

**ENVIRONMENTAL HEALTH
ENFORCEMENT POLICY**

THIS IS A CONTROLLED PROCEDURE

**IN THE EVENT THAT IT IS AMENDED, MEMBERS OF THE
FOOD AND HEALTH & SAFETY ADMINISTRATION TEAM
SHOULD BE NOTIFIED.**

TEIGNBRIDGE DISTRICT COUNCIL

Environmental Health & Housing Services Enforcement Policy

1 Introduction

- 1.1. It is the aim of Environmental Health & Housing Services Department to protect the public and the environment, promote health, safety and welfare and enhance the quality of life of all residents, workers and visitors to the District. Much of this will be achieved through education, by providing advice and by regulating the activities of others. Whilst securing compliance with legal regulatory requirements, using enforcement powers, including prosecution, is an important part of achieving this aim, it will be undertaken in an equitable, practical and consistent manner.
- 1.2 The regulatory services delivered by the Department are extensive. They include food safety, pollution and noise control, health and safety, infectious disease control, housing, drainage, port health, pest control and general nuisances.
- 1.3 Environmental Health & Housing Services' staff work with Central Government and other Regulators on matters such as food safety, air pollution, waste management, contaminated land and health and safety to ensure coherent regulation. They may also work with voluntary or community groups and non-governmental organisations in order to achieve common goals.
- 1.4 It is recognised that fair and effective enforcement is essential to protect the health, safety and interests of the residents, visitors and businesses of the Teignbridge district. Even in a small case a decision about enforcement action has serious implications for all involved; the general public, businesses, victims, witnesses and defendants. The Environmental Health & Housing Services Department applies this policy so that it can make fair and consistent decisions about enforcement
- 1.5 The Environmental Health & Housing Services Department regards prevention as better than cure. It offers information and advice to those it regulates and seeks to secure co-operation avoiding bureaucracy, ensuring efficient compliance with legislation whilst, at the same time minimising the burden on businesses, individuals, organisations and the Council itself. It encourages individuals and businesses to put safety first and to integrate good working practices into normal working methods.
- 1.6 This Policy sets out the general principles, which the Environmental Health & Housing Services Department intends to follow, in relation to enforcement and prosecution. It is to be used in conjunction with the more detailed guidance on enforcement practice issued in respect of various specific functions of Environmental Health & Housing Services Department. The implementation and effectiveness of the Policy as well as adherence to its requirements, will be monitored and reported on through the council's service performance & risk management system.
- 1.7 Certain areas of regulation and enforcement, such as the issue of fixed penalty notices for dog fouling or litter infringements, require an immediate and prescribed response. These activities are, accordingly, not covered by this policy and operate under separate procedural arrangements.

2 Purpose and Method of Enforcement

- 2.1 The purpose of enforcement is to ensure that preventative or remedial action is taken to protect the public or to secure compliance with a regulatory system. The need for enforcement may stem from a failure to comply with Statutory obligations and the likely risk to health, safety or the environment. Enforcement action will not, therefore, constitute a punitive response to minor technical contraventions of legislation. Although the Council expects full voluntary compliance with relevant legislative requirements, it will not hesitate to use its enforcement powers where necessary.
- 2.2 It is recognised that enforcement activity will depend upon prevailing circumstances, level of risk, political and stakeholder will, as well as other external influences. The environmental services Unit will, nevertheless, treat everyone fairly and with respect for their privacy and dignity. The particular interests of consumers, businesses, employees and the public, particularly those with special needs, will all be taken into account. The adverse effects of enforcement activity on legitimate businesses and individuals will be minimised

