



Enforcement Policy

April 2015

Introduction

Our Enforcement Policy explains our approach to regulatory activity. The legislation which the Council is responsible for enforcing is extensive and cannot be listed here, but the following exemplify the range and diversity:-

- Anti Social Behaviour
- Education (school attendance, child employment);
- Environmental crime
- Environmental Protection;
- Finance (collection of local taxation and statutory fees);
- Food Safety;
- Health and Safety;
- Highways and Drainage;
- Housing (mainly private sector);
- Licensing;
- Planning and Development Control (including Building Control);
- Public Health;
- Social Services (inspection unit functions);
- Trading Standards,

The policy applies to enforcement and regulation affecting members of the public, e.g. residents and visitors, and businesses, (e.g. proprietors, employers and employees).

Whilst the policy is intended to be reasonably comprehensive, it cannot cover every situation, especially where there are specific national or local codes or standards which have to be met, for example when dealing with child protection, special educational needs, mental health provisions and benefit fraud. Neither will the policy apply to actions of the Council in dealing with matters of contract (including rents, tenancy agreements and leases) or the collection of penalties, debts or fines. The Council will aim to apply the same general principles as described in the policy wherever appropriate.

This Policy is designed to promote efficient and effective approaches to regulatory interventions and enforcement and to improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the [Regulators' Code](#), made under the Legislative and Regulatory Reform Act 2006. We will adhere to the Enforcement Concordat where the legislation we enforce is not covered by the Regulators' Code.

Overall Aim

The Council's aim is to undertake its regulatory and enforcement role in a fair, open and consistent manner. In doing this it will act in accordance with the guidance and standards set out in this policy, and in any supplementary policies.

In particular, we will:-

- Ensure that staff are properly trained and apply the policy and standards professionally, and monitor compliance with the policy;
- Provide simple and straightforward ways to engage with those that we regulate and hear their views;
- Provide clear information, guidance and advice to those that we regulate to help them meet their responsibilities;
- Ensure that our approach to regulatory activities is transparent.

Guiding Principles

In undertaking its regulatory and enforcement role the Council will have regard to the following Guiding Principles:-

- The Council believes the vast majority of individuals and businesses wish to comply with the legal requirements placed upon them and should be assisted in doing so;
- In dealing with any enforcement situation, the Council's actions will be proportionate to the scale, seriousness and intentionality of any non-compliance;
- There will be consistency of enforcement whilst recognising individual circumstances which may modify the appropriate action to be taken in each case. We will have regard to any impact our interventions may have on economic growth and in particular the impact on small businesses;
- Except in the most serious cases or where advice/warnings have not been heeded, adequate opportunity will normally be given to rectify non-compliance before formal legal action is commenced;
- Enforcement is seen as a final means of securing compliance with the appropriate standards, and not as an end in itself;
- Prosecution will normally only be considered where it is in the public interest to do so and in serious or blatant cases, or where other approaches have failed;
- Regard shall be had to the relevant legislation and codes of practice which protect the rights of the individual and guide enforcement action, (e.g. Human Rights Act 1998, Code for Crown Prosecutors);
- Regard shall be had to the Council's Equal Opportunities and Customer Care Policies.

Standards

The Council will always endeavour to meet the highest standards of service in undertaking its regulatory and enforcement function. The following specific level of service standards will be applied:-

- Matters will be dealt with promptly with enquiries and complaints receiving a response or acknowledgement within ten working days;
- Officers will announce themselves on arrival at premises and show ID except where it would impede the purpose of the visit, or where they are already well known to the person;
- Officers will provide their name and contact details;
- Complaints will normally only be dealt with if the name and address of the complainant is given. Any such identification will be treated in confidence, but may need to be disclosed (with prior consent) should formal legal proceedings be taken. Anonymous complaints may be investigated if they relate to benefit fraud, protection of children or other vulnerable groups, or matters relating to serious health, safety or environmental issues etc;
- Officers will not be able to act as consultants or legal advisors to individuals or businesses, but will be available (by appointment if necessary) to discuss general issues or matters of specific enforcement with the aim of assisting or guiding compliance;
- Officers will be professional, courteous and helpful, and wherever possible, will seek to work with individuals and businesses towards compliance;
- Officers will endeavour to provide information, advice and guidance in a clear, accessible and concise, using a range of appropriate formats, including guidance in writing (online, but where appropriate, also printed) and digital (eg email), face to face and telephone advice. Individual advice will be documented for confirmation if requested;
- Where non compliance may result in further enforcement action or prosecution, we will, where appropriate, discuss the matter further with the individual or business concerned, unless to do so would impede the investigation, or where immediate enforcement action is required;

- Officers will generally seek an informal resolution to cases of non-compliance except where immediate formal enforcement action is required, (e.g. serious issues relating to Health and Safety, Environmental Protection, evidence gathering etc);
- Officers will clearly distinguish between what you must do to comply with the law and what is recommended as good practice.
- Where there are rights of appeal against formal action, information on the appeal mechanism will be clearly set out in writing at the time the action is taken.
- Where there is known to be an involvement of any other enforcement agency, or any case involves joint enforcement arrangements, the Council will consult with that other agency prior to taking any formal enforcement action.
- Any dissatisfaction with the actions of an officer of the Council, will be dealt with via the Council Complaints Procedure. You can report your dissatisfaction via the Council's web site [complaints page](#).

