

Creating Central Bedfordshire

Title: Enforcement Policy

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By	Susan Childerhouse
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1. Introduction.

- 1.1 The purpose of this policy is to secure compliance with the law while minimising the burden on individuals and businesses. We will engage with those we regulate to ensure that they are fully aware of how they can ensure compliance is achieved. Regulatory action will be intelligence led and resources directed at those traders whose illegal activities are likely to have the most impact on the wider public. For others we will endeavour to educate and offer support to ensure compliance.

- 1.2 The Council's vision is to improve the quality of life of all in Central Bedfordshire, and enhance the unique character of our communities and our environment. This enforcement policy recognises the impact that the authority as a regulatory body can have on this vision; the five themes agreed for Bedfordshire from the Bedfordshire Sustainable Communities Strategy and the five agreed Council priorities for 2009 2011. Set out below are examples of some of the ways using intelligence led enforcement activity, can contribute to the Council's priorities and Vision.
- 1.2.1 Supporting and Caring for an ageing population: The older members of our population 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.
- 1.2.2 Educating, protecting and providing opportunities for children and young people: through our regulatory role as an enforcing authority for health and safety in the workplace we will work with schools and employers to ensure that both the young people and their prospective employers are aware of what constitutes a safe and healthy workplace. Other areas where young people can be put at risk will also be reviewed such as working in establishments offering alcohol for sale or providing facilities for gambling. In addition 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 lacking foods. We will work with traders to ensure that they are responsible and compliant in their sale of these types of products, using intelligence gathered from all agencies to target those who are not working with the regulatory bodies to achieve compliance.
- 1.2.3 Managing growth effectively: this policy will contribute to this priority by ensuring that developments are undertaken in accordance with the approval given, including the remediation of land for development. We will work with businesses and individuals to educate them about the need for recycling and proper disposal of waste products and send out a strong message regarding enforcement against those found to be illegally disposing of waste.

- 1.2.4 Creating Safer Communities: by working with partner organisations, the community and businesses we will target those areas identified as crime hot spots and look at all methods of tackling the root causes of the issues identified as priorities by our communities and partner agencies, for example sale of alcohol to minors, and by adopting a multi agency approach and using intelligence gathered we can also target those premises associated with crime for example, criminal damage associated with licensed premises.
- 1.2.5 Promoting Healthier Lifestyles: through intelligence led inspection regimes we will ensure that food being offered for sale is safe and of the quality being advertised. We will provide interventions as required in relation to the misselling of alcohol and tobacco products. In addition we will ensure that those business for which we are the enforcing authority for health and safety provide a safe environment for those working and visiting them.
- 1.3 In 1998 the Cabinet Office published the 'Enforcement Concordat' to help promote consistency in the UK regulatory regime, and sets out best practice. This sets out the five principles of good enforcement policy and, although a voluntary, non-statutory, code of practice, it was adopted by 96% of all central and local government bodies with enforcement functions.
- 1.4 A Government review into regulatory functions and the burdens created by regulation was undertaken¹, and the Legislative and Regulatory Reform Act 2006 ("The Act") was brought into force to give the recommendations in the report a statutory basis.
- 1.5 The Act requires that any person exercising a regulatory function does so in accordance with the five principles set out: Transparency, Accountability, Proportionality, Consistency and in a Targeted manner. Codes of Practice may also be issued by the relevant Minister.
- 1.6 The 'Regulators' Compliance Code', a Statutory Code of Practice for Regulators, was brought in under the provisions of the Act to promote the Government's better regulation agenda. The Regulators Compliance Code supplements the provisions set out in the Enforcement Concordat.
- 1.7 The Regulators Compliance Code was issued on the 17th December 2007, and came into force on the 6th April 2008.

¹ Reducing Administrative Burdens: Effective Inspection and Enforcement, Philip Hampton, March 2005

- 1.8 This enforcement policy accords with the principles of the Human Rights Act 1998, The European Convention on Human Rights, The Freedom of Information Act 2000, the Regulation of Investigatory Powers Act 2000 and the Legislative and Regulatory Reform Act 2006.
- 1.9 Central Bedfordshire Council has adopted the Compliance Code for Regulators and the Concordat on Good Enforcement Practice. This document explains the approach that will be adopted by officers when carrying out the Council's duties.

