

Stafford Borough Council
Environmental and Health Service

Enforcement Policy

- ❖ Food Safety
- ❖ Health and Safety at Work
- ❖ Environmental Protection
- ❖ Housing Standards
- ❖ Licensing
- ❖ Pest Control

Contents

Chapter 1 - General Principles	1
Scope	1
Corporate Priorities	1
Priority One: Prosperity for All	1
Priority Two: Cleaner, Greener, Safer Communities	1
Priority Three: Health and Wellbeing	1
Consistency	1
Staff Training	2
Environmental and Health Service – Management	2
Authorised Officers	2
EQUALITY ISSUES	2
Complaints	3
MORE INFORMATION	3
Chapter 2 – Guiding Principles of Enforcement	4
Introduction	4
Enforcement arising from programmed inspections	4
Enforcement arising from Complaints – reactive work	4
Enforcement – a new approach	5
The Hampton Principles	5
Macrory Report	6
Rogers review	6
Legislative and Regulatory Reform Act 2006 (LRRRA)	8
The Regulators' Compliance Code	8
Proportionality	9
Transparency	9
Accountable	10
Helpfulness	10
Work with other Agencies	10
Civil Claims	10
Chapter 4 - Specific enforcement actions	11
i. Prosecution	11
ii. Simple Cautions	12
iii. Notices	13

iv. Prosecution following non-compliance with a Statutory Notice.....	15
v. Works In Default.....	15
vi. Revocation	16
vii. Written Warnings.....	16
Publicity	16
Conclusion	17
Review	17
Appendix 1 – Food Safety specific Issues.....	18
Appendix 2 - Health and Safety at Work.....	19
Appendix 3 - Private Sector Housing	20
Appendix 4 - Health Act 2006 - smokefree enforcement action	21
Appendix 5 - Clean Neighbourhood and Environment Act 2005 - Dog Fouling Control Order	23
Appendix 6 - Regulation of Investigatory Powers Act 2000	24
Appendix 8 – The Code for Crown Prosecutors	27

Chapter 1 - General Principles

Scope

This policy covers enforcement activities of the Environmental and Health Service; in particular those services covering,

- ❖ Food Safety
- ❖ Health and Safety
- ❖ Housing
- ❖ Pollution Control
- ❖ Licensing
- ❖ Dog Fouling

Corporate Priorities

The Council has produced a Six-Year Corporate Plan for 2007 - 2013 (approved by the Council 11 December 2007). The application of this Enforcement Policy will impact on the delivery of the Corporate Plan.

Priority One: Prosperity for All

- ❖ Provide business investment and support for new and existing enterprises in the Borough.

Priority Two: Cleaner, Greener, Safer Communities

- ❖ Make Stafford Borough a safer place.
- ❖ Enhance the built environment.

Priority Three: Health and Wellbeing

- ❖ Promote healthy living across the Borough.
- ❖ Ensure that there is an adequate supply of housing within the Borough which meets identified housing needs, and the decent homes standard.

Consistency

The Environmental and Health Service will strive to achieve consistency in the application of the Enforcement Policy, advice given, the response to incidents and the ways in which statutory powers are used.

Decisions on enforcement action are a matter of professional judgement and officers will frequently be required to use discretion. The Environmental and Health Service will ensure appropriate staff training and peer review is in place to support staff and

promote the principle of consistency. Arrangements for inter-authority auditing and training will be maintained to further promote consistency.

Consistency does not mean simple uniformity and officers will need to take account of many variables such as the scale of the risk, the attitude and actions of those involved and any history of compliance, whether positive or negative.

Any enforcement that is considered to fall outside the scope of the Enforcement Policy will be reported to the Head of Environment.

Any enforcement that is considered to have a financial, political or reputational risk will be recorded in the Council's Operational Risk Register and appropriate.

Staff Training

In order to ensure consistence the training needs of enforcement officers will be identified thorough;

- ❖ The Performance Development Review programme.
- ❖ Changes to, or additions to, the legislative duties of officer.
- ❖ Evidence of non-compliance with the Enforcement Policy

Records of all training undertaken by staff will be recorded in the Department's training register.

Environmental and Health Service - Management

Head of Environment	- Mr. Howard Thomas
Public Protection Group	- Mr. John Fraser
Environmental Protection Group	- Mr. Mark Street
Housing Group	- Mr. Mac McCoig
Streetscene	- Mr. Phil Gammon

Authorised Officers

The Council's Head of Environment will authorise Officers in writing, specifying the limits of their authorisation according to their level of training and their ability to demonstrate core competencies.

Persons other than Stafford Borough Council employees may be authorised, where it is legally permissible to do so and the Head of Environment considers that the Council's objectives, policies and procedures will be applied.

EQUALITY ISSUES

The Council's Corporate Customer Care Framework was implemented from April 2002. The Council has adopted the Equalities Standard for Local Government and is working towards level 2. There is an ongoing training programme in respect of diversity and customer care issues.

Complaints

If business operators, or members of the public indicate that they wish to complain about any aspect of enforcement work, the Council has in place a mechanism for this. On request Officers will ensure that the process is clearly explained.

Details of the Corporate Complaints Procedure can be found on the Councils web site.

http://www.staffordbc.gov.uk/live/welcome.asp?id=4967&scheme_name=LGNL&scheme_category_id=353

MORE INFORMATION

This document is available in large print - this can be obtained from:

Mr. J Fraser

Public Protection Group Manger

Stafford Borough Council

Civic Centre

Riverside

Stafford

ST16 3AQ

Email jfraser@staffordbc.gov.uk

Telephone 01785 619389

Our website www.staffordbc.gov.uk

Copies of the Environmental and Health Service Enforcement Policy are available through the Council web site www.staffordbc.gov.uk.

