

Environmental Health Partnership – Dartford & Sevenoaks
Enforcement Policy

1.0 Introduction

In October 2011, Dartford Borough Council and Sevenoaks District Council both agreed to a Shared Service Business Case for their individual Environmental Health Teams. It was agreed that the two services would work as one, based at a central office (Dartford), whilst utilising a satellite office in Sevenoaks. The Service has become known as the “Environmental Health Partnership – Dartford and Sevenoaks working together.”

This Enforcement Policy will be applied by the Environmental Health Partnership in relation to the services it provides on behalf of these Authorities and it has been adopted by each of them. It is distinct from any general Enforcement Policy of the individual Local Authority, which applies to any other service provided by them. In the event of conflict this policy will take precedence.

The primary aim of the Environmental Health Partnership is to ensure compliance with the legislative framework within which the Environmental Health functions operate so that, consumers, businesses, employees, individuals and the environment are protected. Fair, proportionate, targeted and effective enforcement is essential to protecting the health, safety and economic interests of all concerned, and there is a range of tools available to the Partnership to achieve this.

Generally we will provide advice and support those seeking to comply and, at the same time, deal with those who choose not to comply, using proportionate action. The detail on how and when action may be taken is outlined in the body of this policy.

The Partnership must also have regard to the various general duties imposed on the partner authorities e.g. section 17 of the Crime and Disorder Act 1998. We are obliged to comply with the Human Rights Act 1998, so we will take its provisions into account when taking decisions relating to enforcement action.

This enforcement policy is a statement of how the Partnership will carry out its enforcement duties and what business and citizens in Dartford and Sevenoaks can expect from our enforcement staff. Enforcement staff shall have regard to this policy and demonstrate how they have complied with it. This policy will be reviewed annually.

2.0 Policy Scope

The relevant legislation must always be adhered to by an officer whilst carrying out all Environmental Health related enforcement and investigation work, such as:

- Human Rights Act 1998
- Regulatory Enforcement and Sanctions Act 2008

- Legislative and Regulatory Reform Act 2006
- Police and Criminal Evidence Act 1984
- Regulation of Investigatory Powers Act 2000
- Criminal Justice Act 2003
- Criminal Procedure and Investigation Act 1996
- Criminal Justice and Police Act 2001
- Equalities Act 2010
- Data Protection Act 1998

We are committed to providing an effective service with officers carrying out their duties in an equitable, proportional, practical and consistent manner. To achieve this we have adopted the principles of the following:

- The Department for Business, Innovation and Skills' (BIS's) Regulators Compliance Code.
- The Enforcement Concordat.
- Local Better Regulation's Priority Regulatory Outcomes.
- BIS's Code of Practice on Guidance on Regulation.
- Health and Safety Executive/Local Authorities Enforcement Liaison Committee's (HELA's) Guidance to Local Authorities on Priority Planning.
- HELA's Incident Selection Criteria Guidance.
- Local Government Regulation's Home Authority Principle.
- Local Better Regulation Office's Primary Authority Principle and Guidance.
- The Crown Prosecution Service Code for Crown Prosecutors (as amended.)
- The Food Law Code of Practice.
- Health and Safety Executive Enforcement Management Model (EMM).
- The Health and Safety Commission's Enforcement Policy Statement
- European Convention on Human Rights.

We will also comply with any statutory requirement placed upon us and seek to align our procedures with best practice, including any codes introduced subsequent to the adoption of this Policy.

The Policy applies to actions in relation to all of the legislation enforced by the Partnership. Enforcement action includes any action taken by officers aimed at ensuring that individuals or businesses comply with the law and goes beyond formal enforcement action such as prosecution.

3.0 General Principles

Prevention is better than cure. Therefore, our role involves actively working with businesses and the public to advise on and assist with compliance. Where we consider that formal action is necessary, each case will be considered on its own merits. However, there are general principles that apply to the way each case must be approached. These are set out in this Policy.

The majority of cases involving regulatory matters will relate to businesses, however, there will be some cases put before the Courts that relate to individuals, particularly those involving statutory nuisance. These cases will be treated in the same way as those involving businesses and the general principles outlined around proportionality of action, for example where appropriate trying informal approaches, before resorting to formal action and the Courts, will be followed.

Enforcement decisions will be fair, independent and objective and will not be influenced by issues such as ethnicity or national origin, gender or gender identity, religion or belief, political views, disability, age or the sexual orientation of the suspect, victim, witness or offender. Such decisions will not be affected by improper or undue pressure from any source. Where applicable, we will take into account the views of any victim, injured party or relevant person to establish the nature and extent of any harm or loss, and its significance, in making the decision whether to take formal action.

