

CABINET ITEM COVERING SHEET PROFORMA

AGENDA ITEM

REPORT TO CABINET

8 SEPTEMBER 2011

**REPORT OF CORPORATE
MANAGEMENT TEAM**

CABINET DECISION

Housing & Community Safety – Lead Cabinet Member – Councillor Steven Nelson

REGULATORY SERVICES ENFORCEMENT POLICY – PROPOSED REVISIONS

1. Summary

The current Regulatory Services Enforcement Policy was approved by Cabinet in November 2006 and this was a revision of the original policy adopted in April 2003. The policy is required to be kept under review and a revised policy has been prepared following consultation with all stakeholders

2. Recommendations

1. That Cabinet approve the proposed revised policy.

3. Reasons for the Recommendations/Decision(s)

This authority formally adopted the Enforcement Concordat in August 2001. The Authority is required, as part of the concordat, to publish, and keep under review, its enforcement policy for its regulatory services. The proposed revised policy statement follows a review and consultation exercise to update the policy

4. Members' Interests

Members (including co-opted Members with voting rights) should consider whether they have a personal interest in the item as defined in the Council's code of conduct (**paragraph 8**) and, if so, declare the existence and nature of that interest in accordance with paragraph 9 of the code.

Where a Member regards him/herself as having a personal interest in the item, he/she must then consider whether that interest is one which a member of the public, with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest (**paragraphs 10 and 11 of the code of conduct**).

A Member with a prejudicial interest in any matter must withdraw from the room where the meeting considering the business is being held -

- in a case where the Member is attending a meeting (including a meeting of a select committee) but only for the purpose of making representations, answering questions or

giving evidence, provided the public are also allowed to attend the meeting for the same purpose whether under statutory right or otherwise, immediately after making representations, answering questions or giving evidence as the case may be;

- in any other case, whenever it becomes apparent that the business is being considered at the meeting;

and must not exercise executive functions in relation to the matter and not seek improperly to influence the decision about the matter (**paragraph 12 of the Code**).

Further to the above, it should be noted that any Member attending a meeting of Cabinet, Select Committee etc; whether or not they are a Member of the Cabinet or Select Committee concerned, must declare any personal interest which they have in the business being considered at the meeting (unless the interest arises solely from the Member's membership of, or position of control or management on any other body to which the Member was appointed or nominated by the Council, or on any other body exercising functions of a public nature, when the interest only needs to be declared if and when the Member speaks on the matter), and if their interest is prejudicial, they must also leave the meeting room, subject to and in accordance with the provisions referred to above.

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SUMMARY

The current Regulatory Services Enforcement Policy was approved by Cabinet in November 2006 and this was a revision of the original policy adopted in April 2003. The policy is required to be kept under review and a revised policy has been prepared following consultation with all stakeholders

RECOMMENDATIONS

1. That Cabinet approve the proposed revised policy.

DETAIL

1. This authority formally adopted the Enforcement Concordat in August 2001. Prior to the introduction of 'The Enforcement Concordat' by the Better Regulation Unit of the Cabinet Office in 1998 the regulatory services of this authority were responsible for devising and implementing their own enforcement policies without the benefit of any central guidance.
2. Regulatory services can be defined as those services that may from time to time institute criminal proceedings against individuals as a consequence of fulfilling the authority's statutory functions. These include Trading Standards and Licensing, Environmental Health, Building Control, Waste Management, Car Parking functions etc. In April 2003 Cabinet approved a combined Regulatory Services Enforcement Policy for the authority (minute 1287) and this was revised in November 2006.
3. The Authority is required, as part of the concordat, to publish its enforcement policy for its regulatory services, to monitor compliance with the policy and to keep it under review. The opportunity has been taken to review the policy in the light of both changing legislation/duties and current best practice. Consultation has taken place on the proposed revised policy by means of a public notice in a local newspaper and via the Trading Standards & Licensing website. No comments have been received on the proposed revised document/ The following comments have been received...*(to be finalised after consultation period ends)*.
4. The proposed revised Regulatory Services Enforcement Policy is attached as Appendix One and changes from the previous policy are outlined in Appendix Two.

