



## **Solihull Metropolitan Borough Council Public Protection**

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## **PUBLIC PROTECTION ENFORCEMENT AND PROSECUTION POLICY**

### **1. Introduction**

- 1.1 The aim of Public Protection Service is to protect the people and the Borough of Solihull by seeking a living, working and trading environment that is healthy, safe and fair. Enforcement of regulatory control plays an essential role in the achievement of this aim.
- 1.2 We are committed to carrying out enforcement work in an open, accountable, proportionate and consistent manner. The Regulators' Code came into statutory effect on 6 April 2014 under the Legislative and Regulatory Reform Act 2006. It provides a clear, flexible and principle-based framework for how regulators should engage with those they regulate. We have considered this code when drafting this policy.
- 1.3 The following policy incorporates the framework of the Regulators Code and makes additional policy statements relating to our enforcement duties. How these principles will be observed and put into practice by officers of the Service is also explained.
- 1.4 The policy applies to the enforcement of all food legislation i.e. food hygiene, food safety and feeding stuffs having due regard to current National inspection regimes and earned autonomy schemes.
- 1.5 The effectiveness of legislation depends crucially on compliance by those it seeks to regulate. We recognise that most businesses want to comply with the law. We will, therefore, help businesses and others meet their legal obligations without causing unnecessary expense or hindrance. Those who deliberately, irresponsibly or recklessly fail to comply with the law will be met with firm action, including prosecution where appropriate.
- 1.6 By acting in accordance with this policy we will:
- Improve health and wellbeing
  - Contribute to management of growth
  - Build stronger communities
  - Deliver value in all we do.

### **2. Policy**

2.1 Our policy includes the following principles of good enforcement:

#### 2.1.1 Openness

We will provide clearly stated information and advice on the rules that we apply and we will make this widely available. We will be open about how we set about our work, including any charges that we set in consultation with those who receive our services. We will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.

#### 2.1.2 Helpfulness

We believe that prevention is better than cure and that our role therefore involves actively working with our customers to advise on and assist with compliance. We will provide a courteous and efficient service and our staff will identify themselves by name. We will provide a contact point and telephone number for further

dealings with us and we will encourage business to seek advice/information from us. Applications for approval of establishments, 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.

#### 2.1.3 Complaints about Service

Complaints about our service will be investigated in accordance the Council's corporate complaints procedure which can be accessed via the Council's website:

<http://www.solihull.gov.uk/About-the-Council/Complaints/councilcomplaints>

#### 2.1.4 Proportionality

We will minimise the costs of compliance by ensuring that any action we require is proportionate to the risks. As far as the law allows, and as far as is practicable, we will take into account the circumstances of each case when considering action.

We will take particular care to work with individuals, small businesses and voluntary and community organisations so that they can meet their legal obligations without unnecessary expense, where practicable.

#### 2.1.5 Consistency

We will carry out our duties in a fair, equitable and consistent manner. Whilst our officers are expected to exercise judgement in individual cases, we will have arrangements in place to promote consistency. These include effective arrangements for liaison with other authorities and enforcement bodies through schemes such as those operated by the Better Regulation Delivery Office, The Chartered Institute of Environmental Health, the Institute of Licensing and The Chartered Trading Standards Institute.

### 3. Procedures

3.1 Our enforcement procedures will include the following principles:

3.1.1 Advice from an officer will be put clearly and simply. It will be confirmed in writing, if requested, explaining why any remedial work is necessary and over what time-scale. Advice will clearly distinguish legal requirements from best practice recommendations.

3.1.2 Before formal enforcement action is taken, officers will provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference, unless immediate action is required (for example, in the interests of health, safety, environmental protection or to prevent evidence being destroyed).

3.1.3 Where immediate action is considered necessary, an explanation of why such action was 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.

