

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

Environment and Community Regeneration Cabinet Board
15th July 2016

Urgency Action Report of the Head of Planning and Public
Protection
N. Pearce

Matter for Decision

Wards Affected: *All Wards*

Report Title

ENVIRONMENTAL HEALTH AND TRADING STANDARDS – ENFORCEMENT
POLICY

Report and reason for urgency

- 1 To ask Members to consider the urgent need to approve the updated Environmental Health and Trading Standards Enforcement Policy (the Policy) for 2016. The reason for the urgency is due to the need to ensure compliance with applicable legislation including the Regulators' Code and other published guidance.

Executive Summary

- 2 The Policy will ensure that the Principles of Good Enforcement are met, namely:-
 - Setting clear standards
 - Openness
 - Helpfulness
 - Complaints handling
 - Proportionality
 - Consistency

- 3 Without an Enforcement Policy there will not be consistency in enforcement action and it may lead to the Council being non-compliant with the Regulators' Code and other applicable legislation and guidance.

Background

- 4 The Environmental Health and Trading Standards Service is required to have an Enforcement Policy and this is normally reviewed annually.
- 5 The Policy ensures our compliance with applicable legislation including the Regulators' Code and other published guidance.
- 6 The Policy ensures that there is consistency in the approach of officers in making decisions which concern enforcement action.
- 7 The Policy will apply to Environmental Health and Trading Standards Services only.

Financial Impact

- 8 None

Equality Impact Assessment

- 9 *A Screening Assessment has been undertaken to assist the Council in discharging its Public Sector Equality Duty under the Equality Act 2010. After completing the assessment it has been determined that this proposal does not require an Equalities Impact Assessment*

Workforce Impact

10 No impact

Legal Impact

11 Positive impact

Risk Management

12 Positive impact

Any Other Impacts? – Crime and Disorder/Counter Terrorism/Sustainable Development

13 Positive impact on crime and disorder

Consultation

14 *There is no requirement under the Constitution for external consultation on this item*

Recommendation(s)

15

- (1) To approve the updated Environmental Health and Trading Standards Enforcement Policy for 2016, as appended to this report.

Reason for Proposed Decision(s)

16 To ensure that consistent enforcement action is taken and the principles of the Regulators' Code and other published guidance are followed.

Implementation of Decision

- 17 *The decision is proposed for implementation after the three day call in period.*

Appendices

- 18 Appendix A - Environmental Health and Trading Standards Enforcement Policy 2016

List of Background Papers

- 19 None

Officer Contact

- 20 Nicola Pearce, Head of Planning and Public Protection.
Tel: 01639 686680 or e-mail:n.pearce@npt.gov.uk

Mark Thomas, Environmental Health and Trading Standards Manager. Tel 01639 685612 or email : m.thomas2@npt.gov.uk

ENVIRONMENTAL HEALTH AND TRADING STANDARDS

ENFORCEMENT POLICY

Introduction

The purpose of this policy is to guide efficient compliance with legislation that is enforced by the Environmental Health and Trading Standards Service, whilst minimising the burden to the Council, individuals, businesses and other organisations.

In performing their enforcement functions, the Environmental Health and Trading Standards Service will pursue their objectives of protecting the health, safety and economic well being of residents, visitors and businesses within the County Borough.

To achieve these objectives the Service is committed to providing advice, information and education to both consumers and businesses and to ensuring that non-compliance is dealt with in a manner which is open, consistent, proportionate and fair. This Enforcement Policy sets out the principles and procedure adopted by the Service in cases of non-compliance and/or unlawful activity by businesses or individuals.

This Policy is intended to provide guidance for officers, businesses and consumers rather than to set down a prescriptive set of rules. Nothing in this Policy should be construed as restricting the discretion of the Council to take legal proceedings or other enforcement action in cases where it is considered to be in the public interest.

