



Borough Council of  
King's Lynn & West Norfolk

# Corporate Enforcement Policy

DRAFT

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A summary of the Policy is available in large print, on tape or other languages on request

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## **Introduction**

This Enforcement Policy is in accordance with the Regulators' Compliance Code and the regulatory principles required under the Legislative and Regulatory Reform Act 2006.

It sets out the general principles and approach which the Borough Council is expected to follow and places a duty on regulators to have regard to five Principles of Good Regulation<sup>1</sup>.

This enforcement policy accords with the principles of the Human Rights Act 1998, the European Convention on Human Rights, The Freedom of Information Act 2000 and Regulation of Investigatory Powers Act 2000.

The appropriate use of enforcement powers, including prosecution, is important, both to secure compliance with the law and to ensure that those who have duties under it may be held to account for failures.

This enforcement policy reiterates the basic principles of enforcement activity. Where emerging risks occur (such as the Covid 19 pandemic) this may necessitate a separate enforcement policy to allow the Council to respond in a dynamic and agile manner.

## **Enforcement Activity**

For the purpose of this document 'enforcement' includes action carried out in the exercise of, or against the background of, statutory enforcement powers. This is not limited to formal enforcement action, such as prosecution or issue of notices, and includes the inspection of premises, including dwellings and land, to check compliance with legal requirements and the provision of advice to aid compliance.

This enforcement 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 the regulator may conclude that a provision in the Code is either not relevant or is outweighed by another provision. The regulator will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

## **Formal Action**

Whilst recognising that most businesses<sup>2</sup> and individuals want to comply with the law the regulator also recognises that some elements of business and individuals will operate outside the law (both intentionally and unintentionally).

The Council will consider taking formal action for breaches, which may include, but is not limited to, any of the following circumstances:

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<sup>1</sup> Transparency, accountability, proportionality, consistency and targeted action.

<sup>2</sup> The term "business" seeks to encompass all organisations, including the voluntary sector and private sector landlords, individuals and corporate organisations, etc.

Where there is a risk to people, property, land, the community or the environment;  
For matters where there has been recklessness or negligence.

A deliberate or persistent failure to comply with advice, warnings or legal requirements.

Any act likely to affect animal health or welfare, disease prevention measures, or the integrity of the food chain.

Obstruction or assault (including verbal assault) of an officer in the execution of their duties.

Emergency action where there is an imminent serious risk to people, property, land, the community or the environment.

For the purposes of this document 'formal action' means (but is not limited to):

Advice or Warning

Written or Verbal Instruction

Service of Notices

Works in Default

Revocation or Suspension of a licence or permit, registration or approval,

Seizure

Forfeiture

Issue of Fixed Penalty Notices

Compulsory Purchase Order

Empty Dwelling Management Order

Emergency Remedial Action

Emergency Prohibition

Simple Caution

Injunctions

Criminal Behaviour Orders & Community Protection Notices

Closure of premises or property

Requesting dispersal of groups by the Police

Prosecution or any other criminal or civil proceedings, applied either separately or in any appropriate combination.

## **Principles of Good Regulation**

The five principles of good regulation are:

Transparency;

Accountability;

Proportionality;

Consistency; and

Targeted only at cases for which action is needed or where it is expedient to take action.

### **Transparency**

We will communicate in plain English or in the appropriate language or method.

Where appropriate we will ensure that people affected by formal action are informed of what is planned, and allow for discussion and time to respond before the action is taken. We will also give them a named officer's contact details. These arrangements must have regard to legal constraints and requirements. In the case where emergency

action is required or where statutory time limitations are likely to expire it may not always be practicable to inform people affected prior to action being taken.

When a notice is served it will say what needs to be done (which may be to simply cease or abate any activity or by specifying works), why, and by when, and that in the officers opinion a breach of the law has been committed and why the notice is necessary

We will make a clear distinction between legal requirements and recommended works.

As part of our commitment to equality we will use the following:

Where businesses or the public do not have English as a first language we may offer translations of correspondence.

Where necessary we will use an interpretation service covering telephone interpreting, face to face interpreting, sign language and lip speaking service.

We can provide large print documents and Braille

We can provide audio recorded information

Documents can be emailed

### **Accountability**

The regulatory officers will actively work with businesses and the public to advise and to assist with compliance and complaints.

Out of hours contact for services will be provided for complaints or requests of an immediate high risk public health impact such as food poisoning outbreaks; serious pollution incidents; serious accidents; animal disease outbreaks; irreversible harm to the environment and unauthorised works and damage to listed buildings and protected trees.

