

Appendix 3

Safety at Sports Grounds: Enforcement Policy 214

1 Purpose

- 1.1 The Council seeks to ensure that in enforcement and regulation, the interests of the public are protected.
- 1.2 The purpose of this policy is to ensure that the law is applied in a fair, equitable and consistent manner and to guide officers into taking the appropriate action.
- 1.3 In general and where appropriate, consideration will be given to alternatives to prosecution, for example giving advice and assistance, or obtaining assurances about future conduct.
- 1.4 Before formal action is taken, officers will normally provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference, unless immediate action is required (for example, in the interests of spectator safety, health and safety or to prevent evidence being destroyed.)
- 1.5 All decisions will be impartial and will not be influenced by race, politics, gender, sexual orientation, religious beliefs or any other belief or status of the alleged offender.
- 1.6 Officers will have due regard to the principles contained within the Enforcement Concordat, and any other published and relevant guidance.
- 1.7 The Council will take into account the comments of any victim, injured party or other relevant person to establish:
 - his or her views about the circumstances in which enforcement action is deemed appropriate; and
 - the nature and extent of any harm or loss, and its significance relative to the individual circumstances.
- 1.8 Middlesbrough Council is a public authority for the purposes of the Human Rights Act 1998. Officers will therefore apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

2 Scope

- 2.1 The sports grounds and regulated stands primarily covered by these arrangements are:

Riverside Stadium

Middlesbrough Sports Village (when complete)

- 2.2 Under the provisions of section 10 of the Safety of Sports Grounds Act 1975 the Council has the power to issue a prohibition notice to limit the capacity, or totally prohibit the admittance of spectators to any sports ground within Middlesbrough

3. Duties and Responsibilities

- 3.1 This enforcement policy sets out the arrangements that Middlesbrough Council has put in place for ensuring compliance with the relevant safety at sports grounds legislation. It explains the Council's powers and approach to enforcement activity, how the Council deals with businesses and the approach to be taken when infringements of the law are established. In applying this policy the Council's aim is to ensure that any enforcement action taken is proportionate, open, consistent and clear.
- 3.2 The Council delegates its powers for the enforcement of the Safety of Sports Grounds Act 1975 (as amended) and the Fire Safety and Safety of Places of Sport Act 1987 to the Head of Transport and Infrastructure and the Principal Engineer (Transport and Infrastructure).
- 3.3 This document should be read in conjunction with the following policies:
- Safety at Sports Grounds: General safety certification policy
- Safety at Sports Grounds: Monitoring and inspection policy
- so as to provide a full understanding of the Safety at Sports Ground role carried out by Middlesbrough Council

4. Legislation and guidance

- 4.1 The relevant legislation that applies to sports grounds safety enforcement and which should be read in conjunction with this policy is as follows -

Safety of Sports Grounds Act 1975 - 10B Enforcement - The duty of every local authority to enforce within their area the Act and regulations made under it and to arrange periodical inspection of designated sports grounds.

Fire Safety and Safety of Places of Sport Act 1997 - 25 Enforcement - It shall be the duty of every local authority to enforce within their area the provisions of this Act and of regulations made under it for designated grounds.

- 4.2 Detailed guidance on prohibition notices is contained in the DCMS Circular of 16 November 1995.
- 4.3 It is an offence for any responsible person, not merely the certificate holder, to contravene the terms and conditions of a safety certificate or a prohibition notice. The penalties for contraventions of the safety certificate are listed in section 12 of the 1975 Act and section 36 of the 1987 Act.
- 4.4 Further advice is contained in “Guide to Safety Certification of Sports Grounds” published by the Sports Grounds Safety Authority.

5. Consistency

- 5.1 The Council will seek to ensure that enforcement is fairly applied by committing to the following principles of fairness:

Proportionate - Any action taken by the Council, to achieve compliance or to bring regulated entities to account for non-compliance, will be proportionate to the risk to public safety, or to the severity of non-compliance, which includes any actual or potential harm arising from the failure under the law. We will seek to minimise the costs of compliance by ensuring that any action we require is in proportion to the risk.

Consistency –There will be a consistent approach from the Council in relation to any advice given, enforcement action, prosecutions and in response to incidents and complaints. The Council will discuss and compare enforcement decisions and policies amongst our own officers and, where appropriate, with other authorities and enforcement bodies.

