



Environmental Health Enforcement Policy

April 2011

ENVIRONMENTAL HEALTH ENFORCEMENT POLICY

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Contents

1	INTRODUCTION	3
2	STATUS OF THE ENFORCEMENT POLICY	3
3	STATEMENT OF OBJECTIVES	3
4	PURPOSE OF ENFORCEMENT	4
5	PRINCIPLES OF ENFORCEMENT	4
6	SHARED ENFORCEMENT ROLES	5
7	ENFORCEMENT OPTIONS	5
8	ENFORCEMENT ACTIONS	6
8.1	TAKE NO ACTION.....	6
8.2	INFORMAL ACTION.....	6
8.3	STATUTORY NOTICES	7
8.4	WORK IN DEFAULT AND COST RECOVERY	8
8.5	FIXED PENALTY NOTICES	8
8.6	REFUSAL, REVOCATION OF LICENCES, REGISTRATIONS, APPROVALS ETC	8
8.7	PROHIBITION.....	8
8.8	WARRANTS	9
8.9	SEIZURE/SUSPENSION.....	9
8.10	SIMPLE CAUTIONS.....	9
8.11	PROSECUTION	10
8.12	PROCEEDS OF CRIME APPLICATIONS	11
9	INJUNCTIONS.....	11

1 INTRODUCTION

1.1.1 The Council's ambition is:

“We want Calderdale to be a place where we value everyone being different and through our actions we demonstrate that everyone matters”.

1.1.2 To achieve this, the Council has set a number of priorities in relation to the economy and enterprise, environment, safer and stronger communities, healthier communities, older people, children and young people, narrowing the gap and efficient use of resources.

1.1.3 The functions undertaken by Council's Environmental Health Service assist the Council in achieving its ambition by contributing toward several of the Council's priorities. It strives to accomplish this by undertaking its duties in a fair and equitable manner by requiring individuals, organisations and businesses fulfil their legal responsibilities. It will achieve this using a combination of education, advice and regulation of the activities of others and where necessary with legal and regulatory requirements by the use of enforcement powers.

1.1.4 This Enforcement Policy gives clarity as to how the Environmental Health Service intends to help the Council achieve its ambition and priorities by setting out the methods of achieving compliance and the criteria that will be considered in deciding the most appropriate response to breaches of legislation.

2 STATUS OF THE ENFORCEMENT POLICY

2.1.1 This Enforcement Policy was approved by Cabinet on 4th February 2002. It has subsequently been reviewed and amended. The amendments in this issue relate only to changes in legislation, national guidance or changes in local circumstances, they do not relate to changes in the overall objectives and principles of the policy. These revisions have been approved by the Head of Housing and Environment.

3 STATEMENT OF OBJECTIVES

3.1.1 The Environmental Health Service is committed to ensuring that legislation is enforced fairly and consistently to ensure that one member of the community cannot enjoy unfair advantage over the rest of the community by illegal activities.

3.1.2 Enforcement action, whether that is verbal warnings, written warnings, statutory notices, fixed penalty notices, simple cautions or prosecution, is primarily based upon an assessment of risks to public health, safety and well-being of persons living, working and visiting the district, and risks to the environment.

3.1.3 This policy has been written having regard to the content of the Statutory Code of Practice for Regulators the purpose of which is to promote efficient and effective approaches to regulatory enforcement.

3.1.4 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.

