

MERTON COUNCIL

ENVIRONMENTAL HEALTH

TRADING STANDARDS

ENFORCEMENT POLICY

CONTENTS

1. Introduction
 - Enforcement Concordat
 - General Prosecution Criteria
 - Summoning
 - Accepting Guilty Pleas
 - Formal Cautions
2. Trading Standards
3. Environmental Health (Commercial)
4. Environmental Health (Housing & Pollution)

BACKGROUND

Enforcement of legislation is a primary function of the Environmental Services Department. This will include the prosecution/cautioning/warning of offenders in appropriate cases.

The decision to take formal enforcement action is a serious step. Fair and effective enforcement is essential to the maintenance of law and order. Even in a small case a prosecution has serious implications for all involved. This policy is designed to help make **fair and consistent enforcement decisions.**

All officers involved in investigating cases and those responsible for recommending or deciding upon legal proceedings will take account of this policy. If there is any doubt as to how to apply the policy officers will seek the guidance of their senior officers. Any decision to prosecute an offender will be made in consultation with the Legal Services Department.

AIM

The aim of the policy is to ensure that the Department applies enforcement guidelines in a consistent manner and is open and clear about the standards which it applies.

ENFORCEMENT CONCORDAT

Merton Council has formally adopted the enforcement concordat. Enforcement decisions will be taken in line with the principles contained in the concordat. In summary this requires the Council to:-

- Draw up performance standards in consultation with its stakeholders and publish performance data
- Be open about their work, including full consultation and provision of information and advice in plain language on the rules that are applied
- Work with stakeholders to achieve compliance wherever possible
- Provide a well publicised and effective procedure for complaints about the Council
- Minimise compliance costs for business by ensuring any actions we require are proportionate to the risks involved.
- Carry out its duties in a fair, equitable and consistent manner
- Provide advice clearly and simply and follow it up in writing if requested. This is to include why remedial work is necessary and over what timescale and ensuring legal requirements are distinguished from best practice

- Provide an opportunity to discuss and resolve issues before formal action is taken (unless immediate action is required)
- Provide an explanation at the time if any immediate action is to be taken and confirm this in writing within 10 days
- Clearly set out any relevant rights to appeal against any formal action.

OTHER LEGAL REQUIREMENTS RELATING TO ENFORCEMENT ACTION

The Council will comply fully with all laws and standards that govern the way enforcement action is to be dealt with. (e.g. Police and Criminal Evidence Act 1984, Criminal Procedure and Investigations Act 1996, Data Protection Act 1998, Human Rights Act 2000, Regulation of Investigatory Powers Act 2000 etc).

SHARED ENFORCEMENT ROLE

Where there is any shared enforcement role, Merton Council Services will liaise fully with any relevant enforcement bodies at the earliest possible stage to agree a suitable approach to any enforcement action. Also partners will be kept updated with the progress of any shared enforcement matter as necessary.

TRANSLATIONS ETC

Where any enforcement action is being considered or undertaken, the Council will undertake to provide information in languages other than English where this is requested.

GENERAL PROSECUTION CRITERIA

In general it will be the policy of the Council to bring prosecutions:

1. when the offence is a serious one in the context of the legislation being enforced: and/or
2. the offence is committed or has continued contrary to advice, warnings or notices given by the Council.

It must be recognised that each individual case is unique and will be considered on its own facts and merits. However there are general principles that will apply in all cases.

Everyone will be fair, independent and objective. They will not let any personal views about ethnic or national origin, sex, religious beliefs, political views or the sexual orientation of the suspect, victim or witness influence their decision. They will not be affected by improper or undue pressure from any source.

The policy contains general guidance from the Code for Crown Prosecutors which summarises the criteria that will be considered before deciding to prosecute any case, together with additional criteria relating to specific types of offence.

There are 2 stages in any decision to prosecute. The first stage is the evidential test. If the case does not pass the evidential test, it must not go ahead, no matter how important or serious it may be. If the case does meet the evidential test, then the Council will decide if a prosecution is needed in the public interest. A prosecution will only be taken when a case has passed both tests.

The Evidential Test

An officer recommending or deciding upon legal proceedings will be satisfied that there is enough evidence to provide a realistic prospect of conviction (i.e. a properly directed jury or Magistrates, is more likely than not to convict) against each defendant on each charge. They will also consider what the defence case may be and how this will affect the prosecution.

