

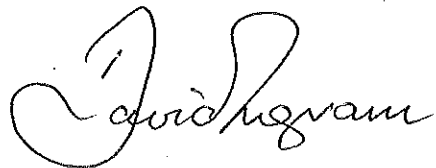
## Operations Directorate

### Enforcement Policy – Regulatory Services

#### Amendment Record

This procedure is a mandatory requirement and forms part of the Environmental Health and Licencing Quality System.

Amendments are not permitted without prior approval from those with delegated powers in accordance with the Councils' Scheme of Delegation

Issue	Date	Approved	Summary of Change	
1	11/02/13	Council	Implementation	
2	22/07/14	D Ingram	Minor changes to reflect legislative changes	
3	07/11/17	D Ingram	Minor Changes to reflect legislative changes	
Prepared by		K Gosling	Date	21/07/2014
Approved		David Ingram		

# WINCHESTER CITY COUNCIL REGULATORY SERVICES

## ENFORCEMENT POLICY

2017

## **ENFORCEMENT POLICY**

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## 1. INTRODUCTION

- 1.1 This document sets out what business and others being regulated can expect from Winchester City Council Regulatory Services (RS) and its Enforcement Officers.
- 1.2 By Regulatory Services we mean the following Teams: Environmental Health and Licensing, Private Sector Housing and Community Safety and Neighbourhood Services Team. It commits the City Council to good enforcement practice with effective procedures and clear policies. Where the City Council is referred to in this document it means the RS.
- 1.3 This document has been prepared with regard to the current principal legislation and statutory guidance including:

The Regulatory Enforcement and Sanctions Act 2008 (The RES Act).

Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009 SI665/2009 (The CRE Enforcement Order).

Co-ordination of Regulatory Enforcement (Procedure for References to RD) Order 2009 SI670/2009 (The CRE RD Order).

Legislative and Regulatory Reform Act 2006 (LRRRA).

Legislative and Regulatory Reform (Regulatory Functions) Amendment Order 2014

Regulators' Code (RC).

Deregulation Act 2015 and the Enterprises Act 2016

The Economic Growth (Regulatory Functions) Order 2017

- 1.4 The RES Act established the Local Better Regulation Office which is now Regulatory Delivery (RD). It also imposed upon the City Council a duty to: (a) have regard to any guidance given to a Local Authority by RD, (b) a duty to comply with guidance where we are directed to do so by RD, and (c) a duty to have regard to any list of enforcement priorities published by RD. We are committed to doing so.
- 1.5 The LRRA, Part 2, requires us to have regard to the Principles of Good Regulation in that we carry out our regulatory activities in a way which is proportionate, accountable, consistent, transparent, and targeted to situations which need action.
- 1.6 This Policy has also been prepared having regard to:  
The Regulator's Code  
The Human Rights Act 1988; and  
The Code for Crown Prosecutors
- 1.7 The RS primary function is to achieve regulatory compliance in order to protect the public, legitimate business, the environment and groups such as consumers and workers. However, we reserve the right to take enforcement action in some cases after compliance has been achieved if it is in the public interest to do so.
- 1.8 We recognise that prevention is better than cure, but where it becomes necessary to take formal enforcement action against a business, or member of the public, we will do so. There is a wide range of tools available to us as an enforcement agency and these are discussed further in the document.
- 1.9 When considering formal enforcement action, WCC will, where appropriate and where reasonably practicable, discuss the circumstances with those suspected of a breach and take these into account when deciding on the best approach. This paragraph does not apply where immediate action is required to prevent or respond to a breach or where to do so is likely to defeat the purpose of the proposed enforcement action.

- 1.10 If you are a business operating in more than one Local Authority and you have chosen to have a registered Primary Authority Partnership under The RES Act we will, where required, comply with the agreement provisions for enforcement and notify your Primary Authority of the enforcement action we propose to take. We may under that Act also refer the matter to RD if appropriate.

## **2. LEGAL STATUS OF THIS ENFORCEMENT POLICY**

- 2.1 This Policy was approved by Winchester City Council on 11<sup>th</sup> February 2013.
- 2.2 The Head of Environmental Health and Licensing has delegation to amend minor changes to this document without Council approval.
- 2.3 This policy is intended to provide guidance for Enforcement Officers, businesses, consumers and the public.

