



St. Helens Council

Regulatory Services

Environmental Health Trading Standards Licensing

Enforcement Policy

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EXECUTIVE SUMMARY

The enforcement policy provides guidance to officers, businesses and the general public on the range of options that are available to achieve compliance with legislation enforced by St. Helens Regulatory Services. The policy has been approved by the Council's Licensing and Environmental Protection Committee.

Our primary objective is to achieve regulatory compliance. We recognise that prevention is better than cure, but where it becomes necessary to take formal action we will do so. There is a wide range of tools available to us as an enforcement agency and we will always choose an enforcement method that is relevant and proportionate to the offence or contravention. We will also take the past history of an individual/business into account when making this decision.

The policy is built around a process of escalation, for example, we will only prosecute in circumstances where a defendant has acted wilfully and where their actions are likely to cause material loss or harm to others, or where they have ignored written warnings or formal notices, endangered, to a serious degree, the health, safety or well being of people, animals or the environment, or assaulted or obstructed and officer in the course of their duties.

The enforcement options/tools available to us include:

- No action;
- Informal Action and Advice;
- Fixed Penalty Notices;
- Penalty Charge Notices;
- Formal Notice;
- Forfeiture Proceedings;
- Seizure of goods/equipment;
- Injunctive Actions and other Civil Sanctions;
- Suspension/revocation of a licence;
- Simple Caution;
- Prosecution;
- Proceeds of Crime Applications

The policy is designed to help you understand our objectives and methods for achieving compliance and the criteria we consider when deciding what the most appropriate response is to a breach of legislation.

All our decisions will have regard to current statutory guidance and codes of practice, particularly the Regulators' Code, the Code for Crown Prosecutors and the Human Rights Act.

1.0 Introduction

1.1 Fair and effective enforcement is essential to protect the health and safety and economic interests of the public, businesses and the environment. Decisions about enforcement action and in particular the decision to prosecute have serious implications for all involved. Regulatory Services will apply this Policy to ensure that:

- Decisions about enforcement action are fair, proportionate and consistent;
- Officers apply current Government guidance and relevant codes of practice;
- Everyone understands the principles that are applied when enforcement action is considered.

2.0 Legal Status of the Enforcement Policy

2.1. The Licensing and Environmental Protection Committee of St. Helens Council approved this policy on the 18th of March 2015.

2.2 This policy is intended to provide guidance for officers, businesses, consumers and the public. It does not affect the discretion of the Council to take legal proceedings where this is considered to be in the public interest.

3.0 Scope and Meaning of Enforcement

3.1 This Enforcement Policy is based on the following 5 principles and relates to Environmental Health, Trading Standards and the Licensing Service.

- Proportionality
- Accountability
- Consistency
- Transparency
- Targeted

3.2 This Policy applies to all the legislation enforced by Officers in Environmental Health, Trading Standards and Licensing.

3.3 'Enforcement' includes any action taken by officers aimed at ensuring that individuals or businesses comply with the law. This is not limited to formal enforcement action such as prosecution.

3.4 In certain circumstances we will seek to raise awareness and increase compliance levels by publicising unlawful trade practices or criminal activity. Where appropriate the results of specific court cases may also be published.

4.0 How to obtain a copy of the Policy or make comments

4.1 If you would like a paper copy of the Policy and/or you would like to comment on the policy, please contact us by:

- telephoning 01744 676789
- e-mailing environmentalhealth@sthelens.gov.uk
- e-mailing tradingstandards@sthelens.gov.uk
- e-mailing Licensing@sthelens.gov.uk
- writing to the Director of Environmental Protection & Safer Communities, 3rd Floor, Wesley House, Corporation Street, St. Helens WA10 1HE

4.2 The policy is available online at:

4.3 On request, this Policy will be made available on tape, in Braille, large type, or in a language other than English.

5.0 General Principles

5.1 Prevention is better than cure and our role therefore involves actively working with businesses to advise on, and assist with compliance. Where appropriate, positive feedback will be provided to regulated businesses thereby encouraging and reinforcing good practice.

5.2 Where we consider that formal action is necessary, each case will be considered on its own merits. However, there are general principles that apply to the way each case must be approached. These are set out in this Policy and in the Regulators' Code.

