



Stockton-on-Tees
BOROUGH COUNCIL

Regulatory Services Enforcement Policy



CONTENTS

Paragraph	Heading	Page No.
1	Introduction	3
2	Scope	3
3	Access to the Policy	3
4	General Principles	3
5	Service Requests	4
6	Deciding What Action to Take	4
7	Liaison	11
8	Offences	11
9	Accepting Guilty Pleas	11
10	Considering the Views of Those Affected by the Offences	12
11	The Interests of the Borough's Stakeholders	12
12	Re-starting a Prosecution	12
13	Code for Crown Prosecutors	12
14	Appeals against Enforcement Action	12

1. Introduction

- 1.1 Fair and effective enforcement is essential to protect the health, safety and interests of the residents, visitors and businesses of Stockton-on-Tees. Even in a small case a decision about enforcement action has serious implications for all involved, the general public, businesses, victims, witnesses and offenders.
- 1.2 This Enforcement Policy is designed to make sure that everyone knows the principles that Stockton Borough Council (SBC) regulatory services will apply when carrying out enforcement work. By applying the same principles, everyone involved in the process is helping to treat stakeholders fairly, consistently and effectively.

2. Scope

- 2.1 This policy applies to the enforcement activities taken under the legislation enforced by the regulatory services of SBC.
- 2.2 Enforcement, in the context of this policy, includes action carried out in the exercise of, or against the background of, statutory enforcement powers. This is not limited to formal enforcement action such as prosecution, and includes, for example, actions arising from the inspection of premises for the purpose of checking compliance with acts and regulations, and the provision of advice to aid compliance.

3. Access To The Policy

- 3.1 This policy is available at the Council's 16 Church Road, Stockton office. On request, it will be made available on tape, in Braille, large type, or in a language other than English. It can be ordered by:

telephoning: 01642 526560
e mailing: trading_standards@stockton.gov.uk
visiting: www.tradingstandards.gov.uk/stockton or
writing to: Stockton-on-Tees Borough Council, PO Box 232,
16 Church Road, Stockton-on-Tees TS18 1XD.

4. General Principles

- 4.1 Each case is unique and must be considered on its own merits. However, this policy lays down the general principles that apply in the way each case will be approached.
- 4.2 SBC staff will be fair, independent and objective. They will not let any personal views about issues such as ethnic or national origin, sex, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender influence their decisions. They will not be affected by improper or undue pressure from any source.
- 4.3 SBC is a public authority for the purposes of the Human Rights Act 1998 and its staff will apply the principles of the European Convention on Human Rights in accordance with the Act.
- 4.4 SBC investigations will be undertaken in accordance with the Regulation of Investigatory Powers Act 2000 and any Codes of Practice issued under Section 71 of that Act. Further details can be obtained from the address shown in paragraph 3.1 above.

- 4.5 All aspects of SBC's enforcement work, including inspections, advice, the gathering of evidence and dealing with identified contraventions will be based on a thorough and open assessment of risk. This risk assessment will assess and balance the likelihood of compliance failure, the seriousness of compliance failure and the offender's past performance and current practice using evidence that is relevant, accurate and reliable.
- 4.6 When contraventions are identified SBC will act in a way proportionate to the risks involved. Except in cases where immediate action is necessary SBC will provide an opportunity for the offender to discuss the circumstances of the case and to try and resolve matters. Where immediate action is considered necessary, reasons for the action will be given at the time and confirmed in writing at the earliest opportunity. SBC will work constructively with offenders that are honestly trying to comply with the law, and help them towards compliance.
- 4.7 SBC will encourage economic progress and only intervene when there is a clear case for protection. SBC regulatory services will ensure that, as far as possible, they do not:
- **Create unnecessary administrative burdens**
 - **Reduce incentives to innovate**
 - **Discriminate between small and large businesses**
 - **Discriminate between companies already in particular markets, and companies that may want to enter**

5. Service Requests

- 5.1 Service requests which may result in enforcement action against a business or individual will be notified to that business or individual as soon as is practicable, except in the circumstances described in 5.2 below. During the progression of enforcement action that business or individual will be further notified of progress and of any new information that comes to light.
- 5.2 In circumstances where notification could impede enforcement action, notification will not take place until those circumstances no longer exist.

