



Charnwood Borough Council

Environmental Health

ENFORCEMENT POLICY

March 2006

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Introduction

This document sets out what business and others can expect from the enforcement officers of Charnwood Borough Council's, Environmental Health Department. It commits the Council to good enforcement policies and procedures. It lays down the generalised policy of the Service based on the principles of good enforcement contained in the "Enforcement Concordat", produced by Central Government, and is supplemented by additional statements of enforcement policy of service units within Environmental Health. For more information about the Enforcement Concordat visit: <http://www.cabinet-office.gov.uk/regulation/publicsector/enforcement/enforcement.htm>

The primary function of central and local government enforcement work is to protect the public, the environment and groups such as consumers and workers. At the same time, carrying out enforcement functions in an equitable, practical and consistent manner helps to promote a thriving national and local economy. Charnwood Borough Council is committed to these aims and to maintaining a fair and safe trading environment.

The effectiveness of legislation in protecting consumers or sectors in society depends crucially on the compliance of those regulated. We recognise that most businesses want to comply with the law. We will, therefore, take care to help business and others meet their legal obligations without unnecessary expense, while taking firm action, including prosecution where appropriate, against those who flout the law or act irresponsibly. All citizens will reap the benefits of this policy through better information, choice and safety.

Charnwood Borough Council has therefore adopted the central and local government Concordat on Good Enforcement. Included in the term 'enforcement' are advisory visits and assisting with compliance as well as licensing and formal enforcement action. By adopting the Concordat we commit ourselves to policies and procedures, which contribute to best value, and will provide information to show that we are observing them.

Approval

This policy was approved by Cabinet on 16 March 2006.

Access to the Policy

Hard copies and electronic copies of this policy are available on request from the Department at which is located in the Southfields Offices, Southfields Road, Loughborough, LE11 2TX. It can be requested by telephoning 01509 634636 or 634628 or e-mailing <mailto:env.health@charnwood.gov.uk> or writing to the Environmental Health Manager. The Enforcement Concordat is made available through the same channels. On request this policy will be made available on tape, in Braille, large type, or in a language other than English.

General Enforcement Policy

Introduction

Where enforcement action is necessary, officers of the Council will take appropriate action dependent on the seriousness of the breach of the law. Decisions on the course of action to be taken will take into account the principles of good enforcement as set out in the Enforcement Concordat namely:

Standards

We will maintain a set of clear standards setting out the levels of service and performance that service users can expect from the Section. These are contained in the annual Service Performance Plan of the Housing and Health Directorate which can be seen on the Council website at <http://www.charnwood.gov.uk/>. We also intend to publish an annual Food Safety Enforcement Plan and a Health and Safety Enforcement Service Plan which will set out in more detail our activities within the food hygiene and health and safety sectors.

We also have a full set of internal procedures that guide officers in the multitude of different tasks they carry out and seek to ensure a high degree of consistency and quality in the service. We monitor our performance indicators and report key indicators on a quarterly basis to the Senior Management Team. We also submit annual returns relating to performance in various areas of work to different government bodies;

1. Annual reports on food hygiene work to the Food Standards Agency
2. Annual report on health & safety to the Health & Safety Executive
3. Annual reports on air pollution and regulation to DEFRA
4. Annual reports on private sector housing improvement to ODPM / GOEM.

We always strive to carry out our core functions in a way that meets our own written procedures in order to ensure a consistent standard of service.

We will consult service users to identify non-conformities in service provision against current standards and refine existing services to better meet expectations.

Openness

We will provide information and advice in plain language on the rules that we enforce and how we apply them.

We will make clear to customers what their legal duties are in our dealing with them.

In all communications, we will make clear if a suggested action is a legal duty or given on a best practice, good will basis.

We will discuss general issues, specific compliance factors or problems with anyone experiencing difficulties.

Helpfulness

We believe that prevention is better than cure and that our role therefore involves actively working with businesses where practicable, especially small and medium sized businesses, and residents, to advise on and assist with legal compliance.

We will provide a courteous and efficient service.

We will provide a contact point, telephone number and email address for further dealings with us.

We will encourage all those who have dealings with us to ask us for advice and information.

Complaints about Service

In the first instance we will try to resolve any complaints by internal action. We will make clear to customers any complaints procedures or rights of appeal that may apply where disputes cannot be resolved.

We will respond to complaints made via the Councils Corporate Complaints procedure in the manner laid down in the procedure.

We will respond to those complaints made about the service to line managers or elected representatives in a manner that meets the same standard as the Corporate Complaints Procedure.

We will record customer compliments in order to identify and expand on those aspects of the service that exceed customer expectations.

