

Teignbridge District Council General Enforcement Policy

DRAFT

Executive Approval:

Teignbridge District Council General Enforcement Policy

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1. Introduction

- 1.1 One of Teignbridge District Council's principal duties is to ensure that individuals, businesses and others are meeting their statutory obligations and complying with the law relating to a range of issues from the payment of council tax to the dropping of litter and producing safe food. To achieve this, officers from the council are authorised to take enforcement action.
- 1.2 A decision about enforcement action, and in particular the decision to prosecute, has serious implications for all involved. The council applies this policy to ensure that:-
- Decisions about enforcement action are fair, proportionate and consistent.
 - Officers apply current Government guidance and codes of practice.
 - Everyone understands the principles that are applied when enforcement action is considered.
- 1.3 The purpose of this general enforcement policy is to set out what those being regulated can expect from the council when enforcement activities are undertaken.

2. Approval and application of the Enforcement Policy

- 2.1 This policy was approved by -----
- 2.2 This policy applies to all law enforcement duties which the council undertakes, except those undertaken by the Revenues and Benefits service. Revenues related enforcement action is detailed within service specific Council tax Recovery guidelines and Non Domestic Rate Recovery Guidelines.
- 2.3 In addition, some service areas have specific enforcement policies. Service specific policies should be read in conjunction with this policy.
- 2.4 'Enforcement' includes any action taken by officers aimed at ensuring that individuals or businesses comply with the law. This is not limited to formal enforcement actions such as prosecution, formal cautions and the issuing of enforcement notices including fixed penalty notices; it also includes, for example, activities undertaken to check compliance with Acts of Parliament and regulations, and the provision of advice to facilitate compliance. Some activities undertaken to check compliance are fee earning e.g. building control inspection.
- 2.5 This policy helps to promote efficient and effective approaches to inspection and enforcement which improve regulatory outcomes without imposing unnecessary burdens. It has been produced with regard to the Regulators' Code (RC). Requirements of the Code are explained further at section 6.

3. How to obtain a copy of the Policy or make comments

- 3.1 This policy can be seen on the council's website at www.teignbridge.gov.uk and is available in other formats on request.
- 3.2 If you need any help in understanding this policy, or you would like to comment on the contents, please contact us by:
- Telephoning 01626 215067
 - E-mailing Foodandsafety@teignbridge.gov.uk
 - Writing to the Food, Health and Safety Manager

4. General principles

- 4.1 Each set of circumstances is unique and must be considered on its own merits. There are, however, general principles that apply to the way each case will be approached. The principles of good enforcement contained in the Enforcement Concordat produced by the Cabinet Office have been formally agreed and adopted by the council.
- 4.2 Authorised officers must be fair, independent and objective and must not let any personal views about issues such as ethnic or national origin, gender, religious beliefs, political views or the sexual orientation of the customer, business operator, complainant, suspect, victim, witness or offender influence their decisions. They must not be affected by improper or undue pressure from any source.
- 4.3 All authorised officers will have regard to the Policy and take action which is proportionate to the risk and to the seriousness of any breach of legislation where appropriate. In most circumstances officers have a range of actions available to facilitate compliance ranging from an educational and advisory approach to recommending legal proceedings. In certain circumstances legislation is prescriptive and this will limit the discretion of the authorised officer. In some circumstances persistent breaches will result in formal action being taken for what would normally be regarded as less serious contraventions.
- 4.4 Consideration will be given to the particular interests of customers including business owners, employees and the public. For example, where the hours of operation of a business do not coincide with normal office hours, we will endeavour to agree a mutually acceptable time or visit during the business's normal trading hours.

Similarly, where English is not spoken as a first language, and there is difficulty in communication, we will provide appropriately accessible information, or if necessary, where a formal action is proposed, a suitable translator/interpreter.

There may be occasions when a relative or friend of the individual may act as an interpreter. Officers will make sure that their statements and questions are clearly understood.

- 4.5 Advice and information will be available, and businesses, employees and the public will be encouraged to contact the council regarding relevant matters. The council retains the right to charge for advice. The Councils fees and charges can be found here: www.teignbridge.gov.uk/council-and-democracy/finance/approved-fees-and-charges/ .
- 4.6 All officers undertaking enforcement activities will be trained and authorised under the council's scheme of delegation. The scheme of delegation can be found here at www.teignbridge.gov.uk/constitution
- 4.7 All authorised officers will be made fully aware of the requirements of this policy and any departure will have to be justified to, and endorsed by, the relevant Director, Business Manager or Service Manager.
- 4.8 We are committed to the equality of opportunity in employment and the provision of services, and this policy will take into account all equality and diversity issues.

