

HAMBLETON DISTRICT COUNCIL

Report To: Cabinet
10 June 2014

Subject: **ENVIRONMENTAL HEALTH ENFORCEMENT STRATEGY AND POLICY**

All Wards
Portfolio Holder for Environmental and Planning Services: Councillor B Phillips

1.0 PURPOSE OF THE REPORT

1.1 The purpose of this report is to seek approval of the Environmental Health Enforcement Strategy and Policy v4.0.

2.0 BACKGROUND

2.1 The current Environmental Health Enforcement Strategy and Policy v2.2 received Council approval in July 2011. Version 4.0 has now been produced following some minor redrafting during 2012 and the requirement to comply with the Regulators Code, published in July 2013. The following amendments have been made in the latest version:-

- a) Paragraph 3.3 – updated to include further previously approved function-specific Enforcement Policies.
- b) Section 4.0 has been rewritten following the replacement of the Regulators' Compliance Code, which was voluntary, with the Regulators' Code, which became mandatory on 6th April 2014. This new code sets out how the enforcement activity must be carried out but makes no practical difference to individual enforcement decisions e.g. whether to prosecute or not. These will always be based on the Evidential and Public Interest tests in the Code for Crown Prosecutors, which is unchanged.
- c) Section 5.0 – the Priority Regulatory Outcomes are unchanged.
- d) Section 6.0 onwards – the Enforcement Options are unchanged.
- e) The Enforcement Reference Documents have been updated.

3.0 LEGAL IMPLICATIONS:

3.1 The Code has been laid before Parliament in accordance with section 23 of the Legislative and Regulatory Reform Act 2006 ("the Act"). Regulators whose functions are specified by order under section 24(2) of the Act **must** have regard to the Code when developing policies and operational procedures that guide their regulatory activities.

4.0 FINANCIAL IMPLICATIONS AND EFFICIENCIES:

4.1 There are no financial implications in this report.

5.0 RISK ASSESSMENT:

5.1 There are no significant risks associated with this report.

6.0 DIVERSITY:

6.1 There are no equality or diversity implications.

7.0 RECOMMENDATIONS:

7.1 That Cabinet approves and recommends to Council the Environmental Health Enforcement Strategy and Policy v4.0.

MICK JEWITT

Background papers: Regulators' Code. BRDO. July 2013

Author ref: PM
Contact: Philip Mepham
Environmental Health Manager
Direct Line No: (01609) 767037



**HAMBLETON DISTRICT COUNCIL
ENVIRONMENTAL HEALTH SERVICE**

**ENVIRONMENTAL HEALTH
ENFORCEMENT STRATEGY AND POLICY**

Date of Issue:

Version control

Version	Date	Author
1.0	22 nd June 2010	Philip Mepham, Environmental Health Manager
2.0	2 nd June 2011	Philip Mepham, Environmental Health Manager
2.1	6 th June 2011	Philip Mepham, Environmental Health Manager
2.2	27 th June 2011	Philip Mepham, Environmental Health Manager
3.0	3 rd April 2012	Philip Mepham, Environmental Health Manager
3.1	19 th July 2012	Philip Mepham, Environmental Health Manager
4.0	25 th November 2013	Philip Mepham, Environmental Health Manager

Contents

HAMBLETON DISTRICT COUNCIL	ENVIRONMENTAL HEALTH ENFORCEMENT STRATEGY AND POLICY
ENVIRONMENTAL HEALTH SERVICE	G.D.1
Issue No. 4	November 2013

	Page
1. Background	3
2. Human Rights	3
3. Policy Statement	4
4. Regulators' Code	5
5. Priority Regulatory Outcomes	6
6. Enforcement Options	7
7. Levels of enforcement action	8
8. Legal proceedings	14
9. Legal Proceedings Process	17
10. Staff authorisation and delegation	17
11. Staff support	17
12. Ensuring fair and equal enforcement	18
13. Review and monitoring	18
14. National Police Computer	19
Enforcement Reference Documents	20

HAMBLETON DISTRICT COUNCIL	ENVIRONMENTAL HEALTH ENFORCEMENT STRATEGY AND POLICY
ENVIRONMENTAL HEALTH SERVICE	G.D.1
Issue No. 4	November 2013

1.0 BACKGROUND

1.1 Hambleton District Council (the Council) carries out a wide range of legal duties under various Acts and regulations. This Strategy and Policy outlines the approach we take when considering and carrying out enforcement action and applies to a variety of functions, including:

- Food Safety including infectious disease and water supplies
- Health and Safety including skin piercing and animal welfare
- Licensing, including alcohol licensing, gambling, taxi and private hire vehicle licensing, charitable collections and street trading
- Pest Control
- Environmental Protection including Noise, Land and Air Pollution
- Residential Services including private sector housing, nuisance and caravan sites.

