

CONTENTS	PAGE
1. Purpose / Scope	1
2. Introduction	1
3. Shared Enforcement Role	2
4. Regulation of Investigatory Powers Act 2000	2
5. Code for Crown Prosecutors	2
6. Policy	3
7. Authorisation of Documents	6
8. Provisions for Particular Interest Groups	6
9. Approval	6
10. Review	6
11. Access to the Policy	7

1.0 PURPOSE/ SCOPE

- 1.1 The purpose of this guidance is to outline the Environmental Health Services Enforcement Policy.

2.0 INTRODUCTION

- 2.1 Leeds City Council signed up to the Enforcement Concordat on 22nd August 2001 confirming its commitment to the principles of good enforcement. Environmental Health Services is a public authority for the purposes of the Human Rights Act 1998. Environmental Health staff apply the principles of the European Convention of Human Rights in accordance with the Act.
- 2.2 The purpose of this document is to set out the Enforcement Policy by which Environmental Health Services on behalf of the Council, ensures compliance with housing and environmental health legislation. The purpose of the policy is to ensure that enforcement decisions are always consistent, balanced, fair, targeted, accountable, transparent, proportional and relates to common standards to ensure the public is adequately protected.
- 2.3 Each case is unique and must be considered on its own merits. There are however general principles that apply in the way each situation must be approached. This document sets out the factors to be taken into account when considering the type of enforcement action to be taken. The policy must be followed except in exceptional circumstances
- 2.4 Officers are authorised to take action, and are required to follow the policy and the lines of responsibility in terms of decision-making, as laid down in Departmental documents.

2.5 The possible outcomes of an inspection or investigation are: -

- a) take no action
- b) take informal action
- c) use statutory notices, equipment seized, premises closed
- d) refusal/revocation of licence/approval/authorisation/permit
- e) fixed penalty
- f) work in default
- g) use simple caution
- h) prosecute
- i) injunction

It may be that one or more of these outcomes are appropriate in any given case.

3.0 SHARED ENFORCEMENT ROLE

3.1 Before proceeding with any action officers shall consider if there is a shared or complementary enforcement role with other agencies e.g. Health and Safety Executive, Fire Authority, Environment Agency, Anti social Behaviour Unit and liaise with that agency.

4.0 THE REGULATION OF INVESTIGATORY POWERS ACT 2000

4.1 If applicable the requirements of this legislation shall be taken into account during investigations. The Act works in conjunction with existing legislation e.g. Human Rights Act 1998.

5.0 THE CODE FOR CROWN PROSECUTORS

5.1 The Code for Crown Prosecutors (Prosecutors employed by the Crown Prosecution Service) is referred to by Local Authority solicitors in ensuring that fair and consistent decisions about prosecutions are made. Officers shall refer to this code when considering the merits of pursuing a prosecution.

5.2 The principles laid down by the Crown Prosecution Service Code of Practice require two tests to govern the decision making process: -

- a) *The Evidential Test*

The Prosecutor shall be satisfied that there is enough evidence to provide a realistic *prospect of conviction* against each defendant on each charge. The defence case must be considered and how this is likely to affect the prosecution case.

EHS	GUIDANCE: EHS ENFORCEMENT POLICY
CEN G 1	Page 3 of 7
ISSUE: 2	DATE: 06.06.06

The Prosecutor must consider whether the evidence can be used and is reliable.

b) *The Public Interest Test*

Essentially, once the evidential test has been passed the prosecution will usually proceed unless there are public interest factors against prosecution that clearly outweigh those in favour. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the offender. Some factors may increase the need to prosecute but others may suggest that another course of action would be more appropriate.

Considering the public interest in prosecution is not simply a matter of adding up the number of factors in each side. The officer must decide how important each factor is in the circumstances of each case and proceed to make an overall assessment.

6.0 POLICY

6.1 *No Action*

- a) The only circumstance where no action can be taken is when compliance with legislation has been achieved.

6.2 *Informal Action*

- a) Informal action to secure compliance with the legislation includes offering advice, issuing warnings and requests for action.
- b) In the following circumstances it may be appropriate to use informal action. This is not an exhaustive list and each case must be looked at on its merits.
- i) The act or omission is not serious enough to warrant formal action.
 - ii) From the individual/organisation's past history it can be reasonably expected that informal action will achieve compliance.
 - iii) Where the original approach is from person(s) seeking advice or assistance (however, if serious breaches are found then formal action will be necessary)
- c) When an informal approach is used to secure compliance, this may be verbal or written. However it is important that any written

EHS	GUIDANCE: EHS ENFORCEMENT POLICY
CEN G 1	Page 4 of 7
ISSUE: 2	DATE: 06.06.06

documentation issued or sent to individuals/businesses:-

- i) Contains all the information necessary to understand what work is required and why it is necessary.
- ii) Indicates the statute or regulations contravened and measures which will enable compliance to be achieved.
- iii) Clearly differentiates between legal requirements and recommendations of good practice

6.3 *Statutory Notices, Equipment Seized or Premises Closed*

- a) Notices shall be served to require offenders to cease contravening activities, give offenders reasonable time to rectify a contravention, or require people to provide information. Notices may require contravening activities to cease immediately where circumstances relating to health, safety, environmental damage or nuisance demands. In other circumstances, the time allowed must be reasonable, but must also take into account the health, safety, environmental damage or nuisance implications of the contravention. Specific policy is available on the circumstances under which notices shall be considered and served, equipment seized or premises closed. These vary according to the type of notice and enforcement legislation.

