

**Environment & Leisure Department**  
**Safety & Food Team**  
**Enforcement Policy**

**1. General**

- 1.1 This policy document sets out the specific issues that relate to the enforcement of food safety, health and safety legislation and associated legislation. It should be read in conjunction with the Environment and Health & Planning Services Generic Enforcement and Prosecution Policy which explains how the regulatory services within Environment & Health seek to comply with the Enforcement Concordat and good professional conduct.
- 1.2 Swindon Borough Council has endorsed the principals of the Enforcement Concordat published in April 1999 by the Government's better regulation task force as principles of good regulation. The Council has adopted a revised version of the concordat with the agreement of the Cabinet Office. This Enforcement Policy is consistent with the revised form of the concordat as adopted by the Council.
- 1.3 Swindon Borough Council recognises the importance of achieving and maintaining consistency in decisions concerning food and safety enforcement. Modern trading activity is often 24 hours a day. We will ensure consistency of service by visiting businesses out of 'normal office' hours when necessary.
- 1.4 The Council will aim to provide interpreters/translators should the need arise if English is not the first language and it is perceived that there are communication difficulties.
- 1.5 Where complaints are received or enforcement action anticipated either from or about parties who are known personally to the investigating officer, the matter will be discussed with the Safety & Food Team Manager (SFTM) and passed to another neutral officer for investigation.
- 1.6 Where enforcement action is anticipated and there is a shared or complimentary enforcement role with other agencies, for example the Health and Safety Executive or the Police, communication at an early stage and confirmation in writing as to who is the lead authority, must be sought to avoid any ambiguity.
- 1.7 Following the detection of a breach of food safety or health and safety legislation, an investigation will be conducted by a qualified and competent officer in accordance with the requirements of the Police and Criminal Evidence Act (PACE), Human Rights legislation, best professional practice and any specific codes of practice issued by central government.

- 1.8 Any person who is suspected to have been responsible for the commission of a breach of legislation, will be interviewed in accordance with the requirements of PACE and be given an opportunity to make any comment. The Investigating Officer will then submit a report (the Investigation Report) setting out the facts of the alleged offence to their line manager to consider what enforcement action, if any, is appropriate.
- 1.9 If enforcement action which may lead to the institution of legal proceedings is considered appropriate, the Investigation Report will be submitted to the Line Manager, who will discuss the case with the SFTM who will consider on behalf of the Director of Environment & Health, whether the proposed action is in the public interest. In deciding the appropriate course of action, reference will be made to the considerations set out below and in the Environment and Health & Planning Services Generic Enforcement and Prosecution Policy.
- 1.10 Legal proceedings against alleged offenders will be initiated by the Borough Solicitor on recommendation made on behalf of the Director of Environment & Health only after the Investigation Report has been examined by the Borough Solicitor's Department to assess evidential requirements.

## **2. Prosecution and Cautioning Offenders**

- 2.1 There are four main types of enforcement action that can be taken when breaches of legal requirements are detected, these are:
  - (i) Prosecution
  - (ii) Simple Caution
  - (iii) Statutory Notice
  - (iv) Informal Action
- 2.2 The decision to consider prosecution will usually lie with the Investigating Officer for the case, in consultation with their line manager and SFTM. This will help ensure:
  - (a) a consistency across different officers cases and;
  - (b) a number of key issues relating to prosecution have been considered by both field officer and management.
- 2.3 The prosecution of offenders should be the ultimate deterrent to be used judicially, but without hesitation, against those businesses or individuals which put the health and safety of consumers at risk. Prosecution should only be used as a last resort where:
  - (i) other attempts to improve food safety conditions have failed or;
  - (ii) where the public have been exposed to significant risk by a defendants actions or negligence;

- (iii) that the offence involved a failure by the defendant to comply, in full or in part, with the requirements of a statutory notice.

