

General Enforcement Policy

1. Statement of Intention

- 1.1 Good enforcement practice is of benefit to both the public and business. It is the Council's intention to use enforcement to deliver its priorities which include supporting a sustainable and growing economy whilst addressing the needs of local/rural communities and protecting and enhancing the environment.
- 1.2 We recognise that most people want to comply with the law. We will, therefore, take care to help business and others meet their legal obligations without unnecessary expense, while taking firm action, including prosecution where appropriate, against those who flout the law or act irresponsibly.
- 1.3 The Council has signed up to the Enforcement Concordat ⁽¹⁾. This is a government initiative with the principles of openness, helpfulness, proportionality and consistency (see point 8.0 below).
- 1.4 In relation to certain regulatory activities specified under section 23 of the Legislative and Regulatory Reform Act 2006 ⁽³⁾, regard is expressly required to be had to certain overarching principles. Furthermore the 2006 Act expressly requires in relation to regulatory functions to which it relates that:
 - (a) any person exercising such functions must, except where (b) below applies, have regard to the code in determining any general policy or principles by reference to which the person exercises the function; and
 - (b) a person exercising such a function where that function is one of setting standards or giving guidance generally in relation to the exercise of other regulatory functions must have regard to the code in the exercise of that function.

2. Approval

- 2.1 This policy was approved by the Cabinet of North Dorset District Council on 15 April 2004.
- 2.2 The policy will be reviewed on an annual basis or when guidance is received indicating the need for change. If appropriate the proposed alterations will be reported to Cabinet. Minor changes will be agreed with the Leader of the Council.

3. Scope of Enforcement Policy

- 3.1 This general policy applies to all enforcement practice including food and safety, licensing, planning and building control, benefits fraud, Council tax/non-domestic rate recovery, private sector housing, noise and environmental pollution. In addition to this general policy there may be other specific enforcement procedures and/or codes of conduct taking account of direction/legislation from Government departments/bodies and supplementary guidance.
- 3.2 Where a shared enforcement role or partnership exists with another authority, for example Trading Standards, there should be joint awareness of the respective roles and where appropriate agreement on enforcement practice. This may be agreed at liaison groups between interested authorities.

4. Enforcement within Local Authority-run Premises

- 4.1 Any perceived breaches of law (for example, food law) which may be detected in premises owned by the local authority should be brought to the attention of the appropriate General Manager and/or Corporate Property Officer without delay.

5. Access to the Policy

- 5.1 This policy is available on the Council's web site and in hardcopy at the Council's Blandford Forum offices. It can be ordered by telephoning 01258 484384, e mailing envlicens@north-dorset.gov.uk or writing to North Dorset District Council, Nordon, Salisbury Rd., Blandford Forum, Dorset, DT11 7LL

6. Action following Complaints

- 6.1 Complaints which may result in enforcement action against a business or individual will normally be notified to that business or individual as soon as is practicable, except in the circumstances described in 6.2 below. During the progression of enforcement action that business or individual will be further notified, if considered appropriate, of progress and any changing circumstances.
- 6.2 In circumstances where notification could impede enforcement action, then there will usually be no notification unless and until it is considered appropriate.
- 6.3 It is recognised that speed of action in investigating complaints may remove the need for subsequent protracted enforcement work.

7. General Principles

- 7.1 Each enforcement situation is unique and must be considered on its own facts and merits, taking account of appropriate guidance used by the Council. The following general principles should apply which take into account the 'The Code for Crown Prosecutors'.

- 7.1.1 Officers must be fair, independent and objective. They must not let any personal views about ethnic or national origin, sex, religious beliefs, political views, or the sexual orientation of the suspect, victim or witness, influence their decisions.
- 7.1.2 Officers must not be affected by improper or undue pressure from any source.
- 7.1.3 The right person must be dealt with for the *relevant* offence and officers must act in the interests of justice and not solely for the purpose of obtaining a conviction.
- 7.1.4 Officers should seek to ensure that the law is properly applied, that all relevant evidence is considered, and that obligations of disclosure are complied with.

8.0 The Enforcement Concordat

8.1 The principles outlined in paragraphs 8.2 to 8.8, below, will be followed at all times. These are derived from the Government's Enforcement Concordat, to which the Council as a whole is fully committed.