Proportionality

Compliance will be made as straightforward as possible, by ensuring that any action we require is proportionate to the risks. As far as the law allows we will take account of the circumstances of the case and the attitude of the individual when considering action.

We will take particular care to work with small business, community and voluntary groups and individual residents so that they can meet their legal obligations without unnecessary expense where applicable.

Consistency

Environmental Health Services will carry out its duties in a fair, equitable and consistent manner. To promote consistency we will liaise with other authorities locally, countywide and nationally, however officers are expected to exercise judgment in individual cases.

Scope of the document

This document applies to Environmental Health Services. Separate more detailed enforcement policies exist for each of the individual service areas of the Department

Enforcement

Environmental Health Services believes that education and advice is the preferred first option for seeking to ensure that compliance with legal requirements is met. The service will provide appropriate advice to allow businesses and individuals to voluntarily comply with legal requirements. Where full compliance is not secured following advice, the Service will use the legal powers available to it. In deciding what enforcement action to take many criteria will be considered, including: -

- Whether the act or omission is serious enough to warrant formal action.
- Whether past history indicates that informal action can be expected to achieve full compliance.
- Whether officers' confidence in the premise's management is high.
- Whether the consequences of non-compliance will pose a significant risk to public health.
- Whether, even when some of the above criteria are not met, there may be circumstances in which informal action will be more effective than a formal approach.
- The availability of a statutory defense (acting with reasonable care).
- Any explanation offered by the party concerned

Where further investigation and the gathering of evidence is deemed necessary, it will be undertaken in accordance with principles laid out in the:

- Human Rights Act 1998
- Police and Criminal Evidence Act 1984
- Regulation of Investigatory Powers Act 2000

All efforts will be made to ensure the investigation is not unduly prolonged or delayed.

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.

We will keep witnesses, complainants or other parties informed as to the progress of the case. In certain circumstances, we may choose not to keep business proprietors or individuals or witnesses informed of progress if this could impede enforcement action and/or pose a safety risk to those concerned or the general public.

Shared Enforcement

In cases where it is believed that dual enforcement is necessary due to overlapping areas of responsibility, the case officer must make efforts to liaise with any other interested enforcement body. Effort should be made where possible to carry out joint inspections or an agreed officer may carry out on site investigations where appropriate. The aim must be to minimize the disruption caused by multiple visits by enforcement authorities without prejudice to any risk based or otherwise derived inspection program. Officers must ensure information relevant to other enforcement authorities is recorded and referred to that appropriate body.

The Environmental Health Department shares intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies, and examples including:

- Government Agencies, such as the Food Standards Agency, Meat Hygiene Service, Health and Safety Executive and Environment Agency.
- Police Forces
- Fire Authorities
- Public Health Laboratory Service
- Statutory undertakers, such as Severn Trent Water
- Other Local Authorities

The Enforcement Options Available To Compel Compliance

Informal Action

No Action

Where an inspection or investigation reveals full compliance with relevant legislation / Codes of Practice, no further action is required, apart from confirming compliance to client. In exceptional circumstances, contraventions may not warrant any action. This can be where the cost of compliance to the offender outweighs the detrimental impact of the contravention on the community, 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 is inappropriate in the circumstances, such as where a trader has ceased to trade, or the offender is elderly and frail and formal action would seriously damage their well being. A decision to take no action must be recorded in writing and must take into account the health, safety, environmental damage or nuisance implications of the contravention.

Advice and written warnings can be issued at the discretion of an authorised officer in order to communicate good practice or where an offence or possible offence is suspected to have occurred. An account of the warning must be kept on a case file.

For some contraventions the offender will be sent a firm but polite letter clearly identifying the contraventions, giving advice on how to put them right and including a deadline by which this must be done. Failure to comply could result in a notice being served or more severe enforcement action being taken. The time allowed must be reasonable, but must also take into account the health, safety and nuisance implications of the contravention.

For minor breaches of the law verbal advice will be given to the offender clearly identifying the contraventions, giving advice on how to put them right and including a deadline by which this must be done. Failure to comply could result in more severe enforcement action being taken. The time allowed must be reasonable, but must also take into account the health, safety and nuisance implications of the contravention.

Following advice or a written warning a revisit to the premises may be made to check compliance has been achieved in accordance with current government advice or codes of practice. For very minor contraventions advice may be given that a revisit may be carried out after the agreed deadline. Officers will then decide whether to actually make a revisit depending upon the health, safety, environmental damage or

nuisance implications of the contravention, and the perceived likely responding action of the offender to the verbal advice.

