

# LICENSING COMMITTEE (Non Licensing Act 2003 Functions)

**Agenda Item 25**  
Brighton & Hove City Council

**Subject:** *Licensing Enforcement Policy*  
**Date of Meeting:** **5 February 2009**  
**Report of:** *Director of Environment*  
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**Wards Affected:** All

## FOR GENERAL RELEASE

### 1. SUMMARY AND POLICY CONTEXT:

- 1.1 On 16 October 2008, Cabinet approved the Corporate Enforcement Policy and authorised its implementation by all enforcement sections in the Council
- 1.2 Fair and consistent enforcement is a key priority for the Council. On 6 April 2008 the statutory Regulators' Compliance Code for specified functions, including Trading Standards and Environmental Health, came into force.

### 2. RECOMMENDATIONS:

- 2.1 That the licensing committee recommends that the Director of Environment uses the draft licensing enforcement policy in appendix C for consultation.

### 3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 The corporate enforcement policy is set out in appendix A. The current commercial enforcement policy is set out in appendix B, for reference, both regulate Trading Standards and Environmental Health. The principles of the Regulators' Code are applicable to all of our regulators because they promote openness, fairness, proportionality and consistency.
- 3.2 As sanctions for licensing offences are not identical to other regulatory services, officers need a framework, consistent with corporate policy, to ensure enforcement is carried out in accordance with principles of good regulation (ref Better Regulation Task Force 2000): proportionality, accountability, consistency, transparency, targeting.

### 4. CONSULTATION

- 4.1 In developing the corporate enforcement policy the following organisations were consulted: The following stakeholders have been consulted
  - All enforcement sections in the council

- Local business associations and individual businesses
- The public (via the website)
- Other enforcement agencies including Sussex Police and neighbouring authorities.

4.2 It is proposed to consult parties set out in section 5 of the Licensing Act 2003: Sussex Police, East Sussex Fire & Rescue Service, the licensed trade, business associations, residents and their associations. This can be achieved by engaging consultative groups: taxi forum, licensing strategy group and the Brighton and Hove Business Forum.

## **5. FINANCIAL & OTHER IMPLICATIONS:**

### Financial Implications:

5.1 There are no direct financial implications.

*Finance Officer Consulted: Karen Brookshaw*

*Date: 21/01/09*

### Legal Implications:

5.2 Policy will assist the Council in meeting its duty under section 6 of the Human Rights Act 1988 not to act in a way which is incompatible with a Convention Right.

*Lawyer Consulted: Rebecca Sidell*

*Date: 21/01/09*

### Equalities Implications:

5.3 An equality impact assessment concludes a policy should promote action that is transparent, consistent, proportionate and fair

### Sustainability Implications:

5.4 None.

### Crime & Disorder Implications:

5.5 The policy requires officers to consider targeted and proportionate action against those that persistently breach the legislation so should assist in the prevention of crime and disorder.

### Risk and Opportunity Management Implications:

5.6 None.

### Corporate / Citywide Implications:

5.7 Good regulation promotes economic success and prosperity.

## **SUPPORTING DOCUMENTATION**

### **Appendices:**

- A. Corporate enforcement policy
- B. Commercial enforcement policy (previously existing)
- C. Draft licensing enforcement policy

### **Documents in Members' Rooms:**

- 1. None

### **Background Documents:**

- 1. The Regulators Compliance Code
- 2. Cabinet Office Enforcement Concordat
- 3. Hampton Review
- 4. Macrory Report (Penalties & Sanctions)

## **APPENDIX A**

### **Corporate Enforcement Policy**

#### **1. Introduction**

- 1.1 Fair and effective enforcement is essential to protect the economic interests and health and safety of the public, businesses, the environment and the public purse.
- 1.2 This Policy sets out what businesses and individuals that are either the subject of, or benefit from enforcement action can expect from Enforcement teams and their officers.
- 1.3 This policy commits the Council to good enforcement practice and procedures and is supplemented by service specific policies.

