

### ENFORCEMENT POLICY

Halton Borough Council's Consumer Protection Service enforces a wide range of public protection legislation. We recognise that most businesses want to comply with the law and we will seek to help business and others meet their legal obligations without unnecessary expense, but take firm action against those who flout the law or act irresponsibly. In our enforcement activities we will follow relevant and appropriate codes of practice, protocols and guidance, including the Police and Criminal Evidence Act 1984, Criminal Procedure and Investigations Act 1996, Regulation of Investigatory Powers Act 2000 etc.

The Consumer Protection Service has adopted the **Enforcement Concordat**, which sets out what business and others being regulated can expect from Enforcement Officers. It commits us to good enforcement policies and procedures, and carrying out enforcement functions in an equitable, practical and consistent manner helps to promote a thriving national and local economy. We are committed to these aims and to maintaining a fair and safe trading environment.

### ENFORCEMENT CONCORDAT

#### Principles of Good Enforcement - Policy

**Standards:** In consultation with business and other relevant interested parties, including technical experts where appropriate, we will draw up clear standards setting out the level of service and performance the public and business people can expect to receive. We will publish these standards and our annual performance against them. The standards will be made available to business and others who are regulated.

**Openness:** We will provide information and advice in plain language on the rules that we apply and will disseminate this as widely as possible. We will be open about how we set about our work, including any charges that we set. We will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.

**Helpfulness:** We believe in working with business, especially small and medium sized businesses, to advise on and assist with compliance. We will provide a courteous and efficient service. We will provide a contact point and telephone number for further dealings with us. Applications for licenses, registrations etc. will be dealt with efficiently and promptly. We will ensure that, wherever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

**Complaints About Services:** We will provide complaint procedures that are easily accessible to business, the public, employees and consumer groups. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely time scales involved.

Halton Borough Council's Consumer Protection Service, invites dissatisfied service users to take complaints to the officer involved or their senior officer. If the complaint remains unresolved it is referred to: -

The Consumer Protection Service Manager

Rutland House, Halton Lea, Runcorn, Cheshire WA7 2GW

Telephone: 0151 906 4864

Fax: 0151 471 7516

If the complainant remains dissatisfied, the complaint is investigated in accordance with the Council's complaints procedure.

**Proportionality:** The enforcement action taken by the Service will be proportionate to the risk posed and to the seriousness of any breach of the law. Where possible we will minimise the costs of compliance for business by ensuring that any action we require is proportionate to the risks. As the law allows, we will take account of the circumstances of the case when taking action.

**Consistency:** We will carry out our duties in a fair, equitable and consistent manner. While inspectors are expected to exercise judgement in individual cases, we will have arrangements in place to promote consistency, including effective arrangements for liaison with other authorities and enforcement bodies. We support the **Home Authority Principle**, operated by the Local Authorities Co-ordinators of Regulatory Services (LACORS) by placing special emphasis on goods and services originating within our area, and providing businesses with a source of guidance and advice.

### **Principles of Good Enforcement - Procedures**

Advice from an officer will be put clearly and simply and will on request be confirmed in writing, explaining why any remedial work is necessary and over what time-scale, and making sure that legal requirements are clearly distinguished from best practice advice.

Before formal action is taken, officers will provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of differences, unless immediate action is required. Where immediate action is considered necessary an explanation of why such action is 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 mechanism will be clearly set out in writing at the time the action is taken (whenever possible this advice will be issued with the enforcement notice).

## **TRADING STANDARDS POLICIES**

### **Dealing With Infringements**

On occasions officers have to deal with problems, which constitute criminal offences for which legal proceedings may be taken against an individual or a company. The nature of infringements varies considerably but will be courteously and thoroughly investigated to establish all the facts.

### **Minor Matters**

Minor matters will normally be dealt with by the officer at the time of the visit, and involve the officer drawing the matter to attention and giving advice where necessary. On occasions, a verbal or written warning may follow up the officer's explanation. Rarely will a minor infringement result in more formal action being taken. However, if repeated previous advice has been ignored, an officer may choose to deal with the incident in a formal way.

### **More Serious Breaches**

More serious breaches may result in a written warning, a fixed penalty notice, a simple or conditional caution or prosecution. In certain instances officers will serve a statutory 'notice of powers' which sets out the officer's powers under the legislation and your rights, and may use their powers to take samples, inspect records or seize goods and documents.

In more serious cases the officer will prepare a report for the Consumer Protection Manager. The report will contain a full and balanced account of the facts of the case and

will be used in considering whether to prosecute. Traders are always given the opportunity to give an explanation of the circumstances surrounding the commission of an offence and any 'due diligence' precautions that may have been taken to prevent such an incident occurring. Officers must record this explanation at a formal interview, which takes the form of questions and answers. The interview is always written down or tape-recorded. Traders are invited to seek legal advice prior to these interviews taking place and can be accompanied by a legal representative at the interview itself. Interviews are conducted strictly in accordance with the Codes of Practice under the Police and Criminal Evidence Act 1984 and questions are therefore asked under caution.