6. Deciding What Action To Take

- 6.1 There are two issues to determine. The first is what level of enforcement action to take. The second is that, if the first decision is to take formal enforcement action, is that action viable and appropriate. These are each discussed in detail below.

What Level Of Enforcement Action To Take

- 6.2 The level of enforcement action taken will be proportionate to the risk or detriment involved to the public, the environment and other affected groups, taking into account, as far as possible, the individual circumstances of the case and the attitude and previous history of the offender. SBC officers will ensure that the enforcement route they take is proportionate to the offence, the outcome and the culpability of the offender. There is a range of options available in seeking to ensure compliance with legislative requirements, including any one or more of the following:
- Prosecution
 - Revocation/Suspension of licence
 - Injunction

- Enforcement order
- Anti-Social Behaviour Orders/Criminal Anti Social Behaviour Orders
- Seizure, suspension and product recalls
- Forfeiture proceedings
- Fixed penalty notice
- Notice of excess charge
- Administrative Penalty
- Caution
- Formal notice
- Written warning and advice
- Verbal warning and advice
- Revisit of premises
- No action

Prosecution

6.3 In order to take forward a prosecution, the offender must meet one or more of the following criteria:

- Engaging in fraudulent activity
- Deliberately or persistently contravening legal obligations
- Deliberately or persistently ignoring written warnings or formal notices
- Endangering the health, safety or well being of people, animals or the environment
- Obstructing an enforcement officer during the course of his or her duties
- Causing, or having the potential to cause, significant consumer or trade detriment

Revocation/Suspension Of Licence

6.4 In order to warrant revocation/suspension of a licence, the offender must meet one or more of the following criteria:

- Engaging in fraudulent activity
- Deliberately or persistently contravening legal obligations or conditions of licence
- Deliberately or persistently ignoring written warnings or formal notices
- Endangering the health, safety or well being of people, animals or the environment
- Obstructing an enforcement officer during the course of his or her duties
- Causing, or have the potential to cause, significant consumer or trade detriment
- Committed such an offence that the person is no longer deemed to be a “fit and proper person”

Injunction

6.5 In the case of an immediate risk to health and safety or where the legal team agree that an injunction is a more appropriate course of enforcement action than any other, injunctions will be used as an enforcement measure.

Enforcement Orders

- 6.6 SBC will use enforcement orders to stop rogue traders from infringing or threatening to infringe specific legislation. Attempts to consult with the offender will initially be made in an attempt to try and achieve cessation of the infringement. This may include asking the offender to sign a formal undertaking in which he agrees to cease the infringing activity. If the infringement does not stop then officers' will where appropriate, take proceedings for an enforcement order in the County Court. Once an order has been obtained officers will continue to monitor the activities of the offender and, if necessary, will bring the offender before the court for breaching the order. Failure to comply with an enforcement order will be viewed as contempt of court.

Anti-Social Behaviour Orders/Criminal Anti-Social Behaviour Orders (ASBO's/CRASBO's)

- 6.7 SBC may seek ASBO's/CRASBO's where a person who has been shown to have engaged in conduct which caused or was likely to cause alarm, harassment or distress to one or more persons not of the same household as himself (or herself) and where an ASBO/CRASBO is necessary to protect relevant persons from further anti-social acts by the offender in addition to any other courses of action outlined in this enforcement policy.

Seizure, Suspension And Product Recalls

- 6.8 Certain SBC enforcement officers have powers under specific pieces of legislation to seize misdescribed, unsafe, unwholesome or contaminated goods and food, or equipment responsible for causing a noise nuisance. When officers seize such items they will give the person from whom the items are taken an appropriate receipt. If they seize unfit food, they will produce it before a Magistrate as soon as possible for them to confirm the seizure and consider if the food is unfit. If the Magistrate does not condemn the food, the officers will return it to the owner who will be entitled to compensation for any loss suffered. Specified SBC enforcement officers also have certain powers in relation to unsafe products intended for use by consumers. This can include suspending the supply of unsafe products and compelling traders to place specific warnings on a product, to warn those who have already been supplied with an unsafe product, to withdraw unsafe products from the supply chain and to instigate product recalls with regard to unsafe products already supplied to consumers. In enforcing these powers SBC officers will act in a proportionate manner at all times taking into account the seriousness of the risk and will seek to promote voluntary action by traders, except in cases of serious risk.

