



# Regulatory and Community Safety Services

## **ENFORCEMENT POLICY 2016-2019**

## 1.0 DOCUMENT INFORMATION

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### 3.0 BACKGROUND

- 3.1 On 6 April 2014 the Regulators' Compliance Code was replaced by a new code of practice, The Regulators' Code.
- 3.2 The code provides a framework for how regulators should engage with those it regulates and regulators must have regard to the code when developing standards, policies or procedures that guide their regulatory activities.
- 3.3 There are six main principles, which are that Regulators should:
  1. carry out their activities in a way that supports those they regulate to comply and grow.
  2. provide simple and straightforward ways to engage with those they regulate and hear their views.
  3. base their regulatory activities on risk.
  4. share information about compliance and risk.
  5. ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply.
  6. ensure that their approach to their regulatory activities is transparent.
- 3.4 Principle six sets out the expectation that local authorities will ensure that their approach to regulatory activities is transparent. This means we will publish our policy as to how we intend to deliver regulation and what those affected can expect. We believe that our enforcement policy is clear, concise, transparent and fit for purpose.

### 4.0 PURPOSE AND SCOPE

- 4.1 Regulatory Services' (Licensing, Environmental Health and Trading Standards) primary function is to achieve regulatory compliance in order to protect the public, legitimate businesses, the environment and groups such as consumers and workers.
- 4.2 Community Safety also has responsibilities to protect the public and undertake appropriate action to reduce antisocial behaviour and crime.
- 4.3 Enforcement action is at the discretion of the Local Authority and enforcement action may be taken after compliance has been achieved if it is in the public interest to do so.
- 4.4 This policy applies to all the legislation enforced by officers with delegated enforcement powers employed by Regulatory and Community Safety Services. This policy supports and supplements specific guidance for example statutory codes of practice and other relevant documents produced by government bodies.
- 4.5 Enforcement includes any criminal or civil action taken by officers aimed at ensuring that individuals or businesses are legally compliant, do not increase crime, disorder or antisocial behaviour and that financial benefit from criminal activity is recovered .

- 4.6 The purpose of this policy is to ensure transparency in the approach to regulatory activities and provide guidance to enforcement officers, business and members of the public.
- 4.7 All authorised officers shall abide by this policy when making enforcement decisions unless it is considered by the Regulatory and Community Safety Service Manager or a nominated deputy that there would be immediate or significant risk to the public or the environment. Any departure from this policy must be justified in writing and approved by a member of the Regulatory and Community Safety Services Management Team.
- 4.8 Regulatory and enforcement functions will be undertaken in a fair, equitable, non-discriminatory and consistent manner. Consistency will be promoted by following clear standards of enforcement and where possible through liaison with other authorities and enforcement bodies.

## 5.0 APPROACH

- 5.1 Regulatory Services recognises the importance of providing advice and support to businesses in order to achieve compliance as well as supporting economic development and growth. However, where it becomes necessary to take enforcement action against a business, or individual, such action will be taken.
- 5.2 There is a wide range of tools available to officers. The actions which can be considered are:
  - a) No action;
  - b) Informal action and advice;
  - c) Referral to another agency;
  - d) Fixed Penalty Notices;
  - e) Statutory notice or order or civil injunction (under the Anti-Social Behaviour Policing and Crime Act(2014
  - f) Seizure/forfeiture;
  - g) Refusal, Suspension of a licence, permit or consent;
  - h) Revocation of a licence, permit or consent;
  - i) Review of Premises Licence;
  - j) Simple Caution;
  - k) Prosecution;
  - l) Work in default;
  - m) Restrictions on trading activities;
  - n) Other Injunctions;
  - o) Criminal behaviour order
  - p) Proceeds of Crime Application.
  - q) Closure (under the Anti-Social Behaviour Policing and Crime Act 2014)
- 5.3 Initial decisions regarding enforcement action will be the responsibility of the authorised officer dealing with each particular case. If the officer believes the most appropriate course of action is one of those outlined from 5.2 h, they will instigate a meeting, to be known as an authority panel.

