



Environmental Health Enforcement Policy

February 2018



ENVIRONMENTAL HEALTH ENFORCEMENT POLICY

Approved by Cabinet:	4 th February 2002
Version:	8.2
Issue date:	18 th February 2018
Review date:	1 st April 2020

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INTRODUCTION

- 1.1.3 The Council has agreed a new mission and priorities for “Calderdale to be the Best Borough in the North”. The aim being to grow the economy, reduce inequalities and build a sustainable future. This will help the Council to achieve and deliver change and transformation in the coming years.
- 1.1.4 The functions undertaken by Council’s Environmental Health Service assist the Council in achieving its mission by contributing toward several of the Council’s priority outcomes. It strives to accomplish this by undertaking its duties in a fair and equitable manner by requiring individuals, organisations and businesses to fulfil their legal responsibilities. It will achieve this using a combination of education, advice and regulation of others.
- 1.1.5 This Enforcement Policy gives clarity as to how the Service will achieve compliance by setting out the various options and the criteria used to determine the most appropriate response to breaches of legislation.

STATUS OF THE ENFORCEMENT POLICY

- 1.1.6 This policy was originally drawn up after consultation with stakeholder representatives and 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.

STATEMENT OF OBJECTIVES

- 1.1.7 The Environmental Health Service will strive to ensure the health, safety and well being of all residents, visitors and persons who work in the Borough. It will endeavour to ensure that legislation is enforced fairly and consistently to protect people from harm, support economic prosperity and ensure that no one member of the community can enjoy an unfair advantage by undertaking illegal activities.
- 1.1.8 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 health, safety, environment and well-being of residents, visitors and persons who work in the Borough.
- 1.1.9 This policy has been written having regard to the content of the Regulators’ Code, the purpose of which is to promote efficient and effective approaches to regulatory enforcement and the Regulatory Enforcement and Sanctions Act 2008.
- 1.1.10 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.
- 1.1.11 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 Criminal Procedures and Investigations Act 1996; the Human Rights Act 1998; the Regulation of Investigatory Powers Act 2000 and its amendments; the Equality Act 2010; the Protection of Freedoms Act 2012 and other relevant legislation and guidance.

- 1.1.12 The Environmental Health Service recognises that some individuals may have specific difficulties and have different needs in terms of accessing the service. This will be taken into account so as to ensure that the legislation is enforced fairly. Interpreters will be used where the stakeholder has difficulty in understanding English and help will be provided for people with impaired hearing, vision or any other impairment.
- 1.1.13 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.
- 1.1.14 All Authorised Officers will abide by this policy. Any departure from this policy must be justified and fully considered by senior management before the decision is taken.

PURPOSE OF ENFORCEMENT

- 1.1.15 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 whenever possible, it will not hesitate to use its enforcement powers if necessary.

PRINCIPLES OF ENFORCEMENT

- 1.1.16 The Environmental Health Service believes in firm but fair regulation however, keeping actions still flexible enough to allow or even encourage economic progress. Underlying this policy 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' Code and what those who are regulated may expect from the Service and **targeting** of enforcement action.

Proportionality

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, safety, environment, the rights of others and to the seriousness of any breach.

Consistency

- 1.1.17 Consistency of approach does not mean dealing with similar situations in exactly the same way. It means taking a broadly comparable approach to achieve similar ends. There is a right to expect consistency from an enforcing authority when:
- Issuing advice
 - Responding to requests for service
 - Using statutory notices
 - Deciding to prosecute

Transparency

Transparency is about the Service being open and clear about its enforcement activities and in particular helping duty holders, and individuals understand what is expected of them and what they can expect from the Service. It also means making it clear about what they have to do, but also, where this is relevant, what they do not have to do. That means distinguishing between what is a statutory requirement as opposed to what is advice or guidance about best practice.

Accountability

- 1.1.18 Accountability means that Authorised Officers should be responsible for their enforcement actions and conduct. They should undertake their duties in a courteous and efficient manner and procedures are in place to allow duty holders, and individuals the opportunity to provide feedback and make complaints about the standard of service. The Service will have regard to the requirements of the Regulatory Enforcement and Sanctions Act 2008, Section 21 of the Legislative and Reform Act 2006 and the Regulators' Code.

Targeting

- 1.1.19 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.

SHARED ENFORCEMENT ROLES

- 1.1.20 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; Authorised Officers will notify the relevant enforcement agency.