This document is available in large print, Braille, on tape and in the following languages. Arabic, Hindi, Punjab and Urdu. If you would like a copy in one of these formats, or another language, then contact 01785 619000.

Chapter 2 - Guiding Principles of Enforcement

Introduction

The aim behind much of the Service's work is the protection of the general public from harm caused by failure to comply with the safeguards provided for in law. This being the case, there will be circumstances in which enforcement is unavoidable and the Council does not shrink from using its full legal powers, including prosecution, where it is necessary to do so.

Wherever possible officers will seek to find solutions, which are arrived at by agreement and co-operation and will keep in mind the maxim that prevention is better than cure.

If any person exerts undue or improper pressure in an attempt to influence a decision concerning enforcement, it will be reported without delay to the Head of Environment.

As a general rule, and where there may be options available to the Officer, the level of enforcement contemplated will be the minimum that will achieve the solution required.

Enforcement arising from programmed inspections

Programmed inspections are used to ensure that the Council has arrangements in place for monitoring compliance by businesses and individuals with the legislation that affects them.

Inspection programmes are in place for food safety, health and safety, authorised processes, hackney carriages and private hire vehicles, and houses in multiple occupation.

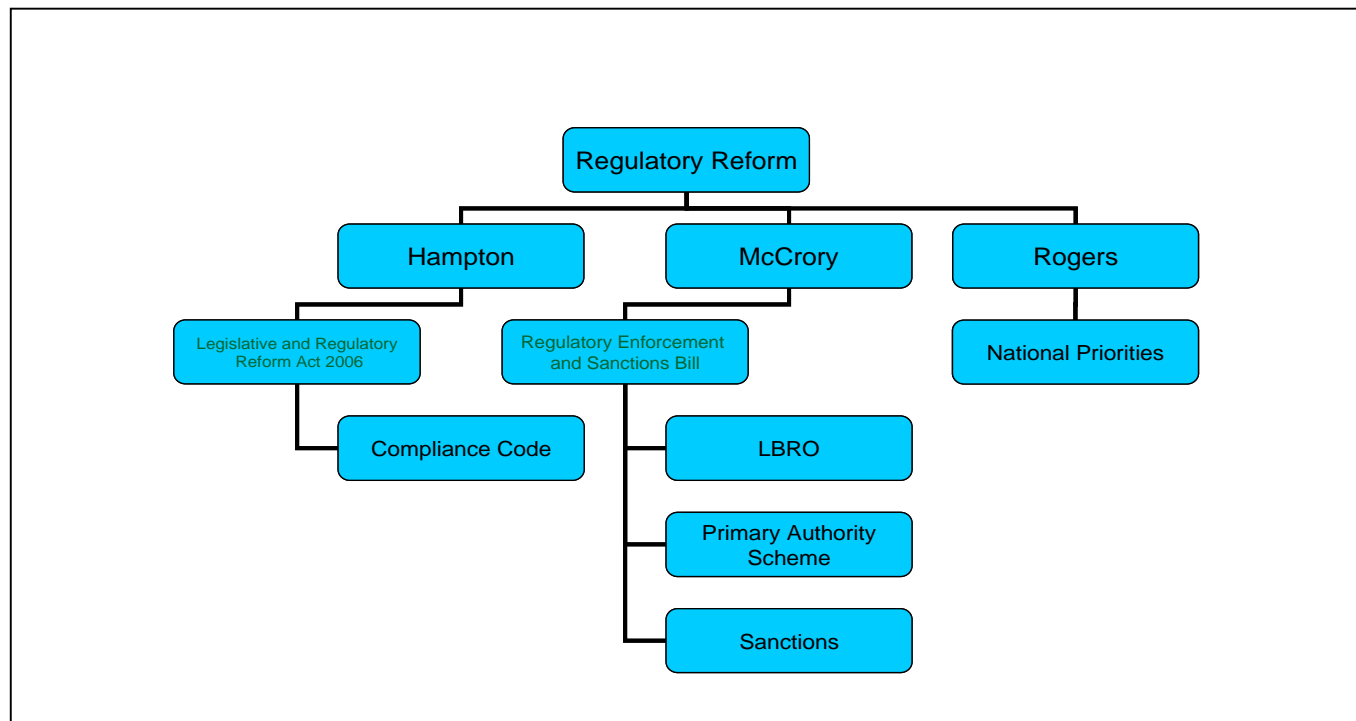
These inspection programmes are regulated by the specific risk based assessment used within the environmental health computer system. The configuration of these inspection programmes conforms to the appropriate legislation, guidance of best practice advice.

Enforcement arising from Complaints - reactive work

Environmental and Health Services will respond to complaints from individuals, or businesses, to investigate complaints relating to either businesses or individuals ignoring, or otherwise failing to comply with their legal obligations.

Enforcement - a new approach

This enforcement policy has been prepared to reflect the recommendations of the Hampton Review, McCrory Report and Rogers Report. Each plays an important part in the new approach to statutory enforcement.



The Hampton Principles

The Hampton Review¹ considered how to reduce unnecessary administration for businesses, without compromising the UK's excellent regulatory regime. He recommended that:

- ❖ Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources on the areas that need them most.
- ❖ Regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take.
- ❖ No inspection should take place without a reason.
- ❖ Businesses should not have to give unnecessary information, nor give the same piece of information twice.
- ❖ The few businesses that persistently break regulations should be identified quickly and face proportionate and meaningful sanctions.

¹ Hampton Review

- ❖ Regulators should provide authoritative, accessible advice easily and cheaply.
- ❖ Regulators should be of the right size and scope, and no new regulator should be created where an existing one can do the work.
- ❖ Regulators should recognize that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection.

