

# **North Somerset Council**

## **Regulatory Services and Streets and Open Spaces**

### **Enforcement Procedure**

#### **Introduction**

This enforcement procedure sets out how the council's Regulatory Services (Trading Standards, Food Safety, Health and Safety, Building Control, Environmental Protection and Licensing teams) and Streets and Open Spaces teams:

- deal with non-compliance with the legislation we have a duty to enforce which includes but is not limited to:  
the Health and Safety at Work Act 1974 and subordinate regulations,  
the enforcement of environmental and food law.
- provides a clear and accessible complaints and appeals process for use by businesses and individuals
- establishes clear principles for how we will interact with those we are regulating.

The enforcement procedure has been updated in response to the requirements of the Regulators Code which came into force on 6 April 2014 and will continue to do so in response to changes in legislation and the responses of those giving feedback to this procedure.

The purpose of this document is to explain the service's procedure to businesses, customers, consumers, individuals, our officers and others affected by our enforcement activities, when dealing with breaches of any legislation enforced by regulatory services and Streets and Open Spaces.

The service operates based on the principles of transparent, accountable, proportionate and consistent enforcement. Our aim is to improve regulatory outcomes without creating unnecessary burdens on business.

Regulation of businesses and individuals includes inspection, monitoring, sampling, testing and analysis, making test purchases, offering advice and information, issuing public warnings, use of fixed penalty notices, service of legal notices, issuing simple cautions and instituting legal proceedings.

We recognise that prevention is better than cure and that most individuals want to comply with the law. We will endeavour to help these individuals to meet their legal obligations without unnecessary expense.

When a person or business does break the law, we will consider all the surrounding circumstances before deciding what action is appropriate. A prosecution will only be brought if all the requisite tests are satisfied.

If you would like this document in a different format please telephone North Somerset Council: 01934 888 802 or write to us at Customer Services, Development and Environment, North Somerset Council, Town Hall, Walliscote Grove Rd, Weston-super-Mare BS23 1UJ.

## **Operational policies and procedures**

The design and review of any existing policies and procedures will be considered in light of this enforcement procedure and will consider how they might support the council's values of:

- promoting lifelong learning opportunities
- enhancing health and wellbeing
- protecting and improving the environment
- building safer and stronger communities
- increasing prosperity
- maintaining high performance.

Consideration will be given to:

- understanding and minimising negative economic impacts of regulatory activity
- minimising the costs of compliance for those regulated
- improving confidence in compliance by providing greater certainty
- encouraging and promoting compliance.

Where appropriate Regulatory Services and Streets and Open Spaces will seek the views of those regulated to contribute to the development of policies, procedures and service standards.

## **Officer competency**

Managers authorising regulatory functions will ensure that all officers carrying out regulatory duties will have had suitable and sufficient training to ensure that they have the competency to carry out these duties and their competencies where appropriate will be subject to annual review and analysis against the appropriate regulators development needs analysis.

To find out more download the Department for Business Innovation and Skills common approach to competency for regulators (pdf).

[http://www.local.gov.uk/documents/10180/5906000/Workshop+2+-+Officer+of+the+Future+-+Dennis+Ager+\(PDF,%2015+pages,%20986KB\).pdf/b7a94739-78a2-4912-8ca5-88e6345aada3](http://www.local.gov.uk/documents/10180/5906000/Workshop+2+-+Officer+of+the+Future+-+Dennis+Ager+(PDF,%2015+pages,%20986KB).pdf/b7a94739-78a2-4912-8ca5-88e6345aada3)

All officers will have due regard to the contents of the enforcement procedure when engaged in regulatory activity and will show that they have an understanding of the principles of good enforcement as recommended by the Better Regulation Delivery Office.

## **Our principles of good enforcement practice**

Regulatory Services and Streets and Open Spaces is committed to good enforcement practice as set out in The Legislative and Regulatory Reform Act 2006, and we aim to exercise our regulatory activities in a way which is:

- **proportionate**

We will ensure that enforcement action is proportionate to the risks involved, and that the sanctions applied are meaningful. As far as the law allows the council will take account of the individual circumstances of each case when considering what action is appropriate.

