

Environmental Health Enforcement Policy

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1.0 INTRODUCTION

- 1.1 Fair and effective enforcement is essential to protect the health, safety and interests of the residents, visitors and businesses of South Derbyshire District Council. Even in a small case a decision about enforcement action has serious implications for all involved; the general public, businesses, victims, witnesses and defendants. The Environmental Health Division applies this policy so that it can make fair and consistent decisions about enforcement.
- 1.2 The Policy is also designed to make sure that everyone knows the principles that the Environmental Health services apply when carrying out enforcement work. By applying the same principles, everyone involved in the process is helping to treat stakeholders fairly but effectively.

2.0 PURPOSE

- 2.1 The purpose of this document is to state the authority's general policy with respect to law enforcement; following the principles contained in the Enforcement Concordat issued by the Cabinet Office and adopted by South Derbyshire District Council in September 2000 and guidance issued by the Health and Safety Commission.
- 2.2 The Policy is based on the principles of openness (about our policies and practices), clear standards (performance and levels of service), proportionality (to secure compliance), consistency (of approach), targeting (of enforcement action) and transparency (of methods and organisation). The Policy follows the principles of the Human Rights Act 1998. All Environmental Health Staff must apply the principles of the European Convention on Human Rights in accordance with the Act.

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- 2.3 We will publish service standards for all enforcement work following consultation with interested parties. These standards will set out the levels of service the public and business people can expect to receive.
- 2.4 The emphasis of enforcement will be primarily based upon risk to public health, or the seriousness of the contravention.
- 2.5 This document covers all enforcement activities carried out by Environmental Health staff under the delegated authority granted by South Derbyshire District Council, (Food Safety and Health and Safety at Work have their own individual Enforcement policies). Enforcement, in the context of this policy, includes action carried out in the exercise of, or against the background of, statutory enforcement powers. This is not limited to formal enforcement action such as a prosecution, and includes for example, the inspection of premises for the purpose of checking compliance with acts and regulations, and provision of advice to aid compliance. Its purpose is to provide an enforcement standard that respects the principles of the Enforcement Concordat in full and meets the requirements in guidance published by both government and the relevant professional bodies. In producing this policy regard has also been taken of the Director of Public Prosecution's Code for Crown Prosecutors.
- 2.6 This policy is available on the Council's web site and in hardcopy at the Council's offices. It can be ordered by telephoning 01283 595717, e mailing cjacobs@south-derbys.gov.uk or writing to the Environmental Health Manager South Derbyshire District Council, Civic Offices, Civic Way, Swadlincote, Derbyshire, DE11 0AH. The public and business will be notified of this policy by distribution of leaflets. We welcome comments on this policy from all sources.
- 2.7 On request, this policy will be made available on tape, in Braille, large type, or in a language other than English. The Authority can also arrange for interpreters to be made available and at present this is arranged through Derbyshire County Council Social Services Department

3.0 GENERAL PRINCIPLES

- 3.1 Each case is unique and will be considered on its own facts and merits.
- 3.2 In arriving at a decision to recommend formal action officers will be fair, independent and objective. They will not let any personal views about ethnic or national origin, sex, religious beliefs, political views or sexual orientation of the suspect; victim or witness influence their decision. They will not be affected by improper or undue influence from any source.
- 3.3 The authority requires officer support for and compliance with the policy.
- 3.4 The policy will be documented, regularly reviewed and developed.
- 3.5 Only properly trained Enforcement Officers will be employed by this Authority. Refresher training will be provided as and when it is required.
- 3.6 Any departure from the policy will be exceptional, capable of justification and be fully considered by the appropriate line Manager or the Environmental Health Manager before the decision is taken, unless it is considered that there is significant risk to the public in delaying the decision.
- 3.7 This authority is committed to providing ready access to those wishing to appeal or complain about enforcement action.
- 3.8 Enforcement action may take place outside normal working hours and it will the policy of the Division to provide adequate levels of resources where necessary to undertake inspections, monitoring, surveillance etc outside those normal working hours. All Enforcement work will take into

consideration the relevant codes of practice that exist i.e. The Police and Criminal Evidence Act 1994 and the Regulations of Investigatory Powers Act 2000.

4.0 AUTHORISATION

4.1 The purpose of this document is to state the authority's policy with respect to:-

- a) Identification of officers appointed and authorised to take enforcement action.
- b) Identification of the designation of the persons who may authorise a prosecution under the relevant Acts.
- c) Identification of the limits of delegations for Enforcement Officers.