We will carry out evening visits and inspections when businesses are open during these times.

Regulatory Officers will show their identification (and authority if requested) at the outset of every visit and explain the reason for the visit, unless the nature of the investigation requires otherwise.

Contact points will be provided for business and public use via the Council's website.

Enforcement activities will be dealt with as promptly and efficiently as possible in order to minimise time delays.

We may include information to highlight new legal requirements, with letters or emails sent, after an inspection or visit; or information on the Council's website.

### **Proportionality**

Any action required will be proportionate to the seriousness of the breach and the risk to people, property, the community or the environment.

The most serious formal action, including prosecution, will be for breaches of the law where risk to people, public health, safety, amenity or the environment is high, or where there has been a flagrant disregard for the requirements of the law.

## **Consistency**

Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends.

There are arrangements in place to ensure discussion and comparison of enforcement decisions by the Regulatory Officers.

All Regulatory Officers undertaking enforcement duties will be suitably trained, qualified and authorised to ensure that they are fully competent to undertake their enforcement duties.

## **Targeted**

All enforcement action will be primarily targeted towards those situations that give rise to the most serious risks, where the risks are least well controlled and against deliberate or organised crime. Other factors also determine priorities for enforcement activity, including Government targets and priorities, the Council's corporate priorities and objectives, new legislation, national campaigns and public concerns.

Any enforcement action will be directed against duty holders, landowners, property owners or other legally interested parties responsible for a breach. This may be employers in relation to workers or others exposed to risks; the self-employed; owners of premises; suppliers of equipment; designers or clients of projects; or employees themselves. Where several duty holders have responsibilities, enforcing authorities may take action against more than one when it is appropriate to do so in accordance with this policy.

## **Intelligence and Risk Led Enforcement**

By having a coherent and robust intelligence system, effective strategies can be formed to enable and co-ordinate solutions to particular problems. This enables the identification of new, current and emerging issues, allowing provision of strategic and tactical direction on how the issues can best be tackled. Activities are targeted based on general or specific risks identified via trends, history or specific incidents. Enforcement Agencies exchange information as part of their partnership work in reducing crime and disorder.

## **Enforcement Action**

Regulatory Officers will have regard to the guidance documents, which exist both generally, for example, the Code for Crown Prosecutors produced by the Crown Prosecution Service (CPS), as well as other guidance relevant to the individual regulator.

In determining the nature of enforcement action to be taken, the Regulators should ensure that any sanction or penalty should:

Aim to change the behaviour of the offender;

Aim to eliminate financial gain or benefit from non-compliance;  
Be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;  
Be proportionate to the nature of the offence and the harm caused;  
Aim to restore the harm caused by the regulatory non-compliance where appropriate;  
Aim to deter future non-compliance.

A person who it is believed may have committed an offence may be formally interviewed during an investigation. These interviews will be conducted under the rules of the Police and Criminal Evidence Act 1984.

### **Conflict of Interest in Enforcement Matters**

Where a breach is detected where the enforcing authority is itself is the responsible operator, then except where the health and safety of an individual or the community is at risk and immediate action is required, the following protocol will be followed:-

Where the breach is sufficiently serious to warrant more than the provision of advice, information, assistance or a written warning, an Officer from another authority within Norfolk will assist in the decision making process as to the action required to be taken. The Chief Executive will be informed of serious breaches without delay.

The additional Officer's role is to assist and challenge the decision making process to ensure that appropriate, proportionate and consistent action is to be taken to remedy the breach, prevent re-occurrence and to minimise the risk of 'conflict of interest' for the enforcing authority. A record of the additional Officer's involvement will be kept such that it is auditable.

### **Prosecution**

Regulatory Officers will follow The Code for Crown Prosecutors 2013 (CPS) guidance which requires two main tests to be considered in relation to instigating a prosecution:

#### The Evidential Stage

The Council must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. The Council shall also consider what the defence case may be and how it is likely to affect the prospects of conviction.

A case that does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be.

When deciding whether there is sufficient evidence to prosecute, we shall ask:

Can the evidence be used in Court

In other words is there any question over the admissibility of the evidence, particularly:

What is the likelihood of that evidence being held as inadmissible by the Court?

Has the Police and Criminal Evidence Act 1984 been complied with to ensure fair and open gathering of the evidence?  
Has the Regulation of Investigatory Powers Act 2000 been properly complied with?  
The importance of that evidence in relation to the evidence as a whole?

