

NORTH WILTSHIRE DISTRICT COUNCIL

ENVIRONMENTAL HEALTH ENFORCEMENT POLICY

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ENVIRONMENTAL SERVICES

ENVIRONMENTAL HEALTH – ENFORCEMENT POLICY

1. Introduction

- 1.1. The Government has identified that Local Authorities need to have documented procedures and policies in place to ensure consistency and conformity of enforcement. The policy is intended to meet this need by acting as a focus for all enforcement actions carried out by Environmental Services under the delegated authority granted by the council. This document is also intended to cover some of the requirements of BV166, the Best Value Performance Indicators for Enforcement Best Practice.
- 1.2. The policy covers all aspects of the service and seeks to assist officers in the decision making process when dealing with enforcement issues. It sets out a consistent approach regarding the use of formal and informal mechanisms at their disposal to achieve effective and efficient compliance with relevant statutes. The policy has come about as a result of discussions with colleagues in the other authorities in Wiltshire and in order to move towards consistency, this format is also being followed by other councils in Wiltshire.
- 1.3. This policy covers all Environmental Health activities, including housing, food safety, health and safety, pollution and all licensing matters. Regard should also be had to specific policies in relation to The Food Safety Act 1990, The Licensing Act 2004 and The Gambling Act 2005. These policies have previously been approved by the relevant committees of North Wiltshire District Council and have now been updated to include the provisions of the Enforcement Concordat and the Code for Crown Prosecutors to which the council has signed up.

2. Aim of the Policy

- 2.1. The aim of the policy is:-
 - i To ensure that a consistent approach is maintained in deciding whether to use informal or formal means of enforcement; to achieve consistent, fair, effective and efficient compliance with the relevant legislation; which is proportional to the risk to public health or contravention whilst minimising the burden to the public, local business and the authority.
 - ii To provide officers with guidelines to assist in the decision process when dealing with enforcement issues; to ensure that enforcement action is taken in line with relevant guidance and Codes of Practice.

- iii To set out criteria to determine the competency of officers for authorisation purposes.
- iv To maintain a level of enforcement activity according to the standards of service laid down in the Environmental Services Business Plan for the Environmental Health Team.
- v To ensure that enforcement is informed by the principles of proportionality in applying the law and securing compliance; consistency of approach, targeting of enforcement action and transparency.

3. Enforcement Policy

- 3.1. The Community and Environment Business Plan identifies the aims and objectives against which the Environmental Health service can be measured. This document lays down the performance criteria to which the service will seek to perform. The criteria within this document are subject to approval and adoption by the relevant Committee.
- 3.2. All officers will follow this enforcement policy. Any departure from the policy must be exceptional, capable of justification and be approved by the relevant Principal Environmental Health Officer in consultation with the Environmental Health Team Leader. Where the issue has potentially significant ramifications the Strategic Manager must be consulted where possible and must be informed of all formal action taken. The Environmental Health Team leader and Principal Environmental Health Officers will undertake periodic monitoring to ensure that the Enforcement Policy is complied with.
- 3.3. In all cases, the investigation of complaints, inspections and gathering of evidence in relation to contraventions of legislation, will be carried out in accordance with the relevant PACE Codes of Practice. If it is deemed necessary that any covert surveillance is required, then this shall be carried out in accordance with Council procedures under the Regulation of Investigatory Powers Act 2000.
- 3.4. In some premises there is a shared enforcement role, for example with the Police, Wiltshire County Council Trading Standards department, or the Health and Safety Executive. Where relevant, officers will liaise with colleagues in the appropriate organisation when dealing with issues relating to such premises.
- 3.5. All officers must have regard to the following North Wiltshire District Council policy and legislation at all times in undertaking their duties, and in the investigation of complaints, inspections and gathering of evidence in relation to contraventions of legislation.
 - i Equality and Diversity Policy
 - ii Human Rights Act 1998
 - iii Data Protection Act 1998
 - iv Freedom of Information Act 2000

In order to comply with this it may be necessary to make special provision to assist those who have language, cultural or disability needs. For example, officers may need to carry out inspections outside of normal office hours, or may

need to provide information to businesses or the public who do not have English as a first language, or who have cultural or disability needs.

- 3.6 The Environmental Health Team Leader will organise for Customer Surveys to be carried out to receive feedback on the carrying out of enforcement duties by Officers within the Team. He shall consider whether any service changes may be required as a result of the feedback.
- 3.7 The enforcement policy will be publicised. A copy is placed on the NWDC website. A summary of the policy is available in leaflet form and is sent out with each letter. The summary is also printed on the reverse of 'Report of Inspection' forms.