Macrory Report

The Hampton Review recommended that the government establish a comprehensive review of regulators penalty regimes. The aim of the review was to bring the penalty system into line with the risk based proportionate model of regulation laid out in the Hampton Review. The Macrory Report² established six principles that a sanction should conform to in order that they were proportionate and justified. Sanctions should:

- ❖ Aim to change the behaviour of the offender
- ❖ Aim to eliminate any financial gain or benefit from a non-compliance
- ❖ Be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction
- ❖ Be proportionate to the nature of the offence and the harm caused
- ❖ Aim to restore the harm caused by regulatory non-compliance, where appropriate
- ❖ Aim to deter future non-compliance

Rogers review

The Rogers Review³ sets out the national enforcement priorities for local regulatory services in England. The review set out priorities for all local regulatory services, to help them focus resources and made seven recommendations on how the priorities should be delivered at national and local level; of these four a directly related to the work of the Environmental and Health Service.

Priorities for local authority enforcement

❖ Air quality - reducing air pollution	Covers air quality regulations, including regulation of pollution from factories and homes.
--	---

² The McCrory Report

³ Rogers review

❖ Alcohol licensing - Protecting people from the effects of the misuse of alcohol through licensing	Covers alcohol, entertainment and late night refreshment licensing and its enforcement.
❖ Hygiene of food businesses - preventing food poisoning	Covers hygiene of businesses, selling, distributing and manufacturing food, and the safety and fitness of food in premises.
❖ Improving health in the workplace	Covers health and safety advice and enforcement in local business.

Legislative and Regulatory Reform Act 2006 (LRRRA)

The Legislative and Regulatory Reform Act 2006 contains provisions which are intended to promote more effective inspection and enforcement by regulators and to ensure that they exercise their functions in a way that is consistent and proportionate without compromising regulatory standards or outcomes. In order to achieve this, the Act establishes statutory principles of good regulation, based on the Better Regulation Commission's Principles of Good Regulation, to which regulators exercising regulatory functions specified by order must have regard.

Section 21 - Principles

(1) Any person exercising a regulatory function to which this section applies must have regard to the principles in subsection (2) in the exercise of the function.

(2) Those principles are that—

(a) regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent;

(b) regulatory activities should be targeted only at cases in which action is needed.

Section 22 - Code of practice

(1) A Minister of the Crown may make a code of practice in relation to the exercise of regulatory functions.

(2) Any person exercising a regulatory function to which this section applies must, have regard to the code in determining any general policy or principles by reference to which the person exercises the function.

The Regulators' Compliance Code

The Code was drafted in response to the Hampton Review. The Regulators' Compliance Code asks regulators to perform their duties in a business-friendly way, by planning regulation and inspections in a way that causes least disruption to the economy. Further regulators should consider the Code when determining policies, setting standards or giving guidance in relation to their duties.

It asks regulators to consider:

- ❖ Supporting economic progress - "Performing regulatory duties should not impede business productivity".
- ❖ Risk assessment - "Undertaking a risk assessment of all activities. "
- ❖ Information and advice - "Providing information and advice in a way that enables businesses to clearly understand what is required by law. "
- ❖ Inspections - "Only performing inspections following a risk assessment, so resources are focused on those least likely to comply. "

- ❖ Data requirements - “Collaborating with other regulators to share data and minimise demand on businesses.”
- ❖ Compliance and enforcement actions - “How formal enforcement actions, including sanctions and penalties, should be applied following the Macrory principles on penalties.”
- ❖ Accountability - “Increasing the transparency of regulatory organisations by asking them to report on outcomes, costs and perceptions of their enforcement approach.”

By ensuring that regulators review their policies, the Government is confident that the Code will help deliver a risk-based approach to the exercise of regulatory activity. High-performing, compliant businesses will bear less of a burden, with regulators focusing their efforts on rogue and higher-risk businesses.

Proportionality

Advice given by Officers will be both clear and simple, confirmed in writing explaining why any remedial work is considered to be necessary and will state the timescale for progress and completion. A clear distinction will be made between legal requirements and best or desirable practice.

Costs of compliance are to be minimised to ensure that any actions required by the Council are proportional to the risks involved.

Where the law allows Officers will take account of the circumstances of a case, and the attitude of the perpetrator, when considering the level of enforcement action.

Before formal action is taken an opportunity may be provided to discuss the circumstances of the case and, if possible, resolve points of difference. This may not be possible if immediate action is required to resolve a particular problem.

In circumstances where immediate action is necessary, an explanation of why such action was required will be given at the time or, if this is not practical, as soon as is reasonably practical and in any event no later than within 5 working days.

Where enforcement is necessary, this will be undertaken without fear or favour and without consideration of the race, ethnic background, religion, social status, colour, age, sex or sexual orientation of any persons involved.

Where there are rights of appeal against specific actions, information on the mechanism to be followed will be given in writing. Wherever possible, this will be included with the Enforcement Notice or other documentation.

Transparency

Information and advice will be published in plain language concerning the legislation that the Council is applying. Officers will be open about the work required, including any financial costs in complying, and consultation will take place as appropriate.

Accountable

All enforcement undertaken by the Environmental and Health Service will be,

- ❖ Consistent with the principle of this policy.
- ❖ Any deviations from the principles of the Enforcement Policy will be reported to the Head of Environment.
- ❖ Be reported in the Council Members' Digest.

Helpfulness

Officers will provide a courteous and efficient enforcement service and individual.

Officers will identify themselves by name and produce their written authority as proof of their identify.

A contact telephone number will be provided for ongoing discussions. Businesses and individuals will be actively encouraged to seek advice and information relating to the Services' enforcement role.

Work with other Agencies

The Council will work in partnership with other agencies to achieve common goals on matters of mutual concern. These agencies will include, for example, Staffordshire County Council, South Staffordshire PCT, Health Authority, Health & Safety Executive, Environment Agency, Police, Staffordshire Fire Service, Health Protection Agency and others as may be appropriate.

