

Annex B - Existing Enforcement Policy - Environmental Health, Trading Standards, Licensing, Street Environment and Enforcement Services Enforcement Policy (February 2012)



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

Enforcement Policy

This document is the enforcement policy for City of York Council's public protection, 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, beaches 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.

In investigations that may result in a prosecution 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. This may result in an investigation into money laundering and confiscation action being taken through the courts.

8.0 Accountability

We will be accountable for the efficiency and effectiveness of our activities, while opportunities for feedback on our service.

- 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, which is easily accessible to all service users, and explains how to make a complaint and the timescales involved. A copy of the complaints procedure can be obtained from 9 St Leonard's Place, York, by telephoning 01904 551550 or via 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 documents 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**