



**South
Northamptonshire
Council**

Cherwell
DISTRICT COUNCIL
NORTH OXFORDSHIRE

CHERWELL DISTRICT COUNCIL & SOUTH NORTHAMPTONSHIRE COUNCIL

ENFORCEMENT POLICY

Enforcement Policy

Date of Issue: (date)

Date approved: (date)

Introduction: The Council's Statement

This policy sets out the Council's approach to enforcement.

The policy sets out what businesses and others who are regulated by the Council can expect from enforcement officers. The Council aims to comply with the principles of the Regulators Code which was published in July 2013.

The Council will use a consistent and proportionate approach to enforcement that is targeted and contributes to achieving the Council's priorities and policy aims and meets the needs of the community.

Enforcement means the actions and activities that the Council's officers carry out as regulators. This includes advisory visits and assisting with compliance as well as formal enforcement action. The Council is committed to equitable enforcement practice, promoting proportionate, consistent and targeted regulatory activity.

Supporting these principles does not detract from our core purpose to protect the vulnerable, the environment and to meet any other objective laid down in law. The Council will talk to, and work openly and constructively with those it regulates so that it can build relationships based on trust and understanding.

The Council fully supports the Government's commitment to reduce regulatory burdens and support compliant business growth. This will give businesses greater confidence to invest and grow locally, regionally and internationally.

The Council expects most businesses to comply with the law, and will therefore aim to help businesses to achieve that objective. The Council will however take firm action against those that flout the law or act irresponsibly. In this way the Council aims to ensure a safe and fair trading environment for compliant businesses.

The Council will consult businesses and other interested parties on the development of clear standards, which set out levels of service and performance that residents, businesses, and visitors to the district, can expect to receive. Each year details of the Council's performance will be published on the Council's website.

General Principles

1 How did the Council develop this policy?

1.1 Before publishing this policy, the Council consulted with businesses, their associations and forums, the NEP, and local Councillors. As well as consulting with the Council's community this policy was approved on (date) by (committee) and issued on (date).

1.2 The Council is committed to good enforcement practice. In addition some of its service areas are required by law to follow the Regulators Code principles.

1.3 There are other laws which the Council has to abide by to ensure that it respects human rights, equality and so that it does not discriminate against individuals or organisations.

1.4 Appendix A provides more detail on the laws that have influenced development of this policy.

2 What is this policy for?

2.1 This policy communicates the Council's policy in respect of its approach to dealing with non-compliance to:

- a) those affected by its activities; and
- b) officers of the Council

2.2 The Council's officers will be suitably qualified and authorised to carry out regulatory activities and to administer proportionate and effective remedies. Where work is undertaken outside of normal office hours the principles of this policy will still be observed.

3 When does this policy apply?

3.1 This policy is an overarching policy which shows how the Council is committed to the fundamental principles of good enforcement. It applies to all of the Council's regulatory services.

3.2 For some of the Council's services there are more detailed policies which relate to specific laws, service standards and procedures that it has to follow. These provide businesses and the community with more detail on the services that the Council provides, and are listed in Appendix B.

4 Our approach to dealing with non-compliance

4.1 When the Council identifies a breach of the law the action it will take will depend on the gravity and nature of the offence, and the urgency with which it needs dealing with. In some cases the Council will respond with informal action and officers may offer advice, information and guidance to help secure compliance.

4.2 Should the Council's advice and assistance be rejected the Council will have to use more formal action, such as the service of a legal notice or prosecution for a specific offence. If formal enforcement action is necessary it will be appropriate and will depend on the seriousness of the breach. Any enforcement action that the Council might take is detailed in Appendix C.

4.3 The Council will take particular care to work with small businesses, community and voluntary groups and individual residents so that they can meet their legal obligations.

4.4 Officers will clearly explain:

- what the non compliance item or activity is
- the advice being given
- the actions required or decisions taken and
- the reasons why these were taken

4.5 Subject to paragraph 4.6 below, officers will provide an opportunity for dialogue with business and others about the advice, requirements and decisions to ensure that they are proportionate and consistent.

4.6 In cases where:

- there is a serious breach and immediate enforcement action is required
- the offering of dialogue would defeat the purpose of the enforcement action, paragraph 4.5 will not apply

4.7 Officers will communicate clearly and confirm formal action in writing. All communication will be clear, consistent and timely. The difference between legal requirements and advice and guidance will be clear. Email may be used.

