



# **Environmental Health & Public Protection Service**

## **Enforcement Policy**

**Edition 1.0**

**2023**

# Cannock Chase District Council

## Environmental Health & Public Protection Service Enforcement Policy

2023

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## Edition History

<b>Edition</b>	<b>Amendments</b>	<b>Date</b>	<b>Officer</b>
1.0	New policy	March 2023	David Prosser-Davies

## 1.0 Introduction

- 1.1 Local authority regulatory services, including our Environmental Health & Public Protection (EHPP) Service play a key role in supporting local economic prosperity and contributing to community health and wellbeing. In order to deliver the Council's corporate priorities we must ensure these services are well-run, legally compliant businesses are supported and that residents, consumers, workers, animals and the environment are protected from harm. We want a Cannock Chase that local residents are proud to call home.
- 1.2 This enforcement policy provides guidance to all stakeholders\* (members, officers, proprietors, licence holders, employers, employees, statutory and voluntary agencies, partner agencies and members of the general public) on the range of options that are available to achieve compliance with legislation enforced by Cannock Chase District Council EHPP Service.

\* The term 'stakeholder' is used in this document to refer to all persons or organisations who may be affected by, or have an interest in, this policy.

- 1.3 The policy covers all areas of the EHPP Service's work where enforcement of legislation may be involved, including:-
- Licensing (taxi / private hire, alcohol, street trading, scrap metal, gambling, animal activity etc.);
  - Private sector housing (regulation of private rented properties, including houses in multiple occupation, registered provider housing and mobile home/caravan sites);
  - Food hygiene in shops, restaurants, pubs, schools, and care homes;
  - Environmental protection (dog fouling, littering, fly tipping, land, air and noise pollution etc.);
  - Public health (filthy properties, accumulations of rubbish, pest infestations etc.);
  - Health and safety at work in a wide range of commercial workplaces;
  - Animal welfare;
  - Smoke-free laws.
- 1.4 The primary objective is to achieve regulatory compliance and we will seek to do this mainly through advice and education, though we will take formal enforcement action where this is necessary. There are a wide range of tools available, and this policy aims to ensure that a sanction that is appropriate and proportionate to the offence or contravention will be chosen.
- 1.5 This policy explains the objectives and methods for achieving compliance and the criteria considered when deciding what is the most appropriate response to a breach of legislation.

- 1.6 All decisions will have regard to current statutory guidance and codes of practice, particularly the [Regulators' Code](#) the [Code for Crown Prosecutors](#) and human rights legislation.
- 1.7 Stakeholders will be notified of this policy through the Council's website.

## **2.0 Legal Status of the Enforcement Policy**

- 2.1 Cannock Chase District Council Cabinet approved this policy on [new date] and authorised amendments to be made by relevant Heads of Service (or equivalent) officers of Cannock Chase District Council.
- 2.2 This policy is intended to provide guidance for all stakeholders as identified in paragraph 1.2 above and does not provide a 'one size fits all' approach across the range of all our services. It does not affect or fetter the discretion of the Council, or its officers, to take legal proceedings, or any other course of action, where this is considered to be in the public interest.

## **3.0 Scope and Meaning of 'Enforcement'**

- 3.1 This Policy applies to all legislation enforced by the EHPP Service.
- 3.2 'Enforcement' includes all actions taken by officers aimed at ensuring legal compliance. This is not limited to formal enforcement action such as prosecution but includes spoken and written requests to comply with legislation.
- 3.3 In certain circumstances we will seek to raise awareness and increase compliance levels by publicising the work of the service, unlawful trade practices or criminal activity. Where appropriate the results of specific enforcement outcomes may also be published including Court cases.

## **4.0 How to obtain a copy of the Policy or make Comments or Complaints**

- 4.1 This policy is available on the Council's website at <https://www.cannockchasedc.gov.uk/residents/environmental-health/environmental-health-enforcement-policy>

If you would like a paper copy of the policy and/or you would like to comment on the policy, or if you have a complaint about the way in which the policy has been applied, please contact us at the following address:

Environmental Health & Public Protection Service,  
Cannock Chase Council,  
Civic Centre,  
Beecroft Road,  
Cannock,  
Staffordshire  
WS11 1BG.

