

MERTON COUNCIL

ENVIRONMENTAL HEALTH

TRADING STANDARDS

AND

LICENSING SERVICES

REGULATORS COMPLIANCE CODE AND  
ENFORCEMENT POLICY

April 2008

## **CONTENTS**

1. Introduction
  - Regulators Compliance Code
2. Enforcement Policy
  - General Prosecution Criteria
  - Summoning
  - Accepting Guilty Pleas
  - Simple Cautions
3. Trading Standards Offences
4. Licensing Offences
5. Environmental Health (Commercial) Offences
6. Environmental Health (Housing & Environmental Protection) Offences

## 1. INTRODUCTION

Enforcement of legislation is a primary function of the Environment and Regeneration Department. This includes 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 Head of Civic and Legal Services.

### 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.

## **REGULATORS COMPLIANCE CODE**

The Regulators' Compliance Code is a central part of the Government's better regulation agenda. Its aim is to embed a risk-based, proportionate and targeted approach to regulatory inspection and enforcement.

The expectation of Government is that as regulators integrate the Code's standards into their regulatory culture and processes, they will become more efficient and effective in their work. They will be able to use their resources in a way that gets the most value out of the effort that they make, whilst delivering significant benefits to low risk and compliant businesses through better-focused inspection activity, increased use of advice for businesses, and lower compliance costs.

The Compliance Code has been issued with parliamentary approval, following a wide and lengthy consultation process, and came into force on 6 April 2008 by virtue of the Legislative and Regulatory Reform Code of Practice (Appointed Day) Order 2007.

Merton Council Environmental Health and Trading Standards and Licensing Services are fully committed to the code's obligations and objectives.

Below are set out some of the key aims, obligations and objectives of the code.

## **1. Purpose of the Code**

**1.1.** Effective and well-targeted regulation is essential in promoting fairness and protection from harm. However, the Government believes that, in achieving these and other legitimate objectives, regulation and its enforcement should be proportionate and flexible enough to allow or even encourage economic progress.

**1.2.** This Code supports the Government's better regulation agenda and is based on the recommendations in the Hampton Report. Its purpose is to promote efficient and effective approaches to regulatory inspection and enforcement which improve regulatory outcomes without imposing unnecessary burdens on business, the Third Sector and other regulated entities.

**1.3.** The Code stresses the need for regulators to adopt a positive and proactive approach towards ensuring compliance by:

- helping and encouraging regulated entities to understand and meet regulatory requirements more easily; and
- responding proportionately to regulatory breaches.

**1.4.** The Code supports regulators' responsibility to deliver desirable regulatory outcomes. This includes having effective policies to deal proportionately with criminal behaviour which would have a damaging effect on legitimate businesses and desirable regulatory outcomes.

**The Code does not relieve regulated entities of their responsibility to comply with their obligations under the law and regulators must have regard to this code.**

**Regulators are not bound to follow a provision of the Code if they *properly* conclude that the provision is either not relevant or is outweighed by another relevant consideration. They should ensure that any decision to depart from any provision of the Code is properly reasoned and based on material evidence. Where there are no such relevant considerations, regulators should follow the Code.**

## **2. Specific obligations of the Code**

### **(A) Economic progress**

**2.A.1.** Regulators should consider the impact that their regulatory interventions may have on economic progress, including thorough consideration of the costs, effectiveness and perceptions of fairness of regulation. They should only adopt a particular approach if the benefits justify the costs and it entails the minimum burden compatible with achieving their objectives.

**2.A.2.** Regulators should keep under review their regulatory activities and interventions with a view to considering the extent to which it would be appropriate to remove or reduce the regulatory burdens they impose.

**2.A.3.** Regulators should consider the impact that their regulatory interventions may have on small regulated entities, using reasonable endeavours to ensure that the burdens of their interventions fall fairly and proportionately on such entities, by giving consideration to the size of the regulated entities and the nature of their activities.

**2.A.4.** When regulators set standards or give guidance in relation to the exercise of their own or other regulatory functions (including the functions of local authorities), they should allow for reasonable variations to meet local government priorities, as well as those of the devolved administrations.

## **(B) Risk Assessment**

**2.B.1.** Regulators should ensure that the allocation of their regulatory efforts and resources is targeted where they would be most effective by assessing the risks to their regulatory outcomes. They should also ensure that risk assessment precedes and informs all aspects of their approaches to regulatory activity, including:

- data collection and other information requirements;
- inspection programmes;
- advice and support programmes; and
- enforcement and sanctions.

**2.B.2.** Risk assessment should be based on all available relevant and good-quality data. It should include explicit consideration of the combined effect of:

- the potential impact of non-compliance on regulatory outcomes; and
- the likelihood of non-compliance.

