

**SWINDON BOROUGH COUNCIL
ENVIRONMENT AND HEALTH and PLANNING SERVICES**

**GENERIC ENFORCEMENT AND PROSECUTION POLICY
(Approved by Cabinet January 2007)**

INTRODUCTION

1. This enforcement policy applies to Swindon Borough Council's Environment and Health and Planning Services (The Services). It also applies to any enforcement activity undertaken by Swindon Commercial Services on behalf of the waste management client.
2. The aim of the services are to meet community expectations regarding the protection and provision of a safe, healthy, fair and equitable environment and to sustain and enhance the health and safety of all who live, work, trade in or visit the area.
3. Service functions covered by this policy are extensive. They include food safety, trading standards, health and safety at work, development control, environmental protection (including statutory nuisance) licensing, standards of residential accommodation and building control, homelessness, waste management and Town Centre Management. Each service area may also have additional, specific requirements which supplement this policy but take into account specific requirements for that service, which may include the statutory need for a service specific enforcement policy.
4. Swindon Borough Council has endorsed the principles of the Enforcement Concordat published in April 1999 by the Government's Better Regulation Task Force as principles of good regulation,. The Council adopted a revised version of the Concordat with the agreement of the Cabinet Office in 2001. This Enforcement Policy is consistent with the revised form of the Concordat as adopted by the Council.
5. Staff work with other Regulators both within and outside the Council to ensure coherent regulation, and with trade, residents and voluntary groups in order to achieve common goals. Where enforcement action is anticipated and there is a shared or complimentary enforcement role with other agencies then agreement will be sought at an early stage, as to who is the lead authority.
6. The Services regard prevention as being better than cure. They offer information and advice to those they regulate and seek to secure co-operation avoiding bureaucracy or excessive cost. They encourage individuals and businesses to put community, the environment and public health and safety first.
7. This Policy sets out the general principles which these Services intend to follow in relation to enforcement and prosecution. The Services will monitor their implementation and effectiveness.
8. The powers available include statutory notices, improvement and prohibition notices, suspension or revocation of licences, variation of licence conditions, injunctions and the carrying out of remedial works. Where the Services have carried out remedial works, they will seek to recover the full costs incurred from those responsible.

9. Where a criminal offence has been committed, in addition to any other enforcement action, the Services will consider instituting a prosecution, issuing a fixed penalty notice or administering a caution.

PRINCIPLES OF ENFORCEMENT

10. The Services covered by this policy believe in firm but fair regulation. Underlying the policy of firm but fair regulation are the principles of:
 - **Proportionality** in the application of the law and in securing compliance.
 - **Consistency** of approach,
 - **Transparency** about how the Service operates and what those regulated may expect from the Service, and
 - **Targeting** of enforcement action.

Proportionality

11. Proportionality means relating enforcement action to the risks. Those whom the law protects and those on whom it places duties, expect the action taken by enforcing authorities to be proportionate to any risks to the community; to the quality of the environment to public health and safety and to standards of trading; and to the seriousness of any breach.
12. Some incidents or breaches of regulatory requirements cause or have the potential to place health and safety at serious risk. Others may interfere with people's enjoyment or rights, or the Division's ability to carry out its activities. The Services first response is to prevent that risk from occurring or continuing. The enforcement action taken will be proportionate to the risks posed and to the seriousness of any breach of the law.

Consistency

13. Consistency of approach does not mean uniformity, it means taking a similar approach in similar circumstances to achieve similar ends. The Services aim to achieve consistency in, advice tendered, the response to incidents, the use of powers and decisions on whether to prosecute.
14. Officers need to take account of many variables: the scale of impact, the attitude and actions of management and the history of previous incidents or breaches. Decisions on enforcement action are a matter of professional judgement and the Division, through its officers, needs to exercise discretion. The Services will continue to develop arrangements to promote consistency including effective arrangements for liaison with each and other council services and enforcing authorities.

Transparency

15. Transparency is important in maintaining public confidence in the Service's ability to regulate. It is about helping those regulated and others, to understand what is

expected of them and what they should expect from the Services. It means making clear why an officer intends to take or has taken enforcement action. It also means distinguishing between statutory requirements and advice or guidance about what is desirable or good practice but not compulsory.

16. Transparency is an integral part of the role of the Services' officers. Staff are trained and procedures developed to ensure that: -

- Where action is required, it is clearly explained (in writing, if requested) why that action is necessary and when it must be carried out; a distinction being made between best practice advice and legal requirements.
- Opportunity is provided to discuss what is required to comply with the law before formal enforcement action is taken, unless urgent action is required, for example, to deal with a statutory nuisance, which is likely to be of limited duration or a dangerous structure in imminent danger of collapse, or evidence required to support a conviction would not otherwise be available.
- A written explanation is given of any rights of appeal against formal enforcement action at the time the action is taken.

Targeting

17. Targeting means making sure that regulatory effort is directed primarily towards those whose activities give rise to the most serious risk or where the risks are less well controlled. Action will be primarily focused on those directly responsible for the risk and who are best placed to control it.

18. The Services prioritise regulatory effort. Factors include response to complaints from the public; the existence of statutory powers and the assessment of risk (e.g. the potential for a particular breach of regulations to cause environmental damage or damage persons health and safety).

19. Management actions are important in the assessment of risk. Repeated incidents or breaches of regulatory requirements, which are related, may be an indication of an unwillingness to change behaviour, or an inability to achieve sufficient control. A relatively low hazard site or activity poorly managed has potential for greater risk than a higher hazard site or activity where proper control measures are in place.

