

Ref. No.	PL/RE/19
Category	
People	
Place	Yes
Corporate	
In Constitution	

# Generic Enforcement Policies (4 policies)

## Policy Details

What is this policy for?	<p>These existing enforcement policies are the overarching and service level policies that apply to the District and Borough authorities. The policies take account of national codes/guidance and local circumstances and include principles such as proportionality, fairness and consistency. These policies are taken into consideration when enforcement action is being considered.</p> <p>For completeness, the policies include both the service level enforcement policies and any overarching policies that apply to the relevant geographical area/enforcement discipline. These overarching enforcement policies will all apply to other regulatory roles.</p> <p>The policies are titled:</p> <ul style="list-style-type: none"> <li>• Public Health Services, General Enforcement and Prosecution Policy (14/04/2008) [East Dorset District Council]</li> <li>• Public Health and Housing Service Enforcement Policy Group – (September 2015) [Purbeck District Council]</li> <li>• General Enforcement Policy (April 2014) [North Dorset District Council]</li> <li>• Targeted, Fair and Transparent – West Dorset District Council Enforcement Policy (05/06/2009) [used for both Weymouth &amp; Portland and West Dorset District Council]</li> </ul>
Who does this policy affect?	The policies affect residents and businesses. In particular concerning situations where enforcement action may be appropriate, and this may relate to a range of different service legislation.
Keywords	Enforcement, prosecution, food and safety, licensing, planning and building control, building safety, littering, land-use, benefits fraud, council tax/non-domestic rate recovery, private sector housing, noise pollution, environmental pollution, smoke free enforcement, environmental crime, dog welfare and enforcement (as applicable).
Author	Various authors from the service management and ratification systems in place in the former Borough and District authorities.
Dorset Council policy adopted from	<p>4 separate policies from East Dorset District Council; Purbeck District Council; North Dorset District Council; and West Dorset District Councils.</p> <p>Dorset Council has adopted policies from its constituent councils. Please be aware varying policies apply within the Dorset Council area. Policies will be reviewed and/or harmonised by 1 April 2021.</p>
Does this policy relate to any laws?	The policies relate to all relevant service legislation where there is the power to take action by enforcement, including prosecution.
Is this policy linked to any other Dorset Council policies?	There will be other relevant policies/procedures to consider when taking enforcement action (and during the preceding evidence gathering process) for example the Regulation of Investigatory Powers Act 2000 for which the Council has policies in place. Some service areas will have specific enforcement consideration and separate additional cover sheets e.g. licensing and housing.
Equality Impact Assessment (EqIA)	An EQIA will be completed when the policies are harmonised for Dorset Council.
Other Impact Assessments	N/A

## Status and Approvals

Status	Live	Version	
Last review date	2008, 2009, 2014 and 2015	Next review date	2019
Approved by (Director)	S.L. Duckett (Head of Public Health Services – East Dorset District Council)	Date approved	
Member/ Partnership Board Approval	East Dorset District Council  Purbeck District Council  North Dorset District Council  West Dorset District Council	Date approved	14 April 2008  September 2015  April 2014  5 June 2009

**PUBLIC HEALTH SERVICES  
GENERIC ENFORCEMENT AND PROSECUTION POLICY**

**EAST DORSET DISTRICT COUNCIL**

## **DOCUMENT MANAGEMENT DATA**

**Document title ...** Statement of Enforcement Policy

**Computer location ...** \\Trinity\EDDC\sduckett\My Documents\Best Value\BVPI166\EDDC Generic Enforcement Policy April 2007.doc

**Document revision date ...** 4 April 2007

**Document prepared by ...** Head of Public Health Services

**Checked ...** April 2007

**Next Full Revision date ...** 1 April 2008

**Date presented to Members** 16 April 2007

**Date approved by Members** 16 April 2007

**Date document placed on the Internet ...**

**Revised by** S.L. Duckett (Head of Public Health Services)

**Date revised** 14 April 2008

**EAST DORSET DISTRICT COUNCIL  
PUBLIC HEALTH SERVICES  
GENERIC ENFORCEMENT AND PROSECUTION POLICY**

**INTRODUCTION**

1. This enforcement policy applies to East Dorset District Council's Public Health Services (The Services).
2. The aim of the services are to meet community expectations regarding the protection and provision of a safe, healthy, fair and equitable environment and to sustain and enhance the health, safety and quality of life of all who live, work, trade in or visit the area.
3. Service functions covered by this policy are extensive. They include food safety, health and safety at work, environmental protection (including statutory nuisance) licensing, private sector housing standards and dog and pest control.
4. Officers work with other Regulators both within and outside the Council to ensure coherent regulation, and with trade, residents and voluntary groups in order to achieve common goals. Where enforcement action is anticipated and there is a shared or complimentary enforcement role with other agencies then agreement will be sought at an early stage, as to who is the lead authority.
5. The Services regard prevention as being better than cure. They offer information and advice to those they regulate and seek to secure co-operation avoiding bureaucracy or excessive cost. They encourage individuals and businesses to put community, the environment and public health and safety first.
6. This Policy sets out the general principles which these Services intend to follow in relation to enforcement and prosecution. Each service area may also have additional, specific requirements which supplement this policy but take into account specific requirements for that service, which may include the statutory need for a service specific enforcement policy.
7. The Services will monitor their implementation and effectiveness on a regular basis and will review the Policy at least annually.
8. The powers available include statutory notices, improvement and prohibition notices, suspension or revocation of licences, variation of licence conditions, injunctions and the carrying out of remedial works. Where the Services have carried out remedial works, they will seek to recover the full costs incurred from those responsible.
9. Where a criminal offence has been committed, in addition to any other enforcement action, the Services will consider instituting a prosecution, issuing a fixed penalty notice or administering a caution.
10. East Dorset District Council has endorsed the principles of the Enforcement Concordat published in April 1999 by the Government's Better Regulation Task Force as principles of good regulation. The Council adopted a revised version of the Concordat with the agreement of the Policy and Resources Committee in

January 2000. This Enforcement Policy is consistent with the revised form of the Concordat as adopted by the Council. Included in the term “enforcement” is advisory visits and assisting with compliance as well as licensing and formal enforcement action. By adopting the principles of the Concordat, the Council is committed to the policies and procedures set out in this document.

## **PRINCIPLES OF ENFORCEMENT**

11. The Services covered by this policy believe in firm but fair regulation. Underlying the policy of firm but fair regulation are the principles of: -

- **Proportionality** to the risk posed in the application of the law and in securing compliance.
- **Consistency** of approach and application,
- **Transparency** about how the Service operates and what those regulated may expect from the Service, and
- **Targeting** of enforcement action to areas where the hazards are greatest and least controlled.

### **Proportionality**

12. Enforcement action will relate to the risk to health, safety, welfare and the quality of life of the community and wider environments, and any enforcement action taken to achieve compliance will be proportionate to the risk.
13. In determining what is reasonably practical to control risks, the Council will exercise judgement and discretion, recognising that the final determination of reasonableness of their actions is made by the Courts.
14. As far as the law allows, the Council will take account of the circumstances of the case and the attitude of the individual/operator when considering action. It will make use of the full range of enforcement options available to it from informal advice, informal notices and, where appropriate, Minded to Notices, through to the service of formal notices, prosecutions and injunctions.
15. Factors which affect the choice of enforcement option include:-
- The requirements of specific Council policy;
  - The seriousness of the offence and the degree of risk;
  - The past history of the business/individuals involved;
  - Confidence in those involved in the issue;
  - Consequences of non-compliance
  - The likely effectiveness of the enforcement option to secure compliance.
16. Formal action will only be initiated when -
- helping, talking and telling have failed to resolve the issue; or
  - there is a serious/urgent risk to public safety, health or the environment; or
  - the offence is so serious that other forms of action would be inappropriate and it would not be in the public interest not to do so; or
  - in particular cases, where the law requires that formal action be taken.

17. The Council will take particular care to work with small businesses and voluntary and community organisations so that those organisations can meet their legal obligations without unnecessary expense, where practicable.

### **Consistency**

18. Consistency of approach does not mean uniformity, it means taking a similar approach in similar circumstances to achieve similar ends. The Services aim to achieve consistency in, advice tendered, the response to incidents, the use of powers and decisions on whether to prosecute.
19. Officers need to take account of many variables: the scale of impact, the attitude and actions of management and the history of previous incidents or breaches. Decisions on enforcement action are a matter of professional judgement and the Division, through its officers, needs to exercise discretion. The Services will continue to develop arrangements to promote consistency including effective arrangements for liaison with each and other council services and enforcing authorities.

