

**BALLYMONEY BOROUGH COUNCIL
BOROUGH SERVICES ENFORCEMENT POLICY**

Revised August 2007

BOROUGH SERVICES DIRECTORATE

ENFORCEMENT POLICY

1. Introduction

- 1.1 Ballymoney Borough Council is the enforcing authority for various statutory legislation. This enforcement role has been delegated to the staff of the Borough Services Directorate.
- 1.2 The Council's aim is to provide a better environment for its citizens both for the present and the future. It will achieve much of this through education by providing advice and regulating the activities of others. Securing compliance with legal regulatory requirements using enforcement powers, including prosecution, is an important part of achieving this aim.

2. Aim and scope of the Policy

- 2.1 This policy sets out the principles and approach of the Council's Borough Services Department and its officers will follow so as to provide an effective and fair service, and to ensure consistent and open enforcement. It is written for the guidance of the Council and its officers and will be made available to any business representatives or members of the public who enquire about our policies and procedures. It applies to all dealings whether formal or informal between businesses and members of the public with officers of the Council into various matters. This Policy does not however apply to offences where a fixed penalty scheme applies.
- 2.2 In addition to this generic policy, officers have been issued with a range of more specific enforcement guidelines and procedural documentation to support them in their enforcement decisions, which they are also required to follow.
- 2.3 The Council has also adopted the central and local government Concordat on Good Enforcement.
- 2.4 This policy and any enforcement carried out shall have regard to the Human Rights Act 1998. In particular regard shall be had for the right to a fair trial, right to respect for private and family life, prohibition of discrimination and protection of property.
- 2.5 The Council supports and is committed to the LACORS Home Authority Principle.

3. Principles of Enforcement

- 3.1 The Council believes in firm but fair regulation. This should be informed by the principles of **proportionality** in application of the law and in securing compliance; **targeting** of enforcement action; **consistency** of approach, **transparency** about how the Council operates and what those regulated may expect from the Council, and **accountability** for the Council's actions.

3.2 Proportionality

- 3.2.1 Meaning relating enforcement action to the risks and costs.

- 3.2.2 The Council will minimise the costs of compliance by ensuring that any action it requires is proportionate to the risks. As far as the law allows, the Council will take account of the circumstances of the case and the attitude of the offender (operator or member of the public) when considering action.
- 3.2.3 Some incidents or breaches of regulatory requirements cause or have the potential to cause serious injury/illness and/or environmental damage. Others may have a lesser effect e.g. interference with peoples property or rights. When Officers are deciding on the most appropriate enforcement action, they will take account of:
- The degree of any risks posed.
 - The seriousness of any breach of the law.
 - The burden which would be placed on the business in taking action, compared with the benefit of risk reduction.
 - The attitude and intent of the offender, individually or corporately.
 - Foreseeability of offence or circumstances leading to it.
 - Relevant good practices as obtained in codes of practice and published guidance.

3.3 **Consistency**

- 3.3.1 Meaning taking a similar approach in similar circumstances to achieve similar ends. The Council aims to ensure consistency in, advice tendered, the response to incidents and complaints; the use of powers and decisions on whether to prosecute.
- 3.3.2 The Council recognises that consistency does not mean simple uniformity. Officers need to take account of the many variables, the scale of environmental impact etc, the attitude and actions of offenders and the history of previous incidents or breaches. Decisions on enforcement action are a matter of professional judgement and the Council, through its officers, needs to exercise discretion. The Council will continue to develop arrangements to promote consistency including effective arrangements for liaison with other enforcing authorities.

3.4 **Transparency**

- 3.4.1 Transparency is important in maintaining public confidence in the Council's ability to regulate. It means helping those regulated and others to understand what is expected of them and what they should expect from the Council. It also means making clear why an officer intends to take, or has taken, enforcement action.
- 3.4.2 Transparency is an integral part of the role of council officers and the Council continues to train its staff and to develop its procedures to ensure that:-
- Where remedial action is required, it is clearly explained (in writing, if requested) why the action is necessary, what legislation is contravened, measures taken to ensure compliance and when it must be carried out; a distinction being made between legal requirements and advice on best practice.

- Opportunity is provided to discuss what is required to comply with the law before formal enforcement action is taken, unless urgent action is required, for example, to prevent serious illness/injury or to prevent evidence being destroyed.
- Where urgent action is required, a written explanation of the reasons is provided as soon as practicable after the event.
- Written explanation is given of all rights of appeal against formal enforcement action at the time the action is taken.
- Having due regard to legal constraints and requirements, keeping all other relevant parties informed during investigations and with respect to enforcement decisions.

3.5 **Targeting**

- 3.5.1 Means making sure that regulatory effort is directed primarily towards those whose activities give rise to the greatest risk of serious environmental damage/injury/illness etc. Action will be primarily focused on law-breakers or those directly responsible for the risk and who are best placed to control it.

