

## Draft Enforcement Policy

## Public Protection Service

DRAFT

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### EXECUTIVE SUMMARY

This enforcement policy provides guidance to officers, managers, businesses and consumers on the application of enforcement decisions taken by Slough Borough Council's regulatory enforcement staff in relation to anti-social behaviour, environmental health, licensing and trading standards matters.

Our primary objective is to achieve regulatory compliance. We recognise that prevention is better than cure, but where it becomes necessary to take formal action against a business, or member of the public, we will do so. There is a wide range of enforcement tools available to the local authority, with prosecution being the most serious.

We will always seek to choose an enforcement method that is relevant and proportionate to the offence or contravention. Furthermore, we will also take account of an individual or a business's past history when making our decision.

The policy is built around a process of escalation. We will only prosecute in circumstances where a defendant has acted wilfully or, where their actions are likely to cause material loss or harm to others, or where they have ignored written warnings or formal notices, endangered, to a serious degree, the health, safety or well being of people, animals or the environment, or assaulted or obstructed an officer in the course of their duties.

The options available to us include:

- No action;
- Informal action and advice;
- Fixed Penalty Notices;
- Penalty Charge Notices;
- Formal Notice;
- Forfeiture Proceedings;
- Seizure of goods/equipment;
- Injunctive Actions;
- Refusal/revocation of a licence;
- Simple Caution;
- Prosecution;
- Proceeds of Crime Applications.

The policy outlines our objectives and the methods we will use to achieve legal compliance, including the criteria used when making enforcement decisions.

All our decisions will have regard to current statutory guidance and codes of practice, and in particular the Regulators' Compliance Code, the Code for Crown Prosecutors and the Human Rights Act.

### 1.0 Introduction

- 1.1 Fair and effective enforcement is essential to protect the wellbeing and economic interests of the public, businesses and the environment. Decisions about enforcement action and in particular the decision making process have serious implications for all involved.

Our Regulatory Services will use this Policy to ensure that:-

- Enforcement decisions are fair, proportionate and consistent;
  - Officers apply current Government guidance and relevant codes of practice;
  - Businesses and consumers alike, understand the principles that are applied when enforcement decisions are taken
- 1.2 All investigations into possible/alleged breaches of legislation will follow best professional practice and the requirements of:
- The Police and Criminal Evidence Act 1984
  - The Criminal Procedures and Investigations Act 1996
  - The Human Rights Act 1998, and
  - The Regulatory and Investigatory Powers Act 2000.

### 2.0 Legal Status of the Enforcement Policy

- 2.1 The Borough Council approved this policy on *(date to be inserted)* 2012
- 2.2 This policy is intended to provide guidance for officers, businesses, consumers and the public. It does not affect the discretion of the Council to take legal proceedings where this is considered to be in the public interest.

### 3.0 Scope

- 3.1 This Policy applies to the legislation enforced by Regulatory Enforcement Officers in relation to anti-social behaviour, environmental health, licensing and trading standards matters.
- 3.2 Enforcement includes any action taken by officers aimed at ensuring that individuals or businesses comply with the law. This is not limited to formal enforcement action such as prosecution.
- 3.3 In certain circumstances it may be necessary to raise awareness and increase compliance levels by publicising unlawful trade practices or criminal activity. Where appropriate the results of individual Court cases may also be published.

### 4.0 How to obtain a copy of the Policy or make comments

- 4.1 This Policy is available on the Council's website: *(web address to be inserted)*

If you would like a paper copy of this Policy and/or you would like to comment on it's content please contact the Assistant Director Public Protection 01753 875211.

- 4.2 On request, this Policy will be made available on tape, in Braille, large type, or in a language other than English.

### 5.0 General Principles

- 5.1 Prevention is better than cure and our role therefore involves actively working with businesses to advise on, and assist with compliance

- 5.2 Each case will be considered on its own merits. However, there are general principles that apply to the way each case must be approached. These are set out in this Policy and in the Regulators' Compliance Code. For more information about the Regulators' Compliance Code visit: <http://bre.berr.gov.uk/regulation/reform/enforcement>

- 5.3 Enforcement decisions will be fair, independent and objective and will not be influenced by issues such as ethnicity or national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender. Such decisions will not be affected by improper or undue pressure from any source.

- 5.4 We will take into account the views of any victim, injured party or relevant person to establish the nature and extent of any harm or loss, and its significance, in making the decision to take formal action.

