

ENFORCEMENT POLICY and REGULATORY SERVICE STANDARDS

Environmental Health / Trading Standards / Waste and Environmental Improvement

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1.0 Purpose

This document sets out the approach to compliance and enforcement with respect to the regulatory services operated by Halton Council's Environmental Health, Trading Standards and Waste and Environmental Improvement Services.

The primary objective of these services is to protect public health, safety and the environment. This objective is achieved through a number of activities that seek to ensure compliance with the law. These activities range from the provision of advice and guidance to formal enforcement action.

Halton Borough Council is provided with the authority to enforce and promote compliance with certain laws within the borough by national and local legislation. Halton Council's Constitution sets out the laws which it has the authority to enforce. This constitution also provides a scheme of delegation to authorise offices of the authority to enforce these laws within the borough.

The purpose of this policy and the associated service standards are to ensure that the delivery of these regulatory services is consistent with the principles of the Regulator's Code which came into force in April 2014. Regulators have a legal obligation to have regard to the Code when developing policies and procedures that guide their regulatory activity. The code is primarily aimed at regulatory interventions with businesses – however the regulatory services provided by Halton council impact on individual members of the public as well as businesses. This policy is intended to cover all regulatory interventions.

This policy will ensure that the Council's approach to regulation balances the legal protections for public health, safety and the environment with the legal freedom for the public to live their lives as they choose and for businesses to grow and prosper.

2.0 Scope

This policy sets out the broad approach to enforcement and regulation and the basic service standards for the Environmental Health, Trading Standards and Waste and Environmental Improvement Services. Many of the regulatory regimes enforced by these services are overseen by different government departments for example food law is overseen the Food Standards Agency and Environmental and Waste Control law is overseen by the Environment Agency. These regulatory regimes may be subject to more detailed codes of practice and guidance issued by those Government departments. Therefore where necessary this document will be supplemented by more detailed service plans that cover the specific requirements for each service area.

3.0 PRINCIPLES OF REGULATION

Proportionate and Targeted

The council will ensure that its approach to dealing with offences, checking compliance and any advice issued or enforcement action taken is proportionate to the risk to public health, safety and the environment, the actual or potential harm caused, the nature of the offence, the size and scale of the business and the previous record of compliance.

The authority will adopt a risk based approach to enforcement and is committed to the principle that resources should be targeted to situations that pose the greatest harm to the public, business community or environment. The authority will adopt any risk assessment schemes prescribed by Government to ensure both reactive and programmed work is focused on risk and is consistent with national standards.

Consistency and Fairness

The Council will carry out its enforcement and regulatory functions in a fair and even handed manner. Whilst individual officers will make their own judgments in individual cases the authority will have arrangements in place to supervise, monitor and review enforcement decisions and advice issued.

The council will ensure officers have sufficient skills, knowledge and experience to carry out their enforcement and regulatory duties in a fair, proportionate and consistent manner. The council will ensure officers undergo regular training and personal development to enable them to meet the demands of the service.

The council will apply any national codes of practice and enforcement guidance to ensure the consistency of enforcement decisions.

Transparency and Accountability

The Council will clearly explain through this policy and supplementary service plans how it undertakes its regulatory work so the public and duty-holders have a clear understanding how regulatory services are delivered and the reasons behind advice given and action taken.

The council will ensure the public and duty-holders are provided with detailed advice on how to complain or appeal about decisions that are made. The authority will implement mechanisms to consider such appeals

The authority will consider the views of the public or business community when reviewing how regulatory services are delivered.

The authority will publish annually any fees and charges that apply in relation to its regulatory and enforcement activities.

4.0 SERVICE STANDARDS

4.1 Co-ordination

The council will coordinate enforcement activities, both internally and externally, to avoid duplication, minimise the burden on businesses and ensure that a regulatory issue is dealt with by the most relevant department or organisation. In particular this will involve liaison, where appropriate, with the following bodies;

- Police
- Environment Agency
- Food Standards Agency
- HBC Licensing
- HBC Development Control
- Fire Service
- HM Revenue and Customs
- Defra / State Veterinary Service
- Office of Fair Trading
- Manchester Port Health Authority
- Health and Safety Executive (In accordance with the HSE protocol on work related deaths, where there has been a breach of the law relating to a work related death the authority will liaise with the Police, Coroner and Crown Prosecution Service. Cases that may give rise to a prosecution for manslaughter will be led by the police)

4.2 Information Governance and data protection

All information will be handled in accordance with corporate policies on Information Governance and Data protection.

Information provided by complainants will be treated in confidence. Unless required by law, the Council will not reveal the source of complaints, although complainants will be advised that, in the event of formal action, the production of their evidence in person is more likely to secure a successful outcome.

Full records will be kept of each case, in accordance with appropriate legislation. Where the detection, prevention or prosecution of crime is involved, disclosure of relevant details may be made to other appropriate parties including the police.

Records may be made public if required under the Freedom of Information Act and the Environmental Information Regulations.

The council may proactively publish information on performance and legal compliance to help consumers make informed choices and to promote compliant businesses.