1.2 The purpose of enforcement is to ensure that preventative or remedial action is taken to protect public health and the environment by securing compliance with regulatory systems. Whilst the Council seeks to ensure full voluntary compliance with relevant legislative requirements wherever possible, it will not hesitate to institute legal proceedings where necessary.

1.3 “Enforcement” includes inspection, investigation, intelligence and education and promotion activities.

- Inspection includes the proactive review of premises, practices or activities to determine levels of compliance with legislation.
- Investigation includes reactive activities to determine whether unsatisfactory situations exist where formal action is required.
- Intelligence covers services that monitor activities, levels of pollution, food and drinking water quality etc to determine whether action is required on the basis of that evidence.
- Education and promotion involves the provision of information or advice on how people and organisations can comply with requirements and good practice.

1.4 Enforcement is a means for achieving Corporate Priorities. Environmental Health Services also make a significant contribution to Local Strategic Partnership plans and other outcome-based indicators.

2.0 HUMAN RIGHTS

2.1 The Council is a public authority for the purposes of the Human Rights Act 1998. We therefore apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

HAMBLETON DISTRICT COUNCIL	ENVIRONMENTAL HEALTH ENFORCEMENT STRATEGY AND POLICY
ENVIRONMENTAL HEALTH SERVICE	G.D.1
Issue No. 4	November 2013

2.2 Human rights are rights and freedoms that belong to all individuals regardless of their nationality and citizenship. The Act identifies 16 rights – some absolute, some limited and some qualified.

2.3 There are situations where a balance can be made between individual rights and those of the community e.g. if a restriction of a qualified right has a legitimate aim, such as public safety, and the restriction itself does not go any further than necessary to protect this aim, then it is likely that it will be compatible with the Convention. This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is had to the right to a fair trial and the right to respect for private and family life, home and correspondence.

3.0 **POLICY STATEMENT**

3.1 The Council aims to secure a safe and healthy environment for everyone living, working or visiting the District. This will be achieved through a combination of education, provision of advice, investigation of issues raised by customers and regulation of the activities of others. Securing compliance with legal regulatory requirements using enforcement powers, including prosecution, is an important part of achieving this aim.

We will exercise our regulatory activities in a way which is:-

- i) Proportionate – our activities will reflect the level of risk to the public and enforcement action will relate to the seriousness of the offence;
- ii) Accountable – our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures;
- iii) Consistent – our advice to those we regulate will be robust and reliable and we will respect advice provided by others. Where circumstances are similar, we will endeavour to act in similar ways to other local authorities;
- iv) Transparent – we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return; and
- v) Targeted – we will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities.

3.2 In particular, the Council will:-

- adhere to the provisions of the Regulators' Code in respect of all enforcement decisions
- ensure the interests of regulated entities and consumers are taken into account in the design and delivery of enforcement services
- adhere to function-specific policies, guidance and codes of practice related to enforcement
- work with other enforcers to achieve greater effectiveness and economy
- carry out enforcement activities in a fair, consistent and transparent way
- comply with requirements on the way enforcement activity should be undertaken

HAMBLETON DISTRICT COUNCIL	ENVIRONMENTAL HEALTH ENFORCEMENT STRATEGY AND POLICY
ENVIRONMENTAL HEALTH SERVICE	G.D.1
Issue No. 4	November 2013

- ensure enforcement staff are properly equipped, trained and supported to perform their functions.

3.3 This strategy and policy covers general enforcement issues relating to all Environmental Health Services. This explained further in a series of function specific Enforcement Policies. These are subject to consultation with appropriate organisations and individuals as well as the community, and then approved by Licensing and Environmental Protection Committee.

Specific policies have been produced in relation to:-

- Food Safety
- Health & Safety
- Domestic Services
- Environmental Permitting
- Licensing
- Taxi and Private Hire Vehicle
- Caravan sites
- Animal Welfare
- Housing Standards
- Skin Piercing
- Water Supplies

3.4 Where there is a need for the Council to share enforcement information with other agencies, we will follow the provisions of the Data Protection Act 1988.

3.5 The Council will protect the identity of people making a protected disclosure in relation to food hygiene and health & safety.

4.0 **REGULATORS' CODE**

4.1 The Regulators' Code provides a flexible, principles based framework for regulatory delivery. The Code was made under section 23 of the Legislative and Regulatory Reform Act 2006 and regulations must have regard to the Code when developing policies and operational procedures that guide their regulatory activities.

If we conclude, on the basis of material evidence, that a specific provision of the Code is either not applicable or is outweighed by another relevant consideration, we are not bound to follow that provision, but should record that decision and the reasons for it.