- 5.5 Slough Borough Council is a public authority for the purposes of the Human Rights Act 1998. We will, therefore, apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

- 5.6 This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulator's Compliance Code.

- 5.7 In certain instances we may conclude that a provision in the code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

## 6.0 Notifying Alleged Offenders

- 6.1 If we receive information [for example from a complainant] that may lead to enforcement action against a business or individual we will notify that business or individual as soon as is practicable of any intended enforcement action, unless this could impede an investigation or pose a safety risk to those concerned or the general public.
- 6.2 During the progression of enforcement investigations/actions, business proprietors or individuals and witnesses will be kept informed of progress. Confidentiality will be maintained and personal information about individuals will only be released to a Court when required and/or in accordance with the Data Protection Act 1998.

## 7.0 Deciding what level of enforcement action is appropriate

A number of factors are considered when determining what enforcement action to take:

### 7.1 Levels of enforcement action:

- 7.1.1 There are a large number of potential enforcement options. The level of the action taken varies from no action through to proceedings in Court. Examples of the main types of action that can be considered are shown below:

- No action;
- Informal Action and Advice;
- Fixed Penalty Notices;
- Penalty Charge Notices;
- Formal Notice;
- Forfeiture Proceedings;
- Seizure of goods/equipment;
- Injunctive Actions;
- Refusal/revocation of a licence;
- Simple Caution;
- Prosecution.

- 7.1.2 In assessing what enforcement action is necessary and proportionate, consideration will be given to:

- ⌚ The seriousness of compliance failure;
- ⌚ The business's past performance and its current practice;
- ⌚ The risks being controlled;
- ⌚ Legal, official or professional guidance;
- ⌚ Local priorities of the Council.

- 7.1.3 Where the law has been contravened, there is a range of enforcement options available to seek compliance with the law. Under normal circumstances, a process of escalation will be used until compliance is reached. Exceptions would be where there is a serious risk to public safety or the environment or the offences have been committed

deliberately or negligently or involve deception, or where there is significant economic detriment.

### **7.2 No Action**

7.2.1 In certain circumstances, contraventions of the law may not warrant any action. This can be where the cost of compliance to the offender outweighs the detrimental impact of the contravention, or the cost of the required enforcement action to the Council outweighs the detrimental impact of the contravention on the community. A decision to take no action may also be taken where formal enforcement is inappropriate in the circumstances, such as where a trader has ceased to trade, or the offender is elderly and frail and formal action would seriously damage their wellbeing. In such cases we will advise the offender of the reasons for taking no action.

### **7.3 Informal Action and Advice**

7.3.1 For minor breaches of the law we may give verbal or written advice. We will clearly identify any contraventions of the law and give advice on how to put them right, including a deadline by which this must be done. The time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of the non-compliance.

7.3.2 Sometimes we will advise offenders about 'good practice', but we will clearly distinguish between what they must do to comply with the law and what is advice only.

7.3.3 Failure to comply could result in an escalation of enforcement action.

### **7.4 Fixed Penalty Notices**

7.4.1 Certain offences are subject to fixed penalty notices where prescribed by legislation. They are recognised as a low-level enforcement tool and avoid a criminal record for the defendant. Where legislation permits an offence to be dealt with by way of a Fixed Penalty Notice (FPN), we may choose to administer a FPN on a first occasion, without issuing a warning.

### **7.5 Penalty Charge Notices**

7.5.1 Penalty Charge Notices (PCN) are prescribed by certain legislation as a method of enforcement by which the offender pays an amount of money to the enforcer in recognition of the breach. Failure to pay the PCN will result in the offender being pursued in the County Court for non-payment of the debt. A PCN does not create a criminal record and we may choose to issue a PCN without first issuing a warning.

**7.6 Formal Notice**

- 7.6.1 Certain legislation allows notices to be served requiring offenders to take specific actions or cease certain activities. Notices may require activities to cease immediately where the circumstances relating to health, safety, environmental damage or nuisance demand. In other circumstances, the time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of the non-compliance.
- 7.6.2 All notices issued will include details of any applicable Appeals Procedures.
- 7.6.3 Certain types of notice allow works to be carried out in default. This means that if a notice is not complied with [a breach of the notice] we may carry out any necessary works to satisfy the requirements of the notice ourselves. Where the law allows, we may then charge the person/business served with the notice for any costs we incur in carrying out the work. Should the charge remain unpaid, we have the power to put a charge on the land.

