

Notice of meeting of

Decision Session - Cabinet Member for Crime and Community Safety

To: Councillor Fraser (Cabinet Member)

Date: Tuesday, 7 February 2012

Time: 4.30 pm

Venue: The Guildhall, York

AGENDA

Notice to Members - Calling In:

Members are reminded that, should they wish to call in any item on this agenda, notice must be given to Democracy Support Group by:

10:00 am on Monday 6 February 2012 if an item is called in *before* a decision is taken, *or*

4:00 pm on Thursday, 9 February 2012 if an item is called in *after* a decision has been taken.

Items called in will be considered by the Scrutiny Management Committee.

Written representations in respect of item on this agenda should be submitted to Democratic Services by **5.00pm on Friday 3 February 2012**.

1. Declarations of Interest

At this point in the meeting the Cabinet Member is asked to declare any personal or prejudicial interests that they may have in the business on this agenda.

2. Minutes (Pages 3 - 6)

To approve and sign the minutes of the meeting held on 1 November 2011.

3. Public Participation - Decision Session

At this point in the meeting, members of the public who have registered their wish to speak at the meeting can do so. The deadline for registering is **Monday 6 February 2012 at 5.00 pm.**

Members of the public may register to speak on -:

- An item on the agenda
- An issue within the Cabinet Member's remit
- An item that has been published on the Information Log since the last session. Information reports are listed at the end of the agenda.

Please note that no items have been published on the Information Log since the last Decision Session.

4. Public Protection Legal Actions (Pages 7 - 12)

The purpose of this report is to enable the Cabinet Member for Crime and Community Safety to review the results of legal actions (prosecutions, cautions and fixed penalties) undertaken by Environmental Health, Trading Standards, and Licensing Services in the Communities and Neighbourhoods Directorate for the period 1st July 2011 – 30th September 2011 and approve the continuation of the current enforcement policy.

5. Review of Street Trading Enforcement Controls (Pages 13 - 28)

The purpose of this report is to inform the Cabinet Member of the existing legislative controls on street trading and to seek approval to amend the Enforcement Policy for Environmental Health, Trading Standards, Licensing, and Street Environment and Enforcement Services to highlight that formal action will be taken against illegal activities.

6. Urgent Business

Any other business which the Chair considers urgent under the Local Government Act 1972.

Democracy Officer:

Name: Judith Betts

Contact Details:

- Telephone – (01904) 551078
- Email – judith.betts@york.gov.uk

For more information about any of the following please contact the Democracy Officer responsible for servicing this meeting

- Registering to speak
- Written Representations
- Business of the meeting
- Any special arrangements
- Copies of reports

Contact details are set out above

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Would you like to speak at this meeting?

If you would, you will need to:

- register by contacting the Democracy Officer (whose name and contact details can be found on the agenda for the meeting) **no later than 5.00 pm** on the last working day before the meeting;
- ensure that what you want to say speak relates to an item of business on the agenda or an issue which the committee has power to consider (speak to the Democracy Officer for advice on this);
- find out about the rules for public speaking from the Democracy Officer.

A leaflet on public participation is available on the Council's website or from Democratic Services by telephoning York (01904) 551088

Further information about what's being discussed at this meeting

All the reports which Members will be considering are available for viewing online on the Council's website. Alternatively, copies of individual reports or the full agenda are available from Democratic Services. Contact the Democracy Officer whose name and contact details are given on the agenda for the meeting. **Please note a small charge may be made for full copies of the agenda requested to cover administration costs.**

Access Arrangements

We will make every effort to make the meeting accessible to you. The meeting will usually be held in a wheelchair accessible venue with an induction hearing loop. We can provide the agenda or reports in large print, electronically (computer disk or by email), in Braille or on audio tape. Some formats will take longer than others so please give as much notice as possible (at least 48 hours for Braille or audio tape).

If you have any further access requirements such as parking close-by or a sign language interpreter then please let us know. Contact the Democracy Officer whose name and contact details are given on the order of business for the meeting.

Every effort will also be made to make information available in another language, either by providing translated information or an

interpreter providing sufficient advance notice is given. Telephone York (01904) 551550 for this service.

