



Ashfield

DISTRICT COUNCIL

PLACE AND COMMUNITIES
Environmental Health and Community
Protection

STATEMENT OF ENFORCEMENT POLICY

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1.0 INTRODUCTION

The enforcement policy provides guidance on the range of options that are available to achieve compliance with legislation enforced by officers within Ashfield District Council's Place and Communities Directorate – Environmental Health and Community Protection sections. The policy should not be considered in isolation and due consideration must also be considered in relation to considered in conjunction with other corporate policies and procedures

The Council believes that most businesses, duty holders, license holders and the public want to abide by the law and will assist them where possible to achieve this. Notwithstanding this, the use of effective and well-targeted regulation is essential in promoting fairness and protection from harm. Appropriate regulation and enforcement should be proportionate and flexible enough to allow and encourage economic progress.

The Council adopts a positive and proactive approach towards ensuring compliance by:

- openness, helpfulness, having complaints policies, proportionality and consistency
- helping and encouraging regulated entities to understand and meet regulatory requirements more easily; and
- responding proportionately to regulatory breaches.

The Council aims to deliver desirable regulatory outcomes and achieve higher levels of voluntary compliance. The approach outlined in this policy demonstrates the Council's commitment to a proportionate response which successfully tackles criminal behaviour which has a damaging effect on legitimate businesses, residents and visitors to Ashfield.

There have been several drivers that have influenced the regulatory environment within which the Council operates, including :-

- the Hampton Review *'Reducing Administrative Burdens: Effective Inspection and Enforcement'* which set out a vision of a regulatory system that is based around risk and proportionality
- the Macrory Review *'Regulatory Justice: Making Sanctions Effective'*, conducted as a result of the Hampton Review, set
- out a blueprint for transforming the regulatory sanctioning regime in the UK. The Council is committed to implementing the Hampton agenda
- the *Regulatory Enforcement and Sanctions Act 2008* is an important element in delivering that commitment. It seeks to advance Hampton's vision of a regulatory system that is risk-based, consistent, proportionate and effective

This published Enforcement Policy is required by the Regulatory Enforcement and Sanctions Act 2008, adopting the principles of, and with regard to:

- Regulators' Code - April 2014, brought in as a requirement of the Legislative and Regulatory Reform Act 2006
- The Statutory Code of Practice for Regulators, December 2007
- Guidance to the Regulatory Enforcement and Sanctions Act 2008
- Recommendations in the Hampton Report
- Local Better Regulation Office advice and guidance
- Legislative and Regulatory Reform (Regulatory Functions) Order 2007
- The Enforcement Concordat: Good Practice Guide for England and Wales
- The Human Rights Act 1998

The enforcement policy will be updated periodically or when additional guidance is issued for instance by Regulatory Delivery.

Additionally complementary policy guidance will be used to assist in specific regulatory activity, for example the Enforcement Management Model and Health and Safety Executive's Enforcement Policy Statement will be taken into account when considering enforcement action in relation to health and safety offences.

1.1 Equalities Statement

An equalities impact assessment has been undertaken in relation to this policy which takes account of those affected by it.

The policy will be administered in accordance with the Council's Equality Position Statement 2017 and associated policies which states that the Council is committed to ensuring that individuals and groups are not discriminated against on the grounds of a protected characteristic:

- age
- being or becoming a transsexual person
- being married or in a civil partnership
- being [pregnant](#) or having a child
- [disability](#)
- race including colour, nationality, ethnic or national origin
- religion, belief or lack of religion/belief
- sex
- sexual orientation

An equalities impact assessment has also been undertaken for the Division.

