



CHESHIRE EAST BOROUGH COUNCIL

ENFORCEMENT POLICY

March 2009

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1. INTRODUCTION

- 1.1 The purpose of this policy is to secure an efficient and effective approach to **all council regulatory inspection and enforcement functions** to improve compliance with legislation whilst minimising the burden on businesses, individuals, organisations, and Cheshire East Borough Council “The Council”. This is in accordance with the Regulator’s Compliance Code and includes the principles contained within the Enforcement Concordat.
- 1.2 In certain instances the Council may conclude that a specific requirement of the Code is either not relevant or is outweighed by another requirement. The Council will ensure that any decision to depart from the Code will be properly reasoned and documented and based on material evidence.
- 1.3 The policy explains the approach adopted when carrying out the Council’s duty to enforce a wide range of legislation and is written in general terms to accommodate this.
- 1.4 The Council will endeavour to serve Cheshire East consumers and businesses by working with the business community to ensure healthy, fair and safe trading and a thriving economy. The Council will take particular care to help small businesses, voluntary and community organisations to meet their legal obligations at minimal expense.
- 1.5 The Council will assist businesses and individuals in Cheshire East comply with legislation for which it has enforcement responsibility.
- 1.6 When the Council takes enforcement action it will take account of national priorities alongside local priorities that exist at the time of any intervention, investigation or offence. Enforcement interventions are likely to be targeted in areas where a Council, Neighbourhood or Area priority is being compromised.

2. STANDARDS

- 2.1 The Council will publish Service Standards and make them available in both paper and electronic format with translations being available on request.
- 2.2 All officers engaged in enforcement functions will be trained and assessed against a competency framework to ensure that the highest standards of enforcement are met.
- 2.3 If a person or business subject to enforcement action does not agree with an officer’s decision a challenge can be made in the first instance to that officer’s line manager. Where this does not resolve the issue the person or business can request that the issue is dealt with by an independent Regulatory Services Manager or Head of Service.

Note: In cases where there is imminent risk to health or the environment, enforcement action may be taken before the right of challenge can be heard.

3. OPENNESS

- 3.1 The Council will provide information and advice in plain language and will clearly explain how it undertakes its work. The Council will discuss general issues, individual compliance failures or problems with anyone experiencing difficulties.
- 3.2 If the Council receives information (for example, from a complainant) that may lead to enforcement against a business or individual, a notification will be given, as soon as is feasible, of any intended enforcement action, unless this could hamper an investigation or pose a safety risk to those concerned, the environment or the general public.

4. HELPFULNESS

- 4.1 The Council believes prevention is better than cure and therefore encourages businesses and others to seek advice to assist with compliance.
- 4.2 In correspondence it will identify named contacts for service related queries or complaints.
- 4.3 It will make all businesses and customers aware of the Council's enforcement policy or changes to the enforcement policy during site visits or via correspondence and will provide all businesses with a printed copy of this policy on request.

5. COMPLAINTS, COMPLIMENTS AND SUGGESTIONS

- 5.1 Formal complaints, suggestions or compliments on any aspect of the services it provides, should, in the first instance, be directed to the service manager of the relevant service area.

If the Council's response to a complaint about the service fails to resolve the matter, you may lodge a formal complaint either by using the information below or requesting a formal complaint form from the Service concerned. The issue will then be investigated through the Council's complaint procedures.

- 5.2 Details of the Council's complaints procedure is available as follows:

On the web at; <http://www.cheshireeast.gov.uk>

Via email on: Complaints@cheshireeast.gov.uk

By telephone on: 0300 123 5038

Or by writing to: Complaints, Suggestions & Compliments, Cheshire East Borough Council, Customer Centre, Market Place, Macclesfield Cheshire, SK10 1EA.

6. PROPORTIONALITY

- 6.1 The Council will minimise the costs of compliance by ensuring that any action it requires is proportionate to (balanced against) the risks. As far as the law allows, the Council will take account of the individual circumstances of each case when considering action.

