

## PROSECUTIONS & FORMAL ENFORCEMENT ACTION POLICY

This policy covers when it is appropriate to instigate formal enforcement action in relation to infringements detected by the Service. It includes prosecutions and other forms of formal enforcement action. The policy incorporates the Council's Community Protection Prosecution Policy, the Enforcement Concordat, guidelines from the Food Standards Agency and Health and Safety Executive and the Code of Practice for Crown Prosecutors.

### **Introduction**

A decision to take a prosecution or formal enforcement action is a serious step and should not be taken lightly. The action 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.

### **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 we aim to work in partnership with businesses, community groups and other enforcement agencies.*

### **Decisions to Prosecute**

Officers must not let any factors relating to ethnic or national origin, sex, religious beliefs, political views or the sexual orientation of any parties to the case affect their decisions.

Prosecutions or Formal Enforcement Action **must not be taken** for purely political reasons. Officers must not be affected by improper or undue pressure from any source.

We have a number of enforcement options ranging from verbal advice on compliance through to prosecution. Before deciding on the type of action, our enforcement officers will consider a number of reasons including:

- a) The seriousness of the alleged offence or situation.
- b) Previous history of the individual or company.
- c) The consequences of non-compliance.
- d) The confidence in management.
- e) Whether the public interest would be served.
- f) The effectiveness of various enforcement options.
- g) The availability of other options (i.e. product recall).

In general, a Prosecution or Formal Enforcement Action will be justified where:

- a) the offender has been engaged in a **course of conduct** that is detrimental to interests of consumers, employees, animals or the environment; **or**
- b) the offender has been engaged in practices that present a risk to the **health and safety** of consumers, employees or animals; **or**
- c) the offender has been engaged in practices where **public policy** demands that a prosecution or formal enforcement action would be appropriate; **or**
- d) The offender has been engaged in **intimidation or obstruction** of officers;

### **AND**

The **Evidential Test** is met; **and**  
 The **Public Interest Test** is met; **and**  
 There is no appropriate **Alternative Resolution**.

### **Public Policy Cases**

The Service will make a statement of the main issues that are considered to be public policy priorities in its Annual Service Plan (X01 – Service Centre Plan). This **does not** preclude additional issues being progressed on the grounds of public policy.

In some cases the actions of the defendant may add gravity to the need for prosecution, these may include:

- a) Obstruction of an Officer.
- b) Organised, premeditated and deliberate offences.
- c) Targeting of vulnerable groups.
- d) Where there is evidence that the offender was informed about the offence advised in writing how to comply with the law and has failed to do so. These previous occasions may include any level of enforcement action.
- e) Failure to comply with formal notices served by the Council.
- f) Where Government or other public body guidance requires strict enforcement, for example:
- g) Non-compliance with the Food Safety (General Food Hygiene) Regulations 1995, Regulation 4(3), where a proprietor has failed to implement control of a serious food safety hazard.
- h) Where there has been a serious risk of danger to life or limb.
- i) Where there has been a serious risk or damage to the environment or public health.
- j) Where there has been a fatality or serious injury.

- k) Where a particular contravention has caused serious public concern.
- l) Where there has been substantial financial gain.

### **The Evidential Test**

There must be enough evidence to provide a realistic prospect of conviction (or judgement in civil cases) against each defendant on each charge or summons. Consideration must be given to what the defence case may be and how that is likely to affect the prosecution or injunction proceedings.

A realistic prospect of conviction (or judgement) is an objective test. It means that a jury, bench of magistrates or judge, properly directed in accordance with the law, is more likely than not to convict the defendant or issue an injunction. This is a separate test from the one that the courts themselves must apply. A jury or magistrates court should only convict if satisfied so that it is sure of a defendant's guilt and a judge should only issue an injunction if satisfied on a balance of probabilities that they should.

When deciding whether there is enough evidence, consideration must be given as to whether the evidence can be used and is reliable. There will be many cases in which the evidence does not give cause for concern. But there will also be cases in which the evidence may not be as strong as it first appears. The following questions may be of assistance:

**Can the evidence be used in court?** Is it likely that the evidence will be excluded by the court? There are certain legal rules which might mean that evidence which seems relevant cannot be given at a trial or hearing. For example, is it likely that the evidence will be excluded because of the way in which it was gathered or because of the rule against using hearsay as evidence? If so, is there enough other evidence for a realistic prospect of a conviction or securing a judgement?

**Is the evidence reliable?** Is there evidence, which might support or detract from the reliability of a confession? Is the reliability affected by factors such as the defendant's age, intelligence or level of understanding?

**What explanation has the defendant given?** Is a court likely to find it credible in the light of the evidence as a whole? Does it support an innocent explanation?

If the identity of the defendant is likely to be questioned, is the evidence about this strong enough?

**Is the witness's background likely to weaken the prosecution case?** For example, does the witness have any motive that may affect his or her attitude to the case, or a relevant previous conviction?

**Are there concerns over the accuracy or credibility of a witness?** Are these concerns based on evidence or simply information with nothing to support it? Is there further evidence, which should be sought which may support or detract from the account of the witness?

Evidence should not be ignored because the investigating officer is unsure whether it can be used or is reliable, but it should be looked at closely when deciding if there is a realistic prospect of conviction or securing a judgement.

### **The Public Interest Test**

The public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction or securing a judgement. A prosecution or civil action will usually take place unless there are public interest factors tending against it, which clearly outweigh those tending in favour. Although there may be public interest factors against prosecution or civil action in a particular case, often the action should go ahead and those factors should be put to the court for consideration when sentence or judgement is being passed.

