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| Report of: | Head of Environmental Health |
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| Portfolio Leader: | Environment |
| Key Decision: | Yes |
| Report Track: | Council: 12/11/14 |

**COUNCIL
12 NOVEMBER 2014
ENVIRONMENTAL HEALTH ENFORCEMENT POLICY**

1 Purpose of Report

- 1.1 To seek approval and adoption of the revised Environmental Health Enforcement Policy (2014).

2 Recommendation

- 2.1 That the Cannock Chase District Council approves and adopts the Environmental Health Enforcement Policy at Appendix 1 to this report.
- 2.2 That the Head of Environmental Health be authorised to make any amendments to the Policy required due to changes in legislation or government guidance and minor variations to the Policy in the interests of operational efficiency.

3 Key Issues and Reasons for Recommendation

- 3.1 Local Authority Regulatory Services, including Environmental Health, play a key role in supporting local economic prosperity and community wellbeing. They ensure that well-run, legally compliant businesses are supported and that consumers, workers and the environment are protected.
- 3.2 On occasions, it is necessary for the Council's Environmental Health Division to take enforcement action for failure to comply with legal requirements against licence holders, businesses, employers and even members of the general public.
- 3.3 The Enforcement Policy covers enforcement of all legislation administered by the Environmental Health Division of Cannock Chase Council, including that

which relates to: Private Sector Housing, Public Health, Licensing, Food Hygiene, Health and Safety, Smokefree, Statutory Nuisances and Environmental Protection issues such as air pollution, noise, littering, fly tipping and dog fouling.

- 3.4 The primary objective is to achieve regulatory compliance. It is recognised that prevention is better than cure, but where it becomes necessary to take formal action this will be done. There is a wide range of tools available, with prosecution and / or revocation of licence being the most serious. A sanction that is relevant and proportionate to the offence or contravention will always be chosen.
- 3.5 Following consultation the revised and updated Policy at Appendix 1 has been produced. The revised Policy provides clear guidance regarding how the Environmental Health Division will enforce the range of legislation it administers. Significant additions are shown in bold text.

4 Relationship to Corporate Priorities

- 4.1 The Environmental Health Division aims to support growth of the local economy through fair and accountable business regulation. The Enforcement Policy contributes to the People, Place and Prosperity priorities in that it aims to promote the following objectives:
- Healthy lives, by investigating and controlling infectious diseases, and promoting high standards of food hygiene and workplace safety;
 - Improved housing, through regulating and improving standards in private rented sector;
 - Cleaner environment, through investigation of littering, fly tipping and dog fouling, and by regulating industrial processes, and dealing with noise, contaminated land etc.
 - Economic Development, in supporting compliant businesses and providing advice and assistance to employers in meeting their legal obligations at minimal costs.

5 Report Detail

- 5.1 In order to effectively administer Environmental Health legislation, an enforcement policy is required, which sets out a framework explaining how the legislation will be enforced.
- 5.2 The policy covers several areas including:
- Scope and meaning of 'Enforcement';
 - Notifying alleged offenders;
 - Deciding what level of enforcement action is appropriate;

- Determining whether a *Prosecution or Simple Caution* is viable and appropriate;
- Who decides what enforcement action is taken
- Liaison with other regulatory bodies and enforcement agencies
- Considering the views of those affected by the offences
- Protection of Human Rights

5.3 There is a range of enforcement tools available, with prosecution and / or revocation of licence being the most serious. An enforcement method that is relevant and proportionate to the offence or contravention is always chosen.

The various options available to us include:

- No action;
- Informal Action and Advice (for example a written warning);
- Fixed Penalty Notices;
- Formal Notice;
- Forfeiture Proceedings;
- Seizure of goods/equipment;
- Injunctive Actions;
- Refusal/suspension/revocation of a licence;
- Simple Caution;
- Prosecution;
- Proceeds of Crime Applications.

5.4 The policy is designed to help understanding of our objectives and methods for achieving compliance and the criteria considered when deciding what is the most appropriate response to a breach of legislation.

5.5 Recent changes to government guidance, most notably the introduction of the Regulators' Code and revisions to the Code for Crown Prosecutors, have prompted changes to the current policy.

5.6 The proposals were consulted on during a 4 week period between July and August 2014, being featured in a press release and on the Council web site.

5.7 There were no consultation responses received.

6 Implications**6.1 Financial**

No implications. The adoption of the Policy gives rise to no additional budgetary requirements.