- 5.4 An authority panel will consist of a minimum of two members of the Regulatory Service Management Team or an appointed senior officer and a representative from legal services.
- 5.5 The accused will be contacted a minimum of 10 working days prior to the authority panel meeting and invited to make a written submission. The panel will discuss the most appropriate course of action after considering the submissions
- 5.6 When taking enforcement action, Regulatory and Community Safety Services will:
  - a) Seek to adopt the most effective approach to enforcement by co-ordinating action between enforcement agencies both internal and external to the council as well as other organisations (such as social landlords) who also have powers to take action.
  - b) Take account of any approved code of practice or other guidance document such as Work related deaths: A protocol for liaison, or Memorandum of understanding between the care quality commission, the health and safety executive and Local Authorities in England
  - c) Clearly explain what needs to be done to comply with the law and confirm in writing including expectations of timescales
  - d) Distinguish between requirements that are stated in law and recommendations that are intended to achieve higher standards.
  - e) Provide an opportunity for the individual or business suspected of an offence to make representations before an enforcement decision is taken unless immediate action is required.
  - f) Where immediate action is considered necessary and there is a departure from this policy, provide an explanation of why such action is required in writing within 10 working days of that decision to the affected person.
  - g) Provide information of the right of appeal, where one is available.
  - h) Where applicable, contact the nominated Primary Authority (as established by the Regulatory Enforcement and Sanctions Act 2008) before giving detailed advice or taking enforcement action.
  - i) Where applicable, liaise with the Accredited Financial Investigator in relation to confiscation proceedings.

## 6.0 CONSIDERATIONS

- 6.1 In order to ensure that decisions are consistent, balanced, fair and relate to common standards ensuring the public and/or environment are adequately protected, the

following principles will be considered by the investigating officer and the authority panel:

- **Proportionality to the circumstances**

Proportionality in securing compliance will generally involve taking account of the degree of the risk of harm caused by non-compliance. Sometimes, however, the precautionary principle will require enforcement action to be taken even though the risks may be uncertain. Regulatory Services reserves the right to take enforcement action after compliance has been achieved, where it is in the public interest to do so.

- **Consistencies as to process and outcome**

Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar outcomes within which a degree of discretion is available

- **Transparencies to all duties**

Transparency means helping those regulated to comprehend what is required of them at the outset and setting out what they may expect from Regulatory Services in return. It also involves making clear what remedial action is required from the regulated person and providing details of any rights of appeal etc.

In addition transparency will include ensuring the complainant/agrieved is informed of the decision making processes and the outcome of any enforcement activity undertaken within the scope of this policy.

- **Targeted at the more serious risks**

Targeting of enforcement action means prioritising and directing regulatory effort effectively. This means concentrating on the activities which create the most serious risk, either because the nature of the activity is inherently high-risk or because of a lack of appropriate controls or appropriate attitude in other less high-risk activities. It also involves identifying and focusing on those responsible for the risk.

## 6.2 When deciding on the most appropriate method of enforcement the officer and authority panel will also consider:

- a) The seriousness of the offence;
- b) Consequence of non-compliance/continued non-compliance;
- c) Previous history of compliance;
- d) Wilfulness of non-compliance;
- e) Public interest consideration, including consideration of impact on the victim, vulnerable groups or quality of life of those in the locality
- f) Human Rights;
- g) Any obstruction on the part of the offender
- h) the existence of a primary authority agreement
- i) Effectiveness of the enforcement options.
- j) The sufficiency of the evidence available

## 7.0 ENFORCEMENT OPTIONS

### a) No Action

This will be appropriate for less serious offences or minor technical breaches, which are immediately remedied whilst the officer is still on the premises or where it is anticipated that the problem will be removed shortly afterwards. A decision of no action may also be taken where formal enforcement is inappropriate in the circumstances.

### b) Informal Action & Advice

Informal action includes offering advice, warnings and requests for action, the use of letters, informal notices and inspection reports. Such correspondence will be in writing identifying the non-compliance, giving advice on how to comply and a deadline by which to do it. Time allowed for rectifying breaches must be reasonable. Failure to comply with warnings could later escalate to enforcement action.

### c) Referral to another Agency (including Primary or Home Authority, the Police, CQC or Crown Prosecution Service)

Sometimes the infringement may be more appropriately dealt with by means of referral to another agency or local authority. Any existing memorandums of understanding or other written agreements, as well as informal discussions with relevant agencies, will be considered when determining the most appropriate enforcement agency.

### d) Fixed Penalty Notices

Certain offences can be dealt with by issuing fixed penalty notices where prescribed by legislation. The fixed penalty notice is recognised as an enforcement tool and enables an offender to avoid a criminal record by discharging their liability to a prosecution for the original offence. Where legislation permits, an offence may be dealt with by way of a Fixed Penalty Notice, on the first occasion without issuing a warning.

### e) Statutory Notice , Order or Civil Injunction

Notice includes Community Protection Notice and Emergency Prohibition notice/orders.

Civil Injunction relates to those applied for under the Anti-social Behaviour, Crime and Policing Act 2014.

