

Warwick District Council Enforcement Policy

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1. Introduction

- 1.1** This policy was developed following a review of Warwick District Council's (*'the Council'*) existing service-specific enforcement policies with a view to producing a single policy for all services, compliant with the Regulators' Code. It should be read in conjunction with the Council's published service standards. The policy which has been discussed with the Coventry and Warwickshire Chamber of Commerce and the South Warwickshire Landlords Steering Group sets out Warwick District Council's approach to dealing with non-compliance and a commitment to good enforcement practice informed by -

Principles of Good Regulation

The Legislative and Regulatory Reform Act 2006, Part 2, requires the Council to have regard to the Principles of Good Regulation when exercising a specified regulatory function. For local authorities, the specified functions include those carried out by our environmental health, licensing, waste, and private sector housing services.

The Council will exercise its regulatory activities in a way which is:

Proportionate – our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence,

Accountable – our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures,

Consistent – our advice to those we regulate will be robust and reliable and we will respect advice provided by others. Where circumstances are similar, we will endeavour to act in similar ways to other local authorities,

Transparent – we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return, and

Targeted – we will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities.

Regulators' Code

The Regulators' Code came into statutory force in April 2014 and provides a clear framework for transparent, open and accountable regulatory delivery. A copy can be found at www.gov.uk/government/publications/regulators-code

The Council has had regard to the Regulators' Code in the preparation of this policy. In certain instances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

Human Rights Act 1998

The Council is a public authority for the purposes of the Human Rights Act 1998. We therefore apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is had to the right to a fair trial and the right to respect for private and family life, home and correspondence.

Data Protection Act 1998

Where there is a need for the Council to share enforcement information with other agencies, we will follow the provisions of the Data Protection Act 1998.

The Code for Crown Prosecutors

When deciding whether to prosecute the Council has regard to the provisions of The Code for Crown Prosecutors as issued by the Director of Public Prosecutions.

The Code for Crown Prosecutors is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases. The Code sets out two tests that must be satisfied, commonly referred to as the 'Evidential Test' and the 'Public Interest Test':

Evidential Test - is there enough evidence against the defendant?

When deciding whether there is enough evidence to prosecute, the Council will consider what evidence can be used in court and is reliable. We must be satisfied there is enough evidence to provide a "realistic prospect of conviction" against each alleged offender.

Public Interest Test - is it in the public interest for the case to be brought to court?

The Council will balance factors for and against prosecution carefully and fairly, considering each case on its merits. The public interest factors that

we will take into account are detailed under the enforcement options available to us in Section 6.1.

Regulatory Enforcement and Sanctions Act 2008 ('the RES Act')

The Regulatory Enforcement and Sanctions Act 2008, as amended, established the Primary Authority scheme. We will comply with the requirements of the Act when we are considering taking enforcement action against any business or organisation that has a Primary Authority, and will have regard to guidance issued by the Secretary of State in relation to Primary Authority.

- 1.2** The Council is committed to avoid imposing unnecessary regulatory burdens, and to assessing whether similar social, environmental and economic outcomes could be achieved by less burdensome means.
- 1.3** This policy can be downloaded at www.warwickdc.gov.uk or copies can be obtained in person from the Council's main offices – Riverside House, Milverton Hill, Royal Leamington Spa CV32 5HZ.
- 1.4** The Council's accessibility statement requires us to maintain and update our website as necessary in plain English in terms of the W3C guidelines. We will ensure that our publications and press statements are accessible to all communities and we aim to provide information in accessible formats on request. The Council also has membership of Language Line to provide language support where required.
- 1.5** This policy was approved by Warwick District Council on xxxxxxxxxxxx
- 1.6** This policy was issued on xxxxxxxxxxxx
- 1.7** The Council's published service standards can be downloaded at www.warwickdc.gov.uk

2. What is this policy for?

- 2.1** This policy explains to anyone affected by the Council's regulatory activities what to expect in respect to its approach to dealing with non-compliance.
- 2.2** Authorised officers will act in accordance with the policy. All services are subject to internal audit to ensure actions are appropriate to the policy and performance data will be published on the Council's website.