#### **2. Status**

- 2.1 This Policy was approved by Cabinet on 16 October 2008.

#### **3. Scope**

- 3.1 This Policy applies to any enforcement activity taken against members of the public who make fraudulent claims to the Council as well as person who is required to comply with the legislation applicable to the running of a business.
- 3.2 Enforcement includes any action taken by officers aimed at ensuring that both the public and/or businesses comply with the law. This is not limited to formal enforcement action such as prosecution but also includes the inspection of premises, investigations and other intervention activity designed to reduce crime and disorder and improve the quality of life in our communities.

#### **4. Aims**

- 4.1 The aim of this policy is to ensure that:
  - All those who live and work in the City have a clear understanding of the Corporate Policy and the enforcement functions.
  - All statutory notices issued by the Council are checked by an experienced officer for legal validity, content and technical information.
  - Any information given, whether written or verbal, clearly identifies these requirements that are mandatory and those that are advisory.
  - Any enforcement activity is proportionate to the seriousness of the breach and risks involved, and officers follow a consistent approach.

## **5. Legal Provisions**

5.1 The following legislation and guidance will be taken into account in the enforcement activities of the council.

- The Compliance Code introduced by the Legislative & Regulatory Reform Act 2006
- Cabinet Office Enforcement Concordat
- Regulation of Investigatory Powers Act 2000
- Police & Criminal Evidence Act 1984
- Criminal Proceedings and Investigations Act 1996
- Freedom of information Act 2000
- Human Rights Act 1998
- Data Protection Act 1998
- Local Government Acts
- Race Relations Acts
- Crime & Disorder Act 1998
- Other relevant legislation such as the Public Health Acts, Anti Social Behaviour Act 2003, Criminal Justice & Public Order Act 1994, Clean Neighbourhoods & Environment act 2005
- The Code for Crown Prosecutors
- Home Office Guidance on the use of Simple Cautions
- Local Service Plans
- Other relevant guidance or professional advice

## **6. General Principles**

6.1 Enforcement actions and the determination of sanctions and penalties should be carried out in an open, transparent and timely manner.

6.2 Regulators should be accountable for the efficiency and effectiveness of their activities whilst remaining independent in their decision-making.

6.3 Any enforcement action must be proportionate to the seriousness of any breach and to the risk to the public and businesses and should

- Aim to change the behaviour of the offender.
- Aim to eliminate any financial gain or benefit from offending.
- Be responsive and take account of what is appropriate for the particular offender.
- Deter further offending.

6.4 All duties must be carried out in a fair, equitable and consistent manner.

6.5 All activities are implemented through the use of comprehensive risk assessment and an intelligence led approach to ensure that resources are targeted at cases where protection is needed.

## **7. Service Standards**

### **7.1 For people subject to enforcement action, we will aim to provide**

- Targeted information and education programmes, where this is appropriate to achieve compliance.
- Information about the actions that can be taken on finding a breach of relevant legislation and the timescales involved.
- Clear advice on how to remedy the breach, distinguishing between legal advice and good practice.
- Advice on the planned level and frequency of any inspection regime, where premises are subject to regulatory controls.
- Arrangements for inspecting businesses at suitable times and an explanation why appointments may not be possible for all activities.
- Coordination of the activities of different Council Services and outside agencies to minimise the burden on businesses from multiple visits.
- Clear standards of response to complaints about the way in which enforcement activities are carried out.
- Arrangements for communicating with people in a manner most appropriate to their needs.
- Arrangements for ensuring that any commercially sensitive information obtained in the course of the enforcement action is protected.
- Consistency of enforcement for businesses that undertake similar activities, where appropriate.

