

Enforcement Policy for Environmental Services

Executive Summary

This enforcement policy provides guidance to officers, businesses and the general public on the range of options that are available to achieve compliance with legislation enforced by Environmental Services of Malvern Hills District Council and the Regulator's Compliance Code, a Statutory Code of Practice for Regulators published by the Government on the 17th December 2007 and in force from the 6th April 2008.

The policy has been approved by Malvern Hills District Council's Executive Committee.

Our primary objective is to achieve regulatory compliance through an effective service with Officers carrying out their duties in an equitable, practical and consistent manner. We recognise that prevention is better than cure, but where it becomes necessary to take formal action against a business, or a member of the public, we will do so. There is a wide range of tools available to us as an enforcement agency, with prosecution being the most serious. We will always choose an enforcement method that is relevant and proportionate to the offence or contravention. We will also take account of an individual's or a business's past history when making our decision.

The policy is built around a process of escalation. We will only prosecute in serious circumstances such as deliberate, negligent or persistent breach of legal obligations; where actions are likely to cause material loss or harm to others; where written warnings or formal notices have been ignored; where there is danger, to a serious degree, the health, safety or well being of people, animals or the environment; or where an officer has been assaulted or obstructed in the course of their duties.

The options available to us include:

- No action
- Informal action and advice
- Fixed penalty notices
- Excess charge notice
- Formal notice
- Forfeiture proceedings
- Seizure of goods/equipment
- Injunctive actions
- Refusal/revocation of a licence
- Simple caution
- Prosecution
- Proceeds of crime applications

The policy is designed to help understand our objectives and methods for achieving compliance and the criteria we consider when deciding what the most appropriate response is to a breach of legislation. It supports the requirement that regulatory activities are carried out in a way that is consistent, transparent, accountable, proportionate and targeted.

The Policy is available on the Malvern Hills District Council websites

www.malvern hills.gov.uk or www.whub.org.uk

If you would like a paper copy of the Policy and/or you would like to comment on the Policy, please contact us by

Telephoning the Customer Contact Centre (Hub) 01684 862151

E-mailing to worcestershirehub@malvern hills.gov.uk

Writing to the Business Regulatory Manager, Environmental Services, The Council House, Avenue Road, Malvern, Worcestershire, WR14 3AF

If you require the Policy in an alternative format i.e. by email, on disk in large print or Braille please contact the Customer Service Centre (Hub) on the number above.

The policy is divided into the following sections to reflect the requirements of the Regulator's Compliance Code:

- Section 1 - Background and underlying principles
- Section 2 - Supporting economic progress
- Section 3 - Risk assessment
- Section 4 - Advice and Guidance
- Section 5 - Inspections and other visits
- Section 6 - Information requirements
- Section 7 - Compliance and enforcement actions
- Section 8 - Determining Appropriate Action and Accountability
- Section 9 - Liaison with other regulatory bodies and enforcement agencies
- Section 10 - Considering the views of those affected by offences
- Section 11 - Protection of Human rights
- Section 12 - Review of the Enforcement Policy

1. Background and underlying principles

All our decisions will have regard to and comply with current statutory guidance and codes of practice, and in particular:

Regulator's Compliance Code - Statutory Code of Practice for Regulators

http://bre.berr.gov.uk/regulation/reform/documents/compliance_code/compliance_code_071217.pdf

The Code for Crown Prosecutors

<http://www.cps.gov.uk/publications/docs/code2004english.pdf>

The Enforcement Concordat

<http://www.berr.gov.uk/files/file10150.pdf>

Human Rights, Police and Criminal Evidence, Data Protection and Regulation of Investigatory Powers legislation and guidance

Guidance and Codes of Practice issued by Local Authorities Coordinators of Regulatory Services (LACORS), Local Authority Better Regulation Office (LABRO) etc

Joint enforcement protocols agreed with partner organisations

Internal procedures and policies

Malvern Hills District Council's Environmental Services has a wide range of statutory responsibilities and fully supports the requirement that regulatory activities should be carried out in a way that is fair, consistent, transparent, accountable, proportionate and targeted.

The ways in which we will achieve this are set out in this enforcement policy.

