

FOREST HEATH DISTRICT COUNCIL
POLICY DOCUMENT

**CORPORATE ENFORCEMENT
POLICY**



Forest Heath
District Council

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Forest Heath District Council Enforcement Policy

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1. Introduction

- 1.1. In 1998 the Cabinet Office published the “Enforcement Concordat” to help promote consistency in the UK regulatory enforcement regime. The Enforcement Concordat set out principles of good enforcement policy and although a voluntary code of practice it was adopted by 96% of all central and local government bodies with enforcement functions.
- 1.2 Following the recommendations of the Hampton Report, the Enforcement Concordat was supplemented by a statutory code of practice, the “Regulators Compliance Code”, to give the Hampton Principles a statutory basis.
- 1.3 This is provided by the Legislative and Regulatory Reform Act 2006, which places a duty on regulators to have regard to five Principles of Good Regulation. The code of practice was issued on 17th December 2007 and came into force on 6th April 2008. These principles of better regulation were further cemented by the Regulatory Sanctions Act 2008 which came into force on the 1st April 2009.
- 1.4 The overall aim of the policy is to deliver improved regulatory outcomes, whilst reducing unnecessary burdens on compliant persons and businesses. We will do this primarily through targeted enforcement on a risk basis and be accountable for our enforcement actions.
- 1.6. A key aim of this policy is to provide transparent, consistent, reasonable and proportionate enforcement by all council services and to actively seek to help persons and businesses comply with the law to protect our community.
- 1.7. This policy applies to all council services involved with enforcement, herein referred to as regulatory services.
- 1.8 This policy will be used by the regulatory services to enable a consistent approach to enforcement, and its implementation and effectiveness will be monitored and evaluated through the corporate regulatory group.

It will also assist the council to work more effectively with its regulatory partners, including:

Other Councils’
Police
Trading Standards
Health & Safety Executive
Fire Service
Environment Agency

- 1.9 This enforcement policy accords with the principles of the Human Rights Act 1998, the European Convention on Human Rights, the

Freedom of Information Act 2000 and Regulation of Investigatory Powers Act 2000.

All enforcement action will be undertaken without regard to race, faith or religious belief, age disability, gender or sexual orientation of the people against whom the action is being taken. Enforcement action taken against an individual or organisation will be consistent with the council's commitment to equality and diversity, and its impact has been assessed using the corporate equality impact process.

- 1.10 This policy is in line with the vision, values and priorities set out in our corporate plan.

2. Enforcement Activity

- 2.1 This policy applies to the enforcement activities undertaken by the regulatory services of this council. For the purpose of this document 'enforcement' includes action carried out in the exercise of, or against the background of, statutory enforcement powers. This is not limited to formal enforcement action such as prosecution or issue of notices and would include the inspection of premises for the purpose of checking compliance with legal requirements and the provision of advice to aid compliance.
- 2.2 This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulator's Compliance Code.
- 2.3 In certain instances the council may conclude that a provision in the Code is either not relevant or is outweighed by another provision. The regulator will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

Formal Action

- 2.4 Whilst recognising that most people want to comply with the law the regulator also recognises that some elements of business and individuals will operate outside the law (both intentionally and unintentionally).
- 2.5 The council will consider taking formal action in serious breaches which may include any of the following circumstances:
- a) Where there is a risk to public health, safety or damage to the environment.
 - b) Fraudulent, deceptive or misleading trading practices that affect or are likely to affect the economic interests of businesses or consumers.
 - c) For matters where there has been recklessness or negligence.

- d) A deliberate or persistent failure to comply with advice, warnings or legal requirements.
- e) Any act likely to affect animal health or welfare, disease prevention measures, or the integrity of the food chain.
- f) Activities, which adversely affect vulnerable groups, e.g. young people or the elderly.
- g) Obstruction or assault (including verbal assault) of an officer in the execution of their duties.

2.6 For the purposes of this document 'formal action' means:

Prosecution, Simple Caution, Issue of Penalty Notices, Improvement & Abatement Notices, Seizure, Suspension, Forfeiture, Enterprise Act Proceedings, Written or Verbal Instruction, Advice or Warning, or any other criminal or civil proceedings, applied either separately or in any appropriate combination.

3. Principles of Good Regulation

3.1 The five principles of good regulation are:

- 1) Transparency;
- 2) Accountability;
- 3) Proportionality;
- 4) Consistency; and
- 5) Targeted only at cases for which action is needed.