### **7.2 For people who benefit from enforcement action, we will aim to provide**

- Clear information about how we will respond their enquiry and the timescale involved.
- Arrangements for visiting complainants to investigate their problem where it is happening.
- Standards for keeping people informed of the status and progress of any subsequent investigation.
- Arrangements for communicating with complainants in a manner most appropriate to their needs.
- Standards for responding to complaints from people who are dissatisfied with the action taken on their behalf.
- Clear explanation of the limitations, or non availability of powers to deal with particular matters.

## **8. Officers Powers**

### **8.1 Enforcement officers have a wide variety of duties and have to act as investigators. In order to act effectively certain legislation provides strong powers of entry, seizure and inspection. If individuals or companies obstruct officers or refuse to provide information the law also imposes punishments.**

Officers use these powers with discretion but to be effective the Council will uphold and support them.

- 8.2 Officers will use their powers of entry only when necessary to effect an inspection of premises or in the process of an investigation. The Council will always support officers who act in good faith, including prosecuting those individuals who obstruct or assault officers during investigations or inspections.
- 8.3 Where the legislation allows, officers may examine premises and articles, remove articles, label samples, require information, issue enforcement notices and may in some instances be accompanied by other persons. In some cases a Justice's warrant may be obtained to obtain entry to specified premises.
- 8.4 An officer must be able to explain the legal basis and justify any individual action taken in the performance of their duties.

## **9. Appointment of officers and identification**

- 9.1 All enforcement will be authorised to act under relevant legislation enforced or administered by the service in which they are employed. Their authorisation will follow the scheme of delegations procedure adopted by the council and will be known as their Warrant. This must be produced if requested.
- 9.2 All officers are issued with an identification card bearing their photograph. This identification must also be produced on request.

## **10. Shared Enforcement Role**

- 10.1 Enforcement officers investigating breaches of the law must consider whether there is a shared or wider enforcement role. In many instances effective action can only occur if officers actively work with other sections within the Council, the Police, Fire & Rescue Services and other similar enforcement agencies.
- 10.2 The Council also has a duty to inform certain government bodies of statutory notifications, e.g. reporting appropriate accidents, occupational diseases outbreaks to the Health & Safety Executive, Notices of Intended Proceedings to the Office of Fair Trading, or the issue of Suspension Notices to the Department of Business & Regulatory Reform.
- 10.3 If another agency or authority is the enforcing authority for a particular activity, officers will inform them of any contraventions they observe during the performance of their duties, e.g. officers must consult the Fire Authority before serving a statutory notice to provide or improve means of escape in a house of multiple occupation. When appropriate, enforcement issues may be referred to other agencies including:

East Sussex Fire & Rescue Service (Petroleum Licensing)  
East Sussex County Council (Animal Health)  
Health and Safety Executive  
Environment Agency  
Emergency Services  
Adjoining local authorities  
Government Departments

## **11. Formal Action**

11.1 Compliance should normally be achieved through informal actions such as

- Educational Courses and training
- Advice provision
- Compliance check
- Warning letters
- Consideration Notices
- Undertakings

11.2 Where this does not result in compliance or in more serious cases, formal action may be considered, this includes

- Notice of intention
- Works notice
- Abatement Notices
- Demotion Orders
- Improvement Notices
- Works in default
- Prohibition Notices
- Suspension Notices
- Control Orders
- Closure Orders
- Seizure and detention, forfeiture
- Simple Cautions
- Enforcement notices and other notices under the Town & County Planning Acts
- Injunctions
- Enforcement Orders
- License Reviews
- Fixed Penalty Notices
- Anti Social Behaviour Orders
- Criminal Anti-Social Behaviour Orders
- Prosecution

11.3 The Proceeds of Crime Act 2002 was introduced to provide a mechanism to ensure that persons committing crime should not benefit from that activity. Financial Investigations should therefore be considered in appropriate cases.



