



# **Service Specific Enforcement Policy**

## **Regulatory Services and Health**

To be read in conjunction with the Cheshire East Council  
Enforcement Policy

July 2016

## **CHESHIRE EAST BOROUGH COUNCIL**

### **REGULATORY SERVICE & HEALTH ENFORCEMENT POLICY**

#### **1. Aims of this Policy**

- 1.1 To advise and inform businesses and individuals with regards to the legislative powers available to the Regulatory Services & Health (RS&H) team and how and when those controls will be executed.
- 1.2 This policy must be read in conjunction with the Cheshire East Corporate Enforcement Policy which provides details of the overarching approach taken by Cheshire East in its enforcement duties.

#### **2. Functions of Regulatory Services and Health**

- 2.1 The Regulatory Services & Health (RS&H) team sits within the broader Communities Service and consists of the following teams:
  - Commercial Services (including Trading Standards)
  - Environmental Protection
  - Licensing
  - Animal Health and Welfare

#### **3. Working With Other Agencies**

- 3.1 RS&H undertakes a wide range of functions across the whole of Cheshire East and works with a number of internal and external partners to provide a holistic approach to enforcement. Where issues are identified that extend beyond the remit of one agency and into the role of another, then joint operations will be considered to maximise resources and improve any enforcement outcomes.
- 3.2 We will refer matters to other authorities where we believe they are the most appropriate to deal with the matter in hand. Similarly we will also accept referrals from others where we believe we are the most appropriate enforcement body to deal with the issue effectively.

#### **4. Our Approach to Enforcement**

- 4.1 In addition to the range of legislation available to the team, national guidance and Codes of Practice are considered when determining the most appropriate course of action to remedy a problem.
- 4.2 Enforcement action should not normally be considered as an initial remedy for any contraventions and where possible officers should consider informal action in the first instance. However, there are occasions, depending of the severity of the contravention, where formal action will be considered as the initial and most appropriate course of action.

## **5. General Service Standards**

- 5.1 RS&H aims to respond to all requests for service, complaints or information received within service standards and to conduct any investigation efficiently and as quickly as possible. Despite this, due to the complexity of some of the work, it is possible for investigations to take a considerable amount of time to enable a thorough investigation and in these circumstances officers will, where possible, keep all parties updated.

## **6. Legislative Framework**

- 6.1 RS&H has a wide range of powers contained within a variety of legislation and regulations which is supported by statutory and non statutory guidance in relation to interpretation and implementation.
- 6.2 In some instances, specific powers contained within legislation are restricted to those officers who are deemed to have the relevant qualification, skills and experience to enforce them. These delegations are formally recorded within individual authorisations granted to and held by each officer.

## **7. How to Make a Report to Regulatory Services and Health**

- 7.1 Before making direct contact with Regulatory Services and Health, individuals and businesses may choose to visit the Cheshire East webpages for initial information and advice [www.cheshireeast.gov.uk](http://www.cheshireeast.gov.uk)

### **7.2 For Environmental Protection, Pest Control, Food Safety, Health & Safety, Licensing, Animal Health & Welfare**

Reports can be made through either the Customer Contact Centre on 0300 123 5015 or on line at [www.cheshireeast.gov.uk](http://www.cheshireeast.gov.uk) .

### **7.3 For Trading Standards**

Cheshire East Council has a formal arrangement with the Citizens Advice Consumer Service (CACS) who provide all initial advice to consumers in relation to Trading Standards matters. CACS can be contacted on 03454 04 05 06.

- 7.4 Businesses seeking advice on Trading Standards matters can use the dedicated Cheshire East webpages [www.cheshireeast.gov.uk](http://www.cheshireeast.gov.uk) which contains a wide variety of information. The webpage also provides contact details for the Business Support Team if further help is required.

- 7.5 In all cases, written communications can be sent to Regulatory Services and Health, Municipal Buildings, Earle Street, Crewe CW1 2BJ.