ENFORCEMENT OPTIONS

- 1.1.21 Authorised Officers must seek to secure compliance with the law. Most of their dealings are with those on whom the law places duties (businesses, landlords, occupiers and individuals) and are often informal. In such circumstances Officers will offer information, advice and support. However, they may also use formal enforcement mechanisms as set out in law, including: fixed penalty notices; enforcement 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; withdrawal of approvals; refusal of registration; variations of licences or conditions, or of exemptions; and /or ultimately prosecution.
- 1.1.22 In coming to a decision as to the most appropriate form of enforcement action , 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.

1.1.23 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 use seizure powers;
- to use simple cautions;
- to prosecute;
- to confiscate assets;
- to seek injunction.

1.1.24 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.

1.1.25 When the Service is taking enforcement action, which is contrary to the advice of the Primary Authority or originating authority, Authorised Officers will discuss the action with that authority before deciding the final enforcement action.

1.1.26 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 Better Regulation Delivery Office (BRDO) and act in accordance with their decision.

ENFORCEMENT ACTIONS

1.2 TAKE NO ACTION

- 1.2.1 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.

1.3 INFORMAL ACTION

- 1.3.1 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.

- 1.3.2 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; or
- confidence in the enterprise's management is high; or
- non-compliance will not pose a significant risk to public health, safety, animal health or harm to the environment; or
- other circumstances, such as voluntary organisations using volunteers.

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

- identify the problem;
- 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.

- 1.3.4 When taking informal action, Authorised Officers will differentiate between legal requirements and good practice.

1.4 STATUTORY NOTICES

- 1.4.1 Statutory notices will be served when one or more of the following applies:

- 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 because of 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 health, safety, animal health or the environment and
- effective action needs to be taken to remedy conditions that are serious or deteriorating.

- 1.4.2 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 the requirements.
- 1.4.3 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.
- 1.4.4 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.
- 1.4.5 Primary and originating Authorities will be notified of any formal action, including notices, instituted by the Service under the provisions of legislation.

1.5 WORK IN DEFAULT AND COST RECOVERY

- 1.5.1 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.

1.6 FIXED PENALTY NOTICES

- 1.6.1 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.
- 1.6.2 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.
- 1.6.3 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.

1.7 REFUSAL, REVOCATION OF LICENCES, REGISTRATIONS, APPROVALS ETC

- 1.7.1 Licenses, registrations, prior approvals and authorisations will only be refused or revoked following consideration by management, 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.

1.8 PROHIBITION

- 1.8.1 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, or voluntary closure would not be suitable for 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.

1.9 WARRANTS

- 1.9.1 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.
- 1.9.2 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 management to ensure such action is proportionate and fair.

1.10 SEIZURE/SUSPENSION

- 1.10.1 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
 - where the article is required for use in evidence in proceedings; or
 - to secure abatement of a statutory nuisance.

1.11 SIMPLE CAUTIONS

- 1.11.1 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. The Ministry of Justice guidance, Simple Caution for Adult Offenders sets out the aims of a simple caution:
- to offer a proportionate response to low level offending where the offender admits the offence;
 - to deliver swift, simple and effective justice that carries a deterrent effect;
 - to record an individual's criminal conduct for possible reference in future criminal proceedings or in criminal record or other similar checks;
 - to reduce the likelihood of re-offending;
 - to increase the amount of time officers spend dealing with more serious crime and reduce the amount of time officers spend completing paperwork and attending court, whilst simultaneously reducing the burden on the courts.
- 1.11.2 The use of simple cautions will be in accordance with the guidance issued by the Ministry of Justice, Simple Cautions for Adult Offenders.
- 1.11.3 Before proceeding with a simple caution, the Authorised Officer must discuss the proposed action with management. Where a simple caution is refused by the offender, the Officer must reconsider all the evidence and this may result in a prosecution.
- 1.11.4 Primary Authorities and originating authorities will be notified of any simple caution issued

1.12 PROSECUTION

- 1.12.1 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.
- 1.12.2 The circumstances which warrant prosecution, are:
- where the offence involves a significant breach of the law such that public health, safety, animal welfare or 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 fault or misleading information to an authorised Officer; or
- failure to pay a fixed penalty notice.

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

1.12.4 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.

1.12.5 The Authorised 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, including:

- seriousness of the offence;
- risk to public health, safety, animal welfare or 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.

- 1.12.6 Once a decision to prosecute has been made, the procedure will be implemented without undue delay. The requirements of Police and Criminal Evidence Act 1984 (PACE) and the Criminal Procedure and Investigation Act 1996 will be adhered to. The manager will determine the designated Authorised Officer in charge of the investigation and disclosure officer.

1.13 PROCEEDS OF CRIME APPLICATIONS

- 1.13.1 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.

INJUNCTIONS

- 1.13.2 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 288001

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