8.2 *Procedures* Advice from officers will be clear and simple as possible and will, where appropriate, be confirmed in writing, explaining why any remedial action may be necessary and stating the timescale for progress and completion. A clear distinction will be made between legal requirements and best or desirable practice.

Where there are rights of Appeal against specific actions, advice on the mechanism to be followed will be given in writing. Wherever possible, this will be included with the enforcement Notice or other documentation.

8.3 *Openness* So far as practicable the Council will seek to publish in plain language any information and advice concerning the legislation that the Council is applying. Officers will be open about the work required, including any charges that we set, and consultation will take place as appropriate. Where appropriate discussion will take place concerning general enforcement issues, specific compliance failures or problems with anyone who is experiencing difficulties.

8.4 *Helpfulness* Officers will provide a courteous and efficient enforcement service and individual officers will identify themselves by name.

A contact telephone number will be provided for on-going discussions. Businesses and individuals will be actively encouraged to seek advice and information relating to the Department's enforcement role.

8.5 *Complaints* If business operators or members of the public indicate that they wish to complain about any aspect of the Council's enforcement work, they will be informed of the Council's complaints procedure.

8.6 *Proportionality* Due regard will be given to the issue of proportionality.

Where the law allows, officers will take account of the circumstances of a case and the attitude of the *offender* when considering the level of enforcement action.

We will take particular care to work with small businesses, voluntary and community organisations so that where practicable they can meet their legal obligations without unnecessary expense.

- 8.7 *Consistency* Consistency means taking a similar approach in similar circumstances to achieve similar ends. The aim, so far as reasonably practicable, is to achieve consistency in the advice given, the response to incidents and the ways in which statutory powers are used.

Consistency does not mean simple uniformity and officers will need to take account of many variables such as the scale of the risk, the attitude and actions of those involved and any history of compliance, whether positive or negative.

Decisions on enforcement action are a matter of professional judgement and officers will frequently be required to use discretion. Efforts will continue in order to develop arrangements for promoting consistency, including effective arrangements for liaison with neighbouring Authorities and other enforcing agencies.

Every effort will be made to ensure consistent enforcement standards between local authorities.

9.0 Other Enforcement policies.

- 9.1 In relation to certain functions, other public bodies have created policy guidance for use by enforcing authorities in relation to various enforcement situations e.g. the Health and Safety Commission has produced guidance relevant to health and safety investigations.
- 9.2 Where such guidance has been produced then in appropriate circumstances due regard will normally be given.

10.0 Specific Enforcement Actions or Sanctions

- 10.1 The Procedures or guidance to be followed when conducting specific types of enforcement are contained in paragraphs as follows:
- a) *Written warnings*. Paragraphs 11.1 – 11.2
 - b) *Formal Notices*. Paragraphs 12.1 – 12.4
 - c) *Simple Cautions*. Paragraphs 13.1 – 13.3
 - d) *Prosecution*. Paragraphs 14.1 – 14.9
 - e) *Works in Default*. Paragraphs 15.1 – 15.2

f) *Revocation*. Paragraphs 16.0 - 16.4

g) Fixed Penalty Notice. Paragraphs 17.1 – 17.2

10.2 Where relevant other special legislative powers exist for example the collection and enforcement of Council tax and non-domestic rates. Separate procedures cover these powers.

11.0 Written Warnings

11.1 Perhaps the commonest and most versatile form of enforcement is the use of a written warning, which may result from an investigation, or a routine inspection visit.

11.2 A written warning will normally

11.2.1 Clearly state the nature of the problem and suggest either specific remedies or a standard to be achieved

11.2.2 State the actions which may follow if matters do not improve

11.2.3 Designate a named officer as point of contact

11.2.4 Clearly distinguish between a legal requirement and 'desirable standard'

11.2.5 Indicate any follow-up action and/or revisit that is intended.

11.2.6 Where appropriate, offer to work with the person(s) responsible in finding a solution

11.2.7 Where appropriate, point the way to specialist advice or additional information.

11.2.8 As appropriate, a written warning will be firm, businesslike, unambiguous, polite and helpful.

12.0 Notices

12.1 The service of statutory Notices is a routine part of the work of the Council and it is not appropriate to deal with the format and wording of Notices within a document such as this. However, there are some points of commonality affecting all types of Notice, as follows:

12.1.1 Associated documentation

12.1.2 Method of Service

Each of which is dealt with in the following paragraphs.