4. Qualifications and Authorisations of Officers

- 4.1. At the meeting of Full Council on 10 July 2001 powers under Environmental Health legislation were delegated to the Environmental Health Team Leader.
- 4.2. Delegated powers will not always be used and in certain circumstances reports will be presented to Committee for decision. Actions taken under delegated powers will be reported on a monthly basis and the information made available to all Members.
- 4.3. No officer shall carry out enforcement duties unless suitably trained and experienced and authorised in writing by the Environmental Health Team Leader. The Environmental Health Team Leader will satisfy himself that officers authorised for specific powers meet the standards of competence outlined in any appropriate guidance. All officers who carry out enforcement duties will be trained in procedures to be used under the Police and Criminal Evidence Act and in dealing with conflict situations.
- 4.4. All officers undertaking out of hours duty are deemed to be competent to carry out the full range of Environmental Health duties. Where an officer on standby requires guidance they should seek the advice of a senior officer.
- 4.5. Improvement Notices and Prohibition Notices may only be served by officers who are suitably qualified and specifically authorised for this purpose by the Authority, in accordance with the appropriate guidance.
- 4.6. A commitment to training will be provided for all enforcement officers as and when required to meet changes in legislation and enforcement procedures. This will be assessed during the annual Staff Appraisal. As part of this process, records of training and evidence of Continuing Professional Development will be maintained by the officer and centrally by Human Resources . It is the responsibility of individual officers to notify HR of any relevant training which is received.

5. Enforcement Options

- 5.1. All officers will follow the documented Team procedures and refer to any relevant guidance in the Statutory Codes of Practice or guidance notes issued under the relevant statutes or by a recognised body and which are accepted as providing a national standard. The aim of this approach is to ensure that enforcement decisions are always consistent, balanced, fair and relate to common standards to ensure the public is adequately protected.
- 5.2. It is considered that there are essentially four steps of enforcement relevant to environmental health. These steps provide the framework which officers employed by North Wiltshire District Council should follow when carrying out their duties. These steps are described broadly as; - Prevention, Informal Action, Formal Action and Prosecution.
- 5.3. Officers will try to ensure that businesses do not unnecessarily expose themselves to the possibility of formal action through lack of information or understanding. Officers will target the advice and information issued to specific businesses and premises for which particular statutes apply and endeavour to ensure from their contact with these people that they understand the requirements placed upon them. The objective will be to secure a positive relationship between enforcer and those whose activities are subject to regulation.
- 5.4. The action taken by the officer should be proportionate to the risk to public health and safety arising from any contravention identified. In deciding the enforcement action to be taken the officer should have regard to:-
 - i The seriousness of the offence.
 - ii The business' past history of compliance.
 - iii The confidence in the management i.e. their willingness to rectify or improve conditions
 - iv The consequences of non-compliance.
 - v The likely effectiveness of various enforcement options.
 - vi The risk to public health, safety and welfare.
 - vii Any significant local factor or circumstance.
 - viii The evidence available.
- 5.5 In addition to the four steps described, Penalty Notices as a means of enforcement may be considered for dog fouling offences. Specific guidance notes relate to this activity.

6. Preventative Action

- 6.1. Officers will seek to raise awareness about the need to comply with legislation using an educational approach to promote good practice on environmental and safety issues. This will not be considered as an option where any significant breach of legislation is identified.
- 6.2. Promotion will be carried out by contact with local industries and various business groups and individuals who are complained of by members of the public. The dissemination of information will be by way of leaflets, publications,

recognised courses, seminars and word of mouth during informal contact or inspection and investigative visits.

- 6.3. The objective is to achieve a climate of legislative awareness and co-operation from possible offenders but is not for use where contravention of relevant legislation has already been identified.

