



**Elmbridge**

**Borough Council**

*... bridging the communities ...*

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# **Environmental Services (Environmental Health & Licensing Team) Enforcement Policy**

Adopted by The Council's Cabinet on 08 October 2001

Revised and updated 14 January 2014

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# Environmental Services (Environmental Health and Licensing Team) Enforcement Policy

## 1 Introduction

Elmbridge Borough Council's Environmental Health and Licensing Service carries out a wide range of legal duties under various Acts and Regulations. These are applied by carrying out programmed inspections of business premises, responding to complaints and offering advice. This policy outlines the approach we take when considering what action is appropriate in a particular situation, and will apply to the following services:

- **Environmental protection (including noise, land and air pollution, and public health issues);**
- **Food safety;**
- **Health and safety at work;**
- **Licensing (including alcohol and entertainment, Hackney Carriage & Private Hire, Gambling, charitable collections, scrap metal and animal welfare).**

Environmental Health & Licensing also has **specific** enforcement guidelines covering food safety, environmental protection, and health and safety, which should be read in conjunction with this general policy.

## 2 Our policy on enforcement:

Our aim is to protect the public, the environment, businesses, consumers and workers from unacceptable hazards. In achieving this aim we will pursue the following objectives in our approach to enforcement action:

- **We will ensure that we enforce the law in a fair, equitable and consistent manner and have regard to the principles that regulatory activities should be carried out in a way that is transparent, accountable and proportionate; and should be targeted only at cases in which action is needed ;**
- **We will focus on prevention rather than cure;**
- **We will take firm action against those who flout the law or act irresponsibly; and/or seek financial gain by deliberately pursuing non-compliance;**
- **We will, wherever possible assist businesses and others in meeting their legal obligations without unnecessary expense;**

## 3 External Guidance:

Our approach to enforcement is based on applicable legislation and influenced by guidance and requirements from other national and Government bodies including the Health and Safety Executive, Department for Environment, Food and Rural Affairs, the Food Standards Agency and the Home Office. In particular the Service has previously formally adopted the Enforcement Concordat, a national Code of Practice that outlines the principles of good enforcement. The Code had the support of Government, through the Cabinet Office, and through the Local Government Association. Businesses and others being regulated can expect officers from the Environmental Health and Licensing Service to follow its principles and those set out in this policy.

In updating this policy due consideration has been paid to the Legislative and Regulatory Reform Act 2006 and the Department for Business Innovation & Skills Better Regulation Delivery Office, Regulators' Code July 2013 (This code replaced the previously voluntary adopted Enforcement Concordat and Department for Business Enterprise & Regulatory Reform (BERR) Statutory Code of Practice for Regulators published 17 December 2007).

The Service also follows the Guidance contained in the Code for Crown Prosecutors, produced by The Crown Prosecution Service.

## **4 Levels of Enforcement Action:**

Our choice of enforcement action will be based upon the seriousness of any breach of the law. We have adopted a staged approach to enforcement, which is set out below:

### **4.1 Prevention**

We believe the first step in enforcement is to help prevent contravention of the law by raising awareness and promoting good practice. The methods that we will pursue to achieve this aim could include training courses, special promotions, the issuing of press releases, tweets, alerts, the production of webpages and other forms of written guidance and social media, and opportunities presented by day-to-day contact with businesses and other customers.

### **4.2 Informal action**

We will use our best efforts to resolve any situations where the law may have been broken without issuing formal notices, or referring the matter to the courts, subject to the requirements to investigate statutory nuisances. This will be our first option when the circumstances indicate that a minor offence may have been committed and we are confident that appropriate corrective action will be taken. We may provide written reports, letters or emails following initial action, for example after an inspection or investigation into a complaint about noise from a neighbour. We will point out areas where the law has been broken, and explain why any recommended remedial work is necessary and over what time scale it should be completed. We will always ensure that it is made clear in a report or letter which matters are required by law and what are recommendations of good practice. We will also allow for alternative solutions to be implemented, if it achieves the same outcome.

### **4.3 Warning letters**

These state that in our opinion, there has been a more serious breach of the law, and warns that more formal action will follow if the contravention continues or is repeated. A record will be retained within the Service's enforcement register, and may be referred to if further legal action is required. Warning letters will normally only be issued following consideration and confirmation by a Principal Officer in order to ensure that our action is fair and consistent. Who to complain to and what steps can be taken if the person disagrees with the warning letter will be detailed in any warning letter sent.