4.2 The Code contains six main provisions:-

1. Regulators should carry out their activities in a way that supports those they regulate to comply and grow;
2. Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views;
3. Regulators should base their regulatory activities on risk;

HAMBLETON DISTRICT COUNCIL	ENVIRONMENTAL HEALTH ENFORCEMENT STRATEGY AND POLICY
ENVIRONMENTAL HEALTH SERVICE	G.D.1
Issue No. 4	November 2013

4. Regulators should share information about compliance and risk;
5. Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply;
6. Regulators should ensure that their approach to their regulatory activities is transparent.

4.3 The Council will avoid imposing unnecessary regulatory burdens through our regulatory activities and will assess whether similar social, environmental and economic outcomes could be achieved by less burdensome means. The Council will choose proportionate approaches to those it regulates, based on relevant factors including, for example, business size and capacity.

4.4 In responding to non-compliance, the Council will clearly explain what the non-compliant item or activity is, the advice being given, actions required or decisions taken, and the reasons for these. We will consult with regulated bodies to ensure that advice, requirements and decisions are proportionate and consistent. This may not apply to situations where immediate enforcement action is required.

4.5 The Council will provide a timely explanation in writing of any right to representation or right to appeal. This explanation will be in plain language and include practical information of the process involved.

4.6 The Environmental Health Service will take an evidence-based approach to determining the priority risks and allocate resources where they would be most effective in addressing those priority risks. Risk will be considered at every stage of our decision-making process.

4.7 The Environmental Health Service will aim to create an environment in which those who are regulated can have confidence in the advice they receive and feel able to seek advice without fear of triggering enforcement action.

4.8 The Environmental Health Service will work collaboratively to assist those regulated by more than one regulator.

5.0 **PRIORITY REGULATORY OUTCOMES**

5.1 The Better Regulation Delivery Office (BRDO) has a statutory duty under the Regulatory Enforcement and Sanctions Act 2008 to 'prepare and publish a list specifying those matters to which a local authority should give priority when allocating resources'. Local Authorities must have regard to the priorities in allocating resources to their regulatory service functions. The BRDO has published new priorities to replace those previously published by the Rogers Review in 2007.

5.2 The current priority set published by the BRDO are as follows:-

HAMBLETON DISTRICT COUNCIL	ENVIRONMENTAL HEALTH ENFORCEMENT STRATEGY AND POLICY
ENVIRONMENTAL HEALTH SERVICE	G.D.1
Issue No. 4	November 2013

Priority 1: Support economic growth, especially in small businesses, by ensuring a fair, responsible and competitive trading environment

Priority 2: protect the environment for future generations including tackling the threats and impacts of climate change

Priority 3: Improve quality of life and wellbeing by ensuring clean and safe neighbourhoods

Priority 4: Help people to live healthier lives by preventing ill health and harm and promoting public health

Priority 5: Ensure a safe, healthy and sustainable food chain for the benefits of consumers and the rural economy.

- 5.3 The Council will select the most appropriate tool from those included in the Priority Regulatory Outcomes Final Report (LBRO. November 2011) to drive better regulatory outcomes and build these tools into service designs.

6.0 ENFORCEMENT OPTIONS

- 6.1 Enforcement officers must seek to secure compliance with the law. The following applies to all Officers' dealings with duty holders or other stakeholders, whether formal or informal, in ensuring compliance.

- 6.2 In most cases compliance is achieved using informal action. We believe the first step in enforcement is to help prevent contravention of the law by raising awareness and promoting good practice. Methods of achieving this include: offering advice, information, guidance and support, both verbally and in the written form. In responding to requests for advice our primary concern will be to provide advice necessary to support compliance, and to ensure that the advice can be relied on.

- 6.3 Formal enforcement mechanisms are also available, as set out in the law, these include:

- Issuing of statutory notices to remedy a legal contravention or prohibition, where there is a risk of injury to health, serious personal injury, or damage to the environment;
- Withdrawal of approvals;
- Revocation of authorisations or permits;
- Refusal of registration, variations to licences or conditions; or,
- Prosecution
- Simple Caution

HAMBLETON DISTRICT COUNCIL	ENVIRONMENTAL HEALTH ENFORCEMENT STRATEGY AND POLICY
ENVIRONMENTAL HEALTH SERVICE	G.D.1
Issue No. 4	November 2013

