

COPELAND BOROUGH COUNCIL



Enforcement Policy

May 2006

1.0 INTRODUCTION

1.1 This document clarifies the Council's general approach relating to its enforcement functions listed at Appendix 1 hereto. The policy is based around the general principles of the Good Enforcement Concordat which the Council has signed, i.e.

- a) Standards of service provision
- b) Openness about the service
- c) Helpfulness to service users
- d) Complaints about the service
- e) Proportionality of the service response
- f) Targeting of enforcement action
- g) Consistency of service

This policy is generic to all of the enforcement functions listed at Appendix 1 hereto; however, there are in existence more detailed enforcement policies relating only to certain specific enforcement functions of the Council and it is the intention to have more detailed enforcement policies relating specifically to other of the various enforcement functions of the Council.

1.2 Definitions

Enforcement

Enforcement encompasses a wide range of actions and activities other than just simply prosecutions. Enforcement is considered to be any action taken with respect to a possible contravention of a statutory requirement which aims to:

- a) secure compliance with the statutory provision ; or
- b) impose a sanction for the contravention.

Seriousness Assessment

Central to a reasoned and proportionate approach to enforcement is an assessment of the seriousness of the possible offence/s in question. The assessment involves an evaluation of the harm or the risk of harm resulting from the non-compliance.

Service Complaint

A "Service Complaint" is a criticism of any aspect of the service provided. It is not a request from the public, elected members or other agencies for action in respect of matters within the service's

responsibilities. At Copeland a service complaint would be dealt with in accordance with the Corporate Complaints System if it could not be resolved by the Unit Manager or appropriate Service Manager.

2.0 GENERAL PRINCIPLES

2.1 Standards

We will establish standards for the levels of service we aim to provide. These are contained in the Corporate Best Value Performance Plan and also in the Service Plans of the Council's Units concerned. Wherever possible these standards will include measurable targets. We will make details of these standards and targets freely available together with reports of our performance against the stated targets. To this end each service area will-

- a) Produce written statements defining what level of service customers can expect. Where appropriate performance targets exist they will be clearly stated.
- b) Each service will as necessary, and at least every two years, review statements produced with respect to (a) above and make changes as necessary ensuring that they are incorporated in the Service Plans.

2.2 Openness

Within the restraints of the confidentiality our consumers have a right to expect, and the requirements of law, we will endeavour to be open about how we set about our work. To this end each service will:-

- a) Ensure the documents identified in this policy are produced in clear language, are readily available and in a format accessible to all our customers.
- b) If requested, provide a written account of its actions or proposed actions to persons or organisations affected by them.
- c) Always ensure a consumer is aware of the existence of any appeals procedures or methods to review our actions/decisions where they are available.

2.3 Helpfulness

We believe that prevention and co-operation are preferable to cure and confrontation. As such we will assist all consumers in their efforts to understand and comply with the requirements placed on them. To this end each service will:

- a) Ensure staff deal with consumers courteously and always identify themselves by name.
- b) Provide clear details of who is dealing with a case and how and when they may be contacted.
- c) Review periodically all standard correspondence to ensure it is clear and contains all relevant information to the matter that it aims to address.

2.4 Service Complaints

We accept that despite our best efforts on occasion consumer dissatisfaction with the service will occur. We recognise the role service complaints can play in identifying areas for improvement. To this end in addition to statutory rights of appeal consumers will be made aware of the Copeland Borough Council Formal Complaints Procedure.

It is the role of the Unit Manager, or one of the Service Managers, to offer a consumer recourse to Copeland Borough Council Formal Complaints Procedure if a service complaint cannot be resolved to the satisfaction of the consumer.

2.5 Proportionality

We will ensure that the requirements imposed by us, the approaches we adopt and the action we take are proportionate to the seriousness of the matter/s in question. To this end each service area will:

- a) Provide clear written methods for the assessment of the seriousness for all enforcement duties within their remit. The methods will include definitions of what the service considers to be serious and trivial offences.
- b) Produce procedures outlining the approach it will take with regard to prosecutions.
- c) Clearly identify the statutory or other relevant guidance it has or may use in the course of its enforcement duties.

2.6 Consistency

We will promote consistency in both the level of service consumers receive and the manner in which we respond. To this end each service will:

- a) Ensure that the documents referred to in this policy are made known and are readily accessible to all staff.
- b) Review operational, supervisory and management practices to identify and address issues of inconsistency, on the occasion of significant changes to the relevant statute law or guidance, or at least the conclusion of each best value service review (i.e. 5 year intervals).

2.7 Availability of Service

We recognise that enforcement activity will need to be available for 24 hours a day for 7 days a week and, when considered necessary, or even desirable, this will be provided for.

2.8 Targeting

We will ensure that our resources are targeted primarily towards those activities which give rise to the most serious risks or where the risks are least well controlled or against deliberate crime. Action will be focussed primarily on lawbreakers or those directly responsible for the risk and who are best placed to control it.

3.0 PROCEDURES (GENERAL)

3.1 We will consider enforcement action during inspections or following incidents or complaints where a contravention or potential contravention of statutory requirements has been identified. We will take either informal or formal action as detailed below having given consideration to all aspects of the case. The factors we will consider are detailed in the following paragraphs.