3. When does this policy apply?

- 3.1** This policy applies to the following regulatory services which are the responsibility of Warwick District Council
 - Environmental Protection
 - Food Safety
 - Health and Safety
 - Licensing

- Planning Enforcement
- Private Sector Housing
- Public Health
- Waste

Service-specific policies which sit under this generic policy can be found at www.warwickdc.gov.uk.

4. Our approach to dealing with non-compliance

4.1 Explanation of the approach to dealing with non-compliance

The general principle will always hinge around negotiation, education and support to ensure maximum benefit from minimum resource input, aiming to avoid imposing unnecessary regulatory burdens. Enforcement procedures will always follow statutory requirements and guidance but prosecution will generally be a last option unless the situation presents little or no option.

We will clearly explain the non-compliance and any advice being given, actions required or decisions taken, with reasons for these.

We will provide an opportunity for dialogue in relation to advice given, actions required or decisions taken in relation to non-compliance.

Dialogue with the business or regulated person is available through all communication channels (face-to-face, telephone, letter, email) and access to translators is available if required.

The Council's Scheme of Delegation, gives the relevant Head of Service responsibility for managing investigations and making decisions on enforcement action. The Head of Service may delegate in writing other officers to act on his/her behalf.

Where it shares or has a complementary role with other agencies, the Council will consult those agencies, including Primary Authorities, before taking any formal enforcement action.

The Council will manage enforcement in relation to its own establishments and activities to ensure that decisions are free from any conflict of interest. For example, environmental health practitioners are free to investigate noise nuisance arising from a Council activity under the same protocols as any other investigation.

All staff must demonstrate commitment to equality in the performance of their regulatory duties and in their professional relationships with regulated persons to ensure fair and objective enforcement. The Council's Equalities and Diversity Framework can be downloaded at www.warwickdc.gov.uk/info/20623/equality_and_diversity

The Council will always aim to publicise successful convictions to reassure compliant businesses or regulated persons that economic competition is a 'level playingfield'.

4.2 Explanation that the action that the local authority chooses to take depends upon the particular circumstances and the approach of the business or regulated person to dealing with the breach

Enforcement action will always be proportionate and follow statutory guidance with prosecution generally being the last resort. However the Council will deal firmly with those that deliberately or persistently fail to comply.

Those regulated by the Council are able to request advice on non-compliance without directly triggering enforcement action, where they show a willingness to resolve the non-compliance.

4.3 Explanation of the factors that influence the local authority's response to breaches of the rules

The Council fully supports the principles in the Regulators' Compliance Code which sets out obligations in relation to enforcement. It sets out the need to consider a range of matters including economic progress, accountability, and risk assessment.

Where applicable, the Council will take note of the Primary Authority on responses to breaches.

The Council's approach to checking that non-compliances which were dealt with by providing advice or guidance have been rectified will generally be through the next scheduled visit.

Where the Council considers that breaches should be investigated by another enforcement body, the details will be shared with that organisation.

4.4 Explanation of the local authority's approach to complaints of non-compliance

The Council will investigate all complaints (unless anonymous) of non-compliance and take action as appropriate. Any follow-up on anonymous complaints will be dependent on the circumstances of each report.

5. Conduct of investigations

5.1 Explanation of the processes for investigating alleged breaches

All investigations will be carried out under the following legislation and in accordance with any associated guidance or codes of practice, in so far as they relate to the Council:

- the Police and Criminal Evidence Act 1984
- the Criminal Procedure and Investigations Act 1996
- the Regulation of Investigatory Powers Act 2000
- the Criminal Justice and Police Act 2001
- the Human Rights Act 1998

These Acts and associated guidance control how evidence is collected and used and give a range of protections to citizens and potential defendants.

Our authorised officers will also comply with the requirements of the particular legislation under which they are acting, and with any associated guidance or codes of practice. Most of this legislation provides the officers with powers of entry at all reasonable times with the associated offence of obstruction if entry is refused.

Where a business is allegedly in breach of relevant legislation and has a partnership agreement with a Primary Authority, early communication will take place with that authority.

When exercising its statutory power to seize items during an investigation, the Council will follow the relevant legal process. If there is reason to believe access will be denied, the Council will apply to the Magistrates' Court for a warrant to execute this process.

