

Report to: Executive Cabinet Member
Environmental Services

Date: 25th January 2016

Report of: Director of Environmental Services **Report No:** ECMES/36/16

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Report Title: **Bolton Council Enforcement Policy 2015-2020**

Non Confidential: This report does not contain information which warrants its consideration in the absence of the press or members of the public.

Purpose: To invite the Executive Cabinet Member to:

1. Consider the comments and recommendations from the policy development group.
2. Approve the Bolton Council Enforcement Policy 2015-2020

Recommendations: The Executive Cabinet Member is requested to approve the policy.

Background Doc(s): Scheme of delegation 2015-16
Department of Business Innovation and Skills Regulator's Code 2014

Summary: No summary

Equality Impact Assessment: an initial assessment has been undertaken and concludes that there will be no differential impact from this proposal, in respect of race, gender or disability.

BOLTON COUNCIL ENFORCEMENT POLICY 2015

1. Introduction

1.1 Bolton Council has reviewed its Enforcement Policy to ensure it complies with the Regulators Code 2014.

The **Regulators' Compliance Code** is a statutory code of practice intended to encourage regulators to achieve their objectives in a way that minimises the burdens on business. The purpose of the Code is to embed a risk-based, proportionate, targeted and flexible approach to regulatory inspection and enforcement among the regulators to which it applies. This approach will ensure that regulators are efficient and effective in their work, without imposing unnecessary burdens on those they regulate.

The following council service areas are covered by this policy:

- Regulatory Services
- Environmental Education and Enforcement
- Housing Standards
- Community Safety Services
- Highways and Engineering

2. The Policy

2.1 The policy sets out the approach services will use when seeking compliance with the law. It will be of interest to anyone whose activities are regulated by the services and to the public at large.

The Council has two main aims:

- **Narrowing the gap** between the most and least well off.
- To ensure **economic prosperity**.

This will be achieved through the provision of quality, cost-effective services delivered by committed, properly trained and rewarded people and many of these services will be linked with the Council's enforcement role.

2.2 This policy is the overarching enforcement policy for the specified services. It outlines the approach to enforcement and lays down the principles which will be followed in deciding upon, and taking action. This enforcement policy will be available to businesses and consumers via the Council's web site.

2.3 Not all of the operational units have the same enforcement options open to them. This makes it necessary for the enforcement policy to be supplemented by more specific information relating to some of the areas of work listed above. The additional information is contained in the Appendices to this policy document.

2.4 Officers will take all reasonable steps to assist businesses and individuals to comply with the law. However officers will be prepared to ensure compliance by exercising the formal powers delegated to them in the Council's Scheme of Delegation including, where appropriate, prosecution.

3. Enforcement Policy procedures

3.1 The purpose of enforcement is to ensure action is taken to secure compliance with legislation thus preventing an incident or recurrence of an incident, which would otherwise have an adverse effect on the Council's ability to deliver our aims: Narrowing the gap and economic prosperity.

3.2 There should be a prompt response to flagrant breaches of the law, but where requirements allow it, a more measured and discriminating approach should be taken. It is, however, recognised that where the law is prescriptive in laying down precisely what needs to be done there will be limits to the discretion available to regulators. Officers will consider the purpose of the law when deciding upon appropriate action.

4. Implementing the Policy

4.1 Officers will only be allocated tasks that they are competent to perform. Staff development interviews and personal development plans provide the framework to assess training needs. This will ensure that officers are provided with appropriate training to carry out their enforcement functions.

4.2 Premises which are subject to inspection by the regulatory services will be risk assessed for the purposes of targeting inspection visits. Premises rated as high risk will be given priority for inspection purposes. Action will be focussed on businesses which are negligent or intentionally infringe the law.

4.3 When officers give advice to businesses, either during enforcement visits or on request, the officer will distinguish legal requirements from best practice advice.

4.4 Instructions on legal requirements will be put in writing. The instructions will be legible, written in plain English and avoid the use of abbreviations and jargon. Information will be provided in other languages as required. Where a disabled person requires information in an alternative format because of their disability, this requirement will be addressed.

4.5 Authorised officers will carry out a programme of planned inspections/operations and respond to complaints at business and residential premises and in connection with land and other non-business premises with a view to securing compliance with legislation. Businesses are liable to be visited by an authorised officer to determine whether the law is being complied with. Businesses will not normally be given advance notice that a visit is to take place. Some visits will be pre-arranged where this positively benefits the purpose of the visit or notice is required by legislation. The authorised officer will offer assistance to help customers comply with statutory requirements, in addition to carrying out appropriate enforcement work.

4.6 Authorised officers are given various powers of entry, inspection and seizure under a variety of statutes. Persons should not attempt to stop an authorised officer who is properly exercising any of these powers; as such action constitutes an offence. Occasionally, an investigation may be undertaken by two or more authorised officers working together. In many cases, depending on the legislation being enforced, an officer can, for example:

- Enter any premises at all reasonable hours
- Inspect any goods, food, articles or equipment
- Take samples of any goods, food, articles or substances
- Buy or take any goods or food
- Inspect any documents to ensure compliance and where an offence is suspected
- Seize, remove and detain food, articles, substances, goods, equipment and documents, when it is believed that an offence has been committed
- Direct that premises, or anything within premises, are left undisturbed
- Take photographs, measurements and recordings.

4.7 In the course of an inspection/operation, our customers can expect:-

- To be shown all due courtesy
- To be informed of the purpose of the visit
- To be shown identification
- To be given advice
- To receive feedback on compliance levels
- To be given guidance on what the law is
- To be given advice on any action required to remedy any points of non compliance
- To receive reasonable time to take remedial action
- To be told of procedures for appealing against any enforcement action taken.

4.8 Enforcement action includes verbal warnings and advice, written advice, reports, warning letters, statutory notices, the execution of work in default, formal warnings, the issue of fixed penalty notices, enforcement orders, injunctions, simple cautions and prosecution. Action taken will be proportionate to the scale of the identified problem. The following factors will be taken into account:

- Significant contraventions resulting in real or potential danger to the public or persons at work
- Previous correspondence on the issue or where there is a history of similar offences related to risk to public health
- Detriment to consumer's rights
- Willful breach of legislation or failure to comply in full or in part with requirements of a statutory notice.

4.9 In the first instance, officers will actively encourage and assist businesses and individuals to understand what the law requires and what needs to be done to comply. Officers will give advice both orally and in writing if requested. Where there is published guidance available officers will direct interested parties to relevant information on the web. Information will be provided in languages other than English if required. Businesses will be encouraged to heed the advice of officers and thereby fulfil their obligations under the law. Before formal action is taken, officers will provide an opportunity to discuss the

circumstances of the case, and if possible, resolve points of difference, unless immediate action is required in response to a serious offence.

4.10 Where advice is not heeded, resulting in continued or further breaches, then officers will need to consider the individual circumstances and decide upon an appropriate course of action. The exact powers open to officers will vary, depending on the legislation they are enforcing. Action may include a warning letter, the issue of a legal notice requiring works, service of a fixed penalty notice, a simple caution or the prohibition of an activity. In some cases an injunction may be sought in the High Court to prevent an activity. Non-compliance with notices and injunctions can result in offenders being prosecuted, and if any work is carried out in default as determined by the local authority then the costs incurred will be recovered by the Council. Guidance on enforcement powers which are service specific are given in the Appendices to this policy.

