

# Enforcement Policy

Community and Environmental Services



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# 1 Introduction

- 1.1 This document applies to the enforcement activities carried out by the Community and Environmental Services (CES) Directorate of Norfolk County Council (NCC); including Trading Standards, Highways, Planning and Norfolk Fire and Rescue Service (Fire Safety).
- 1.2 Where appropriate, additional enforcement protocols or policy may be developed to support this policy, for example where there are national requirements regarding a particular enforcement process. These will be appended to this policy as required. **When read in conjunction with Annex 1 this policy constitutes the Local Enforcement Plan for Planning as recommended by Paragraph 207 of the National Planning Policy Framework.**
- 1.3 The consolidated Enforcement Policy was originally developed in conjunction with a range of stakeholders, including business representatives in 2013. The policy forms part of the Council's policy framework and is subject to annual review and approval.
- 1.4 The purpose of this Enforcement Policy is to provide a framework to ensure that we work in an equitable, practical and consistent manner. NCC is committed to the principles of good enforcement, as set out in the Legislative and Regulatory Reform Act 2006, and we have had regard to the associated [Regulators' Code](#) (the Code) in the preparation of this policy. In certain instances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.
- 1.5 Compliance with this Policy will ensure that we will strive to be fair, impartial, independent and objective. The Council is committed to ensuring that the decisions we take and the services we deliver take proper account of equality issues and, where necessary, put actions in place to address any barriers faced by protected groups.
- 1.6 Within the context of this Policy, 'enforcement' includes action carried out in the exercise of, or against the background of, statutory enforcement powers. This is not limited to formal enforcement action, such as prosecution or issue of notices, and so includes inspection to check compliance with legal or other requirements and the provision of advice to aid compliance.
- 1.7 For the purposes of this document 'formal action' means: Prosecution, Simple Caution, Enforcement Order, Issue of Notices, Monetary Penalties, Seizure, Suspension, Forfeiture, Revocation/Suspension of a licence, registration or approval, Works in Default or any other criminal or civil/injunctive proceedings or statutory sanctions, applied either separately or in any other combination.
- 1.8 Where appropriate the Council will seek to recover its enforcement costs, including making formal applications for costs through the Courts.

## **2 Principles of Inspection & Enforcement**

### **2.1 Proportionality**

- 2.1.1 We are committed to avoiding the imposition of unnecessary regulatory burdens and will endeavour to minimise the cost of compliance for business by ensuring that any action taken, or advice offered, is proportionate to the seriousness of the breach, as well as the risk to people, property, the community or the environment. In doing so we will choose approaches that are based on relevant factors including, for example, business size and capacity.
- 2.1.2 We will usually give notice of our intention to carry out routine inspection visits, unless we are required by law to visit unannounced, or we have a specific reason for not giving prior notice. For example this would include where the identity of the person or premises is unknown, or where it would defeat the objectives of the inspection visit to give such notice. Similarly, routine or reactive inspections of the highway are not normally subject to such notice.
- 2.1.3 As far as the law allows, we will take account of the circumstances of the case and attitude of the people involved when considering action. We will take particular care to work with businesses and individuals so that, where practicable, they can meet their legal obligations without unnecessary expense, to support and enable economic growth.
- 2.1.4 The most serious formal action, including prosecution, will be reserved for serious breaches of the law.

### **2.2 Accountability**

- 2.2.1 We will actively work with businesses and individuals to advise and to assist with compliance and requests for help. Contact points and telephone numbers will be provided for business and public use.
- 2.2.2 We will aim to carry out visits and inspections at a reasonable time and where appropriate to do so. Our staff will show their identification (and authority if requested) at the outset of every visit and explain the reason for the visit, unless the nature of any investigation requires otherwise.
- 2.2.3 Out of hours contact for services will be provided where there is a need for an immediate response/risk to public health, safety or damage to property, infrastructure or the environment.
- 2.2.4 The whole range of enforcement activities will be dealt with as promptly and efficiently as possible in order to minimise time delays.
- 2.2.5 Where appropriate, feedback questionnaires will be used to gather and act upon information about the services we provide.
- 2.2.6 We will include information to highlight new legal requirements on our website, with letters sent after an inspection or visit; and by providing or signposting advice and information to help businesses and individuals keep up to date.