For more information about the Regulators' Code visit:

<https://www.gov.uk/government/publications/regulators-code>

5.3 Enforcement decisions will be fair, independent and objective and will not be influenced by issues such as ethnicity or national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender. Such decisions will not be affected by improper or undue pressure from any source.

5.4 We will take into account the views of any victim, injured party or relevant person to establish the nature and extent of any harm or loss, and its significance, in making any decision to take enforcement action.

5.5 In situations where a regulatory visit is made to a business or organisation that has entered into a Home Authority or Primary Authority arrangement, we will have regard to any statutory advice or inspection plans produced for enforcing authorities. Where enforcement action is envisaged against such businesses or organisations the primary authority will be notified of the proposed enforcement action and account will be taken of any advice provided.

For information on the Primary Authority scheme visit :-

<https://www.gov.uk/government/publications/primary-authority-overview>

- 5.6 St. Helens Council is a public authority for the purposes of the Human Rights Act 1998. We will, therefore, apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
- 5.7 This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulator's Code.
- 5.8 In certain instances we may conclude that a provision in the code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

6.0 Notifying Alleged Offenders

- 6.1 If we receive information, for example from a complainant, that may lead to enforcement action being taken against a business or individual, we will notify that business or individual as soon as is practicable of any intended enforcement action, unless this could impede an investigation or pose a safety risk to those concerned or the general public.
- 6.2 During the progression of enforcement investigations/actions, business proprietors or individuals and witnesses will be kept informed of progress. Confidentiality will be maintained and personal information about individuals will only be released to a Court when required and/or in accordance with the Data Protection Act 1998.

7.0 Enforcement Action

- 7.1 There are a number of potential enforcement options. The level of the action taken varies from no action through to Court proceedings. Examples of the main types of action that may be considered are shown below:
- No action;
 - Informal Action and Advice;
 - Fixed Penalty Notices;
 - Penalty Charge Notices;
 - Formal Notice;
 - Forfeiture Proceedings;
 - Seizure of goods/equipment;
 - Injunctive Actions and other Civil Sanctions;
 - Suspension/revocation of a licence;
 - Simple Caution;
 - Prosecution.
 - Proceeds of Crime Act Applications

- 7.1.1 The order in which the enforcement actions are listed above is not necessarily in absolute order of escalating seriousness relative to each other. Regulatory Services reserves the right to escalate its level of enforcement action, having regard to the criteria in paragraph 7.1.3 of this policy.
- 7.1.2 Where the law has been contravened, there is a range of enforcement options available to seek compliance with the law. Under normal circumstances, a process of escalation will be used until compliance is reached. Exceptions to this would be where there is a serious risk to public safety or the environment or the offences have been committed deliberately or negligently or involve deception, or where there is significant economic detriment.
- 7.1.3 In assessing what enforcement action is necessary and proportionate consideration will be given to:
- The seriousness of the compliance failure.
 - The past and current performance of any business and/or individual concerned.
 - Any obstruction on the part of the offender.
 - The risks being controlled.
 - Statutory Guidance
 - Codes of Practice
 - Any legal guidance/advice
 - Policies and priorities of Government, St Helens Metropolitan Borough Council and its Licensing and Environmental Protection Committee
- 7.1.4 Certain enforcement action, such as the decision to offer a Simple Caution and/or the decision to prosecute, is further and specifically informed by those matters set out below at paragraphs 7.11 and 7.12.

7.2 No Action

- 7.3.1 In certain circumstances, contraventions of the law may not warrant any action. This could be where the cost of compliance to the offender outweighs the detrimental impact of the contravention, or the cost of the required enforcement action to the Council outweighs the detrimental impact of the contravention on the community. A decision of *no action* may also be taken where formal enforcement is inappropriate in the circumstances, such as where a trader has ceased to trade, or the offender is elderly and frail and formal action would seriously damage their health or wellbeing. In such cases we will advise the offender of the reason for taking no action.

7.3 Informal Action and Advice

- 7.3.1 For minor breaches of the law we may give verbal or written advice. We will clearly identify any contraventions of the law and give advice on how to put them right, including a deadline by which this must be done. The time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of the non-compliance.
- 7.3.2 Sometimes we will advise offenders about 'good practice', but we will clearly distinguish between what they *must do* to comply with the law and what is advice or good practice.
- 7.3.3 Failure to comply could result in an escalation of enforcement action.