7. Informal Action

- 7.1. The objective of informal action will be to secure compliance where breaches of statutory requirements or compliance with regulations or statutes that the Environmental Health Team is delegated to take action under. In circumstances where the council is required to enforce legislation by statute, or the act or omission is considered serious or presents a significant risk to public health or safety then the officer may proceed to the Formal Action stage immediately
- 7.2. Informal action includes offering advice, verbal warnings and requests for action, the use of informal letters and inspection reports. Officers will ensure that appropriate records of actions taken shall be put on the Environmental Health M3 system and where necessary in the property file.
- 7.3. Informal action should be considered according to the following circumstances:-
- i The act or omission is not serious enough to warrant formal action and does not pose a significant risk to public health, safety or welfare.
 - ii The individual or company's past history are such that it can be reasonably expected that the informal action will achieve compliance.
 - iii The officer has high confidence in the individual or management's ability to correct a defect or contravention and undertake any works which may be required.
 - iv Standards in general are good, suggesting a high level of awareness of statutory responsibilities.
 - v The consequences of non-compliance are acceptable, e.g. minor matters, or the time period allowed to seek compliance does not present a risk to health safety or welfare.
- 7.4. Officers will inform the individual or company verbally, as soon as reasonably practical, of any circumstance that they consider constitutes non-compliance with the relevant statute, breaches of statutory requirements and the necessary works or action needed to comply with the regulations as the first stage of informal action. Officers will state a specific time period for the individual or company to comply with the relevant legislation. At this stage a warning of the possibility of formal action will be given if the informal action is not complied with.
- 7.5. Where informal action is taken involving verbal confirmation of non-compliance and the offence is serious or where a number of items require attention, and in all cases where a statutory requirement is made, a letter shall be sent confirming the contravention / non-compliance found and the Act to which the comments apply within 5 working days. The informal notice will make clear:-
- i The findings of the investigation or inspection.
 - ii The action which the investigating officer intends to take providing an opportunity to discuss this action.

- iii The work / actions which the recipient will be required / advised to undertake and a specific time period within which they should be completed.
 - iv Relevant advice regarding how the works / actions may be achieved containing sufficient information to understand why the work is required.
 - v The difference between legal requirements and recommendations of good practice.
 - vi Where necessary the specific legislative requirement/s contravened.
 - vii The means by which a complaint or representation may be made regarding the works required, or any other matter regarding the inspection / investigation or its outcome, including the contact details of the inspecting officer, their manager and details of the complaints procedure.
- 7.6. Any time limit stated will relate to the risks or potential health problems that may result. A reasonable time must be allowed for works to be carried out and/or equipment to be purchased. An extension of time will be considered only where representations are made to the council. Any extension will be dealt with on an individual basis depending on the circumstance as to why the works have not been completed.
- 7.7. If raised by way of a complaint, the complainant will be informed of the findings of the inspection / investigation, the action taken and the time limit given for compliance.
- 7.8. The letter must also clearly indicate the willingness of the council to resolve the matter without recourse to formal action so long as there is adequate response to the initial informal approach. Persons in receipt of an informal notice - verbal or written – will be given every opportunity to discuss the requirements with the officer and agree an appropriate programme and timetable of work. Encouragement will be given to recipients to seek advice at each stage of the process where this is applicable.

8. Formal Action

- 8.1. Formal Action will consist of the use of formal mechanisms to achieve compliance where informal action has either been unsuccessful or is not deemed appropriate. Formal action will include the use of formal Notices, legal action of any nature or prosecution.
- 8.2. Formal action also includes seizure and the council will use its powers under relevant legislation where appropriate. These powers can be used immediately in an emergency situation to seize, for example: food, noise equipment and dangerous machinery posing a risk to health and safety.
- 8.3. Formal Action following a serious breach of licence conditions, for example a Taxi Licence, can result in the licence being suspended on a temporary basis and the matter being reported to the relevant licensing committee.
- 8.4. Formal action will normally only be contemplated if the council is satisfied that all reasonable steps have been taken to achieve compliance through informal action or where:-
- i There is a risk of serious pollution or hazard to health safety or welfare.
 - ii There is a blatant disregard of responsibilities under the legislation enforced by the council.

- iii The offences are of such nature or gravity that other forms of action are inappropriate.
 - iv There is a legislative requirement to take action regardless of the circumstances.
 - v There is a reasonable prospect of defending the action taken in the case of an appeal against the action taken or of successful prosecution.
 - vi Statutory works required in an informal notice have not been complied with within the stated time period and there are no reasonable grounds on which to extend the time period.
- 8.5. An important element of formal action is proportionality and consistency. Proportionality demands that local authorities exercise their discretion to ensure that:-
- i Resources are targeted effectively according to risk, and
 - ii There is appropriate interpretation of what is reasonably practical, so that expenditure is proportionate to the benefit gained.
- 8.6. However, where serious breaches of legislation are discovered or risks to public health are high, then formal action will be recommended immediately.
- 8.7. Where formal action is contemplated against an organisation or business outside North Wiltshire District, regard must also be had to the information received from the home authority / lead authority where appropriate, relevant case law and the previous history. Where the action will have national significance it must be taken into account whether the action is in accordance with national guidelines.
- 8.8. It is important that in determining what formal action is to be taken the correct decision is adopted. Enforcement action will take the form of either:-
- i Informal Action (verbal warning or informal letter – see above)
 - ii The use of Statutory Notice.
 - iii The use of Formal Cautions.
 - iv The instigating of legal proceedings.