1.2 Scope

The scope of this enforcement policy includes action and interventions associated with the following :-

- anti-social and criminal behaviour
- air quality, including regulation of pollution from factories and homes
- statutory nuisance, dog control and contaminated land,
- pest management and control
- alcohol, entertainment and late night refreshment licensing and its enforcement
- animal licensing, health and beauty licensing and/or registration
- hygiene of businesses selling, distributing and manufacturing food and the safety and fitness of food in the premises
- improving health and safety in the workplace, including smoke free legislation
- fly tipping, litter, accumulations of rubbish on private land and dog fouling
- graffiti, fly posting, unregulated distribution of literature (flyers) and illegal placement of waste receptacles on streets, illegal signs (on street furniture) and abandoned shopping trolleys
- nuisance vehicles (commercial sales and street repairs), abandoned vehicles (un-taxed or poorly parked vehicles)
- compliance with waste transfer legislation and Duty of Care (commercial and domestic)

2.0 AIMS

2.1 Customer Focus.

As part of Ashfield District Council's commitment to customer focus, the Council continuously seek to improve the service provided to its customers. Where reasonable, the Council will make provision for the particular interests of consumers, business owners, employers and the public. For example, officers may visit businesses outside normal office hours at a time when the necessary people are available.

Translators may be used, where appropriate.

2.2 Proportionality

The Council will take account of both national priorities for local government enforcement together with local priorities based on evidence or emerging need. The Council will direct enforcement towards matters with the greatest risk to public health, safety, animal health, the economic or environmental wellbeing of the community, or to the other stated priorities of Ashfield District Council.

Where a potential breach of the law is encountered, the Council will consider the available facts and decide whether to undertake a more detailed investigation into possible criminal offences or to take other action. Where there is a shared enforcement role with another body, liaison will take place at an early stage.

The Council will ensure that officers who carry out enforcement activities are authorised under the legislation concerned, are assessed as competent to conduct the duties required, and are aware of, and comply with, the general principles of criminal law and evidence gathering, including the Human Rights Act 1998.

2.3 Consistency

The Place and Communities Directorate will maintain systems designed to ensure, that enforcement activities are carried out to a consistent standard, and will monitor compliance with this enforcement policy where practically possible.

With regard to the food hygiene and health and safety functions, the systems include monitoring of officers work by line managers, participation by officers in consistency exercises designed to compare enforcement decisions and recording of reasons/decisions concerning enforcement actions by officers.

2.4 Helpfulness

Whilst responsibility for compliance with legislation falls to businesses and individuals, the Council will provide relevant advice and guidance. The Council will take account of the circumstances of small regulated entities, including any difficulties they may have in achieving compliance.

The Council will provide information of relevant requirements through appropriate communication channels such as publicity and information leaflets. Officers will identify

themselves by name, and a contact telephone number will be provided.

The Council will provide appropriate advice or signposting, where possible, in response to requests. Officers will consider statutory codes of practice and other relevant 'good practice' guidelines or standards as well as current legislation. Where appropriate, officers will highlight forthcoming legal developments.

2.5 Openness

Officers will clearly distinguish between requirements to comply with legal obligations and other recommendations.

Where appropriate we endeavour to discuss the circumstances surrounding an offence with those suspected of a breach and will take these into account when deciding on the best approach. In some cases this may not be possible, for example where immediate action is required to prevent subsequent breaches or where to do so would defeat the purpose of the proposed enforcement action.

The Council will always be prepared to listen to any representations made by or on behalf of a defendant and a decision to prosecute will be kept under constant review.

The Council will liaise with other enforcement agencies if the need arises and consult, as appropriate, before deciding the appropriate course of action.

2.6 Targeting

Targeting means making sure that regulatory effort is directed primarily towards those whose activities give rise to the most serious risk or where the risks are less well controlled. Action will be primarily focused on those directly responsible for the risk and who are best placed to control it.

Factors which determine what takes priority include response to complaints from the public, local and national priorities, the existence of statutory powers and the assessment of risk (e.g. the potential for a particular breach of regulations to cause environmental damage, effect of anti-social behaviour or damage to a person's health and/or safety).

Management actions are important in the assessment of risk. Repeated incidents or breaches of regulatory requirements, which are related, may be an indication of an unwillingness to change behaviour, or an inability to achieve sufficient control for instance. A relatively low hazard site or activity poorly managed has potential for greater risk than a higher hazard site or activity where proper control measures are in place.

Where formal enforcement action is necessary the person responsible should be held to account. Where several persons share responsibility, action will be taken against all parties or those who can be regarded as primarily in breach.

