

DISCUSSION DOCUMENT 2:- Corporate Enforcement Guidance/Protocol

This guidance document is intended to provide operational guidance on the application of the council's Corporate Enforcement Policy. This guidance should be read in conjunction with the most up to date version of the policy.

Policy statement

The Council is committed to providing a speedy, 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.

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.

Scope

The corporate enforcement policy covers the following service areas.

- Animal Health and Welfare, including dog control
- Animal licensing
- Community Safety, including Anti-Social Behaviour and Enviro-Crime
- Environmental Health, including food safety, pollution control, nuisance
- 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 responsibilities change in the light of legislation, statutory guidance or case law.

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

The policy does not cover the following services:

- Off-street parking
- Fraud
- Benefits issues

The policy does not cover offences which are outside the regulatory scope of the District Council.

Response to Complaint or Service Request

Initial screening

All complaints received will be subject to an initial screening which will highlight cases which require a high priority response. This initial screening will identify the most appropriate service and officer

to lead and manage the Council response. This will be particularly important in cases which require input from more than one service.

Standards for response

Cases not requiring a high priority response will be dealt with in line with standard service targets, generally acknowledging a complaint and, if appropriate, starting an investigation within 10 working days.

A high priority will normally be given to cases where providing a standard response would endanger the public or stop a serious offence or breach of regulation being committed. The aim is to attend as soon as an appropriate officer is available and start an investigation into these cases within one working day.

Examples of cases requiring a high priority response would include:- situations placing the public in imminent danger; public health incidents; food safety incidents; incidents requiring a response under the council's emergency planning arrangements; reports of works being carried out to listed buildings or trees subject to preservation orders.

Investigation and Enforcement

Principles

Investigations and enforcement, where required, will be proportionate and transparent.

The privacy and confidentiality of individuals making complaints will be respected.

The broad process of investigation and enforcement is summarised in the model contained in this document, attached at Appendix 1. This model describes a process of fact-finding, followed by a spectrum of options for achieving compliance or, where appropriate, delivering enforcement.

In summary, the model outlines two levels of activity:- investigation/informal action; and formal action. Working through a spectrum of options, the model outlines 5 stages of investigation, informal action and formal enforcement activity. Each of the stages contains a number of options which may be selected as appropriate, following consideration of the specific circumstances.

The model presents a range of possible offences/issues and describes a generalised enforcement progression which can be followed in order either to gain compliance or take proportionate enforcement action. The steps shown are not necessarily a strict progression as, in many cases, several options exist at any given point and the model shows the range of options.

All complaints will be resolved at the lowest level/stage which is consistent with the severity and/or likely impact of the issue being considered.

All complaints will receive an initial assessment to determine whether an investigation is required and, if so, the most appropriate service and officer to lead the response.

All complaints passing initial assessment will be subject to Stage 1 (Fact Finding) in order to establish the circumstances and background.

Officers should be clear with individuals and companies involved in breaches and should communicate, as a minimum, the following information:

- The nature of the breach being considered
- Whether this is a statutory issue or whether guidance on best practice is being given
- What actions are required to correct the breach, if this is being allowed
- What enforcement actions are being taken, if this is the case
- The timetable for compliance to be achieved, or for the next stage in enforcement being taken
- If a “next step” is planned, what this is and when it will take place.

If the fact finding indicates that a breach is taking place or a regulatory issue exists, the case will generally escalate to Stage 2 (Officer Liaison) in order to seek resolution. This may involve working to achieve compliance informally or via education.

If this is the case, officers should consider serving notice to require details of individuals and companies connected with the breach at an early stage so that a lack of this information does not delay later enforcement, should this be required.

If the impact or severity of the issue warrants it, there can be immediate escalation to Stage 3 (Formal Process), Stage 4 (Quasi-Judicial Process), or Stage 5 (Judicial Process).

The model shows the following guidance for each of the offence types listed:

- The expected response (standard, urgent, or referral to another agency if the issues is not in the scope of the council’s powers);
- The expected first level of engagement, considering the impact/severity of the offence type;
- The expected follow-up process in the event that the initial engagement does not achieve an appropriate outcome;
- Actions which would not normally be considered appropriate (shaded out on model)

Follow up actions may fall within the same level, or be at an escalated level, as appropriate to the specific circumstances. For example, Advice Letter and Written Warning are both aspects of Officer Liaison but the warning could be an appropriate follow-up step if advice does not achieve the desired outcome.

Some breaches may be considered relatively minor but warrant a relatively severe initial action due to the combination of severity/impact/background. For example, littering may warrant the immediate issuing of a Fixed Penalty Notice (FPN) because it occurs in an area with a history of littering which is protected by a Public Space Protection Order (PSPO). In this case, the issuing and publicising of the PSPO would be viewed as having, in itself, covered the earlier phases of the model. Similarly, an unauthorised advertising hoarding may merit immediate prosecution due to safety or amenity issues.

Some breaches may require referral to, or enforcement by, an external agency (e.g. the Planning Inspectorate, the Environment Agency, the Police). If this is the case, all relevant parties should be informed that this is being carried out.

Factors taken into consideration

When deciding the most appropriate enforcement method, the full circumstances of each individual case should be considered, including:

- The seriousness of the situation;
- The circumstances of the case and the likelihood of recurrence;
- Mitigation or circumstances which need to be considered, e.g. Disability;
- 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, including deterring further offending;
- 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.

