



Carrickfergus Borough Council

**Environmental Health
Enforcement Policy**

28 February 2000



Introduction

The purpose of this policy is to secure efficient compliance with legislation while minimising the burden to the Council, individuals, organisations and businesses.

The policy explains in general terms, since it is intended to be applied in a wide range of situations, the approach adopted by the department when carrying out the Council's duty to enforce a wide range of legislation.

The policy is based on 5 guiding principles set out below.

- **Consistency** – to ensure that similar issues are dealt with in the same way.
- **Fairness** – to ensure a fair and even handed approach.
- **Proportionality** – to ensure that action taken relates directly to the actual or potential risk to health, safety, the environment, or significant economic disadvantage to the customer or business.
- **Transparency** – to ensure that the enforcement action that will be taken by the Council is easily understood by individuals, organisations and businesses having to comply with legislation and the clear distinctions are made between legal requirements and advice or guidance about what is desirable but not compulsory.
- **Objectivity** – to ensure that decisions are not influenced by the gender, ethnic origin, religious or political beliefs or sexual preferences of the offender, victim or witnesses. Sensitive consideration will be given where persons involved are children, elderly, infirm or suffering from a mental disorder.

Levels of Enforcement Action

Legislation may be enforced by one or a combination of methods.

- **Promotion** – to raise awareness about legal standards and promote good practice. This is typically achieved by posting on the Council website the issuing of, press releases, leaflets and other forms of written guidance available to the public and businesses, and by face-to-face contact.
- **Informal Warnings** – these will be used to reinforce promotional activities in cases, where the law may have been broken or where a minor offence had been committed, but it was not thought appropriate to take any other action. An informal warning can be issued verbally or in writing.

If it is believed that such a warning is inappropriate or unjustified then this policy allows for the decision to be reviewed by a senior officer.

- **Formal Enforcement** – this includes the use of statutory (legal) notices, the refusal to grant or revoke a licence or registration, formal cautions, and prosecution. This course of action would be taken following procedures laid down in legislation, codes of practice and professional guidance notes.



Statutory (Legal) Notices

Many Acts of Parliament and Orders in Council enforced by the Council provide for the service of statutory notices, which require a person, business or organisation to comply with specific legal requirements. Where a formal notice is served, information concerning the method of appealing against the notice (i.e. if the recipient feels that the notice is unjustified or excessive in its requirements) will be provided in writing at the same time. The notice will explain what is wrong, what is required to put things right and what will happen if the notice is not complied with.

In general, failure to comply with a properly drafted and served statutory notice will result in the recipient being liable to prosecution.

Formal Cautions

Under certain circumstances, a formal caution may be an alternative to prosecution. This option will be considered before prosecution. A formal caution is a serious matter. It is recorded, on the Central Register of Convictions, it may be used to influence any decision whether or not to institute proceedings if the person should offend again, and it may be referred to in any subsequent court proceedings. It will not be referred to in respect of any offences committed more than 3 years previously.

The purpose of formal cautions are:

- (a) To deal quickly and simply with less serious offenders;
- (b) To avoid unnecessary appearance in criminal courts; and
- (c) To reduce the chance of offenders re-offending.

Before issuing a caution, which will usually be administered by letter, the following conditions must be satisfied.

- i. There must be evidence of guilt sufficient to give a realistic prospect of conviction.
- ii. The suspected offender must admit the offence, usually by signing a declaration.
- iii. The suspected offender must understand the significance of a formal caution and give an informed consent to the caution.

Prosecution

The Council will use discretion in deciding whether to initiate a prosecution. Other approaches may be effective but, where the circumstances warrant it, prosecution without prior warning and recourse to alternative sanctions may take place.

The Council will consider prosecution when:

- It is appropriate in the circumstances, as a way to draw attention to the need for compliance with the law and the maintenance of standards required by law, especially where there would be a normal expectation that a prosecution would be taken, or where, through the conviction of offenders, others may be deterred from similar failures to comply with the law; or

Environmental Health Enforcement Policy



- Where there is the potential for considerable harm arising from the breach; or
- The gravity of the offence, taken together with the general record and approach of the offender warrants it.

The decision to prosecute will always take account of the criteria set down in Codes of Practice and Guidelines.

The Council will also identify and prosecute or recommend the prosecution of individuals, including company directors, and managers, if they consider that such a conviction is warranted and can be secured.

Before deciding to prosecute there must be sufficient evidence for a realistic prospect of conviction taking account of any defence that may be available, and it must be in the public interest.

The following public interest criteria will normally be taken into account when deciding on the relevance of legal proceedings, although this list is not exhaustive.

- ◆ The prevalence of the type of offence.
- ◆ The need for a suitable deterrent.
- ◆ The risk of danger or injury to the public.
- ◆ The failure to comply with a statutory notice or respond to advice about legal requirements.
- ◆ The disregard of legal requirements for financial reward.
- ◆ A history of similar offences.
- ◆ Persistent breaches of legislation.
- ◆ Minor breaches of a number of statutes.

Where possible an offender will be told as soon as sufficient evidence is obtained that a prosecution may follow.

All prosecutions will be brought without unnecessary delay.

Where there has been a breach of the law leading to a work-related death, the Environmental Health Department will liaise with the police, coroner and the Crown Prosecution Service and if there is evident of manslaughter pass the case to the officer or where appropriate the CPS.