



Uttlesford District Council

Environmental Health Enforcement Policy

INTRODUCTION

Environmental Health provides a diverse range of services to a large customer base. Services that may involve the use of enforcement powers include:

- Food Safety
- Inspection of Imported Foods
- Health & Safety
- Infectious Disease Control
- Licensing
- Animal Welfare
- Pest Control
- Air Quality & Pollution
- Contaminated Land
- Drinking Water Quality
- Noise Control
- Private Sector Housing
- Other Housing Issues
- Public Health including Nuisance and Drainage

Aims and Principles

We aim to safeguard and improve the health, safety and environment of our community by delivering a wide range of enforcement services in a fair and consistent way.

We have adopted the Governments Department for Business, Enterprise and Regulatory Reform (BERR), Statutory Code of Practice for Regulators (Dec 2007) and supports the following statement:

This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulator's Compliance Code.

In certain instances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

In addition when undertaking enforcement action involving prosecution or simple cautions we will take account of the Crown Prosecution Service's Code for Crown Prosecutors 2004.

We will listen to the concerns, needs and views of consumers, business owners, employees and the public, and will endeavour to reflect their interests in the implementation of this enforcement policy. We will work closely with all business owners or others who may be subject to this enforcement policy, to help them to comply with the law.

We will, when necessary, take firm action against those who commit serious offences, or those who consistently breach the law.

We will uphold the human rights of all those we have dealings with.

Standards

We will set clear standards of service and performance so that everyone knows what to expect of us. Where necessary, we will consult with the public, businesses, contractors and all other interested parties. We will publish our standards and we will measure ourselves against those standards.

Openness

We will publish information and advice in plain English and we will ensure that all those who need it have access to it. Where available, we will provide relevant documents translated into languages other than English so that all sections of our community may have access to them.

We will be open about the way we do things, about the way we set our charges and about what we expect from the people we deal with. We shall make ourselves available to talk to those in need of advice, at all reasonable times.

Helpfulness

Our aim is to help people to comply with the law, rather than catch them out whilst breaking it. We will be courteous to our customers at all times. Our staff will identify themselves by name and all our customers will be given a contact number to use in any future dealings with the Service.

In all our dealings we will try to work as speedily as possible without reducing attention to detail or quality and in the most cost-effective way. All applications for approval of establishments, licences, registrations, service agreements etc., will be dealt with efficiently and promptly.

Complaints about our Service

We have provided a well publicised and effective compliments and complaints procedure, which is easily accessible to businesses, the public, employees and consumer groups. In those cases where agreement cannot be reached, any right of complaint or appeal will be explained with details of the process and the likely timescales involved.

Proportionality

We will always make sure that any action taken by our Service is proportional to the risk. As far as the law allows, we will take account of the circumstances of each case and the attitude of the offender when considering action. We will always endeavour to recover our expenses in relation to legal action from the offender.

Consistency

We will carry out our enforcement duties in a fair, even and consistent manner while exercising discretion in individual cases. We will adopt arrangements to promote consistency, including liaison with other enforcement authorities and agencies. We will ensure consistency among our officers through the use of effective management, training and development.

Procedures

We will provide clear simple advice concerning the difference between legal requirements and best practice. Before formal enforcement action is taken, our officers will fully discuss alternative courses of action in order that points of difference may be resolved.

Where our officers consider that immediate action is necessary, they will give an explanation of why such action is required at the time and this will be confirmed in writing within 10 working days unless a shorter period is specified within the relevant legislation.

Where people have a right of appeal against action taken by this Service, we will ensure that they get advice on the appeal mechanism and this will be clearly set out in writing at the time the action is taken.

Decision Making

Prosecutions shall only be authorised by the Head of Environmental Health or the Director of Operations.

As part of the decision making process others may be consulted. These may include scientific, regulatory and legal advisors and other regulatory services including Building Control, Planning, Trading Standards, HSE, Police, and Fire Services. Where there is a shared enforcement role we will work in close co-operation with any partner organisations.

We recognise the importance of achieving and maintaining consistency when making decisions which concern enforcement action including prosecution.

In coming to any decision we will consider many criteria including the seriousness of the offence, the past history, the officer's confidence that remedial action will be taken, the consequences of non-compliance and the likely effectiveness of the various enforcement options.

No decision on prosecution shall be taken without making reference to the "Code for Crown Prosecutors".

Enforcement Options

Environmental Health staff who are properly authorised can enter and inspect premises, procure samples, examine records and processes, and issue formal notices and orders.