This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. We recognise the positive impact that the Partnership can have on economic progress and growth in the local economy and see it as part of our role to encourage and support the growth of legitimate business activity within the legal framework provided by central government.

4.0 Risk Based Enforcement for Businesses

We will ensure that our resources are targeted where they will be most effective. We will ensure that intelligence and risk assessment inform all aspects of our approach to business regulatory activity, including:

- Data collection and other information requirements;
- Inspection programmes;
- Advice and support programmes;
- Enforcement activity and sanctions.

We will normally use the appropriate Government risk assessment scheme to inform any inspection programme, but, where these do not exist, we will consult and involve businesses and other interested parties in developing risk methodologies, and will publish the details on both Council websites. In the absence of other factors, when determining risk, we will consider:

- Compliance history and potential future risks.
- The existence of effective management systems.
- Evidence of recognised external accreditation.
- Management competence and willingness to comply.

We will also use intelligence to direct inspection based projects or business where there are known issues. Obviously, a complaint may also trigger a visit or inspection, if that is the most appropriate response. We will review our approach to regulatory

activities from time to time, in order to remove any unnecessary burdens from businesses.

Currently neither local authority operates any food businesses in their district. In the event that either authority does begin to operate a food business then the policy shall be reviewed to take account of this.

4.1 Advice and Guidance for Businesses

We will provide general information, advice and guidance to make it easier for businesses to understand and meet their obligations. This will be provided promptly, in clear, concise and accessible language, using a range of appropriate formats and media. Information will cover all legal requirements relating to our regulatory activities, as well as changes to legal requirements. Where changes are of great significance, we will look at the best ways of informing businesses of the changes e.g. through newsletters, mail-shots or seminars.

We will provide targeted and practical advice through personal visits, telephone and promote self service via our website. We will try to maximise the accessibility and effectiveness of advice to ensure efficient use of resources and we will involve businesses in developing both the content and style of regulatory guidance to help ensure that it meets their needs.

When offering advice, we will clearly distinguish between statutory requirements and advice or guidance aimed at improvements above minimum legal standards. We seek to provide proportionate advice, the content of which will help achieve compliance but impose the minimum burden required on the business concerned. Advice will be confirmed in writing, a full typed report can be provided if requested.

Where a business identifies a problem and seeks advice to remedy the situation, it will not normally trigger enforcement action. Where appropriate we will seek to support the remedial action to prevent future problems, however, we reserve the right to take enforcement action where applicable.

Generally, we will provide our advisory services free of charge however we reserve the right to charge a reasonable fee for services beyond the basic advice and guidance necessary to help ensure compliance. We would take account of the needs and circumstances of smaller businesses and others in need of help and support in deciding whether or not to charge. Charging will be in line with any guidance issued by the Local Better Regulation Office in relation to the Primary Authority principle and will be set out in the Fees and Charges schedule published annually by each Council on their website.

4.2 Inspection of Businesses

We will ensure inspections and other visits to businesses only occur in accordance with a risk assessment methodology, except where visits are requested by businesses, following receipt of complaints, or where we act on relevant intelligence. We will focus our efforts on businesses where intelligence and risk assessment

shows there is a higher likelihood of non-compliance or which pose a more serious risk to regulatory outcomes. Some processes by their nature present a greater risk to health or the environment, or due to their complexity, may make it more difficult to ensure compliance. These are the areas where we will focus our inspection resources.

When we visit or carry out inspections, we will give feedback to businesses to encourage and reinforce good practice. We will also share information about good practice amongst businesses, and with other regulators.

Where we and another regulator have a shared interest in a business we will work together to rationalise our activities to minimise the burden on the business, providing this is of benefit to the business and does not harm the standard of enforcement for either regulator.

We will also take account of the circumstances of small businesses, including any difficulties they may have in achieving compliance.

4.3 Information Requirements

The Environmental Health Partnership does not routinely require large quantities of information from businesses. When determining what data we may require, we will consider the costs and benefits of data requests to businesses and:

- Limit the data that we request to that which is either appropriate, or required by statute e.g. food registration, licensing applications, etc.
- Minimise the frequency of collection and seek the information from other sources where relevant and possible.

We will work with our fellow local regulators to minimise the information we request from businesses, and we will seek to maximise our data sharing within the provisions of the Data Protection Act. We will seek to use compatible collection methods to give consistency.

We will involve businesses in vetting data requirements and form design for clarity and simplification. We will also ensure that, where possible, data can be returned electronically.