Any person suspected of committing an offence will be invited in writing to an interview under caution in accordance with the Police and Criminal Evidence Act at the Council offices and will be given the opportunity to be legally represented at the interview.

The Council will always endeavour to expedite investigations into non-compliance and in any case ensure that statutory time limits for investigations are achieved.

If the investigating officer prepares a case file for prosecution, the case file and decision will be reviewed by both the team leader and head of service before being referred to the Council's solicitor.

5.2 A commitment to keep all parties informed on progress

The Council will aim to keep alleged offenders and witnesses informed on the progress of investigations every month or such other timeframe as might be agreed between all the parties.

6. Decisions on enforcement action

6.1 The range of actions that are available to the local authority are set out in legislation and include

Compliance Advice, Guidance and Support

The Council 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 a warning letter, to assist individuals and businesses in rectifying breaches as quickly and efficiently as possible, avoiding the need for further enforcement action. A warning letter (sometimes called an 'informal caution') will set out what should be done to rectify the breach and to prevent re-occurrence. If a similar breach is identified in the future, this letter will be persuasive in considering the most appropriate enforcement action to take on that occasion. Such a letter cannot be cited in court as a previous conviction but it may be presented in evidence.

The Council recognises that where a business has entered into a partnership with a Primary Authority, the Primary Authority will provide compliance advice and support, and the Council will take such advice into account when considering the most appropriate enforcement action for it to take. It may discuss any need for compliance advice and support with the Primary Authority.

Where more formal enforcement action, such as a simple caution or prosecution, is taken, the Council recognises that there is likely to be an ongoing need for compliance advice and support, to prevent further breaches.

Voluntary Undertakings

The Council may accept voluntary undertakings that breaches will be rectified and/or recurrences prevented. The Council will take any failure to honour voluntary undertakings very seriously and enforcement action is likely to result.

Statutory (Legal) Notices

In respect of many breaches the Council has powers to issue statutory notices. These include: 'Abatement Notices', 'Prohibition Notices', 'Emergency Prohibition Notices', and 'Improvement Notices'. Such notices are legally binding. Failure to comply with a statutory notice can be a criminal offence and may lead to prosecution and/or, where appropriate, the carrying out of work in default.

A statutory notice will clearly set out actions which must be taken and the timescale within which they must be taken. It is likely to require that any breach is rectified and/or prevented from recurring. It may also prohibit specified activities until the breach has been rectified and/or safeguards have been put in place to prevent future breaches. Where a statutory notice is issued, an explanation of the appeals process will be provided to the recipient.

Some notices issued in respect of premises may be affixed to the premises and/or registered as local land charges.

Works in Default

Where statutory provision exists, the Council will consider carrying out works in default to remedy non-compliance. In such cases, the Council's reasonable costs are recoverable from the offender.

Financial Penalties

The Council has powers to issue fixed penalty notices in respect of some breaches. A fixed penalty notice is not a criminal fine, and does not appear on an individual's criminal record. If a fixed penalty is not paid, the Council may commence criminal proceedings or take other enforcement action in respect of the breach.

If a fixed penalty is paid in respect of a breach the Council will not take any further enforcement action in respect of that breach. Payment of a

fixed penalty does not provide immunity from prosecution in respect of similar or recurrent breaches.

The Council is only able to issue fixed penalty notices where it has specific powers to do so. If fixed penalty notices are available, their issue is at Warwick District Council's discretion. In some circumstances, in particular where breaches are serious or recurrent, it may be that prosecution is more appropriate than the issue of a fixed penalty notice.

Injunctive Actions, Enforcement Orders etc.

In some circumstances the Council may seek a direction from the court (in the form of an order or an injunction) that a breach is rectified and/or prevented from recurring. The court may also direct that specified activities be suspended until the breach has been rectified and/or safeguards have been put in place to prevent future breaches.

Failure to comply with a court order constitutes contempt of court, a serious offence which may lead to imprisonment.

The Council is required to seek enforcement orders after issuing some enforcement notices, providing the court with an opportunity to confirm the restrictions imposed by the notice. Otherwise, the Council will usually only seek a court order if it has serious concerns about compliance with voluntary undertakings or a notice.

