

CORPORATE ENFORCEMENT POLICY

Purpose of this Document

This document sets out the overarching principles that apply to all of the Council's enforcement activities, across the range of services it provides. Enforcement plays an important role in enabling the Council to achieve its corporate priorities.

It reflects the advice and good practice guidance contained in the Enforcement Concordat and also the Regulators' Code published by the Department for Business Innovation & Skills Better Regulation Delivery Office.

How to Use this Document

Whilst this document sets out the overarching principles, each service operates within specific legislative framework, therefore more detailed service specific advice is set out in the appendices attached to this report. This includes:

- Food Safety
- Regulatory Service and Licensing
- Health and Safety
- Environmental Protection
- Planning
- Building Control
- Private Sector Housing
- Housing and Council Tax Benefit Fraud

Why Enforcement Action is important

Enforcement Action is an integral part of the services that we operate. At the heart of the legislative framework, which defines our service is the need to protect public health or the environment for the wider public benefit.

In other areas, such action is designed to protect the public purse and ensure the proper use of resources for the wider public benefit.

Principles of Good Regulation

For the purpose of this document, this includes the general principles for good enforcement within the Enforcement Concordat (outlined below) and the key principles within the Regulators code (April 2014) which specify:

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

In determining the nature of enforcement action to be taken, the investigation should ensure that any sanction or penalty should:

- Aim to change the behaviour of the offender
- Aim to eliminate financial gain or benefit from non-compliance
- Be responsive and consider what is appropriate for the particular offender and regulatory issues, which can include punishment and the public stigma that can be associated with a criminal conviction
- Be proportionate to the nature and seriousness of the offence and the harm caused
- Aim to restore the harm caused by the regulatory non-compliance where appropriate
- Aim to deter future non-compliance

The five principles of good regulation are:

- Transparency;
- Accountability;
- Proportionality;
- Consistency; and
- Targeted only at cases where there is a need for action.

Transparency

- We will communicate in plain English or in the appropriate language or method
- In most circumstances we will ensure that people affected by formal action are informed of what is planned, and allow for discussion and time to respond before the action is taken.

- Where practicable we will also give them a named officer's contact details or when dealt with by a team the teams details. These arrangements must have regard to legal constraints and requirements.
- When a notice is served it will say what needs to be done, why, and by when, and why the notice is necessary
- We will make a clear distinction between legal requirements and recommended works.

As part of our commitment to equality we will use the following:

- Where businesses or the public do not have English as a first language we will offer translations of correspondence.
- We also use INTRAN, the Interpretation and Translation Agency for the Public Services of Norfolk covering telephone interpreting, face to face interpreting, sign language and lip speaking service.
- We can provide large print documents and Braille
- We can provide audio information
- Documents can be emailed

Accountability

Officers will actively work with businesses and the public to advise and to assist with compliance and complaints.

- Officers will show their identification (and authorisation if requested) at the outset of every visit and explain the reason for the visit, unless the nature of the investigation requires otherwise.
- The whole range of enforcement activities will be dealt with as promptly and efficiently as possible in order to minimise time delays.
- We have a range of mechanism to enable and regularly invite, receive and take on board customer feedback, including, for example, through customer satisfaction surveys of those we regulate and the Councils corporate complaints procedure.

Proportionality

- Any action taken will be proportionate to the breach or wrongdoing. In considering what action to take, the Council will look at factors including the nature and seriousness of the offence; the risk to health, safety and the environment and the need to protect the public and the public purse as well as

the relevant criteria set out in the “Enforcement Activities” section of this document.

- In some cases, the council may consider that the most appropriate course of action is prosecution. Where this is the case, the Council will consider the sufficiency of the evidence and whether a prosecution is in the public interest.

Consistency

- Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends.
- There are arrangements in place to ensure discussion and comparison of enforcement decisions by the Officers.
- All Officers undertaking enforcement duties will be suitably trained, qualified and authorised to ensure that they are fully competent to undertake their enforcement duties.

Targeted

- All enforcement action will be primarily targeted towards those situations that give rise to the most serious risks, where the risks are least well controlled and against deliberate or organised crime. Other factors also determine priorities for enforcement activity, including Government targets and priorities, new legislation, national campaigns and public concerns.
- Any enforcement action will be directed against those responsible for a breach. Where several individuals have responsibilities, enforcing authorities may take action against more than one when it is appropriate to do so in accordance with this policy.
- By having a coherent and robust intelligence system, effective strategies can be formed to enable and co-ordinate solutions to particular problems. This enables the identification of new, current and emerging issues, allowing provision of strategic and tactical direction on how the issues can best be tackled. Activities are targeted based on general or specific risks identified via trends, history or specific incidents. Enforcement Agencies exchange information as part of their partnership work in reducing crime and disorder.
- The Council will also share information across its services where it is authorised to do so.

