

**RECORD OF DECISION TAKEN UNDER SCHEME
OF DELEGATION BY MEMBER OF SENIOR
MANAGEMENT TEAM IN CONSULTATION WITH
PORTFOLIO HOLDER/COMMITTEE CHAIRMAN**



ELT Member:	Jennifer Mullin
Service Group:	Environmental Health
Portfolio Holder/Chairman:	Councillor Susan Jones
Portfolio/Committee:	Environment

Subject: Environmental Health Enforcement Policy

Decision: To adopt the updated Enforcement Policy.

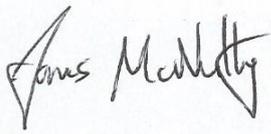
Details and Reasoning: The Environmental Health Departments overarching Enforcement Policy was last reviewed at the end of 2015 and is overdue a review. This has now been undertaken and a reviewed Enforcement Policy has been produced. There are no fundamental changes to the Enforcement Policy.

Wider Implications (including Financial, Legal, Equality and Risk):

Financial – None
 Legal – Without an adopted and current enforcement policy the Council leaves itself open to a legal challenge in the event of any action taken by the Environmental Health Department.
 Equality – None
 Risk -.See Legal Implications
 Air Quality - None

Report attached? Yes
Exempt from publication? No
If exempt, give reason(s):

Signed:



Date: 31/07/20

Financial Management



Date: 29/7/20

Legal Services



Date: 28/07/20

SMT Member

Signed electronically by
Cllr Sue Jones

Date: 05/08/20

Portfolio Holder/
Chairman

Publication Date (DST use): CA 05/08/2020

THIS DECISION WILL COME INTO FORCE AND MAY BE IMPLEMENTED FIVE WORKING DAYS AFTER ITS PUBLICATION DATE, SUBJECT TO BEING CALLED IN IN ACCORDANCE WITH THE COUNCIL'S CONSTITUTION

SOUTH RIBBLE BOROUGH COUNCIL

Environmental Health Enforcement Policy

March 2020



Introduction

The primary aim of Environmental Health is to protect public health. In order to achieve this aim South Ribble Borough Council's Environmental Health Team carries out a wide range of duties. The team ensures compliance with the legislative framework within which Environmental Health operates so that consumers, businesses, employees, individuals and the environment are protected.

Fair, proportionate, targeted and effective enforcement is essential to protecting the health, safety and economic interests of all concerned, and there is a range of tools available for the Service to achieve this. This policy explains the approach adopted by the Council when carrying out its enforcement duties and is designed to ensure efficient compliance with legislation whilst, at the same time, minimising the burden on businesses, individuals and organisations. Our primary enforcement objective is to achieve regulatory compliance. We recognise that prevention is better than cure, but where it becomes necessary to take formal action, we will do so.

There is a wide range of tools available to us, with prosecution and / or revocation of licence being the most serious. We will always choose an enforcement method that is relevant and proportionate to the offence or contravention. All our 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.

We will always choose an enforcement method that is relevant and proportionate to the offence or contravention. The 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 and other Civil Sanctions;
- Refusal / suspension / revocation of a licence or consent;
- Simple Caution;
- Prosecution;
- Restorative Justice;
- Proceeds of Crime Applications.

Scope of Policy

This document covers all enforcement activity carried out by the Environmental Health team of South Ribble Borough Council, including Private Sector Housing, , Food Hygiene, Health and Safety, Environmental Protection, Community Safety and Public Health. 'Enforcement' includes all actions taken by officers aimed at ensuring legal compliance. Specific enforcement policies for individual work streams may be produced and this document will sit as an overarching policy.

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. We are committed to providing an effective service with officers carrying out their duties in an equitable, proportional, practical and consistent manner.

General Principles

Our principles are informed by South Ribble Borough Council's Corporate Prosecutions policy, The Regulators' Compliance Code, the Enforcement Concordat and the Guidance from Local Better Regulation Office.