Where joint enforcement or consultation on enforcement is necessary, this will be undertaken prior to any action being undertaken by the Service. The Environmental and Health Service will work with other agencies to develop appropriate memorandum of understanding to underpin collaboration on enforcement.

Civil Claims

Where any enforcement/investigation has been undertaken and a request for assistance to support a civil claim is subsequently received any support provided by the Environmental and Health Service will be at the discretion of the Group Manager.

A charge for the work undertaken will be made as set out in the Council's Fees and Charges.

Chapter 4 - Specific enforcement actions

There is a range of different methods of enforcement available to the Environmental Health Service:

- ❖ Prosecution
- ❖ Simple Caution
- ❖ Statutory Notices
- ❖ Statutory Orders
- ❖ Works in Default
- ❖ Revocation
- ❖ Written Warnings/ Informal Notices

When considering possible enforcement action Officers will consider and apply the principles put forward in the Macrory Report⁴ that a sanction should:

- ❖ Aim to change the behaviour of the offender
- ❖ Aim to eliminate any financial gain or benefit from a non-compliance
- ❖ Be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction
- ❖ Be proportionate to the nature of the offence and the harm caused
- ❖ Aim to restore the harm caused by regulatory non-compliance, where appropriate
- ❖ Aim to deter future non-compliance

The procedures and guidance to be followed for each enforcement type, which is set out below, will be followed at all times.

i. Prosecution

Where statutory powers to prosecute exist the decision to do so will not be taken lightly.

There is no suggestion that prosecution will automatically follow the discovery of an alleged offence and in every case the alternatives to prosecution will be considered.

Before a decision to prosecute is taken the case must satisfy, in general terms, both the Evidence Test and Public Interest Tests as set out in the Code for Crown Prosecutors⁵. [Code for Crown Prosecutors.pdf](#)

⁴ The McCrory Report

⁵ Code of Crown Prosecutions issued by the Director of Public Prosecutions

Evidential Test

There must be sufficient good quality evidence to provide a realistic prospect of conviction against each defendant and on each charge before prosecution is authorised.

This is an objective test and means that a jury or bench of Magistrates, properly directed in accordance with the law, is more likely than not to convict each defendant on each charge.

Each prospective prosecution is scrutinised throughout the line management chain before the papers are sent to Legal Services. This is so that Officers not directly involved in the preparation of the case can test the evidence. Details of the sort of the test are set out in Appendix 8. ([Code for Crown Prosecutors](#))

If there have been substantive departures from accepted practice in relation to the evidence relating to a particular action the facts of the departure will be reported Group Manager and the Council's Legal Service so that decisions on whether or not to proceed can be properly.

Officers may obtain evidence from many different sources throughout an investigation. Unused material will be disclosed in accordance with the requirements of the Criminal Procedure and Investigation Act 1996.

The Public Interest Test

A number of factors will determine whether or not a particular prosecution is in the public interest and a balance in favour or against will be made between these factors, any of which might be present.

If, after considering both the Evidence Test and Public Interest Test, it is concluded that there is not a realistic prospect of conviction, the case will not proceed to prosecution.

ii. Simple Cautions

Where it is felt that prosecution may not be appropriate, the use of a Simple Caution may be considered. In all such cases, the Home Office Guidance on the use of Cautions will be followed. A Simple Cautions will only be used where: -

- ❖ there is evidence of the offender's guilt sufficient to give a realistic prospect of conviction.
- ❖ the offender admits the offence.
- ❖ the offender clearly understands the significance of a Simple Caution and gives informed consent to being cautioned.
- ❖ the use of a Simple Caution is considered to be in the public interest.

The Service will use a Simple Cautions as an alternative to prosecution in order to: -

- ❖ deal quickly and simply with less serious offences .
- ❖ to divert less serious offences away from the Courts.
- ❖ to reduce the chances of repeat offences.

A Simple Caution will not be used as a substitute for prosecutions that would otherwise be defective. A Simple Caution will never be used simply because the evidence in a case is not robust enough to give a reasonable prospect of success in prosecution.

Factors governing the use of a Simple Caution include:

- ❖ Before a decision to offer a Simple Caution is offered the Group Manager and the Council's Solicitor will review the evidence of the case.
- ❖ The suspect will be given the opportunity, if he/she so wishes, of viewing all of the evidence gathered in the case, including any which may weaken or undermine the prosecution. This is to enable them, and/or their legal advisor, to assess the evidence, so that the decision whether to accept the Caution or not can be an informed one.
- ❖ A suspect will only be invited to accept a Simple Caution following a formal interview under caution.
- ❖ Simple Cautions will only be administered in the Council's offices except where the offender is elderly, infirm or otherwise vulnerable. The Council will engage the services of an interpreter to assist in the interview process should language difficulties prevent the suspect from fully understanding the importance of the Simple Caution.
- ❖ If accepted, the Caution will be fully recorded and a copy of the documentation held on a Register of Simple Cautions.
- ❖ Where an individual/company declines a Simple Caution the Enforcing Officer will instigate legal proceedings.
- ❖ No more than one Simple Caution will be issued to the same business or person for a similar offence within the expiry period. (If a further, similar offence is committed before the expiry of the Simple Caution, then prosecution will normally be taken in all but the most exceptional circumstances.)
- ❖ Unless the circumstances are wholly exceptional, details of any outstanding Simple Caution will be placed before the Court in any prosecution taken within the expiry date of the Simple Caution.

iii. Notices

The decision to serve a Statutory Notice must take into account the following criteria:-

- ❖ where informal action has not achieved the desired effect,
- ❖ there is a lack of confidence that the individual/company will respond to an informal approach. One particular example is where there has been no response to a formal "Requisition for Information" served on the individual/company under the Local Government (Miscellaneous Provisions) Act 1986 Section 16.
- ❖ there is a history of non-compliance with informal action,

- ❖ standards are generally poor with little management awareness of statutory requirements,
- ❖ the consequences of non-compliance could be potentially serious to the health and safety of one or more individuals.

