

CORPORATE ENFORCEMENT POLICY**1. Introduction**

- 1.1 In April 2000 the Council adopted the Cabinet Office Enforcement Policy as a model of good enforcement. In doing so it signed up to the principles of consistency, fairness, proportionality, transparency and objectivity. Since then, various services within the Council have introduced enforcement policies specific to their own services.
- 1.2 During 2006 the Council's Team dealing with the Clean Neighbourhood and Environment Act considered the need for a consistent approach across all these various service policies, particularly with regard to dealing with an Act that was used by a variety of different services. As a result it was agreed that a single overarching document would be drafted, encompassing all the desirable principles of a credible consistent enforcement policy.

2. Background

- 2.1 The Council's Enforcement Policy sets out desired standards of conduct, which includes compliance with the Human Rights Act, 1998, the Government's Enforcement Concordat Principles as well as the Council's own equal opportunities policies.
- 2.2 Beneath this Policy will sit a number of service led policies or protocols which should detail what action would be taken in various circumstances and provide clarity and consistency of approach to those who complain to us or those who are subject to enforcement action.
- 2.3 Consideration was given to producing a single document that encompassed all the various service issues as well. However, some legislation specifically requires a detailed enforcement policy solely on that topic, and bearing in mind the size of the document that potentially would result, this was not pursued.
- 2.4 Attached is a proposed Corporate Enforcement Policy for consideration. It considers all the aspects that various good practice guides recommend and is consequently a lengthy document.

3. Publicity

- 3.1 In order for an enforcement policy to be effective, all those who have an interest in it must have the opportunity to comment on all or parts of it. To facilitate this, a leaflet will be designed to outline the important principles in the policy and request feedback. This system has been in place in Environmental Health for a number of years, and is a requirement of one of the BVPI's. Feedback from stakeholders and a commitment to consult with them is important for the credibility of the policy.

4. Equality and Diversity Implications

- 4.1 The policy itself contains a statement on equalities; in essence officers will strive to be fair, independent and objective in their enforcement activities. In particular, all officers will serve the community equally and fairly, irrespective of ethnic or national origin, sex, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or alleged offender.

5. Financial Implications

- 5.1 There are no direct financial implications arising out of this report.

6. Environmental Implications

- 6.1 Some of the legislation that enforcement officers use is of direct benefit to the environment. Environmental Crime is also noted to have significance in relation to people's fear of crime. The more run down, rubbish strewn and graffitied an area is, the higher the Communities fear of crime.

7. Crime and Disorder implications

- 7.1 One of the concepts of an Enforcement policy is to ensure fair application of the law and due regard to offences, and hence this has a positive benefit for Crime and Disorder.

8. Portfolio Holders' Comments

- 8.1 Both the Policy and Resources Portfolio Holder and the Crime and Disorder Portfolio Holder support the recommendations contained in this report.

9. Recommendations

- 91 That Cabinet endorse the attached Enforcement Policy in so far as they are empowered to do so by law in respect of those functions for which they are responsible; and
- 9.2 That the Council be recommended to endorse the attached Enforcement Policy in so far as they are empowered to do so by law in respect of those functions for which they are responsible.

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Background Papers:

Cabinet Office Enforcement Concordat.
Environmental Health Service Plan 05

NEW FOREST DISTRICT COUNCIL ENFORCEMENT POLICY

The New Forest District Council Enforcement Policy (the policy) provides the overarching principles, guidance and standards which will govern the regulatory and enforcement actions taken by Officers of the Council across the range of its relevant legal powers and duties. The policy is designed to ensure that the public, (e.g. residents and visitors) and businesses, (e.g. proprietors, employers and employees) know the principles that will be applied should they be subject to enforcement action.

1. Overall Policy Principles

- The provision of information and advice in plain language
- The targeting of resources and all regulatory activity will be based on a clear and comprehensive risk assessment where appropriate – see Appendix 1
- Enforcement is carried out in a consistent manner
- Enforcement decisions are proportionate to the circumstances
- Enforcement action is taken against those who are responsible and best placed to remedy the defect – unless statutes dictates otherwise.
- Performance is measured against published standards
- The policy will be reviewed yearly and revised to ensure that the law is properly applied

2. Aims of the Policy

2.1 The Council's aim is to undertake its regulatory and enforcement role in a fair, open and consistent manner. In doing this it will act in accordance with this policy and any supplementary Service Enforcement Protocols will comply with these principles.