The purpose of enforcement is to ensure that preventative or remedial action is taken to achieve compliance with legislation. Although the Council expects full voluntary compliance with legislative requirements and licence provisions, it will not hesitate to use its enforcement powers where necessary. A balance of techniques and approaches, including education, advice and enforcement, will be used in order to ensure the safety and well-being of the public and of the environment.

Prevention is regarded as better than cure and assisting compliance is every bit as important as detecting noncompliance. The targeting of resources where they are most effective and at areas of highest risk is considered essential in providing the public with an effective service. We will always use education and encouragement to achieve compliance where it is possible and appropriate, to do so.

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. 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.

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. Such decisions will not be affected by improper or undue pressure from any source.

The Environmental Health Team 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 enforcement decisions. 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.

Enforcement Concordat

South Ribble Borough Council has formally adopted the central and local government Concordat on Good Enforcement. This sets out principles and procedures for enforcement of regulations, based on best practice.

The principles underlying the Concordat include proportionality in applying the law and securing compliance; consistency of approach; targeting of enforcement action; transparency and openness about methods of operation and what those regulated may expect; helpfulness in the way enforcement responsibilities are approached as well as accountability for actions taken.

The Council will demonstrate its commitment to the principles of the

Concordat by:

- taking all enforcement decisions in a proportionate manner
- striving for high standards of consistency
- ensuring that all enforcement staff are helpful, courteous and efficient
- measuring its performance against agreed standards

Risk based enforcement

We will ensure that our resources are targeted where they will be most effective. We will ensure that intelligence and risk assessment inform all aspects of our approach to business regulatory activity, including:

- Data collection and other information requirements;
- Inspection programmes;
- Advice and support programmes;
- Enforcement activity and sanctions.

We will normally use the appropriate Government risk assessment scheme to inform any inspection programme. In the absence of a government scheme, when determining risk we will consider:

- Compliance history and potential future risks.
- The existence of effective management systems.
- Evidence of recognised external accreditation.
- Management competence and willingness to comply.

We will also use intelligence to direct inspection based projects or business where there are known issues. Obviously, a complaint may also trigger a visit or inspection, if that is the most appropriate response.

Advice and Guidance

We will provide general information, advice and guidance to make it easier for businesses to understand and meet their obligations. This will be provided promptly, in clear and concise language, using a range of appropriate formats and media. Information will cover all legal requirements relating to our regulatory activities, as well as changes to legal requirements. Where changes are of great significance, we will look at the best ways of informing businesses of the changes e.g. through newsletters, mail-shots or seminars.

We seek to provide proportionate advice, the content of which will help achieve compliance but impose the minimum burden required on the business concerned.

Where a business identifies a problem and seeks advice to remedy the situation, it will not normally trigger enforcement action. Where appropriate we will seek to support the remedial action to prevent future problems, however, we reserve the right to take enforcement action where applicable, particularly to protect public health.

Inspection of Businesses

We will ensure inspections and other visits to businesses only occur in accordance with a risk assessment methodology, except where visits are requested by businesses, following receipt of complaints, or where we act on relevant intelligence. We will focus our efforts on businesses where intelligence and risk assessment shows there is a higher likelihood of non-compliance or which pose a more serious risk to regulatory outcomes. Some processes by their nature present a greater risk to health or the environment, or due to their complexity, may make it more difficult to ensure compliance. These are the areas where we will focus our inspection resources.

When we visit or carry out inspections, we will give feedback to businesses to encourage and reinforce good practice. We will also share information about good practice amongst businesses, and with other regulators.

Where we and another regulator have a shared interest in a business we will work together to rationalise our activities to minimise the burden on the business, providing this is of benefit to the business and does not harm the standard of enforcement for either regulator.

Enforcement Action

When considering formal enforcement action, we will, when appropriate, discuss the circumstances with those suspected of a breach. We will take any comments made into account when deciding on the best approach (unless immediate action is required to prevent or respond to a serious breach or where to do so would be likely to defeat the purpose of the proposed enforcement action).