FINANCIAL IMPLICATIONS

5. There are no financial implications in approving the proposed revised policy.

LEGAL IMPLICATIONS

6. The authority is required to monitor compliance with its enforcement policy and to keep it under review. This report provides evidence that the authority is undertaking appropriate monitoring and review.

RISK ASSESSMENT

7. There are no risks that have been highlighted as a consequence of approving the proposed policy revisions

COMMUNITY STRATEGY IMPLICATIONS

8. The approval of the revised Enforcement Policy underlines that the Authority has considered how and when it would be appropriate to use enforcement sanctions to ensure a change of conduct that will improve/maintain policies in relation to Economic Regeneration and Transport, Safer Communities, Children and Young People, Healthier Communities and Adults and Liveability. The Regulatory Services Enforcement Policy will assist in promoting open and competitive markets. A safe and fair trading environment, which protects both consumers and reputable business activity from rogue traders and allows the local economy to succeed and flourish.

CONSULTATION

9. Consultation has taken place on the proposed revised policy by means of a public notice in a local newspaper and via the Trading Standards & Licensing website.

EQUALITIES IMPACT ASSESSMENT

10. This report has been subject to an Equalities Impact Assessment and has been judged to have a positive impact. An action plan for further improvements has been developed. A summary version of the EIA will be published on the Council's website, following Cabinet

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Background Papers: None
Ward(s) and Ward Councillors Not ward specific
Property Not applicable



Stockton-on-Tees
BOROUGH COUNCIL

Regulatory Services Enforcement Policy



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1. INTRODUCTION

- 1.1 Fair and effective enforcement is essential to protect the health, safety and interests of the residents, visitors and businesses of Stockton-on-Tees. Even in a small case a decision about enforcement action can have serious implications for all involved, the general public, businesses, victims, witnesses and offenders.
- 1.2 This Enforcement Policy is designed to make sure that everyone knows the principles that Stockton Borough Council (SBC) regulatory services will apply when carrying out enforcement work. By applying the same principles, everyone involved in the process is helping to treat stakeholders fairly, consistently and effectively.

2. SCOPE

- 2.1 This policy applies to the enforcement activities taken under the legislation enforced by the regulatory services of SBC.
- 2.2 Enforcement, in the context of this policy, includes action aimed at ensuring that individuals or businesses comply with the law, carried out in the exercise of, or against the background of, delegated statutory powers. This is not limited to formal enforcement action such as prosecution, but includes, for example, the provision of advice to aid compliance.

3. ACCESS TO THE POLICY

- 3.1 This policy is available at the Council's 16 Church Road, Stockton office. On request, it will be made available on tape, in Braille, large type, or in a language other than English. It can be ordered by:

telephoning: 01642 526560
e mailing: trading_standards@stockton.gov.uk
visiting: www.tradingstandards.gov.uk/stockton or
writing to: Stockton-on-Tees Borough Council, PO Box 232,
16 Church Road, Stockton-on-Tees TS18 1XD.

4. GENERAL PRINCIPLES

- 4.1 Each case is unique and must be considered on its own merits. However, this policy lays down the general principles that apply in the way each case will be approached.
- 4.2 This policy operates within and supports the principles of the Regulators' Compliance Code issued under the Legislative and Regulatory Reform Act 2006. In those cases where the code does not apply, the Enforcement Concordat's Principles for Good Enforcement and Good Practice Guide for England and Wales will be applied.
- 4.3 This policy also takes account of the relevant parts of the Code for Crown Prosecutors.
- 4.4 Enforcement activities will be targeted only at situations where action is needed and will be carried out in a way that is transparent, accountable, proportionate and consistent. SBC will work constructively with offenders that are honestly trying to comply with the law, and help them towards compliance.
- 4.5 All enforcement decisions will be fair, independent and objective. They will not be influenced by issues such as the 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.

