

Harlow Council

General Enforcement Policy for Environmental Health

Introduction

The purpose of this Enforcement Policy is to provide a general policy that outlines the overarching principles applied to making enforcement decisions, and the process all officers will use when deciding what action to take when carrying out their statutory duties on behalf of Harlow District Council.

Fair and effective enforcement is essential to protect the interests of residents, visitors, employees and businesses of Harlow. Even in a minor case, a decision about enforcement action has serious implications for all involved; the general public, businesses, victims, witnesses and defendants. The Environmental Health Service applies this policy so that it can make fair and consistent decisions about enforcement.

Approval

This policy was approved by the Environment Committee of Harlow District Council on 11th March 2003

Scope

This policy applies to the enforcement activities carried out under legislation enforced under the Council's Environmental Health function, including licensing and anti-social behaviour enforcement.

Enforcement, in the context of this policy, includes action carried out in the exercise of, or against the background of, statutory enforcement powers. This is not limited to formal enforcement action such as prosecution, and includes, for example, the inspection of premises for the purpose of checking compliance with acts and regulations, and the provision of advice to aid compliance.

The Environmental Health Service is also required to publish specific enforcement policies relating to specialist functions such as food safety and occupational health & safety enforcement. These policies are more detailed, but reflect the overarching principles of this General Policy.

General Principles

The Council recognises the importance of achieving and maintaining consistency in its approach to making all decisions that concern enforcement action, including prosecution. Each case is unique and must be considered on its own merits. There are, however, general principles, which apply to the way each case is approached.

These are set out in this policy and in the Government's Enforcement Concordat to which the Council is a signatory

The Council and its officers will make it clear to businesses and individuals what their responsibilities and duties are, and what can be expected of enforcement officers. Written reports will follow inspections and will distinguish mandatory requirements from recommendations on good practice.

Staff must be fair, independent and objective, and treat customers equally regardless of race, colour, ethnic origin, religion, sex, marital status, disability or age. They must not be affected by improper or undue pressure from any source.

The Council is a public authority for the purposes of the Human Rights Act 1998. Staff must apply the principles of the European Convention on Human Rights in accordance with the Act.

Service Requests

Complaints received, which may result in enforcement action against a business or individual will be notified to that business or individual as soon as is practicable, except in the circumstances described in the following paragraph. During the progression of enforcement action that business or individual will be further notified of progress and any new information.

In circumstances where notification could impede enforcement action, notification will not take place until those circumstances no longer exist.

Access to the Policy

This policy is available on the Council's web site (www.harlow.gov.uk) and in hardcopy from the Environmental Health Services offices in the Town Hall. It can be ordered by telephoning (01279) 446111, emailing (env.health@harlow.gov.uk) or by writing to Environmental Health Services, Harlow District Council, Town Hall, Harlow, CM20 1HJ. The Cabinet Office's Enforcement Concordat is also available through the same channels.

Harlow District Council believes in continuous improvement, and you are therefore invited to submit any comments or suggestions regarding this policy to the Head of Environmental Health Services as detailed above.

Deciding the Level of Action to Take/Decision Making Process

A variety of enforcement options exist including:-

- A. Prosecution
- B. Revocation of Licence
- C. Fixed Penalty Notice
- D. Formal Caution
- E. Works in Default
- F. Anti-Social Behaviour Order
- G. Statutory Notice
- H. Written Warning and Advice
- I. Verbal Warning and Advice

A. Prosecution

The circumstances where prosecution is appropriate will normally include one or more of the following:

- Deliberately or persistently breached legal obligations, where there is a risk to public health, safety or well-being of people, animals or the environment.
- Deliberately or persistently ignored verbal and written warnings or notices.
- Where there is a history of similar offences
- Where it is appropriate in the circumstances as a way to draw general attention to the need for compliance with the law, the maintenance of standards required by the law, or conviction may deter others from similar failures to comply with the law.
- Where an officer is obstructed, abused, intimidated, threatened or assaulted, or any attempt is made to so obstruct an officer, whilst undertaking his or her duties.

B. Revocation of Licence

In order to warrant revocation of a licence, the individual or organisation must have met one or more of the following criteria

- Engaged in fraudulent activity,
- Deliberately 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, the health, safety or well being of any person,
- Where an officer is obstructed, abused, intimidated, threatened or assaulted, or any attempt is made to so obstruct an officer, whilst undertaking his or her duties.

C. Fixed Penalty Notice

A facility is provided in respect of some offences for the Council to issue Fixed Penalty Notices. A Fixed Penalty Notice offers the offender the opportunity to pay a penalty, which if paid within a stated period, will result in the Council not proceeding to prosecution.

Fixed Penalty Notices will only be issued in circumstances where the investigating officer is satisfied that an offence has been committed, and that there is sufficient evidence pursue a prosecution.

