

BABERGH DISTRICT COUNCIL and MID SUFFOLK DISTRICT COUNCIL

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| From: Senior Solicitor and Deputy Monitoring Officer | Report Number: R73 |
| To: Strategy Committee Executive Committee | Date of meeting: 3 December 2015 7 December 2015 |

JOINT CORPORATE ENFORCEMENT POLICY

1. Purpose of Report

- 1.1 To seek Members' approval for a revised Joint Corporate Enforcement Policy attached as Appendix 1 to this report.

2. Recommendations

- 2.1 That the Joint Corporate Enforcement Policy within Appendix 1 to this report be adopted with immediate effect
- 2.2 That the Interim Head of Law and Governance and Monitoring Officer be authorised to make minor amendments to the Joint Corporate Enforcement Policy above as may be necessary from time to time.
- 2.3 That if the Regulators' Code is adopted by the Councils to include all the Councils' regulatory functions that the Interim Head of Law and Governance and Monitoring Officer be authorised to make the necessary amendments to the Joint Corporate Enforcement Policy as mentioned above to accommodate this adoption.

The Committee is able to resolve this matter.

3. Financial Implications

- 3.1 None directly.

4. Legal Implications

- 4.1 The Councils are required to have Corporate Enforcement Policies and it is good practice for any Policy or Policies to be regularly reviewed. The existing Policy is over three years old and is overdue a thorough review.

5. Risk Management

- 5.1 This report is not linked with any of the Council's Corporate / Significant Business Risks. Key risks are set out below:

| Risk Description | Likelihood | Impact | Mitigation Measures |
|--|---|--|--|
| Failure to comply with the requirements set out in the Joint Enforcement Policy. This may result in a legal challenge. | Unlikely (if the Policy is adhered to). | If successfully challenged, the impact would be serious both financially and reputationally. | Follow the revised Joint Enforcement Policy. |

6. Consultations

- 6.1 Consultation has been carried out with the Councils' Enforcement Officers and all the Corporate Managers.

7. Equality Analysis

- 7.1 An Equality Impact Assessment (EqIA) has not been completed at this stage. However, before commencing enforcement action the Councils' Enforcement Officers will need to consider whether or not a full EqIA assessment ought to be carried out as part of the particular circumstances of an individual who may be the subject of enforcement action under the revised Policy.

8. Shared Service / Partnership Implications

- 8.1 The Joint Enforcement Policy is a joint corporate policy of both Councils.

9. Links to Joint Strategic Plan

- 9.1 The Joint Enforcement Policy is a legal requirement.
- 9.2 The proposed revised Policy helps safeguard the Councils in their enforcement role and when properly followed will help to ensure that the Councils continue to comply with the law.

10. Key Information

- 10.1 The Councils' adopted a Joint Corporate Enforcement Policy in April 2012. This Policy is attached as Appendix 2 to this report. Since the Policy was adopted in 2012 much has happened within the Local Authority regulatory and enforcement fields. The current Policy is now out of date and urgently needs a comprehensive revision to be fit for purpose.
- 10.2 The proposed Joint Corporate Enforcement Policy at Appendix 1 is much more comprehensive than the existing Policy. It has taken a considerable amount of time and it represents a complete re-write and re-working of the existing Policy.
- 10.3 As the existing Policy has been so extensively re-worded it is very difficult to highlight all the changes without confusing the issue. The report's author will attend the meetings and will endeavour to answer any questions or concerns that Members have.

- 10.4 Appendix 3 contains a glossary of the some of the acronyms used within the proposed Policy at Appendix 1. Hopefully this glossary will assist Members with some of the more obscure terminology.
- 10.5 Members will note reference to the Regulators’ Code within the “Recommendations” under 2 above and also within the Policy itself. At present the Regulators’ Code only applies to legislation enforced by the Councils’ Environmental Health, Licensing and Trading Standards staff. Having said that Members will see that under 5.2.7 on page 14 “...it is recommended that in carrying out enforcement **all** the Councils’ services take into consideration the Regulators’ Code unless there are cogent and sound reasons to depart from its’ principles.”
- 10.6 There is also a possibility via the Councils’ “Open for Business Project Group” that the Councils’ regulatory functions acting outside the scope of the current Regulators’ Code could at some time in the future adopt this Code on a voluntary basis. This report has been written on the basis that if the Regulators’ Code were adopted by the Councils that the Interim Head of Law and Governance and Monitoring Officer would be authorised to make necessary amendments to the Joint Corporate Enforcement Policy without having to come back to Committee.

11. Appendices

| Title | Location |
|--|----------|
| 1. Proposed Joint Corporate Enforcement Policy | Attached |
| 2. Existing Joint Corporate Enforcement Policy | Attached |
| 3. Glossary of the terms used within the proposed Joint Corporate Enforcement Policy | Attached |

12. Background Documents

12.1 See report.

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Appendix 1

BABERGH DISTRICT COUNCIL

AND

**MID SUFFOLK DISTRICT
COUNCIL**

**JOINT CORPORATE
ENFORCEMENT POLICY**



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|-------------------------|---|
| Document Control | |
| Title | Joint Corporate Enforcement Policy |
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| Owner | Suki Binjal – Monitoring Officer and Interim Head of Law and Governance |
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Statement of Policy

1. INTRODUCTION

- 1.1 Enforcement is the method by which any enforcement body compels a person to act in such a way as to not break the law. Enforcement is for the benefit of the public, consumers, the environment and legitimate business.
- 1.2 Enforcement has a wide meaning and it applies to all dealings between Enforcing Authorities and those upon whom the law places duties.
- 1.3 The purpose of this Policy is to ensure compliance with the law, whilst minimising the burden on individuals and businesses. It sets out what individuals and businesses can expect from Council regulation within the Babergh and Mid Suffolk Districts of Suffolk.
- 1.4 The Policy is based on the following statutory provisions and guidance:

Police and Criminal Evidence Act 1984;



Criminal Procedure and Investigations Act 1996;

Human Rights Act 1998 (including the European Convention on Human Rights);

Regulation of Investigatory Powers Act 2000;

Criminal Justice and Police Act 2001;

Legislative and Regulatory Reform Act 2006 (“LRRRA”);

Legislative and Regulatory Reform (Regulatory Functions) Order 2007;

Regulatory Enforcement and Sanctions Act 2008 (“RESA”);

Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009 (“CRE Enforcement Order”);

Co-ordination of Regulatory Enforcement (Procedure for References to the LBRO) Order 2009.

Bribery Act 2010

Protection of Freedoms Act 2012

Regulators’ Code April 2014 (“RC”)

Anti-social Behaviour, Crime and Policing Act 2014

Further guidance is to be found within documents mentioned in the Appendix to this Policy under 15 below.

- 1.5 The LRRRA established the Principles of Good Enforcement which are now set out in the RC. Enforcement should be proportionate, accountable, consistent and targeted to areas which need action.
- 1.6 When considering formal enforcement action, where appropriate and reasonably practical Officers from Babergh / Mid Suffolk District Councils (as appropriate) will discuss the alleged breach (es) with the suspected individual or business and take any comments into account in deciding what action is appropriate. There may be occasions when this is not appropriate if it would defeat the purpose of the proposed enforcement action.



- 1.7 In respect of individuals or businesses operating in more than one Local Authority area which has registered a Primary Authority agreement under the RESA in cases specified in the CRE Enforcement Order the Council will notify the Primary Authority of the enforcement action which it intends to take. The Council may also notify the Better Regulation Delivery Office (“BRDO”) in appropriate cases.
- 1.8 A Primary Authority agreement under the RESA as mentioned in paragraph 1.7 above enables a business to receive advice and to agree their approach to compliance with a single Local Authority, and be able to rely on all other Local Authorities taking that advice into account when considering what action (if any) to take.

2. MEANING AND SCOPE OF ENFORCEMENT

- 2.1 This Policy applies to regulatory enforcement carried out by Babergh and Mid Suffolk District Councils (“the Council(s)”) including both criminal and civil action aimed at ensuring individuals and business comply with the law.
- 2.2 Section 28 of the RESA defines “enforcement action” as follows:
 - (a) Any action which relates to securing compliance with any restriction, requirement or condition in the event of the breach of such;
 - (b) Any action taken with a view to or in connection with the imposition of any sanction (criminal or otherwise) in respect of an act or omission;
 - (c) Any action taken with a view to or in connection with the pursuit of any remedy conferred by an enactment in respect of an act or omission.
- 2.3 The Councils and their Enforcement Officers will be required to interpret and apply all legal requirements fairly and consistently in respect of similar offences.
- 2.4 In appropriate cases the Councils will publicise unlawful trade practices and the results of enforcement action.

3. PRINCIPLES OF ENFORCEMENT

- 3.1 The Councils will work on the basis of the principles set out in the RCC, the Enforcement Concordat and any guidance from BRDO.