4.8 All officers will be authorised to exercise statutory functions on behalf of the Council. Officers will carry a card with them that can be produced on request to confirm their authority to carry out inspections, investigations and to enter premises. Full details of how officers are authorised are contained within the Councils Constitution in the Scheme of Delegation. The Scheme of Delegation is published on each Council's website at:

http://www.southnorthants.gov.uk/Part_10_Responsibility_for_Functions_October_2013.pdf and at:

<http://modgov.cherwell.gov.uk/documents/s19280/CDC%20Council%20211013%20-%20Revised%20Officer%20Delegations.pdf?txtonly=1> and .

Details of the person(s) managing investigations/making decisions are covered in the constitution.

4.9 The majority of enforcement functions will be the responsibility of the Council's officers, but there may be occasions where there is a shared enforcement role, or the Council may need to transfer the case details to another enforcement body for their further action. This will be clearly communicated to the business or other offender.

4.10 In cases where there is a breach of the law connected with premises or activities which the Council controls or is affiliated with, this enforcement policy will apply. Where the Council is unable to take action because the law does not allow it to, the matter will be considered by an independent officer and a clear and transparent course of action taken to ensure that compliance is secured.

4.11 Officers will carry out enforcement in a fair and considered manner and the Council will make sure it treats everyone equally regardless of disability, race, age, sex, sexuality or religion. Information about the Councils' equality and diversity policy can be found at:

<http://www.southnorthants.gov.uk/1492.htm> and at <http://www.cherwell.gov.uk/index.cfm?articleid=1413>

An Equality Impact Assessment of this policy has been carried out.

4.12 Enforcement notices will be placed on the Council's public register if they relate to matters of public concern, or the Council is required by law to do so.

4.13 The Council reserves the right to publish details about other enforcement action that it has taken, e.g. a prosecution, if the Council believes it is in the public interest, or will act as a deterrent to others.

5 How does the Council decide what action it will take?

5.1 The action that the Council chooses to take depends upon the particular circumstances and the approach of the business or regulated person to dealing with the breach.

5.2 The Council is committed to taking firm action against those that deliberately or persistently choose not to comply with the law.

5.3 The Council is committed to creating an environment where businesses and others who ask for advice about non-compliance, or where they show a willingness to resolve the non-compliance, can be confident that this will not trigger enforcement action.

6 What factors influence the Council's response to a breach?

6.1 The Council will choose proportionate approaches based on relevant factors including for example, regularity and/or seriousness of the offence(s), and the business size and capacity.

6.2 Where the Council is considering its response to a breach for a business in a Primary Authority partnership it will have regard to the advice and support of the primary authority. Details of primary authority partnerships can be found here: <https://www.gov.uk/government/organisations/better-regulation-delivery-office>

6.3 Where the Council has provided advice or guidance to a business or others it may check that non-compliance has been rectified. In cases where the breach has not been rectified the Council will reconsider its approach to enforcement taking into account the reasons that the business or others give for the failure to comply.

6.4 The Council may take more formal action if the business or other has not shown any willingness to comply. A clear explanation of any decision will be given to the business or other.

6.5 On occasions details of a breach may be referred to another regulator. A clear explanation of any decision will be given to the business or other.

7 Responding to complaints about non compliance

When responding to complaints the Council will:

- include details of any risk scheme used to determine whether individual complaints require investigation.
- give advice regarding how different departments may become involved in a breach i.e. a non compliance with a licence for breach of noise condition may also be reviewed by ASB team or statutory notices issued, etc.

8 How do we carry out our investigations?

8.1 All investigations will be carried out in line with one or more of the following pieces of legislation:

- Police and Criminal Evidence Act 1984
- Criminal Procedure and Investigations Act 1996
- Regulation of Investigatory Powers Act 2000

- Criminal Justice and Police Act 2001
- Human Rights Act 1998

and in accordance with any associated guidance or codes of practice, in so far as they relate to the Council.

8.2 These Acts and associated guidance control how evidence is collected and used and give a range of protections to citizens and potential defendants. Any amendments to the relevant Acts since publication of this policy will be taken into account and adhered to.