Officers serving statutory Notices will discuss the works specified with individuals/company representatives and will consider the availability and suitability of alternative solutions.

Where a Statutory Notice is served, the method of appeal against the Notice will be provided in writing at the same time.

The Statutory Notice will explain what is wrong, what is required to put things right (where appropriate) and what will happen if the Statutory Notice is not complied with.

Failure to comply with a Statutory Notice will normally result in the enforcement officer seeking authority to prosecute and/or carry out works in default.

Any decision to take no action in the case of a Statutory Notice that has not been complied with shall only be made with the agreement of an Environmental Health Manager/Housing Manager (or more senior Officer) and will be recorded for the file.

The service of Statutory Notices is a routine part of the work of Environmental and Health Service and it is not appropriate to deal with the format and wording of Notices within this document. However, there are some points of commonality affecting all types of Notice, as follows:-

- ❖ peer review
- ❖ associated documentation
- ❖ method of service

Peer Review

There are occasions when speed of service is of the essence and in such cases peer review may not be practicable.

Wherever possible the use of standardised Notices will be used when peer review is not possible to ensure the greatest level of uniformity of approach.

When peer review is possible, and this should be in the majority of cases, each Notice will be scrutinised by a member of the Team unconnected with the case.

Associated Documentation

The following information will normally accompany a Formal Notice:-

- ❖ where further information is required, a covering letter, setting out the background to the Notice and designating a case Officer or other point of contact.
- ❖ a copy of the relevant appeal provisions.
- ❖ a separate Schedule of Works, where appropriate.
- ❖ any other information, which may help the person, served to understand and comply with the terms of the Notice.

Method of Service

The method of service of a Notice may be specified in individual legislation and, in such cases, the method of service will be followed exactly. Where there is no prescribed method any of the following may be used:-

- ❖ Hand Delivery - The Notice will be given directly to the person(s) identified as being responsible, or posted at the property. Where this method is used the date, time, place and other relevant details will be contemporaneously entered into official notebooks.
- ❖ Recorded Delivery - The Notice is sent by first class, recorded delivery post.
- ❖ Normal Post - Where normal post is used a Witness Statement will be provided by the Enforcement Officer giving details of the contents of the envelope, the date, time, and place of posting, and the address to which sent. (The Statement will be in addition to an entry into the case Officer's official notebook.)
- ❖ Left at Scene - The Notice may be left at the scene, i.e. a premises or vehicle. A contemporaneous entry in the Officer's notebook giving details of the contents of the envelope left at the scene, the date, time and place of service will be made by the Officer serving the Notice.

iv. Prosecution following non-compliance with a Statutory Notice

Where Notices are not complied with, the Council will use its powers to prosecute and may carry out work in default and any reclaiming costs. Prosecution will usually be the preferred option, unless there is an urgent need to carry out the works to protect the health and safety of the occupiers

v. Works In Default

Works in Default refers to the powers given to the Council under specified legislation to undertake works required in a Notice if that Notice has not been complied with in the time permitted.

There are two distinct types of Work in Default:

- ❖ Seizure of equipment causing a nuisance, for example stereo equipment in respect of noise problems.
- ❖ Physical works undertaken by the Council to abate nuisance or comply with specified standards, for example carrying out drainage works where there may be risks to health.

Before the Work in Default power for physical work is used the approval of the Group Manager will be obtained. An exception to this will be where Work in Default is required arising from enforcement work undertaken by staff outside normal office hours. (E.g. burglar alarms).

Quotations for the work will be obtained in line with the provisions set out in the Council's Standing Orders. Any costs incurred by the Council in carrying out Work in Default, will be recovered from the person named on the Notice.

vi. Revocation

In some circumstances, notably Licensing, authorisations made under the Environmental Protection Act 1990 and licenses issued to operate a caravan site under the Caravan Sites and Control of Development Act 1960 License the revocation of a licence or authorisation may be used as an enforcement method.

Whilst this is a legitimate enforcement action, it must always be remembered that the above may involve the removal of livelihood, sometimes without reference to an independent arbiter or the Courts.

Accordingly, Revocation is used only as a last resort, when other sanctions are either inappropriate, or have been tried without success.

No Revocation action is taken without reference to Group Manager.

Where Revocation action is taken, it will normally follow at least two warnings, in writing. However, it is recognised that this will not always be possible, especially in the case of some types of licensing offence.

When Revocation action is taken, those concerned will be informed of any rights which they may have to appeal and be told of any time limits or other constraints which may apply.

vii. Written Warnings

Perhaps the commonest and most versatile form of enforcement is the use of a Written Warning. The tone of a Written Warning will be firm, businesslike, unambiguous, polite and helpful.

There are few rules governing the use of this type of action as it is not a regulated or a statutory function. However, a Written Warning will:-

- ❖ clearly state the nature of the problem and suggest either specific remedies or a standard to be achieved,
- ❖ state the actions which may follow if matters do not improve,
- ❖ designate a named Officer as point of contact.
- ❖ clearly distinguish between a legal requirement and 'desirable standard'.
- ❖ indicate any follow-up action intended.
- ❖ offer to work with the person(s) responsible in finding a solution.
- ❖ point the way to specialist advice or additional information where appropriate.

Publicity

The outcome and details of successful prosecutions will be reported in the Members Digest. In addition appropriate press local, national and trade press coverage will be

used to act as a deterrent where enforcement action is taken against an individual or company.

A public register of Improvement and Prohibition Notices that can be made public will be kept for inspection by the public at the Civic Centre.