3.1.4 Where there are rights of appeal against legal 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).

#### **4. Human Rights**

4.1 Our enforcement duties will recognise the spirit of the European Convention on Human Rights and we recognise the obligations placed on this authority by the Human Rights Act 1998. Of particular relevance to our activities are:

- Convention Rights and Freedoms
  - Article 6 – Right to a Fair Trial
  - Article 8 – Right to Respect for Private and Family Life
- First Protocol
  - Article 1 – Protection of Property

#### **5 Conduct of Investigations and Sanctions**

All investigations that we undertake will be carried out under the following legislation and in accordance with statutory powers and controls and any associated guidance or codes of practice, in so far as they relate to our authorisation:

- the Police and Criminal Evidence Act 1984
- the Criminal Procedure and Investigations Act 1996
- the Regulation of Investigatory Powers Act 2000
- the Criminal Justice and Police Act 2001
- the Human Rights Act 1998
- the Protection of Freedoms Act 2012 (Code of Practice for Powers of Entry and Description of Relevant Persons) Order 2015
- Data Protection Act 1998
- Regulatory Enforcement and Sanctions Act 2008
- Any other legislation which may be enforced

#### **6. Liaison**

6.1 The Teams within Public Protection will, where practicable, aim to coordinate their enforcement activity to maximise the effective enforcement and reduce the impact on individuals or businesses.

6.2 Where an enforcement issue involves one or more external authorities or agencies, or extends beyond the geographical area administered by the Council, all other relevant bodies will be informed of the matter in an appropriate manner as soon as is practicable. Any enforcement activity undertaken by Public Protection in these circumstances will be coordinated with those bodies.

#### **7. Interests of Service Customers**

7.1 Our enforcement activity will, where practicable, be arranged to:

- take account of particular local circumstances
- minimise any adverse effects, both on those individuals or businesses to which the activity is directed and those it may otherwise affect

7.2 Levels of legal compliance and examples of good practice will be monitored where practicable and appropriate. This information may be used to direct enforcement activity and to scale the level of enforcement action.

## **8. Sharing of Information derived from enforcement activity**

- 8.1 In some circumstances we have an obligation to share information obtained as a result of enforcement activity. We will ensure that any information we make available in these cases is accurate and appropriate to the purpose for which it is being sought. We will not share information where the purpose for doing so is unclear, is likely to be misused or used for commercial advantage.

## **9. Application of the Policy in relation to Offences**

- 9.1 Our policy for enforcement action following the discovery of offences is based on the framework below:

## **10. Enforcement Options**

- 10.1 The following general courses of action exist to deal with infringements. They can be regarded as an increasing level of response linked to the extent, seriousness and impact of non-compliance with the law in any particular case. However, it is at the officer's discretion which level action is commenced.

- No enforcement action/verbal advice
- Indirect action – referral to other enforcement authority or agency for action as appropriate.
- Inspection report or letter identifying offence(s) - advisory in nature and may contain information to assist compliance.
- Written warning identifying offence(s) and advising of the consequences of continuation or repetition of non-compliance.
- Statutory compliance notice detailing offence(s) and consequences of failing to act.
- Simple Caution. May be cited in a court of law.
- Prosecution in a Magistrates or Crown Court.
- Injunctive proceedings in a Civil Court.
- Forfeiture proceedings
- Restraint and confiscation proceedings

- 10.2 Depending on specific provisions within legislation a number of additional legal actions may be available.

## **11. Criteria for Courses of Enforcement Action**

- 11.1 No enforcement action will be taken or verbal advice only will be given when there is insufficient evidence to establish responsibility for an offence, or there are particular reasons why further action would be inappropriate.
- 11.2 Indirect action will normally be taken when it is appropriate to refer a matter to another local authority (in accordance with Home/Lead/Primary Authority Principles) or another agency with a shared enforcement role.

- 11.3 An inspection report or letter will be used in most circumstances. Their purpose will be to indicate and resolve minor or technical offences, which are capable of prompt rectification and are unlikely to be repeated.
- 11.4 Written warnings and statutory compliance notices normally apply where lower levels of action have been applied but have failed to resolve previous offences. They may also be used where more serious or repeated offences do not meet the criteria for instituting legal proceedings.
- 11.5 A simple caution may be offered as an alternative to prosecution only when all the criteria for prosecution are fulfilled and:
- there is sufficient evidence of an offender's guilt to give a realistic prospect of conviction
  - the offender admits the offence
  - the offender understands the significance of a caution and gives informed consent to being cautioned
- 11.6 Prosecution or injunctive proceedings will be instituted in accordance with the policy which follows.