2.7 Feedback

The Council's complaints policy sets out how to complain or express dissatisfaction about the service provided.

Any applicable rights of appeal against enforcement decisions will be made known to the affected persons, at the time and in writing.

Comments on this enforcement policy are welcomed.

3.0 ENFORCEMENT FOR COMPLIANCE

3.1 Inspection and Intervention Programme

Privately owned residential, business premises and operations, including local authority premises, are risk assessed to inform an inspection and/or intervention programme, and the level of risk is reviewed regularly.

The Council will focus our greatest inspection effort on regulated entities where risk assessment shows that both:-

- a compliance breach or breaches would pose a serious risk to a regulatory outcome;
- there is high likelihood of non-compliance by regulated entities.

Inspection and intervention frequency will generally be risk based, but may additionally be determined by set, or prescribed intervals and additional interventions may take place as part of a local or national campaign working alone or with our partners.

Visits are also made to businesses for other reasons, such as advice, as a result of an allegation/complaint/information received or for a sample or test purchase, and may be without prior notice.

3.2 Sampling Programme

The purpose of sampling is to protect public health, contribute to National databases, to identify infringements and trends and to prevent contraventions.

A sampling programme sets out samples and test purchases taken in response to enquiries, as part of a planned survey/exercise or as a result of officer initiative.

3.3 Home Authority Principle/ Primary Authority Principle

It is Council policy to act as Home Authority for businesses which have their decision making base in Ashfield and which act in accordance with the responsibilities outlined in the Local Authorities Co-ordinating Body on Regulatory Services document "Home Authority Principle".

Officers will observe the above Home Authority Principle in respect of businesses with their decision making base outside of Ashfield by notifying the relevant Home Authority of relevant enquiries at the earliest practicable time and at their conclusion.

Officers will abide by Regulatory Delivery guidance concerning the Primary Authority scheme.

3.4 Statutory Notifications

Where appropriate, officers of the Council will report incidents and enforcement actions to relevant bodies, such as Department for Business, Energy and Industrial Strategy, Health and Safety Executive, the Competition and Markets Authority and the Environment Agency, and respond appropriately to notifications, such as alerts from the Food Standards Agency. Information will be shared with other regulators where it is appropriate to do so.

3.5 Enforcement and Investigatory Visits

When conducting enforcement visits, other than for test purchasing or covert purposes, officers will make their identity known and explain why they are there.

Officers may make combined visits with other agencies where there is a shared and complimentary enforcement role or known risk.

3.6 Enforcement in Local Authority Establishments

Officers will carry out enforcement within local authority run premises in a manner consistent with any other business.

Any serious breaches of law that may be detected in such establishments will be brought to the attention of the Chief Executive without delay.

Contract caterers that operate within Local Authority establishments will be assessed in accordance with the Food Law Code of Practice and be inspected accordingly.

4.0 ENFORCEMENT OF NON-COMPLIANCE

4.1 Levels of Enforcement Action:

Regulatory activities will be carried out in a way which is:

- Proportionate
- Accountable
- Consistent
- Transparent
- Targeted only at cases in which action is needed

In assessing what enforcement action is necessary and proportionate, consideration will be given to:-

- the seriousness of compliance failure
- the business's or individuals past performance and current practice/behaviour
- the risks being controlled
- whether formal action is proportionate
- legal, official or professional guidance
- the willingness of the business or the individual to prevent a recurrence of the problem and co-operate with officers
- whether it is in the public interest to prosecute
- the likelihood of success of the prosecution
- the local priorities of Ashfield District Council

Where the law has been contravened, there is a range of enforcement options available to seek compliance with the law. Under normal circumstances, a process of escalation will be used until compliance is reached. Exceptions would include:-

- serious risk to public health, safety, community safety or the environment
- risk to animal health or welfare, where the offences have been committed deliberately or negligently or involve deception, or where there is significant economic detriment

The sanctions or penalties that are used will:-

- aim to change the behaviour of the offender;
- aim to eliminate any financial gain or benefit from non-compliance;
- be responsive and consider 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;
- be proportionate to the nature of the offence and the harm caused;
- aim to restore the harm caused by regulatory non-compliance, where appropriate; and
- aim to deter future non-compliance