2.4 In deciding whether it is in the public interest to prosecute, the following shall be taken into account:

- (i) the relative seriousness of the alleged offence and likelihood of establishing a due diligence defence;
- (ii) the previous history of the party concerned;
- (iii) any mitigating circumstances surrounding the alleged offence and any explanation offered by the offenders;
- (iv) the willingness of the party to take all practical steps to prevent a recurrence of the problem;
- (v) the views of any injured party / is the evidence from witnesses reliable?
- (vi) the probable public benefit of a prosecution and the importance of the case.

2.5 The decision to prosecute will also take account of the evidential and public interest tests set down in the Code for Crown Prosecutors. These include:

- (i) the age and state of health of the alleged offender;
- (ii) the likelihood of re-offending;
- (iii) any remedial action taken by the alleged offender.

2.6 Consideration will be given as to whether some other action, such as issuing a Simple Caution, in accordance with appropriate Home Office circulars or an Improvement Notice or imposing a Prohibition would be more appropriate or effective. In certain circumstances Improvement Notices or Prohibition Notices may be served in addition to the prosecution or cautioning of the offender.

2.7 Regard will be made to the criteria contained in the Crown Prosecution Services 'Code for Crown Prosecutors' Home Office circulars regarding the cautioning of offenders, and Food Safety Act 1990 and Food Law Code of Practice and Practice Guidance.

### **3. Simple Cautions**

3.1 Simple cautions will be considered as an alternative to prosecutions for legislation enforced by the Safety & Food Team.

3.2 The decision to consider a simple caution will usually lie with the Investigating Officer in consultation with their line manager and SFTM. This will help ensure:

- (a) a consistency across different cases, and;
- (b) a number of key issues relating to simple cautions have been considered both by field officers and management.

3.3 The Director and SFTM within the department are authorised to issue simple cautions.

3.4 A simple caution may not be appropriate in circumstances where:

- (a) a simple caution has already been given for a past or similar offence;
- (b) where the public have been exposed to significant risk by the defendant's actions or negligence;
- (c) where it is considered that prosecution would be a more effective deterrent to re-offending.

3.5 A simple caution may be used:

- (a) to deal quickly and simply with a less serious offence;
- (b) to divert less serious offences away from the Courts;
- (c) to reduce the chances of repeat offences;
- (d) where the interest of justice will not be served by court action;
- (e) for offences of a minor nature where there is little risk to public health of the environment;
- (f) where a technical offence has been committed and there is a need for it to be formally recorded;

In addition, the following must apply:

- (g) there is sufficient evidence to secure a conviction;
- (h) the suspected offender must admit the offence;
- (i) the suspected offender must understand the significance of the simple caution and agree to it.

3.6 Refusal of a simple caution will normally be followed by a prosecution for the alleged offence. It is important to ensure that the case satisfies all the tests and requirements of prosecution.

3.7 The Home and Originating Authority are to be advised of any simple caution issued. A record of the caution will be kept on file. A Caution shall not be cited in relation to any offences committed more than three years after the caution has been issued.

#### **4. Statutory Notices**

4.1 Statutory Notice procedures should be seen as a positive alternative to a prosecution in respect of contraventions of statutory requirements. These notices would usually be served where one or more of the following criteria apply:

- (a) A proprietor is unwilling to confirm in writing their agreement to close or the voluntary prohibition of equipment, process or treatment. (Voluntary closure should never be prompted but the authorised officer may accept such an offer provided he or she is satisfied that there is no risk of the premises being reopened without his or her knowledge.)
  - (b) There is no confidence in the integrity of the offer of a proprietor to a voluntary closure or voluntary prohibition of equipment, process or treatment.
  - (c) The consequences of not taking immediate and decisive action to protect public health would be unacceptable.
  - (d) An imminent risk to injury to health can clearly be demonstrated, i.e. Prohibition Notice served under the Health & Safety at Work etc. Act. Discuss with Senior Environmental Health Officer and SFTM prior to service to ensure officer is properly authorized.
- 4.2 Enforcement Officers should give a realistic time period for compliance but should take into account any previous informal notice given to the recipient. The SFTM may extend the time period of statutory notices if they are satisfied that the recipient is making reasonable progress with the work or has genuine reasons for requesting more time. In order to extend the time period of a notice the offender must write to the SFTM stating the reasons for why more time is required.
- 4.3 Failure to comply with a Statutory Notice will invariably result in Court proceedings and Officers must not issue Statutory Notices unless they are satisfied that such proceedings are likely to go ahead.