### **Transparency and Openness**

20. The Council believes prevention is better than cure and it will actively work with businesses to advise and assist them to comply with their obligations. Transparency is important in maintaining public confidence in the Service's ability to regulate. It is about helping those regulated and others, to understand what is expected of them and what they should expect from the Services. It means making clear why an officer intends to take or has taken enforcement action. It also means distinguishing between statutory requirements and advice or guidance about what is desirable or good practice but not compulsory.
21. Transparency is an integral part of the role of the Services' officers. Staff are trained and procedures developed to ensure that: -
  - Where action is required, it is clearly explained (in writing, if requested) why that action is necessary and when it must be carried out; a distinction being made between best practice advice and legal requirements.
  - Opportunity is provided to discuss what is required to comply with the law before formal enforcement action is taken, unless urgent action is required, for example, to deal with a statutory nuisance, which is likely to be of limited duration or a dangerous structure in imminent danger of collapse, or evidence required to support a conviction would not otherwise be available.
  - A written explanation is given of any rights of appeal against formal enforcement action at the time the action is taken.
22. The Council will provide information and advice in plain English on the rules that they apply and will disseminate this as widely as possible. It will be open about how it sets about its work, including any charges that are set, consulting business, voluntary organisations, charities, consumers, employers and

employees. It will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.

23. The Council will provide a courteous and efficient service. Staff will identify themselves by name and provide contact points and telephone extension numbers to assist in reaching them. It aims to co-ordinate what the Council does to prevent overlap and unnecessary delay.

## **Targeting**

24. Targeting means making sure that regulatory effort is directed primarily towards those whose activities give rise to the most serious risk or where the risks are less well controlled. Action will be primarily focused on those directly responsible for the risk and who are best placed to control it.
25. The Services prioritise regulatory effort. Factors include response to complaints from the public; the existence of statutory powers and the assessment of risk (e.g. the potential for a particular breach of regulations to cause environmental damage or damage persons health and safety).
26. Management actions are important in the assessment of risk. Repeated incidents or breaches of regulatory requirements, which are related, may be an indication of an unwillingness to change behaviour, or an inability to achieve sufficient control. A relatively low hazard site or activity poorly managed has potential for greater risk than a higher hazard site or activity where proper control measures are in place.
27. Where formal enforcement action is necessary the person responsible should be held to account. Where several persons share responsibility, the Services will take action against those who can be regarded as primarily in breach.

## **What We Expect in Return**

28. The Council expects businesses and individuals to talk to them if they do not know what to do or need help, and to work with our officers to resolve problems. In particular, this means not to be obstructive.
29. Above all they expect people to recognise that it is their responsibility to comply with the law.

## **PROSECUTION**

### **Purpose**

30. The Services recognise the use of the criminal process to institute a prosecution as an important part of enforcement. It uses discretion in making such a decision because other approaches to enforcement may equally or more effectively promote compliance with legislation. Where circumstances warrant, the Service will, however, pursue prosecution without prior warning.

31. All investigations into alleged breaches of legislation will follow best professional practice and the requirements of the Police and Criminal Evidence Act (PACE), the Criminal Proceedings and Investigations Act (CPIA) and the Human Rights Act. As part of the investigation process, persons suspected of breaching legal requirements will, where ever possible:
- be formally interviewed in accordance with PACE,
  - be given the opportunity to establish a statutory defence,
  - have the opportunity to give an explanation or make any additional comments about the alleged offence.
32. The Services will consider prosecution when one or more of the following applies:
- it is appropriate in the circumstances as a way to draw general attention to the need for compliance with the law,
  - there is a risk to public health and safety or of environmental damage as a consequence of the breach,
  - the breach was as a result of a deliberate act or following recklessness or neglect,
  - the approach of the offender warrants it, e.g. repeated breaches, persistent poor standards.
33. The decision to prosecute will also take account of the evidential and public interest tests set down in the Code for Crown Prosecutors. These include:
- the age and state of health of the alleged offender;
  - the likelihood of re-offending;
  - any remedial action taken by the alleged offender.
34. Before a decision to prosecute is taken, the alleged offence will be fully investigated and a report compiled by the investigating officer who will make a recommendation as to the appropriate course of action to be taken. The Head of Public Health Services will review the case before any decision to prosecute is taken. All Defendants will be notified of the decision to prosecute in accordance with the Magistrates Court Rules and CPIA.

### **Sufficiency of Evidence**

35. The Services will not pursue a prosecution unless satisfied that there is sufficient, admissible and reliable evidence that the offence has been committed and there is a realistic prospect of conviction.

### **Public Interest Factors**

36. Where there is evidence as described above, the Services will still not pursue a prosecution unless there are one or more of the following public interest factors in favour of such actions: -
- effect of the offence on local environmental health and safety
  - intent of the offender
  - history of offending

- the offence or circumstances leading to it are foreseeable

## **Penalties**

37. The courts have considerable scope to punish offenders and deter others. The Services will seek to make the courts aware of the degree of gravity they consider should be attached to community and environmental health and safety offences. They will also actively seek to ensure that the local community is made aware of action taken to convict persons who are in breach of their legal obligations.
38. The Services will always seek to recover the costs of investigation and court proceedings.

## **Fixed Penalty Notices**

39. Where legislation permits the use of fixed penalty notices, the Services will consider use of them as an alternative to prosecution. Examples of where they may be appropriate are:-
- To deal quickly and simply with less serious offences
  - To divert less serious cases away from the court process
  - To deter repeat offences
40. Before a fixed penalty notice is administered the authorised officer will ensure:-
- There is evidence of the offender's guilt sufficient to sustain a prosecution
41. Where legislation gives the local authority flexibility to set the level of a fixed penalty charge the level of the charge shall be set by the Council or by an Officer to whom this power is delegated in consultation with the appropriate Lead Member for that service area. The level of the fixed penalty charge shall be set having regard to:-
- Any Government guidance on the level at which the fixed penalty charge should be set
  - The likely level of fine which a court would impose for a similar offence
  - The need to deter offenders from opting for prosecution because they believe that the court would impose a lower level of penalty
  - The cost of bringing a prosecution where fixed penalties were not paid
42. The Council's list of Fees and Charges sets out the current fixed penalty charges for offences where a fixed penalty may be offered as an alternative to prosecution. Where legislation permits the provision of a lower fixed penalty, if payment is made within a set time limit, then this will be considered in consultation with the Lead Member for the service area concerned. To qualify for a discount payment must be made within 10 days. The level of discount would be set having regard to the guidance issued by the Secretary of State.
43. Where a fixed penalty notice is not paid within the specified time limit (usually 14 days) then the offender will always be prosecuted unless there are exceptional

circumstances. Where it is decided that an unpaid fixed penalty notice should not be pursued by way of prosecution the reason for not pursuing the notice must be reported to the Lead Member for the service area concerned.

44. There is no right of appeal against a fixed penalty notice covered by this policy as it only deals with criminal offences. A person served with a fixed penalty notice who believes they did not commit the offence has the right for their case to be heard in court.

### **Simple Caution**

45. The Services will consider Simple Cautions as an alternative to prosecution. Examples of where they may be appropriate are: -

- to deal quickly and simply with less serious offences
- to divert less serious cases away from the court process
- to deter repeat offences.

46. Before a caution is administered the officer will ensure: -

- there is evidence of the offender's guilt sufficient to sustain a prosecution
- the offender admits the offence
- the offender understands the nature of the simple caution and agrees to be cautioned for the offence

47. Simple cautions are administered in accordance with Home Office guidelines.

### **Footnote**

This enforcement policy incorporates and is consistent with the Enforcement Concordat produced by the Government's Better Regulation Task Force as principles of good regulation, published in April 1999. It also takes into account the requirements of procedural and evidential law as agreed with the Regulatory Impact Unit of the Home Office in August 2000.

Within the Services individual service areas have specific enforcement procedures which supplement and support this Policy.

### **Supporting Documents**

1. List of Fees and Charges
2. Supplementary Policies for specific services
3. Enforcement Concordat - adopted by East Dorset District Council's Policy & Resources Committee on the 10 January 2000
4. The Code for Crown Prosecutors CPS
5. Appendix 1 Legal Provisions
6. Appendix 2 Principal Acts enforced by the Public Health Service Division

**Version Control**

Version 1	Agreed by Policy & Resources Committee 16 April 2007
Version 2	
Version 3	

## **Appendix 1**

### **Legal Provisions**

Apart from specific legislation, approved codes of practice and official guidance relating to the technical aspects of environmental health work, there are a number of other legal or quasi-legal provisions relating to or having a bearing on enforcement as a whole.

These include:

The Enforcement Concordat  
Police and Criminal Evidence Act ( PACE)  
Regulation of Investigatory Powers Act  
Human Rights Act  
Freedom of Information Act f) Data Protection Act  
Environmental Information Regulations  
Local Government Act  
Race Relations (Amendment) Act  
Codes of Practice/Guidance.  
Criminal Procedures and Investigation Act (CPIA)

Many of the above contain little more than a passing reference to the needs of enforcement whereas some, such as PACE, CPIA and others, are fundamental. Officers will comply with all of the enforcement provisions of the above which are relevant to a particular case.

