

ENVIRONMENTAL HEALTH SERVICE

ENFORCEMENT POLICY

1 AIM

- 1.1 The City of Bradford Metropolitan District Council's Environmental Health Service aims to ensure the health, safety and well being of persons living and working in the district and to protect and improve the environment. It will achieve this using a combination of education, advice and regulation. Securing compliance with legal and regulatory requirements by the use of enforcement powers including prosecution is an important part of achieving this aim.

2 STATEMENT OF OBJECTIVES

- 2.1 It is the Council's policy to strive to ensure the health, safety and well being of all residents, visitors and persons who work in the district. The Environmental Health Service is committed to ensuring that legislation is enforced fairly and consistently to support the prosperity and protection of the District.
- 2.2 Enforcement action, whether that is verbal warnings, written warnings, statutory notices, simple cautions, prosecutions or the use of fixed penalty notices, is primarily based upon an assessment to risks to public health and the health, safety and welfare of the residents of the district.
- 2.3 This policy has been written with regard to the content of the government's Enforcement Concordat. The Concordat covers what businesses and others being regulated can expect from enforcement officers employed by local authorities. The City of Bradford Metropolitan District Council adopted the Enforcement Concordat in June 2001 and operates in accordance with the Regulators Compliance Code and the Regulatory and Sanctions Act 2008.
- 2.4 Where there is specific guidance on enforcement action, for example, statutory guidance or other relevant guidance and codes of practice issued by professional organisations and bodies, this will be followed, unless there are specific Council policies which would achieve at least equivalent standards.
- 2.5 The Council fully acknowledges and endorses the rights of individuals and will ensure that all enforcement action occurs in strict accordance with the Police and Criminal Evidence Act 1984, the Human Rights Act 1998, the Regulation of Investigatory Powers Act 2000, The Criminal Procedures and Investigations Act 1996, Equality Act 2010 and other relevant legislation and guidance. Covert Surveillance will only be used in serious offences, defined as those with a penalty of six months imprisonment or more.
- 2.6 The Service recognises that the particular interests of different consumers within the district will need to be taken account of to ensure that legislation is enforced fairly. Interpreters will be used where the stakeholder has difficulty in understanding English, where the facility is not available "in-house". Where possible translated advisory leaflets will be made available. In addition necessary out of hour's visits will take place.

- 2.7 The Service fully acknowledges a dutyholders right of appeal to any enforcement action. The Service will provide full details of any rights of appeal that are set out in the legislation. Notwithstanding this right, the Service shall also afford the dutyholder the opportunity to informally discuss any grievance relating to the issue at hand with the enforcing officers line manager.
- 2.8 All authorised officers will abide by this policy. Any departure from this policy must be justified and fully considered by management before the decision is taken.

3 PURPOSE OF ENFORCEMENT

- 3.1 The purpose of enforcement is to ensure that preventative or remedial action is taken to protect health and the environment by securing compliance with the regulatory systems. Whilst the Environmental Health Service seeks to ensure full voluntary compliance with relevant legislative requirements when ever possible, it will not hesitate to use its enforcement powers where necessary.

4 PRINCIPLES OF ENFORCEMENT

- 4.1 The Environmental Health Service believes in firm but fair regulation. Underlying the policy of firm but fair regulation are the principles of; **proportionality** in applying the law and securing compliance, **consistency** of approach, **transparency** about how the Service, operates, **accountability** in accordance with the Regulators Compliance Code and what those regulated may expect from the Service and **targeting** of enforcement action.

PROPORTIONALITY

- 4.2 Proportionality means relating enforcement action to the risks. Those whom the law protects and those on whom it places duties (duty holders) expect that action taken by enforcing authorities to achieve compliance should be proportionate to any risks to public health and safety and to the rights of others in the District and to the seriousness of any breach.

CONSISTENCY

- 4.3 Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends. There is a right to expect consistency from an enforcing authority when:

- Issuing advice
- Using statutory notices
- Deciding to prosecute
- Responding to requests for service.

TRANSPARENCY

- 4.4 Transparency means helping duty holders, and individuals to understand what is expected of them and what they should expect from the enforcing authorities. It also means making clear to duty holders and individuals not only what they have to do, but also, where this is relevant,

what they don't. That means distinguishing between statutory requirements, and advice or guidance about what is desirable but not compulsory.