- 4.6 SBC is a public authority for the purposes of the Human Rights Act 1998 and will apply the principles of the European Convention on Human Rights with particular regard to the right for a fair trial and the right to respect for private and family life, home and correspondence.
- 4.7 SBC enforcement activities will always be conducted in accordance with the relevant legislation, including, but not limited to, the Police and Criminal Evidence Act 1984, the Criminal Procedure and Investigations Act 1996, the Regulation of Investigatory Powers Act 2000, the Criminal Justice and Police Act 2001 and the Regulatory Enforcement and Sanctions Act 2008. This includes compliance with any formal procedures and codes of practice made under such legislation in so far as they relate to SBC enforcement powers and responsibilities. Further details can be obtained from the address shown in paragraph 3.1 above.
- 4.8 SBC's approach to the sanctions and penalties available will aim to:-
- Change the behaviour of the offender
 - Eliminate any financial gain or benefit from non-compliance
 - Be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction
 - Be proportionate to the nature of the offence and the harm caused
 - Restore the harm caused by regulatory non-compliance, where appropriate
 - Deter future non-compliance
- 4.9 This 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 Compliance Code. However, in certain circumstances SBC may conclude that a provision in the Policy is either not relevant or is outweighed by another provision. If this is the case, any decision to depart from the Policy will be properly reasoned, based on material evidence and documented.

5. NOTIFYING ALLEGED OFFENDERS

- 5.1 If information is received, for example from a complainant, that may lead to enforcement action against a business or individual, that business or individual will be notified of any intended enforcement action as soon as is practicable, unless this could impede the progress of an investigation or pose a safety risk to those concerned or the general public.
- 5.2 Except in cases where immediate action is necessary SBC will provide an opportunity for the offender to discuss the circumstances of the case and to try and resolve matters. Where immediate action is considered necessary, reasons for the action will be given at the time and confirmed in writing at the earliest opportunity.
- 5.3 During the progression of enforcement action, alleged offenders and witnesses will be kept informed of progress. Confidentiality will be maintained and personal information will only be released to a court when required and/or in accordance with the Data Protection Act 1998.

6. DECIDING WHAT ACTION TO TAKE

6.1 There are two issues to determine. The first is what level of enforcement action to take. The second is that, if the first decision is to take formal enforcement action, is that action viable and appropriate. These are each discussed in detail below.

6.2 The level of enforcement action taken will be proportionate to the risk or detriment involved to the public, the environment and other affected groups, taking into account, amongst other things, the individual circumstances of the case, the seriousness of the compliance failure, the attitude, age and previous history of the offender, the policies and priorities of SBC and any statutory guidance, codes of practice or legal advice.

6.3 There are a range of potential enforcement options available. The level of action taken varies from no action through to proceedings in court. Examples of the main types of action that may be considered are shown below:

- No action
- Informal action and advice
- Formal notice
- Fixed penalty notice
- Penalty charge notice
- Administrative Penalty
- Seizure of goods/equipment/documentation
- Forfeiture proceedings
- Injunctive action and other civil sanctions
- Refusal, review, suspension or revocation of a licence
- Simple caution
- Prosecution
- Proceeds of crime application

6.4 The order in which the enforcement actions are listed is not necessarily in absolute order of escalating seriousness relative to each other. SBC reserves the right to escalate its level of enforcement action, having regard to the requirements of this policy. An explanation of the main enforcement actions available is given below:

6.5 No Action

6.5.1 In certain circumstances, contraventions of the law may not warrant any action. This can 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 SBC 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 the offender is elderly and frail or is suffering from mental health issues or serious ill health and formal action would seriously damage their well being. In such cases SBC will advise the offender of the reasons for taking no action.

6.6 Informal Action and Advice

6.6.1 For minor breaches of the law verbal or written advice and warnings may be given. These will clearly identify any contraventions of the law and, where appropriate, give advice on how to put them right and include a deadline by which this must be done. The time allowed will be reasonable and take into the account the seriousness of the contravention and the implications of non-compliance. In providing advice, officers will ensure that legal requirements are clearly distinguished from best practice guidelines. Failure to comply could result in an escalation of enforcement action.