2.2 In pursuing the aims the Council will:

- a. Consult with parties subject to regulation and enforcement about the standards the Council sets in undertaking this role.
- b. Work with individuals and businesses to assist them in complying with their legal duties and obligations.
- c. Ensure Council Officers are appropriately trained, qualified and supervised and apply the policy and standards professionally and consistently.
- d. Make information about the policy and the standards widely available to the public and businesses within the Council area.
- e. Monitor compliance with the policy and review it from time to time in consultation with parties subject to its application.
- f. Act in accordance with the Government's Enforcement Concordat and the recommendations of the Hampton Review 2005.

3. Enforcement Principles

In undertaking its regulatory and enforcement role the Council will have regard to the following:

- a. Any decision regarding enforcement action will be impartial and objective, and will not be affected by race, politics, gender, sexual orientation, or the religious beliefs of any alleged offender, victim or witness.
- b. In dealing with any enforcement situation, the Council's actions will be proportionate to the scale, seriousness and intentionality of any non-compliance.

- c. There will be consistency of enforcement whilst recognising individual circumstances which may modify the appropriate action to be taken in each case.
- d. Each case is unique and must be considered on its own facts and merits but there are generic considerations throughout the policy that will be considered for each case.
- e. Except in the most serious cases or where assistance, advice or warnings have not been heeded, adequate opportunity will normally be given to rectify non-compliance before formal legal action is commenced.
- f. Prosecution is seen as a means of securing compliance with the appropriate standards, and will normally only be considered where it is in the public interest to do so or in serious or blatant cases, or where other approaches have failed.
- g. Regard shall be had to relevant legislation and codes of practice which protect the rights of the individual and guide enforcement action, (e.g. Police and Criminal Evidence Act 1984, Human Rights Act 1998, the Code for Crown Prosecutors, Data Protection Act 1998).
- h. All relevant evidence will be considered before making any decision on case disposal or outcome.
- i. In any prosecution the rules on disclosure are complied with.
- j. Formal direct action.

4. Enforcement Standards

The Council will always endeavour to meet the highest standards of service in undertaking its regulatory and enforcement function. The following specific level of service standards will be applied:

- a. Matters relating to enforcement and regulation will be dealt with promptly with enquiries and complaints receiving a response within the timescales agreed corporately.
- b. Officers will have regard to any relevant provision of codes of practice issued under the Police and Criminal Evidence Act 1984 Act when carrying out investigations, enforcement actions or prosecutions under the policy.
- c. Enforcement Officers will carry identity cards which have a list of the legislation that they have authority to enforce.
- d. Except in the case of necessary and approved targeted and/or covert surveillance which will be governed by RIPA, officers will announce themselves on arrival at premises and show identification unless they are already well known to the person.
- e. Officers will provide their name and contact details to those persons or businesses with whom they are in contact concerning a regulatory or enforcement matter.
- f. Complaints relating to enforcement or regulatory matters will normally only be dealt with if the name and address of the complainant is given. Any such identification will be treated in confidence, but may need to be disclosed (with prior consent) should formal legal proceedings be taken against the person or business to which the complaint relates. Anonymous complaints may however be investigated if they relate to benefit fraud, protection of children or other vulnerable groups, or matters relating to serious health, safety or environmental issues etc.
- g. Officers will not act as consultants or legal advisors to individuals or businesses, but will be available (by appointment if necessary) to discuss general issues or matters of specific enforcement with the aim of assisting or guiding compliance.

- h. Officers will be professional, courteous and helpful in their conduct of regulatory or enforcement matters, and wherever possible will seek to work with individuals and businesses towards compliance.
- i. Officers will endeavour to provide advice in a clear and simple manner and where any corrective or remedial work is necessary, an explanation will be given as to why it is necessary, and over what time scale it is required. Where non-compliance may result in further enforcement action or prosecution the matter will normally be confirmed in writing within ten working days or as soon as practicable, and any legal requirements will be identified separately from best practice advice.
- j. Officers will generally seek an informal resolution to cases of non-compliance except where more immediate formal enforcement action is required, (e.g. when there is imminent danger of harm to people or property or to the environment)
- k. Where there are rights of appeal against formal action, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken, (e.g. when the enforcement notice is served).
- l. Where there is known to be an involvement of any other enforcement agency, or any case involves joint enforcement arrangements, the Council will consult with that other agency prior to taking any formal enforcement action.
- m. Where any charges or fees are to be levied for a service, individuals and businesses will be informed of the cost or rate of charge prior to the service being provided.
- n. Confidentiality will be maintained and personal information will only be released when required by law and/or in accordance with the Data Protection Act 1998.

