

# RIBBLE VALLEY BOROUGH COUNCIL REPORT TO HEALTH & HOUSING COMMITTEE

Agenda Item No. 5

meeting date: THURSDAY, 1 SEPTEMBER 2016  
title: ENFORCEMENT POLICY  
submitted by: MARSHAL SCOTT – CHIEF EXECUTIVE  
principal author: HEATHER COAR – HEAD OF ENVIRONMENTAL HEALTH SERVICES

## 1 PURPOSE

1.1 To agree an Enforcement Policy for Environmental Health Services.

1.2 Relevance to the Council's ambitions and priorities:

- Community Objectives – To support healthy environmental economic and social wellbeing for people who live, work and visit the Ribble Valley. This document will contribute to three of the ambitions but namely to help make people's lives healthier and safer.
- Corporate Priorities – To promote a healthier environment and lifestyle and ensure a well-managed Council, providing efficient services based on the identified customer needs.
- Other Considerations – None.

## 2 BACKGROUND

2.1 The government is committed to reducing regulatory burdens on businesses and supporting the growth of compliant businesses through open and constructive relationships between regulators and those who regulate.

2.2 The Government introduced a Regulator's Code on 6 April 2014 replacing the previous regulator's compliance code. It was introduced in the Legislative and Regulatory Reform Act 2006, and came into force in April 2014. It provides a principal base framework for how regulators should engage with those that they regulate. The specific local authority services covered by a regulatory cause are all within the Environmental Health services department (food safety, environmental protection, health and safety, private sector housing, waste and licensing, dog warden).

2.3 There are also a number of other regulatory and enforcement services that are not covered by the code, most notably building control. However, the broad principles contained within the Enforcement Policy are equally applicable to all Council enforcement services and it is therefore recommended that this is adopted by the Environmental Health services enforcement approach.

2.4 Local authorities need to have regard to the code when developing standards, policies and procedures to either guide their regulatory activity with businesses and/or apply to other regulators. It applies to legal roles of Environmental Health, Trading Standards and Licensing Services. It requires that we have systems in place to engage with those who we regulate – to let them offer their views and contribute to the development of the policies and service standards.

## 3 THE REGULATOR'S CODE

3.1 The Regulators Code is based on six broad principles which are set out below. The code contains a section on each of these which sets out what is expected of the regulator in each case.

1. Regulators should carry out their activities in a way that supports those they regulate to comply and grow.
  2. Regulators should provide straightforward ways to engage with those they regulate and hear their views.
  3. Regulators should base their regulatory activity on risk.
  4. Regulators should share information about compliance and risk.
  5. Regulators should ensure clear information, guidance and advice is available to help those they regulate and meet their responsibilities to comply.
  6. Regulators should ensure that their approach to their regulatory activity is transferrable.
- 3.2 A key action required to ensure compliance within the code is to have an Enforcement Policy explaining how the local authority respond to non-compliance. The Enforcement Policy for the various regulatory disciplines require updating and it is therefore an opportune time to take a single enforcement statement or policy for all regulatory complaints and enforcement within these services.
- 3.3 It is also a requirement for the code that mechanisms are put in place to engage with those they regulate including engagement in a development and review of policies and service standards.
4. AN OVERVIEW OF THE ENFORCEMENT POLICY
- 4.1 Ribble Valley Borough Council carries out a wide range of regulatory roles in meeting its main statutory duties to protect the public, individuals and the environment. The functions are discharged through a combination of programmed inspections, responding to complaints, issuing licensing and offering advice. This policy is an overarching policy that applies to all of the environmental health services enforcement duties. It should be noted however that the various additional specific enforcement requirements are applicable in certain services.
- 4.2 The policy sets out the broad approach that the Council will take to enforcement which takes account of the regulators code and commits us to being:
- Proportionate – our activities will reflect the level of risk to the public and enforcement action taken in relation to the seriousness of the offence.
  - Accountability – our activities will be open to public scrutiny with clear and accessible policies, and fair and effective complaints procedure.
  - Consistent – our approach to these we regulate will be robust, reliable and we will respect advice provided by others.
  - Transparent – we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return.
  - Target – we will focus our resources on high risk activities and enterprises.
- 4.3 Services covered by the policy will work and consult with other Council services, partners and other regulators where there is a shared or complaint enforcement role to ensure a consistent approach to enforcement within the borough and avoid duplication.
- 4.4 The policy sets out the level of enforcement action available to the Council and will determine what action is appropriate in the event of non-compliance and how we will