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Holding the Cabinet to Account

The majority of councillors are not appointed to the Cabinet (39 out of 47). Any 3 non-Cabinet councillors can 'call-in' an item of business from a published Cabinet (or Cabinet Member Decision Session) agenda. The Cabinet will still discuss the 'called in' business on the published date and will set out its views for consideration by a specially convened Scrutiny Management Committee (SMC). That SMC meeting will then make its recommendations to the next scheduled Cabinet meeting in the following week, where a final decision on the 'called-in' business will be made.

Scrutiny Committees

The purpose of all scrutiny and ad-hoc scrutiny committees appointed by the Council is to:

- Monitor the performance and effectiveness of services;
- Review existing policies and assist in the development of new ones, as necessary; and
- Monitor best value continuous service improvement plans

Who Gets Agenda and Reports for our Meetings?

- Councillors get copies of all agenda and reports for the committees to which they are appointed by the Council;
- Relevant Council Officers get copies of relevant agenda and reports for the committees which they report to;
- Public libraries get copies of **all** public agenda/reports.

City of York Council

Committee Minutes

MEETING	DECISION SESSION - CABINET MEMBER FOR CRIME AND COMMUNITY SAFETY
DATE	1 NOVEMBER 2011
PRESENT	COUNCILLOR FRASER (CABINET MEMBER)

16. DECLARATIONS OF INTEREST

At this point in the meeting the Cabinet Member was invited to declare any personal or prejudicial interests he might have in the business on the agenda. None were declared.

17. MINUTES

RESOLVED: That the minutes of the last meeting of the Crime and Community Safety Decision Session held on 4 October 2011 be approved and signed by the Cabinet Member as a correct record.

18. PUBLIC PARTICIPATION - DECISION SESSION

It was reported that there had been no registrations to speak at the meeting under the Council's Public Participation Scheme.

19. PUBLIC CONSULTATION ON A NEW MANDATORY POWER OF POSSESSION FOR ANTI-SOCIAL BEHAVIOUR

The Cabinet Member considered a report that presented him with details of government consultation on proposals to strengthen the sanction landlords had to evict tenants who have committed serious anti-social behaviour (ASB).

It was reported that the main changes proposed were:

- Courts could grant possession where a tenant or member of their household had been convicted of violence against property, violence against persons at a scene of violent

disorder or theft linked to violent disorder. There would be no requirement that the offence had been committed within the locality of the dwelling house.

- Power to evict for serious, housing related anti-social behaviour proven by another court.
- Powers limiting the court to suspend a possession order.

Officers confirmed that the most controversial element of the proposals were the widening of existing powers to apply for repossession on issues of ASB and criminality that had not necessarily happened in the locality of the tenants residence. Officers pointed out that, although these powers were a welcome addition, they would only be used as a final resort with less punitive measures being used to try and resolve problems.

It was reported that this report had also been considered by the Cabinet Member for Housing and Adult Social Services at her Decision Session on 25 October, at which time she had endorsed the proposed response but flagged up the issue of proportionality.

The Cabinet Member confirmed that he also welcomed the proposals which gave clearer timescales. He did however have concerns at anomalies in the proposals which included the lack of equality between owner occupiers and the tenants of social landlords and the affects on families and younger siblings when an adult child was convicted of an offence.

Following further discussion it was

RESOLVED: That the Cabinet Member endorses the response at Annex 1 of the report to the consultation document on the new mandatory power of possession for anti-social behaviour.
1.

REASON: To offer City of York Council's views on the consultation paper.

Action Required

1. Forward consultation response.

TB

20. SALES OF AGE RESTRICTED PRODUCTS

The Cabinet Member considered a report which detailed the work undertaken by the council's trading standards service to prevent the illegal sales of age-restricted products.

It was reported that the products regulated with age-restrictions included alcohol, fireworks, certain video games, cigarettes, knives, aerosol paint and solvents. The results of test purchasing activity for the period 2007-2011 together with details of the qualifying criteria for the Responsible Retailer Scheme were also set out in the report at Annexes 1 and 2.