There are a large number of potential enforcement options. The level of the action taken varies from no action through to proceedings in Court. Examples of enforcement actions include the following:-

4.1.1 No Action

In certain circumstances, contraventions of the law may not warrant any action. Consideration will be given to whether the resultant cost of action would outweigh the detrimental impact of the contravention. A decision of *no action* may also be taken where formal enforcement is inappropriate in the circumstances, such as where a trader has ceased to trade, or the offender is vulnerable and formal action would seriously damage their wellbeing. In such cases we will advise the offender of the reasons for taking no action.

4.1.2 Informal Action and Advice

For minor breaches of the law we may give verbal or written advice and seek to resolve issues by means of mediation, or use of acceptable behaviour contracts. We will clearly identify any contraventions of the law and give advice on how to put them right, including a deadline by which this must be done. The time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of the non-compliance. Failure to comply could result in an escalation of enforcement action.

4.1.3 Warning Notices

Warning notices may be issued in appropriate circumstances.

In the case of Community Protection Notice under the Anti-social Behaviour, Crime and Policing Act 2014, a warning letter/notice must to be issued by law to the person whose conduct is complained about before the council can issue a Community Protection Notice.

4.1.4 Fixed Penalty Notices

Certain offences may be dealt with by Fixed Penalty Notices (FPN) where prescribed by legislation. They are recognised as a low-level enforcement tool avoiding a criminal record for the defendant. Where legislation permits, an offence may be dealt with by way of a FPN on first occasion, without issuing a warning. However, in the case of the Anti-social Behaviour, Crime and Policing Act 2014, an FPN can only be issued following the issue and subsequent breach of a Community Protection Notice and is to the case owners discretion.

4.1.5 Penalty Charge Notices

Penalty Charge Notices (PCN) are prescribed by certain legislation as a method of enforcement by which the offender pays an amount of money to the enforcer in recognition of the breach. Failure to pay the PCN will result in the offender being pursued in the County Court for non-payment of the debt or prosecution of the offender. A PCN does not create a criminal record and the Council may choose to issue a PCN without first issuing a warning where legislation allows.

4.1.6 Formal Notice

Certain legislation allows notices to be served requiring an individual or body to take specific actions, cease certain behaviour, activities or the use of premises (including residential premises). Notices may require activities to cease immediately, e.g. Hygiene Emergency Prohibition Notices and CPN's

Where such a notice is served, the correct legal procedure will be followed, which may include application to Magistrates Court for a Court Order. In other circumstances, the time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of the non-compliance. Where, despite the Notice recipients best efforts, it is not likely that a Notice will be complied with, a request for additional time to comply will be considered if legislation allows. All notices issued will include details of any applicable Appeals Procedures.

Certain types of Formal Notice allow works to be carried out in default. This means that if a Formal Notice is not complied with (a breach of the notice) the Council may carry out any necessary works to satisfy the requirements of the Formal Notice. Where the law allows, the Council will charge the person/business served with the Formal Notice for any cost incurred in carrying out the work.

4.1.7 Forfeiture Proceedings

This procedure, dealt with through an application in an appropriate court, may be used in conjunction with seizure and/or prosecution where there is a need to dispose of goods in order to prevent them re-entering the market place or being used to cause a further problem.

4.1.8 Seizure

Certain legislation enables officers to seize, confiscate or detain goods, equipment or documents, for example unsafe food, sound equipment that is being used to cause a statutory noise nuisance, unsafe products or any goods that may be required as evidence for possible future court proceedings. When we seize goods we will give a receipt to the person from whom the goods are taken and serve appropriate legal notices.

4.1.9 Injunctive Actions

Injunctions will be sought by the council, to deal with incidents whereby the case owner feels this is the appropriate course of action taking in all the circumstances and evidence. Injunctive action can include agreements and formal undertakings to secure compliance or to prevent actions being undertaken

4.1.10 Simple Caution

Simple Cautions are an alternative to prosecutions in appropriate cases. Simple Cautions are not criminal convictions and can only be issued if the defendant admits the offence, and the circumstances are such the interests of the public and justice would be better served without recourse to legal proceedings in the first instance. If the Simple Caution is not administered because the suspect refuses to accept it, the facts of the case will be reviewed again without the option of a Simple Caution, and a prosecution may result.