9. Statutory Notices

9.1. A Statutory Notice will normally be the first formal sanction issued by the Environmental Health Team. This paragraph refers to those Notices specified in any Act, the enforcement of which is delegated to the Environmental Health Team Leader, within the terms of the current scheme of delegation.

9.2. The circumstances in which a Notice will be served include:-

9.3. Improvement Notice

- i Where there is a significant contravention of legislation.
- ii There is a lack of confidence in the successful outcome of an informal approach.
- iii There is a history of non-compliance with informal action.
- iv Standards are generally poor with little management awareness or statutory requirements.
- v The consequences of non-compliance could be potentially serious to public health, safety or welfare.

- vi Effective action needs to be taken quickly in order to remedy conditions that are serious or deteriorating.
- vii There is a legal requirement for the council to take action.
- viii Where there is a direct contravention of legislation, defect or condition affecting the health, safety or welfare of any person, for which no alternative solution has been selected which would otherwise lead to an early resolution of the matter.
- ix Statutory works required in an informal notice have not been complied with within the stated time and period and there are no reasonable grounds on which to extend the time period.

9.4. Prohibition Notice

- i The consequences of not taking immediate and decisive action to protect health, safety or welfare would be unacceptable.
- ii An imminent risk of injury to health, safety or welfare can be demonstrated.
- iii The requirements of the relevant Statutory Codes of Practice regarding the use of such Notices are fulfilled.
- iv The proprietor of the business or the individual is unprepared to voluntarily close their premises or cease to use any equipment, process, treatment or activity associated with imminent risk.
- v Where there is a direct contravention of legislation, defect or condition affecting the health, safety or welfare of any person for which no alternative solution has been selected which would otherwise lead to an early resolution of the matter.

9.5. Abatement Notice

- i There are serious risks of pollution or imminent risks to public health, safety or welfare.
- ii All efforts to effect an agreed solution to a Statutory Notice by informal means have failed.

9.6. Other Orders and Notices

9.7. Where there is a direct contravention of legislation, defect or condition affecting the health, safety or welfare of any customer or member of the public and for which no agreed alternative solution has been accepted which would otherwise lead to an early resolution of the matter.

9.8. Officers will follow procedures set down in relevant Codes of Practice and guidance notes. Time limits specified in the Notice must be realistic and where possible the requirements of the notice should be agreed in advance with the recipient. Food and Health and Safety notices shall be signed by the officer with the appropriate authority to do so, where possible after consultation with a Principal Environmental Health Officer. Abatement notices shall be signed by the Environmental Health Team Leader, or in his absence, the Strategic Manager. Notices shall be served as a matter of priority following identification of the relevant contravention. All notices will be accompanied by a covering letter which sets out the provisions of the notice explaining clearly what needs to be done, why and by when, and the consequences of non-compliance. The letter should also explain the rights of appeal that are available to the recipient.

- 9.9. A notice should generally not be served without first consulting the relevant Principal Environmental Health Officer or the Environmental Health Team Leader. The officer should ensure that all relevant evidence is available to confirm their findings and opinion.
- 9.10. Authorised officers may serve Notice immediately out of hours or where the circumstances are such that consultation would delay unnecessarily the purpose of the action or expose people to immediate risk. The relevant Principal Environmental Health Officer or Team Leader should be advised as soon as possible if Notice is served.
- 9.11. Officers with delegated authority to issue notices shall only exercise this power after giving full consideration to the circumstances. Notices will be served after all alternative remedies have been exhausted, or have been demonstrated to be inappropriate and officers will follow any procedures set out in relevant Codes of Practice or Guidance Notes. Time limits specified in the Notice must be realistic and where necessary, officers should consult the Council's Legal Team.
- 9.12. If action is being contemplated by way of a complaint the complainant will be informed that a Notice has been served and the time given for compliance.
- 9.13. The service of a notice does not preclude the taking of a prosecution at the same time where such action is considered necessary and appropriate in the circumstances.

10. Prosecutions

- 10.1. Prosecution should only be considered when the following principles have been considered.
- i Reasonableness – is the proposed course of action reasonable in terms of cost, likely outcome and appropriateness to the offence.
 - ii Ultra Vires – does legal authority exist for the proposed course of action and is it vested in the council, The Environmental Health Team or any individual officer. If formal action is contemplated, have all the requirements of the Police and Criminal Evidence Act been met?
 - iii The Crown Prosecution Service Code – This code sets out two clear principles that should be considered before any prosecution is embarked upon. These are the evidential test and the public interest test. The evidential test requires that there be a realistic prospect of conviction based on reliable and admissible evidence. The public interest test is concerned with balancing the possible 'for' and 'against' factors that may exist.
- 10.2. This may mean balancing the cost of legal action against the likely outcome, the seriousness of the offence against a possible disproportionately harmful effect on the defendant and so on.
- 10.3. The decision to initiate prosecution proceedings will be taken by the Environmental Health Team Leader, taking into account the guidelines contained in the relevant Codes of Practice or Guidance Notes.