### **3. SCOPE AND MEANING OF 'ENFORCEMENT'**

- 3.1 This Policy applies to all the legislation enforced by Enforcement Officers with delegated enforcement powers employed by Winchester City Council.
- 3.2 'Enforcement' includes any criminal or civil action taken by Enforcement Officers aimed at ensuring that individuals or businesses comply with the law.
- 3.3 For the purposes of The RES Act, the term 'enforcement action' has been given a general statutory definition, which is:
- (a) action to secure compliance with a restriction, requirement or condition in relation to a breach or supposed breach;
  - (b) action taken in connection with imposing a sanction for an act or omission; and
  - (c) action taken in connection with a statutory remedy for an act or omission.
- 3.4 A list of specific 'enforcement actions' is provided in section 2 of the CRE Enforcement Order, which applies to Part 2 of The RES Act and the Primary Authority Scheme. If your business is registered with the Primary Authority Scheme, it is likely that we will contact your Primary Authority to give notice of the enforcement action we propose to take against you.
- 3.5 By this document the City Council intends to enable Enforcement Officers to interpret and apply relevant legal requirements and enforcement policies fairly and consistently between like-regulated entities in similar situations. The City Council also aims to ensure that its own Enforcement Officers interpret and apply their legal requirements and enforcement policies consistently and fairly.
- 3.6 In certain circumstances we will seek to raise awareness and increase compliance levels by publicising unlawful trade practices or criminal activity.

#### **4. HOW TO OBTAIN A COPY OF THE POLICY OR TO MAKE COMMENTS ON IT OR MAKE A COMPLAINT**

##### **4.1 Obtaining a copy of the Policy/making a comment on the Policy**

##### **4.1.1 This Policy is available on the Winchester City Council website at:**

[www.winchester.gov.uk](http://www.winchester.gov.uk)

If you would like a paper copy of the Policy or make a comment on the Policy, please contact us by:

- (a) e-mailing [environmentalhealth@winchester.gov.uk](mailto:environmentalhealth@winchester.gov.uk)
- (b) writing to the head of the relevant service, City Offices, Colebrook Street, Winchester. SO23 9LJ.
- (c) telephoning 01962 840222.

On request, this Policy will be made available on tape, in Braille or large type.

##### **4.3 How you can make a complaint about decisions made**

If you are unhappy with any decision that is made initially you should try and resolve the issue with the Enforcement Officer. However if this fails you should discuss with their manager. If you feel that you are still not satisfied then you should make a formal complaint in writing by the following options:

- Follow the guidance on the City Councils [website](#)
- Write to the Chief Executive Office, Winchester City Council, Colebrook Street, Winchester. SO23 9LJ.
- Write to the Local Government Ombudsman at The Oaks No 2, Westwood Way, Westwood Business Park, Coventry. CV4 8JB.

Tel: 024 7669 5999 Fax: 024 7669 5902

The Local Government Ombudsman's website is at [www.lgo.org.uk](http://www.lgo.org.uk). If you have an enquiry about the Ombudsman's service, you can telephone their advice line on 0845 602 1983.



## **5. GENERAL PRINCIPLES**

- 5.1 Our principles are informed by The Regulators' Code, the Enforcement Concordat and the Guidance of RD as to how to apply these documents.
- 5.2 Prevention is better than cure and our role, therefore, involves actively working with businesses to advise on, and assist with compliance. However, where it becomes necessary to take formal enforcement action against a business, or member of the public, we will do so.
- 5.3 Where we consider that formal enforcement action is necessary each case will be considered on its own merits.
- 5.4 However, there are general principles that apply to the way each case must be approached. These are set out in this Policy and in the Regulators' Code.
- 5.5 In accordance with the Regulators' Code, the approach of the City Council to the sanctions and penalties available to it, will aim to:
- (a) change the behaviour of the offender;
  - (b) change attitudes in society to offences which may not be serious in themselves, but which are widespread;
  - (c) eliminate any financial gain or benefit from non-compliance;
  - (d) 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;
  - (e) be proportionate to the nature of the offence and the harm caused;
  - (f) restore the harm caused by regulatory non-compliance, where appropriate; and
  - (g) deter future non-compliance.

