

Environment Directorate

**ENFORCEMENT AND
PROSECUTION POLICY**

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Reviewing Officer: R. Pennington

SALFORD CITY COUNCIL

ENVIRONMENT DIRECTORATE

ENFORCEMENT AND PROSECUTION POLICY

1.0 INTRODUCTION

- 1.1 The aim of the Regulatory Services Section of the Directorate is to protect and promote a fair, safe and healthy environment for the benefit of the community.
- 1.2 The Directorate's regulatory functions are extensive. They include abandoned vehicles, animal health and welfare, occupational health and safety, pollution control (air, land, water, noise), public health nuisances, food safety / hygiene and compositional standards, disease control, consumer safety, fair trading, weights and measures, licensing and environmental crime such as littering, dog fouling and fly tipping.
- 1.3 This policy sets out the general principles which the Directorate will follow in relation to enforcement and prosecution.
- 1.4 The primary function of Local Government enforcement work is to protect the public, the environment and groups such as consumers and employees. At the same time, a thriving local economy is promoted when these functions are carried out in an equitable, practical and consistent way. The (Department/Directorate) is committed to achieving these aims and maintaining a fair and safe trading environment.
- 1.5 This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulator's Compliance Code. In certain instances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.
- 1.6 The effectiveness of legislation in protecting consumers or sectors in society depends crucially on the compliance of those who are regulated. The Directorate regards prevention as better than cure and recognises that most businesses want to comply with the law. We will therefore, take care to help businesses and others to meet their obligations without unnecessary expense, whilst taking action, including prosecution, against those who flout the law or act irresponsibly.

2.0 PURPOSE AND METHODS OF ENFORCEMENT

- 2.1 The purpose of enforcement is to ensure that preventative or remedial action is taken to secure compliance with legal requirements. Our preferred method of ensuring compliance is by working together with those who are regulated. Although the Directorate expects full voluntary compliance with legal requirements, it will not hesitate to use its enforcement powers where necessary.

ENFORCEMENT OPTIONS

2.2 There are a variety of enforcement actions available to the Directorate-

Advice / Education	The provision of advice on how to comply with the law, including training.
Local Business Partnership	Working with the business community to help them understand and comply with the law.
Warning Letter	A warning that a recurrence or continuation of an infringement may result in legal action.
Statutory Notice	A wide range of legal powers exist which can require persons to take remedial action or cease a particular course of conduct. In certain extreme cases we have the power to close businesses and / or halt processes. Failure to comply with a statutory notice will often result in prosecution. Statutory notices are served in circumstances where there has been a continuing failure to comply with legal requirements.
Official Caution	A specific form of warning where an individual admits committing an offence. These are used in cases where a prosecution could be brought but there are strong mitigating factors. The Directorate will have full regard to Home Office Guidelines when administering official cautions.
Fixed Penalty Notice	A notice offering a person who has committed certain types of offence, the opportunity of discharging their liability to conviction by payment of a penalty.
Prosecution	The prosecution of cases in the criminal courts. Depending on the circumstances we do not always warn or issue a statutory notice before taking a prosecution.
Enforcement Order	A court order preventing businesses from engaging in activities which harm the collective interests of consumers.

In considering the most appropriate course of type of action to take, we will have regard to a number of factors including:

- a) the seriousness of the alleged offence or situation.
- b) the Previous history of the individual or company.
- c) the consequences of non-compliance.

- d) the confidence in management.
- e) the Public interest .
- f) the effectiveness of various enforcement options.
- g) the availability of other appropriate courses of action (i.e. product recalls, voluntary surrender of property).

In general, a Prosecution or Formal Enforcement Action will be justified where:

- a) the offender has been engaged in a course of conduct that is detrimental to interests of the public, employees, animals or the environment; or
- b) the offender has been engaged in practices that present a risk to the health and safety of the public, employees or animals; or
- c) the offender has been engaged in practices where public policy demands that a prosecution or formal enforcement action would be appropriate; or
- d) The offender has been engaged in the intimidation or obstruction of officers;

3.0 PRINCIPLES OF ENFORCEMENT

3.1 The Directorate believes in firm but fair regulation. Underlying this are the principles of:- proportionality in the application of the law and in securing compliance, consistency of approach, transparency in how the Directorate operates and what those who are regulated can expect from the Directorate and targeting of enforcement action.

3.2 Proportionality

The enforcement action taken by the Directorate) will be proportionate to the risks posed and to the seriousness of the breach. As far as the law allows, we will take into account the circumstances of the case and the attitude of the individual when considering what action to take.

3.3 Consistency

The Directorate aims to carry out its duties in a fair, equitable and consistent manner. Consistency does not mean simple uniformity. Officers will need to exercise their professional judgement and discretion according to the circumstances of each individual case.

Arrangements are in place to promote consistency in the interpretation and enforcement of legislation through liaison with other Local Authorities throughout Greater Manchester and the North West Region. We subscribe to the Local Authority Co-ordinating Body on Regulatory Services (LACORS) and the Health and Safety Executive / Local Authority Enforcement Liaison Committee (HELA) Lead Authority Principle. We also have regard to statutory codes of practice, the Health and Safety Executive's Enforcement Management Model and to advice provided LACORS, HELA and from Central Government Departments.