4.11 Many Acts of Parliament enforced by the Council provide for the service of statutory notices that require a person, business or organisation to comply with specific legal requirements. Where a formal notice is served, the method of appealing against the notice (i.e. if a person feels the notice is unjustified or excessive in its requirements) will be provided in writing at the same time. The notice will explain what is wrong and how to put it right and what will happen if the notice is not complied with.

4.12 In general, failure to comply with a statutory notice (including a fixed penalty notice of the type where payment is required to discharge liability) makes the recipient liable for prosecution. In some circumstances, it is possible to prosecute as well as serve notice. Failure to comply with the notice would be an additional offence.

4.13 Where advice is not heeded resulting in continued or further breaches, officers may have the delegated power to remove or vary permissions, authorisations or licences. In addition, there are circumstances where an interested party may request a review hearing for a premises licence or club premises certificate.

4.14 Officers can recommend that offenders receive a simple caution in accordance with Home Office guidance. This is one step below prosecution, however, offenders must admit the offence and accept the caution. The simple caution is recorded on the Central Register of Convictions. Failure to accept the simple caution could result in prosecution, as would further similar breaches after the caution has been issued. A simple caution will only be used where there is evidence of guilt sufficient to give realistic prospects of conviction.

4.15 For some offences, in relation to environmental crime and smoke free offences for instance, fixed penalty notices may be issued. Fixed penalties provide an effective and visible way of responding to low-level crime, and are seen as part of a wider enforcement strategy, designed to address all aspects of offences in a particular enforcement area. Fixed penalty notices may be issued when an enforcing officer believes that an offence has been committed, and give the putative offender an opportunity to avoid prosecution by payment of a penalty. They are only issued where there is adequate evidence to support a prosecution if a notice is not paid, and unpaid notices are followed up. Failure to pursue unpaid notices through the courts would discredit the use of fixed penalties in the locality, and would lead to declining rates of payment. Please refer to the service specific appendices for more information.

4.16 Finally, offenders may be prosecuted. When deciding if prosecution is appropriate, all the circumstances surrounding the breach would be considered.

5 PROSECUTION

Purpose

5.1 Prosecution should not be undertaken lightly and discretion must be exercised when deciding if this is the appropriate course of action. Other enforcement approaches may be more effective in securing the desired outcome, however, prosecution remains a cornerstone of enforcement and should be used where appropriate.

5.2 Prosecution may be used in conjunction with other enforcement tools, eg a formal notice. Prosecution without prior warning and recourse to other alternative sanction, will be pursued where appropriate.

5.3 The purpose of prosecution is to punish the offender for wrong doing, prevent a recurrence, and act as a deterrent to others who have similar legal obligations.

Evidential Matters

5.4 When deciding whether to initiate proceedings, officers will have regard to the Crown Prosecution Service's guidance in their Code for Crown Prosecutors, in terms of the tests of evidence and public interest. All evidence will be collected in accordance with the Police and Criminal Evidence Act and associated codes. Only when there is sufficient admissible and reliable evidence of the offence, and therefore a realistic prospect of conviction, will a case go forward. Cases which fail the evidential test, will not proceed. Cases will not, however, be abandoned because they are difficult, or conviction is not a complete certainty.

Public Interest Factors

5.5 Officers will also have to satisfy themselves that a prosecution is in the public interest. Issues relating to the seriousness of the breach and the circumstances of the offender fall into this category.

5.6 The following factors will be considered when deciding whether to prosecute:

- The seriousness of the breach and the potential harm which may result.
- Was the breach and the events leading up to it foreseeable?
- Did the offender intend to commit the offence?
- What is the compliance history of the offender?
- What is the attitude of the offender?
- Will the prosecution have a salutary effect on others and encourage compliance with the law?
- What are the personal circumstances of the offender?

These factors are not exhaustive and reflect the range of issues which will be considered when deciding if prosecution is the appropriate course of action.

Companies and Individuals

5.7 Prosecutions will be taken against those responsible for the breach. Where the offence is committed as a result of a company's activities, action would normally be taken against the company. However, the investigation will identify the part played by Directors, Officers and Managers and staff of the company in the commission of the offence. There may be occasions when there is sufficient evidence, and circumstances indicate prosecution is appropriate, that action may be taken against individuals.

Presumption to Prosecute

5.8 The decision to prosecute will be taken having regard to the advice of Council's solicitor. There is a presumption to prosecute in the following circumstances:

- Where there has been a reckless disregard of the law, which has a potentially serious outcome.
- Where there has been a blatant disregard of the law, which has placed the offender at economic advantage over those who comply.
- Where there is a history of repeated breaches, either at the same site or at multiple sites, or a particular type of offence is prevalent at the site indicating significant management failings.
- Failure to comply with legal notices requiring remedial action.
- Where the contravention has caused particular public concern, eg an incident, which involves a member of the public or young person.
- Obstruction or assault on officers of the Department in the course of their duties.
- Impersonation of an officer to gain unlawful access to business or domestic premises.

6 COURTS AND PENALTIES

6.1 Cases are usually heard summarily in the Magistrates Court, but there are some offences, which can also be referred to the Crown Court and heard on indictment. These offences are called either way offences. There are also indictable only offences which relate to more serious offences.

6.2 When deciding if a case should be heard by indictment at the Crown Court the Magistrates will consider submissions from the Council's solicitor and the defence and consider the gravity of the offence.

6.3 As the penalties available in the Crown Court are significantly greater than those available to Magistrates, consideration should be given to the ability of the Magistrates to adequately punish the offender. Even if the case is heard in the Magistrates court, the

Magistrates do have the power to refer a case to the Crown Court for sentence if they feel the penalties at their disposal are inadequate, bearing in mind the facts.

6.4 Officers of the Council enforce a vast array of legislation and the penalties for offences vary widely. Some offences carry fines of several thousands of pounds and/or imprisonment. More detailed information is available from the specific enforcement services.

7 OFFENCES BY YOUNG PERSONS

7.1 All offences involving persons under 18 years of age will receive special consideration. Arrangements will be made for an appropriate adult to be present during any PACE interview involving a child or young person and the requirements of PACE Code C will be followed. Social services and the probation service will be notified, as appropriate, before legal proceedings are commenced. Sanctions available to enforcement officers for offences involving children and young people may differ from those available for adult offenders.

8 WORKING WITH OTHER REGULATORS

8.1 There may be occasions where Bolton Council enforcement officers and other enforcing authorities both have the power to prosecute. Other authorities may include the Health and Safety Executive, Environment Agency, the Police and Fire and Rescue Services as well as other local authorities.

8.2 When such situations arise, officers will liaise with their counterparts throughout the investigation to ensure effective co-ordination and co-operation in gathering and sharing information. Inconsistencies of approach should be avoided, and where proceedings are to be instituted, this should be undertaken by the most appropriate enforcing authority and the most appropriate officers.

8.3 Within the Council itself officers investigating complaints and carrying out inspections may find their work overlaps with the work of other departments and services. Officers will work together with other departments and services as appropriate in the circumstances. When involved with cases where there is an overlap of responsibilities adequate liaison will be maintained and where necessary consideration will be given to ways of cooperating in the investigation and coordinating the outcome.

9 MONITORING

9.1 This policy reflects the essential principles of good enforcement as outlined in the Regulators Code (April 2014). The Code explains to business what they should expect when dealing with regulators from local or central government.