5. Enforcing the Law

- 5.1 We believe in firm but fair regulation, and its enforcement activities follow these essential principles:-

- **Transparency**

Transparency means helping individuals and businesses to understand what we expect of them and what they should expect from us.

- **Consistency**

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.

- **Targeting**

Targeting means making sure that, whilst all requests for service are responded to, regulatory effort is directed primarily towards those whose activities actually or potentially give rise to the most serious risks to public safety and the environment.

- **Proportionality**

Proportionality means relating enforcement action to the risks posed. Any action taken by officers will be proportionate to the seriousness of any breach. Persistent minor breaches may also be viewed as serious.

- **Accountability**

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

6. Regulator's Code

Specific Obligations of the Regulators Code on the Authority

6.1 We will work to the Regulators' Code when developing policies and operational procedures relating to the functions and activities within the code's scope. This applies to the regulatory functions listed under Part 3 of the Legislative Reform (Regulatory Functions) Order 2007. They are:

- Food Standards and Safety
- Environmental Protection
- Housing
- Animal Health and Welfare
- Licensing
- Public Health and Safety
- Anti-Social Behaviour
- Consumer and Business protection

6.2 In certain circumstances we may, however, conclude that a provision in the Code is either not relevant or is outweighed by another relevant consideration. We will ensure that any decision to depart from the Code is properly reasoned, based on material evidence and documented.

6.2.1 Carry out activities in a way that supports those they regulate to comply and grow.

We will

- avoid imposing unnecessary regulatory burdens. We will choose proportionate approaches based on relevant factors including, for example, business size and capacity.
- consider how to support or enable economic growth for compliant businesses when designing and reviewing policies, for example minimising the costs of compliance, improving confidence in compliance and encouraging and promoting compliance.

6.2.2 Provide simple and straightforward ways to engage with those they regulate and hear their views

We will

- engage with those we regulate, residents and others to offer views and contribute to the development of policies and service standards.

- clearly explain, where relevant, what the non-compliant item or activity is, the advice being given, actions required or decisions taken, and the reasons for these
- provide an opportunity for discussion about the advice or decision given. This does not apply where the authorised officer can demonstrate that immediate action is required to prevent or respond to a serious breach, or where providing such an opportunity would be likely to defeat the purpose of the proposed action
- provide an impartial and clearly explained route to appeal against a regulatory decision
- provide a clearly explained comments and complaints procedure.

6.2.3 **Base regulatory activities on risk**

We will

- take an evidence based approach to determining the priority risks and will allocate resources where they would be most effective in addressing those priority risks.
- recognise the compliance record/history of those they regulate when making a risk assessment
- Review the effectiveness of its chosen regulatory activities in delivering the desired outcomes.

6.2.4 **Share information about compliance and risk**

- Collectively follow the principle of ‘collect once, use many times’ when requesting information from those it regulates.
- Agree, where the law allows, secure methods to share information with other regulators about businesses to help target resources and activities.

6.2.5 **Ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply.**

We will

- Provide advice and guidance that is focussed on assisting those it regulates to understand and meet their responsibilities. Legal requirements will be distinguished from good practice.
- Publish guidance and information in a clear, accessible, concise format, using media appropriate to the target audience and written in plain language.

- Create an environment in which those it regulates have confidence in the advice received and feel able to seek advice without fear of triggering enforcement action.
- Provide the advice necessary to support compliance, and will ensure that its advice can be relied on.
- Work collaboratively, where appropriate, to help those regulated by more than one regulator. We will consider advice provided by other regulators and, where there is disagreement, this will be negotiated to reach agreement.

6.2.6 Ensure their approach to the regulatory activities is transparent.

- We will publish a set of clear service standards
- Any information published to meet the requirements of the Code will be easily accessible, and included on the council's website.
- We will ensure that authorised officers act in accordance with published service standards, including the council's enforcement policy.
- We will publish details of performance against service standards, including feedback from customer satisfaction surveys and data relating to complaints and appeals.