- 3.2 The Councils have a range of tools at their disposal in seeking to secure compliance and to ensure a proportionate response to Criminal and Civil matters.
- 3.3 In accordance with RC the Councils' Corporate Enforcement Policy will:
- Aim to change the behaviour of the offender and deter future non-compliance;
 - 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 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 others from future non-compliance.
- 3.4 Enforcement action will be applied in accordance with the Equality Act 2010 and will not normally be affected by race, ethnicity or national origin, gender, religion or belief, disability gender reassignment, sexual orientation, marital status or political beliefs. The age of the victim or the offender will only be a consideration in appropriate cases, for example elderly victims or young offenders.
- 3.5 Where known to the Council, an individual's medical circumstances will be taken into account before taking any action which could potentially criminalise behaviour which arises as a consequence of an individual's medical condition rather than as a result of any premeditated intention to commit a crime.
- 3.6 The views of the victim and any other relevant person will be taken into account in deciding whether or not to take formal enforcement action and in particular any harm to the victim or the environment.
- 3.7 Alleged offenders will be notified as soon as an investigation commences and of any enforcement action proposed unless this adversely affects the investigation or place the public or the environment at risk.
- 3.8 Businesses, victims and witnesses will be kept informed of progress throughout an investigation and confidentiality will be maintained except where this would not be in the public interest.



- 3.9 All enforcement action will be taken:
1. In accordance with the principles of good enforcement specified by the Enforcement Concordat.
 2. In a way compatible with the convention rights specified by the Human Rights Act 1998, to protect the rights of the individual.
 3. In an efficient manner.
 4. Promptly and without unnecessary delay.
 5. Consistently by all services of the Council taking a similar approach in similar circumstances to achieve similar ends.
 6. In a fair, independent and transparent manner, with each case being considered on its own merits.
 7. In a way not influenced by improper or undue pressure from any source or by inappropriate or illegal practices by any Council Officer or Member.

4. THE PRINCIPLES OF GOOD ENFORCEMENT - LOCAL GOVERNMENT CONCORDAT ON GOOD ENFORCEMENT

4.1 POLICY

4.1.1 The Councils have signed up to the UK and local government Concordat on Good Enforcement, which commits us to good enforcement policies and procedures. This document supplements the Concordat, by setting out an additional statement of the Councils' policy on enforcement. The following principles of the Concordat will be adhered to:

4.2 STANDARDS

4.2.1 We will draw up clear standards, setting out the level of service and performance the public and business people can expect to receive. These standards will be developed in consultation with other relevant interested parties, where appropriate. We will publish these standards and our annual performance against them. The standards will be made available to local businesses and others who are regulated.

4.3 OPENNESS

4.3.1 We will provide information and advice in plain language on the rules that apply, and will disseminate this as widely as possible. We will be open about how we set about our work, including any charges that we set, consulting business, voluntary organisations, charities, consumers and workforce representatives, where appropriate. We will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties in relation to legislation that the service enforces, by responding to enquiries and visiting individuals when requested.

4.3.2 In certain circumstances we will seek to raise awareness and increase compliance levels by publicising unlawful business practices or criminal activity so, where appropriate, we may publicise the results of specific court cases.

4.3.3 We will provide interpreters for those people who do not have English as their first language, if requested to do so by them.

4.4 HELPFULNESS

4.4.1 We believe that “prevention is better than cure”, and that our role therefore involves actively working with business, especially small and medium sized businesses, to advise on and assist with compliance. We will provide a courteous and efficient service and our staff will identify them by name. We will provide a contact point and telephone number for further dealings with us, and we will encourage businesses to seek advice/ information from us. Applications for approval of establishments, registrations, planning consultations etc. will be dealt with efficiently and promptly. We will ensure that, wherever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

4.5 PROPORTIONALITY

4.5.1 We will minimise the costs of compliance for business, by ensuring that any action we require is proportionate to the risks. As far as the law allows, we will take account of the circumstances of the case and the attitude of the operator when considering action.

4.5.2 We will take particular care to work with small businesses and voluntary and community organisations, so that they can meet their legal obligations without unnecessary expense, where practicable.



4.5.3 When dealing with individual members of the public, the concept of proportionality will also apply, in so far as the relevant legislation permits. We will attempt to identify and contact all individuals concerned with each case, where possible, and take action that balances the benefit to the complainant or public against the cost or inconvenience to those concerned.

4.6 CONSISTENCY

4.6.1 We will carry out our duties in a fair, equitable and consistent manner. While Officers are expected to exercise judgment in individual cases, we will have arrangements in place to promote consistency, including effective arrangements for liaison with other authorities and enforcement bodies. This will be achieved through staff development and training, and the use of written protocols and procedures where appropriate.

4.7 COMPLAINTS ABOUT THE SERVICE

4.7.1 Complaints will be dealt with in accordance with the Council's Compliments, Comments and Complaints Procedure. Details of this Procedure are on the Councils' websites and will be provided in a documentary format to persons or businesses on request.

4.7.2 We will provide 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.

4.7.3 If anyone has any comments on this policy or has any complaints about how it is being operated in a particular instance then he or she should bring those issues to the attention of a senior officer in the service area in which the officer is working.

4.8 PROCEDURES

4.8.1 All officers who carry out enforcement work will carry appropriate documentation to show that they are authorised to do so by an appropriate senior officer. This will be done in compliance with the General Scheme of Delegation under the Councils' Constitutions.

4.8.2 In circumstances where no formal action is to be taken, advice will be given clearly and in plain language and will be confirmed in writing on request. An explanation will be given as to why remedial



work is required and over what time-scale. Legal requirements will be clearly distinguished from suggested best practice, codes of practice, guidance and other advice.

4.8.3 Officers will be encouraged to promote compliance with legal requirements, by raising awareness of relevant standards and legal requirements, by means of press-statements, distributing leaflets, face-to-face contact and business and community partnerships.

4.8.4 Before formal enforcement action is taken, officers will provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference before deciding on the best approach, unless immediate action is required (for example, in the interests of health and safety or environmental protection or to prevent evidence being destroyed or where this is likely to defeat the purpose of the proposed enforcement action). However if we are considering a formal action this discussion might need to take place by means of a formal interview.

4.8.5 Where immediate action is considered necessary, an explanation of why such action is required will be given at the time, and confirmed in writing, in most cases within 5 working days and, in all cases, within 10 working days.

4.8.6 In cases where there are rights of appeal against formal action, for example certain statutory notices, information on the appeal mechanism will be clearly set out in writing and provided at the time the action is taken and, wherever possible, will be issued with the enforcement notice.

4.9 CONDUCT OF INVESTIGATIONS

4.9.1 When officers are investigating breaches of legislation, subject to the requirements of the legislation, they will be able to make use of any statutory powers that are available to them under the specific act or regulations. These powers can include entering premises to inspect goods, services, procedures, facilities or documentation, taking samples, making test purchases and seizing items. Officers will comply with any associated guidance or codes of practice under the particular legislation. Often the legislation will include an offence that is committed by any person who obstructs an authorised officer or fails to comply with a reasonable requirement made by the officer. When exercising enforcement powers officers will also have regard to any Powers of Entry Code of Practice produced by the Home Office.



4.9.2 As well as using such powers officers may need to speak to individuals and, in the more serious case, interview persons under caution. Any such interview under caution will take place in compliance with the requirements of the Police and Criminal Evidence Act 1984. In the most serious cases officers may make arrangements for a potential defendant to be arrested by the police to facilitate the investigation. Some legislation provides a statutory time limit from the date of the offence or sometimes from the date when it was discovered. In these circumstances the Council cannot commence legal proceedings after such a time limit has expired.

4.9.3 At all times Officers are required to conduct themselves in compliance with the Council's Anti-fraud & Corruption Policy and Bribery Act 2010.

5. THE PRINCIPLES OF GOOD ENFORCEMENT – REGULATORS’ CODE

5.1 In 2008 the Government introduced the Regulators’ Compliance Code that only applied to regulatory functions specified by an order made under the Legislative and Regulatory Reform Act 2006. (These functions mainly relate to the legislation enforced by Environmental Health, Licensing and Trading Standards staff.) In 2013 the Government replaced the Regulators Compliance Code with the Regulators’ Code (RC).

5.2 For the above areas of legislation (other than Trading Standards which is a County Council function) we will have regard to the principles of the RC including the following:

5.2.1 Supporting regulated businesses to comply and grow

We will try to avoid imposing unnecessary regulatory burdens on businesses through our regulatory activities and we will assess whether the desired outcomes could be achieved by less burdensome means. We will only adopt a particular approach if the benefits justify the costs and it entails the minimum burden compatible with achieving the objectives. Our policies and practices will encourage and promote compliance but, in doing so, will try to minimise the negative economic effect of our activities and the cost of compliance. We will choose proportionate approaches to the businesses we regulate, based on such relevant factors as the business’s size and capacity and the nature of their activities. We will ensure that our officers have the necessary knowledge and skills to support those we regulate and to enable them to choose proportionate and effective approaches.