Forfeiture Proceedings

- 6.9 This procedure will be used where there is a need to dispose of goods in order to prevent them from re-entering the market place. If it is unlikely that the offender will agree to sign over the goods for appropriate disposal or if officers are unable to identify the owner of the goods, then an application for forfeiture will be made to the court. The court can make a forfeiture order where it is satisfied that an offence has taken place whether or not the owner of the goods is prosecuted.

Fixed Penalty Notices

- 6.10 A number of offences are allowed to be dealt with through the issue of fixed penalty notices. If the alleged offender fails to pay the fixed penalty notice within the required time-scale, consideration may be given to the issuing of legal proceedings.

Notice Of Excess Charge

- 6.11 If a vehicle is considered to be in breach of any parking provisions applicable in this authority an officer may issue a notice of excess charge. The alleged offender may lodge an appeal disputing the issue of the notice of excess charge. If, after the consideration of any appeal, the appeal is dismissed the case may be referred for the institution of legal proceedings.

Administrative Penalty

- 6.12 An administrative penalty may be offered as an alternative to prosecution in suitable cases of benefit fraud. If the offender refuses to accept the penalty, legal proceedings will usually be instituted

Simple Caution

- 6.13 This procedure derives from advice issued by the Home Office and may be used to deal with first time offenders. For a simple caution to be issued a number of criteria must be satisfied:
- Sufficient evidence is available to prove the case
 - The offender admits the offence
 - The offender agrees to be cautioned
 - The offender has not committed the offence before

A record of the simple caution will be sent to the Office of Fair Trading, the Vehicle and Operator Services Agency (VOSA), or the Department for Work and Pensions if appropriate, and will be kept on file for 5 years. If the offender commits a further offence, the caution may influence a decision to take a prosecution. If during the time the caution is in force the offender pleads guilty to, or is found guilty of, committing another offence anywhere in England and Wales, the caution may be cited in court, and this may influence the severity of the sentence that the court imposes.

Formal Notice

- 6.14 Formal notices are served to require offenders to cease contravening activities, or give offenders reasonable time to rectify a contravention. Notices may require contravening activities to cease immediately where the circumstances relating to health, safety, consumer and trade detriment, environmental damage or nuisance demand. In other circumstances, the time allowed to rectify a contravention must be reasonable, but must also take into account any health, safety, environmental, nuisance or consumer and trade detriment implications.

Written Warning And Advice

- 6.15 For some contraventions SBC officers will send the offender a letter clearly identifying the contraventions, giving advice on how to put them right and, where appropriate, include a deadline by which remedial action must be taken. Failure to comply could result in a notice being served or more formal enforcement action being taken. The time allowed must be reasonable, but must take into account any health, safety, environmental, nuisance or consumer and trade detriment implications. In giving the advice officers will provide consistent statements about regulatory requirements and ensure that legal requirements are clearly distinguished from best practice guidelines. SBC will also provide advice in a range of formats and media so that all businesses can easily access advice that meets their specific needs.

Verbal Warning And Advice

- 6.16 For minor breaches of the law SBC officers will verbally advise the offender clearly identifying the contraventions, giving advice on remedial action and, where appropriate, include a deadline by which the remedial action must be taken. Failure to comply could result in more formal enforcement action being taken. The time allowed must be reasonable, but must take into account any health, safety, environmental, nuisance or consumer and trade detriment implications. In providing the advice officers will ensure that legal requirements are clearly distinguished from best practice guidelines. Confirmation of any verbal advice will be provided in writing if requested.

Revisit Of Premises

- 6.17 Following a formal notice, written warning and advice, or verbal warning and advice officers will, where appropriate, revisit the premise to check that compliance has been achieved. The decision to schedule a revisit will depend upon the perceived likelihood of the offender carrying out remedial action and any health, safety, environmental, nuisance or consumer and trade detriment implications.