Transparency

3.2 We will communicate in plain English or in the appropriate language or method. As part of our ongoing commitment to equality and diversity we will use the following:-

- Where businesses or the public do not have English as a first language we will offer translations of correspondence at the time of the inspection.
- We also use INTRAN, the Interpretation and Translation Agency for the Public Services of Suffolk covering telephone interpreting, face to face interpreting, sign language and lip speaking service.
- We can provide large print documents and Braille.
- We can provide taped information.
- Documents can be emailed.

3.3 In most circumstances we will ensure that people affected by formal action are informed of what is planned, and allow for discussion and

time to respond before the action is taken. We will also give them a named officer's contact details.

- 3.4 We will make a clear distinction between legal requirements and recommended works.

Accountability

- 3.5 The council will actively work with businesses and the public to advise and to assist with compliance and complaints.
- 3.6 Out of hours contact for services will be provided for complaints or requests of an immediate high risk public health impact such as food poisoning outbreaks; serious pollution incidents; serious accidents; animal disease outbreaks and dangerous buildings.
- 3.7 Carrying out evening visits and inspections when businesses are open during these times.
- 3.8 Our staff will show their identification (and authority if requested) at the outset of every visit and explain the reason for the visit, unless the nature of the investigation requires otherwise.
- 3.9 Contact points and telephone numbers will be provided for business and public use.
- 3.10 The whole range of enforcement activities will be dealt with as promptly and efficiently as possible in order to minimise time delays.
- 3.11 Each regulatory service has a complaint procedure for use by businesses, the public, employees and consumer groups. This is available on request by telephone and from reception desks.
- 3.12 We ask for feedback to gather and act upon information about the service we provide.
- 3.13 To help keep people and businesses up to date we will include information to highlight new legal requirements with letters sent after an inspection or visit; newsletters, information on the internet and direct mailing.

Proportionality

- 3.14 Any action required will be proportionate to the seriousness of the breach and the risk to health, safety or the environment. The benefit to our residents, and the wider local community, of any significant regulatory action will always be part of our decision making process.

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

Consistency

- 3.16 Similar issues, such as contraventions to legal provisions, will be dealt with in the same way by the respective regulatory services of the council and all services will act under and comply with this policy. Regulatory services will also have their own specific policies where the overarching policy does not adequately cover the regulatory work of that service.
- 3.17 There are arrangements in place to ensure discussion and comparison of enforcement decisions by the regulatory services.
- 3.18 All regulatory staff undertaking enforcement duties will be suitably trained, qualified and authorised so as to ensure that they are fully competent to undertake their enforcement duties.

Targeted

- 3.19 All enforcement action will be primarily targeted towards those situations that give rise to the most serious risks, and where the risks are least well controlled. Other factors also determine priorities for enforcement activity, including Government targets and priorities, new legislation, national campaigns and public concerns.

4. Intelligence and risk led Enforcement

- 4.1 Through capturing a coherent and robust intelligence picture and implementing effective strategies and tasking, co-ordination for dealing with particular problems can be developed. This methodology enables the identification of new, current and emerging problems, and gives the capability to provide strategic and tactical direction as to how they can best be tackled. Activities are target based on general or specific risks identified via trends, history, specific incidents, inspections and visits. Enforcement Agencies exchange information as part of their partnership work to assist in this aim.

5. Enforcement Action

- 5.1 The council will have regard to the guidance documents which exist, for example the Code for Crown Prosecutors produced by the Crown Prosecution Service (CPS), as well as other guidance relevant to the individual regulatory service.

- 5.2 During an investigation a person who it is believed may have committed an offence may be formally interviewed. These interviews will be conducted under the rules of the Police and Criminal Evidence Act 1984.
- 5.3 Cases involving more serious offences will be thoroughly reviewed before a decision is made on the appropriate enforcement action and sanction.

6. Legal Sanction

Simple Cautions

- 6.1 A simple caution in certain cases may be offered as an alternative to a prosecution. The purpose of a simple caution is to deal quickly with less serious offences, to divert less serious offences away from the Courts, and to reduce the chances of repeat offences.
- 6.2 The council will comply with the provisions of the Home Office Circular 30/2005. The following conditions must be fulfilled before a caution is administered:
1. There must be evidence of the offender's guilt sufficient to give a realistic prospect of conviction;
 2. The offender must admit the offence; and
 3. The offender must understand the significance of the caution and agree to being cautioned.
 4. If a person/Company declines the offer of a formal caution, the regulator will normally pursue the prosecution action.

Prosecution

- 6.3 The guidance that the council follows requires three main tests to be considered in relation to instigating a prosecution:
- The Evidential Sufficiency Test to ensure there is a reasonable prospect of success – i.e. Is there admissible, substantial and reliable evidence that an offence has been committed? i.e. Can it be used in court? Is there enough evidence? Is the evidence sound and factual? (Which may include an expert opinion?).
 - Has the Police and Criminal Evidence Act 1984 been complied with to ensure fair and open gathering of the evidence?
 - The Public Interest Test – i.e. Is it in the public interest to prosecute?