5.2.2 Engaging with those we regulate and hearing their views

In responding to non-compliance we will clearly explain what is non-compliant, the advice being given, the actions required or the decisions taken by us and we will give the reasons for doing so. When considering enforcement action in response to a non-compliance we will, where appropriate, provide an opportunity to discuss the advice, requirements or decision and take this dialogue into account to ensure we are acting in a proportionate and consistent way. However this will not apply where we can demonstrate that immediate enforcement action is required to prevent or respond to a serious breach or where to provide such an opportunity is likely to defeat the purpose of the proposed enforcement action. We will provide an impartial appeal procedure for an appeal against a regulatory decision or a failure to act in accordance with the code and we will give a written explanation of the right to appeal or make a representation. As well as the appeal procedure, we will make available the Council's Compliments, Comments and Complaints Procedure so that complaints can be made about the conduct of our officers. We will consider the impact of our policies and service standards on businesses, so we invite views from businesses, citizens and others about our policies and service standards.

5.2.3 Basing our regulatory activity on risk

We will take an evidence-based approach to determine the priority risks to ensure that the allocation of our efforts and resources is targeted where they would be most effective in addressing these priority risks. Such risk assessments will inform our approach to regulatory activity including inspection programmes, business advice and enforcement/ sanctions. We will make use of any evidence-based risk assessment methodology schemes that are devised and approved by relevant Government Departments for our specific service areas, in order to decide the frequency of inspections and visits to check compliance.

We will ensure that inspections and other visits to check compliance will only occur in accordance with a risk assessment methodology, except where visits are requested by businesses or where visits are made to check that businesses are complying with our advice regarding rectifying non-compliance's or where we act on relevant intelligence or complaints. In those circumstances we will still be able to carry out compliance visits outside of the frequencies stated in the appropriate risk assessment methodology schemes. In addition we may use a small element of random inspection in our programme.



When we carry out a revisit to check that non compliances have been rectified we will expect this to have happened, at least to a significant extent, and for the business to demonstrate that they have improved their systems to prevent similar non compliances happening in the future. If non-compliances have continued we will consider taking more formal enforcement action.

We will focus our greatest inspection efforts on businesses where our risk assessment shows that a compliance breach would pose a serious risk to a regulatory outcome and there is a high likelihood of non-compliance by businesses. We will provide feedback to businesses about the results of our visits including, where appropriate, feedback on the positive aspects of the visits.

At every step of the decision making process we will choose the most appropriate type of intervention or way of working with businesses, including when targeting checks on compliance or taking enforcement action. If the performance of a business is seen to represent a greater or lesser risk than other businesses of a similar type, we will make a change to their risk rating when this is allowed by the relevant risk assessment methodology. We will recognise the compliance record of businesses, including any relevant data on their compliance or evidence of the business being subject to any relevant external verification, so that we can consider using earned recognition approaches. We will review the effectiveness of our regulatory activities in delivering the desired outcomes and will make any necessary adjustments accordingly.

5.2.4 Sharing information about compliance and risk

If possible we will collect information from businesses once and try to use it many times. When determining what data we require from businesses we will endeavour to reduce business costs, where possible, by varying data requests according to risk, limiting collection to specific businesses or sectors, reducing the frequency of data collection, obtaining data from other sources, allowing electronic submission and requesting only data which is justified by risk assessment. In order to help target our resources and activities and to minimise duplication we will share information about businesses with other regulators when the law allows this.



5.2.5 Making information, guidance and advice available to businesses

We will provide general information, advice and guidance to make it easier for businesses to understand and meet their legal responsibilities and we will provide it in clear, concise and accessible format using plain language. Where possible we will look to utilise any relevant national guidance. When providing advice and guidance we will distinguish legal requirements from suggested best practice and we will try not to impose any unnecessary burdens. When responding to requests for advice we will provide the advice necessary to support compliance. In doing this we will respect relevant advice that has been provided by other enforcement agencies. If there is any disagreement with another regulator over the advice provided we will discuss this to reach agreement with the other regulator. Businesses may seek advice from us on noncompliance without directly triggering an enforcement action, as long as the business shows a willingness to resolve the non-compliance. The Council will stand by the advice that we provide so that it can be relied on and we will communicate any update to the advice when this is appropriate.

If a business wishes to enter into a formal Primary Authority Partnership arrangement with us under the Regulatory Enforcement and Sanctions Act 2008, or a more informal Home Authority arrangement, we will use our best efforts to achieve a satisfactory arrangement.

5.2.6 Ensuring our approach is transparent

We will publish a set of clear service standards about:

- How we communicate with those we regulate and how we can be contacted;
- Our approach to providing information, guidance and advice;
- Our approach to checks on compliance and protocols for their conduct;
- Details of the risk assessment frameworks we use to target our checks;
- Our enforcement policy;
- Our fees and charges;
- Our appeals procedure;
- Our complaints procedure;

These service standards will be available on the Councils' websites and will be provided on request.



On a regular basis we will publish:

- Feedback from those we regulate, such as satisfaction surveys;
- Data about complaints made about our regulatory activities;
- Data about appeals made against our decisions

5.2.7 Applicability of the Code

The Act states that the regulator must have regard to the code when developing policies and operational procedures that guide their regulatory activities. However it does not state that the Code applies directly to the work of an officer in carrying out investigations and enforcement activities in individual cases. Nevertheless we expect that our officers should operate in accordance with our general policy or guidance on inspections, investigations and enforcement activities.

In certain instances we may conclude that a provision of the Code is either not applicable or is outweighed by another relevant consideration and so we will not follow that provision. However, we will ensure that any decision to depart from the code is based on material evidence. We will record the decision and the reasons for it.

It should also be noted that our duty to have regard to the Code is subject to any other legal requirement affecting how we exercise our regulatory functions.

Further information is included elsewhere in this document to cover other issues relating to the above points from the Regulators' Code.

Although the Regulators' Code does not apply to all the Councils' Regulatory Services it is recommended that in carrying out enforcement **all** the Councils' services take into consideration the Regulators' Code unless there are cogent and sound reasons to depart from its' principles.

6. ENFORCEMENT ACTION

6.1 The following enforcement actions will be taken in appropriate cases:

- (a) Direct Action
- (b) No action
- (c) Informal warning and/ or advice
- (d) Fixed Penalty Notices
- (e) Statutory Notices and suspending, cancelling, reviewing or

- refusing to review a Licence
- (f) Simple Cautions
- (g) Seizure and Forfeiture Proceedings
- (h) Injunctions and other Civil Actions
- (i) Works in default
- (j) Prohibitions
- (k) Proceeds of Crime Act Confiscation Orders
- (l) Civil Sanctions under Regulatory Enforcement and Sanctions Act
- (m) Monetary Penalties
- (n) Non – Monetary Requirements
- (o) Prohibition of use of Premises, Part of Premises, an Activity or Item of Equipment
- (p) Prosecutions

6.2 In deciding which enforcement action (if any) is necessary and proportionate the following guidelines will be taken into account:

- (a) The gravity of an alleged offence, together with the seriousness of any actual or potential harm
- (b) The previous record of the individual or business concerned
- (c) Any obstruction or lack of co-operation on the part of the offender
- (d) The harm that has been caused or the risk to persons, the environment or public funds
- (e) The statutory provisions and Codes of Practice set out in paragraph 1.3 above
- (f) Legal advice
- (g) Vulnerability of Defendant (i.e. in relation to age and/ or mental capacity).

7. DETAILED EXPLANATION OF ENFORCEMENT ACTIONS

7.1 Direct Action

7.1.1 In certain situations the Councils are permitted to take direct action often without having to give any notice. Before taking direct action the Councils' Officers must make sure that they are acting lawfully. If necessary Legal advice must be sought before direct action is taken.

7.2 No Action

7.2.1 In certain situations contraventions may not warrant formal action. Examples include where the cost of compliance or the cost of the enforcement action outweighs the detrimental impact of the contravention on the community. It may also apply where the offender



is in some way vulnerable and/ or suffering from serious illness. In all cases reasons will be clearly given normally in writing.

7.3 Informal warning and advice

7.3.1 The Councils may take informal action when:

- the problem is not too serious and more of a minor or technical nature
- the Councils have a high level of confidence that the offender will remedy the situation and /or will not reoffend (The Councils will take into account past experience where appropriate/relevant)
- there is no significant risk to persons, the environment or public funds

7.3.2 Verbal or written warnings and advice may be given. If appropriate, time will be given to put the matter right. Failure to do so may result in the Councils taking further action. Advice will distinguish between good practice and legal requirements.

7.4 Fixed Penalty Notices

7.4.1 In certain situations legislation provides a power to issue a fixed penalty notice which allows an offender to pay a sum in respect of the offence and remove the need for the matter to be brought to Court. A fixed penalty notice may be issued without prior warning. For the avoidance of doubt a fixed penalty notice will **not** be issued for serious offences.

7.4.2 They are recognised as being a low-level enforcement tool, whereby they do not create a criminal record for the offender. Choosing to pay the required penalty is not an admission of guilt and so the issuing of these notices cannot be used as evidence in any future court proceedings. Payment of such a penalty does not provide immunity from prosecution in respect of similar or recurrent breaches. The decision to issue these notices will be at the discretion of the investigating officer. In some circumstances, particularly where the breaches are serious or recurrent, it may be that a prosecution is more appropriate than the issuing of such a notice. Such notices will only be issued where there is adequate evidence to support a prosecution.