2.0 The Principles of Good Regulation

- 2.1 This policy is based on the 5 guiding principles of good regulation: -
- 2.1.1 **Transparency:** to ensure businesses and individuals understand what is expected of them. Clear distinctions will be made between legal requirements and recommendations about best practice, which are not compulsory. Businesses and Individuals will be able to easily understand the nature of any enforcement action, and the reasons for it.
- 2.1.2 **Accountability:** to ensure a fair and even-handed approach based on robust policies and procedures and to be accountable for the efficiency and effectiveness of the activities. As far as possible, officers will ensure that persons involved in a case are kept up-to-date. The Council will be accountable for the efficiency and effectiveness of the actions it takes
- 2.1.3 **Proportionality:** to minimise the costs of compliance, to the individual or business, by ensuring any action required is proportionate to the risks to health, safety, welfare or the environment. This will include taking into account the circumstances of the case and the attitude of the operator when considering action.
- 2.1.4 **Consistency:** to ensure that similar issues are dealt with in a similar way, making full use of guidance produced by government and other agencies in a fair, equitable and consistent manner. All staff undertaking enforcement duties will be suitably trained, qualified and authorised.
- 2.1.5 **Targeted:** to ensure focused enforcement based on the identification and measurement of the potential for harm, from different businesses and processes Enforcement action will be primarily targeted towards those areas that give rise to the most serious risks. Priorities for enforcement action are also set through government priorities, new legislation, national campaigns, public concerns and national regional and local intelligence. Enforcement will be risk based and intelligence led

2.2 In addition to the five guiding principles of good regulation:

2.2.2 **Objectivity:** to ensure that decisions are not influenced by the colour, race, nationality, ethnic or national origin, sex, religion, marital status, age, sexual orientation or disability of the offender, complainant or witness. Officers will be trained to understand equality and diversity issues and Equality Impact Assessments will be carried out in respect of procedures and policies relating to regulatory activities.

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 investigation and enforcement action, officers will have regard, wherever possible, to any potential or existing action of any other Council services or outside agencies.

3.3 Where matters are identified by, or reported to, officers that are the enforcement responsibility of another Council service or outside agency, officers will refer the matter to the appropriate service or agency. Any persons involved will, so far as is reasonably practicable, be informed that the matter has been referred to the appropriate service or agency.

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

3.5 If a business has a Primary Authority the officer will contact the Primary Authority before enforcement action is taken, unless immediate action is required because of imminent danger to health, safety or the environment.

3.6 Enforcement agencies exchange information as part of their partnership work in reducing crime and disorder. By capturing a coherent and robust intelligence picture, effective strategies and tasking and co-ordination for dealing with particular problems can be developed. This methodology enables the identification of new, current and emerging problems, and gives the capacity to provide strategic and tactical direction as to how they can best be tackled. Activities are target based on general or specific risks identified via trends, history or specific incident. The Council will seek to exchange data with other enforcement agencies.

4. Provision for particular Interests

- 4.1 Where possible all documents will be produced in plain language and will also be available on request in the relevant community languages, Braille, large type or on audiotape. Provision may also be made for the use of interpreters where appropriate.

5. Levels of Enforcement Action

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

5.1.1 Advice and Guidance: to assist individuals, existing and prospective businesses and other organizations and individuals to comply with their legal obligations. This will be achieved by providing both information leaflets and the opportunity for face-to-face contact to discuss and help resolve potential problems.

5.1.2 Informal Warnings: these will be used to reinforce 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, but where an oral warning is given it will be followed up in writing as soon as practicable. Where warnings are issued follow up visits will normally be made to ensure the problem is being rectified. Warnings issued in respect of significant breaches of the law will include timescales within which the breaches should be remedied and will always result in a follow up visit to ensure compliance.

5.1.3 Formal Enforcement: this includes the use of fixed penalty notices, statutory (legal) notices, simple cautions and prosecutions and will normally be taken when informal action has failed to achieve a satisfactory resolution.

5.1.4 During an investigation a person who it is believed may have committed an offence may be formally interviewed. These interviews will be conducted under the rules of the Police and Criminal Evidence Act 1984 (PACE). All evidence gathered will be done so in accordance with the rules of PACE, the Regulatory Investigations and Powers Act 1996, the Criminal Procedures and Investigations Act 1996 and any special conditions set out within specific legislation.

Where formal action is considered appropriate, regard will be had to guidance documents, and in particular the Code for Crown Prosecutors produced by the Crown Prosecution Service.

6. Guidance for Enforcement

- 6.1 Enforcement will progress from advice to formal enforcement, unless the circumstances are so serious that formal action is required immediately. In serious cases, for instance, where the offence involves a significant breach of the law that puts at risk public health, safety or well being it may be appropriate to commence formal action immediately.
- 6.2 The following guidance will be followed when formal enforcement options are being considered.

7. Fixed Penalty Notices

- 7.1 Fixed Penalty Notices are provided for in certain legislation where an act described has been commissioned.
- 7.2 The fixed penalty notice will state:
- The details of the officer serving the notice;
 - The statute being used and the offence that has been committed;
 - The circumstances that have led to the issuing of the Fixed Penalty Notice;
 - The level of fine payable (which is generally set by central government);
 - The time given for the fine to be paid and any reductions or increase in the fine payable within set time limits; and
 - The appeal procedure to be used if the person on whom the notices has been served wishes to appeal against it.
- 7.3 Where an individual, organisation or business fails to pay the penalty set out in the Fixed Penalty Notice, the Council shall consider the matter for prosecution action, as if the Fixed Penalty Notice had not been issued.
- 7.4 In some cases, the local authority keeps receipts from fixed penalty notices. The local authority 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. The Notice will require a person, business or organization to comply with specific requirements outlined in it.