Reference material

The Service has had regard to the following reference material in implementing this Enforcement Policy:

- a) The Ministry of Justice guidance for Simple Cautions for Adult Offenders (November 2013).

- b) The Code for Crown Prosecutors 2013
- c) The former LACORS Home Authority Scheme and the Better Regulation Delivery Office's Primary Authority Scheme.
- d) The Regulators' Code 2014
- e) Regulatory Enforcement and Sanctions Act 2008, as amended
- f) Legislative and Regulatory Reform Act 2006
- g) Food and Feed Law Codes of Practice
- h) Health and Safety Executive's Enforcement Policy Statement
- i) Office of the Deputy Prime Minister's Housing, Health and Safety Rating System Enforcement Guidance

Basic Principles

The Service, as a law enforcement body, has a duty to ensure that there is compliance with the wide range of laws relating to trading activity, public health, housing, health & safety and food safety, with the protection of public health and the promotion of good business practice being fundamental to the implementation of their enforcement and regulatory roles.

Regulators' Code

We will follow the provisions of the Regulators' Code, in that we will:-

- Conduct our activities to support businesses to comply and grow
- Provide simple and straightforward ways to engage with businesses and we will listen to their views
- Base our regulatory activities on risk
- Share information about compliance and risk
- Provide clear information, guidance and advice to aid business compliance
- Ensure that our regulatory approach is transparent

Additionally our policy is underpinned by certain other basic principles as detailed below:

Consistency

In order to ensure the equitable implementation of enforcement action, the Service is committed to ensuring that the policy is operated consistently at all levels within the Service from investigating officers to senior management. Consistency is not to be equated with uniformity and this does not mean that all cases will be treated identically as circumstances vary in each matter. The principle of consistency means that we will take a similar approach in similar circumstances to achieve similar ends. Further, in line with Better Regulation Delivery Office (BRDO) strategy, we are committed to improving consistency across local regulators and between regulators, to work towards developing a single regulatory system focused on shared outcomes, shared services and the sharing of intelligence.

Accountability

The Service is responsible to the public for their actions and will ensure that this Enforcement Policy is accessible. Further, it operates a fair and efficient complaints process within the overall Corporate Compliments, Complaints and Comments process. Details of the Corporate Compliments, Complaints and Comments procedure can be accessed via:- <http://www.npt.gov.uk/default.aspx?page=2777> ; by email – contactus@npt.gov.uk or by telephone on 01639 686868.

Proportionality

Proportionality means that any enforcement action is proportionate to the risk and will be related to the seriousness of any breach of the law. In considering seriousness, various factors will be taken into account, which include, among other considerations, the following: the number of people affected by any breach and their vulnerability, the economic impact, the detriment to the safety of others and the degree of intent. Any statutory defences will also be considered.

Transparency

We are committed to the implementation of clear and open procedures. Ensuring that individuals and business proprietors are aware of, and understand, their obligations and rights under the law is an integral part of the activities of the Service. In the event that the Service takes any enforcement action in relation to an individual or business, detailed information will be given as to what action is being taken, what is required of the individual or business and what the next steps will be. Any questions in relation to what is happening will be answered fairly and accurately having regard to the need for confidentiality in some cases. The Enforcement Policy is published on our website.

Targeting

We aim to focus enforcement activity on those areas which: indicate the greatest risk to public health or safety; impact most significantly on the economic well-being of the community; disproportionately affect vulnerable groups; taking into account both local and national priorities. We also aim to adopt a lighter touch for compliant businesses or individuals, and in some cases may opt not to take enforcement action where the infringement is minor or where a suitable alternative course of action is available. In all cases, we aim to target those who are primarily responsible for the non-compliance.

Enforcement Action

In dealing with non-compliance with environmental health, consumer and trading legislation, various factors are considered when assessing the most appropriate course of action. Action should be both necessary and proportionate with the objective of protecting the public, employees, consumers and the environment and where relevant be in the interests of compliant businesses. A graduated enforcement approach will be considered where the circumstances in each case merit such an approach. Evidence gathering will be subject to the relevant laws and codes of practice which may cover topics such as PACE (Police and Criminal Evidence); RIPA (Regulation of Investigatory Powers); Powers of arrest; and linking with other enforcement agencies.

