



Corporate Enforcement Policy

Reading Borough Council

Reading Borough Council
Civic Centre
Reading
RG1 7TD

Telephone 0118 9373737

2012

Reading Borough Council Corporate Enforcement Policy

Contents:

Section	Subject	Page No
1.0	Introduction	3
2.0	Status of the Enforcement Policy	3
3.0	Scope and meaning of Enforcement	3
4.0	Need for an Enforcement Policy	3
5.0	Legal Provisions	4
6.0	General Principles	4
7.0	Expectations of Business	5
8.0	Obstruction of Officers and Powers of Entry	5
9.0	Appointment of Officers & Identification	6
10.0	Shared Enforcement Role	6
11.0	Provision for Interests of Consumers and Businesses	6
12.0	Choice of Appropriate Enforcement	7
13.0	Who Decides on Enforcement Action	8
14.0	Monitoring of Policy	8
15.0	Appeals, Complaints and Comments	8

Reading Borough Council

CORPORATE ENFORCEMENT POLICY

1.0 INTRODUCTION

- 1.1 Fair and effective enforcement is essential to protect the economic interests and health and safety of the public, businesses and the environment. This Policy sets out what businesses and individuals being regulated by the Council can expect from Enforcement Officers.
- 1.2 This Policy commits the Council to good enforcement policies and procedures.

2.0 STATUS OF THE ENFORCEMENT POLICY

- 2.1 The Corporate Enforcement Policy was first approved by the Cabinet of Reading Borough on 20th March 2006, and was revised in 2009. The current version of the Policy is effective from February 2012.
- 2.2 In addition to this Corporate Policy, some individual Service Areas may have specific Enforcement Policies relevant to their work.

3.0 SCOPE AND MEANING OF ENFORCEMENT

- 3.1 This Policy applies to all the legislation enforced by officers of the Council.
- 3.2 Enforcement includes any action taken by officers aimed at ensuring that individuals or businesses comply with the law. This is not limited to formal enforcement action such as prosecution; it also includes, for example, the inspection of premises for the purpose of checking compliance with Acts of Parliament or Regulations.

4.0 NEED FOR AN ENFORCEMENT POLICY

4.1 A clear enforcement policy ensures that:

- (a) all those who live and work in Reading are able to have a clear understanding of the Corporate Policy covering the Council's enforcement functions.
- (b) all statutory notices issued by the Council are checked by an experienced officer for appropriateness, legal validity, content and technical information;

- (c) any information given to a business, landlord or individual, whether written or verbal, clearly identifies those requirements which are mandatory and those which are advisory;
- (d) any enforcement action is proportionate to the risks involved; and
- (e) officers follow a consistent approach to enforcement.

5.0 LEGAL PROVISIONS

5.1 The following legislation and guidance will be taken into account in the enforcement activities of the Council:

- a) The Enforcement Concordat (adopted by the Council on 14 March 2000)
- b) Legislative and Regulatory Reform Act 2006
- c) Regulatory Enforcement and Sanctions Act 2008
- d) Regulation of Investigatory Powers Act 2000
- e) Police and Criminal Evidence Act 1984
- f) Criminal Proceedings and Investigation Act 1996
- g) Freedom of Information Act 2000, Data Protection Act 1998 and Environmental Information Regulations 2004
- h) Human Rights Act 1998
- i) Local Government Acts
- j) Race Relations Act 1976 and Equality Act 2010
- k) Crime and Disorder Act 1998
- l) Other relevant Acts e.g. Public Health Acts, Housing Acts, Anti-Social Behaviour Act 2003, Criminal Justice and Public Order Act 1994, Clean Neighbourhoods and Environment Act 2005, Proceeds of Crime Act 2002, Localism Act 2011 etc.
- m) The Code for Crown Prosecutors
- n) Home Office Guidance on use of simple cautioning
- o) Local Service Plans
- p) Guidance from the Local Better Regulation Office
- q) Regulators' Compliance Code

Any other relevant Governmental Guidance or professional advice

6.0 GENERAL PRINCIPLES

6.1 Each case is unique and must be considered on its own merits. However, there are general principles that apply to the way each case must be approached. These are outlined in this Policy, and are based on the Enforcement Concordat, which was adopted by the Council on 14th March 2000. The Concordat is a voluntary Code of Practice developed by the Government in

partnership with local authorities and representatives of consumer and business interests.