ACCOUNTABILITY

- 4.5 Accountability means that in all enforcement actions officers shall be accountable for actions taken having regard to the Regulatory Enforcement and Sanctions Act 2008, S21 of the Legislative and Reform Act 2006 and the Regulators Compliance Code .

TARGETING

- 4.6 Targeting means making sure that enforcement is targeted primarily on those whose activities give rise to the most serious risks, or where the hazards are least well controlled. The Environmental Health Service will ensure that action is focused on the duty holders who are responsible for the risk and who are best placed to control it.

5 SHARED ENFORCEMENT ROLES

- 5.1 Legislation to protect public health and the environment is enforced by several enforcement agencies. Where there are shared enforcement roles e.g. West Yorkshire Police, the Health and Safety Executive, the Environment Agency, West Yorkshire Fire Service etc, officers will notify the relevant enforcement agency of contraventions for which that agency is responsible. Where flexible warrants are in place, these principles shall apply in the authority in which the warrant is being exercised.

6 ENFORCEMENT OPTIONS

- 6.1 Enforcement officers must seek to secure compliance with the law. Most of their dealings with those on whom the law places duties (businesses, landlords, occupiers and individuals) are informal - officers offer information, advice and support, both verbally and in writing. They may also use formal enforcement mechanisms, as set out in law, including fixed penalty notices, enforcement notices where a contravention needs to be remedied, prohibition notices where there is a risk of serious personal injury, damage to the environment, or injury to health, revocation of authorisations, withdrawal of approvals; refusal of registration, variations of licences or conditions, or of exemptions; or ultimately prosecution and injunction. This statement applies to all dealings, formal or informal, between officers and duty holders or individuals - all contribute to securing compliance. Officers will always provide advice to businesses and individuals regarding compliance as requested.
- 6.2 The Environmental Health Service recognises the importance of maintaining consistency in decision-making concerning enforcement action, which is demonstrated by the Council's adoption of the Cabinet Office Enforcement Concordat.
- 6.3 The Environmental Health Service seeks to ensure that enforcement decisions are consistent, balanced and fair to ensure the public is adequately protected, and that businesses and individuals are treated in a fair, consistent, transparent, and proportionate manner.
- 6.4 In coming to a decision, the Service will consider:

- Local need and local priorities
 - The seriousness of the offence or conditions;
 - The individual or duty holder's past history;
 - Confidence in management;
 - The requirements of legislation;
 - The consequence of non compliance; and
 - The likely effectiveness of the various enforcement options.
- 6.5 Where enforcement is deemed appropriate and is being considered, the Service can choose one or more of the following options:
- To take no action;
 - To take informal action;
 - To issue a fixed penalty notice;
 - To issue a statutory notice;
 - To carry out work in default;
 - To revoke licences/authorisations/approvals;
 - To refuse licences/registration/authorisations/approvals
 - To call for review licences;
 - To use seizure powers;
 - To use formal cautions;
 - To prosecute;
 - To seek injunction.
- 6.6 The service fully supports the principles of the Regulatory Enforcement and Sanctions Act 2008. The Service will normally take enforcement action which is consistent with advice issued by the relevant national bodies adopted nationally by other local. However, in exceptional circumstances, it will seek advice from relevant regional or national bodies.
- 6.7 When the Service is taking enforcement action which is contrary to the advice of the Home, Lead, Primary or originating authority, officers will discuss the action with that authority before taking action.
- 6.8 When the Service is considering action against a business that has a primary authority, it will do so in accordance with the current guidance issued.

7 ENFORCEMENT ACTIONS

TAKE NO ACTION

- 7.1 Upon investigation and where circumstances are largely satisfactory and no action is proposed, then the business or person affected will be advised of this, as will any complainant, where appropriate.

INFORMAL ACTION

- 7.2 Informal action includes the offering of advice, verbal warnings, letters and the issue of technical reports, including those generated on the premises following an inspection.

- 7.3 When deciding whether informal action is appropriate regard will be had to the following:

- The seriousness of the act or omission;
- The past history of the business, landlord or individual shows that informal action would achieve compliance;
- Whether confidence in the enterprise's management is high;
- If non compliance will not pose a significant risk to public health, safety or welfare;
- Other circumstances, such as voluntary organisations using volunteers.