Failure to pay the amount imposed by the notice may result in the offender being pursued in the County Court for non-payment of a debt.

7.5 Statutory Notices and suspending, cancelling, reviewing or refusing to renew a licence



7.5.1 In certain situations legislation provides for a statutory notice to be issued either to take specified action or cease specified action. The action to be taken and time allowed to comply with the said notice will vary depending on the harm to health and safety, environmental damage or nuisance involved. Notices state the implications of non-compliance. With certain notices there may be a statutory right of appeal, in which case this will be specified in the notice.

7.5.2 A statutory notice may be issued, or a licence may be suspended or revoked if one of the following applies:

- the Council has a statutory duty to do so
- the offender has significantly disregarded the law
- the Council consider that the offender will not respond to informal action
- the offender has a history of disregarding the law or not obeying Regulations
- standards found are generally poor and the offender does not seem to be aware of their legal obligations
- there is a risk of serious harm to public health or safety, of public nuisance, or of permanent damage

7.5.3 In addition to prosecuting, the Council may need to take measures to remedy serious or deteriorating conditions or may have to serve a notice to support a prosecution.

7.5.4 The Council will usually prosecute and/or carry out the works themselves if a statutory notice is ignored. The Council will seek to recover **all** reasonable costs if necessary via the Criminal Courts or if appropriate by civil action in the County or High Courts.

7.6 Simple Cautions

7.6.1 A simple caution is an alternative to prosecution, where the circumstances are such that the caution is likely to be effective and the use of a caution is appropriate to the offence. It is an admission of guilt, but it is not a form of sentence, nor is it a criminal conviction. Simple cautions are issued by a senior officer and can only be given to an offender who is over 18, where there is sufficient evidence to give a realistic prospect of a conviction and it is considered to be in the public interest to use a simple caution rather than institute criminal proceedings. Additionally, the offender must admit guilt and consent to a caution in order for one to be given. It will only be in exceptional circumstances that a Simple Caution would be an appropriate disposal



for more serious offences. A senior, authorised officer may give a simple caution.

7.6.2 There is no legal obligation for any person to accept the offer of a simple caution, but failure to accept a caution will normally result in prosecution for the offence.

7.6.3 Normally it is not appropriate to administer a second simple caution to the same offender for a similar offence within a period of two years.

7.6.4 If a person is offered a simple caution but declines to accept it, then the case is likely to proceed to prosecution. At this stage, as the person has already declined to accept a caution it will not be appropriate to offer the caution to the person for a second time.

7.6.5 If the offender commits a further offence the caution may influence the decision whether or not to take a prosecution. A simple caution can be cited in court, so it may influence the severity of any sentence imposed by the court. Accepting a simple caution may have consequences if an individual seeks certain types of employment.

7.7 Seizure and Forfeiture Proceedings

7.7.1 Certain legislation enables authorised officers to seize goods, equipment or documents, where they may be required as evidence for possible future court proceedings or to prevent further offences from being committed. When items are seized an appropriate receipt will be given to the person from whom the items are taken. The decision to seize items will be at the discretion of the investigating officer, subject to the requirements of the legislation.

7.7.2 In certain circumstances officers will make an application to the Magistrates' Courts for forfeiture of the goods. Forfeiture may be used in conjunction with seizure and / or prosecution, where there is a need to dispose of the goods or equipment to prevent them being used to cause a further problem or to prevent them re-entering the market place.

7.8 Injunctions and other Civil Actions

7.8.1 In certain circumstances officers may seek injunctive orders in the civil courts to stop infringements of a wide range of laws, which seriously affect the rights of others. They can be used to deal with repeat offenders, dangerous goods or significant harm to consumers in



general. Sometimes these matters can be dealt with by informal undertakings with the offender, but otherwise applications may be made to the civil courts for an injunction to stop these detrimental activities. The decision to seek an injunction will be made by a senior officer who will consider the seriousness and circumstances of the case and will consult with Legal Services first.

7.9 Works in Default

7.9.1 Under certain statutory notices the Councils may carry out specified works itself and recover the cost from an offender if an offender fails to comply with a statutory notice within the specified time scale.

7.10 Prohibitions

7.10.1 Where very serious offences are committed or offences are repeated, the Council has powers in some areas to apply to the courts to prohibit people from carrying out certain activities. In deciding to take this action, a senior officer of the Council will have regard to all the relevant factors that are listed in relation to prosecutions.

7.11 Proceeds of Crime Act Confiscation Orders

7.11.1 The Councils recognise that the use of the powers given within the Proceeds of Crime Act (POCA) to recover criminal assets can make a significant contribution to the disruption of criminal activity. Therefore the Councils promote the use of financial investigations as an integral part of criminal investigations and this may lead to confiscation of the benefits of the crime. Such work is carried out by Financial Investigators who have been suitably accredited by the National Crime Agency. The use of the Proceeds of Crime Act is not just for so called serious criminals, but it can apply to any case of acquisitive crime. Acquisitive crime describes offences where the perpetrator derives material gain from the crime. The Councils will actively work with other law enforcement agencies that conduct financial investigations in order to maximise the amount of assets and money seized under POCA legislation.

7.11.2 Officers may make applications under the Proceeds of Crime Act for confiscation of assets of offenders in relevant cases. The purpose is to recover the financial benefit that the offender has obtained from their crimes. Proceedings only take place after a criminal conviction has been obtained, but they are conducted according to the civil standard of proof. Proceeds of Crime Act proceedings will only take place after we have considered the



factors relating to the tests in the Code for Crown Prosecutors in reaching our initial decision to prosecute. We will consider any relevant factors when deciding whether to commence a Proceeds of Crime Investigation or whether to continue with it or change it if further evidence comes to light during the investigation. It should be noted that the Courts can instruct us to carry out a Proceeds of Crime investigation when they consider that this is appropriate.

7.11.3 As part of an investigation, Accredited Financial Investigators will be able to apply for the orders that are available under the legislation, including applying for Restraint Orders to restrain assets and for Production Orders to obtain financial information. Accredited Financial Investigators will also be able to carry out seizures of cash of £1000 and above when it is found whilst officers are lawfully on premises. This is for the purpose of investigating the origins of the cash with a view to applying for a Forfeiture Order at a Magistrates' Court.

7.12 Civil Sanctions under Regulatory Enforcement and Sanctions Act

7.12.1 Certain legislation gives the Councils the power to impose various civil sanctions including administrative penalties in certain cases.

7.13. Monetary Penalties

7.13.1 Some legislation enables officers who consider that an offence or breach has been committed to issue various types of notices imposing a financial penalty; these are often referred to as penalty notices. Monetary penalties are not criminal fines and do not appear on an individual's criminal record. In some instances the amount of the penalty is variable, between specified upper and lower limits, and is determined by the Council, but in some instances it is a fixed amount. Normally the payment of the penalty amount within a specified period of time will prevent the Council from taking legal proceedings, but if such payment is not made the Council will then be able to institute a prosecution.

7.13.2 The form and content of such notices varies between different legislation. Any notice that is issued will be in the form required by the particular legislation. Almost invariably the notice will require details of the circumstances that amount to the offence, the amount of the penalty, the period during which proceedings will not be taken for the offence and details of how and where to pay. Usually the legislation will allow the Council to amend or withdraw such notices if it is appropriate to do so.



7.13.3 Some legislation requires the Council to issue a notice of our intention to issue a 'penalty notice' and to allow the offender to make representations and objections within a specified period. Once the person makes representations or does nothing we will then make a final determination within the specified period, based on all the circumstances and the person's response. If we set the level of the penalty we might decide to impose the original amount, or to modify this amount, or not to impose the penalty at all, perhaps where the response indicates that the person has an appropriate defence or because imposing a monetary penalty would be unproductive. If we decide to proceed we will issue a final notice as required by the particular legislation.

7.13.4 Some legislation enables the person to discharge their liability by making a payment of a reduced amount of money by a specified early date.

7.13.5 When we are deciding the appropriate level for those penalty notices that allow the Council to decide the amount, we will take into account all of the factors in the case, including any ones specified by the legislation. In doing so, we will often be aiming to remove any benefit from non-compliance and to deter future non-compliance. In appropriate cases when reaching such a decision our approach is likely to be:

- a) We will estimate the benefit derived from the non-compliance; (If we are unable to do this or do not consider it appropriate to use it as a starting point, we will use the most relevant of the level of fixed penalty available or the maximum fine that can be imposed by a magistrates' court for the offence);
- b) We will add on an appropriate deterrent component based on any aggravating or mitigating factors;
- c) We will adjust the amount downwards if it exceeds the statutory maximum;

(We will also consider making adjustments to deduct the cost of the person complying with any non-monetary requirement, if we have imposed such requirements.)

