

Environmental Health and Regulatory Services

Enforcement Policy (November 2009)



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INTRODUCTION

- 1.1 Gloucester City Council carries out a wide range of regulatory roles in meeting its many statutory duties of protecting the public, individuals and the environment. The enforcement policy provides guidance to officers, businesses and the general public on the range of options that are available to achieve compliance with the legislation enforced by Environmental Health and Regulatory Services.
- 1.2 The aim of the Environmental Health and Regulatory Service is to improve the quality of life, safeguard and improve public health and the environment in the City.
- 1.3 Our primary objective is to achieve regulatory compliance. It is recognised that prevention is better than cure, however, formal action against a business or a member of the public will be taken where it becomes necessary to do so.
- 1.4 Fair and effective enforcement is essential to protect the economic interest and health and safety of the public and businesses and the environment. Decisions about enforcement action and in particular the decision to prosecute has serious implications for all involved. Environmental Health and Regulatory Services applies this Policy to ensure that:
 - Decisions about enforcement action are fair, proportionate and consistent;
 - Officers apply current Government guidance and codes of practice;
 - To ensure that everyone understands what principles are applied when enforcement action is considered.
- 1.5 This Policy is designed to make sure that everyone knows the principles that Environmental Health and Regulatory Services applies when carrying out its work. By applying the same principles, everyone involved in the decision making process is helping to treat victims fairly and to prosecute fairly but effectively.
- 1.6 Each service area may also have additional, specific requirements, which supplement this policy but take into account specific requirements for that service which may include the statutory need for a service specific enforcement policy.

LEGAL STATUS OF THE ENFORCEMENT POLICY

- 2.1 The Policy was approved by Cabinet (*date to be inserted*) and all enforcement officers carry cards showing their identity and a list of legislation that they are authorised to enforce.

SCOPE AND MEANING OF 'ENFORCEMENT'

- 3.1 This Policy applies to all the legislation enforced by Officers from Environmental Health and Regulatory Services.
- 3.2 'Enforcement' includes any action taken by Officers aimed at ensuring that individuals or businesses comply with the law. This is not limited to formal enforcement action such as prosecution; it also includes, for example, the inspection of premises for the purpose of checking compliance with acts of Parliament and regulations.

HOW TO OBTAIN A COPY OF THE POLICY OR MAKE COMMENTS

4.1 This Policy is available on the City Council's web site:
<http://www.gloucester.gov.uk/>

If you would like a paper copy of the Policy and/or you would like to comment on the Policy, please contact us by:

- Telephoning 01452 396396
- E-mailing heretohelp@gloucester.gov.uk
- Writing to Environmental Health and Regulatory Services, Gloucester City Council, Herbert Warehouse, The Docks, Gloucester GL1 2EQ.

4.2 On request, this Policy will be made available on tape, in Braille, large type, or in a language other than English.

GENERAL PRINCIPLES

5.1 Each case is unique and must be considered on its own merits. However there are general principles that apply to the way each case must be approached. These are set out in this Policy and in the BERR Regulators' Compliance Code "Statutory code of practice for Regulators" and the Government's Enforcement Concordat.

For more information about the Regulators' Compliance Code visit:

<http://www.berr.gov.uk/files/file45019.pdf>

5.2 Environmental Health and Regulatory Service believe in firm but fair regulation. Underlying this are the principles of:

- Proportionality in the application of the law and in securing compliance
- Consistency of approach
- Transparency about how the Service operates and what those regulated may expect from the Service, and
- Targeting of enforcement action.

5.3 Enforcement officers must be fair, independent and objective and must not let any personal views about issues such as disability, ethnic or national origin, sex, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender influence their decisions. They must not be affected by improper or undue pressure from any source.

5.4 It is the duty of enforcement officers to make sure that enforcement action is taken against the right person. In doing so it must act in the interests of justice and not solely for the purpose of obtaining a conviction.

