

Black Country Local Authorities Enforcement Policy



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<p>Joint Statement of the Chief Executives</p>	<p>The four local Authorities in the Black Country are responsible for protecting people’s health, safety and wellbeing as well as the environment and amenities. They are responsible for promoting economic growth and employment opportunities.</p> <p>Key to supporting these objectives is a regulatory regime that balances support and enforcement. Providing advice that supports businesses to thrive and grow through all stages of the business lifecycle, whilst targeting formal enforcement actions at those businesses that breach the legislation contrary to our local needs and priorities and obtaining an unfair competitive advantage.</p>
<p>Name Signature</p>	<p>Similarly, residents and communities thrive best when they can enjoy the highest standards of local amenities and benefit from high levels of consumer protection.</p>
<p>Name Signature</p>	<p>It is recognised by each of the Authorities, as well as by national government, that business often operates on a wider basis than a single Authority. Following initiatives, such as “Better Business For All” and working with the Black Country Local Enterprise Partnership, it is recognised that businesses and communities alike thrive and are supported by providing consistency and certainty as far as possible. Therefore, the four authorities have developed a single enforcement policy</p>
<p>Name Signature</p>	<p>The Black Country’s regulatory focus, through its various compliance and consenting activities and functions, is based around four central principles:</p>
<p>Name Signature</p>	<ul style="list-style-type: none"> • We will ensure that we enforce the law in a fair, equitable and consistent manner • We will work to assist businesses and others in meeting their legal obligations • Our focus will be on prevention rather than cure, where appropriate. • We will take action against those who breach the law or act irresponsibly <p>This Policy has been developed in conjunction with key stakeholders, including local business and enforcement partners</p>

Enforcement Policy For Dudley Council, Sandwell Council, City of Wolverhampton Council and Walsall Council

A. Principles of Good Regulation

The Legislative and Regulatory Reform Act 2006, Part 2, requires the authorities named above to have regard to the Principles of Good Regulation when exercising a specified regulatory function¹. For local authorities, the specified functions include those carried out by the services referenced in Annex 1.

We will exercise our regulatory activities in a way which is:

- (i) Proportionate – the Regulators’ Code promotes proportionate regulatory activity, which includes taking appropriate action where non-compliance is identified. The Public Interest Stage contained in the Code for Crown Prosecutors and can be accessed at http://www.cps.gov.uk/publications/code_for_crown_prosecutors/ will always be considered when determining whether it is right to prosecute. Our activities will reflect the impact of the offending on those living in, working in and visiting the area and enforcement action taken will relate to the seriousness of the offence.
- (ii) Accountable – our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures,
- (iii) Consistent – our advice to those we regulate will be robust and reliable and we will respect advice provided by others. Where circumstances are similar, we will endeavour to act in a consistent manner.
- (iv) Transparent – we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return, and
- (v) Targeted – we will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities and intelligence.

B. Regulators’ Code

The Regulators’ Code has been a central part of the Governments’ better regulation principles for some time now. Its aim is to embed a risk based, proportionate and targeted approach to regulatory inspection and enforcement

The authorities and services have had regard to the Regulators’ Code in the preparation of this policy. In certain instances we may conclude that a provision in the Code is either not relevant, is outweighed by another provision or does not legally apply to some aspects of regulatory activity. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

The Regulators’ Code can be accessed at <https://www.gov.uk/government/publications/regulators-code>

C. The Code for Crown Prosecutors

When deciding whether to prosecute the authorities have regard to the provisions of The Code for Crown Prosecutors as issued by the Director of Public Prosecutions.

¹ Specified by the Legislative and Regulatory Reform (Regulatory Functions) Order 2007, available at www.legislation.gov.uk

The Code for Crown Prosecutors is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases. The Code sets out two tests that must be satisfied, commonly referred to as the 'Evidential Test' and the 'Public Interest Test':

- a. Evidential Test - is there enough evidence against the defendant?

When deciding whether there is enough evidence to prosecute, each Authority will consider what evidence can be used in court and is reliable. They must be satisfied there is enough evidence to provide a "realistic prospect of conviction" against each alleged offender for each offence.

- b. Public Interest Test - is it in the public interest for the case to be brought to court?

Each Authority will balance factors for and against prosecution carefully and fairly, considering each case on its merits. Before deciding that prosecution is appropriate each Authority will consider the matters which, in the opinion of the Authority, are relevant and will have regard to the public interest. Their decision will reflect the impact of the offending on those living and working in the Boroughs.

