

## **ANTRIM AND NEWTOWNABBEY BOROUGH COUNCIL ENVIRONMENTAL HEALTH ENFORCEMENT POLICY**

### **Introduction**

Antrim and Newtownabbey Borough Council has a duty to enforce Environmental Health legislation that regulates a wide range of activities. This document sets out why and how this is done.

Due to the range and complexity of the legislation, Council has delegated most of its enforcement activities to the Director of Operations or other authorised officers.

### **Aim and Scope**

Through the application of its Environmental Health functions, the Council aims to protect the public, the environment, businesses, consumers and workers.

This policy sets out the principles and approach that will be followed so as to provide an effective and fair service and to ensure consistent and open enforcement. It applies to all dealings in Environmental Health matters whether formal or informal and with businesses or members of the public. This policy is written for the guidance of the Council and its officers and is available to anyone who enquires about policies and procedures.

In addition to this generic policy, guidelines and procedural documentation exist to support enforcement decisions. This policy also encompasses the aims and principles of:

- The European Enforcement Concordat;
- The Code for Crown Prosecutors; and
- The role of Primary Authorities established under the Regulatory Enforcement and Sanctions Act 2008.

### **Principles of Enforcement**

The Council believes in firm but fair regulation. Enforcement action will be informed by:

- Proportionality in application of the law and in securing compliance;
- Targeting of enforcement action;
- Consistency of approach;
- Transparency about how the Council operates and what those regulated; may expect; and
- Accountability for the Council's actions.

### **Proportionality**

The Council will seek to minimise the cost of compliance by ensuring that any action it requires is proportionate to the risk.

When deciding on the most appropriate enforcement action, account will be taken of:

- The degree of any risks posed;
- The seriousness of any breach of the law;
- The burden which would be placed on any business in taking action, compared with the benefit of risk reduction;
- The attitude and intent of the offender, individually or corporately;
- Foreseeability of offence or circumstances leading to it;
- Relevant good practices as obtained in codes of practice and published guidance.

### **Consistency**

The Council recognises that consistency does not mean simple uniformity. Officers need to take account of the many variables such as the scale of environmental impact, the attitude and actions of offenders and the history of previous incidents or breaches. Decisions on enforcement action are a matter of professional judgment. The Council will continue to develop arrangements to promote consistency including effective arrangements for liaison with other enforcing authorities.

### **Transparency**

Transparency is important in maintaining public confidence in the Council's ability to regulate. It is an integral part of the role of Council officers and the Council trains its staff and develops its procedures to ensure that:

- Where remedial action is required, it is clearly explained why the action is necessary and when it must be carried out. A distinction will be made between legal requirements and advice on best practice.
- Opportunity is provided to discuss what is required to comply with the law before formal enforcement action is taken, unless urgent action is required for example, to prevent serious illness/injury 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 is given of all rights of appeal against formal enforcement action at the time the action is taken.
- Due regard is given to legal constraints and requirements, keeping all other relevant parties informed during investigations and with respect to enforcement decisions.

## Targeting

Action will be primarily focused on law-breakers or those directly responsible for the risk and who are best placed to control it. The Council will have systems for deciding which inspections, investigations or other regulatory contacts should take priority according to the nature and extent of risks posed by a duty holder.

## Accountability

The Council and its officers fully recognise that they are accountable to the public for their actions. Consequently, policies and standards have been put in place against which the Council's actions can be judged and procedures exist for dealing with comments and handling complaints. In addition, the Council will comply with legislation that protects the rights of persons subject to legal action, which controls how evidence against offenders may be obtained and which preserves the confidentiality of personal information. Particular consideration will be given to:

- The Police and Criminal Evidence (Northern Ireland) Order 1989
- The Human Rights Act 1998
- The Data Protection Act 1998
- The Regulation of Investigatory Powers Act 2000
- The Environmental Information Regulations 2004
- Statutory Codes of Practice
- Statutory Guidance

In the event that a customer is dissatisfied with the service provided, recourse is available as outlined below. Officers will ensure the customer is made aware of this and the procedure followed will depend not only upon the nature of the complaint itself but also the course of action that the complainant wishes to pursue.