9.2 Adherence to this policy by officers is therefore essential for the services to demonstrate the implementation of the Code's principles.

9.3 Service managers will ensure that all enforcement officers are familiar with the policy document. They will also monitor the activity of enforcement officers to ensure that the policy is being implemented in their day to day enforcement duties and have regard to current documents and guidance.

9.4 Complaints against the service

Where a business, or other member of the public, makes a complaint or expresses dissatisfaction with the service, the officer receiving the complaint will notify the Service Manager as soon as possible. The complainant will be advised of Council's complaints procedure and, if action to resolve the complaint informally is unsuccessful, the complaint will be investigated in accordance with that procedure. Complaints and expressions of dissatisfaction will be seen as opportunities to identify possible weaknesses in service delivery. This is the first step towards making improvements. This information will be used to examine possible action to improve service provision. Complaints that indicate non-compliance with this policy will be monitored.

10.0 REVIEW

10.1 The Council is committed to ensuring that local enforcement practice reflects current best practice and government policy. To this end, the service will review this policy document regularly and implement further revisions where the existing policy does not reflect best enforcement practice.

10.2 Revision may arise from monitoring this policy and from changes in government guidance. Any revision will ensure that the Council's enforcement policy reflects current best practice to ensure that those regulated are treated fairly and in line with national policy.

Revision date: 1st September 2015
Review date: 1st September 2020

REGULATORS CODE

KEY PRINCIPLES

- **Regulators should carry out their activities in a way that supports those they regulate to comply and grow.**
- **Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views**
- **Regulators should base their regulatory activities on risk**
- **Regulators should share information about compliance and risk**
- **Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply**
- **Regulators should ensure that their approach to their regulatory activities is transparent**

Link to the full code:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf

POLLUTION CONTROL UNIT

SUPPLEMENTARY ENFORCEMENT POLICY ISSUES

Introduction

This appendix covers the Unit's approach to enforcement where the enforcement options available differ from those outlined in the service wide policy.

Unit approach to achieving legislative compliance

The enforcement options available to the Pollution Control Unit beyond those mentioned in the policy document are:

- **Fixed penalty notices** - Where a night noise offence occurs between 11pm and 7am, the investigating officer can serve an abatement notice or, in some instances, offer a fixed penalty to the person responsible.
- **Burglar Alarms** - there is no provision in the legislation for the service of a notice where an audible intruder alarm has been sounding for over 20 mins or intermittently over 1hr. Authorities have the power of entry without force (or with force with a warrant) to silence an alarm where it is likely to give persons living or working in the vicinity of the premises reasonable cause for annoyance without prior discussions with the person responsible. Any expenses reasonably incurred by the local authority in connection with entering the premises, silencing the alarm may be recovered by the authority from the responsible person
- **Work in default** - Failure to comply with a legal notice, without reasonable excuse, is an offence and the local authority may, in some cases, execute works in default and recover the costs. Authorities have powers of entry to execute those works and the power to seize samples or articles necessary for that purpose. In the area of noise control, this has included the seizing of DIY and amplifying equipment.
- Use of powers under the **Anti-Social Behaviour Crime and Policing Act 2014** may also be used. (refer to appendix 9)

Enforcement action by enforcement officers

Enforcement action will be in accordance with the policy and be reasonable, proportionate and consistent with good practice.

FOOD CONTROL UNIT

SUPPLEMENTARY ENFORCEMENT POLICY ISSUES

Introduction

The Food Law Code of Practice (England) requires all food authorities to state their approach to enforcement in specific circumstances. This appendix along with the Council's enforcement policy constitutes the Food Law Enforcement Policy for Bolton Council.

The Food Law Enforcement Policy may be part of a generic policy or combined with other enforcement policies, providing the applicability of the Policy to the enforcement of food law is clear.

The Policy covers all areas of food law that the food authority has a duty to enforce and includes criteria for the use of all the enforcement options that are available.

In deciding the type of enforcement action to take, regard will be had to the nature of the breach and the history of compliance of the food business operator; or in the case of a new business, an assessment of the food business operator's willingness to undertake the work identified by the officer

Food businesses where Bolton Council is itself the food business operator
The Food Control Unit will ensure compliance with food law in establishments where Bolton Council is the food business operator. Wherever there is a serious breach of food law in establishments operated by the Council, the Food Control Unit will bring the matter to the attention of the Chief Executive without undue delay.

Changes to Food Law

Any changes to food law requirements which affect enforcement will be documented and result in a revision of the main enforcement policy and/or this appendix as appropriate.

Enforcement action by enforcement officers

Enforcement action by the food law enforcement officers will be in accordance with the policy and be reasonable, proportionate, risk based and consistent with good practice.

Enforcement options

The enforcement options available to the Food Control Unit are:

- Educating food business operators and giving advice
- Informal action where the Officer believes this will secure compliance
- Written warnings where there is a breach of food law
- Sampling in accordance with the Sampling Policy and Programme
- Detention and seizure where food has not been produced, processed or distributed in compliance with the Hygiene Regulations or is unsafe
- Hygiene Improvement Notices / Improvement Notices where there is a risk to public health which warrants formal action, there is a record of non – compliance with food law or where the officer believes informal action will not be successful.

- Hygiene Prohibition Procedures / Prohibition Procedures where there is an imminent risk of injury to health
- Remedial Action Notice Procedures in establishments subject to approval under Regulation (EC) No. 853 / 2004 where requirements of the Hygiene Regulations are being breached or an inspection under the Hygiene Regulations is being hampered
- Simple Caution / Prosecution Procedures where the hierarchy of enforcement structure indicates that prosecution is most appropriate, the Enforcement Policy has been adhered to and there is sufficient evidence

Except where circumstances indicate a significant risk, officers will operate a graduated and educative approach, starting with advice / education and informal action and only move on to more formal action where the informal action does not achieve the desired effect.

Food authority duties in relation to Animal Feeding stuffs

Enforcement of Food Law requirements in relation to animal feeding stuffs is carried out by the Trading Standards Team. These duties will be carried out in accordance with the service wide enforcement policy and this appendix.

FSA and LGR guidance

In drawing up this enforcement policy the service has had regard to advice issued by the Food Standards Agency (FSA) and Local Government Regulation (LGR).

Alternative Interventions

Lower risk businesses and those which are broadly compliant with food hygiene legislation and which are due for inspection will receive a “lighter touch” through an Alternative Intervention in line with Government strategy to reduce the burden on business.

Health & Safety Unit

SUPPLEMENTARY ENFORCEMENT POLICY ISSUES

Introduction

The purpose of this appendix is to explain the enforcement options available to enforcement officers under the Health and Safety at Work etc Act 1974, and the Health Act 2006. This appendix along with the service wide enforcement policy constitute the Health and Safety Enforcement Policy for Bolton Council.

Who enforces Health and Safety Legislation?

The enforcement of health and safety legislation is split between the Health and Safety Executive (HSE) and Local Authorities, (LA). In Local Authorities it is Health & Safety Inspectors who visit businesses to carry out inspections.

Enforcement action by enforcement officers

Enforcement action by health and safety inspectors will be in accordance with the policy and be reasonable, proportionate and consistent with good practice. The service will carry out regulatory activity in accordance with HSE national guidance.

Enforcement Options.

