

**STROUD DISTRICT COUNCIL****ENVIRONMENT AND CLEAN NEIGHBOURHOODS ENFORCEMENT 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 policy has been updated in response to the requirements of the [Regulators' Code](#) and will continue to be reviewed in response to changes in legislation and the responses of those giving feedback on this policy
- 1.3 This document seeks to communicate and explain the service's procedure to businesses, consumers, individuals and others affected by our enforcement activities.

**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 Transparency**

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.

We will ensure that there is always a clear distinction between those actions necessary to comply with the law and those that we recommend as best practice but are not compulsory.

**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 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.

## 2.5 Consistency

The Council will carry out its duties in a fair, 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.

## 2.6 Targeting

We will direct our regulatory effort effectively using local and national intelligence and or relevant risk assessment schemes where appropriate. We will have regard to any national priorities issued by government agencies or national regulators such as the Health and Safety Executive or the Food Standards Agency.

## 2.7 Primary Authority

We will have regard to the Primary Authority Statutory Guidance issued by the Department for Business Energy and Industrial Strategy and any advice, guidance or inspection plans issued by Primary Authorities in respect of the businesses we regulate

## 3.0 How We Deal With Non Compliance

3.1 Where a breach of legislation has been identified we will usually, in the first instance, offer advice and support to the business or individual. However some occasions may give rise to immediate enforcement action and each case will be dealt with according to its individual circumstances.

3.2 We will take reasonable steps to establish whether a business has a Primary Authority or is relying on PA advice and communicate with the PA at an early stage. Where we intend to take enforcement action we will notify the appropriate PA in accordance with the statutory guidance.

3.2 Officers will clearly explain the non-compliance and any advice being given, actions required or decisions taken, with reasons for these. There will be an opportunity for dialogue in relation to this. If legal action is likely to be considered as an option then dialogue may be needed by way of a formal recorded interview as required by the Police and Criminal Evidence Act.

#### **4.0 Processes for Investigating Alleged Breaches**

- 4.1 Investigations are subject to controls as to how evidence is gathered and used and give a range of protections to citizens and potential defendants. Our investigations will be carried out in accordance with the relevant legislation any associated guidance or codes of practice, in so far as they relate to this Service.
- 4.2 Our authorised officers will also comply with the requirements of the particular legislation under which they are acting, and associated guidance or codes of practice.

#### **5.0 How Decisions Are Made On Enforcement Action**

- 5.1 We recognise that most people want to comply with the law and we will endeavour to help these businesses and individuals to meet their legal obligations without unnecessary expense. Where there is a breach of legislation, we will consider all the surrounding circumstances before deciding whether formal action is appropriate.
- 5.2 Decisions on enforcement action will take into account a range of factors in addition to the evidence. Prosecution will only be used if we assess that it is in the public interest to do so.
- 5.3 Enforcement decisions will be fair and objective and must not be influenced by ethnicity or national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender. Decisions will not be influenced by improper or undue pressure from any source.

#### **6.0 Keeping Alleged Offenders and Witnesses Informed of Progress**

- 6.1 Alleged offenders or their legal representatives are encouraged to contact the investigating officer or their line manager if they wish to know the progress on their investigation.
- 6.2 Any person interviewed under caution will be informed in writing of decisions on enforcement action and the matter should not be considered as concluded until confirmed in writing, or a court case has taken place.
- 6.3 Witnesses will, where possible, be kept informed of progress. In doing so it must be understood that this service may be restricted as to the information they are legally allowed to divulge.

#### **7.0 Enforcement Action – Our Options**

- 7.1 There are a range of enforcement options available to the Service through the legislation it enforces. These vary and one or more may be relevant to apply in each case. These are set out below.

## 8.0 Prosecution and Cautioning of Offenders

- 8.1 The Head of Service is authorised to direct the Solicitor to the Council to undertake prosecutions for offences under legislation falling within his delegated powers.
- 8.2 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.
- 8.3 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 none of the above conditions can be satisfied, the Head of Service shall report the facts of the case to the relevant committee for a decision on whether or not to prosecute.
- 8.4 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
- 8.5 The Head of Service shall also consider whether some other action, such as issuing a simple caution, in accordance with Home Office Circular 16/2008, 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.
- 8.6 The Head of Service and Solicitor shall have regard to the criteria contained in the Ministry of Justice guidance "Simple Cautions for Adult Offenders", and the current issue of the Food Law Code of Practice.

8.7 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

8.8 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.

## **9.0 Statutory Notices**

### **9.1 General**

9.1.1 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.

9.1.2 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.

9.1.3 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.

9.1.4 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.

### **9.2 Improvement Notices**

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

9.2.2 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.

9.2.3 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.

### **9.3 Prohibition Notices**

- 9.3.1 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.
- 9.3.2 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.
- 9.3.3 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.
- 9.3.4 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.

### **9.4 Fixed Penalty Notices**

- 9.4.1 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.
- 9.4.2 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.
- 9.4.3 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.
- 9.4.4 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.

### **9.5 Other Enforcement Notices**

- 9.5.1 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.

### 9.5.2 Seizure

Some legislation permits our officers to seize equipment, goods or documents that may be required as evidence or to secure compliance with a notice. When we seize items we will give an appropriate receipt to the person from whom they are taken, if not at the time, as soon as practicably afterwards

Some legislation allows us to apply to the court to seek forfeiture of goods either in conjunction with a prosecution or separately

## 10.0 Communication

10.1 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.

10.2 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.

## 11.0 Provision for Interests of Businesses and Consumers

11.1 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 be 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.

11.2 We will ensure officers have the necessary knowledge and skills to support those they regulate and understand the statutory principles of good regulation. We will work with the Gloucestershire Growth Hub to ensure we understand the economic impacts of our regulatory responsibilities and avoid imposing unnecessary regulatory burdens on businesses.

## 12.0 Liaison with Other Agencies

12.1 The Council will maintain effective mechanisms for communication and liaison with other agencies that may have a joint enforcement role.

12.2 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.

## 13.0 Feedback, Comments, Compliments and complaints

13.1 We will invite, receive and take on board customer feedback via customer satisfaction surveys and comments.

13.2 We are committed to providing open equal and timely access to our services. If you are unhappy with the service you have received or we have failed to

live up to our promises , managers are always willing to discuss with you the cause of your dissatisfaction, and will try to find a solution

- 13.3 If you are still not satisfied and wish to make a formal complaint, you can do so using the Councils formal complaints procedure on our website.