The policy applies to all the legislation enforced by Officers of Environmental Services, for example Food and Health and Safety, Pollution Control, Licensing

Throughout this document "businesses and others" refers to businesses of any sort, individuals and voluntary organisations, all of whom may be subject to regulation by Environmental Services.

Enforcement includes any action taken by officers aimed at ensuring that individuals or businesses comply with the law and not limited to formal enforcement action such as prosecution.

In certain circumstances we will seek to raise awareness and increase compliance levels by publicising results of prosecutions, unlawful practices or criminal activity.

2. Supporting economic progress

Fair and effective enforcement is essential to protect the health and safety and economic interests of the public, businesses and the environment. Decisions about enforcement action and in particular the decision to prosecute have serious implications for all involved.

We will seek to support businesses and others by:

- Providing easily accessible and understandable information and advice relating to legal requirements and best practice, to existing and new businesses and others
- Considering the burdens that regulatory sanctions impose on individual businesses and others, and reducing the burden to the minimum level consistent with achieving compliance
- Regularly reviewing our approach to regulatory activities and interventions so as to remove unnecessary burdens
- Promoting efficient and effective approaches to regulatory inspection and enforcement
- In circumstances where we 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 Regulator's Compliance Code will be properly reasoned, based on material evidence and documented.

3. Risk assessment

We will ensure that our resources are targeted where they will be most effective in reducing risk. This applies across all of our service areas – food safety, licensing, pollution control, street scene, flood alleviation, land drainage, health and safety at work etc. Intelligence and risk assessment will inform all aspects of our approaches to regulatory activity.

No inspection or intervention will be carried out without a reason. We will follow national inspection programmes where appropriate including those developed by the Food Standards Agency (FSA), Health and Safety Executive (HSE) and Department for Environment, Food and Rural Affairs (DEFRA). Intelligence – led inspections may also be carried out, as will inspections as a result of a complaint or a request from the business operator or householder.

In the absence of nationally recognised inspection programmes we will give consideration to the following factors when considering the frequency and type of interventions we will employ:

- compliance history and potential future risks
- the existence of effective management systems
- evidence of recognised external accreditation
- management competence and willingness to comply

Examples of interventions include monitoring, surveillance, audits, sampling, advice, coaching or education.

Details of our inspection programmes, interventions and other planned regulatory activities are held in service level procedures, plans and policies and will be made available, where appropriate, on our website.

4. Advice and guidance

Prevention is better than cure and our role therefore involves actively working with businesses to advise on and assist with compliance.

We will provide general information, advice and guidance to make it easier for businesses and others to understand and meet their legal responsibilities. It will be provided promptly, free of charge, and when legislation changes we will seek to provide information in the most direct way possible (e.g. by mail shot to those affected).

Where appropriate advice exists in a variety of languages we will make these versions available or signpost their location to those who need them. Where the information is only available in English (e.g. a statutory notice or report) we will tell the recipient about translation services available.

When offering guidance on compliance with the law we will distinguish between statutory requirements and guidance on best practice which go beyond the legal minimum.

Except in cases of immediate risk we will ensure that advice and guidance can be accessed without triggering enforcement action. This will be provided in clear, concise and accessible language by officers in person, in writing and via our website.

5. Inspections and other visits

When developing our inspection programmes and procedures we will ensure that no inspection takes place without a reason. Inspections will result either as part of a risk based programme, as a result of intelligence received, a complaint or on request.

We will focus our efforts on those businesses and organisations where evidence shows that:

- one or more contraventions would lead to a serious risk, and
- there is a high likelihood of non-compliance

Where we find examples of good practice we will acknowledge it and where possible share the information with other organisations.

Where possible, we will work with other regulators to reduce inspection burdens and to share information to reduce risk.

6. Information requirements

We will normally require only that information required by statute from businesses and others e.g. food registration, completed application forms and submission of appropriate returns.

On occasions when we require businesses and others to provide information beyond that required above, we will consider the costs of providing that data and will balance the benefits of the data to us against the cost of providing it. We will also consider whether the information we require is already available from another source.

We will ensure that effective mechanisms are in place to share data (within the legal boundaries of data protection law) with other regulators so as to reduce the burden of providing such data. Where possible we will encourage and facilitate electronic submission of data, minimise frequency of collection and request only data which is justified on the basis of risk.

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.

