

# Cheshire East Council – Enforcement Policy

## 1.0 Background

- 1.1 Cheshire East Council is an Enforcing Council and proud to be one that is tough on residents and businesses that are selfish and cause harm to others. Through this policy we want to be clear about what you can expect from us if you break Council rules on enforcement, or if you are a victim of someone else doing it.
- 1.2 We accept that there are times when you may need help on what the rules are and what we expect from you. So along with our tough stance on enforcement, we will provide advice and assistance, and try and nip problems in the bud through more informal approaches. We will make sure that we target those areas that are most in need and so we are upfront that our challenge is huge, but we are committed to protecting residents and businesses from harm wherever we can.
- 1.2 Cheshire East Council has an existing Enforcement Policy that was approved in March 2009. This new Policy provides an update and refresh of the 2009 version and takes into account changes that have occurred in relation to regulatory activity; this includes updated statutory requirements of an Enforcement Policy, new regulatory sanctions available for specific issues of non compliance and also changes to the structure within Cheshire East Council itself. *The Policy was approved by [insert decision making body] on [insert date].*
- 1.3 Our policy does not aim to provide a ‘one size fits all’ approach to enforcement across the wide range of regulatory services, but is more of an overarching view of how Cheshire East and its officers will undertake regulatory and enforcement action as part of their day to day work.
- 1.4 It also takes into account the subtle differences in regulatory approach between the various service areas by providing links to specific local enforcement procedures which will be useful for business and individuals.

## Scope and Meaning of Enforcement

This Policy applies to all the legislation enforced by Officers with delegated enforcement powers employed by the Council.

‘Enforcement’ includes any criminal or civil action taken by Enforcement Officers aimed at ensuring that individuals or businesses comply with the law.

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.

## **2.0 What Guides Our Enforcement Approach?**

### **2.1 The Principles of Good Regulation**

The Legislative and Regulatory Reform Act 2006 requires every local authority to have regard to the five Principles of Good Regulation when carrying out specific regulatory functions.

#### 1. Proportionate

Our activities will reflect the level of risk to the public and enforcement action will relate to the seriousness of the offence.

#### 2. Accountable

Our activities will be open to public scrutiny, with clear and accessible policies, and a fair and efficient complaints procedure.

#### 3. Consistent

Our advice to those that we regulate will be robust and reliable and we will respect advice provided by others. Where circumstances are similar, we will endeavour to act in similar ways to other local authorities.

#### 4. Transparent

We will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return.

#### 5. Targeted

We will focus our resources on higher risk enterprises and activities, reflecting both local need and national priorities.

### **2.2 The Regulators Code**

Cheshire East Council has had regard to the Regulators' code in the preparation of this policy. This provides for an efficient and effective approach to all council regulatory inspection and enforcement functions to improve compliance with legislation whilst minimising the burden on businesses, individuals, organisations and Cheshire East Council itself.

In certain instances we may however conclude that a provision of 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, documented and based on material evidence.

### **2.3 Human Rights Act 1998**

Cheshire East Council is a public authority for the purposes of the Human Rights Act 1998. We therefore apply the principles of the European Convention for Human Rights and Fundamental Freedoms. The 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.

## **2.4 Data Protection Act 1998**

Where there is a need for Cheshire East Council to share enforcement information with other agencies, we will follow the provisions of the Data Protection Act 1998.

## **2.5 The Code for Crown Prosecutors**

When deciding whether to prosecute, Cheshire East Council will have regard to the provisions of The Code for Crown Prosecutors as issued by the Director of Public Prosecutions.

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. The code sets out two tests that must be satisfied, commonly referred to as the 'Evidential Test' and the 'Public Interest Test'.

1. Evidential Test: Is there enough evidence against the defendant?

When deciding whether there is enough evidence to prosecute, Cheshire East will consider what evidence can be used in court and is reliable. We must be satisfied there is enough evidence to provide a 'realistic prospect of conviction' against each alleged offender.

2. Public Interest Test: Is it in the public interest for the case to be brought to court?

Cheshire East will balance factors for and against prosecution carefully and fairly, considering each case on its merits. The following public interest criteria will normally be taken into account when deciding on the relevance of legal proceedings, although this list is not exhaustive.

- § The prevalence of the type of offence
- § The need for a suitable deterrent
- § The risk of danger or injury to the public
- § The failure to comply with a statutory notice or respond to advice about legal requirements
- § The disregard of legal requirements for financial reward
- § Significant financial loss, potential or actual, to a third party
- § A history of similar offences
- § Persistent breaches of legislation
- § Where fraud, gross negligence or guilty knowledge is a factor
- § Minor breaches of a number of statutes

## **2.6 Regulatory Enforcement and Sanctions Act 2008**

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

## **3.0 Which services operate in accordance with this Enforcement Policy?**

This policy relates to all council services that operate a regulatory function within or on behalf of the council.