7.4 Fixed Penalty Notices

- 7.4.1 Certain offences are subject to fixed penalty notices where prescribed by legislation as an alternative to prosecution. They are recognised as a low-level enforcement tool and avoid a criminal record for the defendant. Where legislation permits an offence to be dealt with by way of a Fixed Penalty Notice (FPN), we may choose to administer a FPN on a first occasion, without issuing a warning.
- 7.4.2 In circumstances where a person or body corporate fails to accept or pay a FPN, then in order to maintain the integrity of these legislative regimes, Regulatory Services will consider an escalation of enforcement action. This will include consideration of a prosecution for the original offence under the primary legislation.
- 7.4.3 St Helens Councils' Fixed Penalty Enforcement Strategy can be viewed at:

http://www.sthelens.gov.uk/media/641743/fpn_enforcement_strategy.pdf

7.5 Penalty Charge Notices

- 7.5.1 Penalty Charge Notices (PCN) are prescribed by certain legislation as a method of enforcement by which the offender pays an amount of money to the enforcer in recognition of the breach. Failure to pay the PCN will result in the offender being pursued in the County Court for non-payment of the debt. A PCN does not create a criminal record and we may choose to issue a PCN without first issuing a warning.

7.6 Formal Notice

- 7.6.1 Certain legislation provide for notices to be served requiring offenders to take specific actions or cease certain activities. Notices may require activities to cease immediately where the circumstances relating to health, safety, environmental damage or nuisance demand. In other circumstances, the time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of the non-compliance. An example is an Improvement Notice requiring a food business to comply with provisions of specified legislation.
- 7.6.2 All notices issued will include details of any applicable *Appeals Procedures*.
- 7.6.3 Certain types of notice allow works to be carried out at default. This means that if a notice is not complied with [a breach of the notice] we may carry out any necessary works to satisfy the requirements of the notice ourselves. Where the law allows, we may then charge the person/business served with the notice for any cost we incur in carrying out the work.

7.7 Forfeiture Proceedings

- 7.7.1 This procedure may be used in conjunction with seizure and/or prosecution where there is a need to dispose of goods in order to prevent them re-entering the market place or being used to cause a further problem. In appropriate circumstances, we will make an application for forfeiture to the Magistrates Courts.

7.8 Seizure

7.8.1 Certain legislation enables authorised Officers to seize goods, equipment or documents for example unsafe food, sound equipment that is being used to cause a statutory noise nuisance, unsafe products or any goods that may be required as evidence for possible future court proceedings. When we seize goods we will give the person from whom the goods are taken an appropriate receipt.

7.9 Injunctive Actions and other Civil Sanctions

7.9.1 In certain circumstances, for example where offenders are repeatedly found guilty of similar offences or where it is considered that injunctive action is the most appropriate course of enforcement, injunctive actions may be used to deal with repeat offenders, dangerous circumstances or significant consumer detriment.

7.9.2 Action under the Enterprise Act 2002, proceedings may be brought where an individual or organisation has acted in breach of community or domestic legislation with the effect of harming the collective interests of consumers. In most circumstances action will be considered where there have been persistent breaches or where there is significant consumer detriment. Action can range from:

Information undertakings;
Formal undertakings;
Interim Orders;
Court Orders;
Contempt Proceedings.

7.9.3 Anti- Social Behaviour Orders and Criminal Behaviour Orders; Where the non-compliance under investigation amounts to anti-social behaviour such as persistent targeting of an individual or a group of individuals in a particular area then, following liaison with the Council's Anti-Social Behaviour Unit where appropriate, an ASBO or CBO will be sought to stop the activity.

7.10 Suspension and Revocation of a Licence

7.10.1 Review of Hackney Carriage/Private Hire Drivers Licence

Pursuant to Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 the Council may suspend, revoke or refuse to renew a hackney carriage/private hire driver's licence on any of the following grounds:

(a) That the Licence Holder has since the grant of the Licence:

- (i) Been convicted of an offence involving dishonesty, indecency or violence; OR
- (ii) Been convicted of an offence under or has failed to comply with the provisions of the Local Government (Miscellaneous Provisions) Act 1976 or the Town Police Clauses Act 1847 (legislation referring to the 'control' of Hackney Carriages and Private Hire Vehicles).

(b) Any other reasonable cause.

