

STROUD DISTRICT COUNCIL**ENVIRONMENT AND CLEAN NEIGHBOURHOODS ENFORCMENT POLICY****1.0 General Enforcement Policy**

- 1.1 This Council supports the judicious use of its statutory enforcement powers, including the prosecution of offenders, as an effective means of ensuring that local premises, practices and activities comply with statutory requirements and do not put consumer's health, safety and well being at risk.
- 1.2 The Council adopted the "Enforcement Concordat" in March 1998. Officers will put procedures in place to ensure that the principles of good enforcement are rigorously applied in all dealings with businesses and members of the public.

2.0 Principles of Enforcement**2.1 Standards**

In consultation with businesses and other relevant parties the Council will draw up clear standards setting out the level of service and performance the public can expect to receive. It will publish these standards and its annual performance against them.

2.2 Openness

The Council will provide advice in plain language on the rules that are applied and will disseminate this as widely as possible. The Council will be open about how it sets about its work, including any charges that are set and will consult with interested parties. Officers will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.

2.3 Helpfulness

The Council will actively work with people to advise on and assist with compliance and will encourage individuals and businesses to seek advice and information. Officers will provide a courteous and efficient service and will provide a contact point and telephone number for further dealings with the Council. Applications for approval of licenses, registrations, grants etc., will be dealt with efficiently and promptly. The Council will try to ensure that its enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

2.4 Complaints about the Service

Complaints about the service may be made in writing to the Head of Environmental Health at the Council Offices, Ebley Mill, Westward Road, Stroud. Gloucestershire, GL5 4UB or by telephoning the direct dial number 01453 754443 or, in fact, by a personal visit to the Council Offices.

2.5 Proportionality

The Council will minimise the cost of compliance for businesses and individuals by ensuring that any action taken is proportionate to the risks or wider public benefit. As far as the law allows officers will take account of the circumstances of the case, and the attitudes of those concerned. Officers will have regard to the human rights of all parties involved in a case.

The Council will take particular care to work with small businesses and voluntary and community organisations so that they can meet their legal obligations without unnecessary expense, where practicable.

2.6 Consistency

The Council will carry out its duties in a fair and equitable and consistent manner. Whilst officers will exercise judgement in individual cases the Council will have arrangements in place to promote consistency, including effective arrangements for liaison with other authorities and enforcement bodies. Officers will have regard to national codes of practice and guidelines issued by government or recognised organisations.

3.0 Prosecution and Cautioning of Offenders

3.1 The Head of Environmental Health is authorised to direct the Solicitor to the Council to undertake prosecutions for offences under legislation falling within his delegated powers.

3.2 The prosecution of offenders should be the ultimate deterrent to be used judiciously, but without hesitation, against those businesses or individuals which put the health and safety of consumers at risk.

3.3 The Head of Service may exercise his delegated powers provided that one or more of the following conditions are satisfied: -

- i) that the alleged offence involves a clear breach of the law such that public health, safety or well being is put at risk.
- ii) that the alleged offence involved a failure by the defendant to comply with the lawful, written directions of authorised officers and the defendant had been given reasonable opportunity to comply with those directions.
- iii) that the offence involved a failure by the defendant to comply, in full or in part, with the requirements of a statutory notice.

If one or more of the above conditions cannot be satisfied, the Head of Service shall report the facts of the case to the Cabinet for a decision on whether or not to prosecute.

3.4 Before making any decision to prosecute the Head of Service shall take into account: -

- i) the relative seriousness of the alleged offence
 - 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 practicable steps to prevent a recurrence of the problem
 - v) the views of any injured party
 - vi) the probable public benefit of a prosecution and the importance of the case
- 3.5 The Head of Service shall also consider whether some other action, such as issuing a simple caution, in accordance with Home Office Circular 30/2005, 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.
- 3.6 The Head of Service and Solicitor shall have regard to the criteria contained in the Crown Prosecution Services "Code for Crown Prosecutors", Home Office Circular 30/2005 "The Cautioning of Adult Offenders", Food Standards Agency: Code of Practice (England) and the Health and Safety Commission's Enforcement Policy Statement: HSC15.
- 3.7 Where legislation permits the use of fixed penalty notices, the Services will consider them as an alternative to prosecution. Examples of where they may be appropriate are:-
- To deal quickly with less serious offences
 - To divert less serious cases away from the Court Process
 - To deter repeat offenders
- 3.8 Before a fixed penalty notice is administered the authorising officer will ensure there is evidence of the offender's guilt sufficient to sustain a prosecution.