## **Appendix 2**

### **Principal Acts enforced by the Public Health Services Division**

Animal Boarding Establishments Act 1963  
Building Act 1984  
Caravan Sites and Control of Development Act 1960  
Clean Air Act 1993  
Control of Pollution Act 1974  
Dangerous Wild Animals Act 1976  
Dogs (Fouling of Land) Act 1996  
Environment Protection Act 1990  
Environmental Act 1995  
European Communities Act 1972  
Food Safety Act 1990  
Gambling Act 2005  
Health and Safety at Work etc Act 1974  
Home Energy Conservation Act 1995  
Housing Act 1985  
Housing Act 2004  
Housing Grants, Construction and Regeneration Act 1996  
Housing Construction and Regeneration Act 1996  
Licensing Act 2003  
Local Government (Miscellaneous Provisions) Acts 1976 & 1982  
Local Government Act 1972  
Local Government and Housing Act 1989  
National Assistance Act 1948  
Noise Act 1996  
Noise and Statutory Nuisances Act 1993  
Pet Animals Act 1951  
Prevention of Damage by Pests Act 1949  
Public Health (Control of Diseases) Act 1984  
Public Health Acts 1936 & 1961  
Riding Establishments Acts 1964 & 1970  
Safety of Sports Grounds Act 1975  
Town Police Clauses Act 1847  
Water Industry Act 1991  
Zoo Licensing Act 1981

*North Dorset District Council***General Enforcement Policy****1. Statement of Intention**

- 1.1 Good enforcement practice is of benefit to both the public and business. It is the Council's intention to use enforcement to deliver its priorities (which are subject to review from time to time).

We recognise that most people want to comply with the law. We will, therefore, take care to help business and others meet their legal obligations without unnecessary expense or burden, while taking firm action, including prosecution where appropriate, against those who flout the law or act irresponsibly. In adopting this approach the Council recognises the desirability of minimising negative economic effects from regulatory activity and encouraging and promoting compliance.

- 1.2 The Council previously signed up to the Enforcement Concordat. This was a government initiative with the principles of openness, helpfulness, proportionality and consistency (see point 7.2 below).
- 1.3 In relation to certain regulatory activities<sup>(2)</sup> specified pursuant to section 24 of the Legislative and Regulatory Reform Act 2006 <sup>(3)</sup>, regard is expressly required to be had to certain overarching principles, namely
- (a) regulatory activities will be carried out in a way which is transparent, accountable, proportionate and consistent; and
  - (b) regulatory activities will be targeted only at cases in which action is needed. Furthermore the 2006 Act expressly requires in relation to those regulatory functions to which it relates that:
    - (a) any person exercising such functions must, except where (b) below applies, have regard to the code<sup>(3)</sup> in determining any general policy or principles by reference to which the person exercises the function; and
    - (b) a person exercising such a function where that function is one of setting standards or giving guidance generally in relation to the exercise of other regulatory functions must have regard to the code in the exercise of that function.
- 1.4 In so far as it is necessary and appropriate:
- (a) regard has been had to all relevant legislation, principles and codes in the preparation of this policy; and
  - (b) regard will be had to this policy and the relevant documents identified in the performance of the Council's regulatory activities.

## **2. Approval**

- 2.1 This policy was approved by the Cabinet of North Dorset District Council on 15 April 2004 and updated on a regular basis.
- 2.2 The policy will be reviewed from time to time particularly when it is identified as requiring change. If considered appropriate, the proposed alterations will be reported to Cabinet. Changes will otherwise be agreed by the Leader of the Council.

## **3. Scope of Enforcement Policy**

- 3.1 This general policy applies to all enforcement practice including food and safety, licensing, planning and building control, benefits fraud, Council tax/non-domestic rate recovery, private sector housing, noise and environmental pollution. In addition to this general policy there may be other specific enforcement procedures and/or codes of conduct taking account of direction/legislation from Government departments/bodies and supplementary guidance.
- 3.2 Where a shared enforcement role or partnership exists with another authority, for example Trading Standards, there should be joint awareness of the respective roles and where appropriate agreement on enforcement practice. This may be agreed at liaison groups between interested authorities.

## **4. Enforcement within Local Authority-run Premises**

- 4.1 Any perceived breaches of law (for example, food law) which may be detected in premises owned by the local authority should be brought to the attention of the appropriate General Manager and/or Corporate Property Officer without delay.

## **5. Access to the Policy**

- 5.1 This policy is available on the Council's web site and in hardcopy at the Council's Blandford Forum offices. It can be ordered by telephoning 01258 484384, e mailing [envlicens@north-dorset.gov.uk](mailto:envlicens@north-dorset.gov.uk) or writing to North Dorset District Council, Nordon, Salisbury Rd., Blandford Forum, Dorset, DT11 7LL

## **6. Action following Complaints**

- 6.1 Complaints which may result in enforcement action against a business or individual will normally be notified to that business or individual as soon as is practicable, except in the circumstances described in 6.2 below. During the progression of enforcement action that business or individual will be further notified, if considered appropriate, of progress and any changing circumstances.
- 6.2 In circumstances where notification could impede enforcement action, then there will usually be no notification unless and until it is considered appropriate.

- 6.3 It is recognised that speed of action in investigating complaints may remove the need for subsequent protracted enforcement work.

## 7. General Principles relating to Enforcement

- 7.1 Each enforcement situation is unique and must be considered on its own facts and merits, taking account of appropriate guidance used by the Council. The following general principles should apply which take into account the 'The Code for Crown Prosecutors'.

7.1.1 Officers must be fair, independent and objective. They must not let any personal views about ethnic or national origin, sex, religious beliefs, political views, or the sexual orientation of the suspect, victim or witness, influence their decisions.

7.1.2 Officers must not be affected by improper or undue pressure from any source.

7.1.3 The right person must be dealt with for the relevant offence and officers must act in the interests of justice and not solely for the purpose of obtaining a conviction.

7.1.4 Officers should seek to ensure that the law is properly applied, that all relevant evidence is considered, and that obligations of disclosure are complied with.

- 7.2 The principles outlined in paragraphs 7.2 to 7.8, below, will be followed at all times.

- 7.3 *Procedures:* Advice from officers will be as clear and simple as possible and will, where appropriate, be confirmed in writing, explaining why any remedial action may be necessary and stating the timescale for progress and completion. A clear distinction will be made between legal requirements and best or desirable practice.

Where there are rights of Appeal against specific actions, advice on the mechanism to be followed will be given in writing. Wherever appropriate, this will be included with the enforcement notice or other documentation.

- 7.4 *Openness:* So far as practicable the Council will seek to publish in plain language any information and advice that it provides concerning the legislation that the Council is applying. Officers will be open about the work required, including any charges that we set, and consultation will take place as appropriate. Where appropriate discussion will take place concerning general enforcement issues, specific compliance failures or problems with anyone who is experiencing difficulties.

- 7.5 *Helpfulness:* Officers will seek to provide a courteous and efficient enforcement service and individual officers will normally identify themselves by name.

A contact telephone number will be provided for on-going discussions. Businesses and individuals will be actively encouraged to seek advice and information relating to the Department's enforcement role.

#### 7.6 *Customer Service Standards*

Our Customer Services Standards describe what you can expect as a minimum level of service, when contacting the Council. Our standards were reviewed and published in 2013 following broad consultation with partner agencies, councillors, staff and customers.

The standards are published on the website or a hard copy can be provided for you.

<https://www.dorsetforyou.com/397653>

customerservices@north-dorset.gov.uk

Tel. no. 01258 454111

- 7.7 *Complaints and Feedback about a Service/Officer:* If business operators or members of the public indicate that they wish to complain about any aspect of the Council's enforcement work, we will seek to identify a relevant procedure to them.

The Council's complaints procedure and customer feedback survey are available on the Dorset-for-You website or can be requested from the Customer Services Team:

<https://www.dorsetforyou.com/complaints/north>

customerservices@north-dorset.gov.uk

Tel. no. 01258 454111

- 7.8 *Proportionality:* Due regard will be given to the issue of proportionality. Where the law allows, officers will take account of the circumstances of a case and the attitude of the *offender* when considering the level of enforcement action.

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

- 7.9 *Risk:* Where it is considered appropriate or necessary to prioritise enforcement within an area of Council responsibility, a risk approach based on evidence is one approach to which regard is likely to be had.

- 7.10 *Consistency:* Consistency means taking a similar approach in similar circumstances to achieve similar ends. The aim, so far as reasonably practicable, is to achieve consistency in the advice given, the response to incidents and the ways in which statutory powers are used.

Consistency does not mean simple uniformity and officers will need to take account of many variables such as the scale of the risk, the attitude and actions of those involved and any history of compliance, whether positive or negative.

Decisions on enforcement action are a matter of professional judgement and officers will frequently be required to use discretion. Efforts will continue in order to develop arrangements for promoting consistency, including effective arrangements for liaison with neighbouring Authorities and other enforcing agencies.

Every effort will be made to ensure consistent enforcement standards between local authorities.

## **8.0 Other Enforcement policies.**

- 8.1 In relation to certain functions, other public bodies have created policy guidance for use by enforcing authorities in relation to various enforcement situations e.g. the Health and Safety Commission has produced guidance relevant to health and safety investigations.
- 8.2 Where such guidance has been produced then in appropriate circumstances due regard will normally be given.