Home Authority Principle and Primary Authority Principle

In respect of Home Authority and Primary Authority businesses the Service will, prior to undertaking any work that may affect a business that may be assisted by a Home Authority or Primary Authority:-

- Consult the Home Authority or Primary Authority Registers prior to undertaking the proposed work.
- Liaise with those authorities that have entered into Home Authority or Primary Authority relationships with businesses.
- Follow and adhere to any inspection plans produced by Primary Authorities.
- Feed back to Home Authorities or Primary Authorities on the work that has been subsequently undertaken.
- Publish the inspection plans for any business for whom we act as a Primary Authority on the Primary Authority Register.
- Contribute to the Primary Authority Register by adding information or responding to Statutory Notifications when necessary or required.

Graduated Enforcement Approach

The graduated approach that we employ starts at informal advice and verbal warnings and may progress through to serving of notices, issuing of written warnings and simple cautions and potentially lead to prosecutions. Some matters may involve less significant breaches of the legislation that we enforce and proportionality and fairness may dictate that advice and lesser scale enforcement action is taken. Some matters however, will be so serious, perhaps involving negligence, dishonesty, deception, deliberate actions or vulnerable persons and these by their nature should be considered as appropriate for prosecution, without the graduated approach being followed.

The main options available to us are outlined below.

Informal action and advice

This can take the form of a verbal warning, with guidance and advice on how to avoid future breaches, or a written warning setting out the infringement and giving advice as appropriate. A written warning is likely to be accompanied by verbal guidance and advice. In both instances the advice given will be clear and simple and, if appropriate, legal requirements will be clearly distinguished from best practice advice.

Statutory Notices

Certain provisions of the legislation administered by the service relate to the issuing of a Statutory Notice for breaches of law. The notice requires the recipient to take steps in order to return to legal compliance. Such steps may include; refraining from doing something such as making excessive noise or undertaking works such as restoring a commercial kitchen to compliance with food hygiene laws. The decision to serve a statutory notice will depend upon all the circumstances of the case. In some instances, the service may be under a legal duty to issue a notice once a contravention has been identified.

The person receiving the notice may not agree with it and has the right to appeal.

Failure to comply with a valid notice is an offence and the Council may take one of the following actions in response.

- Issue the offender with a simple caution;
- Take legal proceedings, usually in the Magistrate's Court;
- Seize and detain materials or equipment
- Undertake any work required by the notice and recover costs

The service makes a charge when statutory notices are issued under housing legislation. The charge, which is made at the end of the notice appeal period, includes: the cost of inspection; the cost of deciding the most satisfactory course of action and the cost associated with the service of the notice. An administrative charge is also made. The amount of charge is agreed annually by the Director of Environment and our Cabinet Member in consultation with the Head of Planning

and Public Protection and the Environmental Health and Trading Standards Manager.

Emergency or Immediate Actions/Prohibitions

Emergency or immediate action is sometimes needed to deal with the most serious risks and they will be subject to specific procedures, some of which may involve the Magistrates Court. Details of the appeals procedures are routinely included with the relevant Notices and information provided at the time of action.

Hygiene Emergency Prohibition Notices.

Where an authorised Officer has evidence of an imminent risk of injury to health relating to a Food Business, a Hygiene Emergency Prohibition Notice (HEPN) may be served to prohibit a premise, equipment or a process.

The notice must state the reasons why the premises pose an imminent risk to health and the works which are required to remove the imminent risk, such as “ Rid the premise of rodents / cockroaches. Pest proof the premise. Thoroughly disinfect all surfaces and equipment.”