8.3 Authorised officers will comply with the legislation under which they are acting and with any associated guidance or codes of practice.

8.4 Any offence of Obstruction will be dealt with in accordance with the law that the officer is acting under.

8.5 Cases will be reviewed regularly and complainants, offenders and witnesses will be regularly informed and updated on the progress of the investigation.

9 Decisions on enforcement action

9.1 The actions that can be taken by the Council are set down in law and include:

- a) Compliance advice, guidance and support;
- b) Voluntary undertakings;
- c) Statutory (legal) notices;
- d) Financial penalties;
- e) Injunctive actions/enforcement orders etc;
- f) Simple cautions;
- g) Prosecution; and
- h) Refusal/suspension/revocation of licences

A detailed explanation of the types of action listed can be found in Appendix C

9.2 Factors which the Council may consider when making a decision with regard for Macrory Principles include:

- a) aiming to change the behaviour of the offender;
- b) aiming to eliminate any financial gain or benefit from non-compliance;
- c) being responsive and considering 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;
- d) being proportionate to the nature of the offence and the harm caused;
- e) aiming to restore the harm caused by regulatory non-compliance, where appropriate; and,
- f) aiming to deter future non-compliance.

9.3 The Council will consider the effect of risk on all parties involved at every stage of the decision making process when it decides to take enforcement action.

9.4 Where available the Council will use decision making models. For example, for health and safety enforcement it will use the HSE's Enforcement Management Model for

enforcement under the Licensing Act 2003 it will consider the guidance issued under Section 182, and so on.

9.5 Where necessary the Council will consult with other organisations before taking action. In accordance with the law the Council will notify the Primary Authority of any proposed enforcement action.

9.6 Any decision taken on enforcement action will be monitored and reviewed.

9.7 Where the Council takes enforcement action it will provide a timely explanation in writing of any rights to representation or rights to appeal, and practical information on the process involved to the business or others.

10 Review of this policy

10.1 The Council will keep this policy under review taking into account changes in legislation or guidance.

10.2 Before the Council changes the policy it will consider the impact on business and engage with business representatives. The Council has a consultation strategy to ensure that it engages with businesses, the community and others when developing policies and service standards

11 Comments, Complaints & Appeals

The Council has a policy for comments and complaints about its services and conduct of its officers. This is published on the relevant Council's website at <http://www.southnorthants.gov.uk/Servicepage353.htm> and at <http://www.cherwell.gov.uk/index.cfm?articleid=3985&contactid=9558#email>

11.2 Those regulated may challenge or complain about a regulator's enforcement decision, or about a failure to comply with the regulatory code.

11.3 All complaints and challenges will be considered impartially, objectively and transparently.

11.4 Where a legal right of appeal exists against enforcement action taken the offender will be given clear simple guidance in writing on how and where they can appeal against the decision.

Appendix A: Legislation, guidance and codes that influenced the preparation of the Enforcement Policy

A. Principles of Good Regulation

The Legislative and Regulatory Reform Act 2006, Part 2, requires the Council to have regard to the Principles of Good Regulation when exercising a specified regulatory function¹. For local authorities, the specified functions include those carried out by environmental health and licensing services.

The Council will exercise its regulatory activities in a way which is:

- **Accountable** – the Council's activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures.
- **Consistent**: to ensure that similar issues are dealt with in an equitable way, making full use of guidance produced by Government and other agencies.
- **Fair**: to ensure a fair and even-handed approach.
- **Proportional**: to consider whether proposed action is proportionate considering all relevant factors, including the severity of the offence, likely outcome and costs of proceedings.
- **Transparent**: to ensure enforcement action to be taken by the Council is easily understood. Clear distinctions will be made between legal requirements and recommendations about good practice which are not compulsory.
- **Objective**: to ensure that decisions are not influenced by the ethnic origin, gender, religious or political beliefs, or sexual preferences or mental or physical ability of the offender, complainant or witness.

Where any rights contained within the Human Rights Act 1998 may be affected, officers should consider whether the action is both necessary and proportionate, and ensure that the provisions of the Act are taken into consideration where applicable.