NOTIFYING ALLEGED OFFENDERS

- 6.1 If we receive information [for example from a complainant] that may lead to enforcement action against a business or individual. We will notify that business or individual as soon as is practicable of any intended enforcement action, except in the circumstances described in 6.3 below.
- 6.2 During the progression of enforcement investigations/actions, business proprietors or individuals or witnesses will be kept informed of progress. 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.
- 6.3 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.

DECIDING WHAT LEVEL OF ENFORCEMENT ACTION IS APPROPRIATE

- 7.1 A large number of factors are considered when determining what action to take. These factors are used to determine the level of enforcement action we may take:

Levels of enforcement action:

There are a large number of potential enforcement options. The level of the action taken varies from no action through to proceedings in Court. Examples of the main types of action that can be considered are shown below:

- No action
 - Informal Action and Advice
 - Written warning and/or advice
 - Formal Notice
 - Works in Default
 - Revisit of premises
 - Fixed Penalty Notice
 - Seizure
 - Forfeiture Proceedings
 - Simple Caution
 - Refusal/revocation of a licence
 - Court Injunction
 - Prosecution
- 7.2 In assessing what enforcement action is necessary and proportionate, consideration will be given to:
- The seriousness of compliance failure;
 - The business' past performance and its current practice;
 - The risks being controlled;
 - Legal, official or professional guidance;
 - Local priorities of the City Council.

- 7.3 Where the law has been contravened, there is a range of enforcement options available to seek compliance with the law. Under normal circumstances, a process of escalation will be used until compliance is reached. Exceptions would be where there is a serious risk to public safety or the environment or the offences have been committed deliberately or negligently or involve deception or where there is significant economic detriment.

No Action

- 7.4 In exceptional circumstances, contraventions of the law 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, the cost of the required enforcement action to the City Council outweighs the detrimental impact of the contravention on the community or where a risk based assessment had not identified a significant hazard. 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 will be recorded in writing and must take into account the health, safety, and environmental damage or nuisance implications of the contravention.

Informal Action and Advice

- 7.5 For minor breaches of the law we verbally advise the offender. We will clearly identify the contraventions of the law and give advice on how to put them right and including a deadline by which this must be done. Sometimes we will advise offenders about 'good practice', but we will clearly distinguish between what they must do to comply with the law and what is advice only.
- 7.6 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.

Written warning and/or advice

- 7.7 For some contraventions we will send the offender 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.
- 7.8 If anyone is concerned with the contents of the written warning then they may put in a written appeal to the Service Manager.

Formal Notice

- 7.9 Notices are served to require offenders to cease contravening activities, or to give offenders reasonable time to rectify a contravention. Notices may require *contravening activities* to cease immediately where the circumstances relating to health, safety, environmental damage or nuisance demand. In other circumstances, the time allowed must be reasonable, but must also take into account the health, safety, and environmental damage or nuisance implications of the contravention.

7.10 Any reasonable written requests, with valid reasons, for an extension to this time period will be considered.

7.11 All notices issued will include details of any applicable *Appeals Procedures*.

Works in Default

7.12 Certain types of notice allow us to 'carry out work at default'. This means that if a notice is not complied with or there is 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.

Revisit of premises

7.13 Following a formal notice, written warning or verbal warning we may revisit the premises to check compliance has been achieved. For very minor contraventions we may advise 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 response of the offender to the warning/ advice.

Fixed Penalty Notices

7.14 Fixed Penalty Notices are another means of dealing with a breach of the law. They are recognised as a low-level enforcement tool and avoid a criminal record for the defendant. Where legislation permits the use of fixed penalty notices, they will be considered as an alternative to prosecution. Examples of where they may be appropriate are:

- To deal quickly and simply with less serious offences
- To divert less serious cases away from the court process
- To deter repeat offences

7.15 Recent Government guidance recommends that the enforcement of less serious offences, such as littering and dog fouling, should be proportional and advice and education of the law should be the first approach.

7.16 Before a fixed penalty notice is administered the authorised officer will ensure that there is evidence of the offender's guilt sufficient to sustain a prosecution.