7. Notifying Alleged Offenders

7.1 If we receive information that may lead to enforcement action against an individual or business, we will notify that individual or business as soon as is practicable of any intended enforcement action, except in the circumstances described in 7.3 below.

7.2 During the progression of enforcement investigations/actions, individuals, business proprietors and witnesses will be kept informed of the progress of the matter under investigation. Confidentiality will be maintained and personal information about individuals will only be released during legal proceedings when required and/or in accordance with the Data Protection Act/General Data Protection Regulations.

7.3 In certain circumstances, we may choose not to keep individuals, business proprietors or witnesses informed of progress if this could impede enforcement action.

8. Covert Surveillance

8.1 Covert surveillance will only be undertaken in line with the requirements of the Regulation of Investigatory Powers Act 2000 ('RIPA') and Home Office's Codes of Practice on Covert Surveillance, and the Office of Surveillance Commissioners Procedures and Guidance. Surveillance shall only be

authorised for the purpose of preventing or detecting a criminal offence which is punishable by a maximum term of at least six months imprisonment. (Subject to certain exceptions). The decision to carry out directed surveillance will only be taken after consultation with the council's 'Senior Responsible Officer for RIPA.

- 8.2 The use of the internet and, in particular social networking sites, can provide useful information for council staff carrying out investigations. These investigations may relate to the various enforcement roles within the council – for example Fraud, Licensing or Environmental Health, Housing, debt collection. The use of the internet and social networking sites may potentially fall within the definition of covert surveillance. This is likely to result in the breaching of an individual's Article 8 rights under the Human Rights Act (the right to privacy).

Council staff using social networking in any form for gathering information about an individual must refer to the council's surveillance policy.

9. Deciding what level of enforcement action is appropriate

- 9.1 A decision on enforcement action will be taken on its own merits and after full consideration of the implications and consequences of the action. While fair and effective enforcement is essential to the maintenance of law and order, a breach of criminal law may not necessarily result in enforcement action.
- 9.2 A number of factors are considered when determining what action to take. These factors are detailed in Appendix 1 - Factors we consider when taking enforcement action.

Levels of enforcement action:

We will take steps to help individuals and organisations comply with their legal obligations without unnecessary expense, while at the same time taking firm enforcement action where appropriate against those who flout the law or act irresponsibly. Officers have a range of actions at their disposal in seeking to secure compliance with the law and to ensure a proportionate response to apparent offences. The range of enforcement actions available differs between regulatory functions.

The level of the action taken varies from no action through to proceedings in court. Examples of the main types of action that can be considered are shown below:-

- No action
- Verbal warning and/or advice
- Written warning and/or advice
- Anti-social behaviour ASB escalation letters one and two
- Acceptable Behaviour Contracts
- Community Protection Notices
- Public Space Protection Orders

- Fixed Penalty Notices
- Closure Orders
- Formal Notice
- Criminal Behaviour Order and Anti-social behaviour Civil Injunctions – In partnership with the Police
- Seizure
- Court injunction
- Refusal, revocation or suspension of a licence
- Simple caution
- Prosecution

No action

In some circumstances, contraventions of the law may not warrant any action. This can be

- where the cost of compliance to the offender outweighs the detrimental impact of the contravention on the community
- 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, or the offender is elderly, frail or a juvenile, and formal action would seriously damage their wellbeing. A decision to take no action must take into account the health, safety, and environmental damage or nuisance implications of the contravention.

Verbal warning and/or advice

For minor breaches of the law, verbal advice will generally be given to the offender. We will clearly identify the contraventions of the law and give advice on how to put them right, and include a deadline by which this must be done. Sometimes we will advise offenders about ‘good practice’, but we will clearly distinguish between what they must do to comply with the law and what is advice only.

Failure to comply could result in more severe enforcement action being taken. The time allowed must be reasonable, but must also take into account the health, safety and nuisance implications of the contravention.

Written warning and/or advice

For some contraventions we will send the offender a firm but polite letter clearly identifying the contraventions, giving advice on how to put them right and including a deadline by which this must be done. Failure to comply could result in a notice being served or more severe enforcement action being taken. The time allowed must be reasonable, but must also take into account the health, safety and nuisance implications of the contravention.

Anti-social behaviour (ASB) escalation letters one and two.