## **2.3 Consistency**

- 2.3.1 All officers are required to act in accordance with this enforcement policy and our published service standards.
- 2.3.2 We will carry out our enforcement and advisory functions in an equitable, practical and consistent manner. We will adopt and adhere to relevant policy and guidance and will ensure that our officers are suitably trained, qualified and authorised to undertake their enforcement duties, and understand the principles of good regulation.
- 2.3.3 Where appropriate, we will publish clear service standards providing information on:
- a) How we communicate and how we can be contacted
  - b) Our approach to providing information, guidance and advice
  - c) Our risk assessment methodology used to determine inspection activity, clearly setting out what can be expected from us at the time of visit
  - d) Any applicable fees and charges; and
  - e) How to comment or complain about the service provided and the routes to appeal.

## **2.4 Transparency**

- 2.4.1 In most circumstances we will seek to ensure that people affected by formal action are informed of what is planned, and allow for discussion and time to respond before the action is taken. We will also give them a named officer's contact details. These arrangements must have regard to legal constraints and requirements.
- 2.4.2 When a notice is served it will say what needs to be done, why, and by when, and that in the officer's opinion a breach of the law has been committed and why the notice is necessary. We will also make a clear distinction between legal requirements and recommended works.
- 2.4.3 As part of our commitment to equality we will communicate in a clear, accessible, concise, format using media appropriate to the target audience, in plain language. Where businesses or the public do not have English as a first language we offer translations of correspondence on request.
- 2.4.4 This Enforcement Policy is published via the Norfolk County Council website, and we may publish further guidance about specific areas, such as the use of civil sanctions.
- 2.4.5 The publicity generated by legal proceedings acts as a deterrent to others, and reassures the general public that we take a serious view of illegal behaviour. We therefore publish the outcome of court proceedings, including undertakings; as part of this we include the name of the defendant(s), unless directed not to do so by the Courts.
- 2.4.6 Where we are aware of ongoing breaches of the law we may also use publicity in order to raise awareness, warn residents and increase compliance. This may involve publishing the name of an individual(s) and/or business suspected of breaching the law. In reaching a decision as to whether to publish such information, we will consider the following factors:

- The specific details of the offence committed or detrimental activity.
- The public interest in disclosing personal information e.g. the deterrent effect of the publication.
- Whether the publication would be proportionate.
- The personal circumstances of the offender.
- Community cohesion.

2.4.7 An example of the current published enforcement action is via the [Trading Standards web pages](#).

## 2.5 Targeted (Intelligence and Risk Led) Enforcement

2.5.1 Enforcement will be primarily targeted towards those situations that give rise to the most serious risks, and against deliberate/organised crime. Other determining factors will include local priorities, Government targets and priorities, new legislation, national campaigns and public concerns.

2.5.2 By having a coherent and robust intelligence system, effective strategies can be formed to enable and co-ordinate solutions to particular problems. This enables the identification of new, current and emerging issues, allowing provision of strategic and tactical direction on how the issues can best be tackled.

## 2.6 Supporting the local economy

2.6.1 We recognise that a key element of our activity will be to facilitate and encourage economic progress against a background of protection.

2.6.2 Wherever possible, we will work in partnership with businesses and individuals, and with parish councils, voluntary and community organisations, to assist them with meeting their legal obligations without unnecessary expense.

## 2.7 Reducing enforcement burdens

2.7.1 If there is a shared enforcement role with other agencies, e.g. the Police, Environment Agency or other local authorities, we will consider co-ordinating with these agencies to minimise unnecessary overlaps or time delays and to maximise our overall effectiveness. We will also liaise with the other regulators to ensure that any proceedings instituted are for the most appropriate offence.

2.7.2 We will follow the principle of “collect once, use many times” and share information that we collect with other local authority regulatory services to minimise business impact. Partner enforcement agencies routinely exchange information and in doing so we will ensure we follow the requirements of the Data Protection Act 1998 and other relevant legislation.

2.7.3 When conducting farm visits, we will have due regard to the [Farm Regulators' Charter](#), which makes sure visits are carried out consistently across regulators. The charter covers all inspection types and visits of agricultural and aquaculture activities carried out by Farm Regulators.

