

**STATEMENT OF
ENVIRONMENTAL SERVICES
ENFORCEMENT POLICY**

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1.0 Introduction

- 1.1 This Statement outlines the enforcement policy of the Environmental Services Environmental Health Section of Malvern Hills District Council.

Copies will be made available to businesses and individuals at a cost of £2.00 and on the Council web site www.malvernhills.gov.uk

- 1.2 Wherever possible, officers will seek to find solutions, which are arrived at by education, agreement and co-operation and will keep in mind the maxim that prevention is better than cure.

Officers are required to regulate activities carried out by a wide range of businesses and individuals. Full regard will be had to the different abilities, which are encountered, and to the importance of the education and help, which they themselves are able to give to achieve compliance.

- 1.3 However, the aim behind much of the department's efforts is the protection of persons at work, the general public and the environment from harm caused by failure to comply with the safeguards provided for in law.

This being the case, there will be circumstances in which enforcement is unavoidable and the Council does not shrink from using its full legal powers, including prosecution, where it is necessary to do so.

- 1.4 There are two distinct facets to enforcement, which may be taken to mean either of the following:

a) Enforcement for Compliance. This ensures that the Council has programmes in place for monitoring compliance by businesses and their owners, employees, consumers, the public and individuals with the various legislation affecting them.

For example, there will be inspection programmes in place for food premises, workplaces, and authorised processes.

Many such programmes are based upon the risk while others require inspections at pre-determined intervals, or set annual targets for the number of inspections to be made.

Because of the diversity of requirements under the different legislation and Guidance, it is not practicable in this document to be prescriptive about the ways in which inspection programmes are organised and monitored.

However, each Team/Section has in place the means to arrange programmes or visits which will satisfy the needs of their particular legislation *and* the mechanism for monitoring.

b) Enforcement for *Non Compliance*. In this aspect of enforcement, the options available for taking action against businesses or individuals for ignoring or otherwise failing to comply with their legal obligations are discussed.

1.5 For the purposes of this Procedure, enforcement for non-compliance includes the following:

- a) Prosecution
- b) Formal Cautions
- c) The service of Notices
- d) Works in Default, including seizure of equipment
- e) Revocation (of Licenses or Authorisations)
- f) Written warnings (sometimes known as informal Notices)

The principles outlined in the Enforcement Concordat (the Government's own enforcement Guidelines) and paragraphs 3.1 to 4.8, below, will be applied to all such actions.

1.6 Enforcement action may be taken as a result of an incident, a complaint or an inspection.

2.0 **Legal Provisions**

2.1 Apart from the specific laws relating to the technical aspects of environmental health work, there are a number of other legal or semi-legal provisions relating to or having a bearing on enforcement as a whole.

These include:

- a) The Enforcement Concordat
- b) PACE
- c) Regulation of Investigatory Powers Act
- d) Human Rights Act
- e) Freedom of Information Act
- f) Data Protection Act
- g) Environmental Information Regulations
- h) Local Government Act
- i) Race Relations (Amendment) Act
- j) Codes of Practice/Guidance.
- k) CIPA Criminal Investigations Procedures Act
- l) The Code for Crown Prosecutors

- 2.2 Many of the above contain little more than a passing reference to the needs of enforcement whereas some, such as PACE, and others, are fundamental.

Officers will comply with all of the enforcement provisions of the above when they are relevant to a particular case.

- 2.3 Whenever possible, the Council will work in partnership with other agencies to achieve common goals on matters of mutual concern, particularly where there may be shared enforcement

These Agencies will include, for example, the Police, the Environment Agency, the Food Standards Agency, the Health Authority and the Health and Safety Executive, and many others, as may be appropriate.

3.0 **Specific Considerations**

- 3.1 The enforcement policy is based on firmness and fairness. Where it is necessary, enforcement will be undertaken without fear or favour and without consideration of the race, ethnic background, religion, social status, colour, sex or sexual orientation of any persons involved.

- 3.2 If any person exerts undue or improper pressure in an attempt to influence a decision concerning enforcement, it will be reported without delay.

- 3.3 As a general rule and where there may be options, the level of enforcement contemplated will be the minimum at which a satisfactory solution is thought to be achievable.

