

Appendix A

Waste Management Regulatory and Enforcement Policy

The Council recognises that its waste collection service requirements can take time to be fully communicated and understood. Consequently the Council will adopt an approach that will offer advice, support and guidance as the first and preferred way to establish this policy.

However, the Council is fully aware that resorting to the use of formal powers will be necessary in some circumstances and is committed to seeing such measures applied in an open, reasonable and proportionate way.

As a signatory to the Government's Enforcement Concordat, the Directorate has produced and Cabinet approved an Environmental Services Enforcement Policy in December 2012.

a. Principles of Enforcement

The Environmental Enforcement Policy sets out the general principles with regard to any enforcement action taken and this policy will adhere to those same principles, namely firm but fair regulation guided by the following:

- proportionality in applying the law and in making sure that people comply with it
- a consistent approach
- transparency including sharing clear information with service users about how we operate and what they can expect from us
- effective, targeted enforcement
- accountability to the public for our actions

i) Proportionality

Service users have a right to expect that when the service takes enforcement action to make sure legislation is complied with; this action will be proportionate taking account of:

- the seriousness of any risk involved
- the circumstances of the case
- the response of those subject to regulation and
- the extent of the breach of regulations.

ii) Consistency

Consistency does not mean simple uniformity. Officers will receive appropriate training and supervision in order to carry out their duties in a fair and equitable manner and will take account of many variables which may aggravate or mitigate action to be taken including:

- the seriousness of the offence
- the willingness of those involved to cooperate
- the attitude and actions of the person or organisation involved towards compliance
- the previous history of the person or organisation responsible

Decisions on enforcement action are a matter of professional judgement and discretion. The service aims, as far as possible, for a consistent, effective approach and we will develop good practice with others where appropriate.

iii) Transparency

In order to maintain public confidence in our ability to regulate, Waste Management will operate in a clear, open way. It will help people and organisations to clearly understand what is expected of them and what they should expect from the service.

The service will make it clear why an officer is taking, or has taken, enforcement action and officers will ensure that whenever possible that they work to the following standards:

- if remedial action is needed, they will explain clearly (in writing if asked to do so) why the action is necessary and when it must be carried out
- if urgent action is needed, they will provide a written explanation of the reasons as soon as possible after the event
- when the service takes formal enforcement action, officers will give a written explanation of any rights of appeal at the same time.

iv) Targeting

Waste Management will direct regulatory efforts at:

- those cases where deliberate contravention is suspected
- those situations where there have been repeated incidents or breaches of legislation
- reinforcing the messages from education and awareness raising campaigns.

The focus for action will primarily be on those who break the law or those who are directly responsible for the breach and who are best placed to control it.

v) Accountability

The Council has service standards to adhere to and managers within Waste Management will carry out checks on quality to ensure a satisfactory service is being delivered. In the event of a complaint being received, this will be dealt with under the Council's complaints procedure.

The Service will also make decisions on enforcement and conduct enforcement action impartially and objectively, and this will not be affected by such things as race, politics, gender, sexual orientation, age, disability, religious belief and any other protected characteristic of an offender, victim or witness.

b. Waste Management Service Enforcement

i) Environmental Protection Act (EPA) 1990 S.46: Enforcement where household recycling and refuse is presented incorrectly either by the position of the container, time of presenting for collection or content.

The following identifies the approach that will be taken in cases where robust evidence is obtained that service requirements are not met.

a) Stage One - On the first occasion, officers who witness incorrect presentation by a householder will, where possible, advise householders verbally and in any event provide written advice. This will inform them of the correct method of presenting the container and the contents.

If necessary the Council will endeavour to remove recycling and / or refuse presented in the containers (i.e. not excess) on this first occasion if there is no significant risk to the H&S of the collection crews.

b) Stage Two - On the second occasion a S.46 notice, explaining clearly which wastes should be placed in each bin, will be served on the householders.

If possible the Officer will contact the resident in person and advise them of the issue and seek to determine the resident's reasons for failing to present their refuse correctly. Help and advice will be offered to the resident to solve the problem.

If at any point before Stage 3 a resident requests advice or assistance from Waste Management then no further action will be taken until that help has been provided. However, if following such a request a resident refuses three appointments offered then action can proceed to stage three.

c) Stage Three - On the third occasion an Officer will serve a fixed penalty notice (FPN) on the householder.

The amount of penalty imposed under S.46 is £60 and the penalty is payable within 14 days. The penalty is discounted to £40 if paid within 10 days.

If the householder continues to present their refuse incorrectly or fails to discharge their liability by payment of the FPN, then the Council will consider taking legal action at the magistrate's court to prosecute the alleged offender.

ii) EPA 1990 S.34: Enforcement where trade refuse is presented

Where evidence is obtained that trade recycling or refuse has been unlawfully placed in the household collection containers, the Council will in the first instance advise the trader that this is not acceptable and explain what the business must do to comply with trade waste regulation. If there is no improvement then the Officer will issue a S.34 notice under the provision of the Environmental Protection Act 1990. The notice will require documentary evidence that a business has in place suitable arrangements for waste collection and disposal. If the correct documents are not produced then a FPN will be issued. Should the fixed penalty not be paid or further incidents of non compliance occur then the Council will consider legal action at the magistrate's court to prosecute the alleged offender and recover full costs.

iii) EPA 1990 S.34: Enforcement Regarding Duty of Care

When a trader is asked to provide a proper Duty of Care (DoC) Waste Transfer Note with regard to their arrangements for the collection and

disposal of their trade waste and the necessary documentation cannot be immediately produced, then the trader will be given between seven and twenty one days to produce the necessary documentation.

If after twenty one days the trader has not produced the necessary documentation, the Council will issue an FPN. If there is a second such incident of failure to immediately produce the DoC or non payment of the fixed penalty then the Council will consider legal action at the magistrate's court to prosecute the alleged offender and recover full costs.

iv) EPA 1990 S.33: Enforcement of Fly Tipping

Where evidence of fly-tipping is obtained an investigation will begin and in the absence of any evidence of extenuating circumstances the Council will initiate legal proceedings to prosecute the alleged offender and recover full costs

v) EPA 1990 S.87: Enforcement of Littering

There is no statutory definition of "litter and refuse" under the EPA 1990. However the code of practice issued in respect of dealing with litter and refuse states that the definition is wide. In some circumstances excess waste left next to bins can be defined as litter and where it is clear who has left out the excess waste which is littering the neighbourhood a FPN may be issued on that person. Should the fixed penalty not be paid or further incidents of non compliance occur then the Council will consider legal action at the magistrate's court to prosecute the alleged offender and recover full costs.