

Breckland Council and South Holland Council

# Corporate Enforcement Policy

# DRAFT

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## Corporate Enforcement Policy

### 1. Introduction

The Council carries out a wide range of regulatory roles in meeting its many statutory duties of protecting the public, individuals and the environment. These duties are met by carrying out a range of activities, including carrying out programmed inspections of premises, responding to complaints, issuing licences and offering advice. This Policy outlines the approach it takes when considering enforcement action.

This policy is an overarching policy that applies to all the Council's Services with enforcement duties, although it should be noted that some services also have more specific enforcement requirements, as defined by specific legislative guidance and regulations.

The appropriate use of the full range of enforcement powers, including prosecution, is important, both to secure compliance with the law and to ensure that those who have duties under it are held to account for failures to safeguard health, safety, welfare and environment or breach of regulations enforced by the Council.

In deciding on the most appropriate course of action officers should have regard to the principles set out in this policy and the need to maintain a balance between enforcement and other activities, including inspection, advice and education.

#### a) Principles of Good Regulation

Regulatory activities undertaken by the Council will be exercised in a way that are:

- i. **Proportionate** – activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence;
- ii. **Accountable** – activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures;
- iii. **Consistent** – advice given to those regulated will be robust and reliable and officers will respect advice provided by other regulators. The Council shall seek to ensure consistency of enforcement; however the Council realises that consistency is not a simple matter of uniformity. Officers will need to exercise their professional judgement and discretion according to the circumstances of each individual case and the relevant responsibilities and intervention systems maintained by the Council;
- iv. **Transparent** – Officers will ensure that those they regulate are able to understand what is expected of them and what they can anticipate in return, and
- v. **Targeted** – Resources will be focused on higher risk enterprises and activities, reflecting local need and national priorities and where the

Council believes its efforts are able to have an impact.

**b) Regulators' Code**

The Council has had regard to the Regulators' Code in the preparation of this policy. In certain instances it may conclude that a provision in the Code is either not relevant or is outweighed by another provision. Where statutory guidance and legislation specifies the action to be taken this legislation takes precedence.

**c) Human Rights Act 1998**

The Council is a public authority for the purposes of the Human Rights Act 1998. It 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) General Data Protection Regulation and Data Protection Act 2018**

Officers will comply with all relevant data protection laws and any associated statutes, regulations and guidance.

**e) The Code for Crown Prosecutors**

When deciding whether to institute criminal proceedings 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':

**(i) 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. It must be satisfied there is enough evidence to provide a "realistic prospect of conviction" against each alleged offender.

**(ii) 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 we will take into account are detailed under the enforcement options available to us in Section 6.

**Legal Status of this Enforcement Policy**

This Policy was approved by the (\*TO BE INSERTED and was adopted by Council on TO BE INSERTED) following an open public consultation between and )

## **2. Purpose of this Policy**

One of the functions of the Council is to act as a regulator and an enforcement agency for a large range of legal duties and powers applied by Acts of Parliament and the Regulations and Orders made under them (including various byelaws).

This policy sets out standards that will be applied across the Council when acting in its role as regulator and enforcement agency and what residents, businesses, consumers and workers can expect from the Council.

It is supplemented in some cases by more specific and detailed service-based procedures.

These procedures also set out the approach to be followed by authorised officers when making decisions in respect of the Council's compliance and enforcement activities. The Council is committed to ensuring that all authorised officers will act in accordance with this policy.

## **3. When this Policy Applies**

### **3.1 Scope of the Policy**

This policy is the overarching enforcement policy for the Council. It outlines the approach to enforcement and lays down the principles that will be followed in deciding upon, and taking action.

Enforcement includes any criminal or civil action taken by the Council aimed at ensuring that individuals or businesses comply with the law.

This policy has been set in accordance with the Regulators' Code. This means that the Council will be open, helpful, fair and careful to ensure that any action required by the Council is proportionate to the risks.

The Council has set out its strategic aims and objectives and its enforcement services will carry out their duties in support of these. This approach is intended to provide better information to businesses and the community and, by doing so, lend support to the Council's aim to deliver the right service, at the right time and in the right way.

Council services will work with and consult other agencies, and other service areas within the Council, as necessary, where there is a shared or complementary enforcement role.

Officers will take reasonable steps to assist businesses and individuals to comply with the law. However officers will be prepared to ensure compliance by exercising the formal powers delegated to them in the Council's Scheme of Delegation including, where appropriate, prosecution.

In certain circumstances the Council will seek to raise awareness and

increase compliance levels by publicising unlawful trade practices or criminal activity. Where appropriate the results of specific court cases may also be published.

## **4. Non-Compliance**

### **4.1 Approach to dealing with non-compliance**

An open, fair and proportionate approach will be taken in dealing with breaches of legislation that are regulated and enforced by the Council. Raising awareness and promoting good practice in regulated areas is the first step in preventing breaches, and officers of the Council will signpost to guidance on aspects of the law where requested to do so.

