



Corporate Enforcement Policy

September 2019

Cheshire East Council – Enforcement Policy

1.0 Background

- 1.1 This document sets out what businesses and others being regulated can expect from Cheshire East Council ('The Council') and its Enforcement Officers.
- 1.2 It commits the Council to good enforcement practice with effective procedures and clear policies.
- 1.2 The Council has an existing Enforcement Policy that was approved in July 2016. This new Policy provides an update and refresh of the 2016 version and was approved by Cabinet 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 a general overarching view of how the Council 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. Where there is a conflict between this general policy and any service specific enforcement policies, the service specific policy will take precedence.

2.0 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 the Council 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.

'Enforcement Officer' includes any individual who has been duly authorised by the Council under the terms of the Cheshire East Council Constitution and/or scheme of officer delegations to undertake 'Enforcement' and 'Enforcement Action' in accordance with paragraphs (a)-(c) above.

3.0 What Guides Our Enforcement Approach?

3.1 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.

3.2 The Regulators Code

The 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 the 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.

3.3 Human Rights Act 1998

The Council is a public authority for the purposes of the Human Rights Act 1998. This Policy and all associated enforcement decisions therefore take account of the provisions of the Human Rights Act 1998. We therefore apply the principles of the European Convention for Human Rights and Fundamental Freedoms and 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.

3.4 Data Protection Act 2018 and General Data Protection Regulations 2018 (GDPR)

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 2018 and General Data Protection Regulations 2018 (GDPR) and in line with the Council's Data Protection Policy.

3.5 The Code for Crown Prosecutors

When deciding whether to prosecute, the 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, the Council will consider what evidence can be used in court and whether it is reliable and credible. We must be satisfied there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. As part of this assessment we need to consider the impact of any defence or any other information that may be put forward or relied upon by the defendant.

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

The Council 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 seriousness of the offence committed.
- The level of responsibility of the suspect.
- The circumstances of and the harm caused to the victim.
- The past and current performance or actions of any business and/or individual concerned.
- A person's age in relation to young people (termed 'juveniles') aged under 18.
- The impact on the community.
- Statutory requirements, guidance or Codes of Practice.
- Legal advice.
- Whether prosecution is a proportionate response.
- The need to protect sources of information.

3.6 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 has a Primary Authority relationship and in those circumstances will have regard to guidance issued by the secretary of State in relation to Primary Authority.

Under this Act we may also refer the matter to the Office for Product Safety & Standards.

4.0 Which functions 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 and scams, fraud, counterfeiting and intellectual property, under age sales, weights and measures, food standards, product safety)
- Safety of Sports Grounds
- Financial Investigations (Proceeds of Crime)
- Housing (housing conditions, licensing of houses in multiple occupation, empty homes, harassment and illegal eviction)
- Unauthorised Gypsy and Traveller encampments
- Planning Enforcement
- Building Control
- Waste & Litter
- Antisocial Behaviour
- Parking Services
- Blue Badge Scheme
- 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.

5.0 Who does this Enforcement Policy affect?

- 5.1 This policy provides a framework for Council employees, Members 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 principles to those who might be affected by its use; this would include members of the public, commercial businesses and voluntary organisations.
- 5.2 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 Senior Management Team without delay.

6.0 Evidence Gathering during an Investigation

- 6.1 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.
- 6.2 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), Investigative Powers Act 2016 and the Protection of Freedoms Act 2012 as applicable. The Council has a corporate application and authorisation process for the use of these specific measures in addition to the use of Privacy Risk Assessments. These processes are monitored by senior officers of the Council.
- 6.3 As part of any investigation and to support decisions around the need for further action a wide variety of evidence and intelligence will be gathered; this may include information from other agencies such as those listed in Section 10.
- 6.4 Evidence that is gathered as part of an investigation may be retained indefinitely or in accordance with established data retention policies. In certain circumstances the Council may seek to destroy equipment or goods that have been seized as part of an investigation, for example where there is a potential risk to health. This will take into consideration any statutory process.
- 6.5 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.

- 6.6 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.
- 6.7 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 appropriate, if this is not forthcoming.
- 6.8 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 response to anonymous complaints or cases where there is no independent witness 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. Factors that may be taken into account as part of this decision include the availability of corroborating independent evidence or whether evidence exists that undermines the case.

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

- Police and Criminal Evidence Act 1984
- Criminal Procedure and Investigations Act 1996
- Regulation of Investigatory Powers Act 2000
- Investigative Powers Act 2016
- 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.

7.0 What does enforcement look like?

- 7.1 The 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 action in some cases even after compliance has been achieved if it is in the public interest to do so. We will retain the discretion to depart from national guidelines where doing so will better meet local priorities and circumstances.
- 7.2 The Council is committed to working with its local residents, business and volunteer communities to provide practical and proactive help and advice to all parties to help them achieve compliance with the law.
- 7.3 If a resident or business operator chooses not to act on advice, an enforcement intervention should be expected. Similarly the Council is committed to taking firm action against those that deliberately or persistently fail to comply with legislation and where this is considered appropriate.

