

REPORT TO: Safer Halton Policy & Performance Board
DATE: 17th November 2009
REPORTING OFFICER: Strategic Director Environment
SUBJECT: Environmental and Regulatory Services
Enforcement Policy
WARDS: Borough-wide

1.0 PURPOSE OF THE REPORT

1.1 To provide Members with a draft Environmental and Regulatory Services Enforcement Policy document for comment and endorsement.

2.0 RECOMMENDATION: That;

- 1) Members receive and comment upon the report;**
- 2) The Policy & Performance Board endorse the draft Environmental and Regulatory Services Enforcement Policy document; and**
- 3) A report be presented to the Executive Board recommending the adoption of the Environmental and Regulatory Services Enforcement Policy.**

3.0 SUPPORTING INFORMATION

3.1 Effective and well-targeted regulation is essential in promoting fairness and protection from harm. However, the Government believes that, in achieving these and other legitimate objectives, regulation and its enforcement should be proportionate and flexible enough to allow or even encourage economic progress.

3.2 The Regulators' Compliance Code is a central part of the Government's better regulation agenda. Its aim is to embed a risk-based, proportionate and targeted approach to regulatory inspection and enforcement among the regulators it applies to. The Government's expectation is that as regulators integrate the Code's standards into their regulatory culture and processes, they will become more efficient and effective in their work. They will be able to use their resources in a way that gets the most value out of the effort that they make, whilst delivering significant benefits to low risk and compliant businesses through better-focused inspection activity, increased use of advice for businesses, and lower compliance costs.

- 3.3 The Code stresses the need for regulators with public and environmental protection functions to adopt a positive and proactive approach towards ensuring compliance by:
- helping and encouraging regulated entities to understand and meet regulatory requirements more easily; and
 - responding proportionately to regulatory breaches.
- 3.4 The Code supports regulators' responsibility to deliver desirable regulatory outcomes. This includes having effective policies to deal proportionately with criminal behaviour that would have a damaging effect on legitimate businesses and desirable regulatory outcomes. The Code does not relieve regulated entities such as businesses, public sector bodies, charities and voluntary sector organizations, of their responsibility to comply with their obligations under the law.
- 3.5 Currently, within the Council's Environmental and Regulatory Services Department, Environmental Health must have regard to the provisions of the Code when determining general policies or principles or when setting standards or giving general guidance about the exercise of general functions. However, it is good practice for the Department to be consistent in its approach and adopt the principles of the Code in its Enforcement Policy. Officers will continue to work in accordance with the general policies and procedures or guidance on inspections, investigations and enforcement activities required by their individual service area plans.
- 3.6 For a range of statutory requirements introduced in recent years, particularly in the area of Environmental Health, the Council has adopted various enforcement policies. These have now been reviewed and in the interests of clarity and consistency the intention is to produce a single 'top tier' Environmental and Regulatory Services Department Enforcement Policy setting out basic principles. These principles reflect national guidance and, in some areas, those being regulated will see a consistency of approach across the region.
- 3.7 To augment this top tier document, supplementary documents will be produced by each service area of the Department that will detail the processes and procedures that officers will use when deciding what action to take when carrying out their statutory duties. The content of each will supplementary document will vary and will cover, dependant upon the requirement of the particular service area, such matters as:
- (a) Task specific standards, enforcement options and considerations.
 - (b) Provision for shared enforcement roles with other regulators
 - (c) The particular interests of sectors of the community
 - (d) Management procedures to ensure implementation and compliance

- (e) The planning of enforcement activity
- (f) Dealing with notifications

- 3.8 An important part of the process will be consultation with the community and as the supplementary policies and procedures arising from the top tier policy are developed these will, in certain service areas, be subject to public consultation.
- 3.9 The draft Environmental and Regulatory Services Enforcement Policy (attached as Appendix 1) sets out, in broad terms, how the Council's Environmental and Regulatory Services Department will approach its role as an enforcement authority. It explains to members of the public, the business community and others the standards of service they should expect from the Council when exercising its regulatory functions, and the circumstances when various enforcement actions may be considered. The policy documents Halton's commitment to the principles of regulation and enforcement laid out in The Cabinet Office Enforcement Concordat and the statutory BERR Regulators Compliance Code.
- 3.10 The attached draft document replaces the current Enforcement Policy that was originally approved in 2001. Members are advised that there is a key risk that future enforcement actions taken by the Council may be contested if the authority cannot demonstrate that it has an up to date enforcement policy that recognises the principles of enforcement in the Cabinet Office Enforcement Concordat and the statutory BERR Regulators Compliance Code.
- 3.11 It is appreciated that the Regulatory Enforcement and Sanctions Act was introduced in 2008, however, the full implications of the Act are not yet known as there are Directives and Regulations the have not yet been made. The Act therefore creates the potential for a radical review of the attached Enforcement Policy in the future.