5. Enforcement Options

Enforcement options are varied and include the provision of advice and guidance when appropriate. Enforcement actions for consideration are:

- **Informal Actions**

- No action
- Advice and guidance
- Revisit
- Verbal warning
- Written warning

- **Formal Actions**

- Formal Notice
- Seizure
- Forfeiture
- Refusal/revocation/review of a license
- Formal Caution
- Fixed Penalty Notice Procedure
- Civil Order e.g. ASBO
- Prosecution
- Court Injunction
- Direct Action remedial

Further explanation of the options can be found at Appendix 2.

6. Consistency of Enforcement Actions

- 6.1 Consistent enforcement action is desirable, and this policy and the detailed service Enforcement Policies will detail the consistency of approach for the specific enforcement issues relevant to each service.
- 6.2 Absolute uniformity across the wide range of legislation would be unfair as it fails to recognise individual or case circumstances which may affect the action that needs to be taken to achieve the most effective outcome. Discretion is an important element of enforcement decision making and consistency is encouraged by:-
- Recognising the defences that would be available at law and exercising appropriate discretion where formal action is unwarranted.
 - Recognising that formal enforcement action or prosecution in the case of minor infringements is likely to be contrary to the public interest.
 - Recognising that in some situations the Council has no legal discretion and must serve a formal legal notice, take formal legal action, or pursue the collection of a fine.
 - Taking into consideration guidance and codes of practice published by recognised bodies such as LACORS, Food Standards Agency, Health and Safety Commission, etc.

7. Assessing Appropriate Enforcement Action

- 7.1 After investigation, the final action taken will depend on any modifying or mitigating factors present, and account will be taken of any national or local guidance available.
- 7.2 Formal action will normally be instigated where one or more of the following apply:
- It is prescribed by law as obligatory.
 - Informal actions have failed.
 - The matter is of such seriousness or urgency that informal action is inappropriate.
 - Formal action is necessary to remedy an unsatisfactory condition relating to health, safety, amenity or the environment.
 - There is a need to ensure a decision or policy of the Council is enforced (including planning policy).
- 7.3 Prosecution will normally only be considered where one or more of the 'Public Interest' criteria are satisfied. These are detailed at Appendix 3.
- 7.4 Mitigating factors are a consideration and can influence the final outcome of an investigation. Mitigating factors are shown at Appendix 4.

8. Liaison with other Enforcement Agencies

- 8.1 Where appropriate, enforcement activities will be coordinated with other regulating bodies and enforcement agencies to maximise the effectiveness of the action taken.
- 8.2 Where appropriate we will inform and liaise directly with the Hampshire Police. In some cases joint investigations may be carried out with the Police and/or other Regulatory bodies.
- 8.3 Where an enforcement matter affects a wide geographical area or involves enforcement by one or more other Local Authorities or organisations, all relevant authorities will be notified of the matter as soon as possible and all enforcement activity will be coordinated with them.

9. Decisions on enforcement actions

- 9.1 For the less serious offences the decision on the most appropriate course of action will be taken by the Investigating Officer, in conjunction when appropriate with the line manager. The decisions will be based on the professional judgement of the officer the application of this policy, supplementary Service Enforcement Protocols, legal guidelines, Codes of Practice and priorities set by this Council and Central Government.
- 9.2 For the more serious offences and where the offence is sufficiently serious for a prosecution or formal caution, the approval of a relevant line Manager or Assistant Director or Head of Legal and Democratic Services may be required. The exception to this may be in the case of health and safety legislation where the inspector has the right to decide on the course of action to be taken. The final decision however, rests with New Forest District Council Head of Legal and Democratic Services who will apply the tests set out in the 'Code for Crown Prosecutions' with regard to the 'Evidential Test' and the 'Public Interest Test' before making a decision.
- 9.3 The Investigating Officer, the Senior Manager and the Councils Solicitor will select the most appropriate legislation which: -
- a) Reflects the seriousness of the offence
 - b) Gives the courts adequate sentencing powers
 - c) Are made to most appropriate costs.
- 9.4 The views of any complainant and those affected by the offence will be taken into account before any enforcement action is taken.