## **9.0 Specific Enforcement Actions or Sanctions**

- 9.1 The Procedures or guidance to be followed when conducting specific types of enforcement are contained in paragraphs as follows:
  - a) *Written warnings.*
  - b) *Formal Notices.*
  - c) *Simple Cautions.*
  - d) *Prosecution.*
  - e) *Works in Default.*
  - f) *Revocation.*
  - g) *Fixed Penalty Notice.*
- 9.2 This list is not intended to be exhaustive and in some cases other legislative powers of enforcement may also exist e.g. injunctions. In so far as it is relevant, and to the extent it is not already covered by other procedures, consideration will be given to this policy in exercising such other powers as well.

## 10.0 Written Warnings

- 10.1 Perhaps the commonest and most versatile form of enforcement is the use of a written warning, which may result from an investigation, or a routine inspection visit.
- 10.2 A written warning will normally
  - 10.2.1 Clearly state the nature of the problem and suggest either specific remedies or a standard to be achieved
  - 10.2.2 State the actions which may follow if matters do not improve
  - 10.2.3 Designate a named officer as point of contact
  - 10.2.4 Clearly distinguish between a legal requirement and 'desirable standard'
  - 10.2.5 Indicate any follow-up action and/or revisit that is intended.
  - 10.2.6 Where appropriate, offer to work with the person(s) responsible in finding a solution
  - 10.2.7 Where appropriate, point the way to specialist advice or additional information.
  - 10.2.8 As appropriate, a written warning will be firm, businesslike, unambiguous, polite and helpful.

## 11.0 Notices

- 11.1 The service of statutory Notices is a routine part of the work of the Council and it is not appropriate to deal with the format and wording of Notices within a document such as this. However, there are some points of commonality affecting all types of Notice, as follows:
  - 11.1.1 Associated documentation
  - 11.1.2 Method of ServiceEach of which is dealt with in the following paragraphs.
- 11.2 *Associated Documentation* Under normal circumstances, the following information will accompany a formal Notice:
  - 11.2.1 A covering letter, setting out the background to the Notice and designating a case officer or other point of contact
  - 11.2.2 A copy of the relevant Appeal provisions
  - 11.2.3 A Schedule of Works, where appropriate

11.2.4 Any other information which may help compliance with the terms of the Notice.

11.3 *Method of Service* This may be specified in individual legislation and, in such cases, the appropriate method of service will be followed.

11.4 Depending on the circumstances, service methods could include :

11.4.1 *Hand delivery.* The Notice will be given directly to the person(s) identified as being responsible. Where this method is used, the date, time, place and other relevant details will be recorded. The notice may be left at the scene where permitted(12.4.4)

11.4.2 *Recorded Delivery.* The Notice is sent by first class, recorded delivery post.

11.4.3 *Normal Post.* Where normal post is used, a short Witness Statement may be provided giving details of the contents of the envelope, the date, time, and place of posting, and the address to which sent.

The Statement will be in addition to an entry into the case officer's official notebook.

11.4.4 *Left at Scene.* The Notice may be left at the scene, i.e. a premises or vehicle. The officer will make an appropriate contemporaneous record of service.

## **12.0 Simple Cautions**

12.1 In certain circumstances, as a possible alternative to formal prosecution, the use of the Simple Caution may be considered. In all such cases, the Home Office Guidance on the use of Simple Cautions will be closely followed.

12.2 A Simple Caution will **never** be used because the evidence in a case is not robust enough to give a reasonable prospect of success in prosecution.

Indeed, if a Simple Caution is offered and refused, the most likely alternative enforcement action would be prosecution, so the evidence must always be sufficient before a Simple Caution is considered.

12.3 Other factors governing the use of a Simple Caution include:

12.3.1 Line Managers, as appropriate, are informed before a Simple Caution is offered.

12.3.2 In relevant circumstances, details of any outstanding Simple Caution will be placed before the Court in any prosecution taken within the expiry date of the Formal Caution.

12.3.3 If accepted, the Caution will be recorded as appropriate with the Office of Fair Trading or other central body.

## **13.0 Prosecution**

- 13.1 Where statutory powers to prosecute exist, the decision to do so is not taken lightly.

Each case is unique and will be processed according to its own merits. There is no suggestion that prosecution will automatically follow the discovery of an alleged offence. In particular, alternative actions to prosecution which are outlined in paragraphs 14.2, below, will be considered in all cases and at every stage.

- 13.2 *Alternatives to Prosecution:* Where appropriate the approaches set out below will be considered as alternatives to prosecution as part of the decision making process. Any assessment undertaken will be in light of relevant guidance relating to the matter.

13.2.1 Simple Caution

13.2.2 Works in default

13.2.3 Written Warning

13.2.4 Administrative penalties

13.2.5 Fixed Penalty Notice

- 13.3 *Test for Prosecution:* Before a decision to prosecute is taken, regard will be had to relevant tests. In this respect, consideration will in particular be had to the guidance set out in the Code for Crown Prosecutors. This includes:

13.3.1 Evidential Test

13.3.2 Public Interest Test

13.3.3 *Evidential Test:* In general terms, this requires the prosecutor to be satisfied on an objective assessment that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge.

13.3.4 *The Public Interest: Test* At its most general, this requires the prosecutor to identify, consider and determine public interest factors for the purposes of assessing whether a prosecution should go ahead.

## **14.0 Works in Default**

- 14.1 The approval of the line management, as appropriate, will be sought before arrangements are made to carry out works in default. At the time that approval is sought, the case officer will provide full details of the perceived need to undertake the work and issues concerning the funding of the work. The officer will continue to be prepared to discuss alternatives if appropriate.

- 14.2 Works in default include physical works undertaken by the Council to abate nuisance, or comply with specified standards, for example carrying out

drainage works where there may be risks to health, demolition of structure, etc.

## **15.0 Revocation**

- 15.1 In some circumstances, such as Licensing Authorisations and Approvals, revocation may be used as an enforcement method.
- 15.2 Whilst this is a legitimate enforcement action, it is always remembered that the above may involve the removal of livelihood, sometimes without reference to an independent arbiter or the Courts.
- 15.3 Where revocation action is taken, it will normally follow at least two warnings, in writing. However, it is recognised that this will not always be possible, especially in the case of some types of offence and where there is a risk to health and/or safety.
- 15.4 When revocation action is taken, those concerned will be informed of any rights which they may have to appeal and be told of any time limits or other constraints which may apply

## **16.0 Fixed Penalty Notices**

- 16.1 A fixed penalty notice (FPN) is a notice that may be issued for a variety of different prescribed offences including littering, graffiti, fly posting, failure to display no-smoking sign, etc
- 16.2 In appropriate circumstances a FPN provides an alternative to the taking of other formal action. Consideration will be given in addition to this policy to any Council enforcement strategy for example on environmental crime and smokefree laws.

## **17.0 Liaison with the Police and Other Enforcement Services**

- 17.1 The enforcement officers within the Council will seek to co-ordinate their enforcement activity to maximise the effective enforcement of any matters that are related to more than one of the services.
- 17.2 An enforcement matter may affect a wide geographical area beyond the District's boundaries, or involve enforcement by one or more regulatory authority. As appropriate, all relevant authorities and organisations (which might include Town and Parish Councils) will be informed of such matters and enforcement action co-ordinated with them.
- 17.3 Where there is a work-related death the police are responsible for deciding whether to proceed with a manslaughter investigation and the Council will investigate possible health and safety offences. If in the course of the investigation evidence is found suggesting manslaughter this will be passed on to the police. The work-related deaths protocol agreed between the police, the Health and Safety Executive and the Crown Prosecution Service will apply.

(1) The Enforcement Concordat can be found at:

<http://www.berr.gov.uk/consumers/enforcement/enforcement-concordat/index.html>

Alternatively a copy can be requested form from this authority.

(2) As defined in the Legislative and Regulatory Reform (Regulatory Functions) Order 2007 (as amended): The Code can be found at:

<https://www.gov.uk/government/publications/regulators-code>

Alternatively a copy can be requested form from this authority.

(3) Code for Crown Prosecutors (including different languages)

[https://www.cps.gov.uk/publications/code\\_for\\_crown\\_prosecutors/](https://www.cps.gov.uk/publications/code_for_crown_prosecutors/)

It should be noted that all these documents are subject to alteration and replacement, and therefore the links provided and the documents referred to, are those of which the Council is aware at the time of the latest revision to this document. Changes to such documents will not necessarily result in a change to this enforcement policy unless it is considered that substantive amendments are required.

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*North Dorset District Council*

*Addendum to General Enforcement Policy*

*Food Law Enforcement Policy*

## **1. Introduction**

1.1 North Dorset District Council has an adopted General Enforcement Policy (“GEP”). It is however inevitable that as a document designed for general application, it does not seek to address enforcement issues that might be of particular relevance to matters arising specifically in relation to food.

1.2 This document is an addendum to the GEP and should be read in conjunction with it. It does not seek to repeat any points referred to in the GEP. Its purpose however is two fold.

1.2.1 First, to give emphasis to certain areas of relevance to food investigation and enforcement that are considered to warrant particular emphasis but which are not necessarily expressed addressed within the GEP.

1.2.2 Second, to recognize that certain powers exist under relevant food legislation which do not have universal application to other enforcement functions of the Council (although in some cases similar powers may exist). As such, they have not necessarily been highlighted within the GEP.