4.0 POLICY IMPLICATIONS

- 4.1 There are no new policy implications associated with this report.

5.0 IMPLICATIONS FOR THE COUNCIL'S PRIORITIES

5.1 Children and Young People in Halton

There will be close co-operation with schools and colleges in Halton to promote a clean borough.

5.2 Employment, Learning and Skills in Halton

No direct impact.

5.3 A Healthy Halton

The continuing development of the Council's strategy for improving environmental health standards, the environment and the appearance of the borough, shall have an overall beneficial affect on wellbeing.

5.4 A Safer Halton

Effective use of its regulatory powers will demonstrate that the Council is committed to dealing with environmental crime, nuisance and other breaches in legislation.

The continuing development of the Council's strategy for improving environmental standards and reducing environmental crime will have a positive impact upon the Safer Halton Priority, and contribute towards the 'Cleaner, Greener, Safer' agenda.

5.5 Halton's Urban Renewal

No direct impact, but overall environmental benefits should make the borough a more attractive location for investment.

6.0 RISK ANALYSIS

- 6.1 As detailed within the report, the key risk in failing to maintain an up to date Environmental Enforcement Policy is that future enforcement actions taken by the Council may be contested.

7.0 EQUALITY AND DIVERSITY ISSUES

- 7.1 The Department's regulatory services aim to be consistent and evenhanded in all regards. The enforcement policy is not intended to have either a positive or negative impact upon equality and diversity or apply differently to any particular group. The regulatory practice is to invite and seek feedback on its regulatory activities and to respond to any suggestion of differential impact.

8.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972

Document	Place of Inspection	Contact Officer
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- 8.1 There are no background papers within the meaning of the Act.

Appendix 1

Environmental And Regulatory Services Enforcement Policy

ENVIRONMENTAL AND REGULATORY SERVICES

ENFORCEMENT POLICY

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HALTON BOROUGH COUNCIL

ENVIRONMENTAL AND REGULATORY SERVICES ENFORCEMENT POLICY

1.0 INTRODUCTION

This Enforcement Policy provides guidance to Members, Officers, businesses and the general public on the general approach to enforcement and the range of enforcement options that are available to achieve compliance with legislation enforced by Halton Borough Council's Environmental and Regulatory Services Department.

The primary objective of the policy is to achieve regulatory compliance, whilst recognising that prevention is better than cure. However, it also promotes formal action, where appropriate. There are a wide range of tools available to the Council, with prosecution being the most serious, although the Council will always choose an enforcement option that is relevant and proportionate to the offence or contravention, taking into account an individual's or a business's past history when making our decision.

The Department will maximise its regulatory effectiveness by coordinating its enforcement activities, both internally and externally, to ensure that a regulatory issue is dealt with by the most relevant section of the Council or partner organisations. In particular, the Department will liaise, where appropriate, with the following outside bodies

- Police
- Environment Agency
- Food Standards Agency
- Fire Service
- HM revenue and customs
- Defra / State veterinary service
- Office of Fair Trading
- Consumer Protection
- Health and Safety Executive (In accordance with the HSE protocol on work related deaths, where there has been a breach of the law relating to a work related death the authority will liaise with the Police, Coroner and Crown Prosecution Service. Cases that may give rise to a prosecution for manslaughter will be led by the police)

2.0 PURPOSE OF THE ENFORCEMENT POLICY.

This document sets out the wider policy context relating to Halton's regulatory services, the service aims & objectives, its priorities, the procedural approach, and service standards that the public and business's can expect. The preparation of this Policy flows on from the commitments identified in the Environment Directorate's Service Plans, which identify the need for a

modern, cross cutting and co-ordinated approach to environmental enforcement.

The policy also enables the Council to communicate information about its enforcement policy and also the regulatory procedures to those most directly affected. The policy is supported by a range of information documents, for the different groups of service users, explaining the operation of the enforcement process in Halton. Published documents and this policy are also available on the Halton website.

3.0 POLICY CONTEXT FOR REGULATORY SERVICES

The basis of this policy is provided by statutory legislation that the Council is responsible for enforcing throughout the Borough. These Acts of Parliament can be complex and it is essential, through a combination of experience, communication and co-ordination, that the right area of legislation or combination of legislation is used positively to solve local problems.

The Acts of Parliament, statutory guidance and this policy provide the basis for the preparation of individual service plans and initiatives, that detail how specific areas of regulation will function and how these activities are coordinated to ensure the provision of the most efficient and effective regulatory service.