10. Complaints against Enforcement Officers

Any dissatisfaction with the actions of an officer of the Council will be dealt with under the Council Complaints Procedure, copies of which are available from offices of the Council, by accessing the Council's Web site (www.nfdc.gov.uk) or by telephoning the Council on 02380 285000 and asking for the appropriate Service.

11. Monitoring of Enforcement Activities

To monitor consistency of action and to provide feedback on the effectiveness of its application, the following monitoring and feedback mechanisms will be undertaken:

- a. Periodic internal quality audits to ensure that all activity is undertaken in accordance with this policy.
- b. Opportunities for businesses and members of the public to comment on the policy.
- c. Sample surveys undertaken on the perception of service users of particular aspects of the policy, following contact with one of the Council's enforcement services.
- d. Periodic consultation with Business representatives such as members of District Partnerships and Chambers of Commerce.
- e. Production and making public the results of monitoring, together with any improvements or changes to the policy or its implementation.

12. Review of Policy

This Policy will be reviewed annually.

RISK BASED ASSESSMENTS

The basis of a risk based approach is to assess when and where to take action depending on the assessment of how likely it is that the infringement may be breached and with what impact.

The Hampton Report 2005 recommended that risk assessment should:

- be open to scrutiny
- be balanced in including past performance and potential future risk where appropriate
- use all available good quality data
- be implemented uniformly and impartially
- be expressed simply, preferably mathematically
- be dynamic not static
- be carried through into funding decisions
- incorporate deterrent effects, and
- always include a small element of random inspection

Wherever necessary, all supplementary Service Enforcement Protocols will detail a system of risk based assessment for their enforcement functions using the above criteria where appropriate.

ENFORCEMENT ACTIONS

All decisions and the rationale for reaching the decisions will be recorded in writing for all forms of enforcement action, whether formal or informal. Decisions will take into account all relevant and available information.

Failure to comply with any stage of an enforcement action may lead to further enforcement action being taken.

1. INFORMAL ACTIONS

1.1 No Action

There are some circumstances where contraventions of the law may not warrant any action being taken. This could be when the cost of compliance or action outweighs the detrimental impact of the contravention. Action may not be taken in circumstances where it would be inappropriate such as when businesses have ceased to trade.

1.2 Advice and Guidance

There are some circumstances where contraventions of the law may only warrant verbal or written advice on how to comply with the law, typically following a request for advice, a programmed inspection or complaint. Such decisions will be recorded in writing and will take into account all relevant and available information

1.3 Revisit of premises

Following the service of a formal notice, the giving of advice or guidance a visit to check that the notice or recommended actions have been complied with will be necessary. A revisit may also follow a written or verbal warning.

1.4 Verbal Warning

For minor breaches of the law with clear identification of the contraventions and advice on how and by when to remedy them. May also advise of 'good practice' but will clearly distinguish between what the law requires and what is good practice. It will include a warning that recurrence or continuation of the infringement will result in legal action.

1.5 Written Warning

Similar to a verbal warning For some contraventions we will send the offender a firm but polite letter or leave a written report following inspection clearly identifying the contraventions, giving advice on how to put them right and giving a deadline by which this must be achieved. Warning that recurrence or continuation of an infringement will result in legal action

2. FORMAL ACTIONS

2.1 Formal Notice

Notices are served to require offenders to cease contravening activities or to give them a time to rectify the contravention or to advise there is a contravention and or to require further information. Such notice, may have immediate effect or will state a reasonable time limit by which it has to be complied with. Failure to comply with the notice will often result in prosecution.

2.2 Seizure

Some legislation enables authorised Officers to seize goods or equipment. When this happens a receipt will be given for the goods to the person from whom the goods were taken.

2.3 Forfeiture

This may be used in conjunction with seizure where the goods need to be disposed of to prevent them re-entering the market place or being used to cause further problems.