**2.B.3.** In evaluating the likelihood of non-compliance, regulators should give consideration to all relevant factors, including:

- past compliance records and potential future risks;
- the existence of good systems for managing risks, in particular within regulated entities or sites
- evidence of recognised external accreditation; and
- management competence and willingness to comply.

**2.B.4.** Regulators should consult and involve regulated entities and other interested parties in designing their risk methodologies, and publish details of the methodologies and Regulators should regularly review and, where appropriate, improve their risk methodologies. In doing so, they should take into account feedback and other information from regulated entities and other interested parties.

## **(C) Advice and Guidance**

**2.C.1.** Regulators should ensure that all legal requirements relating to their regulatory activities, as well as changes to those legal requirements, are promptly communicated or otherwise made available to relevant regulated entities.

**2.C.2.** Regulators should provide general information, advice and guidance to make it easier for regulated entities to understand and meet their regulatory obligations. Such information, advice and guidance should be provided in clear, concise and accessible language, using a range of appropriate formats and media.

**2.C.3.** Regulators should provide targeted and practical advice that meets the needs of regulated entities. Such advice may be provided in a range of formats, such as through face-to-face interactions, telephone helpline and online guidance. In

determining the appropriate formats, regulators should seek to maximise the reach, accessibility and effectiveness of advice while ensuring efficient use of resources. There may remain a need for regulated entities with particularly complex practices to use specialist or professional advisors as appropriate.

**2.C.4.** When offering compliance advice, regulators should distinguish between statutory requirements and advice or guidance aimed at improvements above minimum standards. Advice should be confirmed in writing, if requested.

**2.C.5.** Regulators should provide appropriate means to ensure that regulated entities can reasonably seek and access advice from the regulator without directly triggering an enforcement action. In responding to such an approach, the regulator should seek primarily to provide the advice and guidance necessary to help ensure compliance.

**2.C.6.** Advice services should generally be provided free of charge, but it may be appropriate for regulators to charge a reasonable fee for services beyond basic advice and guidance necessary to help ensure compliance. Regulators should, however, take account of the needs and circumstances of smaller regulated entities and others in need of help and support.

#### **(D) Inspections and other visits**

**2.D.1.** Regulators should ensure that inspections and other visits, such as compliance or advice visits, to regulated entities only occur in accordance with a risk assessment methodology, except where visits are requested by regulated entities, or where a regulator acts on relevant intelligence.

**2.D.2.** Regulators should use only a small element of random inspection in their programme to test their risk methodologies or the effectiveness of their interventions.

**2.D.3.** Regulators should focus their **greatest** inspection effort on regulated entities where risk assessment shows that both:

- a compliance breach or breaches would pose a serious risk to a regulatory outcome; and
- there is high likelihood of non-compliance by regulated entities.

**2.D.4.** Where regulators visit or carry out inspections of regulated entities, they should give positive feedback to the regulated entities to encourage and reinforce good practices. Regulators should also share amongst regulated entities, and with other regulators, information about good practice.

**2.D.5.** Where two or more inspectors, whether from the same or different regulators, undertake planned inspections of the same regulated entity, regulators should have arrangements for collaboration to minimise burdens on the regulated entity, for example, through joint or coordinated inspections and data sharing.

#### **(E) Information requirements**

**2.E.1.** When determining which data they may require, regulators should undertake an analysis of the costs and benefits of data requests to regulated entities. Regulators should give explicit consideration to reducing costs to regulated entities through:

- varying data requests according to risk,
- limiting collection to specific regulated entities sectors/sub-sectors;

- reducing the frequency of data collection;
- obtaining data from other sources;
- allowing electronic submission; and
- requesting only data which is justified by risk assessment.

## **(F) Compliance and enforcement actions**

**2.F.1.** Regulators should seek to reward those regulated entities that have consistently achieved good levels of compliance through positive incentives, such as lighter inspections and reporting requirements where risk assessment justifies this. Regulators should also take account of the circumstances of small regulated entities, including any difficulties they may have in achieving compliance.

**2.F.2.** When considering formal enforcement action, regulators should, where appropriate, discuss the circumstances with those suspected of a breach and take these into account when deciding on the best approach. This paragraph does not apply where immediate action is required to prevent or respond to a serious breach or where to do so is likely to defeat the purpose of the proposed enforcement action.

**2.F.3.** Regulators should ensure that their sanctions and penalties policies are consistent with the principles set out in the Macrory Review. This means that their sanctions and penalties policies should:

- aim to change the behaviour of the offender;
- aim to eliminate any financial gain or benefit from non-compliance;
- be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
- be proportionate to the nature of the offence and the harm caused;
- aim to restore the harm caused by regulatory non-compliance, where appropriate; and
- aim to deter future non-compliance.