Importantly, this Policy recognises the need for the Council to strike a balance between the freedom of the Borough's residents and business community to go about their daily business as they wish, whilst safeguarding the Borough's environment, economy, the health & safety of its residents and workforce and the amenities of neighbours.

4.0 PRINCIPLES OF ENFORCEMENT

This section sets out the Council's approach to enforcement and reflects the principles detailed in the Cabinet Office's Enforcement Concordat and the Regulator's Compliance Code. The following key principles will underpin the delivery of regulatory services;

Proportionality

Any action proposed is in keeping with the scale of the alleged breach, the amount of harm caused. The authority will adopt a risk based approach to enforcement and is committed to the principle that resources should be directed to situations that pose the greatest harm to the public, business community or environment. The authority will adopt any risk assessment schemes prescribed by Government to ensure both reactive and programmed work is focused on risk.

Consistency and Fairness

The Council will carry out its regulatory functions in a fair and even handed manner. Whilst individual officers will be expected to make their own judgments in individual cases, the authority will have arrangements in place to promote coordinated decision making and monitor enforcement actions.

Transparency

Members, residents, local businesses, potential investors, complainants, and alleged offenders, as well as staff of the service generally, understand the basis on which the service is provided and decisions are made. This principle means a transparent and accessible service, where the procedures, the level of service to be provided, and the rights of appeal for the alleged offenders are clear and easy to understand.

Halton Borough Council will ensure in any communication that any advice and guidance on achieving legal compliance is distinguished from matters that may be considered desirable or best practice.

Openness

The Council will, through corporate and divisional service plans, clearly explain how it will undertake its work. The authority will openly discuss any concerns regarding compliance failures unless this would hamper an investigation.

Where an investigation that may lead to enforcement action is as a result of a complaint from a member of the public this will be made clear to the subject of the complaint. However, where necessary, the council will protect the identity of any complainant who wishes to remain anonymous.

Helpfulness

The Council believes prevention is better than cure. The authority is committed to providing advice and guidance to individuals and the business community to help them comply with the law. This information will generally be free of charge unless there is a statutory basis for charging for the service or prior agreement to charge has been reached.

The Department is committed to developing resources to assist individuals and the business community to comply with the law.

5.0 QUALITY OF SERVICE AND SERVICE STANDARDS

5.1 Each individual service area of the Department will produce detailed annual supplementary documents that will set out specific service and quality standards. However, to ensure consistency, the principles set out below will be observed by all regulatory services.

- **Information provided by Complaints** will be treated in confidence as far as possible. Unless required by law, the Council will not reveal the source of complaints, although complainants will be advised that, in the event of formal action, the production of their evidence in person is more likely to secure a successful outcome.
- **Advice** to all parties will be clear and courteous and unbiased, and will include details of action to be taken, why and by when.
- The consequences of not taking appropriate **remedial action** will be explained to those responsible, particularly when formal action is being considered. Wherever possible, an opportunity will be given to complainants and those responsible to respond to issues raised, before formal action is taken.
- **Full records** will be kept of each case, in accordance with appropriate legislation. Where the detection, prevention or prosecution of crime is involved, disclosure of relevant details may be made to other appropriate parties, including the police.
- **Rights of appeal** will be clearly explained when formal or immediate action is taken.
- **The needs** and aspirations of **small businesses** will be taken into account and assistance given where possible to help them to comply with legislation.
- **Regulation** will be maintained and co-coordinated across all relevant agencies within and outside the Council.
- **In exercising** its powers under relevant legislation the Council will not discriminate on the grounds of gender, sexual orientation, race, color, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
- **All** cases will be dealt with as quickly as possible in the public interest.
- The authority will ensure **all officers** are **qualified, competent and authorised** to undertake regulatory activity. In particular, any training and qualification requirements specified in relevant codes of practice will be observed.

5.2 The Department is committed to improving the quality of its service delivery and, to this end, both this Policy and the resources for enforcement will be regularly reviewed.

6.0 LEVELS OF ENFORCEMENT ACTION

Legislative compliance will be secured by a combination of the following enforcement options open to the Council:

6.1 Advice and Guidance

Information on legal requirements and advice on compliance will be issued during the course of routine inspection visits, following complaints, investigations or from applications to approve licenses and or permissions. In addition, information will be provided through press releases, publications and the internet. Businesses and individuals will be made aware of any guidance issued by Government Departments.

6.2 Informal warnings

In situations where a contravention has been identified but it is not deemed appropriate to take formal enforcement action a written warning will be issued. This will detail the contravention identified, any remedial works required and the timescale for compliance. Further formal enforcement action may need to be considered if an informal warning has not resolved the matter.