6.2 Legal

The Policy provides guidance to all stakeholders (Members, officers, proprietors, licence holders, employers, employees, statutory and voluntary agencies, partner agencies and members of the general public) on how the Council will enforce Environmental Health legislation.

The adoption of this updated enforcement Policy will ensure the Council is able to evidence a clear policy framework within which enforcement decisions and enforcement actions are taken. The Policy will ensure that the Council discharges its statutory functions effectively and that decisions made by Officers and Members are transparent, proportionate and comply with Human Rights and Equalities legislation. The policy provides assurance that decisions in relation to enforcement are able to withstand challenge and scrutiny by outside bodies including the Courts.

6.3 Human Resources

None

6.4 Section 17 (Crime Prevention)

The Policy ensures the Council exercises its enforcement functions responsibly and gives due consideration to crime prevention issues, with particular emphasis on protecting vulnerable members of society.

6.5 Human Rights Act

All enforcement activity is taken giving due consideration to the Human Rights Act 1998 which derives from the European Convention on Human Rights, particularly Article 6, the right to a fair trial. Prior to deciding to take legal proceedings, the Council must be satisfied that the accused knows what is alleged against them, that they have had reasonable time to make any representations and that due consideration is given to any such representations in making a decision. This will form part of the operational procedure following adoption of the Policy.

6.6 Data Protection

None.

6.7 Risk Management

The Policy ensures the Council is able to effectively discharge its statutory functions.

6.8 Equality & Diversity

The Policy Document will be made available in large print, Braille and as an audio version, on request.

An equality impact assessment has been completed for the Policy.

6.9 Best Value

None.

7 Appendices to the Report

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| Appendix 1 | Revised Environmental Health Enforcement Policy (2014) |
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Previous Consideration

None

Background Papers

None



Environmental Health Division

Enforcement Policy

2014

Cannock Chase District Council
Environmental Health Division
Enforcement Policy (2014)

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1.0 Introduction

- 1.1 **Local Authority Regulatory Services, including Environmental Health, play a key role in supporting local economic prosperity and community health and wellbeing. These services ensure that well-run, legally compliant businesses are supported and that consumers, workers and the environment are protected from harm.**

Comment [DP1]: New paragraph

- 1.2 This enforcement policy provides guidance to all stakeholders* (Members, officers, proprietors, licence holders, employers, employees, statutory and voluntary agencies, partner agencies and members of the general public) on the range of options that are available to achieve compliance with legislation enforced by Cannock Chase Council Environmental Health Division.

* The term "stakeholder" is used in this document to refer to all persons or organisations who may be affected by, or have an interest in, this Policy.

- 1.3 **The policy covers all areas of the Environmental Health Division's work where enforcement of legislation may be involved, including:-**

- **Licensing (taxi / private hire, alcohol, street trading, gambling etc.);**
- **Private Sector Housing (conditions in rented properties, including multi-occupied houses, and mobile homes);**
- **Food hygiene in shops, restaurants, pubs, schools, hospitals and care homes;**
- **Environmental protection (dog fouling, littering, fly tipping, land, air and noise pollution);**
- **Public health (filthy properties, accumulations of rubbish, pest infestations etc);**
- **Health and safety at work in a wide range of commercial workplaces;**
- **Smoke-free laws.**

Comment [DP2]: New paragraph

- 1.4 The primary objective is to achieve regulatory compliance. It is recognised that prevention is better than cure, but where it becomes necessary to take formal action this will be done. There is a wide range of tools available, with prosecution and / or revocation of licence being the most serious. A sanction that is relevant and proportionate to the offence or contravention will always be chosen.

- 1.5 The policy is designed to assist in explaining the objectives and methods for achieving compliance and the criteria considered when deciding what the most appropriate response is to a breach of legislation.
- 1.6 All decisions will have regard to current statutory guidance and codes of practice, particularly the [Regulators' Code](#), the [Code for Crown Prosecutors](#) and the Human Rights Act.
- 1.7 Stakeholders will be notified of this policy through the Council's website and summary leaflet which will be distributed during inspections, visits or with formal letters and notices.

2.0 Legal Status of the Enforcement Policy

- 2.1 Cannock Chase District Council approved this policy on 12 November 2014.
- 2.2 This policy is intended to provide guidance for all stakeholders as identified in paragraph 1.1 above. It does not affect or fetter the discretion of the Council to take legal proceedings, or any other course of action, where this is considered to be in the public interest.