During the progression of enforcement investigations/actions, business proprietors of individuals and witnesses 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. Compliance and enforcement actions

Where the law has been contravened there is a range of enforcement options available to secure compliance with the law. When we 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 which are set out in this policy and the Regulator's Compliance Code.

Enforcement decisions will be fair, independent and objective and will not be influenced by issues such as ethnicity or national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender.

Under normal circumstances, a process of escalation will be used 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 or negligently or involve deception or where there is a significant economic detriment.

We will take into account the views of any victim, injured party or relevant person to establish the nature and extent of any harm or loss, and its significance in making the decision to take formal action.

When enforcement action is being considered there will usually be opportunity for those responsible for any breaches to discuss the matter. However when we are considering a prosecution this will be at a formal interview.

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

In seeking to ensure compliance with statutory requirements, there are a large number of potential enforcement options. They vary from no action through to proceedings in court.

The options are:

- no action; 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 action is inappropriate in the circumstances, such as where a business has ceased trading or the offender is elderly and frail and formal action would seriously damage their wellbeing. In such cases we will advise the offender of the reasons for taking no action.
- informal action; to secure compliance by offering information, advice and support, either face to face, or in writing; for minor breaches of the law where the act was not sufficiently serious to require formal action, from past history it can be reasonably expected that informal action will achieve compliance, the result of non-compliance will not cause a significant risk to public health safety wellbeing or the environment.

Where informal action will be more effective than formal action we may give verbal or written advice, verbal warnings, requests for action, use of letters and inspection reports. 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. Sometimes 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 advice only. Failure to comply could result in an escalation of enforcement action

- formal action; through the issue of verbal warnings, requests for action and the issue of letters warning of non-compliance to try to ensure that business proprietors and others do not, through lack of information or understanding, unnecessarily expose themselves to the possibility of formal action
- fixed penalty notices; certain offences are subject to fixed penalty notices where prescribed by legislation. Fixed penalty notices 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 Fixed Penalty Notice (FPN) we may chose to administer a FPN on a first occasion, without issuing a warning.
- excess charge notices; certain legislation prescribes excess charge notices as a method of enforcement by which the offender pays an amount of money to the enforcer in recognition of the breach. Failure to pay will result in the offender being pursued in the County Court for non-payment of the debt. A criminal record is not created and we may chose to issue these without first issuing a warning.
- statutory notices; to require compliance with the law. Certain legislation allows notices to be served which require specific actions to be taken or to cease certain activities where there are significant breaches of legislation and there is a lack of confidence in a response to an informal approach. Where the result of non-compliance could be potentially serious to public health, safety, wellbeing or the environment or there has been a history of non-compliance with informal action and little knowledge of statutory requirements, notices are appropriate. Notices may require activities to cease immediately where the circumstances relating to 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. The statutory right of appeal against any notice served will be brought to the attention of the person served with the notice at the time of the service. Certain types of notice allow works to be carried out in default. This means that if a notice is not complied with 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 costs we incur in carrying out the work. The relevant home/lead or primary authority should be consulted if appropriate
- forfeiture application; through the Magistrates Courts. This procedure can be used in conjunction with seizure and/or prosecution where there is a need to dispose of goods in order to prevent them re-entering the market place or being used to cause a further problem.
- seizure; certain 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, unsafe equipment or any items that may be required as evidence for possible future court proceedings. When we seize goods we will give the person from whom the goods are taken an appropriate receipt.

- injunctive action; where offenders are repeatedly found guilty of similar offences, where dangerous or significant breaches have occurred including anti social behaviour, applications for anti-social behaviour injunctions/orders may be the most appropriate course of enforcement action.
- refusal, suspension, modification, conditioning or revocation of licences, registrations, approvals, or authorisation; where there is a requirement for a business to be licensed, registered, approved or authorised by the local authority to ensure legislation is complied with, we will take account of breaches of legislation or failure to apply.
- formal/simple cautions; in order to deal quickly and simply with less serious offences, drive the less serious offences away from the courts and to reduce the likelihood of a repeat offence. The caution is an admission of guilt but is not a form of sentence nor is it a criminal offence. There must be sufficient evidence to prove the case, the offender must be over 18 years old and admit the offence, it must be in the public interest to use a caution.

