

THE EXECUTIVE

18 MARCH 2002

ENFORCEMENT CONCORDAT

REPORT OF EXECUTIVE DIRECTOR OF ENVIRONMENT AND TRANSPORTATION

1.0 PURPOSE OF REPORT

- 1.1 The purpose of this report is to request formal approval of the Corporate Enforcement Policy which seeks to aid practical implementation of the principles of the Government's Enforcement Concordat.

2.0 RECOMMENDATION

- 2.1 The Executive is recommended to approve the Corporate Enforcement Policy as attached at Appendix 1.

ENFORCEMENT CONCORDAT

3.0 INTRODUCTION

3.1 The Council's former Policy and Resources Committee at its meeting on 23 July 2001 approved the adoption of the Enforcement Concordat which sets out what businesses and others being regulated can expect from enforcement officers employed by local authorities and other agencies.

3.2 Good Practice Guidance has been produced which sets out to help local authorities progress through the process of adoption and subsequently, implementation, monitoring and review of the Concordat across regulatory services.

3.3 The Cabinet Office requires commitment to be demonstrated across the range of the Authority's regulatory services in respect of the Concordat's principles.

4.0 CONCORDAT PRINCIPLES

4.1 Policy -

- Standards - clear standards to be established setting out the level of service and performance the public and businesses can expect to receive. Standards and annual performance to be published.
- Openness - information and advice to be provided in plain language on the rules applied. Such information to be disseminated as widely as possible.
- Helpfulness - a commitment to prevention rather than cure through actively working with businesses, in particular with small and medium sized businesses. The local authority must also provide a courteous and efficient service, staff to identify themselves by name, a contact point and a telephone number and encourage businesses to seek advice/information.
- Complaints about service - effective complaints procedure to be well publicised.
- Proportionality - any action required by the local authority must be proportionate to the risks to minimise the costs of compliance.
- Consistency - duties to be carried out in a fair, equitable and consistent manner. Whilst inspectors are expected to exercise judgement in individual cases, arrangements must be in place to promote consistency including effective arrangements for liaison with other authorities and enforcement bodies.

4.2 Procedures -

- Advice from officers must be put clearly and simply and be confirmed in writing, on request, explaining why any remedial work is required and over what timescale. Legal requirements to be clearly distinguished from best practice advice.
- Before formal action is taken, officers will provide an opportunity to discuss the circumstances of the case, and if possible resolve points of difference.
- Where immediate action is considered necessary a full explanation will be given at the time and confirmed in writing in most cases within 5 working days and in all cases 10 working days.
- Appeal procedures to be clearly set out in writing.

4.3 Policy and Procedure -

A general statement is published to show the local authority's commitment to the principles of good enforcement and the adoption of the Concordat on Good Enforcement.

5.0 **ENFORCEMENT POLICY**

- 5.1 Having adopted the Enforcement Concordat for all regulatory services it is now essential that a clear policy is agreed and implemented to ensure adherence to the principles as defined.
- 5.2 To take this forward a corporate policy has been drafted, Appendix 1. This clearly identifies the Council's aims and principles in relation to good enforcement practice at a corporate level. Operating beneath the corporate policy it is proposed that individual regulatory services adopt specific, detailed policies which provide clear and open guidance to be taken account of in relation to the type of enforcement work undertaken.
- 5.3 Full consultation with all Chief Officers has been undertaken and a list of regulatory services covered by the Policy is attached at Appendix II.
- 5.4 The Policy will be widely publicised through service specific guidance particularly to businesses and will also be available through the Council's website.

6.0 CONCLUSION

6.1 Many of the regulatory services provided by the Council already operate to the principles of the Enforcement Concordat and are working to provide quality services through Best Value and continuous improvement. The approach of clearly defining a corporate enforcement policy will obviously support this work.

The following is a list of the background papers on which this report is based in accordance with the requirements of Section 100(1) of the Local Government Act 1972. It does not include documents which would disclose exempt or confidential information as defined by that Act.