**7.7 Forfeiture Proceedings**

- 7.7.1 This procedure may be used in conjunction with seizure and/or prosecution where there is a need to dispose of goods in order to prevent them re entering the market place or being used to cause a further problem. In appropriate circumstances, we will make an application for forfeiture to the Magistrates Courts.

**7.8 Seizure**

- 7.8.1 Certain legislation enables authorized Officers to seize goods, equipment or documents for example unsafe food, sound equipment that is being used to cause a statutory noise nuisance, unsafe products or any goods that may be required as evidence for possible future court proceedings. When we seize goods we will give the person from whom the goods are taken an appropriate receipt and advise them of their statutory rights.

**7.9 Injunctive Actions**

- 7.9.1 In certain circumstances, for example, where offenders are repeatedly found guilty of similar offences or where it is considered that injunctive action is the most appropriate course of enforcement, then injunctive actions may be used to deal with repeat offenders, dangerous circumstances or significant consumer detriment.
- 7.9.2 Action under the Enterprise Act 2002; proceedings may be brought where an individual or organization has acted in breach of community or domestic legislation with the effect of harming the collective interests of consumers. In most circumstances action will be



considered where there have been persistent breaches or where there is significant consumer detriment. Action can range from:

Informal undertakings;  
Formal undertakings;  
Interim Orders;  
Court Orders;  
Contempt Proceedings.

- 7.9.3 Anti Social Behaviour Orders and Criminal Anti Social Behaviour Orders: Where the non-compliance or behaviour under investigation amounts to anti-social behaviour such as persistent targeting of an individual or a group of individuals in a particular area then, following liaison with the Council's Anti-Social Behaviour Unit where appropriate, an ASBO or CRASBO will be sought to stop the activity.

### **7.10 Refusal, Suspension and Revocation of Licence**

- 7.10.1 Where there is a requirement for a business to be licensed by the local authority, the licence may be granted unless representations or objections are received against the application. In such cases the Licensing Committee will hear the case and decide to grant, grant with conditions, or refuse the licence application.

In addition to the above, in relation to the Gambling Act 2005, applications for premises Licence, the Licensing Committee can exclude a condition of licence.

- 7.10.2 Grounds for Refusal, Suspension or Revocation of a Hackney Carriage or Private Hire Drivers Licence

- Where application is for the GRANT of a licence, the Committee has to be satisfied that the applicant is a "fit and proper" person to hold a licence.
- The Committee's current policy requires an applicant to have held a full DVLA driver's licence for at least two years.
- All new applicants are required to pass a driving assessment and undergo a medical examination prior to becoming licensed.
- Applicants are also subject to a criminal record check.
- The grounds for refusing to renew a licence, or for suspending or revoking a licence, are based on whether the driver has:-
  - (a) been convicted of an offence involving dishonesty, indecency or violence;
  - (b) been convicted of an offence under the Local Government (Miscellaneous Provisions) Act 1976;
  - (c) failed to comply with a requirement of the Local Government (Miscellaneous Provisions) Act 1976, or

(d) any other reasonable cause.

- Licence may be suspended or revoked **with immediate effect** if such a decision is deemed necessary **in the interests of public safety**.

7.10.3 Under the Licensing Act 2003, where a Review of a Premises Licence is sought under Section 51 of the Act, the options available to the Licensing Committee are:-

- To modify the conditions of Licence
- To exclude a Licensable activity from the scope of the Licence
- To removed the Designated Premises Supervisor
- Suspend the Licence for a period not exceeding three months
- Revoke the Licence
- Issue a warning letter
- No action

7.10.4 Under the Gambling Act 2005, where a Review of a Premises Licence is sought under Section 202 of the Act, the options available to the Licensing Committee are:-

- Revocation of the Licence
- Suspend the Licence for a specified period not exceeding three months
- Exclude a condition attached to the Licence, under Section 168 or remove or amend exclusion
- Add, remove or amend a condition under Section 169

## 7.11 Simple Caution

7.11.1 A Simple Caution is an admission of guilt, but is not a form of sentence, nor is it a criminal conviction.

7.11.2 For a Simple Caution to be issued a number of criteria must be satisfied:

- Sufficient evidence must be available to prove the case;
- The offender must admit the offence;
- It must be in the public interest to use a Simple Caution;
- The offender must be 18 years or over.