7.13.6 The types of matters that we will consider to be aggravating factors include degree of blameworthiness; ignoring earlier advice and guidance; lack of prompt attention to rectify identified failings; and



history of non-compliance. The types of matter that we will consider to be mitigating factors include preventative measures taken; cooperation with the Council during the investigation (such as voluntarily providing information or assistance); voluntary reporting of the non-compliance; any restoration taken; personal circumstances that might otherwise reduce blameworthiness (e.g. age, health issues); and other case specific mitigating features.

7.13.7 The Council will comply with any requirements specified in the particular legislation regarding the issuing of all such notices. If relevant national guidelines are produced on the use of any such civil sanctions under particular legislation we will comply with them. We will also comply with any appeal mechanism specified by the legislation.

7.13.8 Fixed monetary penalties are mainly appropriate for clear-cut offences where advice and guidance has already been given and has not been complied with, or lax regard has been given to that advice and guidance. This is likely to be in circumstances where we judge that recourse to formal procedures is warranted to signal that the business operator or individual needs to pay more serious attention to its obligations and to prioritise its compliance efforts. They are not appropriate for more serious cases of non-compliance, for example where the impact of non-compliance is significant or where there is evidence of intentional disregard for the law, or repeated non-compliance. Variable monetary penalties are likely to be imposed for those cases where we aim to remove the benefit from non-compliance and to deter future non-compliance, for instance where the impact of non-compliance is significant or there is evidence of intentional disregard for the law.

7.14 Non-monetary requirements

7.14.1 Some legislation enables officers who consider that an offence or breach has been committed to impose non-monetary requirements, where the precise nature of the sanctions is decided by us. In these circumstances we may impose non-monetary requirements in combination with monetary penalties. We will use such non-monetary requirements for more serious cases of non-compliance, such as when there is evidence of an intentional disregard for the law or repeated non-compliance. Where the Council decides to impose non-monetary discretionary requirements it will clearly set out what steps should be taken by the business and the time period within which they must be completed.



7.14.2 Non-monetary requirements include compliance notices, restoration notices and stop notices. Compliance notices are sometimes known as improvement notices. They are requirements for the person to take steps to ensure that a breach does not continue or recur.

Restoration notices are requirements for the person to take steps to restore harm caused by non-compliance. Stop notices prohibit the person from carrying out an activity until the person has taken the specified steps to remove the risk of serious harm. In each case we decide what those steps will be and the time period within which they must be completed. Different names may be used in different legislation for notices serving similar purposes.

7.14.3 We will consider such non-monetary requirements in all cases where we believe that it is warranted to impose sanctions but a monetary penalty alone is unsuitable. The primary purpose of imposing these types of requirements is to secure the person modifying his or her behaviour, so as to halt the on-going breach or to address the causes that give rise to a breach or to restore any harm that was caused by the activity.

7.14.4 The form and content of such notices varies between different legislation. Any notice that is issued will be in the form required by the particular legislation. Almost invariably the notice will require details of the circumstances that amount to the offence, details of what steps the person is required to take and the period during which this should be done. Usually the legislation will allow the Council to amend or withdraw such notices if it is appropriate to do so.

7.14.5 Some legislation requires the Council to issue a notice of our intention to issue a non-monetary requirement and to allow the offender to make representations and objections within a specified period. Once the person makes representations or does nothing we will then make a final determination on the requirement that we will impose within the specified period, based on all the circumstances and the person's response. We might decide to impose the original version of the requirement or to impose the requirement with modifications, or instead to impose another requirement or not to impose the requirement at all, perhaps if the response indicates that the person has an appropriate defence or imposing the requirement would be unproductive. If we decide to proceed we will issue a final notice as required by the particular legislation. Some legislation may allow us to serve an enforcement costs recovery notice at the same time as serving the final notice to allow us to recover all the costs we incurred,



including investigation costs, administration costs and costs of obtaining expert advice.

7.14.6 If the person does not fully comply with a non-monetary requirement by the required date then a breach of some notices may be an offence in itself for which we can prosecute. However often we can impose a financial penalty, sometimes known as non-compliance penalty. In setting a non-compliance penalty usually it is the Council that decides the amount to be paid, subject to the statutory maximum and any prescribed criteria. In doing this we will aim to set the amount at a level to reflect the amount of costs avoided by the failure to comply with the original notice. When the person has completed some, but not all, of the required steps, we will aim to set the amount of the non-compliance penalty at the full costs of complying with the requirements, less the costs incurred in carrying out the steps already taken. Some legislation imposes a requirement on the Council to serve a notice of intention to serve a non-compliance penalty. Once the person who receives such a notice of intention has made representations or does nothing we will then make a final determination within the specified period, based on all the circumstances and the person's response

7.14.7 The Council will comply with any requirements specified in the particular legislation regarding the issuing of all such notices. If relevant national guidelines are produced on the use of any such civil sanctions under particular legislation we will comply with them. We will also comply with any appeal mechanism specified by the legislation.

7.14.8 Service of a compliance notice will mainly be appropriate in order to stop an offence from recurring where compliance can be achieved by relatively simple adjustments to the process or labelling and in serious cases to avoid further supply of non-compliant product to consumers or distributors.

7.14.9 Service of a stop notice will mainly be appropriate when we are satisfied that the activity is causing serious harm or is presenting a significant risk of causing serious harm to human health or the environment or the financial interests of consumers. However it may not be appropriate to do so if it is not in the public interest or the person or business has taken immediate voluntary steps to cease a particular course of action.

7.14.10 In some situations the legislation may allow voluntary enforcement undertakings to be offered by the business as a formal agreement about the steps, that they proactively offer to carry out, to ensure that a breach will be rectified and/or recurrences will be



prevented. The Council may accept such voluntary undertakings, but will take any failure to honour such voluntary undertakings very seriously and enforcement action is likely to result.

7.14.11 We consider that it may not be appropriate to accept an enforcement undertaking when there is insufficient detail as to how non-compliance will be resolved or if the level of noncompliance is not fully recognised or when factors are present that indicate that a prosecution or another civil sanction is more appropriate.

7.15 Prohibition of use of Premises, Part of Premises, an Activity or Item of Equipment

7.15.1 Officers may prohibit the use of premises, parts of premises, activities or items of equipment where they pose a risk of injury or a risk to public health. The owner of the premises or equipment has a right of appeal. In some circumstances the Councils must make an application to the Magistrates' Court within a specified period of time to confirm the Officers' decision.

7.16 PROSECUTIONS

7.16.1 We recognise that most persons wish to comply with the law. However there are occasions when we will take enforcement action, including prosecution against those who flout the law, or who deliberately or persistently fail to comply, or who act irresponsibly or where there is an immediate risk to health and safety. In deciding what action to take, a number of factors will be taken into consideration, including:

- The nature of the alleged offence
- The seriousness of the alleged offence.
- The previous history of the business or persons involved
- The likelihood of a defendant establishing an available statutory defence
- Action taken by business to prevent any recurrence
- Any explanation offered and, as far as the law allows the circumstances and attitude of the business towards compliance
- What course of action will best serve the public interest of the community (Please also see the public interest factors under the Code for Crown Prosecutors.)

7.16.2 The decision to prosecute is taken by an appropriately authorised senior officer:

- In accordance with this Policy;



- In accordance with the Code for Crown Prosecutors; and
- In accordance with statutory requirements, taking into consideration all other codes of practice.

7.16.3 Having decided to prosecute our policy is to select offences that reflect the seriousness and extent of the offending give the court adequate powers to sentence and impose appropriate post-conviction orders and enable the case to be presented in a clear and simple way.

7.16.4 On some occasions prosecutions may be taken in the criminal courts at the same time as civil proceedings are also taking place in the civil courts.

7.16.5 In circumstances where the defendant wants to plead guilty to some, but not all of the charges, the Council will only accept such a plea if we think that the court is still able to pass a sentence that matches the seriousness of the offending. If the defendant pleads guilty to the charges but on the basis of facts that are different to the Council case and where this may significantly affect the sentence, we will usually invite the Court to hear evidence to determine what happened and then the Court will be asked to sentence on that basis.

7.16.6 A conviction will result in a criminal record. The court may impose a fine and/ or a community order and/or impose a prison sentence in respect of particularly serious breaches. The court may also order the forfeiture of seized items or non-compliant goods. In some circumstances a prosecution may lead to the disqualification of individuals from driving or from acting as company directors.

8. POWERS UNDER THE ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014

8.1 The Anti-Social Behaviour, Crime and Policing Act 2014 (“the 2014 Act”) has introduced additional powers for the Councils to deal with anti-social behaviour and irresponsible dog ownership.

8.2 The 2014 Act introduces two new measures which are designed to give victims and communities a say in the way that anti-social behaviour is dealt with:

- **The Community Trigger** gives victims the ability to demand action, starting with a review of their case, where the locally defined threshold is met.
- **The Community Remedy** gives victims a say in the out-of-court punishment of perpetrators for low-level crime and anti-social behaviour.

8.3 Separate guidance is available re the use of The Community Trigger and The Community Remedy from the Home Office within their Statutory Guidance of July 2014 entitled “Anti-social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers”.