Formal Action

Statutory Notices can be produced by authorised officers where offences are known or suspected to have been committed and when the officer considers formal action appropriate, based on the principles of good enforcement outlined below. Any legal notices must be issued in the name of the delegated officer and counter-signed by a suitably competent officer, other than fixed penalty notices which are issued in the name of the authorised officer only.

Authorised officers will attempt to agree realistic compliance times on statutory notices, with businesses/proprietors (including head offices, company health and safety officers, and nominated persons authorised to speak on behalf of the company) prior to their service.

Authorised officers will only withdraw notices at their discretion, following a full review of the circumstances of a case and relevant legislation, and where the facts indicate the notice is no longer relevant. In some circumstances legal notices cannot be withdrawn after service.

Authorised officers will only extend notices (upon written request) at their discretion provided that the notices have not already expired.

Failure to comply with a Statutory Notice will result in the case being considered under the Prosecutions section of this policy.

Notices must contain all the information required by the various statutes and as a matter of general principle must: -

- Be correctly signed and dated.
- Provide clear information as to the offence or suspected offence committed and the action or work necessary to rectify this.
- Provide a date or time for completion of the action or work.

The notice or an accompanying letter must also give a statement of the intended further action of the local authority.

Following a formal notice a revisit to the premises may be made to check compliance has been achieved in accordance with current government advice or codes of practice. For very minor contraventions advice may be given that a revisit may be carried out after the agreed deadline. Officers will then decide whether to actually make a revisit depending upon the health, safety, environmental damage or nuisance implications of the contravention, and the perceived likely responding action of the offender to the verbal advice.

Certain types of notice allow us to 'carry out work in default'. This means that if a notice is not complied with [a breach of the notice] 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 cost we incur in carrying out the work.

Public Registers

All relevant notices will be placed on the Authority's public register in compliance with the Environment and Safety Information Act 1988 if they relate to matters of a public concern. Copies of the public registers are kept at the Southfields Offices, Southfields Road, Loughborough. Hard and electronic copies of the public register entries can be sent on request although a fee may be payable

Revocation of a Licence

In order to warrant revocation of a licence, the individual or organisation must meet one or more of the following criteria:

- Engaged in fraudulent activity,
- Deliberately or persistently breached legal obligations, which were likely to cause material loss or harm to others,
- Deliberately or persistently ignored written warnings or formal notices,
- Endangered, to a serious degree, the health, safety or well being of people, animals or the environment,
- Obstructed an officer during undertaking his or her duties.
- Fail to pay appropriate fees required by statute for the license.

Injunction

In the case of immediate risk to health and safety or where the legal team agree that an injunction is a more appropriate course of enforcement action than any other, then injunctions will be used as an enforcement measure to remedy contraventions or dangerous circumstances.

Seizure

We have powers under various pieces of legislation to seize faulty, dangerous, unwholesome or contaminated goods, food, or equipment responsible for causing a noise nuisance, to prevent them causing nuisance or harm to consumers, employees, other businesses or residents. When we seize goods we will give the person from whom the goods are taken an appropriate receipt. If we seize unfit food, we will produce it before a Magistrate as soon as possible for them to confirm the seizure and consider the food unfit. If the Magistrate does not condemn the food, we will return it to the owner who will be entitled to compensation for any loss suffered. We always give full details of our actions to the offender when we exercise this power.

Formal Caution

The aim of a Formal Caution is to,

- Deal quickly and simply with less serious offences
- Divert them from unnecessary appearance in the criminal court
- Reduce the chances of their re-offending

A person will only receive a Formal Caution when the circumstances of the offence meet the criteria identified in Home Office Circular 18/94 or any replacement thereof and therefore there must be: -

- Sufficient evidence of the offenders guilt to make a conviction a realistic prospect and,
- An admission of guilt,
- Such understanding of the issue of a Formal Caution as to enable the offender to give his informed consent to it.

Factors, which will be taken into account on whether to issue a Formal Caution, include

- The nature and seriousness of the offence
- The likely penalty
- Previous offence history and attitude to the offence for which a formal caution is contemplated.

The Formal Caution will be administered by the “Cautioning Officer”, (as defined in the Councils Constitution) in person, if possible. Alternatively a relevant Service Unit Manager may administer the caution.

We will inform the offender in writing that we propose to issue a Formal Caution, using the form in annex 11, document 1 of the Home Office Circular 18/94.

The Formal Caution will be issued in writing using the form in annex 11, document 2 of the Home Office Circular 18/94 in the case of an individual, and annex 2, document 3 when the offence is committed by a Company. The person receiving, and then the person administering the caution will sign two copies. One of the copies will then be given to the person receiving the caution.