- 8.2 The notice will explain:
- What is wrong;
 - What is required to put things right;
 - The time scale in which to put things right;
 - What will happen if the notice is not complied with.
- 8.3 Where a right of appeal exists against the notice, an explanation of the method of appeal will be provided with the service of the notice.
- 8.4 Should an individual, organisation or business fail to comply with the properly served statutory notice, the Council shall consider the matter for alternative formal action, such as Simple Caution or Prosecution.
- 8.5 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 only be used in appropriate circumstances, taking into account the severity of the offence; the time elapsed since the offence and the actions and attitude of the offender since the commission of the offence. This list is not prescriptive and is non-exhaustive.
- 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 remain on record for a period of five years and may be referred to in any subsequent court proceedings.
- 9.3 Simple cautions are intended to:
- Deal quickly and simply with certain offences;
 - Avoid unnecessary appearance in criminal courts; and
 - Reduce the chance of offenders re-offending.
- 9.4 Before issuing a formal caution officers shall have reference to Home Office Circular 30/2005.
- 9.5 The following conditions must be fulfilled before a caution is administered.
- 9.5.1 There must be evidence of the offenders guilt, sufficient to give a realistic prospect of conviction; and

9.5.2 The offender must understand the significance of the simple caution, and admit the offence by signing a declaration.

9.6 Where an individual, organisation or business chooses not to accept a simple caution the Council shall consider the matter for prosecution.

10. Prosecution

10.1 Undertaking prosecution action is a discretionary power.

10.2 Prosecutions shall only be undertaken where they meet the evidential and public interest test, laid out in the Code for Crown Prosecutors. This will take into account any defence that may be available.

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

11. Sanctions

11.1 Following a successful prosecution there are a number of sanctions that the court has the discretion to impose.

11.2 The sanctions consist of:

- Anti-Social Behaviour Orders
- Fixed Monetary Penalties (Fines)
- Compensation Orders
- Restorative justice (Community Orders)
- Imprisonment
- Forfeiture
- Recovery of assets in relation to proceeds of crime
- On conviction of a Director: Disqualification Orders
- Banning Orders, from undertaking a specific business or pursuit

11.3 Prior to the presentation of any case to the Court, consideration will be given to the sentencing guidelines of the particular offence. Relevant submissions on the range of penalties available shall be outlined to the Court.

11.4 Should additional applications be necessary these will be made at the appropriate times.

12. Publicity

- 12.1 Officers undertake a range of activities to achieve the Council's responsibility to protect the public from detrimental trading and environmental practices. These include actions taken after the detection of an offence, as well as measures to prevent and deter the commission of offences.
- 12.2 One specific measure shall be the publication of convictions and information of the offence, following successful prosecution. The publicity generated by prosecutions and other enforcement action acts as a deterrent to others. Furthermore, it provides reassurance to general public that the Council takes the commission of offences particularly seriously. We will also provide information in relation to unsuccessful prosecutions, to ensure that our approach is open and transparent.
- 12.3 The Council will consider publishing the names and addresses of each person convicted of an offence, or subject to enforcement action, in addition to publication of the details of the offence.
- 12.4 When deciding whether or not to publish information, the Council will consider the following factors:
- The specific details of the offence committed or detrimental activity;
 - The public interest in disclosing personal information e.g. the deterrent effect of the publication;
 - Whether the publication would be proportionate;
 - The personal circumstances of the offender;
 - Any Data Protection Issues; and
 - Any reporting restrictions imposed by the Court.
- 12.5 This list is not exhaustive and other factors may be relevant to individual cases.

13 Disclosure of Information to third parties

The Council will act in accordance with the requirements of the Data Protection Act 1998. We will not release private information relating to individuals or their property held by virtue of any enforcement activities with the following exceptions :

- Provision of information to officers of the Council providing a service on behalf of the Council e.g. local authority search
- Where the Council is the enforcing authority and is intending to take action under specific legislation

- Information required by police or other emergency services in pursuance of their stated aims
- As set out in guidance in HELA Circular 62/1 and in compliance with the requirements of section 28 Health and Safety at Work etc. Act 1974
- Requests made under the Freedom of Information Act 2003, which the council determines are properly made under the Act
- Requests made under the Environment and Safety Information Act 1988 which the council determines are properly made under the Act
- Requests made under the Environmental Information Regulations 2004 which the council determines are properly made under the Regulations.
- Requests from HM Revenue and Customs for information relating to the register of food premises.

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 of Central Bedfordshire.

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

14.3 Policies currently exist for:

- Food Safety and Standards and Health and Safety
- Private Sector Housing
- Licensing
- Planning
- Trading Standards

15.0 Complaints

Should anyone be dissatisfied by the Council's action or lack of action or about the standard of a service, whether the action was taken or the service 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.