8.4 The 2014 Act mentioned above also covers the use of:

- **Warnings**
- **Community Resolution**
- **Mediation**
- **Acceptable Behaviour Contracts**
- **Parenting Contracts**
- **Support and Counselling**
- **Civil Injunctions**
- **Criminal Behaviour Orders**
- **Community Protection Notices**
- **Public Spaces Protection Orders (which can be used to combat anti-social behaviour and to control the presence of dogs in certain areas)**
- **Closure Powers (to quickly close premises which are being used, or likely to be used, to commit nuisance or disorder)**
- **New absolute ground for possession of a Council House Tenancy where anti-social behaviour or criminality has already been proven by another Court**

The Statutory Guidance referred to above covers these additional Council powers.

9. CODE FOR CROWN PROSECUTORS

We use two tests, under the Code for Crown Prosecutors to determine whether a prosecution or simple caution is a viable and appropriate method of disposal and the case must pass both tests before commencing a prosecution or using a simple caution.

We must be satisfied under the evidential test that, after an objective assessment of the evidence, including the impact of any defence and any other information that has been put forward by the suspect or on which he or she might rely, there is sufficient evidence to provide a “realistic prospect of conviction” against each defendant on each offence.



This means that an objective, impartial and reasonable jury or bench of magistrates or a judge hearing the case alone when properly directed and acting in accordance with the law is more likely than not to convict the defendant of the alleged offence. As part of this test we will assess whether the evidence can be used in court, whether it is reliable and whether it is credible. We will look closely at any evidence where we are not sure that it can be used or whether it is reliable or credible.

If the case passes the evidential test we must apply the public interest test to decide whether it is in the public interest to take the action. A prosecution will usually take place unless there are public interest factors tending against prosecution which outweigh those in favour or we are satisfied that the public interest may be properly served by using another method of disposal. We will balance factors both for and against prosecution carefully and fairly. Some factors may increase the need to prosecute but others may suggest that another course of action would be better.

In deciding the public interest we will consider the following questions:

- How serious is the offence that has been committed?
- What is the level of culpability of the suspect?
- What are the circumstances of and the harm caused to the victim?
- Is the suspect under 18 years old?
- What is the impact on the community?
- Is prosecution a proportionate response?
- Do sources of information require protecting?

The questions are not exhaustive and not all of them are relevant in every case. In answering these questions some factors that we will consider are listed below, but again this list is not exhaustive:

- The more serious the offence the more likely that a prosecution is required;
- The suspect has acted fraudulently or is reckless or negligent in their activities or there is significant risk to public health & safety or to the environment;
- The amount of gain for the offender or the amount of loss to the victim;
- The offence was committed in order to facilitate more serious offending;
- The greater the suspect's level of culpability, the more likely that a prosecution is required;



- Whether the suspect is, or was at the time of the offence, suffering from any significant mental or ill health, which may mean that it is less likely that a prosecution is required;
- The level of the suspect's involvement in the offence;
- The suspect was a ringleader or organiser of the offence;
- The extent to which the offence was premeditated and/ or planned;
- Whether the suspect has previous criminal convictions or out-of-court disposals;
- Whether the offending has taken place whilst the suspect was on bail or subject to a court order;
- Whether the offending is likely to be continued repeated or escalated;
- The presence any motivation of any forms of discrimination or hostility the more likely it is that a prosecution is required;
- The suspect has attempted to conceal their identity, whether directly or indirectly, to make it more difficult to identify or trace the person;
- The suspect deliberately obstructs an officer;
- The offence was committed as a result of a genuine mistake or misunderstanding;
- 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 suspect made a prompt acknowledgement of guilt;
- The suspect has put right the loss or harm that was caused, but must not avoid prosecution or an out-of-court disposal solely because he or she pays compensation or repays the sum of money he or she unlawfully obtained;
- The court is likely to impose a nominal penalty;
- The greater the vulnerability of the victim the more likely it is that a prosecution is required;
- If there is evidence that a prosecution is likely to have an adverse effect on the victim's physical or mental health this may make a prosecution less likely, but the seriousness of the offence must still be borne in mind;
- Whether a position of trust or authority exists between the suspect and the victim;
- If the offence was committed against a victim who was at the time serving the public the more likely it is that a prosecution is required;
- The views of the victim about the impact that the offence has had, which may include the views of the victim's family;
- The suspect's age or maturity;
- Where the offender is under 18 the best interests and welfare of the young person must be considered including whether a prosecution is likely to have an adverse effect on the young person's future that is disproportionate to the seriousness of the offending;
- The greater the impact of the offending on the community the more likely it is that a prosecution is required;



- Whether prosecution is proportionate to the likely outcome, including the cost to the council and the wider criminal justice system;
- Whether the case is capable of being prosecuted in a way that allows effective case management;
- The seriousness and consequences of the offending can be appropriately dealt with by an out of- court disposal which the suspect accepts and with which he or she complies;
- Special care should be taken with cases where details may need to be made public that could harm sources of information;

When we assess the public interest we will not simply add up the number of factors on each side to find out which side has the greatest number.

Each case will be considered on its own facts and its own merits. We will decide the importance of each public interest factor in the circumstances of each case and go on to make an overall assessment of the public interest. It is quite possible that one factor alone may outweigh a number of other factors that tend in the opposite direction. We will not assume that the absence of a factor necessarily means that it should be taken as a factor tending in the opposite direction. Although there might be public interest factors tending against prosecution, sometimes we might consider that a prosecution should still go ahead so as to allow the court to consider those factors when deciding the sentence to be passed.

The final decision on whether or not to prosecute in a specific case will be made by a senior officer who has been authorised under the General Scheme of Delegation to institute a prosecution. He or she will only do so after a thorough review of the evidence and circumstances of the case have been carried out.

10. CHARGING SUSPECTS

There may be circumstances when a suspect has been arrested by the police although the offence is being investigated by the council. After the suspect has been interviewed at the police station the investigating officer might consider that it is appropriate to charge the offender with the offences at the police station rather than to report the suspect so that summonses can be issued at a later date. Such a request will be considered by a senior officer who is authorised to institute a prosecution; if the senior officer is satisfied that the evidential and public interest tests are met he or she will instruct the investigating officer to charge the suspect with the offence(s) at the police station.

Exceptionally there might be circumstances when a suspect has been arrested by the police and the seriousness of the offence indicates that



he or she should be kept in custody, but insufficient evidence to meet the evidential test is currently available to the Council. In such cases we will apply the threshold test if:

- There are reasonable grounds for believing that further evidence will become available within a reasonable period;
- The seriousness or circumstances of the case justify the making of an immediate decision on charging;
- There are continuing substantial grounds to object to bail and it is proper to do so in all the circumstances of the case

Under the first part of the threshold test we must be satisfied that there is at least a reasonable suspicion that the person to be charged has committed the offence. If the reasonable suspicion part is satisfied we will then consider the second part of the test. Under this we must be satisfied that there are reasonable grounds for believing that the continuing investigation will produce further evidence, within a reasonable period of time, so that all of the evidence together is capable of establishing a realistic prospect of conviction. To do this we will consider the nature, extent and admissibility of such evidence, the charges it will support, the reason why the evidence is not already available, the time required to obtain the further evidence and whether any consequential delay is reasonable in all the circumstances.

If the senior officer is satisfied that the above threshold test is satisfied, then he or she will instruct the relevant investigating officer to charge the suspect with the offence(s) at the police station. We will keep such a decision to charge under review and, as soon as possible, we will apply the full evidential and public interest tests to the case.

11. WORKING IN PARTNERSHIP WITH OTHER ENFORCEMENT AGENCIES.

For some areas of our services, we have a shared or complementary enforcement role with other agencies. On occasion it will be more appropriate for other enforcement agencies or other local authorities to deal with particular breaches of legislation, so officers may pass details of the offence to such other parties. In carrying out these shared duties, we will still comply with our Enforcement Policy, but the other agencies will maintain the right to take any enforcement action that they consider to be necessary.

If an offender commits offences in a number of Local Authority areas, it may be more appropriate for one Council to take a prosecution for all the offences, including ones that took place outside of its area. In such



circumstances we may enter into legal agreements with other councils for one authority to take the lead role, making use of provisions under the Section 19 of the Local Government Act 2000, Section 222 of the Local Government Act 1972 or any other enabling powers.

We will work closely with our partners including the Police, the Environment Agency, the Health & Safety Executive, the Food Standards Agency, the Office of Fair Trading, and the Department for Environment, Food and Rural Affairs/ Department of Environment, Planning and Countryside, other local authorities and other enforcement agencies. We will exchange information on enforcement activities with our partner organisations and we will do so in accordance with any established methods of information sharing and legal requirements, including the provisions of the Data Protection Act 1998 and the Crime and Disorder Act 1998.

12. SUFFOLK FLEXIBLE WARRANT SCHEME.

The Suffolk Flexible Warrant Scheme is a mutual aid agreement between the seven District and Borough Councils of Suffolk and Suffolk County Council. This scheme enables suitably qualified, experienced and competent Officers providing occupational health & safety, food safety and/or animal health statutory enforcement services to be issued with a flexible warrant enabling them to carry out relevant enforcement functions across the County of Suffolk.