B. Regulators' Code

The Council has had regard to the [Regulators' Code](#) in the preparation of this policy. In certain instances the Council may conclude that a provision in the Code is either not relevant or is outweighed by another provision. The Council will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

C. Human Rights Act 1998

The Council is a public authority for the purposes of the Human Rights Act 1998. The Council therefore applies the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is had to the right to a fair trial and the right to respect for private and family life, home and correspondence.

D. Data Protection Act 1998

Where there is a need for the Council to share enforcement information with other agencies, it will follow the provisions of the Data Protection Act 1998.

E. The Code for Crown Prosecutors

When deciding whether to prosecute the Council has regard to the provisions of [The Code for Crown Prosecutors](#) as issued by the Director of Public Prosecutions.

The Code for Crown Prosecutors is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases. The Code sets out two tests that must be satisfied; commonly referred to as the 'Evidential Test' and the 'Public Interest Test':

a. Evidential Test - is there enough evidence against the defendant?

When deciding whether there is enough evidence to prosecute, the Council will consider what evidence can be used in court and is reliable. The Council must be satisfied there is enough evidence to provide a "realistic prospect of conviction" against each alleged offender.

b. Public Interest Test - is it in the public interest for the case to be brought to court?

The Council will balance factors for and against prosecution carefully and fairly, considering each case on its merits. The public interest factors that the Council will take into account are detailed under the enforcement options available to us in Appendix C.

F. Regulatory Enforcement and Sanctions Act 2008 ('the RES Act')

The Regulatory Enforcement and Sanctions Act 2008, as amended, established the Primary Authority scheme. The Council will comply with the requirements of the Act when it is considering taking enforcement action against any business or organisation that has a primary authority, and will have regard to guidance issued by the Secretary of State in relation to Primary Authority.

Appendix B: Service Specific Policies

Anti-fraud & Corruption Strategy
Anti-social Behaviour Policy & Procedures
Caravan Site Licensing Policy
Environmental Crimes Policy
Food Safety Enforcement Policy
Gambling Act 2005 Statement of Licensing Policy
Hackney Carriage & Private Hire Licensing Policy
Health & Safety Enforcement Policy
House in Multiple Occupation (HMO) Policy
HMO Standards
Housing Health and Safety Rating Scheme Policy
Housing (Private Sector) Policy
Housing Renewal Policy
Licensing Act 2003 Statement of Licensing Policy
Money Laundering Avoidance Policy
Noise Investigation Procedure
Noise Policy
Planning Policy
Prosecution Policy
Recovery of Costs Policy
Sex Establishment Policy & Conditions
Street Trading Policy & Conditions

Appendix C: Enforcement Actions available to the Council in Respect of Criminal and Civil breaches

A. Compliance Advice, Guidance and Support

The Council uses compliance advice, guidance and support as a first response in the case of many breaches of legislation that are identified. Advice is provided, sometimes in the form of a warning letter, to assist individuals and businesses in rectifying breaches as quickly and efficiently as possible, avoiding the need for further enforcement action. A warning letter will set out what should be done to rectify the breach and to prevent re-occurrence. If a similar breach is identified in the future, this letter will be persuasive in considering the most appropriate enforcement action to take on that occasion. Such a letter cannot be cited in court as a previous conviction but it may be presented in evidence.

The Council recognises that where a business has entered into a partnership with a primary authority, that authority will provide compliance advice and support. The Council will take such advice into account when considering the most appropriate enforcement action for it to take. It may discuss any need for compliance advice and support with the primary authority.

Where more formal enforcement action such as a simple caution or prosecution is taken, the Council recognises that in certain circumstances, in order to prevent further breaches, there is likely to be an ongoing need for compliance advice and support.

B. Voluntary Undertakings

The Council may accept voluntary undertakings that breaches will be rectified and/or recurrences prevented. The Council will take any failure to honour voluntary undertakings very seriously and enforcement action is likely to result.

C. Statutory (Legal) Notices

In respect of many breaches, the Council has powers to issue statutory notices. These include:

- Stop Notices;
- Planning Notices (see https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/321033.pdf)
- Prohibition Notices;
- Emergency Prohibition Notices;
- Improvement Notices.

Such notices are legally binding. Failure to comply with a statutory notice can be a criminal offence and may lead to prosecution and/or, where appropriate, the carrying out of work in default.