An application must be made to the Magistrates Court for a Hygiene Emergency Prohibition Order (HEPO) to replace the HEPN within three working days of the notice being served. Where an HEPO is granted by the Court, the HEPN should be removed and replaced by the HEPO that day. The food business operator must apply in writing to the Food Authority for a certificate lifting the Emergency Hygiene Prohibition Order / Notice, which on request, an Authorised Officer should re-inspect as soon as possible (within 14 days) to determine whether the notice or Order can be lifted.

Simple Caution

We have the discretion to issue a simple caution in circumstances where there is sufficient evidence to support a realistic prospect of a conviction and the offender admits the offence and gives informed consent to being cautioned.

A caution is a serious matter and it is kept on record for a period of 3 years after it has been given. The issuing of a Simple Caution will be considered by the Service when deciding on enforcement action, as an alternative to prosecution. Such

decisions will be made on consideration of the facts of each case and the level of seriousness of the offence or offences being investigated. In the event of future breaches it can be cited in any subsequent court proceedings.

The Ministry of Justice guidance on Simple Cautions for Adult Offenders provides detailed information on the intended use and administration of the Simple Caution.

Fixed Penalty Notices

Fixed Penalty Notices can be issued as an alternative to legal proceedings for breaches of certain legislation, for example, smoke free laws or non-display of a food hygiene rating. If the person responsible does not accept the Fixed Penalty Notice or fails to pay the penalty within the required time period they may be liable to prosecution.

We may seek accreditation to issue a Fixed Penalty Notice to those responsible for non-compliance with other legislation for example, relating to the prohibition on the sale of alcohol to under-age children etc or we may work in conjunction with partners such as the Police who may serve Fixed Penalty Notices for such matters.

Revocation, Review or Refusal of Licences

Where there is non-compliance with any conditions of a licence that a business or individual may hold, for example, to sell alcohol, we may take steps with the appropriate licensing body to undertake a review to determine if the Licensee, Designated Premises Supervisor, Premises or Personal Licence Holder or any person or persons having responsibility for or under the licence is/are still fit and proper to hold the licence and/or to impose further specific conditions.

The service also operates a Mandatory Licensing Scheme to regulate high risk houses in multiple occupation (HMOs), of 3 or more storeys occupied by 5 or more people not of the same family. Further powers are available should the authority decide to utilise them for the control of 2 storey HMOs.

The Enterprise Act 2002

Under the Enterprise Act 2002 the Service can take action against businesses or individuals where there has been a breach of community or domestic law with the

effect of harming the collective interests of consumers. This action is civil action, not criminal, and any sanctions are civil sanctions with any proceedings going through the civil courts.

The purpose of action under the Enterprise Act is to prevent future breaches of the law rather than to punish previous breaches. The penalties for a future breach can be severe including a fine or potentially imprisonment.

This type of enforcement action is most appropriate in situations where there have been persistent breaches of the law, although in some circumstances action may be considered for a small number of breaches, or even a sole breach, where there is significant detriment or potential detriment to the consumer.

There is a range of actions available under the Act including:

- Informal undertakings
- Formal undertakings
- Interim Court Enforcement Orders
- Court Enforcement Orders
- Proceedings for Contempt of Court

Anti Social Behaviour Orders and Criminal Anti Social Behaviour Orders

Where the non-compliance under investigation amounts to anti-social behaviour under the Crime and Disorder Act 1998, for example, the persistent targeting of an individual or a group of individuals, then we may consider an application to the Magistrates' Court for an ASBO or, if following on from a conviction, a CRASBO. These orders prohibit certain types of conduct, which do not necessarily need to amount to criminal conduct. Breach of a prohibition is a criminal offence and can result in a fine or imprisonment.

Prosecution

Prosecution may have serious consequences for a business or individual: financial penalties, a criminal record, adverse publicity, an adverse effect upon a business' trading position and in some cases even loss of liberty. For these reasons the decision to prosecute is not taken lightly and is usually reserved for the more serious offences.