3.0 Scope and Meaning of 'Enforcement'

- 3.1 This Policy applies to all legislation enforced by the Environmental Health Division.
- 3.2 'Enforcement' includes all actions taken by officers aimed at ensuring legal compliance. This is not limited to formal enforcement action such as prosecution, but includes spoken and written requests to comply with legislation.
- 3.3 In certain circumstances we will seek to raise awareness and increase compliance levels by publicising unlawful trade practices or criminal activity. Where appropriate the results of specific court cases may also be published.

4.0 How to get a copy of the Policy, make comments or complaints

4.1 This Policy is available on the Council's website at [\(insert link\)](#)

If you would like a paper copy of the Policy and/or you would like to comment on the Policy, or if you have a complaint about the way in which the Policy has been applied please contact us at the following address:

Environmental Health Division,
Cannock Chase Council,
Civic Centre,
Beecroft Road,
Cannock,
Staffs
WS11 1BG.

Tel: 01543 462621

E-mail: environmentalhealth@cannockchasedc.gov.uk

5.0 General Principles

- 5.1 Prevention is better than cure and our role therefore involves actively working with individuals and businesses to advise on, and assist with, compliance. We will always use education and encouragement to achieve compliance where it is possible, and appropriate, to do so.
- 5.2 Where we do consider that formal action is necessary each case will be considered on its own merits. However, there are general principles that apply to the way each case must be approached. These are set out in this Policy, the [HSE Enforcement Policy](#) and in the [Regulators' Code](#)
- 5.3 Enforcement decisions will be fair, proportionate, transparent, independent and objective and will not be influenced by issues such as ethnicity or national origin, gender, disability, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender.
- 5.4 Where the subject of the enforcement action is either a juvenile, or a person with special needs, a learning disability, or is otherwise vulnerable, contact will be made with, and advice sought from, appropriate agencies as necessary. In accordance with Council Policy, and for a first offence of littering, an alternative sanction will be offered to Juveniles.

- 5.5 Cannock Chase Council is a public authority for the purposes of the Human Rights Act 1998. We will, therefore, apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
- 5.6 This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens.
- 5.7 **We will have regard to the Regulators' Code and in particular we will:**
- **Carry out our regulatory activities in a way that supports those we regulate to comply and grow;**
 - **Provide simple and straightforward ways to engage with those we regulate;**
 - **Base our regulatory activities on risk;**
 - **Share information about compliance and risk;**
 - **Ensure clear information, guidance and advice is available to help those we regulate meet their responsibilities to comply;**
 - **Ensure our approach to regulatory activities is transparent**
- 5.8 We will ensure that any decision to depart from the Regulators' Code, or this Policy, will be properly reasoned, based on material evidence and documented.

Comment [DP3]: New paragraph

6.0 Notifying Alleged Offenders

- 6.1 If we receive information that may lead to enforcement action against a business or individual we will notify that business or individual as soon as is practicable of any intended enforcement action, unless this could impede an investigation or pose a safety risk to those concerned or the general public (for example the need for immediate action to close a food business, or prevent the use of a dangerous process / piece of machinery).
- 6.2 During the progress of enforcement investigations/actions, all stakeholders (businesses, licence holders, employees, complainants etc.) will be kept informed of progress. Confidentiality will be maintained and personal information about individuals will only be released to a Court when required and/or in accordance with the Data Protection Act 1998.

7.0 Deciding what level of enforcement action is appropriate

A number of factors are considered when determining what enforcement action to take:

7.1 Levels of enforcement action:

7.1.1 There are a large number of potential enforcement options. The option chosen varies from no action through to proceedings in Court.

Examples of the main types of action that can be considered Are shown below (not all will apply in all circumstances):

- No action;
- Informal Action and Advice (for example a written warning);
- Fixed Penalty Notices;
- Formal Notice;
- Forfeiture Proceedings;
- Seizure of goods/equipment;
- Residential Property Closure or Emergency Remedial Action;
- Injunctive Actions;
- Refusal/suspension/revocation of a licence;
- Simple Caution;
- Prosecution;
- Proceeds of Crime Applications.

Note: Availability of the above options is determined by the legislation applicable and the particular circumstances of each case; not all options will be available on all occasions.

Comment [DP4]: New paragraph

7.1.2 In assessing what enforcement action is necessary and proportionate, consideration will be given to:

- The seriousness of compliance failure;
- Past performance and current practice;
- The risks being controlled;
- Legal, official or professional guidance;
- Local priorities of the Council.