For details on the Home Office guidance (Circular 30/2005) visit:

<http://www.homeoffice.gov.uk>

7.11.3 We will also take into account the following when making our decision:

- The offender should not have received a simple caution for a Similar offence within the last 2 years.

7.11.4 A record of the Caution will be sent to the Office of Fair Trading and the Local Authority Coordinating Body for Regulatory Services (LACORS) if appropriate, and will be kept on file for 2 years. If the offender commits a further offence, the Caution may influence our decision to take a prosecution. If during the time the Caution is in force the offender pleads guilty to, or is found guilty of, committing another offence anywhere in England and Wales, the Caution may be cited in court, and this may influence the severity of the sentence that the court imposes.

## **7.12 Prosecution**

7.12.1 A prosecution will normally ensue where the individual or organization meets one or more of the following criteria:

- Deliberately, negligently or persistently breached legal obligations, which were likely to cause material loss or harm to others;
- Deliberately or persistently ignored written warnings or formal notices;
- Endangered, to a serious degree, the health, safety or well being of people, animals or the environment;
- Assaulted or obstructed an Officer in the course of their duties.

7.12.2. Post conviction options will always be brought to the attention of the Court where appropriate, for example, post conviction ASBO or exclusion from managing a food premises, particularly where the defendant has continued to carry out the offence after it was formally brought to their attention. (could do with some work on this wording)

## **7.13 Proceeds of Crime Applications**

7.13.1 Applications may be made under the Proceeds of Crime Act for confiscation of assets in serious cases. Their purpose is to recover the financial benefit that the offender has obtained from his criminal conduct. Proceedings are conducted according to the civil standard of proof. Applications are made after a conviction has been secured.

## **8.0 Determining whether a Prosecution or Simple Caution is viable and appropriate**

8.1 We apply two 'tests' to determine whether a Prosecution or Caution is viable and appropriate. We follow guidance set by the Crown Prosecution Service when applying the tests: For more information

about the 'Code for Crown Prosecutors' visit  
[:http://www.cps.gov.uk/victims\\_witnesses/code.html](http://www.cps.gov.uk/victims_witnesses/code.html)

8.2 A Caution or Prosecution proceedings will only be progressed when the case has passed both the evidential test and the public interest test. The principles outlined apply equally to the other types of formal enforcement action that are available.

### 8.3 **The Evidential Test**

We must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. A realistic prospect of conviction is an objective test that means that a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a separate test from the one that the criminal courts themselves must apply. A jury or Magistrates' Court should only convict if it is sure of a defendant's guilt.

### 8.4 **The Public Interest Test**

The public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. We will balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the suspect. Some factors may increase the need to prosecute but others may suggest that another course of action would be better.

## 9.0 **Who decides what enforcement action is taken**

9.1 Decisions about the most appropriate enforcement action to be taken are based upon professional judgment, legal guidelines, statutory codes of practice and priorities set by the Borough Council and/or Central Government.

9.1.1 Where appropriate, decisions about enforcement will involve consultation between or approval from:

- Investigating Officer(s);
- Senior Managers from Regulatory Services;
- Council Solicitors;

## 10.0 **Liaison with other regulatory bodies and enforcement agencies**

10.1 Where appropriate, enforcement activities within Regulatory Services will be coordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement.

10.2 Where an enforcement matter affects a wide geographical area beyond the Borough boundaries, or involves enforcement by one or more other local authorities or organisations; where appropriate all

relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activity coordinated with them.

10.3 Regulatory Services will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies, and examples including:

- Government Agencies;
- Police Forces;
- Fire Authorities;
- Statutory undertakers;
- Other Local Authorities.

### **11.0 Considering the views of those affected by offences**

11.1 Regulatory Services undertakes enforcement on behalf of the public at large and not just in the interests of any particular individual or group. However, when considering the public interest test, the consequences for those affected by the offence, and any views expressed by those affected will, where appropriate, be taken into account when making enforcement decision.

### **12.0 Protection of Human Rights**

12.1 This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is had to the following:

- Right to a fair trial;
- Right to respect for private and family life, home and correspondence.

### **13.0 Review of the Enforcement Policy**

13.1 This Policy will be reviewed annually.