Simple Caution

The Council has the power to issue simple cautions (previously known as 'formal cautions') as an alternative to prosecution for some less serious offences, where a person admits an offence and consents to the simple caution. Where a simple caution is offered and declined, the Council is likely to consider prosecution.

A simple caution will appear on the offender's criminal record. It is likely to influence how the Council and others deal with any similar breaches in the future, and may be cited in court if the offender is subsequently prosecuted for a similar offence. If a simple caution is issued to an individual (rather than a corporation) it may have consequences if that individual seeks certain types of employment.

Simple cautions will be used in accordance with Home Office Circular 016/2008 and other relevant guidance.

Prosecution

The Council may prosecute in respect of serious or recurrent breaches, or where other enforcement actions, such as voluntary undertakings or statutory notices have failed to secure compliance. When deciding whether to prosecute the Council has regard to the provisions of [The Code for Crown Prosecutors](#) as issued by the Director of Public Prosecutions.

Prosecution will only be considered where the Council is satisfied that it has sufficient evidence to provide a realistic prospect of conviction against the defendant(s).

Before deciding that prosecution is appropriate, the Council will consider all relevant circumstances carefully and will have regard to the following public interest criteria:

- a) how serious is the offence committed?
- b) what are the circumstances of and the harm caused to the victim?
- c) is prosecution a proportionate response?

A successful prosecution will result in a criminal record. The court may impose a fine and in respect of particularly serious breaches a prison sentence. The court may order the forfeiture and disposal of non-compliant goods and/or the confiscation of any profits which have resulted from the breach. Prosecution may also lead, in some circumstances, to the disqualification of individuals from acting as company directors.

Refusal/Suspension/Revocation of Licences

The Council issues a number of licences and permits. The Council also has a role to play in ensuring that appropriate standards are met in relation to licences issued by other agencies. Most licences include conditions which require the licence holder to take steps to ensure that, for example, a business is properly run. Breach of these conditions may lead to a review of the licence which may result in its revocation or amendment.

When considering future licence applications, the Council may take previous breaches and enforcement action into account. A person convicted of a relevant offence may be judged to be no longer a 'fit and proper person' and their application refused.

6.2 Explanation of how decisions are made on enforcement action

The Council follows the principles set out in the Macrory Review, which expect policies to:

- a) aim to change the behaviour of the offender;
- b) aim to eliminate any financial gain or benefit from non-compliance;
- c) 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;
- d) be proportionate to the nature of the offence and the harm caused;
- e) aim to restore the harm caused by regulatory non-compliance, where appropriate; and,
- f) aim to deter future non-compliance.

The Council will consider risk at every stage of their decision-making progress, choosing the most appropriate type of enforcement action including taking note of the compliance record of those being regulated.

The Council recognises the statutory requirement under Primary Authority to notify proposed enforcement action.

The Council will keep under review the effectiveness of their chosen regulatory activities in delivering the desired outcomes and make any necessary adjustments accordingly.

6.3 Explanation of how decisions are communicated to those affected

Where a right of appeal exists to any regulatory action, the Council will include full details of the appeal process at the time of taking the action. Regulated persons will be advised of their rights to representation at the time of being invited to any formal interview or hearing.

7. Review of this policy

7.1 Details of when and how the policy will be reviewed

This policy will be reviewed following any new Government guidance or as a result of feedback received from local businesses or regulated persons as appropriate. It will also be refreshed every two years.

8. Comments and Complaints

8.1 Details of processes for complaints and appeals

An appeal against a regulatory decision can in the first instance be directed to the relevant Head of Service. If the action is subject to a formal appeal process (eg through the Magistrates' Court), the appellant should be aware of the statutory deadlines and may wish to proceed immediately with this approach.

Complaints about the conduct of local authority staff can be made through our website at www.warwickdc.gov.uk, by email to complaints@warwickdc.gov.uk or by post to Committee Services, Warwick District Council, Riverside House, Milverton Hill, Royal Leamington Spa CV32 5HZ.

8.2 Contact details for comments or complaints about the policy

Any comments or complaints about this policy should be sent to Richard Hall, Head of Health & Community Protection, Warwick District Council, Riverside House, Milverton Hill, Royal Leamington Spa CV32 5HZ.

