/Suspension/Revocation of a licence, permit or certificate.
- k) Forfeiture
- l) Tobacco Restriction Orders
- m) Taking animals into possession
- n) Post-conviction court orders
- o) Reduction in capacity at a sports ground
- p) Confiscation of Proceeds of Crime
- q) Restitution
- r) Unlawful profit orders.
- s) Banning Orders
- t) Closure Notices/Orders
- u) Prohibition Notices
- v) Suspension Notices
- w) Seizures
- x) Possession Action
- y) Unlawful Profit Order

This is not an exhaustive list. There are other options for formal action that are available to certain regulatory officers under the legislation that they enforce on behalf of the Council or other sanctions that may be provided for in subsequent legislation.

3.16 An explanation of the formal action options

a. No action

In certain circumstances, contraventions of the law may not warrant any action. This can be where the cost of compliance to the offender outweighs the detrimental impact of the contravention, 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 in the circumstances, such as where the offender is elderly and frail or is suffering from mental health issues or serious ill health and formal action would seriously damage their wellbeing. In such cases we will advise the offender of the reasons for taking no action.

b. Verbal or written advice or warning

For minor breaches of the law we may give verbal or written advice. We will clearly identify any contraventions of the law and give advice on how to put them right, including a deadline by which this must be done. The time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of the non-compliance. Sometimes we will advise offenders about 'good practice' but we will clearly distinguish between what they must do to comply with the law and what is advice only. Failure to comply could result in an escalation of enforcement action.

c. Undertakings & Injunctive action

The range of actions under various legislation (for example the Enterprise Act 2002 and the Anti-Social Behaviour, Crime and Policing Act 2014) include: informal assurances, formal undertakings, interim orders, court orders and contempt proceedings.

d. Formal Notice

Certain legislation allows notices to be served requiring offenders to take specific actions or cease certain activities. Notices may require activities to cease immediately where the circumstances relating to health, safety, environmental damage or nuisance demand. In other circumstances, the time allowed will be reasonable, take into account the seriousness of the contravention, the implications of the non-compliance and the appeal period for that notice. All notices issued will include details of any applicable Appeals Procedures.

e. Work in Default

The Council is given powers under the Housing Act 2004 and other legislation to carry out works in default where a person has been required to do works but has failed to do so. In most

circumstances a person will be given notice of the Council's intention to carry out works in their default. Once the Council has started works it is an offence for that person to obstruct the Council or any of the contractors that have been employed to carry out the works. The cost of the works will be recovered in accordance with the relevant statutory provisions. The Council is not obliged to carry out works and reserves the right not to do so where the cost of the works is likely to be very high or there are likely to be difficulties in recovering the costs.

f. Simple Caution

In appropriate circumstances, where a prosecution would otherwise be justified, a Simple Caution may be issued with the agreement of the defendant. This will be done in accordance with Home Office guidelines. The purpose of these cautions is to avoid unnecessary court action, but can only be used where the defendant fully admits the offence and agrees to it being dealt with by way of caution. Simple cautions are recorded by the Council and may be cited in court should a future infringement occur. This may include an infringement prosecuted by the Police or another body; as indicated above the Council will usually share relevant information (such as the fact that a simple caution has been given) with other investigators where satisfied that this will help in the prevention and detection of crime. No court proceedings are involved in the giving of a simple caution.

A Simple Caution will be issued in accordance with the current **Home Office Circular**. There is no legal obligation for any person to accept such a caution and no pressure will be applied to that person to do so. If a caution is declined, a prosecution should normally follow.

g. Fixed Penalty Notice

The 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, the 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 the 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.

The 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 the discretion of the Council. 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.

h. Civil or Financial Penalty notices

The Council has in certain circumstances the power to issue Civil or Financial Penalties in relation to particular offences. The powers are set out in law and the Council will follow the relevant policy and procedures when deciding on whether to make a financial penalty or civil penalty and the level or amount that the penalty should be. The details of the method of appealing these penalties will be set out in any notices served. In some cases, this will include the right to make representations before a final penalty notice is made.

i. Prosecution

In circumstances where none of the other forms of enforcement action are considered appropriate a prosecution will be considered and may ensue.

j. Refusal/ Suspension/ Revocation of a licence, permit or certificate.

Oldham Council issues licences to carry out certain activities. It also has a role to play in ensuring that appropriate standards are met in relation to licences issued. Most licences 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 suspension, revocation or amendment. When considering future licence applications or similar applications the Council may take previous breaches and enforcement action into account.

k. Forfeiture

Some legislation allows us to apply to the court to seek forfeiture of goods, either in conjunction with a prosecution, or separately.

l. Tobacco Restriction Orders

Where an offender continually breaks the law by selling tobacco products to young people, we may make a complaint to the court and apply for a restricted premises order or a restricted sale order. The effect of such an order is to prohibit a premises or a person from selling tobacco for a period of time up to one year.

m. Taking Animals into Possession

Under the Animal Welfare Act 2006, if a veterinary surgeon certifies that 'protected animals' are suffering or are likely to suffer if their circumstances do not change, we may consider taking them into possession and applying for Orders for re-imbursement of expenses incurred and subsequent disposal.