Corporate Enforcement Board

The Council will take a multi-disciplinary approach to complex enforcement cases to ensure that it uses the most appropriate legislation/action to secure a satisfactory resolution of the issue. The Council Enforcement Board co-ordinates enforcement activities across all the services, those cases identified by the Board are dealt with as high priority.

Standards

The Council will draw up clear standards, setting out the level of service and performance that customers can expect to receive. We will review performance regularly and publish results in line with the corporate performance framework.

The Corporate Enforcement Policy will be subject to review at least every three years, but the plan may be reviewed on a more regular basis if circumstances dictate.

Complaints about the service

The Council has a well publicised, effective and timely complaints procedures easily accessible to business, the public, employees and consumer groups. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely time-scales involved.

Conflict of Interest in Enforcement Matters

Where investigating enforcement action involving the enforcing authority itself is responsible, or it involves the activities related to an employee or Member of the Council, then the Chief Executive or Section 151 officer will be informed of serious breaches without delay or in cases where formal action is being considered. Information will be released as appropriate and will be specific to each service area.

The Council's Constitution contains the Members Code of Conduct and the Employee's Code of Conduct which covers the conduct of Member and Officer including declaration and conflicts of interest.

Enforcement Activities

All enforcement action, whether informal or formal, will be carried out in accordance with the principles set out in this Policy. In deciding to take formal action and if so what type of action to take, officers will consider the following criteria:

- the nature and seriousness of the offence;

- the consequences of non-compliance in terms of risk to people, property, the community or the environment;
- the individual's or company's past history in terms of compliance;
- confidence in management, level of awareness of statutory responsibilities and willingness to prevent a recurrence;
- the likely effectiveness of the various alternative enforcement options;
- the public interest, public expectation and the importance of the case in setting a precedent;
- the application of any national or local guidance to the matter in question;
- information received following liaison with other external enforcing agencies;
- relevant case law and guidance;
- the likelihood of the offender being able to establish a defence;
- the consumer/complainants attitude towards formal action;
- the information received following liaison with other authorities;
- the reliability of witnesses.

Enforcement Actions

Where breaches of the law exist, informal action may be taken in the first instance where the officer is satisfied that informal action will be effective. In deciding whether informal action is appropriate, account will be taken of factors including whether the breach is a first occurrence, the seriousness of the risk to public health, safety, amenity or the environment and any loss to the public purse.

Where informal action has not been successful, or where it is not considered appropriate-formal action may be taken

Statutory Notices and Orders

Statutory Notices are legal documents normally requiring the recipient to carry out work or to cease specified activities, to ensure compliance with legislation. They are issued by the officer to whom authority is delegated by the Council. A wide variety of Notices/Orders are provided in the legislation enforced by the Council, therefore specific procedures for their issue are necessary. These are set out in the service area enforcement protocols.

Prosecution

The decision as to whether to prosecute (or offer Simple Caution) will always be made following a case conference. Each case will be considered on its own facts and merits. All the circumstances surrounding the case will be considered including the social benefits and costs associated with bringing the matter to the attention of the Courts.

Legal advice will be taken to ensure that only those cases presenting a realistic prospect of conviction will be pursued. Due regard will be made to the availability of any defenses and to any explanation, apology or other issue referred to by the suspect.

Simple Cautions

A Simple Caution may be used as an alternative to prosecution for first time minor offences. The aim of a Simple Caution is to deal quickly and simply with offences, to save court time and reduce the likelihood of re-offending.

A decision to offer a Simple Caution must be made having regard to:

- Home Office circular 30/2005 Cautioning of Offenders;
- Guidance to Police Officers and Crown Prosecutors issued by the Director of Public Prosecutions;
- LACORS Guidance on Cautioning of Offenders

If the offender fails to admit the offence and/or does not agree to the Simple Caution, the case may be referred for prosecution

Publication, Consultation and Revision

The Policy will be published by the Council, and made available through its website.

This Enforcement Policy will be reviewed and updated whenever there are changes to relevant legislation or centrally issued guidance. The review will take account of changes in the law, operational experience and feedback from individuals and businesses.