## **5 Improvement Notices**

- 5.1 These notices would usually be served where one or more of the following criteria apply:
- (a) there are significant contraventions of legislation;
  - (b) there is a lack of confidence in the proprietor or enterprise to respond to an informal approach;
  - (c) there is a clear history of non compliance with informal action;
  - (d) standards are generally very poor with little management awareness of statutory requirements;
  - (e) the consequence of non compliance could be potentially serious to public health;
  - (f) although prosecution / simple caution is intended, action needs to be taken as quickly as possible to remedy conditions that are serious or deteriorating.
- 5.2 Improvement Notice would normally be related to the risk to health and/or safety.

- 5.3 Improvement Notices would only be used in exceptional circumstances to remedy minor technical contraventions.
- 5.4 Officers are expected to comply with the relevant legislation and Codes of Practice.
- 5.5 Qualified Environmental Health Officers and Technical Officers achieving the relevant competency may serve these Notices on the relevant category premises. See Safety & Food Team Protocols 90 to 93.

## **6 Prohibition Notices**

- 6.1 The judicious use of Prohibition Notices will ensure that premises, practices or processes which by their continuance put employees and/or consumers health or safety at risk, can be stopped quickly and efficiently. Where officers believe that there is an imminent risk to health and/or safety then action should be taken to close the business or prohibit the process practice or equipment giving rise to the risk. Officers must however, ensure that the extent of a prohibition is limited to the minimum necessary to remove the risk.
- 6.2 Officers are expected to comply with the relevant legislation and Codes of Practice.
- 6.3 Only Officers achieving the required competency are authorised to serve these Notices. See Safety & Food Team Protocols 90 to 93.
- 6.4 A second opinion as to whether the Notice should be served must be sought from a Senior Environmental Health Officer/SFTM prior to service.

## **7 Informal Action**

- 7.1 Environmental Health Officers and Technical officers are authorised to initiate informal action.
- 7.2 Informal action includes: offering advice; verbal warnings; 'informal' cautions - either by letter or verbally; requests for action; follow up letters; and the issue of inspection reports on site.
- 7.3 Inspection reports will be issued following all inspections including revisits and other visits even where conditions were found at the time to be satisfactory.

- 7.4 Under normal circumstances it would be appropriate to use informal action where:
- (a) the act or omission is not serious enough to require formal action;
  - (b) it can be reasonably expected that informal action will achieve compliance;
  - (c) the consequences of non compliance will not pose a significant risk to public health;
  - (d) confidence in the individual or enterprise is high.
- 7.5 Even where these criteria are not met there will be occasions where informal action can be expected to be more effective than formal action. Officers will exercise their judgement when these circumstances are met and will refer to the SFTM for clarity as appropriate.
- 7.6 Verbal advice given will differentiate between legal requirements and items of good practice advice. All correspondence or reports sent to a proprietor will:
- (a) indicate the legislation contravened;
  - (b) indicate measures which will enable compliance and what other measures of equivalent effect may be chosen;
  - (c) contain all the information necessary to understand what work is required and why it is necessary;
  - (d) differentiate between legal requirements and good practice advice.
- 7.7 Any variations from these policies and procedures should be agreed with the SFTM. This is to ensure consistency of interpretation and judgement and to enable continuing review of the system.

## **8 Time limits for commencing proceedings**

- 8.1 The prosecution report for the alleged offences shall be completed by the reporting officer at the earliest practicable date and passed to the manager without delay.
- 8.2 For alleged offences where the last date for laying information is six months from the date of offence the prosecution report must be with the Solicitor as soon as possible before this date.
- 8.3 All cases must be discussed with the Senior Environmental Health Officer / SFTM, prior to issue of notice. A second opinion by the Senior Environmental Health Officer / SFTM or an officer with the relevant competency must be sought on site for service of Prohibition Notices.