Letter one is sent with standard partnership text after the first incident of ASB being reported. Letter two is used for any further reports of ASB within six months of the first letter or if the incident is of such a serious nature that it requires a jump to stage two. The letter contains information that a multi-agency meeting will take place if the behaviour continues.

Acceptable Behaviour Contracts (ABC)

For repeat or serious cases of anti-social behaviour, it may in some circumstances be appropriate for an individual to be asked to sign an acceptable behaviour contract. The ABC is a written agreement between the person who has committed repeated incidents of anti-social behaviour and the council and/or the police. The contract is entered into voluntarily and clearly details the actions in which the perpetrator is no longer allowed to engage. In addition, a personalised support package can be offered to help the individual keep to the conditions of their contract.

Community Protection Notices (CPN)

A CPN is to stop a person aged 16 years or over, business or organisation, from committing ASB which spoils the community's quality of life. It can impose requirements to start or stop doing specific things, and to take reasonable steps to achieve specified results. It can specify different periods of time for compliance, and should be closely tied with the appropriate conduct.

CPNs are issued by 'authorised persons'. They include police, a PCSO, the relevant local authority and social landlords. A prior written warning will be sent. If the behaviour continues then the CPN can be issued. There are no time limits with regards to CPNs but it is suggested a time period is included when the notice is drawn up. CPNs can be appealed at the Magistrates Court.

Public Space Protection Orders (PSPO)

PSPOs are intended to deal with a particular nuisance or problem in a particular area that is detrimental to the community's quality of life, by imposing conditions on the use of that area which apply to everyone. They are designed to ensure the law abiding majority can use and enjoy public spaces free from ASB. They can only be issued by local authorities and are valid for a maximum three year period (they can be extended by another three years before expiry).

Fixed Penalty Notices (FPN)

For some contraventions, Fixed Penalty Notices are issued once an offence has been committed, requiring the offender to discharge their liability to prosecution by payment of a fixed sum. Failure to pay the fixed sum will result in a prosecution being instigated unless there are exceptional circumstances.

Closure Orders

The closure power is a fast and flexible power that can be used to protect victims and communities by quickly closing premises that are causing nuisance and disorder.

The power comes in two stages: the closure notice and the closure order which are linked.

- The notice lasts for 24 hours (48 hours if issued by a Police Superintendent or Chief Executive of a council) and is issued by a Police Inspector (or above), or a council if they are satisfied that the use of particular premises has resulted, or is likely soon to result, in nuisance to members of the public; or that there has been, or is likely soon to be, disorder near the premises associated with the use of those premises and that the notice is necessary to prevent the nuisance or disorder from continuing, recurring or occurring.
- A closure order is issued by a court. They last up to three months and can be extended by the magistrates for a further three months (six months max). Breach of a closure order is a criminal offence.

Formal Notice

Notices are served on offenders to cease activities contravening the relevant legislation, to give offenders reasonable time to rectify a contravention or to require further information. Notices may require such activities to cease immediately where the circumstances relating to health, safety, environmental damage or nuisance demand. In other circumstances, the time allowed to comply must be reasonable, but must also take into account the health, safety, environmental damage or nuisance implications of the contravention.

All notices issued will include details of any applicable appeals procedures.

Certain types of notice allow the council to 'carry out work in default'. This means that if a notice is breached, we may carry out any necessary works to satisfy the requirements of the notice. Where the law allows, we may charge any costs incurred to the person/business served with the notice..

Failure to comply with a notice is an offence which will result in a prosecution unless there are exceptional circumstances.

Criminal Behaviour Order (CBO) and anti-social behaviour Civil Injunctions

A CBO is available on conviction for any criminal offence in any criminal court. It can be made on conviction or conditional discharge. A CBO is intended to tackle the most serious and persistent offenders. A court must be satisfied that the offender has engaged in behaviour that caused or was likely to cause harassment, alarm or distress to any person, and that making the order will help prevent the offender from engaging in such behaviour. CBOs on adults last from a minimum of two years up to an indefinite period. For under 18s the order must be between one and three years.

Civil Injunctions are civil powers to deal with anti-social individuals aged over 10 years. A number of agencies can apply for them and relate to both housing and non-housing related behaviour.

Seizure

Certain legislation enables authorised officers to seize goods, vehicles or equipment. For example, food that is unsafe, or sound equipment that is being used to cause a statutory noise nuisance. When the council seizes goods an appropriate receipt will be given. Where the law requires, we will produce seized goods before the Magistrates Court.