The Enforcement Concordat contains the following principles:

- (a) **Standards:** set clear standards for the level of service and performance which the public and businesses can expect to receive;
- (b) **Openness:** provide information and advice in plain language on the legislation and rules the Council applies, and disseminate this as widely as possible;
- (c) **Helpfulness:** actively work with businesses and individuals, especially small and medium sized businesses, to advise on and assist with compliance; and provide an opportunity for discussion and for compliance before formal enforcement action is taken
- (d) **Complaints about the Council's enforcement service:** provide well publicised, effective and timely complaints procedures which are easily accessible to businesses, the public and community groups;
- (e) **Proportionality:** minimise the costs of compliance for businesses by ensuring any enforcement action required is proportionate to the risks; prosecute when appropriate
- (f) **Consistency:** carry out our duties in a fair, equitable and consistent manner.

- 6.2 In addition to the principles of the Enforcement Concordat, the Council is required to carry out its regulatory activities relating to trading standards, environmental health and licensing in a way which is consistent, transparent, accountable, proportionate and targeted, in accordance with the Principles of Better Regulation.

These principles underpin how Reading Borough Council's regulatory services work with businesses. The Council sees businesses - whether compliant or not - as its customers, and builds appropriate relationships. Any advice and support given to customers is authoritative and accessible, focussing on the needs of specific business sectors.

- 6.3 The Council will also have regard, where appropriate, to the priority regulatory outcomes published by the Local Better Regulation Office, which is a statutory body set up in 2008 to improve enforcement and regulatory activity in certain sectors. It has a statutory duty to specify matters to which local authorities must give priority when allocating resources, and is responsible for publishing priority regulatory outcomes, which assist local authorities in focussing their enforcement activities.
- 6.4 The Council is also under a duty to have regard to the Regulators' Compliance Code, which again applies to trading standards, environmental health and licensing, and which is largely based on the Principles of Better Regulation. The Code applies when determining general policy or setting standards, but not to individual cases.
- 6.5 The Council also operates the Primary Authority scheme and will have regard to guidance issued by the Local Better Regulation Office in carrying out enforcement activity within the scope of the scheme.

- 6.6 Further details of the Principles of Better Regulation, the Regulators' Compliance Code, the Primary Authority scheme and priority regulatory outcomes can be found in the relevant Departmental Enforcement Policies.
- 6.7 The Code, the priority regulatory outcomes, the primary authority scheme and the Principles of Better Regulation do not apply to enforcement activity relating to planning, listed buildings, advertisements, protected trees or building control.

7.0 EXPECTATIONS OF BUSINESS

- 7.1 In their own interests, and in order to avoid the need for enforcement action, businesses are expected:
- to be proactive in seeking advice
 - to be open in disclosing information to the Council when required
 - to be cooperative and willing to discuss problems

8.0 OBSTRUCTION OF OFFICERS AND OFFICERS' POWERS OF ENTRY

- 8.1 Enforcement Officers have a wide variety of duties, many of which need them to act as investigators similar to Tax Inspectors, Revenue and Customs officers and police officers. To enable them to act effectively, the law has given strong powers of entry, seizure and inspection. If individuals or companies obstruct officers or do not provide the requested information, the law also imposes punishments. Officers rarely have to use these powers, but for them to be effective the Council will continue to uphold and support them.
- 8.2 Officers will use their powers of entry only when necessary to effect an inspection of the premises or in the process of an investigation. The Council will **always** actively support officers acting in good faith, including prosecuting those individuals who obstruct or assault officers during investigations or inspections.
- 8.3 When the legislation allows, an officer may examine premises and articles, take photographs, remove articles, take samples or require information and may in some instances be accompanied by other persons. In appropriate cases an officer may seek a warrant from a Magistrates' court to gain entry into premises.
- 8.4 An officer will be expected to explain both the justification and the legal basis for the above actions upon demand.

9.0 APPOINTMENT OF OFFICERS AND IDENTIFICATION

- 9.1 All enforcement officers are required to carry identification in the form of an "Authority to Enter" card bearing their photograph. If an officer does not show his/her card, he or she may be asked to show it by anyone who is

requested to allow entry. If no card is produced, entry may be legitimately refused. If a member of the public has any doubt about the officer's identity, he/she may telephone the Council on 0118 937 3737 to confirm this.

10.0 SHARED ENFORCEMENT ROLE

10.1 Enforcement officers investigating breaches of the law must consider whether there is a shared or wider enforcement role. In some instances Council Officers from one Section work closely with officers of other Sections, or the Police, the Fire and Rescue Service, the Health and Safety Executive, the medical profession and others. Officers will respect confidentiality so far as it is appropriate to do so, and will not divulge any information which is not relevant to the case in question. However, the Council has a duty to inform certain government bodies of statutory notifications, for example, reporting certain accidents or occupational diseases to the Health & Safety Executive, or notices of intended prosecutions to the Office of Fair Trading.