- 10.4. The investigating officer must be able to show that there is relevant, admissible, substantial and reliable evidence to support legal action. The councils Legal Team will be consulted to determine compliance with the evidential test. The investigating officer, in consultation with the relevant Principal Environmental Health Officer will produce the legal proceedings file. Full regard must be had to the availability of the 'due diligence', 'best practicable means', or 'best practical environmental option' defences. The final decision to proceed will be taken by the Environmental Health Team Leader when he is satisfied that there is a realistic prospect of a conviction being gained.
- 10.5. Prosecutions will in general be restricted to those who blatantly disregard the law, refuse to achieve a basic minimum requirement or who place any person at risk. The circumstance in which prosecution will normally be considered are according to the following:-
- i Where the alleged offence involves a flagrant breach of the law, such that public health, safety or welfare is being put at risk. The seriousness of the alleged offence will take into account the risks or harm to public health, identifiable victims, or disregard of public health for financial reward.
 - ii Where the alleged offence involves a failure to correct and identify a serious risk and the offender has been given a reasonable opportunity to comply with the lawful requirements of an enforcement officer.
 - iii Where the offence involves the failure to comply in full or in part with the requirements of a Statutory Notice.
 - iv Where there is a history of similar offences related to risk of public health, safety or welfare.
 - v Where the perpetrator gained the advantage sought from a single commission.
 - vi Where prosecution would be in the public interest, having regard particularly to the council's duty to enforce the law.
 - vii Where there are overriding local factors that must be taken into account.
- 10.6. There will be no hard and fast rule with regard to the restraints leading to the decision to prosecute. Every case will be considered on its merits, including the need to prosecute first time offenders.
- 10.7. Where prosecution is as a result of a complaint, the complainant will be informed of the decision to prosecute and kept informed of the progress of the action proposed including the final court decision.
- 10.8. Where a complainant is required to give evidence in support of a prosecution they will be given all suitable support and advice to enable them to do so effectively and with the minimum of burden.

11. Formal Cautions

- 11.1. The Formal Caution may be used as an alternative to prosecution. As with prosecutions, the council's Legal Team will be consulted to determine compliance with the evidential test. The final decision to proceed will be taken by the Environmental Health Team Leader in conjunction with the legal Team. A formal caution will only be issued by The Environmental Health Team Leader in the presence of one of the Council's solicitors.
- 11.2. The Home Office Circular states the purpose of a formal caution is:-
- i To deal quickly and simply with less serious offences.
 - ii To divert less serious offences away from the courts.
 - iii To reduce the chance of repeat offences.
- 11.3. The formal caution may be used in place of court proceedings when:-
- i The interest of justice will not be served by court action.
 - ii For offences of a minor nature not actioned following service of a Statutory Notice and where there is no risk to public health or the environment.
 - iii A 'technical offence' has been committed and there is no need for the offence to be formally recorded.
- 11.4. To safeguard the suspected offender's interest the following conditions must be fulfilled:-
- i There is sufficient evidence to secure a conviction.
 - ii The suspected offender must admit the offence.
 - iii The suspected offender must understand the significance of a formal caution and agree to being cautioned.
 - iv The suspected offender's Human Rights must not have been contravened by the issue of the caution.
- 11.5. The Environmental Health Team Leader with the relevant Principal Environmental Health Officer and investigating officer will determine if a formal caution is the most appropriate form of sanction following consultation with the Legal Team. Unless there are particular reasons not to, refusal of a formal caution will be followed by a prosecution for the alleged offence. It is important therefore to ensure that before a formal caution is offered, the case satisfies all the tests and requirements for a prosecution.
- 11.6. The Office of Fair Trading, Home or Lead Authority where appropriate must be advised of any formal caution issued by the Council.
- 11.7. Any formal caution issued by the Council under the above will not be cited in relation to an offence committed more than three years after the caution is issued.

12. Review

- 12.1. This Enforcement Policy will be reviewed at least annually by the Environmental Health Team Leader and updated as appropriate. Any changes affecting the principle of the policy shall be the subject of a report to the Executive.