20. Where formal enforcement action is necessary the person responsible should be held to account. Where several persons share responsibility, the Services will take action against those who can be regarded as primarily in breach.

PROSECUTION

Purpose

21. The Services recognise the use of the criminal process to institute a prosecution as an important part of enforcement. It uses discretion in making such a decision because other approaches to enforcement may equally or more effectively

promote compliance with legislation. Where circumstances warrant, the Service will, however, pursue prosecution without prior warning.

22. 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) and the Human Rights Act. As part of the investigation process, persons suspected of breaching legal requirements will, where ever possible:

- 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.

23. The Services will consider prosecution when one or more of the following applies:

- it is appropriate in the circumstances as a way to draw general attention to the need for compliance with the law,
- there is a risk to public health and safety or of environmental damage as a consequence of the breach,
- the breach was as a result of a deliberate act or following recklessness or neglect,
- the approach of the offender warrants it, e.g. repeated breaches, persistent poor standards.

24. 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:

- the age and state of health of the alleged offender;
- the likelihood of re-offending;
- any remedial action taken by the alleged offender.

25. Before a decision to prosecute is taken, the alleged offence will be fully investigated and a report compiled by the investigating officer who will make a recommendation as to the appropriate course of action to be taken. A senior manager will review the case before any decision to prosecute is taken. All Defendants will be notified of the decision to prosecute in accordance with the Magistrates Court Rules and CPIA.

Sufficiency of Evidence

26. The Services will not pursue a prosecution unless satisfied that there is sufficient, admissible and reliable evidence that the offence has been committed and there is a realistic prospect of conviction.

Public Interest Factors

27. Where there is evidence as described above, the Services will still not pursue a prosecution unless there are one or more of the following public interest factors in favour of such actions: -

- effect of the offence on local environmental health and safety
- intent of the offender
- history of offending
- the offence or circumstances leading to it are foreseeable

Penalties

28. The courts have considerable scope to punish offenders and deter others. The Services will seek to make the courts aware of the degree of gravity they consider should be attached to community and environmental health and safety offences. They will also actively seek to ensure that the local community is made aware of action taken to convict persons who are in breach of their legal obligations.
29. The Services will always seek to recover the costs of investigation and court proceedings.

Fixed Penalty Notices

30. Where legislation permits the use of fixed penalty notices, the Services will consider use of them as an alternative to prosecution. Examples of where they may be appropriate are:-
- To deal quickly and simply with less serious offences
 - To divert less serious cases away from the court process
 - To deter repeat offences
31. Before a fixed penalty notice is administered the authorised officer will ensure:-
- There is evidence of the offender's guilt sufficient to sustain a prosecution
32. Where legislation gives the local authority flexibility to set the level of a fixed penalty charge the level of the charge shall be set by the Council or by an Officer to whom this power is delegated in consultation with the appropriate Lead Member for that service area. The level of the fixed penalty charge shall be set having regard to:-
- Any Government guidance on the level at which the fixed penalty charge should be set
 - The likely level of fine which a court would impose for a similar offence
 - The need to deter offenders from opting for prosecution because they believe that the court would impose a lower level of penalty
 - The cost of bringing a prosecution where fixed penalties were not paid

The table at Appendix 1 sets out the current fixed penalty charges for offences where a fixed penalty may be offered as an alternative to prosecution.

Where legislation permits the provision of a lower fixed penalty, if payment is made within a set time limit, then this will be considered in consultation with the Cabinet Member for the service area concerned. To qualify for a discount payment must be made within 10 days. The level of discount would be set having regard to the guidance issued by the Secretary of State. The table at Appendix 1 also sets out the discounted charge for each offence.

33. Where a fixed penalty notice is not paid within the specified time limit (usually 14 days) then the offender will always be prosecuted unless there are exceptional circumstances. Where it is decided that an unpaid fixed penalty notice should not be pursued by way of prosecution the reason for not pursuing the notice must be reported to the Cabinet Member for the service area concerned.
34. There is no right of appeal against a fixed penalty notice covered by this policy as it only deals with criminal offences. A person served with a fixed penalty notice who believes they did not commit the offence has the right for their case to be heard in court.

Formal Caution

35. The Services will consider Formal Cautions as an alternative to prosecution. Examples of where they may be appropriate are: -

- to deal quickly and simply with less serious offences
- to divert less serious cases away from the court process
- to deter repeat offences.

36. Before a caution is administered the officer will ensure: -

- there is evidence of the offender's guilt sufficient to sustain a prosecution
- the offender admits the offence
- the offender understands the nature of the formal caution and agrees to be cautioned for the offence

37. Formal cautions are administered in accordance with Home Office guidelines.

FOOTNOTE

38. This enforcement policy incorporates and is consistent with the Enforcement Concordat produced by the Government's Better Regulation Task Force as principles of good regulation, published in April 1999. It also takes into account the requirements of procedural and evidential law as agreed with the Regulatory Impact Unit of the Home Office in August 2000.

39. Within the Services individual service areas have ISO 9001 quality assured enforcement procedures which supplement and support this Policy.

Supporting Documents

1. Offences where fixed penalties may be used and the level of charge to be applied.
2. Supplementary Policy – Food, Health & Safety and Licensing.
3. Supplementary Policy – Private sector Housing.
4. Enforcement Concordat - adopted by Swindon Borough Council's Cabinet on the 19th December 2001

Version Control

Version 1	Agreed by cabinet – 6 th March 2002
Version 2	Draft – modified to include fixed penalties.
Version 3	Agreed by Cabinet 17 th January 2007