In answer to questions, officers confirmed that the number of test purchasing visits had been scaled down following the use of targeted grants. It was pointed out that, with limited resources, it had been felt that the best way to reduce underage sales of alcohol was to undertake proactive work with shop owners which it was considered had a longer term impact.

The Cabinet Member thanks officers for their report and details of activity in this area.

RESOLVED: That the Cabinet Member notes the report and agrees Option 1 to approve the programme of enforcement action for the next 12 months as set out at paragraph 4. ¹.

REASON: So that the council can meet its obligations.

Action Required

1. Continue with the programme of education and enforcement action.

CR

CLLR S FRASER, Cabinet Member

[The meeting started at 4.30 pm and finished at 4.45 pm].

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**Decision Session – Cabinet Member for
Crime and Community Safety**

7th February 2012

Report of the Assistant Director for Housing and
Public Protection

Public Protection Legal Actions

Summary

1. The purpose of this report is to enable the Cabinet Member for Crime and Community Safety to review the results of legal actions (prosecutions, cautions and fixed penalties) undertaken by Environmental Health, Trading Standards, and Licensing Services in the Communities and Neighbourhoods Directorate for the period 1st July 2011 – 30th September 2011 and approve the continuation of the current enforcement policy.

Background

2. The Cabinet Member for Environment and Sustainability approved an enforcement policy for Environmental Health, Trading Standards, Licensing, Street Environment and Enforcement Services in March 2008.
3. This report details the results of prosecutions taken in the period 1st July 2011 – 30th September 2011 by Environmental Health, Trading Standards, and Licensing Services. In accordance with the policy each case is considered on its merits before legal proceedings are instituted.
4. Annex A summarises the prosecutions completed, fixed penalty notices and simple cautions that have been issued. A simple caution is a Home Office approved procedure which is an alternative to prosecution. It involves a written acceptance that an offence has been committed and may be drawn to the attention of a court if any subsequent offence is committed within two years of issue.

Consultation

5. Not applicable.

Options

6. Not applicable as members are being asked to note the content of the report.

Analysis

7. Not applicable.

Council Plan

8. Three council priorities are “Protect jobs and grow the economy”, “Protect vulnerable people” and “Protect the environment”. Many legal actions are taken in support of these priorities.

Implications

9. **Financial:** There are no financial implications associated with this report.
10. **Human Resources:** There are no Human Resources implications associated with this report.
11. **Equalities:** There are no equalities implications associated with this report.
12. **Legal:** There are no legal implications associated with this report
13. **Crime and Disorder:** Formal enforcement action taken by environmental health, trading standards and licensing services contributes to reducing anti social behaviour and dishonest trading.
14. **Information Technology (IT):** There are no IT implications associated with this report.
15. **Other:** There are no other implications associated with this report.

Risk Management

16. There are no known risks associated with this report.

Recommendations

17. That the Cabinet Member approve this report and the continuation of the current enforcement policy.

Reason: so that the Cabinet Member reviews formal enforcement activity undertaken by Environmental Health, Trading Standards, and Licensing Services.

Contact Details

Author:

Colin Rumford
Head of Public Protection
Phone: 551502

Chief Officer Responsible for the report:

Steve Waddington
Assistant Director (Housing and Public Protection)

Report Approved



Date 23/01/2012

Specialist Officer Implications: None

Wards Affected:

All

Background Papers:

Environmental Health, Trading Standards, Licensing, Street Environment and Enforcement Services Enforcement Policy (June 2008)

Annexes

Annex A: EH, TS and Licensing Formal Enforcement Action 1st July 2011 – 30th September 2011

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**Environmental Health, Trading Standards and Licensing
Formal Enforcement Action 1st July 2011 – 30th September 2011**

Animal Health

Defendant	Legislation	Nature of Case	Penalty	Costs
Neil JACKSON (Private Individual)	Dogs Act 1871 as amended by Dangerous Dogs Act	Dangerous dog	Order to keep dog under proper control, kept on a lead and muzzled when outside its property	£704.07

2 x £50.00 fixed penalty notices were issued under the Dogs (Fouling of Land) Act 1996 for allowing a dog to foul and failing to remove the faeces.