We will have due regard to the compliance record and will, where appropriate, have regard to evidence of relevant external verification. Deliberate or persistent non-compliance will be firmly dealt with.

- **accountable**

Our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures .

- **consistent and fair:**

We will treat everyone, including businesses and consumers, fairly. We aim to give positive feedback where it is due. We will ensure that our enforcement practices are consistent within the council and will endeavour to be consistent with other local authorities.

We will take note of national guidelines in our decision-making processes.

### **Equal opportunities**

All officers carrying out enforcement duties will make sure that all recipients of the service whether they are suspects, victims or witnesses receive fair and equitable treatment irrespective of their race, ethnicity, gender, disability, religious beliefs, political views or sexual orientation. Enforcement decisions will be fair, impartial, independent and objective and will not be influenced by issues such as ethnicity or national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender. Decisions will not be influenced by improper or undue pressure from any source.

- **Transparent and open**

We are committed to the open provision of information and advice in a format that is accessible and easily understood.

We will ensure that there is always a clear distinction between those actions necessary to comply with the law, and those which we recommend as best practice but which are not compulsory.

We will discuss general issues, specific compliance failures or problems with the business or individual being regulated to ensure that they understand the reasons for enforcement and to give opportunity for alternative compliance and to make sure that the service is acting in a proportionate and consistent manner.

If we receive information that may lead to enforcement action against a business or individual, we will notify the business or individual as soon as practicable of any intended enforcement action, unless this could impede an investigation or pose a safety risk to those concerned or the general public.

As part of our commitment to advice and education we will offer advice on non-compliance without directly triggering enforcement action where a willingness is shown to resolve the non-compliance.

- **Publicity**

Regulatory Services and Streets and Open Spaces are committed to transparent and consistent enforcement action. We may publicise aspects of our work from time to time in accordance with data protection principles. Publicity can be a valuable tool in raising awareness and educating both businesses and the public. Press releases are regularly issued by the council's communications team, particularly following court action.

We may also take part in radio interviews or television programmes to promote the work of the service. Press releases will also appear on our website: [www.n-somerset.gov.uk/news](http://www.n-somerset.gov.uk/news)

- **Targeted**

We will direct our regulatory effort effectively using the Intelligence operating model and/or relevant risk assessment schemes where appropriate.

We will focus our resources on the areas that need them most and ensure that persistent offenders are identified quickly.

In drawing up and developing our enforcement procedure we have had regard to:

**Regulators' Code 2014:** in certain circumstances decisions may be appropriate that deviate from the code and any such cases will be reasoned and documented.

**Human Rights Act 1998:** North Somerset Council is a public authority for the purposes of the Human Rights Act 1998 and we apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This procedure and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is given 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 to share enforcement information with other agencies, we will follow the provisions of the Data Protection Act 1988.

**Code for Crown Prosecutors:** this code is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases. It sets out two tests that must be satisfied, commonly referred to as the 'evidential test' and the 'public interest test':

*The evidential test:* there needs to be enough evidence that is reliable and can be used in court to provide a realistic prospect of conviction against each alleged offender.

*The public interest test:* we will consider each case on its merits as to which enforcement options are appropriate and if taking a case to court it is in the

public interest, bearing in mind other businesses as well as members of the public.

**Regulatory Enforcement and Sanctions Act 2008:** this act, as amended, established the primary authority scheme. Where we are considering taking enforcement action against any business or organisation that has a primary authority, we will have regard to guidance issued by the secretary of state in relation to the primary authority scheme.

**Home authority principle:** we support this principle, to promote good enforcement practice and reduce burdens on business. The objective is to create a partnership which will secure regulatory compliance. We will:

- provide businesses for whom we are the 'home authority' with appropriate guidance and advice
- maintain records of our contacts with 'home authority' businesses to reduce the amount of information they have to provide to us
- support efficient liaison between other local authorities and business, provide a system for the resolution of problems and disputes.