The enforcement options available to the Health and Safety unit are:

- Educating business operators and giving advice
- Informal action where the Officer believes this will secure compliance
- Written warnings where there is a breach of health and safety law
- Simple Caution / Prosecution Procedures where the hierarchy of enforcement structure indicates that prosecution is most appropriate, the Enforcement Policy has been adhered to and there is sufficient evidence.

HSE and LGR guidance

In drawing up this enforcement policy the service has had regard to advice issued by the Health and safety Executive (HSE) and Local Government Regulation (LGR).

Fixed penalties notices are issued under the Health Act 2006 for smoking offences and should be part of a wider enforcement strategy, designed to address all aspects of offences in this area. Fixed penalty notices may be issued when an enforcing officer believes that an offence has been committed, and give the recipient an opportunity to avoid prosecution by payment of the penalty. It is essential, therefore, that they are only issued where there is adequate evidence to support a prosecution if a notice is not paid, and that unpaid notices are followed up. Failure to pursue unpaid notices through the courts will discredit the use of fixed penalties in the locality, and will lead to declining rates of payment.

Alternative enforcement strategy

Low risk businesses will be subject to the alternative enforcement strategy outlined in the National LA Enforcement Code.

Housing Standards

Enforcement policy supplementary guidance

Introduction

Housing Standards will carry out its enforcement duties in accordance with the policy. This appendix covers the approach to enforcement where the enforcement options available differ from or expand on those outlined in the policy.

Housing related functions

Housing Standards aims to provide a wide range of help and support to landlords, whilst ensuring that privately rented properties are maintained to an acceptable standard, which do not pose a risk to the health and safety of occupiers. The Housing Health & Safety Rating System is the mechanism used to carry out property inspections and risk assessments.

The Unit aims to work with landlords whenever possible, therefore following a property inspection an informal letter will be sent to the owner/landlord advising them of any hazards identified and asking them to contact the investigating officer to agree appropriate remedial action. In the majority of circumstances timescales for completion of the required work are agreed and the matter is resolved with the landlord, without the need for formal action.

Where the owner/landlord contacts the Unit and proposes alternative works to those suggested these will be considered and a decision made as to whether they achieve the same aim.

It should be noted that in certain circumstances when there is an imminent risk to health and safety or a breach of specific housing legislation, it may not always be possible to follow this process.

The level of co-operation from the owner/landlord, any previous history of failing to engage with the Council and the severity of the problems identified will all be considered when determining what the most appropriate course of action is.

Empty homes

In addition to the powers listed below, the Council has additional powers to help bring empty homes back into use. Empty homes in Bolton are again initially tackled informally with the owners, with the hope of understanding the reasons why they are empty and agree steps to ensure they are brought back into use. However, the Council can use Empty

Dwelling Management Orders to take over long term empty homes when other informal approaches have failed. Additionally, if empty homes are detrimental to the local amenity the Council may also consider requiring improvements using Section 215 of the Town and Country Planning Act 1990.

Public Health functions

Housing Standards also carry out a variety of advisory and enforcement activities in relation to public health issues. These include the investigation of Statutory Nuisances (e.g. accumulations of waste on private land or one property causing damp to a neighbour) and drainage related problems.

Again the unit will seek to resolve these matters initially through informal action where appropriate, however it may be necessary to use formal notices to resolve issues, particularly when the problem poses a risk to health.

Formal action

There are a variety of enforcement mechanisms available to tackle housing and public health related issues, with the most common being:

- **Hazard Awareness notice** (housing) – This is usually the initial letter sent to the property owner/landlord and is classed as informal action. This will list any hazards that have been identified and outline what action is considered necessary.
- **Improvement Notice or Suspended Improvement Notice** (housing) – These are formal legal notices that require the work specified to be carried out within a specific period of time.
- **Prohibition Orders and Emergency Prohibition Orders** (housing) – These formal legal notices can be used to restrict or prevent the use of a property or part of a property.
- **Emergency Remedial Action** (housing) – This formal legal notice allows the Council to carry out emergency work at a property when there is considered to be an immediate risk to health and safety. For this type of action the work will be carried out immediately and the notice will be served after the work has been carried out.
- **Abatement notice** (housing & public health) – This formal legal notice can be used when a Statutory nuisance is found to exist in a property and will require certain remedial works to be carried out within a specified period of time.
- **Legal notices** under Building Act 1984, Public Health Acts 1936 & 1961 and Local Government (Miscellaneous Provisions) Act 1976 to resolve various public health related issues.

- Use of powers under the **Anti-Social Behaviour Crime and Policing Act 2014** may also be used. (refer to appendix 9)

None compliance

In the event that the person served with a legal notice fails to comply with its requirements, the Council may carry out the work in default. If the Council carries out the work required to ensure compliance with a notice, all costs incurred will be recovered and an administration charge will be added. When a notice is served on the property owner, any costs incurred will usually be registered as a charge against the property and further steps may be taken to recover any debt owed to the Council.

In certain circumstances, following non-compliance or breach of legislation, a criminal prosecution may be brought.

Environmental Education & Enforcement Unit

SUPPLEMENTARY ENFORCEMENT POLICY ISSUES

Introduction

This appendix covers the unit's approach to enforcement within its own areas of competence. These documents are produced having regard to current legislation, centrally issued guidance and best working practice at the time of preparation.

The documents will become out of date, therefore they will be reviewed periodically and amended as appropriate.

Reviews will also be carried out as new legislation is implemented, when centrally issued guidance changes and as and when working practice identifies areas for procedural improvements.

Unit approach to achieving legislative compliance

The enforcement options available to the Environmental Education & Enforcement Unit (including dog control) beyond those mentioned in the service wide policy document are:

Promotion: To raise awareness about legal standards and promote good practice. This is typically achieved by issuing press releases, distributing information leaflets and other forms of written guidance, by seminars and exhibitions and by direct contact.

Advice and Assistance: On rights and responsibilities and obligations to individuals, organisations and businesses is regarded as an important way of ensuring improved standards of customer care and compliance with legislation.

Informal Warnings: These will be used to reinforce promotional activities and advice and assistance where a small number of minor defects or infringements are discovered or in the case of minor first offences where complete co-operation is envisaged in rectifying the problem and preventing a recurrence.

Formal Enforcement: This can include such things as the seizure of stray and/or dangerous dogs, the use of statutory (legal) notices, fixed penalty notices, simple cautions and prosecution. Each course of action, if taken, will follow procedures laid down in legislation, codes of practice and professional guidance as appropriate for the specific function:

- Stray dogs
- Dangerous dogs
- Dog fouling

- Litter, fly-posting and graffiti
- Fly-tipping
- 'Duty of care' (commercial and domestic waste offences)

Fixed penalties provide an effective and visible way of responding to low-level environmental crime, and should be part of a wider enforcement strategy, designed to address all aspects of offences in this area. Fixed penalty notices may be issued when an enforcing officer believes that an offence has been committed, and give the recipient an opportunity to avoid prosecution by payment of the penalty. It is essential, therefore, that they are only issued where there is adequate evidence to support a prosecution if a notice is not paid, and that unpaid notices are followed up. Failure to pursue unpaid notices through the courts will discredit the use of fixed penalties in the locality, and will lead to declining rates of payment.

Prosecution will result where a fixed penalty notice is not paid to discharge liability or where the offence is so severe as to make the issue of a fixed penalty for the offence disproportionate. All prosecutions will be taken in accordance with the Council's Enforcement Policy.