4.0 **The Enforcement Concordat**

- 4.1 The principles outlined in paragraphs 4.2 to 4.8, below, will be followed at all times. These are derived from the Government's Enforcement Concordat, to which the Council as a whole is committed. The Council has signed up to the Government's Enforcement Concordat as confirmed by the Executive Committee meeting on the 19th March 2002 – Agenda item 8

- 4.2 Procedures Advice from officers will be clear and simple and will, on request, be confirmed in writing, explaining why any remedial works may be necessary and stating the timescale for progress and completion. A clear distinction will be made between legal requirements and best or desirable practice.

Before formal action is taken, the opportunity may be provided to discuss the circumstances of the case and, if possible, resolve points of difference *unless* immediate action is required (for example in the interests of health and safety, environmental protection or to prevent evidence from being destroyed).

In circumstances where immediate action is necessary, an explanation of why such action was required will be given at the time.

Where there are rights of Appeal against specific actions, advice on the mechanism to be followed will be given in writing. Wherever possible, this will be included with the enforcement Notice or other documentation.

4.3 Transparency Information and advice will be published in plain language concerning the legislation which the Council is applying. Officers will be open about the work required, including any financial costs in complying if appropriate, and consultation will take place as appropriate. Discussion will take place concerning general enforcement issues, specific compliance failures or problems with anyone who is experiencing difficulties.

4.4 Helpfulness Officers will provide a courteous and efficient enforcement service and individual officers will identify themselves by name.

A contact telephone number will be provided for on-going discussions. Businesses and individuals will be actively encouraged to seek advice and information relating to the Service's enforcement role.

4.5 Complaints If business operators or members of the public indicate that they wish to complain about any aspect of enforcement work, officers will ensure that the mechanism for doing so is clearly explained.

4.6 Proportionality Costs of compliance are to be minimised to ensure that any actions required by the Council are proportional to the risks involved.

Where the law allows, officers will take account of the circumstances of a case and the attitude of the individuals and businesses when considering the level of enforcement action.

4.7 Consistency Consistency means taking a similar approach in similar circumstances to achieve similar ends. The aim is to achieve consistency in the advice given, the response to incidents and the ways in which statutory powers are used.

Consistency does not mean simple uniformity and officers will need to take account of many variables such as the scale of the risk, the attitude and actions of those involved and any history of compliance, whether positive or negative.

Decisions on enforcement action are a matter of professional judgement and officers will frequently be required to use discretion. Efforts will continue in order to develop arrangements for promoting consistency, including effective arrangements for liaison with neighbouring Authorities and other enforcing agencies.

Every effort will be made to ensure consistent enforcement standards between local authorities. However, local circumstances may preclude an entirely uniform approach on all issues.

5.0 **Specific Enforcement Actions** The Procedures or guidance to be followed when conducting specific types of non-compliance enforcement are contained in paragraphs as follows:

- a) *Prosecution*. Paragraphs 6.0-6.13
- b) *Formal Cautions*. Paragraphs 7.0 - 7.5
- c) *Notices*. Paragraphs 8.0 - 8.4
- d) *Works in Default*. Paragraphs 9.0 - 9.2
- e) *Revocation*. Paragraphs 10.0 - 10.5
- f) *Written warnings*. Paragraphs 11.0 - 11.3

6.0 **Prosecution**

- 6.1 Where statutory powers to prosecute exist, the decision to do so is not taken lightly. The Head of Environmental Services will, as delegated, determine the instigation of legal proceedings (or in his absence the Strategic Director - Operational Services). Each case is unique and will be processed according to its own merits. There is no suggestion that Prosecution will automatically follow the discovery of an alleged offence. In particular, alternative actions to prosecution, which are outlined in paragraphs 6.3, below, will be considered in all cases and at every stage.
- 6.2 The decision as to whether to prosecute or not will be constantly reviewed and, if necessary, changed up until such time as an irrevocable step (e.g. offering a Formal Caution as an alternative) is made.
- 6.3 Alternatives to Prosecution The following steps will be considered as alternatives to prosecution, where applicable, as part of the decision making process. However, each must be examined in light of Public Interest (see paragraphs 6.11 to 6.13 below);
- a) Formal Caution
 - b) Works in default
 - c) Written Warning
- 6.4 Test for Prosecution Before a decision to prosecute is taken, the case must satisfy, in general terms, the following Tests:
- a) EVIDENTIAL TEST
 - b) PUBLIC INTEREST TEST
- Each of which is described in more detail below.
- 6.5 Evidential Test There must be sufficient good quality evidence to provide a *realistic prospect of conviction* against each defendant and on each charge, before prosecution is authorised.