2.4 Refusal/Revocation/Review of a Licence

Certain types of premises/businesses/individuals require a licence to operate legally e.g. regulated entertainment, alcohol, taxi drivers. Legal provisions often dictate the procedures to be followed, but generally before action is taken the licence holder would normally have to have: -

- a) Deliberately or persistently breached legal obligations
- b) Deliberately or persistently ignored written warnings or formal notices
- c) Seriously endangered the health, safety or welfare of people, animals or the environment
- d) Obstructed an Officer in the course of their duties.

2.5 Formal caution

A formal caution derives from advice issued by the Home Office, details of which can be seen at homeoffice.gov.uk/circulars/1994/hoc9418.htm.

A record of the Formal Caution will be sent to the Office of Fair Trading and the Local Authorities Coordinators of Regulatory Services (LACORS).

A formal caution can only be given if:

- An offence has been committed
- The person liable admits the offence and agrees to the caution
- There is sufficient evidence that would support a prosecution
- There are mitigating factors suggesting an official caution is the more appropriate course of action rather than a prosecution

2.6 Fixed Penalty Notice

Legislation enables the Council to issue fixed penalty notices for various offences such as littering, dog fouling etc.

2.7 Prosecution

Prosecution in the Magistrates Court or Crown Court. This happens in serious cases or when other approaches have failed. Prosecution will normally be taken where an individual or organisation:-

- a) Deliberately or persistently breaches legal requirements
- b) Deliberately or persistently ignores written warnings or formal notices
- c) Assaults or obstructs an Officer
- d) Endangers to a serious degree, the health, safety and welfare of people, animals or the environment

and there is a realistic prospect of conviction.

2.8 Court Injunction

In the case of immediate risk to health and safety or where the legal team agree that an injunction is a more appropriate course of enforcement action than any other, then injunctions will be used as an enforcement measure to remedy contraventions or dangerous circumstances.

2.9 Direct Action

In some cases, for example Planning Legislation, direct formal action may be taken eg to remove a structure.

PUBLIC INTEREST CRITERIA

Public Interest Criteria is detailed in the Codes of Practice for Crown Prosecutors. The following factors can be considered when making a decision to prosecute:

- a conviction is likely to result in a significant sentence
- a conviction is likely to result in a confiscation or any other order
- violence was threatened or used during the commission of the offence
- the offence was committed against a person serving the public
- the defendant was in a position of authority or trust
- the evidence shows that the defendant was a ringleader or an organiser of the offence
- there is evidence that the offence was premeditated
- there is evidence that the offence was carried out by a group
- the victim of the offence was vulnerable, has been put in considerable fear, or suffered personal damage or disturbance
- the offence was committed in the presence of, or in close proximity to, a child
- the offence was motivated by any form of discrimination against the victim's ethnic or national origin, disability, sex, religious beliefs, political views or sexual orientation
- there is a marked difference between the actual or mental ages of the defendant and the victim, or if there is any element of corruption
- the defendant's previous convictions or cautions are relevant to the present offence
- the defendant is alleged to have committed the offence while under an order of the court
- there are grounds for believing that the offence is likely to be continued or repeated, for example, by a history of recurring conduct
- the offence, although not serious in itself, is widespread in the area where it was committed
- a prosecution would have a significant impact on maintaining community confidence

MITIGATING FACTORS

Mitigating factors include the examples below, but these should always be balanced against the seriousness of the offence and the likelihood of it being repeated:

- the court is likely to impose a nominal penalty
- the defendant has already been made the subject of a sentence and any further conviction would be unlikely to result in the imposition of an additional sentence of order, unless the nature of the particular offence requires a prosecution or the defendant withdraws consent to have an offence taken into consideration during sentencing
- the offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence)
- the loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement
- there has been a long delay between the offence taking place and the date of the trial, unless:
 - the offence is serious
 - the delay has been caused in part by the defendant
 - the offence has only recently come to light
 - the complexity of the offence has meant that there has been a long investigation
- a prosecution is likely to have a bad effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence
- the defendant 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. The Council will, where necessary, apply Home Office guidelines about how to deal with mentally disordered offenders in order to balance the desirability of diverting a defendant who is suffering from significant mental or physical ill health with the need to safeguard the general public
- the defendant has put right the loss or harm that was caused (but defendants must not avoid prosecution or diversion solely because they pay compensation); or
- details may be made public that could harm sources of information, international relations or national security.