File Ref - Background files available a request

Any Person wishing to inspect copies of the above background papers should contact:-

Carol Brown - Tel No 0161 911 4494

OLDHAM METROPOLITAN BOROUGH COUNCIL

ENFORCEMENT POLICY

Introduction

Oldham Metropolitan Borough Council acts as a regulator and enforcement body for a diverse range of Acts of Parliament, Regulations and orders which in turn place legal duties and powers upon the Council.

The Council has adopted the Enforcement Concordat issued by the Cabinet Office and supports the principles laid down together with national guidance, Codes of Practice and circulars relating to enforcement . This Policy also sets out the standards the Council applies acting in its role as regulator and enforcement body across a range of legal duties and powers.

It is the intention of this policy to cover the broad common issues of enforcement and regulation with component policies on specific areas of enforcement, giving greater detail to the relevant statutory provisions.

Objectives

The Council is seeking to ensure that in undertaking its regulatory and enforcement role it will be fair, open and consistent in its approach. To that end it will follow the guidance and standards set out in this policy and any supplementary service policies.

In particular the Council will;

- i) Consult with businesses and other parties about the standards it has in relation to this role;
- ii) Make available information on the standards and policies;
- iii) Work with individuals and businesses, where appropriate, to advise on and assist with compliance;
- iv) Ensure that staff have appropriate training and apply this policy and standards consistently and professionally;

- v) Monitor compliance with the policy and standards to ensure consistency and review it as necessary in consultation with affected parties;

General Principles

In undertaking its regulatory and enforcement role the Council will have regard to the following principles.

Equity - decisions relating to enforcement action will be taken in an impartial manner and will not be affected by race, creed, colour, gender, political views or sexual orientation.

Assistance - where appropriate advice will be given to assist with compliance before formal action is instigated, except in those instances where the breach of legislation is sufficiently serious to warrant immediate formal action.

Proportionality - the enforcement action the Council takes will be in proportion to the seriousness of the offence committed.

Fairness - in appropriate cases adequate opportunity will be given to rectify the non-compliance before legal proceedings are commenced.

Tolerance - enforcement action will be taken when other avenues to ensure compliance have been used.

Public Interest - the Council sees prosecution as the final means to achieve compliance. It will prosecute where it is in the public interest to do so and the seriousness of the offence warrants it.

Consistency - The Council aims to ensure consistency of enforcement through appropriate training and supervision of enforcement officers to ensure compliance with this policy and supplementary service policies.

Officers will always aim for consistent enforcement action but absolute uniformity will never be expected as individual circumstances may aggravate or mitigate action to be taken.

Standards

The Council will always endeavour to meet the highest standards of service in undertaking its regulatory and enforcement functions.

The following service standards will be applied.

- i) Enforcement and regulation enquiries or complaints will receive a response or acknowledgement within 15 working days.

- ii) Officers will announce themselves on arrival at premises and show their identification unless they are already known by the person.
- iii) Officers will be objective and ensure that decisions are not influenced by the gender, ethnic origin, religious or political beliefs of any alleged offender.
- iv) Officers will enter into discussion and offer advice in a clear and simple way to protect people against exposing themselves to the possibility of formal action through a lack of understanding, or information.
- v) Advice on rights of appeal against formal action will be clearly set out in writing at the time the action is taken.
- vi) In any situation where a shared enforcement role exists this will be taken into account including where appropriate, notification and discussion with other enforcement bodies to ensure the most suitable action is taken.
- vii) Any complaints against the actions of an officer of the Council will be dealt with under the Council's Complaints Procedure copies of which are available from Council Offices, the Council's Website (www.oldham.gov.uk) or by telephoning the Council on 0161-911-3000 and asking for the appropriate service.
- viii) This policy will be monitored and feedback delivered through the Council's service planning process. Businesses and the public will be invited to comment through the Council's website and feedback forms attached to published copies of this and service specific enforcement policies.