Tel: 01543 462621

E-mail: [environmentalhealth@cannockchasedc.gov.uk](mailto:environmentalhealth@cannockchasedc.gov.uk)

## 5.0 General Principles

- 5.1 Our role involves actively working with individuals and businesses to advise on, and assist with, compliance. We will always use education and encouragement to achieve compliance where it is possible, and appropriate, to do so.
- 5.2 Where we do consider that formal action is necessary each case will be considered on its own merits. However, there are general principles that apply to the way each case must be approached. These are set out in this policy, and where applicable the [HSE Enforcement Policy](#) and in the [Regulators' Code](#).
- 5.3 Enforcement decisions will be fair, proportionate, transparent, independent, and objective and will not be influenced by factors such as ethnicity, nationality, gender, disability, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender.
- 5.4 Where the subject of the enforcement action is either a juvenile, or a person with special needs, a learning disability, or is otherwise vulnerable, contact will be made with, and advice sought from, appropriate agencies as necessary. For a first offence, an alternative sanction will usually be offered to juveniles.
- 5.5 Cannock Chase District Council is a public authority for the purposes of the Human Rights Act 1998. We will, therefore, apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
- 5.6 This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens.
- 5.7 We will have regard to the [Regulators' Code](#) and in particular we will:
- Ensure our enforcement is fair, transparent, consistent, proportionate and accountable
  - Carry out our regulatory activities in a way that supports those we regulate to comply and grow;
  - Provide simple and straightforward ways to engage with those we regulate;
  - Use our resources effectively, based on risk;
  - Share information with other regulators is an effective use of resources through a risk-based methodology
  - improves protection for the community and businesses
- 5.8 We will ensure that any decision to depart from the Regulators' Code, or this policy, will be properly reasoned, based on material evidence and documented.

## 6.0 Notifying Alleged Offenders

- 6.1 If we receive information that may lead to enforcement action against a business or individual, we will notify that business or individual as soon as is practicable of any intended enforcement action, unless this could impede an investigation or pose a safety risk to those concerned or the general public (for example the need for immediate action to close a food business, or prevent the use of a dangerous process/piece of machinery).
- 6.2 – In some cases, the Council may only notify offenders once the enforcement action has been considered by Legal Services and information laid at Court.
- 6.3 Confidentiality will be maintained and personal information about individuals will only be released to a court or other agency when required and/or in accordance with the Data Protection Act 2018.

## 7.0 Deciding what Level of Enforcement Action is Appropriate

A number of factors are considered when determining what enforcement action to take:

### 7.1 Levels of enforcement action:

7.1.1 There are a large number of potential enforcement options. The option chosen varies from no action through to proceedings in court.

Examples of the main types of action that may be considered

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- No action;
- Informal action and advice (for example a written warning);
- Fixed penalty notice;
- Formal notices/orders;
- Forfeiture proceedings;
- Seizure of property;
- Compulsory closure;
- Rent repayment order applications
- Banning & Management order applications;
- Taking animals into the Council's possession;
- Rogue landlord database entry applications;
- Injunctive actions;
- Refusal/suspension/revocation of a licence;
- Simple caution;
- Prosecution;
- Civil penalty & penalty charge notices;
- Management & Compulsory Purchase Orders
- Proceeds of crime applications.

**Note:** Availability of the above options is determined by the legislation applicable and the particular circumstances of each case; not all options will be available on all occasions.

7.1.2 In assessing what enforcement action is necessary and proportionate, consideration will be given to:

- The seriousness of compliance failure;
- Past performance, compliance history and current practice;
- The risks being controlled;
- The level of culpability;
- The level of harm caused;
- Legal, official or professional guidance;
- Local priorities of the Council.

7.1.3 Where the law has been contravened, enforcement actions / options will normally be commenced at a low level and escalated until compliance is reached. Exceptions would be where there is a serious risk to public safety or the environment or the offences have been committed deliberately, repeatedly or negligently and/or involve deception.

7.1.4 The Council recognises that the EHPP Service also investigates and takes enforcement action in relation to offences that are not traditional regulatory offences, for example fly-tipping of waste, harassment of tenants or the neglect of pet animals. Due to the level of culpability, it is expected that in some of these cases the starting point will be prosecution.

## 7.2 No Action

7.2.1 In certain 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, 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 may (*but not always*) be the case where a trader has ceased to trade. In such cases we will advise the offender of the reasons for taking no action.

## 7.3 Informal Action and Advice

7.3.1 For minor breaches of the law we may give verbal or written advice. We will clearly identify any contraventions of the law and give advice on how to put them right, including 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.

Sometimes we will give recommendations or advice on 'good practice', but we will clearly distinguish between what must be done to comply with the law and what is advice only.