### **Cautions**

When deciding whether a case should be prosecuted in the courts, the Consumer Protection Service may consider the alternatives to prosecution. This will include cautioning. The Home Office guidelines will be applied.

### **PROSECUTION**

The **Code for Crown Prosecutors** is used in considering prosecutions as follows: -

The decision to prosecute a person/business is a serious step and Halton Borough Council follows the principles of the Code for Crown Prosecutors issued by the Director of Public Prosecutions and Halton B.C Corporate Prosecution Policy, so that it can make fair and consistent decisions about prosecutions. The Code contains information that is important to those who work in the criminal justice system and to the general public.

### **General Principles**

Halton Borough Council has a power to institute proceedings under section 222 of the Local Government Act 1972 where it considers it expedient for the promotion of the interests of the inhabitants of its area. Each case is unique and must be considered on its own facts and merits. However, there are general Code principles that apply to the way in which every case is approached, namely: -

1. That the case must be reviewed fairly, independently and objectively and those reviewing it must not let any personal views about ethnic or national origin, sex, religious beliefs, political views or the sexual orientation of the suspect, victim or witness influence decisions, and must not be affected by improper or undue pressure from any source. It is a duty to make sure that the right person is prosecuted for the right offence. In doing so Halton Borough Council must always act in the interests of justice and not solely for the purpose of obtaining a conviction.
2. Halton Borough Council and The Consumer Protection Service has the duty to review, advise on and prosecute cases, ensuring that the law is properly applied, that all relevant evidence is put before the court and that obligations of disclosure are complied with, in accordance with the principles set out in the Code.
3. Halton Borough Council is a public authority for the purposes of the Human Rights Act 1998.

## **Case Review**

Each case received from investigating officers is reviewed to make sure it meets the evidential and public interest tests set out in the Code. Review is a continuing process and the Consumer Protection Manager must take account of any change in circumstances.

## **Code Tests**

There are two stages in the decision to prosecute. The first stage is **the evidential test**. 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 Consumer Protection Manager must decide if a prosecution is needed in the public interest.

This second stage is **the public interest test**. A prosecution will only be commenced when the case has passed both tests.

## **The Evidential Test**

The Consumer Protection Manager must be satisfied that there is enough evidence to provide a '**realistic prospect of conviction**' against each defendant on each charge and consider what the defence case may be, and how that is likely to affect the prosecution case. 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, the Consumer Protection Manager must consider whether the evidence is '**admissible and is reliable**' and if the defendant has made out any '**statutory defence**'.

## **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, or it appears more appropriate in all the circumstances of the case to divert the person from prosecution. 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.

The Consumer Protection Manager 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 and 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 of some common public interest factors, both for and against prosecution, are not exhaustive. 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:

- a conviction is likely to result in a significant sentence;
- a conviction is likely to result in confiscation or any other order;

- the offence was committed against a person serving the public;
- the defendant was in a position of authority or trust;
- the evidence shows that the defendant was the 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 attack, damage or disturbance;
- the offence was committed in the presence of, or in close proximity to, a child
- the offence was motivated by any form of discrimination against the victim
- the defendant's previous convictions or cautions are relevant to the present offence;
- the defendant is alleged to have committed the offence whilst under an order of the court;
- there are grounds for believing that the offence is likely to be continued or repeated, for example, by a history of recurring conduct; or
- the offence, although not serious in itself, is widespread in the area where it was committed.
- a prosecution would have a significant positive impact on maintaining community confidence

### **Some common public interest factors against prosecution**

A prosecution is less likely to be needed if:

- 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 or the defendant withdraws consent to have an offence taken into consideration during sentencing;
- 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. The Consumer Protection Manager, where necessary, applies Home Office guidelines about how to deal with mentally disordered offenders, and must balance the desirability of prosecuting a person who is suffering from significant mental or physical ill health with the need to safeguard the general public;
- the defendant has put right the loss or harm that was caused (but defendants must not avoid prosecution solely because they pay compensation); or
- details may be made public that could harm sources of information, international relations or national security;

Deciding on the public interest is not simply a matter of adding up the number of factors on each side. The Consumer Protection Manager must decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

### **The relationship between the victim and the public interest**

Halton Borough Council prosecutes cases on behalf of the public at large and not just in the interests of any particular individual. However, when considering the public interest test the Consumer Protection Manager should always take into account the consequences for the victim or the victim's family.

It is important that a victim is told about a decision, which makes a significant difference to the case in which he or she is involved. The Consumer Protection Manager should ensure that any agreed procedures are followed.

### **Youths**

The Consumer Protection Service Manager must consider the interests of a youth when deciding whether it is in the public interest to prosecute. However, the Consumer Protection Service Manager should not avoid prosecuting simply because of the defendant's age. The seriousness of the offence or the youth's past behaviour is very important.

The Consumer Protection Service Manager will only consider cases involving youths for prosecution if the youth has previously received a written warning or a simple or conditional caution, unless the offence is serious or the youth does not admit committing the offence. Written warnings and cautions are intended to prevent re-offending and the fact that a further offence has occurred indicates that attempts to divert the youth from the court system have not been effective. So the public interest will usually require a prosecution in such cases, unless there are clear public interest factors against prosecution.