- 6.4 The guidance gives a number of factors that may lead to a decision not to prosecute, including: -
- a) The court is likely to impose a nominal penalty;
 - b) The offence was committed as a result of a genuine mistake or misunderstanding;
 - c) If the loss or harm caused can be described as minor and was the result of a single incident;
 - d) There has been a long delay between the offence taking place and the date of the trial, unless:
 - The offence is serious;
 - The delay has been caused in part by the defendant;
 - The offence has only recently come to light; or
 - The complexity of the offence has meant that there has been a long investigation;
 - e) A prosecution is likely to have a bad effect on the victim's physical or mental health;
 - f) The defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health;
 - g) The defendant has put right any loss or harm; or
 - h) Details may be made public that could harm sources of information, international relations or national security.
- 6.5 The council will also consider whether or not a prosecution is appropriate by consideration of the factors contained in paragraph 6.2 of this policy.
- 6.6 When considering formal enforcement action, the council will, where appropriate, discuss the circumstances with those suspected of a breach and take these into account when deciding the best approach.
- 6.7 Each regulatory service of the council will have an internal procedure for the authorisation of any investigations that may result in prosecution. All such cases will be regularly reviewed.
- 6.8 If formal action is taken, the council is likely to seek to recover the costs of the investigation. The Court determines the level of fine imposed and costs awarded.

Forfeiture

- 6.9 Where an accused has not agreed to voluntarily surrender any infringing goods then, on successful conclusion of legal proceedings, forfeiture may be applied for. This does not preclude the council taking forfeiture proceedings in their own right in appropriate circumstances.

Proceeds of Crime

- 6.10 Where appropriate, working in partnership as necessary, the council will seek to recover the assets of convicted offenders under the Proceeds of Crime Act 2002.

Directors

- 6.11 On the conviction of a Director connected with the management of a company the prosecutor will, in appropriate cases, draw to the Court's attention their powers to make a Disqualification Order under the Company Directors Disqualification Act 1986.

Civil Claims

- 6.12 Any enforcement action is completely separate and distinct from civil claims made by individuals for compensation or other remedy. Enforcement is not undertaken in all circumstances where civil claims may be pursued, nor is it undertaken to assist such claims.
- 6.13 The council may upon request provide solicitors acting for individuals pursuing a civil claim, a factual report, which details the investigation and involvement in the case. There may be a charge for this report.

7. Working with external agencies and enforcement bodies

- 7.1 If a business has a Primary Authority (also if appropriate a Lead or Home Authority scheme or informal Lead or Home Authority scheme), the council will contact the Primary Authority before enforcement action is taken, unless immediate action is required because of imminent danger to health, safety or the environment.
- 7.2 The council will liaise with the other partner regulators to ensure that any proceedings instituted are for the most appropriate offence.
- 7.3 The council recognises its legal duty under section 17 of the Crime & Disorder Act 1998 and will work together with our partners in the interests of public safety.
- 7.4 The council will consider all of the powers available to us and our partners, and use these to gain compliance with relevant legislation. For example, the use of anti-social behaviour orders and contracts will

be explored with the Police to deal with problems impacting significantly on the wider community.

8. Publicity

- 8.1 Regulatory authorities have a responsibility to protect the public from detrimental trading and environmental practices. The council undertakes a range of activities to achieve this. These include actions that are taken after the detection of an offence, as well as measures to prevent and deter their commission.
- 8.2 One such measure is the publication of convictions and information concerning significant detrimental trading behaviour. The publicity generated by prosecutions and other enforcement action acts as a deterrent to others. It also reassures the general public that the council takes a serious view of such detrimental behaviour.
- 8.3 The council will therefore consider publishing the name and address of each person convicted of or subject to other enforcement action, together with details of the issues involved. In reaching a decision as to whether to publish such information, the council will consider the following factors:-
- The specific details of the offence committed or detrimental activity.
 - The public interest in disclosing personal information e.g. the deterrent effect of the publication.
 - Whether the publication would be proportionate.
 - The personal circumstances of the offender.

This list is not exhaustive and other factors may be relevant in the circumstances of an individual case.

The corporate communications team will always be consulted prior to the council publicising any enforcement information of this nature.

9. Contacting the Council:

Forest Heath District Council
College Heath Road
Mildenhall
Suffolk IP28 7EY

Tel: 01638 719000
Fax: 01638 716493

Email: info@forest-heath.gov.uk

Further copies of this policy, plus supporting information and service leaflets, are available from the above address or from our website:
www.forest-heath.gov.uk