6.3 Formal Enforcement Action

In making any decision to take enforcement action the principles of this policy will be considered. In addition, any consideration to take formal enforcement action and determine the level of action appropriate must consider the following principles

- The criminality and severity of the offence
- The need to protect the public, business community or environment
- Action the Council, Other public organization or instigator of the offence may take to resolve the matter;
- The previous compliance history of the business or individual
- The likelihood of compliance being secured by informal means

In undertaking any formal enforcement action consideration will be given to any relevant provisions of legislation, codes of practice or guidance issued to enforcement authorities. A range of formal enforcement options are available, which include the following:

6.4 Statutory legal notices

Many statutory instruments enforced by the council provide for the service of statutory notices to secure compliance with the law and protect the public or the environment from harm. These will normally require the recipient of the notice to comply with a particular requirement within a specified period of time. Any notice served by the authority will include details of the consequences of non-compliance, any right of appeal and the means by which this appeal can be submitted.

In general, and subject to any appeal provisions, a failure to comply with a valid notice will make that individual or organisation liable to prosecution.

6.5 Court Orders

Where provided for in legislation the authority may make application to the appropriate court for a Court Order requiring certain action or prohibiting activities that either contravene the law or pose a risk to the public or environment. Where there is an intention to apply for an order the potential subject of that order will be provided with details of the hearing date and any appeal provisions.

6.6 Fixed Penalty Notices

Where provided for in legislation, a fixed penalty notice, penalty charge notice or penalty notice may be used as a means of dealing with an offence instead of prosecution. It is the offender's opportunity to avoid a conviction. Non-payment of a penalty notice is generally not an offence in its own right, however should the recipient not pay the penalty offered, prosecution will be considered for the actual offence.

The council will comply with any relevant guidance and codes of practice relating to the service of fixed penalty notices. In particular the following conditions must be satisfied;

- a) There must be evidence sufficient to give a realistic prospect of conviction;
- b) The offence is not too serious and is of a nature suitable for being dealt with by a penalty notice.

6.7 Simple Cautions

Simple cautions have replaced what was previously referred to as a "formal caution". Under certain circumstances a simple caution may be considered as an alternative to prosecution. Whilst a simple caution will not result in an appearance before a court, it will require the offender to admit the offence and a record of the offence will be maintained on the central register of convictions.

Although not a conviction in itself the caution may be considered by a court when sentencing for any similar offences in the future. A caution will not normally be considered for more serious or persistent offending.

Simple cautions serve the following purposes;

- a) To deal quickly and simply with less serious offences and thereby avoid unnecessary recourse to a criminal court
- b) To reduce the chances of an individual or business re-offending

All simple cautions will comply with relevant guidance in particular Home Office Circulars on the cautioning of offenders. Before a simple caution can be considered the following criteria must be fulfilled.

- a) There must be evidence of guilt that would give a realistic prospect of conviction if the case was taken to court.
- b) The suspect must admit the offence, usually by making a signed declaration;
- c) The suspected offender must understand the significance of a simple caution and give informed consent.

If the evidential requirements for a caution are met but a suspected offender declines to accept a simple caution then the case will normally be referred for prosecution.

6.8 Prosecution

The authority will exercise discretion and consider other enforcement options before initiating a prosecution. However where justified by the nature of the offence a prosecution may be initiated without prior warning or recourse to other enforcement options.

The ultimate decision on whether to initiate a prosecution will be taken by the authority's legal services department taking into account Halton Council's prosecution policy and the criteria set down in the code for crown prosecutors.

A case will be considered for referral for prosecution when:

- a) It is appropriate in the circumstances to draw attention to the need for compliance with the law, especially where there would be a normal expectation of a prosecution
- b) Through conviction, the defendant and others may be deterred from future offending

- c) The contravention gave rise to serious harm to the public or the environment or created a risk of such harm.
- d) The gravity of the offence
- e) The general record of the defendant and their approach to legal compliance.

7.0 COMPLAINTS

Initial complaints regarding regulatory services or the application of this policy should in the first instance be directed to the manager for the service area concerned. Their details should normally be included in any correspondence but will always be provided on request. This will be treated as an informal complaint.

If the response fails to resolve the matter to the complainant's satisfaction the matter should be directed through the authority's corporate complaints system as a formal complaint.

A complaint form will need to be completed. These can be obtained from:

Policy and Performance Department
Halton Borough Council
Municipal Building
Kingsway
Widnes
Cheshire WA8 7QF
Telephone: 0151 471 7390