5.0 Enforcement Action

In accordance with good practice, we will:

- Publish our Enforcement Policy;
- Report on our enforcement activities year on year to interested parties through an Annual Report;
- Follow-up enforcement actions where appropriate;
- Be transparent in the way in which we enforce requirements and, apply and determine penalties (when such powers are made available.)

When considering what action should be taken, we will look to:

- Be proportionate to the nature of the offence and the harm caused,
- Change the behaviour of the offender;
- Eliminate any financial gain or benefit from non-compliance;
- Address the harm caused by regulatory non-compliance, where appropriate;
- Deter future non-compliance,
- Be responsive and consider what is appropriate for the particular offender and regulatory issue, and
- Avoid perverse incentives that might influence the choice of sanctioning response.

When considering formal enforcement action, we will, when appropriate, discuss the circumstances with those suspected of a breach. We will take any comments made into account when deciding on the best approach, (unless immediate action is required to prevent or respond to a serious breach or where to do so would be likely to defeat the purpose of the proposed enforcement action).

We will ensure that clear reasons for any formal enforcement action are given to the person or entity at the time the action is taken. These reasons will be confirmed in writing at the earliest opportunity. Complaints and relevant appeals procedures for redress will also be explained at the same time.

5.1 Deciding what enforcement action is appropriate.

In assessing what enforcement action is necessary and proportionate, consideration will be given to:

- The seriousness of compliance failure;
- The business's past performance and its current practice;
- In the case of new businesses, an assessment of the operator's willingness to undertake the work identified by the Officer;
- The risks being controlled;
- Legal, official or professional guidance;
- Act in the interest of Public Health.

The Partnership recognises that where a business has entered into a Primary Authority Partnership, the primary authority may provide compliance advice and support and the Partnership will take such advice into account when considering the most appropriate enforcement action for it to take. It may discuss any need for compliance advice and support with the primary authority.

There are a large number of potential enforcement options. The level of the action taken varies from no action through to proceedings in Court. Examples of the main types of action that can be considered, if specifically permitted by legislation, are shown below:

- No action;

- Informal Action and Advice;
- Fixed penalty Notices;
- Statutory Notice;
- Formal closure
- Seizure of goods/equipment;
- Injunctive Actions;
- Refusal/revocation of a licence;
- Simple Caution;
- Prosecution.

5.2 No Action

There will be circumstances where a contravention may not warrant action, or it may be inappropriate. Many minor contraventions can be dealt with via advice and/ or assistance.

5.3 Informal Action and Advice

For certain minor breaches of the law we will give advice on how to put them right, including a deadline by which this must be done. The time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of the non-compliance. Where the advice required is detailed, or there are potentially serious implications from the failure, the advice will be provided in writing. Failure to comply could result in an escalation of enforcement action.

Wherever possible we will advise offenders about 'good practice', but we will clearly distinguish between what they *must do* to comply with the law and what is recommended best practice.

5.4 Fixed Penalty Notices

Certain offences are subject to fixed penalty notices where prescribed by legislation. These notices are recognised as a low-level enforcement tool and avoid the defendant obtaining a criminal record. Where legislation permits an offence to be dealt with by way of a Fixed Penalty Notice (FPN), we may choose to administer a FPN on a first occasion, without issuing a warning. They will be used in appropriate circumstances to give a fast and measured response to the situation.

If a fixed penalty is paid in respect of a breach, the Partnership will not take any further enforcement action in respect of that breach. Payment of a fixed penalty does not provide immunity from prosecution in respect of similar or recurrent breaches. If a fixed penalty is not paid the Partnership may commence criminal proceedings or take other enforcement action in respect of the breach.

5.5 Statutory Notices

Officers of the Environmental Health Partnership have the power under various pieces of legislation to issue notices that:

- Prohibit the sale or distribution of food where relevant provisions may have been breached,
- Require a business to take specific actions to remedy an identified problem,
- Require a business to desist from particular activities that may not comply with legal requirements.
- Require any person to take action to ameliorate or stop nuisances being caused by their actions.

Notices may require immediate action where, for example, there are risks to public health or safety, or an immediate risk of environmental damage or serious nuisance. In other circumstances, a reasonable amount of time will be given, depending on the circumstances, to rectify the problem.

Certain types of notice allow works to be carried out in default. This means that if a notice is not complied with (a breach of the notice) we may carry out any necessary works to satisfy the requirements of the notice ourselves. Where the law allows, we may then charge the person/business served with the notice for any cost we incur in carrying out the work.

In certain limited circumstances e.g. under the provisions of food safety legislation, where an authorised officer is satisfied that there is an imminent risk of injury to health from the condition of the premises, the officer may serve notice to close the premises. This would be immediately followed by an application to a Magistrates Court to confirm the closure.