- 6.4 The Council is committed to protecting the public, the environment and groups such as consumers and workers. We are also committed to making enforcement decisions that are consistent and ensuring that businesses and individuals are treated in a fair, transparent and proportionate manner.
- 6.5 The Council will consider the following factors when deciding whether or not to prosecute:
- The seriousness and effect of the offence;
 - The previous history of the party concerned;
 - Confidence in management;
 - The intent and attitude of the offender;
 - The willingness of the alleged offender to prevent a recurrence;
 - The consequence of non-compliance;
 - The deterrent effect of a prosecution on offenders and others
 - Whether there is enough evidence to prove the offence; and,
 - Whether other enforcement options would be more appropriate.
- 6.6 The factors are not exhaustive and will depend on the particular circumstances of each case. Each case is unique and must be considered on its own merits. There are, however, general principles that apply in the way each situation must be approached.
- 6.7 Where enforcement is felt to be appropriate, then the Council has the following options available:
- Take no action;
 - Take informal action;
 - Issue a statutory notice;
 - Issue a Simple Caution;
 - Use seizure and detention powers;
 - Revoke a licence, approval or authorisation;
 - Refuse a registration, licence, approval, permit or authorisation;
 - Carry out work in default;
 - Prohibition notice
 - Require action or compliance with standards
 - Seek an injunction;
 - Issue a Fixed Penalty Notice
 - Prosecute
 - Administration penalty
 - Voluntary Undertakings
- 6.8 Should the Council decide on enforcement action, which goes against the advice of the Home, Lead, Primary or originating authority, then Officers will discuss the action with the relevant authority before taking any action. The

HAMBLETON DISTRICT COUNCIL	ENVIRONMENTAL HEALTH ENFORCEMENT STRATEGY AND POLICY
ENVIRONMENTAL HEALTH SERVICE	G.D.1
Issue No. 4	November 2013

Council will implement the Primary Authority framework for the operation of the Primary Authority Scheme, managed by the BRDO) where appropriate.

7.0 LEVELS OF ENFORCEMENT ACTION

7.1 The following paragraphs detail the enforcement actions available and circumstances where they would be applied.

TAKE NO ACTION

7.2 Following investigation, if the situation is found to be largely satisfactory, then no further action would be taken. The business or individual concerned would be informed of this, as would any complainant where applicable.

INFORMAL ACTION

7.3 Informal action to secure compliance with legislation includes: offering advice, verbal warnings and requests for action, letters and the issue of technical inspection reports, including those generated on the premises following an inspection. We will use compliance advice and support as a first response in the case of many breaches of legislation that are identified.

7.4 Informal action will be considered where:

- The act or omission is not serious; and
- Confidence in the management is high; and
- The past history demonstrates that informal action would achieve compliance; and
- The consequences of non-compliance do not pose a significant risk to public health, safety, or welfare; or
- Where a business is operated by a voluntary or charitable organisation using volunteers, informal action will always be considered as the first option.

7.5 When taking informal action Officers will clearly differentiate between legal requirements and recommendations of good practice. This includes the provision of oral advice. If a similar breach is identified in the future, written advice will be persuasive in considering the most appropriate enforcement action to take on that occasion.

7.6 Where letters or other reports are sent to a business or individual these will:

- Clearly specify what work is required and why,
- Indicate legislation which is being or is likely to be contravened and methods of compliance, including alternatives that may achieve the same effect
- Clearly indicate recommendations of good practice, as distinct from legal requirements;

HAMBLETON DISTRICT COUNCIL	ENVIRONMENTAL HEALTH ENFORCEMENT STRATEGY AND POLICY
ENVIRONMENTAL HEALTH SERVICE	G.D.1
Issue No. 4	November 2013

- Detail time scales to achieve compliance.

STATUTORY NOTICES

7.7 Statutory notices will be considered where one or more of the following criteria apply:

- There is a specific legal requirement to serve a notice;
- There are significant contraventions of legislation;
- There is a lack of confidence in the recipient to respond positively 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;
- The consequence of non-compliance could be potentially serious to public health, safety or welfare and,
- Although it is intended to prosecute, effective action also needs to be taken to remedy conditions that are serious or deteriorating.

Notices will be served for matters where there is a risk to public health, safety, or the environment and not for minor technical contraventions.

7.8 Notices will be in the prescribed form where this has been specified.

7.9 The notice will explain the contraventions (i.e. what is wrong), what is required to put things right and what the likely consequences are if the notice is not complied with.

7.10 The time limit on notices will be realistic and recipients of notices will be given the opportunity, should they wish, to discuss the requirements. Alternative ways of complying with the notice will be considered.

7.11 Compliance with the requirements of all notices will be checked as soon as is practicable after expiry.

7.12 Failure to comply with a statutory notice will, in general, result in prosecution and/or work in default. Officers must have sufficient evidence to justify service of a statutory notice, and be prepared to pursue non-compliance through the courts. Work in default will be undertaken where there is a continuing need for the works to be carried out. Not all statutory notices can be followed by work in default.

