

**EDUCATION &
ENTERPRISE:**

Wolverhampton
City Council



REGENERATION COMPLIANCE AND REGULATORY POLICY

Approved By:

Signed Cabinet Member for
City Services
Date

Signed Cabinet Member for
Economic Regeneration
and Prosperity
Date

Signed Chair of Licensing
Committee
Date

Signed Assistant Director
Regeneration
Date

REGENERATION COMPLIANCE AND REGULATORY POLICY

1.0 INTRODUCTION

1.1 The Regeneration service group, which is part of the Education and Enterprise Directorate, has responsibility for protecting and enhancing many aspects of Wolverhampton's natural, commercial and built environments. Effective regulation, through a balance of support and enforcement has a key contribution to local communities by protecting the public and supporting businesses. Regeneration's regulatory focus, through its various compliance and consenting activities and functions, is based around four central principles:-

- Resources directed towards rogue / higher risk businesses
- Actions focussed on addressing risk and public safety / health issues
- Assisting business compliance through a joint approach towards identifying solutions
- Except in cases relating to the deliberately dishonest, legal action will be pursued as a last resort with a presumption against formal proceedings following requests for help and assistance.
- Actions focussed on improving the environment and experience for residents, shoppers, visitors and businesses.

1.2 Regeneration delivers its regulatory responsibilities through three key service areas:

- Regulatory Services
 - Environmental Health
 - Trading Standards
 - Licensing
- Planning
 - Development Control
 - Building Control
- Housing
 - Private sector standards and management
 - Empty Homes
 - Area Renewal
- Transportation
 - Highway safety
 - Traffic Management

1.3 Regeneration seeks to ensure, through a fair and proportionate approach to compliance and enforcement, appropriate, focussed and timely support to business and effective partnership working, that the

highest levels of protection are afforded to the residents and visitors to the City of Wolverhampton in relation to public health, the built environment and public realm, housing, environmental protection, food safety, trading standards, historic environment and licensing.

- 1.4 This Policy has been developed in conjunction with key stakeholders, including local business and enforcement partners. The Policy was originally developed in 1999 and has been reviewed and updated to take account of the Human Rights Act 1998, Regulation of Investigatory Powers Act 2000, the Council's duty to work in partnership to address crime and disorder and the 'mainstreaming of equalities' into service delivery. The Policy endorses the principles of fair and proportionate compliance and enforcement to guide all of Regeneration's regulatory activities and was last, fully revised in 2012. This revision takes into account changes brought about by the 2014 restructure and the publication, in 2014, of the new Regulators' Code

2.0 **PRINCIPLES OF COMPLIANCE AND ENFORCEMENT**

- 2.1 The Policy endorses the principles of good regulatory practice, including high emphasis on the provision of advice and guidance, which will be used to ensure, fair, proportionate and consistent compliance and enforcement activity across all of Regeneration's regulatory functions. The Legislative and Regulatory Reform Act 2006 details the principles of good enforcement:

- Targeted:- intelligence led and risk based.
- Proportionate:- use of powers and sanctions appropriate to address the issue
- Consistent:- use of similar measures in similar circumstances
- Transparent:- clear and understandable to the recipient
- Accountable:- in terms of officer and service ability to explain chosen actions

- 2.2 Although the above Act does not formally apply to all Regeneration's activities (Development/Building Control for example) the principles of good regulatory practice are still applicable to those service areas in the execution of their compliance and enforcement approach.

3.0 **REGULATORS' CODE**

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

- 3.2 The Code came into force on 6th April 2014 and Regeneration has had full regard to it in developing and implementing its policies and guidance. The Code does not legally apply to some aspects of

Regeneration regulatory activity although the provisions are still relevant.

- 3.3 A copy of the code is attached as an appendix to this document, however Regeneration's interpretation of the provisions contained within the Code, are briefly summarised below:

1. Regulators should carry out their activities in a way that supports those they regulate to comply and grow

1.1 Regulators should avoid imposing unnecessary regulatory burdens through their regulatory activities and should assess whether similar social, environmental and economic outcomes could be achieved by less burdensome means. Regulators should choose proportionate approaches to those they regulate, based on relevant factors including, for example, business size and capacity.

1.2 When designing and reviewing policies, operational procedures economic growth for compliant businesses and other regulated entities, for example, by considering how they can best:

- understand and minimise negative economic impacts of their regulatory activities;
- minimising the costs of compliance for those they regulate;
- improve confidence in compliance for those they regulate, by providing greater certainty; and
- encourage and promote compliance.