6.7 Formal Notice

- 6.7.1 Certain legislation allows notices to be served requiring offenders to take specific actions or cease certain activities. Notices may require contravening activities to cease immediately where the circumstances relating to health, safety, environmental damage or nuisance demand. In other circumstances, the time allowed to rectify a contravention will be reasonable, taking into account the seriousness of the contravention, the implications of the non-compliance and the appeal period for that notice.
- 6.7.2 Certain types of notice allow works to be carried out at default. This means that if a notice is not complied with, SBC may carry out the necessary works to satisfy the requirements of the notice. Where the law allows, SBC may then charge the person/business served with the notice for any cost incurred in carrying out the work.

6.8 Fixed Penalty Notice

- 6.8.1 Certain offences, prescribed by legislation are subject to fixed penalty notices. They enable an offender to avoid a criminal record and 'buy off' their liability to a prosecution for the original offence. Where legislation permits an offence to be dealt with by way of a fixed penalty notice, SBC may choose to administer such a notice on a first occasion without issuing a warning.
- 6.8.2 If the alleged offender fails to accept or pay the fixed penalty notice within the required time-scale, consideration may be given for the prosecution of the original offence under the primary legislation.

6.9 Penalty Charge Notice

- 6.9.1 Penalty charge notices 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. A penalty charge notice does not create a criminal record and SBC may choose to issue such a notice without first issuing a warning. The alleged offender may challenge the notice at the time of issue or later may appeal to an independent adjudicator.
- 6.9.2 In circumstances where a person or business fails to successfully challenge or pay a penalty charge notice, then SBC will consider instituting civil action to recover the debt.
- 6.9.3 If a vehicle is considered to be in breach of any SBC traffic related provision an officer may issue a penalty charge notice. The person ultimately responsible in law is routinely the registered vehicle keeper. The notice may be fixed to the vehicle, handed to the driver or posted to the registered vehicle keeper. If, after the consideration of any challenge, that challenge is dismissed and the offender still fails to pay the penalty charge, SBC reserves the right to institute civil proceedings to recover the debt. This can include a debt referral to the Council's bailiff for collection purposes.

6.10 Administrative Penalty

- 6.10.1 An administrative penalty may be offered as an alternative to prosecution in suitable cases of benefit or council tax fraud. It is a type of fine, the rate of which is laid down by legislation, which the offender is required to repay on top of the monies already overpaid to them. If the offender refuses to accept the administrative penalty, SBC retains the right to take the matter forward for prosecution.
- 6.10.2 Whilst an administrative penalty is an alternative to prosecution, SBC can still take civil recovery action in a court of law if there is a failure to repay the debt and the administrative penalty.

6.11 Seizure

- 6.11.1 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 nuisance, counterfeit goods or any goods that may be required as evidence for possible future court proceedings. When officers seize such items they will give the person from whom the items are taken an appropriate receipt.
- 6.11.2 If officers seize unfit food, they will produce it before a Magistrate as soon as possible for them to confirm the seizure and consider if the food is unfit. If the Magistrate does not condemn the food, the officers will return it to the owner who will be entitled to compensation for any loss suffered.

6.12 Forfeiture Proceedings

- 6.12.1 This may be used in conjunction with seizure and/or prosecution where there is a need to dispose of goods in order to prevent them from re-entering the market place or being used to cause a further problem.
- 6.12.2 If it is unlikely that the offender will agree to sign over the goods for appropriate disposal or if officers are unable to identify the owner of the goods, then a forfeiture application will be made to the court. The court can make a forfeiture order if it is satisfied that an offence has taken place whether or not the owner of the goods is prosecuted.

