

**WANDSWORTH COUNCIL
WASTE MANAGEMENT
ENFORCEMENT POLICY**

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P.G. Brennan, DMS MCI Assoc MCIWM MinstD
Director of Leisure and Amenity Services
Wandsworth Council
The Town Hall
Wandsworth High Street
LONDON SW18 2PU

WASTE MANAGEMENT ENFORCEMENT POLICY

1. Introduction

- 1.1 The Waste Management Service, within the Leisure and Amenity Services Department, carries out enforcement of waste and street trading legislation in the London Borough of Wandsworth. One of Wandsworth Council's five strategic objectives includes 'improving the local environment'. Enforcement legislation contributes to the achievement of this corporate objective. This enforcement policy contributes to a number of the key actions to improve the local environment and enhance the street scene by:
- (a) Conducting education and enforcement operations, targeting known 'Hotspots', to reduce fly-tipping and improve cleanliness.
 - (b) Increase enforcement actions as weighted by the government database 'Flycapture'.
 - (c) Issuing FPNs for waste-related offences and increasing the proportion paid or successfully prosecuted.
 - (d) Reviewing services in town centres with the aim of introducing 'Time Bands' to remove the number of commercial waste sacks left out for collection at unacceptable times.
 - (e) Working with the Technical Services Department to provide suitable storage arrangements for seized fly tippers' vehicles.
 - (f) Using CCTV monitoring equipment (both overt and covert) to identify fly-tippers.
- 1.2 This document describes the Waste Management Service's enforcement policies. The policies described may affect any individual or organisation suspected of having committed waste or street trading offences affecting the London Borough of Wandsworth. It is available on request and or via the Council's web site.
- 1.3 This document takes into account "*The Principles of Good Enforcement: Policy and Procedures*" outlined in the national "*Enforcement Concordat*". The policies described below are intended to incorporate all aspects of good enforcement practice.
- 1.4 The Policy incorporates the Regulators' Compliance Code which was issued by the Department for Business Enterprise and Regulatory Reform and became effective on 6th April 2008., which requires local authorities to have regard to when they take enforcement action in certain specified areas. This includes action under the Control of Pollution (Amendment) Act 1989, Environmental Protection Act 1990 and Clean

Neighbourhoods and Environment Act 2005. In certain instances we may conclude that a provision in the Code is either not appropriate or is outweighed by another provision. We will ensure that any departure from the Code will be properly reasoned and based on material evidence.

- 1.5 The policies in this document only apply to the Waste Management Service. They describe how the Waste Management Service carries out waste and street trading enforcement. Most enforcement actions will be taken on the public highway but can be taken anywhere else where there is evidence of an offence.
- 1.6 The Council is committed to taking enforcement action against those perpetrators who breach the law and will seek authorisation to use all the powers available to it, including deploying surveillance and acquiring subscriber information under The Regulation of Investigatory Powers Act 2000.
- 1.7 The Council will seek full recompense for any financial losses suffered by it in order to protect the local taxpayers, and will publish the details of convictions in order to deter offenders.
- 1.8 This Enforcement Policy is specific to the Waste Management Service and does not affect enforcement activities by other services within the Council.
- 1.9 This Policy only applies to the Waste Management Service.

2. Legislation

- 2.1 All enforcement action taken by the Waste Management Service will be undertaken with regard to the relevant statutory provisions which include:
 - (a) Environmental Protection Act 1990
 - (b) Control of Pollution (Amendment) Act 1989
 - (c) London Local Authorities Acts 1990, 1994, 2004 and 2007
 - (d) Controlled Waste Regulations 1992
 - (e) Clean Neighbourhoods and Environment Act 2005
 - (f) Police and Criminal Evidence Act 1984
 - (g) Criminal Procedure and Investigations Act 1996
 - (h) Regulation of Investigatory Powers Act 2000

3. The Council's Waste Management Service

3.1 The main functions of the Waste Management Service are:

- (a) Keeping Wandsworth's public streets clean and free of litter and refuse;
- (b) Collecting household refuse;
- (c) Increasing the amount of household refuse that is recycled;
- d) Managing street trading; and
- (e) Enforcing waste, litter and street trading legislation.

4. Keeping the streets clean and clear of litter and refuse

4.1 Under section 89 of the Environmental Protection Act 1990 the Council has a statutory duty to keep public highways clean and clear of litter, refuse and other rubbish, so far as is practicable the Council fulfils this duty by:

- (a) Providing an efficient and effective street cleaning service; and
- (b) Endeavouring to reduce the amount of litter and refuse being dropped or abandoned.

4.2 The Council spends approximately £5 million a year on street cleansing. The contract specification is schedule based and requires that all public highways within the Borough be cleansed as a minimum twice a week and in some instances 12 times per day.

4.3 Reducing the amount of litter and refuse being dropped or abandoned involves:

- (a) Educating local residents and businesses about their 'Duty of Care' to manage their waste properly in compliance with the law;
- (b) Raising awareness of the adverse effects of littering and flytipping; and
- (c) Where necessary taking enforcement action against offenders.