7. CONSISTENCY

- 7.1 The Council will carry out its duties in a fair, equitable (even-handed) and consistent manner. Whilst officers are expected to exercise judgement in individual cases, the Council will have arrangements in place to promote consistency, including effective liaison arrangements with other authorities and enforcement agencies which may have a shared enforcement role. All investigations are undertaken in accordance with legal requirements and where appropriate, government guidance

8. LEVELS OF ENFORCEMENT ACTION

- 8.1 Legislative compliance will be secured by one or a combination of the following methods:

Promotion: to raise awareness about legal standards and promote good practice. This is typically achieved by the issuing of press releases, distributing leaflets and other forms of guidance available to the public and businesses, by face-to-face contact and schemes to enhance compliance and self-regulation.

Informal warnings: these will be used to reinforce promotional activities where, whilst the law may have been broken, it was not thought appropriate to take more formal action. An informal warning can be oral or written. If it is believed by the recipient that such a warning is inappropriate or unjustified then this policy allows for the decision to be reviewed by a senior officer.

Formal enforcement: this includes the use of statutory (legal) notices; written undertakings and enforcement orders; the refusal to grant or revoke a licence or registration; cautions; fixed penalty notices; penalty charge notices and penalty notices or prosecution. This course of action would be taken following procedures laid down in legislation, codes of practice and professional guidance notes. Where it is felt that members of the public need protecting from behaviour that is likely to cause harassment, alarm or distress, the Council may seek an Anti Social Behaviour Order either as an independent action or following conviction.

9. STATUTORY (LEGAL) NOTICES

- 9.1 Many Acts of Parliament enforced by the Council allow for, or require, the service of statutory notices, which require a person, business or organisation to comply with specific legal requirements. Where a formal notice is served, the

method of appealing against the notice (i.e. if the recipient feels that the notice is unjustified or excessive in its requirements) will be provided in writing at the same time. The notice will explain what is wrong, what is required to put things right and what will happen if the notice is not complied with.

- 9.2 In general, failure to comply with a properly written and served statutory notice makes the person or business who is named in the notice (the recipient of the notice) liable to prosecution. In some cases the Council is able to, and will carry out works to comply with the notice and recover the cost from the recipient of the notice. In exceptional circumstances both prosecution and service of a notice may be appropriate.

10. WRITTEN UNDERTAKINGS AND ENFORCEMENT ORDERS

- 10.1 Where an individual or organisation fails to comply with the law, the Council may seek a written undertaking from that person that they will cease the action. In such circumstances, the Council may decide that no further formal action will be taken.
- 10.2 In cases where an individual or organisation has breached an undertaking or has refused to provide a written undertaking to cease an action, the Council may serve a formal notice or make an application to a court for an enforcement order or other formal action in accordance with the relevant legal provisions.

11. FIXED PENALTY NOTICES AND SIMILAR SANCTIONS

- 11.1 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 and should a recipient not pay the penalty offered, prosecution will be necessary for the actual offence.
- 11.2 The Council will comply with any relevant guidance on the use of fixed penalty, penalty charge notices and penalty notices. In particular, the following conditions will 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

12. SIMPLE CAUTIONS

- 12.1 Under certain circumstances, a "simple caution" may be an appropriate alternative to prosecution. This option will be considered before prosecution. A caution is a serious matter. It is recorded on the Central Register of Convictions and may be used to influence any future decision whether or not to institute proceedings should another offence be committed. It may be referred to in any

subsequent court proceedings. It will not be referred to in respect of any conviction recorded more than three years earlier.

12.2 Simple cautions serve the following purposes:

- a) To deal quickly and simply with less serious offenders;
- b) To avoid unnecessary appearance in criminal courts;
- c) To reduce the chance of offenders re-offending

12.3 It will comply with Home Office guidance on the cautioning of adult offenders and in particular before issuing a simple caution, the following conditions must be satisfied:

- a) There must be evidence of guilt sufficient to give a realistic prospect of conviction;
- b) The suspected offender must admit the offence, usually by signing a declaration;
- c) The suspected offender must understand the significance of a simple caution and give an informed consent to the caution

13. PROSECUTIONS

13.1 The Council will use discretion in deciding whether to initiate a prosecution. Where the circumstances justify it, prosecution without prior warning may take place.

