

next steps they propose to take. This can range from specific advice with no further actions through to more formal enforcement action, for example the serving of statutory notices or the institution of legal proceedings. Where there is a right of appeal or other redress, officers will advise those affected persons or organisations of these at the time and in writing. They will also make it clear what are legal requirements and what are recommendations.

- **Consistent** - we aim to achieve consistency in our inspection and enforcement services, recognising that for all businesses, particularly larger national and international business organisations that we regulate, it is important to ensure there is a consistent approach and level playing field. This is not just across our own local authority boundary but nationally with other local authority enforcement services. Whilst there will sometimes be local nuances and emphasis in our approach to enforcement and inspection, due to variable factors such as the scale of the breach, the risk posed, the competence and attitude of the management, we will adopt effective measures to promote and achieve better consistency.

We will ensure that our officers keep apprised of and in touch with the Home Authority and Primary Authority Partnership (PAP) arrangements, where businesses who trade in our area have such an arrangement with another local authority and where inspection plans have been agreed between the PA and business, ensure when an inspection is required these are followed and data records updated accordingly.

Where businesses come to us requesting a Primary Authority Partnership, we will work with them to explore the development and implementation of a PAP, where this is both appropriate and practicable.

- **Proportionate** - we will put in place and adopt systems and operating procedures to ensure the compliance requirements and any necessary enforcement action is proportionate to the risks and impact posed and seriousness of the breach of the law.
- **Intelligence led** - we will adopt an intelligence led approach to our compliance interventions and enforcement actions, using systems, procedures and techniques that provide us with such intelligence. We will keep apprised of matters that are relevant to the sectors we regulate at a national, regional and local level and will closely work with our other internal regulatory services, other local authorities and enforcement agencies to share information and intelligence on important regulatory issues and enforcement matters.
- **Joined-up approach to enforcement** - we will build on our existing approach to joined-up enforcement working with colleagues in other departments, other local authorities and enforcement agencies across the county, region and where appropriate nationally. Sharing resources including staff for larger investigations and enforcement actions as part of our approach to sharing intelligence and undertaking joint training with other agencies where appropriate.

- **Risk based** - adapted to the risk posed by the non-compliant activities to provide robust, speedy and effective enforcement against those that commit the most serious regulatory offences and serial offenders who deliberately and wilfully flout the law, including those who seek to take commercial advantage from such offences.
- **Accountable** - we recognise the importance of the public services we provide and the impact they have on protecting the safety and health of the public, the quality of our local environment and the need for direct accountability for our actions or where we decide not to take action, to the public, stakeholders and to our council as the corporate body. We will ensure, where this does not compromise our legal responsibilities, that our enforcement actions will be placed in the public arena. This is more fully encompassed in the sections on our service standards and complaints procedures that follow.

3.10 Responsibilities, legal powers and duties of the council, including delegated responsibilities and powers of our officers - the council as a corporate body and through delegated powers to its enforcement officers has an important role in discharging a wide range of statutory responsibilities with the associated legal powers and duties including those covering public protection, environmental protection and development control.

The council's Constitution sets out the scheme of delegation of powers to elected Cabinet members and senior managers.

4. Interventions and enforcement action types

The council has a range of interventions and enforcement actions available that enable effective monitoring of activities subject to regulatory control and the necessary follow up actions to secure regulatory compliance.

There are varying levels of enforcement options and actions open to the council, which are determined in relation to the criteria shown at paragraph 4.6.

4.1 Planned inspections, surveillance and intervention programmes

These form an important and integral part of the council's monitoring regime to ensure we meet our statutory duties in regard to our environmental health and wider public protection functions and enforcement responsibilities.

Planned inspections will be based on the requirements set out by Government and its relevant departments and agencies, and we will have close regard to any relevant codes of practice, statutory guidance and advice issued by them. For example the Food Standards Agency's Food Law Code of Practice and the Health and Safety Executive's National Local Authority (LA) Enforcement Code.