7.13 Where a formal notice is served the method of appealing against the notice and the time scale for doing so will be provided in writing at the same time as the notice is served.

HAMBLETON DISTRICT COUNCIL	ENVIRONMENTAL HEALTH ENFORCEMENT STRATEGY AND POLICY
ENVIRONMENTAL HEALTH SERVICE	G.D.1
Issue No. 4	November 2013

SIMPLE CAUTION

- 7.14 The issue of a Simple Caution will be considered as an alternative to prosecution in accordance with the Home Office Circular 016/2008.
- 7.15 Where there is a criminal offence, but the public interest does not require a prosecution, a Simple Caution may be an appropriate course of action. Home Office Circular 016/2008 states that the purpose of a Simple Caution is to:
- To deal quickly and simply with less serious offences where the offender has admitted the offence;
 - To divert offenders where appropriate from appearing in the criminal courts;
 - To record an individual's criminal conduct for possible reference in future criminal proceedings or relevant security checks; and
 - To reduce the chances of them re-offending
- 7.16 Simple Cautions will be used in accordance with the Home Office Circular and relevant official guidance. Before administering a caution the following conditions must be satisfied:
- The suspected offender must make a clear and reliable admission of the offence, either verbally or in writing;
 - There must be a realistic prospect of conviction if the offender were to be prosecuted;
 - It should be in the public interest to use a simple caution as a means of disposal;
 - The offender should be 18 years of age or older at the time the caution is administered; and
 - The offender must understand the significance of the formal caution and consent to it;
- 7.17 The decision to refer matters to the Council's Solicitor for Simple Caution will be taken by the Environmental Health Manager who will consider all relevant evidence and information.
- 7.18 Alternative enforcement action will be considered by the Environmental Health Manager, where the offer of a Simple Caution is refused or is not appropriate. Again all evidence and information will be considered.
- 7.19 In most cases, but not necessarily all, refusal of a Simple Caution will result in a referral for prosecution.
- 7.20 A Simple Caution is a serious matter, which will influence any future decision should the company or individual offend again. It can be referred to in any

HAMBLETON DISTRICT COUNCIL	ENVIRONMENTAL HEALTH ENFORCEMENT STRATEGY AND POLICY
ENVIRONMENTAL HEALTH SERVICE	G.D.1
Issue No. 4	November 2013

subsequent court proceedings, but this will not apply if the caution was issued more than three years before.

- 7.21 Home, Lead, Primary and Originating Authorities will be notified of formal action. The details of Simple Cautions must be forwarded to the Central Register of Convictions, operated by the Office of Fair Trading, together with a copy of the countersigned letter accepting the caution.

SEIZURE POWERS

- 7.22 Enforcement Officers may use appropriate statutory powers to take possession of and detain articles, substances or equipment where:
- There are reasonable grounds for suspecting that the article, substance or equipment is a cause of imminent danger, serious personal injury or pollution of the environment; or,
 - Food is suspected to fail to meet the requirements of the relevant food safety legislation; or,
 - To secure the abatement of a statutory nuisance.

PROHIBITION

- 7.23 Prohibition notices will only be considered where:
- The consequence of not taking immediate and decisive action to protect public health, safety and the environment would be unacceptable;
 - An imminent risk of injury or to health or to the environment can be conclusively demonstrated;
 - The requirements of the relevant statutory guidance criteria regarding the use of such notices are fulfilled;
 - There is no confidence in the integrity of an unprompted offer made voluntarily;
 - A proprietor is unwilling to confirm in writing his/her unprompted offer of voluntary prohibition.
- 7.24 Officers authorised to issue prohibition notices will be suitably qualified and experienced, as described in the relevant statutory official guidance and in-house procedures.

REQUIREMENT OF ACTION, STANDARDS OR CONDITIONS

- 7.25 Orders can be considered where action or standards are required as an alternative form of action. This includes powers such as:-
- An order to comply with conditions attached to a licence, approval, registration or permit;

HAMBLETON DISTRICT COUNCIL	ENVIRONMENTAL HEALTH ENFORCEMENT STRATEGY AND POLICY
ENVIRONMENTAL HEALTH SERVICE	G.D.1
Issue No. 4	November 2013

- Provision of checklists prior to consideration of delivery of a service.

These actions are specific to particular legislation and their use is described in service specific policies.

REFUSAL/REVOCAION OF A REGISTRATION, LICENCE, APPROVAL, PERMIT OR AUTHORISATION

- 7.26 Registrations, licences, prior approvals, permits and authorisations will only be refused or revoked by the Council in line with appropriate procedures and after consideration of all relevant evidence.