### **Our approach to dealing with non-compliance**

Where a breach of legislation has been identified we will usually, in the first instance, offer advice and support to the business or individual. However some occasions may give rise to immediate enforcement action and each case will be dealt with according to its individual circumstances; however we will always have regard to the following aims:

- to change the behaviour to ensure compliance
- to eliminate any financial gain or benefit from non-compliance
- to be responsive and consider what is the most appropriate sanction for those who are non-compliant and the regulatory issue concerned
- for the action to be proportionate to the nature of the non-compliance and the harm/potential harm caused
- to restore the harm caused by regulatory non compliance, where appropriate
- to deter future non-compliance.

Wherever reasonable and practical we will take account of the other demands on businesses so that we deal with any non-compliance at a convenient time and way. When dealing with a business or individual in a public situation we will ensure that our approach is both confidential and courteous. We will also, in seeking compliance, take account of the size and capacity of a business to help ensure compliance is appropriate and proportionate.

Officers will clearly explain the non-compliance and any advice being given, actions required or decisions taken, with reasons for these. There will be an opportunity for dialogue in relation to this. If legal action is likely to be considered as an option then a formal recorded interview may be needed as required by the Police and Criminal Evidence Act.

Investigations are overseen by the appropriate team manager. Occasionally complex or demanding investigations affecting two or more local authorities will be investigated and enforcement dealt with by, or with the assistance of external partner agencies.

We will refer matters to other local authorities or other enforcement bodies where we believe they are the most appropriate to deal with a matter. We will also accept referrals from others where we believe we are the most appropriate enforcement body to deal with something effectively and that enforcement comes under the appropriate service plan.

In the event of a possible conflict of interest, for example where a key enforcement decision involves parts of the council or its staff, we will involve another local authority in ensuring an impartial decision is made.

### **Processes for investigating alleged breaches**

Investigations are subject to controls as to how evidence is gathered and used and give a range of protections to citizens and potential defendants. Our investigations will be carried out in accordance with the following legislation and in accordance with any associated guidance or codes of practice, in so far as they relate to this service.

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

Our authorised officers will also comply with the requirements of the particular legislation under which they are acting, and associated guidance or codes of practice.

Where a business has established a 'primary authority' relationship with a local authority regulatory service our officers will communicate with that service in accordance with the guidance issued by the Better Regulation Delivery Office.

Under some legislation officers are given particular powers to carry out certain activities including, for example, test purchasing; sampling; inspection of premises, goods, equipment or documents. In certain circumstances where offences are suspected or evidence required legislation gives our officers powers to seize goods and documents. These powers vary depending on the legislation being used.

Where any items are seized, officers will supply a document giving written confirmation of anything taken at that time or if not practical as soon as possible afterwards.

Legislation enforced can include offences of obstructing officers involved in enforcement activities and this can include failure to give appropriate assistance in some circumstances.

Our officers do not have the power of arrest, however we work with the police and in some circumstances the police may use their powers of arrest.

Where a person, company or other legal entity is suspected of breaching legal requirements and formal action remains under consideration, wherever possible they will:

- be formally interviewed in accordance with the Police and Criminal Evidence Act 1984 usually but not exclusively audio recorded
- be given the opportunity to demonstrate if a statutory defence is available to them
- have the opportunity to give an explanation or make any additional comments about the alleged breach.

Before a decision to prosecute is taken, the alleged offence(s) will be fully investigated, evidence gathered and a confidential report compiled by the investigating officer that will include the evidence obtained. The investigation will be reviewed by the appropriate manager and signed off by the assistant director operations, development and environment.

Where prosecution is deemed necessary it will be managed by the appropriate manager in conjunction with the council's legal team. Other legal representation may be appointed or advice sought if required. Prosecution costs increase significantly where external legal representation is used and this service will always seek to recover these prosecution costs where possible.

### **How decisions are made on enforcement action**

We recognise that most individuals want to comply with the law and we will endeavour to help these businesses and individuals to meet their legal obligations without unnecessary expense. Where there is a breach of legislation, we will consider all the surrounding circumstances before deciding whether formal action is appropriate.

Decisions on enforcement action will take into account a range of factors in addition to the evidence. Prosecution will only be used if we assess that it is in the public interest to do so.