The full range of informal actions available to enforcement officers are referred to in the service wide enforcement policy document.

TRADING STANDARDS SERVICE

SUPPLEMENTARY ENFORCEMENT POLICY ISSUES

Introduction

The purpose of this appendix is to state the unit's approach to enforcement in specific circumstances. This appendix along with the service wide enforcement policy constitutes the Trading Standards Enforcement Policy for Bolton Council.

Changes to Trading Standards Enforcement powers

Any changes to trading standards law which affect enforcement will be documented and result in a revision of the main enforcement policy and/or this appendix as appropriate.

Enforcement action by enforcement officers

Enforcement action by the trading standards law enforcement officers will be in accordance with the service wide enforcement policy and be reasonable, proportionate and consistent with good practice.

Enforcement options

The enforcement options available to the Trading Standards Service are:

- Verbal / written warning
- Simple caution
- Prosecution
- Injunctions and enforcement orders
- Proceeds of Crime Action
- Statutory Notices
- Seizure Notices
- Forfeiture
- Fixed Penalty Notices & Penalty Charge Notices

Certain pieces of legislation also give officers additional powers to take the actions set out below.

Weights and Measures

Under the Weights and Measures Act 1985 a trading standards officer can issue a notice requiring a trader to take specified action in relation to weighing or measuring equipment which does not comply with legislative requirements. This action can include altering or repairing the equipment or ceasing its use completely. In certain circumstances equipment can be seized.

Product Safety

Under the Consumer Protection Act 1987 and the General Product Safety Regulations 2005 officers from the trading standards service can seize goods which are suspected to be unsafe.

Officers can issue notices controlling the supply of unsafe goods or requiring traders to take actions in relation to the supply of unsafe goods. These are:

- Suspension notice – prohibits the supply of products
- Withdrawal notice – requires a trader to withdraw products from supply
- Recall notice – requires a trader to recall products which have already been supplied.
- Requirement to Mark notice – requires a trader to mark a product with specified warning
- Requirement to Warn notice – requires a trader to supply consumers with specified warnings in relation to products which have been supplied

Underage sales

The trading standards service enforces legislation in relation to a range of age restricted goods including alcohol, tobacco, knives, fireworks, DVDs, spray paints and gas lighter refills.

The enforcement of the legislation controlling the supply of these goods is achieved through education, business advice, publicity and test purchase surveys using under age volunteers.

When conducting a survey using underage volunteers the trading standards service use the Local Government Regulation organisation (LGR) guidance document.

Where an age restricted product is supplied to an underage volunteer a criminal offence may be committed by both the seller and the owner of the business. For offences in relation to the supply of alcohol offences are committed by the seller and the Designated Premises Supervisor (DPS).

It is an offence for a person under 18 to buy alcohol. However where the person under 18 is making the purchase at the request of a weights and measures inspector (trading standards officer) no offence is committed.

Where offences are committed the options available to the trading standards service are:

- Verbal / written warning
- Simple caution
- Prosecution

The trading standards service works with the police on some underage sales survey and in relation to sales of alcohol to underage volunteers the police can issue Penalty Notices for

Disorder (PNDs). The trading standards service also works with the police in relation to the review of premises licences under the Licensing Act 2003.

Counterfeit goods

Under the Trade Marks Act 1994 officers from the trading standards service can seize goods which are suspected of being counterfeit. Officers can also seize equipment and documents suspected of being associated with counterfeiting.

Food authority duties in relation to Animal Feeding stuffs

Enforcement of Food Law requirements in relation to animal feeding stuffs is carried out by the Trading Standards Team. These duties will be carried out in accordance with the service wide enforcement policy and this appendix.

Animal Health

Bolton's Council commission Oldham Council to carry out its Animal Health service. This enforcement policy is followed by them when carrying out our work and prosecutions are still taken by Bolton. Oldham Council have a copy of our policy for their information.

Enforcement Orders and Injunctions

When action is taken against traders under the Enterprise Act this is in the form of an enforcement order or (if the matter is urgent) an interim enforcement order.

When action is taken under the Business Protection from Misleading Marketing Regulations the Local Authority can apply for an injunction or (if the matter is urgent) an interim injunction.

Planned Operations.

Trading Standards use a planned operations enforcement approach. This is based on intelligence and complaints received together with proactive priority based operations.

Home Authority & Primary Authority

We support the principles of Home Authority and Primary Authority for those Companies in Bolton with whom we have an agreement.

LICENSING UNIT

SUPPLEMENTARY ENFORCEMENT POLICY ISSUES

1. Introduction

The Licensing Unit will carry out its enforcement duties in accordance with the service wide enforcement policy. This appendix covers the unit's approach to enforcement where the enforcement options available differ from or expand on those outlined in the service wide policy.

The Licensing Unit is responsible for issuing licenses and regulating a variety of activities. The majority of the work carried out by the unit is statutory and is carried out using powers given to and/or adopted by the Council. The primary activities, in terms of the workload, for the unit's Enforcement Team are:

- **'TAXIS'** - Hackney Carriage and Private Hire, drivers, vehicles and operators – Local Government (Miscellaneous Provisions) Act 1976, Town Police Clauses Act 1847, Transports Acts 1980, 1981 and 1985 and the Disability Discrimination Act 1995 where it relates to 'Taxis' (for the purpose of this report 'Taxi' includes Private Hire).
- **LICENSED PREMISES** – Pubs, Bars, Night Clubs, Private Members Clubs, Church Halls, Theatres, Cinemas and Late Night Food Premises - Licensing Act 2003.
- **STREET TRADERS** – Local (Government Miscellaneous) Provisions Act 1982.
- **CHARITABLE COLLECTIONS** – small lotteries, collections on the street and house to house collections – Police, Factories, Etc (Miscellaneous Provisions) Act 1916, House to House Collections Act 1939 and the Lotteries and Amusements Act 1976.

Other activities that are regulated by the Licensing Unit include:

- Sex shops
- Gaming; Amusements with prizes; Track betting and pool promoters
- Scrap metal dealers
- Second hand goods dealers

2. Identifying breaches and non-compliance

Reactive enforcement - This can be triggered by a complaint received by the unit, or observations by officers from the unit. The unit also receives intelligence from stakeholders, partnership agencies, members of the public and elected members. Officers from the enforcement team will inspect vehicles etc, trade premises, and

business records and if a breach of licence condition or other non-compliance is discovered then an enforcement action will be chosen in line with this enforcement policy. This is to ensure compliance with licence conditions, the legislation, or to improve working practices and maintain public safety.

Pro-active enforcement - The unit's enforcement team complete a number of planned inspections on traders, premises, or records every year. During the inspection if a breach of licence conditions or other non-compliance is discovered then an enforcement action will be chosen in line with this enforcement policy. This is to ensure compliance with licence conditions, the legislation, or to improve working practices and maintain public safety.

Covert operations – Through intelligence received from stakeholders, partnership agencies, members of the public and elected members, the unit undertakes a number of covert operations each year. For instance:

- Unlawful plying for hire i.e. private hire not previously booked ('taxis')
- Test purchase e.g. serving alcohol beyond permitted hours by pubs
- Observations on 'hot spot' activities e.g. ice cream vans
- Observations on unlicensed activities e.g. bogus charity collections
- Joint visits with other agencies such as Home Office Immigration Team

If an offence, breach or non-compliance is discovered then an enforcement action will be chosen in line with this Enforcement Policy. This is to ensure compliance with licence conditions, the legislation, or to improve working practices and maintain public safety.