13. DECISION PROCESS

13.1 Decisions will be based on the principles set out in this Policy.

13.2 The decision will involve consultation between investigating officers, senior managers, Lawyers in Legal Services and if appropriate with external Legal Advisers; and will be in accordance with the appropriate Councils' Officer Delegations of Functions and respective Constitutions.

14. ENFORCEMENT OFFICERS AND REVIEW

14.1 All Enforcement Officers and other relevant staff will be notified of this Policy and the most recent copy will be available on the Councils' websites. All Enforcement Officers will familiarise themselves with this document. As appropriate, Enforcement Officers will receive a document authorising them to undertake enforcement duties, and will keep this available for presentation at all times.



14.2 This Policy will be periodically reviewed and amended as appropriate in the light of changes in legislation or guidance. This will include where appropriate, consultation with Council Officers engaged in enforcement activities as part of their role and with other interested parties, relevant bodies and stakeholders in the enforcement process. The Councils' Monitoring Officer will be authorised to make minor or inconsequential amendments to this Policy as necessary as a result of changes/ amendments to the statutory provisions and/ or guidance as mentioned in paragraph 1.3 above and/ or in relation to any typing or minor drafting errors.

14.3 The operation of this Policy will be reported to Members as agreed.

15. APPENDIX

See also the following documentation:

Local Better Regulation's Priority Regulatory Outcomes.

BIS' Code of Practice on Guidance on Regulation.

Health and Safety Executive/Local Authorities Enforcement Liaison Committee's (HELA's) Guidance to Local Authorities on Priority Planning.

HELA's Incident Selection Criteria Guidance.

Local Government Regulation's Home Authority Principle.

The Crown Prosecution Service Code for Crown Prosecutors (as amended).

The Food Law Code of Practice.

The Health and Safety Executive's Enforcement Management Model (EMM).

The Health and Safety Commission's Enforcement Policy Statement

Babergh District Council and Mid Suffolk District Council



Legal Services Babergh & Mid Suffolk District Councils

Babergh District Council Corks Lane Hadleigh Suffolk IP7 6SJ

**Mid Suffolk District Council 131 High Street Needham Market Ipswich
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Appendix 2

BABERGH DISTRICT COUNCIL MID SUFFOLK DISTRICT COUNCIL

CORPORATE ENFORCEMENT

Statement of Policy

1. INTRODUCTION

- 1.1 Enforcement is the method by which any enforcement body compels a person to act in such a way as to not break the law. Enforcement is for the benefit of the public, consumers, the environment and legitimate business.
- 1.2 The purpose of this Policy is to ensure compliance with the law, whilst minimising the burden on individuals and businesses. It sets out what individuals and businesses can expect from Council regulation within the Babergh and Mid Suffolk Districts of Suffolk.
- 1.3 The Policy is based on the following statutory provisions and guidance:
- Police and Criminal Evidence Act 1984;
 - Criminal Procedure and Investigations Act 1996;
 - Human Rights Act 1998;
 - Regulation of Investigatory Powers Act 2000;
 - Criminal Justice and Police Act 2001;
 - Legislative and Regulatory Reform Act 2006 (“LRRRA”);
 - Legislative and Regulatory Reform (Regulatory Functions) Order 2007;
 - Regulators Compliance Code (“RCC”);
 - Regulatory Enforcement and Sanctions Act 2008 (“RESA”);
 - Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009 (“CRE Enforcement Order”);
 - Co-ordination of Regulatory Enforcement (Procedure for References to the LBRO) Order 2009.
- 1.4 The LRRRA established the Principles of Good Regulation set out in the RCC. Enforcement should be proportionate, accountable, consistent and targeted to areas which need action.

- 1.5 When considering formal enforcement action, where appropriate and reasonably practical Officers from Babergh / Mid Suffolk District Councils (as appropriate) will discuss the alleged breach (es) with the suspected individual or business and take any comments into account in deciding what action is appropriate. There may be occasions when this is not appropriate if it would defeat the purpose of the proposed enforcement action.
- 1.6 In respect of individuals or businesses operating in more than one Local Authority area which has registered a Primary Authority agreement under the RESA in cases specified in the CRE Enforcement Order the Council will notify the Primary Authority of the enforcement action which it intends to take. The Council may also notify the Local Better Regulation Office (“LBRO”) in appropriate cases.
- 1.7 A Primary Authority agreement under the RESA as mentioned in paragraph 1.6 above enables a business to receive advice and to agree their approach to compliance with a single Local Authority, and be able to rely on all other Local Authorities respecting that advice.

2. MEANING AND SCOPE OF ENFORCEMENT

- 2.1 This Policy applies to regulatory enforcement carried out by Babergh and Mid Suffolk District Councils (“the Council(s)”) including both criminal and civil action aimed at ensuring individuals and business comply with the law. There are separate Prosecution Policies for the Councils’ Housing and Council Tax Benefit cases.
- 2.2 Section 28 of the RESA defines “enforcement action” as follows:
 - (a) Any action which relates to securing compliance with any restriction, requirement or condition in the event of the breach of such;
 - (b) Any action taken with a view to or in connection with the imposition of any sanction (criminal or otherwise) in respect of an act or omission;
 - (c) Any action taken with a view to or in connection with the pursuit of any remedy conferred by an enactment in respect of an act or omission.
- 2.3 The Councils and their Enforcement Officers will be required to interpret and apply all legal requirements fairly and consistently in respect of similar offences.
- 2.4 In appropriate cases the Councils will publicise unlawful trade practices and the results of enforcement action.

3. PRINCIPLES OF ENFORCEMENT

- 3.1 The Councils will work on the basis of the principles set out in the RCC, the Enforcement Concordat and any guidance from LBRO.
- 3.2 The Councils will seek to prevent breaches of regulation by advice and publicity but will take formal enforcement action where it is necessary to do so.
- 3.3 In accordance with RCC the Councils' Corporate Enforcement Policy 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 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 others from offending.
- 3.4 Enforcement action will be applied in accordance with the Equality Act 2010 and will not be affected by ethnicity or national origin, gender, religion or belief, disability gender reassignment or sexual orientation. The age of the victim or the offender will only be a consideration in appropriate cases, for example elderly victims or young offenders.
- 3.5 The views of the victim and any other relevant person will be taken into account in deciding whether or not to take formal enforcement action and in particular any harm to the victim or the environment.
- 3.6 Alleged offenders will be notified as soon as an investigation commences and of any enforcement action proposed unless this adversely affects the investigation or place the public or the environment at risk.
- 3.7 Businesses, victims and witnesses will be kept informed of progress throughout an investigation and confidentiality will be maintained except where this would not be in the public interest.
- 3.8 All enforcement action will be taken in a timely manner.

4. ENFORCEMENT ACTION

- 4.1 The following enforcement actions will be taken in appropriate cases:
 - (a) No action
 - (b) Informal warning and/ or advice
 - (c) Fixed Penalty Notices
 - (d) Statutory Notices and suspending, cancelling, reviewing or refusing to review a Licence
 - (e) Simple Cautions
 - (f) Forfeiture proceedings
 - (g) Seizure of goods or equipment

- (h) Injunctions and other civil actions
- (i) Works in default
- (j) Prosecutions
- (k) Proceeds of Crime Applications
- (l) Administrative Penalties in Housing Benefit and Council Tax Benefit cases

4.2 In deciding which enforcement action (if any) is necessary and proportionate the following guidelines will be taken into account:

- (a) The gravity of an alleged offence, together with the seriousness of any actual or potential harm
- (b) The previous record of the individual or business concerned
- (c) Any obstruction or lack of co-operation on the part of the offender
- (d) The harm that has been caused or the risk to persons, the environment or public funds
- (e) The statutory provisions and Codes of Practice set out in paragraph 1.3 above
- (f) Legal advice
- (g) Age where this is a relevant consideration (i.e. in relation to children/ young persons).

5. DETAILED EXPLANATION OF ENFORCEMENT ACTIONS

5.1 No Action

5.1.1 In certain situations contraventions may not warrant formal action. Examples include where the cost of compliance or the cost of the enforcement action outweighs the detrimental impact of the contravention on the community. It may also apply where the offender is in some way vulnerable and/ or suffering from serious illness. In all cases reasons will be clearly given.

5.2 Informal warning and advice

5.2.1 The Council may take informal action when:

- the problem is not too serious and more of a minor or technical nature
- the Council has a high level of confidence that the offender will remedy the situation and /or will not reoffend (The Council will take into account past experience where appropriate/relevant)
- there is no significant risk to persons, the environment or public funds

5.2.2 Verbal or written warnings and advice may be given. If appropriate, time will be given to put the matter right. Failure to do so may result in the Council taking further action. Advice will distinguish between good practice and legal requirements.

5.3 Fixed Penalty Notices

5.3.1 In certain situations legislation provides a power to issue a fixed penalty notice which allows an offender to pay a sum in respect of the offence and remove the need for the matter to be brought to Court. A fixed penalty notice may be issued without prior warning. For the avoidance of doubt a fixed penalty notice will **not** be issued for serious offences.