3 Responsibility and Authorisation

- 3.1 Responsibility for implementation of the Policy rests with the Head of Environmental Health & Housing Services. Authorised Officers within the Environmental Health & Housing Services Department carry out day-to-day enforcement activities. Officers, authorised in accordance with relevant Codes of Practice or National Guidance, carry out inspections, sampling, complaint investigations, deal with requests for service and, where necessary, offer advice or training. The relevant Sectional Manager is responsible for the planning, organising and subsequent monitoring of all aspects of the Policy.
- 3.2 All officers are authorised in accordance with their qualifications, experience and competency. Only officers who are competent by training, qualification and/or experience will be authorised to undertake enforcement action. Such officers are authorised in writing by the Head of Environmental Health & Housing Services who will specify the legal provisions under which they are entitled to act.
- 3.3 Officers who undertake criminal investigations will be conversant with the provisions of the Police and Criminal Evidence Act 1984 (PACE), the Criminal Procedure and Investigations Act 1996 (CPIA), the Data Protection Act 1998, the Human Rights Act 1998, the Disability Discrimination Act 1995 and the Regulation of Investigatory Powers Act 2000.
- 3.4 In undertaking all enforcement, 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
- 3.5 The issue of a Formal Caution and any decision to prosecute will only be administered or approved by the Head of Environmental Health & Housing Services in consultation with Council's Solicitor.

- 3.6 All statutory notices will be authorised and signed by either the Head of Environmental Health & Housing Services or a Section Manager unless specific authorisation has been granted to another officer to act under 3.2 above.
- 3.7 All enforcement officers will be authorised to issue fixed penalty notices without further approval from a more senior officer.

4 Enforcement Options

- 4.1 Enforcement options available include prosecution, enforcement notices, prohibition notices (where there is an imminent or serious risk), seizure, suspension or revocation of licences, variation of licence conditions, fixed penalty notices, injunctions and the carrying out of works in default as well as verbal or written warnings and advice. A hierarchical approach, as set out in the Enforcement Action Decision Sheet at Appendix 1, will be adopted in selecting the most appropriate enforcement sanctions. Although decisions will clearly vary with circumstances, non-criminal sanctions will always be considered before criminal sanctions.
- 4.2 To maintain consistency, officers will adhere strictly to the guidance set out in the specific enforcement procedure document for the relevant service area of enforcement (Food Safety, Health and Safety, Pollution etc.) when deciding upon the actions to be taken.
- 4.3 As a general rule, a prosecution will not be undertaken without the offender being given a reasonable opportunity to comply with the law. It is recognised, however, that there are circumstances where a contravention is particularly serious or there is a blatant or reckless disregard for the law and it is right to prosecute without a prior warning. Failure to comply with a Statutory Notice will normally result in a prosecution, except in cases where works in default may be more appropriate.
- 4.4 When deciding upon the best course of action, regard will be had to the specific guidance on enforcement action contained in various Codes of Practice guidelines and Guidance Documents issued by the relevant co-ordinating bodies and the Crown Prosecution Service.
- 4.5 Where a criminal offence has been committed, in addition to any other enforcement action, the Head of Environmental Health & Housing Services, who will consider instituting a Prosecution or administering a Formal Caution. (See section 9).

5 Human Rights Act

- 5.1 The Environmental Health & Housing Services Department is a public authority for the purposes of the Human Rights Act 1998. Environmental Health & Housing Services staff will, therefore, apply the principles of the European Convention on Human Rights in accordance with the Act.
- 5.2 The Human Rights Act places everyone under a duty to interpret all legislation compatibly with the Convention Rights incorporated by the Act and requires Teignbridge District Council, as a public Authority, to act in accordance with the Convention Rights. Authorised Officers will, accordingly, ensure that respect for

human rights is at the core of their day-to-day work. This covers all aspects of the District Council's activities including: -

- drafting Rules and Regulations;
- internal staff and personnel issues;
- administrative procedures;
- decision making;
- policy implementation;
- interaction with members of the public.

6 Enforcement Concordat

- 6.1 The Environmental Health & Housing Services Department believes in firm but fair regulation. Teignbridge District Council has formally adopted the Government's Enforcement Concordat on good enforcement. This sets out principles and procedures for enforcement of Regulations, based on best practice.
- 6.2 The principles underlying the Concordat require a policy of firm but fair regulation. This includes **proportionality** in the application of the law and in securing compliance; **consistency** of approach; **targeting** of enforcement action; **transparency and openness** about how the Environmental Health & Housing Services operate; **helpfulness** in offering advice and assistance in a courteous manner so that those regulated know what to expect from the Environmental Health & Housing Services as well as **accountability** for actions.
- 6.3 Commitment to the principles of the Concordat will be demonstrated by: -
- taking all enforcement decisions in a proportionate manner;
 - striving for high standards of consistency;
 - ensuring that all enforcement staff are helpful, courteous and efficient;
 - measuring its performance against agreed standards, where appropriate.