3.4 **Transparency**

Transparency is important in maintaining public confidence in the Directorate's ability to regulate. It means helping those regulated and others to understand what is expected of them and what they should expect from the Directorate. It also means making it clear why an officer intends to or has taken enforcement action. The Directorate trains its staff and has procedures to ensure that:-

- Where remedial action is required it is clearly explained (in writing in most cases) why the action is necessary, when it must be carried out and that a clear distinction is made between best practice and legal requirements.
- Opportunity is provided to discuss what is required to comply with the law before formal enforcement action is taken unless urgent action is required e.g. to protect the environment, to remove risks to health and safety or to prevent evidence being destroyed.
- Where urgent action is required, a written explanation of the reason is provided as soon as practicable after the event.
- Written explanation is given of any rights of appeals against formal enforcement action at the time the action is taken.
- We maintain a Public Register of information as required under Food Safety, Health & Safety and Environmental Protection legislation.

The Directorate has access to translation and interpretation services when necessary to ensure there is effective communication with those whose first language is not English and/or have a social or hearing impairment

3.5 **Targeting**

Targeting means making sure that regulatory effort is directed primarily towards those whose activities are likely to give rise to the most serious breaches of legislation.

The Directorate has systems for prioritising regulatory effort. They include:-

- responding to complaints from the community about regulated activities
- the inspection of premises according to the risks posed
- the gathering and acting on intelligence about illegal activities.

Where appropriate, positive feedback will be given to those who are regulated and where applicable, a change in risk rating may occur as a result of their performance.

3.6 **Human Rights**

In carrying out its duties, the Directorate will respect the rights and freedoms guaranteed to individuals under the Human Rights Act 1988.

3.7 **Enforcement in Council Run Premises**

Certain premises operated by the City Council will be subject to enforcement visits which are relevant to the particular field of operation. These visits will be carried out in accordance with the appropriate legislation and relevant Codes of Practice. Any serious or significant contraventions which are detected during the course of such visits will be notified in writing to the appropriate Assistant Director and copies sent to the service's Strategic Director and the Chief Executive without undue delay.

3.8 **Avoiding Potential Conflicts of Interest**

The Directorate is fully aware of the potential conflicts of interest that may arise in an enforcement situation either through the operation of Council run services, the contracting in of enforcement services or responsibilities under the home or originating authority principle. The Directorate will therefore discharge its enforcement duties impartially in accordance with the principles of this policy.

3.9 **Out of Hours Service**

The Directorate provides a service to deal with emergency situations which may occur outside of normal office hours by having an officer on stand-by duty. In addition special inspection programmes are arranged to visit businesses who operate at times which are outside normal office hours.

4.0 **PROSECUTION**

- 4.1 The Attorney General's guidelines on criteria for prosecution endorsed the principle that suspected criminal offences should not automatically be the subject of prosecution. The decision to prosecute an individual is a serious step. Fair and effective prosecution is essential to the maintenance of law and order. Even in a small case, a prosecution has serious implications for those involved - the victim, every witness and the defendant. The purpose of this policy is to ensure the Directorate makes fair and consistent decisions about prosecutions. We will have full regard to the criteria set out in the Code for Crown Prosecutors and will only bring a prosecution if-
- (a) there is a realistic prospect of a conviction against an individual and
 - (b) a prosecution would be in the public interest.

PUBLIC INTEREST FACTORS IN FAVOUR OF PROSECUTION

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 offence was committed against an officer of the Directorate - e.g. obstruction
- the defendant was in a position of authority or trust
- the evidence shows the defendant was a ringleader or organiser of the offence
- there is evidence that the offence was pre-meditated or due to the defendant's neglect or failure to take all reasonable precautions and exercise all due diligence to avoid committing the offence
- the defendant has failed to act on advice, guidance or a warning which had been given on a previous occasion
- the victim of the offence was vulnerable

- there is evidence of corruption
- the defendant's previous convictions or cautions are relevant to the present offence
- the defendant is alleged to have committed the offence whilst under an order of the court
- there are grounds for believing that the offence is likely to be continued or repeated, for example by a history of recurring conduct, or the offence, although not serious in itself, is widespread in the area where it was committed.
- A prosecution would have a significant positive impact on maintaining community confidence.

9.0 **SOME PUBLIC INTEREST FACTORS AGAINST PROSECUTION**

A prosecution is less likely to be needed if:-

- the court is likely to impose a very small or nominal penalty
- the offence was committed as a result of a genuine mistake or misunderstanding and the offender is prepared to put right any loss (these factors must be balanced against the seriousness of the offence and defendants must not avoid prosecution simply because they can pay compensation)
- the defendant is willing to prevent a recurrence of the offence
- the defendant is able to establish a statutory defence
- 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 trial, unless:-
 - the offence is serious
 - the delay has in part been caused by the defendants
 - the offence has recently come to light
 - the complexity of the offence has meant there has been a long investigation
 - a prosecution is likely to have a very 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, 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
- other courses of action such as issuing a Simple Caution in accordance with Home Office guidelines or an improvement notice or imposing a prohibition, would be more appropriate or effective.

9.1 **The Relationship between the Victim and the Public Interest**

The Directorate prosecutes cases on behalf of the public at large and not just in the interests of any particular individual. However, when considering the public interest test, the Directorate will always take into account the consequences for the victim of the decision, whether or not to prosecute and any views expressed by the victim or the victims' family.

10.0 **WORKING WITH OTHER REGULATORS**

- 10.1 Where the Directorate and another enforcement body both have the power to prosecute, the Directorate will liaise with that other body to ensure effective co-

ordination, to avoid inconsistencies and to ensure that any proceedings instituted are for the most appropriate offence.

<http://intranet.salford.gov.uk/enforcement-prosecution-policy.doc> (amended October 2007)