Court Injunction

In certain circumstances, for example where offenders are repeatedly found guilty of similar offences, or where an injunction is a more appropriate course of enforcement action than any other, injunctions may be used as an enforcement measure to deal with repeat offenders or dangerous circumstances.

Refusal, revocation or suspension of a licence, registration or authorisation

Certain types of premises/businesses require a licence, registration or authorisation to operate legally. In order to warrant refusal/revocation one of the following criteria must apply to the licensed individual or organisation:-

- No longer a fit and proper person
- Deliberately 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
- Obstructed an officer undertaking their duties
- Deliberate or persistent breach of licence conditions
- Any other reasonable cause.

Simple caution

This procedure is used as an alternative to prosecution to deal quickly and simply with less serious offenders to divert them from the criminal courts. For a simple caution to be issued a number of criteria must be satisfied:-

- Sufficient evidence must be available to prove the offence, and
- the offender must admit the offence, and
- the offender must understand the significance of the caution and give informed consent to being cautioned.

There is no legal obligation for any person to accept a simple caution.

A record of the simple caution will be kept on the appropriate local and/or national database, and will be kept on file for 3 years. If the offender commits a further offence, the simple caution may influence any decision to prosecute the further offence. 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.

If the offender refuses to accept a caution then legal proceedings will normally be instigated.

The caution will also be recorded in the council's Register of Convictions.

Prosecution

A prosecution will normally ensue where one of the following criteria are met by the individual or organisation:-

- Deliberately or persistently breaching legal obligations, which were likely to cause material loss or harm to others
- Significant or serious breach of legal obligations
- Deliberately or persistently ignoring written warnings
- Failure to comply with an enforcement notice, including the non-payment of a FPN
- Endangering, to a serious degree, the health, safety or wellbeing of people, animals or the environment
- Assaulting or obstructing an officer in the course of their duties.

10. Determining whether a prosecution or simple caution is viable and appropriate

10.1 The council applies two 'tests' to determine whether a prosecution or simple caution is viable and appropriate and follows guidance set by the Crown Prosecution Service when applying the tests:

- **The Evidential Test**

There must be sufficient evidence to provide a 'realistic prospect of conviction' against any defendant charged.

- **The Public Interest Test**

There may be public interest factors which are in favour of, or are against, prosecution. These have to be considered before a decision regarding the final enforcement action (caution or prosecution) is taken.

For more information about the 'Code for Crown Prosecutors' visit:

www.cps.gov.uk/publication/code-crown-prosecutors

10.2 If the case meets the evidential test, the authorised manager will recommend appropriate formal action to the Solicitor to the Council who may then authorise a formal caution or prosecution.

- 10.3 Simple caution or prosecution proceedings will only be progressed when the case has passed both tests. Paragraphs 10.4 to 10.8 detail how this policy applies to considering a prosecution.
- 10.4 The Solicitor to the Council must be satisfied that there is enough 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. A jury or magistrates' court should only convict if it is sure of a defendant's guilt.

- 10.5 When deciding whether there is enough evidence to prosecute, the Solicitor to the Council must consider whether the evidence can be used and is reliable.
- 10.6 The public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. A prosecution will usually take place unless there are public interest factors against prosecution, which clearly outweigh those in favour. Although there may be public interest factors against prosecution in a particular case, often the prosecution should go ahead and those factors should be put to the court for consideration when sentencing the defendant.
- 10.7 The Investigating Officer(s), along with senior managers and the council solicitors, must 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 need to prosecute but others may suggest that another course of action would be better.

The following lists include some common public interest factors, both for and against prosecution. These are not exhaustive and the factors that apply will depend on the facts in each case.

The more serious the offence, the more likely it is that a prosecution will be in the public interest. A prosecution is likely to be appropriate if:-

- A conviction is likely to result in a significant sentence
- The evidence shows that the defendant was a ringleader or an organiser of the offence
- There is evidence that the offence was premeditated
- The victim of the offence was vulnerable, has been put in considerable fear, or suffered personal, damage or disturbance
- The victim of the offence has suffered harassment, alarm or distress
- The offence was motivated by any form of discrimination against the victim's ethnic or national origin, gender, religious beliefs, political views or

sexual orientation, or the suspect demonstrated hostility towards the victim based on any of those characteristics

- There is a marked difference between the actual or mental ages of the defendant and the victim, or if there is any element of corruption
- The defendant's previous convictions or cautions are relevant to the present offence
- There are grounds for believing that the offence is likely to be continued or repeated, for example, by a history of recurring conduct
- A prosecution would have a significant positive impact on maintaining community confidence or safety.