Formal action is more likely to be pursued where the offender has:

- acted fraudulently
- put the safety or health of consumers, others or animals at risk
- acted irresponsibly and negligently
- failed to heed advice or warning, or
- failed to take reasonable steps to avoid non-compliance.

We will take into account the views of any victim, injured party or relevant person to establish the nature and extent of any harm or loss, including potential harm and loss and its significance in making the decision to take formal action.

Enforcement decisions will be fair and objective and must not be influenced by ethnicity or national origin, gender, religious beliefs, political views or the sexual

orientation of the suspect, victim, witness or offender. Decisions will not be influenced by improper or undue pressure from any source.

### **Keeping alleged offenders and witnesses informed of the progress**

Alleged offenders or their legal representatives are encouraged to contact the investigating officer or a member of the regulatory services management team if they wish to know the progress on their investigation.

Any person interviewed under caution will be informed in writing of decisions on enforcement action and the matter should not be considered as concluded until confirmed in writing, or a court case has taken place.

Witnesses will, where possible, be kept informed of progress. However we may be restricted about the information we can legally divulge.

### **Enforcement action: our options**

There is a range of enforcement options available to the service through the legislation it enforces. These vary and one or more may be relevant to apply in each case. These are set out below.

### **Compliance advice, guidance and support**

This service uses compliance advice, guidance and support as a first response in the case of most breaches of legislation that are identified. Advice is provided, sometimes in the form of a warning letter or documented action plan, to assist individuals and businesses to rectify breaches as quickly and efficiently as possible, avoiding the need for further enforcement action. Any warning letter 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, any such warning letter or action plan cannot be cited in court like a previous conviction but may be presented in evidence.

We recognise that where a business has entered into a 'primary authority' or a 'home authority' arrangement with a particular regulatory service then that primary or home authority will provide compliance advice and support. We will take such advice into account when considering the most appropriate enforcement action. We may discuss any need for compliance advice and support with the primary or home authority.

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

### **Civil sanctions under the Regulatory Enforcement and Sanctions Act 2008**

Where the council has been issued an order allowing use of the following civil sanctions, they may be used as an alternative to criminal action to secure compliance:

- variable monetary penalty (VMP)  
The amount of the penalty to be determined by the council to ensure the penalty reflects the nature of the non compliance.
- compliance notice  
This is a requirement to take specified steps within a stated period to secure that an offence does not continue or happen again.

- restoration notice  
This is a requirement to take specified steps within a stated period to secure that the position is restored to what it would have been, so far as possible, if no offence had been committed.

### **Voluntary undertakings**

Under certain legislation voluntary undertakings may be possible. This service may accept undertakings that breaches will be rectified and/or recurrences prevented. Any failure to honour voluntary undertakings will be viewed seriously and enforcement action is likely to result.

### **Penalty charge notices(PCN)/fixed penalty notices(FPN)**

Penalty charge notices (PCN) and fixed penalty notices (FPN) are prescribed by certain legislation as a method of enforcement by which the offender pays an amount of money to the enforcer in recognition of the breach. Failure to pay the PCN/FPN will result in the offender being pursued in the courts for non-payment of the debt.

A PCN/FPN does not create a criminal record and we may choose to issue a PCN/FPN without first issuing a warning.

### **Penalty notice for disorder**

A penalty notice for disorder (PND) is the fixed penalty option for anti-social behaviour such as the sale of alcohol to a minor.

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### **Statutory (legal) notices**

For some breaches this service has powers to issue statutory notices to stop or prevent ongoing breaches. 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 would set out clearly what actions 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.

### **Seizure**

Some legislation permits our officers to seize goods and documents that may be required as evidence, or as works in default in order to secure compliance notices. When we seize goods, we will give an appropriate receipt to the person from whom they are taken, if not at the time, as soon as practicable afterwards.

On some occasions, we may ask the person to voluntarily surrender the goods.

## **Forfeiture**

Some legislation allows us to apply to the court to seek forfeiture of goods, either in conjunction with a prosecution, or separately.

## **Taking animals into possession**

Under the Animal Welfare Act 2006, if a veterinary surgeon certifies that 'protected animals' are suffering or are likely to suffer if their circumstances do not change, we will consider taking them into possession and applying for orders for re-imbursment of expenses incurred and subsequent disposal.