7.17 An authorised officer will inform the offender of the contravention of the law and give advice on how to put it right. Where an offender does not rectify his actions, then a fixed penalty notice will be issued. However, in certain circumstances, where legislation permits an offence to be dealt with by way of a Fixed Penalty Notice, the Council may choose to administer a Fixed Penalty Notice without issuing a warning.

7.18 Any false information provided by the offender will make the Fixed Penalty Notice unenforceable.

Seizure

- 7.19 Certain legislation enables authorised Officers to seize goods or equipment, for example food that is unsafe or sound equipment that is being used to cause a statutory noise nuisance. When we seize goods we will give the person from whom the goods are taken an appropriate receipt. Where the law requires, we will *produce* seized goods before the Magistrates Court.

Forfeiture Proceedings

- 7.20 This procedure may be used in conjunction with seizure and/or prosecution where there is a need to dispose of goods in order to prevent them re-entering the market place or being used to cause a further problem. In appropriate circumstances, and where the law enables us to do so, we will make an application for forfeiture to the Magistrates Court following successful prosecution.

Simple Caution

- 7.21 This procedure is used as a final warning. It is an admission of guilt, but is not a form of sentence, nor is it a criminal conviction. It derives from advice issued by the Home Office and has already been successfully used by this authority to deal with contraventions of Environmental Health legislation. For a simple caution to be issued a number of criteria must be satisfied:

- Sufficient evidence must be available to prove the case, and;
- The offender must admit the offence; must agree to be cautioned and must not have been committed by the offender before.

For details on the Home Office guidance [Circular 18/1994] visit:
<http://www.homeoffice.gov.uk/about-us/publications/home-office-circulars/circulars-2005/030-2005/>

- 7.22 A record of the Simple Caution will be sent to the Office of Fair Trading and the Local Authorities Coordinators of Regulatory Services (LACORS) if appropriate, and will be kept on file for 3 years. If the offender commits a further offence, the Simple Caution may influence our decision to take a prosecution. If during the time the Caution is in force the offender pleads guilty to, or is found guilty of, committing another offence anywhere in England and Wales, the caution may be cited in court, and this may influence the severity of the sentence that the court imposes.

Refusal/suspension/revocation of a licence

- 7.23 Where there is a requirement for a business to be licensed by the local authority, the licence may be granted unless representations or objections are received against the application. In such cases the Licensing and Enforcement Committee or a Sub-Committee of Licensing and Enforcement will hear the case and decide to grant, grant with conditions or refuse the licence application.
- 7.24 Certain types of premises/businesses require a licence to operate legally. In order to warrant refusal/revocation/suspension of a licence, the controlling individual or organisation must meet one or more of the following criteria:

- 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 their duties

Court Injunction

7.25 In certain circumstances, for example where offenders are repeatedly found guilty of similar offences or where the City Council's Solicitors agree that an injunction is a more appropriate course of enforcement action than any other, then injunctions may be used as an enforcement measure to deal with repeat offenders or dangerous circumstances.

Prosecution

7.26 A prosecution will normally be taken where the individual or organisation meets one or more of the following criteria:

- 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,
- Assaulted or obstructed an Officer in the course of their duties.

DETERMINING WHETHER A PROSECUTION OR FORMAL CAUTION IS VIABLE AND APPROPRIATE

8.1 We apply two 'tests' to determine whether a Prosecution or Caution is viable and appropriate. We follow guidance set by the Crown Prosecution Service when applying the tests:

- The **Evidential Test** -

There must be enough evidence to provide a 'realistic prospect of conviction' against each defendant on charge.

- The **Public Interest Test** -

There may be public interest factors that are in favour of, or are against prosecution. These have to be weighed-up before enforcement action is taken.

For more information about the 'Code For Crown Prosecutors' visit:

<http://www.cps.gov.uk/Publications/docs/code2004english.pdf>

8.2 If the case does not pass the evidential test, it must not go ahead, no matter how important or serious it may be. If the case does meet the evidential test, the Investigating Officer(s), along with senior managers from the Environmental Health and Regulatory Services and City Council Solicitors must decide if formal enforcement action is needed in the public interest.