Some covert operations are completed in partnership with other agencies e.g. Vehicle & Operator Services Agency, Greater Manchester Police, Security Industry Agency. Where the 'lead' is executed by the partner agency, then the partner's enforcement policy may apply.

Overt operations – 'High visibility' activity by the unit's enforcement team to seek to influence licence, permit and consent holders to comply with the relevant legislation and conditions. A number of overt operations are undertaken each year.

If a breach or non-compliance is discovered then an enforcement action will be chosen in line with this enforcement policy. This is to ensure compliance with licence conditions, the legislation, or to improve working practices and maintain public safety.

Some overt operations are completed in partnership with other agencies e.g. Vehicle & Operator Services Agency, Greater Manchester Police, Security Industry Agency and the Department of Work and Pensions. Where the lead is executed by the partner agency, then the partners Enforcement Policy may apply.

Out of hour's service

Some of the trading activity of the trades which are licensed and regulated by the unit takes place at night (taxis, pubs, clubs etc) The enforcement team work outside office hours when a range of enforcement actions may be undertaken including acting on intelligence and complaints – the team works in line with this Enforcement Policy and ensure compliance with legislation and conditions of licence. Officers provide advice and guidance to licence holders and promote public safety.

3. Enforcement actions available

- Advice (written and verbal)
- Mediation, education and support
- Vehicle suspension (“taxis” only)
- Suspension of a taxi or hire car driver licence of a person who has been convicted for offences relating to drugs, indecency, dishonesty or violence until such time as the Licensing & Environmental Regulation Committee can consider the matter
- Referral to the relevant Committee for consideration (see section 4)
- Verbal and written warning
- Simple caution
- Prosecution
- Referral to other government bodies and partner agencies

In dealing with any enforcement situation the unit's actions will be proportionate to the scale, seriousness and intentionality of any non-compliance or breach of licence condition. There will be consistency of enforcement whilst recognizing circumstances, which may modify the appropriate action to be taken in each case and a 'light touch', may be applied.

Except in the most serious cases or where advice or warnings have not been heeded, adequate opportunity will normally be given to rectify non-compliance before legal action is commenced. Enforcement is seen as a final means of securing compliance with the appropriate licence conditions and legislation. Prosecution will be considered where it is in the public interest to do so and in serious, deliberate or blatant cases, or where other approaches have failed.

4. Licensing & Environmental Regulation Committee

Officers of Bolton Council may refer matters to the Licensing & Environmental Regulation Committee, in accordance with the Scheme of Delegation of the Council. Legislation may allow this Committee to grant or refuse an application for a licence, permit or consent. The Committee may also have powers to suspend or revoke an existing licence, permit, or consent or attach additional conditions.

There are also Sub-Committees of the Licensing & Environmental Regulation Committee that resolves 'Hearings' and 'Reviews' relating to the Licensing Act 2003. For sensitive issues relating to matters such as grooming; child sexual exploitation; domestic violence a Sensitive Sub-Committee has been established.

Matters relating to minor traffic offences are heard by the Traffic Sub-Committee.

The Sub-Committees has the authority to grant, refuse, revoke, suspend or apply additional conditions to Licences.

The Licensing & Environmental Regulation Committee and its sub—committees usually meets on a monthly basis.

5. Other Policies

In addition to the Enforcement Policy, the Service will also have regard to the Council's other specific policies, for example Gambling Policy and Licensing Act Policy when considering appropriate action.

1. Introduction

The purpose of this appendix is to set-out the enforcement options available to the unit under the Anti-social Behaviour, Crime and Policing Act 2014 and accompanying statutory guidance. This appendix along with the policy constitutes the Anti-social Behaviour Enforcement Policy for Bolton Council.

Anti-social behaviour is a broad term used to describe the day-to-day incidents of crime, nuisance and disorder that make people's lives a misery – from litter and vandalism, to public drunkenness or aggressive dogs, to noisy or abusive neighbours. Such a wide range of behaviours means that responsibility for dealing with anti-social behaviour is shared between a number of agencies, particularly the council, police and social landlords.

2. Overarching principles

Working together and sharing information: The right response to anti-social behaviour will depend on a range of factors, but most importantly, on the needs of the victim and the impact the behaviour is having on their lives. Solutions will be developed jointly by council departments, and local agencies, each bringing their own experience and expertise to work together with the community and victims. For the council this means that not one single service area can address all issues of antisocial behaviour and it is important that services communicate to ensure the most appropriate tools and powers are used to bring about a resolution for the victim.

Case management: Effective case management underpins all activities to deal with anti-social behaviour, starting from when an incident is reported until the matter is resolved. The welfare, safety and well-being of victims whose reports form the basis of any action must be the main consideration at every stage of the process.

Assess the risk to victims: It is good practice for agencies to assess the risk of harm to the victim, and their potential vulnerability, when they receive a report of antisocial behaviour. This marks the start of the case-management process and will identify the effect the anti-social behaviour is having on the victim, particularly if repeated incidents of anti-social behaviour are having a cumulative effect on their well-being.

3. Early and Informal Interventions

Early intervention, especially through informal approaches, can be successful in stopping the anti-social behaviour committed by the majority of perpetrators. Early and informal interventions can establish clear standards of behaviour and reinforce the message that anti-social behaviour will not be tolerated. Informal interventions will be considered first in most cases, particularly when dealing with young people, as they can stop behaviour before it escalates. Community Safety Services coordinate and manage a multi-agency ASB Pathway for young people which has significantly reduced the need to use formal sanctions. This involves close cooperation with Targetted Youth Support who provides a key worker function for the young person. In cases where informal interventions are not an appropriate first step, because the victim is at risk of harm, formal sanctions may be considered. This will

be determined on a case by case basis.

4. Enforcement Powers

4.1 Civil Injunction

The purpose of the civil injunction is to stop or prevent individuals (anyone who is 10 years of age or over) engaging in anti-social behaviour quickly, nipping problems in the bud before they escalate. They can be used to cover a wide range of behaviours, e.g. vandalism, public drunkenness, aggressive begging, irresponsible dog ownership, noisy or abusive behaviour towards neighbours, or bullying. There are two tests:

- Non-housing related test – conduct that has caused, or is likely to cause, harassment, alarm or distress to any person. This will apply, for example, where the anti-social behaviour has occurred in a public place, such as a town centre, shopping mall, or local park, and where the behaviour does not affect the housing management functions of a social landlord or people in their homes.
- Housing related test – conduct is capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises or the conduct is capable of causing housing related nuisance or annoyance to any person.

Applicants of an injunction for a young person must statutorily consult with the Youth Offending Team and a local procedure has been developed for this purpose. The injunction will include relevant prohibitions to get individuals to stop behaving anti-socially. It can also include positive requirements to get the individual to deal with the underlying cause of their behaviour, e.g. engaging with substance misuse services.

4.2 Criminal Behaviour Order

The Criminal Behaviour Order is available on conviction for any criminal offence in any criminal court. The order is aimed at tackling the most serious and persistent offenders where their behaviour has brought them before a criminal court. They can be used to cover a wide range of behaviours following the individual's conviction for a criminal offence, e.g. threatening violence against others in the community, persistently being drunk and aggressive in public or criminal damage. The test is:

- The court must be satisfied, beyond reasonable doubt, that the offender has engaged in behaviour that caused, or was likely to cause, harassment, alarm or distress to any person; and
- That the court considers making the order will help in preventing the offender from engaging in such behaviour.