For details on the Home Office guidance (Circular 30/2005) visit

<http://www.homeoffice.gov.uk>

We will also take into account whether the offender has received a caution for a similar offence within the last 5 years. The caution will be kept on file for 5 years; if the offender commits a further offence the caution may influence our 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.

- prosecute; this option will only be taken in more serious cases and following discussion with the Head of Service and the Council's legal advisor. The criteria to be considered include deliberately, negligently or persistently breaching legal obligations, which were likely to cause material loss to others, deliberately or persistently ignoring written warnings or formal notices, endangering to a serious degree the health, safety or well being of people, animals or the environment or the assault or obstruction of an Officer in the course of their duties, or where there is a history of similar offences.
- confiscation of assets; in serious cases under the Proceeds of Crime Act. The purpose would be to recover the financial benefit that the offender has obtained from his criminal conduct. Proceedings are conducted according to the civil standard of proof and applications are made after a conviction has been secured.

We will seek to use the full range of enforcement options detailed above to:

- Aim to change the behaviour of offenders and eliminate any financial gain or benefit from non-compliance
- Be responsive and consider what is appropriate for each combination of offender and offence, including the consideration of the effect of the stigma associated with criminal convictions
- Take action proportionate to the nature of the offence and the harm caused
- Aim to address the harm caused by non-compliance where appropriate, and
- Aim to deter future non-compliance

The following criteria will be considered before reaching a decision on the use of the most appropriate enforcement action

- a) Has all informal action (where appropriate) to resolve the issue been exhausted
- b) Is there blatant disregard of responsibilities under the legislation
- c) The seriousness of the offence
- d) The history of previous compliance with legal requirements and its current practice
- e) The confidence in an individual's or company's ability to meet legal requirements and restore the harm caused by non-compliance (where appropriate)
- f) The likely results of non-compliance (is there any financial gain?)
- g) The risk/benefit to public health
- h) The likelihood of recurrence
- i) The risk of pollution of the environment or harm to health or safety
- j) Sector specific guidance, decision making tools, and legal official or professional guidance, including national policies of guidance
- k) The priorities of the Council

8. Determining Appropriate Action and Accountability

Decisions about the most appropriate enforcement action to be taken are based upon professional judgement, legal guidelines, statutory codes of practice and priorities set by Malvern Hills District Council and/or Central Government.

Where appropriate, decisions about enforcement will be taken in accordance with the Council's constitution and scheme of delegation and may involve consultation between or approval from:

Investigating Officers
Senior managers from Environmental Services
Malvern Hills District Council legal advisers

The guidance set by the Crown Prosecution service will be followed when determining whether a prosecution or Caution is appropriate. Further information about the Code for Crown Prosecutors is available from

http://www.cps.gov.uk/victims_witnesses/code.html

A Caution or Prosecution 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.

The Evidential Test: We must be satisfied that there is enough evidence to provide a realistic prospect of conviction against each defendant on each charge. A realistic prospect of conviction is an objective test that means 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. This is a separate test from the one that the criminal courts themselves must apply. A jury or Magistrates' Court should only convict if it is sure of a defendant's guilt.

The Public Interest Test: The public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. We will balance factors for and against prosecution carefully and fairly. Public interest factors may affect the decision to prosecute or may indicate that another course of action would be better.

We will set clear standards and targets for our service and publish them in the form of an annual Service Plan. In setting the standards and targets we will take into account all

feedback received from users of our service and the public. This can be in the form of unsolicited feedback (both complimentary and complaints) and solicited feedback as the result of satisfaction surveys.

We will ensure Officers are courteous and efficient and able to interpret and apply the relevant legal requirements fairly and consistently.

If necessary we carry out a consultation exercise and/or impact assessment before changing policies, procedures and plans.

9. Liaison with other regulatory bodies and enforcement agencies

Where appropriate enforcement activities within Environmental Services will be coordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement.

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

Environmental Services will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies and examples including

- Government Agencies
- Police Forces
- Fire Authorities
- Statutory undertakers
- Other Local Authorities

10. Considering the views of those affected by offences

Environmental Services 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 the views expressed by those affected will where appropriate be taken into account when making enforcement decisions

11. Protection of Human rights

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

12. Review of the Enforcement Policy

This policy will be reviewed every two years or as required by changes to the law or guidance.