### **4.4 Legal notices**

We will take formal action where in our opinion, there has been a serious breach of the law, which presents a risk to health, safety or the environment, where either an informal approach has failed, or it is felt that an informal approach will have no effect. Where specific legal requirements dictate notices will be served, for example following investigation of statutory nuisances.

Many of the various pieces of legislation that we enforce provide for the service of formal notices on individuals, businesses and other organisations requiring them to meet specific legal requirements. The notice will explain what is wrong, and where appropriate what is required to put things right and what the likely consequences are if the notice is not complied with. The method of appealing against the notice and the time scale for doing so will be provided in writing at the same time.

In most situations before formal action is taken, we will provide an opportunity to discuss matters and hopefully resolve points of difference. However, this may not be possible where immediate

action has to be taken, for example in the interests of health and safety, following investigation of statutory nuisances, or to prevent an imminent risk to health, or to protect the environment.

#### **4.5 Licences, permits or authorisations**

These may be varied, suspended or revoked if any conditions are not complied with, or if offences are committed or to remedy an unsatisfactory situation.

#### **4.6 Simple caution**

The use of a simple caution will be considered as an alternative to prosecution. Before issuing a caution, the following conditions must be satisfied:

- there must be evidence of guilt sufficient to give a realistic prospect of conviction if the case were to be taken to prosecution;
- the offender must understand the significance of the simple caution and consent to it; and
- the offender must admit the alleged offence by signing a simple caution form.

The Environmental Health and Licensing Manager would normally administer a simple caution following careful consideration of the circumstances of the case, and consultation with the Council's Legal Services Division. A simple caution is a serious matter, which can influence any future decision should the company or individual offend again. It can be referred to in any subsequent court proceedings, and if the case is proved, the previous simple caution may be considered by the court, as if it were a previous conviction. This will not normally apply if the caution was issued more than three years before. Where the offer of a simple caution is refused, the case will be reviewed again, and a prosecution may be pursued. In considering and issuing simple cautions we will have regard to the Ministry of Justice Guidance April 2013 – Simple Cautions for Adult Offenders.

#### **4.7 Fixed Penalty Notices**

Where provided for in legislation (such as in the Clean Neighbourhoods and Environmental Act 2005) in circumstances where it is appropriate to do so the Council may deal with some offences by way of fixed penalty notices.

#### **4.8 Prosecution**

A prosecution is normally taken as a last resort after alternatives have failed to remedy problems. This happens in only a small number of cases where it is necessary to protect consumers, employees or the environment. In these cases we prosecute to try and prevent a recurrence, and to act as a warning to others. We would only prosecute without prior warning in very severe circumstances, or where the action was deliberate and or sought to achieve financial advantage.

Any decision to prosecute will take into account the Government's Code for Crown Prosecutors. Under this code there are two tests that need to be satisfied before a decision to prosecute can be agreed. The first stage is the **evidential test**, where we must be satisfied that there is enough evidence to provide a "realistic prospect of conviction". If the case does not meet the evidential test, it cannot go ahead, no matter how serious it may be. If the evidential test is passed the case must then pass the second stage, **the public interest test**. The more serious the offence, the more likely it is that a prosecution will be needed in the public interest.

We will normally take a prosecution against those who are considered responsible for the offence. Where a Company is involved, we would normally prosecute the company where the offence resulted from its activities. The Service would however consider any part played in the offence by officers of the company, such as directors or managers. Action could also be taken against other employees where the offence was committed with their consent, was due to their neglect, or they 'turned a blind eye' to the circumstances of the offence.

We will apply the principles of 'Criminal Procedures & Investigations Act 1996' as well as Home Office Guidance, when making decisions on the course of action to be taken in any particular case.

Each case is considered individually, and the balance for and against prosecution is considered in the light of the circumstances of the case, in consultation with the Head of Legal Services. The following factors will be considered when deciding whether or not to prosecute:

- the seriousness and effect of the offence;
- whether the offence, or the circumstances leading to it were foreseeable;
- the intent of the offender;
- the history of offending;
- the attitude of the offender; and
- the deterrent effect of a prosecution, on the offender and others.