6.4 *Refusal/Revocation of Licence/ Approval/ Authorisation/Permit*

- a) Licences, Approvals, Authorisations and Permits are issued under specific legislation and the requirements of the circumstances that allow refusal/revocation of licence etc. shall be taken into account in accordance with the legislation.

In order to warrant refusal/revocation of a Licence, Approval, Authorisation or Permit the individual or organisation must meet one or more of the following criteria:

- i) engage in fraudulent activity
- ii) deliberately or persistently breach legal obligations
- iii) deliberately or persistently ignore written warnings or formal notices
- iv) endanger to a serious degree the health, safety or well being of people, animals or the environment
- v) failure to pay subsistence fees

In cases of wider public interest, or if there is significant expenditure involved in compliance which jeopardises the financial viability of a business, reference

may be made to the Licensing Panel.

6.5 *Fixed Penalty*

- a) Fixed Penalty Notices will be issued under specified legislation. If a fixed penalty is not paid within the prescribed period legal proceedings shall be instituted.

6.6 *Work in Default*

- a) Where provided for under specific legislation, work will be carried out in default in certain circumstances. These will vary according to both public risk and strategic considerations.

6.7 *Simple Cautions*

- a) Simple cautions may, under certain circumstances as specified by internal guidance, be an alternative to prosecution rather than a court hearing, but only if there is sufficient evidence for the matter to proceed by way of prosecution. Home Office Circular 30/2005 provides information on the subject.

6.8 *Prosecution*

- a) The decision to recommend the institution of proceedings will in general be in respect of those persons or organisations that blatantly disregard the law, refuse to achieve even the basic legal standards, often following previous contact with the Services and/or who put the public at risk.
- b) The investigating officer, when deciding on the appropriateness for legal proceedings, shall take the following criteria into account in addition to those included within the Code for Crown Prosecutors (refer to paragraph 5.0) and within published guidance including the Food Safety Act Codes of Practice, LACORS guidance on food safety enforcement policy and Health and Safety Commission Guidance.
- c) Flagrant Breach of Law. For example, where there is an apparent blatant breach of law such that public health, safety or well being, animal health or welfare is put at serious risk, it would be appropriate to take legal action.
- d) Failure to Comply with a Notice. Legal action that may be prosecution or works in default shall be taken in cases of failure to comply with improvement and prohibition notices or other notices requiring or prohibiting action.
- e) Failure to Comply with Lawful Requirements. If the operator of a

EHS	GUIDANCE: EHS ENFORCEMENT POLICY
CEN G 1	Page 6 of 7
ISSUE: 2	DATE: 06.06.06

business fails to comply with lawful requirements, having been advised on previous occasion(s), proceedings shall be taken.

- f) History of Non-compliance If there is a history of non-compliance with law by the operator of a business or by an individual then legal action shall be taken even if the matters identified are not flagrant breaches of law.
- g) Community Benefit Legal action shall be taken on the first occasion that certain events are witnessed because of the extreme improbability that the person once seen committing an offence would be seen on a subsequent occasion. Community benefit of a prosecution would also be indicated by the importance of the case, for example, whether it might establish a legal precedent.
- h) Obstruction Legal proceedings shall be taken in cases of deliberate obstruction of an officer.

6.9 *Injunctions*

- a) In exceptional cases it may be considered that an injunction is the more appropriate course of action to remedy the contraventions or dangerous circumstances.

7.0 **AUTHORISATION OF DOCUMENTS**

Individuals authorised to sign various documents on behalf of the Local Authority shall, in general, have the level of experience and responsibility of the post as referred to in their job descriptions and specifications and outlined in the scheme of delegations and associated documents.

8.0 **PROVISIONS FOR PARTICULAR INTEREST GROUPS**

Environmental Health Services will endeavour to make provision for the particular interests of consumers including business owners, employees and the public where it is reasonable to do so.

9.0 **APPROVAL**

This revised policy was approved by the Executive Board of Leeds City Council on 17th November 2004.

10.0 **REVIEW**

This policy will be reviewed on an annual basis.

EHS	GUIDANCE: EHS ENFORCEMENT POLICY
CEN G 1	Page 7 of 7
ISSUE: 2	DATE: 06.06.06

11.0 ACCESS TO THE POLICY

The policy will be made available on the Leeds City Council web site. It can be ordered by telephoning 0113 2476026, emailing env.health@leeds.gov.uk or writing to the Chief Environmental Health Officer, Merrion House, 4th Floor West, 110 Merrion Centre, Leeds, LS2

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