When the law allows, the council will agree secure mechanisms to share information with other regulators to help target resources and activities and minimise duplication.

The council will only request information from a duty-holder where this is permitted by law and where necessary to fulfill its statutory and regulatory functions. The council is committed to the principal of “collect once use many times” to prevent repeated requests for information and minimise burdens on business.

4.3 Assisting compliance

The Council believes in a preventative approach to regulation. Therefore the authority is committed to providing advice and guidance to individuals and the business community to help them comply with the law. Businesses and individuals should feel free to come to the council for advice on compliance. This guidance will be consistent with any national guidance or standards. The council may direct duty holders to external sources of guidance such as that produced by the Government and national regulators rather than reproduce that material. This avoids duplication and is a more efficient use of public resources. This will also ensure the consistency and proportionality of advice given. The council will, if necessary, tailor advice to individual businesses and circumstances.

The authority will openly discuss with duty holders any concerns regarding compliance failures unless this would prejudice an investigation.

Advice to all parties will be clear and courteous and unbiased and will include details of action to be taken, why that action is required and the timescale for compliance to be achieved.

When the council issues advice or makes a decision regarding enforcement action the council will explain how it came to the decision. The council will make clear when further enforcement action is being considered and what this enforcement action will be. The council's policy with respect to specific enforcement options is set out in section 5 of this document.

Unless the breach in compliance results in an imminent risk to health or the environment the council will allow the duty holder a realistic period of time to address the breach before considering further enforcement action.

Where advice is given or enforcement action proposed the council will explain how the proposed action relates to a specific legal requirement or offence. The council will make a clear distinction between actions that are required to achieve legal compliance and advice on best practice.

4.4 Checking compliance

The council will monitor and support compliance through a number of different means including inspection, sampling visits, test purchases, advisory visits or

by investigating complaints and acting on information from members of the public or other organisations. The council will ensure the conduct and targeting of compliance visits is consistent with any national codes of practice and risk rating schemes. In the absence of any national codes or risk rating schemes the council will ensure all compliance visits are based on an assessment of risk.

In assessing compliance the authority will consult with and consider advice issued by other regulators as part of the primary authority scheme. The council will also consider any applicable earned recognition scheme.

4.5 Conduct of officers

Council officers will be courteous and polite in all dealings with members of the public and businesses. Officers will exercise discretion when discussing offences or compliance issues in a public place. When making direct contact with businesses or members of the public officers will identify themselves by name and provide contact details. An officer will always explain the purpose of their visit or the interaction with an individual.

Officers will keep members of the public and businesses informed on progress with investigations and any complaints they have made. Where an officer is unable to directly deal with an issue or concern raised or request for advice the officer will use their knowledge and experience to refer the matter to an individual or organisation that can help.

4.6 Equality and diversity

In exercising its powers under relevant legislation the Council will not discriminate on the grounds of gender, sexual orientation, race, color, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

5.0 Securing compliance – enforcement options.

Legislative compliance will be secured by a combination of the following enforcement options open to the Council. The council is committed to taking a gradual approach to enforcement. In most cases compliance will be sort through informal means but action may be escalated to secure compliance. Formal enforcement action will be considered for deliberate, persistent or serious breaches or for environmental or waste related offences.

5.1 Advice and Guidance

Information on legal requirements and advice on compliance will be issued during the course of routine inspection visits, following complaints, investigations or from applications to approve licenses and or permissions. In addition, information will be provided through press releases, publications and the internet. Businesses and individuals will be made aware of any guidance issued by Government Departments.

In respect of environmental or waste related offences, the Council will actively provide advice and guidance to deter such offences by such means as, but not limited to, warning signs and advisory or warning letters.

5.2 Informal warnings

In situations where a contravention has been identified but it is not deemed appropriate to take formal enforcement action a written warning will be issued. This will detail the contravention identified, any remedial works or action required and the timescale for compliance. Further formal enforcement action may need to be considered if an informal warning has not resolved the matter.

5.3 Formal Enforcement Action

A decision to take formal enforcement action will be consistent with the regulatory principles set out in this policy and will also consider;

- The criminality and severity of the offence
- The need to protect the public, business community or environment
- Action the Council, other public organisation or instigator of the offence may take to resolve the matter;
- The previous communication with and compliance history of the business or individual
- The likelihood of compliance being secured by informal means

In undertaking any formal enforcement action consideration will be given to any relevant provisions of legislation, codes of practice or guidance issued to enforcement authorities. A range of formal enforcement options are available, which include the following:

5.3.1 Legal and Formal Notices

Many statutory instruments enforced by the council provide for the service of statutory notices to secure compliance with the law and protect the public or the environment from harm. These will normally require the recipient of the notice to comply with a particular requirement within a specified period of time. Any notice served by the authority will include details of the consequences of non-compliance, any right of appeal and the means by which this appeal can be submitted. Some notices may require immediate action e.g. seizure, closure or prohibition to protect public health and safety.

The Council can also serve Formal Notices to secure compliance with its waste Policies.