No Action

- 6.18 In exceptional circumstances, contraventions may not warrant any action. This can be where the cost of compliance to the offender outweighs the detrimental impact of the contravention on the community, or the cost of the required enforcement action to the Council outweighs the detrimental impact of the contravention on the community. A decision of no action may also be taken where formal enforcement is inappropriate in the circumstances, such as where a trader has ceased to trade, or the offender is elderly and frail and formal action would seriously damage their well being. A decision to take no action must be recorded in writing and must take into account any health, safety, environmental, nuisance or consumer and trade detriment implications.

Determining Whether Formal Enforcement Action Is Viable And Appropriate

- 6.19 There are two stages in the decision to take formal enforcement action.
- Stage 1: the evidential test
 - Stage 2: the public interest test

- 6.20 SBC will only start, and continue, with formal enforcement action when the case has passed both tests. Paragraphs 6.21 to 6.28 below, detail how this policy applies to the consideration of taking a prosecution. The principles outlined apply equally to the other types of formal enforcement action that are available.

The Evidential Test

- 6.21 The relevant service manager together with the legal team must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction' against each offender on each charge. A realistic prospect of conviction is an objective test. It means that a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the offender of the charge alleged. This is a separate test from the one that the criminal courts themselves must apply. A jury or magistrates' court should only convict if it is sure of an offender's guilt.
- 6.22 When deciding whether there is enough evidence to prosecute, the relevant service manager together with the legal team must consider whether the evidence is relevant, compelling and admissible and also whether the offender is able to satisfy any applicable statutory defence, such as a due diligence defence. If the case does not pass the evidential test it should not proceed, no matter how important or serious it may be.

The Public Interest Test

- 6.23 The public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. A prosecution will usually go ahead unless there are public interest factors tending against prosecution, which clearly outweigh those tending in favour. Although there may be public interest factors against prosecution in a particular case, often the prosecution should go ahead and those factors should be put to the court for consideration when sentence is being passed.
- 6.24 The relevant service manager together with the legal team must balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence and the circumstances of the case. Some factors may increase the need to prosecute but others may suggest that another course of action would be better.
- 6.25 Some common public interest factors are listed below, both for and against prosecution. The list is not exhaustive and the factors that apply will depend on the circumstances in each case.

Some Common Public Interest Factors In Favour Of Prosecution

- 6.26 The more serious the offence, the more likely it is that a prosecution will be needed in the public interest. A prosecution is likely to be needed if:
- A conviction is likely to result in a significant sentence
 - The evidence shows that the offender was a ringleader or an organiser of the offence
 - There is evidence that the offence was premeditated
 - The victim of the offence was vulnerable, has been put in considerable fear, or suffered personal trauma, damage or disturbance

- 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 offender has demonstrated hostility towards the victim based on any of those characteristics
- There is a marked difference between the actual or mental ages of the offender and the victim, or if there is any element of corruption
- The offender's previous convictions or cautions are relevant to the present offence
- There are grounds for believing that the offence is likely to be continued or repeated, for example, by a history of recurring conduct and ignoring previous warnings
- The offence has endangered the health, safety or well-being of people, animals or the environment
- The offence has caused, or has the potential to cause, significant consumer or trade detriment

Some Common Public Interest Factors Against Prosecution

6.27 A prosecution is less likely to be needed if:

- The court is likely to impose a nominal penalty.
- The offender has already been made the subject of a sentence and any further conviction would be unlikely to result in the imposition of an additional sentence or order, unless the nature of the particular offence requires a prosecution.
- The offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence).
- 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.
- There has been a long delay between the offence taking place and the date of the trial, unless:
 - The offence is serious
 - The delay has been caused in part by the offender
 - The offence has only recently come to light
 - The complexity of the offence has meant that there has been a long investigation
- A prosecution is likely to have a detrimental effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence.
- The offender 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.
- The interests of a youth offender must be considered when deciding whether it is in the public interest to prosecute. The stigma of a conviction can cause very serious harm to the prospects of a youth offender or young adult. Young offenders can sometimes be dealt with without going to court, for example, by issuing a cautionary letter to the youth and their parents/guardians. However, a prosecution will not be

avoided simply because of the offender's age. The seriousness of the offence or the offender's past behaviour may make prosecution necessary.