## **12. Prosecution Policy**

- 12.1 The council recognises that fair and effective prosecution is essential to the maintenance of law and order. However, the decision to prosecute is a serious step and may have severe implications for those involved e.g. defendants; victims and witnesses.
- 12.2 Any decision regarding enforcement action will be impartial; objective; proportionate and fair. It will not be influenced by any view with regard to the race; gender; sexual orientation or religious beliefs of any offender; victim or witness. Improper or undue pressure from any source will be similarly disregarded.
- 12.3 To ensure consistency and fairness, in deciding whether to prosecute consideration will be given to guidance from Central Government, in particular the Code of Practice for Crown Prosecutors issued by the Director of Public Prosecutions. Other relevant sources will also be taken into account, such as case law and the recommendations of national co-ordinating bodies.

## **13. Deciding whether or not to Institute Proceedings**

- 13.1 Some of the factors which are taken into account, both for and against prosecution, are given in paragraphs 12.2, 12.3 and 13.2 below.
- 13.2 Prosecution will normally only be considered when one or more of the following public interest criteria are present:
- Conviction is likely to result in a significant sentence.
  - There is significant danger to health, safety or well-being of persons, animals or the environment.
  - Fraudulent, reckless or negligent practice with the likelihood of causing significant economic disadvantage to persons or business.

- The offence involves, or is directed at victims from vulnerable groups such as children, the elderly or infirm.
- Violence or threat of violence against any person is involved.
- The offence relates to wilful obstruction of an officer of the division acting in the course of their duties.
- History of the party, or parties, to an offence including relevant previous convictions, cautions, warnings or advice.
- There are grounds for believing that the offence is likely to be continued or repeated.
- Evidence that the offence was deliberate or premeditated.
- The offence, although not serious in itself, is widespread in the area where it was committed.

13.3 A prosecution is less likely to be needed if:

- A court is likely to impose a nominal penalty.
- The offence was committed as a result of a genuine mistake or misunderstanding, balanced against the seriousness of the offence.
- Any loss or harm can be considered minor and resulted from a single incident, particularly if caused by misjudgement.
- There has been undue delay between the date of offence and trial, unless:
  - the offence is serious
  - the delay is caused in part by the defendant
  - the discovery of the offence is recent; or
  - investigation of the offence has, out of necessity, been lengthy and complex.
- A prosecution is likely to have a serious adverse effect on the physical or mental health of a victim, bearing in mind the seriousness of the offence.
- The defendant is, or was at the time of the offence, suffering from significant mental or physical ill health, bearing in mind the seriousness of the offence or a real possibility it may be repeated.
- The defendant has put right the loss or harm caused (but defendants must not avoid prosecution solely because they have paid compensation).

**14. Consideration of Evidence**

14.1 Where prosecution is under consideration, no decision to institute proceedings will be taken without an assessment of the evidence relating to each offence. In every case regard will be had to the following factors:

- Whether there is sufficient evidence to prove each offence.
- Whether the evidence available is reliable and acceptable.
- Whether a defendant can satisfy a statutory defence provision available to them.

- Suitability, availability, credibility and willingness of witnesses.

## **15. Policy Review and Monitoring**

- 15.1 Application of the policy will be monitored by reviewing enforcement activity.
- 15.2 The policy will be reviewed 2 years from approval by the Council's Executive. Intermediate reviews of the policy will take place as required in order to accommodate changes in legislation, legal procedures and guidance, local circumstances and the views of customers.
- 15.2 Variance from the policy and areas of improvement identified following review or audit will be reported annually.

**If you (or someone you know) needs a copy of this Policy in another language or format please let us know:**

**Tel: 0121 704 6000**

**or**

**Email: [pprotection@solihull.gov.uk](mailto:pprotection@solihull.gov.uk)**