

ENFORCEMENT POLICY

This policy establishes protocols and tests for determining whether allegations of malpractice within the remit of the Service should be subject to ‘preliminary enquiries’, ‘investigation’ or ‘enforcement action’. The policy incorporates the Council’s Community Protection Enforcement Policy, the Enforcement Concordat, guidelines from the Food Standards Agency and Health and Safety Executive and the Code of Practice for Crown Prosecutors.

Introduction

The decision to launch an investigation or undertake enforcement action is a serious one. Even in a small case, an investigation or enforcement action has serious implications for the victims, witnesses and businesses. In addition, undertaking an investigation or enforcement action is expensive and time-consuming for the Service. Effective and proportionate targeting of this work is, therefore, essential.

Enforcement Policy Statement

The Council has set out its Community Protection Enforcement Policy, with the following statement:

Our primary enforcement duty is to protect the public, employees and the environment. We are committed to promoting a thriving, safe and fair economy and community. We seek to achieve this by carrying out our enforcement functions in a fair, practical, transparent and consistent way. In doing so, it is our aim to work in partnership with businesses, community groups and other enforcement agencies.

Sources

We receive information, intelligence and complaints from a wide variety of people – called “sources”.

When we receive information, a complaint or intelligence about the activities of a business, we automatically presume that the circumstances are isolated or as a result of an innocent mistake by the business. This is unless we receive information or intelligence that suggests that the contrary is true, or if we are investigating accidents in the workplace.

An individual source may provide information or intelligence to suggest that the incident is not isolated, but this would normally result from a variety of sources over a period of time.

In any case where the presumption of isolated and innocent mistake is true, we will proceed to deal with the issue informally. This may include:

- a) Offering the source of the information, complaint or intelligence advice on how to proceed to resolve the issue using their own means;
- b) Speaking to, contacting or visiting the business to offer informal advice or assistance with resolving the issue or complying with legal requirements;
- c) Notifying the local authority where the business is based, called the Home Authority, of the issue.

At this stage we will not conduct any further investigation into the circumstances of the case.

A decision not to commence Preliminary Enquiries does not preclude making a later decision to commence those enquiries if further information comes to light or other factors present themselves which justify altering the initial judgement.

Irrelevant Factors

In deciding whether to commence preliminary enquiries, launch an investigation or report for enforcement action, officers must consider all relevant factors in an objective way. They must be fair and independent, with particular regard to the special needs of vulnerable groups. They must not let any factors relating to ethnic or national origin, sex, religious beliefs, political views or the sexual orientation of the business owners or employees, witnesses, victims or sources influence their decisions. They must not be affected by improper or undue pressure from any source.

Officers will not take any action that contravenes rights conferred by the Human Rights Act 1998.

Incident Reports

An officer may commence a Preliminary Enquiry or Investigation during visits, inspections, searches or on general duty. In general, this would be by completing an Incident Report. using Form.

It is a matter for the officer to decide when it is appropriate to use the Incident Report Book. It is not mandatory in all circumstances. It is envisaged that use will be infrequent and probably only after the officer has decided that some kind of formal enforcement action is necessary. As an example, it probably would not be appropriate to use the book for routine inspections/visits or in responding to complaints, but it probably would be appropriate to use it to record incidents likely to lead to prosecution.

An incident report is a formal document that replaces the need for officers to maintain official notebooks. The book should be kept with the case papers and may be produced in court through providing a witness statement. Officers may continue to use their official notebook and may use other forms of record keeping (such as visit records) but these should be cross-referenced in the incident report book as necessary.

Any officer who tampers with or falsifies any element of an Incident Report will be subject to disciplinary proceedings for gross misconduct and may be subject to criminal investigation.

Decision to Commence Preliminary Enquiries

Preliminary Enquiries may be launched into a wide range of activities or practices of business. The activities could be a breach of either civil or criminal legislation or practices that are generally detrimental to the economic, social or environmental well being of the community. Preliminary Enquiries may also be launched by the conduct of a project or proactive intelligence tasking.