- 7.4 Letters or documents sent to duty holders and individuals will:

- Contain all the information necessary to understand what work is required and why;
- Indicate timescales to achieve compliance.
- Indicate legislation which is being or is likely to be infringed and methods of compliance and that other means of achieving the same effect may be chosen; and
- Indicate any recommendations of good practice to clearly show that they are not a legal requirement.

- 7.5 When taking informal action, including giving verbal advice, officers will clearly differentiate between legal requirements and good practice.

FIXED PENALTY NOTICES

- 7.6 Fixed penalty notices will be served having regard to the following:

- Certain legislative provision for the discharge of an offence by the service of a fixed penalty notice, this is at the local authorities discretion;
- In some circumstances particularly where breaches are serious or recurrent, prosecution may be more appropriate;

- Payment of a fixed penalty notice does not provide immunity from similar or recurrent breaches;
- If a fixed penalty notice is not paid we may commence criminal proceedings or take other enforcement action in respect of the breach

STATUTORY NOTICES

7.7 Statutory notices will be served having regard to the following:

- any specific legal requirements to serve notice;
- if there are significant breaches of legislation;
- if there is a lack of confidence in the recipient to respond to an informal approach;
- there is a history of non-compliance with an informal approach;
- standards are generally poor with little management awareness of statutory requirements;
- the consequences of non-compliance could be potentially serious to public health, safety or welfare; and
- effective action also needs to be taken to remedy conditions that are serious or deteriorating, even when it is intended to prosecute.

7.8 Statutory notices will be served for matters which are a risk to public health, safety, or the environment and not for minor technical contraventions.

7.9 Statutory notices will be in the prescribed form where this has been specified.

7.10 The time limit on notices will be realistic and have regard to the issue and recipients of notices will be given the opportunity, if they wish, to discuss its requirements.

7.11 Compliance with the requirements of all notices served will be checked as soon as is practicable after expiry.

7.12 Failure to comply with a statutory notice will, in general, result in prosecution and/or work in default. Officers must have sufficient evidence to justify service, and be prepared to pursue non-compliance through the courts. Recipients of notices will be advised of any right of appeal, at the time the notice is served.

7.13 Home, Lead and originating authorities will be notified of formal action instituted under the provisions of the food safety and Health and Safety legislation.

7.14 Primary authorities will be consulted prior to any formal action being taken and approval obtained before continuing.

WORK IN DEFAULT AND COST RECOVERY

7.15 Work required in the interest of public health, safety or the environment may be undertaken by the Service and the cost recovered from the duty holder where the notice allows. This may be appropriate when:

- it is necessary to carry out the work in the public interest and/or the costs are not prohibitive.
- there is a failure to carry out work covered by a statutory notice.
- immediate action is required.
- it is unlikely that the work will be carried out unless done in default.

REFUSAL/REVOCAION OF LICENCES, REGISTRATIONS, APPROVALS ETC

7.16 Licenses, registrations, prior approvals and environmental permits, will only be refused or revoked following consideration with management following appropriate procedures and consideration of all relevant evidence and having regard to statutory guidance.

PROHIBITION

7.17 Prohibition notices will only be considered when:

- The consequences of not taking immediate and decisive action to protect health, safety and the environment would be unacceptable.
- An imminent risk of injury or to health or to the environment can be demonstrated.
- The requirements of any relevant statutory Codes of Practice regarding the use of such notices are fulfilled.

SEIZURE/SUSPENSION

7.18 Enforcement officers will use appropriate statutory powers to take possession and detain articles, substances or equipment where:

- There are reasonable grounds for suspecting that the article, substance or equipment is a cause of imminent danger, serious personal injury, or pollution of the environment, **or**
- Food is suspected to fail to meet the requirements of the relevant food safety legislation, **or**
- To secure abatement of a statutory nuisance.

SIMPLE CAUTIONS

7.19 Home Office Circular 016/2008 advises that local authorities should consider issuing a simple caution as an alternative to prosecution. Where there is a criminal offence, but the public interest does not require a prosecution, a simple caution may be an appropriate course of action. Home Office Circular 1016/2008 states that the purpose of a simple caution is:

- To deal quickly and simply with less serious offenders;
- To divert them from unnecessary appearances in the criminal courts; **and**
- To reduce the chances of them re-offending.

7.20 The use of simple cautions will be in accordance with the Home Office Circular and official guidance. The following conditions **must** be fulfilled before a caution is administered:

- There must be evidence of the suspected offender's guilt, sufficient to give a realistic prospect of a conviction;
- The suspected offender must admit the offence; **and**
- The suspected offender must understand the significance of a simple caution and give an informed consent to being cautioned.