The enforcement options open to us are:

- To take no action;
- To take informal action including the issuing of appropriate advice;
- To issue statutory notices or orders;
- To revoke, suspend or change licences, licence conditions, registrations, authorisations, formal agreements, contracts and prior approvals
- To use simple cautions;
- To prosecute;
- To undertake works in default and recover the costs;

Informal Action

Informal action to secure compliance with legislation includes offering advice, verbal warnings, the use of letters and the issue of inspection reports. We will use informal action when:

- the situation is not serious enough to warrant formal action;
- from past experience we think that informal action will achieve compliance with the law;
- confidence in a business's management is high;
- the consequences of not doing what we ask will not pose a significant risk to public health or the environment.

We will issue an inspection report to all businesses following a programmed food safety inspection. If we think that a follow up letter is appropriate we will ensure that it contains all the information necessary to understand what work is required and why it is necessary. In addition it will indicate the regulations contravened and the measures which will enable compliance with the legal requirements and that other means of achieving the same effect may be chosen. Furthermore, we shall ensure that a clear distinction is made between a legal requirement and a recommendation.

Issuing Formal Notices or Orders

Improvement Type Notices

This Authority will only consider the issue of improvement notices in one or more of the following circumstances, where:

- there are significant contraventions of the legislation;
- we think that there will not be a response to an informal approach;
- there is a history of non-compliance with informal action;
- standards are generally poor with little awareness of statutory requirements;
- the consequences of non-compliance could be potentially serious to public health or the environment;
- although it is intended to prosecute action also needs to be taken as quickly as possible;
- conditions that are serious or deteriorating need to be remedied quickly.

We will follow all relevant guidance in statutory codes of practice and other guidance notes. Our officers will always place realistic time limits on notices (usually agreed with the person on whom the notices is to served as attainable and appropriate), discuss the works that will be specified and fully consider the availability of other solutions. In general we will take action in court if statutory notices are not complied with.

Prohibition Type Notices

We will serve a prohibition notice in one or more of the following circumstances, where:

- an imminent risk of injury to health or a risk of serious pollution of the environment can be demonstrated. This might include evidence from relevant experts;
- there is no confidence in the integrity of an unprompted offer made by a person to voluntarily close premises or cease the use of any equipment, process or treatment associated with the imminent risk;
- a person is unwilling to confirm in writing his/her unprompted offer of a voluntary prohibition.

We will only authorise officers to serve emergency prohibition notices if they are competent, fulfil the qualification requirement referred to in the relevant statutory code of practice and also have considerable experience in enforcement situations.

Where emergency prohibition action involving contamination is being considered this Authority shall seek medical or other expert advice before a final enforcement decision is taken. Where an emergency prohibition notice has been issued this Authority may advise other authorities or bodies of any such action.

Abatement Type Notices

Where there is a serious risk of nuisance, pollution or imminent risk to public health an abatement type notice may be served to stop the activity or to prevent a recurrence.

Direction Orders

Where a house in multiple occupation is overcrowded we may serve a direction order to reduce the occupancy.

To revoke, suspend or change licences, licence conditions, registrations, authorisations and prior approvals.

Authorised officers have the power to revoke, suspend or change licences, licence conditions, registrations, authorisations and prior approvals, however, there is a right of appeal against those decisions. In some instances the appeal is to the Council's Licensing Panel and/or to the Magistrates Court.

Simple Cautions

Under some circumstances we may consider issuing a simple caution as an alternative to prosecution as outlined by Home Office Circular 59/1990.

The purpose of the simple caution is:

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

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

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

In this Authority the Head of Environmental Health and the Director of Operations are authorised to issue simple cautions.

We consider the issue of a simple caution an alternative to prosecution, therefore should a simple caution be declined we will prosecute.

Should a simple caution be issued by us other bodies may be informed of the matter. If, following the administration of a simple caution, a subsequent successful prosecution of the same offender occurs, a simple caution may be referred to in court and taken into account by the court in assessing the sentence.

Simple cautions may be notified to LACORS, the FSA or other bodies as deemed appropriate.

Works in default and cost recovery

Where works required by a formal notice have not been carried out or are not likely to be carried out or where immediate works are necessary, the Council may carry out the work on behalf of the person whose duty it is to carry out the work and recover the cost of the works at a later date. Rights of appeal under the relevant legislation are unaffected by this approach.