Targeted – By adopting a risk based system for prioritising regulatory action the Council aims to make sure, through targeting, that the direction of regulatory effort takes into account the level of risk and ensure action will be targeted at those situations that give rise to the more serious risks or the least well controlled risks.

Transparent– The Council will be open about how we set about our work and will provide information and advice in plain language. We will ensure we help those we regulate to understand the standards expected from them and the standards that they should expect from the local authority.

Accountable - The Council will be able to justify all enforcement decisions and be accountable for the efficiency, effectiveness and cost. Consultation and feedback opportunities are given to stakeholders. The local authority will publish an annual report which will detail performance for the previous year.

6. Risk assessed approach to enforcement

6.1 Middlesbrough Council's risk based enforcement will consider the combined effect of:

- the potential impact of non-compliance on regulatory outcomes; and
- the likelihood of non-compliance.

7. Enforcement considerations

7.1 The Council's enforcement officers will consider a number of factors and questions before deciding when to act, these questions will include:

- The seriousness of compliance failure i.e. could the offence lead to a serious risk of injury or has serious injury or death already occurred, if the problem is not rectified will it lead to a significant risk?
- The degree of willfulness involved i.e. does the individual or organisation concerned appear to be willing to carry out the necessary action immediately or in a specified time frame or has the problem resulted from a deliberately ignoring conditions or the law?
- The ground managements past performance and its current practice i.e. has the recommendations, is this a recurring problem, has the business had a previous high standard of practice?
- The risks being controlled and there consequence – what type of risks are involved and will they have serious consequences that could affect the public?
- Legal, official or professional guidance – Has all legislation and guidance been taken into consideration when taking a decision? Has the issue been referred to the local authority legal department for their consideration and interpretation?

8. Choices of enforcement action

8.1 There are several courses of action open to the Council's enforcement officers depending on the different circumstances that may be encountered or apply to the situation. The choices of enforcement action are:

- Informal Warning
- Reduction in Capacity
- Prohibition Notice
- Simple Caution

- Prosecution

8.2 **Informal warning**

8.2.1 Informal action includes offering advice, verbal warnings and requests for action, the use of letters/informal notices and reports.

8.2.2 Informal action is appropriate where:

- the act or omission is not serious;
- it can reasonably be expected that informal action will achieve compliance;
- confidence in the business management is reasonably high; and
- the consequences of non-compliance will not pose a significant risk to health, safety or the public,

8.2.3 An informal warning will be in the form of a written letter that clearly and in plain language will:

- contain all information necessary to ensure that the club/organisation knows what is required and why it is necessary;
- indicate the regulations contravened and the measures that will achieve compliance with the legal requirements and that other means of compliance may be chosen;
- where recommendations of good practice are included make it clear that they are not legal requirements; and
- set out the timescales for compliance.

8.3 **Reduction in capacity**

8.3.1 Reducing the capacity of all, or part of, a sports ground is a formal action which would be appropriate in the following situations:

- if an incident suggests that the management of a sports ground is performing poorly; or
- if the Council's inspecting personnel identify any deficiencies in the fabric, equipment, records or management systems, which the authority has not already taken into account when accepting or calculating the permitted capacity.

8.3.2 Any new capacity should be properly calculated having regard to the change in circumstances and the procedures to be followed will be the same as during the routine annual review of the safety certificate. Ground management should be invited to submit its proposed revised Physical (P) or Safety (S) factor, but the Council reserve the right to overrule this if appropriate.

8.3.3 When reducing a capacity it is important that

- officers act reasonably and in accordance with due process, not least because the certificate holder has a right of appeal against any reduction in capacity; and
- a formal amendment to the safety certificate is issued.

8.3.4 Once the remedial measures or improvements have been implemented consideration should be given to restoring the original capacity.

8.4 Prohibition notice

8.4.1 Unlike the other provisions of the 1975 and 1987 Acts, the power to issue a prohibition notice applies to all sports grounds, as defined in section 17 of the 1975 Act, including those that are neither designated nor contain a regulated stand.