### **7.6 Anonymous Complaints**

There are circumstances where customer details are required to enable a full investigation to take place. Whilst officers must ensure customers details are kept

confidential, there are occasions when people wish to remain anonymous. In these situations, officers will use professional judgement to determine if the service request or information can be actioned in the absence of customer details.

## **8. Power of Entry**

- 8.1 Where legislation grants officers the power to enter premises to carry out statutory functions, this will be undertaken in accordance with the requirements of relevant legislation.
- 8.2 Where a warrant is required from the Magistrates' Court, an application will be made in accordance with the Council's procedures and the requirements set out by the Magistrates' Court.

## **9. Enforcement Proceedings**

<b>Type of Enforcement Action</b>	<b>Description</b>
<b>Promotion</b>	This typically involves a push of information to residents and businesses about specific matters of legislation. This can be achieved by a variety of methods including direct correspondence, press releases, face to face contact and website information.
<b>Compliance Advice, Guidance and Support</b>	RS&H 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 an informal warning letter to assist individuals and businesses in rectifying breaches as quickly and efficiently as possible and avoiding the need for any formal enforcement action. Where 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.
<b>Informal Warnings</b>	Informal warnings are used for low-level breaches of legislation and where there is a low risk of harm being caused to health or the environment. They can be either oral or written, but where an oral warning is given, it will be confirmed in writing either with an inspection record left at the time of the visit or by a subsequent letter. When a warning is issued by RS&H, it may be followed up by a further visit or inspection to ensure the problem has been rectified.
<b>Fixed Penalty Notice</b>	Certain lower level offences are subject to a Fixed Penalty Notice which allows the offender to discharge their liability and avoid a criminal record. RS&H will comply with any current relevant guidance on the use of Fixed Penalty Notices. 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 committed.
<b>Formal Notices</b>	Where a breach is either causing, or likely to cause

	<p>serious harm to health, the environment or safety, a formal notice may be issued to all parties concerned and can include the owner(s) of the premises. A formal notice will require a person, business or organisation to comply with specific legal requirements within a specified time period. A notice shall explain the legislation that 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.</p> <p>In general, failure to comply with a notice makes the person or business named in the notice liable for prosecution action.</p>
<b>Variation/Review of Permits and Licences</b>	Where a minor breach to a permit or licence has occurred, the Council may either vary the conditions applicable to that licence or call the licence in for a review by the relevant Committee.
<b>Suspension/Revocation of Permits or Licences</b>	<p>Where a permit or licence has been issued and where continued or serious breaches occur, the Council will consider suspending/revoking the licence.</p> <p>With regards to taxi licensing a licence may be suspended for a suitable period of time to allow for specific actions to be undertaken in order to achieve compliance.</p>
<b>Seizure and Suspension Proceedings</b>	Certain legislation enables authorised officers to seize or suspend goods, for example, unsafe food, unsafe products or any goods or documents that may be required as evidence for possible future court proceedings.
<b>Forfeiture Proceedings</b>	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 from re-entering the market place or being used to cause a further problem. RS&H 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.
<b>Works in Default</b>	<p>Where a formal notice has not been complied with and it is in the public interest to undertake the work to ensure that risks to health or the environment are prevented, the Council can undertake the works to ensure the notice is complied with. In some circumstances, the Council may decide to undertake the work in default and prosecute.</p> <p>The Council can recover its costs in undertaking Works in Default from the individual or business responsible for the breach of legislation.</p>
<b>Closure of Premises</b>	Where serious concerns for the health or safety of the public or the environment, the Council may apply to the Courts to close a premises.
<b>Caution</b>	Where appropriate, consideration will be given to offering a Caution to a person, where they admit culpability for the offence, rather than taking a prosecution through the