There are times where the circumstances of the case mean that the balance tends to be in favour of a prosecution. These would include:

- Offences which have, or may have, significant consequences for the environment or the health or safety of the public or employees;
- carrying out operations without, or in serious breach of, a relevant licence, permit or authorisation;
- excessive or repeated breaches of legal requirements;
- failure to supply information without reasonable excuse, or knowingly supplying false or misleading information;
- obstruction of the Service's staff in carrying out their powers; or
- impersonating the Service's staff.

Where a prosecution is pursued and the defendant is found guilty, our policy is to seek to recover the costs incurred by the Council in mounting the prosecution. The Service may also take the opportunity to highlight the circumstances of the case to emphasise our commitment to pursuing this enforcement policy.

A combination of enforcement measures may be appropriate in some cases, so that a prosecution and a notice may be used to resolve the same problem.

## **5 Other enforcement measures:**

- Where we identify breaches of legislation or licence conditions during inspections or investigations, follow up visits (revisits) may be undertaken, in order to ensure that appropriate and timely remedial action is carried out. Revisits will normally take place in accordance with the timescale for any remedial work discussed at the time of the initial visit.
- Where we have to carry out works in default, for example where works required in a notice have not been carried out, we will seek to recover the costs of those works and associated costs of administering the necessary works from those responsible.
- Exceptionally, in the case of an urgent and serious risk to health, safety or the environment a High Court injunction may need to be considered.

## 6 Our commitment to you:

- We will enter into discussion and offer advice, to try and ensure that people do not unnecessarily expose themselves to the possibility of formal action through a lack of understanding, or information.
- We will ensure that when discussing any action, officers make a clear distinction between what is recommended because it is good practice, and what is actually required by the law.
- Before taking enforcement action the case will be discussed with a senior officer to ensure that the proposed action is appropriate and fair.
- Where formal action is taken, our officers will provide an opportunity 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 or environmental protection, or to prevent evidence being destroyed.
- Where immediate action is considered necessary, an explanation of why such action was required will be given at the time and confirmed in writing, , in most cases within 5 working days and in all cases, within 10 working days.
- Where there are rights of appeal against formal action, advice on the appeal mechanisms will be clearly set out in writing at the time the action is taken. There are also opportunities for review of the case by a more senior officer, where there is disagreement with any enforcement action taken.
- We will be consistent in our approach by following the criteria and guidance set down in relevant legislation, codes of practice, and written procedures and work instructions.
- Where appropriate, we will liaise with our colleagues in related enforcement bodies to ensure that we are making similar decisions to others in similar circumstances. In some situations, the Service and other organisations may have the same or similar enforcement powers. In such cases we will co-ordinate our approach to seek to avoid duplication and ensure that the most appropriate action is taken.
- We will be objective to ensure that our decisions are not influenced by the gender, ethnic origin, religious or political beliefs, sexual preferences or any other status of any alleged offender.
- Where reasonable and practicable, we will try and accommodate the particular interests of consumers within Elmbridge, including business owners, employees and the public. This may include for example, carrying out an inspection of a food business in the evening, where it is not possible to gain access during the day.
- We will where necessary, provide particular help or guidance where a disability or other special need makes it difficult for a duty holder to understand or comply with our requirements.
- In implementing this policy we will consider the requirements of the Human Rights Act 1998.
- We will ensure that Councillors can scrutinise our enforcement activities by regularly circulating reports of our enforcement activities (covering notices issued) to them.

We will not depart from this policy unless there are exceptional circumstances, and only then with the written authority of the Environmental Health and Licensing Manager, or nominated cover. We will review our performance in adhering to this policy and take corrective action as necessary.

## 7 Further information

Copies of the Enforcement Policy and the Service's Complaint Procedure are freely available from the Civic Centre, High Street, Esher, Surrey, KT10 9SD. Tel. 01372 474750. Email; [envhealth@elmbridge.gov.uk](mailto:envhealth@elmbridge.gov.uk) (website <http://www.elmbridge.gov.uk/envhealth/enfguidelines.htm>)

Copies of the Code for Crown Prosecutors can be obtained from the CPS Communications Branch, tel. 020 7796 8442, or can be downloaded from [www.cps.gov.uk](http://www.cps.gov.uk)

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We welcome your comments on our Enforcement Policy in order to help us continuously improve our services.

Please send us your comments by email to [envhealth@elmbridge.gov.uk](mailto:envhealth@elmbridge.gov.uk) or complete this form, detach, adding your address if you would like a reply, and return to the address below.

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