

## **Appendix 2: Draft Enforcement Policy**

### **DRAFT NEIGHBOURHOODS ENFORCEMENT POLICY**

In April 2008, the Regulators Compliance Code set out new obligations in relation to regulatory enforcement. In particular it sets out the need for consideration of:

- Economic Progress
- Risk Assessment
- Advice and Guidance
- Inspections and other visits
- Information Requirements
- Compliance and Enforcement Actions
- Accountability

Peterborough City Council fully supports these principles and has set out within this Enforcement Policy the principles to be adopted by all departments and officers exercising any enforcement functions. In adopting this Enforcement Policy the Council is stating its commitment to an enforcement service which is courteous and helpful and which works with individuals and businesses, wherever possible, to help them comply with the law. The Council nevertheless acknowledges the need for firm action against those that flout the law and put consumers and others at risk.

This policy must be read in conjunction with the community and corporate priorities. Consequently they can influence the enforcement approach adopted, as well as helping define those areas where breaches are considered serious. In such cases a staged approach to enforcement is unlikely to be appropriate.

In drafting the policy the council has taken the provisions of the Human Rights Act 1998 into account. In the Council's view this Enforcement Policy is compatible with Convention Rights.

#### **1. ENFORCEMENT ACTIVITY**

- 1.1. Neighbourhoods, as part of the City Council, has a duty to enforce a wide range of statutes relating to public health and safety, quality of life, preservation of public and residential amenity maintenance of the environment and protection of public funds. All of these activities will be carried out having regard to the general principles of good enforcement practice outlined in this Policy document. The services falling within the scope of this policy include: Trading Standards, Environmental Health, Licensing and Environmental Crime.
- 1.2. Although primary responsibility for compliance with the law rests with individuals and business, the Council will provide information to help and support them to understand and comply with legal requirements.

#### **2. DELEGATION OF AUTHORITY**

- 2.1 The Council's Scheme of Delegation specifies in the Council's constitution the extent to which enforcement powers are delegated to officers. Whilst delegation is usually to officers, in certain circumstances the decision to take enforcement action lies with the relevant Council Committee.

#### **3. PRINCIPLES OF ENFORCEMENT**

##### **3.1 Overview**

- 3.1.1 The Council believes in firm but fair regulation. Underlying the policy are the principles of proportionality in the application of the law and in securing compliance; consistency of approach; openness about how the Council operates and what customers may expect, and targeting of enforcement action.

3.1.2 Peterborough City Council will adhere to the Regulators Compliance Code by:

- Allowing and encouraging economic progress and only intervening where there is a need for protection.
- Using a comprehensive risk assessment to concentrate resources on the areas of highest priority.
- Providing straightforward and authoritative advice.
- Only undertaking inspections where there is either a risk based or complaint led reason or at the request of the business.
- Reducing the burden on businesses by not asking for unnecessary information.
- Applying meaningful sanctions against those businesses that persistently breach legislation.
- Being accountable for the effectiveness of our actions.

### **3.2 Proportionality**

3.2.1 The enforcement action taken by the Council will be proportionate to the risks posed and to the seriousness of any breach of the law.

3.2.2 Some incidents or breaches of regulatory requirements have the potential to cause serious risks to public health and safety, environmental damage or loss of public or residential amenity. One of the Council's responsibilities is to protect the public and prevent harm to the environment, prevent significant financial loss and protect animal welfare and prevention of disease from occurring or continuing. There will be occasions when the breach of legislation will justify statutory action. Any such action will only be taken in accordance with the law and statutory guidance, consideration of the Code of Practice for Crown Prosecutors, and any Convention Rights, under the Human Rights Act 1998, that may be affected by such action.

### **3.3 Consistency**

3.3.1 The Council aims to achieve consistency in advice tendered, the response to complaints and other incidents, the use of powers and decisions on whether to prosecute.