We will ensure that clear reasons for any formal enforcement action are given to the person or entity at the time the action is taken. These reasons will be confirmed in writing at the earliest opportunity. 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 immediate action to close a food business, or prevent the use of a process / piece of machinery). Complaints and relevant appeals procedures for redress will also be explained at the same time.

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.

Local Authority work on Health & Safety enforcement is now directed by the Health & Safety Executive. Our work must therefore be carried out in accordance with the “National Local Authority Enforcement Code” and supplementary guidance. It must also take into account the requirements of LAC 67/2 (Targeting local authority interventions) and LAC 22/13 (Incident selection criteria guidance).

Deciding what enforcement action is appropriate

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

- The seriousness of compliance failure;
- The business’ and individuals past performance and its current practice;
- In the case of new businesses, an assessment of the operator’s willingness to undertake the work identified by the Officer;
- The risks being controlled;
- Legal, official or professional guidance;
- Acting in the interest of Public Health.

A hierarchical approach will be adopted in choosing the most appropriate enforcement sanctions which will clearly vary with circumstances. Generally, informal action will be considered first with more formal action being considered if the breach is serious or where informal warnings have been ignored.

The Service recognises that where a business has entered into a Primary Authority Agreement, the primary authority may provide compliance advice and support and the Service will take such advice into account when considering the most appropriate enforcement action for it to take. It may discuss any need for compliance advice and support with the primary authority.

There are a large number of potential enforcement options. The level of the action taken varies from no action through to proceedings in Court. Examples of the main types of action that can be considered, if specifically permitted by legislation, are shown below:

No Action

There will be circumstances where a contravention may not warrant action, or it may be inappropriate. Many minor contraventions can be dealt with via advice and/or assistance.

Informal Action and Advice

For certain minor breaches of the law we will 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. Where the advice required is detailed, or there are potentially serious implications from the failure, the advice will be provided in writing. Failure to comply could result in an escalation of enforcement action.

Wherever possible we will advise offenders about 'good practice', but we will clearly distinguish between what they *must do* to comply with the law and what is recommended best practice.

Fixed Penalty Notices

Certain offences are subject to fixed penalty notices where prescribed by legislation. These notices are recognised as a low-level enforcement tool and avoid the defendant obtaining a criminal record. Where legislation permits an offence to be dealt with by way of a Fixed Penalty Notice (FPN), we may choose to administer a FPN on a first occasion, without issuing a warning. They will be used in appropriate circumstances to give a fast and measured response to the situation.

Payment of a fixed penalty does not provide immunity from prosecution in respect of similar or recurrent breaches. If a fixed penalty is not paid the Service will commence criminal proceedings or take other enforcement action in respect of the breach.

Fixed penalty notices will not be issued to persons under the age of 16 years.

Statutory Notices

Officers have the power under various legislation to issue notices that:

- Prohibit the sale or distribution of food where relevant provisions may have been breached;
- Require a business or individual to take specific actions to remedy an identified problem;
- Require a business or individual to desist from particular activities that may not comply with legal requirements;
- Require any business or individual to take action to ameliorate or stop nuisances or Anti-Social behaviour being caused by their actions.

Notices may require immediate action where, for example, there are risks to public health or safety, or an immediate risk of environmental damage or serious nuisance. In other

circumstances, a reasonable amount of time will be given, depending on the circumstances, to rectify the problem.

Certain types of notice allow works to be carried out in default. This means that if a notice is not complied with (a breach of the notice) we may carry out any necessary works to satisfy the requirements of the notice ourselves. Where the law allows, we may then charge the person/business served with the notice for any cost we incur in carrying out the work.

In certain limited circumstances e.g. under the provisions of food safety legislation, where an authorised officer is satisfied that there is an imminent risk of injury to health from the condition of the premises, the officer may serve notice to close the premises, after consulting a Manager. This would be followed by an application to a Magistrates Court to confirm the closure.

Failure to comply with a statutory notice can be a criminal offence. All notices issued will contain details of any appeals process that may be available to the recipient.