conduct our activities. In updating the enforcement policy, particular regard has been given to the provisions and regulator's code and provision outlined in the Legislative and Regulatory Reform Act 2006 and the Regulatory and Enforcement Sanctions Act 2008. This policy document, if adopted, will supersede any previous versions of our enforcement policy.

## 5. CONSULTATION

5.1 There are no statutory consultees in this recommendation.

## 6 RISK ASSESSMENT

6.1 The approval of this report may have the following implications:

- Resources – there are no significant implications.
- Technical, Environmental and Legal – there are no environmental or legal implications; however the implementation of the policy will have implications to legal through the new provisions.
- Political – this document permits the Council to consider and determine its intended approach in relation to an important statutory function.
- Reputation – as above.
- Equality & Diversity – there are no significant implications, but it contributes towards the corporate priorities of the Council, open and transparent decision making.

## 7 **RECOMMENDED THAT COMMITTEE**

7.1 Agree to the Environmental Health Enforcement Policy at Appendix 1.

7.2 That further minor amendments and updates following annual reviews be approved by Members.

HEATHER COAR  
HEAD OF ENVIRONMENTAL HEALTH SERVICES

MARSHAL SCOTT  
CHIEF EXECUTIVE

## BACKGROUND PAPERS

None.

For further information please ask for Heather Coar, extension 4466.

REF: HC/EL/H&H/1/9/16



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# **ENFORCEMENT POLICY ENVIRONMENTAL HEALTH DEPARTMENT**

# **ENFORCEMENT POLICY**

## **ENVIRONMENTAL HEALTH DEPARTMENT**

### 1. Environmental Health

The purpose of the Environmental Health's service is predominantly to protect the health, safety and environment of residents within the Borough. To help achieve this purpose Environmental Health has a duty to enforce a range of statutes relating to public health and safety, quality of life and maintenance of the environment.

This policy therefore intends to outline how this service will use its powers in relation to enforcement. In particular this policy is designed to help promote efficient, effective and consistent approaches to regulatory inspection.

This Policy has been written in conjunction with the Regulators Compliance Code 2008. The Human Rights Act 1998, The European Convention on Human Rights, The Freedom of Information Act 2000 and the Regulation of Investigatory Powers Act 2000

### 2. Introduction

The Environmental Health Department will comply fully with the Council's Corporate Enforcement Policy, Enforcement Concordat and the Regulators Compliance Code. This policy describes the procedures in place to ensure compliance with the Council's Corporate Enforcement Policy and makes reference to specific issues associated with the service, not necessarily shared with other Council departments.

### 3. Departmental Enforcement Procedures

Education and advice are considered the first options to secure compliance, however these may not always be appropriate and as such firm but fair regulation will be needed, guided by the following principles of enforcement.

- Proportionality
- Consistency of approach
- Transparency
- Targeting
- And flexibility

The options available to the diverse range of environmental health functions include:

- Verbal and written warnings
- Liaison with home, lead or originating authority/ primary authority
- Statutory notices
- Simple cautions
- Formal prosecutions
- Fixed penalty notices
- Work in default
- Modification of licence conditions
- Revocation of licenses, permits and approvals
- Refusal of licenses, registrations, permits and approvals
- Seizure, forfeiture and detention

- Closure / prohibition of premises or equipment usage
- Prohibition of persons
- Anti-social behaviour orders
- Injunctions

Any enforcement considered by this Department will follow the procedures below:

- i) Once an offence is deemed by an Officer to have been committed, the appropriate action will be taken to remedy the offence, guided by the principles of the Council's Corporate Enforcement Policy.
- ii) When an Officer believes enforcement action is appropriate they shall ensure that:
  - the action is in line with recognised guidance on securing compliance.
  - the action is in line with departmental work instructions/procedure notes, with reference to consulting their line manager where appropriate.
  - the action is proportionate to the alleged offence.
  - the evidence is likely to stand up to legal scrutiny to demonstrate an offence has occurred.
  - a successful defence is unlikely and any interference with a Convention under the Human Rights Act is justified.
  - it is in line with the Regulation of Investigatory Powers Act 2000
  - the Council's enforcement policy has been adhered to.
  - they differentiate between a legal requirement which is essential to that of "good practice" which is desirable where necessary.
- iii) If the appropriate action is to consider a prosecution or simple caution, any officer who prepares a report recommending this will ensure that:
  - the action is proportionate to the alleged offence.
  - a successful defence is unlikely and any interference with a Convention under the Human Rights Act is justified.
  - It is in line with the Regulation of Investigatory Powers Act 2000.
  - the action is in the public interest and consideration has been given to the Code for Crown Prosecutors.
  - the action is consistent with the overall enforcement approach taken across the department.
- iv) The final decision as to whether a prosecution is the correct course of action is made by the Chief Executive, following any recommendations made by the Head of Environmental Health Services.

#### 4. Consideration of Shared Enforcement Roles

The breadth and nature of Environmental Health work means that we regularly come across situations where other council departments and outside agencies also have a role in protecting human health and the environment. In dealing with those situations and applying the correct regulations, it is important that all those involved are aware of their role and the need to ensure that they work effectively together. The following list describes the main areas of shared responsibility and some of the other agencies with whom we will work.

<b><u>Department/Agency</u></b>	<b><u>Nature of Shared Responsibility</u></b>
Planning Department Ribble Valley Borough Council	Applications for Planning Permission
Trading Standards Department Lancashire County Council	Food safety matters - labelling, food quality and composition. Underage sales of alcohol
Health & Safety Executive Lancashire Constabulary	Health & safety in the workplace Licensing of premises for alcohol sales, regulated entertainment and late night refreshments. Community safety. Investigation of workplace fatalities.
Lancashire Fire & Rescue Service	Fire safety - ensuring that fire safety standards are maintained in business premises and private rented housing
Environment Agency	Contaminated land, pollution prevention & control & accumulations
Public Health England	Investigation of infectious diseases
DEFRA ( Dept. of the Environment, Farming and Rural Affairs), the Agricultural and Dairy Advisory Service and the Farming and Rural Conservation Association	Standards within dairy operations and pasteurisation plants. Egg production and packing operations
Food Standards Agency	Large scale food safety issues to do with contamination/distribution or food fraud

Although the degree of overlap between these agencies and the Council may vary from case to case, we will always follow the procedures outlined below. In some cases, specific instructions in our documented quality assurance systems may also supplement these procedures.

- Routine Requests for Service

Where such a request is received and it is immediately apparent that it is the responsibility of another agency, the request will be forwarded to that agency as soon as practicable and in any event, within 2 working days. The customer will also be informed that their request has been passed on.

- Investigations

During the course of routine investigations, it may become apparent that another agency should be involved or taking the lead role. If this is the case, our investigation will cease, pending further instructions from the lead agency. (Gathering information and evidence on behalf of another agency could, in some cases, compromise this information). Any information gathered by our department will be passed on immediately to make sure the investigation is not delayed in any way.

- Joint Investigations

There may be some circumstances where joint visits or investigations may be necessary. Similarly, certain application or licensing procedures undertaken by the Council may require an input from more than one department or agency. In such cases, all relevant information will be shared openly and promptly between the parties involved.

## 5. Principles of Good Regulation

### Transparency

Transparency is important to help all customers understand what is expected of them and what they should expect from Environmental Health. As such Environmental Health will:

- where remedial action is required, clearly explain (in writing if requested) why the action is necessary and timescales if required; with distinctions always being made between best practice advice and legal requirements;
- provide opportunity to discuss what is required to comply with the law before formal enforcement action is taken, unless urgent action is required;
- give written explanation on any rights of appeal against formal enforcement action at the time the action is taken;
- where possible communication must be made in plain language. If known and required, and alternative appropriate language or method should also be used.