	<p>Courts. Therefore a Caution will be considered in those instances where the Council is satisfied that there is sufficient evidence to offer a realistic prospect of conviction.</p> <p>A Caution is not a criminal conviction but it will form part of an offenders criminal proceedings and may be referred to in any subsequent proceedings.</p>
Prosecution	<p>The Council will consider commencing prosecution proceedings in the Courts against any person(s) who fails to comply with the requirements of a formal Notice or in those cases where the legislation allows for this without the service of an initial formal Notice.</p> <p>Before commencing legal proceedings, the Council will ensure it is satisfied there is sufficient evidence to offer a realistic prospect of conviction and that the legal proceedings are in the public interest. The Council will use discretion in deciding to initiate a prosecution and may do so without prior warning taking place.</p>
Injunction/Enforcement Order	<p>Where a formal Notice has not been complied with and a prosecution is not considered expedient or previous prosecution(s) have failed to secure compliance, the Council will consider applying to the Court for an Injunction. Such action will only be considered if the breach is likely to continue.</p> <p>In certain circumstances RS&amp;H may consider it necessary or expedient to seek a direction from the court (in the form of an order or injunction) to control behaviour or activity.</p>
Proceeds of Crime	<p>There are some cases where an application under 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 appropriate an Accredited Financial Investigator will commence a parallel financial investigation. Any subsequent confiscation must be made after conviction but prior to any sentencing.</p>

## 10. Naming Offenders

10.1 The names and addresses of individuals or businesses who act in ways that represent significant harm or risk, particularly to the young and vulnerable or against the interest of legitimate businesses may be published. This action may be taken in circumstances where:

- Evidence of unfair, dishonest or illegal trading is conclusive;
- It is in the public interest to do so;
- There is no risk of prejudicing legal proceedings or other formal enforcement action;
- To do so does not breach Human Rights or Data Protection law;
- After every prosecution.

## **11. Appeals**

- 11.1 There is a statutory right of appeal against the Council's decision to issue a formal Notice. The period for submission of the appeal is set by legislation and all notices will contain notes relating to the appeal provisions.
- 11.2 Unless otherwise stated in the formal Notice, where an appeal is lodged with the Courts, the requirements of the Notice will be held in abeyance until the appeal has been determined.
- 11.3 In addition, some decisions taken by the council can be challenged through a formal appeals process. Where this is available information will be supplied with the decision.

## **12. Works in Default – Cost Recovery**

- 12.1 The Council has the power to carry out works in default for certain Notices and recover all of its reasonable costs from any person(s) responsible for a failure to comply with requirements. It is not necessary for the Council to have exhausted all other avenues, e.g. prosecution before a decision is taken to carry out works in default.
- 12.2 Where it is considered reasonable and proportionate, the Council will carry out works in default and seek to recover all costs incurred either directly from the owner/occupier or by placing a registered charge on the land. Ultimately, the Council may seek to use its powers to force the sale of land to recover its costs.

## **13. Verbal/Physical Abuse Towards Officers**

- 13.1 The Council is committed to ensuring that its officers are able to carry out their work safely and without fear and, where appropriate, will use legal action to prevent abuse, harassment or assault towards officers. To obstruct an officer in carrying out their duties is an offence and legal action may be taken against any person(s) doing so.
- 13.2 Officers are entitled, if subjected to verbal abuse either in person or on the telephone, to terminate the meeting or telephone call.

## **14. Complaints and Compliments about the service**

- 14.1 In accordance with the Council's Compliments and Complaints procedure, persons wishing to make a complaint or compliment about the Regulatory Services and Health service should do so in writing to:

Cheshire East Borough Council, Westfields, Middlewich Road, Sandbach, Cheshire CW11 1HZ.

- 14.2 Alternatively you can telephone 0300 123 5500 or complete the "Contact Form" at [www.cheshireeast.gov.uk](http://www.cheshireeast.gov.uk)

- 14.3 If the complainant has exhausted the Council's corporate complaint process without satisfaction, they can complain to the Local Government Ombudsman. Advice about the types of complaint the Local Government Ombudsman can investigate, as well as application forms for such complaints can be found at the following web site, [www.lgo.org.uk](http://www.lgo.org.uk). Application forms for such complaints are also available on request at Cheshire East Borough Council offices.