The Council is committed to fulfilling its responsibilities under Section 75 of Northern Ireland Act 1998. Therefore, any decision regarding enforcement will be impartial and shall not be influenced by religious beliefs, political opinion, racial group, age, gender, marital status, or sexual orientation of any alleged offender, complainant or witness.

### a) Complaints related to enforcement action decisions:

- Officers will advise persons, whom they have required to take any action, of their right to make representation to the Head of Environmental Health and, if not satisfied to the Director of Operations, Chief Executive and ultimately to the Local Government Ombudsman.
- Officers will provide appeal details to be used should the recipient wish to lodge a formal appeal against any Notice served on them.

b) Complaints relating to issues other than enforcement action decisions:

Council's formal complaints procedure will be used to investigate those complaints which relate to dissatisfaction with the service provided, for example:

- Failure to follow Council policies and procedures;
- Discrimination;
- Failure to respond to requests for service within a reasonable timescale; and
- Conduct of an Authorised Officer of the Council.

### **Investigation**

The Council recognises that it is neither possible nor necessary to investigate all issues of non-compliance with legislation uncovered in the course of preventative inspection, or in the investigation of reported events such as accidents and complaints. The Council will use its discretion and have regard to the aforementioned principles in deciding whether an investigation should be initiated and in deciding the level of resources to be committed.

The following factors will be taken into account:

- The severity and scale of the potential or actual harm;
- The seriousness of any potential breach of the law;
- Knowledge of the duty holder's past performance;
- The enforcement priorities;
- The practicality of achieving results;
- The wider relevance of the event, including serious public concern;
- Attitude and actions of offenders; and
- History of any previous incidents or breaches of the law.

### **Confidentiality**

The Council understands that people making complaints may not wish their identity to be made known to the party about whom the complaint is being made and whenever possible, care will be taken to respect the confidentiality of complainants. However, in some circumstances, details relating to individual cases may be in the public domain. Every endeavour will be made to make it clear whether or not complainant confidentiality can be maintained. Anonymous complaints will be investigated whenever it is possible and appropriate and in the public interest. However, it may not be possible to pursue legal proceedings where anonymity has been retained.

### **Levels of Enforcement Action**

Officers will use a graduated approach in determining what, if any, enforcement action is appropriate, in accordance with the aforementioned principles, from the following informal and formal options:

### Informal Action

The Council recognises informal action as one means to secure compliance with the law. Informal action includes:

- Verbal advice/warning;
- Advisory letter where advice is being confirmed or remedial action requested informally; and
- Inspection reports generated on the premises following an inspection.

Informal action is appropriate in the following circumstances:

- a) Where the action or omission is not serious enough to warrant formal action;
- b) From the previous history, it can be reasonably expected that informal action will achieve compliance;
- c) Confidence in the management involved is high; and
- d) The consequences of non-compliance will not pose a significant risk to public health.

### Formal Action

In cases where informal action has failed to achieve the necessary outcome or the breach is serious enough to warrant formal action in its own right, the following will be considered:

#### a) Enforcement Letters

In cases where contraventions in legislation have been identified formal letters will be issued advising the breaches identified and how to remedy the breach. The letter will outline the time period for compliance and provide information on good practice that is applicable.

#### b) Enforcement Notice

In certain cases, these may need to be served prior to legal proceedings being instigated. The Council will give due consideration to the issue of Enforcement Notices as soon as the necessary evidence is available and where one or more of the following criteria apply:

- The specific legislation requires that a notice shall be served when circumstances leading to the existence of a statutory nuisance have been proved;
- There are significant contraventions of legislation;
- There is a lack of confidence in the proprietor or enterprise to respond to an informal approach;
- There is a history of non-compliance with informal action;
- Standards are generally poor with little management awareness of statutory requirements; and
- The consequences of non-compliance could be potentially serious to public health and although it is intended to prosecute, effective action also needs to be taken as quickly as possible to remedy conditions that are serious or deteriorating.

c) Fixed Penalty Notice

Where this enforcement option is available under the legislation, a Fixed Penalty Notice will be issued in line with the principles of proportionality, targeting and consistency.