Crown Prosecution Service in applying for a Criminal Behaviour Orders involving a young person must statutorily consult with the Youth Offending Team. CBOs will include all relevant prohibitions to get individuals to stop behaving anti-socially. It can also include positive requirements to get the individual to deal with the underlying cause of their behaviour, e.g. engaging with substance misuse services.

4.3 Community Protection Notice

The purpose of the Community Protection Notice is to deal with particular, on-going problems or nuisances which negatively affect the community's quality of life by targeting those responsible. A Community Protection Notice can be issued against any person aged 16 or over or a body, including a business. The council can issue a Community Protection Notice if they are satisfied on reasonable grounds that the conduct of the individual, business or organisation:

- Is having a detrimental effect on the quality of life of those in the locality;
- Is persistent or continuing in nature; and
- Is unreasonable

Issuing a Community Protection Notice does not discharge the council from its duty to issue an Abatement Notice where the behaviour constitutes a statutory nuisance for the purposes of Part 3 of the Environmental Protection Act 1990.

Before a Community Protection Notice can be issued a written warning must be served to the person committing the anti-social behaviour. A Community Protection Notice will be drafted so that it is appropriate to the situation and can include any or all of the following:

- A requirement to stop doing specified things;
- A requirement to do specified things;
- A requirement to take reasonable steps to achieve specified results.

Failure to comply with a Community Protection Notice is an offence and the following options are available to the council, consulting with the victims wishes to ensure that the impact of the breach on the community is not ignored.

- Fixed Penalty Notice – This will be issued in accordance with the agreed amounts agreed by the council.
- Remedial action – the council may decide to take remedial action to address the issue, e.g. removal of rubbish in someone's front garden
- Remedial Orders / Forfeiture Orders – the council can ask the court to impose these orders for the following reasons:
 - The matter may be deemed so serious that a court order is warranted
 - Works may be required to an area that requires the owner's or occupier's consent and this is not forthcoming; or
 - The council may believe that forfeiture or seizure of one or more items is required as a result of the behaviour (e.g. sound making equipment).

4.4 Public Space Protection Order

Public Space Protection Orders are intended to deal with particular nuisance or problem in a particular area that is detrimental to the local community's quality of life, by imposing conditions on the use of that area which apply to everyone. They are designed to ensure the law-abiding majority can use and enjoy public spaces, safe from anti-social behaviour.

A Public Space Protection Order can be made by the council if they are satisfied on reasonable grounds that the activities carried out, or likely to be carried out, in a

public space:

- Have had, or likely to have, a detrimental effect on the quality of life of those in the locality;
- Is, or is likely to be, persistent or continuing in nature;
- Is, or is likely to be, unreasonable; and
- Justifies the restrictions imposed.

A Public Space Protection Order will be drafted based on the individual issues being faced in a particular public space. A single Public Space Protection Order can also include multiple restrictions and requirements in one order. It can prohibit certain activities, such as the drinking of alcohol, as well as placing requirements on individuals carrying out certain activities, for instance making sure that people walking their dogs keep them on a lead. It can also restrict access to a public right of way.

Failure to comply with a Public Space Protection Order is an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale. Fixed Penalty Notice – This will be issued in accordance with the agreed amounts agreed by the council.

4.5 Closure Power

The closure power is a fast, flexible power that can be used to protect victims and communities by quickly closing premises that are causing nuisance or disorder. The power comes in two stages; the closure notice and the closure order which are intrinsically linked. The closure notice can be used by the council out of court. Following the issuing of a closure notice, an application must be made to the Magistrates' court for a closure order, unless the closure notice has been cancelled. A closure notice can be issued for 24 hours if the council (Director of Environmental Services or their nominated representative of at least Head of Service) is satisfied on reasonable grounds;

- That the use of particular premises has resulted, or (if the notice is not issued) is likely soon to result, in nuisance to members of the public; or
- That there has been, or (if the notice is not issued) is likely soon to be, disorder near those premises associated with the use of those premises, and that the notice is necessary to prevent the nuisance or disorder from continuing, recurring or occurring.

The closure notice can be issued in the first instances for 48 hours or extended from 24 hours up to a maximum of 48 hours by the council (Chief Executive and all Chief Officers within Environmental Services to exercise this function on his behalf). A closure order can subsequently be issued if the court is satisfied

- That a person has engaged, or (if the order is not made) is likely to engage, in disorderly, offensive or criminal behaviour on the premises; or
- That the use of the premises has resulted, or (if the order is not made) is likely to result, in serious nuisance to members of the public; or
- That there has been, or (if the order is not made) is likely to be, disorder near those premises associated with the use of those premises, and the order is necessary to prevent the behaviour, nuisance or disorder from continuing, recurring or occurring.

Highways & Engineering Division

SUPPLEMENTARY HIGHWAY ENFORCEMENT POLICY

Introduction

Bolton Council has a duty under The Highways Act 1980 to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highways authority, however, there is an expectation that when implementing these powers they are done so in reasonable way.

This appendix outlines how the Highways & Engineering Division will approach highway enforcement issues, which directly impact on users of the public highway, across the Councils highway network.

The documents will become out of date, therefore they will be reviewed periodically and amended as appropriate.

Reviews will also be carried out as new legislation is implemented, when centrally issued guidance changes and as and when working practice identifies areas for procedural improvements.

Highways Approach To Achieving Legislative Compliance

Highways & Engineering Officers undertake this role will exercise the powers conferred upon them in an equitable, practical and consistent manner.

The following legislation is available to support Highways & Engineering officers in their role when dealing with highway enforcement issues.

- The Highways Act 1980
- New Roads & Street Works Act 1991
- Town & Country Planning Act 1990
- Clean Neighborhood and Environment Act 2005

These tools are available to address a variety of unauthorised activities on the public highway, however, this does not imply that although an offence may have been committed that it must result in legal action. It would be at the discretion of the officer investigating the issue as to whether a case is to be reported for legal proceedings.

Obstructions On The Public Highway:

The Highways Act 1980 provides the necessary powers enabling Bolton Council to deal with unlawful obstructions on the public highway that directly impact on the users of the highway. The powers provide for the serving of a legal notice requiring the removal of anything unlawfully deposited on the public highway. The Act also provides for the immediate removal of obstructions in situations where the obstruction constitutes a danger to the users of the highway and should be removed without the delay involved in giving notice.

In all cases the investigating officer will evaluate the obstruction taking into account the location of the obstruction, surrounding environment and the impact on users of the highway before deciding what action should be taken.

A-Boards & Displaying Of Goods On The Highway:

Bolton Council recognises that shopping areas have much to offer by way of creating an ambience that makes them attractive to shoppers and visitors alike and that many businesses operating within the borough seek to create business displays on the public highway to promote the individual business in order to boost trade.

Well-presented and managed advertisement boards and trade displays on the public highway are traditional ways for businesses to promote and display their goods within a commercial environment, often adding to the atmosphere of the street scene. Such displays are currently tolerated with enforcement action only being taken in situations whereby the A-board or display causes an unreasonable obstruction or hazard to the users of the highway.