Food

Defendant	Legislation	Nature of Case	Penalty	Costs
Marstons plc t/a Pitcher & Piano (Bar and Restaurant)	Food Safety Act 1990	Possessed/displayed with food a label falsely describing the strength of spirit drinks.	12 months conditional discharge	£2,575.58

5 x simple caution were issued to 3 businesses under the Food Safety Act 1990 for displaying a label falsely describing the strength of spirit drinks.

Health & Safety/Licensing

4 x £50 fixed penalty notices were issued under the Health Act 2006 for smoking in a vehicle/premise.

Licensing

Defendant	Legislation	Nature of Case	Penalty	Costs
Graham NEWBOLD (Taxi driver)	Road Traffic Act 1988/ Local Government (Miscellaneous Provisions) Act 1976 as amended	Driving a taxi without the required licence/third party insurance.	Fine £225.00 8 penalty points on licence	£200.00

Environmental Protection

Defendant	Legislation	Nature of Case	Penalty	Costs
Susan DIXON (Private Individual)	Environmental Protection Act 1990 as amended	Breach of an abatement notice for noise nuisance	Fine £300.00 Forfeiture	£250.00

Trading Standards

2 x simple caution were issued under the Nightwear (Safety) Regulations 1985 and the Consumer Protection Act 1987 for children's nightwear failing the relevant flammability tests.

Please note: all fines imposed by the Courts are now subject to an additional £15 victim surcharge.



**Decision Session – Cabinet Member for
Crime and Community Safety****7 February 2012**

Report of the Assistant Director of Communities
& Neighbourhoods

Review of Street Trading Enforcement Controls**Summary**

1. The purpose of this report is to inform the Cabinet Member of the existing legislative controls on street trading and to seek approval to amend the Enforcement Policy for Environmental Health, Trading Standards, Licensing, and Street Environment and Enforcement Services to highlight that formal action will be taken against illegal activities.

Background

2. In the autumn of 2011 the council received several complaints about 'Gag Mag' magazine sellers operating in the city centre. Most complaints were of a similar nature in that the sellers were being aggressive and intimidating to members of the public. Officers from trading standards investigated but were unable to substantiate the allegations. The officers did approach and give suitable advice to several sellers. Following these complaints the Cabinet Member requested that officers conduct a review of the legislative controls on street trading in York.

Street Trading Legislation

3. Street trading is defined as selling or offering to sell articles in the street and street traders require the consent of the Council to operate lawfully in York. However, there are several exemptions to this requirement and there are some related activities that are not controlled at all. Street trading and related activities includes: markets, charitable collections, sale of periodicals, face to face collections, buskers, pedlars and leaflet distributors.

4. Annex 1 to this report identifies the current issues, the legal requirements and enforcement responsibilities.

Enforcement Policy

5. The current Enforcement Policy for Environmental Health, Trading Standards, Licensing, and Street Environment and Enforcement Services (the policy) was approved by the Executive Member for Neighbourhoods in 2008. The policy details the circumstances under which formal enforcement action, which includes prosecution, will be taken 'in the first instance'. These circumstances however, do not include illegal street trading activities and where legal action has been taken under the scope of the policy it has been under the provision 'any other case in which a head of service considers formal action is necessary'.
6. Annex 2 to this report is an amended policy which has updated the circumstances under which formal action will be taken 'in the first instance' and is now clear that this includes illegal street trading activities.

Consultation

7. City of York Council departments were consulted regarding this report, these include, City Centre Manager, Safer York Partnership, Food and Safety Unit Manager, Trading Standards Manager, Environmental Protection Manager and Head of Environmental Enforcement and Parking Services. All are in agreement with the proposed amendments to the policy.

Options

8. To approve the amended Enforcement Policy
9. Not to approve the amended Enforcement Policy.

Analysis

10. Approving the option in paragraph 8 will clarify the Council's approach to tackling illegal street trading activities. Illegal street trading undermines legitimate business activities in York, gives the perpetrator an unfair commercial advantage and damages the reputation of York.
11. Approving the option in paragraph 9 will still allow action to be taken against illegal street traders but this will be at the discretion

of a head of service. This has the potential for a legal challenge on the grounds of 'lack of consistency' and abuse of process'.