1.3 Regulators should ensure that their officers have the necessary knowledge and skills to support those they regulate, including having an understanding of those they regulate that enables them to choose proportionate and effective approaches.

1.4 Regulators should ensure that their officers understand the statutory principles of good regulation and of this Code, and how the regulator delivers its activities in accordance with them.

Since implementing a systems thinking approach to regulation, Wolverhampton Regulatory Services have gone further than most to embody this principal into the way it regulates.

2. Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views

2.1 Regulators should have mechanisms in place to engage those they regulate, citizens and others to offer views and contribute to the development of their policies and service standards. Before changing

policies, practices or service standards, regulators should consider the impact on business and engage with business representatives.

2.2 In responding to non-compliance that they identify, regulators should clearly explain what the non-compliant item or activity is, the advice being given, actions required or decisions taken, and the reasons for these. Regulators should provide an opportunity for dialogue in relation to the advice, requirements or decisions, with a view to ensuring that they are acting in a way that is proportionate and consistent.

This paragraph does not apply where the regulator can demonstrate that immediate enforcement action is required to prevent or respond to a serious breach or where providing such an opportunity would be likely to defeat the purpose of the proposed enforcement action.

2.3 Regulators should provide an impartial and clearly explained route to appeal against a regulatory decision or a failure to act in accordance with this Code. Individual officers of the regulator who took the decision or action against which the appeal is being made should not be involved in considering the appeal. This route to appeal should be publicised to those who are regulated.

2.4 Regulators should provide a timely explanation in writing of any right to representation or right to appeal. This explanation should be in plain language and include practical information on the process involved.

2.5 Regulators should make available to those they regulate, clearly explained complaints procedures, allowing them to easily make a complaint about the conduct of the regulator.

2.6 Regulators should have a range of mechanisms to enable and regularly invite, receive and take on board customer feedback, including, for example, through customer satisfaction surveys of those they regulate.

Wolverhampton Regulatory Services has consulted widely on its regulatory activity, the last consultation was prior to the implementation of The Regulators Compliance Code, satisfaction surveys of those we regulate, have returned a very positive feedback. Regulatory Services has published service standards for all its regulatory functions since 2001.

3. Regulators should base their regulatory activities on risk

3.1 Regulators should take an evidence based approach to determining the priority risks in their area of responsibility, and should allocate resources where they would be most effective in addressing those priority risks.

3.2 Regulators should consider risk at every stage of their decision-making processes, including choosing the most appropriate type of intervention or way of working with those regulated; targeting checks on compliance; and when taking enforcement action.

3.3 Regulators designing a risk assessment framework, for their own use or for use by others, should have mechanisms in place to consult on the design with those affected, and to review it regularly.

3.4 Regulators, in making their assessment of risk, should recognise the compliance record of those they regulate, including using earned recognition approaches and should consider all available and relevant data on compliance, including evidence of relevant external verification.

3.5 Regulators should review the effectiveness of their chosen regulatory activities in delivering the desired outcomes and make any necessary adjustments accordingly.

3.6 The Government will discuss with national regulators a common approach to surveys to support benchmarking of their performance.

3.7 The term 'risk assessment framework' encompasses any model, scheme, methodology or risk rating approach that is used to inform risk-based targeting of regulatory activities in relation to individual businesses or other regulated entities.

Wolverhampton Regulatory Services has had a risk based approach to regulation since the implementation of the Enforcement Concordat in 1998. There will be no inspection without a reason and when engaging with dutyholders, consideration has always been given to the economic impact and public interests of the consequences of regulation.

4. Regulators should share information about compliance and risk

4.1 Regulators should collectively follow the principle of "collect once, use many times" when requesting information from those they regulate.

4.2 When the law allows, regulators should agree secure mechanisms to share information with each other about businesses and other bodies they regulate, to help target resources and activities and minimise duplication.

Where possible data is shared through common IT systems within Regulation. Data Protection Legislation can sometimes hinder this process, Regulatory Services uses all its legal ability to reduce administrative burdens and information obligations.

5. Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply

5.1 Regulators should provide advice and guidance that is focused on assisting those they regulate to understand and meet their responsibilities. When providing advice and guidance, legal requirements should be distinguished from suggested good practice and the impact of the advice or guidance should be considered so that it does not impose unnecessary burdens in itself.

5.2 Regulators should publish guidance, and information in a clear, accessible, concise format, using media appropriate to the target audience and written in plain language for the audience.

5.3 Regulators should have mechanisms in place to consult those they regulate in relation to the guidance they produce to ensure that it meets their needs.

5.4 Regulators should seek to create an environment in which those they regulate have confidence in the advice they receive and feel able to seek advice without fear of triggering enforcement action.