The Council will seek to avoid, where possible, issuing Fixed Penalty Notices to anyone under the age of 18. The Council will work to prevent offending by young people by undertaking the following:

- Letters to parents or guardians;
- Schools based education; and
- Interaction with local youth clubs and community groups.

d) Licences or Authorisations

Where the relevant powers exist, a Licence or Authorisation may be varied, suspended or revoked if conditions are not complied with or in order to protect the public from regulated activities carried out to an unacceptable standard.

e) Caution

A caution is a written acceptance by an offender that they have committed an offence and may only be used where a prosecution could properly have been brought.

The Council will take account of current Home Office guidance when considering whether to offer a caution so as to:

- Deal quickly and simply with less serious offences;
- Divert less serious cases away from the Courts; and
- Reduce the chance of repeat offences.

A Caution will be brought to the attention of the Court if the offender is convicted of a subsequent offence. Where a person declines such an offer the Council will consider taking alternative enforcement action which will usually take the form of a prosecution.

The Council recognises that other bodies such as Home, Originating or Primary Authorities will require to be advised of the cautions issued by the Council and their outcome.

f) Works in Default

This action is permitted under certain legislation and is reserved for those cases where there is an imminent danger to persons or property and the legal process would not provide adequate remedy. In cases where work in default is carried out, the Council will make every effort to recover the costs of the works from the relevant party.

g) Seizure and/or Rendering Harmless

Certain legislation allows for the seizure of:

- Food;
- Other articles and substances if:
  - They could cause harm if consumed, or

- Pose a risk of serious personal injury, or
- Are in breach of a specific prohibition for example under street trading legislation.

Procedural guidance is available to officers which will be followed in such cases.

h) Council Owned Premises

Where the Council is the proprietor of a business, details of non-compliance shall be brought to the attention of the relevant Director in writing without undue delay.

Prosecution

The use of the criminal process to institute a prosecution is an important part of enforcement. It aims to punish wrongdoing to avoid a recurrence, and to act as a deterrent to others. It follows that it may be appropriate to use prosecution to ensure certain requirements are met. Where the circumstances warrant it, prosecution without prior warning or recourse to alternative sanctions will be pursued.

The Council recognises that the institution of a prosecution is a serious matter that should only be taken after full consideration of the implications and consequences. Decisions about prosecution will take account of the Code for Crown Prosecutors issued by the Crown Prosecution Service.

A prosecution will not be commenced or continued on behalf of the Council unless it is satisfied that there is sufficient, admissible and reliable evidence that the offence has been committed and that there is a realistic prospect of conviction. If the case does not pass this evidential test, it will not go ahead, no matter how important or serious it may be. Where there is sufficient evidence, a prosecution will not be commenced or continued on behalf of the Council unless it is in the public interest to do so.

Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the offender and whether, through the conviction of offenders, others may be deterred from similar failures to comply with the law.

Where there is sufficient evidence the Council will normally prosecute in any of the following circumstances:

- Where the offence involves a failure to comply in full or in part with the requirement of a statutory notice.
- Where there is a history of similar offences in relation to non-compliance with notices.
- Excessive or persistent breaches of regulatory requirements.
- Obstruction of Council staff in carrying out their powers.

- Where the gravity of the alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender warrants it.
- Failure to supply information without reasonable excuse or knowingly supplying false or misleading information.
- Impersonating a Council officer.

## Death at Work

Where there has been a breach of the law leading to a work-related death, enforcing authorities need to consider whether the circumstances of the case might justify a charge of manslaughter.

The Police Service of Northern Ireland (PSNI) is responsible for deciding whether to pursue a manslaughter investigation and whether to refer a case to the Public Prosecution Service (PPS) to consider possible manslaughter charges. If in the course of health and safety investigation, there is evidence indicating that manslaughter may have been committed, Council officers will have regard to the principles of the Northern Ireland Agreement for Liaison (Investigation of Work Related Deaths) and ensure that decisions on the investigation and prosecution of such matters are properly coordinated with both the PSNI and the PPS.