13.2 The Council will consider prosecution when:

- a) It is appropriate in the circumstances, as a way to draw attention to the need for compliance with the law, especially where there would be a normal expectation of a prosecution, or where;
- b) Through the conviction of offenders, others may be deterred from offending; or
- c) There is the potential for considerable harm arising from the breach; or
- d) The gravity of the offence, taken together with the general record and approach of the offender justifies it

13.3 The decision to prosecute will always take account of the criteria set down in the Code for Crown Prosecutors.

13.4 Before deciding to prosecute there must be sufficient evidence for a realistic prospect of conviction taking account of any defence that may be available, and it must be in the public interest.

13.5 The following public interest criteria will normally be taken into account when deciding on the relevance of legal proceedings, although this list is not exhaustive:

- The prevalence of the type of offence

- The need for a suitable deterrent
- The risk of danger or injury to the public
- The failure to comply with a statutory notice or respond to advice about legal requirements
- The disregard of legal requirements for financial reward
- Significant financial loss, potential or actual, to a third party
- A history of similar offences
- Persistent breaches of legislation
- Where fraud, gross negligence or guilty knowledge is a factor
- Minor breaches of a number of statutes

13.6 Where possible an offender will be told as soon as sufficient evidence is obtained that a prosecution may follow.

13.7 All prosecutions will be brought without unnecessary delay.

13.8 The Council will aim to maximise its effectiveness by working with other authorities and other agencies, sharing intelligence where it is lawful to do so and mounting joint operations where that would bring benefits.

Outside agencies include:

- Police
- Environment Agency
- Health and Safety Executive
- Food Standards Agency
- Fire Service
- HM Revenue and Customs
- Defra/State Veterinary Service
- Office of Fair Trading
- Assets Recovery Agency
- The enforcement arms of trade protection organisations such as the Federation against Copyright Theft

Where there has been a breach of the law leading to a work-related death, the enforcement authority will liaise with the Police, Coroner and the Crown Prosecution Service (CPS) and if there is evidence of manslaughter (including corporate manslaughter) pass the case to the Police or, where appropriate, the CPS.

14. PROCEEDS OF CRIME

14.1 In appropriate cases, an application may be made under the Proceeds of Crime Act for confiscation of assets to recover the financial benefit that the offender has obtained from a criminal conduct. Proceedings are carried out in accordance with the civil standard of proof and applications are made after a conviction has been secured but before the offender has been sentenced.

15. GATHERING EVIDENCE

- 15.1 Regulatory bodies are empowered to gather evidence by numerous means, including, where appropriate, covertly (without the targeted individual/s being aware of surveillance). Remote CCTV and other recording devices may be utilised. In each case appropriate authorisation will be sought prior to the undertaking of covert surveillance in accordance with the Regulation of Investigatory Powers Act 2000 (RIPA).

16. EQUALITY AND DIVERSITY

- 16.1 Equality and diversity issues have been considered in this policy. It reflects the Council's values, and is in line with anti-discrimination legislation. It will be applied in accordance with the legal obligations of the Council irrespective of disability, gender, race, religion, age, sexual orientation and marital status or any other grounds, which would constitute unfair or unreasonable discrimination.
- 16.2 The policy will have no detrimental impact on minority groups and such groups will be afforded the same level of protection from crime and anti-social behaviour. Crime specifically targeted at minority groups will be appropriately addressed.
- 16.3 The Council will regularly review its policies and practice to ensure a continuing commitment to providing services that do not discriminate against minority groups.
- 16.4 The policy and service standard documents can be provided in other formats such as audio, large print, on CD or can be translated on request.

17. GENERAL PRINCIPLES OF OFFICER CONDUCT

- 17.1 In addition to the principles set out in this Policy, officers will always present themselves professionally and courteously. Officers will, as the circumstances allow, announce who they are and in what capacity they are acting. However, there may be occasions when officers legitimately delay identifying themselves until a later stage of the investigation. Officers will carry, and show their identity card or authorisation as appropriate.
- 17.2 Officers will engage with individuals and groups effectively without discrimination.

18. REVIEW OF THIS ENFORCEMENT POLICY

- 18.1 This policy will be reviewed every three years or more frequently in response to a significant service change or changing regulation.