## **12. Decision - making**

- 12.1 The relevant enforcement officer can make the decision for less serious infringements. These decisions must be based on professional judgement, legal guidelines, statutory codes of practice and the priorities set by the Council and / or Central Government.
- 12.2 For more serious breaches, where the nature of the offence points towards prosecution, the offer of a simple caution, the issuing of an Enforcement Notice, or an application to the courts for injunctive action the decision will be made by the Team Manager, Head of Service or relevant Assistant Director. These decisions should be taken in conjunction Legal Services and reflect national guidance and best practice, in particular the criteria found within the Code for Crown Prosecutors.

## **13. Monitoring & Review**

- 13.1 All officers must adhere to this policy. Senior managers are required to monitor its implementation and make any necessary suggestions or recommendations for improvement.
- 13.2 Any variance from the policy should be reported to the appropriate Head of Service who will ensure that the issue is addressed and necessary training given if applicable.
- 13.3 The policy will be reviewed when there is any significant change in legislation or other circumstances that affect its effectiveness and validity.

## **14. Equalities**

- 14.1 The Council is committed to delivering all its operational activities in accordance with our Equalities and Diversity policies and will embed the principles in its approach to its enforcement and regulatory functions

## **15. Appeals, Complaints & Comments**

- 15.1 The Council has published its Complaints Procedure which can be found on the Councils website [www.brighton-hove.gov.uk](http://www.brighton-hove.gov.uk). Copies of this Policy can also be found. In addition, most legislation has inbuilt appeals procedures whenever formal enforcement action is taken.

Complaints may also be made to the Local Government Ombudsman.

## **APPENDIX B**

### **1. Commercial Enforcement Policy**

- 1.1 This policy supports and supplements specific guidance on enforcement action contained in the Cabinet Office's Enforcement Concordat, Code for Crown Prosecutions, Statutory Codes of Practice and relevant guidance documents and guidelines issued by Government departments and co-ordinating bodies.
- 1.2 All authorised officers when making enforcement decisions shall abide by this policy. Any departure from the policy must be exceptional, capable of justification, and be fully considered by a team member before a decision is taken, unless there is significant risk to the public in delaying the decision. Any such departure from the policy should be recorded in writing.

### **2. Training**

- 2.1 Officers undertaking enforcement duties will be suitably trained and qualified so as to ensure they are fully competent to undertake their enforcement activities.

### **3. Management systems**

- 3.1 The council will maintain management systems to monitor the quality and nature of enforcement activities undertaken so as to ensure uniformity and consistency, so far as is reasonably practicable.

### **4. Enforcement Options**

- 4.1 The department recognises the importance of achieving and maintaining consistency in its approach to enforcement. Statutory Codes of Practice and guidance issued by Government departments and professional bodies will therefore be considered and followed where appropriate.
- 4.2 Enforcement decisions will be consistent, balanced, fair and relate to common standards that ensure the public or environment is adequately protected. Criteria to be considered will include:
- the seriousness of the offence
  - the past history of the business
  - confidence in management
  - consequences of non-compliance
  - likely effectiveness of the various enforcement options

4.3 Having considered all the relevant options the choices for action are:

- to take no action, or
- to take informal action, or
- to serve statutory notices, or
- to issue formal cautions, or
- to prosecute

4.4 If the department is considering taking enforcement action which it believes may be inconsistent with that adopted by other authorities, the matter will be referred to the appropriate local co-ordinating body.

4.5 Prior to taking enforcement action, consideration shall be given to the compatibility of such action with those rights protected by the Human Rights Act 1998.

## **5. Informal Action**

5.1 Informal action may be taken when:

- the act or omission is not serious enough to warrant formal action, or
- from the individual/enterprise's past history, it can be reasonably expected that informal action will achieve compliance, or
- confidence in the individual/enterprise's management is high, or
- the consequences of non-compliance will not pose a significant risk to public health public safety, or the environment

5.2 When an informal approach is used to secure compliance with regulations, written documentation issued to the proprietor will:

- contain all the information necessary to understand what work is required and why
- indicate the regulations contravened, the measures which will enable compliance with legal requirements, and that the individual/organisation may choose other means of achieving the same effect
- clearly differentiate between legal requirements and recommendations of good practice - such a differentiation will also be made when verbal advice is given