This is an objective test and means that a jury or bench of Magistrates, properly directed in accordance with the law, is more likely than not to convict each defendant on each charge.

- 6.6 Each prospective prosecution is scrutinised throughout the Line Management chain before the papers are sent to Legal Services, in accordance with Procedures.

This is so that the evidence can be tested by officers not directly involved in the preparation of the case.

- 6.7 The following will be borne in mind by case officers throughout the investigation:

- a) The validity and relevance of any tape-recorded interviews.
- b) The continuity of evidence.
- c) The quality of any notes and records kept during the investigation.
- d) The level of compliance with the Enforcement Concordat, all legislation having a bearing on enforcement practice, and internal Procedures.

If there have been substantive departures from accepted practice on any of the above, this will be made known to line management and Legal Services, so that decisions on whether or not to proceed can be properly informed.

- 6.8 Officers may obtain evidence from many different sources throughout an investigation.

Unused material will be disclosed in accordance with the requirements of the Criminal Procedure and Investigation Act 1996.

- 6.9 In considering the evidence, the following will be addressed:

- a) Any factors, which might reduce the reliability of an admission, made during a taped interview such as, for example, a defendant's age, or lack of understanding.
- b) Any factors, which might have a bearing, on the reliability of any witness.

- 6.10 If, after balancing the above, it is concluded that there is not a realistic prospect of conviction, the case will not proceed to prosecution.

One of the alternatives listed in paragraph 6.3, above, may still be used if appropriate.

- 6.11 The Public Interest Test A number of factors will determine whether or not a particular prosecution is in the public interest and a balance in favour or against will be made between these factors, any of which might be present.

- 6.12 Those factors, which will tend towards prosecution, include positive answers to the following, which may not be an exhaustive list:

- a) number of people affected by the offence
- b) degree to which people are/were affected (seriousness of the offence)
- c) evidence that the offence was committed deliberately or maliciously
- d) evidence that the defendant intimidated or harassed those affected
- e) evidence of previous or on-going offences of a similar type
- f) likelihood of repeated offence which may be deterred by prosecution
- g) defendant was in a position of authority
- h) lack of co-operation on the part of the defendant
- i) offence is widespread, at least in the general area in which it was committed

6.13 Factors which might argue *against* a prosecution will include:

- a) the offence is disproportionate to the level of penalty available to the Courts.
- b) offence appears to have been the result of a genuine misunderstanding or mistake
- c) harm done was minor and was the result of a single incident, particularly if it was caused by a misjudgement
- d) willingness on the part of the defendant to co-operate and to ensure that no future offences of a similar nature are committed
- e) long delay between offence and trial, unless
 - i) The offence is serious
 - ii) The delay has been caused, at least in part, by the defendant
 - iii) The Offence has only recently come to light
 - iv) The complexity of the investigation results in unavoidable delays.
- f) defendant is elderly, in poor health or confused (unless there is a real possibility that the offence will be repeated).
- g) defendant has, so far as possible, put right the harm caused by the offence
- h) a key witness has refused to testify or to provide a Witness Statement or, if they are the only victim, they have strongly indicated opposition to a prosecution or would make an unreliable witness.

7.0 **Formal Cautions**

7.1 Where it is felt that prosecution may not be appropriate, the use of the Formal Caution may be considered. In all such cases, the Home Office Guidance on the use of Formal Cautions will be closely followed, where it applies to legislation enforced by Environmental Health.

7.2 Typically, the reason for choosing this option will be that the case does not fully meet the PUBLIC INTEREST TEST described in paragraphs 6.11 to 6.13, above. It may be, for example, that the offence did not result in real harm to any person, or that the person responsible co-operated fully in limiting the effects of the offence.

7.3 A Formal Caution will *never* be used simply because the evidence in a case is not robust enough to give a reasonable prospect of success in prosecution. Indeed, if a Formal Caution is offered and refused, the most likely alternative enforcement action would be prosecution, so the evidence must always be sufficient before a Formal Caution is considered.

7.4 Other factors governing the use of a Formal Caution include:

a) Line Management are informed before a Formal Caution is offered.

b) No more than *one* Formal Caution will be issued to the same business or person for a similar offence within the expiry period.