When deciding if there is enough evidence to prosecute, consideration will be given to the following questions:-

Can the evidence be used in Court?

- a is it likely the Court will exclude evidence (e.g. due to breaches of procedure or because it is hearsay);**
- b Is the evidence reliable?**
- c Is there any evidence which might support/detract from the reliability of a confession (e.g. defendants age, intelligence, lack of understanding etc.);**
- d What explanation has the defendant given? Is a court likely to find it credible in the light of the rest of the evidence? Does it support an innocent explanation?**
- e if the identity of the defendant is likely to be questioned, is the evidence about this strong enough**
- f is a prosecution witness's background likely to weaken the prosecution case (e.g. dubious motive, previous convictions);**
- g are there any concerns over the accuracy/credibility of a witness?**

Officers should not ignore evidence because they are not sure that it can be used or is reliable but they should look closely at it when deciding if there is a realistic prospect of conviction.

The Public Interest Test

The public interest will be considered in each case where there is enough evidence to provide a realistic prospect of conviction.

A prosecution will usually take place unless there are public interest factors tending against a prosecution which clearly outweigh those tending in favour. Although there

may be public interest factors against a prosecution, often the prosecution should go ahead and those factors should be put to the Court for consideration when sentence is being passed.

Public interest factors include:

- a** the seriousness of the offence
- b** whether or not violence was used/threatened;
- c** whether or not the offence was committed against a person serving the public (e.g. obstruction\assault of Council staff);
- d** whether or not the defendant was in a position of authority/trust or was the ringleader/organiser of an offence
- e** whether the defendant knew that the activity was illegal or had deliberately set out to commit the offence;
- f** whether or not the offence was carried out by a group of people;
- g** whether the victim was vulnerable, put in considerable fear, suffered personal attack, damage or disturbance;
- h** whether the offence was motivated by any form of discrimination or the defendant demonstrated hostility towards the victim based on any of those characteristics.
- i** whether there is a marked difference between actual/mental age of the defendant and victim or if there is any element of corruption;
- j** the previous history of the defendant (e.g. relevant previous convictions/cautions, other recent history);
- k** whether or not the offence was committed while the defendant was already under an order of the Court;
- l** whether or not the offence is likely to be continued/repeated;
- m** the offence, though not serious in itself, is widespread in the area;
- n** the likely penalty
- o** whether or not the offence was due to a genuine mistake/misunderstanding;
- p** whether or not the loss/harm was minor and arose from a single incident;

- q** any long delay between the offence and the trial (unless the offence is serious; the delay was caused by the defendant; the offence has only recently come to light; or the complexity of the offence required a lengthy investigation).
- r** a prosecution would have a very bad effect on the defendant's physical/mental health (always bearing in mind the seriousness of the offence);
- s** the defendant's age and state of health (again always bearing in mind the seriousness of the offence and whether it is likely to be repeated);
- t** whether or not the defendant has put right the loss/harm caused (NB defendants must not avoid prosecution **SIMPLY** because they pay compensation);
- u** the views of the victim and the consequences of the decision to prosecute or not on the victim;

Extra consideration must be given if the prospective defendant is under 18. Normally a prosecution should only be considered if a previous warning has been given.

Officers deciding upon enforcement action must decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

SUMMONSING

Where a prosecution is to be taken, officers will decide, in association with the Legal Department, which offences should appear in the summons. The summons issued should:

- reflect the seriousness of the offence;**
- give the court adequate sentencing powers;**
- enable the case to be presented in a clear and simple way.**

Officers should never go ahead with more offences than are necessary just to encourage a defendant to plead guilty to a few. In the same way they should not change the summons simply because of the decision made by the Court/defendant about where the case will be heard. (ie Magistrates Court or Crown Court)

ACCEPTING GUILTY PLEAS

Defendants may want to plead guilty to some but not all of the charges. Alternatively they may want to plead guilty to a different, possibly less serious charge, because they are only admitting part of the crime. Prosecutors should only accept the defendants plea if they think the court is able to pass a sentence that matches the seriousness of the offending. A guilty plea must never be accepted just because it is convenient.

FORMAL HOME OFFICE CAUTIONS

The Council supports the use of Formal Home Office Cautions in cases where there is sufficient evidence to proceed with a prosecution and a warning letter etc is not sufficient but it is not in the public interest to proceed with a prosecution.

Such cautions enable a defendant to admit their guilt and have the offence placed on record without the need for a prosecution.