Best efforts will be used to resolve any issues where the law may have been broken without taking formal action, or referring the matter to the courts when the circumstances indicate that a minor offence may have been committed and the Council is confident that appropriate corrective action will be taken. However, there may be occasions when the breach is considered to be serious and/or where informal action is not appropriate. In such cases, immediate enforcement action may be taken without prior notice and, as noted above, some services have specific legislative guidance and regulations that set out the enforcement requirements in these services.

Advice regarding the non-compliance, the actions required and decisions taken at the time of the intervention, along with the reasons for these will be clearly explained. An opportunity to discuss the Council's course of action will be provided to ensure actions are proportionate and consistent. As stated in the previous paragraph, where immediate enforcement action is required, the opportunity for discussion may not be given where there is a serious breach or public health or safety is at risk.

Officers investigate potential breaches of legislation and they are responsible for managing investigations and making decisions on enforcement action. As part of this process, they may consult with colleagues and managers in determining the best and most appropriate course of action. Officers have the power to use a variety of legislation in the course of their duties, and these have been delegated to them in accordance with the Council's Scheme of Delegation. In relation to prosecutions, where relevant, officers' cases are reviewed by a service manager and approved following a case conference involving key officers, as defined in the Scheme of Delegation.

In some instances, the Council may have shared responsibilities or a complementary role with another enforcement agency. In these circumstances, officers will liaise with that other agency to ensure effective co-ordination, to avoid inconsistencies and to ensure that any proceedings taken are proportionate and appropriate.

The Council will be fair, objective and consistent in its approach to enforcement by following the criteria and guidance set down in relevant legislation and codes of practice.

The Council may publicise information about enforcement action in line with the Criminal Justice System document entitled 'Publicising Sentencing Outcomes'. This will usually occur once an investigation has been brought to a conclusion via a successful prosecution in Court. Any news releases of this nature are normally sent electronically by the Communications Team to newspapers and broadcast media to use in their news bulletins. Such information may also be publicised on the Council's website and via other social media.

#### **4.2 How action taken is determined**

Where evidence is found that a business or other regulated person is showing flagrant disregard for the law by deliberately or persistently failing to comply with advice or requests made by the Council, it may be deemed that informal action is not appropriate. Under these circumstances enforcement action may be escalated directly to prosecution or other more severe sanctions where available.

Where there is specific legislative guidance and regulations that set out the enforcement requirements these will be followed.

Where a business or other regulated person contacts the Council to ask for advice and it transpires that a breach of legislation is present at the premises, the most appropriate course of action will be determined based on the factors outlined in section 6 below.

If it is clear that the business or regulated person is keen to resolve the non-compliance quickly, taking on board and completing the steps recommended by the Council, an informal approach is likely to be taken as opposed to triggering enforcement action. However, if there is a serious breach and/or there is an imminent risk to public health or safety, enforcement action may still have to be taken but the Council will seek to work with the business or regulated person to resolve the problem as quickly as possible.

#### **4.3 Factors that influence our response to breaches**

Where a breach of legislation is being investigated the approach taken will be proportionate and will take into account factors such as business size and capacity.

If the Council has provided advice or guidance to a business or regulated person, officers will make the necessary checks to ensure that, where this relates to a legal requirement rather than best practice, the non-compliance has been rectified.

The Council may receive referrals from other enforcement bodies that require investigation. These referrals will typically be as a result of the other bodies' inspections or investigations, or intelligence that they have received. The Council will also refer to other enforcement bodies where breaches of legislation that are dealt with by that body are found.

#### **4.4 Approach to complaints of non-compliance**

Where a complaint of non-compliance relating to a business, or other regulated person, is received the officers investigating this breach will assess the information received and may make further enquiries to determine whether a complaint requires investigation. In assessing a complaint, officers may consult colleagues and managers to help assess what risk may be involved and this will determine what action is taken.

#### **5. Conduct of Investigations**

Enforcement action may result in either civil or criminal proceedings being instituted by the Council. The process that will be followed by officers in the investigation of alleged breaches of the law will depend on which branch of law the investigation is being conducted under. As the enforcing authority in any proceedings it instigates, the burden of proof falls to the Council.

Investigations will be carried out in compliance with the following legislation and in accordance with any associated guidance or codes of practice, in so far as they relate to the Council:

- The Criminal Procedure and Investigations Act 1996;
- The Regulation of Investigatory Powers Act 2000;
- The Criminal Justice and Police Act 2001;
- The Human Rights Act 1998;
- The Police and Criminal Evidence Act 1984

These Acts and associated guidance control how evidence is collected and used and give a range of protections to citizens and potential defendants.

The authorised officers of the Council will also comply with the requirements of the particular legislation under which they are acting, and with any associated guidance or codes of practice.

#### **5.1 Powers of Authorised Officers**

There are numerous pieces of legislation which the Council as a local authority either has a duty to enforce or adopts or chooses to enforce. The powers available to officers under these different pieces of legislation vary considerably and it is not the purpose of this document to provide an exhaustive list of those powers.

If officers come across situations where they believe they are being obstructed in carrying out their duties they will always explain the provisions of the relevant legislation in order to resolve the issue.

The Council recognises the Primary Authority scheme and where appropriate will communicate with any identified primary authority as part of the enforcement/compliance process.