Is the evidence reliable?

Are there any reasons to question the reliability of the evidence, including its accuracy or integrity.

Is the evidence credible?

Are there any reasons to doubt the credibility of the evidence.

Is there any other material that might affect the sufficiency of evidence?

### The Public Interest Stage

In every case where there is sufficient usable, reliable and credible evidence to justify a prosecution, the Council shall consider whether a prosecution is required in the public interest. When deciding the public interest, we shall consider the following questions:

How serious is the offence committed?

The more serious the offence, the more likely it is a prosecution is required.

What is the level of culpability of the suspect?

The greater the suspect's level of culpability, the more likely a prosecution is required.

The following will determine culpability:

Suspects level of involvement

Extent to which offending was premeditated and/or planned

Extent to which the suspect has benefitted from the criminal conduct

Whether the suspect has previous convictions and/or out of court disposal

Whether offending is likely to be continued, repeated or escalated

Suspects age and maturity

Whether suspect has been compelled, coerced or exploited;

Suspect affected by significant mental or physical ill health or disability at time of offending

What are the circumstances of and harm caused to the victim?

The greater the vulnerability of the victim, the more likely it is a prosecution is required, including where the suspect was in a position of trust.



A prosecution is also more likely if the offence has been committed against a victim who was at the time serving the public.

Was the suspect under the age of 18 at the time of the offence?

The criminal justice system treats children and young people differently from adults and so significant weight must be attached to the age of the suspect if they are a child or young person under 18.

What is the impact on the community?

The greater the impact of the offending on the community, the more likely it is that a prosecution is required.

Is prosecution a proportionate response?

Is cost to Council and wider criminal justice system proportionate to the likely outcome BUT decision should not be made on this factor alone.

Where multiple suspects, prosecution might be reserved for main participants to avoid excessively long and complicated proceedings  
Early admission by suspect and/or cooperation with investigation?

Do sources of information require protecting?

In cases where public interest immunity does not apply, special care should be taken when proceeding with a prosecution where details may need to be made public that could harm sources of information.

The Council may also take the following into account, as well as other local factors, which may us to make a decision not to prosecute:

The Court is likely to impose a nominal penalty;

The offence was committed as a result of a genuine mistake or misunderstanding;

If the loss or harm caused can be described as minor and was the result of a single incident;

There has been a long delay between the offence taking place and the date of the trial, unless:

The offence is serious;

The delay has been caused in part by the defendant;

The offence has only recently come to light; or

The complexity of the offence has meant that there has been a long investigation;

A prosecution is likely to have a bad effect on the victim's physical or mental health;

The defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health;

The defendant has put right any loss or harm; or

Details may be made public that could harm sources of information, international relations or national security.

If there are public interest factors against the prosecution which outweigh those for the prosecution then any potential out-of-court disposal should be considered rather than bringing a prosecution.

The Regulatory Officers will also consider whether or not a prosecution is appropriate by consideration of the factors contained in paragraph 2.4.2 of this policy.

When considering formal enforcement action, the Regulatory Officer will, where appropriate, discuss the circumstances with those suspected of a breach and take these into account when deciding the best approach.

The Council will have an internal procedure for the authorisation of any investigations that may result in prosecution. All such cases will be regularly reviewed.

If formal action is taken, the Council is likely to seek to recover the costs of the investigation and, where appropriate, the costs of any works in default undertaken. The Court determines the level of fine imposed and costs awarded.

### **Fixed Penalty Notices**

Fixed Penalty Notices (FPN's) are increasingly being added to new and revised powers that are available to the Council. FPN's have the advantage of reducing the burden on authorities and the courts when dealing with low level offences.

FPN's offer the opportunity to discharge liability to conviction by payment of a penalty, without removing the defendants right to have the case heard in court if they wish, by not paying or refusing to accept the penalty notice.

In many instances there is no right of appeal for a FPN as the case would move to court for determination. However, where appropriate and where specifically required by the enacting legislation the recipient of a FPN can ask for it to be reviewed.

An FPN will only be issued where there is sufficient evidence to progress the case to court for prosecution, should the offer of an FPN be declined or the fine not paid.

### **Civil Penalties**

As an alternative to prosecution the Council may seek to impose a civil or financial penalty where appropriate and allowed for in the enacting legislation.

Where the Council seeks to impose a financial penalty they will do so in consideration of relevant statutory and non-statutory guidance and in accordance with adopted policies and procedures relevant to that legislation and offence.