In order to take this step the following criteria should be considered in relation to the individual or organisation who :

- a) engages in fraudulent activity
- b) deliberately or persistently breaches legal obligations
- c) deliberately or persistently ignores written warnings or formal notices
- d) endangers, to a serious degree, the health, safety or well being of people, animals or the environment
- e) fails to pay subsistence fees
- f) any other grounds which indicate the person is not deemed to be a fit and proper person e.g. for the purposes of licensing.

WORK IN DEFAULT AND RECOVERY OF COSTS

- 7.27 Where work is required in the interest of public health, safety or the environment and the statutory notice allows, it may be carried out by or on behalf of the Council and the cost recovered from the business, organisation or individual as appropriate, including an oncost to cover administration.

INJUNCTION

- 7.28 In exceptional circumstances where action under the relevant legislation is deemed unlikely to be effective or where there is a serious imminent risk to public health or the environment, and immediate action is considered necessary, injunctive proceedings may be considered.

FIXED PENALTY NOTICE

- 7.29 Enforcement action through fixed penalty notices will be taken against persons in circumstances permitted by specific legislation. A fixed penalty notice is not a criminal fine, and does not appear on an individual's criminal record. If a fixed penalty is not paid, the Council may commence criminal proceedings or take other enforcement action in respect of the breach.

HAMBLETON DISTRICT COUNCIL	ENVIRONMENTAL HEALTH ENFORCEMENT STRATEGY AND POLICY
ENVIRONMENTAL HEALTH SERVICE	G.D.1
Issue No. 4	November 2013

7.30 The intention of a fixed penalty notice is to avoid the need for Court action, though the option of simple caution or prosecution is available where the offence warrants such action or in the event of non-compliance with the notice.

7.31 If a fixed penalty is not paid within the prescribed period, legal proceedings shall be instituted.

ADMINISTRATION PENALTY

7.32 Enforcement action through administration penalties can be taken where there is sufficient evidence to prove that certain offences have occurred.

7.33 The intention of the Administration Penalty is to provide another avenue, other than prosecution, for cases that would not be in the public interest to prosecute.

7.34 If an administration penalty is not paid within the prescribed period, legal proceedings shall be instituted.

VOLUNTARY UNDERTAKINGS

7.35 The Council may accept voluntary undertakings that breaches will be rectified and/or recurrences prevented. The Council will take any failure to honour voluntary undertakings very seriously and enforcement action is likely to result.

ANONYMOUS REQUESTS FOR SERVICE

7.36 If requests for investigations are received but made anonymously, we will investigate them where:-

- It concerns an issue that we would normally investigate,
- A member of staff can witness the activity/issue without the need of input from a complainant, and
- We could take enforcement action without the evidence of the complainant.

8.0 LEGAL PROCEEDINGS

8.1 The Council recognises that the decision to prosecute an individual is a serious step with implications for all involved – victims, witnesses and defendants. Circumstances where prosecution is considered appropriate are:

- Where there has been a serious breach of the law or blatant disregard for the law;
- Where there is a refusal to achieve basic minimum legal requirements, and
- Following previous contact with an Authority.

HAMBLETON DISTRICT COUNCIL	ENVIRONMENTAL HEALTH ENFORCEMENT STRATEGY AND POLICY
ENVIRONMENTAL HEALTH SERVICE	G.D.1
Issue No. 4	November 2013

8.2 Circumstances which warrant prosecution include:

- Where the offence involves the failure to comply in whole or in part with the requirements of a statutory notice; or
- Where the offence involves a serious or flagrant breach of the law, such that it places public health, safety or well being at risk; or
- Where the offender has been given reasonable opportunity to comply with legal requirements and where the offence involves a failure to correct an identified serious potential risk; or
- Where there has been a history of similar offences; or
- Obstruction or assault of an authorised officer; or
- Legal action shall be taken on the first occasion that certain events are witnessed because of the extreme improbability that the person once seen committing an offence would be seen on a subsequent occasion. Community benefit would also be indicated by the importance of the case, for example, whether it might establish a legal precedent.

8.3 The Officer and their line manager will consider all relevant information and evidence, when circumstances have been identified which may warrant prosecution, in order that a fair, consistent and objective decision be made, which is in line with relevant Council Policy. The case and the available evidence would be discussed with the Council's Legal Section prior to any decision regarding the institution of legal proceedings

8.4 Before a prosecution proceeds, the Officer shall refer to the Code for Crown Prosecutors which requires two stages to govern the Full Code Test decision-making process:- the Evidential Stage and the Public Interest Stage. The Threshold Test is not appropriate, as the Council has no powers of arrest.

The *Evidential Stage* requires that the prosecutor be satisfied that there is enough evidence to provide a "realistic prospect of conviction" against each defendant on each charge. The defence case must be considered and how this is likely to affect the prospects of conviction. The prosecutor must consider whether the evidence can be used and is reliable. A case which does not pass the evidential test must not proceed.