3.3.2 However, the Council recognises that consistency does not mean uniformity. Officers need to take account of many variables including the scale of the breach; the attitude and actions of management, and the history of previous incidents or breaches. Decisions on enforcement action are a matter of professional judgement and the Council, through its officers, needs to exercise discretion. The Council will continue to develop arrangements to promote consistency including effective arrangements for liaison with other enforcing authorities.

### **3.4 Openness**

3.4.1 Openness is important in maintaining public confidence in the Council's ability to regulate. It means helping all customers to understand what is expected of them and what they should expect from the Council. It also means making clear why an officer intends to or has taken enforcement action.

3.4.2 Openness is an integral part of the role of Council officers and the Council continues to train its staff and to develop its procedures to ensure that:

- where remedial action is required, it is clearly explained (in writing if requested) why the action is necessary and when it must be carried out; a distinction being made between best practice advice and legal requirements;
- opportunity is provided to discuss what is required to comply with the law before formal enforcement action is taken, unless urgent action is required, for example, to protect the environment, to prevent evidence being destroyed or in the course of an investigation into fraud which may lead to prosecution;
- where urgent action is required, a written explanation of the reasons is provided at the time or as soon as practicable after the event;

- written explanation is given on any rights of appeal against formal enforcement action at the time the action is taken.

### **3.5 Targeting**

3.5.1 Targeting means making sure that regulatory effort is directed primarily towards those who are responsible for risk to health and safety or whose activity gives rise to serious environmental damage, where the risks are least well controlled or against deliberate or organised crime. Action will be primarily focused on lawbreakers or those directly responsible for the risk and who are best placed to control it.

3.5.2 The Council has systems for prioritising regulatory effort. They include the response to complaints from the public about regulated activities, the assessment of the risks posed by business operation and the gathering and acting on intelligence about illegal activity.

In the case of regulated industries, management actions are important. Repeated incidents or breaches of regulatory requirements which are related may be an indication of an unwillingness to change behaviour or an inability to achieve sufficient control, and may require a review of the regulatory requirements, the actions of the operator and additional investment. A relatively low hazard site or activity, poorly managed, has potential for greater risk to the environment than a higher hazard site or activity where proper control measures are in place.

3.5.3 The Council will always seek to recover the costs of investigation and Court proceedings.

### **4.1 ENFORCEMENT OPTIONS**

4.1.1 The Council recognises the importance of achieving and maintaining consistency in its approach to enforcement. For many areas of our enforcement activity government guidance already exists in the form of Codes of Practice, Planning Policy Guidance, Government Circulars etc. There may also be local or regional Codes of Practice such as the Charter and Code of Practice for the collection of debts which have been produced locally to promote consistency in our enforcement activity. When making enforcement decisions officers must have regard to any relevant national or local guidance as well as the provisions of the Human Rights Act 1998 and this Enforcement Policy.

4.1.2 Enforcement decisions must be consistent, balanced, fair and relate to common standards that ensure the public or environment is adequately protected. The criteria to be considered will include:

- the seriousness of the offence;
- the history of the activity;
- confidence in achieving compliance;
- consequences of non-compliance; and
- likely effectiveness of the various enforcement options.

4.1.3 In addition, the following will be considered:-

- I. Whether the standard evidence is sufficient for there to be a realistic prospect of prosecution.
- II. Whether the prosecution is in the public interest.
- III. The likely penalty, i.e. if the probable penalty would only be an absolute discharge then it would not normally be considered in the public interest to prosecute.
- IV. Currency, i.e. regard would be had to the time which has elapsed since the date of any alleged offence.
- V. Youth, with regard being taken of previous character, parental attitude and the likelihood of the alleged offence being repeated.
- VI. Old age, infirmity, or other medical condition, in particular, whether the accused is fit to stand trial.

