



Stratford-on-Avon District Council

Corporate Enforcement Protocol

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Corporate Enforcement
Protocol**

1. INTRODUCTION

- 1.1. Fair and effective enforcement is essential to protect the economic interests and health and safety of the public, businesses and the environment. This Protocol sets out what businesses and individuals being regulated by the Council can expect from Enforcement Officers.
- 1.1 The Council is committed to good enforcement because it is recognised that to act in any other way will have serious implications for local businesses and the Council's reputation. Consequently the Council agreed a Corporate Enforcement Policy on 23 February 2008 which has been periodically reviewed and which sets out the guiding principles to be followed when officers are using any enforcement power for which they are authorised to use. The Legislative and Regulatory Reform Act 2006 (The Act) places a duty on regulators to have regard to five Principles of Good Regulation in the exercise of regulatory functions.
- 1.2 The Government has also issued the statutory Regulator's Compliance Code which came into force on 6 April 2008. From this date, regulators whose functions are specified by the Order must have regards to the Code in carrying out any of these functions.
- 1.3 The Code stresses the need for regulators to adopt a positive and proactive approach towards ensuring compliance by:
- Helping and encouraging regulated entities to understand and meet regulatory requirements more easily; and
 - Responding proportionately to regulatory breaches.

2. STATUS OF THE ENFORCEMENT PROTOCOL

- 2.1 The Corporate Enforcement Protocol has taken the guiding principles enshrined in the Corporate Enforcement Policy and translated them into management instructions for all service with an enforcement responsibility. In order to aid openness and understanding individual services have developed additional protocols relating to their respective areas of responsibility including the Planning Enforcement, Environmental Health, Licensing, Community Safety, Housing and Parking services. Where necessary, other service protocols will be developed.

3. SCOPE AND MEANING OF ENFORCEMENT

- 3.1 This Protocol applies to all law enforced by Council Officers as specified in the Statutory Regulators Code. (Criminal and Civil).
- 3.2 Enforcement includes any action taken by officers aimed at ensuring that individuals or businesses comply with the law. This is not limited to formal enforcement action such as prosecution; it also includes, for example, the inspection of premises for the purpose of checking compliance with Acts of Parliament or Regulations.

4. NEED FOR AN ENFORCEMENT PROTOCOL

4.1 A clear enforcement protocol ensures that:

- (a) all those who visit, live and work in the District are able to have a clear understanding of the Council's expectations relating to the Council's enforcement functions;
- (b) all statutory notices issued by the Council are checked by an experienced officer for appropriateness, legal validity, content and technical information;

- (c) any information given to a business, landlord or individual, whether written or verbal, clearly identifies those requirements which are mandatory and those which are advisory;
- (d) officers in all services follow a consistent approach to enforcement;
- (e) regulators consider the impact that their statutory interventions may have on economic progress, including through consideration of costs, effectiveness and perceptions of fairness of regulation;
- (f) regulators keep under review their regulatory activities and interventions with a view to considering the extent to which it would be appropriate to remove or reduce the regulatory burdens they impose;
- (g) risk assessment precedes and informs all aspects of regulatory activity including:
 - data collection and other information requirements
 - inspection programmes
 - advice and support programmes
 - enforcement and sanctions.

5. GENERAL PRINCIPLES

5.1 Each case is unique and will be considered on its own merits after taking into consideration all relevant Government Guidance or professional advice. However, there are general principles that apply to the way each case must be approached. These are outlined in the Corporate Enforcement Policy, and mirror those of the Local Government Association Enforcement Concordat. This Concordat is a voluntary Code of Practice developed by the Government in partnership with local authorities and representatives of consumer and business interests.

- (a) **Standards:** Clear standards are set for the level of service and performance which the public and business can expect to receive;
- (b) **Openness:** Provide information and advice in plain language on the legislation and rules the Council applies, and disseminates this as widely as necessary;
- (c) **Helpfulness:** actively work with businesses and individuals, especially small and medium sized businesses to advise on and assist with compliance; and provide an opportunity for discussion and for compliance before formal enforcement action is taken;
- (d) **Complaints about the Council's enforcement service:** provide well publicised, effective and timely complaints procedures, which are easily accessible to businesses, the public and community groups;
- (e) **Proportionality:** minimise the costs of compliance for businesses by ensuring any enforcement action required is proportionate to the risks; and hence prosecute when appropriate;
- (f) **Consistency:** carry out our duties in a fair, equitable and consistent manner.

6. EXPECTATIONS OF BUSINESS

6.1 In their own interests, and in order to avoid the need for enforcement action, businesses are expected:

- to be proactive in seeking advice.
- to be open in disclosing information to the Council when required.
- to be cooperative and willing to discuss issues/problems.

7. OBSTRUCTION OF OFFICERS AND OFFICERS' POWERS OF ENTRY

- 7.1 Enforcement Officers have a wide variety of duties, many of which need them to act as investigators similar to Tax Inspectors, Revenue and Customs officers and police officers. To enable them to act effectively, the law has given strong powers of entry, seizure and inspection. If individuals or companies obstruct officers or do not provide the requested information, the law also imposes punishments. Officers are trained so they rarely have to use these powers, but for them to be effective the Council will continue to uphold and support them.
- 7.2 Officers will use their powers of entry when necessary to effect an inspection of the premises or in the process of an investigation. The Council will **always** actively support officers acting in good faith and will consider prosecuting those individuals who obstruct or assault officers during investigations or inspections.
- 7.3 When the legislation allows, an officer may examine premises and articles, take photographs, remove articles, take samples or require information and may in some instances be accompanied by other persons. In appropriate cases an officer may seek a warrant from a Magistrates' court to gain entry into premises.
- 7.4 An officer will be expected to explain the powers available to them and seek to obtain voluntary compliance. However where this cannot be obtained formal use of powers will be sought. Officers will explain both the justification and the legal basis for the above actions upon demand.