### Accountability

Regulators must be able to justify decisions, and be subject to public scrutiny, to help achieve this, Officers from Environmental Health will:

- show their identification at the outset of every visit and explain the reason for that visit, unless the nature of the investigation requires otherwise;
- provide their names and contact details when requested;
- will strive to deal their enforcement activities as promptly and efficiently as possible in order to minimise delays;
- will gather feedback and act upon information about the service provided, as appropriate;
- direct people to the Councils complaint procedure which is also available from reception points, online and over the phone, as required or requested.

### Helpfulness

Environmental Health recognises the importance of working with its customers as in many cases this helps to prevent the need for enforcement action.

Officers will do this by:

- listening to and finding out what matters to the customer, and as appropriate build a rapport with its customers;
- provide advice and guidance either verbally, written or through the web;
- where required, signpost its customers to other agencies and information; and
- where appropriate co-ordinate advice with other agencies to prevent unnecessary overlaps

### Proportionality

Any enforcement actions taken by Environmental Health will be proportionate to the risks posed and to the seriousness of any breach of law:

- When considering the measures necessary to be taken by duty holders,



- Environmental Health will take account of cost as well as the degree of risk.
- The existence of relevant good practice will also be considered in cases of judgment.

### Consistency

Environmental Health aims to achieve consistency in actions it takes:

- Therefore all officers undertaking enforcement duties will be suitably trained, qualified and authorised so as to ensure that they are fully competent to undertake their duties.
- Officers will also have regards to codes of practice, government circulars and guidance as appropriate to also aid with consistency actions.

### Targeted

Targeting means making sure that regulatory effort is directed primarily towards those who are responsible for those most serious risks, where the risks are least well controlled and against deliberate or organised crime.

activities, including Government and local targets and priorities, new legislation, national campaigns and public concerns.

## 6 Enforcement Options

Enforcement actions must be consistent, balanced, fair and relate to common standards that ensure the public or environment is adequately protected. Firstly and where appropriate a staged approach to enforcement should be adopted and in the first instance customers should be given the opportunity to discuss and remedy problems before action is taken, unless immediate action is required. If enforcement action is still required after this approach the following must then be considered:

- The seriousness of the offence.
- The history of the activity.
- Confidence in achieving compliance.
- Consequences of non-compliance.
- Likely effectiveness of the various enforcement options.

And in considering this any sanction or penalty should:

- aim to change the behaviour of the offender;
- aim to eliminate any financial gain or benefit from non-compliance;
- be proportionate to the nature of the offence and harm caused;
- aim to restore the harm caused by regulatory non-compliance;
- aim to deter future non-compliance.

### Enforcement Options Available

#### Informal Action

Informal Action will be considered when:

- the act or omission is not serious enough to warrant formal action; or

- from the individual's or business's past history it can be reasonably expected that informal action will achieve compliance; or
- the confidence in an individual or business proprietor is high; or
- the consequences of non-compliance will not pose a significant risk to public health, public safety or the environment.

Any correspondence must clearly differentiate between legal requirements and recommendations of good practice and must indicate the regulations contravened and the measures which will enable compliance.

### Statutory Notices

Statutory Notices will be considered where one of the following criteria apply:

- Where there is a statutory duty to do so.
- There are significant contraventions of legislation.
- There is a lack of confidence in the persons responsible to respond to an informal approach.
- There is a history of non-compliance.
- Standards are generally poor with little management awareness of statutory requirements.
- The consequences of non-compliance could be potentially serious to public health or cause public nuisance or be irreversible.
- Where, in addition to prosecution, measures need to be taken to remedy conditions that are serious, deteriorating or where the service of a notice is needed to support a prosecution.