Conclusion

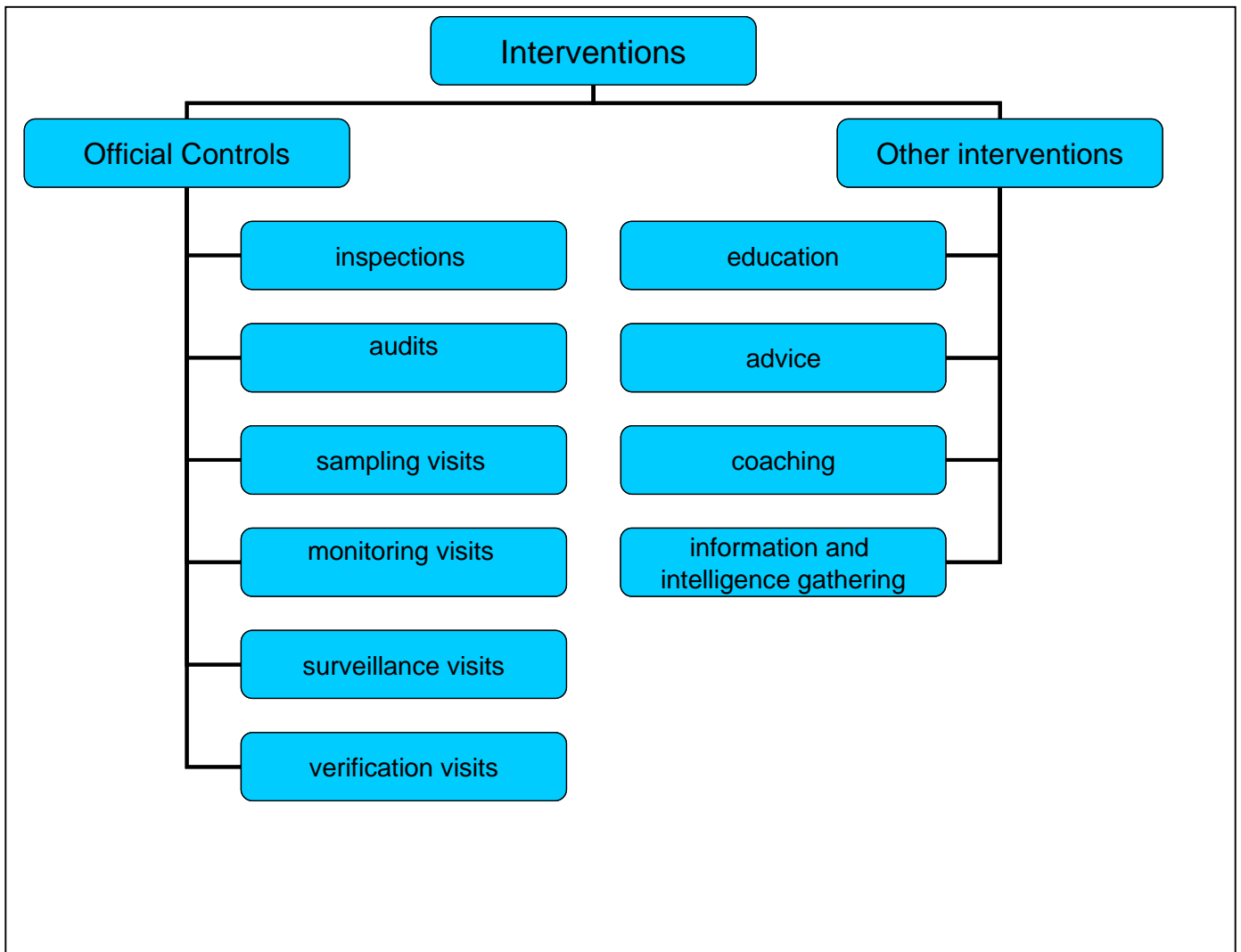
This Policy sets out Environmental and Health Services' approach to the principles of enforcement, namely proportionality, consistency, targeting and transparency. All officers employed in the Environmental and Health Service will follow this Policy when carrying out their duties. If any person is concerned that an Officer has not complied with this Policy, then they should contact the Head of Environment, Civic Centre, Riverside, Stafford, ST16 3AQ - telephone 01785-619000, e-mail ehadmin@staffordbc.gov.uk.

Review

This Policy will be considered annually as part of the review of the Environmental and Health Services' Service Plan and in light of any changes in legislation, Codes of Practice, or other appropriate national guidance.

Appendix 1 - Food Safety specific Issues

Add text on policy



Appendix 2 - Health and Safety at Work

The appendix sets out details specific to the enforcement of the Health and Safety at Work etc. Act 1974

Death at Work

Where there has been a breach of the law leading to a work-related death the Environmental Health Manager, together with the Council's Legal Section, will consider whether the circumstances of the case might justify a charge of manslaughter or corporate manslaughter.

The Environmental Health Manager and other Officer will liaise with the Police, Coroner and the Crown Prosecution Service (CPS) and, if they find evidence to support a charge of manslaughter, pass the evidence to the CPS or Police depending on the circumstances.

If the Police or CPS decides not to pursue the case the Environmental Health Manager, together with the Council's Legal Section, will consider whether to pursue a prosecution under the Health and Safety at Work Act 1974

Appendix 3 - Private Sector Housing

The appendix sets out details specific to the enforcement of the Housing Act 2004.

Private Rented Dwellings

The Council believes that every private tenant deserves a safe, decent place in which to live backed up by a responsible landlord.

The Council believes that enforcement alone is unlikely to improve overall standards. It is our intention, where possible to work in partnership with landlords, giving advice and support. However, where landlords do not cooperate, enforcement action will be taken.

Enforcement action will result from receipt of a complaint, or where a routine assessment of risk indicates that a property is sub-standard. In the case of a complaint, the Council expects the tenant to have informed the landlord of the problem and allowed time for remedial action before contacting the service for assistance. The Council further expects that the will tenant allow the landlord or his agent reasonable access to remedy the defect and carry out routine maintenance.