## **6. Statutory Notices**

6.1 Statutory notices will, in general, relate to risk, maintenance of the environment, quality of life, or public or residential amenity, and may be issued where one or more of the following criteria apply:

- where this is a statutory duty
- there are significant contraventions of legislation or substantial evidence of nuisance that requires remedy
- a breach of planning legislation is suspected
- 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 or cause public nuisance or be irreversible
- although it is intended to prosecute, effective action also needs to be taken as quickly as possible to remedy conditions that are serious, deteriorating, irreversible or needed to support prosecution

6.2 Failure to comply with statutory notices may, in general and where relevant, result in prosecution. Where works in default are being undertaken prosecution may still be considered.

## **7. Statutory Notices - Prohibition Notices/Stop Notices/Injunctions**

7.1 It will be necessary to consider the service of a statutory notice that takes immediate effect (such as prohibition notices or injunctions) or remove control from businesses (such as stop notices, revocation notices, closing orders, demolition orders or control orders) in one or more of the following circumstances:

- an imminent risk of injury to health or safety can be demonstrated
- an imminent risk of serious pollution to the environment can be demonstrated
- the consequences of not taking immediate and decisive action to protect the public would be unacceptable
- where an unauthorised development is unacceptable and immediate remedial action is required because the breach is causing serious harm to public amenity in the neighbourhood of the site or where there has been breach of a condition notice
- where unauthorised development is unacceptable and continuing works are causing irreversible damage and remedial action is not a satisfactory option
- the guidance criteria concerning the conditions when prohibition may be appropriate, are fulfilled
- there is no confidence in the integrity of an unprompted offer made by a proprietor to voluntarily close premises or cease the

use of any equipment, process or treatment associated with the imminent risk

- a proprietor is unwilling to confirm his/her unprompted offer of a voluntary prohibition in writing

7.2 Any notice listed in 7.1 in the name of the Director of Housing & City Support will be served after proper consultation in accordance with the Scheme of Delegation for the council's functions.

## **8. Prosecution**

8.1 The department recognises that the decision to prosecute is significant and could have far reaching consequences for the offender.

8.2 The decision to undertake a prosecution will be taken after proper consultation in accordance with the Scheme of Delegation for the council's functions. The decision to proceed with a prosecution will normally be taken following legal advice. The criteria for the issue of proceedings include:

- the alleged offence involves a flagrant breach of the law such that public health, safety or well being is or has been put at risk or irreversible damage has resulted
- there has been a reckless disregard for the environment
- the alleged offence involves deception or the integrity of the licensing framework is threatened
- the alleged offence involves a failure by the suspected offender to correct an identified serious potential risk having been given a reasonable opportunity to comply with the lawful requirements of an authorised officer
- the alleged offence involves a failure to comply in full or in part with the requirements of a statutory notice, licence, authorisation or other granted permission
- there is a history of similar offences
- the alleged offence causes public alarm and it is desirable to produce an effect which reassures the public and deters other offenders
- a prosecution is in the public interest, there is realistic prospect of conviction and sufficient evidence to support proceedings

8.3 All relevant evidence and information will be considered before deciding upon a prosecution in order to enable a consistent, fair and objective decision to be made.

## **9. Summary v Either Way Offences**

9.1 Where an act or omission is capable of constituting both a summary and either way offence, the following will be considered when deciding which offence to charge:

- the gravity of the offence
- the adequacy or otherwise of the powers of the summary court to punish the offence
- the record of the offender
- the offender's previous response to advice or other enforcement action
- the magnitude of the hazard
- any circumstances causing particularly great public alarm
- comments from the council's Legal Team

## **10. Prosecution Without Warning**

10.1 As a general rule a person or a company will be given a reasonable opportunity to comply with the law although in some circumstances prosecution may be undertaken without giving prior warning, eg:

- the contravention is a particularly serious one
- there has been a particularly blatant disregard of the law
- a statutory notice has previously been issued for a similar offence
- the integrity of the licensing framework is threatened

## **11. Formal Cautions**

11.1 A formal caution may be issued as an alternative to a prosecution. Formal cautions may be issued to:

- deal quickly and simply with less serious offences
- divert less serious offences away from the courts
- reduce the chances of repeat offences

11.2 To safeguard the suspected offender's interests, the following conditions will be fulfilled before a caution is administered:

- there must be sufficient evidence of the suspected offender's guilt to give a realistic prospect of conviction ,and
- the suspected offender must admit the offence, and
- the suspected offender must understand the significance of a formal caution and give an informed consent to be cautioned

- 11.3 No pressure will be applied to a person to accept a formal caution.
- 11.4 The 'Cautioning Officer' will be the most appropriate officer from Appendix 1. The Cautioning Officer must not have taken an active part in investigating the case.
- 11.5 Should a person decline the offer of a formal caution, a prosecution will be recommended.

## **12. Appeals**

- 12.1 If any person is unhappy with the action taken, or information/advice given, they will be given the opportunity of discussing the matter with the relevant team manager, Strategic Director, Assistant Director or Neighbourhood Services Manager.

### Appendix 1

The appropriately delegated authorised officers to make relevant decisions under 7.1 or act as Cautioning Officers are:

Strategic Director,  
Assistant Directors,  
Head of Private Sector Services,  
Neighbourhood Managers,  
Building Control Manager,  
Development Control Manager,  
Environmental Health Manager,  
Housing Advice Manager,  
Private Sector Housing Manager,  
Trading Standards Manager,  
Divisional Environmental Health Officers.

Brighton & Hove City Council  
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## APPENDIX C

# LICENSING ENFORCEMENT POLICY

## 1.0 STATEMENT OF OBJECTIVES

- 1.1 The Environmental Health & Licensing service is committed to the Council's core priorities. This policy gives detail on how the Council's priorities:

*Protect the environment while growing the economy;*  
*better use of public money;*  
*reduce inequality by increasing opportunity;*  
*fair enforcement of the law;*  
*open and effective leadership;*

and will inform the enforcement actions taken. Amendments to prioritise will be embedded automatically.

- 1.2 This service policy promotes efficient and effective approaches to regulatory inspection and enforcement that improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulator's Compliance Code.
- 1.3 In certain instances the service may conclude that a provision in the Code is either not relevant or is outweighed by another provision. It will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.
- 1.4 The service pursues a positive and proactive approach towards ensuring compliance by:
- Supporting the better regulation agenda;
  - Helping make prosperity and protection a reality for the City's community;
  - Helping and encouraging regulated entities to understand and meet regulatory requirements more easily;
  - Responding proportionately to regulatory breaches; and
  - Protecting and improving public health and the environment.



1.5 This policy is based on the seven 'Hampton Principles' of:

- **Economic Progress:** Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection;
- **Risk Assessment:** Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources in the areas that need them most;
- **Advice and Guidance:** Regulators should provide authoritative, accessible advice easily and cheaply;
- **Inspections and other visits:** No inspection should take place without a reason;
- **Information requirements:** Businesses should not have to give unnecessary information or give the same information twice;
- **Compliance and enforcement actions:** The few businesses that persistently break regulations should be identified quickly and face proportionate and meaningful sanctions; and
- **Accountability:** Regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take.

1.6 The rights and freedoms given to an individual under the Human Rights Act, particularly Article 6 and 8, will be observed, as will the provisions of the Regulation of Investigatory Powers Act.

## **2.0 SCOPE OF THE POLICY**

2.1 This policy supports and supplements specific guidance on enforcement action contained in the Statutory Code of Practice for Regulators, Brighton & Hove City Council's Corporate Enforcement Policy, Statutory Codes of Practice and relevant guidance documents and guidelines issued by Government Departments and co-ordinating bodies.