The aim of a Preliminary Enquiry is to corroborate or dismiss initial information provided with a view to deciding whether to launch a formal investigation. The decision to launch an investigation is a serious one and should be based on sound corroborated facts.

In general, a Preliminary Enquiry will fall into one of the following categories (see paragraph 22 below for a more detailed explanation):

- a) A Course of Conduct Enquiry
- b) A Safety Enquiry
- c) A Public Policy Enquiry
- d) An Intimidation or Obstruction Enquiry

The advice officer or receiving officer will conduct an initial assessment, if necessary in liaison with an investigating officer, into whether preliminary enquiries should be made as a result of receiving any information, complaints or intelligence. The decision could be based on just one source of information or a collection of sources over a period of time.

The following lists some common factors for and against initiating preliminary enquiries. The list is not exhaustive and the factors that apply will depend on each case.

Factors in favour of initiating preliminary enquiries:

Information, intelligence, data or evidence which suggests that the issue is not isolated or the result of an innocent mistake (this information need not necessarily be of a good standard, but it should be based on more than intuition) – A COURSE OF CONDUCT ENQUIRY;

The issue is one that presents a risk to the health and safety of consumers, employees or animals (the risk, at this stage, may only be theoretical or unproven) – A SAFETY ENQUIRY;

The issue is one that public policy demands should be the subject of more detailed examination (this will include an assessment of the seriousness of the issue and whether there have been any deliberate or dishonest intentions),

alternatively, it could be an issue that the Council has highlighted as a priority area – A PUBLIC POLICY ENQUIRY;

There is information, intelligence or evidence which suggests that a business has used violence, or threatened the use of violence, towards a member of the public, an advice officer or an enforcement officer or has obstructed an advice officer or an enforcement officer – AN INTIMIDATION OR OBSTRUCTION ENQUIRY.

Factors against initiating preliminary enquiries:

- a) The complaint or allegation is vexatious or frivolous;
- b) The source of the information, complaint or intelligence is unreliable, is being deliberately dishonest or is attempting to procure an investigation by providing misleading information;

Action upon Instigating Preliminary Enquiries

The advice officer or receiving officer must complete Preliminary Enquiries request form. This form contains information about the complaint or alleged activity together with an assessment of the reliability of the information and the source – called a 5x5 assessment. This form, together with any complaint paperwork or other material, is forwarded to the Team Leader responsible for that area of work.

The Team Leader will allocate an investigating officer for the Preliminary Enquiries, unless the factors for initiating Preliminary Enquiries have not been met, in which case the form and attachments will be returned to the advice officer or receiving officer with an indication of the reasons for not instigating Preliminary Enquiries.

The investigating officer will then proceed to conduct preliminary enquiries into the issue. This may include:

- a) Contacting the source or sources of the information, complaints or intelligence in order to clarify detail or ascertain further information about the issue;
- b) Visiting or speaking to the business to clarify detail or ascertain further information about the issue;
- c) Offering the business informal advice or assistance with resolving the issue or complying with legal requirements;
- d) Liaising with the local authority where the business is based, called the Home Authority, on the issue, with particular emphasis on obtaining their views about the conduct of the business; or
- e) Liaising with other enforcement agencies about the issue.

Within **30 days** of commencing the Preliminary Enquiries, the investigating officer must make a decision as to whether to launch an investigation (see below), if necessary, in liaison with their Team Leader.

In exceptional circumstances, the investigating officer can apply to their Team Leader for an extension to the Preliminary Enquiries. This could be where the outcome of test results is awaited or there is some other factor justifying an extension.

The 30-day limit should be seen as an absolute limit and not a target. It will usually be possible to make a decision as to whether to launch an investigation much earlier and it may even be possible to make the decision on the day that the information, complaints or intelligence were received.