Owner- Occupied Dwellings

Other than in exception circumstances, the Council expects owner-occupiers to take their own action to remedy problems of disrepair or nuisance.

In exceptional circumstances, where there is a serious risk of harm and an owner-occupier has failed to respond to informal approaches, the Council will consider the need to take formal action.

Heath & Safety Rating System

The Council has a duty to deal with a Category 1 Hazards (as defined in the Housing Act 2004) in all dwellings.

The Council has discretionary powers to deal with Category 2 hazards.

In cases where the occupier is considered to be vulnerable we will deal with category 2 hazards where there is a hazard scoring over 500 points and the problem relates to health, cold, fire safety or entry by intruders. In deciding whether or not formal action is appropriate, we will consider the views of the occupiers and the landlord; we will also consider the appropriateness of the remedial action and any action being taken in relation to Category 1 hazards.

We may also deal with a Category 2 hazard where the defect giving rise to the hazard is having an adverse effect on the neighbourhood.

Houses in Multiple Occupation (HMO's)

We will seek to identify all HMO's in the Borough. We will endeavour to re-assess properties at least once every five years and owners, agents and occupiers will be encouraged to assess their own houses and agree to carry out phased improvements.

We will endeavour to ensure that owners are fully aware of their responsibilities and do not unnecessarily expose themselves to enforcement action through lack of understanding or information. However, properties inspected which fail to meet the

relevant standards will be subject to appropriate enforcement action to remedy all deficiencies.

Empty Homes

The Environmental and Health Service will in 2008 produce a specific Enforcement Policy on the way the service will engage with owners of empty homes. The policy will take into account the powers available under the Housing Act 2004.

Appendix 4 - Health Act 2006 - smokefree enforcement action

The overall approach will be to take an educational approach in the first instance, but at a certain point this should be reinforced through a stronger enforcement approach. There may be instances where Officers may find smoking taking place in the same premises on several occasions. Under such circumstances, it would be appropriate to raise with management of the premises the controls they have in place.

Officers have the following enforcement options available to them:

Verbal Warning;

Written Warning;

Fixed Penalty Notice (FPN) or legal proceedings against an owner, occupier, manager or any other person in charge of a No-Smoking premises for failing to display No-Smoking signage - Health Act 2006 section 6(5);

FPN or legal proceedings against an individual smoking in No-Smoking premises - Health Act 2006 section 7(2); and

Legal proceedings against an owner, occupier, manager or any other person in charge of No-Smoking premises for failing to prevent smoking in a smokefree place - Health Act 2006 section 8(4)

Failure to display correct No-Smoking signage

The Department of Health Guidance on this offence recognises this is a technical infringement of the Health Act 2006 and that an educational approach, for longer than might normally be the case, will be the most appropriate way to deal with this offence. However where advice has been given and a proprietor is clearly not complying then a FPN will be served.

Smoking in a Smokefree place

There are practical difficulties in taking effective enforcement action against an individual Smoking in smokefree premises, or vehicles. Therefore, as an initial stage the regulatory Officer will satisfy themselves that the owner, occupier, manager or any other person in charge can demonstrate that all reasonable steps have been taken to prohibit individuals from smoking on their premises and to detect and deal with illegal smoking when it does occur.

Officers may come across the same individual either at the same premise or different premises who refuses to smoke outside, at which point it would be appropriate to serve an FPN on the individual.

Failing to prevent smoking in a Smokefree place

The Council will consider initiating legal proceedings against owners, occupiers, managers or other persons in charge of Smokefree premises or vehicles, only after repeated efforts to secure compliance with the legislation, or where there have been serious or persistent contraventions.

Enforcement Officers will therefore, initially take an educational and non-confrontational approach wherever possible.

Cancellation of Fixed Penalty Notice (FPN)

There are no formal appeal provisions against the service of a FPN. However the Head of Environment may deal with such queries and, if appropriate, decide upon the cancellation of the FPN.

Appendix 5 - Clean Neighbourhood and Environment Act 2005 - Dog Fouling Control Order

The effect of the Order is to make it an offence for a person, who is in charge of a dog when it fouls on land covered by the provisions of the Control Order, to fail to remove the faeces from the land forthwith, unless that person has a reasonable excuse for failing to do so, or if the owner, occupier or other person having control of the land, has consented to that person failing to do so.

The Order does not apply to a person registered as blind under section 29 of the National Assistance Act 1948, or in respect of a dog provided by a prescribed charity and upon which a person relies for assistance due to a disability which affects his mobility, manual dexterity, physical co-ordination or ability to lift, carry or otherwise move everyday objects.

Failure to Prevent Dog Fouling

This Order will apply to all land, within the Borough of Stafford, which is open to the air and to which the public are entitled or permitted to have access (with or without payment).

Where an Officer witnesses a dog owner failing to remove dog faeces from a dog under his control the Officer will issue a fixed penalty Notice in accordance with the Clean Neighbourhoods and Environment Act 2005 Section 55.

Cancellation of Fixed Penalty Notice (FPN)

There are no formal appeal provisions against the service of a FPN. However the Head of Environment may deal with such queries and, if appropriate, decide upon the cancellation of the FPN.

Environmental Crime Enforcement Policy

In deciding on the level of action to be taken in relation an offence under the Dog Fouling Control Order the Officer will have regard to guidance in the Stafford Borough Council Environmental Crime Enforcement Policy.

Appendix 6 - Regulation of Investigatory Powers Act 2000

The provisions of the Investigatory Powers Act 2000 (RIPA) are designed to regulate any act of covert investigation or surveillance carried out by a local authority.