Enforcement Actions

Formal action will normally only be initiated where one or more of the following apply:-

- i) it is prescribed by law;
- ii) informal approaches have failed;
- iii) the matter is of such a serious nature that informal action is inappropriate

Enforcement action may take the form of:-

- i) informal written warnings
- ii) service of statutory notices
- iii) formal cautions

iv) prosecutions

Informal written warnings - legal requirements will be clearly distinguished from recommendations.

Statutory Notices - Formal notices may be served on individuals, businesses and other organisations requiring them to meet specific legal requirements. Where a formal notice is served the method of appealing against the notice and the timescale 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 the likely consequences if the notice is not complied with.

Formal Cautions - There will be instances where a formal caution would be an appropriate alternative to a prosecution. The Council's aims in issuing a formal caution follow the guidance set out in Home Office Circular 18/1994, which are:-

- to deal quickly and simply with the less serious offenders;
- to divert them from unnecessary appearance in the Criminal Courts; and
- to reduce the chances of their re-offending

In order to safeguard the offender's interests the Council will ensure that the following criteria are met before a caution is given:-

- there must be evidence of the offender's guilt sufficient to give a realistic prospect of conviction;
- the offender must admit the offence; and
- the offender (or, in the case of a juvenile, his parents or guardian) must understand the significance of a caution and give informed consent to being cautioned

Prosecution - Where the circumstances warrant and the alternative actions mentioned previously in this Policy are considered inappropriate, then prosecution may result. Any decision to prosecute will take into account the criteria set down in the Code for Crown Prosecutors and Attorney General's Guidelines.

The following factors will be taken into account when reaching a decision as to whether or not to prosecute:-

- There is significant risk to health or safety of persons, or to amenity or the environment;

- The offence involves the threat of violence against any person, or obstruction of an officer of the Council;
- False information either written or in verbal form is deliberately provided to the Council or to an investigating officer;
- Fraudulent or reckless practice or the threat of significant economic disadvantage to consumers or businesses is involved;
- The victim is part of a vulnerable group, eg. children, elderly persons;
- The offender has relevant previous convictions, or formal cautions;
- The offender has repeatedly ignored advice;
- There is widespread disregard of the law and appropriate notice has been given to the public or the business community that legal proceedings will be considered for future breaches (eg. sale of tobacco to those under 16);
- The offender has failed to comply with a statutory notice within the compliance period;
- The offender, by action or inaction, risks causing suffering to animals or has increased the risk of the spread of animal disease; or
- Some other significant public purpose would be served.

Mitigating factors could include the examples below, but these should always be balanced against the seriousness of the offence and the likelihood of it being repeated:-

- The problem was revealed by an approach for advice from the person or business;
- Compliance with previous advice by Oldham Council or guidance from government departments;
- Co-operative attitude to prevent recurrence;
- Legitimate conflict of interpretation (not just disagreement) where it may be more appropriate to seek adjudication through another body, (eg Local Authority co-ordinating organisation on Trading Standards (LACOTS) or Food Standards Agency);
- Previous good history or absence of complaints;
- Reluctance of witnesses to testify;

- There has been undue delay in bringing the matter to court (unless the delay was the fault of the offender);
- A prosecution is likely to have a significantly detrimental effect on the victim's physical or mental health;
- The offender is elderly or a minor, or was, at the time of the offence, suffering from significant mental or physical ill health; or
- The views of the Council's legal advisor, or a relevant expert witness(es).

Oldham Council services have policies giving more detailed information on the application of enforcement powers for specific services. Copies are available through the Council's website on www.Oldham.gov.uk or by telephoning 0161-911-3000 and requesting the appropriate service department.

Doc ref: Enforcement Policy OMBC

ENFORCEMENT CONCORDAT

Regulatory Services to which the Concordat applies:-

- Trading Standards
- Environmental Health
- Building Control
- Planning Enforcement
- Highways
- Licensing
- Housing - Private Sector Housing, Public Sector tenancy conditions enforcement etc
- Operational & Leisure Services - Refuse Service
- Education - Pupil Welfare Service