

Environmental and Consumer Services

Enforcement Policy

Our Enforcement Policy

This is the enforcement policy of the Environmental and Consumer Services Group, North Somerset Council.

The regulatory services in this group comprise of:

- Food and Health and Safety
- Trading Standards
- Licensing
- Building Control
- Environmental Protection

This document provides information on:

- the purpose of our enforcement policy
- our principles of inspection and enforcement
- our compliance with the 'home authority' principle
- our enforcement actions
- what you can expect of us
- our accessibility/advice details
- our commitment to you
- complaints, compliments and comments about our Service
- how we can help consumers and businesses.

We are committed to the principles of good enforcement, as set out in the Legislative and Regulatory Reform Act 2006, the [Enforcement Concordat](#) and the [Regulators' Compliance Code](#).

'Enforcement' includes any action taken by officers aimed at ensuring that businesses or individuals comply with the law – these actions may range from offering advice, information and issuing public warnings, to cautioning and instituting legal proceedings/prosecutions.

Enforcement decisions will be fair, impartial, independent and objective and will not be influenced by issues such as ethnicity or national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender. Decisions will not be influenced by improper or undue pressure from any source.

This document replaces any previously adopted Environmental and Consumer Services Enforcement Policy.

1. The Purpose of our Enforcement Policy

The purpose of our enforcement policy is to provide a framework to make sure that we work in an equitable, practical and consistent manner.

We recognise that most businesses want to comply with the law. We will endeavour to help these businesses and others to meet their legal obligations without unnecessary expense. When a business does break the law, we will consider all the surrounding

circumstances before deciding whether formal action is appropriate. A prosecution will only be brought if it is in the public interest to do so.

- a) Environmental Health (Food Safety, Health and Safety, Licensing and Environmental Protection) exists to ensure that public health and safety is not compromised, employees are protected in the work place and to look after the environment
- b) Building Control services apply standards to ensure that our buildings are safe, energy efficient and accessible for everyone who lives and works in and around them.
- c) Trading Standards exists to promote and maintain a fair and safe trading environment and thereby protect the interests of consumers and businesses. We enforce a wide range of business and consumer protection legislation relating to quality, quantity, safety, description and price of goods and services.

We carry out our duties in various ways including: inspection, sampling, test purchasing, testing, investigation and prosecution, but also by informing, advising and educating businesses and consumers.

2. Our Principles of Inspection and Enforcement

Targeting

We aim to prioritise and direct our regulatory effort effectively.

To achieve this, we will use 'national' risk assessment schemes or, where these are not applicable, we will implement a 'local', comprehensive, intelligence led risk assessment scheme.

Such risk assessments will have regard to all available, relevant and good-quality data. We will give due consideration of the combined effect of the potential impact and likelihood of non-compliance – this approach will enable us to focus our resources on the areas that need them most and to ensure that persistent offenders are identified quickly.

Proportionality

We will ensure that enforcement action is proportionate to the risks involved, and that the sanctions applied are meaningful.

Accountability

We will be accountable for the efficiency and effectiveness of our activities.

Fairness and Consistency

We will treat all consumers and businesses fairly.

We will ensure that our enforcement practices are consistent – this means that we will adopt a similar approach in similar circumstances to achieve similar ends.

We will have regard to national guidelines and Codes of Practice in our decision-making processes.

Openness and Transparency

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

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

Supporting the local economy

We recognise that a key element of our activity will be to facilitate and encourage economic progress against a background of protection. Wherever possible, we will work in partnership with small businesses and with voluntary/community organisations to assist them with meeting their legal obligations without unnecessary expense.

Reducing enforcement burdens

If there is a shared enforcement role with other agencies, e.g. the Office of Fair Trading (OFT), Animal Health, Food Standards Agency, Environment Agency, Health and Safety Executive, Local Authority Building Control, Health Protection Agency, Fire Service, local health authorities or the Police, we will consider co-ordinating with these agencies to minimise unnecessary overlaps or time delays and to maximise our overall effectiveness.

3. Compliance with Home Authority Principle

We support the Home Authority Principle, which has been developed by food and trading standards authorities to promote good enforcement practice and reduce burdens on business.

We will therefore:

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

4. Our Enforcement Options

Wherever appropriate we will deal with a breach of the law by advice.

In deciding what enforcement action to take against an offender we will have regard to the following aims:

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

The range of enforcement options available to us includes the following:

a. No action

In certain circumstances, contravention of the law may not warrant any action.

b. Indirect action

- including referral to another authority or agency for information or action.

c. Verbal/written advice or warning

- where a relatively minor offence has been committed but is not thought appropriate to take any further action, in which case the suggested corrective action and a timescale will be given.

d. Fixed Penalty Notices

- Certain offences are subject to Fixed Penalty Notices (FPN) - they are recognised as a low-level enforcement tool.
- Where legislation permits an offence to be dealt with by way of a Fixed Penalty Notice (FPN), we may choose to administer a FPN on a first occasion, without issuing a warning. This avoids a criminal record for the defendant. In some circumstances offenders may be warned so they may change their behaviour and thereby prevent the issue of an FPN.

e. Penalty Charge Notices

- Penalty Charge Notices (PCN) are prescribed by certain legislation as a method of enforcement by which the offender pays an amount of money to the enforcer in recognition of the breach.
- Failure to pay the PCN 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.

f. Statutory Notice

- these are used as appropriate in accordance with relevant legislation (they usually require offenders to take specific action or to cease certain activities).
- Examples include improvement notices, abatement notices, closure notices, stop notices, prohibition notices, suspension notices together with notices covering seizure, forfeiture or voluntary surrender of goods/documents.

g. Injunctive action under the Enterprise Act

The range of actions under this legislation includes the following:

- informal undertakings
- formal undertakings
- interim orders
- court orders
- contempt proceedings

h. Caution in accordance with the current [Home Office circular](#)

- to deal quickly and simply with less serious offences and to avoid unnecessary appearances in criminal courts.