5.4 Statutory Notices and suspending, cancelling, reviewing or refusing to renew a licence

5.4.1 In certain situations legislation provides for a statutory notice to be issued either to take specified action or cease specified action. The action to be taken and time allowed to comply with the said notice will vary depending on the harm to health and safety, environmental damage or nuisance involved. Notices state the implications of non-compliance. With certain notices there may be a statutory right of appeal, in which case this will be specified in the notice.

5.4.2 A statutory notice may be issued, or a licence may be suspended or revoked if one of the following applies:

- the Council has a statutory duty to do so
- the offender has significantly disregarded the law
- the Council consider that the offender will not respond to informal action
- the offender has a history of disregarding the law or not obeying regulations
- standards found are generally poor and the offender does not seem to be aware of their legal obligations
- there is a risk of serious harm to public health or safety, of public nuisance, or of permanent damage

5.4.3 In addition to prosecuting, the Council may need to take measures to remedy serious or deteriorating conditions or may have to serve a notice to support a prosecution.

5.4.4 The Council will usually prosecute and/or carry out the works themselves if a statutory notice is ignored. The Council will seek to recover **all** reasonable costs if necessary via the Criminal Courts or if appropriate by civil action in the County or High Court.

5.5 Simple Caution

5.5.1 Where an offence has been committed which would otherwise result in prosecution and the offender accepts it a simple caution may be administered. If the offender does not accept a simple caution this will be a material matter in deciding whether or not to prosecute.

5.5.2 A simple caution is an admission of guilt but does not result in a conviction or sentence. They will be issued to:

- deal quickly and simply with less serious offences

- divert less serious offences away from the Courts
- reduce the chances of repeat offences

5.5.3 The criteria for a simple caution to be administered are:

- (a) Sufficient evidence to prove the case;
- (b) The offender must admit the offence;
- (c) It is in the public interest;
- (d) The offender is 18 years or over.

5.5.4 In determining whether or not a simple caution is appropriate a previous caution in the preceding two years will be taken into account.

5.5.5 If while a simple caution is in force (i.e. for two years from date of caution) the offender is found guilty or pleads guilty to another offence in England and Wales the simple caution may be cited in Court and may influence the sentence passed.

5.6 Forfeiture Proceedings

5.6.1 This procedure can be used to ensure that goods are disposed of to prevent further problems. It will normally be used in addition to prosecution and seizure.

5.7 Seizure of Goods or Equipment

5.7.1 Enforcement Officers are authorised by legislation to seize certain goods or equipment for example unsafe food or sound equipment causing a statutory nuisance which may be used as evidence in subsequent Court proceedings. When goods are seized a receipt will be issued.

5.8 Injunctions and other Civil Actions

5.8.1 Where offenders are repeatedly convicted of similar offences or where prosecution is not an adequate remedy an injunction may be applied for to prevent further offences being committed.

5.8.2 Where there is evidence of anti-social behaviour involving persistent targeting of an individual or group in an area such as social housing an Anti-Social Behaviour Order (ASBO) or a Criminal Anti-Social Behaviour Order (CRASBO) as appropriate will be applied for.

5.8.3 An application for an ASBO may be made where the following apply:

- where it appears that a person, aged 10 years or over, has acted in an anti-social manner
- where there is a need to protect the public from behaviour likely to cause harassment, alarm or distress
- where there is evidence 'beyond reasonable doubt' of past acts of anti-social behaviour within the previous six months

The proposed application will be discussed with the Police and other agencies, as appropriate, before any such application is made.

5.8.4 In certain circumstances where there is persistent anti-social behaviour an interim ASBO may be applied for to provide immediate protection to the community in advance of a full hearing where:

- it will put an immediate stop to anti-social behaviour
- it will reduce the scope for witness intimidation

5.8.5 A CRASBO may be applied for in any prosecution where the Prosecutor considers that a CRASBO would assist in preventing an offender from committing further or similar criminal offences.

5.9 Works in Default

5.9.1 Under certain statutory notices the Council may carry out specified works itself and recover the cost from an offender if an offender fails to comply with a statutory notice within the specified time scale.

5.10 Prosecutions

5.10.1 Where none of the above actions are considered appropriate prosecution proceedings may be considered and a criminal prosecution brought against the offender.

5.10.2 In deciding whether to prosecute, the Code for Crown Prosecutors will apply. The Code is a public document issued by the Director of Public Prosecutions which sets out general principles to follow when deciding whether or not to prosecute.

5.10.3 A prosecution may be brought if the following two tests are satisfied

(a) Is there enough evidence against the Defendant? Evidence has to be admissible in Court and reliable and support a realistic prospect of conviction against the Defendant. Any Defence available to the Defendant must also be considered.

(b) Is it in the public interest for the prosecution to be brought to Court?

5.10.4 The following criteria (not an exhaustive list) will be considered in relation to the "public interest test" under paragraph 5.10.3 (b) above:

- (a) Does the alleged offence involve a deliberate or flagrant breach of the law such that public health, safety or well-being is or has been put at risk or permanent damage has been caused?
- (b) Has there been a reckless disregard for the environment?
- (c) Does the alleged offence involve deception which may or may not result in loss or potential loss to public funds?
- (d) Is the integrity of any licensing activity threatened?
- (e) Does the alleged offence involve a failure to correct an identified serious potential risk having been given a reasonable opportunity to do so?
- (f) Does the alleged offence involve a failure to comply either in part or in full with the requirements of a statutory notice or licence?

- (g) Has a statutory notice or fixed penalty been issued in respect of a previous offence?
- (h) Is there a history of similar offences?
- (i) Has a Simple Caution been offered and refused?
- (j) Is the contravention of the law particularly serious, or has there been a blatant disregard of the law?
- (k) Is the integrity of the Councils' enforcement activities threatened?
- (l) Is prosecution desirable to reassure the public or deter other offenders?

5.11 Proceeds of Crime Applications

5.11.1 In appropriate cases an application under the Proceeds of Crime Act 2002 may be made to the Court to restrain and/or confiscate the assets of an offender. This is designed to recover the financial benefit that the offender has obtained from his crime. These proceedings are based on balance of probabilities, the civil burden of proof.

6. DECISION PROCESS

- 6.1 Decisions will be based on the principles set out in this Policy.
- 6.2 The decision will involve consultation between investigating officers, senior managers, Lawyers in Legal Services and if appropriate with external Legal Advisers; and will be in accordance with the appropriate Councils' Officer Delegations of Functions and respective Constitutions.
- 6.3 Where the Council is considering enforcement action against a business which is registered under the Primary Authority scheme, the Council will contact the Primary Authority and will generally follow any guidance given. The Primary Authority can veto the proposed enforcement action, if it believes it to be inconsistent with advice or guidance that it has previously provided. See paragraphs 1.6 and 1.7 above.

7. LIAISON WITH OTHER AGENCIES

- 7.1 In addition to notifying LBRO in appropriate cases, the Council may, where appropriate, cooperate and coordinate with any relevant enforcement authority. Such bodies may include the Suffolk Constabulary, the Suffolk Fire & Rescue Authority, the Health and Safety Executive, the Food Standards Agency, the Environment Agency and/ or Suffolk County Council Trading Standards.

8. ENFORCEMENT OFFICERS AND REVIEW

- 8.1 All Enforcement Officers and other relevant staff will be notified of this Policy and the most recent copy will be available on the intranet. All Enforcement Officers will familiarise themselves with this document. As appropriate, Enforcement Officers will receive a document authorising them to undertake enforcement duties, and will keep this available for presentation at all times.

- 8.2 This Policy will be reviewed and amended as appropriate at least every **two years** (or earlier if necessary), in consultation with all Council Officers engaged in enforcement activities as part of their role. The Councils' Head of Legal Services will be authorised to make minor or inconsequential amendments to this Policy as necessary as a result of changes/ amendments to the statutory provisions and/ or guidance as mentioned in paragraph 1.3 above and/ or in relation to any typing or minor drafting errors.
- 8.3 The operation of this Policy will be reported to District Councillors on an agreed basis.

**Legal Services
Babergh & Mid Suffolk District Councils**

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Appendix 3

BABERGH DISTRICT COUNCIL AND MID SUFFOLK DISTRICT COUNCIL

JOINT CORPORATE ENFORCEMENT POLICY

GLOSSARY

| | |
|-------------------------|---|
| “LRRRA” | Legislative and Regulatory Reform Act 2006 |
| “RC” | Regulators’ Code April 2014 |
| “RESA” | Regulatory Enforcement and Sanctions Act 2008 |
| “BRDO” | Better Regulation Delivery Office |
| “RCC” | Regulators’ Compliance Code |
| “POCA” | Proceeds of Crime Act 2002 |
| “CRE Enforcement Order” | Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009 |
| “BIS” | Department for Business, Innovation & Skills |
| “HELA” | Health and Safety Executive/Local Authorities’ Enforcement Liaison Committee |
| “EMM” | The Health and Safety Executive’s Enforcement Management Model |