A statutory notice will clearly set out actions which must be taken and the timescale within which they must be taken. It is likely to require that any breach is rectified and/or prevented from recurring. It may also prohibit specified activities until the breach has been rectified and/or safeguards have been put in place to prevent future breaches. Where a statutory notice is issued, an explanation of the appeals process will be provided to the recipient.

Some notices issued in respect of premises may be affixed to the premises and/or registered as local land charges.

D. Financial penalties

The Council has powers to issue fixed penalty notices in respect of some breaches. A fixed penalty notice is not a criminal fine, and does not appear on an individual's criminal record. If a fixed penalty is not paid, the Council may commence criminal proceedings (if convicted this will result in a criminal record), or take other enforcement action in respect of the breach.

If a fixed penalty is paid in respect of a breach the Council will not take any further enforcement action in respect of that breach. Payment of a fixed penalty does not provide immunity from prosecution in respect of similar or recurrent breaches.

The Council is only able to issue fixed penalty notices where it has specific powers to do so. If fixed penalty notices are available, their issue is at the Council's discretion. In some circumstances, in particular where breaches are serious or recurrent, it may be that prosecution is more appropriate than the issue of a fixed penalty notice.

E. Injunctive Actions, Enforcement Orders etc.

In some circumstances the Council may seek a direction from the court (in the form of an order or an injunction) that a breach is rectified and/or prevented from recurring. The court may also direct that specified activities be suspended until the breach has been rectified and/or safeguards have been put in place to prevent future breaches.

Failure to comply with a court order constitutes contempt of court, a serious offence which may lead to imprisonment.

The Council is required to seek enforcement orders after issuing some enforcement notices, providing the court with an opportunity to confirm the restrictions imposed by the notice. Otherwise, the Council will usually only seek a court order if it has serious concerns about compliance with voluntary undertakings or a notice.

F. Simple Caution

The Council has the power to issue simple cautions (previously known as 'formal cautions') as an alternative to prosecution for some less serious offences, where a person admits an offence and consents to the simple caution. Where a simple caution is offered and declined, the Council is likely to consider prosecution.

A simple caution will appear on the offender's criminal record. It is likely to influence how the Council and others deal with any similar breaches in the future, and may be cited in court if the offender is subsequently prosecuted for a similar offence. If a simple caution is issued to an individual (rather than a corporation) it may have consequences if that individual seeks certain types of employment.

Simple cautions will be used in accordance with Home Office Circular 016/2008 and other relevant guidance.

G. Prosecution

The Council may prosecute in respect of serious or recurrent breaches, or where other enforcement actions, such as voluntary undertakings or statutory notices have failed to secure compliance. When deciding whether to prosecute, the Council has regard to the provisions of [The Code for Crown Prosecutors](#) as issued by the Director of Public Prosecutions.

Prosecution may be considered where the Council is satisfied that it has sufficient evidence to provide a realistic prospect of conviction against the defendant(s).

Before deciding that prosecution is appropriate, the Council will consider all relevant circumstances carefully and have regard to the following public interest criteria:

- the public benefit;
- likelihood that the offence will be repeated or continue;
- whether, although not serious in itself, the offence is widespread in the area where it was committed;
- whether alternative formal action could be taken other than prosecution;
- the explanation offered/ mitigating circumstances.

A successful prosecution will result in a criminal record. The court may impose a fine or a community penalty and in respect of particularly serious breaches, a prison sentence. The court may order the forfeiture and disposal of non-compliant goods and/or the confiscation of any profits which have resulted from the breach. Prosecution may also lead, in some circumstances, to the disqualification of individuals from acting as company directors or from working in certain areas and/or industries. In many cases, costs will also be awarded.

H. Refusal/suspension/revocation of licences

The Council issues a number of licences and permits. It also has a role to play in ensuring that appropriate standards are met in relation to licences issued by other agencies. Most licences include conditions which require the licence holder to take steps to ensure that, for example, a business is properly run. Breach of these conditions may lead to action being taken in relation to the licence/licence holder. This action can vary from adding/amending licence conditions to reviewing the licence; and from suspension to revocation of the licence.

In the event of a licence being refused, suspended or revoked, there is in most cases a right of appeal (details of which are notified to the licensee at the time of the relevant action being taken).

When considering future licence applications, the Council may take previous breaches and enforcement action into account.