n. Post-Conviction Court Orders

A person who is convicted of a relevant offence in the Criminal Courts, can under the Anti-Social Behaviour Crime and Policing Act 2014, be given an order that is equivalent to an Anti-Social Behaviour Order, known as a Criminal Behaviour Order, which prohibits and/or requires the offender doing anything described in the order. A Remedial Order can be made for breach of a Community Protection Notice under section 49 of the Anti-social Behaviour, Crime and Policing Act 2014. Dog Destruction and Control Orders can be made under The Dangerous Dogs Act 1991 and the Dogs Act 1871.

o. Reduction in capacity at a sports ground

Formal action may also be taken in relation to all or part of sports grounds such as imposing a reduction in capacity or issuing a Prohibition or Closure Notice.

p. Confiscation of Proceeds of Crime

Where a prosecution concerns offending conduct falling within the relevant tests under the Proceeds of Crime Act 2002, we will consider seeking a confiscation order to remove the benefit obtained from such criminal conduct. The making of such orders sends a clear message that 'crime does not pay'. The purpose is to recover the financial benefit the offender has obtained from their criminal conduct.

q. Restitution

Where goods have been stolen and an offender is convicted of any offence with reference to theft of those goods, the court may make a restitution order. Sometimes also called a compensation order, an award can also be made to a victim of other crimes.

r Unlawful profit orders

If you are found guilty of an unlawful subletting offence, the court can also make an 'unlawful profit order'. This means you have to pay the landlord any profit you made from subletting. The court can make this order instead of, or on top of any fines or imprisonment.

s Banning Orders

A banning order prohibits a person from: renting out residential accommodation; and. performing letting agency work; and. performing property management work; and. holding a HMO or selective licence. Banning orders can also be imposed to those convicted of animal welfare offences to stop them owning animals. They can also be imposed for disqualifying somebody from being a company director.

t Closure Notices/Orders

Closure powers allow the local authority or police to quickly close premises which are being used, or likely to be used, to commit nuisance or disorder. This power can be used for up to 48 hours out of court and is single power that is intended to cover a wide range of behaviours in a quick and flexible way. Closure notices can also be imposed for the persistently selling of alcohol to children and also for un-licensed scrap metal sites.

u Prohibition Notice

If you receive a Prohibition Notice, it means that you must stop the activity to which it refers at once. Prohibition Notices usually refer to a breach of health and safety legislation. An inspector will issue a Prohibition Notice if the activities involve a risk of serious personal injury.

v Suspension Notice

A suspension notice could be issued to a private hire or hackney carriage owner where there is a suspected defect to a vehicle or where there is non-compliance with conditions of licence. It could also be used to suspend the licence of a private hire or hackney carriage driver for various reasons.

w Seizures

Where officers suspect a criminal offence has been committed, they can enter premises and seize goods.

x Possession Action

This is where the Council could apply to a court for possession of certain goods, animals or other items.

y Unlawful Profit Order

The Prevention of Social Housing Fraud Act 2013 ("the Act") introduced an ability to obtain an Unlawful Profit Order ("UPO"), which is an order requiring a tenant to pay their landlord any profit they have made from subletting their home.

4. How We Implement this Enforcement Policy

4.1 Implementation and Training

All officers when engaged in enforcement in services covered by this policy are required to use this policy in their work. To update existing practices, it is essential that the expectations of this policy are disseminated to all officers within those regulatory services covered by this policy. Appropriate training will be provided to ensure that each officer understands and applies this policy to all enforcement activity.

4.2 Publication and Publicity

Following adoption, this policy will be published on the Council's website and in printed form on request.

In order to deter others, the Council will aim to publish the outcome of any prosecution or other enforcement action within 24 hours of the conviction or sentence unless there is good reason not to do so.

4.3 Service Specific Standards and Charters

As set out in Section 1.1 of this policy, it will be a priority for each of the regulatory services covered by this policy to review and, where necessary, update their current enforcement policies and procedures and service standards in order to ensure that they are consistent with this policy.

4.4 Responsibilities

Each manager of a regulatory service that is covered by this policy will be responsible for its effective implementation throughout the enforcement activities of their team. Every officer within these teams will be responsible for applying it in relation to any enforcement activity covered by this policy.

4.5 Liaison with Other Regulatory Bodies and Enforcement Agencies

Where there is a wider regulatory interest, enforcement activities will be co-ordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement.

Where an enforcement matter affects a wider geographical area beyond the local authority'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 coordinated with them.

The officers will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies including:

- Government Agencies Inc. HMRC, Border Force and DWP
- Police Forces
- Fire Authorities
- Statutory Undertakers
- Other Local Authorities

The sharing of any specific information with other regulatory bodies and enforcement agencies will take place having due regard for the requirements of the Data Protection Act 2018, and Part 9 of the Enterprise Act 2002. Under s241A of the Enterprise Act 2002, a public authority which holds prescribed information to which section 237 applies, may disclose that information to any person for the purposes of, or in connection with, prescribed civil proceedings only (including prospective proceedings) in the United Kingdom or elsewhere. However, information gathered under other legislation may be subject to the provisions of the Freedom of Information Act 2000, Data Protection Act 2018 or otherwise subject to disclosure provisions that may be contained within the relevant legislation.

4.6 Monitoring and Review of the Policy

The operation of this policy in practice will be reviewed from time to time. The content of the policy will be reviewed in the light of any relevant changes in legislation or updated codes of practice. Any significant changes will be subject to prior approval by relevant elected Members of the authority following consultation with the Council's senior officers.



Oldham
Council