7.10.2 The Council may suspend or revoke a hackney carriage/private hire driver's licence with immediate effect if it is deemed necessary in the interests of public safety. This could be due to information received for example from the Police about a serious conviction or allegation against a driver such as drink driving, sexual offences or serious assault. The Council must be satisfied that there is a clear connection between the alleged incident(s) and the safety of the travelling public which justifies taking immediate action.

7.10.3 Review of a Private Hire Operators Licence -

Pursuant to section 62 of the Local Government (Miscellaneous Provisions) Act 1976 ('the Act') the Council may suspend, revoke or refuse to renew an operator's licence on any of the following grounds.

- (a) any offence under, or non-compliance with, the provisions of part II of the Act;
- (b) any conduct on the part of the operator which appears to the council to render him unfit to hold an operator's licence;
- (c) any material change since the licence was granted in any of the circumstances of the operator on the basis of which the licence was granted; or
- (d) any other reasonable cause.

7.10.4 Review of a Premises Licence

(a) Where a review of a Premises Licence is sought pursuant to Sections 51 or 53 of the Licensing Act 2003, the Licensing Sub Committee may take the following steps on determination of the application, if it is considered necessary for the promotion of the licensing objectives:-

- To modify the conditions of Licence
- To exclude a Licensable activity from the scope of the Licence
- To remove the Designated Premises Supervisor
- Suspend the Licence for a period not exceeding three months
- Revoke the Licence
- Issue a warning letter (i.e. informal action)
- No action

(b) In addition, where a Summary Review of a Premises Licence is sought by the Police pursuant to Section 53 of the Act, the Licensing Sub Committee may take the following interim steps if they are considered necessary, pending determination of the review:-

- To modify the conditions of Licence
- To exclude the sale of alcohol by retail from the scope of the Licence
- To remove the Designated Premises Supervisor
- To suspend the Licence

7.10.5 Where a Review of a Premises Licence is sought pursuant to Section 201 of the Gambling Act 2005 ('the Act'), the Licensing Sub Committee may take the following action:-

- To revoke the Licence
- To suspend the Licence for up to three months
- To exclude a condition attached to the Licence under Section 168 of the Act or to remove or amend an exclusion To add, remove or amend a condition under Section 169 of the Act.

7.11 Simple Caution

7.11.1 A Simple Caution is an admission of guilt but is not a form of sentence nor is it a criminal conviction. In appropriate circumstances, where a prosecution would otherwise be justified, a Simple Caution may be administered with the consent of the offender.

7.11.2 For a Simple Caution to be issued a number of criteria must be satisfied;

- Sufficient evidence must be available to prove the case.
- The offender must admit the offence.
- It must be in the public interest to use a Simple Caution.
- The offender must be aged 18 years or over.

7.11.3 We will also take into account whether the offender has received a Simple Caution within the last 2 years when determining whether a Simple Caution is appropriate for any subsequent offending

7.11.4 A record of the Simple Caution will be kept on file for 2 years. If the offender commits a further offence, the Simple Caution may influence the decision to pursue a prosecution. If during the time the Caution is in force the offender pleads guilty to, or is found guilty of, committing another offence anywhere in England and Wales, the Simple Caution may be cited in Court, and this may influence the severity of the sentence imposed by the Court .

7.11.5 For details of the Ministry of Justice guidance on Simple Cautions visit:

<http://www.justice.gov.uk/downloads/oecd/adult-simple-caution-guidance-oecd.pdf>

7.12 Prosecution

7.12.1 We apply two ‘tests’ to determine whether a prosecution is viable and appropriate. We apply guidance set by the Crown Prosecution Service when applying the tests:

For more information about the ‘Code for Crown Prosecutors’ issued by the Director of Public Prosecutions visit:

http://www.cps.gov.uk/publications/code_for_crown_prosecutors/codetest.html

A prosecution will only be progressed when the case meets both the evidential test and the public interest test. The principles outlined below apply equally to the other types of formal enforcement action that are available.

7.12.2 Evidential Test

We must be satisfied that there is enough evidence to provide a ‘realistic prospect of conviction’ against each defendant on each charge. A realistic prospect of conviction is an objective test that means that a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. The following evidential factors will be considered when deciding whether there is a realistic prospect of conviction:

- Whether there is enough evidence to prove the offence
- The likelihood of evidence being held as inadmissible by the courts and the importance of that evidence in relation to the evidence as a whole
- Whether there are any reasons to question the credibility or reliability of evidence
- Whether the offender can make out a statutory or other defence

7.12.3 The Public Interest Test

The public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. We will balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the suspect. Some factors may increase the need to prosecute but others may suggest that another course of action would be better.