When conducting enforcement visits, officers will make their identity known, carry and show their formal written authorisation issued to them, unless this was to compromise the investigation.

Surveillance may include, for example, surveying for potential breaches of statutory nuisance, checking compliance with town planning conditions attached to planning permissions and monitoring for air quality emissions.

4.2 Service requests/complaints

Service requests or complaints may be received from the public, including employers, residents, visitors, workers and consumers. The nature of the service request or complaint will determine the follow up actions necessary in terms of the priority, speed of those actions and resources deployed. They also provide a useful form of intelligence that can help to determine future planned inspections and intervention programmes.

4.3 Statutory and/or notifications and wider sources of intelligence

This may be where information is provided from one of our council services to another or from other local authorities including for example, neighbouring councils or Suffolk County Council Trading Standards Service. Other external agencies eg Public Health England, HSE, Food Standards Agency, the Director of Public Health, and unions may directly notify matters such as serious workplace accidents and incidents, food product safety alerts and recalls, and food poisoning incidents respectively. Follow up actions and response time will be assessed using the criteria set out in 4.6 below for the determination of enforcement actions.

Local businesses and/or their representative organisations can also provide information and intelligence that may be helpful when considering ongoing and future enforcement programmes and again the above criteria will be used for any proposed follow actions.

4.4 Primary Authority

The Primary Authority Principle (PAP) is statutorily based (Regulatory and Enforcement Sanctions Act 2008) and has as a key aim to secure regulatory compliance standards across a wide range of regulatory activities in a consistent and proportionate manner. Fundamental to PAPs are PAP partnerships between businesses who trade across more than one local authority boundary and the local authority regulator, normally (but not exclusively), where the businesses head office is based or primary production takes place.

There is also provision as part of the partnership agreement for the Primary Authority to produce an inspection plan that includes where enforcement authorities should target any inspection or planned intervention. As an enforcement authority we are required to have regard to any agreed inspection plans and focus our

inspection and subsequent actions towards those aspects specifically identified requiring attention in the agreed inspection plan.

Before any inspection takes place of a business premises or activity, the inspector will check to see if a PAP exists and an inspection plan is in place and as stated above will have close regard to the inspection plan. Where regulatory non-compliance occurs, the council will notify the Primary Authority and cases where formal enforcement action is considered eg the serving of a statutory notice to secure compliance, will require, unless it is considered that an imminent risk to safety or health exists, the permission to take such actions from the Primary Authority. Before any proposed prosecution for breach of regulations is embarked upon, the council must notify the Primary Authority, who will then advise whether they give authority for the prosecution to take place.

4.5 Enforcement of non-compliance activities

The levels of enforcement action open to the council:

- No action
- Informal action and advice
- Fixed Penalty Notices
- Penalty Charges
- Formal Notices
- Detention/seizure of food/goods/equipment
- Refusal, revocation or suspension of a licence or approval
- Simple caution
- Prosecution
- Statutory Orders.

4.6 Criteria for determining the specific enforcement actions for non-compliance will include:

- Seriousness in terms of impact or likely impact on public safety and health and local environment
- Council policies and priorities
- Risk to animal health and welfare
- Deliberate or repeated non-compliance
- Economic disadvantage to other businesses caused by the non-compliance
- Public confidence
- Relevant national/European criteria.

4.7 No Action

In some circumstances, contraventions of the law may not justify any action. Examples include where the cost of compliance to the offender outweighs the detrimental impact of the contravention, or the cost of the required enforcement action to the council outweighs the detrimental impact of the contravention on the

community. A decision of no action may also be taken where formal enforcement is inappropriate in the circumstances, such as where a trader has ceased to trade. Such decisions will take into account the public interest principle and in such cases we will advise the offender and any 'victim' of the reasons for taking no action.