## **Injunctive actions, enforcement orders etc.**

In some circumstances this service 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 service 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, we will usually only seek a court order if we have serious concerns about compliance with legislation, voluntary undertakings or a notice.

## **Anti-social Behaviour, Crime and Policing Act 2014**

We will use powers from this Act to address anti-social behaviour through Criminal Behaviour Orders, Community Protection Notices and Public Spaces Protection Orders.

## **Simple caution**

The council has the power to issue 'simple cautions' (previously known as 'formal cautions') as an alternative to prosecution for less serious offences and where a person freely admits the offence. If a simple caution is offered and declined, a prosecution will be considered.

A simple caution will not appear on an offender's criminal record. It is likely, however, 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.

## **Prosecution**

Prosecution will be used for the more serious or recurrent breaches, or where other enforcement actions, such as voluntary undertakings or statutory notices, have failed to secure compliance.

If an offender is prosecuted and pleads guilty or is found guilty after a trial the court may impose a fine, a prison sentence for more serious matters or select

from a range of other sentencing options. Offenders will then have a criminal record. The court may order the forfeiture and disposal of goods or equipment 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.

If successful, this service will also apply to the court for an offender to pay for the costs of investigation and bringing the prosecution to court. This is usually granted by courts in full or part.

### **Refusal/suspension/revocation of licences**

This service issues licences to carry out certain activities. It 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 or similar applications this service may take previous breaches and enforcement action into account.

### **Proceeds of crime actions (POCA)**

The purpose of proceeds of crime action is to recover the financial benefit that the offender has obtained from his criminal conduct.

Applications may be made under the Proceeds of Crime Act for confiscation of assets in relevant cases. Proceedings are conducted according to the civil standard of proof. Applications are made after a conviction has been secured.

We will continually review our position regarding the use of enforcement options and additional sanctions under the Regulatory Enforcement and Sanctions Act 2008.

### **Review of this procedure**

This procedure will be reviewed should any changes in legislation or relevant codes of practice require it to be updated..

The current version of this procedure will be published on the council's website.

We welcome any comments on the procedure at any point and these will be reviewed by the regulatory services management team (contact details below). We will also consult with representative groups of business on the procedure and how it could be improved

### **Feedback, comments, compliments, complaints and appeals**

We will regularly invite, receive and take on board customer feedback through customer satisfaction surveys and comments.

Download details of our service standards and what you can expect from our officers (pdf) [http://www.n-somerset.gov.uk/Your\\_Council/The%20Council/Documents/Service%20standards/community%20and%20consumer%20services%20\(pdf\).pdf](http://www.n-somerset.gov.uk/Your_Council/The%20Council/Documents/Service%20standards/community%20and%20consumer%20services%20(pdf).pdf)

To make a comment, compliment or complaint about a service read our compliments, suggestions and complaints faqs.

[http://www.n-somerset.gov.uk/Your\\_Council/Communication\\_and\\_Information/Pages/compliments,suggestions-and-complaints-FAQ.aspx](http://www.n-somerset.gov.uk/Your_Council/Communication_and_Information/Pages/compliments,suggestions-and-complaints-FAQ.aspx)

If an alleged offender is being prosecuted or subject to formal legal action in court then the court process has its own channels for legally challenging the action or the outcome through a court appeal.

### **Our commitment to you**

We are committed to providing open, equal and timely access to our services.

If you are unhappy with the service you have received, or we have failed to live up to our promises, managers are always willing to discuss with you the cause of your dissatisfaction, and will try to find a solution.

If you are still not satisfied, and you feel you have been caused injustice, we will tell you how to complain to the Local Government Ombudsman.

As we are continually seeking to improve our standards, this procedure is subject to regular review.

### **Our contact details are:**

Development and Environment  
North Somerset Council  
Town Hall  
Walliscote Grove Rd  
Weston-super-Mare  
BS23 1UJ  
01934 888 802

This document is available in large print, Braille or audio formats on request. Help is also available for people who require council information in languages other than English.