Decision to Close a Preliminary Enquiry

The investigating officer may decide to close a Preliminary Enquiry as a result of information or intelligence received. The following lists some common reasons why an officer decides to close a Preliminary Enquiry. The list is not exhaustive and the factors that apply will depend on the facts in each case.

Factors likely to lead to the closure of a Preliminary Enquiry:

- a) The complaint or allegation is vexatious or frivolous;
- b) The source of the information, complaint or intelligence is unreliable, is being deliberately dishonest or is attempting to procure an investigation by providing misleading information;
- c) The circumstances of the complaint or alleged conduct are isolated or as a result of an innocent mistake by the business;
- d) The Preliminary Enquiry has resulted in a satisfactory resolution of the issue;
- e) The information available does not amount to a course of conduct by the business;
- f) Scientific or expert advice suggests that the health and safety of consumers, employees or animals is not at risk or the risk is low;
- g) The issues raised are more appropriately dealt with by another public authority;
- h) The circumstances of the case are such that it will be impossible or highly improbable that sufficient evidence could be adduced to proceed with an investigation (this could be where evidence has been lost, destroyed or altered as a result of the actions of the source of the evidence or others); or
- i) The circumstances of the case are such that it will be unlikely to meet the public interest test.

A decision to close Preliminary Enquiries does not preclude making a later decision to re-open those enquiries if further information comes to light or other factors present themselves which justify altering the initial judgement.

Decision to Commence an Investigation

Investigations may be launched into a wide range of activities or practices of businesses normally as a result of conducting Preliminary Enquiries into an issue that has been raised by complaints, incident reports, proactive project work or intelligence tasking. The activities could be a breach of either civil or criminal legislation or practices that are generally detrimental to the economic, social or environmental well being of the community.

In general, an Investigation will fall into one of the following categories:

- a) A Course of Conduct Investigation
- b) A Safety Investigation
- c) A Public Policy Investigation
- d) An Intimidation or Obstruction Investigation

An investigating officer, in liaison with their Team Leader, will decide whether to commence an investigation as a result of Preliminary Enquiries. The decision could be based on just one source of information or a collection of sources over a period of time.

The following lists some common factors for and against commencing an investigation. The list is not exhaustive and the factors that apply will depend on each case.

Factors in favour of commencing an investigation:

- a) The Preliminary Enquiry has confirmed information, intelligence, data or evidence which suggests that the issue is not isolated or the result of an innocent mistake – A COURSE OF CONDUCT INVESTIGATION;
- b) The issue is one that presents a risk to the health and safety of consumers, employees or animals (the risk, at this stage, should have been subject to an expert or scientific opinion) – A SAFETY INVESTIGATION;
- c) The issue is one that public policy demands should be the subject of investigation (this will include an assessment of the seriousness of the issue and whether there have been any deliberate or dishonest intentions), alternatively, it could be an issue that the Council has highlighted as a priority area – A PUBLIC POLICY INVESTIGATION;
- d) There is corroborated information, intelligence or evidence which suggests that a business has used violence, or threatened the use of violence, towards a member of the public, an advice officer or an enforcement officer or has obstructed the Preliminary Enquiries of an investigating officer – AN INTIMIDATION OR OBSTRUCTION INVESTIGATION.

Factors against initiating an investigation:

- a) The complaint or allegation is vexatious or frivolous;
- b) The source of the information, complaint or intelligence is unreliable;
- c) The circumstances of the complaint or alleged conduct are isolated or as a result of an innocent mistake by the business;
- d) The information available does not amount to a course of conduct by the business;
- e) Scientific or expert advice suggests that the health and safety of consumers, employees or animals is not at risk or the risk is low;
- f) The issues raised are more appropriately dealt with by another public authority;
- g) The circumstances of the case are such that it will be impossible or highly improbable that sufficient evidence could be adduced to proceed with an

- investigation (this could be where evidence has been lost, destroyed or altered as a result of the actions of the source of the evidence or others); or
- h) The circumstances of the case are such that it will be unlikely to meet the public interest test.