Some examples of service areas that have a role to enforce legislation include;

- Environmental Health (food safety, health and safety, environmental protection, public health)
- Licensing (alcohol, hackney carriage & private hire, street trading)
- Animal Health and Welfare (farmed animal health, animal boarders and breeders, zoos, riding schools)
- Trading Standards (doorstep crime, fraud, counterfeiting, under age sales, weights and measures, labelling)
- Private Sector Housing
- Planning Enforcement
- Building Control
- Benefit fraud
- Waste Management
- Antisocial Behaviour
- Parking Services
- Public Rights of Way and Countryside Services

Please note that this is not exhaustive and refers to the 'traditional' name of the service area/function for simplicity.

## **4.0 Who does this Enforcement Policy affect?**

4.1 Although this policy provides a framework for Council employees and contractors whilst they are carrying out their day to day duties it is also designed to provide an overview of the Council's approach and general operating principals to those who might be affected by its

use; this would include members of the public, commercial businesses and voluntary organisations.

- 4.2 This policy is also applicable where the Council is the Enforcing Authority for its own premises. In such instances steps are taken to ensure that enforcement decisions are free from any conflict of interest. In particular, any serious breaches of legislation would be brought to the attention of the Head of Service and Chief Executive without delay.

## **5.0 Evidence Gathering during an Investigation**

- 5.1 Regulatory bodies are empowered to gather evidence by various means and as part of any ongoing investigation. This can include overt methods where the subject is aware of the investigation or, where appropriate, covert methods where the subject is unaware.

- 5.2 Where the Council undertakes to gather information covertly then they will have regard to the procedures and protocols laid down within the Regulatory Investigation Powers Act 2000 (RIPA) and the Protection of Freedoms Act 2012 as applicable. The Council has a corporate application and authorisation process for the use of these specific methods which is monitored by senior officers.

- 5.3 During an investigation the type of evidence or intelligence gathered can be wide ranging and may include one or more of the following;

- § Photographs
- § Computer Records and open source investigations including information from social media websites
- § Communications data
- § CCTV images including body camera footage
- § Paper Records
- § Samples (food, water, environmental, counterfeit goods)
- § Equipment
- § Plans or sketches made at the scene
- § Noise recording records
- § Invoices
- § Witness Statements
- § Expert reports
- § Forensics (including forensic examination of electronic devices)
- § Results of Test Purchase work

§ Information from other agencies such as those listed in section [insert number]

5.4 This list is not exhaustive and will depend upon the circumstances of the investigation. Evidence may be retained indefinitely and in certain circumstances the Council may seek to destroy equipment that has been seized as part of an investigation, for example where there is a potential risk to health.

5.5 In gathering evidence the Council routinely undertake recorded investigative interviews. These are carried out in accordance with the Police and Criminal Evidence Act 1984 and associated Codes of Practice and seek to provide an individual or business with the opportunity to provide their version of events as part of an ongoing investigation.

5.6 Attendance in person at an interview under caution is expected on the grounds of gathering complete evidence and to maximise the efficiency of the investigation process. Failure to assist an investigation or the act of obstructing an officer is an offence under many pieces of legislation used by enforcement agencies. The Council expect cooperation and will take action where this is not forthcoming.

5.7 In order to take enforcement action there needs to be sufficient supporting evidence to prove that there is a breach of legislation upon which enforcement action can be taken. In relation to anonymous complaints or cases where there is no independent witness, corroborating independent evidence or evidence exists that undermines a case the Council will take a view as to whether they can take any further action or whether to retain the details purely for intelligence purposes.

All investigations will be carried out lawfully having regard to the following legislation and in accordance with any associated guidance or codes of practice, in so far as they relate to Cheshire East Council:

- Police and Criminal Evidence Act 1984
- Criminal Procedure and Investigations Act 1996
- Regulation of Investigatory Powers Act 2000
- Criminal Justice and Police Act 2001
- Human Rights Act 1998

These Acts and associated guidance control how evidence is collected and used and give a range of protections to citizens and potential defendants.

## **6.0 What does enforcement look like?**

6.1 Cheshire East Council is committed to working with its local residents, business and volunteer communities to provide a safe, healthy and fair working and trading environment. Where it can the Council will provide practical and proactive help and advice to all parties to help them achieve compliance with the law. However there remains the expectation that individuals and business will make every effort to comply with the law in their day to day business and social lives.