- 8.3 A Caution or Prosecution proceedings will only be progressed when the case has passed both tests. Paragraphs 8.4 to 8.8 below, detail how this Policy applies to the consideration of taking a prosecution. The principles outlined apply equally to the other types of formal enforcement action that are available.

The Evidential Test

- 8.4 The Investigating Officer(s), along with senior managers from the Environmental Health and Regulatory Services and City Council's Solicitors must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. 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.
- 8.5 When deciding whether there is enough evidence to prosecute, the Investigating Officer(s), along with senior managers from Environmental Health and Regulatory Services and City Council's Solicitors must consider whether the evidence can be used and is reliable.

The Public Interest Test

- 8.6 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, which 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.
- 8.7 The Investigating Officer(s), along with senior managers from Environmental Health and Regulatory Services and City Council Solicitors 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. The following lists include 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.

Some common public interest factors in favour of prosecution

The more serious the offence, the more likely it is that a prosecution will be needed in the public interest. A prosecution is likely to be needed if one or more of the following factors exist:

- A conviction is likely to result in a significant sentence;
- The evidence shows that the defendant was a ringleader or an organiser of the offence;
- There is evidence that the offence was premeditated;
- The victim of the offence was vulnerable, has been put in considerable fear, or suffered personal damage or disturbance;

- The offence was motivated by any form of discrimination against the victim's ethnic or national origin, sex, religious beliefs, political views or sexual orientation, or the suspect demonstrated hostility towards the victim based on any of those characteristics;
- There is a marked difference between the actual or mental ages of the defendant and the victim, or if there is any element of corruption;
- The defendant's previous convictions or cautions are relevant to the present offence;
- There are grounds for believing that the offence is likely to be continued or repeated, for example, by a history of recurring conduct.

Some common public interest factors against prosecution

A prosecution is less likely to be needed if one or more of the following factors exist:

- The court is likely to impose a nominal penalty;
- The defendant has already been made the subject of a sentence and any further conviction would be unlikely to result in the imposition of an additional sentence or order, unless the nature of the particular offence requires a prosecution;
- The offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence);
- The loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement;
- There has been a long delay between the offence taking place and the date of the trial, unless:
 - The offence is serious;
 - The delay has been caused in part by the defendant;
 - The offence has only recently come to light; or
 - The complexity of the offence has meant that there has been a long investigation;
- A prosecution is likely to have a bad effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence;
- The defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is a real possibility that it may be repeated.

8.8 Deciding on the public interest is not simply a matter of adding up the number of factors on each side. The Investigating Officer(s), along with senior managers from the Environmental Health and Regulatory Services and City Council's Solicitors must decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

WHO DECIDES WHAT ENFORCEMENT ACTION IS TAKEN

9.1 For less serious infringements of the law, decisions about the most appropriate course of action is usually determined by the Investigating Officer(s). Decisions are based upon professional judgment, legal guidelines, statutory codes of practice and priorities set by the City Council and/or Central Government.

9.2 For more serious offences [where the nature of the offence points towards prosecution, formal caution or seizure], decisions about enforcement, where appropriate, may be 'authorised' by a team, including the:

- Investigating Officer(s)
- Senior managers in accordance with the City Councils Constitution and Officer delegated powers.
- City Council Solicitors
- Cabinet Member, or Leader/Deputy Leader. In Licensing cases, consultation with the Chair of Licensing and Enforcement Committee.

LIAISON WITH OTHER REGULATORY BODIES AND ENFORCEMENT AGENCIES

10.1 Where appropriate, enforcement activities within the Environmental Health and Regulatory Services will be co-ordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement.

10.2 Where appropriate, for example where there has been a work related death, we will inform and liaise directly with Gloucestershire Police. In certain circumstances joint investigations may be undertaken with any relevant enforcement agency.