4.8 Informal Action and Advice

For minor breaches we may only give verbal or written advice. We will clearly identify any contraventions and give advice on how to put them right. We will include a deadline by which this must be done. The time allowed will be reasonable and take into account the seriousness of the contravention and the implications of the non-compliance. For example, inspections of food businesses under the Food Hygiene Rating Scheme will include what will be required to meet food safety legal requirements and our officers will determine the necessary actions and time allowed to meet the legal requirements.

4.9 Fixed Penalty Notices

Certain offences are subject to fixed penalty notices (FPNs). A FPN can be offered as an alternative to going to Court. They are available for some low level offences and avoid a criminal record for the defendant. Where legislation permits an offence to be dealt with by way of an FPN, we may choose to administer an FPN on a first occasion without issuing a warning, for example, for environmental offences under the Environmental Protection Act 1990, the Anti-social Behaviour Act 2003 and a number of other pieces of legislation, as amended and extended by the Clean Neighbourhoods and Environment Act 2005. These include smoke free, litter, graffiti, certain noise nuisance and parking offences.

4.10 Penalty Charge Notices

Penalty Charge Notices (PCNs) 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. These include offences under Traffic Management laws and the enforcement of on-street car parking contraventions. Failure to pay the PCN will result in the offender being pursued in the County Court for non-payment of the debt. A PCN does not create a criminal record and we may choose to issue a PCN without first issuing a warning.

4.11 Formal Notice

Certain legislation allows notices to be served requiring a person or business to take specific actions, provide information or cease certain activities. Notices may require activities to cease immediately where the circumstances relating to health, safety, environmental damage or nuisance demand. In other circumstances, the time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of the non-compliance.

All Notices issued will include details of any applicable Appeals Procedures.

Certain types of Notice allow works to be carried out in default. This means that if a Notice is not complied with we have the power to carry out any necessary works to satisfy the requirements of the Notice ourselves. Where the law allows, we may then charge the person/business served with the Notice for all costs we have reasonably incurred in carrying out the work. The council will normally seek to recover all of its costs.

4.12 Seizure and detention

Some legislation enables authorised officers to seize or detain food, goods, equipment or documents, for example unsafe food, sound equipment that is being used to cause a statutory noise nuisance. When we seize goods we will give the person from whom the goods are taken an appropriate Goods Seized Notice.

Where the non-compliance under investigation amounts to anti-social behaviour such as persistent targeting of an individual or a group of individuals in a particular area then, where appropriate, an ASBO or CRASBO will be sought to stop the activity.

4.13 Refusal, Suspension and Revocation of Licence/Permits

Where there is a requirement for a business or person to be licensed by the local authority, the licence will be determined in accordance with council procedures including receipt of representations or objections to that application. Where representations or objections are received and in accordance with the relevant legislation or council procedure members of the Licensing and Health Committee, or Sub-Committee, as appropriate, may hear the case and decide to grant, grant with conditions, or refuse the licence application.

Under the Licensing Act 2003, where a Review of a Premises Licence is sought under Section 51 of the Act, the options available to members of the Licensing and Health Committee or a Sub-committee, as appropriate are:

- To modify the conditions of the Licence
- To exclude a licensable activity from the scope of the Licence
- To remove the Designated Premises Supervisor
- Suspend the Licence for a period not exceeding three months
- Revoke the Licence
- Issue a warning letter
- No action.

Under the Gambling Act 2005, where a Review of a Premises Licence is sought under Section 202 of the Act, the options available to members of the Licensing Committee are:

- Revocation of the Licence.
- Suspend the Licence for a specified period not exceeding three months.

- Exclude a mandatory condition attached to the Licence, remove or amend exclusion.
- Add, remove or amend a condition.

Under the Housing Act 2004 there is no provision for the council to receive objections relating to House in Multiple Occupation (HMO) applications. Where an HMO licence is refused or revoked, the applicant or licence holder has the right of appeal to a Residential Property Tribunal (RPT).