7.3.3 Failure to comply could result in an escalation of enforcement action.

## 7.4 Fixed Penalty Notices

7.4.1 Certain offences may be dealt with by Fixed Penalty Notices (FPN) where permitted in legislation. FPNs are recognised as a low-level enforcement tool and avoid a criminal record for the offender. Where legislation permits an offence to be dealt with by way of a FPN, for example littering, dog fouling, or smoking in a smoke free place, the starting point will normally be a FPN. Second and subsequent offences are unlikely to be dealt with by FPN and will normally result in prosecution.

## 7.5 Formal Notice

7.5.1 Certain legislation allows notices to be served requiring offenders to take specific actions or cease certain activities. Notices may require activities to cease immediately where the circumstances 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.

7.5.2 In some cases, a charge will be made where a notice is served.

7.5.2 Where required, notices issued will include details of any applicable appeals procedures.

7.5.3 Some notices allow works to be carried out in default. This means that if a notice is not complied with [a breach of the notice] the Council may carry out any necessary works. Where the law allows, we may then recover our costs from the person/business served with the notice, through the Courts if necessary.

## 7.6 Seizure

7.6.1 Some legislation enables officers to seize property, including goods, equipment, and documents, for example unsafe food, dangerous equipment, equipment that is being used to cause a nuisance or vehicles used to commit waste offences. ~~Where required, when property is seized, a receipt is given to, or left for, the person from whom the property is taken.~~

## 7.7 Injunctive Actions

7.7.1 In certain circumstances, for example, where offenders are repeatedly found guilty of similar offences, or where it is considered that injunctive action is the most appropriate course of enforcement, then injunctive actions through the courts may be used to deal with repeat offenders or dangerous circumstances.

## 7.8 Refusal, Suspension and Revocation of Licences

### 7.8.1 Hackney Carriage and Private Hire Drivers' Licences

The grounds for refusing to issue, renew, or for suspending or revoking a licence, are based on whether the driver has: -

- been convicted of an offence involving dishonesty, indecency or violence;
- been convicted of an offence under the Local Government (Miscellaneous Provisions) Act 1976;
- failed to comply with a requirement of the Local Government (Miscellaneous Provisions) Act 1976, or
- any other reasonable cause.

*In line with the Council's Hackney Carriage and Private Hire Driver, Vehicle and Operator Licensing Policy, where a hackney carriage/private hire drivers' licence is refused, revoked or suspended, the driver's details will be recorded on the National Register of Refusals and Revocations (NR3), which is hosted by the National Anti-Fraud Network (NAFN).*

7.8.2 Under the Licensing Act 2003 and Gambling Act 2005, where a review of a premises licence is sought, the options available to the the Licensing Committee are: - To modify the conditions of 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. in accordance with the Council's Licensing Act 2003 [Statement of Licensing Policy.](#)

7.8.3 Licences issued under the Housing Act 2004 or other housing related legislation will be dealt with in accordance with the Housing Standards Enforcement Policy 2023, which forms an appendix to this Policy.

7.8.3 Under the Gambling Act 2005, where a review of a premises licence is sought, the options available to the Committee are:-

- Revocation of the licence;
- Suspend the licence for a specified period not exceeding three months;
- Exclude a condition attached to the licence, or remove or amend an exclusion;
- Add, remove or amend a condition;
- Issue a warning letter;

- No action.

## 7.9 Simple Caution

7.9.1 A Simple Caution is a means by which the Council deals quickly and simply with less serious offences, both reducing burdens on the court system and reducing the chance of repeat offences. A simple caution is an admission of guilt, but is not a form of sentence, nor is it a criminal conviction, though a record may be made of the caution.

7.9.2 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.

Ministry of Justice Guidance on simple cautions is accessible by visiting:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/708595/cautions-guidance-2015.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/708595/cautions-guidance-2015.pdf)

7.9.3 We will also take into account the following when making our decision: -

- The offender should not have received a simple caution for a similar offence within the last 3 years.

7.9.4 The final decision on whether or not to issue a simple caution will be made by the Head of Service , or other suitably authorised officer, after receiving appropriate legal advice.

7.9.5 A record of the caution will be kept on file for three years. If the offender commits a further offence, the caution may influence a 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.

## 7.10 Prosecution

7.10.1 The Council will consider all relevant circumstances, , having regard to the public interest criteria, which may include:

- the gravity of an alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the suspect;
- there has been a reckless disregard of regulatory requirements;
- there have been repeated breaches giving rise to significant risk, or persistent and significant poor compliance;

- the level of culpability of the suspect and the level of harm caused by the offence;
- there has been a failure to honour voluntary undertakings or comply with statutory notices;
- there has been a repetition of a breach that was subject to a simple caution;
- false information has been supplied wilfully, or there has been an intent to deceive, in relation to a matter which gives rise to significant risk;
- officers have been intentionally obstructed in the lawful execution of their duties.