10.3 Where an enforcement matter affects a wide geographical area beyond the City boundaries, or involves enforcement by one or more other local authorities or organisations; all relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activity coordinated with them.

10.4 Environmental Health and Regulatory Services shares intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies, and examples include:

- Government Agencies, such as the Food Standards Agency, Meat Hygiene Service, Health and Safety Executive, Customs and Excise, Benefits Agency and Environment Agency.
- Police Forces, such as Gloucestershire Constabulary
- Fire Authorities, such as Gloucestershire Fire and Rescue Service
- Public Health Laboratory Service
- Gloucestershire County Council Trading Standards
- Public Analyst - Worcestershire County Scientific Services
- Statutory undertakers, such as Severn Trent Water
- Other Local Authorities

10.5 Where wider regulatory matters can be more effectively addressed through joint working we will, where appropriate, enter into formal 'Enforcement Liaison Policies'.

OFFENCES

11.1 The Investigating Officer(s), along with senior managers from the Environmental Health and Regulatory Services and City Council's Solicitors should select the most appropriate legislation which:

- Reflect the seriousness of the offence,
- Give the court adequate sentencing powers,
- Are made to the appropriate court,
- Enable the case to be presented in a clear and simple way.

CONSIDERING THE VIEWS OF THOSE AFFECTED BY OFFENCES

- 12.1 Environmental Health and Regulatory Services undertakes enforcement on behalf of the public at large and not just in the interests of any particular individual or group. However, when considering the public interest test (see section 8.6 above), the consequences for those affected by the offence, of the decision whether or not, and how to take enforcement action, and any views expressed by those affected will, where appropriate, be taken into account.
- 12.2 Those people affected by the offence will be told about any decision that makes a significant difference to the case in which they are involved.

THE INTERESTS OF THE CITY'S STAKEHOLDERS

- 13.1 Where particular local circumstances dictate, enforcement activity will, where practicable, take account of those circumstances that minimise any adverse effects of enforcement activity on legitimate businesses and individuals.
- 13.2 When practicable and beneficial to local businesses, standards of competitors will be reviewed/monitored, for example through liaison with other regulatory bodies and enforcing agencies, in order to support a consistent approach to enforcement (see section 10).

RE-STARTING A PROSECUTION

- 14.1 People should be able to rely on enforcement decisions taken by the Environmental Health and Regulatory Service Managers. Normally, if a suspect or defendant is advised that there will not be a prosecution, or that the enforcement action has been stopped, that is the end of the matter and the case will not start again. But occasionally there are special reasons why enforcement action will re-start, particularly if the case is serious. These reasons include:
- Rare cases where a new look at the original decision shows that it was clearly wrong and should not be allowed to stand
 - Cases which are stopped so that more evidence, which is likely to become available in the fairly near future, can be collected and prepared. In these cases, the defendant will be told that the enforcement action may well start again
 - Cases which are stopped because of a lack of evidence but where more significant evidence is discovered later

14.2 A review of a case will automatically be triggered where one or more of the following circumstances apply:

- New information/evidence comes to light.
- There is a change in circumstances that mean that a prosecution should be reconsidered.
- New case law is established.

PROTECTION OF HUMAN RIGHTS

15.1 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 1 - Right to peaceful enjoyment of possessions e.g. home/licence. (No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.)
- 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

15.2 Officers within Environmental Health and Regulatory Services operate to a range of internal guidance documents that support the principles of primary human rights legislation, for example guidance relating to the Data Protection Act 1998 and Regulation of Investigatory Powers Act 2000.

PUBLICISING ENFORCEMENT ACTION

16.1 It is important that certain levels of enforcement action taken by Environmental Health and Regulatory Services is recognised and the details of such are suitably published. For example, details of prosecutions and public notices and, subject to the Data Protection Act 1998, details of final warnings (cautions).

REVIEW OF THE ENFORCEMENT POLICY

17.1 This Policy will be reviewed annually.