- 6.28 Deciding on the public interest is not simply a matter of adding up the number of factors on each side. The relevant service manager together with the legal team must decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

7. Liaison

- 7.1 SBC services will co-ordinate their activity to maximise the effective enforcement of any matters that are related to more than one of the services.

- 7.2. Where an enforcement matter affects a wide geographical area beyond SBC's boundaries, or involves enforcement by one or more other local authorities or organisations, all relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activity co-ordinated with them.

- 7.2. Community Safety Accredited Neighbourhood Enforcement Officers conduct two elements of their Enforcement Activity under National Guidelines and within the protocols and procedures laid down by external bodies:

- Driver and Vehicle Licensing Agency (DVLA) - the impounding and seizure of untaxed vehicles are carried out following national training and procedures laid down by DVLA. Officers act as agents for the DVLA and any appeals against actions are considered jointly between the Enforcement Coordinator (SBC) and relevant Senior DVLA Officer.
- Cleveland Police Community Safety Accreditation Scheme - the powers bestowed on Enforcement Officers, and the manner in which they are applied, form part of an application and accreditation to the Chief Constable to operate under the scheme. The complaints and licensing of Officers are monitored jointly between the Chief Constable and the Enforcement Coordinator (SBC) as the Authorities Accreditation Officer and signatory.

8. Offences

- 8.1 The relevant service manager in conjunction with the legal team should select offences which:

- Reflect the seriousness of the offending
- Give the court adequate sentencing powers
- Are made to the appropriate court
- Enable the case to be presented in a clear and simple way

9. Accepting Guilty Pleas

- 9.1 Offenders may want to plead guilty to some, but not all, of the charges. Alternatively, they may want to plead guilty to a different, possibly less serious, charge because they are admitting only part of the offence. The relevant service manager together with the legal team should only accept the offender's plea if they think the court is able to pass a sentence that matches the seriousness of the offending. The relevant service manager

in conjunction with the legal team must never accept a guilty plea because it is convenient.

- 9.2 In cases where an offender pleads guilty to the charges but on the basis of facts that are different from the prosecution case, and where this may significantly affect sentence, the court should be invited to hear evidence to determine what happened and then sentence on that basis.

10. Considering The Views Of Those Affected By The Offences

- 10.1 SBC undertakes enforcement on behalf of the public at large and not just in the interests of any particular individual or group. However, when considering the public interest test (see section 6 above) the consequences for, and views of, those affected by the offence will be taken into account in determining how to deal with the matter.
- 10.2 Those people affected by the offence will be told about any decision that makes a significant difference to the case in which they are involved, subject to any applicable data protection and disclosure rules.

11. The Interests Of The Borough's Stakeholders

- 11.1 SBC enforcement activity will, where practicable, take account of local circumstances to minimise any adverse effects on legitimate businesses and individuals.

12. Re-Starting A Prosecution

- 12.1 People should be able to rely on enforcement decisions taken on behalf of SBC. Normally, if an offender is advised that there will not be a prosecution or that the enforcement action has been stopped, that is the end of the matter and the case will not start again. However, occasionally there are special reasons why enforcement action will re-start, particularly if the case is serious. These reasons include:
- Rare cases where a new look at the original decision shows that it was clearly wrong and should not be allowed to stand
 - Cases that are stopped so that more evidence, which is likely to become available in the fairly near future, can be collected and prepared. In these cases, the offender will be told that the enforcement action may well start again
 - Cases which are stopped because of a lack of evidence but where more significant evidence is discovered at a later date

13. Code For Crown Prosecutors

- 13.1 This policy takes account of all the relevant parts of the Code for Crown Prosecutors. Further details of this can be obtained from the address given in paragraph 3.1 above.

14. Appeals Against Enforcement Action

- 14.1 For certain types of enforcement action there exists a statutory appeal system. The offender will be informed of these mechanisms, where appropriate. However, in all cases the offender has the right to appeal directly to SBC. The matter will then be considered in accordance with the prevailing corporate complaints procedure.