- 6.2 The Council expects residents and businesses to act on its officer's advice when given. If a resident or business operator chooses not act on this advice, an enforcement intervention should be expected. Similarly Cheshire East Council is committed to taking firm action against those that deliberately or persistently fail to comply with legislation and where this is considered appropriate.
- 6.3 Where non compliance is identified then the Council will seek compliance through a combination of Promotion, Compliance Advice, Guidance and Support, Informal Warning and Formal Enforcement action.

### **6.3.1 Promotion**

This typically involves a push of information to residents and businesses about specific matters of legislation. This is usually achieved by methods such as direct correspondence, press releases, face to face contact and website information.

### **6.3.2 Compliance Advice, Guidance and Support**

The Council uses compliance advice, guidance and support as a first response in the case of many breaches of legislation that are identified. Advice is provided, sometimes in the form of a warning letter, to assist individuals and businesses in rectifying breaches as quickly and efficiently as possible, avoiding the need for further enforcement action. If a similar breach is identified in the future, this advice will be persuasive in considering the most appropriate enforcement action to take on that occasion. Such advice cannot be cited in court as a previous conviction but it may be presented in evidence.

The Council recognises that where a business has entered into a partnership with a Primary Authority, the Primary Authority will provide compliance advice and support, and the Council will take such advice into account when considering the most appropriate enforcement action for it to take. It may discuss any need for compliance advice and support with the Primary Authority in accordance with the Regulatory Enforcement and Sanctions Act 2008.

### **6.3.3 Informal Warnings**

This method is used in circumstances where there has been a breach of legislation, usually minor, and where it was not thought appropriate to take more formal action. In these cases the remedy may be simple and easily achieved following a written or oral warning. Such warnings can be challenged by the recipient and a review by a senior officer can be requested.

### **6.3.4 Formal Enforcement**

This includes a wide variety of sanctions including statutory (legal) notices, written undertakings, the refusal to grant or the revocation of an existing licence or registration, fixed penalty notices, powers of seizure and detention, cautions and prosecution. Formal enforcement action is taken in line with corporate procedures and having regard to Codes of Practice and professional guidance notes. Formal enforcement action also extends beyond prosecution as the Council may apply for further post conviction sanctions.

#### **6.4 Statutory (legal) Notices**

Many pieces of legislation enforced by the Council provide for the service of statutory notices to seek compliance with legal requirements. A statutory notice will require a person, business or organisation to comply with specific legal requirements within a specified time period. A notice shall explain what legislation has been breached, how to comply with the notice and the consequences of not complying with a notice. Notices will be accompanied by any relevant appeal information.

In general, failure to comply with a notice makes the person or business named in the notice liable for prosecution action. Further, the Council may, in some cases carry out the works identified within the notice and recover costs from the recipient of the original notice. Prosecution and Works in Default may run in parallel.

#### **6.5 Written Undertakings (Voluntary and Formal)**

Where an individual or organisation persistently fails to comply with the law, the Council may seek a written undertaking from that person that they will cease the action causing the breach. If appropriate and proportionate, this action may preclude the need for further formal action whilst the agreement is met.

Failure by an individual or business to agree to a written undertaking or, in the case where an agreement is breached, can lead to further formal action being taken by the council in accordance with the relevant legal provisions.

#### **6.6 Injunctions/ Enforcement Orders etc**

In certain circumstances the Council may consider it necessary or expedient to seek a direction from the court (in the form of an order or an injunction) to control behaviour or an activity. The court may also direct that specified activities be suspended until the breach has been rectified and/or safeguards have been put in place. Injunctions are orders of the court, breach of which are punishable as a contempt of court by imprisonment or a fine.

#### **6.7 Seizure proceedings**

Certain legislation enables authorised officers to seize goods, for example, unsafe food, sound equipment that is being used to create a statutory noise nuisance, unsafe products or any goods or documents that may be required as evidence for possible future court proceedings.

#### **6.8 Fixed Penalty Notices**

A Fixed Penalty Notice may be used as a means of dealing with an offence instead of prosecution action. Certain lower level offences such as littering, dog fouling and smoking in prohibited places are subject to Fixed Penalty Notices and they enable the offender to discharge their liability and avoid a criminal record.

The Council will apply with any current relevant guidance on the use of Fixed Penalty Notices to include;

- a) There must be sufficient evidence to give a realistic prospect of conviction;
- b) The offence is not too serious and is of a nature suitable for being dealt with by a Fixed Penalty Notice; and
- c) Specific guidance on issuing Fixed Penalty Notices to juveniles; including provisions for issuing a Fixed Penalty Notice to an individual aged between 10-15 years of age; cases where there is doubt over the age of a juvenile; first and second offence provisions.