2.2 This policy relates to actions taken to educate and enforce legislation where non-compliances have been identified or have a realistic potential to occur.

2.3 The policy is limited to those enforcement activities lead by the Head of Environmental Health & Licensing.

### **3.0 TRAINING**

3.1 Officers undertaking enforcement duties will be suitably trained and qualified so as to ensure they are fully competent to undertake their enforcement activities.

### **4.0 MANAGEMENT SYSTEMS**

4.1 The service will maintain management systems to monitor the quality and nature of enforcement activities undertaken, so as to ensure, so far as is reasonably practicable, uniformity and consistency.

### **5.0 ENFORCEMENT OPTIONS**

5.1 The service recognises the importance of achieving and maintaining consistency in its approach to enforcement. Statutory Codes of Practice and guidance issued by Government Departments, other relevant enforcement agencies or professional bodies will therefore be considered and followed where appropriate.

5.2 Sanctions and penalties will be consistent, balanced, fairly implemented and relate to common standards that ensure individual's, public safety or the environment is adequately protected. The aim of sanctions and penalties are to:

- Change the behaviour of the offender;
- 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;
- Proportionate to the nature of the offence and the harm caused; and
- Aim to deter future non-compliance.

5.3 Criteria to be taken into account when considering the most appropriate enforcement option include:

- the potential of the offence to cause harm;
- confidence in the offender;

- consequences of non compliance;
- likely effectiveness of the various enforcement options.

5.4 Having considered all the relevant options the choices for action are:

- **Informal Warning:** All advice issued will be given in writing and specify the nature of the breach or offence, and the actions required to remedy the issue. An informal warning may be included with the advice, and may accompany higher-level actions, such as Enforcement Notices or Voluntary Surrender.
- **Licence review:** Licence review power will be used where an application for review relates to one or more of the licensing objectives.
- **Taxi licence:** Taxi licence suspension or revocation will be used to protect public safety. Other sanctions such as DSA testing will be used to protect public safety and in accordance with the taxi licensing policy (Blue book).
- **Simple Caution:** The issue of a Simple Caution by an authorised officer may be undertaken as an alternative to prosecution where it is considered unnecessary to involve the courts, and the offender's response to the problem makes repeat offending unlikely, or the offender's age or health make it appropriate. Cautions may only be issued where the offender makes a clear and reliable admission of guilt and understands the significance of acceptance.
- **Prosecution:** A prosecution is appropriate where there is a breach of a legal requirement, such that public safety, health, economic or physical well-being or the environment or environmental amenity is adversely affected.

The Crown Prosecutor's Code of Evidential and Public Interests tests must be met in all cases. However, certain circumstances will normally justify prosecution to prevent the undermining of the service's enforcement responsibilities.

- Failure to comply with an Enforcement Notice
- Declining a Simple Caution
- Continued, reckless, negligent or pre-meditated non-compliance.
- Failure to pay a fixed penalty.

- Non-cooperation, acts of obstruction or threats of physical harm or abuse.
- **Injunctions:** Injunctive action as a means of preventing an activity or course of action likely to result in significant risk to public or community safety or economic wellbeing of consumers and businesses.

5.5 If the Department is considering taking enforcement action which it believes may be inconsistent with that adopted by other authorities, the matter will be referred to the appropriate local co-ordinating body.

## 6.0 INFORMAL WARNING

6.1 Informal action may be taken when:-

- the act or omission is not serious enough to warrant formal action or
- from the individual's/enterprise's past history it can be reasonably expected that informal action will achieve compliance or
- confidence in the individual/enterprise's management or ability to resolve the matter is high or
- the consequences of non-compliance will not pose a significant risk to public health, public safety, animal welfare or the environment.