### 3 Primary Authority Partnerships

- 3.1 Primary Authority is a statutory scheme established by the Regulatory Enforcement and Sanctions Act 2009. It allows an eligible business to form a legally recognised partnership with a single local authority in relation to the provision of tailored advice, guidance and assistance relating to regulatory compliance. The single local authority (known as the “Primary Authority”) is registered with the Government’s Regulatory Delivery Directorate via the Primary Authority Register.
- 3.2 The Primary Authority then acts as the single point of contact between its partner business and the local authorities that regulate it. The Primary Authority can issue assured advice upon which the business can rely and can also, where appropriate, devise inspection plans for businesses. The inspection plan can place specific requirements on other local authorities and can require feedback on their checks to be given to the Primary Authority.
- 3.3 Where an enforcing local authority is considering enforcement action against a business that has a Primary Authority it is required to make a statutory notification to the Primary Authority. In most cases, this notification must be made before the action can be taken. However, in certain circumstances the notification can be retrospective. These currently include:
- abatement notices under section 80 of the Environmental Protection Act 1990
  - emergency prohibition notices under specified food hygiene legislation
  - prohibition notices under section 31(1) of the Regulatory Reform (Fire Safety) Order 2005
  - notices of emergency remedial action under section 40(7) of the Housing Act 2004
  - emergency prohibition orders under section 43 of the Housing Act 2004
  - enforcement action that is required urgently to avoid a significant risk of harm to human health, the environment or the financial interests of consumers; and
  - enforcement action where the ‘pre-notification’ requirements of the scheme would be wholly disproportionate.
- 3.4 If another local authority proposes enforcement action which the Primary Authority deems to be inconsistent with the assured advice, the Primary Authority may seek to block the enforcement action. Where this is the case but is disputed, or there is a need for further considerations, the matter would be referred to Regulatory Delivery for their consideration/determination.

## 4 Enforcement Actions

- 4.1 Nothing in this policy shall be taken to compel the Council to take enforcement action. In certain instances the Council may conclude that an enforcement response is not appropriate given the circumstances. Any decision to deploy enforcement powers will be taken in the context of operational priorities and this policy.
- 4.2 In deciding what enforcement action to take, we will have regard to the following aims:
- to change the behaviour of the offender
  - to eliminate financial gain or benefit from non-compliance
  - to be responsive and consider what is the most appropriate sanction for the particular offender and the regulatory issue concerned
  - to be proportionate to the nature of the offence and the harm/potential harm caused
  - to repair the harm caused to victims, where appropriate to do so
  - to deter future non-compliance.
- 4.3 Any decision to undertake formal enforcement action will be taken in the context of operational priorities, this policy and the [Council Constitution and scheme of delegations](#). Such decisions will include the use of risk based approaches and intelligence in determining the nature of any response, as well as being subject to ongoing monitoring and review.
- 4.4 Where a right of appeal against a formal action exists other than through the courts, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken.
- 4.5 Where more formal enforcement action, such as a simple caution or prosecution, is taken, Norfolk County Council recognises that there is likely to be an ongoing need for compliance advice and support, to prevent further breaches.
- 4.6 Where it is necessary to carry out a full investigation, the case will be progressed without undue delay. All investigations into alleged breaches of legislation will be conducted in compliance with statutory powers, time limits and all other relevant legislation (and relevant Codes of Practice), including the requirements of:
- Police and Criminal Evidence Act 1984 (PACE)
  - Criminal Procedure and Investigations Act 1996 (CPIA)
  - Regulation of Investigatory Powers Act 2000 (RIPA)
  - the Criminal Justice and Police Act 2001 (CJPA)
  - Human Rights Act 1998 (HRA).
- 4.6.1 As part of any criminal investigation process, persons suspected of having committed a criminal offence will, wherever possible,
- be formally interviewed in accordance with PACE
  - be given the opportunity to demonstrate a statutory defence
  - have the opportunity to give an explanation or make any additional comments about the alleged breach



- be offered translation services where English is not their first language.
- 4.6.2 Some of our Officers have a wide variety of powers, including the power to enter premises and inspect goods, to require the production of documents or records and, when necessary, the power to seize and detain such material where they believe it may be required as evidence.
- 4.6.3 Officers may also take with them such other persons as may be necessary as part of their investigations, or when exercising their powers. This may include Police Officers where there is the possibility of an arrest. In certain cases, Officers may exercise an entry warrant issued by a Magistrate in order to gain access to premises.

