

## **DISCUSSION DOCUMENT 1: - Corporate Enforcement Policy**

### **Purpose of the Policy**

The purpose of this policy is to provide certainty and consistency in an over-arching framework that explains the Council's approach to its regulatory duties, guides Officers in enforcement work and offers insight into the role of enforcement in the achievement of the Council's wider strategic objectives. The policy will help us achieve transparency and consistency and make sure that enforcement is effective and proportionate. It will help keep the public and environment safe while supporting the general aim of enabling growth.

### **Aim of the Policy**

The aim of this policy is to establish a regulatory and enforcement framework that enables the Huntingdonshire area to be successful by ensuring expedient compliance with the various regulatory regimes within which the Council provides its services. In delivering effective regulation and enforcement, we will be proportionate, transparent, fair and effective, working at the lowest possible level to help individuals and businesses comply with the law and the associated regulatory guidance.

Establishing this policy is intended to clarify the Council's potential responses to different forms of regulatory breach without restricting its enforcement options.

The intent of the policy is to be clear that, in regulating activities, the Council will work with those being regulated to help achieve compliance. It is also to set clear expectations that, if required, the Council will escalate actions and take enforcement if non-compliance continues. We will be clear about process and clear about whether particular activities can continue or need to be ceased.

### **Helping to deliver Huntingdonshire's priorities**

Effective regulation and appropriate enforcement linked with this policy will contribute to the delivery of Huntingdonshire District Council's strategic aims. This policy will make specific contributions to Huntingdonshire's priorities as outlined below:

#### **Enabling Communities**

*Objective: - Create, protect and enhance our safe and clean built and green environment*

Regulatory services impact on the environment and the use of land and premises. Effective regulation and enforcement will help protect these and make sure that individuals and businesses act responsibly when accessing and interacting with the environment.

#### **Delivering Sustainable Growth**

*Objective: - Accelerate business growth and investment*

*Objective: - Support development of infrastructure to enable growth*

Our aim is to develop and operate regulatory and enforcement services which help, not hinder businesses in their operation and growth. We aim to ensure compliance with the law through the provision of a range of services including, advice, information and appropriate support- with targeted and proportionate enforcement only when necessary.

#### **Becoming a More Efficient and Effective Council**

*Objective: - Become more efficient and effective in the way we deliver services*

*Objective: - Become a customer focused organisation*

The development and delivery of a corporate enforcement policy will help us focus on issues which are important and reflect the needs of our community, helping individuals and businesses comply with their legal responsibilities. This approach will help us become more efficient, removing duplication, streamlining processes and ensuring consistency and certainty of approach as we work within multiple legal frameworks.

### **Scope of the Policy**

This policy provides an over-arching framework for enforcement linked to the Council's regulatory duties so will provide a banner under which these services operate. It will establish a set of common principles and objectives within which these will be provided, allowing our customers to understand our approach and have a reasonable expectation of how we will carry out regulatory and enforcement activity, whatever specific services are involved.

Some of our work is governed by specific legislation and statutory guidance which sets out prescribed procedural approaches which must be followed. This policy is not intended to over-write or contradict these, rather it is to explain the Council's approach to regulation and enforcement in general terms.

The policy will cover the following service areas:

- Animal Health and Welfare, including dog control;
- Animal licensing;
- *Building control*;
- Community Safety, including Anti-Social Behaviour and Enviro-Crime;
- Environmental Health, including food safety, pollution control, nuisance;
- Private sector housing ;
- Health and Safety;
- Licensing, including personal, premises and event licences, Hackney carriage and private hire regulation;
- Planning and Development Management;
- *Waste collection and disposal*.

This is intended to be an indicative rather than an exhaustive list and will be subject to change over time should the Council's regulatory duties change in the light of legislation, statutory guidance or case law.

The policy will cover all incidents, accidents, activities, actions or acts of omission by individuals, organisations or businesses which are in breach of legislation and which have the potential, if unchecked, to result in legal action.

The policy will not include enforcement activities linked to off-street parking, benefit issues, fraud and serious crime, which are covered by service-specific protocols.

### **Regulation and Enforcement**

Many aspects of our lives are controlled by the law. The Government has legislated to control individuals, businesses, processes and our impact upon the environment. Generally, this legislation is in place to protect the public and the environment from misuse and hazard. The Council has a statutory duty to monitor, regulate and enforce in a range of areas set out by the Government.

We will take an approach to regulation which is risk-focussed and intelligence-led. Our inspection activities will be targeted at areas, activities, individuals and businesses which pose the most significant risks and we will act appropriately on data and received information to target our work.