7 Principles of Enforcement

7.1 Proportionality

- 7.1.1 In general, the concept of proportionality is included in much of the regulatory system through the balance of action to protect the employee or the public against risks and costs. Achieving proportionality requires that the enforcement action taken is directly related to the risks involved.
- 7.1.2 Some duties are specific and absolute whereas others require action 'so far as reasonably practicable'. Whilst deciding what is reasonably practicable to control risks requires the exercise of judgment, in the final analysis it is the Courts which determine what is reasonably practicable, in the circumstances of each particular case. Where risks must be controlled so far as reasonably practicable, regard will be had to the protection measures necessary to comply, the degree of risk involved and the cost, whether in money, time or trouble involved in averting the risk. Unless it can be shown that there is a gross disproportion between these factors and that the risk is insignificant in

relation to the cost, measures must be taken and costs incurred to reduce the risk.

- 7.1.3 Some incidents or breaches of regulatory requirements cause or have the potential to cause serious damage to health or to the environment. Others may interfere with people's enjoyment or rights, or the Environmental Health & Housing Services Department's ability to carry out its enforcement activities. The Environmental Health & Housing Services Department's first response will be to prevent harm from occurring or continuing. The Department is, nevertheless, conscious of the costs of compliance faced, in particular, by small and medium sized businesses as well as by voluntary or community groups and the public. It will make sure that these are kept to a minimum by ensuring that any enforcement action it takes is strictly proportionate to the risks posed and to the seriousness of any breach of the law.

7.2 Consistency

- 7.2.1 Consistency means taking a similar approach in similar circumstances to achieve similar ends. All those involved need to know that they are being treated fairly and businesses, in particular, need to know that they are competing with one another on level terms. The Environmental Health & Housing Services Department will endeavor to ensure that all its enforcement decisions are consistent, balanced, fair and relate to common standards. In coming to any decision account will be taken of the seriousness of the offence, past history, confidence in management, the consequences of non-compliance, any evidence of genuine remorse and the likely effectiveness of the various enforcement options.
- 7.2.2 It is, however, recognised that consistency does not mean simple uniformity. Officers need to take account of many variables, the scale of impact on health or the environment, the attitude and actions of those responsible and the history of previous incidents or breaches. Decisions on enforcement action are a matter of professional judgment and the Department, through its officers, needs to exercise discretion. The Environmental Health & Housing Services Department will continue to develop arrangements to promote consistency including effective arrangements for liaison with other enforcing authorities.

7.3 Targeting

- 7.3.1 Targeting means making sure that regulatory effort is directed primarily towards those whose activities give rise to the most serious risks or where the hazards are poorly controlled or against deliberate or organised crime. Action will be primarily focused on those that break the law or those directly responsible for the risk and who are best placed to control it.
- 7.3.2 Systems have been introduced for prioritising regulatory effort. They include guidance contained in Codes of Practice, the response to complaints from the public about regulated activities, the assessment of the risks posed by a person's operations and the gathering and acting on intelligence about illegal activities.

- 7.3.3 In the case of regulated businesses, management actions are important. Persons breaking the law will be held to account with enforcement action being directed against those responsible. Where several people have responsibilities, action will be taken against those who can be regarded as primarily in breach. Repeated incidents or breaches of regulatory requirements which are related may be an indication of an unwillingness to change behavior, or an inability to achieve sufficient control and may require a review of the regulatory requirements, the actions of the business operator and additional investment.
- 7.3.4 All commercial premises will receive regular inspection visits in accordance with their perceived risk so that the public can be assured that potentially serious risks continue to be effectively managed. A relatively low hazard activity poorly managed has potential for greater risk to public safety than a higher hazard activity where proper control measures are in place. There are, however, high hazard sites (for example, some major food manufacturers or industrial plants) which will receive regular visits to ensure that the risks, though remote, continue to be effectively managed. Models and tools to enable risks to be assessed and compared will continue to be developed.