- 3.1.5 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, and other relevant legislation and guidance.
- 3.1.6 The Environmental Health Service recognises that some individuals have specific difficulties and have different needs. Extra advice and assistance will be provided to ensure that the legislation is enforced fairly. For instance interpreters will be used where the stakeholder has difficulty in understanding English and help will be provided for people with impaired hearing, vision or other impairment.
- 3.1.7 Enforcement action taken against an individual, business or other duty holder will be consistent with the Council's commitment to equality and diversity. When making a decision to take enforcement action we aim to ensure that there is no discrimination against an individual regardless of race, gender, disability, age, religious belief or sexual orientation.
- 3.1.8 All authorised Officers will be directed by this policy. Any departure from this policy must be justified and fully considered by management before the decision is taken.
- 3.1.9 This policy sets out the general principles that the Environmental Health Service intends to follow in relation to enforcement and prosecution. It is to be used in conjunction with more detailed specific guidance for staff in respect of each specific work activity.
- 3.1.10 This policy has been drawn up after consultation with stakeholder representatives and has been approved by Council Members. The Policy is subject to review periodically. Amendments will be made if there have been any changes in legislation, national guidance or in local need.
- 3.1.11 A copy of this policy will be made available to any party who requests one. A copy of this policy is also available on the Council's web site.

4 PURPOSE OF ENFORCEMENT

- 4.1.1 The purpose of enforcement is to ensure that preventative or remedial action is taken to protect human health, animal 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 if necessary.

5 PRINCIPLES OF ENFORCEMENT

- 5.1.1 The Environmental Health Service believes in firm but fair regulation however, keeping actions still flexible enough to allow or even encourage economic progress. The underlying principle behind this policy is a risk based, proportionate, consistent and targeted approach to inspection and enforcement to ensure effective and efficient compliance in a clear and consistent manner.

6 SHARED ENFORCEMENT ROLES

6.1.1 Legislation to protect public health, employees, animal 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, DEFRA, West Yorkshire Fire and Rescue Service, the Environment Agency, Officers will notify the relevant enforcement agency.

7 ENFORCEMENT OPTIONS

7.1.1 Authorised Officers must seek to secure compliance with the law. Most of their dealings are with those on whom the law places duties (individuals, businesses) and are often informal. In such circumstances Officers will offer information, advice and support. However they may also use formal enforcement mechanisms, including: notices to require remedial action; prohibition notices where there is an imminent risk of serious injury, to persons, animals or the environment, revocation of authorisations, or approvals; refusal of registration, variations of licences or conditions, or of exemptions; and /or ultimately prosecution.

7.1.2 The Environmental Health Service seeks to ensure that enforcement decisions are consistent, balanced and fair to ensure the public is adequately protected, but actions taken by the Service are flexible enough to allow or even encourage economic progress.

- In coming to a decision, the Service will consider:
- the seriousness of the offence or conditions;
- the risk posed to the public, employees, welfare of animals or the environment;
- the individual, business 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.

7.1.3 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 statutory notice;
- to carry out work in default;
- to revoke licences/authorisations/approvals;
- to refuse licences/registration/authorisations/approvals;

- to use seizure powers;
- to use simple cautions;
- to issue a Fixed Penalty Notice;
- to prosecute;
- to confiscate assets;
- to seek injunction.

7.1.4 The Service will normally take enforcement action which is consistent with that adopted by other local authorities or with advice issued by a relevant national standards body. However, in exceptional circumstances, it will seek advice from relevant regional or national bodies.

7.1.5 When the Service is taking enforcement action, which is contrary to the advice of the Home, Lead or originating authority, authorised Officers will discuss the action with that authority before deciding the final enforcement action.

7.1.6 Where a Primary Authority has been established under the provisions of the Regulatory Enforcement and Sanctions Act 2008 the Service will consult with the Primary Authority and may instigate action in accordance with their advice. In circumstances where the Service does not agree with the advice of the Primary Authority then an appeal will be made to the Local Better Regulation Office (LBRO) and act in accordance with their decision.

8 ENFORCEMENT ACTIONS

8.1 TAKE NO ACTION

8.1.1 Where circumstances upon investigation reveal the activities of an individual, business or other duty holder are largely compliant with their obligations and no action is proposed, then those affected will be advised that no action will be taken, as will any client, where appropriate.

8.2 INFORMAL ACTION

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

8.2.2 Informal action is appropriate when:

- the act or omission is not serious; and
- the past history of the individual, business or other duty holder shows that informal action would achieve compliance
- confidence in the enterprise's management is high;
- non compliance will not pose a significant risk to public health, safety, animal health or harm to the environment;
- other circumstances, such as voluntary organisations using volunteers.