4.4. Keeping Wandsworth clean and tidy is a high priority for local residents. The reputation of the Council and local businesses are liable to suffer if the streets are covered in litter and abandoned refuse. The Waste Management Service therefore takes a firm approach towards waste and litter enforcement.

5. The Council's use of its enforcement powers.

5.1 Offences where the Council may deem it appropriate take enforcement action:

- (a) Fly-tipping on open land anywhere in the Borough;

- (b) Dropping litter or chewing gum in a street or other open public place and not clearing it up;
- (c) Leaving refuse on the public highway, for collection, without authorisation. (generally, if a premise has a front garden or forecourt, there will be no justifiable reason to ever leave refuse on the public highway);
- (d) Failing to provide details of non-domestic (commercial) refuse collection and disposal arrangements when requested to do so;
- (e) Failing to store and or secure waste properly, thus resulting in waste spillage;
- (f) Failing to comply with the boroughs waste regulations;
- (g) Breaching the conditions of a street trading licence; and
- (h) Trading on or near a street without a licence.

6. Education

- 6.1 The Waste Management Service aims to educate local residents, businesses and visitors to Wandsworth about how to manage their refuse properly. This includes advice to commercial and industrial waste producers about how to comply with their “*Duty of Care*” to manage their refuse responsibly under section 34 of the Environmental Protection Act 1990. It also involves encouraging them to use the guidance available from the Government and the Council. Where education has been provided, offenders claiming ignorance of the law should not expect to be given a second chance before enforcement action is taken. The Council will normally take enforcement action if it is supported by an assessment of the factors listed at 7 below and there is no general requirement to have first provided education.
- 6.2 Where an offence has been committed, but it is not been possible to identify the perpetrator, the Council will organise a leaflet drop or write to premises within the vicinity to ensure that businesses and residents are aware of the problem and their duty of care responsibilities.
- 6.3 **Publicity.** The Council will publish details of successful prosecutions including the names of perpetrators, outcomes and amounts recovered in costs by the Council.

7. Deciding what type of action to take – Enforcement

- 7.1 When evidence of an offence is found, Waste Management staff must decide whether taking enforcement action is appropriate. The factors to be considered in coming to a decision include, but are not restricted to:
- (a) The quality of available evidence and probability of the enforcement action under consideration being successful;

- (b) The seriousness and prevalence of the offence;
- (c) The past history of the offender and the probability of re-offending;
- (c) The likely effectiveness of a deterrent that successful enforcement action and publicity would achieve;
- (d) The availability of resources, and whether deploying them elsewhere would be more likely to have a greater impact on reducing the amount of litter and refuse being deposited on the Borough's public highways or other open land.

8. Types of enforcement action

- 8.1 The law allows for different types of enforcement action dependant on the nature and severity of the offence and the quality of the evidence available. Details of the various enforcement options are given below.
- 8.2 **Oral and written warnings:** Oral and written warnings, as alternative to more formal enforcement action, may be given. Records of warnings are retained and may be taken into account if the same person commits further offences.
- 8.3 **Simple caution:** Simple cautions, as an alternative to prosecution, may be given and will be administered in accordance with the statutory provisions and guidance that apply and involve the offender admitting guilt. They may be taken into account by the court should the offender be prosecuted for a further offence. These would only be offered where it is not in the public interest to initiate court proceedings.
- 8.4 **Fixed penalty notice (FPN):** FPN's, may be given, as an alternative to prosecution, in respect of specified offences. Officers will not issue a fixed penalty notice unless:
- (a) the offence justifies prosecution;
 - (b) there is believed to be sufficient evidence to enable follow up proceedings should the offender not pay the charge within the statutory payment period; and
 - (c) it will act as a sufficient deterrent against re-offending.
- 8.5 If a FPN remains unpaid after expiry of the payment period, the offender will be prosecuted.
- 8.6 FPN's are the most common form of enforcement against littering by private individuals, who are first-time offenders, street trading offences and illegal street trading. They are also issued for waste related offences including to businesses that fail to produce a valid refuse collection/disposal records on request, and also street trading infringements. Businesses have a "*Duty of Care*" to manage their refuse responsibly and are likely to have received relevant advice and information in the past.
- 8.7 **Penalty Charge Notice (PCN)** From April 2009 the Council adopted the waste regulations under London Local Authority Act 2007. Section 22 of the Act allows the Council to introduce 'Time Bands' and receptacle identification. These measures

restrict the periods of the day during which commercial waste can be placed out and dictate the storage of the waste on the highway for collection. Contravention of these regulations will lead to the issue of a PCN. [*London Councils is expected to make their decision regarding PCN levels by September 2009*]

- 8.8 **Prosecution:** Prosecution action will only be taken where the evidential and public interest tests contained within the Code for Crown Prosecutors have been satisfied. For the avoidance of any doubt, there is no requirement for any alternative form of enforcement action to have first been taken before prosecution is considered to be appropriate.
- 8.9 **Vehicle seizure:** For fly-tipping offences involving a vehicle with no current registered keeper. In these instances the Council will generally seek a vehicle seizure warrant in addition to any other action.
- 8.10 **Removal of street trading licence:** In the first instance, street trading offences will generally result in a verbal warning; unless the breach is of a serious enough nature to warrant enforcement action. For serious license infringements, or lesser infringements committed regularly by a trader, the Council will revoke their license to trade.