7.4 Transparency and Openness

- 7.4.1 Transparency is vitally important in maintaining public confidence in the ability to regulate. It means helping both those regulated and others to understand what is expected of them and what they should expect from the Environmental Health & Housing Services Department. It also means making clear why an officer intends to, or has taken enforcement action.
- 7.4.2 Transparency is an integral part of the role of the Council's officers and the Environmental Health & Housing Services Department continues to train its staff and to develop its procedures to ensure that: -
- where remedial action is required, it is clearly explained (and confirmed in writing, if requested) why the action is necessary and when it must be carried out; a clear distinction will always be made between legal requirements and best practice advice;
 - opportunity is provided to discuss the circumstances of the case, clarify what is required to comply with the law and if possible, resolve any points of difference, before formal enforcement action is taken, unless urgent action is required, for example, to protect serious harm or to prevent evidence being destroyed;
 - where urgent action is required, a written explanation of the reasons is provided as soon as practicable after the event;
 - written explanation will be given of any rights of appeal against formal enforcement action at the time the action is taken. This will explain the appeal procedure, where and when an appeal may be made as well as confirming the grounds on which it may be brought. It will make clear where action will be suspended pending the outcome of the appeal.
- 7.4.3 Every effort will be made to ensure that information and advice is provided in plain language without abbreviations or jargon and is distributed as

widely as possible. Details of the ways in which the Environmental Health & Housing Services Department works, as well as the charges it sets for any of its services and arrangements for consulting with its stakeholders will be made freely available. Where appropriate, explanatory leaflets will be produced for both businesses and the public.

- 7.4.4 Copies of this Enforcement Policy, along with the more specific Enforcement Procedures documents produced for the various services delivered by the Environmental Health & Housing Services Department, will be published and will be made freely available to businesses and individuals.

7.5 Helpfulness

- 7.5.1 Advice and assistance are regarded as central to the implementation of the enforcement policy and are used to inform both businesses and individuals of their rights and responsibilities. Help will be given to businesses, voluntary or community groups, workplace representatives and the public to assist them to comply with Statutory requirements. By adopting this approach and by positively encouraging businesses and others to seek advice and information it is hoped that many issues can be resolved without having to resort to the more formal stages of enforcement action.
- 7.5.2 A courteous approach and efficient service will be provided with all staff identifying themselves by name. The purpose of any visit will be properly explained and a contact point or telephone number for any further dealings will be given when required. Applications for licences, registrations, approvals etc. will be dealt with efficiently and promptly and every effort will be made to ensure that, wherever practicable, the Council's enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.
- 7.5.3 The Department operates a flexible approach to service delivery, which takes account of the diverse needs of the public and business community. Services will be made available by prior arrangement, out of hours and will be tailored to meet the specific needs of both individuals and businesses. In delivering services, special arrangements will be made, wherever necessary, to accommodate both ethnicity and disability.

7.6 Accountability

- 7.6.1 The Council recognises that it is accountable to Government, citizens and Parliament for its actions. Policies and Standards have been adopted against which it can be judged, along with effective and easily accessible mechanisms for dealing with comments and handling complaints.

8 Prosecution

- 8.1 It is recognised that the institution of a prosecution is a serious and important part of enforcement that should only be taken after full consideration of the implications and consequences. Decisions about prosecution will take account of Council policies and procedures and the Code for Crown Prosecutors.
- 8.2 A prosecution will not be commenced or continued unless there is sufficient, admissible and reliable evidence that the offence has been committed and that

there is a realistic prospect of conviction. A bare prima facie case is not enough. If the case does not pass this evidential test, it will not go ahead, no matter how important or serious it may be. The issue of a formal caution will not be used as an alternative in such circumstances.