Seizure of Goods/Equipment

The right to privacy and respect for personal property are key principles of the Human Rights Act 1998. Powers of entry, search and seizure should be fully and clearly justified before use because they may significantly interfere with the occupier's privacy. Officers should consider if the necessary objectives can be met by less intrusive means.

In all cases authorised officers should:

- exercise their powers courteously and with respect for persons and property; and
- in circumstances where a warrant has been obtained and is appropriate, only use reasonable force when this is considered necessary and proportionate to the circumstances.

Works in default

Works in default may be carried out if:

- There is no prospect of the person responsible carrying out the work e.g. the person is absent;
- There is an imminent risk to public or environmental health;
- A prosecution is not appropriate;
- A prosecution has been brought and works have still not been carried out; and
- It is appropriate to get the problem resolved quickly.

The Council will seek to recover all the costs incurred including officer time.

Injunctive Actions and other Civil Sanctions

In some circumstances the Service may seek a direction from the court (in the form of an order or an injunction) that a breach is rectified and/or prevented from recurring. The court may also direct that specified activities be suspended until the breach has been rectified and/or safeguards have been put in place to prevent future breaches. The use of enforcement powers are not to assist or support civil claims for redress or compensation by members of the public, although it can use civil powers to ensure compliance.

The Use of Simple Cautions

In appropriate circumstances, where a prosecution would otherwise be justified, a Simple Caution may be administered with the consent of the offender. Where the public interest justifies it, we will consider offering a Formal (Simple) Caution (or Reprimand/ Final Written Warning if the offender is under 18). In offering a Caution, we will take account of the Home Office Guidelines in relation to the cautioning of offenders and the Code for Crown Prosecutors. Where the offender is under 18 and a formal approach is being considered, appropriate bodies such as the Youth Offending Team will be consulted.

A Simple Caution is an admission of guilt, but is not a form of sentence, nor is it a criminal conviction. A caution will remain on record for a period of 3 years and may be cited in Court should a further offence be committed and prosecuted during that time. For a Simple Caution to be issued a number of criteria must be satisfied:

- (a) Sufficient evidence must be available to prove the case.
- (b) The offender must admit the offence.
- (c) It must be in the public interest to use a Simple Caution.
- (d) The offender must be 18 years or over.

Where a simple caution is offered and declined the Service will consider prosecution. In fact, any such failure will be a material consideration when deciding whether the offender should then be prosecuted for that offence. The final decision on whether or not to issue a Simple Caution will be made by the Director, or other suitably authorised officer, after receiving appropriate legal advice.

If during the time the Simple 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.

Commencement of Legal Proceedings

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

Once an officer has completed his/her enquiries, they will submit a case report to a Manager authorised to institute legal proceedings, independent of the investigation, who will decide, using the criteria below, the most appropriate course of action.

Where the law has been broken, there is a range of enforcement options available to seek compliance with the law. Under normal circumstances, a process of escalation will be used until either compliance is reached or there is no option other than to instigate proceedings. Exceptions would be where there is a serious risk to public safety or the environment, or the offences have been committed deliberately or negligently or involve deception. Each case is unique and will be considered on its own facts and merits.

The officer authorised to institute legal proceedings will take into consideration the requirements of the Code for Crown Prosecutors and other relevant codes such as the

Enforcement Management Model before deciding whether or not to authorise the institution of legal proceedings.

Firstly this officer will have to be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each defendant on each charge (i.e. 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). To this end, the officer authorised to institute legal proceedings will look at all the available evidence, reliability of witnesses, supporting documentation and any other matters relating to the investigation. They must consider what the defence case may be and how it is likely to affect the prospects of conviction . Only when this evidential test has been satisfied will the public interest to proceed with the prosecution be considered.

