

**ENVIRONMENTAL HEALTH AND WELL
BEING**

ENFORCEMENT POLICY

Approved:

**SignedCabinet Member
Environmental Health and Well Being**

Date

Review Date April 2009

Environmental Health and Wellbeing Enforcement Policy

1.0 Introduction

- 1.1 The Environmental Health and Well-Being business unit has responsibility for protecting and enhancing public and environmental health within the Borough of Telford and Wrekin.
- 1.2 Environmental Health and Well-Being delivers the Council's responsibility to ensure compliance with statutory obligations by businesses and individuals within the borough with respect to ;
 - 1.2.1 **Food Safety** - the principle aim is to ensure that food and drink intended for human consumption, which is produced stored, handled or sold within the borough is safe wholesome and without risk to the health and safety of the consumer.
 - 1.2.2 **Health and Safety** - the principle aim is to secure the health, safety and welfare of persons at work and protect other persons against the risks arising from work activities.
 - 1.2.3 **Pollution Control** - the principle aim is to control and monitor pollution of the environment by securing compliance with the law in respect of pollution to air land and water including noise.

2.0 Commitments

- 2.1 All officers will be officially authorised to carry out the duties delegated to them.
- 2.2 All authorised officers will be fully trained and competent in the areas of service relevant to their post and duties as required by government guidance including but not exclusively Food Law Code of Practice, Section 18 Guidance Notes, Annex 2 issued by the HSC.
- 2.3 All authorised officers when making enforcement decisions shall abide by the enforcement policy (and any specific procedures made there under). Any departure from the policy will be exceptional, capable of justification and be fully considered by the Business Manager Environmental Health and Well-Being before the decision is taken, unless it is considered that there is a significant risk to the public in delaying the decision.

- 2.4 The contents of this policy will be brought to the Council's Cabinet for approval. Any future revisions or amendments brought by legislative change, operational or administrative developments will also be referred to the Cabinet for approval.

3.0 Principles of Enforcement

- 3.1 The Policy sets out the principles of good enforcement practice that will be used to deliver fair, proportionate and consistent enforcement across all of Environmental Health and Well-Being. The following key principles of the Statutory Code of Practice for Regulators: Regulators' Compliance Code of Practice will inform all enforcement activities and support legislative requirements and the guidance provided by statutory codes of practice.
- 3.2 **Targeted:** enforcement action will be targeted at cases in which action is needed; this will be risk assessment based or based on intelligence received
- 3.3 **Proportionality:** The business unit will ensure that enforcement action and compliance advice is fair and proportionate to risk (or seriousness of the offence) and will seek to help small businesses and voluntary organisations to comply with requirements on a cost effective basis.
- 3.4 **Openness:** The business unit will provide information and advice in a clear manner and will be open about the development, delivery and review of enforcement policies and procedures.
- 3.5 **Consistency:** Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends. Duty holders managing similar risks can expect a consistent approach from the business unit in the advice given, the use of enforcement notices, decisions on whether to prosecute and in response to incidents and complaints. To promote consistency the business unit will have arrangements in place for both internal and external standardisation exercises. The business unit is committed to working with regional partners to seek regional and national "best practice" approaches.
- 3.6 **Standards:** The business unit will work to clear standards which will set out the level of service and performance the public and businesses can expect to receive. Performance will be measured against these standards which will be reported annually

- 3.7 **Complaints:** The business unit will provide service users with an effective method of raising issues about service quality, including recourse to the Council's Complaints & Compliments Procedure.
- 3.8 **Transparency:** The business unit will ensure that advice is provided in a clear manner and that mandatory compliance advice is distinguished from recommendations. Duty holders under investigation will be offered the opportunity to discuss the matters under investigation within a formal interview under the Police and Criminal Evidence Act 1984.
- 3.9 **Helpfulness:** The business unit will work, whenever possible with customers to advise and assist with compliance. A courteous and efficient service will be provided and customers will be encouraged to seek advice and or information