7.1.3 Where the law has been contravened, enforcement actions / options will normally be commenced at a low

level and escalated until compliance is reached. Exceptions would be where there is a serious risk to public safety or the environment or the offences have been committed deliberately, repeatedly or negligently and / or involve deception.

7.2 No Action

7.2.1 In certain circumstances, contraventions of the law may not warrant any action. This can be where the cost of compliance to the offender outweighs the detrimental impact of the contravention, 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 may (*but not always*) be the case where a trader has ceased to trade. In such cases we will advise the offender of the reasons for taking no action.

7.3 Informal Action and Advice

7.3.1 For minor breaches of the law we may give verbal or written advice. We will clearly identify any contraventions of the law and give advice on how to put them right, including a deadline by which this must be done. The time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of the non-compliance.

7.3.2 Sometimes we will give recommendations or advice on 'good practice', but we will clearly distinguish between what *must be done* to comply with the law and what is *advice only*.

7.3.3 Failure to comply could result in an escalation of enforcement action.

7.4 Fixed Penalty Notices

7.4.1 Certain offences may be dealt with by Fixed Penalty Notices (FPNs) where permitted in legislation. FPNs are recognised as a low-level enforcement tool and avoid a criminal record for the defendant. Where legislation permits an offence to be dealt with by way of a FPN, for example littering, dog fouling, or smoking in a smoke free place, we may choose to administer a FPN on a first

occasion, without issuing a warning. Second and subsequent offences are unlikely to be dealt with by FPN and will normally result in prosecution.

7.5 Formal Notice

7.5.1 Certain legislation allows notices to be served requiring offenders to take specific actions or cease certain activities. Notices may require activities to cease immediately where the circumstances relating to food hygiene, health, safety, environmental damage or nuisance demand. In other circumstances, the time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of the non-compliance.

7.5.2 In some cases, a charge will be made where a notice is served.

7.5.2 All notices issued will include details of any applicable *Appeals Procedures*.

7.5.3 Some notices allow works to be carried out in default. This means that if a notice is not complied with [a breach of the notice] the Council may carry out any necessary works. Where the law allows, we may then recover our costs from the person/business served with the notice, through the Courts if necessary.

7.6 Seizure

7.6.1 Some legislation enables authorised officers to seize goods, equipment or documents, for example unsafe food, sound equipment that is being used to cause a statutory noise nuisance, or any goods that may be required as evidence for possible future court proceedings. When goods are seized a receipt is given to the person from whom the goods are taken.

7.7 Injunctive Actions

7.7.1 In certain circumstances, for example, where offenders are repeatedly found guilty of similar offences, or where it is considered that injunctive action is the most appropriate course of enforcement, then injunctive actions through the Courts may be used to deal with repeat offenders or dangerous circumstances.

7.8 Refusal, Suspension and Revocation of Licences

7.8.1 Grounds for Refusal, Suspension or Revocation of Hackney Carriage or Private Hire Drivers' Licences

The grounds for refusing to renew a licence, or for suspending or revoking a licence, are based on whether the driver has:-

- (a) been convicted of an offence involving dishonesty, indecency or violence;
- (b) been convicted of an offence under the Local Government (Miscellaneous Provisions) Act 1976;
- (c) failed to comply with a requirement of the Local Government (Miscellaneous Provisions) Act 1976, or
- (d) any other reasonable cause.

Licences may be suspended or revoked **with immediate effect** if such a decision is deemed necessary **in the interests of public safety**.

7.8.2 Under the Licensing Act 2003, where a Review of a Premises Licence is sought, the options available to the Licensing Committee are:-

- To modify the conditions of Licence
- To exclude a Licensable activity from the scope of the Licence
- To remove the Designated Premises Supervisor
- Suspend the Licence for a period not exceeding three months
- Revoke the Licence
- Issue a warning letter
- No action

7.8.3 Under the Gambling Act 2005, where a Review of a Premises Licence is sought, the options available to the Committee are:-

- Revocation of the Licence

- Suspend the Licence for a specified period not exceeding three months;
- Exclude a condition attached to the Licence, or remove or amend an exclusion;
- Add, remove or amend a condition;

7.9 Simple Caution

7.9.1 A Simple Caution is a means by which the Council deals quickly and simply with less serious offences, both reducing burdens on the Court system and reducing the chance of repeat offences. A Simple Caution is an admission of guilt, but is not a form of sentence, nor is it a criminal conviction, though a record may be made of the Caution.