### **Consumer Protection Service Policy**

Within the overall code guidelines the Consumer Protection Service may consider a prosecution where:

- (i) an offence is detected which is prevalent, or could become so, and prosecution of that offence could encourage compliance by all potential offenders.
- (ii) an offence is committed by a defendant whose past record indicates a lack of regard for the law
- (iii) repeated minor offences of the same or a similar nature are committed and the offender refuses to improve.
- (iv) advice about the likelihood of an offence arising had been given, and that advice had been rejected
- (v) an offence is detected and advice or a caution is administered and the same or subsequent offence is committed.
- (vi) the investigation reveals a course of conduct, which is reckless or negligent, or there is a high risk to public safety.
- (vii) an investigation reveals an element of fraud or dishonesty.
- (viii) where a defendant fails to co-operate.

### **Partnership Working**

The Service may share its enforcement role with other enforcement agencies as appropriate, including joint action on investigations and legal proceedings.

### **Legislation Enforced**

The legislation enforced by the Service is listed in the following Schedule of Statutes and is subject to amendment or addition as appropriate.

## **Schedule of Acts Enforced**

Accommodation Agencies Act 1953  
Administration of Justice Act 1970  
Const/May 2005 262  
Agricultural Produce (Grading and Marking) Act 1928  
Agricultural Produce (Grading and Marking) (Amendment) Act 1931  
Agriculture Act 1970  
Agriculture (Miscellaneous Provisions) Act 1968  
Anti-Social Behaviour Act 2003  
Bankers Books Evidence Act 1879  
Business Names Act 1985  
Cancer Act 1939  
Children and Young Persons Act 1933  
Children and Young Persons (Protection from Tobacco) Act 1991  
Chiropractors Act 1994  
Clean Air Act 1993  
Companies Act 1985  
Consumer Credit Act 1974  
Consumer Protection Act 1987  
Control of Pollution Act 1974  
Control of Pollution (Anti-Fouling Paints and Treatments) Regulations 1987  
Copyright Designs & Patents Act 1988  
Criminal Attempts Act 1981  
Criminal Justice Act 1993  
Criminal Law Act 1977 (common-law conspiracy to defraud)  
Crossbows Act 1987  
Customs and Excise Management Act 1979  
Development of Tourism Act 1988  
Education Reform Act 1988  
Energy Act 1976  
Energy Conservation Act 1981  
Enterprise Act 2002  
Environmental Protection Act 1990  
Estate Agents Act 1979  
European Communities Act 1972  
Explosives Act 1875  
Explosives Act 1923  
Explosives (Age of Purchase) Act 1976  
Fair Trading Act 1973  
Farm and Garden Chemicals Act 1967  
Fireworks Act 1951  
Fireworks Act 1964  
Fireworks Act 2003  
Forgery and Counterfeiting Act 1981  
Hallmarking Act 1973  
Health and Safety at Work Etc. Act 1974  
Insurance Brokers (Registration) Act 1977  
Intoxicating Substances (Supply) Act 1985  
Knives Act 1997  
Licensing Act 1964  
Licensing (Young Persons) Act 2000



Lotteries and Amusements Act 1976  
Malicious Communications Act 1988  
Medicines Act 1968  
Const/May 2005 263  
Mock Auctions Act 1961  
Motor Cycles Noises Act 1987  
National Lotteries Act 1993  
Nurses Agencies Act 1957  
Offensive Weapons Act 1996  
Olympic symbol etc. (Protection) Act 1995  
Opticians Act 1989 S27  
Osteopaths Act 1993  
Petroleum (Consolidation) Act 1928  
Petroleum (Transfer of Licences) Act 1936  
Poisons Act 1933  
Poisons Act 1972  
Police and Criminal Justice Act 2001  
Prices Acts 1974 and 1975  
Proceeds of Crime Act 2002  
Property Misdemeanors Act 1991  
Protection from Harassment Act 1997  
Registered Designs Act 1949  
Road Traffic Act 1972  
Road Traffic Act 1974  
Road Traffic Act 1988  
Road Traffic (Consequential Provisions) Act 1988  
Road Traffic Act 1991  
Road Traffic (Foreign Vehicles) Act 1972  
Road Traffic Regulation Act 1984  
Road Traffic Offenders Act 1988  
Scotch Whisky Act 1988  
Solicitors Act 1974  
Tattooing of Minors Act 1969  
Telecommunications Act 1984  
Theft Act 1968  
Theft Act 1978  
Timeshare Act 1992  
Tobacco Advertising and Promotions Act 2002  
Trade Descriptions Act 1968  
Trade Marks Act 1994  
Trade Representations Act 1972  
Trading Representations (Disabled Persons) Act 1958  
Trading Schemes Act 1996  
Trading Stamps Act 1964  
Unsolicited Goods and Services Act 1971  
Unsolicited Goods and Services (Amendment) Act 1975  
Vehicles (Crime) Act 2001 (Part 2)  
Video Recordings Act 1984  
Video Recordings Act 1993  
Weights and Measures Act 1976  
Weights and Measures Act 1985