**2.F.4.** In accordance with the Macrory characteristics, regulators should also:

- publish an enforcement policy;
- measure outcomes not just outputs;
- justify their choice of enforcement actions year on year to interested parties;
- follow-up enforcement actions where appropriate;
- enforce in a transparent manner;
- be transparent in the way in which they apply and determine penalties; and
- avoid perverse incentives that might influence the choice of sanctioning response.

**2.F.5.** Regulators should ensure that clear reasons for any formal enforcement action are given to the person or entity against whom any enforcement action is being taken at the time the action is taken. These reasons should be confirmed in writing at the earliest opportunity. Complaints and relevant appeals procedures for redress should also be explained at the same time.

**2.F.6.** Regulators should enable inspectors and enforcement officers to interpret and apply relevant legal requirements and enforcement policies fairly and consistently between like-regulated entities in similar situations. Regulators should also ensure that their own inspectors and enforcement staff interpret and apply their legal requirements and enforcement policies consistently and fairly.

## **(G) Accountability**

**2.G.1.** Regulators should create effective consultation and feedback opportunities to enable continuing cooperative relationships with regulated entities and other interested parties.

**2.G.2.** Regulators should ensure that their employees provide courteous and efficient services to regulated entities and others. They should take account of comments from regulated entities and other interested parties regarding the behaviour and activity of inspectors and other enforcement staff.

**2.G.3.** Regulators should provide effective and timely complaints procedures (including for matters in this Code) that are easily accessible to regulated entities and other interested parties.

**2.G.4.** Complaints procedures should include a final stage to an independent, external, person. Where there is a relevant Ombudsman or Tribunal with powers to decide on matters in this Code, the final stage should allow referral to that body. However, where no such person exists, a regulator should, in consultation with interested parties, provide for further complaint or appeal to another independent person, for example, an independent professional body.



## **2. ENFORCEMENT POLICY**

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.

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.

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.

## **SIMPLE CAUTIONS**

The Council supports the use of Simple 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. See Home Office website <http://www.homeoffice.gov.uk/police/powers/cautioning/> for further information.

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 should be complied with.

- a Simple cautions may be used only where there is sufficient admissible evidence for a realistic prospect of conviction if a prosecution was taken;
- b a Simple caution can be given ONLY if the defendant admits their guilt;
- c Simple cautions should not be given if the defendant is under 18 ( a reprimand or final warning should be used instead);
- d under normal circumstances Simple cautions should not be offered for serious offences, a Simple caution should only be offered if it is likely to be effective;
- f in general a Simple caution should not be given if the defendant has already recently received a Simple 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 Simple cautions will be carried out only by officers who are authorised to institute legal proceedings on behalf of the Council.

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

### 3. 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 Business and Consumer Protection Manager (BCPM)
- Simple 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 BCPM. 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.



## 4. LICENSING OFFENCES

### **Types of Enforcement Action**

Licensing offences may be dealt with by the following methods:

- verbal advice
- informal written advice
- issue of statutory notices
- letter of caution from Business and Consumer Protection Manager (BCPM)
- simple caution
- prosecution
- review of license
- revocation of license

### **All Licensing Matters**

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

- a information contained within specific policy documents of the Council e.g. the Licensing policy and Gambling policy;
- b whether the offence has national or local significance;
- c the nature and extent and significance of a breach of license conditions;
- d whether or not a statutory notice has been breached.
- e the co-operation of the defendant during investigations and in trying to remedy the matter;
- f whether or not there is a best practicable means or other statutory defence in place;
- g whether or not there are any safety/welfare implications and the seriousness of those implications;
- h any guidance issued by Central Government or LACORS (or where any proposed formal action is known to be inconsistent with that adopted by other local authorities or decisions of the Courts)
- i any protocols agreed between Merton Council and other enforcement authorities.

## **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.

## **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

## **5. 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 Business and Consumer Protection Manager (BCPM)
- seizure/condemnation of food
- simple 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 BCPM. 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 BCPM and it will be usual for this to be dealt with by either a Simple 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 BCPM and it will be usual for this to be dealt with by at least a letter of caution.

## **6. ENVIRONMENTAL HEALTH (HOUSING AND ENVIRONMENTAL PROTECTION) OFFENCES**

### **Types of Enforcement Action**

Environmental Health (Housing and Environmental Protection) 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 (EHM)
- simple caution
- prosecution
- seizure

### **All Environmental Health (Housing and Environmental Protection) 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 enforcement 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;

Ian Murrell, Business and Consumer Protection Manager, Tel Number 020 8545 3859

email [ian.murrell@merton.gov.uk](mailto:ian.murrell@merton.gov.uk)

Mike Barrett, Environmental Health Manager, Tel Number 020 8545 3002

email [mike.barrett@merton.gov.uk](mailto:mike.barrett@merton.gov.uk)

or write to either at the following address

London Borough of Merton  
Civic Centre  
London Road  
Morden  
Surrey  
SM4 5DX

Issue date April 2008