Authorisation of enforcement and escalation

Actions in Stages 1, 2 and 3 can be carried out at the discretion of appropriately authorised officers.

Head of Service authorisation and formal legal advice is required for all cases proceeding to Stages 4 or 5. [check who can authorise quasi-judicial or judicial actions in Planning]

Authorisation for exceptions

In cases where the model indicates that the appropriate action would fall in Stage 4 or 5 and the investigating officer wishes to carry out enforcement action at a lower stage, this must be authorised by a Head of Service.

Illegal evictions	<i>On receipt</i>		1			x			x									x
Empty properties	<i>On receipt</i>	5				x			x									x
Caravan site- operation without licence	<i>On receipt</i>	5						x	x									x
Caravan site- breach of conditions	<i>On receipt</i>	5				x			x									x
Activities regulated by Licencing Act 2003																		
Operating without licence	<i>On receipt</i>	5				x	x		x									x
Breach of licence conditions	<i>On receipt</i>	5				x	x		x									x
Conduct of licensee	<i>On receipt</i>	5				x	x		x									x
Serious Crime linked to licensable activity	<i>On receipt</i>																	
Licensing- other than under Licencing Act 2003																		
Operating without licence	<i>On receipt</i>	5				x	x		x									x
Breach of Conditions	<i>On receipt</i>	5				x	x		x									x
Conduct of the Operator	<i>On receipt</i>	5				x	x		x									x
Serious Crime linked to licensable activity	<i>On receipt</i>																	
Taxi and Private Hire																		
Operating without licence	<i>On receipt</i>	5				x	x		x									x
Breach of licence conditions	<i>On receipt</i>	5				x	x		x									x
Vehicle condition requirements	<i>On receipt</i>		1															x
Conduct of operator	<i>On receipt</i>																	
Food Hygiene																		
Operating without registration	<i>On receipt</i>	5				x	x		x									x
Operating without approval	<i>On receipt</i>		1			x	x		x									x
Contraventions of hygiene legislation	<i>On receipt</i>		1			x	x											x
Health and Safety- Local Authority enforced																		
Contravention of legislation	<i>On receipt</i>	5	1	x		x	x		x									x
Public Health																		
Infectious disease control	<i>On receipt</i>		1															x
Planning																		
Unauthorised development likely to cause a serious risk to health and safety , e.g. <ul style="list-style-type: none"> • traffic hazards • causing pollution or on contaminated land • at risk of or causing flooding 	<i>On receipt</i>	10	1 or 3						x									x

Response proportionate to incident

<p>Unauthorised development likely to cause significant harm to amenity, health and safety or the environment; the integrity of planning decision-making; public acceptance of decision-making, e.g.</p> <ul style="list-style-type: none"> building work that is unlikely to be given approval without significant modification unauthorised uses causing serious loss of amenity through noise or smells 	<i>On receipt</i>	10	1 or 3				x	x	x	x								x	x	
<p>Unauthorised development likely to cause less than significant harm, e.g.</p> <ul style="list-style-type: none"> building work that may require modification uses that may require restriction 	<i>On receipt</i>	10				x	x	x	x	x								x	x	
<p>(Unauthorised development types which can fall into any the above categories for action)</p> <ul style="list-style-type: none"> creation of vehicle and pedestrian access means of enclosure (gates, walls, fences etc.) engineering operations works other than buildings) commercial extensions commercial outbuildings domestic extensions domestic outbuildings satellite dishes and aerials development not in accordance with approved plans breach of planning conditions material change of use (to uses including commercial, residential and houses in multiple occupation) businesses operating at residential properties residential caravans (including gypsies and travellers) 																				
<p>Buildings or land detrimental to amenity</p>	<i>On receipt</i>	10			x	x		x	x	x	x		x					x	x	
<p>Demolition of a protected building (listed buildings)</p>	<i>On receipt</i>		1				x	x	x	x			x			x	x	x		Possible immediate offence

Alterations to a protected building (listed buildings)	<i>On receipt</i>		3				x	x	x	x			x			x	x	x	Possible immediate offence
Loss of or damage to protected trees (trees with a Tree Preservation Order and trees in Conservation Areas)	<i>On receipt</i>		1				x	x	x	x			x				x	x	Possible immediate offence
Display of unauthorised advertisements	<i>On receipt</i>	10					x	x	x	x			x				x	x	Possible immediate offence
Flyposting	<i>On receipt</i>	10					x	x	x	x	x		x				x	x	Power to remove or obliterate offence
Conservation areas – unauthorised demolition	<i>On receipt</i>		1				x	x	x	x			x				x	x	Possible immediate offence
Conservation areas – unauthorised work to trees	<i>On receipt</i>		1				x	x	x	x			x				x	x	Possible immediate offence
Protected trees (unauthorised cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of a tree subject to a Tree Preservation Order)	<i>On receipt</i>		1				x	x	x	x			x				x	x	Possible immediate offence

Notes:-

Corporate response standard is 10 working days

Where more than one response is shown at a given stage, this indicates that these are available options, NOT that each should be followed in sequence. More than one response can be provided out at any stage and these may be sequential.

* References to offences being dealt with by Committee may mean being dealt with by Tribunal for certain Housing offences

Abbreviations used:-

CPN Community Protection Notice

CPW Community Protection Warning

FPN Fixed Penalty Notice

PSPO Public Space protection Order

HMO House in Multiple Occupation

DRAFT