This is not an exhaustive list. Where we consider that formal enforcement action is necessary each case will be considered on its own merits.

7.11 Certain Housing related offences may be dealt with via Civil Penalty Notices, **Management and Rent Repayment Orders**, Banning Orders and Rogue Landlord Database entries. These are discussed further in the Private Sector Housing Enforcement Policy 2023.

## **8.0 Determining whether a Prosecution or Simple Caution is Appropriate and Proportionate**

- 8.1 We apply the 'Full Code Test' to determine whether a prosecution or caution is appropriate and proportionate. This Test, described in the [Code for Crown Prosecutors](#) (2018), consists of two stages: (i) the evidential stage; followed by (ii) the public interest stage.
- 8.2 A caution or prosecution proceedings will only be progressed when the case has passed both the evidential test and the public interest test.
- 8.3 Prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. They must consider what the defence case may be, and how it is likely to affect the prospects of conviction. A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be.
- 8.4 In every case where there is sufficient evidence to justify a prosecution, prosecutors must go on to consider whether a prosecution is required in the public interest. A prosecution will usually take place unless the prosecutor is satisfied that there are public interest factors tending against prosecution which outweigh those tending in favour. In some cases, the prosecutor may be satisfied that the public interest can be properly served by offering the offender the opportunity to have the matter dealt with by an out-of-court disposal rather than bringing a prosecution.

## **9.0 Who decides what Enforcement Action is Taken**

- 9.1 Decisions about the most appropriate enforcement action to be taken are based upon professional judgment, legal guidelines, statutory codes of practice and priorities set by the Council and/or central government.
- 9.2 In the majority of cases, the lead case officer will recommend the most appropriate enforcement action for consideration and approval by the relevant authorised officer.
- 9.3 Final decisions (excluding items mentioned in 9.4) about the instigation of legal proceedings will involve consultation between and / or approval from:
- Investigating officers(s);
  - Officer in charge of the case;
  - Head of Service
  - Service Manager;
  - Council Solicitors.
- 9.4 Any decision to prosecute will be documented and signed off by at least two officers.
- 9.5 Where enforcement decisions relate to licensing matters, these will be taken under delegated authority by officers or by a Licensing Committee.

## **10.0 Liaison with other Regulatory Bodies and Enforcement Agencies**

- 10.1 Where appropriate, enforcement activities within the EHPP Service will be coordinated with those of other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement.
- 10.2 Where an enforcement matter affects a wide geographical area beyond the Council's boundaries or involves enforcement by one or more other local authorities or organisations all relevant parties will, where appropriate, be informed of the matter as soon as practicable and all enforcement activity coordinated with them.
- 10.3 The EHPP Service will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies, including:
- Government agencies (for example, HSE, Environment Agency, Border Agency, HMRC, DWP);
  - Police forces;
  - Fire and rescue authorities;
  - Statutory undertakers;
  - Other local authorities and public health agencies;

10.4 Convictions secured by the Council for recordable offences will be entered onto the Police National Computer (PNC) either automatically or via form NPA03. A recordable offence is one that is imprisonable and includes a wide range of offences that are dealt with by the EHPP Service. Details of such convictions are therefore shared with police forces across the UK and other organisations that have access to the PNC, and will be disclosed on Disclosure and Barring Service checks in accordance with the relevant Regulations.

## **11.0 Considering the Views of those Affected by Offences**

11.1 The EHPP Service undertakes enforcement on behalf of the public at large and not just in the interests of any particular individual or group. However, when considering the public interest test, the consequences for those affected by the offence, and any views expressed by those affected will, where appropriate, be taken into account when making an enforcement decision.

11.2 The Council may, where appropriate, prepare a [community impact statement](#) for the court as part of a prosecution. The purpose of a community impact statement is to make the court aware of particular crime trends in the local area and the impact of these on the local community.

## **12.0 Protection of Human Rights**

12.1 This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is had to the following:

- Right to a fair trial;
- Right to respect for private and family life, home and correspondence.

## **13.0 Review of the Enforcement Policy**

This Policy will be reviewed every five years or following significant changes to relevant legislation or government guidance.

Signed:

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**Head of Regulatory Services**