Council Plan

12. Three council priorities are "Protect jobs and grow the economy", "Protect vulnerable people" and "Protect the environment". Formal enforcement action is often taken in support of these priorities.

Implications

13. **Financial:** There are no financial implications associated with this report.
14. **Human Resources:** There are no Human Resources implications associated with this report.
15. **Equalities:** The revised Enforcement Policy has been subject to an equalities impact assessment.
16. **Legal:** There are no legal implications associated with this report
17. **Crime and Disorder:** Formal enforcement action taken by environmental health, trading standards and licensing services contributes to reducing anti social behaviour and dishonest trading.
18. **Information Technology (IT):** There are no IT implications associated with this report.
19. **Other:** There are no other implications associated with this report.

Risk Management

20. There are no known risks associated with this report.

Recommendations

21. That the Cabinet Member note the report and approve amended Enforcement Policy set out in Annex 2.

Reason: To improve transparency in taking formal enforcement action against illegal street traders.

Contact Details

Author:

Colin Rumford
Head of Public Protection
Phone: 551502

Chief Officer Responsible for the report:

Steve Waddington
Assistant Director (Housing and Public Protection)

**Report
Approved**



Date 23 January
2012

Specialist Officer Implications: None

Wards Affected:

All

Background Papers:

Environmental Health, Trading Standards, Licensing, Street Environment and Enforcement Services Enforcement Policy (June 2008)

Annexes

Annex 1: Current street trading/activity issues.

Annex 2: Amended Environmental Health, Trading Standards, Licensing, Street Environment and Enforcement Services Enforcement Policy

Activities that currently take place with the permission of the City of York Council (the Council): -

Markets (City Centre Management)

The Council has a Markets Charter and therefore has the right to hold markets in Newgate and Parliament Street. Under this Charter there is the right to charge a 'toll' for traders wishing to operate at these markets.

Street Trading Activities (Licensing Section)

All street within the City of York are designated Consent Street for the purpose of street trading under Paragraph 2(1) of Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 (the Act). This means that a Street Trading Consent issued by the Council is required where articles are sold or offered for sale in the street or on land to which the public have access without payment. Therefore trading activities such as the flower stall on Davygate, the Hot Sausage Company and ice cream stand on St Sampson's Square, the key cutter in Tesco car park and the ice cream rounds operating in our area all operate with our authorisation and hold street trading consents. Occasional consents are also issued for buskers selling CD's, the markets that take place in St Sampson's Square and Coppergate Centre, fetes and gala's and car boot sales. Fees are payable for these consents.

Charitable Collections (Licensing Section)

Under the Police, Factories, Etc (Miscellaneous Provisions) Act 1916 the Council authorises static and mobile collections to take place on the street (this includes public highway and private land). Within the city centre only 1 collection per day is authorised with a maximum of 4 collections in any week. In the case of static collections the locations where this can take place is stipulated. In the case of mobile collections the route of the collection is agreed. Authorisation permits are issues and each collector must display an authorisation badge (labels are issued for each collector to display). There is no fee payable for collection permits.

Under the House to House Collections Act 1939 the Council authorises house to house collections. This enables charities or businesses to collect money or items. If charities or businesses hold a Home Office Exemption Order they do not have to apply to the local authorities for authorisation to hold a house

to house collection in their area. There is no fee payable for authorisation to collect.

Periodicals (City Centre Management)

The sale of periodicals is exempt from street trading legislation, however the Council has agreements in place with The Press and Big Issue with regards to their dedicated pitches in the city centre.

Face to Face Collections (Licensing Section)

Face to face collections do not come under the definition of a charitable collection as no money is collected on the street. This type of collections only takes people's personal details on behalf of charities. The Council has agreements in place with five companies who regularly hold this type of collection in the city centre. Before visiting the city they contact the Licensing Section to ask for permission.

Buskers (City Centre Management)

The Council encourages busking within the city centre. Buskers must firstly apply for a permit to busk from the City Centre Management Office. If buskers wish to sell CD's they must also obtain a street trading consent from the Licensing Section. A fee is payable for the permit and the street trading consent.