6.13 Injunctive Actions and other Civil Sanctions

- 6.13.1 In dealing with repeat offenders, social disorder, dangerous circumstances and significant consumer, environmental and public health detriment, injunctive action may be considered to be the most appropriate form of enforcement.
- 6.13.2 Action under the Enterprise Act may be brought where an individual or business 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, or could potentially be, significant consumer detriment. Action to stop the breach can range from obtaining an informal assurance or formal undertaking as to future conduct, through to applying to a court for an interim order, a court order or finally for contempt proceedings.
- 6.13.3 SBC may apply to a court for an anti-social behaviour order (ASBO) or a criminal anti-social behaviour order (CRASBO) where a person has engaged in conduct which has caused or is likely to cause alarm, harassment or distress to one or more persons not of the same household as himself (or herself) and it is necessary to protect relevant persons from further anti-social acts by the offender. Where applicable, this can be done in addition to any other course of action outlined in this policy.

6.14 Refusal, Review, Suspension or Revocation of a Licence

- 6.14.1 SBC has the power to refuse, review, suspend or revoke a range of licences or registrations. Some of these powers rest with officers but in other cases the law demands that decisions are made by a committee of elected councillors. Applicants and/or licensees have the right to attend committee hearings and may have a statutory right to appeal to the courts against the decision made, depending on the applicable legislation.

- 6.14.2 In deciding to grant a hackney carriage or private hire driver's licence, SBC has to be satisfied that the applicant is a "fit and proper" person to hold such a licence. This will be considered in light of SBC's prevailing Private Hire and Hackney Carriage Licensing Policy and guidelines on the Relevance of Convictions, Cautions, Reprimands, Complaints and Character.
- 6.14.3 Where there is a requirement for a business to be licensed by the local authority, SBC may grant the licence unless representations or objections are made against the application. In such cases the Licensing Committee will generally hear the case and decide to grant, grant with conditions or refuse the licence application. In addition under the Gambling Act 2005, the Licensing Committee can exclude a condition of the licence.
- 6.14.4 Where breaches of the Licensing Act 2003 or the Gambling Act 2005 are discovered, consideration may be given as to whether an application should be made for a review of the premise licence, whether or not any other enforcement action is taken.
- 6.14.5 Under the Licensing Act 2003, where a review of a premise licence is sought under section 51 of the Act, the options available to the Licensing Committee are to:
- Take no action
 - Modify the conditions of the licence
 - Exclude a licensable activity from the scope of the licence
 - Remove the designated premise supervisor
 - Suspend the licence for a period not exceeding three months
 - Revoke the licence
- 6.14.6 Under the Gambling Act 2005, where a review of a premise licence is sought under section 197 of the Act, the options available to the Licensing Committee are to:
- Take no action
 - Suspend the licence for a period not exceeding three months
 - Exclude a condition attached to the licence or remove or amend an exclusion
 - Add, remove or amend a condition
- 6.14.7 In order to warrant the revocation or suspension of a licence, an offender must meet one or more of the following criteria by:
- Engaging in fraudulent activity
 - Deliberately or persistently contravening legal obligations or conditions of licence
 - Deliberately or persistently ignoring written warnings or formal notices
 - Endangering or posing a risk to the health, safety or well being of people, animals or the environment
 - Obstructing an enforcement officer during the course of his or her duties
 - Causing, or having the potential to cause, significant consumer or trade detriment
 - Behaving in such a way that the person is no longer deemed to be a "fit and proper" person
- 6.14.8 A points system of enforcement is used with regard to taxi licensing. Whilst serious breaches of conditions will always be referred to the Licensing Committee, for less serious matters it is both unnecessary and undesirable to bring licence holders before the Licensing Committee every time they do something wrong. The points system therefore establishes a record of poor conduct before an individual is referred to the Licensing Committee. Under the system, if 12 points are awarded in any 2-year period a reference to the Licensing Committee can be made.

6.15 Simple Cautions

6.15.1 In appropriate circumstances, where a prosecution would otherwise be justified, a simple caution may be administered with the consent of the offender.