## **Simple Cautions**

A simple caution in certain cases may be offered as an alternative to a prosecution. The purpose of a simple caution is to deal quickly with less serious offences, to divert less serious offences away from the Courts, and to reduce the chances of repeat offences.

The regulators will comply with the provisions of the Home Office Circular Simple Cautions for Adult Offenders: guidance for police officers and Crown Prosecutors 2013. The following conditions must be fulfilled before a caution is administered:

The offender has made a clear and reliable admission (either verbally or in writing);

There is a strong realistic prospect of a conviction;

It is in the public interest to offer a simple caution; and

The offender is 18 years or more at the time that the caution is to be administered

If a person/company declines the offer of a simple caution, the regulator will normally pursue the prosecution action.

## **Works in Default**

Work required in the interest of public health, safety or the environment may be undertaken by the Service and the cost recovered from the duty holder where legislation allows. This may be appropriate where:

It is necessary to carry out the work in the public interest.

OR

There is a failure to carry out work covered by a statutory notice.

OR

Immediate action is required and it is unlikely that the work will be carried out unless done in default.

## **Forfeiture**

Where an accused has not agreed to voluntarily surrender any infringing goods then, on successful conclusion of legal proceedings, forfeiture may be applied for. This does not preclude a regulator taking forfeiture proceedings in their own right in appropriate circumstances.

## **Proceeds of Crime**

Where appropriate, working in partnership as necessary, the regulatory authority will seek to recover the assets of convicted offenders under the Proceeds of Crime Act 2002 (as amended).

## **Directors**

On the conviction of a Director connected with the management of a company the prosecutor will, in appropriate cases, draw to the Court's attention their powers to make a Disqualification Order under the Company Directors Disqualification Act 1986.

## **Civil Claims**

Any enforcement action is completely separate and distinct from civil claims made by individuals for compensation or other remedy. Enforcement is not undertaken in all circumstances where civil claims may be pursued, nor is it undertaken to assist such claims.

The Council may, upon request, provide a factual report which details its' investigation and involvement in the case to individuals, or their solicitors, pursuing a civil claim. There may be a charge for this report.

Where the civil claim results in an Officer being formally subpoenaed to Court to give evidence, the Council reserves the right to recover in full any costs incurred

## **Working with external agencies and enforcement bodies**

If a business has a Primary Authority (also, if appropriate, a Lead or Home Authority scheme or informal Lead or Home Authority scheme), the regulator will contact the Primary Authority before enforcement action is taken, unless immediate action is required because of imminent danger to health, safety or the environment.

The Council will liaise with the other partner regulators to ensure that any proceedings instituted are for the most appropriate offence.

## **Publicity**

Regulatory authorities have a responsibility to protect the public from detrimental trading and environmental practices. Regulators undertake a range of activities to achieve this. These include actions that are taken after the detection of an offence, as well as measures to prevent and deter their commission.

One such measure is the publication of convictions and information concerning significant detrimental trading or other behaviour. The publicity generated by prosecutions and other enforcement action acts as a deterrent to others. It also reassures the general public that Regulators take a serious view of such detrimental behaviour.

The Executive Director for the service area may therefore consider publishing the name and address of each person convicted of an offence together with details of the issues involved.

To reach decision as to whether to publish such information, the Executive Director will consider the following factors:

- The specific details of the offence committed or detrimental activity.
- The public interest in disclosing personal information e.g. the deterrent effect of the publication.
- Whether the publication would be proportionate.
- The personal circumstances of the offender.

This list is not exhaustive and other factors may be relevant in the circumstances of an individual case.

## Comments and Complaints

The Borough of King's Lynn and West Norfolk Council operates a corporate complaints procedure administered by the Democratic Services Section

Details of the Borough of King's Lynn and West Norfolk Council's Complaints Procedure can be found on the Council's website:

[Comments, compliments and complaints | Comments, compliments and complaints | Borough Council of King's Lynn & West Norfolk \(west-norfolk.gov.uk\)](#)

If you have any comments about this policy please contact the Council via the website.

Copies of this document and other advisory leaflets are available from:

### **Borough Council of King's Lynn and West Norfolk**

King's Court  
Chapel Street  
King's Lynn  
Norfolk  
PE30 1EX

Telephone: 01553 616200

Email: [contact@west-norfolk.gov.uk](mailto:contact@west-norfolk.gov.uk)

Website: [www.west-norfolk.gov.uk](http://www.west-norfolk.gov.uk)

We will make this policy available on tape, in Braille, large type, or in another language on request,

The policy will be reviewed regularly.