D. Regulatory Enforcement and Sanctions Act 2008 ('the RES Act')

The Regulatory Enforcement and Sanctions Act 2008, as amended, established the Primary Authority scheme. We will comply with the requirements of the Act when we are considering taking enforcement action against any business or organisation that has a primary authority, and will have regard to guidance issued by the Secretary of State in relation to Primary Authority.

E. Conduct of Investigations and Sanctions

All investigations will be carried out under the following legislation and in accordance with statutory powers and controls and any associated guidance or codes of practice, in so far as they relate to the Authorities:

- the Police and Criminal Evidence Act 1984
- the Criminal Procedure and Investigations Act 1996
- the Regulation of Investigatory Powers Act 2000
- the Criminal Justice and Police Act 2001
- the Human Rights Act 1998
- The Protection of Freedoms Act 2012 (Code of Practice for Powers of Entry and Description of Relevant Persons) Order 2015
- Data Protection Act 1998
- Consumer Rights Act 2015
- Any other relevant legislation that may be in force

Breaches of legislation found in premises owned or run by the Local Authority will be treated in accordance with this policy as would a breach in other businesses. In addition, details of the breach will be brought to the attention of the appropriate head of service and/or director.

i. Compliance Advice, Guidance and Support

The Authorities use compliance advice, guidance and support as a first response in the case of many breaches of legislation that are identified. Advice is provided, sometimes in the form of a warning letter, to assist individuals and businesses in rectifying breaches as quickly and efficiently as possible, avoiding the need for

further enforcement action. A warning letter (sometimes called an 'informal caution') will set out what should be done to rectify the breach and to prevent re-occurrence. We will always make it clear what is a legal requirement and what is best practice. If a similar breach is identified in the future, this letter will be persuasive in considering the most appropriate enforcement action to take on that occasion. Such a letter cannot be cited in court as a previous conviction but it may be presented in evidence.

The Authorities recognise that where a business has entered into a partnership with a primary authority, the primary authority will provide compliance advice and support, and the Authorities will take such advice into account when considering the most appropriate enforcement action for it to take. It may discuss any need for compliance advice and support with the primary authority.

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

ii. Voluntary Undertakings

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

iii. Statutory (Legal) Notices

In respect of many breaches the Authorities have powers to issue statutory notices. Examples of these include but are not limited to: 'Stop Notices', 'Prohibition Notices', 'Emergency Prohibition Notices', and 'Improvement Notices'. Such notices are legally binding. Failure to comply with a statutory notice can be a criminal offence and may lead to prosecution and/ or, where appropriate, the carrying out of work in default, the costs of which may be recovered at a later date.

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

In the event of non-compliance, and in appropriate case, costs associated with works in default may be recovered by registering as a local land charge on the property.

iv. Financial penalties

The Authorities have 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 relevant Authority 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 relevant Authority 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.

If fixed penalty notices are available, it is the discretion of each Authority to opt to issue a fixed penalty notice. In some circumstances, in particular where breaches are serious or recurrent, it may be that prosecution is considered more appropriate than the issue of a fixed penalty notice.

v. Injunctive Actions, Enforcement Orders etc.

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

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

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

vi. Simple Caution

The Authorities have the power to issue simple cautions (previously known as 'formal cautions') as an alternative to prosecution for some less serious offences, where a person admits an offence and consents to the simple caution. Where a simple caution is offered and declined, the Authority is likely to consider prosecution.

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

vii. Prosecution

Where the circumstances warrant it and the alternative actions detailed previously in this policy are considered inappropriate, then prosecution may result. Any decision to prosecute will take into account the criteria set down in the Code for Crown Prosecutors and in consultation with the Council's legal services.

The criteria to be considered will include where relevant: -

- a) The nature of the alleged offence;
- b) Where appropriate, the previous history of the party concerned;
- c) The likelihood of a successful prosecution;
- d) The availability and quality of evidence and of any witnesses and their willingness to co-operate;
- e) The public benefit from prosecution and the significance of the case;

Each Authority may prosecute without prior warning or recourse to alternative sanctions where the circumstances warrant it and the evidence to support the case is available.

Prosecution will only be considered where the relevant Authority is satisfied that it has sufficient evidence to provide a realistic prospect of conviction against the

defendant(s). Due consideration will be given to the availability and compliance with any relevant statutory defence.

Before deciding that prosecution is appropriate, the relevant Authority will consider all relevant circumstances carefully and will have regard to the public interest and, where appropriate, the views of any victim, injured party or other relevant person or impact on the community.