## Decision-Making process

In cases of Health and Safety legislation it is the authorised officers who have the power to take legal action. In other matters the power of decision to prosecute rests with the officer having delegated authority.

In all cases the decision to prosecute will be based on the following considerations:

- Is there a reasonable prospect of conviction?

And **where there is, the**

- a) seriousness of the offence;
- b) previous history of the party concerned;
- c) likelihood of the defendant being able to establish a viable defence under the relevant statute if applicable;
- d) ability of any important witness and their willingness to co-operate;
- e) willingness of the party to prevent recurrence;
- f) probable public benefit of a prosecution;
- g) explanation offered by the company/offender;
- h) other possible action such as issuing a formal caution; and
- i) deterrent to further non-compliance.

Where legal advice is necessary before a decision is made this will be sought through any appropriate legal advisor approved by the Council.



Where there is reasonable doubt as to the success of the proceedings and the possibility of costs being awarded against the Council this will be included in the considerations made before a decision to proceed is taken.

In legal proceedings the Council will fully support the necessary action taken in all cases by the authorised officer.

### **Working with other Regulators**

Where the Council and other enforcement bodies have the power to prosecute, the Council will liaise with that other body to ensure effective co-ordination, to avoid inconsistencies and to ensure that any proceedings instituted are for the most appropriate offence. The Council will also consult with other local authorities as appropriate.

The Council will, when appropriate and when requested to, seek to raise the awareness of the Courts of the gravity of certain offences and the full extent of their sentencing powers. In certain cases, it may also be appropriate to draw the attention of the courts and/or the PPS to the fact that disqualification of a director may arise under relevant legislation.

### **Recovery of Costs**

In carrying out the formal action outlined in this policy, Antrim and Newtownabbey Borough Council will endeavour to recover all reasonable costs incurred.

### **Complaints and Appeals**

If a person wishes to appeal against an enforcement action the Council recommends that they should seek legal advice.

The Council will provide the following information to the person against whom the enforcement action is being taken:

- Authorised officers will advise the individual or business of the right to make representation to officer's line manager.
- If in the case of a Statutory Notice and the legislation used has a Statutory Appeal Provision, details of the right to appeal and how it should be lodged will be served upon the recipient along with the notice.

Details of the Council's complaints procedure can be found at [antrimandnewtownabbey.gov.uk/Residents/Customer-Service](http://antrimandnewtownabbey.gov.uk/Residents/Customer-Service)

### **Public Access to Information**

This policy will be made freely available to all members of the public on request and a copy will be posted on the Council website.

Officers will adhere to the restrictions placed on them by legislation in relation to the release of any information to a third party, obtained by them in the course of

their duties. When convictions have been obtained however, the Council will, in addition to reporting the details to the appropriate authorities, consider alerting the media and making the details of the conviction public. Such action will serve to draw the attention of a wider audience to the need to comply with legal requirements and deter others tempted to disregard their legal duties.

In accordance with the Environment and Safety Information (Northern Ireland) Order 1993, the Council will keep and make available, a public register of statutory notices which have implications for the general public.

### **Revision**

The implementation of this policy will be monitored through the Council's internal auditing process.

This policy will be reviewed every two years or as necessary to ensure that it satisfies legal requirements and customer expectations of the service.

### **Comments**

The Council welcomes comments on this policy and on how services can be improved. Comments can be made in the following ways:

#### **In person at:**

Antrim and Newtownabbey Borough Council:

Mossley Mill	or	Antrim Civic Centre
Newtownabbey		50 Stiles Way
BT39 5QA		ANTRIM
		BT41 2UB

#### **By telephone on:**

028 9034 0000

#### **In writing to:**

The Head of Environmental Health, Antrim and Newtownabbey Borough Council  
at:

Mossley Mill  
Newtownabbey  
BT36 5QA

#### **Email to:**

[envhealth@antrimandnewtownabbey.gov.uk](mailto:envhealth@antrimandnewtownabbey.gov.uk)