A record of the Caution will be sent, where appropriate to the Competition and Markets Authority Fair Trading and/or the Chartered Institute of Environmental Health, (primarily in respect of food hygiene, health & safety and licensing offences) and will be kept on file for 2 years. If the offender commits a further offence, the Caution may influence the Council's decision to take a prosecution. If during the time the Caution is in force the offender pleads guilty to, or is found guilty of, committing another offence anywhere in England and Wales, the Caution may be cited in court, and this may influence the severity of the sentence that the court imposes.

For details on the Home Office guidance (Circular 016/2008) visit:

<http://www.homeoffice.gov.uk>

4.1.11 Prosecution

A prosecution will normally ensue where the individual or organisation meets one or more of the following criteria:

- deliberately, negligently or persistently breached legal obligations,
- used an element of deception, theft or fraud made significant gain or caused significant loss
- deliberately or persistently ignored written advice or formal notices;
- endangered, to a serious degree, the health, safety or well-being of people, animals or the environment;
- assaulted or obstructed an officer in the course of their duties.

4.1.12 Proceeds of Crime Applications

Applications may be made under the Proceeds of Crime Act for confiscation of assets in serious cases. Their purpose is to recover the financial benefit that the offender has obtained from his criminal conduct. Proceedings are conducted according to the civil standard of proof. Applications are made after a conviction has been secured.

4.1.13 Restorative Justice

For relevant offences and in conjunction with schools, restorative justice may be considered as an alternate to issuing FPNs to children and young people under the age of 18 or may be included in the requirements of a Community Protection Notice. Examples of such action include:

- litter pick
- other forms of cleansing i.e. removal of graffiti or chewing gum, painting, desk scrubbing, etc. supervised by parent, school, officer or person duly authorised by Ashfield District Council
- letter of apology to victim

5.0 DETERMINING WHETHER A PROSECUTION OR SIMPLE CAUTION IS APPROPRIATE

5.1 Introduction

The Council will attempt to administer the requirements of legislation by advice and assistance wherever possible. Occasionally, however, it will be necessary to consider initiating legal proceedings.

Each case is unique and must be considered on its own facts and merits. However, the same general principles will be applied to every case. When deciding whether to prosecute the Council will have regard to the evidential test in the Code for Crown Prosecutors on Prosecution Policy.

A prosecution will not be started or continued unless there is sufficient admissible and reliable evidence that an offence has been committed by an identifiable person, and unless there is a realistic prospect of a conviction. Any lines of defence which are plainly open to or indicated by the accused and to the public interest will be considered.

5.2 The Public Interest Test

Factors for and against prosecution will be balanced carefully and fairly. Deciding on the public interest is not simply a matter of adding up the factors on each side but a consideration of how important each factor is in the circumstances of each case and an overall assessment made.

The following considerations are taken from the Code for Crown Prosecutors and adapted for public protection offences. Factors which are less relevant to public protection offences are not repeated here, but would still be considered if they were to be relevant.

Public Interest Factors in Favour of Prosecution

A prosecution is more likely when:

- a conviction is likely to result in a significant sentence or to result in a confiscation or any other order
- there is evidence that the offence was premeditated
- there is evidence that the offence was carried out by more than one person acting together

- the victim of the offence was vulnerable or has been left frightened;
- 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, or the suspect demonstrated hostility towards the victim based on any of those characteristics
- the risk or nuisance presented to individuals, the public, the trade (including unfair competition between traders), the farming community, animal health & welfare, or the environment is serious or widespread
- the 'defendant' has acted fraudulently/dishonestly, wilfully or negligently or insufficient steps have been taken to prevent the offence
- the 'defendant' was in a position of authority or trust or the offence was committed in the presence of, or near to, a child or vulnerable adult
- the 'defendant's' previous convictions or cautions are relevant to the present offence
- there are grounds for believing that the alleged offence is likely to be continued or repeated
- the outcome of the prosecution may serve an important, informative purpose or might establish an important legal precedent or might act as a warning to others or would have a significant positive impact on maintaining community confidence
- the defendant committed the offence while under an order of the court;