7.21 A decision regarding whether a simple caution is appropriate to be administered, should be made having regard to the points in 7.27. Conditional cautions cannot be offered by a local authority.

7.22 Primary home, Lead and originating authorities will be notified of the simple caution.

7.23 If the offender refuses to accept a simple caution a prosecution will automatically follow.

PROSECUTION

7.24 Prosecution is appropriate for persons or duty holders, who blatantly disregard the law, refuse to achieve even basic minimum legal requirements, often following previous contact with the authority, and who put the public at serious risk.

7.25 Some factors in favour of prosecution (see matrix at Appendix 1), are:

- Where the offence is serious. **or**
- Where there is culpability of the offender, **or**
- Where there is harm to the victim, **or**
- Where the offender is over the age of 18 **or**
- Where the offence has caused a significant impact on the wider community, **or**
- Where a prosecution is a proportionate response to the contravention, **or**
- Where any sources of information require protection.

7.26 The officer and their manager will consider all relevant information and evidence, when circumstances have been identified which may warrant a prosecution, to enable a consistent, fair and objective decision to be made.

- 7.27 With regard to fixed penalty notices, payments made after the date that the matter has been authorised for prosecution by the appropriate officer will NOT be accepted as a discharge of liability. Payment will be refused or will be reimbursed within 14 working days and the matter will proceed to prosecution.
- 7.28 The officer must be satisfied, before a prosecution proceeds, that there is relevant, admissible, substantial and reliable evidence that the offence was committed by the accused. There must be a realistic prospect of conviction. A bare prima facie case is not enough. If there is insufficient evidence, other formal action such as cautioning is not an alternative.
- 7.29 The officer and their manager must decide that it is in the public's interest to prosecute, following the guidance in the Code for Crown Prosecutors, and using the Environmental Health Service prosecution matrix at Appendix 1.
- 7.30 Once a decision to prosecute has been made, the procedure should be implemented without undue delay. The requirements of PACE and CPIA will be adhered to.

INJUNCTIONS

- 7.31 In exceptional circumstances where action under the relevant legislation is deemed likely to be ineffective, where there is serious imminent risk to public health or the environment, and immediate action is considered necessary, injunctive proceedings may be instituted.

LEGAL PROCEEDINGS – COST RECOVERY

- 7.32 The Council incurs costs when formal legal proceedings are instigated and those costs will be recovered from the suspected offender. For prosecutions and injunctions this will be through an application to the court. In the case of simple cautions the costs must be reimbursed to the Council by the suspected offender before the caution may proceed.
- 7.33 Costs will be calculated using our current legal proceedings hourly rate which is set out in our fees and charges.

Appendix 1

Environmental Health – Legal proceedings Matrix Defendants Full Name (insert)

The decision to prosecute or offer a formal caution should be made using guidance in the following table. Further guidance on each of the criteria can be found in the Code for Crown Prosecutors – January 2013. Ring the appropriate response to each criterion and total the number of rings in each column. The decision will be influenced by the total number of rings.

CRITERION	PROSECUTE	OFFER CAUTION
1. How serious is the offence committed?	High/ Medium	Low
2. What is the level of culpability of the suspect? (this includes the offenders level of involvement; the extent of premeditation/planning; previous convictions, out of court disposals; offending whilst on bail or subject to a court order; likely continuation, repetition or escalation of the offence; the offenders age or maturity , mental or physical illness; safeguarding the public)	High /Medium	Low
3. What are the circumstances of and the harm to the victim (vulnerability; trust; authority over the victim; a public servant; motivation (equality issues) views of the victim and family and the affect on the victim's health)?	High/ Medium	Low
4. Was the suspect under the age of 18 at the time of the offence? (the younger the child the less likely it is in the public interest to prosecute and criminal responsibility begins age 10)	No	Yes
5. What is the impact on the community?	High/ Medium	Low
6. Is a prosecution a proportionate response? - This includes issues of cost arising from complexity and the number of defendants as compared with the likely sentence.	Yes	No
7. Do sources of information require protecting?	No	Yes
TOTALS		

Recommendation of Investigating Officer

- Formal Caution/Prosecution

Signed _____ Date _____

- Agree/Disagree (Manager)

Signed _____ Date _____

Decision of Principal Officer _____

Signed _____ Date _____