The factors for and against prosecution or civil action must be balanced carefully and fairly. Public interest factors that can affect the decision usually depend on the seriousness of the offence or the circumstances of the suspect. Some factors may increase the need to prosecute or take action but others may suggest that another course of action would be better.

The following lists of some common public interest factors, both for and against prosecution or civil action, are not exhaustive. The factors that apply will depend on the facts of each case.

A prosecution or civil action is likely to be needed if:

- a) A conviction is likely to result in a significant sentence;
- b) A weapon was used or violence was threatened or used during the commission of the offence, or subsequent to the commission of the offence;
- c) The offence is one of obstruction or intimidation of an enforcement officer;
- d) The defendant was in a position of authority or trust;
- e) The evidence shows that the defendant was a ringleader or an organiser of the offence;
- f) There is evidence that the offence was premeditated;
- g) There is evidence that the offence was carried out by a group;
- h) The victim of the offence was vulnerable, has been put in considerable fear, or suffered personal attack, damage or disturbance;
- i) The offence was motivated by any form of discrimination against the victim's ethnic or national origin, sex, religious beliefs, political views or sexual orientation, or the suspect demonstrated hostility towards the victim based on any of those characteristics;
- j) There is a marked difference between the actual or mental ages of the defendant and the victim, or there is any element of corruption;
- k) The defendant's previous convictions, cautions, judgements or undertakings are relevant to the present offence;
- l) The defendant is alleged to have committed the offence whilst under an order of the court;

- m) There are grounds for believing that the offence is likely to be continued or repeated, for example, by a history of recurring conduct;
- n) The views of other regulatory services involved in the issue support formal enforcement action; or
- o) There is potential for the award of compensation arising from the crime.

A prosecution is less likely to be needed if:

- a) The court is likely to impose a nominal penalty;
- b) The defendant has already been made the subject of a sentence or order and any further action would be unlikely to result in the imposition of an additional sentence or order, unless the nature of the particular offence requires prosecution or action;
- c) The offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence);
- d) The loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement;
- e) There has been a long delay between the offence taking place and the date of the trial, unless:
  - f) The offence is serious;
  - g) The delay has been caused in part by the defendant;
  - h) The offence has only recently come to light; or
  - i) The complexity of the offence has meant that there has been a long investigation;
- j) A prosecution or action is likely to have a bad effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence;
- k) The defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is a real possibility that it may be repeated.
- l) The defendant has put right the loss or harm that was caused (but defendants must not avoid prosecution or action solely because they pay compensation); or
- m) Details may be made public that could harm sources of information, international relations or national security.

The Council takes prosecutions or seeks injunctions against traders for the purposes of protecting the community as a whole and not just in the interests of a particular individual. However, when considering the public interest test officers should always take into account the consequences for the victim of the decision whether or not to take enforcement action, and any views expressed by the victim. For this purpose, we will take a Victim of Crime Statement when we take a witness statement.

## The Alternative Resolution Test

Before proceeding to report a matter for formal enforcement action, the investigating officer must examine alternative resolutions that could be used to deal with the issue. These are widespread and the availability of an alternative resolution does not necessarily preclude cases being reported for enforcement action where the case is serious.

We will use the full range of enforcement options to achieve compliance. These include

*Informal action* - will be taken in the first instance where the matter is not serious, the past history shows no similar problems, there is no risk to health or of significant fraud and we have confidence that compliance will be achieved. 'True' voluntary organisations will normally be dealt with at this level.

Advice from Officers will be put clearly and simply. It will be confirmed in writing, explaining why any remedial work is necessary and over what time-scale. We will make sure that legal requirements are clearly distinguished from best practice advice.

*Notices Requiring Improvement* - These will be used where there are significant contraventions or risks to health.

Before formal enforcement action is taken, officers will give an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference and agree time scales for compliance.

*Notices Prohibiting Activities* - These will be used where the activity poses a significant risk to health or safety. Where the risk exists at the time of the action or is imminent we will immediately use powers available to seize or detain articles, equipment or food so as to effectively remove the risk.

Where Officers consider immediate notice action is necessary, they will give an explanation of why such action is needed at the time and confirm in writing in the notice served at that time. If requested, officers will give further written explanation of their decision within 5 working days.

Where Officers serve an Emergency Prohibition Notice under the Food Safety Act 1990, they will also give at least one day's notice of an intention to apply to Enfield Magistrates for an Emergency Prohibition Order. Copies of emergency prohibition orders and notices will be displayed at the premises to inform the public what action has been taken.

*Formal Cautions* - these will be issued where there is clear evidence and acceptance of an offence by the offender. The purpose will be:

- a) to deal quickly and simply with less serious offences;
- b) to avoid unnecessary appearances in criminal courts; and
- c) To reduce chances of re-offending.

Possible alternative resolutions that could be considered:

- a) Seeking a Voluntary Undertaking from the trader
- b) Referral to Licensing Authorities for action
- c) Goods, equipment or materials to be seized and rendered harmless.
- d) Goods, equipment or materials to be seized and subject to forfeiture.
- e) Referral to another Public Authority for action

## **Publicity**

We recognise that publicising our activities, including prosecution cases, will help to inform others and improve awareness and compliance. We will issue press releases on our successful prosecutions, other issues of public interest and will 'name and praise' and 'name and shame' when it is legally possible and appropriate to do so.

--ends--