5.5 In responding to requests for advice, a regulator's primary concerns should be to provide the advice necessary to support compliance, and to ensure that the advice can be relied on.

5.6 Regulators should have mechanisms to work collaboratively to assist those regulated by more than one regulator. Regulators should consider advice provided by other regulators and, where there is disagreement about the advice provided, this should be discussed with the other regulator to reach agreement.

Both the Lord Young report and the Loefstedt report recognised Local Government as an excellent resource for advice and guidance, Regulatory Services have long since delivered help and assistance to dutyholders and operated Lead and Home Authority partnerships with significant businesses and sectors within Wolverhampton and Nationally. Officers are always available to give free impartial advice without the threat of regulation.

6. Regulators should ensure that their approach to their regulatory activities is transparent

6.1 Regulators should publish a set of clear service standards, setting out what those they regulate should expect from them.

6.2 Regulators' published service standards should include clear information on: a) how they communicate with those they regulate and

how they can be contacted; b) their approach to providing information, guidance and advice;

c) their approach to checks on compliance, including details of the risk assessment framework used to target those checks as well as protocols for their conduct, clearly setting out what those they regulate should expect; Including inspections, audit, monitoring and sampling visits, and test purchases.

d) their enforcement policy, explaining how they respond to non-compliance;

e) their fees and charges, if any. This information should clearly explain the basis on which these are calculated, and should include an explanation of whether compliance will affect fees and charges;

and f) how to comment or complain about the service provided and routes to appeal.

6.3 Information published to meet the provisions of this Code should be easily accessible, including being available at a single point on the regulator's website that is clearly signposted, and it should be kept up to date.

6.4 Regulators should have mechanisms in place to ensure that their officers act in accordance with their published service standards, including their enforcement policy.

6.5 Regulators should publish, on a regular basis, details of their performance against their service standards, including feedback received from those they regulate, such as customer satisfaction surveys, and data relating to complaints about them and appeals against their decisions.

- 3.4 In certain instances Regeneration may conclude that full compliance with a provision in the Code is outweighed by another significant factor. It will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

Wolverhampton Regulatory Services has published its Enforcement Policy Statement since 1998 and reviewed it in line with national government requirements, Service Standards for all regulatory functions have been in place since 2001.

4.0 **DEVELOPMENT CONTROL**

- 4.1 Development Control will have regard to the National Planning Policy Framework and Circular 10/97 "Enforcing Planning Control – legislative provisions and procedural requirements" in the development of their service specific enforcement policy.

5.0 **ENFORCEMENT OPTIONS & COMPLIANCE MEASURES**

5.1 Regeneration is committed to ensuring an adequate level of public and business protection within the City via a positive and proactive approach to compliance based on advice, education and support with formal action only being taken in appropriate circumstances, usually when all reasonable attempts to secure compliance through assistance and support have been exhausted and/or the case concerns deliberate dishonesty.

5.2 Enforcement action will generally reflect a significant severity of offence or worsening compliance history. Action must adequately protect the public interest and provide an appropriate deterrent to offending. Each case will however, be considered on its own merits in determining the course of action to be taken.

5.3 The range of compliance measures and/or enforcement actions together with a brief description of the circumstances in which they would generally be considered, is set out below.

- **Advice:** A range of general, authoritative information, advice and guidance through a variety of channels will be made available to assist compliance
- **Written Warnings:** Generally used for minor offences.
- **Enforcement Notices:** Issued in relation to significant breaches of legislative requirements or where significant risks to health exist or used in conjunction with other action as appropriate.
- **Fixed Penalty Notices:** Used where there is either a local or current need to address a particular issue through their deterrent effect.
- **Simple Cautions:** May be used as an alternative to prosecution in respect of less serious offences :-
 - where it is considered unnecessary to involve the courts
 - where the offender's approach makes repeat offending unlikely
 - where the offender's age or health make it appropriate
 - where offenders have adequately demonstrated improvement since the initial offence(s)

Simple Cautions may only be issued where the offender makes a clear and reliable admission of guilt and understands the significance of accepting a caution.

- **Legal Proceedings:** Regeneration will consider prosecution where there has been a breach of legal requirements such that individual

or public safety, health or economic or physical well being or the environment or environmental amenity is adversely affected. The Evidential and Public Interest Tests in the Code for Crown Prosecutions must be met by all prosecution cases.