4.2 Enforcement action under the relevant acts should be initiated by suitably qualified, experienced and competent Enforcement Officers.

5.0 SERVICE REQUESTS

5.1 Service requests which may result in enforcement action against a business or individual will be notified to that business or individual as soon as is practicable, except in the circumstances described in 5.2 below. During the progression of enforcement action that business or individual will be further notified of progress and any new information.

5.2 In circumstances where notification could impede enforcement action, notification will not take place until those circumstances no longer exist.

6.0 DECIDING THE ACTION TO TAKE

6.1 There are two issues to determine. The first is what level of enforcement action to take. The second is that, if the first decision is to take formal enforcement action, then is that action viable and appropriate. There are two stages in determining whether formal enforcement action is viable and appropriate:

- Stage 1 : The evidential test
- Stage 2 : The public interest test

What level of enforcement action to take

This can be one, or a number, of the following:

- Prosecution
- Revocation of license or Authorisation
- Injunction
- Seizure
- Forfeiture Proceedings
- Formal Caution
- Formal Notice (Statutory)
- Fixed Penalty Notices
- Written warning and advice
- Verbal warning and advice
- Revisit of premises
- No action

7.0 PROSECUTION

7.1 In order to take forward prosecution, the individual or organisation must meet one or more of the following criteria:

- Engaged in fraudulent activity,
- Deliberately or persistently breached legal obligations, which were likely to cause material loss or harm to others,
- Deliberately or persistently ignored written warnings or formal notices,
- Endangered, to a serious degree, the health, safety or well being of people, animals or the environment,
- Obstructed an officer during undertaking his or her duties.

8.0 REVOCATION OF LICENCE or AUTHORISATION

8.1 In order to warrant revocation of a licence or Authorisation, the individual or organisation must meet one or more of the following criteria :

- Engaged in fraudulent activity,
- Deliberately or persistently breached legal obligations, which were likely to cause material loss or harm to others,
- Deliberately or persistently ignored written warnings or formal notices,
- Endangered, to a serious degree, the health, safety or well being of people, animals or the environment,
- Obstructed an officer during undertaking his or her duties.

9.0 INJUNCTION

9.1 In the case of immediate risk to health and safety or where the legal services team agree that an injunction is a more appropriate course of enforcement action than any other, then injunctions will be used as an enforcement measure to remedy contraventions or dangerous circumstances.

10.0 SEIZURE

10.1 We have powers under various pieces of legislation to seize faulty, dangerous, unwholesome or contaminated goods, food, or equipment responsible for causing a noise nuisance, to prevent them causing nuisance or harm to consumers, employees, other businesses or residents. When we seize goods we will give the person from whom the goods are taken an appropriate receipt. We always give full details of our actions to the offender when we exercise this power.

11.0 FORFEITURE PROCEEDINGS

11.1 This procedure is to be used in conjunction with a prosecution where there is a need to dispose of goods in order to prevent them causing further nuisance. If it is unlikely that the defendant will agree to sign over the goods to us for appropriate disposal then an application for forfeiture will be made to the court following successful prosecution.

12.0 FORMAL CAUTION

12.1 This procedure is used as a final warning. It derives from advice issued by the Home Office and has already been successfully used by this authority to deal with contraventions of Environmental Health legislation. For a formal caution to be issued a number of criteria must be satisfied:

- (i) sufficient evidence must be available to prove the case;
- (ii) the offender must admit the offence;
- (iii) the offender must agree to be cautioned.

A record of the Caution will be sent to the Office of Fair Trading (if applicable), and will be kept on file for 3 years. If the offender commits a further offence, the Formal Caution may influence our decision to take a prosecution. If during the time the Caution is in force the offender pleads guilty to, or is found guilty of, committing another offence anywhere in England and Wales, the caution may be cited in court, and this may influence the severity of the sentence that the court imposes.

13.A FORMAL NOTICE

13.A1 Notices are served to require offenders to cease contravening activities, or give offenders reasonable time to rectify a contravention. Notices may require contravening activities to cease immediately where the circumstances relating to health, safety, environmental damage or nuisance demand. In other circumstances, the time allowed must be reasonable, but must also take into account the health, safety, environmental damage or nuisance implications of the contravention. Failure to comply with a formal notice will result in more severe enforcement action, dependent on the criteria outlined above.