In deciding whether a prosecution will serve the public interest, this officer will balance factors for and against the prosecution carefully, fairly and impartially. Some factors may increase the justification to prosecute whereas others may militate against. Below are some of the matters to be taken into consideration for and against criminal proceedings. This is not an exhaustive list and, as such, each case is considered strictly on its own individual merits:

Factors in favour of prosecution

- The offender was in a position of control within the business.
- The offender acted dishonestly, wilfully, premeditatedly or negligently.
- The product or service was aimed at a vulnerable group or person.
- The product or service has caused or had the potential to cause physical or mental injury or suffering, significant harm or loss.
- The offender has received advice or a warning concerning the circumstances of the offence or similar matters.
- The offender has failed to comply with the requirements of a formal notice.
- The offender has received previous formal warning or a caution from an enforcement officer.
- The offender has previous convictions that are relevant.
- The offence, though not serious in itself, is widespread in the area where it was committed.
- A conviction is likely to result in a significant sentence.
- There are grounds to believe that the offence is likely to be continued or repeated, for example by a history of recurring conduct.
- The outcome of a prosecution might serve an important, informative purpose or establish a legal precedent.

Factors which might mitigate against the need for a prosecution

- The offence was minor in nature and as a result of a genuine mistake or misunderstanding, which did not involve significant negligence.
- The offender was at the time of the offence suffering from significant mental or physical ill health, which contributed to the commission of the offence, and the offence was neither serious nor likely to be repeated.

- A prosecution is likely to have an adverse effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence and the views of the victim about the effect of a prosecution on his or her physical or mental health.
- The loss or harm could be described as minor and was as a result of a single incident, particularly if it was caused by a failure of judgment.
- The offender put right the loss or harm caused prior to the intervention of the Environmental Health Service.
- Prior to the Service's intervention, the offender had introduced adequate steps to prevent further similar offences.
- The defendant was a youth at the time of the offence.

Environmental Health team will always seek to recover the full costs of investigation and Court proceedings, together with compensation in appropriate cases.

Restorative Justice

In some cases it may be more effective to promote behavioural change by allowing offenders to carry out relevant restorative work where this is available. This could include taking part in an organised litter pick rather than having a Community Protection Notice attending a smoking cessation course when a smoking fixed penalty could have been imposed.

Proceeds of Crime Application

Applications under the Proceeds of Crime Act 2002 may be made by the Service, to confiscate the assets of an offender in certain cases. The purpose is to recover the financial benefit the offender has received from their criminal conduct. Proceedings in such cases are usually made after a successful prosecution, but are conducted according to the civil standard of proof namely 'on the balance of probabilities'.

Shared Services Lead- Legal

The Manager involved in making the more serious decisions will also have regard to advice from the Shared Services Lead – Legal, who in any event, is the officer authorised to issue summonses.

Liaison with other regulatory bodies and enforcement agencies

Where appropriate, enforcement activities within the Environmental Health team activities will be coordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement. The Service will respect advice that has been provided by other regulators and enforcement agencies.

Where an enforcement matter affects a wide geographical area beyond the Service'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.

The Environmental Health team will share intelligence about compliance and risk relating to wider regulatory matters with other regulatory bodies and enforcement agencies, and examples include:

- Government Agencies
- Trading Standards

- Police Forces
- Fire Authorities
- Other Statutory Bodies
- Local Authorities

Protection of Human Rights

The Council acknowledges and endorses the rights of individuals and will ensure that all enforcement action is in accordance with Police and Criminal Evidence Act 1984, Human Rights Act 1998, Regulation of Investigatory Powers Act 2000, The criminal Procedures and Investigatory Act 1996, Equality act 2010 and any other relevant legislation. .

Departure from Policy

All authorised officers when making enforcement decisions will abide by this policy. This 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.

Any departure from policy will only be accepted in exceptional circumstance capable of justification and only after full consideration and authorisation by the Public Health Manager or a designated alternative officer.

Review

This Policy will be reviewed every 3 years or following significant changes to relevant legislation or Government guidance. The policy will also be reviewed if comments are received as the service wants to hear the views of those who we regulate. Comments should be sent to:

South Ribble Borough Council, Environmental Health, Civic Centre, West Paddock, Leyland, PR25 1DH.