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

viii. Refusal/Suspension/Revocation of Licences

The Authorities issue a number of licences and permits and also have a role to play in ensuring that appropriate standards are met in relation to licences issued by other agencies. 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 revocation or amendment. A review of a licence may be considered in addition to or as an alternative to any other action.

When considering future licence applications, each Authority may take previous breaches and enforcement action into account.

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

Subject to the needs of an investigation, officers will notify the individuals or business they are subject to an investigation as soon as is reasonably practicable. The Authorities will endeavour to make timely decisions about the progress of the investigation and decisions on the most appropriate action. The person or business subject to any investigation will be informed of the outcome.

F. Complaints and Appeals

Where any enforcement action is conducted under legislation which contains a specific appeals procedure, you will be advised of that procedure at the required time.

Should you have any concerns or complaints about the actions of any authorised officers of the relevant Authorities, then these should be made in the first instance to the manager of the service or team in question. If the matter is not resolved at this stage, each Authority has a formal complaints procedure which should then be followed. Details of how to make a formal complaint to each Authority can be found at Annex 2

G. Equal Opportunities

The Authorities are committed to delivering their operational activities in accordance with Equal Opportunities Policies and the regions commitment to Equalities. Officers are also committed to work flexibly to meet service users' needs as far as practicable, particularly where those users are from a disadvantaged or vulnerable group.

H. Monitoring and Review

All proposed enforcement actions shall be assessed against this policy by the investigating officers concerned in conjunction with line or the service manager and legal services team of each Authority, where appropriate

Each Authority will monitor performance against this policy.

This policy will be subject to annual review.

Annex 1 Services Within Scope Of This Policy

<p>Dudley Metropolitan Borough Council</p> <ul style="list-style-type: none"> • Regulatory Services <ul style="list-style-type: none"> ○ Environmental Health ○ Trading Standards ○ Licensing ○ Waste Enforcement 	<p>Sandwell Metropolitan Borough Council</p> <ul style="list-style-type: none"> • Regulatory Services <ul style="list-style-type: none"> ○ Environmental Health ○ Trading Standards ○ Licensing (excluding taxi licensing) • Housing <ul style="list-style-type: none"> ○ Private Sector Housing
<p>Walsall Metropolitan Borough Council</p> <ul style="list-style-type: none"> • Regulatory Services <ul style="list-style-type: none"> ○ Environmental Health ○ Trading Standards ○ Licensing ○ Unauthorised Encampments ○ Community Protection ○ Highway Safety 	<p>City of Wolverhampton Council</p> <ul style="list-style-type: none"> • Regulatory Services <ul style="list-style-type: none"> ○ Environmental Health ○ Trading Standards ○ Licensing ○ Waste Enforcement ○ Environmental Crime ○ Highways Enforcement ○ Unauthorised Encampments

Annex 2 How to Comment or Complaints

Comments and complaints can be made to each authority as detailed below:

Dudley Metropolitan Borough Council

In the first instance, complaints should be addressed to:

Dolores Nellany Public Protection Manager (Food and Consumer Safety) Or
Tim Glews, Public Protection Manager (Environmental Safety and Health)

Dudley MBC
4 Ednam Road
Dudley
DY1 1HL

If the matter is not resolved, further details on the corporate complaints procedure can be found at: <http://www.dudley.gov.uk/resident/your-council/compliments-comments-complaints/>

Sandwell Metropolitan Borough Council

In the first instance, complaints should be addressed to:

Stephen Gabriel

Head of Regulatory Services
Sandwell Council
Court House
High Street
West Bromwich
B70 8LU

If the matter is not resolved, further details on the corporate complaints procedure can be found at http://www.sandwell.gov.uk/info/200195/contact_the_council/283/feedback_and_complaints

Walsall Metropolitan Borough Council

In the first instance, complaints should be addressed to:

Regulatory Services Manager (Business & Compliance) or Regulatory Services Manager (Community Protection)

Walsall Council
The Civic Centre
Darwall Street
Walsall
WS1 1TP

If the matter is not resolved, further details on the corporate complaints procedure can be found at <http://cms.walsall.gov.uk/index/tellus.htm>

City of Wolverhampton Council

In the first instance, complaints should be addressed to:

Andy Jervis

Head of Regulatory Services
City of Wolverhampton Council
Civic Centre
St Peter's Square
Wolverhampton
WV1 1SH

If the matter is not resolved, further details on the corporate complaints procedure can be found at <https://www.wolverhampton.gov.uk/complaints>