Special factors against commencing an investigation:

The source of the information, complaint or intelligence is being deliberately dishonest or is attempting to procure an investigation by providing misleading information – in this case, the investigating officer may consider commencing an investigation, in liaison with the Police, into the source for obstruction or attempting to pervert the course of justice;

Whilst being desirable to commence an investigation, there are insufficient resources to have a realistic opportunity of bringing the investigation to a satisfactory conclusion – in this case, the investigating officer must consult with their Group Manager.

Action upon Commencing an Investigation

The investigating officer must commence an Investigation File. At this point, all remaining unclosed complaints and preliminary enquiries should be closed down. The file should contain all relevant materials, including the Preliminary Enquiry and any relevant complaints. An entry should be made for a new 'Prosecution' on MVM – this will generate an Investigation number in the form PR/00000000.

The investigating officer will then proceed to conduct an investigation into the issue. This may include:

- a) Contacting the source or sources of the information, complaints or intelligence in order to obtain witness statements, clarify detail or ascertain further information about the issue;
- b) Visiting or speaking to the business, formally or informally, to clarify detail or ascertain further information about the issue;
- c) Interviewing the business, or a representative of the business, in accordance with the Police and Criminal Evidence Act;
- d) Exercising entry warrants, seizing and detaining goods, documents or other material or undertaking other enforcement action;
- e) In accordance with Quality Policies – taking Emergency Action;
- f) Liasing with the local authority where the business is based, called the Home Authority on the issue, with particular emphasis on obtaining their views about the conduct of the business; or
- g) Liasing with other enforcement agencies about the issue.

Not less than 90 days prior to the “out-of-time” date (this is a date set by statute and varies depending on the case, but is usually 12 months from the point where offences were discovered) the investigating officer, in liaison with their Team Leader must make a decision as to whether to proceed to report. This is an absolute deadline and an investigation may not proceed beyond this date without approval from a Group Manager.

Decision to Close an Investigation

The investigating officer may decide to close an Investigation as a result of information or intelligence received or as a result of an action that seriously undermines the case. The following lists some common reasons why an officer decides to close an Investigation. The list is not exhaustive and the factors that apply will depend on the facts in each case.

Factors likely to lead to the closure of an Investigation:

- a) The complaint or allegation is vexatious or frivolous;
- b) The source of the information, complaint or intelligence is unreliable, is being deliberately dishonest or is attempting to procure formal enforcement action by providing misleading information;
- c) The circumstances of the alleged conduct are isolated or as a result of an innocent mistake by the business;
- d) The information available does not amount to a course of conduct by the business;
- e) Scientific or expert advice suggests that the health and safety of consumers, employees or animals is not at risk or the risk is low;
- f) The issues raised are more appropriately dealt with by another public authority;
- g) The circumstances of the case are such that it will be impossible or highly improbable that sufficient evidence could be adduced to proceed to report (this could be where evidence has been lost, destroyed or altered as a result of the actions of the source of the evidence or others); or
- h) The circumstances of the case are such that it will be unlikely to meet the public interest test.

A decision to close an Investigation does not preclude making a later decision to re-open the Investigation if further information comes to light or other factors present themselves which justify altering the initial judgement.

Decision to Proceed to Report

The investigating officer prepares a report when the investigation is complete and formal enforcement action is necessary. A decision to report is a serious step and should not be taken lightly. The reported case could be a breach of either civil or criminal legislation or practices that are generally detrimental to the economic, social or environmental well being of the community.

Each case is unique and must be considered on its own facts and merits. Before proceeding to report, the investigating officer, in liaison with their Team Leader, must undertake the three prosecution tests on all of the facts and merits of the case as set out in Preparing a Report for Formal Enforcement Action.