1.3 The GEP is the subject of review. Consideration is given at the time of such review as to whether any issues raised in addendums to it could be better incorporated within the primary document.

## **2 Supplemental powers**

2.1 Paragraph10 of the GEP outlines various procedures and guidance to be followed in relation to specific enforcement actions or sanctions.

2.2 For the purposes of investigation and enforcement in connection with food related law, the following additional options in particular are worth highlighting:

- 2.2.1 providing education;
- 2.2.2 giving informal advice;
- 2.2.3 sampling; and
- 2.2.4 seizure and detention.

### Education and Advice

2.3 The Council has generally adopted a proactive role in the provision of education to food businesses and the supply of advice in relation to enforcement issues is a practice that is well established. Whilst each case inevitably requires assessment on its individual merits, an advice based approach might well be most appropriate in situations where compliance is likely within a reasonable period appropriate to the circumstances whilst also having regard to issues such as degree of risk, history etc

### Sampling

2.4 The Food, Safety and Licensing Team has a Sampling Policy to which consideration will be given in relation to any intended sampling activities.

### Seizure and Detention

2.5 There is a presumption under food law that food is intended for human consumption until the contrary is proved. The use of detention powers are not appropriate in relation to food clearly identified as not being intended for human consumption, and careful judgment should be exercised in deciding whether to detain food.

2.6 Unless it is considered that the circumstances warrant immediate action, it will normally only be appropriate to detain food if it has been discussed with the owner / person in charge of the food and, if appropriate, the manufacturer.

## **3 Formal Notices**

3.1 Paragraph 12 of the GEP identifies the use of formal notices as one of the options available for enforcement purposes.

3.2 There are a wide range of formal notices available for use in relation to food law enforcement, including:

- 3.2.1 Improvement Notice;
- 3.2.2 Emergency Prohibition Notice;
- 3.2.3 Hygiene Improvement Notice;

3.2.4 Hygiene Emergency Prohibition Notice;

3.2.5 Remedial Action Notice;

3.2.6 Detention Notice.

3.3 Not all officers who might be involved in food safety enforcement are authorized to issue the full range of formal notices that may be available. As such, where formal notices are to be used, they should only be issued by those with appropriate authorization.

#### **4 Exercise of powers**

4.1 Except in situations which are considered to be of significant risk, a hierarchical approach to enforcement will normally be appropriate so that more formal action would usually only be pursued if informal action has been ineffective.

4.2 That said, in some cases it may be appropriate to utilize more than one power in parallel. For example, prosecution of matters that are subject of a notice (e.g. an Improvement Notice) may be relevant where conditions are serious or deteriorating.

4.3 Paragraph 9 of the GEP identifies that, in relation to certain functions, policy guidance has been produced by other public bodies. In the case of the exercise of powers available under food legislation various codes of practice exist that are relevant to the investigation and enforcement of food related issues (e.g. Food Law Code of Practice (England)). Regard will, where appropriate, be had to these codes in the exercise of food related investigation and enforcement.

4.4 As the GEP makes clear, in addition to relevant guidance and enforcement policies produced by this Council and by other public bodies, there are other matters as well to which regard will need to be had in considering the appropriate enforcement approach to adopt e.g. The Code for Crown Prosecutors.

4.5 The need for such regard extends to the undertaking of investigations as well. The extent and nature of additional matters that might need consideration will depend upon individual circumstances but might for example include:

4.5.1 codes produced pursuant to the Police and Criminal Evidence Act 1984; and

4.5.2 the need for appropriate authorization in relation covert surveillance pursuant to the Regulation of Investigatory Powers Act 2000.

Policy Revision: April 2014



# **PURBECK DISTRICT COUNCIL** **Public Health and Housing Services**

## **Enforcement Policy**

### **1. Introduction**

Purbeck District Council's Public Health and Housing Service is committed to contributing to the Council's corporate priorities and targets which are;

- Protecting and enhancing the natural environment.
- Meeting the housing needs of local people.
- Improving the local economy and infrastructure.
- Enhancing local communities and involvement.
- Being an efficient and effective council.

The Service delivers a wide range of functions that contribute to the delivery of the objectives that includes;

- Inspection and enforcement for food safety
- Health and safety
- Accident investigation
- Infectious disease control
- Food alerts
- Food sampling
- Smoke Free Enforcement
- Air quality
- Water (drinking and bathing) quality and standards
- Contaminated land
- Specialist planning consultations
- Public Health Funerals
- Permitted processes
- Investigation of statutory nuisance
- Environmental crime
- Dog welfare and enforcement
- Business and start-up support
- Co-ordination of new and emerging public health initiatives
- Issue and enforcement of licences
- Private sector housing standards
- Community Safety and antisocial behaviour
- Grounds maintenance
- Enabling the provision of affordable decent housing
- Enabling the provision of disabled facility grants
- Dealing with homelessness and the allocation of social and rented housing.

In carrying out these functions, the Public Health and Housing Service is committed to ensuring that no one is discriminated against on the basis of their: age, disability, employment status, ethnic or national origins, race or colour, marital status, religious or political beliefs, responsibilities for children or dependents, gender or gender reassignment, sexuality, social class, or unrelated criminal convictions. All staff will ensure their actions do not breach the principles of the Equality Act 2010

The Service will not be affected by improper or undue pressure from any source in carrying out these functions. The Service will always act in the interests of justice and not solely for the purpose of obtaining a conviction.

Purbeck District Council is a public authority for the purposes of the Human Rights Act 1998. We therefore apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is had to the right to a fair trial and the right to respect for private and family life, home and correspondence.

Where there is a need for the Service to share enforcement information with other agencies, we will follow the provisions of the Data Protection Act 1988.

## **2. Our Enforcement Policy**

This Enforcement Policy sets out what action the public and the regulated community can expect from the Public Health and Housing Service. It specifies the range of enforcement options available to this Service, and sets out when and in what circumstances enforcement action is likely to be taken.

The term 'regulatory activities' refers to a whole range of regulatory options and interventions available to this Service, while 'enforcement' includes any action taken by officers of this Service aimed at ensuring that businesses or individuals comply with the law.

Our enforcement policy reflects the Principles of Good Regulation set out in the Legislative and Regulatory Reform Act 2006<sup>1</sup>, namely that regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent; and that regulatory activities should be targeted only at cases in which action is needed.

In writing this policy; we have taken account of the Regulators' Compliance Code<sup>2</sup>, and the Code for Crown Prosecutors<sup>3</sup>. As we are continually seeking to improve our standards, this enforcement policy will be subject to regular review.

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<sup>1</sup> The Legislative and Regulatory Reform Act 2006 is available at:

<http://www.legislation.gov.uk/ukpga/2006/51/part/2>

<sup>2</sup> The Regulators' Compliance Code is available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/300126/14-705-regulators-code.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf)

<sup>3</sup> The Code for Crown Prosecutors is available at:

[http://www.cps.gov.uk/publications/code\\_for\\_crown\\_prosecutors/index.html](http://www.cps.gov.uk/publications/code_for_crown_prosecutors/index.html)

### **3. Our Principles of Inspection and Enforcement**

Below are the key principles the Public Health and Housing Service will follow when undertaking regulatory activity. These principles are in line with the guidance issued in the Regulators' code.

#### **Economic Progress**

**Key Principle: Good regulation and its enforcement is an enabler to economic activity.**

The Public Health and Housing Service recognises that encouraging and supporting economic progress is a key element of our work. We understand that most businesses want to comply with the law, and we will reward compliance with positive feedback.

Wherever possible, we will work in partnership with businesses and other organisations to assist them in meeting their legal obligations without unnecessary expense. We will only intervene where there is a clear case for protection.

#### **Advice & Guidance**

**Key Principle: Regulators should provide authoritative, accessible advice.**

The Public Health & Housing Service is committed to the principle that prevention is better than cure. We will therefore provide information, advice and guidance to businesses and consumers that is targeted, practical, accurate and consistent.

We will also engage in media campaigns to raise general awareness of issues affecting the public and businesses.

We will use clear, concise language, and a range of formats and media, to ensure that our services are accessible to all and appropriate to the differing needs of all sections of the community.

We will ensure that there is always a clear distinction between those actions which are necessary to comply with the law and those which this Service recommends as best practice, but which are not compulsory.

#### **Targeted Action**

**Key Principle: Regulatory activities should be targeted only at cases in which action is needed**

The Public Health and Housing Service will use intelligence-led risk assessment to concentrate our resources in the areas that need them most.

We will continue to use an element of random inspection in order to test the effectiveness of our work and to fulfil our preventative duties. However, the majority of our activities will be focused on those areas which give rise to the most serious risks and concerns, or where the hazards are most difficult to control.

Action will be focused on those persons who are responsible for the risk, or who are best placed to control it.

## Enforcement Action

Key Principle: Enforcement action should be carried out in a way which is transparent, accountable, proportionate and consistent.

The Public Health and Housing Service believes that the appropriate use of enforcement action, including prosecution, is fundamental to securing compliance with the law and to ensuring that those who have duties under it are held to account for any failures.

### Transparency

The Public Health and Housing Service will endeavour to help businesses and members of the public to understand what they should expect from the Service, and what rights of complaint are open to them.