Officers may also use investigation equipment as part of their duties, including hand held and Body-Worn Video (BWV) cameras. BWV devices are capable of recording both visual and audio information and can provide a number of benefits to enforcement agencies, including a deterrent to aggressive, verbal and physical abuse towards officers, and in providing additional evidence to support investigations. BWV will usually be deployed on an overt basis for a specific purpose, and where it is necessary and proportionate to do so. Any decision to deploy BWV on a covert basis will be made in accordance with the Regulation of Investigatory Powers Act (RIPA), related legislation, Codes of Practice and associated Council Policy.

#### **4.7 Immediate Formal Action**

- 4.7.1 Whilst recognising that most people want to comply with legal requirements, we also recognise that some will operate outside the law (both intentionally and unintentionally). A staged approach to enforcement will therefore be adopted, with advice and informal action fully explored to resolve the matter in the first instance, if appropriate. However the Council will consider taking immediate formal action for the most serious breaches, which may include any of the following circumstances:
- Where there is a significant risk to public health, safety or wellbeing, or damage to property, infrastructure or the environment.
  - Fraud or deceptive/misleading practices, including those seeking an unfair 'competitive advantage'.
  - For matters where there has been recklessness or negligence, causing or likely to cause significant loss or prejudice to others.
  - Illegal practices targeted at the young, the elderly or other vulnerable people.
  - A deliberate or persistent failure to comply with advice, warnings or legal requirements.
  - Where food fails food safety requirements.
  - Any act likely to affect animal health or welfare, disease prevention measures, or the integrity of the food chain.
  - Obstruction or assault (including verbal assault) of an officer in the execution of their duties.

#### **4.8 Advice, Guidance and Support**

- 4.8.1 Norfolk County Council is committed to using advice, guidance and support as a first response to the majority of breaches of legislation.
- 4.8.2 Any initial requests for advice from individuals or businesses on non-compliance will not in themselves directly trigger enforcement action. We will seek to assist in rectifying such breaches as quickly and efficiently as possible, where there is a clear willingness to resolve the matter, thus avoiding the need for further enforcement action.
- 4.8.3 Any correspondence will clearly differentiate between legal requirements and good practice, and indicate the regulations contravened and the measures which will enable compliance.
- 4.8.4 Follow up checks will be carried out on a risk and intelligence-led basis and where a similar breach is identified in the future, previous advice will be taken into account in considering the most appropriate enforcement action to take on that occasion.

#### **4.9 Verbal or written warning**

Compliance advice can be provided in the form of a verbal or written warning. In doing so we will clearly explain what should be done to rectify the problem, and how to prevent re-occurrence. Warnings cannot be cited in court as a previous conviction, but may be presented in evidence.

#### **4.10 Statutory (Legal) Notices**

- 4.10.1 Statutory Notices are used as appropriate in accordance with relevant legislation. Such notices are legally binding. Failure to comply with a statutory notice can be a criminal offence and may lead to prosecution and/or, where appropriate, the carrying out of work in default.
- 4.10.2 A statutory notice will clearly set out actions which must be taken and the timescale within which they must be taken. It is likely to require that any breach is rectified and/or prevented from recurring. It may also prohibit specified activities until the breach has been rectified and/or safeguards have been put in place to prevent future breaches. Where a statutory notice is issued, an explanation of the appeals process for such notices will be provided to the recipient.

#### **4.11 Monetary penalties**

- 4.11.1 Fixed or variable monetary penalties may be issued where there is a specific power or delegated authority to do so and under the following circumstances:
  - To provide an effective and visible way to respond to less serious crimes without going to court
  - As a response to genuine problems or as part of a wider enforcement strategy.

4.11.2 Specific guidance for legislation which includes the power to issue monetary penalties may be produced to support this policy. An example of this is guidance for the enforcement of the Single Use Carrier Bags Charges (England) Order 2015, which is available [here](#).

4.11.3 Where the offender fails to discharge their liability resulting from any monetary penalty issued, alternative enforcement action will automatically be considered under this policy (including prosecution of the initial offence). Where prosecution is brought; an assessment will be made of other offences that may also have been committed in order that those charges may be considered at the same time.