If the offender refuses to accept a Caution or fails to return the signed copies within 14 days, then formal prosecution action will be taken.

Recording Offences

We will record details of the offence in the appropriate premises file and inform Home Authorities as necessary.

The Office of Fair Trading will be informed of the Caution as soon as possible using the form in annex 11 of the Home Office Circular 18/94. We will also send a signed copy of the caution letter to

Office of Fair Trading
Consumer Affairs Division
Field House (Room 206)
15-25 Bream’s Building
London
EC4A 1PR

If the offence relates to a complaint, we will inform the complainant that a Formal Caution has been issued.

Prosecutions

Prosecution is available to punish wrongdoing and act as a deterrent. The Council always has the discretion of whether or not to prosecute for an offence. The decision to prosecute is a very significant one and is not taken lightly and is based on the circumstances of each case laid out in the policy below.

A breach of law will not automatically result in legal proceedings, however a prosecution will normally take place unless public interest factors against clearly outweigh those in favour of prosecution or unless the evidence is not sufficiently reliable, admissible and substantial so as to provide a 'realistic prospect of conviction'.

Evidential tests and **public interest tests** are normally applied when considering a prosecution;

The Evidential Test

Environmental Health managers and Legal Services 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. It 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 satisfied so that it is sure of a defendant's guilt.

When deciding whether there is enough evidence to prosecute, Environmental Health Managers and Legal Services must consider whether the evidence can be used and is reliable. Details of the evidential tests to be applied are contained in the current Charnwood Borough Council Prosecution Code.

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. A prosecution will usually take place unless there are public interest factors tending against prosecution that clearly outweigh those tending in favour. Although there may be public interest factors against prosecution in a particular case, often the prosecution should go ahead and those factors should be put to the court for consideration when sentence is being passed.

Environmental Health Managers and Legal Services must balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the suspect. Some factors may increase the need to prosecute but others may suggest that another course of action would be better. Usual considerations include;

- There is a flagrant breach of law such that public health, safety or well being is put at risk, or there is a serious offence under relevant legislation.
- A failure by the offender to correct an identified serious potential risk to public safety after having been given a reasonable opportunity to do so.
- A failure to comply in full or part with a Statutory Notice, licensing or registration.
- There is a history of similar offences related to risk to the public.
- A Formal Caution has previously been issued for a similar offence.

- The foresee ability of the offence.
- The likelihood of its recurrence or a similar recurrence
- Mitigation offered by the offender
- The attitude, intent and history of the offender.
- The validity of any likely legal defences.
- Likely co-operation of key witnesses
- Possible Human Rights Act breaches

The current Charnwood Borough Council Prosecution Code lists some common public interest factors both for and against prosecution. These are not exhaustive and the factors that apply will depend on the facts in each case.

Authorisations

Authorisation to act in accordance with this policy and prosecute in individual cases will be in accordance with the Council's current scheme of delegation. All enforcement officers carry cards showing their identity and a list of legislation that they are authorised to enforce.

Suitably qualified, experienced and competent Enforcement Officers will normally initiate enforcement action. Where, through upholding the principles outlined in the policy document, a prosecution is necessary, the investigating office and Service Unit Manager Legal Services may authorise it without further reference to Elected Members. External advisors / experts may also be consulted where appropriate.

A list of all of the statutes for which the Director of Housing and Health has delegated responsibility to authorised Environmental Health staff is contained in the relevant delegated decision.

(The designated Officers who are responsible for authorising a prosecution will be aware of the limits and Officers and Statutory Codes of Practice and any other forms of guidance, of their delegated powers by reference to the Councils Functions and Scheme of Delegation to Committees including the principles set out in this policy).

Indemnification

The Authority will indemnify authorised officers against the whole of any damages and costs or expenses which may be involved, if the Authority is satisfied that the officer honestly believed that the act complained of was within their powers and that their duty as an officer entitled them to do it, providing the officer was not wilfully acting against instructions.

Post Prosecution

Following a successful prosecution, the Service will: -

- Notify the Office of Fair Trading of the conviction in sufficient detail for other authorities to make use of the system.
- Notify the Home and/or Originating Authority if appropriate.

- Notify the complainant of the outcome of the case.
- Notify lead authority if appropriate.

Enforcement Policy implementation

Instances of non-compliance with this policy will be recorded and reported to the Environmental Health Manager, who will instigate appropriate action.

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:

- Article 6 - Right to a fair trial
- Article 8 - Right to respect for private and family life, home and correspondence
- Article 14 - Prohibition of discrimination on any grounds