### Accountability

The Public Health and Housing Service will be accountable both locally and nationally for the efficiency and effectiveness of our activities. We will publish our service standards, together with information about our performance against those standards. We will publish on our website the names of all the companies and individuals who have been prosecuted by the Service and convicted, except where those convictions are spent. We will ensure that media attention is drawn to any conviction where it may help to publicise the need for consumers to be vigilant against particular practices, the need for businesses to comply with the law, or to deter anyone who may be tempted to disregard their legal responsibilities.

### Proportionality

The Public Health and Housing Service will relate our enforcement action to the risks. We will always take account of how far the duty holder has fallen short of what the law requires, the actual or potential harm arising from the breach, and any relevant legal remedies. We may proceed straight to a prosecution when the need arises. For example: imminent risk or blatant disregard of the law.

### Consistency

Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends. The Public Health and Housing Service will work to promote consistency through effective liaison with other enforcing authorities, and will have regard to national guidelines in our decision-making processes. The Service will, however, retain the discretion to depart from national guidelines where doing so will better meet local priorities and circumstances.

### Investigation

A full investigation into the circumstances encountered during inspections or following incidents or complaints is essential before any enforcement action is taken.

The Public Health and Housing Service will ensure that, during the investigation process, any person who is at risk of being prosecuted is informed of their rights in accordance with the Police and Criminal Evidence Act 1984 and given the opportunity to be interviewed, so that any explanation they have to offer and any circumstances they wish to draw to our attention can be taken into account.

Investigations will be carried out in an expeditious manner.

## Formal Action

Formal action includes, but is not limited to, serving of Statutory Notices, obtaining a court order, and initiating a prosecution.

The Public Health and Housing Service recognises that it is neither necessary nor possible to take formal action in respect of every breach of the law. We will therefore consider all information, including the surrounding circumstances, gathered during the investigation before deciding whether formal action is appropriate.

For example, The Regulatory Enforcement and Sanctions Act 2008, as amended, established the Primary Authority scheme. We will comply with the requirements of the Act when we are considering taking enforcement action against any business or organisation that has a primary authority, and will have regard to guidance issued by the Secretary of State in relation to Primary Authority.

If a decision to take formal enforcement action against a person or entity is made, we will ensure that clear reasons for the decision are given to the person or entity affected.

Where sanctions are imposed or sought by this Service, we will take that action in accordance with one or more of the six [Macrory Penalties Principles](#), namely to;

- change the behaviour of the offender;
- eliminate any financial gain or benefit from non-compliance;
- be responsive and consider what is appropriate for the particular offender and regulatory issue;
- be proportionate to the nature of the offence and the harm caused;
- restore the harm caused by regulatory non-compliance; and
- deter future non-compliance.

## **4. Our Enforcement Options**

There are a number of enforcement options open to us, depending on the specific circumstances of the case:

### **No Action**

Contravention of the law will not always warrant further action being taken.

### **Referral**

In certain circumstances a contravention will be referred to another local authority (such as Dorset County Council Trading Standards) or an external agency (such as the Police or the Environment Agency) for information or further action.

### **Advice or a Warning**

Where a relatively minor offence has been committed and it is not thought appropriate to take any formal action, advice will be given. This advice will recommend corrective action and provide a timescale for compliance.

If it is likely that a future similar breach would result in formal action, the advice will include a warning to this effect.

## Fixed Penalty Notices

Where the relevant legislation provides for this option, we may issue a Fixed Penalty Notice (FPN), as an effective and visible way of responding to low level offending. A FPN provides an opportunity to avoid prosecution by payment of a penalty. It does not result in a criminal record for the offender.

A FPN will be issued only where there is sufficient evidence to support a prosecution.

Where a FPN is not paid within the specified time limit, a prosecution will be brought against the offender for the original offence. The result may be a fine that is higher than the original penalty offered. We will not offer a FPN for a repeat of the same offence if committed within twelve months of the first or previous offence. In such circumstances we will commence prosecution proceedings against the offender.

## Community Protection Notices

Part 4 of the Anti-social Crime and Policing Act 2014 allows Councils to serve Community Protection Notices (CPN) to tackle certain anti-social behaviour which negatively impacts the community's quality of life.

Prior to serving a CPN the Service will issue a written warning to the offender stating that a CPN will be issued unless the specific anti-social behaviour ceases. CPNs can impose requirements to either; stop doing something, to do specific things or to take reasonable steps to achieve a specified result. If a CPN is breached the Service will consider using other enforcement options covered in this policy such as the issue of a fixed penalty notice, prosecution, injunction or seizure of items used in the offence.

## Civil injunction to prevent nuisance and annoyance

In cases of anti- social behaviour, where it is not felt appropriate to apply a CPN (or a CPN is not complied with) the Service will consider applying to the county court for adults and in the youth court (sitting in its civil capacity) for under 18s, for an injunction to prevent nuisance and annoyance.

In applying for an injunction the Service will be satisfied a two-stage test has been applied namely;

1. **Where the behaviour is non-housing related:** that the behaviour is likely to cause harassment, alarm or distress
2. **Where the behaviour is housing related:** the conduct is capable of causing nuisance or annoyance

**And that in both cases:** it is just and convenient to grant the injunction to prevent anti-social behaviour.

## Criminal Behaviour Order

If the Council or any of its partners is successful in securing a conviction for an offence relating to anti-social behaviour or it is satisfied an injunction or CPN has been breached we will consider applying for a [Criminal Behaviour Order](#).

We would only apply for such an order if;

- The service can show to the court that, beyond reasonable doubt, that the offender has engaged in behaviour that caused, or was likely to cause, harassment, alarm or distress to any person; and
- That the making the order will help in preventing the offender from engaging in such behaviour.

Before considering any such application the service will seek legal advice from the Council's solicitor and will consider the advice and guidance provided by the [Crown Prosecution Service](#) applying the relevant evidential tests.

### **Vulnerable people and people under the age of 18**

As a general rule people under the age of 18 or, people who are considered to be vulnerable (for example people who lead a chaotic lifestyle or have mental health impairment) will not be subject to formal action which includes prosecution, Community Protection Notice, Fixed Penalty Notice, Injunction or Formal Notice unless there is a significant and overriding public interest in doing so. In certain circumstances there is specific guidance for dealing with people under the age of 18 that will be followed for example [CPS guidance](#) on the issue of a Criminal Behaviour Order for youths. In such cases the General Manager - Public Health and Housing Services, will decide on the most appropriate course of action and keep a record of the circumstances of that decision.

In cases where a vulnerable person is subject to investigation or potential formal action the appropriate safeguards and assistance to the person will be made available for example an "appropriate adult" attending an interview or signposting the person to other services to provide appropriate advice and assistance if needed.

### **Statutory Notices and Orders**

A number of statutory notices may be issued by the Public Health and Housing Service. These include: improvement notices for premises that do not meet food safety, health and safety or housing standards, prohibition notices, licensing suspension notices (for example, under the Licensing Act 2003 for failure to pay licence fees); abatement notices requiring the recipient to stop making unreasonable noise, community protection notices and closure notices for premises or private sector housing when applicable.

These notices will be issued when the criteria in the relevant legislation are met and it is felt appropriate to do so. Statutory notices may be used instead of or in addition to other forms of enforcement action.

### **Variation or Revocation of Licences, Approvals, Authorisations and Permits**

Where the holder of a licence, approval, authorisation or permit is in breach of its conditions, contravenes any relevant law, or demonstrates by their acts or omissions that they are not a suitable person to be a holder we may use our statutory powers to vary its terms or revoke it.

Alternatively, we may refer the matter to the relevant committee within the Council, who will consider whether it would be appropriate to suspend revoke or alter the terms of the licence, approval, authorisation or permit.

## Emergency Remedial Action

Where the Public Health and Housing Service has identified a hazard that presents an imminent risk of harm we may take emergency enforcement action and carry out the necessary remedial work. We will always seek to recover the costs of this work, using the statutory powers available.

## Simple Caution

The aim of a Simple Caution is to deal quickly and simply with less serious offences and to avoid unnecessary appearances in the criminal courts.

Simple Cautions are issued in accordance with the [Ministry of Justice Guidelines for police officers and Crown Prosecutors](#) and outlines how and when to issue a simple caution for minor offences or first-time offenders. It is only possible to offer a Simple Caution if the offender has already made a clear, reliable and voluntary admission to each element of the offence.

A Simple Caution is an admission of guilt, but it is not a criminal conviction, nor a form of sentence. A record of the Simple Caution will be sent to those bodies that are required to be notified. The fact that a Simple Caution has been accepted may be cited in court if further offences are committed.

## Prosecution

A prosecution will only be brought by the Public Health and Housing Service where the Council's solicitor is satisfied the Service has demonstrated that the two-stage test in the [Code for Crown Prosecutors](#) is satisfied:

- i) That there is sufficient evidence to provide a realistic prospect of conviction; and
- ii) that a prosecution is in the public interest.