3.1 Where we and another enforcement body both have a shared or complimentary enforcement role we will liaise with that body to ensure effective co-ordination to avoid inconsistencies and to ensure that enforcement action is appropriate to the circumstances of the case. Other bodies with whom we share significant enforcement roles include:

- Cumbria Fire and Rescue Service
- Cumbria County Council Trading Standards
- Cumbria County Council Emergency Planning Unit
- Cumbria Police
- Food Standards Agency
- Health and Safety Executive
- Environment Agency

3.2 We will consider informal action where:

- The contravention is minor in effect
- There is no significant risk to health and safety
- From the offender's past history it can be reasonably expected that informal action will result in compliance.

Informal action will:

- Contain all the information necessary to understand what is required, why it is considered necessary, what alternative courses of action (if any) are available and the timetable for completion.
- Clearly state the legislation contravened and any recommendations
- Give a point of contact for the purpose of further clarification or in the event of any queries.
- Be considered where the legislation gives us discretionary powers.

3.3 Where the circumstances described above do not apply, formal action by service of statutory notice, fixed penalty or order will be taken.

Statutory notices or orders will include the following information:

- The legislation concerned
- The work or other action needed to ensure compliance with or to avoid breach of the notice
- The time period for compliance
- The time period for appeal (where appropriate)

Before the service of notices or orders discussions will, wherever possible, take place with the person on whom the notice or order is to be served.

Where the law allows it we will also charge administration costs for service.

Immediate action without any prior notice will be considered in situations where there is a risk of danger to public health.

Where the law allows us to act immediately we will give an explanation at the time (where appropriate) and a written confirmation will be given within ten working days.

Where notices or orders are not complied with within the time period allowed we will consider undertaking (where it is possible) work in default and prosecution.

Work in default means that we will undertake any work required to secure compliance with the notice concerned and charge the full cost, plus administrative charges and a daily interest to the appropriate person(s). If this is not paid it may be registered as a debt against the property and we will consider taking action through the courts to secure recovery.

4 PROSECUTION

- 4.1** A decision to prosecute is a serious matter which we will take only after full consideration of the implications of doing so. The decision will have regard evidential and public interest tests set down in the Code for Crown Prosecutors.
- 4.2** Prosecutions will not be commenced or continued unless we are satisfied that there is sufficient, admissible and reliable evidence that the offence has been committed and that there is a reasonable prospect of conviction. Where a case does not pass this evidential test it will not go ahead, no matter how important or serious it may be.
- 4.3** Where there is sufficient evidence a prosecution will not be commenced or continued unless it is in the public interest to do so. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence and/or the circumstances of the offender.
- 4.4** We will consider the following public interest factors in deciding whether to prosecute:
- Effect of the offence or action
 - Foreseeability of the offence or the circumstances leading to it
 - Intent of the offender (individually and/or corporately)
 - History of offending
 - Attitude of the offender
 - Deterrent effect of a prosecution on the offender and others
 - Personal circumstances of the offender

These factors are not exhaustive and those which apply will depend on the particular circumstances of each case.

- 4.5** Criminal proceedings will be taken against those persons responsible for the offence. Where the offence has resulted from the activities of a company we will usually prosecute the company. We will also consider any part played by the officers of a company and may take action against those officers either instead of or as well as the company. Action against officers of a company will usually be where it can be shown that the offence was committed with their consent, due to their neglect or that they “turned a blind eye” to the offence or the circumstances leading to it.
- 4.6** Where there is sufficient evidence we will normally prosecute in any of the following circumstances:
- Incidents which have significant consequences
 - Failure to comply with fixed penalty payment requirements
 - Carrying out activities without a necessary licence
 - Excessive or persistent breaches of regulatory requirements
 - Failure to comply fully with formal statutory requirements
 - Reckless disregard for management or quality standards
 - Failure to supply information without reasonable excuse or knowingly supplying false or misleading information
 - Obstruction of officers in the course of their official duties

5 ALTERNATIVES TO PROSECUTION

- 5.1** In cases where we consider that prosecution is not the most appropriate course of action the alternative of a caution will be considered, the choice depending on the factors referred to at 4.6 above.
- 5.2** A caution is the written acceptance by an offender that they have committed an offence and may only be used where a prosecution could properly have been brought.
- 5.3** A caution will be brought to the attention of the Court if the offender is convicted of a subsequent offence.

Keith Parker
Head of Leisure & Environmental Services

Martin Jepson
Head of Legal & Democratic Services

Mike Tichford
Head of Regeneration

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APPENDIX 1

ENFORCEMENT FUNCTIONS TO WHICH THIS POLICY APPLIES

- Food Safety
- Health and Safety at Work
- Port Health
- Private Drinking Water Supplies
- Contaminated Land
- Air Pollution
- Statutory Nuisances (e.g. Noise, Smoke, Odours, Artificial Lighting)
- Drainage and Sewerage
- Caravan and Camping Sites
- Pests
- Animal Welfare
- Personal Services (e.g. Tattooing, Electrolysis, Acupuncture, Cosmetic Piercing)
- Dogs (Fouling, Strays)
- Abandoned Vehicles
- On- Street and Off-Street Car Parking
- Taxis
- Fly Tipping
- Litter
- Trade Waste
- Private Sector Housing
- Licensing
- Development Control
- Building Control

