

Central Bedfordshire

Title: Enforcement Policy - March 2014

Date prepared: December 2008

By Susan Childerhouse

Date of Last Review: 2014

Date of Next Review: 2015

Table of Contents

Page

1. Introduction
2. Principles of Good Regulation
3. Shared Enforcement
4. Provisions of Particular Interest
5. Levels of Enforcement Action
6. Guidance for Enforcement
7. Fixed Penalty Notices
8. Statutory (legal) Notices
9. Simple Cautions
10. Injunctive Actions
11. Prosecutions
12. Other Sanctions
13. Publicity
14. General
15. Complaints

1. Introduction

- 1.1 The purpose of this policy is to enable both businesses and members of the public to know what to expect when dealing with the Council in matters for which the Council exercises an enforcement function.
- 1.2 We seek to secure compliance with the law while minimising the burden upon individuals and businesses. We will provide information, advice and guidance to those we regulate to ensure that they are fully aware of how they can achieve compliance.
- 1.3 Regulatory action will be intelligence-led with resources directed at those persons, businesses or organisations who either deliberately flout or have a reckless disregard for their legal obligations or whose actions have impacted upon the safety or economic well-being of consumers, businesses, the environment or the welfare of animals or are anti-social in nature.

The Council's vision is to keep Central Bedfordshire as a great place to live and work. This enforcement policy recognises the impact that the authority as a regulatory body can have on this vision; and the six priorities of the Council for 2012 – 2016:

- Enhancing your local community
- Improved Educational Attainment
- Promote health and well-being and protect the vulnerable
- Better infrastructure
- Great Universal Services
- Value for Money

Set out below are examples of some of the ways in which intelligence-led enforcement activities, can contribute to these priorities.

- 1.4 Enhancing Central Bedfordshire – creating jobs, managing growth, protecting our countryside and enabling businesses to grow: We will provide appropriate information, advice and guidance to both businesses and individuals on how to comply with regulatory requirements. We will ensure that developments are undertaken in accordance with the approval given, including the remediation of land for development and will use advice, loans or enforcement to bring empty properties back into use. We will work with businesses and individuals to educate them about the need for recycling and the proper disposal of waste products and, where appropriate, take enforcement action against those found to be illegally disposing of waste.
- 1.5 Protecting the Vulnerable: The vulnerable members of our population, particularly the elderly, are often targeted by unscrupulous traders . By raising awareness of our regulatory services amongst this vulnerable group and targeting those traders who prey on them we will be able to provide a supportive service to both consumers and those traders who are working within the law, but can be tarnished by the reputation of others. For example no cold calling areas and the considerate contractors schemes, already operate within the area of Central Bedfordshire. We will continue to work with consumers and traders to expand these and other schemes. Poor quality housing can have a significant effect on the health and well-being of residents and it is often the most vulnerable who find themselves living in substandard conditions. We will work with our colleagues and partners to identify housing that does not meet the required legal standards and use advice and if necessary, enforcement to remedy this.
- 1.6 Promoting health and well-being: Through intelligence-led inspection regimes we will ensure that food being offered for sale is safe and of the quality being advertised. We will work with young people to ensure that they achieve a healthier lifestyle by making them aware of health and other issues raised by the use of alcohol, tobacco-related products and nutritionally deficient foods. We will provide interventions as required in relation to the underage sale of alcohol and tobacco products and other

age-restricted products. In addition we will ensure that those businesses, for which we are the enforcing authority for health and safety, provide a safe environment for those who visit or work in them.

1.7 Value for money: Through working with partner organisations and utilising intelligence-led interventions, we will ensure that resources are used in the most appropriate and cost-effective manner by targeting those individuals or businesses who do not comply with their relevant statutory / regulatory responsibilities or whose actions impact upon either the safety or economic well-being of others.

1.8 Central Bedfordshire Council is committed to the principles of the Better Regulation Delivery Office “Regulators’ Code”. Accordingly the Council will seek to carry out its duties as a regulator in a way that supports those we regulate to achieve compliance and allows them to grow.

2. The Principles of Good Regulation

2.1 This policy is based on the 5 guiding principles of good regulation, namely:

- Transparency
- Accountability
- Proportionality
- Consistency
- Targeted

2.2 In addition to these five principles we will also ensure that decisions regarding enforcement action are not influenced by the colour, race, nationality, ethnic or national origin, sex, religion, marital status, age, sexual orientation, disability or political views of the offender, complainant or witness.

3. Shared Enforcement

3.1 The range of enforcement matters dealt with is such that there may be occasions when there is a need to work with other agencies.

3.2 In determining the most appropriate form of intervention(s), officers will have regard, wherever possible, to any potential or existing action by any other Council service or external agency.

3.3 Where enforcement action is being taken by another Council service or external agency, officers will provide all reasonable assistance including the production of witness statements and the collection and sharing of evidence etc. subject to legal constraints.

3.4 We will exchange information with other Enforcement Agencies as part of our partnership work in reducing crime and disorder. Only by capturing a coherent and robust intelligence picture can effective strategies, tasking and co-ordination of enforcement activities be achieved.

4. Provision for Particular Interests

4.1 Except for documents that are legal in nature, consideration will be given to the provision of documents in relevant community languages, Braille, large type or on audiotape. Provision may also be made for the use of interpreters in appropriate cases.

5. Levels of Enforcement Action

5.1 Officers will seek compliance with legislation by one or more of the following:

5.2 Information, Advice and Guidance: To assist and guide individuals, existing and prospective businesses and other organizations to achieve compliance with their legal obligations.