- 7.4 Where non-compliance is identified then the Council will seek compliance through a combination of Promotion, Compliance Advice, Guidance and Support, Regularisation, Informal Warning and Formal Enforcement action.

7.4.1 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.

7.4.2 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. Failure to comply could result in an escalation of enforcement action.

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.

7.4.3 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.

7.4.4 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 the prosecution process as the Council may apply for further post-conviction sanctions.

7.4.5 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. 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 (work in default). Prosecution and work in default may run in parallel.

7.4.6 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, breach of agreement in the case where an agreement is in place, can lead to further formal action being taken by the Council in accordance with the relevant legal provisions.

7.4.7 Injunctions/ Enforcement Orders etc. and other civil sanctions including financial and civil penalties

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.

Where applicable legislation permits the Council may also seek civil sanctions including financial and civil penalties.

7.4.8 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.

7.4.9 Fixed Penalty Notices

A Fixed Penalty Notice may be used as a means of dealing with a low-level offence instead of prosecution action and enables a defendant to avoid a criminal record by discharging their liability to a prosecution for the original offence. 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 comply 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 so serious as to warrant a prosecution 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 10-17 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.

7.4.10 Penalty Charge Notices

Penalty Charge Notices are issued in relation to contraventions 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 enforcement agents where their fees will also apply.

The notices issued are no longer breaches of criminal law enforceable through the criminal justice system, but instead 'Penalty Charge Notices' (PCN's) are a debt owed to the Council, enforceable through the civil justice system.

7.4.11 Revocation, suspension and withdrawal of licences 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 Council e.g. prosecution.

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

7.4.12 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.

7.4.13 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.

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

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

7.4.14 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 (section 3.5). The Council will use discretion in deciding to initiate a prosecution and may do so without prior warning taking place.

7.4.15 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.

7.4.16 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 others are determined by the Council and must demonstrate financial transparency in how they are calculated.

The Council 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 financial services.

7.4.17 No Action

In certain circumstances, contravention 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 Council outweighs the detrimental impact of the contravention on the community. In addition there may be circumstances 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.

8.0 How do we determine the most appropriate enforcement action?

- 8.1 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 local schemes for officer delegation. This could include an internal case review and discussion on whether the proposed action is the most suitable means of achieving compliance.
- 8.2 As part of its decision making process, the Council 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.
- 8.3 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.

9.0 What can you expect from your enforcing officer/Council?

- 9.1 All officers engaged in enforcement functions are appropriately trained and authorised in line with the provisions of the Cheshire East Council Scheme of Delegations to ensure the highest standards of service delivery.
- 9.2 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.
- 9.3 The Council believes that prevention, including education, 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.

- 9.4 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 a point of contact in any correspondence that it issues.
- 9.5 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.
- 9.6 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.
- 9.7 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.
- 9.8 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 details of its formal complaints procedure for those wishing to use this approach.
- 9.9 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.
- 9.10 In certain circumstances we will seek to raise awareness and increase compliance levels by publicising unlawful trade practices or criminal activity. Where appropriate the results of specific court cases may also be published.

10.0 Which other agencies might we work with?

- 10.1 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
- Food Standards Agency
- Fire Service
- HM Revenue and Customs
- DEFRA
- Animal Plant Health Agency
- Office for Product Safety & Standards
- Citizens Advice
- Department for Work and Pensions
- Department for Transport (DfT)
- Registered providers of social housing
- Other Local Authorities (particularly where a Primary Authority relationship exists)
- Other Enforcement Agencies as appropriate

11.0 Equality and Diversity

The Council is committed to providing high-quality, customer focussed services for all people living in, working in, or visiting the area. Promoting fairness and providing equality and inclusion is one of our important ambitions and relates to:

- Accessing the Council's services
- Accessing employment opportunities with the Council, or with its contractors who supply goods or services to the Council.
- Developing policies and plans that impact upon communities and individuals

Through all our work we are committed to achieving the following outcomes:

- Narrowing the gaps between our communities
- Providing access to services for all our communities

- Understanding and reflecting the needs of all our communities
- Fostering good relations with all our communities and partners
- Ensuring our workforce is representative of the communities it serves

12.0 Complaints, compliments and suggestions

- 12.1 Complaints, compliments or suggestions on any aspect of the services the Council provides should be directed to the service area in the first instance.
- 12.2 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.
- 12.3 For further details on how to register a complaint, complement or suggestion, please see our web page detailed below.

https://www.cheshireeast.gov.uk/council_and_democracy/customer-services/complaints_and_feedback/complaints_and_feedback.aspx

- 12.3 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.

13.0 Monitoring

- 13.1 The Regulators Code requires that the Council publish details of performance against the Enforcement Policy. This should include feedback from satisfaction surveys and data relating to complaints and appeals against enforcement decisions.
- 13.1 To meet this requirement the various regulatory functions will provide an annual report on enforcement activities to the appropriate Committee.

14.0 Review of this enforcement policy

- 14.1 This policy will be reviewed every three years or more frequently in response to a significant service change or changing regulation.
- 14.2 If you have any queries regarding the content of this policy then please contact:
Tracey Bettaney Principal Manager: Regulatory Services and Health