RIPA was enacted to provide a lawful procedure for public bodies to carry out covert investigations without the risk of a claim being made under the Human Rights Act 1998, against either that body or the investigating officer, by the person subject to such an investigation.

If an investigation is carried out in accordance with RIPA procedures, then any possible resultant breach of the subject's privacy rights would not be actionable as a civil claim. In addition, in criminal proceedings arising from the investigation, the evidence gathered will not be challengeable under Section 78 of the Police & Criminal Evidence Act 1996, on the ground that it is a breach of privacy rights.

Surveillance

RIPA regulates the use of covert surveillance. It does so by establishing a procedure for authorising covert surveillance it prescribes the office, rank and position of those permitted to authorise covert surveillance.

Surveillance includes:-

- monitoring, observing or listening to persons their movements, their conversations or any of their activities or communications
- recording anything monitored, observed or listened to in the course of surveillance
- surveillance by or with the assistance of any surveillance device.

What is Covert Surveillance?

Covert Surveillance is any surveillance which is carried out in a manner calculated to ensure that the subject is unaware it is or may be taking place. The provisions of RIPA apply to the following forms of covert surveillance-

- (a) directed surveillance
- (b) intrusive surveillance
- (c) the conduct and use of covert human intelligence sources (CHIS)

Note that RIPA does not enable a local authority to make any authorisations to carry out intrusive surveillance.

The Procedure for Obtaining Authorisations

(Directed Surveillance and CHIS)

Each form of covert surveillance that is subject to the provisions of RIPA must be authorised in accordance with the provisions of RIPA.

Any covert surveillance must be authorised by the Head of Environment, or in his absence by the Chief Executive or other Head of Service in consultation with the Council Solicitor.

Regulation of Investigatory Powers Act (RIPA) Office Administration Procedure

Decisions about using regulated investigatory powers must be recorded as they are made.

Stage 1 - Application

1. Applications to use RIPA powers for **Direct Surveillance**
2. [Form 1 - Application for Directed Surveillance](#)
3. Form to be considered and if appropriate signed by the Head of Environment.
4. Review date for the power to be agreed by Head of Environment and the investigating officer.
5. Date of first review to be confirmed with the Environmental and Health Service Administration Team
6. Copy of the signed application form to be placed on the RIPA file held in Environmental and Health Service Administration.
7. Copy of the signed application form to be forwarded to Legal Services.
8. Review date to be added to the mentor system with 3 working days notice of date of first review being given to the Head of Service and Investigating Officer.

Stage 2 - First Review

1. Investigating officer arrange a meeting with the Head of Environment to take place on or before the date of the first review.
[Form 2 - Review Form](#)
2. Head of Environments considers review request and if appropriate signs the review form.
3. Date of next review agreed.
4. Copy of the signed review form to be placed on the RIPA file.
5. Coy of the signed review form to be forwarded to Legal Services.
6. Subsequent review date to be added to the mentor system with 3 working days notice of date of first review being given to the Head of Service and Investigating Officer.

Stage 3 - Second and subsequent reviews

1. Repeat Stage two.

Stage 4 - Renewal Form

1. Complete application to renew the original application

[Form 3 - Renewal Form](#)

2. Head of Environments considers renewal request and if appropriate signs the review form.
3. Date of next review agreed.
4. Copy of the signed renewal form to be placed on the RIPA file.
5. Copy of the signed renewal form to be forwarded to Legal Services.
6. Subsequent review date to be added to the mentor system with 3 working days notice of date of first review being given to the Head of Service and Investigating Officer
7. Follow Stage 2 and 3.

Stage 5 - Termination of need for RIPA power

1. Investigating Officer to arrange meeting with the Head of Environment.
2. Cancellation form to be completed and signed by the Head of Environment.

[Form 4 - Cancellation Form](#)

3. Copy of the signed cancellation form to be placed on the RIPA file
4. Copy of the signed cancellation form to be forwarded to Legal Services.

Appendix 8 - The Code for Crown Prosecutors

The Evidence Test

The following will be borne in mind by case officer throughout the investigation:-

- ❖ the validity and relevance of any tape-recorded interviews;
- ❖ the continuity of evidence;
- ❖ the quality of any notes and records kept during the investigation
- ❖ the level of compliance with the Enforcement Concordat, all legislation having a bearing on enforcement practice, and internal procedures.

The Public Interest Test

Factors which will tend towards prosecution include positive answers to the following, which may not be an exhaustive list: -

- ❖ number of people affected by the offence;
- ❖ degree to which people are/were affected (seriousness of the offence);
- ❖ evidence that the offence was committed deliberately or maliciously;
- ❖ evidence that the defendant intimidated or harassed those affected;
- ❖ evidence of previous or ongoing offences of a similar type;
- ❖ likelihood of repeated offence which may be deterred by prosecution;
- ❖ defendant was in a position of authority;
- ❖ lack of co-operation on the part of the defendant;
- ❖ offence is widespread, at least in the general area in which it was committed.

Factors which might argue against a prosecution will include: -

- ❖ court is likely to impose a very small penalty on conviction;
- ❖ offence appears to have been the result of a genuine misunderstanding or mistake;
- ❖ harm done was minor and was the result of a single incident, particularly if it was caused by a misjudgement;
- ❖ willingness on the part of the defendant to co-operate and to ensure that no future offences of a similar nature are committed;
- ❖ long delay between offence and trial, unless:-
 - ❖ the offence is serious
 - ❖ the delay has been caused, at least in part, by the defendant
 - ❖ the offence has only recently come to light
 - ❖ the complexity of the investigation results in unavoidable delays
- ❖ defendant is elderly, in poor health or confused (unless there is a real possibility that the offence will be repeated);
- ❖ defendant has, so far as possible, put right the harm caused by the offence;

- ❖ a key witness has refused to testify or to provide a witness statement or, if they are the only victim, they have strongly indicated opposition to a prosecution.