The following public interest criteria will normally be taken into account when deciding on the relevance of legal proceedings, although this list is not exhaustive:

- The seriousness of the offence including whether there is a significant risk to public health or safety: damage to the environment: causing suffering to animals or risk of spread of animal or human disease
- The culpability of the offender including their level of involvement in the offence, the degree of premeditation or pre planning, relevant previous convictions or out of court disposals, previous advice or warnings, their age or maturity or whether, at the time of the offence, they were suffering from any significant mental or physical ill health

- Any threat of violence against any person
- Any obstruction of an officer of the authority in carrying out their duties.
- Whether the victim is part of a vulnerable group or has been put in a position of considerable fear, damage or disturbance. This includes where a position of trust or authority exists between the suspect and the victim.
- Whether the offence was motivated by any form of discrimination against the victim's ethnic or national origin, gender, age, religion or belief, sexual orientation, or gender identity of the offender demonstrated any hostility toward a victim based on any of these.
- Whether prosecution is proportionate to the likely outcome, including a consideration of the cost of the action to the authority and the wider criminal justice system, especially where it could be considered excessive when weighed against any likely penalty.
- The principles of effective case management. For example in a case involving multiple defendants' prosecution may be reserved for the main participants in order to avoid excessively long and complex proceedings
- The views of any relevant "Home" or "Primary" Local Authority for the business in question.

7.13 Proceeds of Crime Act Applications

7.13.1 Applications may be made under the Proceeds of Crime Act 2002 for confiscation of assets in serious cases. Their purpose is to recover the financial benefit that the offender has obtained from his criminal conduct. Proceedings are conducted according to the civil standard of proof. Applications are made after a conviction has been secured.

7.13.2 We may also assist the courts, where victims apply for compensation as it is our policy that the victims of crime should be compensated where possible

7.13.3 We will attempt to recover the cost of enforcement action wherever possible, for example by applying to courts for full prosecution costs (in accordance with existing law). This is to mitigate the burden to Council Tax payers of the cost of enforcement.

8.0 Who decides what enforcement action is taken

8.1 Decisions about the most appropriate enforcement action to be taken are based upon professional judgement, legal guidelines, statutory codes of practice and priorities set by the Council and/or Central Government. This will be further reinforced, where considered necessary, by the introduction of practice and procedure notes which will seek to guide officers in the appropriate line of action to take.

8.2 Where appropriate, decisions about enforcement will involve consultation between or approval from:

- Investigating Officer(s);
- Senior Managers from Regulatory Services;
- Council Solicitors and Legal Officers;
- Chair of the Council's Licensing and Environmental Protection Committee

9.0 Liaison with other Regulatory Bodies and Enforcement Agencies

- 9.1 Where appropriate, enforcement activities within Regulatory Services will be co-ordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement.
- 9.2 Where an enforcement matter affects a wide geographical area beyond the Council's boundaries, or involves enforcement by one or more other local authorities or organisations; where appropriate all relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activity co-ordinated with them.
- 9.3 Regulatory Services will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies, examples including:
- Government Agencies;
 - Police Forces;
 - Fire Authorities;
 - Statutory Undertakers;
 - Other Local Authorities.

10.0 Considering the views of those affected by offences

- 10.1 Regulatory Services undertakes enforcement on behalf of the public at large and not just in the interest of any particular individual or group. However, when considering the public interest test, the consequences for those affected by the offence, and any views expressed by those affected will, where appropriate, be taken into account when making enforcement decision.

11.0 Protection of Human Rights

- 11.1 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 following:
- Right to a fair trial;
 - Right to respect for private and family life, home and correspondence.

12.0 Review of the Enforcement Policy

- 12.1 This Policy will be reviewed annually.

13.0 Complaints

- 13.1 The Council has an established complaints procedure which can be accessed on line at www.sthelens.gov.uk or by contacting St. Helens Council, Contact Centre, Wesley House, Corporation Street, St. Helens, WA10 1HE. Telephone 01744 – 676789.