12.2 *Associated Documentation* Under normal circumstances, the following information will accompany a formal Notice:

12.2.1 A covering letter, setting out the background to the Notice and designating a case officer or other point of contact

12.2.2 A copy of the relevant Appeal provisions

12.2.3 A Schedule of Works, where appropriate

12.2.4 Any other information which may help compliance with the terms of the Notice.

12.3 *Method of Service* This may be specified in individual legislation and, in such cases, the appropriate method of service will be followed.

12.4 Depending on the circumstances, service methods could include :

12.4.1 *Hand delivery.* The Notice will be given directly to the person(s) identified as being responsible. Where this method is used, the date, time, place and other relevant details will be recorded. The notice may be left at the scene where permitted(12.4.4)

12.4.2 *Recorded Delivery.* The Notice is sent by first class, recorded delivery post.

12.4.3 *Normal Post.* Where normal post is used, a short Witness Statement may be provided giving details of the contents of the envelope, the date, time, and place of posting, and the address to which sent.

The Statement will be in addition to an entry into the case officer's official notebook.

12.4.4 *Left at Scene.* The Notice may be left at the scene, i.e. a premises or vehicle. The officer will make an appropriate contemporaneous record of service.

13.0 Simple Cautions

13.1 In certain circumstances, as a possible alternative to formal prosecution, the use of the Simple Caution may be considered. In all such cases, the Home Office Guidance on the use of Simple Cautions will be closely followed.

13.2 A Simple Caution will **never** be used because the evidence in a case is not robust enough to give a reasonable prospect of success in prosecution.

Indeed, if a Simple Caution is offered and refused, the most likely alternative enforcement action would be prosecution, so the evidence must always be sufficient before a Simple Caution is considered.

13.3 Other factors governing the use of a Simple Caution include:

13.3.1 Line Managers, as appropriate, are informed before a Simple Caution is offered.

13.3.2 In relevant circumstances, details of any outstanding Simple Caution will be placed before the Court in any prosecution taken within the expiry date of the Formal Caution.

13.3.3 If accepted, the Caution will be recorded as appropriate with the Office of Fair Trading or other central body.

14.0 Prosecution

14.1 Where statutory powers to prosecute exist, the decision to do so is not taken lightly.

Each case is unique and will be processed according to its own merits. There is no suggestion that prosecution will automatically follow the discovery of an alleged offence. In particular, alternative actions to prosecution which are outlined in paragraphs 13.2, below, will be considered in all cases and at every stage.

14.2 *Alternatives to Prosecution* Where appropriate the approaches set out below will be considered as alternatives to prosecution as part of the decision making process. Any assessment undertaken will be in light of relevant guidance relating to the matter.

14.2.1 Simple Caution

14.2.2 Works in default

14.2.3 Written Warning

14.2.4 Administrative penalties

14.2.5 Fixed Penalty Notice

14.3 *Test for Prosecution* Before a decision to prosecute is taken, the case must satisfy, in general terms, the following Tests:

14.3.1 Evidential Test

14.3.2 Public Interest Test

Each of which is described in more detail below.

14.4 *Evidential Test* There must be sufficient good quality evidence to provide a *realistic prospect of conviction* against each defendant and on each charge, before prosecution is authorised.

This is an objective test and means that a jury or bench of Magistrates, properly directed in accordance with the law, is more likely than not to convict each defendant on each charge.

- 14.5 Each prospective prosecution is scrutinised in accordance with the Council's scheme of delegation before the papers are sent to the Legal Services Manager.

This is so that the evidence can be tested by officers not directly involved in the preparation of the case.

- 14.6 The following will be borne in mind by case officers throughout the investigation:

14.6.1 The validity and relevance of any evidence gained and shortfalls in the investigation.

14.6.2 The continuity of evidence.

14.6.3 The quality of any notes and records kept during the investigation.

14.6.4 The level of compliance with the Enforcement Concordat, all legislation having a bearing on enforcement practice, and internal Procedures.

If there have been substantive departures from accepted practice on any of the above, this will be made known to line management and Legal Services, so that decisions on whether or not to proceed can be properly informed.

- 14.7 Officers may obtain evidence from many different categories throughout an investigation.

Unused material will be disclosed in accordance with the requirements of the relevant legislation.