3.6 **Accountability**

- 3.6.1 The Councils and its officers fully recognise that they are accountable to the public for their actions. Consequently policies and standards have been put in place against which the Council's actions can be judged and procedures exist for dealing with comments and handling complaints.
- 3.6.2 In the event that the "customer" is dissatisfied with the service provided, there are a number of forms of recourse available as outlined below, which officers will ensure the customer is made aware of. The exact procedure followed in any particular case will depend not only upon the nature of the grievance itself but also the course of action the complainant wishes to pursue.

a) Complaints related to enforcement action decisions

- Officers will advise persons whom they have required to take any action, of their right to make representation to the Office Manager and, if not satisfied to the Chief Executive and ultimately the Local Government Ombudsman.
- Officers will when serving Notices provide with those Notices appeal details to be used should the recipient wish to lodge a formal appeal against same.

b) Complaints relating to issues other than enforcement action decisions

The Council's formal complaints procedure will be used to investigate those complaints which relate to dissatisfaction with the service, for example:-

- Failure to follow Council procedure policy or standards
- Discrimination
- Failure to respond quickly enough to requests for service
- Conduct of authorised officers

4.0 Investigation

4.1 The Council recognises that it is neither possible nor necessary to investigate all issues of non-compliance with the law uncovered in the course of preventive inspection, or in the investigation of reported events such as accidents and complaints. The Council will use its discretion and have regard to the aforementioned principles in deciding whether an investigation should be initiated and in deciding the level of resources to be committed. The following factors will be taken into account:

- The severity and scale of the potential or actual harm
- The seriousness of any potential breach of the law
- Knowledge of the duty holder's past performance
- The enforcement priorities
- The practicality of achieving results; and
- The wider relevance of the event, including serious public concern.

4.2 Enforcement Action

4.2.1 Officers will determine what, if any, enforcement action is appropriate, in accordance with the aforementioned principles, from the following informal and formal options:

4.2.2 Informal Action

The Council recognises informal action as one means to secure compliance with the law. Informal action includes

- a) Verbal advice
- b) Advisory letter where advice is being confirmed or remedial action requested informally
- c) Inspection reports generated on the premises following an inspection.

4.2.3 Informal action is appropriate in the following circumstances:

- Where the action or omission is not serious enough to warrant formal action;
- From the individual/enterprise's past history, it can be reasonably expected that informal action will achieve compliance;
- Confidence in the individual/enterprise's management involved is high;
- The consequences of non-compliance will not pose a significant risk to public health.

4.2.4 Formal Action

4.2.4.1 In cases where informal action has failed to achieve the necessary outcome or the breach is serious enough to warrant formal action in its own right, the following enforcement options will be considered:

- a) Verbal warning.
- b) Warning/enforcement letter.
- c) Enforcement Notice e.g. Improvement Notice, Prohibition Notice, Abatement Notice etc. – required in certain cases to be served prior to legal proceedings being instigated. The Council will give due consideration to the issue of enforcement notices as soon as the necessary evidence is available, and where one or more of the following criteria apply:

- There are significant contraventions of legislation
- There is a lack of confidence in the proprietor or enterprise to respond to an informal approach
- There is a history of non-compliance with informal action
- Standards are generally poor with little management awareness of statutory requirements
- The consequences of non-compliance could be potentially serious to public health and although it is intended to prosecute, effective action also needs to be taken as quickly as possible to remedy conditions that are serious or deteriorating.

d) Formal Caution where a business admits to an offence, and extenuating circumstances exist which make prosecution inappropriate.

4.2.4.2 A formal caution is a written acceptance by an offender that they have committed an offence and may only be used where a prosecution could properly have been brought. It will be registered with the Office of Fair Trading and brought to the Courts attention if the offender is convicted of a subsequent offence.

4.2.4.3 The Council will take account of current Home Office guidelines when considering whether to offer a formal warning. Where a person declines such an offer the Council will consider taking alternative enforcement action, which will usually take the form of a prosecution.

4.2.4.4 The Council recognises that other bodies such as home and originating authorities will require to be advised of the formal cautions issued by the Council and their outcome.

e) Prosecution.

f) Works in default – this action is permitted under certain legislation and is reserved for those cases where there is an imminent danger to persons or property and the legal process would not provide adequate remedy. In cases where work in default is carried out, the Council will make every effort to recover the costs of the works from the relevant party.

4.2.4.5 **Arrangements Where the Borough Council is the Proprietor of a Business**

Where the Borough Council is the proprietor of a business (in respect of enforcement this refers to a food business), details of non-compliance shall be brought to the attention of the Manager, Head of Service and the Councils Chief Executive. In the event where the non-compliance is deemed to warrant formal action, the matter will in addition be drawn to the attention of Councils Senior Management Team and the Council at the earliest opportunity.