A caution is an admission of guilt but it is not a form of sentence, nor is it a criminal conviction - it may be cited in court in certain circumstances. A record of the caution will be sent to the Office of Fair Trading and to other bodies that are required to be notified.

i. Prosecution

A prosecution will only be undertaken when the evidence passes the 'Evidential Test' and when it is in the public interest to do so – we will have regard to the Crown Prosecution Service Code of Practice which is available at:

www.cps.gov.uk/publications/docs/code2004english.pdf

Where it is necessary to carry out a full investigation, the case will be progressed without undue delay. All investigations into alleged breaches of legislation will be conducted in compliance with statutory powers and all other relevant legislation (and relevant Codes of Practice), including the requirements of:

- Police and Criminal Evidence Act (PACE)
- Criminal Procedure and Investigations Act (CPIA)
- Regulation of Investigatory Powers Act (RIPA)
- Human Rights Act (HRA).

As part of the investigation process, persons suspected of breaching legal requirements will, wherever possible,

- be formally interviewed in accordance with PACE
- be given the opportunity to demonstrate that a statutory defence is available
- have the opportunity to give an explanation or make any additional comments about the alleged breach.

Before a decision to prosecute is taken, the alleged offence(s) will be fully investigated, a Report compiled by the Investigating Officer and the file reviewed by a Senior Manager.

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

j. Proceeds of Crime Actions

- Their purpose is to recover the financial benefit that the offender has obtained from his criminal conduct.

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

k. Other remedies as appropriate

The range of actions under this section include:

- Use of Anti-social-Behaviour Orders where there is evidence of alarm, distress or harassment

- Local Government Act 1972 the local authority may institute proceedings in its own name under Section 222 for the promotion or protection of the interests of the inhabitants of its area
- Works in default. Where statute permits the local authority to undertake works in default consideration will be given to doing so if it is in the public interest either to prevent the continuation of a severe persistent nuisance or in the interests of protecting public health and safety

5. What You Can Expect of Us

- In the case of calls that could involve a high risk to public health and safety we aim to respond to 100% within one working day.
- We will provide an initial reply to enquiries within ten working days.

You are entitled to expect our staff to:

- be courteous and helpful
- identify themselves by name and produce identification if requested
- provide a contact point for any further dealings
- give clear and simple advice
- confirm advice in writing on request, explaining why action is required and over what time-scale
- clearly distinguish between what you must do to comply with the law and what is recommended as best practice
- minimise the cost of compliance by requiring proportionate action
- give you reasonable time to comply (unless immediate action is necessary in the interest of health, safety or to prevent evidence being lost)
- advise you of the procedure for making a complaint or representations in cases of dispute
- maintain confidentiality

Before any legal action is taken there will be an opportunity to discuss the case, although if we are considering a prosecution it will usually be a formal interview.

Where a right of appeal against a formal action exists other than through the courts, advice on the appeal mechanism will be clearly set out in writing at the time the action was taken.

6. Accessibility and Advice

Our contact details:

Environmental and Consumer Services
 North Somerset Council
 Somerset House
 Oxford Street
 Weston-super-Mare
 North Somerset
 BS23 1TG

Tel: 01934 888 888

7. Our Commitment to You

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

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

As we are continually seeking to improve our standards, this policy is subject to regular review. It will be reviewed when there are significant changes to national policy or legislation.

8. Complaints, Compliments and Comments

We are committed to the delivery of quality services that meet your needs.

There may be times when things go wrong and you do not receive the standard of service you expect.

If you feel that you have good cause for complaint, then we need to know. We will deal with your complaint confidentially unless this is not possible, for example if legislation applies.

Step one - Go direct

If you know the specific service that your complaint is about please take it up with the relevant officer or service area in the first instance. If you are not sure who to speak to, you can call in to any council office, contact our [Customer Services Officer](#) or give your [feedback online](#).

You can also contact your local councillor who will take the issue up for you.

Step two - Chief Executive Officer (CEO)

If you are not satisfied with the outcome of your complaint after taking the matter up with the relevant officer, you can take the matter up with the [Chief Executive Officer \(CEO\)](#).

Our response

We aim to reply to your complaint within 10 working days. If we can't reply fully within that timescale we will let you know.

Local Government Ombudsman

If you are not satisfied with the CEO's response you can ask for your complaint to be examined by the Local Government Ombudsman.

There is a pack available to help people making complaints. Please contact our [Customer Services Officer](#) for further information.