D. Formal Caution

This procedure is used as a final warning. It derives from advice issued by the Home Office and has already been successfully used by this authority to deal with contraventions of food safety legislation. For a formal caution to be issued a number of criteria must be satisfied:

- (i) sufficient evidence must be available to prove the case;
- (ii) the offender must admit the offence;
- (iii) the offender must agree to be cautioned;
- (iv) the offence must not have been committed by the offender before.

A record of the Caution will be sent to the Office of Fair Trading, and will be kept on file for 3 years. If the offender commits a further offence, the Formal 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.

E. Works in Default

We have powers under various pieces of legislation to carry out works in default where normal enforcement procedures have resulted in the offender failing to remedy an unacceptable situation. This may include for example, the Council carrying out works on behalf of the responsible person or body where further unnecessary delay cannot be justified, or the seizure of equipment responsible for causing a noise nuisance. We always give full details of our actions to the offender when this power is exercised.

F. Anti-Social Behaviour Order

Anti-Social Behaviour Orders (ASBO's) came about as a result of the Crime & Disorder Act 1998, and are civil orders granted by the courts, that exist to protect the public from behaviour that causes or is likely to cause, harassment, alarm or distress. An Order contains conditions prohibiting the offender from specific anti-social acts and is effective for a minimum period of two years. A breach of an order is a criminal offence, the maximum penalty being 5 years imprisonment for an adult offender.

The procedures governing ASBO's are complex, and require consultation with the Police and other relevant local agencies such as Social Services, Primary Care Trust and the Youth offending Team before proceeding to court. The procedure followed will be in accordance with the Act, Home Office Guidance on ASBO's and Safer Harlow Partnership ASBO Protocol.

G. Statutory Notice

Notices are served to require offenders to cease contravening activities, or give offenders reasonable time to rectify a contravention. Notices may require contravening activities to cease immediately where the circumstances relating to health, safety, environmental damage or nuisance demand. In other circumstances, the time allowed must be reasonable, but must also take into account the implications of the contravention.

Officers will only consider service of Notice where there is sufficient evidence to justify their issue. All relevant guidance in statutory codes of practice and guidance issued by the Government or co-ordinating bodies will be followed as appropriate.

H. Written Warning and Advice

For some contraventions we will send the offender a firm warning letter clearly identifying the contraventions. This may contain advice on how to put them right, and include a deadline by which this must be done. Failure to comply could result in a Notice being served or more severe enforcement action being taken in the future. Any time allowed must be reasonable, but must also take into account the implications of the contravention.

I. Verbal Warning and Advice

In some circumstances we verbally advise the offender, clearly identifying the contraventions, giving advice on how to put them right and including a deadline by which this must be done. Failure to comply could result in formal enforcement action being taken. The time allowed must be reasonable, but must also take into account the implications of the contravention.

Determining Whether Formal Enforcement Action is Viable and Appropriate

Before reaching any decision on formal enforcement action, regard will be given to the Crown Prosecution Service (CPS), Code for Public Prosecutors. In particular a prosecution should not be commenced unless the criteria in the Code Tests, namely, the Evidential Test and the Public Interest Test have been met. The Code is located on the CPS website: www.cps.gov.uk or can be requested by telephoning 0207 796 8442.

Regard will also be given to relevant Government Agency advice, and other nationally recognised guidance such as statutory Codes of Practice.

Liaison

Where an enforcement matter affects a wide geographical area beyond the boundaries of Harlow, or requires the involvement of one or more other local authorities or organisations, liaison and consultation will be undertaken as soon as possible, and all enforcement activity co-ordinated with them.

Training

Officers undertaking enforcement duties, will be suitably trained and qualified, to ensure that they are fully competent to undertake their enforcement activity. Continuing Professional Development training will be provided both in-house and externally, and will cover both the technical and legal aspects of the officer's duties.

Authorisations

Enforcement action is carried out by officers appointed and authorised by the Council. All authorised officers are issued with a written Authority specifying the provisions that they are entitled to exercise.

The final decision to prosecute will be taken by the Head of Environmental Health Services in consultation with the Legal Services Manager.

Management Systems

The Council will maintain management systems to monitor the quality and nature of enforcement activity undertaken to ensure, as far as is practicable, uniformity and consistency in approach and quality of service.

Adherence with Policy

All authorised officers when making enforcement decisions shall abide by this policy, and refer to supporting documented operating procedures, and specialist enforcement policies where appropriate.

Any departure from this policy will only be accepted in exceptional circumstances capable of justification; and only after full consideration and authorisation by the Head of Environmental Health Services, or a designated alternative officer.

Appeals

If any person/business is unhappy with the action taken, or the information or advice given by the Council's environmental health staff, they will be given the opportunity of discussing the matter with the officer's line manager. This is without prejudice to any formal appeals mechanism.

Harlow Council also operates a corporate Customer Care and Complaints Procedure, details of which are available on request, or on Harlowweb: www.harlow.gov.uk