Under the Environmental Protection Act the council has powers to revoke, suspend and prosecute for non-compliance with Environment Permits (EPs). These powers can be used for incidences of serious pollution and none payment of fees.

4.14 Simple Caution

A simple caution is an admission of guilt, but is not a form of sentence, nor is it a criminal conviction.

For more information about a simple caution visit:

http://www.cps.gov.uk/legal/a_to_c/cautioning_and_diversion/

For a simple caution to be issued a number of criteria must be satisfied:

- Sufficient evidence must be available to prove the case.
- The offender must admit the offence.
- It must be in the public interest to use a simple caution.
- The offender must be 18 years or over.

Officers will not offer a caution where the offender has received one already for a similar offence within the last 2 years.

A record of the caution will be kept on file for 2 years. If the offender commits a further offence, the caution may influence our decision to take a prosecution. If during the time the caution is in force the offender pleads guilty to, or is found guilty of, committing another offence anywhere in England and Wales, the caution may be cited in court, and this may influence the severity of the sentence that the court imposes.

Details of all cautions issued are a matter of public record.

4.15 Prosecution

A prosecution will normally ensue where the individual or organisation meets one or more of the following criteria:

- Deliberately, recklessly, negligently or persistently breached legal obligations, which were likely to cause material loss or harm to others.
- Deliberately or persistently ignored written warnings or formal notices.
- Endangered, to a serious degree, the health, safety or wellbeing of people, animals or the environment.
- An attempt to make financial gain at the expense of others.
- Assaulted or obstructed an officer in the course of his/her duties.

Other Enforcement Actions and Options

4.16 Proceeds of Crime Applications

Applications may be made under the Proceeds of Crime Act for confiscation of assets in appropriate cases. Their purpose is to recover the financial benefit that the offender has obtained from his criminal conduct. Proceedings are conducted according to the civil standard of proof. The council will seek to recover proceeds of crime in appropriate circumstances.

4.17 Prohibition

This power will be used where there are valid grounds (eg there is an imminent risk of injury to health or a risk of serious personal injury) and where the situation cannot be allowed to continue because of the risks involved. This course of action is usually associated with food and health and safety enforcement, but there will be other occasions, for example prohibiting part of a dwelling under housing legislation.

4.18 Statutory Orders

A range of Statutory Orders are available under the Housing Act 2004. In addition to Prohibition Orders the council may make an Interim or Final Management Order on a licensed house in multiple occupation, which allows it to take over the running of a property. Powers to take over the management of empty premises are contained in the Empty Dwelling Management Orders. The council can take emergency remedial action to remove a Category 1 hazard where there is an imminent risk of serious harm to the health or safety of the occupiers. If such works are undertaken action will be taken to recover the costs incurred. Rights of Appeal exist in relation to these powers and compensation provisions also arise in some cases.

4.19 Compulsory Purchase Orders

The council may compulsorily purchase property under Section 17 of the Housing Act 1985. The use of such powers will be on a case by case basis. The consent of the Secretary of State is required and compensation provisions for the owner apply.

4.20 Determining whether a prosecution or simple caution is viable and appropriate

Two 'tests' will be applied to determine whether a prosecution or caution is viable and appropriate. The officers will follow guidance set by the Crown Prosecution Service when applying the tests.

For more information about the Code for Crown Prosecutors visit:

http://www.cps.gov.uk/publications/code_for_crown_prosecutors/index.html

A simple caution or prosecution will only be progressed when the case has passed both the evidential test and the public interest test. The principles outlined apply equally to the other types of formal enforcement action that are available.

4.21 The Evidential Test

We must be satisfied that there is sufficient evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. A realistic prospect of conviction is an objective test that means that a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a separate test from the one that the criminal courts themselves must apply.

4.22 The Public Interest Test

The public interest will be considered in each case where there is sufficient evidence to provide a realistic prospect of conviction. We will balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the suspect. Some factors may increase the propensity to prosecute but others may not.