### Prohibition Notices/Orders

It will be necessary to consider the service of a Prohibition Notice, Order or injunction in one or more of the following circumstances:

- An imminent risk or injury to health or safety can be demonstrated.
- An imminent risk of serious pollution to the environment can be demonstrated.
- The consequences of not taking immediate and decisive action to protect the public would be unacceptable.
- The guidance criteria concerning the conditions when prohibition may be appropriate are fulfilled.
- There is no confidence in the integrity of an unprompted offer made by a proprietor to voluntarily close premises or cease the use of any equipment, process or treatment associated with the imminent risk.
- Where it would be the most effective remedy available

### Fixed Penalty Notices

Fixed Penalty Notices may be issued under the following circumstances:

- To provide an effective and visible way to respond to low level crimes without going to court.
- As a response to genuine problems or as part of a wider enforcement strategy.
- That there is enough evidence to progress with a prosecution or alternative action if non-payment of a fixed penalty notice follows.

- Known persistent offenders will not be issued with FPNs but shall be considered for prosecution.

### Prosecution

The Council recognises that the decision to prosecute is significant and could have far reaching consequences on the offender.

The decision to undertake a prosecution will be taken by the Service Unit Manager for Environmental Health or the Head of Department in his absence. Proceedings will be issued when one or more of the following criteria are met:

- Officers have been intentionally obstructed in the lawful course of their duties.
- The alleged offence involves a flagrant breach of the law such that public health, safety or wellbeing is or has been put at risk or irreversible damage had resulted.
- There has been a reckless disregard for health and safety or the environment.
- The alleged offence involves a failure to comply in full or in part with the requirements of a statutory notice, prohibition or fixed penalty notice.
- There is a history or repetition of similar offences.
- The alleged offence causes public alarm and it is desirable to reassure the public and deter other offenders.
- A breach of health and safety legislation resulted in death, or serious injury.
- There have been repeated breaches which give rise to significant risk or persistent and significant poor compliance.
- A prosecution is in the public interest, there is a realistic prospect of conviction and sufficient evidence to support proceedings.
- There has been a repetition of a breach that was subject to a simple caution.

It is worth noting that In certain situations, both prosecution and notice procedures may be appropriate. All relevant evidence and information will be considered, taking into account the guidance set out in “The Code for Crown Prosecutors”, before deciding upon a prosecution in order to enable a consistent, fair and objective decision to be made.

### Simple Cautions

A simple caution may be issued as an alternative to a prosecution. Simple cautions will be issued to:

- deal quickly and simply with less serious offences;
- divert less serious offences away from the Courts; or
- reduce the chances of repeat offences.

To safeguard the suspected offenders’ interests the following conditions will be fulfilled before a caution is administered:

- There must be evidence of the suspected offender’s guilt sufficient to give a realistic prospect of conviction.
- The suspected offender must admit the offence.
- The suspected offender must understand the significance of a formal caution and given an informed consent to being cautioned.

No pressure will be applied to a person to accept a formal caution. Should a person decline the offer of a formal caution a prosecution will be pursued, unless there are extenuating circumstances.

#### Suspend, Revoke, Refuse to Renew a Licence

Where a licensed holder does not meet the conditions attached to the licence, suspension, revocation or refusal to renew a licence may be considered:

- in the most serious cases;
- where previous formal letters have not resulted in improvement;
- there is a history of non-compliance;
- standards are generally very poor with little management awareness of what is required;
- where the licence fees have not been paid.

#### 7. Working with External Agencies and Enforcement Bodies

If a business has a primary Authority, Lead or Home Authority scheme an officer will contact these before enforcement action is taken, unless immediate action is required because of imminent danger.

The officer will also liaise with other regulators as required

#### 8. Training and Appointment of Officers

All Officers undertaking enforcement duties will be suitably trained and qualified so as to ensure that they are fully competent to undertake their enforcement activities.

Officers will be formally authorised by the relevant Delegated Officer to exercise specified powers under relevant statutes (See attached appendices). The level of authorisation for each Officer will be determined by their qualifications, experience and competence having regard to any relevant national guidelines. Authorisation will be in writing and in a form which can be shown on request. A copy of an Officer's authorisation will be held in a central file.

Environmental Health also supports the principle of continuing professional development and will ensure that all Officers are given additional in-post training to maintain up to date knowledge and skills.

#### 9. Review of this Policy

This Policy will be reviewed on a regular basis.