7.9.2 For a Simple Caution to be issued a number of criteria must be satisfied:

- Sufficient evidence must be available to prove the case;
- The offender must admit the offence;
- It must be in the public interest to use a Simple Caution;
- The offender must be 18 years or over

Ministry of Justice Guidance on simple cautions is accessible [here](#) or by visiting: <http://www.justice.gov.uk/downloads/oocd/adult-simple-caution-guidance-oocd.pdf>

7.9.3 We will also take into account the following when making our decision:

- The offender should not have received a simple caution for a similar offence within the last 3 years.

7.9.4 The final decision on whether or not to issue a Simple Caution will be made by the Head of Environmental Health, or other suitably authorised officer, after receiving appropriate legal advice.

7.9.5 A record of the Caution will be kept on file for 3 years. If the offender commits a further offence, the Caution may influence a 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.

7.10 Prosecution

7.10.1 A prosecution will normally follow where the individual or organisation concerned has done one or more of the following:

- Deliberately, negligently 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 or the environment;
- Assaulted or obstructed an Officer in the course of their duties.

8.0 Determining whether a Prosecution or Simple Caution is viable and appropriate

8.1 We apply two 'tests' to determine whether a Prosecution or Caution is viable and appropriate. These tests are the 'evidential' and 'public interest' tests (see 8.3 and 8.4 below) and are included, along with additional guidance, in the Code for Crown Prosecutors, which we follow.

For more information about the 'Code for Crown Prosecutors' visit:

https://www.cps.gov.uk/publications/docs/code_2013_accessible_english.pdf

8.2 A Caution or Prosecution proceedings will only be progressed when the case has passed both the evidential test and the public interest test. The principles outlined apply equally to the other types of formal enforcement action that are available.

8.3 Prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. They must consider what the defence case may be, and how it is likely to affect the prospects of conviction. A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be. The Public Interest Test

- 8.4 In every case where there is sufficient evidence to justify a prosecution, prosecutors must go on to consider whether a prosecution is required in the public interest. It has never been the rule that a prosecution will automatically take place once the evidential stage is met. A prosecution will usually take place unless the prosecutor is satisfied that there are public interest factors tending against prosecution which outweigh those tending in favour. In some cases the prosecutor may be satisfied that the public interest can be properly served by offering the offender the opportunity to have the matter dealt with by an out-of-court disposal rather than bringing a prosecution.

Comment [DP5]: New paragraph

9.0 Who decides what enforcement action is taken

- 9.1 Decisions about the most appropriate enforcement action to be taken are based upon professional judgment, legal guidelines, statutory codes of practice and priorities set by the Council and/or Central Government.
- 9.2 Where appropriate, decisions about enforcement will involve consultation between and / or approval from:
- Investigating Officer(s);
 - Head of Environmental Health / Service Manager;
 - Council Solicitors;
- 9.3 The decision about enforcement will be documented and signed off by at least two officers.
- 9.4 Where enforcement decisions relate to licensing matters, these will be taken under delegated authority by Officers or by a Licensing Committee, as detailed in paragraphs 7.8.1 – 7.8.3 inclusive.

Comment [DP6]: Words added

10.0 Liaison with other regulatory bodies and enforcement agencies

- 10.1 Where appropriate, enforcement activities within Environmental Health will be coordinated with those of other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement.
- 10.2 Where an enforcement matter affects a wide geographical area beyond the Council's boundaries, or involves enforcement by one or more other local authorities or organisations; where appropriate all relevant authorities and organisations will be

informed of the matter as soon as possible and all enforcement activity coordinated with them.

10.3 The Environmental Health Division will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies, including:

- Government Agencies (for example, HSE, Environment Agency, UKVI (former Border Agency), HMRC, Benefits Agency);
- Police Forces;
- Fire Authorities;
- Statutory undertakers;
- Other Local Authorities and Public Health Agencies;

Comment [DP7]: Paragraph amended

11.0 Considering the views of those affected by offences

11.1 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, the consequences for those affected by the offence, and any views expressed by those affected will, where appropriate, be taken into account when making an enforcement decision. .

12.0 Protection of Human Rights

12.1 This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is had to the following:

- Right to a fair trial;
- Right to respect for private and family life, home and correspondence;

13.0 Review of the Enforcement Policy

This Policy will be reviewed every 5 years or following significant changes to relevant legislation or Government guidance.

Comment [DP8]: Replaces annual review