10.2 If another agency or authority is the enforcing authority for a particular activity, officers will inform them of any contraventions they observe during the performance of their duties; for example, officers must consult the Fire Authority before serving a statutory notice to provide or improve means of escape in a house in multiple occupation. When appropriate, enforcement issues are referred to other agencies. For example:

Health and Safety Executive

Emergency Services

Thames Water

Royal Society for Prevention of Cruelty to Animals

Other Local Authorities

The Environment Agency, Department of Environment, Food and Rural Affairs, Department for Work and Pensions, the UK Border Agency and other Government Departments and Agencies

10.3 Confidentiality, data-protection and information-sharing are covered in detail in separate Council policies with reference to the Data Protection Act 1998 and Freedom of Information Act 2000, and the Environmental Information Regulations 2004.

11.0 PROVISION FOR INTERESTS OF CONSUMERS AND BUSINESSES

11.1 This enforcement policy has taken into account the interests of consumers and businesses in Reading. Visits to businesses sometimes occur out of normal working hours to cope with their extended operating hours. Similarly, many residents are only available in the evenings and visits are often arranged for mutual convenience. Where possible, interpreters and translators will

accompany officers where business persons, consumers and residents are unable to communicate in English.

12.0 CHOICE OF APPROPRIATE ENFORCEMENT PROCEDURES

12.1 Compliance should normally be achieved through informal action such as letters or giving advice. Where this does not result in compliance, or in more serious instances, formal enforcement action will be considered, e.g. issuing a statutory notice, offering a formal caution, or prosecution. The Code for Crown Prosecutors will be taken into account, among other factors, in deciding whether a caution or prosecution is appropriate.

12.2

(a) Informal action includes:

- (i) Educational Courses
- (ii) Giving Advice
- (iii) Visits to Check
- (iv) Warning Letters
- (vi) Consideration Notices
- (vii) Undertakings

(b) Formal Action includes:

- (i) Notice of Intention
- (ii) Works Notices
- (iii) Abatement Notices
- (iv) Improvement Notices
- (v) Works in default
- (vi) Prohibition Notices
- (vii) Control orders
- (viii) Closing Orders
- (ix) Seizure and Detention
- (x) Simple Cautions
- (xi) Enforcement Notices and other Notices under the Town and Country Planning Acts
- (xii) Injunction
- (xii) Revocation of licence
- (xiii) Fixed Penalty Notices
- (xiv) Anti-Social Behaviour Orders and Contracts
- (xiv) Prosecution

12.3 More information on different types of enforcement action can be found within each Service's enforcement Policy where appropriate.

13.0 WHO DECIDES WHAT ENFORCEMENT ACTION IS TAKEN?

- 13.1 For less serious infringements of the law, decisions about the most appropriate course of action may be made by the enforcement officer(s). Decisions are based upon professional judgment, legal guidelines, statutory codes of practice and priorities set by the Council and/or Central Government.
- 13.2 For more serious offences (where the nature of the offence points towards prosecution, simple caution and/or seizure), decisions about enforcement, may be taken by Enforcement / Investigating Officer(s) and/or senior managers from the relevant Section, and the Head of Legal Services where appropriate.

14.0 MONITORING AND REVIEW OF POLICY

- 14.1 All officers are required to adhere to this policy. Managers, including Team Leaders, are required to monitor the implementation of the policy by enforcement officers and make any necessary suggestions and recommendations for improvement. Any variance from the policy should be reported to the appropriate Service Manager who will ensure that it is addressed in the Service Plan, and that the necessary training is given to the officer(s) concerned.
- 14.2 This Policy will be reviewed when there is any significant change in legislation or other circumstances which affect its effectiveness and validity.

15.0 APPEALS, COMPLAINTS AND COMMENTS

- 15.1 The Council has published its Corporate Appeals and Complaints Procedures, which can be found on the Council's web-site: www.reading.gov.uk, where copies of this Policy are also available. In addition, most legislation that we enforce has an in-built appeals procedure whenever formal enforcement action is taken. These procedures will be explained as appropriate. Complaints may also be made to the Local Government Ombudsman (www.lgo.org.uk).
- 15.2 In addition to the corporate complaints procedure any person can take up their complaint with the Service Manager or Service Director in the first instance, should they so wish. Paper copies of this Policy may also be obtained from the relevant Service Director, and comments on the Policy should also be made to the Director. Copies will be made available on request in Braille, large type or in languages other than English where this is a reasonable requirement.