8. APPOINTMENT OF OFFICERS AND IDENTIFICATION

- 8.1 All enforcement officers are required to carry identification in the form of an "Authority to Enter" card bearing their photograph. If an officer does not show his/her card, he or she may be asked to show it by anyone who is requested to allow entry. If no card is produced, entry may be legitimately refused and no punitive enforcement action will result. If a member of the public has any doubt about the officer's identity, he/she may telephone the Council on 01789 267575 to confirm this. This will be published by enforcement officers.

9. SHARED ENFORCEMENT ROLE

- 9.1 Enforcement officers investigating breaches of the law must consider whether there is a shared or wider enforcement role. In some instances Council Officers from one Service work closely with officers of other Services, or the Police, the Fire and Rescue Service, the medical profession and others. Officers will respect confidentiality so far as it is appropriate to do so, and will not divulge any information which is not relevant to the case in question. However, the Council has a duty to inform certain government bodies of statutory notifications, for example, reporting appropriate accidents, occupational diseases to the Health & Safety Executive, or notices of intended prosecutions to the Office of Fair Trading.
- 9.2 If another agency or authority is the enforcing authority for a particular activity, officers will inform them of any potential contraventions they observe during the performance of their duties; for example, officers must consult the Fire Authority before serving a statutory notice to provide or improve means of escape in a house in multiple occupation. When appropriate, enforcement issues are referred to other agencies. For example:
- Health and Safety Executive
 - Environment Agency
 - Emergency Services
 - Seven Trent Water
 - Royal Society for Prevention of Cruelty to Animals
 - Adjoining Local Authorities
 - Government Departments.
- 9.3 Confidentiality, data-protection and information-sharing are covered in detail in separate Council policies with reference to the Data Protection Acts and Freedom of Information Act 2000.

10. PROVISION FOR INTERESTS OF CONSUMERS AND BUSINESSES

10.1 This enforcement Protocol has taken into account the interests of consumers and businesses in the District. Visits to businesses sometimes occur out of normal working hours to cope with their extended operating hours. Similarly, many residents are only available in the evenings and visits are often arranged for mutual convenience. Interpreters and translators will be made available to assist officers where business persons, consumers and residents are unable to understand what is being required of them.

11. CHOICE OF APPROPRIATE ENFORCEMENT PROCEDURES

11.1 Compliance will normally be sought at the first stage through informal action such as letters or giving advice. Where this does not result in compliance, or in more serious instances, formal enforcement action will be considered, e.g. issuing a statutory notice, offering a formal caution, or prosecution. The Code for Crown Prosecutors will be taken into account, among other factors, in deciding whether a caution or prosecution is appropriate.

(a) Informal action includes:

- (i) Educational Courses
- (ii) Giving Advice
- (iii) Visits to Check
- (iv) Rewarding Businesses
- (v) Warning Letters
- (vi) Consideration Notices
- (vii) Undertakings
- (viii) Mediation

(b) Formal Action includes:

- (i) Requisition for Information
- (ii) Notice of Intention
- (iii) Works Notices
- (iv) Abatement Notices
- (v) Improvement Notices
- (vi) Works in default
- (vii) Prohibition Notices
- (viii) Control Orders
- (ix) Closing Orders
- (x) Seizure and Detention
- (xi) Formal Cautions
- (xii) Enforcement Notices and other Notices
- (xiii) Injunction
- (xiv) Revocation of Licence
- (xv) Fixed Penalty Notices
- (xvi) Anti-Social Behaviour Orders, Notices and Injunctions
- (xvii) Prosecution.

11.2 More information on different types of enforcement action can be found within each Service's enforcement Protocol where appropriate.

12. WHO DECIDES WHAT ENFORCEMENT ACTION IS TAKEN?

- 12.1 For less serious infringements of the law, decisions about the most appropriate course of action may be made by the enforcement officer(s). Decisions are based upon professional judgment, legal guidelines, statutory codes of practice and priorities set by the Council and/or Central Government.
- 12.2 For more serious offences (where the nature of the offence points towards prosecution, formal caution and/or seizure), decisions about enforcement, may be taken by Enforcement/Investigating Officer(s) and/or senior managers from the relevant Section, after consulting with the Senior Solicitor.

13. MONITORING AND REVIEW OF PROTOCOL

- 13.1 All officers must adhere to the Corporate Enforcement Protocol. Managers, including Team Leaders, will monitor implementation and make any necessary suggestions and recommendations for improvement. Any variance from the protocol must be reported to the appropriate Service Manager who will ensure that it is addressed and that the necessary training is given to the officer(s) concerned.
- 13.2 This Protocol will be reviewed when there is any significant change in legislation or other circumstances which affect its effectiveness and validity.

14. COMPLAINTS, APPEALS AND COMMENTS

- 14.1 The Council has published its Corporate Complaints Procedures, which can be found on the Council's web-site: www.stratford.gov.uk, where copies of this Protocol are also available. In addition, most legislation that we enforce has an in-built appeals procedure whenever formal enforcement action is taken. Where available the appeals route must be taken in the first instance and not the Complaints procedure. These procedures will be explained in more detail within the service specific Enforcement Protocols. Complaints may also be made to the Local Government Ombudsman (www.lgo.org.uk).
- 14.2 In addition to the corporate complaints procedure any person can take up their complaint with the Head of Service should they so wish. Paper copies of this Protocol may also be obtained from the relevant Head of Service and comments on the Protocol should also be made to the Head of Service. Copies will be made available on request in Braille, large type or in languages other than English where required.