We believe that the vast majority of individuals, organisations and businesses want to comply with the law. Wherever possible, we will help them to do so. As a general rule, our contact will be supportive and, wherever possible, we aim to ensure compliance with legislation through the provision of support, advice and information- ensuring that we promote understanding of both statutory responsibilities (minimum standards) and good practice (desirable standards). Where things have gone wrong, our primary focus will be to ensure that they can be put right and that the public are protected from the impact of poor practice. In all cases, our activities will be delivered in a clearly articulated timescale and our officers will clearly communicate expectations and next steps.

On occasion, it will be necessary for us to take action under the relevant statutory framework. This may be due to finding serious problems, finding issues which present dangers to people or the environment, finding issues which have not been resolved satisfactorily despite previous advice or action, or finding evidence of criminal acts. In these cases, we will act in a manner which is fair, consistent and proportionate to the individual set of circumstances we are dealing with at the time.

### **Our approach to Enforcement**

Enforcement will aim to protect and enhance the environment of Huntingdonshire and to protect and improve the quality of life of its residents and businesses.

The Council is committed to providing a timely, robust and proportionate, regulation and enforcement system for the issues which we are responsible for. When we are carrying out enforcement activity, we will do so fairly, in accordance with a nationally recognised set of principles, and by officers who are competent, suitably experienced and appropriately authorised to carry out this important work.

Where appropriate, we will work with partners and other appropriate external agencies to assess risk, exchange information, process data and provide appropriate and proportionate enforcement services.

### **Enforcement principles**

The Council is committed to the principles of good enforcement set out in the **Enforcement Concordat** and other guidance issued by Government departments. These principles are:

- **Standards:** We will set clear standards for our level of service and performance. We will monitor our performance and strive to improve;
- **Openness:** We will Provide information on regulations and enforcement practice, discuss compliance failures or problems with anyone experiencing difficulties. We will disseminate information widely and we will be approachable to business;
- **Helpfulness:** We will provide clear advice, confirmed in writing if appropriate. We will distinguish between best practice advice and legal requirements. We will consider providing an opportunity for discussion before formal enforcement action. We will give a clear explanation of the need for any immediate action. We will focus on preventative activity.
- **Complaints:** We will welcome complaints regarding our enforcement and investigate them thoroughly where there are clear material issues;
- **Proportionality:** We will aim to tailor enforcement action to minimise costs of compliance. We will prosecute when proportionate to bring serious offenders to account;

- **Consistency:** We will have effective arrangements to promote consistency and, where appropriate, liaise with other enforcement bodies;

We will apply the principles of the **Regulators' Compliance Code** to promote an efficient and effective approach to regulatory inspection and enforcement, improving the outcome of regulation without imposing unnecessary burdens on individuals or businesses. These principles are:

- Regulators should allow, or even encourage, economic progress and only intervene when there is a clear case for protection;
- Regulators should use comprehensive risk assessment to concentrate resources on the areas that need them most;
- Regulators should provide authoritative advice easily and cheaply. No inspection should take place without a reason;
- Businesses should not have to give unnecessary information;
- Businesses that persistently break regulations should face meaningful sanctions;
- Regulators should be accountable for the effectiveness of their activities.

If necessary, enforcement may be carried out by the Council, in association with appropriate partners, or through the appropriate Primary Authority if one exists.

#### **Responding to reports of possible regulatory breaches**

Reports of potential breaches will receive an initial assessment in order to determine whether a prioritised (urgent) response is required, whether there is possible offending taking place and which officers should lead on any necessary investigation and enforcement.

#### **Investigations**

Where necessary, we will carry out investigations in order to determine whether the law has been broken and to gather an appropriate amount and standard of evidence to provide a sufficient standard of proof to meet the requirements of the level of enforcement which is deemed appropriate. These investigations will be carried out within a prescribed timescale, dependent upon the nature of the breach.

Investigations may involve: monitoring environmental or other physical data; conducting interviews, either informally or under PACE (Police and Criminal Evidence Act) conditions, taking photographs, taking video recordings; monitoring via overt or covert CCTV, using powers of entry to gain access to premises or other legally available means deemed necessary and proportionate. Investigations will prioritise the early identification of all relevant parties in order that any necessary action will not be delayed unduly.

All investigations will be undertaken in adherence with the relevant statutory requirements of the legislation involved and will be compliant with the Regulation of Investigatory Powers Act 2000 and the Protection of Freedoms Act 2012. All information shared with other agencies will be in accordance with agreed Information Sharing Protocols. All information will be handled in accordance with the Data Protection Act and all current data protection guidance.

#### **Enforcement Action**

Being committed to the principles outlined above, wherever possible our approach will be to resolve problems and ensure safe operations and appropriate protection of the public and the environment. We will aim to provide advice and information and be clear in this about the difference between good practice advice and legal requirements. Where intervention is required, we will aim to provide informal interventions, only proceeding to formal interventions and legal action where this is

necessary, proportionate and in the public interest. Instances of non-compliance and failure to co-operate will lead to an escalation of action.