5.0 **Prosecution**

5.1 The use of the criminal process to institute a prosecution is an important part of enforcement. It aims to punish wrongdoing to avoid a recurrence, and to act as a deterrent to others. It follows that it may be appropriate to use prosecution to ensure certain requirements are met. Where the circumstances warrant it, prosecution without prior warning or recourse to alternative sanctions will be pursued.

5.2 The Council recognises that the institution of a prosecution is a serious matter that should only be taken after full consideration of the implications and consequences. Decisions about

prosecution will take account of the Code for Crown Prosecutors (Crown Prosecution Service).

- 5.3 A prosecution will not be commenced or continued by the Council unless it is satisfied that there is sufficient, admissible and reliable evidence that the offence has been committed and that there is a realistic prospect of conviction. If the case does not pass this evidential test, it will not go ahead, no matter how important or serious it may be. Where there is sufficient evidence, a prosecution will not be commenced or continued by the council unless it is in the public interest to do so.
- 5.4 Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the offender and whether, through the conviction of offenders, others may be deterred from similar failures to comply with the law.
- 5.5 Where there is sufficient evidence the Council will normally prosecute in any of the following circumstances:-
- Where the offence involves a failure to comply in full or in part with the requirement of a statutory notice.
 - Where there is a history of similar offences in relation to non-compliance with notices.
 - Excessive or persistent breaches of regulatory requirements.
 - Obstruction of Council staff in carrying out their powers.
 - Where the gravity of the alleged offence, taken together with the serious of any actual or potential harm, or the general record and approach of the offender warrants it.

6.0 Death at Work

- 6.1 Where there has been a breach of the law leading to a work-related death, enforcing authorities need to consider whether the circumstances of the case might justify a charge of manslaughter.
- 6.2 The Police are responsible for deciding whether to pursue a manslaughter investigation and whether to refer a case to the Director of Public Prosecutions to consider possible manslaughter charges. If in the course of its health & safety investigation evidence suggesting manslaughter is found, the Council shall pass it on to the Police. Should the decision be made not to pursue a manslaughter case, the Council will make its own decision on whether to bring a health and safety prosecution in accordance with this policy.

6.3 Decision making process

- 6.3.1 In cases of Health and Safety legislation it is the authorised officers who have the power to take legal action. In other matters the power of decision rests with the Council.
- 6.3.2 In cases where the Council make the decisions a full report will be presented to the appropriate committee advising them of all of the relevant matters for consideration.
- 6.3.3 A recommendation will always be provided guiding them towards a particular decision or option. The report will consider the following matters:-

Is there a reasonable prospect of conviction?

And ***where there is,***

- a) the seriousness of the offence,
- b) the previous history of the party concerned,
- c) the likelihood of the defendant being able to establish a due diligence defence if applicable,
- d) the ability of any important witness and their willingness to co-operate,
- e) the willingness of the party to prevent recurrence,
- f) the probable public benefit of a prosecution
- g) any explanation offered by the company/offender,
- h) whether other action such as issuing a formal caution would be more appropriate.

- 6.3.4 In cases where the officer has the delegated authority to make the decision a similar report will be prepared, but prior to coming to a decision, the officer concerned will present all of the matters under consideration to a panel of at least two other senior officers from the department. In this case the report submitted to the appropriate committee will advise them of the decision which has already been taken and the reasons for it.
- 6.3.5 Where legal advice is necessary before a decision is made this will be sought through the Councils Solicitor or any other appropriate legal adviser approved by the Chief Executive.
- 6.3.6 Where there is reasonable doubt as to the success of the proceedings and the possibility of costs being awarded against the Council this will be included in the considerations and the information presented to the Council before a decision is made to proceed.
- 6.3.7 In legal proceedings the Council will fully support the necessary action in all cases, whether the decision was made by the Council or the authorised officer.

7.0 Working with other Regulators

- 7.1 Where the Council and other enforcement bodies have the power to prosecute, the Council will liaise with that other body to ensure effective co-ordination, to avoid inconsistencies and to ensure that any proceedings instituted are for the most appropriate offence.

8.0 Public Access to Information

- 8.1 This policy will be made freely available to all members of the public on request.
- 8.2 Officers will adhere to the restrictions placed on them by legislation in relation to the release of any information to a third party, obtained by them in the course of their duties. When convictions have been obtained however, the Council will, in addition to reporting the details to the appropriate authorities, consider alerting the media and making the details of the conviction public. Such action will serve to draw the attention of a wider audience to the need to comply with legal requirements and deter others tempted to disregard their legal duties.
- 8.3 In accordance with the requirements of legislation, the Council will keep and make available, a public register of statutory notices that have implications for the general public.

9.0 Revision

- 9.1 This policy will be reviewed as necessary to ensure that it satisfies legal requirements and our customers' expectations of the service, and as a minimum every two years.