In general, and subject to any appeal provisions, a failure to comply with a valid notice will make that individual or organisation liable to further action, including prosecution.

5.5 Court Orders

Where provided for in legislation the authority may make application to the appropriate court for a Court Order requiring certain action or prohibiting activities that either contravene the law or pose a risk to the public or environment. Where there is an intention to apply for an order the potential subject of that order will be provided with details of the hearing date and any rights to representation or appeal.

5.6 Fixed Penalty Notices

Where provided for in legislation, a fixed penalty notice, penalty charge notice or penalty notice may be used as a means of dealing with an offence. It is the offender's opportunity to avoid a prosecution or civil sanction. Non-payment of a penalty notice is generally not an offence in its own right however, where relevant, should the recipient not pay the penalty offered, prosecution will be considered for the actual offence.

The council will comply with any relevant guidance and codes of practice relating to the service of fixed penalty notices. In particular the following conditions must be satisfied;

- a) There must be sufficient evidence to warrant the issuing of the penalty notice or to give a realistic prospect of conviction;
- b) The offence is not too serious and is of a nature suitable for being dealt with by a penalty notice.

5.7 Simple Cautions

Simple cautions have replaced what was previously referred to as a "formal caution". Under certain circumstances a simple caution may be considered as an alternative to prosecution. Whilst a simple caution will not result in an appearance before a court, it will require the offender to admit the offence and a record of the offence will be maintained on the central register of convictions. Although not a conviction in itself the caution may be considered by a court when sentencing for any similar offences in the future. A caution will not normally be considered for more serious or persistent offending.

Simple cautions serve the following purposes;

- a) To deal quickly and simply with less serious offences and thereby avoid unnecessary recourse to a criminal court
- b) To reduce the chances of an individual or business re-offending

All simple cautions will comply with relevant guidance in particular Home Office Circulars on the cautioning of offenders. Before a simple caution can be considered the following criteria must be fulfilled.

- a) There must be evidence of guilt that would give a realistic prospect of conviction if the case was taken to court.
- b) The suspect must admit the offence, usually by making a signed declaration;
- c) The suspected offender must understand the significance of a simple caution and give informed consent.

If the evidential requirements for a caution are met but a suspected offender declines to accept a simple caution then the case will normally be referred for prosecution.

Simple cautions will not be used to deal with environmental or waste related offences which appear to have been committed maliciously or intentionally. These offences will result in the issuing of an FPN or prosecution.

5.8 Prosecution

The Authority will exercise discretion and consider other enforcement options before initiating a prosecution. However, where justified by the nature of the offence, a prosecution may be initiated without prior warning or recourse to other enforcement options.

The ultimate decision on whether to initiate a prosecution will be taken by the authority's legal services department taking into account Halton Council's Prosecution Policy and the criteria set down in the Code for Crown Prosecutors.

A case will be considered for referral for prosecution when:

- a) It is appropriate in the circumstances to draw attention to the need for compliance with the law, especially where there would be a normal expectation of a prosecution
- b) Through conviction, the defendant and others may be deterred from future offending
- c) The contravention gave rise to serious harm to the public or the environment or created a risk of such harm.
- d) The gravity of the offence
- e) The general record of the defendant and their approach to legal compliance.

- f) An individual has failed to pay a penalty notice issued to them for an offence and has thereby failed to discharge their liability to conviction for the original offence.

6.0 COMPLAINTS and APPEALS

All correspondence to an individual or organisation will contain details on their rights and options to appeal or complain about a regulatory service or enforcement decision.

6.1 Complaints and Comments

The Council welcomes feedback from businesses and members of the public regarding its enforcement and regulatory services. Correspondence will contain details on how to contact the service concerned. In addition comments and complaints can be submitted through the council's website www.halton.gov.uk

The Council's complaints procedure will consider complaints about routine regulatory services and informal enforcement action. All correspondence with a business or individual will contain details of how to complain or make comments about the service or advice received. In accordance with the Council's Corporate Complaints Procedure in the first instance a complaint will be dealt with by the manager of the service concerned. If the complaint is not resolved at this stage the business or individual can request a Stage 2 independent investigation. The council may not be able to consider a complaint if a formal appeals procedure exists (see 6.2 below). In such cases the complainant will be provided with details of the formal appeals procedure.

A complaint form will need to be completed. These can be obtained from:

Policy and Performance Department
Halton Borough Council
Municipal Building
Kingsway
Widnes
Cheshire WA8 7QF
Telephone: 0303 333 4300

6.2 Appeals

Most formal enforcement action will contain a legal right of appeal against the decision. In most cases this appeal will be to a court or a Government Department. Certain national regulators e.g. Food Standards Agency and Health and Safety Executive have independent regulatory challenge panels who will also consider appeals and challenges against a regulatory decision.

Where a right of appeal exists the council will ensure all correspondence contains details on how to appeal including timescales and the organisation who will consider the appeal.

7.0 Improving services

The council will use the feedback from comments and complaints to review and improve our services.

The council will periodically consult with the public and businesses via satisfaction surveys and use this information to improve services.