However, in addition to the paragraph above other circumstances which may justify prosecution are:

- failure to comply with an Enforcement Notice
 - the offer of a Simple Caution has been declined
 - continued, premeditated or reckless non-compliance
 - failure to pay a fixed penalty
 - acts of obstruction or threats of physical harm
 - deliberate non-compliance to secure economic advantage over competitors
- **Injunctions:** Regeneration will pursue injunctive action as a means of preventing an activity or course of action likely to result in continued harm to public safety economic harm to businesses or the public or an adverse impact on environmental amenity.
 - **Licensing Reviews:** In addition to or as an alternative to the above, Regeneration may also use powers available in its capacity as a Licensing Authority and/or a 'responsible authority' in the cases of Environmental health and Trading Standards to apply for review of a licence where an offence or breach of a licence is identified. Under the provisions of the Licensing Act 2003 reviews of Premises Licences can be undertaken in appropriate circumstances. Situations that would normally result in a review application would include for example, under age sales of alcohol and persistent or significant breaches of licence conditions.
 - **Seizure:** The seizure of articles, vehicles and/or equipment will be considered where there is an immediate need to resolve a current, recurring or foreseeable event which is impacting or likely to impact on the public health or wellbeing of a person or community.
 - **Works in Default:** In certain circumstances, when work required by a duty holder to comply with a formal notice is not completed, it will be appropriate for the Council to undertake those works directly and recover the costs at a later date via a local land charge process or as otherwise prescribed in the relevant provisions. Works in default will be considered when the alternative sanction of prosecution will still not rectify the defect or adequately deal with the issue the notice was originally intended to address. Undertaking Work in Default will not preclude the Council also taking other legal actions.

5.4 To ensure that proposed legal proceedings are subject to a robust evaluation before a decision is taken to prosecute. Regeneration has established a Cases Panel to evaluate each potential case. In

accordance with the Council's constitution, the Assistant Director for Regeneration in consultation with the Chief Legal Officer (or nominee) will determine legal action based on the salient aspects of each case, in particular a rigorous public interest assessment of the proposed action, identified by the relevant Manager and a Legal Services Officer.

6.0 **COMPLAINTS AND APPEALS**

6.1 Service users who express dissatisfaction with enforcement action should be invited to:

- contact the relevant Service Lead or
- contact the relevant Head of Service
- use the Council's Complaints and Compliments Procedure.

6.2 Where legislation provides a formal appeals procedure to challenge enforcement action, written notice of the appeals procedure shall be provided at the time action is taken.

7.0 **EQUAL OPPORTUNITIES**

7.1 Regeneration is committed to delivering its operational activities in accordance with the Council's Equal Opportunities Policy and the Council's commitment to Equalities. Officers are also committed to work flexibly to meet service user's needs as far as practicable, particularly where those users are from a disadvantaged or vulnerable group.

7.2 This revised Enforcement Policy has been subject to an Equality Analysis in accordance with the Council's guidelines. Since the analysis, no significant alterations to the aims of the policy, that would change the anticipated impacts, have been made. The revised policy still aims to ensure an appropriate balance between levels of compliance and economic impact on local businesses and individuals without jeopardising public wellbeing, health and safety. All decisions made against the policy will be monitored from equalities perspectives.

8.0 **HUMAN RIGHTS ACT 1998**

8.1 The Human Rights Act 1998 allows enforcement actions to be directly challenged in the UK courts, where it is alleged that rights enshrined in the Human Rights Convention of 1951 have been infringed. The rights most commonly involved would be:

- Article 6 : Right to a fair trial
- Article 8 : Right to respect for private and family life
- Protocol 1 Article 1 : Protection of property

- 8.2. The right to a fair trial is an absolute right that may not be infringed. The rights expressed in Article 8 and Article 1 of Protocol 1 are conditional rights that may be infringed where it is necessary and proportionate to protect public and community rights. The service protects that right in through compliance with the Police and Criminal Evidence Act 1984, Regulation of Investigatory Powers Act 2000 and all other statutory provisions relating to criminal and evidential procedure and relevant guidance from time to time.

9.0 **SHARED ENFORCEMENT ROLE**

- 9.1 Regeneration will work in partnership with other enforcement agencies with a shared enforcement role under legislation such as the Environmental Protection Act 1990, Enterprise Act 2002, Licensing Act 2003, Food Safety Act 1990 and Gambling Act 2005. The service is also committed to partnership working to address community safety, crime and disorder, public health and community cohesion issues together with the Police, the LNPs, voluntary sector and other central and local government partners.

10.0 **MONITORING AND REVIEW**

- 10.1 All proposed enforcement actions shall be assessed against this policy by the investigating officers concerned in conjunction with line or the service manager where appropriate.
- 10.2 Effective implementation of the Policy will be monitored by the Regeneration Management Team.