Where an adult recipient does not pay the penalty offered, or is a repeat offender there will be a presumption that prosecution will follow in relation to the actual offence.

### **6.9 Penalty Charge Notices**

Penalty Charge Notices are issued in relation to breaches of parking restrictions whereby an individual pays an amount of money as a consequence of the breach.

The method and circumstances for issuing a Penalty Charge Notice is prescribed by specific legislation.

Failure to pay a Penalty Charge Notice may ultimately result in the individual being pursued by the Traffic Enforcement Centre for non payment of debt.

A Penalty Charge Notice does not result in the creation of a criminal record and it is common practice for a Penalty Charge Notice to be issued within first issuing a warning.

### **6.10 Administrative Penalties**

There are circumstances and where prescribed by specific legislation where the authority may impose administrative penalties in response to an offence; this is normally in relation to matters of Benefit overpayment. Where you agree to accept an administrative penalty and the conditions of its repayment no proceedings for an offence relating to the overpayment will be instituted against you.

Depending upon when the benefit overpayment occurred a set percentage will be added to the outstanding balance. There are circumstances where an administrative penalty can be invoked with no overpayment and the level and regulations are set down in specific legislation.

### **6.11 Revocation, suspension and withdrawal of licensing and permits**

Where the council has issued a permit, approval, licence or other form or permission, removal of that permission in line with the relevant guidance or legislation will be considered as an enforcement remedy. This action does not preclude further parallel formal enforcement action by the authority e.g. prosecution.

When considering future licensing applications, Cheshire East may take previous breaches and enforcement action into account.

## **6.12 Forfeiture Proceedings**

This procedure may be used in conjunction with seizure and/or prosecution where there is a need to dispose of goods in order to prevent them re-entering the market place or being used to cause a further problem. The Council may seek an order of the court for forfeiture of goods it has seized either as part of criminal investigations or during the exercise of its enforcement functions.

## **6.13 Simple Caution**

As an alternative to prosecution and in appropriate circumstances a simple caution may be considered as a means of formal enforcement action. A caution is not a criminal conviction but it will form part of an offenders' criminal record and may be referred to in any subsequent proceedings.

For a caution to be issued the following criteria must be met;

- a) There is sufficient evidence to provide a realistic prospect of conviction and it is in the public interest to caution;
- b) There has been a reliable admission of guilt by the offender; and
- c) The offender is over 18 years of age.

The refusal of an offender to accept a caution will not prevent the matter from being prosecuted.

Consideration will be given to the Ministry of Justice - Simple Caution for Adult Offender guidance (MoJ Guidance)

## **6.14 Prosecutions**

The Council will consider a prosecution when;

- a) It is appropriate in the circumstances, as a way to draw attention to the need for compliance with the law, especially where there would be a normal expectation of a prosecution, or where;
- b) Through the conviction of offenders, others may be deterred from offending; or
- c) There is potential for considerable harm arising from the breach; or
- d) The gravity of the offence, taken together with the general record and approach of the offender justifies it.

The decision to prosecute will always take into account the criteria set down in the Code for Crown Prosecutors [insert section number]. The Council will use discretion in deciding to initiate a prosecution and may do so without prior warning taking place.

## **6.15 Proceeds of Crime**

There are some cases where an application under the provisions of the Proceeds of Crime Act is considered appropriate. This seeks to confiscate assets from an offender in order to recover the financial benefit they have gained during the course of their criminal activities. Where such an

approach is considered then the Council will seek the advice of an Accredited Financial Investigator at the earliest opportunity so that a parallel financial investigation can be undertaken.

There is a defined timescale for the application to proceed with confiscation; it must be made after conviction but prior to any sentencing.

#### **6.16 Charges**

Certain enforcement activities incur a charge designed to solely recover the cost of the enforcement action taken and are recoverable from the offender or perpetrator. Some charges are set by statute whilst other are determined by the Council and must demonstrate financial transparency in how they are calculated.

The authority also has the power to apply interest charge rates to any expense it incurs in the course of enforcement action including works in default. Such charges will be applied with regard to advice provided by from financial services.

#### **6.17 No Action**

In certain circumstances, contravention of the law may not warrant any action. This can be where there is insufficient evidence or it is not in the public interest to proceed. Some areas of legislation only allow the Council to take action where it is expedient to do so, taking into account the level of harm caused by the contravention. In certain cases it may not be considered expedient to take enforcement action. All such decisions will be made transparently.