The *Public Interest Stage* follows the Evidential stage. A prosecution will usually take place unless the prosecutor is sure that there are public interest factors tending against prosecution that outweigh those tending in favour, or the prosecutor considers the public interest is properly served by an out-of-court disposal. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the offender. Some factors may increase the need to prosecute but others may suggest that another course of action would be better.

HAMBLETON DISTRICT COUNCIL	ENVIRONMENTAL HEALTH ENFORCEMENT STRATEGY AND POLICY
ENVIRONMENTAL HEALTH SERVICE	G.D.1
Issue No. 4	November 2013

8.5 When deciding whether or not to prosecute, certain factors in paragraph 4.16 and 4.17 of the CPS Code for Crown Prosecutors will be taken into consideration.

a) A prosecution is likely to be required if (briefly):-

- a conviction is likely to result in a significant sentence;
- a conviction is likely to result in an order of the court in excess of that which a prosecutor is able to secure through a conditional caution;
- the offence involved the use of a weapon or the threat of violence;
- the offence was committed against a member of the enforcement staff or other person serving the public;
- the offence was premeditated;
- the offence was carried out by a group;
- the offence was committed in the presence, or in close proximity to, a child;
- the offence involved motivation by any form of discrimination;
- the offence was committed in order to facilitate more serious offending;
- the victim of the offence was in a vulnerable situation and the suspect took advantage of this;
- there was an element of corruption of the victim in the way the offence was committed;
- there is a marked difference in the ages of the suspect and the victim and the suspect took advantage of this;
- the suspect was in a position of authority or trust and he or she took advantage of this;
- the suspect was a ringleader or an organiser of the offence;
- the suspect's previous convictions or the previous out-of-court disposals which he or she has received are relevant to the present offence;
- the defendant is alleged to have committed the offence in breach of an order of the court
- a prosecution would have a significant positive impact on maintaining community confidence.
- There are grounds for believing that the offence is likely to be continued or repeated.

b) A prosecution is less likely to be required if (briefly):-

- The court is likely to impose a nominal penalty;
- The seriousness and the consequences of the offending can be appropriately dealt with by an out-of-court disposal which the suspect accepts and with which he or she complies;
- the suspect has been subject to any appropriate regulatory proceedings, or any punitive or relevant civil penalty which remains in place or which has been satisfactorily discharged, which adequately addresses the seriousness of the offending and any breach of trust involved;
- The offence was committed as a result of a genuine mistake or misunderstanding

HAMBLETON DISTRICT COUNCIL	ENVIRONMENTAL HEALTH ENFORCEMENT STRATEGY AND POLICY
ENVIRONMENTAL HEALTH SERVICE	G.D.1
Issue No. 4	November 2013

- The loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement;
- There has been a long delay between the offence taking place and the date of the trial, unless;
 - i. the offence is serious;
 - ii. the delay has been caused wholly or in part by the suspect;
 - iii. the offence has only recently come to light;
 - iv. the complexity of the offence has meant that there has been a long investigation; or
 - v. new investigative techniques have been used to re-examine previously unsolved crimes and, as a result, a suspect has been identified.
- A prosecution is likely to have an adverse effect on the victim's physical or mental health
- The suspect played a minor role in the commission of the offence;
- The suspect has put right the loss or harm that was caused;
- The suspect is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is a real possibility that it may be repeated;
- A prosecution may require details to be made public that could harm sources of information, international relations or national security.

8.6 Deciding on the public interest is not simply a matter of adding up the number of factors on each side. The prosecutor must decide how important each factor is in the circumstances of each case and go on to make an overall assessment. Once a decision has been made to prosecute then action should be taken without undue delay.

8.7 When implementing legal proceedings, the requirements of the Police and Criminal Evidence Act 1984 (as amended) - Codes of Practice and the Criminal Procedures and Investigation Act 1996 (as amended) - Codes of Practice, will be adhered to.

8.8 Charges will be selected which:-

- a) reflect the seriousness and extent of the offending
- b) give the court adequate powers to sentence and impose Orders
- c) enable the case to be presented in a clear and simple way.

9.0 **LEGAL PROCEEDINGS PROCESS**

9.1 In order to ensure that legal proceedings are administered in a consistent and timely fashion, and to the required level of quality, a documented procedure will be used to manage the process. This will deal with all aspects of routine cases including preparation of prosecution files, dealing with cases in progress, completion of documentation after the case has been completed and dealing with abandoned or withdrawn cases and appeals.