5.3 Informal Warnings: These will be used to reinforce information, advice and guidance where minor breaches of the law may have been discovered but it was not thought appropriate to take formal action. These warnings can be oral or written.

5.4 Formal Enforcement: This includes the use of fixed penalty notices, statutory (legal) notices, simple cautions, injunctive proceedings and prosecutions. These will normally be taken when informal action has failed to achieve a satisfactory resolution. Where formal action is considered, where appropriate, regard will be had to the Code for Crown Prosecutors produced by the Crown Prosecution Service.

6. Guidance for Enforcement

6.1 Enforcement will progress from information, advice and guidance to formal enforcement, unless the circumstances warrant immediate formal action. For example where the matter involves a breach of the law that either puts at risk the environment, public health, the safety or well-being of individuals or animals or impacts upon the financial well-being of businesses or consumers or involves vulnerable members of the community.

6.2 The following guidance (from paragraphs 7 to 13) will normally be followed when formal enforcement options are being considered but there may be a departure where the appropriate circumstances require it.

- 6.3 Additionally the right is reserved to take enforcement action in some cases after compliance has been achieved if it is in the public interest to do so.
- 6.4 The views or opinions of victims or an injured party may be also be taken into account , if considered significant, when making a decision to take enforcement action

7. Fixed Penalty Notices

- 7.1 Fixed Penalty Notices are provided for in certain legislation where an act described has been committed.
- 7.2 Where an individual, organisation or business fails to pay the penalty set-out in the Fixed Penalty Notice, and where it is able to do so, the Council shall consider the matter for either prosecution action, or for the institution of civil recovery proceedings.
- 7.3 The Council will not reward officers on the basis of the number of notices issued.

8. Statutory (legal) Notices

- 8.1 The service of certain statutory notices are provided for in legislation, for example, an Enforcement Notice, a Stop Notice, an Improvement Notice or a Prohibition Notice. Such Notices require a person, business or organization to comply with its specific requirements.
- 8.2 Should an individual, organisation or business fail to comply with a properly served statutory notice, the Council shall consider the matter for alternative formal action.
- 8.3 In certain circumstances the Council is permitted to execute the required works and recover the costs of doing so. Where appropriate, the Council will seek to undertake this course of action.

9. Simple Cautions

- 9.1 Certain circumstances may give rise to the administration of a simple caution as an alternative to prosecution. A simple caution will apply when the criteria for prosecution are met but the existence of extenuating circumstances suggests that more lenient action is appropriate.
- 9.2 A simple caution is a serious matter which is recorded as a conviction in line with the legislation under which it is issued. A simple caution may influence any future considerations of prosecution action, should the individual, organisation or business commit any further offences. Simple cautions may be referred to in any subsequent court proceedings.

9.3 Simple cautions should only be issued where there is an acknowledgment of guilt by the offender.

9.4 Where a simple caution is offered and accepted, the Council may, in appropriate circumstances, also seek from the offender, a contribution towards its costs.

9.5 Where an individual, organisation or business chooses not to accept a simple caution then prosecution will normally follow.

10. Injunctive Action

10.1 Injunctive Action will be considered where a business, organisation or individual persistently behaves in a way that acts against the collective interests of consumers or where formal undertakings given by a business, organisation or individual are subsequently ignored by them.

11. Prosecution

11.1 A prosecution will be considered where there is evidence that either an individual, business or an organisation have persistently or deliberately breached or have had a reckless disregard for a legal obligation.

Prosecution will also be considered in cases where there is evidence of:

- (a) fraudulent action(s)
- (b) action(s) likely to cause material loss or prejudice or others,
- (c) action(s) that may endanger the health, safety or well-being of people, animal(s) or the environment
- (d) the sale of product(s) in breach of a legal restriction placed upon their sale.
- (e) obstruction of an authorised officer carrying out his/her duties.

In addition to the above a prosecution will only be considered if the circumstances fall within the guidelines produced by the Attorney General and the Crown Prosecution Service with respect to the threshold test, evidential sufficiency and the test of public interest.

11.2 In certain circumstances prosecution action may be undertaken without prior warning.

12 Other Sanctions

12.1 Forfeiture Proceedings

Where infringing goods have been seized under or by virtue of the Trade Marks Act 1994 and for whatever reason prosecution action is not taken, proceedings will be instigated under Section 97 of that Act for the forfeiture of those goods.

NB: This action is by way of complaint to the Magistrates Court and therefore is not a prosecution or simple caution.

12.2 Confiscation Proceedings

In cases where a person can be shown to have obtained a financial benefit from criminality, without prejudice to any other action that may be taken, consideration will also be given to seeking the recovery of such benefit through the Proceeds of Crime Act 2002 or the Criminal Justice Act 1988.

12.3 Where permitted by the relevant legislation, the Council will consider the revocation, suspension or the imposition of additional conditions on licences / permits issued by them.

13. Publicity

13.1 The Council will consider publishing the names and addresses of each person convicted of an offence, or subject to enforcement action together with details of their offence.

13.2 When deciding whether or not to publish information, the Council will consider any Data Protection Issues; and comply with any reporting restrictions imposed by the Court.

14. General

14.1 This policy and any enforcement actions will be reviewed on an annual basis and we will consult as appropriate should any changes to the policy impact on the communities or businesses of Central Bedfordshire.

14.2 Detailed policies exist for some areas of work and should be read in conjunction with this general policy.

15. Complaints

15.1 Should anyone be dissatisfied by either the Council's action or lack of action or about the standard of a service, (where the action / service was taken / provided by the Council itself or a person or body acting on behalf of the Council), they should follow the course of action set out in the Corporate Complaints Procedure.