Public Interest Factors Against Prosecution

A prosecution is less likely if:

- the offence was committed due to a genuine mistake/ misunderstanding (this 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
- the 'defendant' has put right the loss or harm that was caused (but 'defendants' cannot avoid prosecution simply because they have offered compensation)
- 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 or order
- the defendant is considered vulnerable, 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, age of alleged defendant will be taken into consideration

5.3 Deaths at Work

Where there has been a breach of the law leading to a work-related death, the Council will consider whether the circumstances of the case might justify a charge of manslaughter. The Council will liaise with the Police, Coroners and the Crown Prosecution Service (CPS) and if they find evidence suggesting man-slaughter this will be passed to the Police or where appropriate the CPS. If the Police or the CPS decides not to pursue a manslaughter case, the Council will bring a health and safety prosecution if considered appropriate. The Council will take account of "Work Related Deaths: A Protocol for Liaison".

6.0 LEGAL PROVISIONS

Apart from the specific legislation relating to the technical aspects of each regulatory team within the council there are a number of other legal or semi-legal provisions relating to or having a bearing on enforcement as a whole.

These include, inter alia:*

- (a) The Enforcement Concordat
- (b) Police and Criminal Evidence Act (PACE)
- (c) Regulation of Investigatory Powers Act
- (d) Human Rights Act
- (e) Freedom of Information Act
- (f) Data Protection Act
- (g) Environmental Information Regulations
- (h) Local Government Acts
- (i) Equality Act 2010
- (j) Codes of Practice/Guidance (e.g. Crown Prosecution Code).
Many of the above contain little more than a passing reference to the needs of enforcement whereas some, such as PACE, and others, are fundamental in the delivery of effective enforcement.
Officers will comply with all of the enforcement provisions of the above when they are relevant to a particular case
- (k) Regulators' Code April 2014
- (j) Anti-social Behaviour, Crime and Policing Act 2014

* this list is not exhaustive

7.0 APPLICATION OF OUR POLICY STATEMENT

This policy statement applies to all officers when making enforcement decisions. The Council is committed to ensuring that all officers are appropriately trained on this policy and other relevant aspects of enforcement.

Any departure from this policy must be exceptional, capable of justification and be fully considered by the appropriate Service Director before a final decision is taken. This proviso shall not apply where a risk of injury or to health is likely to occur due to a delay in any decision being made.

In cases of emergency or where exceptional conditions prevail, the Chief Executive may suspend all or part of this policy, but only when necessary to achieve effective running of the service and/or where there is a risk of injury or to health of employees or members of the public.

8.0 REVIEW

The Place and Communities Directorate – Environmental health and Community Protection – Enforcement Policy Statement will be reviewed at intervals not exceeding two years and amendments will be made, as appropriate.

Amendments to the policy may also be made at other times as a result of identified improvements which contribute to the main aim of the service.

Review of the enforcement policy will take account of any responses received from affected persons and any other relevant comments.

Compliance with this policy will be monitored on an ongoing basis and any variation from it will be set out in our Service Plan for the following financial year.

The Code for Crown Prosecutors is available in English, Arabic, Bengali, Chinese, Gujarati, Hindi, Punjabi, Urdu and Welsh at www.cps.gov.uk/victims_witnesses/code.html

9.0 COMMENTS

If you have any comments, queries or questions concerning this policy, please do not hesitate to contact:

Mr Glen Beaver, Commercial and Environmental Protection Team Leader at g.beaver@ashfield.gov.uk

Mr Mike Manly or Mrs Rebecca Whitehead Community Protection Manager at m.manly@ashfield.gov.uk or r.whitehead@ashfield.gov.uk respectively

or in writing to Place and Communities Directorate, Council Offices, Ashfield District Council, Kirkby in Ashfield, Notts, NG17 8DA

Telephone (01623) 450000

