

Environmental Health Enforcement Policy 2020

1. Introduction

- 1.1. The Council has a responsibility to enforce specific legislation identified within the Council's Constitution. We also have a responsibility to ensure that we enforce these regulations following the statutory principles of good regulation. Each case is unique and will be considered on its own merits, but this document has been prepared to set out our approach, the general principles to be applied and the factors to be taken into consideration when determining the enforcement actions to apply or recommend.
- 1.2. Our primary function is to achieve regulatory compliance in order to protect the public, legitimate business, the environment, consumers and workers.

2. Aims of policy

- 2.1. To ensure that enforcement decisions are consistent, transparent and proportionate and that people, businesses, organisations and the community are aware of the basis on which enforcement action is taken.
- 2.2. To provide a clear framework for officers undertaking regulatory enforcement work clearly setting out the factors to consider to achieve the principles of good enforcement identified in the policy.

3. Shared role/partnership

- 3.1. Regulatory enforcement can in many situations overlap with enforcement responsibilities of external agencies or other services within the council. Officers shall consider this wider context of enforcement if there is a shared or complementary role with internal and external partners. The main organisations and services are listed below (this is not an exhaustive list):

Internal partners:

- Waste Services
- Environmental Response
- Licensing
- Development Control & Planning Enforcement
- Housing

External partners:

- Trading Standards
- Kent Police
- Social and Mental Health Services
- Housing Associations
- Voluntary sector organisations
- Environment Agency
- Kent Fire and Rescue

4. Governance and ethics

4.1. Equality and diversity

We will take into account the legal and procedural implications of The Human Rights Act 1998 and European Convention on Human Rights.

We will also have regard to our responsibilities as described in the Council Equalities Policy Statement and Objectives 2016 - 2020. We recognise there is diversity within the community. Care will be taken to ensure enforcement actions are clearly understood by all. For example, we may arrange for an interpreter or make reasonable adjustments for people with disabilities, where appropriate.

Many of the activities which we seek to control happen out of office hours. Within our resource and if considered necessary we will arrange for enforcement to take place out of usual office hours. This will include monitoring enquiries, etc.

4.2. Legislative and regulatory reform

This policy has been prepared with regard to the current principal legislation and statutory guidance including:

- The Regulatory Enforcement and Sanctions Act 2008
- Enterprise Act 2016
- Co-ordination of Regulatory Enforcement Regulations 2017
- Legislative and Regulatory Reform Act 2006
- Legislative and Regulatory Reform (Regulatory Functions) Order 2007 as amended in 2009 2010 and 2014
- Regulators Code April 2014

Regard is also given to:

- The Code for Crown Prosecutors

We are committed to delivering our regulatory activities in a manner that is risk-based, proportionate and consistent and we aim to be transparent and accountable about our regulatory approach and activities, in accordance with the statutory principles of good regulation.

4.2.1. When we take enforcement action we aim to:

- change behaviour
- change attitudes in society to offences which may not be serious in themselves, but which are widespread
- eliminate any financial gain or benefit from non-compliance
- be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction
- be proportionate to the nature of the offence and the harm caused
- restore the harm caused by regulatory non-compliance, where appropriate deter future non-compliance

4.2.2. When considering formal enforcement action, we will, where reasonably practicable, discuss the circumstances with those suspected of a breach of regulation and take any information gained into account when deciding on the appropriate enforcement approach. However, in some situations, for example, where immediate action is required to prevent or respond matters of imminent risk to public health or where such an approach will defeat the purpose of the proposed enforcement measure, we may not be able to do so.

4.2.3. Where businesses are in a Primary Authority Partnership under The Regulatory Enforcement and Sanctions Act, we will, where required, comply with the agreed provisions for enforcement and notify the business's Primary Authority of the enforcement action we propose to take. We may under that Act also refer the matter to Office for Product Safety and Standards if appropriate.