Aggravating features that make a prosecution more likely include:

- the offender was in a position of authority or trust;
- there is evidence that the offence was premeditated;
- the victim of the offence was vulnerable;
- the offender has relevant previous convictions or cautions;
- the offence is likely to be continued or repeated;
- the offence is widespread in the area where it was committed; or
- A prosecution would have a significant positive impact on maintaining community confidence.

Mitigating features that may make a prosecution less likely include:

- the offence was committed as a result of a genuine mistake or misunderstanding (this must be balanced against the seriousness of the offence);
- a prosecution is likely to have a bad effect on the victim's physical or mental health;
- the offender is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health (unless the offence is serious or there is real possibility that it may be repeated); or
- The defendant has put right the loss or harm that was caused (but defendants cannot automatically avoid prosecution by paying compensation).

The law allows action to be taken against a wide range of persons: limited companies, partnerships and sole traders; manufacturers, wholesalers and retailers; employers, employees and self-employed professionals; landlords; company directors and officers; and licence-holders.

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

In some circumstances the Service may seek a direction from the court (in the form of an order or an injunction) that a breach is rectified and/or prevented from recurring. The court may also direct that specified activities be suspended until the breach has been rectified and/or safeguards have been put in place to prevent future breaches.

Failure to comply with a court order constitutes contempt of court, a serious offence which may lead to imprisonment.

The Service is required to seek enforcement orders after issuing some enforcement notices, providing the court with an opportunity to confirm the restrictions imposed by the notice. Otherwise, the Service will usually only seek a court order if it has serious concerns about compliance with voluntary undertakings or a notice.

### **Costs**

At the conclusion of every successful prosecution, the Public Health and Housing Service will seek to recover both the investigation and the legal costs, in order to ensure that the costs incurred in enforcing such matters are not the responsibility of Council Tax payers.

### **Proceeds of Crime Actions**

Where an offender has obtained a financial benefit from their criminal conduct, an application under the Proceeds of Crime Act 2002 for confiscation of an offender's assets may be made. Applications are made after a conviction has been secured, but a restraint order may be obtained in the meantime to prevent the offender disposing of their assets.

## **5. What you can expect from the Public Health and Housing Service**

You are entitled to expect Public Health and Housing Staff to:

- be courteous and helpful;
- identify themselves by name and produce identification if requested;
- confirm advice in writing on request, explaining why action is required and over what timescale;
- clearly distinguish between action that must be taken to comply with the law, and action that is recommended as best practice;
- minimise the cost of compliance by requiring proportionate action;
- set a reasonable time for compliance (unless immediate action is necessary);
- keep you updated with the progress of any investigation;
- give you an opportunity to comment before any matter is reported for formal action;
- carry out their duties in accordance with the applicable law;
- explain their powers and decisions to you, and advise you of the procedure for making a complaint or lodging an appeal; and;
- work in accordance with the legal requirements that govern data protection and the disclosure of information.

## **What we expect from you:**

In return, we ask all users of our service to respect the right of our staff to carry out their duties free from violence, threatening behaviour and abuse. All incidents of assault, intimidation or harassment of Public Health and Housing Service staff, in connection with the carrying out of their duties, will be reported to the police.

## **6. Comments, Compliments and Complaints**

If you are unhappy with the service you have received from the Public Health and Housing Service, or we have failed to live up to our promises, our managers are always willing to discuss the matter with you, to try to find a solution.

If you wish to make a formal complaint about the Public Health and Housing Service, or send us a compliment or comment about the Public Health and Housing Service, you can do so by:

- writing to the General Manager Public Health and Housing at the address below;
- by e mail [envservcies@purbeck-dc.gov.uk](mailto:envservcies@purbeck-dc.gov.uk)
- by telephoning 01929 556561
- by talking directly to your local councillor
- by using Purbeck District Council's [online feedback](#) service
- by calling into reception at Purbeck District Council offices

## **7. Access to the Public Health and Housing Service**

You can contact the Public Health and Housing Service by writing to us at;

Westport House, Worgret Road, Wareham, BH20 4PP

Please note: Purbeck District Council does not accept service of any proceedings or legal process via e-mail or any other electronic means.

We can produce this document in large print, on audio tape, and in other languages. If you would like a copy in one of these formats, please telephone 01929 556561.

The Purbeck District Council Public Health and Housing Service Enforcement Policy will be subject to review to ensure that it remains relevant.

# Targeted, Fair and Transparent

## The WDDC Enforcement Policy

### **About Our Enforcement Policy - Why we regulate and enforce**

If we are to maintain the good quality of life in West Dorset, the district council must undertake a range of specific enforcement activities in services such as Planning, Health and Safety, Building Regulation, Licensing and Benefits. Although it is the responsibility of individuals and business to comply with the law, the district council must sometimes intervene in the interest of the wider benefit. Responsible businesses, in particular, value the level playing field that this creates.

This policy provides information on:

- the purpose of our enforcement policy
- our principles of inspection and enforcement
- our enforcement options, and how we use them
- what you can expect of us – our standards
- our accessibility and advice details
- our commitment to you
- how to complain, compliment, or comment on our services

We are committed to the principles of good enforcement, as set out in the [Enforcement Concordat](#) and the [Regulators' Compliance Code](#). This means that our enforcement decisions will be fair, impartial, independent and objective and will not be influenced by issues such as ethnicity or national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender. Decisions will not be influenced by improper or undue pressure from any source.

### **The Purpose of our Enforcement Policy**

The council will support those who comply with regulatory requirements and those who work with us to achieve compliance. However, we will not hesitate to take the enforcement action necessary against those who, for example, commit serious breaches, flout the law, or refuse to work with us to achieve compliance, or commit persistent offences which threaten the quality of life in West Dorset.

Council services exist to provide and maintain a fair and safe environment for residents, visitors and businesses. We enforce a wide range of legislation relating to issues as diverse as land use, food safety, and safety of buildings and littering.

The purpose of our enforcement policy is to provide a framework to make sure that we work in an equitable, practical and consistent manner.

We carry out our enforcement duties in various ways and this policy describes the circumstances in which the options available to us are pursued. We recognise that prevention is better than cure and that most people want to comply with the law, and so we endeavour to help businesses and others to meet their legal obligations without unnecessary expense. When an individual or business does break the law, we will consider all relevant circumstances before deciding what action is appropriate. Formal action, including prosecution, will be taken if it is in the public interest to do so.

Although the Principles of this Policy apply to all services not all enforcement options are available to all, because of the breadth of our activities.

## **Our Principles of Investigation & Enforcement**

### ***Targeted***

We will prioritise and direct our regulatory effort effectively using available intelligence and relevant risk assessment schemes. Risk assessments will take account of all available, relevant and good-quality data.

We will give due consideration to the combined effect of the potential impact and likelihood of non-compliance. This enables us to focus our resources on the areas that need them most.

We will ensure that persistent offenders are identified quickly, and their history of non-compliance is taken into account.

### ***Necessity and Proportionality***

We will ensure that enforcement action is necessary and proportionate to the risks involved, and that sanctions applied are meaningful.

### ***Accountability***

We will be accountable for the efficiency and effectiveness of our activities.

We will provide the name and contact details of the officer dealing with your case

### ***Reasonableness, Fairness and Consistency***

We will treat everyone we deal with reasonably and fairly.

We will give positive feedback to businesses and others where it is due.

We will ensure that our enforcement practices are consistent – this means that we will adopt a similar approach in similar circumstances to achieve similar ends.

We will have regard to national guidelines in our decision-making processes.

### ***Openness and Transparency***

We are committed to the open provision of information and advice in a format that is accessible and easily understood. Where requested, information will be made available in other languages.

We will ensure that there is always a clear distinction between those actions necessary to comply with the law, and those that we recommend as best practice but which are not compulsory.

We may publicise the results of court proceedings in order to raise awareness, or to increase compliance.

### ***Supporting the local economy by working in partnership***

We will co-ordinate our enforcement activities between services, and with other agencies, such as Dorset County Council, other local authorities or the Police, when it will minimise unnecessary overlaps or time delays and to maximise our overall effectiveness.

We will work in partnership with businesses, particularly small traders, and with voluntary/community organisations, wherever possible, to help them meet their legal obligations without unnecessary expense. We recognise that a key element of our activity when dealing with business will be to facilitate and encourage economic progress against a background of protection.

## **Our Enforcement Options**

In a situation that requires action to ensure compliance we will consider the following when deciding on the most appropriate enforcement method: -

- The degree of risk from the situation
- The seriousness of the contravention
- The different technical means of remedying the situation
- The particular circumstances of the case and likelihood of its continuation or recurrence
- The general attitude of the offender to his or her responsibilities
- The compliance history of the offender
- The impact of the enforcement choice in encouraging others to comply with the law
- The likely effectiveness of the various enforcement options
- Overriding legal imperatives. For example, we must serve an abatement notice if a statutory nuisance exists
- Any legal guidance, e.g. advice contained in Government circulars and case law

In deciding what enforcement action to take against an offender some or all services will have regard to the following aims:

- To be responsive and consider what is the most appropriate sanction for the particular offender and the regulatory issue concerned
- To take action that is proportionate to the nature of the offence and the harm/potential harm it caused, is causing, or may cause.
- To change the behaviour of the offender
- To eliminate any financial gain or benefit from non-compliance
- To minimise financial losses to the council
- To restore the harm caused by non-compliance, where appropriate
- To deter future non-compliance

The range of enforcement options available to us could include the following:

### ***No action***

No action may be warranted where the detrimental impact on a community of a contravention of the law is small, or there is no public benefit in enforcement.