Failure to comply with a statutory notice can be a criminal offence. Some notices issued in respect of premises may be affixed to the premises and/or registered as local land charges. All notices issued will contain details of any Appeals process that may be available to the recipient.

5.6 Seizure of Goods/Equipment

The right to privacy and respect for personal property are key principles of the Human Rights Act 1998. Powers of entry, search and seizure should be fully and clearly justified before use because they may significantly interfere with the occupier's privacy. Officers should consider if the necessary objectives can be met by less intrusive means.

In all cases authorised officers should:

- exercise their powers courteously and with respect for persons and property; and
- in circumstances where a warrant has been obtained and is appropriate, only use reasonable force when this is considered necessary and proportionate to the circumstances.

5.7 Injunctive Actions

In some circumstances the Partnership may seek a direction from the court (in the form of an order or an injunction) that a breach is rectified and/or prevented from recurring. The court may also direct that specified activities be suspended until the breach has been rectified and/or safeguards have been put in place to prevent future breaches.

Failure to comply with a court order constitutes contempt of court, a serious offence which may lead to imprisonment.

The Partnership is required to seek enforcement orders after issuing some enforcement notices, providing the court with an opportunity to confirm the restrictions imposed by the notice. Otherwise, the Partnership will usually only seek a court order if it has serious concerns about compliance with voluntary undertakings or a notice.

5.8 Refusal/Revocation of a Licence

The Partnership issues a number of licences and permits. The Partnership also has a role to play in ensuring that appropriate standards are met in relation to licences issued by other agencies. Most licences include conditions which require the licence holder to take steps to ensure that, for example, a business is properly run. Breach of these conditions may lead to a review of the licence which may result in its revocation or amendment.

When considering future licence applications, each Partner Authority may take previous breaches and enforcement action into account.

5.9 The Use of Simple Cautions

Where the public interest justifies it, we will consider offering a Formal (Simple) Caution (or Reprimand/ Final Written Warning if the offender is under 18.) In offering a Formal Caution, we will take account of the Home Office Guidelines in relation to the cautioning of offenders, and the Code for Crown Prosecutors. Where the offender is under 18 and a formal approach is being considered, appropriate bodies such as the Youth Offending Team will be consulted.

A Formal Caution requires an admission of guilt on behalf of the offender, however there is no sentence and there is no recorded conviction. A caution will remain on record for a period of 2 years and may be cited in Court should a further offence be committed and prosecuted during that time.

Where a simple caution is offered and declined the Partnership is likely to consider prosecution

6.0 Institution of Legal Proceedings

Once an officer has completed his/ her enquiries, they will submit a case report to an officer authorised to institute legal proceedings, independent of the investigation, who will decide, using the criteria below, the most appropriate course of action.

Where the law has been broken, there is a range of enforcement options available to seek compliance with the law. Under normal circumstances, a process of escalation will be used until either compliance is reached or there is no option other than to instigate proceedings. Exceptions would be where there is a serious risk to public safety or the environment, or the offences have been committed deliberately or negligently or involve deception. Each case is unique and will be considered on its own facts and merits.

The officer authorised to institute legal proceedings will take into consideration the requirements of the Code for Crown Prosecutors and other relevant codes before deciding whether or not to authorise the institution of legal proceedings.

Firstly this officer will have to be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each defendant on each charge (i.e. That a jury or bench of Magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged). To this end, the officer authorised to institute legal proceedings will look at all the available evidence, reliability of witnesses, supporting documentation and any other matters relating to the investigation. They must consider what the defence case may be and how it is likely to affect the prospects of conviction [Code for Crown Prosecutors]. Only when this evidential test has been satisfied will the public interest to proceed with the prosecution be considered.

In deciding whether a prosecution will serve the public interest, this officer will balance factors for and against the prosecution carefully, fairly and impartially. Some factors may increase the justification to prosecute whereas others may militate against. Below are some of the matters to be taken into consideration for and against criminal proceedings. This is not an exhaustive list and, as such, each case is considered strictly on its own individual merits:

Factors in favour of prosecution

- The offender was in a position of control within the business,
- The offender acted dishonestly, wilfully, premeditatedly or negligently.
- The product or service was aimed at a vulnerable group or person.
- The product or service has caused or had the potential to cause physical or mental injury or suffering, significant harm or loss.

- The offender has received advice or a warning concerning the circumstances of the offence or similar matters.
- The offender has failed to comply with the requirements of a formal notice.
- The offender has received previous formal warning or a caution from an enforcement officer.
- The offender has previous convictions that are relevant.
- The offence, though not serious in its self, is widespread in the area where it was committed.
- A conviction is likely to result in a significant sentence.
- There are grounds to believe that the offence is likely to be continued or repeated, for example by a history of recurring conduct.
- The outcome of a prosecution might serve an important, informative purpose or establish a legal precedent.