A prosecution is less likely to be needed if:-

- The court is likely to impose a nominal penalty
- The defendant has already been made the subject of a sentence and any further conviction would be unlikely to result in the imposition of an additional sentence or order, unless the nature of the particular offence requires a prosecution
- The offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence)
- The loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement
- 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.
- A prosecution is likely to impact adversely on the victim's physical or mental health, always bearing in mind the seriousness of the offence
- The defendant is elderly, frail or a juvenile or is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is a real possibility that it may be repeated
- The defendant has already discharged their liability through payment of a fixed penalty notice.

10.8 Deciding on the public interest is not simply a matter of adding up the number of factors on each side. The investigating officer(s), along with senior managers and the council's solicitors must decide how important each factor is in the circumstances of each case, and make an overall assessment.

11. Who decides what enforcement action is taken

11.1 For less serious infringements of the law, decisions about the most appropriate course of action are usually determined by the investigating officer(s). Decisions are based upon professional judgement, legal guidelines, statutory codes of practice and priorities set by the council and/or central government.

- 11.2 For more serious offences, where the nature of the offence points towards prosecution or simple caution, decisions about enforcement will be recommended by the relevant appropriately authorised manager and the Solicitor to the Council.

Details of '**who decides what enforcement action is taken**' is shown in **Appendix 2**.

12. Reconsidering a prosecution decision

Normally if the defendant is told that there will not be a prosecution, or that the prosecution has stopped, the case will not start again. There may, however, be an occasion when the decision not to prosecute, offer a simple caution or stop a prosecution, may be overturned.

The reasons for this include:-

- Rare cases where a new look at the original decision shows that it was wrong
- Cases which were stopped so that further evidence could be collected
- Cases which were stopped due to lack of evidence but more significant evidence is discovered later
- Cases involving a death in which a review following an inquest concludes that a prosecution should be brought.

13. Liaison with other regulatory bodies and enforcement agencies

- 13.1 Where appropriate, enforcement activities carried out by the council will be co-ordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement.
- 13.2 In some cases, for example where there has been a work related death, we will inform and liaise directly with Devon and Cornwall Police. Joint investigations may also be undertaken with the Police and or the Health and Safety Executive. These provisions along with other matters relating to workplace health, safety and welfare are detailed within our Health and Safety Enforcement Policy available at www.teignbridge.gov.uk/environmentalhealthenforcement
- 13.3 Where an enforcement matter affects a wide geographical area beyond the district boundaries, or involves enforcement by one or more other local authorities or organisations; all relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activity co-ordinated.
- 13.4 The council shares intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies, including:

- Government Agencies, such as the Food Standards Agency, Health and Safety Executive, Environment Agency, Civil Aviation Authority and Public Health England.
 - Police Forces, such as Devon & Cornwall Police
 - Fire Authorities, such as Devon & Somerset Fire and Rescue Service
 - Statutory undertakers, such as South West Water
 - Other Local Authorities
- 13.5 Where wider regulatory matters can be more effectively addressed through joint working we will, where appropriate, enter into formal 'Enforcement Liaison Protocols'.
- 13.6 Where enforcement action is being considered against a business, reference will be made to the Primary Authority Scheme.
- 13.7 Where action is being considered in cases of persistent or serious anti-social behaviour a collective decision may be made by the South Devon and Dartmoor Community Safety Partnership

14. Offences

- 14.1 It is the duty of enforcement officers to make sure that enforcement action is taken against the right person. In doing so they must act in the interests of justice and not solely for the purpose of obtaining a conviction.
- 14.2 The investigating officer(s), along with the council's Solicitors should select the most appropriate legislation and ensure that cases are dealt with in the appropriate court which so that the prosecution
- Reflects the seriousness of the offence.
 - Gives the court adequate sentencing powers.
 - Enables the case to be presented in a clear and logical way.
- 14.3 Juveniles (persons aged 17 or under) can be served with warning letters, a Fixed Penalty Notice or issued with an Acceptable Behaviour Contract, Criminal Behaviour Order and Anti-social behaviour Civil Injunctions – in partnership with the Police. Prosecutions can be brought in the Youth Court.