In some cases powers of seizure are used for safety and evidence gathering purposes. Where articles are removed for any of these purposes a receipt or notice will be given at the time of the inspection or as soon as is practicably



possible afterwards.

Officers do not have the power of arrest; however joint working is undertaken with the Police and other agencies. Instances may arise where the Police or other agencies consider that an arrest should be made in connection with an authorised officer's investigation.

Officers will carry out formal interviews in line with this policy and the Police and Criminal Evidence Act 1984.

In respect of legislation in England that contains criminal offences, there are strict time limits beyond which the law prevents proceedings being instituted. These time limits vary and are stated in the relevant legislation.

In relevant cases where it is proposed that either criminal or civil proceedings are to be brought by the Council a report will be prepared containing all relevant evidence that has been gathered during an investigation. This report will be reviewed by a manager and case conference called to consider the matter, in accordance with the Council's Scheme of Delegation. The evidence will usually also be reviewed by a solicitor before any proceedings are instigated.

## **5.2 Progress of Investigations**

Officers carrying out investigations will keep alleged offenders and witnesses informed about the progress of any investigation as far as their involvement in the process is concerned.

## **6. Decisions on Enforcement Action**

### **6.1 The Range of Actions Available as Set Out in Legislation**

There are a range of actions that are available to the Council as set out in the different legislation the Council enforces. Examples of the main types of actions that may be considered are set out below:

#### **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 (sometimes called an 'informal caution') 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.

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

### **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**

The Council has powers to issue statutory notices in respect of many breaches. These include: 'Stop Notices', 'Prohibition Notices/Orders', 'Emergency Prohibition Notices/Orders', and '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 that must be taken and the timescale within which they must be taken. It is likely to require that any breach be rectified and/or prevented from recurring. It may also prohibit specified activities until such time as prescribed works/safeguards have been carried out to the satisfaction of the authority. 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 or penalty charge notices in respect of some breaches. A fixed penalty notice or penalty charge notice is not a criminal fine, and does not appear on an individual's criminal record. If a fixed penalty/penalty charge notice is not paid, the Council may commence criminal proceedings in respect of the breach or take civil enforcement action to recover the penalty charge subject to the provisions of the relevant legislation.

If a fixed penalty/ penalty charge notice 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 that 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 Ministry of Justice document 'Simple Cautions for Adult Offenders'.

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

If the evidential test is satisfied a prosecution will usually take place unless there are public interest factors tending against prosecution that outweigh those tending in favour. The more serious the offence or the offender's record of breaches/ criminal behaviour, the more likely it is that prosecution will be required in the public interest.

Assessing the public interest is not merely a matter of adding up the number of factors on each side and seeing which has the greater number. The public interest must be decided on the merits of each individual case and making an overall assessment. It is quite possible that one factor alone may outweigh a

number of other factors that tend in the opposite direction.

A successful prosecution will result in a criminal record. The court may impose a fine 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 that have resulted from the breach. Prosecution may also lead, in some circumstances, to the disqualification of individuals from acting as company directors.

#### **h) Refusal/Suspension/Revocation of Licences**

The Council issues a number of different licences, consents, registrations and permits. They are applied for by submission of an application, the form and content of which is sometimes specified in law. Applications are generally granted for a limited defined period and will be required to be renewed annually unless otherwise specified.

The Council may be permitted to ask supplementary questions on an application form in order to assist it in reaching a decision on whether the applicant is a fit and proper person to hold such a licence.

In some cases applications are subject to either a public or interested party consultation process and any application that attracts adverse comment or objection or does not meet Council policy requirements will be referred to an internal civil hearing forum to determine the application.

Most licences and other permissions have conditions attached, which can be standard conditions or specific conditions or a combination of both. These conditions form part of the licence and lay down requirements that a business or individual must have regard to when trading. Breach of a condition may be a civil or criminal matter.

When considering applications information supplied with the application together with any previous enforcement action and compliance record can be taken into account when reaching a decision.

#### **6.2 Explanation of how decisions are made on enforcement action**

In assessing what enforcement action is necessary and proportionate consideration will be given to, the following principles for enforcement set out in the 'Macrory Review':

- 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.

Where appropriate decisions about what enforcement action is to be taken

may involve consultation between:

- Investigating Officer(s)
- Senior Managers
- Solicitors appointed to act for the Council
- Portfolio Holder

The decision to prosecute a case will be taken by those with authority to do so in accordance with the Council's Scheme of Delegations.

### **6.3 Explanation of how Decisions are Communicated to those Affected.**

The Council will provide a timely explanation in writing of any rights to representation or appeal and information on the process involved.

## **7. Review of this Policy**

### **7.1 Details of when and how the policy will be reviewed**

This policy will be reviewed periodically or in line with changes in relevant legislation, or Regulators' Code.

## **8. Comments and Complaints**

### **8.1 Details of processes for complaints and appeals**

All appeals in relation to enforcement action taken should be via the statutory appeals process outlined in the relevant legislation.

Complaints about the conduct of officers should be made via the Council's corporate complaints procedure.