8.2.3 Letters or documents sent to individuals, businesses or other duty holders will:

- identify what work is required and why;
- indicate timescales to achieve compliance;
- identify the legislation infringed and suggest methods of compliance however other means may still be used to achieve compliance;
- indicate any recommendations or guidance, identifying that they are not a legal requirement; and
- outline the right to discuss the matter with the authorised Officer's line manager.

8.2.4 When taking informal action, authorised Officers will differentiate between legal requirements and good practice.

8.3 **STATUTORY NOTICES**

8.3.1 Statutory notices will be served when:

- there are specific legal requirements to serve a notice;
- there are significant breaches of legislation;
- there is a lack of confidence that the recipient will respond to informal approaches such as a history of non-compliance;
- standards are generally poor with little management awareness of statutory requirements;
- the consequences of non-compliance could be potentially serious to the public; and
- effective action needs to be taken to remedy conditions that are serious or deteriorating.

8.3.2 Notices will be served for serious matters and not for minor technical contraventions and where possible will be in the prescribed form. The time limit on notices will be realistic and recipients of notices will be given the opportunity, if they wish, to discuss its requirements.

8.3.3 Authorised 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.

8.3.4 Compliance with the requirements of all notices served will be checked as soon as is practicable after expiry. Failure to comply with a statutory notice will, in general, result in prosecution and/or work in default.

8.3.5 Primary, Home, Lead and originating authorities will be notified of any formal action, including notices, instituted by the Service under the provisions of legislation.

8.4 WORK IN DEFAULT AND COST RECOVERY

8.4.1 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.

8.5 FIXED PENALTY NOTICES

8.5.1 Fixed Penalty Notices can be served on individuals or businesses for a variety of offences. They are recognised as a low-level enforcement tool which avoids a criminal record for the offender. Where legislation permits an offence to be dealt with by way of a Fixed Penalty Notice, the Authorised Officer may choose to administer a Fixed Penalty Notice on a first occasion, without issuing a warning.

8.5.2 Fixed Penalty Notices will, whenever possible, be served at the time of the offences or alternatively shortly after the offence. If the Fixed Penalty Notice is complied with by payment of the fixed penalty, within the appropriate timescale, then no further statutory action will be taken. If no payment is made the matter may be dealt with by a simple caution or prosecution.

8.5.3 A separate Fixed Penalty Enforcement Strategy was approved by Council on 9th December 2010. This document sets out a framework of how the fixed penalty regime will be implemented within the Borough and contains further information and specific details in relation to fixed penalty notices.

8.6 REFUSAL, REVOCATION OF LICENCES, REGISTRATIONS, APPROVALS ETC

8.6.1 Licenses, registrations, prior approvals and authorisations, will only be refused or revoked by the Head of Service, following appropriate procedures and consideration of all relevant evidence. Where applicable, other enforcement bodies will be informed of the refusal or revocation as soon as practicable.

8.7 PROHIBITION

8.7.1 Prohibition notices will only be considered when:

- the consequences of not taking immediate and decisive action would be unacceptable;
- an imminent risk to human health, animal health or harm to the environment can be demonstrated;
- the proprietor or operator of the business is unwilling to voluntarily close all or part of the premises, or cease to use any equipment, process or treatment associated with that imminent risk;

- the requirements of the relevant statutory Codes of Practice regarding the use of such notices are fulfilled.

8.8 WARRANTS

8.8.1 Should any Authorised Officer be unreasonably refused access to a property and has strong grounds to believe that an illegal activity is taking place, or it is believed that an activity would temporarily cease and would continue at a later date an application for a warrant may be necessary.

8.8.2 Although Authorised Officers have powers of entry in most circumstances they may apply for a warrant and request assistance from the police in appropriate circumstances. Officers identifying the need for a warrant will discuss the matter, prior to an application being made, with the Principal Officer to ensure such action is proportionate and fair.