In deciding whether or not to instigate proceedings we have particular regard to the Crown Prosecution Service's (Code for Crown Prosecutors) which requires the assessment of two elements known as the evidential test and the public interest test.

The evidential test requires that the evidence to support a prosecution is deemed to be admissible in court, reliable and of sufficient quality and depth to give a realistic prospect of conviction. Integral to this process is consideration of any statutory defence which may be available and the likely success of such defence.

The public interest test is, broadly, a consideration of a number of factors which support the view that it is in the public interest to proceed. These relevant factors are outlined in the paragraph below. An additional factor which is particularly relevant to prosecution is whether the conviction will result in a significant sentence or penalty, including forfeiture of non-compliant goods, confiscation of the proceeds of the crime, disqualification of company directors and/or compensation for the victim. Consideration is also given to any impact a prosecution may have on a victim's physical or mental health, subject to the seriousness of the offence.

In applying the public interest test, it is not simply a case of adding up the factors on either side. We will decide in each individual case on the weight to be given to the relevant factors and assess the position overall, which is inline with the approach outlined in the Code for Crown Prosecutors.

In cases where legal proceedings are to be instigated, we have regard for the defendant's right to have the matter brought before the Courts without undue delay. What constitutes undue delay is determined by the date the offence came to light, the contribution by the defendant to the delay, the complexity of the offence and/or investigation and the seriousness of the offence.

Relevant Factors in considering Enforcement Action

The following factors are relevant in considering which of the above enforcement options is the most appropriate to take. In the decision making process, we will consider whether or not and /or the extent to which:

- The organisation or individual appears willing to speedily remedy the situation
- The offence was the result of a genuine mistake or misunderstanding
- There is a history of similar previous alleged breaches by the same organization or individual
- Previous advice has been heeded and acted upon
- There is a threat to public health, safety or the environment
- There is a threat of a significant economic disadvantage to consumers or other businesses
- The victim is part of a vulnerable group, for example, children, the disabled or the elderly
- The offence was motivated by some form of discrimination
- The offence is widespread with the potential to affect a number of individuals
- The organisation or individual has acted deliberately, negligently or with premeditation
- The organisation or individual has breached a position of authority or trust
- There are grounds for believing the offence is likely to be repeated
- As a matter of public policy it is desirable to proceed with enforcement action

Action under the Proceeds of Crime Act 2002

In the event of a criminal conviction, it is open to the authority in certain circumstances to apply for an order under the Proceeds of Crime Act 2002. This

legislation provides for confiscation of property and assets if it can be demonstrated that a defendant has profited from crime. In appropriate cases we will consider if an investigation into the defendant's financial affairs is required with a view to pursuing a confiscation order. We **will not** consider the fact that Proceeds of Crime actions may or may not be available in determining whether to prosecute.

Enforcement of Our Functions at Neath Port Talbot County Borough Council Premises

As a Service we are also required to inspect premises managed by or owned by this Authority.

We will treat such inspections as we would inspections of any other business in the County Borough area, taking steps to ensure that where we find non-compliance that this is raised immediately post inspection, with the relevant Head of Service via our own Head of Service. We will work with those Sections to rectify non-compliance in an open and transparent manner, ensuring that the same level of compliance is met as we would expect from any other business within our area.

Freedom of Information

The Freedom of Information Act 2000 deals with access to official information. In addition there are also regulations which provide access to environmental information i.e. the Environmental Information Regulations 2004.

This legislation gives the public a general right of access to information held by public authorities. When responding to requests, there are procedural requirements set out in the legislation which an authority must follow including the time frame within which the information must be supplied. There are also valid exemptions from supplying information that the authority can apply in certain, legally defined, circumstances.

Equal Opportunities

Implementation of this Policy will be carried out in accordance with Neath Port Talbot County Borough Council's policy on diversity. All decisions will be impartial and will not be influenced by race, politics, gender, sexual orientation or religious beliefs of the alleged offender.