Builders Skips On The Highway

Section 139 & 140 of The Highways Act provides the necessary legislative powers to control the placing of builders skips or enclosed containers on the public highway. Whilst The Highways Act provides the legal framework, Bolton Council has introduced its own "Code of Practice for the Depositing of Skips on the Highway" which the skip operators must comply with at all times whilst the skip is located on the public highway. Requests to place builders skips on the public highway will be considered on their individual merits, taking into account the potential impact on the travelling public.

In all cases Bolton Council will take the appropriate enforcement action against a skip operator in the event that a builders skip is found on the public highway without the necessary permit being granted in advance by Bolton Council.

Scaffolding & Hoarding On The Highway

Section 169 & 172 of The Highways Act provides the necessary legislative powers to control the placing of scaffolding or hoarding on the public highway. All scaffolding placed on the public highway must comply with the requirements of Section 169 and hoardings must comply with Section 172, along with any other conditions that may be attached by Bolton Council.

In all cases Bolton Council will take the appropriate enforcement action so as to ensure that any scaffolding or Hoarding placed on the public highway is compliant with Section 169 and Section 172 at all times and does not pose a hazard or danger to the users of the highway.

Public Rights of Way

Public rights of way in the form of public footpaths, public bridleways and restricted byways enjoy the same protection, provided by the Highways Act as proper roads. Our aim is to ensure that all public rights of way remain in a condition that is safe and easy for use by the public. Wherever obstructions or other breaches of relevant legislation are identified, Bolton Council can utilise its various enforcement powers to remedy the problem.

In the rural area, many issues arising are the result of land management and farming practices. We will initially work with businesses, land owners and tenants in an informal and advisory capacity to resolve any matters. Businesses and farms that receive grants or payments under the Basic Payments Scheme will be expected to comply with Cross Compliance Conditions on the management of public rights of way. If these conditions are infringed, this information may be passed on to Defra and the Rural Payments Agency.

The public rights of way network is varied from well surfaced urban paths to rough upland routes; nuisances, obstructions and offences vary from the very minor to the significant. What is considered a minor infringement in one location may be considered major in another. How and whether enforcement action is undertaken and the priority it is given has to take account of the context of the infringement, its location, the type of route and its impact on users. In all cases the investigating officer will evaluate the issue and the impact on users of the right of way before deciding what course of action should be taken.

Enforcement Options

The enforcement options available to the Highways & Engineering Division beyond those mentioned in the service wide policy document are:

Advice and Guidance:

In respect of the rights and responsibilities and obligations to individuals, organisations and businesses is regarded as an important way of ensuring improved standards of customer care and compliance with legislation.

Informal Warnings:

This can either be verbally or in writing and will be used, if necessary, to reinforce any advice or guidance given in instances where a minor obstruction or infringement is discovered or in the case of minor first offences, where complete co-operation is envisaged in rectifying the problem and preventing a recurrence.

Formal Written Warnings:

This will be used where the informal approach has failed to resolve the issue in the first instance. The aim of this letter will be to formally outline the issue, highlight the section of legislation that is being contravened, and will also specify what action is now required to resolve the situation.

Formal Enforcement Action:

This can include such things as removal of things that are obstructing the public highway, the use of legal notices, simple cautions and prosecution. Each course of action, if taken, will follow procedures laid down in legislation and professional guidance.

Prosecution:

All prosecutions will be taken in accordance with the Council's Enforcement Policy.

Nothing in this Policy in any way affects the powers available to the Council to take direct action to remove unsafe or unauthorised obstructions or deposits on the highway.

Highways & Engineering Division

LAND DRAINAGE AND FLOOD RISK ENFORCEMENT POLICY

Introduction

The purpose of this appendix is to state the approach to enforcement of the Land Drainage Act 1991 (LDA) and the Flood and Water Management Act 2010 (FWMA). This appendix along with the service wide enforcement policy constitutes the Land Drainage and Flood Risk Enforcement Policy for Bolton Council. Bolton Council is the Lead Local Flood Authority with a responsibility for managing flood risk in the area.

Land Drainage Act

A landowner through which a watercourse flows is responsible for its maintenance, such owners are often referred to as Riparian Owners; they can be private individuals, organisations or companies. They are responsible for maintaining the bed and banks of the watercourse as well as the trees and shrubs growing on the banks. Riparian owners must also keep any structure, such as culverts, trash screens, weirs and mill gates, clear of debris, and must let water flow through their land without any obstruction, pollution or diversion which affects the rights of others.

The Council can serve notice (S25 LDA) requiring landowners to carry out works if ditches, watercourses or culverts have become blocked resulting in a flood risk or health hazard. The LDA contains criminal sanctions for any person who fails to comply with any notice served by Bolton Council.

These powers are permissive and are applied using a risk based approach, and if applied can be a lengthy process. Usually we would firstly take an informal approach working with landowners offering advice and guidance rather than taking a formal approach. However, a more formal enforcement approach may be undertaken where there is a serious risk of flooding that threatens public safety, property, critical infrastructure or a significant highway.

If a formal notice has been served and after the prescribed period repair works have not been undertaken, Bolton Council may choose to undertake the works and the LDA allows for the recovery of all reasonable expenses from the person liable to repair.

In the event of an immediate threat of flooding or if flooding is already occurring that threatens public safety, property, critical infrastructure or a significant highway, then the LDA allows Bolton Council to undertake works without notice on any land to mitigate or eliminate the flood or flood risk.

Land Drainage Consent

Anyone who intends to do works which may obstruct or affect the flow of a watercourse needs written consent from Bolton Council.

A land drainage consent is required for:

- The erection of, or alteration to, any mill, dam, weir or similar obstruction to the flow of any ordinary watercourse, or
- The construction of a culvert in any ordinary watercourse, or
- The alteration of a culvert that would affect the flow of an ordinary watercourse, or
- Temporary works in an ordinary watercourse such as scaffolding, a dam, pumping off excessive water, or any major drainage work.

Should anyone undertake the above works without written approval, it is our policy to always serve notice on landowners or any person in control of the land requiring them to cease work and remedy the obstruction.

Designation of Features

Under the FWMA Bolton Council can designate a structure, manmade or natural feature if its existence has an effect on flood risk. A person may not alter, remove or replace a designated structure or feature without the consent of Bolton Council. All designations will be recorded as a local land charge.

During the designation process landowners will be made aware of the purpose and reasons for doing so and the legal duties placed upon them. Designated features will be regularly monitored (see powers of entry below) and if any contravention has taken place, then the landowner will be contacted informally to discuss their options. Depending on the severity of the contravention this may lead to Bolton Council serving a formal enforcement notice.

Powers of Entry

Under S64 of the LDA and Schedule 1 of the FWMA authorised officers of Bolton Council, have the legal power to enter any land for the purposes of carrying out their functions under the Acts and to survey any land and inspect the condition of drainage work on it or to inspect designated features. Officers will only enter land at reasonable times and will first produce, if so required, a document showing their authority. Except in the case of emergency, admission to land will not be demanded as of right unless notice of the intended entry has been given to the occupier. If the land is used for residential purposes, the notice period will be at least 7 days. Any person who intentionally obstructs or impedes an authorised Officer is guilty of an offence and could be liable to a fine.

In an emergency where flooding is occurring, officers of Bolton Council may enter land without notice to undertake investigations or to remedy the cause of a flood or to mitigate the effect of the flood. We may also take onto the land, such other persons or equipment as may be necessary.