Prosecution

We regard prosecution as a very significant step and will in general be restricted to those persons who blatantly disregard the law, refuse to achieve even the basic minimum legal requirement, often following previous contact with the Authority or who put themselves, others or the environment at serious risk.

This Authority will consider prosecution when one or more of the following criteria exist:

- where the alleged offence involves a flagrant breach of the law such that public health or the environment is or has been put at risk;
- where 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;
- where the offence involves a failure to comply in full or in part with the requirements of a statutory notice;
- where there is a history of similar offences related to risk to public health or the environment.

Before proceeding with a prosecution we will be satisfied that an offence has been committed by an identifiable person or company, that there is relevant admissible and reliable evidence and that there will be a realistic prospect of conviction.

When a decision is being taken on whether to prosecute, the guidance contained in the relevant code of practice and the Code for Crown Prosecutors will be followed and factors which may be taken into consideration may include:

- the seriousness of the alleged offence;
- the previous history of the party concerned;
- the likelihood of the defendant being able to establish a statutory defence;
- the willingness of the party to prevent a recurrence of the problem;
- the probable public benefit of a prosecution and the importance of the case;
- whether other action such as issuing a simple caution in accordance with Home Office circular 59/1990 or an improvement notice or imposing a prohibition would be more appropriate or effective;
- any explanation offered by the company or the suspected offender.

We will endeavour to recover all the costs associated with a prosecution from the offender.

Successful prosecutions may be notified to LACORS, the FSA or other bodies as deemed appropriate.

Who will carry out inspections

Duly authorised Environmental Health Officers and Technical Officers have the right to enter and inspect premises at all reasonable times if they consider breaches of the law are taking place. We do not have to make an appointment and we will usually come without advance notice. This will enable us to make a reasonable assessment of the problem.

We may take samples and photographs and may also inspect your records. It is a serious offence to obstruct an officer in the course of his or her duty.

Officers can always be expected to be courteous and to show their identification.

Environmental Health Officers and Technical Officers are likely to be met in the following ways:

- during an inspection of premises;
- when investigating a complaint;
- when seeking a licence or authorisation from us;
- when seeking our advice;

Inspections

From time to time we will need to carry out inspections of premises.

Examples of the types of inspections we carry out include:

food hygiene, health and safety, environmental protection act authorised processes, animal welfare, licensing, drainage, housing standards, infectious disease, nuisance, drinking water quality, taxi vehicles, trade waste compliance etc.

The time taken for an inspection will vary depending on the size, nature and extent of your premises. At the end of the inspection the officer's findings will be discussed with you and you will receive a report form or a letter shortly afterwards.

Investigations of Complaints

From time to time we may visit to investigate complaints that we have received. On these occasions we may not carry out a full inspection but concentrate on the particular area of concern.

Licensing

When you contact us seeking a licence, an inspection may take place in order to establish the suitability of the premises and/or applicants and to determine if any works are necessary to bring the premises up to standard.

Seeking Our Advice

We recommend that if you do not understand anything that we send to you after an inspection, or if you need advice on any environmental health matter to please contact us. Although we are here to enforce the law we are also available to help you.

Food Hazard Warnings

Occasionally we will contact food businesses regarding a food hazard warning which has been issued nationally. This will usually be by telephone and may sometimes be by letter. In these instances we are seeking your urgent co-operation in removing a product from sale. However, should you refuse we may have no alternative but to take formal action and seize the offending material.

In General

All information gained by Officers during their inspections and conversations with you are treated confidentially. However we cannot control information available in the public forum such as the Magistrates' Court.

We will seek to prevent breaches of the law by the application of this policy and we will carry out all legal action in accordance with current statutes, codes of practice and other recommendations and guidelines of interested bodies.

Following a food safety inspection a customer care survey questionnaire will be left at the premises to provide an opportunity for the proprietor or relevant staff member to tell us how they felt about the inspection. This may be returned to the Head of Environmental Health, postage pre-paid (we treat all replies confidentially).

We will always endeavour to treat every case equally and fairly, however if you feel that we have failed, you are at liberty to complain using the Council's complaints procedure, a copy of which is available on request and on the councils website.

If you have any complaint or comment, favourable or not concerning our service or wish to make any comments concerning this policy, please contact the Head of Environmental Health.

You may discuss this or any other document which the Council publishes by writing to us at: Uttlesford DC, Council Offices, London Road, Saffron Walden, Essex, CB11 4ER, or by telephoning 01799 510510 or by email to environmental@uttlesford.gov.uk

Please visit our web site at www.uttlesford.gov.uk