

ENVIRONMENTAL SERVICES ENFORCEMENT POLICY

Introduction

The work of Environmental Health includes:

- air pollution control
- noise control
- environmental nuisance
- drinking water quality
- contaminated land
- epidemiology and public health
- licensing and Sunday Trading
- operation of the Border Inspection Post at the airport
- pest and vector control
- provision of relevant, environmental health comment and input to strategic and operational elements of planning and licensing issues
- smoke free enforcement
- occupational health and safety *
- food hygiene, safety and standards *

(* We are required to produce specific enforcement policies for Food and Health & Safety enforcement).

Our Role

Our role is to protect, promote and improve the health and environment of the city and all its people through education, guidance and enforcement, and by supporting the Corporate Objectives to ensure the continued success of Manchester.

We believe that carrying out these functions in a fair, consistent, independent and practical manner will help to promote a thriving local and national economy.

We are committed to these objectives in our approach to enforcement action, which is intended to:

- ensure that we enforce the law in a fair, equitable and consistent manner
- assist businesses and others in meeting their legal obligations without unnecessary expense
- focus on prevention rather than cure
- take firm action against those who flout the law or act irresponsibly

Principles of Enforcement

Manchester City Council has formally adopted the central and local government Concordat on Good Enforcement. This means that we will be open, helpful and fair to ensure that any enforcement action is proportionate to the risks.

Enforcement is distinct from civil claims for compensation and is not undertaken in all circumstances where civil claims may be pursued, nor to assist such claims.

Our Approach

- **Prevention**

We believe that the first step in enforcement is to help prevent contravention of the law by raising awareness and promoting good practice. We provide written guidance on aspects of the law and are happy to discuss and explain requirements with our customers and members of the public.

- **Inspections**

Environmental Health will:

- arrange routine inspections
- carry out unannounced inspections
- act on information received, or make enquiries about a specific complaint

- **Inspection Frequency**

We will attempt to concentrate on those sectors, businesses or individuals whose activities impact most on the safety, health or well being of the community at large, on vulnerable groups or individual people.

The Service has a system to assess these risks in a consistent and objective manner, which takes into account such things as:

- the nature and history of the business
- the procedures and controls it has in operation
- other national guidance determining inspection frequency
- the renewal date of any licence or permit

We prefer Informal Action

We will use our best efforts to resolve any issues where the law may have been broken without issuing formal notices, or referring the matter to the courts. This will be our first option when the circumstances indicate that a minor offence may have been committed and we are confident that appropriate corrective action will be taken.

During inspections and following investigations about specific complaints:

- minor technical breaches will be dealt with informally by the officer giving information, advice or guidance;
- formal action, including the issuing of fixed penalty notices, will be taken where it is an absolute offence, there is an immediate threat to human health and the environment, the breach is serious, or the circumstances exceptional.

Wherever possible or requested, advice or guidance will be given in writing with a distinction made between legal requirement and best practice. An opportunity will be given to discuss the matter and any rights of appeal, complaint or further representation will be advised. This will not, however, be possible where immediate action is considered necessary.

Enforcement in City Council Premises

The Local Authority is still the enforcing authority for certain activities of the City Council. Where minor breaches of legislation are observed the outcome will follow that described above for Informal Advice. Should more serious breaches be observed a report will be sent to the appropriate Head of Service with a copy to the facility manager. The most serious breaches will be reported to the Chief Executive with a copy to the Head of Service and the facility manager.

We sometimes have to give legal notice

Some legislation that we enforce provides for the service of formal notices including fixed penalty notices, on individuals, businesses or other organisations requiring them to meet specific legal requirements. Where a formal notice is served which has a designated appeal procedure, the method of appealing against the notice and the time-scale for doing so 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 the likely consequences are if the notice is not complied with.

The most common legal notices include:

- **Improvement Notice**
Issued under both Food Safety Act and Health and Safety Act to remedy non-compliance
- **Prohibition Notice**
Issued under the Health and Safety at Work etc. Act to prohibit an activity which poses an imminent risk
- **Abatement Notice**
Issued under the Environmental Protection Act to remedy a statutory nuisance
- **Fixed Penalty Notices**
Issued under the Health Act 2006 for either smoking in a smokefree place or vehicle or failing to display the designated sign in a smokefree place or vehicle

Failure to comply with notices is taken very seriously and is likely to lead to prosecution. Appeals against notices can be taken to employment tribunals: information on how to do this is provided when notices are issued.

The final resort is prosecution

Where the circumstances warrant it, and the alternative actions mentioned previously in this policy are considered inappropriate, then prosecution may result.

We will consider the following factors when deciding whether or not to prosecute:

- the failure to carry out action required in a notice within the time specified
- the recovery of outstanding fines resulting from a fixed penalty notice
- previous advice has been ignored
- flagrant/reckless disregard for the law or repeated breaches
- the seriousness of the offence
- the attitude of the offender towards the offence
- the offender's history of previous behaviour
- the deterrent effect of a prosecution, on the offender and others

- whether a Simple (previously Formal) Caution would be more appropriate

To ensure that fair and consistent decisions are made regarding prosecutions any decision to prosecute takes account of the Code for Crown Prosecutors by having regard to the weight of evidence and public interest.

We will, during the investigation, give the offender the opportunity to be interviewed, with legal representation if they so wish, and will give due regard to any statutory defences, explanations or mitigation.

The Human Rights Act 1998 introduced an obligation on public authorities to act consistently with the Articles of the European Convention on Human Rights. These articles confer rights on an individual for example, it confers a right of respect for a person's home, other land and business assets. However, the Council's use of enforcement powers under the various Acts enforced by Environmental Health is a justified interference with these rights if it is in accordance with the law, in the public interest, and proportionate to the objective of remedying the breach of these Acts.

A Consistent Approach

All our staff will:-

- be courteous, open, fair and consistent in enforcing the law;
- show their official identification or give a business card when they visit;
- give their name when speaking on the telephone;
- answer enquiries as promptly as they can;
- tell you if they are going to write following a visit: sometimes staff need to consult colleagues or others, seek further advice, or conduct further investigations

We will be consistent in our approach by following the criteria and guidance set down in relevant legislation and codes of practice. We will ensure that before considering prosecution, the case will be subject to independent review by a Senior Manager and the City Solicitor. We will always be objective to ensure our decisions are based on facts and evidence.

Every effort is made to ensure consistent enforcement standards between local authorities although local circumstances may preclude an entirely uniform approach on all issues.

In some instances the Service may have shared responsibilities with another enforcement agency. In these circumstances we will liaise with that other agency to ensure effective co-ordination, to avoid inconsistencies and to ensure that any proceedings instituted are for the most appropriate offences.