### **7.0 How do we determine the most appropriate enforcement action?**

7.1 The Council will carry out its duties in a fair and consistent manner. Whilst officers are expected to exercise judgement in individual cases the Council has formal documented arrangements in place to review proposed enforcement actions in the more serious cases and a published scheme of officer delegation. This could include an internal case review and discussion on whether the proposed action is the most suitable means of achieving compliance.

7.2 As part of its decision making process, Cheshire East will also consider the role of supplementary decision making policies and tools that are available across the wide range of regulatory functions; this could include the use of the HSE Enforcement Manager Model, Codes of Practice or the role of Primary Authority protocols etc.

7.3 Where there is a shared enforcement role with other local authorities and/or enforcement agencies, the Council will ensure that effective liaison and consultation takes place to ensure that the needs of all parties are considered and to help achieve the best outcome from formal enforcement action.

### **8.0 What can you expect from your enforcing officer/council?**

8.1 All officers engaged in enforcement functions are appropriately trained and authorised to ensure the highest standards of service delivery. Officers are subject to a twice yearly

appraisal to identify where new or refresher training is required to help them carry out their existing and new roles.

- 8.2 Authorised officers will carry out their enforcement activities in accordance with the principles of this Policy and the requirements of the particular legislation under which they are acting and with any associated guidance or codes of practice.
- 8.3 The Council believes that prevention is better than cure and encourages businesses and individuals to seek advice on matters that they are unsure of without fear that this will trigger direct enforcement action. In return the Council will be clear about issues that constitute direct non-compliance with legislation and those matters which are examples of good practice. Where appropriate, advice and guidance will be followed up by dedicated compliance checks or will form part of any routine inspection programme.
- 8.4 The Council will endeavour to provide information and advice in plain language. The Council will discuss general issues, individual compliance failures or problems with anyone experiencing difficulties should it be requested. To support this, the Council will identify named contacts in any correspondence that it issues.
- 8.5 The Council will have regard to the challenges faced by individuals and businesses, particularly small businesses. It will ensure that any action it requires is proportionate and balanced against risk. As far as the law allows, the council will take account of the individual circumstances of each case when considering action. This includes the seriousness of the offence, past history, confidence in management, the consequences of non compliance and the likely effectiveness of the various enforcement options.
- 8.6 A business or individual will be notified of any intended enforcement action as soon as possible, unless this could undermine an investigation or pose a safety risk to those concerned, the environment or the general public.
- 8.7 In cases where there is an imminent risk to health or the environment, enforcement action may be taken before any right or challenge can be heard.
- 8.8 The Council will provide information on how to challenge or appeal any enforcement decision as part of the enforcement action and where a statutory appeal process exists; where no statutory appeal process exists, guidance on how to challenge or make a representation is provided at the time the action is taken. In addition the Council will also provide its formal complaints procedure for those wishing to use this approach.
- 8.9 The Council will make businesses and individuals aware of the current Enforcement Policy through the website, direct correspondence or as part of day to day contact. Printed copies of the Policy will be provided on request.

## **9.0 Which other agencies might we work with?**

- 9.1 The Council will aim to maximise its effectiveness by working with other authorities and other agencies to share intelligence and resources where it is lawful to do so. Where issues are identified that extend beyond the remit of one agency and into the role of another, then

joint operations will be undertaken to maximise resources and improve any enforcement outcome.

Some examples of agencies that the Council might work with include;

- § Police
- § Environment Agency
- § Health and Safety Executive
- § Fire Service
- § HM Revenue and Customs
- § DEFRA
- § *New AHVLA name*
- § Better Regulatory Delivery Office
- § Citizens Advice Office of Fair Trading
- § Department for Work and Pensions
- § Registered Social Landlords
- § Other Local Authorities (particularly where a Primary Authority relationship exists)

## **10.0 Equality and Diversity**

*Need some equality comments here as well as any accessibility statement we have.*

## **11.0 Complaints, compliments and suggestions**

11.1 Complaints, compliments or suggestions on any aspect of the services the Council provides should be directed to Service Manager of the relevant service area in the first instance.

11.2 If the Council's response to a complaint about the service fails to resolve the matter then you may wish to lodge a formal complaint using our dedicated corporate complaint procedure.

*Insert details – also link to full procedure on our website.*

11.3 Where a complaint is received about the conduct of an officer then this will be investigated separately to run in parallel with the enforcement investigation; this will ensure that there is no unnecessary delay in the enforcement process.

## **12.0 Review of this enforcement policy**

12.1 This policy will be reviewed every three years or more frequently in response to a significant service change or changing regulation.

12.2 If you have any queries regarding the content of this policy then please contact [*insert contact details*].