4.0 Statutory Notices

4.1 General

- 4.1.1 Statutory Notice procedures should be seen as a positive alternative to the more confrontational approach of prosecution in respect of contraventions of statutory requirements. Before formal action is taken officers must provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference. Where immediate action is necessary an explanation of why such action was required will be given and confirmed in writing.
- 4.1.2 Enforcement officers should give a realistic time period for compliance but should also take into account any previous informal notice given to

the recipient. Officers 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.

4.1.3 The rights of appeal against formal action and advice on the appeal mechanism will be clearly set out in writing at the time the action is taken.

4.1.4 Failure to comply with a statutory notice will invariably result in Court proceedings or works in default and officers must not issue statutory notices unless they are satisfied that such proceedings are likely to be successful.

4.2 **Improvement Notices**

4.2.1 Should be seen as a contract between the recipient and the enforcement officer to complete programmes of remedial work within specified time limits.

4.2.2 Improvement Notices should be issued to secure significant improvements provided the following criteria are satisfied:

- i) the enforcement officer has reason to believe that an informal approach would not result in the expeditious compliance with his/her requirements. (An improvement notice should always be considered following an informal approach which has failed) or
- ii) the improvements are required to remove a significant health or safety risk.

4.2.3 Enforcement Officers are expected to comply with any enforcement guidance issued by Central Government or by the Health and Safety Commission, the Food Standards Agency or other authoritative body.

4.3 **Prohibition Notices**

4.3.1 The judicious use of prohibition notices will ensure that premises, practices or processes which, by their continuance, put employees or consumer's health or safety at risk, can be stopped quickly and efficiently.

4.3.2 Where officers believe that there is an imminent risk to health 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.

4.3.3 Where a proprietor or employer offers to close voluntarily (this should never be prompted) the authorised officer may accept such an offer provided he/she is satisfied that there is no risk of the premises being reopened without his/her knowledge or agreement and the proprietor/employer provides written confirmation of the offer. Voluntary agreements should not be accepted in respect of practices, processes or the use of equipment.

- 4.3.4 Enforcement Officers are expected to comply with any enforcement guidance issued by Central Government or by the Health and Safety Commission or Food Standards Agency or other authoritative body.

4.4 Fixed Penalty Notices

- 4.4.1 The Council has powers to issue Fixed Penalty Notices in respect of a wide range of offences. Matters which may be dealt with by such notices include dog fouling, littering, smoking, abandoning vehicles, noise nuisance, nuisance parking, graffiti and fly posting.
- 4.4.2 If an offence is committed under legislation which allows a Fixed Penalty Notice to be issued, the Council would normally issue such a notice in the first instance. The Council would normally prosecute if a notice is not paid within the time allowed.
- 4.4.3 Where a second or further similar offence occurs within 12 months of an earlier Fixed Penalty Notice, the Council will normally proceed to prosecute the later offences without first issuing another notice.
- 4.4.4 When the Council first applies a Fixed Penalty Notice regime to a particular offence, it reserves the right to designate an 'Education Period' for a limited time. During such a period the Council would normally deal with a first offence by way of a warning notice rather than a Fixed Penalty Notice. The Council will nevertheless consider each case on its own merits and reserves the right to issue such notices or prosecutions as it deems necessary.

4.5 Other Enforcement Notices

- 4.5.1 Abatement notices and notices requiring the execution of works (which by their issue create an offence) should be served where there is clear evidence that the service of the notice is necessary to ensure compliance with legislation or abatement of a situation which is prejudicial to health or a nuisance and officers are satisfied that an informal approach would not achieve the required result.

5.0 Communication

- 5.1 Advice from an officer will be put clearly and simply and will be confirmed in writing, on request, explaining why any remedial work is necessary and over what time scale, and making sure that legal requirements are clearly distinguished from best practice advice.
- 5.2 Where officers have reason to believe that a person has difficulty in understanding the requirements of a written communication they will ensure have it translated or otherwise explained to them. If necessary, officers will engage a translator to explain the requirements of the notice.

6.0 Provision for interests of Businesses and Consumers

- 6.1 This enforcement policy has taken into account the interest of consumers and businesses in the Stroud District. Visits to businesses sometimes occur out of normal working hours to cope with their extended operating hours. Similarly, residents may only available in the evenings, particularly in relation

to noise complaints and visits are often arranged for mutual convenience. Interpreters and a translation service is available where businesses, consumers and residents do not have English as a first language.

7.0 Liaison with Other Agencies

- 7.1 The Council will maintain effective mechanisms for communication and liaison with other agencies that may have a joint enforcement role.
- 7.2 If another agency is better able to provide a service in any particular case the Council will pass on the relevant details to that agency and advise the person requesting the service accordingly.