

Corporate Enforcement Policy – Operational Guidance

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

Policy statement

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

In delivering effective regulation and enforcement, we will be proportionate, transparent, fair and effective, working at the lowest possible level to help individuals and businesses comply with the law and the associated regulatory guidance.

Scope

The corporate enforcement policy covers the following service areas.

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

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

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

The policy does not cover the following services:

- Off-street parking
- Fraud
- Benefits issues

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

The Investigation and Enforcement Model

The following model provides outline guidance on the expected approach to different types of regulatory brief. It is intended as guidance and may not be applicable in all cases, as every case is recognised as having individual circumstances.

The model is laid out with different breach types being in the left hand column. The first block (in white) notes the relative priority given to different types of breach and shows the response timescale which would normally be expected. The coloured blocks, working from left to right, provide an outline of how the investigation and enforcement of individual breach types would be expected to operate. The checked boxes are intended to show available enforcement options, not necessarily a progression. The blocked out boxes indicate that particular options would not normally be considered for the relevant breach.

Generally the intention of the model is to achieve compliance with the lowest necessary level of intervention. The model works through investigation, advice and information, direct enforcement and judicial enforcement, noting the likely timescales for each phase. These timescales are important as some are enshrined in statute and others are driven by the courts- for example, as a rule, if court action is to be considered evidence should not be more than six months old to be considered current.

The guidance under this model should be applicable to the majority of scenarios. It is intended that this will be a working model and will evolve over time to reflect operational experience and regulatory changes. Major changes will be authorised by the relevant Head of Service and such changes will be notified to the appropriate service committee on an annual basis.

Response to Complaint or Service Request

Initial screening

All complaints received will be subject to an initial screening which will highlight cases which require a high priority response. This initial screening will identify the most appropriate service and officer to lead and manage the Council response. This will be particularly important in cases which require input from more than one service.

Standards for response

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

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

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

Investigation and Enforcement

Principles

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Engagement by officers

We will aim to communicate effectively with individuals making complaints and with those who are being complained about. In doing so, we will aim to keep all parties informed of the progress of our interventions, while respecting confidentiality and observing all appropriate data protection principles.

In seeking regulatory compliance and/or undertaking enforcement, we will be clear as to whether the breaches being investigated constitute statutory breaches (situations where the law is being broken) or guidance breaches (situations where best practice is not being followed but the law is not being broken). In most situations, upon discovering a breach, we will advise on action which should be taken to rectify the breach and allow a realistic timescale for remedial action to be taken. Wherever possible, we will also give an indication of what the next stage of action will be, should compliance not be achieved within the notified timescale.

When notifying action timescales, we will consider the scale and nature of any actions required and statutory timescales which have to be taken into account. For example, it would not generally be appropriate to require that building works be undertaken which required planning consent or regulatory approval in a timescale which did not allow such consents to be obtained.

At all stages, individuals or companies found to be in breach should be clear about what has gone wrong, what they need to do to put it right, how long will be allowed to do this, and what is likely to happen next should compliance not be achieved.

Factors taken into consideration

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

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

Authorisation of enforcement and escalation

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

Head of Service authorisation and formal legal advice is required for all cases proceeding to Stages 4 or 5.

Authorisation for exceptions

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

Enforcement Examples

All cases will be treated individually. However, there are general principles which can be considered and adapted to provide an appropriate response in many different circumstances. The brief examples noted below relate to specific types of breach but elements will be applicable in other areas.

It is intended that, over time, a series of these case studies will be developed and included in the officer guidance.

Scenario 1: Noise nuisance.

Cases of reported noise nuisance will generally be investigated with an initial request for information to clarify the nature of the noise disturbance (where is the noise from, when is it occurring, how often and for how long?). Officers will investigate using a combination of statements, personal witness visits and the use of monitoring equipment.

Where a statutory nuisance is determined, the perpetrator will have this explained to them and offered the opportunity to rectify the situation. If this is not achieved within one week, the serving of a statutory notice is required. On serving, officers will ensure that the perpetrator is informed of the right of appeal against the notice. The notice will define the nuisance and the parameters which must be achieved in order to prevent a breach- this will generally be outlined in terms of specified noise limits and specified times of the day. If the perpetrator fails to comply with the terms of the notice, a court prosecution may follow, with proceedings being started within six months of the originally noted nuisance. Between serving of notice and commencement of legal proceedings, a period of 2-3 months will generally be allowed for the perpetrator to make any necessary adjustments in order to achieve compliance.