6.15.2 A simple caution is an admission of guilt, but it is not a form of sentence, nor is it a criminal conviction.

6.15.3 Where appropriate, SBC will use simple cautions to:

- Deal quickly and simply with low level offences
- Divert offenders from appearing in the criminal courts
- Record an individual's criminal conduct for future reference in possible criminal proceedings
- Reduce the likelihood of re-offending

6.15.4 For a simple caution to be issued a number of criteria must be satisfied:

- Sufficient evidence is available to prove the case
- The offender has not been previously cautioned or prosecuted for the offence
- The offender admits the offence
- The offender agrees to be cautioned and understands the significance of it
- The offender is aged 18 years or over
- It is in the public interest to use a simple caution

6.15.5 A record of the caution will be kept on SBC databases and, where appropriate, recorded on any national information databases. If the offender is subsequently prosecuted for another offence, the caution may be cited in court and may influence the severity of the sentence that the court imposes.

6.15.6 If the offender refuses to accept the offer of a simple caution, then this will be a material consideration in deciding what further action to take. In these circumstances it is likely that a prosecution will follow.

6.16 Prosecution

6.16.1 Where circumstances warrant it and alternative enforcement actions are considered inappropriate, a prosecution will be considered and may ensue.

6.16.2 In order to take forward a prosecution, the offender must meet one or more of the following criteria:

- Engaging in fraudulent activity
- Deliberately or persistently contravening legal obligations
- Deliberately or persistently ignoring written warnings or formal notices
- Endangering or posing a risk to the health, safety or well being of people, animals or the environment
- Obstructing an enforcement officer during the course of his or her duties
- Causing, or having the potential to cause, significant consumer or trade detriment

6.17 Proceeds of Crime Application

6.17.1 SBC either through its own enforcement officers or in cooperation with the Police may make an application under the Proceeds of Crime Act 2002 to restrain and/or confiscate the assets of an offender.

6.17.2 This will be used in conjunction with a criminal prosecution where the law and circumstances allow it. The purpose of any such application is to recover the financial benefit that the offender has obtained from his criminal conduct. Proceedings are conducted according to a civil standard of proof.

7. DETERMINING WHETHER FORMAL ACTION IS VIABLE AND APPROPRIATE

7.1 There are two stages in the decision to take formal enforcement action:

- Stage 1: the evidential test
- Stage 2: the public interest test

7.2 SBC will only start, and continue, with formal enforcement action when the case has passed both tests. Paragraphs 7.3 to 7.6.1 below, detail how this policy applies to the consideration of taking a prosecution. The principles outlined apply equally to the other types of formal enforcement action that are available.

7.3 The Evidential Test

7.3.1 The relevant service manager together with the legal team must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction' against each offender on each charge. A realistic prospect of conviction is an objective test. It means that a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the offender of the charge alleged. This is a separate test from the one that the criminal courts themselves must apply. A jury or magistrates' court should only convict if it is sure of an offender's guilt.

7.3.2 When deciding whether there is enough evidence to prosecute, the relevant service manager together with the legal team must consider whether the evidence is relevant, compelling and admissible and also whether the offender is able to satisfy any applicable statutory defence, such as a due diligence defence. If the case does not pass the evidential test it should not proceed, no matter how important or serious it may be.

7.4 The Public Interest Test

7.4.1 The public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. A prosecution will usually go ahead unless there are public interest factors tending against prosecution, which clearly outweigh those tending in favour. Although there may be public interest factors against prosecution in a particular case, often the prosecution should go ahead and those factors should be put to the court for consideration when sentence is being passed.

7.4.2 The relevant service manager together with the legal team must 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 and the circumstances of the case. Some factors may increase the need to prosecute but others may suggest that another course of action would be better.

7.4.3 Deciding on the public interest is not simply a matter of adding up the number of factors on each side. The relevant service manager together with the legal team must decide how important each factor is in the circumstances of each case and go on to make an overall assessment

7.4.4 Some common public interest factors are listed below, both for and against prosecution. The list is not exhaustive and the factors that apply will depend on the circumstances in each case.