13.B FIXED PENALTY NOTICES

13.B1 We also have powers under certain pieces of Environmental Health legislation to issue Fixed Penalty Notices for offences. These are issued, where the circumstances permit, on a person committing an offence in the understanding that they will pay the fixed charge within a designated time period. Failure to pay the charge will result in more severe enforcement action being taken, subject to the other criteria contained within this policy.

14.0 WRITTEN WARNING AND ADVICE

14.1 For some contraventions we will send the offender a firm but polite letter clearly identifying the contraventions, giving advice on how to put them right and including a deadline by which this must be done. Failure to comply could result in a notice being served or more severe enforcement action being taken. The time allowed must be reasonable, but must also take into account the health, safety and nuisance implications of the contravention.

15.0 VERBAL WARNING AND ADVICE

15.1 For minor breaches of the law we verbally advise the offender clearly identifying the contraventions, giving advice on how to put them right and including a deadline by which this must be done. Failure to comply could result in more severe enforcement action being taken. The time allowed must be reasonable, but must also take into account the health, safety and nuisance implications of the contravention.

16.0 REVISIT OF PREMISES

16.1 Following a formal notice, written warning and advice or verbal warning and advice we will revisit the premises to check compliance has been achieved. For very minor contraventions we may advise that a revisit may be carried out after the agreed deadline. Officers will then decide whether to actually make a revisit depending upon the health, safety, environmental damage or nuisance implications of the contravention, and the perceived likely responding action of the offender to the verbal advice.

17.0 NO ACTION

17.1 In exceptional circumstances, contraventions may not warrant any action. This can be where the cost of compliance to the offender or the cost of the required enforcement action to the Council outweighs the detrimental impact of the contravention on the community. A decision of no action may also be taken where formal enforcement is inappropriate in the circumstances, such as where a trader has ceased to trade, or the offender is elderly and frail and formal action would seriously damage their well being. A decision to take no action must be recorded in writing and must take into account the health, safety, environmental damage or nuisance implications of the contravention.

18.0 DETERMINING WHETHER FORMAL ENFORCEMENT ACTION IS VIABLE AND APPROPRIATE

18.1 There are two stages in the decision to take formal enforcement action. The first stage is the evidential test. If the case does not pass the evidential test, it must not go ahead, no matter how important or serious it may be. If the case does meet the evidential test, Environmental Health managers and the legal services team must decide if formal enforcement action is needed in the public interest. This second stage is the public interest test.

18.2 Environmental Health services will only start, and continue, with formal enforcement action when the case has passed both tests. Paragraphs 19 to 22 below, detail how this policy applies to the consideration of taking a prosecution. The principles outlined apply equally to the other types of formal enforcement action that are available.

19.0 THE EVIDENTIAL TEST

19.1 Environmental Health managers and the legal services team must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. A realistic prospect of conviction is an objective test. It means that a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a separate test from the one that the criminal courts themselves must apply. A jury or magistrates' court should only convict if satisfied so that it is sure of a defendant's guilt.

19.2 When deciding whether there is enough evidence to prosecute, Environmental Health Managers and the legal services team must consider whether the evidence can be used and is reliable.

20.0 THE PUBLIC INTEREST TEST

20.1 The public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. A prosecution will usually take place unless there are public interest factors tending against prosecution which clearly outweigh those tending in favour. Although there may be public interest factors against prosecution in a particular case, often the prosecution should go ahead and those factors should be put to the court for consideration when sentence is being passed.

20.2 Environmental Health Managers and the legal services team must balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the suspect. Some factors may increase the need to prosecute but others may suggest that another course of action would be better.

The following lists of some common public interest factors, both for and against prosecution, are not exhaustive. The factors that apply will depend on the facts in each case.

21.0 SOME COMMON PUBLIC INTEREST FACTORS IN FAVOUR OF PROSECUTION

21.1 The more serious the offence, the more likely it is that a prosecution will be needed in the public interest. A prosecution is likely to be needed if:

- a conviction is likely to result in a significant sentence;
- the evidence shows that the defendant was a ringleader or an organiser of the offence;
- there is evidence that the offence was premeditated;
- the victim of the offence was vulnerable, has been put in considerable fear, or suffered personal, damage or disturbance;
- the offence was motivated by any form of discrimination against the victim's ethnic or national origin, sex, religious beliefs, political views or sexual orientation, or the suspect demonstrated hostility towards the victim based on any of those characteristics;
- there is a marked difference between the actual or mental ages of the defendant and the victim, or if there is any element of corruption;
- the defendant's previous convictions or cautions are relevant to the present offence;
- there are grounds for believing that the offence is likely to be continued or repeated, for example, by a history of recurring conduct.