4.0 **Enforcement Options**

- 4.1 Enforcement action may only be initiated by officers who are authorised to do so in accordance with the Council's authorisation procedure.
- 4.2 Environmental Health and Well-Being business unit will ensure that all actions will be consistent with Human Rights Act 1998. Further more, guidance contained in Code of Practice issued by the Food Standards Agency, Local Authorities Coordinators of Regulatory Services (LACORS) circulars, Health and Safety Commission guidance notes, Department for Environment, Food and Rural Affairs and Environment Agency will be followed where appropriate.
- 4.3 Environmental Health and Well-Being is committed to ensuring an adequate level of public and business protection within the Borough via a balanced approach to enforcement based on advice, education and support with the formal action being taken in appropriate circumstances.
- 4.4 The action taken must adequately protect the public interest and provide an appropriate deterrent to offending. However, each case will be considered on its own merits in determining the course of action to be taken.
- 4.5 Authorised officers must take into account the appropriate facts and evidence and will decide on a course of action from the following:
- 4.6 **No action:** In exceptional circumstances, contraventions may not warrant any action. This is likely to be when the cost of compliance to the offender outweighs the impact of the offence. A decision of no action may also be taken when a business has ceased to trade.

- 4.7 **Written warning and advice:** All warnings will be confirmed in writing and clearly specify the precise nature of the breach or offence and the actions required to remedy the issue. Warnings will generally be used for minor offences. They may also accompany higher level actions such as Enforcement Notices.
- 4.8 **Statutory Notices:** These will always be issued by properly trained and authorised officers. They will normally be issued in cases involving breaches of legislative requirements, or where consequences of non compliance present a serious and or an imminent risk to the public or the environment, they may be used to prohibit the use of a premise, an activity or a process. Enforcement Notices may be appropriate where there has been a history of non-compliance or where there are doubts as to whether the potential recipient will respond to an informal approach. Statutory notices may be used in conjunction with other action such as prosecution.
- 4.9 **Fixed Penalty Notices:** These will be used where the powers have been adopted and in accordance with written procedures.
- 4.10 **The Seizure of goods and equipment:** Officers have statutory powers to seize goods and equipment in particular circumstances. Such action can have a range of outcomes including the destruction or sale of goods or equipment seized.
- 4.11 **Carry out works in default:** If a Statutory Notice is not complied with the Authority can take reasonable steps to undertake works in default itself. Where appropriate, any expense reasonably incurred may be recovered from the person or persons served with the Notice.
- 4.12 **Formal Cautions:** The issue of a Formal Caution may be considered as an alternative to prosecution where:
- There is sufficient evidence to prove the case;
 - The offender has admitted the offence
 - The offender has agreed to be cautioned
 - The offence has not been committed by the offender before
 - Where the offenders approach makes repeat offending unlikely
 - The offender understands the significance of accepting the caution
 - Reference should be made to Home Office Circular 30/2005.
- 4.13 **Prosecution:** Environmental Health and Well-Being will prosecute those offences where there has been a breach of legal requirements such that food safety, health and safety, environmental safety or health and physical well being are put at risk,

or any other factor which indicates prosecution is appropriate. The Evidential and Public Interest Test in the Code for Crown Prosecutors' must be met by all cases.

4.14 Certain circumstances will normally justify prosecution to prevent the undermining of the business units enforcement responsibilities

- The failure to comply with an Enforcement Notice;
- The offer of a Formal Caution has been declined;
- It has been necessary to seize articles or equipment or to prevent an activity taking place
- Acts of obstruction.

Proceedings will be taken against those persons responsible for the offence.

All prosecutions will be approved by the Head of Prevention and Protection or the Business Manager Environmental Health and Well-Being.

4.15 **Revocation of Licence/Registration/Authorisation:** The business unit may wish to revoke a licence, registration to trade or authorisation to businesses that trade within the Borough. This decision will be made by the Head of Prevention and Protection or the Business Manager Environmental Health and Well-Being in relation to matters of health and safety and additionally the Environmental Health Team Manager in matters relating to pollution prevention and control.

4.16 The above enforcement actions are not sequential and each case will be determined on its own merits. Prosecution may be considered the appropriate first action in certain circumstances

5.0 Equal Opportunities

5.1 The business unit will ensure that all recipients of the Environmental Health and Well-Being service receive fair and equitable treatment irrespective of their age, race, ethnicity, gender, sexuality or disability.

6.0 Monitoring and Review

6.1 All proposed enforcement actions shall be assessed against this policy by the investigating officers concerned in conjunction with Team Managers, Business Unit Manager and Head of Service (as appropriate).

6.2 The policy will be reviewed annually.