Consideration will be given to the adoption of alternative remedies to the issue of a monetary penalty, such as those involving dedicated advice and training sessions, which aim to change the behaviour of the offender, whilst remaining proportionate to the nature of the offence and the harm/potential harm caused.

#### **4.12 Licences, registrations and approvals**

Norfolk County Council has a role to play in ensuring that appropriate standards are met in relation to licences, registrations and approvals. We may seek to review, temporarily remove or revoke any licence, registration or approval if we are made aware that actions have been carried out which undermine scheme objectives and/or would be unlawful. This includes those issued by other agencies.

#### **4.13 Seizure**

4.13.1 Some legislation permits our Officers to seize **items such as** goods and documents that may be required as evidence. When we seize goods, we will give an appropriate receipt to the person from whom they are taken. On some occasions we may also ask a person to voluntarily surrender and transfer ownership of illegal goods to Norfolk County Council.

4.13.2 Where we seize food for failing food safety requirements, or animal feed for non-compliance with feed law, an application will be made to the Court for a condemnation order, for the illegal product to be destroyed. We will provide details of where and when this application will be made to allow interested parties to attend the hearing.

#### **4.14 Detention**

4.14.1 Where food is suspected of failing food safety requirements, or where animal feed does not comply with specified feed law, it may be detained to allow further investigation.

4.14.2 When food or animal feed is detained, a notice of detention will be provided, detailing the detention arrangements, including the location where the product(s) will be detained.

#### **4.15 Forfeiture**

Where an accused has not agreed to voluntarily surrender any infringing goods then, on successful conclusion of legal proceedings, forfeiture may be applied for. This does not preclude the Council from taking forfeiture proceedings in their own right in appropriate circumstances.

#### **4.16 Injunctive Actions, Enforcement Orders etc**

We will consider formal civil enforcement action in pursuance of breaches of law which have a detrimental impact on the collective interests of consumers or businesses.

4.16.1 When considering formal civil enforcement action, an Officer will, where appropriate, first discuss the circumstances with those suspected of a breach and, through consultation, attempt to resolve any issues. Alternatively we will look to redress detrimental practices via a range of enforcement actions. These include the following:

- informal and formal undertakings
- interim and other court orders
- contempt proceedings.

We may ask the Court to consider other remedies as part of any proceedings, including compensation for victims.

#### **4.17 Other Sanctions**

The Council will consider other sanctions where legally available and appropriate to do so, including criminal behaviour orders under the Anti-Social Behaviour, Crime and Policing Act 2014, injunctions under the Local Government Act 1972 or equivalent orders to disrupt and/or prevent activities that may contribute to crime or disorder.

#### **4.18 Taking animals into possession/banning orders**

Under the Animal Welfare Act 2006, if a veterinary surgeon certifies that 'protected animals' are suffering or are likely to suffer if their circumstances do not change, we will consider taking them into our possession and applying for Orders for re-imbursement of expenses incurred and subsequent disposal. We may also look to other legislation where appropriate to ensure that similar standards of care and/or control of animals is properly maintained. In some circumstances we will also consider applying to the Court to ban a person(s) from keeping animals.

#### **4.19 Simple Cautions**

4.19.1 In certain cases a simple caution may be offered as an alternative to a prosecution. The purpose of a simple caution is to deal quickly with less serious offences, to divert less serious offences away from the Courts, and to reduce the chances of repeat offences.

4.19.2 Officers will comply with the provisions of relevant Home Office Circulars. The following conditions must be fulfilled before a caution is administered:

- The offender has made a clear and reliable admission
- There is a realistic prospect of conviction
- It is in the public interest to offer a simple caution; and
- The offender is 18 years old or older at the time that the caution is to be administered.

4.19.3 A simple caution will appear on the offender's criminal record. It is likely to influence how Norfolk County Council and others deal with any similar breaches in the future, and may be cited in court if the offender is subsequently prosecuted for a similar offence. If a simple caution is issued to an individual (rather than a corporation) it may have consequences if that individual seeks certain types of employment. Simple cautions will be issued with regard to Home Office and other relevant guidance.