5. Methods of enforcement

There are a wide range of actions available to the authority and we may respond with one or more of them as is proportionate. There are some cases where we may take enforcement action after compliance has been achieved if it is in the public interest to do so:

Informal action

- a) No Action
- b) Informal Action - Advice and Guidance

Formal action

- c) Formal Written Warning
- d) Statutory Notices, Community Protection Notices,
- e) Fixed Penalty Notices
- f) Prosecution
- g) Simple Caution
- h) Seizure and Detention
- i) Works in default
- j) Forfeiture Proceedings
- k) Refusal/Suspension/Revocation of a licence
- l) Injunctive Actions and other Civil Sanctions

We believe in firm but fair enforcement and will follow enforcement proportionate to the offence. Where there is a serious or flagrant breach of legislation, or there is an imminent risk to the health or welfare of people, immediate enforcement action may be considered.

5.1 No action

In some circumstances reports are made to the council which fall outside any legislation that they have a responsibility to enforce in which case the complainant will be informed that the council or other agency has no statutory role. Where legislation does apply the only circumstance where no action should be taken is when the breach was a result of a genuine mistake where, once identified, immediate action was taken to comply.

5.2. Informal action – advice and guidance

The term informal action means offering advice and guidance to persons, businesses or organisations, this can be verbally or in writing. If it is included in forms or letters, it will be clearly identified as such. Situations which may be dealt with through informal action are generally but not exclusively:

- The act or omission is not serious enough to warrant formal action or,
- From the past history it can be reasonably expected that informal action will achieve compliance or,
- Where we seek to educate and inform of ‘good practice’

5.3. Formal action

As an authority we can take action through more formal means to achieve compliance or protect the public, this includes the following options.

5.3.1. Formal written warning

A formal written warning is used where the act or omission is **serious enough** to warrant formal written warning and must contain the following:

- All the information necessary to understand what is required and why it is necessary,

- The legislation contravened and measures which enable compliance to be achieved,
- Clearly differentiate between legal requirements and recommendations of good practice, and
- A reasonable date for compliance

Where the recipient of the letter disagrees with any requirement and there is a “right of appeal”, where identified in legislation, this should be made to the relevant Team Leader/Manager.

5.3.2. Statutory notices

Notices may be served in circumstances where there is a **serious contravention, imminent risk to safety or health, or continuing non-compliance**. Notices include, but are not limited to:

Hygiene Emergency Prohibition Notices (food) or **Prohibition Notices** (health and safety) which require contravening activities to cease immediately and may close all or part of a premise.

Hygiene Emergency Prohibition Notices (food) must be confirmed by a Magistrates Court within 3 days of service.

Hygiene Improvement Notices (food) or **Improvement Notices** (health and safety) may be served to correct specific contraventions of the legislation and specify a compliance date. In both cases, the Notice must state what provision is being contravened, and what is necessary in order to comply with it.

Environmental Protection Act notices may be served for contraventions of appropriate legislation e.g., for the existence of a statutory nuisance. Notices shall be served to require persons, businesses or organisations to cease contravening activities, or improve conditions to comply with legislation within a reasonable time.

The Environmental Permitting (England and Wales) Regulations 2016 Notices can be served under this legislation for failure to comply with conditions contained in an Environmental Permit. Enforcement Notices can include steps to remedy any issues and bring a Permitted business back into compliance. Where, in the opinion of the Council, there is a risk of serious pollution, a Suspension Notice can be served which requires the business to cease operating until the remedial steps have been taken.

Community Protection Notices (CPNs) may be issued under the Anti-social Behaviour, Crime and Policing Act 2014 will always be preceded by a community protection warning. The scope of use for CPNs is extremely broad, for example:

- Anti-social behaviour
- Litter and refuse accumulations
- Dog control including repeat strays
- Noise including barking dogs
- Bonfires and other nuisances
- Public Health issues including vermin

Where the legislation contains an appeal process no further action will be taken until the appeal period is completed. Officers will revisit to confirm the notice has been complied with. Failure to comply with a Notice is an offence in itself and may result in prosecution.

