

# **TONBRIDGE & MALLING BOROUGH COUNCIL**

## **Environmental Health Service**

### **Enforcement Policy**

**January 2018**



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## INTRODUCTION

1. Our aim is to protect and improve public health, the environment and quality of life for everyone who lives, works or visits Tonbridge and Malling. This document sets out what businesses and individuals can expect from the Council's enforcement officers and the general principles we intend to follow in relation to enforcement. We will monitor its implementation and effectiveness and, where necessary, make changes.
2. Environmental Health Services are responsible for enforcing legislation relating to aspects of:-

animal welfare	pest control
environmental protection	pollution prevention and control
food safety	public health
health and safety at work	
3. This policy aims to promote efficient and effective approaches to regulatory inspection and enforcement which improve regulatory outcomes and encourage economic growth without imposing unnecessary burdens on businesses. This accords with the Regulators' Code and the Enforcement Concordat. In certain instances we may conclude that a provision in the Code or Concordat is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from either document will be properly reasoned, based on material evidence and documented.
4. We are committed to the promotion of equal opportunities in all of our activities and providing equality of access to all our services. Every effort will be made to ensure that everyone is treated equitably and fairly.
5. The rights and freedoms given under the Human Rights Act, particularly Articles 6 (right to a fair trial ) and 8 (right to respect for private and family life), will be observed, as will the provisions of the Regulation of Investigatory Powers Act, which requires those carrying out directed surveillance as part of an investigation to follow specific procedures.
6. We recognise that people who contact us about an environmental health problem can sometimes feel vulnerable and uncertain. We will provide appropriate information and support for complainants, victims and witnesses. In our dealings with businesses we are committed to providing simple explanations about statutory requirements and best practice and, where appropriate, will leave written guidance to help businesses or individuals comply with the law. In providing this information, we will be sensitive to the needs of all.

## PURPOSE AND METHOD OF ENFORCEMENT

7. The primary concern of officers of the Environmental Health Service is to prevent harm to human health or damage to the environment and to improve living/working conditions. We recognise that most individuals and organisations are anxious to comply with the law and in these cases the Council's role will often be to educate, guide and support. We regard prevention as better than cure. We offer information and advice to those we regulate and seek to secure co-operation while avoiding bureaucracy or excessive costs.
8. The purpose of enforcement is to protect the public, employees and the environment and ensure that those responsible for breaches of their statutory duties take action to comply with the law.
9. The Council has a range of enforcement tools at its disposal and while informal action, such as providing guidance and education, will usually be undertaken in the first instance, it may not always be appropriate to adopt an informal approach. For example, there may be a risk to human health from a hazard the nature of which requires prompt formal enforcement action or there may be evidence of previous non-compliance with statutory obligations imposed under legislation relating to environmental health.
10. If enforcement officers find evidence that the law is being broken they can respond in various ways. Having considered all relevant information and evidence, our options are:-
  - to take no action;
  - to take informal action – this includes
    - offering advice
    - verbal warnings and requests for action
    - sending a letter
    - issuing an inspection report;
  - to use statutory notices – which require improvements to be made to secure legal compliance or prohibit the use of equipment, tasks or activities that pose imminent risk of harm to people or the environment;
  - to issue fixed penalty notices;
  - to close premises or seize goods;
  - to use simple cautions and
  - to prosecute.

## PRINCIPLES OF ENFORCEMENT

11. We 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 we operate and what those regulated may expect from us and *targeting* of enforcement action, based on risk.

### Proportionality

12. The concept of proportionality is included in much of the regulatory system through the balance of action to protect the public and the environment against risks and costs. Some incidents or breaches of regulatory requirements cause or have the potential to cause serious harm to health or environmental damage. Others may interfere with people's enjoyment or rights. The enforcement action taken will be proportionate to the risks posed to health or the environment and to the seriousness of any breach of the law.
13. Informal action is normally appropriate when:
- the Council is not under a positive duty to take formal action;
  - the act or omission is not serious enough to warrant immediate formal action;
  - from the individual's/enterprise's past history, it can be reasonably expected that informal action will achieve compliance;
  - confidence in the individual's/enterprise's management involvement is high;
  - the consequences of non-compliance will not pose a significant risk to public health or the environment, and,
  - even where some of the above criteria are not met, there may be circumstances in which informal action will be more effective than a formal approach – for example, voluntary organisations.

### Consistency

14. Consistency means taking a similar approach in similar circumstances to achieve similar ends. We aim to achieve consistency in the advice we give, our response to complaints or incidents and the use of our legal powers and decisions on whether to prosecute. However, we recognise that consistency does not mean simple uniformity. Officers need to take account of many variables:
- the risk to health;
  - the scale of environmental impact;
  - the attitude and actions of management;
  - the confidence we have in management;
  - the likely effectiveness of the various enforcement options, and
  - the history of previous incidents or breaches.
15. Decisions on enforcement action are a matter of professional judgement and the exercise of discretion. We will ensure consistency of enforcement standards by:-
- ensuring officers are aware of this policy and have adequate training and competency in aspects of enforcement relevant to their role

- having regard to national and local co-ordination arrangements, for example:
  - statutory Codes of Practice/Guidance
  - guidance from the Regulatory Delivery (Part of the Department for Business, Energy and Industrial Strategy)
  - Health and Safety Executive guidance e.g. Enforcement Management Model (EMM) and Work Related Death Protocol
  - Local Government Regulation (LGR) guidance
  - Chartered Institute of Environmental Health Kent Environmental Health Managers Groups – guidance/practice notes
  - Kent and Medway Health and Safety Enforcement Policy
- liaison with Primary Authorities, where appointed
- publication and dissemination of our standards and policies
- a commitment to work with colleagues in Kent to develop consistency in our approach to enforcement procedures and practices.