## 4.20 Prosecution

4.20.1 Norfolk County Council may prosecute in respect of serious or recurrent breaches, or where other enforcement actions, such as statutory notices have failed to secure compliance. The Council recognises that the decision to prosecute is significant and could have far reaching consequences on the offender.

4.20.2 Before a decision to prosecute is taken, the alleged offence(s) will be fully investigated, a report compiled by the Investigating Officer and the file independently reviewed by a Senior Manager. A prosecution will only be considered if the sufficiency of the evidence and the public interest falls within the guidelines as laid down by the Attorney General and Crown Prosecution Service [Code for Crown Prosecutors](#).

4.20.3 Before making a decision whether or not to prosecute, consideration will also be given to:

- How well the prosecution supports NCC aims and priorities
- The factors contained in paragraphs 4.2 and 4.7 of this policy
- Action taken by other enforcement agencies for the same facts
- The nature and extent of any harm or loss, including potential harm and loss, and any offer of redress made by the offender to victims
- The willingness of the alleged offender to prevent a recurrence of the infringement
- The likelihood of the alleged offender being able to establish a statutory defence
- The calibre and reliability of witnesses
- The probable public benefit of a prosecution and the importance of the case, e.g. the possibility of establishing legal precedent
- Cost effectiveness of a prosecution
- The scope for alternative routes for redress for 'victims' and their likelihood of success
- The impact of the intervention on small businesses in particular, to ensure action is proportionate.

A conviction will result in a criminal record and the court may impose a fine and, for particularly serious breaches, a prison sentence. The court may order the forfeiture and disposal of non-compliant goods and/or the confiscation of assets. Prosecution may also lead, in some circumstances, to the disqualification of individuals from acting as company directors (see 4.22 below).

#### **4.21 Proceeds of Crime Actions**

4.21.1 Where appropriate, we will seek to recover the benefit that the offender has obtained from their criminal conduct through financial investigation.

4.21.2 Financial investigations will be undertaken in accordance with the Proceeds of Crime Act 2002. Such investigations may include applications to the Court requiring financial information to be provided (production orders) or in serious cases applications to freeze and/or confiscate criminal assets (restraint and confiscation orders). Where appropriate, consideration will also be given to seek compensation for victim losses as part of financial investigations.

#### **4.22 Directors**

On the conviction of a Director connected with the management of a company the prosecutor will, in appropriate cases, draw to the Court's attention their powers to make a Disqualification Order under the Company Directors Disqualification Act 1986.

## 5 Complaints, Compliments and Comments

5.1 If you are unhappy with the service you have received, or we have failed to live up to our promises, managers are always willing to discuss with you the cause of your dissatisfaction, and will try to find a solution.

5.2 If you wish to make a complaint or send us a compliment or comment about our service please use our online procedure by going to:

[www.norfolk.gov.uk/compliments and complaints](http://www.norfolk.gov.uk/compliments and complaints)

5.3 If you are still not satisfied, and feel you have been caused injustice, our complaints process explains how the matter will be escalated, including how to complain to the Local Government Ombudsman.

If you wish to appeal against any enforcement action taken or have any other comments about this policy, you should write to the Executive Director - Community and Environmental Services, at the address shown at the bottom of this page.

## 6 Conflict of Interest in Enforcement Matters

6.1 Where a breach is detected in which the enforcing authority is itself the responsible operator, for example operating as a food business, the following protocol will be followed:

(a) Where a breach of law is sufficiently serious to warrant more than the provision of advice, information, assistance or a written warning, or where the response to remedy the breach is considered insufficient, an authorised officer from **another local authority** will be requested to assist in the decision making process as to the action required. The Managing Director of Norfolk County Council and the **Chief Legal Officer** will be informed of serious breaches without delay.

(b) The additional officer's role is to assist and challenge the decision making process to ensure that appropriate, proportionate and consistent action is taken to remedy the breach, prevent re-occurrence and to minimise the risk of 'conflict of interest' for the enforcing authority. An auditable record of the additional officer's involvement will also be kept.

## 7 Where to get further information

7.1 Copies of this document and other advisory leaflets are available from:

Norfolk County Council  
Trading Standards Service  
County Hall  
Martineau Lane  
Norwich. NR1 2SG.

7.2 We will make this policy available on tape, in Braille, large type, or in another language on request.