HAMBLETON DISTRICT COUNCIL	ENVIRONMENTAL HEALTH ENFORCEMENT STRATEGY AND POLICY
ENVIRONMENTAL HEALTH SERVICE	G.D.1
Issue No. 4	November 2013

9.2 In order to aid consistency, a set of forms have been designed to record and present information in a consistent fashion.

10.0 STAFF AUTHORISATION AND DELEGATION

10.1 The Council's constitution and scheme of delegation describe how the responsibility for enforcement is allocated and how staff are authorised to undertake duties on behalf of the Council.

10.2 Notices shall be served by officers whose opinion they reflect and who is properly authorised.

11.0 STAFF SUPPORT

11.1 Staff involved in enforcement are assured of their safety and welfare by means of the implementation of policies, strategies and the provision of guidance and training. In particular, as enforcement activity is generally carried out by staff working alone, policies and practices have been adopted to secure their safety while out of the office. These include:-

- The Lone Worker Policy and Procedure, which provides a system for ensuring that contact is maintained with staff while they are working out of the office.
- An Out of Hours Lone Working Procedure provides a framework for keeping in contact and emergency support for staff working outside normal working hours, at weekends and on bank holidays.
- Training needs are assessed on an annual basis and training is made available for staff in relation to issues such as dealing with aggression and de-escalation of confrontational situations.
- Staff are provided with suitable identification documents and their authority to undertake enforcement activity is confirmed through administrative procedures linked to the Council's Constitution.
- Richmondshire District Council has adopted policies in relation to unreasonably persistent complaints and unacceptable behaviour and based on guidance produced by the Local Government Ombudsman.

12.0 ENSURING FAIR AND EQUAL ENFORCEMENT

12.1 Policies and advice, produced within the Council, ensure that enforcement activity is undertaken in a professional and respectful way. Practices include:-

- Disclosure and Barring Service checks are undertaken in respect of all staff that work with or come into contact with children and vulnerable adults.
- The Council's Equalities Strategy ensures that enforcement activity is delivered in such a way that stresses the importance of fair treatment and equal access to our services.

HAMBLETON DISTRICT COUNCIL	ENVIRONMENTAL HEALTH ENFORCEMENT STRATEGY AND POLICY
ENVIRONMENTAL HEALTH SERVICE	G.D.1
Issue No. 4	November 2013

- Equality Impact Assessments are undertaken of all significant policies and strategies and these are published and are publicly available.
- The Code of Practice for carrying out surveillance under the Regulation of Investigatory Powers Act 2000 as amended ensures that individual's rights are protected while also ensuring that law enforcement can be undertaken effectively. It ensures that covert surveillance is only used and authorised in specific circumstances and with specific controls. This would be where the collection of evidence would otherwise be jeopardised by the visibility or prior notice of the officer collecting that evidence, where prior notice might jeopardise the collection of evidence, or where the matter is of significant local importance.

13.0 REVIEW, MONITORING AND REPORTING COMPLIANCE

13.1 All regulatory services have come under increasing influence from central Government initiatives. These influences will be regularly assessed and this Strategy and Policy reviewed on not less than an annual basis to ensure it is up to date.

13.2 Monitoring of compliance with the Policy and in the implementation of the Strategy will be monitored by the Environmental Health Manager.

13.3 Staff shall use the Enforcement Policy Checklist (Form G.F.14) to record enforcement decisions that are not in compliance with the Enforcement Policy and record the agreement of that non-compliance by the relevant Lead Officer.

13.4 The outcome of regulatory service delivery will be reported on an annual basis to the Corporate Director.

14.0 NATIONAL POLICE COMPUTER

14.1 The Council will co-operate, as a non-police prosecuting agency, with North Yorkshire Police in the transfer of appropriate information to and from the Police National Computer.

HAMBLETON DISTRICT COUNCIL	ENVIRONMENTAL HEALTH ENFORCEMENT STRATEGY AND POLICY
ENVIRONMENTAL HEALTH SERVICE	G.D.1
Issue No. 4	November 2013

ENFORCEMENT REFERENCE DOCUMENTS

Regulators' Code. BRDC. 2014

The Legislative and Regulatory Reform (Regulatory Functions) Order 2007. SI 2007:3544. 6 April 2008 (the "Listing Order")

Corporate Manslaughter and Corporate Homicide Act 2007. HMSO

Regulatory Enforcement and Sanctions Act 2008. HMSO. October 2008.

Simple Cautioning of Adult Offenders. Home Office Circular 016/2008. July 2008.

The Code for Crown Prosecutors. Crown Prosecution Service. February 2010.

Human Rights and Human Lives. Ministry of Justice. October 2006.

Priority Regulatory Outcomes. A new approach to refreshing the National Enforcement Priorities for Local Authority Regulatory Services. LBRO. November 2011.

Protected Disclosures