Activities that take place that do not require the permission of the City of York Council

Pedlars

Pedlars are able to operate under the Pedlar's Act 1871. Pedlar certificates are issued by the police. Persons acting lawfully as pedlars are exempt for the requirements of street trading. To act lawfully as a pedlar a person must:

1. **'Act'** as a pedlar.
2. **'Travel and trade on foot'** – this makes the legal definition of a pedlar an individual who sells whilst on the move.
3. A trader who stands by a portable stall, that is, one who trades on foot in that more limited sense is **'not a pedlar'**.

4. **'Must move'**, this requires that a pedlar **'must go to his customers'**, he is permitted to then stop and trade, but he is not permitted to set up a stall in a pre-selected location inviting customers to come to him.
5. **'Go from town to town'** or to other's houses, carrying to sell or exposing for sale any goods, merchandise, etc.

In the past the city centre has had major issues with pedlars, especially during the Christmas period. It is very difficult to do enforcement work in relation to pedlars acting unlawfully. To claim that a pedlar is acting as an illegal street trader they have to be witnessed staying in one location for a period of time, establishing themselves a pitch. Case law has shown that a pedlar must stay in one location (without moving) for at least 20-30 minutes without making a sale before they can be classed as illegally street trading. Case law has also shown that a pedlar that stays in one area for a period of time but keeps moving is not classed as illegally street trading, for example a trader who just walks around the fountain on Parliament Street all day and only stops to make a sale is not street trading. A large percentage of pedlars are aware of the case law and know how to act just inside the law.

Trading Standards are able to take action against pedlars if they are selling counterfeit or dangerous goods.

Recently the police have dealt with any pedlars that come into the city centre under their own legislation.

Gag Mag Sellers

As this publication is produced periodically it is classed as a periodical and therefore is exempt under street trading legislation.

There are no dedicated pitches for sellers to operate from, they do not have to inform anyone from the Council when they intend to come into the city to trade, so they can, and do, turn up at anytime and trade anywhere.

The Council receive complaints about the activities of these sellers. Some people are concerned that the 'gag mags' may be mistaken for 'rag mags' (magazines produced by students to raise money for charity), and that the seller's behaviour can be intimidating.

Trading Standards officers can take action in relation to misleading claims or 'aggressive' sales practices but only where the seller's behaviour causes (or is likely to cause) a buyer to act in a way that they wouldn't otherwise have

done e.g. causes them to buy a magazine that they wouldn't otherwise have purchased.

A number of sellers also have pedlars' certificates.

Leaflets / Flyers

To promote their shops / restaurants / bars / etc a number of businesses have promotional staff giving out leaflets/flyers in the city centre. This is more prevalent on Friday and Saturday evenings as late bars and nightclubs have lots of promotional staff situated in Coney Street and on Ouse Bridge. This can cause a major litter problem for the city. Businesses do not require permission from the Council to give out leaflets/flyers. The Street Environment Service writes to businesses if a major litter issue does occur.

Local authorities can take further action by bringing in a designated place order under Section 94b, Schedule 3a of the Environmental Protection Act 1990 (distribution of free printed matter) (as inserted by Section 23 of the Clean Neighbourhoods and Environment Act 2005).

Before an authority can introduce a designated place order consultation must take place. Once introduced any businesses wishing to distribute leaflets/flyers would have to apply to the authority for consent and pay a fee. Businesses distributing leaflets/flyers without the consent of the Council could face prosecution with maximum fines up to £2500 and fixed penalties.



Environmental Health, Trading Standards, Licensing, and Street Environment and Enforcement Services

Enforcement Policy

This document is the enforcement policy for City of York Council's environmental health, trading standards, licensing and street environment and enforcement services. It sets out the key principles under which officers will seek to achieve compliance with the legislation enforced by these services. In carrying out their duties officers will adhere to the principles of good enforcement set out in the 'Statutory Code of Practice for Regulators' and all other relevant codes of good practice including those with the investigation of offences or the prosecution of offenders.

All enforcement activity undertaken under this policy will have regard to the Human Rights Act 1998 and the European Convention of the Protection of Human Rights and Fundamental Freedoms.