If a statutory nuisance is not determined, depending on the circumstances of the case, the noise may be viewed as constituting anti-social behaviour (ASB). If this is the case, officers have the option of issuing a written Community Protection Warning (CPW) defining the circumstances and explaining what must be done in order to mitigate the ASB. If the perpetrator fails to adhere to the terms of the CPW, a Community Protection Notice (CPN) can be served which formalises the terms of the previous warning. If this CPN is breached, officers can either issue a Fixed Penalty Notice or prosecute in court. The issue of CPNs and CPWs do not have statutory timescales but, should prosecution be considered, this would normally be within 6 months of the original issue.

Scenario 2: Abandoned vehicle (within HDC scope- generally on public land, but not a major trunk road)

Reports of abandoned vehicles will generally be investigated within 3 working days although cases where the vehicle is in a dangerous location or is deemed likely to cause nuisance or crime, will be investigated within 1 working day. Officers will investigate using a combination of statements, witnessing visits and database searches (e.g. DVLA information, Police information requests).

Vehicles which pose an immediate risk due to their location or condition will be scheduled for removal within 1 working day. If possible, the owner will be notified and offered the opportunity to reclaim the vehicle. If the vehicle does not pose an immediate risk, officers will attempt to contact the owner and ascertain whether it is abandoned.

If the vehicle is deemed to be abandoned, officers will arrange for the vehicle to be removed- generally within 2 working days of the decision. The vehicle will be taken to a secure depot and stored for a period of up to 1 month, allowing the owner to reclaim it. After this period the vehicle will be disposed of.

If the vehicle is not deemed to be abandoned, but is parked in an inappropriate or inconsiderate manner, the owner will be asked to move it to a more suitable location.

Reports of abandoned vehicles on private land will be investigated in a similar manner but the Council may not have the power to remove. In these cases the landowner may have to arrange removal.

Scenario 3: Licensing complaint- breach of conditions

Complaints regarding the operation of a licence will generally be investigated within 5 working days. Officers will investigate using a combination of statements and witnessing visits and, where available and appropriate, additional evidence such as CCTV. Depending upon the circumstances, material obtained during Police investigations may be considered. The investigation phase will generally be completed within 2 weeks. If it is considered that a breach of conditions has occurred, the licence holder would be invited to work with us to rectify the breach. Once a breach has been established, if it is confirmed as minor or one-off it may be dealt with by providing advice on how to comply appropriately with the licence or developing an action plan outlining how this will be delivered. If the breach is more serious but viewed as one-off, officers may issue a simple caution. For serious breaches, particularly if a pattern of breaches is established, officers may request a review of the licence by Committee. This would generally happen at the next available meeting.

Scenario 4: Food hygiene breach

Food hygiene issues can emerge as a result of routine inspection or via complaints. Complaints will generally be investigated within 3 days, with urgent cases receiving a same day response. Officers will investigate using a combination of statements and witnessing visits. Regulatory breaches will be assessed by risk. Issues not presenting imminent risk are likely to be dealt with by means of advice and/ action plan/hygiene improvement notice. Issues presenting imminent risk are likely to be dealt with by a combination of seizure/closure powers. Ordered closures require magistrates court orders to be obtained. Non-compliance with hygiene notices and/or patterns of poor hygiene practice can be dealt with by court prosecution.

Scenario 5: Works to a listed building

Cases of unauthorised work to listed buildings will generally be the subject of an initial site inspection within 3 working days. If the work involves demolition the site inspection will be made within 1 working day to try to avoid the loss of a protected building. Site inspections are prioritised in these cases to try to save the building from damage and to gather evidence because it is an offence to carry out work which affects the character of a listed building without listed building consent. Officers will, as appropriate, make a photographic record, carry out interviews and assess whether the work may be urgently necessary for any reason. If listed building consent is required the officer will generally request that work stops. When work is not stopped voluntarily an application can be made to the High Court for an injunction.

The investigation will then focus on three aspects: the acceptability of the works; whether remedial action is necessary to put right damage to the building and whether those responsible for carrying out unauthorised works should be prosecuted. If works are likely to be approved an application for listed building consent will be requested. This enables the acceptability of the works to be assessed through the normal planning process. If the works are clearly unacceptable an enforcement notice will generally be necessary requiring remedial action to be carried out. The decision about prosecution will be taking into account government guidance on when prosecution is appropriate

and the circumstances, including whether historic fabric has been irretrievably lost. Prosecution would normally be within 6 months of an offence.