- 14.8 *The Public Interest Test* Consideration will be given as to whether it is in the public interest to proceed with a prosecution. There is no definitive list of factors that might be relevant in assessing issues of public interest, however factors which may support a view that a prosecution should be undertaken include:

14.8.1 There are grounds for believing that the offence is likely to be continued or repeated, for example, by a history of recurring conduct

14.8.2 The offence, although not serious itself, is widespread in the area where it was committed

14.8.3 The defendant's previous convictions or cautions are relevant to the present offence

14.9 Some common public interest factors where a prosecution is less likely to be needed include:

14.9.1 The offence was committed as a result of a genuine misunderstanding or mistake (these factors must be balanced against the seriousness of the offence)

14.9.2 The loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement

14.9.3 The defendant has put right the loss or harm that was caused (but the defendant must not avoid prosecution solely because they pay compensation)

15.0 Works in Default

15.1 The approval of the line management, as appropriate, will be sought before arrangements are made to carry out works in default. At the time that approval is sought, the case officer will provide full details of the perceived need to undertake the work and issues concerning the funding of the work. The officer will continue to be prepared to discuss alternatives if appropriate.

15.2 Works in default include physical works undertaken by the Council to abate nuisance, or comply with specified standards, for example carrying out drainage works where there may be risks to health, demolition of structure, etc.

16.0 Revocation

16.1 In some circumstances, such as Licensing Authorisations and Approvals, revocation may be used as an enforcement method.

16.2 Whilst this is a legitimate enforcement action, it is always remembered that the above may involve the removal of livelihood, sometimes without reference to an independent arbiter or the Courts.

16.3 Where revocation action is taken, it will normally follow at least two warnings, in writing. However, it is recognised that this will not always be possible, especially in the case of some types of offence and where there is a risk to health and/or safety.

16.4 When revocation action is taken, those concerned will be informed of any rights which they may have to appeal and be told of any time limits or other constraints which may apply

17.0 Fixed Penalty Notices

- 17.1 A fixed penalty notice (FPN) is a notice that may be issued for a variety of different prescribed offences including littering, graffiti, fly posting, failure to display no-smoking sign, etc
- 17.2 In appropriate circumstances a FPN provides an alternative to the taking of other formal action. Consideration will be given in addition to this policy to any Council enforcement strategy for example on environmental crime and smokefree laws.

18.0 Liaison with the Police and Other Enforcement Services

- 18.1 The enforcement officers within the Council will seek to co-ordinate their enforcement activity to maximise the effective enforcement of any matters that are related to more than one of the services.
- 18.2 An enforcement matter may affect a wide geographical area beyond the District's boundaries, or involve enforcement by one or more regulatory authority. As appropriate, all relevant authorities and organisations (which might include Town and Parish Councils) will be informed of such matters and enforcement action co-ordinated with them.
- 18.3 Where there is a work-related death the police are responsible for deciding whether to proceed with a manslaughter investigation and the Council will investigate possible health and safety offences. If in the course of the investigation evidence is found suggesting manslaughter this will be passed on to the police. The work-related deaths protocol agreed between the police, the Health and Safety Executive and the Crown Prosecution Service will apply.

(1) The Enforcement Concordat can be found at:

<http://www.berr.gov.uk/consumers/enforcement/enforcement-concordat/index.html>

Alternatively a copy can be requested form from this authority.

(2) The Regulators' Compliance Code can be found at:

<http://www.berr.gov.uk/iles/file45019.pdf>

Alternatively a copy can be requested form from this authority.

(3) The regulatory functions to which the Code applies are set out in the Legislative and Reform (Regulatory Functions) Order 2007 that can be accessed from the following link: http://www.opsi.gov.uk/si/si2007/uksi_20073544_en_1.

This Order has been the subject of further minor revision, although currently none directly affecting local authorities

Code for Crown Prosecutors (including different languages)

http://www.cps.gov.uk/victims_witnesses/code.html

It should be noted that all these documents are subject to alteration and replacement, and therefore the links provided and the documents referred to, are those of which the Council is aware at the time of revision 3 to this document.

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Revision Issue No	By whom	Approval	Date
1	Roger Frost Robert Firth	Cllr D Whitehead	16/06/04
2	Roger Frost Robert Firth	Cllr P Webb Cllr G Carr-Jones	20/06/07
3	Roger Frost Robert Firth	Cllr P Webb	28/07/08