Monitoring

To ensure the effectiveness of our enforcement and regulatory functions, we will undertake the following:-

- Provide opportunities for businesses and individuals to comment on this policy;
- Sample surveys on the perception of service users and other interested parties

Enforcement in cases where the authority has an interest

To avoid any possibility, or any potential perception, of a conflict of interest in cases where the object of enforcement is, for example a premise or business in which the Council has an ownership or management interest, we will:

- Be proactive in identifying and addressing circumstances in which there could be potential for conflict of interest issues to arise.
- Consider conflict of interest issues in designing governance arrangements for Council interests and properties. In particular, management arrangements will include separate lines of control for regulatory functions and any potential objects of enforcement action.
- Have arrangements in place for addressing and resolving potential conflicts of interest in specific cases.

Enforcement Actions

Formal action will normally be instigated where one or more of the following apply:

- It is prescribed by law as obligatory;
- Informal approaches have failed;
- The matter is of such seriousness or urgency that informal action is inappropriate;
- Enforcement is necessary to remedy an unsatisfactory condition relating to health, safety, amenity or the environment;
- There is a need to ensure a decision or policy of the Council is enforced (including planning policy).

Prosecution will normally only be considered where one or more of the following Public Interest criteria are satisfied:

- a conviction is likely to result in a significant sentence;
- a conviction is likely to result in a confiscation or any other order;
- violence was threatened or used during the commission of the offence;
- the offence was committed against a person serving the public;
- the defendant was in a position of authority or trust;
- the evidence shows that the defendant was a ringleader or an organiser of the offence;
- there is evidence that the offence was premeditated;
- there is evidence that the offence was carried out by a group;
- the victim of the offence was vulnerable, has been put in considerable fear, or suffered personal damage or disturbance;
- the offence was committed in the presence of, or in close proximity to, a child;
- the offence was motivated by any form of discrimination against the victim's ethnic or national origin, disability, sex, religious beliefs, political views or sexual orientation;
- there is a marked difference between the actual or mental ages of the defendant and the victim, or if there is any element of corruption;
- the defendant's previous convictions or cautions are relevant to the present offence;
- the defendant is alleged to have committed the offence while under an order of the court;
- there are grounds for believing that the offence is likely to be continued or repeated, for example, by a history of recurring conduct;
- the offence, although not serious in itself, is widespread in the area where it was committed, or
- a prosecution would have a significant impact on maintaining community confidence.

Mitigating factors could include the examples below, but these should always be balanced against the seriousness of the offence and the likelihood of it being repeated:-

- the court is likely to impose a nominal penalty;
- the defendant 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 of order, unless the nature of the particular offence requires a prosecution or the defendant withdraws consent to have an offence taken into consideration during sentencing;
- 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 defendant;
 - the offence has only recently come to light; or
 - the complexity of the offence has meant that there has been a long investigation;
- a prosecution is likely to have a bad effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence;
- the defendant 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 real possibility that it may be repeated. The Council will, where necessary, apply Home Office guidelines about how to deal with mentally disordered offenders in order to balance the desirability of diverting a defendant who is suffering from significant mental or physical ill health with the need to safeguard the general public;
- the defendant has put right the loss or harm that was caused (but defendants must not avoid prosecution or diversion solely because they pay compensation); or
- details may be made public that could harm sources of information, international relations or national security.

Action To Secure Compliance

There are a large range of enforcement and regulatory actions that can be taken to resolve non compliance:-

ACTION AVAILABLE	EXPLANATION
Advice	Advice and support on how to comply with the law, typically following a request, a programmed inspection or complaint.
Warning letter	Warning that recurrence or continuation of an infringement could result in legal action.
Enforcement/Formal notice	A wide range of legal powers to require persons to perform some act or desist from a course of conduct. In some cases we have the power to close premises/businesses or execute work in default. There are often appeals procedures or a requirement to have emergency action confirmed by a Magistrates' Court. (We provide details of those appeals procedures at the same time as the notice.) Failure to comply with the notice will often result in prosecution.
Suspension, seizure, forfeiture or voluntary surrender of goods	A wide range of powers to remove goods e.g. unsafe products, counterfeit products, unfit food, sound equipment. Items may also be seized where they are required as evidence. Documentation will be provided where good are suspended, seized or where voluntarily surrendered. Forfeiture provisions are applied by the Courts.

ACTION AVAILABLE	EXPLANATION
Simple Caution (often called Formal Cautions')	<p>A recordable warning that may need to be disclosed by the individual or business in certain circumstances, e.g. employment purposes, travel, and which offers a proportionate response to low level offending. It is our policy to seek a voluntary contribution from the offender towards the costs of the investigation. A Simple Caution can only be given if:-</p> <ul style="list-style-type: none"> ○ An offence has been committed. ○ The person liable admits the offence. ○ A prosecution could be taken.
Fixed Penalty Notice (FPN) Penalty notice for Disorder (PND)	<p>Legislation enables the Council to issue FPNs for various offences such as littering, dog fouling etc. PNDs may be issued by Police officers working in partnership with Council staff.</p>
Refusal, Suspension, amendment or Revocation of a Licence	<p>Officers or the Council's Regulation Committee, Licensing Committee or Licensing Sub Committee may determine whether to grant, suspend or revoke a licence based on legislative requirements and other available information.</p>
Proceeds of Crime applications	<p>Applications may be made under the Proceeds of Crime Act for confiscation of assets. Applications are made after a conviction has been secured.</p>
Prosecution	<p>Prosecution in Magistrates or Crown Court. There are very strict controls to ensure this only happens in serious cases or when other approaches have failed. Depending on the circumstances, we do not always warn or issue a statutory notice before taking prosecutions. On conviction, we will seek to recover the costs that we have incurred in bringing the prosecution.</p>