5.3.3. Prosecution

The authority to prosecute will be given in accordance with the council's constitution. The decision to prosecute will be made by the Head of Mid Kent Legal Services having regard to the authorisation from the relevant authorising officer and the Full Code Test as set out in the code for Crown Prosecutors which has two stages which must be satisfied:

1. The Evidential Stage – is there sufficient evidence to provide a realistic prospect of conviction against the offender
2. The 'Public Interest' Stage – is it in the public interest for the case to be brought to court?

This can be found on [The Crown Prosecution Service \(CPS\) website](#).

5.3.3.1. The decision to recommend the institution of proceedings will in general be in respect of those persons or organisations that:

- visually or materially damage the environment;
- blatantly disregard the law;
- fail to achieve basic legal standards, (often following previous contact with the Services); or
- who put the public at risk

5.3.3.2. The investigating officer, when deciding on the appropriateness for legal proceedings (prosecution) shall also take the following criteria into account:

- **Community benefit**

Legal proceedings may be taken on the first occasion of certain events because of the seriousness of the case and/or Community benefit from a prosecution and its likely deterrent effect.

- **Blatant breach of law**

Where there is a breach of law is such that public health, safety or wellbeing, animal health or welfare or the local environment is or has been put at risk, it would be appropriate to take legal proceedings.

- **Failure to comply with a statutory notice**

Legal proceedings, seizure of equipment or works in default will usually be appropriate, in cases of failure to comply with improvement or prohibition notices or other notices requiring or prohibiting action.

- **Failure to comply with lawful requirements**

If a person or business fails to comply with lawful requirements, having been advised on previous occasions, legal proceedings will usually be taken.

- **History of non-compliance**

If there is a history of non-compliance with legislation by a person or business, then legal proceedings will usually be taken.

- **Obstruction**

Legal proceedings will be taken in cases of deliberate obstruction of an officer.

5.3.4. Simple cautions

The decision to offer a simple caution will be made by the Head of Service having received a recommendation from their Service Manager in consultation with the Head of Legal Services.

5.3.4.1. We may use a simple caution as a proportionate alternative to prosecution and in accordance with Ministry of Justice guidance 'Simple Cautions for Adult Offenders' (dated 13.4.15).

5.3.4.2. A simple caution will only be considered:

- Where we are satisfied that there is sufficient evidence to provide a realistic prospect of conviction against the offender,
- The offender admits the offence,
- The offender consents to being cautioned, and
- It is in the public interest to offer a simple caution in respect of the offence rather than to prosecute

5.3.4.3. Where a simple caution is offered and declined, we are likely to consider prosecution.

5.3.5. Seizure and detention

Certain legislation enables authorised officers to seize goods or equipment. This includes unsafe food or dangerous pieces of work equipment, noise generating

equipment or vehicles associated with certain waste crime etc. Receipts will be issued to the person from whom the goods are seized. Where the law requires, seized goods will be taken before a Magistrate e.g., unfit food.

5.3.6. Works in default

Under certain legislation a council can undertake work in default and recover the cost from the occupier or owner. This may be appropriate for example, when:

- It is necessary to carry out work in the public interest and/or the costs are not prohibitive,
- There is a failure to carry out work covered by a statutory notice,
- Immediate action is required, or
- It is unlikely that work will be carried out unless done in default

5.3.7. Forfeiture proceedings

In certain situations it may be appropriate for the Council to seek forfeiture of property to address a contravention. This would only occur where the legislation gives the Council the power to do so and would be through an application to the Court.

5.3.8. Refusal / Suspension / Revocation of Licence / Approval / Authorisation

Licences, Approvals and Authorisations are issued under specific legislation and will only be refused, suspended or revoked following appropriate procedures and consideration of all relevant evidence.

