

BROADLAND DISTRICT COUNCIL



HOUSING AND ENVIRONMENTAL SERVICES DEPARTMENT

Enforcement Policy

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

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1. Introduction

- 1.1. In 1998 the Cabinet Office published the “Enforcement Concordat” to help promote consistency in the UK regulatory enforcement regime.
- 1.2. The Enforcement Concordat set out principles of good enforcement policy and although a voluntary code of practice it was adopted by 96% of all central and local government bodies with enforcement functions.
- 1.3. Following the recommendations of the Hampton Report¹, the Enforcement Concordat was supplemented by a statutory code of practice, the “Regulators Compliance Code”, to give the Hampton Principles a statutory basis.
- 1.4. This is provided by the Legislative and Regulatory Reform Act 2006, which places a duty on regulators to have regard to five Principles of Good Regulation². The code of practice was issued on 17th December 2007 and came into force on 6th April 2008.
- 1.5. This enforcement policy which is a developed enhancement of a document originally produced by the erstwhile Norfolk Better Regulation Partnership (NBRP) seeks to deliver improved regulatory outcomes, whilst reducing unnecessary burdens on compliant businesses.
- 1.6. The enforcement policy re-affirms the work originally developed by the NBRP and furthers the aim of providing consistency of approach within Broadland District Council’s Environmental Services Department and with other partner regulatory services within Norfolk.
- 1.7. In accordance with the above, this document seeks to mirror as far as possible the existing Enforcement Policies of other partner regulatory services to enable and facilitate collaborate enforcement processes and joint enforcement activities.
- 1.8. 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.
- 1.9. This enforcement policy is intended to iterate the basic principles of enforcement activity with specific matters and issues relating to:-
 - 1.9.1.1. Private Sector Housing
 - 1.9.1.2. Environmental Protection (incorporating Pollution Control and Street Scene
 - 1.9.1.3. Environmental Enforcement (incorporating Health and Safety, Food Safety and licensing)

These principles are within dedicated enforcement documents forming appendices to this policy. In all cases this main policy and the specific relevant document must be considered in conjunction.

¹ “Reducing administrative burdens: effective inspection and enforcement” – Philip Hampton 2005

² Transparency, accountability, proportionality, consistency and targeted action.

2. 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 would include the inspection of premises for the purpose of checking 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.

2.1 Formal Action

2.1.1 Whilst recognising that most businesses 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).

2.1.2 Broadland District Council will consider taking formal action in serious breaches which may include any of the following circumstances:

- a. Where there is a risk to public health, safety or damage to the environment.
- b. For matters where there has been recklessness or negligence.
- c. A deliberate or persistent failure to comply with advice, warnings or legal requirements.
- d. Any act likely to affect animal health or welfare, disease prevention measures, or the integrity of the food chain.
- e. Obstruction or assault (including verbal assault) of an officer in the execution of their duties.

(THE ABOVE LIST IS NOT EXHAUSTIVE)

2.1.3 For the purposes of this document 'formal action' means: Prosecution, Simple Caution, Issue of Penalty Notices, Seizure, Suspension, Forfeiture, revocation/suspension of a licence, registration or approval, Written or Verbal Instruction, Advice or Warning, or any other criminal or civil proceedings, applied either separately or in any appropriate combination.

3. 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.

3.1. Transparency

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

In most circumstances 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.

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 will offer translations of correspondence at the time of the inspection
- We also use INTRAN, the Interpretation and Translation Agency for the Public Services of Norfolk covering telephone interpreting, face to face interpreting, sign language and lip speaking service.
- We can provide large print documents and Braille
- We can provide taped information
- Documents can be emailed

3.2. 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 and animal disease outbreaks.
- Carrying 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 and telephone numbers will be provided for business and public use.
- The whole range of enforcement activities will be dealt with as promptly and efficiently as possible in order to minimise time delays.
- The Environmental Services Department has a complaint procedure for use by businesses, the public, employees and consumer groups. This is available on request by telephone and from reception desks.
- Feedback questionnaires will be routinely used to gather and act upon information about the service we provide.

- To help keep businesses up to date we will include information to highlight new legal requirements, with letters sent after an inspection or visit; information on the internet and direct mailing.

3.3. Proportionality

- Any action required will be proportionate to the seriousness of the breach and the risk to health, safety or the environment.
- The most serious formal action, including prosecution, will be for serious breaches of the law where there is a significant risk to health, safety or the environment or where there has been a flagrant disregard for the requirements of the law.

3.4. Consistency

- Similar issues will be dealt with in the same way by the Regulatory Officers.
- 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 so as to ensure that they are fully competent to undertake their enforcement duties.

3.5. 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 organized crime. Other factors also determine priorities for enforcement activity, including Government targets and priorities, new legislation, national campaigns and public concerns.

4. Intelligence and Risk Led Enforcement

Through capturing a coherent and robust intelligence picture, effective strategies and tasking and co-ordination for dealing with particular problems can be developed. This methodology enables the identification of new, current and emerging problems, and gives the capability to provide strategic and tactical direction as to how they 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.

5. Enforcement Action

The 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.

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

5.1 Conflict of Interest in Food Law Enforcement Matters

Where a breach of food law is detected in premises where the enforcing authority is itself the food business 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, a food officer from another food authority within Norfolk will be asked to assist in the decision making process as to the action required to be taken. The Chief Executive should also be informed of serious breaches without delay.

The food 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 food officer's involvement will be kept such that it is auditable.

5.2 Prosecution

Regulatory Officers will follow guidance which requires two main tests to be considered in relation to instigating a prosecution:

A. The Evidential Sufficiency Test – i.e.

- Is there admissible, substantial and reliable evidence that an offence has been committed? i.e. Can it be used in court? Is there enough evidence? Is the evidence sound and factual? (Which may include an expert opinion).
- Has the Police and Criminal Evidence Act 1984 been complied with to ensure fair and open gathering of the evidence?

B. The Public Interest Test – i.e.

- Is it in the public interest to prosecute?

The guidance gives a number of factors that may lead to a decision not to prosecute, including: -

- a) The court is likely to impose a nominal penalty;
- b) The offence was committed as a result of a genuine mistake or misunderstanding;

- c) If the loss or harm caused can be described as minor and was the result of a single incident;
- d) 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;
- e) A prosecution is likely to have a bad effect on the victim's physical or mental health;
- f) The defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health;
- g) The defendant has put right any loss or harm; or
- h) Details may be made public that could harm sources of information, international relations or national security.

The Regulatory Officers will also consider whether or not a prosecution is appropriate by consideration of the factors contained in paragraph 2.1.2 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 Environmental Service Department 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 Environmental Services Department is likely to seek to recover the costs of the investigation. The Court determines the level of fine imposed and costs awarded.

5.3 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 30/2005. The following conditions must be fulfilled before a caution is administered:

- There must be evidence of the offender's guilt sufficient to give a realistic prospect of conviction;
- The offender must admit the offence; and
- The offender must understand the significance of the caution and agree to being cautioned.

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

5.4 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.

5.5 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.

5.6 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.

5.7 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 Environmental Services Department may upon request provide solicitors acting for individuals pursuing a civil claim, a factual report, which details the investigation and involvement in the case. There may be a charge for this report.

6. 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 Environmental Services Department will liaise with the other partner regulators to ensure that any proceedings instituted are for the most appropriate offence.

7. 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 Head of Environmental Services Department will therefore consider publishing the name and address of each person convicted of or subject to other enforcement action, together with details of the issues involved. In reaching a decision as to whether to publish such information, the Head of Environmental Services 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.