8.3 The circumstances which are likely to warrant prosecution may be characterised by one or more of the following: -

- there has been a blatant disregard for the law, particularly where the economic advantages of breaking the law are substantial and the law-abiding are placed at a disadvantage to those who disregard it;
- the gravity of the offence taken with the general record and approach of the offender warrants a strong legal sanction, for example, a reckless disregard for standards, repeated breaches or persistent poor standards;
- where the offence and or the circumstances leading to it are reasonably foreseeable;
- it is considered to be an appropriate way of drawing attention to the need for compliance with the law and the maintenance of standards, especially where there would be a normal expectation that a prosecution would be taken;
- the offender and particularly others may be deterred from similar failures through the conviction;
- evidence of willful intent of the offender, individually and/or corporately;
- there has been a previous history of offending, poor standards or lack of co-operation;
- the attitude of the offender, particularly in respect of any explanations offered and any remedial action taken, is not helpful;
- the likelihood of the offender re-offending if firm action is not taken;
- if the prosecution is successful, a significant penalty is likely to result;
- the particular contravention or circumstances have caused serious public concern or alarm;
- prosecution would serve the public interest;
- Teignbridge District Council, as opposed to another authority or agency, is the most appropriate body to institute proceedings.

8.5 These factors are not exhaustive and those which apply will depend on the particular circumstances of each case. The importance of each factor will be determined in the circumstances of each case and will be used to make an overall assessment.

8.6 Where necessary, criminal proceedings will be taken against those persons responsible for the offence. Where a Company is involved, it will be usual practice to prosecute the Company where the offence resulted from the Company's activities. However, any part played in the offence by the officers of the Company, including Business Proprietors, Directors, Managers and the Company Secretary or employees of the Company will also be considered. Action may also be taken against such officers (as well as the Company) where it can be shown that the

offence was committed with their consent, was due to their neglect or they 'turned a blind eye' to the offence or the circumstances leading to it. In appropriate cases, consideration will be given to seeking the prohibition of the business proprietor under the appropriate specific statutes.

- 8.7 Enforcement action against employees will receive special consideration. Where appropriate, a warning letter will be preferred unless the matter is serious or the employee had received a prior warning from either his employer or the Council.

9 Formal cautions

- 9.1 In cases where a prosecution is not considered to be the most appropriate course of action, the issue of a Formal Caution will be considered as an alternative, depending on the circumstances.
- 9.2 A Formal Caution is the written acceptance by an offender that they have committed an offence and may only be used where a prosecution could properly have been brought. It will be brought to the Court's attention if the offender is convicted of a subsequent offence.
- 9.3 As with a prosecution, additional enforcement mechanisms may also be used in conjunction with a Formal Caution.

10 Court Proceedings

- 10.1 In cases of sufficient gravity, for example serious breaches of food safety or health and safety legislation, where circumstances allow, consideration will be given to requesting the magistrates to refer the case to the Crown Court. The same factors as listed in paragraph 8.3 (above) will be used, as well as consideration of the sentencing powers of the Magistrates' Court.
- 10.2 The existing law gives the courts considerable scope to punish offenders and to deter others. Unlimited fines and, in some cases, imprisonment may be imposed by the higher courts. The Council will continue to raise the awareness of the courts to the gravity of specific offences brought before them and will encourage the courts to make full use of their powers.
- 10.3 The Environmental Health & Housing Services Department will always seek to recover the costs of investigation and Court proceedings.

11 Accepting Guilty Pleas

- 11.1 Defendants 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 officer responsible for the case, in conjunction with the Council's legal team, should only accept the defendant's plea if they think the court is able to pass a sentence that matches the seriousness of the offending. A guilty plea must never be accepted because it is convenient to do so.
- 11.2 In cases where a defendant 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.

12. Powers of Entry

- 12.1 Access to properties is normally achieved by informal means by appointment with the occupier. If, however, there is a need to enter a premises and prior notice would be counterproductive or impracticable, a visit will be made to the property without giving prior notice.
- 12.2 In appropriate circumstances, a Notice of Entry will be served or an application made to the Magistrates' Court for a warrant to enter, e.g. if access is refused, or the premises are vacant, or giving prior notice would be counterproductive or impracticable.