This should be used in circumstances where:

- o There is an imminent risk; or
- o The consequences of not taking action would be unacceptable; or
- o There is no confidence in that voluntary compliance will be gained; or
- o Legislation and/or Codes of Practice deem it necessary; or Behaviour is unreasonable, persistent and has a detrimental impact on the quality of life of those in the locality; or
- o There is antisocial behaviour likely to cause harassment, alarm or distress

Any time allowed to rectify the offence will be reasonable in all circumstances. Where there is an opportunity to appeal a notice, information on how to appeal will be provided with the notice.

f) Seizure

Certain legislation enables authorised officers to seize goods, equipment or documents, where appropriate this power will be exercised. An appropriate receipt will be provided. It should be noted that in some circumstances voluntary disposal or surrender of goods may be permitted, if appropriate.

g) Refusal, Suspension of a Licence, Permit or Consent

This should be used in circumstances where there:

- o Is an imminent risk; or
- o The consequences of not taking action would be unacceptable; or
- o There is no confidence in that voluntary compliance will be achieved; or
- o Where Legislation and/or Codes of Practice deem it necessary or justified

h) Revocation of a Licence, Permit or Consent

This should be used in circumstances where there:

- o Is an imminent risk; or
- o The consequences of not taking action would be unacceptable; or
- o There is no confidence in that voluntary compliance will be gained; or
- o Where Legislation and/or Codes of Practice deem it necessary or justified

i) Review of a Premises Licence

Under the Licensing Act, 2003 responsible authorities are able to call for a review of the Premises Licence where one or more of the four licence objectives are not being met.

j) Simple Caution

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:

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

Simple cautions should not be used as an alternative to prosecutions where insufficient evidence is available. A simple caution is an admission of guilt and does not constitute a criminal conviction.

k) Prosecution

Regulatory Services acknowledge that such action should be reserved for those who blatantly disregard the law or refuse to implement legal requirements. Prosecution shall not be limited to such situations if the authority panel feels that, in all the circumstances of the relevant case, prosecution is the most suitable enforcement option. In addition, prosecution will always be considered where:

- o the offence involves a failure to comply in full or in part with the requirements of a statutory notice;

- there is an obstruction or assault of an officer; false or misleading information is provided to officers in the course of any investigation or inspection;
- A decision to prosecute will be independently reviewed by the Council's Prosecutor before proceedings re issued to ensure compliance with the Code for Crown Prosecutors and that the decision is reasonable and fair and that the evidential and public interest tests are met.

l) Work in Default

Certain legislation provides the power to allow for the enforcing agency to carry out works in default to ensure the issue or problem is resolved. The costs of this work will, where possible, be recharged to the person responsible for causing the problem or issue. This will be recovered as a civil debt and may be placed on a property as a land charge.

m) Restriction on Trading Activities

Proceedings for Enforcement Orders may be considered under Part 8 of the Enterprise Act 2002 regarding continuous and/or multiple infringements of specified civil and criminal legislation as prescribed in Schedule 13. The trader's history, previous guidance or business advice provided by Trading Standards and the trader's response will be a relevant consideration.

n) Injunctions

An injunction may be considered where it is necessary for activity to be prohibited or forced compliance is required. Regulatory Services acknowledge that this would not be a normal course of action but may be required in circumstances where other remedies are not as effective.

o) Criminal Behaviour Order

Where there is a decision to proceed with a prosecution for an offence for criminal activity and the non-compliance relates to antisocial behaviour. An application for a criminal behaviour order under the Anti-social behaviour Crime and policing Act 2014 will be considered.

p) Proceeds of Crime Application.

Where we believe that there has been financial gain from the criminal activity the authority may make an application under the Proceeds of Crime Act 2002 to restrain and/or confiscate the assets of the offender.

q) Closure/voluntary Closure

Where there is an imminent risk or where premises are being used to commit nuisance or disorder officers may consider that a closure is necessary. Officers will explore the option of voluntary closure where it is appropriate to do so.

## 8.0 EQUALITIES AND HUMAN RIGHTS

- 8.1 All enforcement decisions will be fair, independent and objective. They will not be influenced by issues such as ethnicity or national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender. Such decisions will not be affected by improper or undue pressure from any source.
- 8.2 Officers will consider the implications of the Mental Capacity Act 2005 and seek further advice or guidance if necessary.
- 8.3 All enforcement activities, including investigations and formal actions, will always be conducted in compliance with the statutory powers of the officer and all other relevant legislation, including but not limited to the Police and Crime Evidence Act 1984, the Criminal Procedure and Investigations Act 1996, the Human Rights Act 1998, the Regulation of Investigatory Powers Act 2000 and the Criminal Justice and Police Act 2001, and in accordance with any formal procedures and codes of practice made under this legislation in so far as they relate to enforcement powers and responsibilities.

## 9.0 APPEALS AND COMPLAINTS

- 9.1 A complaint about the conduct or service provided by an officer may be made through the council's corporate complaints procedure.