If a further, similar offence is committed before the expiry of the Formal Caution, then prosecution will normally be taken in all but the most exceptional circumstances.

c) Unless the circumstances are wholly exceptional, details of any outstanding Formal Caution will be placed before the Court in any prosecution taken within the expiry date of the Formal Caution.

d) The suspect will be given the opportunity, if (s)he so wishes, of viewing all of the evidence gathered in the case, including any which may weaken or undermine the prosecution. This is to enable them, and/or their legal advisor, to assess the evidence, so that the decision whether to accept the Caution or not can be an informed one.

f) If accepted, the Caution will be fully recorded and a copy of the documentation held on a Register of Formal Cautions.

8.0 **Notices**

8.1 The service of statutory Notices is a routine part of the work of Environmental Health and it is not appropriate to deal with the format and wording of Notices within a document such as this. However, there are some points of commonality affecting all types of Notice, as follows:

a) Peer Review

- b) Associated documentation
- c) Method of Service

each of which is dealt with in the following paragraphs.

- 8.2 Peer Review There are occasions when speed of service is of the essence and in such cases peer review may not be practicable.

Wherever possible, the use of standardised Notices will be used when peer review is not possible, to ensure the greatest level of uniformity of approach.

When peer review is possible, and this should be in the majority of cases, each Notice will be scrutinised by a member of the Team unconnected with the case, using a checklist format produced for the purpose.

- 8.3 Associated Documentation Under normal circumstances, the following information will accompany a formal Notice:

- a) A covering letter, setting out the background to the Notice and designating a case officer or other point of contact
- b) A copy of the relevant Appeal provisions
- c) A separate Schedule of Works, where appropriate
- d) Any other information, which may help the person, served to understand and comply with the terms of the Notice.

- 8.4 Method of Service This may be specified in individual legislation and, in such cases, the method of service will be followed exactly.

Where there is no prescribed method, any of the following may be used:

- a) Hand delivery. The Notice will be given directly to the person(s) identified as being responsible. Where this method is used, the date, time, place and other relevant details will be contemporaneously entered into official notebooks.
- b) Recorded Delivery. The Notice is sent by first class, recorded delivery post.
- c) Left at Scene. The Notice may be left at the scene, ie a premises or vehicle. If this method is used, service will normally be by two officers. Each will make a contemporaneous entry in their official notebook and each may provide a short Witness Statement giving details of the contents of the envelope left at the scene, the date, time and place of service.

9.0 **Works in Default (WiD)**

- 9.1 Works in Default refers to the powers given to the Council under specified legislation to undertake works required in a Notice that has not been complied with in the time permitted. A charge is normally made for carrying out such work, which the person(s) named on the Notice would be required to pay.

- 9.2 The approval of line management will be sought before arrangements are made to carry out works in default. At the time that approval is sought, the case officer will

provide full details of the perceived need to undertake the work, and be prepared to discuss alternatives.

9.3 There are two distinct types of WiD, these being:

- a) Seizure of equipment causing a nuisance, for example stereo equipment in respect of noise problems
- b) Physical works undertaken by the Council to abate nuisance or comply with specified standards, for example carrying out drainage works where there may be risks to health.

10.0 **Revocation**

10.1 In some circumstances, notably Licensing and Authorisations made under the Environmental Protection Act, the revocation of a Licence or Authorisation may be used as an enforcement method.

10.2 Whilst this is a legitimate enforcement action, it is always remembered that the above may involve the removal of livelihood, sometimes without reference to an independent arbiter or the Courts.

Accordingly, revocation is used only as a last resort, when other sanctions are either inappropriate, or have been tried without success.

10.3 No revocation action is taken without reference to line management.

10.4 Where revocation action is taken, it will normally follow at least two warnings, in writing. However, it is recognised that this will not always be possible, especially in the case of some types of Licensing offence.

10.5 When revocation action is taken, those concerned will be informed of any rights which they may have to appeal and be told of any time limits or other constraints which may apply.

11.0 **Written Warnings**

11.1 Perhaps the commonest and most versatile form of enforcement is the use of a written warning, which may result from a service request investigation, or a routine inspection visit.

11.2 There are few rules governing the use of this type of action, as it is not a regulated or statutory function.

However, a written warning will normally:

- a) Clearly state the nature of the problem and suggest either specific remedies or a standard to be achieved
- b) State the actions, which may follow if matters do not improve
- c) Designate a named officer as point of contact
- d) Clearly distinguish between a legal requirement and 'desirable standard'
- e) Indicate any follow-up action intended, (such as a re-visit in 14 days etc)

f) Offer to work with the person(s) responsible in finding a solution

g) Point the way to specialist advice or additional information.

11.3 The tone of a written warning will be firm, businesslike, unambiguous, polite and helpful.