13 Promotion, Prevention and Publicity

- 13.1 Promotion is an essential part of the policy as it raises awareness of the Unit's services, informs people of their legal responsibilities and encourages co-operation between officers and the regulated. A strong element of self-regulation is considered essential and support for this will be provided through newsletters, leaflets, direct contact and where appropriate, seminars.
- 13.2 Proactive inspections of various types of business premises are carried out each year to a frequency determined by risk. This system of inspection is seen as a means of building positive relationships between the Department and businesses.
- 13.3 Teignbridge District Council will, where possible, following a successful prosecution, name companies and individuals that have been convicted in the previous 12 months of breaking the law. Media attention will, where appropriate, be drawn to any impending prosecution or any successful prosecution to draw attention to the need to comply with specific legal requirements, or deter anyone tempted to disregard their duties and responsibilities.

14 Liason and Working with other Regulators

- 14.1 Every effort will be made to co-ordinate enforcement activity and avoid duplicating work which is the responsibility of other authorities or departments. The Environmental Health & Housing Services Department will not generally investigate or enforce where more specific legislation is enforced by another regulatory body or service. The Department will, however, liaise with that other body, to ensure effective co-ordination, to avoid inconsistencies or duplication and to ensure that any action is taken by the most appropriate body and for the most appropriate legislative breach.

15 Home Authority Principle/ Lead Authority Partnership

- 15.1 Teignbridge District Council is committed to the Home Authority Principle/ Lead Authority Partnership and will seek to promote them in accordance with the guidance issued by the Local Authority Co-ordinating Body on Food and Trading Standards and the Health and Safety Executive.

15.2 The purpose of the scheme is to help businesses avoid contraventions of food and health and safety laws by officers from this Council offering advice, at source, and encouraging any other enforcement authority to work in liaison with Teignbridge District Council on enforcement issues concerning that business. These arrangements, however, can only be made where the head office is located within the District and the company has made an approach for Home/ Lead Authority liaison.

16 Complaints

16.1 The Environmental Health & Housing Services Department has a simple, well defined and timely procedure for dealing with complaints which is clearly set out in its leaflet "*Got a Complaint About our Service*". Where a business or other member of the public makes a complaint or expresses dissatisfaction with a service provided, or any action taken, the officer receiving the complaint will notify the Head of Environmental Health & Housing Services or the appropriate Section Manager as soon as possible.

16.2 On receipt of a complaint, the Head of Environmental Health & Housing Services or Section Manager will impartially investigate all relevant facts and report the findings, in writing, to the complainant.

16.3 Complaints and expressions of dissatisfaction are seen as opportunities to identify possible weaknesses in service delivery and as a step towards making improvements. Information obtained from the investigation of complaints will be used to examine possible action to improve service provision. Where a complaint comes within the definition in the Council's Complaints Procedure, that procedure will be followed.

17 Departure from the Enforcement Policy

17.1 All Authorised Officers will abide by this Policy when making enforcement decisions.

17.2 Any departure from the Policy will only be accepted in exceptional circumstances, capable of justification, and only after full consideration and authorisation by the Head of Environmental Health & Housing Services or the Council's Solicitor.

17.3 Instances of non-compliance with this policy will be recorded and reported directly to the Head of Environmental Health & Housing Services, who will instigate appropriate action

18 Availability of the Enforcement Policy

18.1 This policy is available on the Council's web site and in hardcopy at the Environmental Health & Housing Services Department. It can be ordered by telephoning 01626 215401, e mailing twhite@teignbridge.gov.uk or writing to the Environmental Health & Housing Services Department, Teignbridge District Council, Forde House, Brunel Road, Newton Abbot, Devon, TQ12 4XX.

18.2 On request, this policy will be made available on tape, large type, or, wherever possible, in a language other than English.

Teignbridge District Council **APPENDIX 1**
Environmental Health & Housing Services Department Enforcement
Decision Sheet