In these cases the following guidance (based on Home Office circular 18/1994) should be complied with.

- a formal cautions may be used only where there is sufficient admissible evidence for a realistic prospect of conviction if a prosecution was taken;**
- b a formal caution can be given ONLY if the defendant admits their guilt;**
- c formal cautions should not be given if the defendant is under 18 (a reprimand or final warning should be used instead);**
- d under normal circumstances formal cautions should not be offered for serious offences;**
- e a formal caution should only be offered if it is likely to be effective;**
- f in general a formal caution should not be given if the defendant has already recently received a formal caution for a similar offence;**
- g the defendant must understand the significance of a caution and be able to consent to being cautioned;**

The issuing and recording of formal Home cautions will be carried out only by officers who are authorised to institute legal proceedings on behalf of the Council.

If a formal caution is not accepted by the defendant then a prosecution will follow (unless there are serious extenuating circumstances).

Formal cautions are citable as previous convictions for up to 3 years from the date of offence for which it was issued.

TRADING STANDARDS OFFENCES

Types of Enforcement Action

Trading Standards offences may be dealt with by the following methods:

- verbal advice
- informal written advice (traders notice\advice letter)
- home authority referral
- issue of statutory notices
- letter of caution from Commercial & Trading Standards Manager
- formal Home Office caution
- prosecution

All Trading Standards Matters

In addition to guidance given in previous chapters, officers should also consider the following criteria:

- a whether the offence has national significance;
- b the co-operation of the defendant during investigations (including whether or not there has been voluntary forfeiture/withdrawal of infringing goods);
- c the co-operation of other witnesses (especially complainants/trade mark holders etc.);
- d whether or not there is a due diligence system or other statutory defence in place;
- e the view of the home authority in relevant cases (in all cases where formal action is considered the home authority should be advised and their view sought);
- f the qualifications/credibility of expert witnesses;
- g whether or not there are any safety/welfare implications
- h any guidance issued by Central Government or LACORS. (Where any proposed formal action is known to be inconsistent with that adopted by other local authorities, or LACORS advice, then the view of the local LACORS liaison groups should be considered).
- i whether or not there has been a breach of any statutory notice

Prosecution of Directors of Companies

This should be considered in cases where it can be proved that the offence was committed due to the consent, connivance or neglect of the Director.

It should always be considered in cases where the officer believes that a company may be wound up to avoid criminal proceedings.

Prosecution of Employees

This should be considered only in exceptional cases (e.g. where an employee has contradicted employers instructions or is being deliberately obstructive). In all such cases it must be borne in mind that an employee may be put at risk of losing his/her employment.

Prosecution of Private Persons

No enforcement action will be taken against private persons who were not acting in the course of a business.

Obstruction

Prosecution will be considered in all cases of obstruction but in particular where it has resulted in additional work and costs to the Authority.

Minor/Technical Breaches

Prosecutions will normally be considered only in association with more serious offences or where there has been a consistent failure by the trader to rectify the problem following informal advice.

Overloaded Vehicles

The following LACORS guidelines will be applied:

up to 5% (axle or gross) caution

5-10% or 1 tonne (axle or gross), whichever is the least, prosecution should be considered

over 10% or over 1 tonne (axle or gross), whichever is the least, prosecution should be taken unless there are extenuating circumstances

In most cases action will be taken against the operator. The prosecution of drivers will be considered unless there are extenuating circumstances.

Statutory Notices

Statutory Notices will be issued in accordance with any legislative requirements and following guidance issued by Central Government and/or LACORS.

Prosecution will be considered in all cases where a trader has failed to comply with a notice.

Any case involving the issue of a suspension notice under the Consumer Protection Act 1987 must be reported to the CATSM. It will be usual for such matters to be dealt with by at least a letter of caution even where the notice has been complied with

It will be usual for any breach of a Road Traffic Prohibition Notice to result in a prosecution.

ENVIRONMENTAL HEALTH (COMMERCIAL) OFFENCES

Types of Enforcement Action

Environmental Health (Commercial) offences may be dealt with by the following methods:

- verbal advice
- informal written advice
- home authority referral
- issue of statutory notices (including emergency prohibitions/closures)
- letter of caution from Commercial & Trading Standards Manager
- seizure/condemnation of food
- formal Home Office caution
- prosecution

All Environmental Health (Commercial) Matters

In addition to guidance given in previous chapters, officers should also consider the following criteria:

- a whether the offence has national significance;
- b the co-operation of the defendant during investigations;
- c whether or not there is a due diligence system or other statutory defence in place;
- d the view of the home authority in relevant cases (in all cases where formal action is considered the home authority should be advised and their view sought);
- e the qualifications/credibility of expert witnesses;
- f whether or not there are any safety/welfare implications and the seriousness of those implications;
- g any guidance issued by Central Government or LACORS (where any proposed formal action is known to be inconsistent with that adopted by other local authorities, or LACORS advice, then the view of the local LACORS liaison groups should be considered)
- h whether or not a statutory notice has been breached.