8.4.2 Section 10 of the 1975 Act empowers the Council to issue a prohibition notice in respect of all or part of any sports ground if it considers that “the admission of spectators to a sports ground or any part of a sports ground involves or will involve a risk to them so serious, that, until steps have been taken to reduce it to a reasonable level, admission of spectators to the sports ground or that part of the sports ground ought to be prohibited or restricted”. A prohibition notice is therefore a measure of last resort and should only be used where an amendment of the safety certificate (where issued) is not considered an effective way of dealing with the risk(s)

8.4.3 When issuing a prohibition notice consideration should be given as to whether the risk to spectators is or may be imminent and if so the notice should take effect as soon as it is served. In all other cases it should come into force at the end of the period specified in the notice.

8.4.4 A prohibition notice must specify:

- the nature of the risk to spectators; and
- the number of spectators that may be admitted to the sports ground, or any part of the sports ground, until appropriate steps have been taken to address those risks.

8.4.5 The notice may also include directions as to the steps which will have to be taken to reduce the risk to a reasonable level.

8.4.6 Under the Environment and Safety Information Act 1988 the local authority is required to keep a register of any prohibition notices that it has issued.

8.5 Simple cautions (formerly known as formal cautions)

8.5.1 A simple caution should only be issued for offences where there is no imminent risk or where the offence is readily admitted and immediate action has removed the imminent risk. A caution can be used to:

- deal quickly and simply with less serious offenders
- to divert them from unnecessary appearance in the criminal courts and
- to reduce the chances of their re-offending

8.5.2 A record of the caution is required to be kept on the Council's computer system.

8.5.3 If the offender commits a further offence, the caution may influence future decision to take a prosecution

8.5.4 Simple cautions should not be used as an alternative to prosecutions where insufficient evidence is available. Officers should be prepared to prosecute where an individual or business refuses to accept a simple caution

8.5.5 More information can be found in Home Office Circular 016/2008 – "Simple Cautioning Adult Offenders"

8.6 Prosecution

8.6.1 The decision to prosecute is very significant and must be related to risk. In general, it should be reserved for those who

- blatantly disregard the law;
- refuse to implement basic legal requirements and who put the public at risk.

8.6.2 Factors to consider are:

- The seriousness of the offence, including the seriousness of the result of the offence.
- The previous history of the defendant/organisation.

- Availability, co-operation and reliability of witnesses.
- The willingness of persons involved to put matters right.
- The probable public benefit and importance of the case.
- Whether other action e.g. prohibition notices would be more effective (It may be appropriate in some circumstances to serve a prohibition notice as well as to prosecute if the risk to employees or the public remains high).
- Any explanation offered by the defendant/organisation.

8.6.3 Before deciding to proceed with a prosecution officers must be satisfied that there is relevant, admissible, substantial and reliable evidence that the offence has been committed by the defendant and that there is a realistic prospect of conviction. Any prosecutions should be brought without delay.

9 Appeals

9.1 Appeals against a reduction in capacity imposed by way of an amendment to a safety certificate or against a prohibition notice are to be to a Magistrates Court. When an appeal is made against an amendment to a safety certificate the amendment cannot take effect until the appeal is heard. However, in the case of an appeal against a prohibition notice any reduction in capacity remains in place until the appeal is heard.

10 Penalties

10.1 It is an offence for any responsible person, not merely the certificate holder, to contravene the terms and conditions of a safety certificate or a prohibition notice. These offences and associated penalties, along with the defences of absence of consent and due diligence, are listed in section 12 of the Safety of Sports Grounds Act 1975 and section 36 of the Fire Safety and Safety of Places of Sport Act 1987.

11. Suitably trained and competent staff

11.1 Individual officers who undertake enforcement duties under the 1975 and 1987 Acts will be suitably trained and qualified to ensure their competency.

11.2 The Council will ensure that:

- duties are specified in job descriptions and experience is built-up over time with provision made in individual appraisal for monitoring progress;

- appropriate succession planning is in place to ensure that staff have the necessary training and experience to undertake the roles they may be expected to undertake.

12. Revisions to this Document and Review

12.1 This policy and procedures will be reviewed at intervals not exceeding 12 months and amended at any stage to reflect any changes that may occur in operation procedure or to current legislation.

12.2 Following any amendment a complete replacement will be distributed.

Date of Issue –

Date of last review –

Reviewed by -