For more information about the Regulators' Code visit:

[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)

- 5.6 All enforcement decisions will be fair, independent and objective. They 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. Such decisions will not be affected by improper or undue pressure from any source.
- 5.7 We will take into account the views of any victim, injured party or relevant person to establish the nature and extent of any harm or loss, and its significance, in making the decision to take formal action. This may include actual harm or loss or the impact on the well being of the individual or potential or actual harm to the environment.
- 5.8 Winchester City Council is a public authority for the purposes of the Human Rights Act 1998. We will, therefore, apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
- 5.9 All enforcement activities, including investigations and formal actions, will always be conducted in compliance with the statutory powers of the officer and all other relevant legislation, including but not limited to the Police and Criminal Evidence Act 1984, the Criminal Procedure and Investigations Act 1996, the Human Rights Act 1998, the Regulation of Investigatory Powers Act 2000, Criminal Justice and Police Act 2001, and the Crime and Disorder Act 1998 and in accordance with any formal procedures and codes of practice made under this legislation in so far as they relate to the City Councils enforcement powers and responsibilities.
- 5.10 This Policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulator's Compliance Code. In certain instances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

## **6. NOTIFYING ALLEGED OFFENDERS**

- 6.1 If we receive information, for example from a complainant, that may lead to formal enforcement action against a business or individual we will notify that business or individual as soon as is practicable of any intended enforcement action, unless this could impede an investigation or pose a safety risk to those concerned or the general public or where notification would defeat the purpose.
- 6.2 During the progression of enforcement investigations or enforcement actions, business proprietors or individuals and witnesses will be kept informed of progress.
- 6.3 Confidentiality will be maintained and personal information about individuals will only be released to a Court when required and/or in accordance with the Data Protection Act 1998.

## **7. ENFORCEMENT ACTION**

### **7.1 An overview of the enforcement actions available**

- 7.1.1 There are a large number of potential enforcement options. The level of the action taken varies from no action through to proceedings in Court. Examples of the main types of action that may be considered are shown below:

- (a) No action.
- (b) Informal Action and Advice.
- (c) Fixed penalty Notices.
- (d) Penalty Charge Notices.
- (e) Formal Notice.
- (f) Forfeiture Proceedings.
- (g) Seizure of goods/equipment.
- (h) Injunctive Actions and other Civil Sanctions.
- (i) Refusal/Review/revocation of a licence.
- (j) Simple Caution.

- (k) Prosecution.
- (l) Proceeds of Crime Applications.

7.1.2 The order in which the enforcement actions are listed above is not necessarily in absolute order of escalating seriousness relative to each other. The City Council reserves the right to escalate its level of enforcement action, having regard to the criteria in paragraph 7.2 of this policy.

## **7.2 Deciding what level of action is appropriate**

7.2.1 In assessing what enforcement action is necessary and proportionate, consideration will be given to, amongst other things:

- (a) The seriousness of the compliance failure.
- (b) The past and current performance of any business and/or individual concerned.
- (c) Any obstruction on the part of the offender.
- (d) The risks being controlled.
- (e) Statutory guidance.
- (f) Codes of Practice.
- (g) Any legal advice.
- (h) Policies and priorities of the Government and the City Council.
- (i) A person's age in relation to young people (termed 'juveniles') aged under 18.

7.2.2 Certain enforcement action, such as the decision to Caution and/or the decision to prosecute, is further and specifically informed by those matters set out below at paragraphs 7.13 and 7.14.

## **7.3 An explanation of the enforcement action options**

### **7.3.1 No Action**

7.3.2 In certain circumstances, contraventions of the law may not warrant any action. This can be where the cost of compliance to the offender outweighs the detrimental impact of the contravention, or the cost of the required enforcement action to the City Council outweighs the detrimental impact of the contravention on the community. A decision of no action may also be taken

where formal enforcement is inappropriate in the circumstances, such as where the offender is elderly and frail, is suffering from mental health issues or serious ill health, and formal action would seriously damage their wellbeing. In such cases we will advise the offender and the complainant of the reasons for taking no action.

#### **7.4 Informal Action and Advice**

- 7.4.1 For minor breaches of the law we may give verbal or written advice. We will clearly identify any contraventions of the law and give advice on how to put them right, including a deadline by which this must be done. The time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of the non-compliance.
- 7.4.2 Sometimes we will advise offenders about 'good practice', but we will clearly distinguish between what they must do to comply with the law and what is advice only.
- 7.4.3 Failure to comply could result in an escalation of enforcement action.

#### **7.5 Fixed Penalty Notices**

- 7.5.1 Certain offences are subject to Fixed Penalty Notices (FPN)) where prescribed by legislation. They are recognised as a low-level enforcement tool and enable a defendant to avoid prosecution and a criminal record. Where legislation permits an offence to be dealt with by way of a FPN, we may chose to issue a FPN on a first occasion, without any prior warning.