Scenario 6: Unauthorised development

Investigations into complaints about unauthorised development will generally start with a site visit carried out within 10 working days. Development can involve new buildings and extensions or changes in the use of buildings or land. The complaint may relate to development being carried out entirely without planning permission or with permission, but not in accordance with plans which have been approved.

The purpose of the site visit is to find out what is happening and to assess the harm, if any, being caused. Officers take photographs and measurements and speak then or separately to the person carrying out the development and to the complainant to establish the facts. Depending on the findings the officer will consider whether it is appropriate to make an initial request for work to stop.

After the site visit, officers will assess the information and carry out any necessary research, for example into the site's planning history or uses. The investigation then identifies whether 'development' is involved, whether it is unauthorised (bearing in mind the government regulations which permit a wide range of development) and finally whether any unauthorised development is unacceptable because material harm has been identified. Development carried out without the benefit of any necessary planning permission is unauthorised but not unlawful. The options available in cases of unauthorised development are generally: (i) to take no formal action if the breach is remedied voluntarily, minor in nature or the development would be acceptable; (ii) to request a planning application, for example so that planning conditions can be imposed; (iii) to use the discretionary power to serve a formal enforcement notice. In straightforward cases the decision whether or not to take action can usually be made quickly, within a matter of weeks. More complex cases can take considerably longer if extensive investigation and legal assessment is required.

Appendix 1: Investigation and Enforcement Model

Example of Issue	Triage	Investigation and informal action								Formal Action							Notes			
	Assessment for priority and allocation of lead officer and service area	Stage 1: Fact Finding			Stage 2: Officer Liaison (Actions generally commencing within 1-2 weeks* ¹) Increasing severity within the stage					Stage 3: Formal Process (Actions generally commencing within 1-4 weeks* ¹) Increasing severity within the stage				Stage 4: Quasi-Judicial Process (Actions generally commencing within 4 months* ¹)				Stage 5: Judicial Process (Actions generally commencing within 6 months* ¹)		
		Standard Response (days)	Urgent Response (days)	Agency Referral Response	Information	Advice Letter	Permit to Operate	Invitation to Regularise	Verbal Warning	Written (inc. CPW) Warning	Formal Notice	CPN	FPN (or equivalent)	Simple Caution	Delegated Action	Committee* ² Hearing		Statutory referral (e.g. HSE)	Injunction Application	Offence Prosecution
Community Safety																				
Anti-Social Behaviour/Disorder	On receipt	3	1	x					x	x								x	x	
Breach of council order (e.g. PSPO)	On receipt	3	1								x									x
Enviro-crime (e.g. fly tipping)	On receipt	5	1								x	x						x		
Community nuisance issues	On receipt	5			x				x	x								x	x	
Littering		3			x						x	x						x		
Abandoned vehicles	On receipt	3	1	x		x					x					x		x		
General dog control (excluding PSPO breach) issue	On receipt	5			x				x	x										x
Breach of dog control PSPO	On receipt	5			x						x	x								x
Stray dog	On receipt		1								x									
Environment Protection																				
Statutory nuisance - domestic	On receipt	5			x	x			x			x								x
Statutory nuisance - business	On receipt	5			x	x			x			x								x
Pollution	On receipt		1		x	x	x	x	x			x								x
Pests - failure to control	On receipt	5			x	x			x			x								x
Major incident	On receipt	5							x	x			x					x		
Environmental Permits																				
Operating without permit	On receipt		1				x	x	x			x						x	x	
Breach of permit conditions	On receipt		1				x	x	x			x						x	x	
Housing regulation																				
Conduct of responsible person/company	On receipt	3				x			x									x		
Housing safety hazards	On receipt	5	1			x			x	x										x
HMO licensing- operating without licence	On receipt	5				x		x	x	x										x
HMO licensing- breach of conditions	On receipt	5				x		x	x	x										x
Overcrowding	On receipt	5				x			x											x

*¹ References to timescales are for guidance only. Serious or high risk breaches may require earlier interventions. Escalation may be delayed if compliance is recognised as requiring a longer timescale to be achieved (e.g. situations where additional approvals are required)

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

Notes:-

Corporate response standard is 10 working days

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

*² References to offences being dealt with by Committee may mean being dealt with by Tribunal for certain Housing offences

Abbreviations used:-

CPN Community Protection Notice

CPW Community Protection Warning

FPN Fixed Penalty Notice

PSPO Public Space protection Order

HMO House in Multiple Occupation

PACE Police and Criminal Evidence Act

DRAFT