1.0 Introduction

The main purpose of the public protection, environmental health, trading standards, licensing and street environment and enforcement services are to maintain a fair and safe trading environment for consumers and businesses, to help reduce the actual and perceived impact of violent, aggressive and nuisance behaviour on people in York and to improve and protect public health and improve the environment. We recognise that effective and well-targeted regulation is essential in achieving this.

We will ensure legal compliance by:

- Helping and encouraging businesses and individuals to understand and comply with the law.
- Responding proportionately to breaches of the law.

We want to achieve the following outcomes:

- Support economic growth, especially in small businesses, by ensuring a fair, responsible and competitive trading environment
- Protect the environment for future generations including tackling the threats and impacts of climate change
- Improve quality of life and wellbeing by ensuring clean and safe neighbourhoods
- Help people to live healthier lives by preventing ill health and harm, and promoting public health
- Ensure a safe, healthy and sustainable food chain for the benefits of consumers and the rural economy.

2.0 Economic Progress

We will consider the impact that our regulatory activities may have on businesses, including consideration of costs, effectiveness and perceptions of fairness. We will only adopt a particular approach if the benefits justify the costs and in doing so will endeavour to try to keep any perceived burdens to a minimum.

(References to costs and benefits include economic, social and environmental costs and benefits).

3.0 Risk Assessment

We will allocate our resources where they will be most effective by assessing the risks due to non-compliance with the law. The risk factors include:

- the potential impact on residents, consumers, business and the environment in failing to meet legal requirements.
- the likelihood of non-compliance taking into account matters such as:

- the past history,
- the systems a business has in place,
- management competence of the business
- and willingness to comply.

4.0 Advice and Guidance

We recognise that prevention is better than cure and will actively work with business and residents to advise on and assist with, compliance with the law.

In doing this we will ensure that:

Legal requirements are made available and communicated promptly upon request.

The information we provide will be in clear, concise and accessible language. Advice will be confirmed in writing where necessary.

We will clearly distinguish between legal requirements and guidance aimed at improvements above minimum standards.

5.0 Inspections and Other Visits

All inspections and other visits to businesses will be undertaken after consideration of the risk the business poses if it fails to comply with the law (see paragraph 3.0 above), where the business has requested advice or where intelligence/information suggests that an inspection or visit is appropriate.

- Where we carry out inspections we will give feedback to the business on what the officer has found; this will include positive feedback to encourage and reinforce good practice.
- Where practicable we will co-ordinate inspections with other regulators to minimise the burden on businesses.
- Random inspection will be undertaken where government guidelines require us to do so. A small amount of random inspections may also be undertaken to test our risk assessments or the effectiveness of any action we have taken.

6.0 Information Requirements

We will only ask businesses for information that is necessary after considering the cost and benefit to obtaining the information. Where possible we will share this information with our partners (taking account of data protection) to prevent the need for providing the information more than once.

7.0 Compliance and Enforcement Actions

We recognise that most businesses and individuals wish to comply with the law, however firm action will be taken against those who break or flout the law or act irresponsibly.

We will carry out all of our enforcement duties, including taking formal enforcement action, in a fair, equitable and consistent manner. Whilst officers exercise judgement in individual cases, we will have arrangements in place to promote consistency including liaison with other agencies and authorities.

Formal enforcement action will only be considered and taken in the first instance in cases involving unfair commercial practices against consumers or businesses, commercial fraud, sales of age restricted products, supply of counterfeit goods, intellectual property crime, occupational health and safety, public safety, risk to public health (including food safety), statutory nuisances, animal health and welfare, the compositions of safety or animal feeding stuffs, damage to the environment, overloaded goods vehicles, dog fouling, trading standard offences committed by doorstep sellers, breaches of licence conditions, operation of unlicensed taxis, unauthorised street trading activities and charitable collections, or in any other case in which a head of service considers formal enforcement action is necessary.

Formal enforcement action will also be considered and may be taken where advice has been ignored.