#### **7.6 Penalty Charge Notices**

- 7.6.1 Penalty Charge Notices (PCN) are prescribed by certain legislation as a method of enforcement by which the offender pays an amount of money to the enforcer in recognition of the breach. Failure to pay the PCN will result in the offender being pursued in the County Court for non-payment of the debt. A PCN does not create a criminal record and we may chose to issue a PCN without first issuing a warning.

## **7.7 Failure to accept a FPN and/or a PCN**

- 7.7.1 In circumstances where a person or body corporate fails to accept or pay a FPN, then in order to maintain the integrity of these legislative regimes, Regulatory Services will consider an escalation of enforcement action. This will include consideration of a prosecution for the original offence under the primary legislation.
- 7.7.2 In circumstances where a person or body corporate fails to accept or pay a PCN, then in order to maintain the integrity of this legislative regime, Regulatory Services will consider an escalation of enforcement action. This will include consideration of civil action to recover the debt incurred by the RS.
- 7.7.3 A failure to pay a FPN or PCN is a material consideration for the purposes of deciding whether a prosecution will be taken or civil debt recovery commenced.

## **7.8 Formal Notice**

- 7.8.1 Certain legislation allows notices to be served requiring offenders to take specific actions or cease certain activities. Notices may require activities to cease immediately where the circumstances relating to health, safety, environmental damage or nuisance demand. In other circumstances, the time allowed will be reasonable, take into account the seriousness of the contravention, the implications of the non-compliance and the appeal period for that notice.
- 7.8.2 All notices issued will include details of any applicable Appeals Procedures.
- 7.8.3 Certain types of notice allow works to be carried out in default. This means that if a notice is not complied with [a breach of the notice] the RS may carry out any necessary works to satisfy the requirements of the notice. Where the law allows, the RS may then charge the person/business served with the notice for any cost we incur in carrying out the work.

## **7.9 Seizure**

7.9.1 Certain legislation enables authorised Enforcement Officers to seize goods, equipment or documents for example unsafe food, sound equipment that is being used to cause a statutory noise nuisance, unsafe products or any goods that may be required as evidence for possible future court proceedings. When we seize goods we will give the person from whom the goods are taken an appropriate receipt itemising the goods / equipment that have been seized.

## **7.10 Injunctive Actions and other Civil Sanctions**

7.10.1 In certain circumstances, for example, where offenders are repeatedly found guilty of similar offences or where it is considered that injunctive action is the most appropriate course of enforcement, then injunctive actions may be used to deal with repeat offenders; dangerous circumstances; or consumer/environmental/public health detriment.

7.10.2 Action under the Enterprise Act 2002; proceedings may be brought where an individual or organization has acted in breach of community or domestic legislation with the effect of harming the collective interests of consumers. In most circumstances action will be considered where there have been persistent breaches or where there is significant consumer detriment. Action can range from:

- (a) Informal undertakings.
- (b) Formal undertakings.
- (c) Interim Orders.
- (d) Court Orders.
- (e) Contempt Proceedings.

7.10.3 Civil Injunctions and Criminal Behaviour Orders: Where the non-compliance under investigation amounts to anti-social behaviour such as persistent targeting of an individual or a group of individuals in a particular area then, following liaison with the Community Safety and Neighbourhood Services Team where appropriate, a CI, CBO or CPN will be sought to stop the activity.

## **7.11 Suspension and Revocation of a Licence**

7.11.1 Where there is a breach of condition of Licence or Permit, upon hearing evidence, the Head of Service or the Licensing Committee has the power to suspend, revoke or refuse to renew the Licence/Permit subject to the provisions of the legislation.

## **7.12 Simple Caution**

7.12.1 In appropriate circumstances, where a prosecution would otherwise be justified, a Simple Caution may be administered with the consent of the offender.

7.12.2A Simple Caution is an admission of guilt, but is not a form of sentence, nor is it a criminal conviction.

7.12.3 For a Simple Caution to be issued a number of criteria must be satisfied:

- (a) Sufficient evidence must be available to prove that the offence has been committed.
- (b) The offender must admit the offence.
- (c) It must be in the public interest to use a Simple Caution.
- (d) The offender must be 18 years or over.

For details on the Home Office guidance (Circular 30/2005) visit:  
<http://www.homeoffice.gov.uk/>

7.12.4 We will also take into account whether the offender has received a simple caution within the last 2 years when determining whether a simple caution is appropriate for any subsequent offending.