9. **The “Enforcement Concordat”**

- 9.1 The “*Enforcement Concordat*” sets out what business and others being regulated can expect from enforcement officers. It is supplemented by “*Enforcement Concordat: A Good Practice Guide for England and Wales*”.
- 9.2 Waste Management staff aim to conform to the principles outlined in the Concordat and apply them in the following ways:
- 9.3. **Openness and helpfulness:** The Council will publicise this enforcement policy so people know what standards are expected. Waste Management staff will help people to comply with the law and will explain what they are doing and why. They will inform people about their rights of appeal. They will make sure people know how to make a complaint. They will try to help people who cannot read or speak English by using the Wandsworth Interpreting Service.
- 9.4 **Proportionality, consistency and priorities:** Enforcement staff will carry out their duties in a fair, reasonable and consistent manner. They will take appropriate enforcement action when required to do so. Any action taken will fit the seriousness and prevalence of the crime.
- 9.5 It should be noted that each case is unique; certain offences are worse than others, and as such the enforcement action taken will potentially differ. Notwithstanding staff will be trained to apply the law and this policy in a fair and consistent way. To ensure consistency Senior Management will regularly carry out random to checks for accuracy and consistency.

- 9.6 Guidance details as to how the Council undertakes its enforcement actions are set out in the 'Procedures Guidance for Enforcement Officers' document. This document is available as set out in section 11.

10 The Regulators' Compliance Code.

- 10.1 Whilst the Regulators' Compliance Code (the Code) only applies to certain designated legislation, most of the regulatory functions of the Waste Management Service are included within the designation. The main purpose of the Code is to 'embed a risk-based, proportionate and targeted approach to regulatory inspection and enforcement'. The Government expects that the Code will lead to better value from the regulatory efforts made and benefits to low risk and compliant businesses through better focused inspection activity. The Code stresses the need for a positive and proactive approach by helping businesses to understand and meet regulatory requirements as well as responding proportionately to breaches.
- 10.2 The Code establishes specific obligations, which flow from the Hampton Review (a previous Government investigation into regulatory burdens). These are as follows:
- (a) **Economic progress:** Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear *case for* protection.
 - (b) **Risk Assessment:** Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources in the areas that need them most.
 - (c) **Advice and guidance:** Regulators should provide authoritative, accessible advice easily and cheaply.
 - (d) **Inspections and other visits:** No inspection should take place without a reason.
 - (e) **Information requirements:** Businesses should not have to give unnecessary information or give the same piece of information twice.
 - (f) **Compliance and enforcement actions:** The few businesses that persistently break regulations should be identified quickly and face proportionate and meaningful sanctions.
 - (g) **Accountability:** Regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take.

11. Further information and contacts

- 11.1 A free copy of this policy, waste regulations and further information and advice on litter, refuse and enforcement is available from:

Address: Wandsworth Council
Leisure and Amenity Services Department
Waste Management Services
The Town Hall
Wandsworth High Street
LONDON SW18 2PU

Telephone: (020) 8871 6396 (Waste Enforcement Manager)

E-mail: wasteservices@wandsworth.gov.uk

Web: www.wandsworth.gov.uk/wastemanagement

12. Useful Reading

12.1 Enforcement Concordat:

<http://www.cabinetoffice.gov.uk/regulation/documents/pst/pdf/concord.pdf>

12.2 Enforcement Concordat: A Good Practice Guide for England and Wales:

<http://www.dti.gov.uk/ccp/topics1/pdf1/concordatguide.pdf>

12.3 Statutory Code of Practice for Regulators, December 2007: Department of Business Enterprise and Regulatory Reform.

<http://www.berr.gov.uk/files/file45019.pdf>

12.4 The Code for Crown Prosecutors

<http://www.cps.gov.uk/Publications/docs/code2004english.pdf>

12.4 London Borough of Wandsworth Waste Receptacle Regulations 2009

www.wandsworth.gov.uk/wasteregulations

12.5 EnCams Publications:

(a) **Litter and the Law:** A guide to the public, including all aspects of litter and the law in England.

(b) **Your Rubbish and the Law:** A guide for businesses, detailing their legal commitments to waste and litter.

(c) **Dog Fouling and the Law:** A guide to the public on dog fouling and the law in the UK.

(d) **Flytipping and the Law:** A guide for the public.

These items are available from

<http://www.encams.org/publications/index.asp>.

For hard copies, please call EnCams on 01942 612621.

12.6 **Department of the Environment, Food and Rural Affairs (Defra) Publications**

(a) **Waste – Duty of Care**

<http://www.defra.gov.uk/environment/waste/management/doc/index.htm>

12.7 **The Stationery Office Ltd**

(a) **Waste Management: The Duty of Care, A Code of Practice** Available from Stationery Office bookshops or by telephoning 0870 600 5522.