Where formal enforcement action is necessary, we will consider the most appropriate course of action (from the range of sanctions and penalties available) with the intention of: -

- Aiming to change the behaviour of the offender
- Aiming to eliminate any financial gain or benefit for non-compliance

- Being responsive and considering what is appropriate for the particular offender and issue involved, including punishment and the public stigma that may be associated with criminal convictions
- Being proportionate to the nature of the offence and harm caused
- Aiming to restore the harm caused by non-compliance
- Aiming to deter future non-compliance.

Before formal enforcement action is taken:

- There will be an opportunity to discuss the circumstances of the case, unless immediate action is required e.g. to prevent the destruction loss of evidence or there is an imminent risk to the environment, public health or health and safety. This discussion will usually follow an interview under caution if a prosecution is being considered.
- Where immediate formal enforcement action is taken, which will usually be the service of a written notice, reasons for such action will be given at the time (if possible) and confirmed in writing within 10 working days.
- Where there are rights of appeal against formal enforcement action, notification of the appeal mechanism will be clearly set out in writing at the time the action is taken.
- Clear reasons will be given for any formal enforcement action taken, and confirmed in writing.

For the purpose of this policy 'formal enforcement action' includes serving a legal notice (e.g. an improvement, suspension, prohibition, fixed penalty or abatement notice), the seizure of goods, the seeking of an injunction, the issue of a 'formal' written caution and prosecution. In cases involving food safety and the issue of legal notices and voluntary closure of premises we will follow guidance set out in the appropriate Food Standards Agency Food Law Code of Practice.

If the formal enforcement action being considered is a prosecution we will also consider a number of additional factors in line with the Code for Crown Prosecutors and any other nationally recognised guidance such as the

Enforcement Management Model published by the Health and Safety Executive. These factors may include the following:

- The seriousness of the alleged offence
- The history of the party concerned
- The willingness of the business or the individual to prevent a recurrence of the problem and co-operate with officers
- Whether it is in the public interest to prosecute
- The realistic prospect of conviction
- Whether any other action (including other means of formal enforcement action) would be more appropriate or effective
- The views of any complainant and other persons with an interest in prosecution.

These factors are NOT listed in order of significance. The rating of the various factors will vary with each situation under consideration.

When formal enforcement action is being considered for an acquisitive crime i.e. the acquiring of assets (including money) from offences such as fraud or intellectual property crime, we will undertake a financial investigation into the circumstances of the case. In serious cases this may result in the seizure of a suspect's cash and legal proceedings for money laundering and confiscation of assets under the provisions of the Proceeds of Crime Act 2002.

8.0 Accountability

We will be accountable for the efficiency and effectiveness of our activities:

- We shall provide businesses and individuals with effective consultation and opportunities for feedback on our service.
- Officers will be courteous, fair and efficient at all times, and will identify themselves by name and, where appropriate, identity card.
- Any complaints about the way you have been treated will follow the City of York Council's complaints procedure. A copy of the complaints

procedure can be obtained from 9 St Leonard's Place, York, by telephoning 01904 551550 or from our website at www.york.gov.uk

9.0 Application of our enforcement policy

All officers will have regard to this document when making enforcement decisions.

Any departure from this policy must be exceptional, capable of justification and be fully considered by the head of service before a final decision is taken. This proviso shall not apply where a risk of injury or to health is likely to occur due to a delay in any decision being made. In cases of emergency or where exceptional circumstances prevail, the chief executive may suspend any part of this policy where it is necessary to achieve the effective running of the service and/or where there is a risk of injury or to health of employees or any members of the public.

10.0 Review

This policy will be subject to review as and when required. Improvements will be made if there are any changes in legislation or in local needs.

If you have any comments please contact the head of public protection by calling 01904 551550 or by writing to 9 St Leonard's Place, York, YO1 7ET or email to trading.standards@york.gov.uk

This information can be provided in your own language.

我們也用您們的語言提供這個信息 (Cantonese)

এই তথ্য আপনার নিজের ভাষায় দেয়া যেতে পারে। (Bengali)

Ta informacja może być dostarczona w twoim własnym języku. (Polish)

Bu bilgiyi kendi dilinizde almanız mümkündür. (Turkish)

یہ معلومات آپ کی اپنی زبان (بولی) میں بھی مہیا کی جاسکتی ہیں۔ (Urdu)

 (01904) 551550

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