The Division will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies including:

- Health & Safety Executive
- Food Standards Agency
- Environment Agency
- The Police
- Other local authorities.

4.23 Police and Criminal Evidence Act (PACE)

Our officers will have close regard to the requirements set out in the Police and Criminal Evidence Act and any further amendments and current and future codes relevant to our regulatory enforcement responsibilities. This includes investigation of

relevant offences, powers of entry in the course of discharging statutory duties, taking samples to help in gaining necessary evidence and interviewing those suspected of committing offences.

4.24 Regulation and Investigatory Powers Act (RIPA) 2000

The Act is important for our regulatory services officers and regulates the powers of public bodies to carry out surveillance and investigation, including the interception of communications, and we will ensure we use our powers in accordance with our RIPA policy.

4.25 Powers of Entry

The council through a wide range of legislation is provided with specific powers of entry, which is a right for a person (usually in the form of delegated authority from the council to named officers) to legally enter defined premises, such as businesses, vehicles or land for specific purposes.

Powers of entry include enabling our officers to undertake inspections and investigations for a wide range of regulatory responsibilities including food safety, health and safety, environmental protection and housing legislation, in addition to dealing with emergencies or searching for evidence during those investigations. Often, the power to enter is accompanied by what are known as 'associated powers', which set out what our officers are allowed to do once they have entered the premises. This might, for instance, include conducting a search, seizing relevant items or collecting samples.

In certain cases, for example under Housing Act legislation, where entry is required to a residential property, then a period of notice is usually required to be given to the owner or occupier of the property before entry can be gained.

4.26 Protection of Human Rights

The provisions of the European Convention on Human Rights such as Article 1 of the First Protocol, Article 8 and Article 14 are relevant when considering any enforcement action. There is a clear public interest in enforcing relevant public and environmental protection regulations, in a proportionate way. In deciding whether enforcement action is taken, the council should, where relevant, have regard to the potential impact on the health, welfare of those affected by the proposed action, and those who are affected by the breach of regulations.

In particular, due regard will be given to the right to a fair trial and right to respect for private and family life, home and correspondence.

4.27 Equalities, vulnerable groups and people in minority groups

The enforcement services covered by this compliance and enforcement policy will align with and meet the equality policies and objectives adopted by the council. We

will aim to effectively support and promote access to our enforcement services recognising the diversity of the communities we serve and ensure that residents and businesses are treated equally and fairly through the delivery of our services.

4.28 Enforcement in our own local authority premises and contractor services

Officers will carry out enforcement within our own local authority run premises in a manner consistent with any other business.

Any serious breaches of law that may be detected in such establishments will be brought to the attention of the Chief Executive without delay.

Contract caterers that operate within Local Authority establishments will be assessed in accordance with the Food Law Code of Practice and be inspected accordingly.

5. Working and Liaison with External Agencies and other Regulatory Bodies

Where there is a wider regulatory interest, enforcement activities covering Environment and Public Protection will be co-ordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement.

Where an enforcement matter affects a wider geographical area beyond the council's boundary, or involves enforcement by one or more other local authorities or organisations, where appropriate all relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activity coordinated with them.

Where a business operating in more than one local authority and has chosen to have a registered PAP under the Regulatory Reform Act 2006 (see Section 4.3 above), we will, where required, comply with the agreement provisions for enforcement and notify the relevant Primary Authority of the enforcement action we propose to take. We may under the Act also refer the matter to the relevant enforcement body if appropriate.

The council will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies including:

- Government Agencies for example the Health and Safety Executive and Food Standards Agency
- Police Forces
- Fire Authorities
- Statutory Undertakers
- Other Local Authorities

We will recognise businesses efforts to comply with regulatory requirements and standards and will use our resources effectively to explore alternative compliance and enforcement approaches to secure compliance.

Where there is a legal basis to do so, we will look to recover our costs and make reasonable charges for the time and effort spent on investigating and taking enforcement action.