15. Considering the views of those affected by offences

- 15.1 We undertake enforcement on behalf of all public and not just in the interests of any particular individual or group. When considering the public interest test however (see section 10.1), the consequences for those affected by the offence, and any views they may have expressed, will, where appropriate, be taken into account.
- 15.2 Those people affected by the offence will be told about any decision that makes a significant difference to the case.

16. Actions by the courts

- 16.1 In cases of sufficient gravity, for example where serious injury or ill health has resulted, consideration will be given to requesting that the Magistrates Court refers the case to the Crown Court where the legislation allows.
- 16.2 The existing law gives the courts considerable scope to punish offenders and to deter others. Unlimited fines and, in some cases, imprisonment may be imposed by the higher courts. We will continue to raise the awareness of the courts to the gravity of offences and will encourage them to make full use of their powers.
- 16.3 We will always seek to recover the costs of investigations which result in court proceedings.

17. Protection of human rights

- 17.1 This policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998.
- 17.2 Authorised officers operate to a range of internal guidance documents that support the principles of primary human rights legislation, for example guidance relating to the Data Protection Act/General Data Protection Regulation (GDPR) and Regulation of Investigatory Powers Act 2000. These guidance documents will be monitored by scheduled internal quality audits.

18. Publicity

- 18.1 Where appropriate, publicity will be actively sought for any enforcement action taken which could draw attention to the need to comply with the law or deter anyone else from non-compliance.
- 18.2 Information about enforcement actions will be made available on request subject to the restrictions placed on the authority by the Data Protection Act/General Data Protection and the Freedom of information Act 2000.

19. Complaints, appeals and accountability

- 19.1 The council's complaints procedure is available at www.teignbridge.gov.uk/customerfeedback
- 19.2 The process for appeals against enforcement action taken will be referenced in all cases.

20. Review of the Enforcement Policy

- 20.1 The implementation of this policy will be monitored on an ongoing basis.
- 20.2 We will fully review the policy every five years to ensure it is relevant.

Appendix 1- Council General Enforcement Policy

Factors we consider when taking enforcement action?

Officer(s) carry out **investigations/inspections**. This can be done in response to a complaint or request for assistance, as part of routine planned inspections of business premises or survey work.



Investigating Officer discovers evidence and is satisfied that a **criminal offence** may have been committed or is about to be committed. This is called *Prima facie* evidence.



- Investigating officer considers a range of factors including:**
- Previous history - whether any similar situation has been found before.
 - Seriousness of the alleged offence(s), including:
 - Risks to the public or the environment
 - Any intent or recklessness of the person(s) committing the offence
 - Any obstruction of the Investigating officer
 - Whether the alleged offence(s) are considered a special area of priority by central government and/or Teignbridge District Council
 - Is there enough evidence to provide a realistic prospect of conviction
 - Would any further action be in the public interest



For **LESS SERIOUS** infringements of the law and/or where there is no previous history of offences/non-compliance with legislation the following options are considered:

- **Informal action** – verbal or written advice/warning
- **Statutory Notice** – service of a legal notice that will require certain specified action to be taken by the recipient

In all cases we will advise the alleged offender what he/she needs to do in order to comply with the law.

For **MORE SERIOUS** offences the following options will also be considered:

- **Seizure of goods or equipment** – in certain cases, goods or equipment may be seized to protect the public and/or employees, for example unsafe food or sound equipment being used to cause a nuisance.
- **Simple Caution** – a Simple Caution is an alternative to prosecution and can only be issued if strict criteria are met. The Home Office sets these criteria. A Caution stays on public record for three years.
 - If a Simple Caution is offered to an offender, but he/she refuses to accept it then we may prosecute instead.
- **Prosecution** – legal proceedings are taken against the offender that results in the offender being summonsed to appear in Court. Any decision to prosecute is based upon guidelines set by the Crown Prosecution Service

In all cases the alleged offender will be informed of the matters under investigation and invited to attend a formal interview in accordance with the Police and Criminal Evidence Act 1984.

**See – Who decides what action is taken
[Appendix 2]**

Who decides what enforcement action is taken?

