

Environmental Health & Trading Standards Division Enforcement Policy

(As endorsed by Housing, Environmental Services and
Community Safety Select Committee on 11 June 2002)

1. Introduction

- 1.1. This enforcement policy aims to ensure that enforcement action is consistent and conforms to the principles of the Cabinet Office Enforcement Concordat, the Attorney General's Guidelines; the Code for Crown Prosecutors and the Home Office Guidelines on Cautions.
- 1.2. It is Liverpool City Council's policy to strive to ensure the health, safety and well being of all residents, visitors and persons who work in the City. The Environmental Health and Trading Standards Division is committed to ensuring that legislation is enforced fairly and consistently.
- 1.3. Enforcement action, whether that is verbal warnings, written warnings, statutory notices, formal cautions or prosecution, is primarily based upon an assessment to risks to public health and the health, safety and welfare of the residents of the City. **Formal enforcement action will not be taken as a punitive response to minor technical contraventions of legislation.**
- 1.4. It is recognised that much compliance is achieved through educational activities. However the use of enforcement powers including prosecution is an important part in ensuring compliance.
- 1.5. The policy states the general principles that the service intends to follow in relation to enforcement and prosecution. It will be used as the basis for more detailed procedural guidance for staff. The Service will monitor the implementation and effectiveness of the Policy.

2. Principles of Enforcement

- 2.1. The City Council recognises the importance of maintaining consistency in the decision it makes concerning enforcement action. To assist in achieving this, **the City Council is signatory to the Cabinet Office Enforcement Concordat and guidance in that Concordat is to be considered and followed by Environmental Health and Trading Standards Service.**
- 2.2. The City Council wishes to ensure that enforcement decisions are consistent, balanced, fair, and relate to common standards that ensure the public is adequately protected.
- 2.3. The Principles that underpin this approach to regulation are, **proportionality** in the application statutory requirements and in securing compliance; **consistency** of approach; **transparency** about how we operate and what can be expected from us; and **targeting** of enforcement action.

3. Proportionality

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

- 3.2. Some duties are specific and mandatory - others require action so far as practicable. Deciding what is reasonably practicable to control risks involves the exercise of judgement by duty holders and discretion by enforcers.
- 3.3. The enforcement action taken by this Service will be proportionate to the risks posed to the persons and the environment and the seriousness of any breach of the law.
- 3.4. In some circumstances when duty holders and enforcing officers cannot reach agreement, final determinations, on what is reasonably practicable in particular circumstances, are made by the courts.

4. Consistency

- 4.1. Consistency means taking a similar approach in similar circumstances to achieve similar ends. It does not necessarily mean uniformity. This Service aims to achieve consistency in the advice given and in our response and decisions
- 4.2. The Council recognises that in practice consistency is not a simple matter. Enforcing officers are faced with many variables: the level of hazard, the attitude and competence of management, the previous history may vary between situations, which may otherwise appear similar. The decision on enforcement action is a matter of judgement and the enforcer must exercise discretion.
- 4.3. Officers must ensure that the particular needs of certain groups are taken into account to ensure that legislation is enforced fairly.
- 4.4. Where there are shared enforcement roles, officers shall advise the enforcement agency, when contraventions, for which that agency is responsible, are identified.

5. Transparency

- 5.1. Transparency means helping duty holders to understand what is expected of them and what they should expect from the enforcing authorities. It also means making clear to duty holders not only what they have to do but also, where this is relevant, what they don't. That means distinguishing between statutory requirements and advice or guidance about what is desirable but not compulsory.
- 5.2. The Service will continue to develop its procedures so that we make clear to our clients what action we are taking and why.

6. Targeting

- 6.1. 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 Service ensures that action is focused on the duty holders who are responsible for the risk and those who are best placed to control it.
- 6.2. The Service has systems for prioritising visits according to the risks posed by a duty holder's operations, which take account of hazards and the nature and extent of risks.
- 6.3. In assessing risk it is important to be mindful of role that can be played by adequate management systems. Properly managed hazards can give rise to lower risk. Conversely poorly managed low hazard activities have potential for greater risk.

7. Purpose and Methods of Enforcement

7.1. PROSECUTION

7.1.1. Prosecution will be considered where there is a blatant disregard the law, inability to achieve even basic minimum legal requirements, and where the public is put at risk.

7.1.2. Where there is sufficient evidence, the Authority will normally seek to prosecute:

- where the offence involves a flagrant breach of the law such that public health, safety or well being is or has been put at risk;
- where the incident or breach has significant consequence for the environment or has the potential for such consequences;
- 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;
- where the offence involves the failure to comply in full or in part with the requirements of a statutory notice;
- where there is a history of similar offences;
- carrying out processes without a relevant licence or authorisation;
- obstruction of an authorised officer;
- providing false or misleading information has been supplied to authorised officer;
- impersonating an authorised officer.

7.2. **INFORMAL ACTION**

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

7.2.2. Informal action will be considered when:

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

7.3. **FORMAL CAUTIONS**

7.3.1. Where there is a criminal offence, but the public interest does not require a prosecution, a formal caution may be one appropriate course of action. The purpose of a formal caution is:

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

7.3.2. It is important to remember that a caution is the written acceptance by an offender that they have committed an offence and can only be used where a prosecution could have been properly brought. It will be brought to the Court's attention if the offender is convicted of a subsequent offence.

7.3.3. Other enforcement processes may be used in conjunction with a caution, a warning or prosecution.

8. **Complaints**

8.1. Any complaints arising from this policy can be made through the Liverpool City Council "Have Your Say Procedure"