8.9 SEIZURE/SUSPENSION

8.9.1 Authorised 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 of failing to meet the requirements of the relevant food safety legislation; or
- to secure abatement of a statutory nuisance.

8.10 SIMPLE CAUTIONS

8.10.1 The Service may consider issuing a simple caution as an alternative to prosecution. Where there is a criminal offence, but the public interest does not warrant a prosecution, a simple caution may be an appropriate course of action. Home Office Circular 30/2005 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 likelihood of them re-offending.

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

- There must be evidence of the suspected offender's guilt, sufficient to give a realistic prospect of a conviction; the Threshold Test (as outlined in the Director of Public Prosecutions' Guidance)
- The suspected offender must admit the offence;
- The suspected offender must understand the significance of a simple caution and given an informed consent to be cautioned; and

- The public interest test must be met as set out in the Code for Crown Prosecutors.

8.10.3 Before proceeding with a simple caution, the Authorised Officer must discuss the proposed action with their Principal Officer. Where a simple caution is refused, the Officer must reconsider all the evidence, which may result in a prosecution, written warning or other action.

8.10.4 Primary, Home, Lead and originating authorities will be notified of the simple caution. The details of simple cautions will be forwarded to the Central Register of Convictions, operated by the Office of Fair Trading, together with a copy of the countersigned letter accepting the caution.

8.11 PROSECUTION

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

8.11.2 The circumstances, which warrant prosecution, are:

- where the offence involves a flagrant breach of the law such that public health, safety, animal welfare or harm to the environment is or has been put at risk; or
- where the offence involves a failure by the offender to correct an identified serious potential risk having been given a reasonable opportunity to comply with the lawful requirements of an authorised officer; or
- where the offence involves the failure to comply in full or in part with the requirements of a statutory notice; or
- where there is a history of similar offences; or
- obstruction or assault of an authorised Officer; or
- a simple caution has been offered but has been declined; or
- providing false or misleading information to an authorised Officer.

8.11.3 The Authorised Officer and their Principal Officer will consider all relevant information and evidence, when circumstances may warrant a prosecution, to enable a consistent, fair and objective decision to be made.

8.11.4 The Authorised Officer must be satisfied, before 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.

8.11.5 The Authorised Officer and their Principal Officer must decide that it is in the public's interest to prosecute, following the guidance in the Code for Crown Prosecutors, including:-

- seriousness of the offence

- risk to public health, safety, animal welfare or harm to the environment
- identifiable victims;
- failure to comply with a statutory notice served for a significant breach of legislation;
- disregard for public health, safety, animal welfare or the environment for financial reward;
- previous history of the defendant;
- offences following a history of similar offences;
- failure to respond positively to past warnings;
- whether a due diligence defence exists, and the likelihood of the defendant being able to establish such a defence;
- ability of important witnesses and their willingness to co-operate;
- the willingness of the defendant to prevent a recurrence;
- the probable public benefit of a prosecution and the importance of the case e.g. whether it may create a legal precedent;
- whether other formal action would be more appropriate or effective; and
- any explanations offered by the defendant. Authorised Officers should invite the defendant to offer an explanation before a decision to prosecute is made.

8.11.6 Once a decision to prosecute has been made, the procedure will be implemented without undue delay. The requirements of PACE and CPIA will be adhered to. The Principal Officer will determine the designated Authorised Officer in charge of the investigation and disclosure officer.

8.12 PROCEEDS OF CRIME APPLICATIONS

8.12.1 Applications may be made under the Proceeds of Crime Act 2002 for confiscation of assets in serious cases. Their purpose is to recover the financial benefit that the offender has obtained from his criminal conduct. Proceedings are conducted according to the civil standard of proof.

9 INJUNCTIONS

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

Calderdale Council

If you would like this information in another format or language, please contact: 01422 392373

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