- 4.1.4 The criteria are not exhaustive and those which apply will depend on the particular circumstances of each case.
- 4.1.5 Having considered the enforcement criteria the following options are available:
- to take no action; or
  - to take informal action: or
  - to serve statutory notices; or
  - to issue simple cautions; or
  - to suspend, revoke or refuse to renew a licence; or
  - to impose an administrative penalty; or
  - Issue proceedings under civil law; or
  - to prosecute or apply for a Court Order.
- 4.1.6 Where appropriate a staged approach to enforcement should be adopted and in the first instance business should be given the opportunity to discuss and remedy problems before action is taken, unless immediate action is required.

## **4.2 Informal Action/Out of Court Disposals**

4.2.1 Informal Action will be taken when:

- the act or omission is not serious enough to warrant formal action; or
- from the individual's or business's past history it can be reasonably expected that informal action will achieve compliance; or
- the confidence in an individual or business proprietor is high; or
- the consequences of non-compliance will not pose a significant risk to public health, public safety or the environment.

4.2.2 When an informal approach is used to secure compliance with regulations, confirmation of what action is required must be confirmed in writing. All correspondence must clearly differentiate between legal requirements and recommendations of good practice and must indicate the regulations contravened and the measures which will enable compliance.

## **4.3 Statutory Notices**

4.3.1 Statutory Notices will be issued where one of the following criteria apply:

- where there is a statutory duty to do so;
- there are significant contraventions of legislation;
- where there is a lack of confidence in the proprietor or enterprise to respond to an informal approach;
- there is a history of non-compliance;
- standards are generally poor with little management awareness of statutory requirements;
- the consequences of non-compliance could be potentially serious to public health, or cause public nuisance, or be irreversible; or
- where, in addition to prosecution, measures need to be taken to remedy conditions that are serious, deteriorating or where the service of a notice is needed to support a prosecution.

4.3.2 Failure to comply with a statutory notice will, in general and where relevant, result in prosecution and/or works in default where appropriate.

## **4.4 Prohibition Notices**

4.4.1 It will be necessary to consider the service of a Prohibition Notice, Stop Notice or Injunction in one or more of the following circumstances:

- an imminent risk of injury to health or safety can be demonstrated;
- an imminent risk of serious pollution to the environment can be demonstrated;
- the consequences of not taking immediate and decisive action to protect the public would be unacceptable.
- where an unauthorised development is unacceptable and immediate remedial action is required because the breach is causing serious harm to public amenity in the neighbourhood of the site or where there has been breach of a condition notice;
- where unauthorised development is unacceptable and continuing works are causing irreversible damage and remedial action is not a satisfactory option;
- the guidance criteria concerning the conditions when prohibition may be appropriate are fulfilled;
- there is no confidence in the integrity of an un-prompted offer made by a proprietor to voluntarily close premises or cease the use of any equipment, process or treatment associated with the imminent risk; or
- a proprietor is unwilling to confirm in writing his/her un-prompted offer of a voluntary prohibition.
- where it would be the most effective remedy available.

## **4.5 Fixed Penalty Notices/Penalty Charge Notices**

4.5.1 Fixed penalty notices may be given for less serious offences such as parking tickets (where a Penalty Charge Notice is issued), and littering and fly posting as an alternative to prosecution, or where it is the only sanction available, e.g. smoke free legislation. They will be issued to:

- deal quickly and simply with less serious offences;
- divert less serious offences away from the courts; or
- reduce the likelihood of re-offending.
- Where there is a statutory duty to do so.

## **4.6 Simple Cautions**

4.6.1 Simple Cautions (previously known as Formal Cautions or Home Office Cautions) may be issued as an alternative to prosecution. Simple Cautions may be issued to:

- To reduce the likelihood of re-offending

4.6.2 When considering issuing a Simple caution, the following must be taken into account:

- There must be sufficient evidence to provide a realistic prospect of conviction if the matter was brought before a court.
- There must be a clear and reliable admission of guilt by the alleged offender.
- The alleged offender must understand the significance of the caution and make an informed decision to consent to receiving a simple caution.