6.2 When an informal approach is used to secure compliance with regulations, written documentation issued will:-

- contain all the information necessary to understand what is required and why;
- indicate the regulations contravened, measures which will enable compliance with legal requirements and that other means of achieving the same effect may be chosen;
- clearly differentiate between legal requirements and recommendations of good practice. Such a differentiation will also be made when verbal advice is given.

## **7.0 SIMPLE CAUTIONS**

7.1 A Simple Caution may be issued as an alternative to a prosecution. Cautions may be issued to:-

- deal quickly and simply with less serious offences;
- divert less serious offences away from the courts;
- reduce the chances of repeat offences.

7.2 The following factors will be considered when deciding whether a Caution is appropriate:-

- evidence of the suspect's guilt
- has a clear and reliable admission of the offence been made either verbally or in writing
- is it in the public interest to use a Caution as the appropriate means of disposal when taking into account the public interest principles set out in the Code for Crown Prosecutors.
- the suspected offender must understand the significance of a formal caution and give an informed consent to being cautioned.

7.3 No pressure will be applied to a person to accept a Simple Caution.

7.4 The 'cautioning officer' will be the most appropriate officer from Service Director, Service Assistant Director, Head of Service Environmental Health Manager or Licensing Manager. The Cautioning Officer must not have taken an active part in investigating the case.

7.5 Should a person decline the offer of a formal caution a prosecution will be recommended.

## **8.0 PROSECUTION**

8.1 The Department recognises that the decision to prosecute is significant and could have far reaching consequences on the offender.

8.2 The decision to undertake a prosecution will be taken after proper consultation in accordance with the Scheme of Delegation for the Council's functions. The decision to proceed with a prosecution will normally be taken following legal advice. The matters to be taken into account when deciding if the issue of proceedings is proportionate include:-

- the seriousness and nature of the alleged offence;
- the role of the suspect in the commission of the offence;
- any explanation by the suspect or any agent or third party acting on their behalf;
- was the suspect in a position of trust, responsibility or authority in relation to the commission of the offence;
- is there evidence of premeditation or disregard of a legal requirement for financial reward;
- risk of harm to the public, an individual or the environment;
- relevant previous history of compliance;
- reliability of evidence and witnesses
- any mitigating or aggravating circumstances or the likelihood that the suspect will be able to establish a defence;
- suspect's willingness to prevent a recurrence of the offence;
- the need to influence future behaviour of the suspect;
- the likely penalty to be imposed; and
- a prosecution is in the public interest, there is realistic prospect of conviction and sufficient evidence to support proceedings.

8.3 All relevant evidence and information will be considered before deciding whether to instigate proceedings in order to enable a consistent, fair and objective decision to be made.

8.4 Where an act or omission is capable of constituting both a summary and either way offence, when deciding which offence to charge the following will be considered:-

- the gravity of the offence;
- the adequacy or otherwise of the powers of the summary court to punish the offence;
- the record of the suspect;
- the suspect's previous response to advice or other enforcement action;
- the magnitude of the hazard;
- any circumstances causing particularly great public alarm;
- comments from the Council's Solicitor's Office.

8.5 As a general rule an individual or business will be given a reasonable opportunity to comply with the law although in some circumstances prosecution may be undertaken without giving prior warning e.g.

- the contravention is a particularly serious one;

- the integrity of the licensing framework is threatened.

## **9.0 APPEALS**

- 9.1 If any person is unhappy with the action taken, or information or advice given they will be given the opportunity of discussing the matter with the relevant team manager, Head of Service or Assistant Director.
- 9.2 Any such appeal does not preclude any aggrieved person from making a formal complaint about the service or any officers. Any such complaint will be dealt with in accordance with Corporate procedures and guidance.
- 9.3 Complaints that are not dealt with by the council's complaints procedure are listed in corporate policy and include:
- Complaints where the complainant or another person has commenced or intends to commence legal proceedings against the council, in which case advice should be sought from Legal Services.
  - Complaints where the council has commenced or intends to commence legal proceedings against the complainant or another person relating to the matter of complaint.