Factors which might mitigate against the need for a prosecution

- The offence was minor in nature and as a result of a genuine mistake or misunderstanding, which did not involve significant negligence.
- The offender is elderly, or was at the time of the offence suffering from significant mental or physical ill health, which contributed to the commission of the offence, and the offence was neither serious nor likely to be repeated.
- A prosecution is likely to have an adverse effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence and the views of the victim about the effect of a prosecution on his or her physical or mental health;
- The loss or harm could be described as minor and was as a result of a single incident, particularly if it was caused by a failure of judgment.
- The offender put right the loss or harm caused prior to the intervention of the Environmental Health Partnership.
- Prior to the Partnership's intervention, the offender had introduced adequate steps to prevent further similar offences.
- The defendant was a youth at the time of the offence.
- There has been a long delay between the offence and any potential court action, unless either:
 - The offence is serious,
 - The delay has been caused by the defendant or his/ her legal representatives,
 - The offence has only recently come to light, or
 - The complexity of the offence meant that there has been a long investigation.

7.0 Anti-Social Behaviour Orders and Criminal Anti-Social Behaviour Orders

This is a civil process. Where the non-compliance identified during an investigation amounts to antisocial behaviour such as persistent targeting of an individual or a group of individuals in a particular area then, following liaison with the relevant

partner Council's Anti-Social Behaviour team where appropriate, an ASBO or CRASBO will be sought to stop the activity.

8.0 Additional Information

The Senior Managers involved in making the more serious decisions will also have regard to legal advice from the relevant partner Head of Legal Services. Once the Environmental Health Partnership reaches a decision to prosecute, the relevant Partner Authority's Legal Services Department must authorise the action before implementation.

9.0 Standards and Accountability

We will, in consultation with businesses and other interested parties, set and publish on each Council's website clear standards and targets for our service and performance. These will include:

- Regulatory outcomes (e.g. proportions of businesses that comply);
- Performance standards for contact with residents, visitors and businesses;
- A commitment to ensuring costs to businesses of regulatory interventions are proportionate; and
- A commitment to dealing with any negative perceptions of businesses and other interested parties relating to these issues.

We will create effective consultation and feedback opportunities to ensure we have continuing cooperative relationships with businesses and other interested parties. We will ensure our officers provide courteous and efficient services to businesses. We will provide a courteous and efficient service and our staff will identify themselves by name. We will provide a contact point and telephone number for further dealings with us and we will encourage business to seek advice/information from us. We will enable our officers to interpret and apply relevant legal requirements and ensure that they enforce requirements fairly and consistently between like-businesses in similar situations. We will take account of comments from businesses and other interested parties regarding the behaviour and activity of our staff.

If you would like to make a complaint against an officer please follow the complaints procedure for the appropriate Council:

Dartford Borough Council

Details of the Council's Council's Corporate Complaints Procedure can be found either through the Council's website ([Dartford Borough Council – Our Formal Complaints Procedure](#)) or you may telephone our Customer Services on 01322 343434 and ask for a complaint form to be sent to you.

Sevenoaks District Council

You may either find more details through the Council's website ([Sevenoaks District Council – Making a Complaint](#)) or contact the Complaints Co-ordinator directly

Complaints Co-ordinator
Sevenoaks District Council
FREEPOST SEA 6448
Argyle Road
Sevenoaks
Kent
TN13 1BR
Tel: 01732 227000
E-mail: feedback@sevenoaks.gov.uk

10.0 Liaison with other regulatory bodies and enforcement agencies

Where appropriate, enforcement activities within the Environmental Health Partnership activities will be coordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement. The Partnership will respect advice that has been provided by other regulators and enforcement agencies.

Where an enforcement matter affects a wide geographical area beyond the Partnership's boundaries, or involves enforcement by one or more other local authorities or organisations; where appropriate all relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activity coordinated with them.

The Environmental Health Partnership will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies, and examples include:

- Government Agencies
- Police Forces
- Fire Authorities
- Other Statutory Bodies
- Local Authorities

11.0 Further Information

Anyone requiring further information on this policy should contact the Environmental Health Partnership – Dartford and Sevenoaks by writing to:

Environmental Health Partnership – Dartford and Sevenoaks
Civic Centre
Home Gardens
Dartford
DA1 1DRO by e-mail to:
Environmentalhealth@dartford.gov.uk