Prosecution of Directors of Companies

This should be considered in cases where it can be proved that the offence was committed due to the consent, connivance or neglect of the Director.

It should always be considered in such cases where the officer believes that a company may be wound up to avoid criminal proceedings.

Prosecution of Employees

This should be considered only in exceptional cases (e.g. where an employee has contradicted employers instructions or is being deliberately obstructive). In all such cases it must be borne in mind that an employee may be put at risk of losing his/her employment.

Obstruction

Prosecution will be considered in all cases of obstruction but in particular where it has resulted in additional work and costs to the Authority.

Minor/Technical Breaches

Prosecutions will normally be considered only in association with more serious offences or where there has been a consistent failure by the trader to rectify the problem following informal advice.

Health & Safety

Prosecutions will normally be reserved for serious cases which have or could have resulted in serious injury or ill health or which represent blatant disregard of responsibilities under health, safety and welfare legislation.

Where a breach has led to a fatality and the police do not intend to pursue action for manslaughter, a prosecution would be considered for the breach itself.

Food Seizures

Any case where food has been deemed to fail a food safety requirement and has been either voluntarily forfeited or seized must be reported to the CATSM. It will be usual for such matters to be dealt with by at least a letter of caution.

Statutory Notices

Statutory Notices will be issued in accordance with any legislative requirements and following guidance issued by Central Government and/or LACORS.

Prosecution will be considered in all cases where a trader has failed to comply with a notice

Any case involving the issue of an emergency prohibition notice under the Food Safety Act 1990 must be reported to the CATSM and it will be usual for this to be dealt with by either a formal Home Office Caution or a prosecution.

Any case involving the issue of a prohibition notice under the Health and Safety at Work Act 1974 (deferred or otherwise) must be reported to the CATSM and it will be usual for this to be dealt with by at least a letter of caution.

ENVIRONMENTAL HEALTH (HOUSING AND ENVIRONMENT) OFFENCES

Types of Enforcement Action

Environmental Health (Housing and Environment) offences may be dealt with by the following methods:

- verbal advice
- informal written advice
- formal written advice
- issue of notice of intention to serve statutory notice (in accordance with statutory procedures)
- issue of statutory notices
- letter of caution from Environmental Health Manager
- formal Home Office caution
- prosecution
- seizure

All Environmental Health (Housing and Environment) Matters

In addition to guidance given in previous chapters, officers should also consider the following criteria:

- a whether the offence has national or local significance;
- b the co-operation of the defendant during investigations and in trying to remedy the matter;
- c whether or not there is a best practicable means or other statutory defence in place;
- d the qualifications/credibility of expert witnesses;
- e whether or not there are any safety/welfare implications and the seriousness of those implications;
- f any guidance issued by Central Government or LACORS (where any proposed formal action is known to be inconsistent with that adopted by other local authorities, or LACORS advice, then the view of the local LACORS liaison groups should be considered)
- g whether or not a statutory notice has been breached.

Prosecution of Directors of Companies

This should be considered in cases where it can be proved that the offence was committed due to the consent, connivance or neglect of the Director.

It should always be considered in such cases where the officer believes that a company may be wound up to avoid criminal proceedings.

Prosecution of Employees

This should be considered only in exceptional cases (e.g. where an employee has contradicted employers instructions or is being deliberately obstructive). In all such cases it must be borne in mind that an employee may be put at risk of losing his/her employment.

Obstruction

Prosecution will be considered in all cases of obstruction but in particular where it has resulted in additional work and costs to the Authority.

Minor/Technical Breaches

Prosecutions will normally be considered only in association with more serious offences or where there has been a consistent failure by the trader to rectify the problem following informal advice.

Feedback on this policy

This policy has been agreed by Merton Council, but we welcome any views, comments or concerns that any residents, businesses or enforcement agencies have with regard to its content or application.

Should you wish to make any representations please contact;

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