4.6.3 No pressure will be applied to a person to accept a formal caution.

- The alleged offender will be informed of the nature and consequences of accepting the Simple Caution before it is administered.

4.6.4 Should a person decline the offer of a simple caution a prosecution must be pursued.

## **4.7 Prosecution**

4.7.1 The Council recognises that the decision to prosecute is significant and could have far reaching consequences on the offender.

4.7.2 The decision to undertake a prosecution will normally be taken by the relevant Director or officer with delegated authority in consultation with the Council's Legal Team. The criteria for the issue of proceedings are:

- the alleged offence involves a flagrant breach of the law such that public health, safety or well being is or has been put at risk or irreversible damage had resulted;
- there has been a reckless disregard for the environment;
- the alleged offence involves deception which may or may not result in a loss or potential loss of public funds;
- the integrity of the licensing framework is threatened;
- the alleged offence involves a failure by the suspected offender to correct an identified serious potential risk having been given a reasonable opportunity to comply with the lawful requirements of an authorised officer;
- the alleged offence involves a failure to comply in full or in part with the requirements of a statutory notice;
- a repeat offence that has been subject to a formal warning, a simple caution, or there has been a failure to pay a fixed penalty notice.
- there is a history of similar offences;
- the alleged offence causes public alarm and it is desirable to reassure the public and deter other offenders; or
- a prosecution is in the public interest, there is realistic prospect of conviction and sufficient evidence to support proceedings;

4.7.3 All relevant evidence and information will be considered before deciding upon a prosecution in order to enable a consistent, fair and objective decision to be made.

## **4.8 Prosecution Without Warning**

4.8. As a general rule a person or a company will be given a reasonable opportunity to comply with the law, although in some circumstances prosecution may be undertaken without giving prior warning, e.g.

- the contravention is a serious one;
- there has been a blatant disregard of the law;
- a statutory notice or warning has been previously issued for a similar offence; or
- the integrity of the licensing framework is threatened.

## **5. Shared Enforcement Role**

5.1 There are occasions when there is a shared enforcement role between Council services as well as with external organisations. In each case there will be arrangements made between joint enforcement bodies to ensure that there is effective, open, proportionate and consistent enforcement. These arrangements will follow statutory guidelines and policies where applicable. Where it is considered to be advantageous, Service Level Agreements may be entered into with other Council services and/or external organisations to promote consistent enforcement procedures.

## **6. TRAINING AND APPOINTMENT OF OFFICERS**

6.1 All officers undertaking enforcement duties will be suitably trained and qualified so as to ensure that they are fully competent to undertake their enforcement activities.

6.2 All officers will be formally authorised by the relevant Council committee or delegated officer to exercise specified powers under relevant statutes. The level of authorisation for each officer will be determined by their qualifications, experience and competence having regard to any relevant national guidelines. Authorisation will be in writing and in a form which can be shown on request.

6.3 The Council supports the principle of continuing professional development and will ensure that all officers are given additional training and development as required.

## **7. MONITORING**

7.1 Staff competency and the consistency of enforcement will be reviewed by each department on a regular basis.

7.2 The Council will monitor the quality and nature of enforcement activities undertaken, so as to ensure, as far as is reasonably practicable, a uniform and consistent approach. Where local or national co-ordinating bodies exist such as LACORS and the Cambridgeshire Food Liaison Group, the Council will ensure that wherever possible its enforcement practices are consistent with best practice. The review of the enforcement services may have regard to reviews of enforcement standards by members of the Council, quality assurance and performance monitoring, including supervision of officers during enforcement action, peer review exercises and internal training sessions and workshops.

## **8. NON COMPLIANCE WITH POLICY**

8.1 If any person is unhappy with the action taken, or information or advice given, they will be given the opportunity of discussing the matter with the relevant line manager or Head of Service. This is without prejudice to any formal appeals mechanism or to the Council's formal complaints procedure.

## **9. REVIEW OF THE POLICY**

9.1 This policy document will be reviewed on a regular basis.

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