Where we take action, this will have the objectives of achieving compliance with the relevant legislation within a reasonable, explicitly stated, timescale and, if appropriate, seeking appropriate redress from the individual, organisation or business which is subject to this action.

Action will be proportionate to the harm caused by the offence. Harm will be assessed in terms of direct impact of the offence and any potential indirect impact.

Informal action could include: providing verbal advice; accepting voluntary undertakings; giving verbal warnings. It is likely that advice requiring improvement works or acceptance of voluntary undertakings to carry out improvements will be time-bound, generally offering a period of up to one month to make such improvements as are deemed appropriate.

Informal action may be deemed appropriate in situations where, for example, a first offence, the offence considered is minor or has low impact, compliance is readily achievable, the offender has sought advice to resolve a problem.

Formal action could include; a warning letter; a 'letter before action' a statutory notice; a fixed penalty notice; amending licence conditions, referral to Licensing Panel; simple caution; civil court proceedings; criminal court proceedings. The requirements of warnings and notices will be time-bound, generally offering a period of up to one month to make such improvements as are deemed appropriate. Ordinarily, due to evidential requirements, all steps prior to court action will take place in a period of less than six months from the initial identification of a possible offence.

Formal action may be deemed appropriate in situations where, for example, the offence is serious, the offence has a high impact on individuals, the community or the environment, is a repeat offence, previous action has not resulted in compliance, compliance is considered unlikely, statutory process states that this is required.

Generally, formal action would be preceded by an informal stage involving information, advice or warning. However, immediate formal action may be taken in situations where this is appropriate and proportionate.

Where formal action includes court proceedings, the Council will seek to recover its costs following a successful prosecution. In preparing court proceedings, we will consider the appropriateness of the full range of sanctions including (but not limited to) injunctions, restorative justice, and use of the Proceeds of Crime Act against individuals being prosecuted.

These are outlined as examples of possible sanctions and scenarios, not as an exhaustive list.

We will generally aim to enforce at the lowest level which is consistent with achieving compliance or taking sanction against non-compliance. However, in serious cases, in cases where there has been repeated offending, or in cases where initial action has not been effective in achieving compliance, it may be necessary to take immediate action at higher levels.

When deciding the most appropriate enforcement method, we will consider the full circumstances of each individual case, taking account of a wide range of issues including:

- The seriousness of the situation;
- The circumstances of the case and the likelihood of recurrence;

- The different options for achieving compliance with the relevant law;
- The level of risk to the public and the environment;
- Any relevant previous history of the offender or location, including the existence of existing control measures, e.g. conservation area, area subject to public space protection order;
- The likelihood of achieving a satisfactory outcome;
- Any relevant precedents;
- The attitude of the offender;
- Legal imperatives, e.g. statutory requirements to follow a particular process;
- Relevant guidance;
- The availability of admissible evidence;
- The prevalence of the offence locally or nationally;
- The public interest.

We will put appropriate internal controls and management checks in place to ensure that enforcement activity is appropriately authorised, appropriately recorded, is carried out in accordance with the principles outlined in this policy and we will ensure that all formal enforcement is appropriately authorised, compliant with statute and subject to appropriate quality assurance checks.

#### **Enforcement with other agencies**

We will liaise appropriately with other agencies in cases where our investigations indicate that there is a possibility that investigation or enforcement may be required which is outside the Council's area of responsibility. This may be in addition to the Council's actions or may replace Council action if another agency is able to be more effective or apply more pertinent legislation. Similarly we will accept referrals from external agencies if their work indicates that investigation or enforcement may be required in an area which is within our remit. We will exchange information with these agencies in line with our responsibilities under locally agreed information sharing protocols and our statutory duties to share information.

#### **Conflict of Interest and Undue Influence**

We will be impartial in carrying out our enforcement duties. Our intention is to regulate and enforce "without fear or favour". The Council has a procedure to deal with conflicts of interest and allegations of undue influence being brought to bear on enforcement decisions. Complaints made in connection with these matters will be investigated using the Council's complaints procedure.

#### **Equalities**

We are committed to fair and objective enforcement and to enhancing good community relations. This policy will be applied in a non-discriminatory manner. An Equalities Impact Assessment has been carried out as part of the approval process and equalities issues will be monitored and reported to senior management periodically.

#### **Implementation**

This policy covers the roles of officers in providing a regulatory framework and in taking enforcement action linked to this framework. The policy covers actions up to the point of hand-over to the judicial (court) or quasi-judicial (e.g. Licensing Panel, Planning Committee) process. Where these quasi-judicial processes involve Council Members, we will ensure clear separation of roles between the regulation, investigatory and enforcement roles.

#### **Review**

This policy will be reviewed after 5 years or if there is a substantive change to underlying legislation which impacts on the operation of the policy.