6. Service Delivery standards, quality and performance monitoring

6.1 Skills, competencies and experience of our regulatory services officers

We will ensure our enforcement officers are equipped with the appropriate level of skills, competencies and experience commensurate with the role and responsibilities and the support necessary to undertake their job effectively and efficiently. Continuing Professional Development (CPD), qualifications, training and development to meet statutory codes of practice, HSE's Section 18 Standard.

Staff training and development will be maintained by using methods such as Regulator's Development Needs Analysis (RDNA) and Guide for Regulators Information Point (GRIP), CPD; development opportunities; appraisals, feedback, personal development plan; mentoring/shadowing, secondment; peer review and challenge (both receiving and supporting).

6.2 Improving performance

The council has developed the management of business performance. Quarterly Performance Reports were introduced and aligned to the priorities identified in the council's Business Plan¹.

6.3 Access to our services

The council's Access & Customer Care Strategy – Journey to Excellence 2015 - 2019, maps out how we will make services even easier to use by taking advantage of available technology and tailoring them to meet the needs of different people and groups. The Strategy has been agreed and follows the publication of a Business Plan which reflected on the importance of getting the customer experience right.

6.4 Service and quality standards

We will always strive to meet the highest standards in undertaking enforcement action. The following service standards will be applied:

- Officers will clearly identify themselves and carry the appropriate ID cards and any necessary authorisations.

¹ <https://www.eastsuffolk.gov.uk/yourcouncil/how-your-council-works/east-suffolk-business-plan/>

- Officers will be professional, courteous and helpful in their conduct during work on enforcement issues and will work with individuals, groups and businesses to promote compliance.
- Officers will provide assistance where appropriate and advice will be given to assist with compliance before formal action is instigated, except in those instances where the breach of legislation is sufficiently serious to warrant formal action or is punishable by the issuing of a fixed penalty notice.
- Fairness in appropriate cases - adequate opportunity will be given to rectify the non-compliance before formal proceedings are commenced.
- Matters relating to enforcement will be dealt with promptly.

6.5 Complaints, comments procedures

We will strive to satisfy those we serve, recognising that enforcement actions will not be welcomed by those who are the subject of those actions. By meeting the requirements set out in this policy we hope that this will ensure satisfactory service delivery. However, where individuals directly affected by our services consider the service standards have not been met, then they can seek redress through the council's complaints procedure.

6.6 Benchmarking

We work with organisations such as the Chartered Institute of Public Finance and Accountancy, the Food Standards Agency, the Health and Safety Executive and the Local Government Association to share data on our performance and facilitate benchmarking.

6.7 Monitoring, feedback, driving improvement

We pro-actively manage the council's performance and our residents and partners can judge whether our policies and reforms are having the effect they want. We let people know quarterly how we are performing against our priorities and commitments, together with other key data, through our website which already enables people to tell us what they think about our services and will develop to enable our communities and residents to engage with us even more.

6.8 Freedom of information

Requests for information may be made under the Environmental Information Regulations 2004 and the Freedom of Information Act 2000. The council publishes guidance on how to make requests and performance statistics on dealing with these requests.

6.9 Publicity

Where we consider it is in the public interest we will put into the public arena relevant compliance and enforcement activities, particularly if this is to act as a

deterrent to others who may be breaching or considering breaching important regulatory requirements.

6.10 Monitoring and Review of this policy

We will undertake an annual review of this Compliance and Enforcement Policy and report to the council on our activities, performance and regulatory outcome.

7. Key Reference Documents and Acknowledgements

- LBRO/BRDO enforcement template
- BIS/BRDO Regulator's Compliance Code
- BIS/BRDO Regulator's Code
- East Suffolk Business Plan

- City of London Corporation enforcement template
- South Staffordshire District Council's enforcement Policy
- Better Regulation Principles from Hampton Report 2005
- Bracknell Forest Council's Enforcement Policy – 2012.

UPDATE IN PROGRESS