7.12.5 If during the time the Simple Caution is in force the offender pleads guilty to, or is found guilty of, committing another offence anywhere in England and Wales, the Caution may be cited in court, and this may influence the severity of the sentence that the court imposes.



7.12.6 The refusal of an offender to be cautioned does not preclude the matter being passed for prosecution. In fact, any such failure will be a material consideration when deciding whether the offender should then be prosecuted for that offence.

### **7.13 Prosecution**

7.13.1 In circumstances where none of the other forms of enforcement action are considered appropriate a prosecution will be considered and may ensue.

7.13.2 When deciding whether to prosecute City Council applies The Code for Crown Prosecutors as issued by the Director of Public Prosecutions.

7.13.3 The Code for Crown Prosecutors is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases.

7.13.4 The Code for Crown Prosecutors has two tests:

- Is there enough evidence against the defendant? When deciding whether there is enough evidence to prosecute, the City Council must consider what evidence can be used in court and whether it is reliable. The City Council must be satisfied there is enough evidence to provide a "realistic prospect of conviction" against each defendant.
- Is it in the public interest for the City Council to bring the case to court?

A prosecution will usually take place unless the public interest factors against prosecution clearly outweigh those in favour of prosecution.

For a copy of the Code for Crown Prosecutors visit:-

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

#### **7.14 Proceeds of Crime Applications**

- 7.14.1 The City Council either through its own Enforcement Officers or in cooperation with the Police may make application under the Proceeds of Crime Act 2002 to restrain and/or confiscate the assets of an offender. The purpose of any such proceedings is to recover the financial benefit that the offender has obtained from his criminal conduct. Proceedings are conducted according to the civil standard of proof.

### **8. DECISIONS ON ENFORCEMENT ACTION**

- 8.1 Decisions about the most appropriate enforcement action to be taken are based upon those matters set out in Section 7 above.
- 8.2 Where appropriate, decisions about what enforcement action to take may involve consultation between:
- (a) Investigating Officer(s).
  - (b) Senior managers from the City Council.
  - (c) Winchester City Council's Legal Team.
- 8.3 All cases that are being considered for prosecution will be referred to an Enforcement Panel whose role is to ensure that the integrity and robustness of the case merits prosecution.
- 8.4 The decision to prosecute a case will be taken by those with authority to do so in accordance with the City Council's Scheme of Delegation.

### **9. PRIMARY AUTHORITY PARTNERSHIP SCHEME AND ITS ENFORCEMENT PROVISIONS**

- 9.1 When a decision has been made to take enforcement action against a business and:
- (1) That business is operating in more than one Local Authority and has a registered Primary Authority Partnership under The RES Act; and
  - (2) The enforcement action we propose to take is covered by the definition of enforcement action for the purposes of Part 2 of The RES Act.

We will, where required to do so by that Act, comply with the agreement provisions for enforcement and notify your Primary Authority of the action we propose to take.

- 9.2 A Primary Authority has the right to object to our proposed action and in such circumstances either they or we may refer the matter to RD.

## **10. LIAISON WITH OTHER REGULATORY BODIES AND ENFORCEMENT AGENCIES**

- 10.1 In addition to the duties imposed upon us by The RES Act in respect of cooperating and working with Primary Authorities and the RD; we will, where appropriate, cooperate and coordinate with any relevant regulatory body and/or enforcement agency to maximise the effectiveness of any enforcement.
- 10.2 Where an enforcement matter affects a wide geographical area beyond the City boundaries, or involves enforcement by one or more other local authorities or organisations; where appropriate all relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activity coordinated with them.
- 10.3 The City Council will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies, including:
- (a) Government Agencies.
  - (b) Police Forces.
  - (c) Fire Authorities.
  - (d) Statutory undertakers.
  - (e) Other Local Authorities.

## **11. CONSIDERING THE VIEWS OF THOSE AFFECTED BY OFFENCES**

- 11.1 The City Council undertakes enforcement on behalf of the public at large and not just in the interests of any particular individual or group. However, when considering the public interest test, the consequences for those affected by

the offence, and any views expressed by those affected will, where appropriate, be taken into account when making enforcement decisions.

## **12. PROTECTION OF HUMAN RIGHTS**

- 12.1 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.

## **13. REVIEW OF THE ENFORCEMENT POLICY**

- 13.1 This Policy will be reviewed annually. A copy of this policy is available at: [www.winchester.gov.uk](http://www.winchester.gov.uk)

**- END OF DOCUMENT-**