22.0 SOME COMMON PUBLIC INTEREST FACTORS AGAINST PROSECUTION

22.1 A prosecution is less likely to be needed if:

- the court is likely to impose a nominal penalty;
- the defendant has already been made the subject of a sentence and any further conviction would be unlikely to result in the imposition of an additional sentence or order, unless the nature of the particular offence requires a prosecution;
- the offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence);
- the loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement;
- there has been a long delay between the offence taking place and the date of the trial, unless:
 - the offence is serious;
 - the delay has been caused in part by the defendant;
 - the offence has only recently come to light; or
 - the complexity of the offence has meant that there has been a long investigation;
- a prosecution is likely to have a bad effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence;
- the defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is a real possibility that it may be repeated.

22.2 Deciding on the public interest is not simply a matter of adding up the number of factors on each side. Environmental Health Managers and the legal services team must decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

23.0 LIAISON

23.1 The enforcement services within the Environmental Health division will co-ordinate their enforcement activity to maximise the effective enforcement of any matters that are related to more than one of the services.

23.2 Where an enforcement matter affects a wide geographical area beyond the District's boundaries, or involves enforcement by one or more other local authorities or organisations; all relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activity co-ordinated with them.

24.0 OFFENCES

24.1 The Environmental Health managers, in conjunction with the Council's legal services team, should select offences which:

- reflect the seriousness of the offending;
- give the court adequate sentencing powers;
- are made to the appropriate court;
- enable the case to be presented in a clear and simple way.

25.0 ACCEPTING GUILTY PLEAS

25.1 Defendants may want to plead guilty to some, but not all, of the charges. Alternatively, they may want to plead guilty to a different, possibly less serious, charge because they are admitting only part of the offence. The Environmental Health managers, in conjunction with the Council's legal services team, should only accept the defendant's plea if they think the court is able to pass a sentence that matches the seriousness of the offending. The Environmental Health managers, in conjunction with the Council's legal services team, must never accept a guilty plea because it is convenient.

25.2 In cases where a defendant pleads guilty to the charges but on the basis of facts that are different from the prosecution case, and where this may significantly affect sentence, the court should be invited to hear evidence to determine what happened, and then sentence on that basis.

26.0 CONSIDERING THE VIEWS OF THOSE AFFECTED BY OFFENCES

26.1 The Environmental Health division undertakes enforcement on behalf of the public at large and not just in the interests of any particular individual or group. However, when considering the public interest test (see section 20 above) the consequences for those affected by the offence, of the decision whether or not, and how to take enforcement action, and any views expressed by those affected will be taken into account.

26.2 Those people affected by the offence will be told about any decision that makes a significant difference to the case in which they are involved.

27.0 THE INTERESTS OF THE DISTRICT'S STAKEHOLDERS

27.1 Where particular local circumstances dictate, enforcement activity will, where practicable, take account of those circumstances to minimise any adverse effects of enforcement activity on legitimate businesses and individuals.

27.2 When practicable and beneficial to local businesses, standards of competitors will be monitored.

28.0 RE-STARTING A PROSECUTION

28.1 People should be able to rely on enforcement decisions taken by the Environmental Health managers. Normally, if a suspect or defendant is advised that there will not be a prosecution, or that the enforcement action has been stopped, that is the end of the matter and the case will not start again. But occasionally there are special reasons why enforcement action will re-start, particularly if the case is serious. These reasons include:

- rare cases where a new look at the original decision shows that it was clearly wrong and should not be allowed to stand,
- cases which are stopped so that more evidence, which is likely to become available in the fairly near future, can be collected and prepared. In these cases, the defendant will be told that the enforcement action may well start again,
- cases which are stopped because of a lack of evidence but where more significant evidence is discovered later.

29.0 CODE FOR CROWN PROSECUTORS

29.1 This policy takes account of all the relevant parts of the Code for Crown Prosecutors.

30.0 ENFORCEMENT POLICY IMPLEMENTATION

- 30.1 Scheduled internal quality audits will be undertaken to ensure that all enforcement activity is carried out in accordance with this policy.
- 30.2 Instances of non-compliance with this policy will be recorded and reported to the Head of Environmental Health, who will instigate appropriate action.