## Transparency

16. Transparency is important in maintaining public confidence in our ability to regulate. It means helping those regulated, and others, to understand what is expected of them and what they should expect from us. It also means making clear why an officer intends to, or has taken, enforcement action.
17. Transparency is an integral part of our role. We will ensure that:-
  - where remedial action is required, it is clearly explained (in writing, if requested or otherwise required) why the action is necessary and when it must be carried out: a distinction will be made between best practice advice and legal requirements
  - an opportunity is provided to discuss with the enforcement officer or his/her manager what is required to comply with the law before formal enforcement action is taken, *unless* urgent action is required, for example, to protect health, the environment or to prevent evidence being destroyed
  - where urgent action is required, a written explanation of the reasons for taking the action is provided as soon as practicable after the event
  - a written explanation is given on any rights of appeal against formal enforcement action at the time the action is taken.
18. We will use plain English in all our written communications and will explain technical terms where these are used. We will provide a translation of any written communication into an alternative language and provide a translator for face to face discussions on enforcement issues if requested or in the officer's opinion is thought necessary. Documents are available in alternative formats for the visually impaired and assistance will be provided to those hard of hearing, when necessary.

## Targeting

19. Targeting means making sure that regulatory effort is directed primarily towards those whose activities give rise to the greatest risks. We will use nationally and locally agreed risk assessment guidance e.g. Food Standards Agency, Food Hygiene Intervention Frequency to assist in targeting our efforts.

20. We have systems for prioritising regulatory effort. They include the response to complaints from the public, the assessments of the risk posed by different types of activity and the gathering and acting on intelligence about illegal activity.

## **PROSECUTION**

21. The use of the criminal process to institute a prosecution is an important part of enforcement. It aims to punish serious wrongdoing, to avoid recurrence and to act as a deterrent to others. It may be appropriate to use prosecution in conjunction with other available enforcement tools, for example, a prohibition notice requiring an operation to stop until certain requirements are met. Where the circumstances warrant it, prosecution without prior warning or recourse to alternative sanctions will be pursued.
22. However, we recognise that prosecution is a serious matter that can have far reaching consequences for the offender. The decision to prosecute rests with the Council's Director of Central Services, and will only be made after full consideration by the Council's legal team of all the implications and consequences and that both the evidential and public interest tests are met in all cases, in accordance with the Code for Crown Prosecutors.
23. In general, failure to comply with statutory notices will result in prosecution , even if the Council may have controlled any risks through measures such as initiating works in default or detention/seizure of equipment.
24. All investigations into alleged breaches of legislation will follow best professional practice and the requirements of the Police and Criminal Evidence Act (PACE), the Criminal Proceedings and Investigations Act (CPIA), the Regulation of Investigatory Powers Act (RIPA), and the Human Rights Act. As part of the investigation process, persons suspected of breaching legal requirements will, where ever possible:
- be invited to be formally interviewed in accordance with PACE,
  - be given the opportunity to establish a statutory defence,
  - have the opportunity to give an explanation or make any additional comments about the alleged offence.
25. The Council will seek to recover the full costs of any investigation and prosecution or civil proceeding where the Council has been successful. More detail on cost recovery is provided in the Corporate Enforcement Strategy.

## **SIMPLE CAUTIONS**

26. A Simple Caution is a non-statutory disposal and may be issued as an alternative to a prosecution to deal quickly and simply with less serious, first time offences; divert less serious offences away from the courts; and reduce the chances of repeat offences.
27. The following factors will be considered when deciding whether a Caution is appropriate:

- evidence of the suspect's guilt;
  - a clear and reliable admission of the offence has been made, either verbally or in writing; and
  - consideration of the guidance in the Code for Crown Prosecutors on whether the use of a Caution is the appropriate means of disposal when taking into account the public interest principles.
28. The suspected offender must understand the significance of a Simple Caution and give an informed consent to being cautioned. No pressure will be applied to a person to accept a Simple Caution.
29. The 'cautioning officer' will be the most appropriate officer from the Council's Legal Service. The cautioning officer will not have taken an active part in investigating the case.
30. In most cases, should a person decline the offer of a Simple Caution we will prosecute.

## **APPEALS**

31. If any person is unhappy with the action taken, or information or advice given, they will be given the opportunity of discussing the matter with the relevant manager. This does not affect the right of any aggrieved person to exercise their rights under formal or informal appeal process which might exist.

## **HOW WE WORK WITH YOU**

32. Dissatisfaction with officers' actions, behaviour or decisions can be taken up with the Director of Planning, Housing and Environmental Health Services using the Council's formal complaints procedure which is available on the [council's website](#)

## **WORKING WITH OTHER ORGANISATIONS**

33. Where the Council and other enforcement organisations both have enforcement responsibilities, we will liaise with them to ensure effective co-ordination and to avoid inconsistencies. Such organisations include the Health and Safety Executive, and the Environment Agency.



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## References

[The Code for Crown Prosecutors January 2013](#)

[Regulators' Code April 2014](#)

[Food Standards Agency Framework Agreement on Official Feed and Food Controls by Local Authorities April 2010](#)

Legislative and Regulatory Reform Act 2006

Legislative and Regulatory Reform (Regulatory Functions) Order 2007 (as amended)