Certain food business manufacturing or handling high risk food products require approval to allow their foods to be sold. For the approval to be refused, suspended or revoked, one or more of the following criteria must be met:

- Failure to comply with legal requirements
- Have ignored written warnings or statutory notices
- Are producing unsafe food products likely to harm human health
- Obstructed an officer undertaking their duties

5.3.9. Injunctions and civil sanctions

An injunction can be used to deal with a wide range of behaviours, many of which can cause serious harm to victims and communities. If a person 'engaged or threatens to engage in anti-social behaviour' an application may be considered. This could include but is not limited to irresponsible dog ownership or noisy/abusive behaviour towards neighbours.

Many of the civil sanctions available to the authority are already identified in sections 5.3 other appropriate options may be considered such as restoration or stop notices.

5.3.10. Other enforcement action

The diverse and evolving nature of the legislation used across the service means that other enforcement tools can be appropriate, but it is not practical to list them all here. Where other enforcement action is used its use will be proportionate and only by officers that are trained and authorised in writing to do so in accordance with section 6 below.

6. Authorisation

- 6.1. Officers carrying out enforcement work will be suitably trained, experienced and authorised to do so in writing.
- 6.2. Officers authorised to sign and serve various documents will have the level of competence and ability required. Officers authorised will carry identification and will have evidence of their authorisation.

7. Deciding on enforcement action to be taken

- 7.1. For breaches resulting in 'no action', 'advice and guidance' and 'formal written warning' the case officer will decide upon the appropriate course of action.
- 7.2. The case officer's decision will be based upon professional judgement, legal guidelines, statutory codes of practice, guidance. Advice and confirmation can be obtained from colleagues and the Team Leader.
- 7.3. For breaches resulting in enforcement methods not listed at 7.1 the case officer will consult with the Team Leader to decide the appropriate course of action. This will include service of Hygiene Emergency Prohibition Notices (food), Prohibition Notices (health and safety), refusal / suspension / revocation of licences / approvals / authorisations and Remedial Action Notices (RAN). Where the Team Leader is unavailable, the Environmental Health Manager or other senior manager will be consulted.
- 7.4. In the case of service of Hygiene Emergency Prohibition Notices (food) and Prohibition Notice (health and safety), agreement of the Food and Safety Team Leader, the Environmental Health Manager or other senior manager may not be possible where there is an imminent and serious risk to safety or health. Officers will inform them as soon as practicable.
- 7.5. In exceptional circumstances where officers, on consideration of the evidence and the risk to health or the environment, may depart from the policy.
- 7.6. In the case of a work-related death, the case officer must inform and liaise with Kent Police in accordance with the protocol 'Work Related Deaths: A protocol for liaison'.

This may result in a joint investigation. Where Kent Police/Crown Prosecution Service decides not to pursue a manslaughter case, consideration will be given to a health and safety prosecution, in-line with this policy.

8. Application of this policy

- 8.1. The principles contained within the enforcement policy shall be applied to the enforcement of legislation within the remit of the Mid Kent Environmental Health Service.
- 8.2. The preparation of this policy and any supplementary supporting documents will involve, where appropriate, consultation of affected parties.

9. Approval

- 9.1. The Environmental Health Enforcement Policy will be approved by Cabinet.

10. Access to the policy

- 10.1. The policy is available on the [Tunbridge Wells Borough Council website](#) and at the Tunbridge Wells Council offices. The case officer will be able to provide a copy of this policy given suitable notice. On request and where practicable this policy may be made available on tape, in Braille, large type, or in a language other than English.

11. Review of policy

- 11.1. The Policy will be kept under review to take account of changes in legislation and amendments found necessary as a result of internal monitoring.

12. Complaints

- 12.1. If a person feels we have not followed the enforcement policy or has a complaint about the application of the policy complaints may be made through the Corporate Complaints process accessed from the [Tunbridge Wells Borough Council website](#).