7.5 Some Common Public Interest Factors in Favour of Prosecution

7.5.1 The more serious the offence, the more likely it is that a prosecution will be needed in the public interest. A prosecution is likely to be needed if:

- A conviction is likely to result in a significant sentence
- The evidence shows that the offender was a ringleader or an organiser of the offence
- There is evidence that the offence was premeditated
- The victim of the offence was vulnerable, has been put in considerable fear, or suffered personal trauma, damage or disturbance
- The offence was motivated by any form of discrimination against the victim's ethnic or national origin, sex, religious beliefs, political views or sexual orientation, or the offender has demonstrated hostility towards the victim based on any of those characteristics
- There is a marked difference between the actual or mental ages of the offender and the victim, or if there is any element of corruption
- The offender's previous convictions or cautions are relevant to the present offence
- There are grounds for believing that the offence is likely to be continued or repeated, for example, by a history of recurring conduct and ignoring previous warnings
- The offence has endangered or posed a risk to the health, safety or well-being of people, animals or the environment
- The offence has caused, or has the potential to cause, significant consumer or trade detriment

7.6 Some Common Public Interest Factors Against Prosecution

7.6.1 A prosecution is less likely to be needed if:

- The court is likely to impose a nominal penalty
- The offender has already been made the subject of a sentence and any further conviction would be unlikely to result in the imposition of an additional sentence or order, unless the nature of the particular offence requires a prosecution
- The offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence)
- The loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement
- There has been a long delay between the offence taking place and the date of the trial, unless:
 - The offence is serious
 - The delay has been caused in part by the offender
 - The offence has only recently come to light
 - The complexity of the offence has meant that there has been a long investigation
- A prosecution is likely to have a detrimental effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence
- The offender is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is a real possibility that it may be repeated
- The interests of a youth offender must be considered when deciding whether it is in the public interest to prosecute. The stigma of a conviction can cause very serious harm to the prospects of a youth offender or young adult. Young offenders can sometimes be dealt with without going to court, for example, by issuing a cautionary letter to the youth and their parents/guardians. However, a prosecution will not be avoided simply because of the offender's age. The seriousness of the offence or the offender's past behaviour may make prosecution necessary

7.7 Offences

7.7.1 Where taking a prosecution is felt to be the most appropriate course of action, the relevant service manager in conjunction with the legal team should select offences which:

- Reflect the seriousness of the offending
- Give the court adequate sentencing powers
- Are made to the appropriate court
- Enable the case to be presented in a clear and simple way

7.8 Re-Starting a Prosecution

7.8.1 People should be able to rely on enforcement decisions taken on behalf of SBC. Normally, if an offender is advised that there will not be a prosecution or that the enforcement action has been stopped, that is the end of the matter and the case will not start again. However, occasionally there are special reasons why enforcement action will re-start, particularly if the case is serious. These reasons include:

- Rare cases where a new look at the original decision shows that it was clearly wrong and should not be allowed to stand
- Cases that are stopped so that more evidence, which is likely to become available in the fairly near future, can be collected and prepared. In these cases, the offender will be told that the enforcement action may well start again
- Cases which are stopped because of a lack of evidence but where more significant evidence is discovered at a later date

7.9 Accepting Guilty Pleas

7.9.1 Offenders may want to plead guilty to some, but not all, of the charges. Alternatively, they may want to plead guilty to a different, possibly less serious, charge because they are admitting only part of the offence. The relevant service manager together with the legal team should only accept the offender's plea if they think the court is able to pass a sentence that matches the seriousness of the offending. The relevant service manager in conjunction with the legal team must never accept a guilty plea because it is convenient.

7.9.2 In cases where an offender pleads guilty to the charges but on the basis of facts that are different from the prosecution case, and where this may significantly affect sentence, the court should be invited to hear evidence to determine what happened and then sentence on that basis.

8. LIAISON WITH OTHER REGULATORY BODIES AND ENFORCEMENT AGENCIES

8.1 SBC services will coordinate their activity to maximise the effective enforcement of any matters that are related to more than one of the services.

8.2 Where an enforcement matter affects a wide geographical area beyond SBC's boundaries, or involves enforcement by one or more other local authorities or organisations, all relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activity coordinated with them.