### ***Indirect action***

A notification of non-compliance may be referred to a more appropriate authority or agency for information or action.

### ***Verbal warning***

Where a relatively minor offence has been committed by a person with no history of non-compliance and there is good reason to expect them to put right the matters in question

without the need for further intervention, we may verbally require corrective action within a certain time.

### ***Written advice or warning***

Where a warning about non-compliance, or recommendations on non-compulsory best practice is to be given, a letter might be appropriate. Such a written warning will be written in plain English, and will normally:

- Identify the case officer and their contact details
- Clearly state the nature of the problem and suggest either specific remedies or a standard to be achieved
- Clearly distinguish between a legal requirement and 'desirable standard'
- Indicate any follow-up action intended, such as a re-visit within a stated timescale etc
- Offer to work with the person(s) responsible in finding a solution, or signpost specialist advice or additional information.
- State the enforcement actions that may follow if matters do not improve

The tone of a written warning will be firm, businesslike, unambiguous, polite and helpful. Informal action will be recorded and will be used as a basis for judgements on future enforcement action if there are recurrent instances of non-compliance.

### ***Administrative Penalty Notices***

For some minor offences such as littering or defaulting on the parking requirements, a Fixed Penalty Notice or a Penalty Charge Notice can be issued to require the offender to pay a specified fine to the council in recognition of the breach. Where legislation permits an offence to be dealt with by way of an Administrative Penalty Notice, it may be issued on the first occasion of non-compliance, without a preceding warning. Settlement avoids a criminal record for the defendant.

Failure to pay will result either in the offender being pursued for non-payment, or – more likely – an escalation of enforcement action.

An Administrative Penalty Notice does not create a criminal record and we may choose this sanction without first issuing a warning.

### ***Statutory Notice***

A statutory notice will usually require offenders to take specific action, such as ceasing certain activities, within a certain time. Examples include improvement notices, prohibition notices and suspension notices.

We will use statutory notices to deal with offences that have significant impact in accordance with relevant legislation.

### ***Seizure***

Certain legislation permits our officers to seize equipment that causes nuisance, or goods or 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 ask the person to voluntarily surrender the goods.

### ***Review of Licences***

Where there is a requirement (such as the Licensing Act) for a business to be licensed by a local authority then a review of the licence or permit may be sought where the activities or fitness of the licence holder is in question. This may result in the loss of the licence.

### ***Anti-Social Behaviour Orders***

In conjunction with other organisations, where applicable, we will take all appropriate action to prevent anti-social behaviour, including if necessary, applying for Anti-Social Behaviour Orders.

### ***Simple Caution***

A formal or 'Simple' caution is applied where a clear and reliable admission of guilt has been made. It will be used to deal quickly and simply with less serious offences and to avoid unnecessary appearances in criminal courts. It will be carried out in accordance with the current Home Office circular. Failure to accept a caution will however lead to the matter being heard in court.

It is not a criminal conviction – although it may be cited in court in certain circumstances. A record of the caution will be sent to bodies that are required to be notified.

### ***Prosecution***

A prosecution will only be undertaken when the evidence is deemed adequate and when it is in the public interest to do so.

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 and all other relevant legislation (including Codes of Practice).

As part of the investigation process, persons suspected of breaching legal requirements will, wherever appropriate,

- be formally interviewed in accordance with applicable legislation
- have the benefit of appropriate advocacy or translation services
- be given the opportunity to demonstrate their statutory defence, where available
- have the opportunity to give an explanation or make any additional comments about the alleged breach.

Before a decision to prosecute is taken, the alleged offence(s) will be fully investigated and a file compiled by the investigating officer for review by a senior manager.

We will take into account the views of any complainant, victim, injured party or other relevant person to establish the nature and extent of any existing or potential harm and loss and its significance in making the decision.

### ***Works in Default***

In certain cases where the owner has failed to comply with a requirement to carry out specified works within a timescale, the council has powers to carry out the works in their default. We aim to recover our costs from the person(s) on whom the notice was served, by means of a charge on the land if needs be.

## ***Compulsory Purchase Orders***

The Council has powers to compulsorily purchase property in certain cases, following the exercise of another statutory power or without prior action. But we will only take this action as a matter of last resort, and after negotiations with the owner(s) fail. The consent of the Secretary of State is required and compensation provisions flow from the exercise of this power.

## ***Injunction***

The council may apply to the County Court or High Court for an injunction where the circumstances of any case require it. This might be where the offence causes a significant problem or threat to health of an individual or group of individuals and other enforcement options are likely to be ineffective because the perpetrator has shown a careless disregard for earlier similar requirements, or where the process of law would take an unacceptably long time having regard to the particular circumstances.

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

A legal process exists to recover the financial benefit that an offender has obtained from his criminal conduct after a conviction has been secured. We may, in serious cases, make application under the Proceeds of Crime Act for confiscation of assets. Proceedings are conducted according to the civil standard of proof.

## **What You Can Expect of Us**

You can expect our staff to:

- be courteous and helpful
- identify themselves by name, and produce identification when it will not compromise an investigation
- name a contact for any further dealings
- give clear and simple advice
- confirm advice in writing on request, explaining in plain English why action is required and over what time-scale
- clearly distinguish between what you must do to comply with the law and what is recommended as best practice
- minimise the cost of compliance by requiring proportionate action
- clearly set out in plain English written advice on the appeal mechanism when a right of appeal against a formal action exists
- allow reasonable time to comply (unless immediate action is necessary in the interest of health, safety or to prevent evidence being lost)
- notify you if the matter is to be reported for legal proceedings
- have due regard for child protection policies and guidance
- advise you of the procedure for making a complaint or representations in cases of dispute
- keep information provided to them confidentially
- be well trained in the legislation they use and in enforcement issues
- respect cultural or religious requirements where prior knowledge is available, such as by providing a female visiting officer or accompanying colleague where appropriate
- and otherwise take account of people's individual needs in the process of enforcement, liaising with other appropriate agencies

## Our Commitment to You

This Policy and all associated enforcement decisions take account of your Human Rights. In particular, we will have due regard to your:

- Right to a fair trial, and
- Right to respect for private and family life, home and correspondence

We are committed to providing open, equal and timely access to our services.

We will regularly review this policy, as we continually seek to improve our standards,

## Complaints, Compliments and Comments

The manager of the service you have been dealing with will be willing to discuss with you any dissatisfaction you have had with it. They will seek to find its cause, and try to find a solution to it. We aim to live up to our promises.

If you wish to make a comment, compliment, or complaint about our service:

- please contact the manager of the relevant service at the address below, or
- you can use our online complaints procedure by going to our [website](#), or
- you can talk directly to your councillor,
- and if you have use our complaints procedure and are still not satisfied, we will tell you how to complain to the Local Government Ombudsman.

## Accessibility and Advice

Unless shown otherwise, the contact details for the following services are:

West Dorset District Council  
Stratton House  
58/60 High West Street  
Dorchester  
DT1 1UZ

Office Hours; Monday – Thursday 08.30 – 17.00, Friday 08.30 – 16.30

Tel; 01305 251010

Web: [www.dorsetforyou.gov.uk](http://www.dorsetforyou.gov.uk)

Our regulatory services covered by this Enforcement Policy are;

- **Anti-Social Behaviour**  
Anti-social Behaviour Caseworker  
d.thomas@westdorset-dc.gov.uk  
West Weymouth Police Station  
Radipole Lane, Chickerell  
Weymouth, Dorset DT4 9WW

- **Benefit Fraud Investigations**  
Compliance Manager  
FraudTeam@westwey.gov.uk  
Reporting Benefit Fraud: 01305 211938
- **Building Regulations**  
Building Control Partnership Manager  
BuildingControl@westdorset-dc.gov.uk
- **Environmental Protection**  
Environmental Health Team Leader  
E.Protection@westdorset-dc.gov.uk
- **Food Safety Services**  
Environmental Health Team Leader  
EnvHealth@westdorset-dc.gov.uk
- **Licensing**  
Environmental Health Team Leader  
licensing@westdorset-dc.gov.uk
- **Parking Services**  
Parking Services Team Leader  
parking@westdorset-dc.gov.uk
- **Pest Control and Dog Warden Services**  
Environmental Health Team Leader  
E.Protection@westdorset-dc.gov.uk
- **Planning Enforcement**  
Development Services Manager  
D.Serv@westdorset-dc.gov.uk
- **Private Housing**  
Head of Housing  
EnvHealth@westdorset-dc.gov.uk
- **Waste and Streetscene**  
Waste Enforcement Officer  
l.newman@westdorset-dc.gov.uk  
West Dorset Services  
Poundbury West Industrial Estate  
Dorchester, Dorset, DT1 2PG

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We can produce this document in Braille, in large print, on audiotape, and in other languages. If you would like a copy in one of these formats, please phone 01305 251010

5 June 2009