8.3 SBC will share intelligence relating to wider regulatory matters with other enforcement agencies and regulatory bodies, including government agencies, police forces, fire authorities, statutory undertakers and other local authorities.

8.4 Community Safety Accredited Officers

8.4.1 Community Safety Accredited Officers conduct two elements of their enforcement activity under national guidelines and within the protocols and procedures laid down by external bodies:

- Driver and Vehicle Licensing Agency (DVLA) - the impounding and seizure of untaxed vehicles are carried out following national training and procedures laid down by DVLA. Officers act as agents for the DVLA and any appeals against actions are considered jointly between the Enforcement Coordinator (SBC) and the relevant Senior DVLA Officer
- Cleveland Police Community Safety Accreditation Scheme - the powers bestowed on Officers, and the manner in which they are applied, form part of an application and accreditation to the Chief Constable to operate under the scheme. The complaints and licensing of officers are monitored jointly between the Chief Constable and the Enforcement Coordinator (SBC) as SBC's Accreditation Officer and signatory

8.5 Primary Authority Partnerships

8.5.1 When dealing with a business operating in more than one local authority area and that business has a registered Primary Authority Partnership under the Regulatory Enforcement and Sanctions Act 2008, SBC will, where required, comply with the agreement provisions for enforcement and notify the Primary Authority of any proposed enforcement action against that business.

8.5.2 The relevant Primary Authority has the right to object to SBC's proposed enforcement action, in which case either the primary authority or SBC may refer the matter through to the Local Better Regulation Office for a determination as to the legitimacy of the proposed action.

9. CONSIDERING THE VIEWS OF THOSE AFFECTED BY OFFENCES

9.1 SBC undertakes enforcement on behalf of the public at large and not just in the interests of any particular individual or group. However, when considering the public interest test (see paragraphs 7.4 to 7.6.1 above) the consequences for, and views of, those affected by the offence will be taken into account in determining how to deal with the matter.

9.2 In particular, SBC enforcement activity will, where practicable, take account of the need to minimise any adverse effects on legitimate businesses and individuals.

9.3 Those people affected by the offence will be told about any decision that makes a significant difference to the case in which they are involved, subject to any applicable data protection and disclosure rules.

10. APPEALS AGAINST ENFORCEMENT ACTION

10.1 For certain types of enforcement action there exists a statutory appeal system. The offender will be informed of these mechanisms, where appropriate. However, in all cases the offender has the right to appeal directly to SBC. The matter will then be considered in accordance with the prevailing corporate complaints procedure.

Enforcement Policy 2011

Summary of the main changes from the 2006 version:

1. Mention of Regulators Compliance Code (see section 4.2).
2. Mention of the Regulatory Enforcement and Sanctions Act 2008 (see sections 4.7 to 4.9).
3. Statement about departure from policy – ‘In certain circumstances SBC may conclude that a provision in the Policy is either not relevant or is outweighed by another provision. If this is the case, any decision to depart from the Policy will be properly reasoned, based on material evidence and documented’ (see section 4.9)
4. Mention of penalty charge notice replacing previous section on notice of excess charge (see section 6.9).
5. Extend section on suspension or revocation of a licence to include both refusals and reviews (see section 6.14).
6. Mention of proceeds of crime applications under the Proceeds of Crime Act 2002 to restrain and/or confiscate the assets of an offender (see section 6.17).
7. In section 8, liaison with other regulatory bodies and enforcement agencies, mention of formal Primary Authority Partnerships made under the Regulatory Enforcement and Sanctions Act 2008 (see section 8.5).
8. There has been other wording and cosmetic changes. For example, the order in which the actions appear in section 6 has been reversed and prosecution appears second last (proceeds of crime is last) rather than first. Specific mention of verbal warnings and advice, written warnings and advice and revisits in the old policy have been consolidated in a single section covering informal action and advice (see section 6.6). Specific mention of suspensions and product recalls in the old version has been consolidated with the formal notice section (see section 6.7). Sections on injunctions, enforcement orders and ASBOs have been consolidated within section on injunctive actions and other civil sanctions (see section 6.13)