



**South
Derbyshire**
District Council

South Derbyshire District Council

ENVIRONMENTAL HEALTH ENFORCEMENT POLICY AND ASSOCIATED GUIDANCE

February 2013

Version 2c

1. Introduction and Scope of Policy

1.1. Fair and effective enforcement is essential to protect the health, safety and economic interests of the public, businesses and the environment. Decisions about enforcement action and in particular the decision to prosecute carry serious implications for all involved. The purpose of this protocol is to provide guidance to ensure:

- Decisions about enforcement action are fair, proportionate and consistent;
- Officers apply current Government guidance and relevant codes of practice;
- Everyone understands the principles that are applied when enforcement action is considered.

1.2. This Environmental Health Enforcement Policy applies to those service areas of the Council below as described in the [Scheme of Delegation to Officers](#) contained within the [South Derbyshire District Council constitution](#);

- Permanent gypsy / traveller sites;
- Public health;
- Food sales, safety and standards;
- Health and Safety at Work;
- Cleansing of highways and other public areas;
- Pollution control;
- Exhumations;
- Pest control;
- Animals;
- Litter and fly tipping – prevention and clearance;
- Water supply, standards and safety;
- Public nuisance;
- High hedges;
- Drainage and sewers;
- Dogs;
- Smoking prohibition;
- Environmental management.

1.3. This Policy does not apply to the following regulatory functions of the Council which are covered by their own separate policies;

- Housing advice, advances and grants;
- Mobile homes;
- Harassment and unlawful eviction;
- Caravan sites;
- Street and house-to-house collections;
- Amusements, lotteries and gaming;
- Shops and Sunday trading;
- Hackney carriages;
- Private hire vehicles;

- Licensing;
 - Home safety;
 - Housing conditions, standards and safety;
 - Housing improvement and renovation.
- 1.4. This Policy also supports all four of the strategic objectives in [South Derbyshire District Council's Corporate Plan](#).
 - 1.5. By providing the businesses we regulate with a clear and transparent approach to our enforcement functions the Policy supports the strategic objective to “*Strengthen South Derbyshire's economic position within a clean and sustainable environment*”.
 - 1.6. By providing our residents with a Policy about how we enforce laws relating to nuisance and environmental crime we can show how we are using our powers to deliver “*safe and clean neighbourhoods*”.
 - 1.7. The Policy outlines how we will enforce laws which have a material effect on “*Improving the health and wellbeing of our communities and residents*”
 - 1.8. The purpose of the [Legislative and Regulatory Reform Act 2006](#) is to maximise efficiencies in the way Councils regulate in order to reduce the burdens on business whilst maintaining standards. The Policy is central to the way the Council deploys its regulatory services and so it ensures “*that proper arrangements are in place to enable resources to be used efficiently and effectively*”.

2. Legal Status of the Enforcement Policy

- 2.1. The Environment and Development Services Committee of South Derbyshire District Council approved this policy on 7th March January 2013.
- 2.2. This policy is intended to provide guidance for officers, businesses, consumers and the public. It does not affect the discretion of the Council to take legal proceedings where this is considered to be in the public interest.
- 2.3. The adoption and application of the Policy demonstrates the Council's compliance with the requirements of section 21 of the Legislative and Regulatory Reform Act 2006.
- 2.4. The [Food Law Code of Practice](#) paragraph 3.1.4 requires that a Food Authority's Enforcement Policy is readily available to food businesses and consumers. This Policy demonstrates the Council's compliance with this statutory Code.
- 2.5. The [Standard for Health and Safety Enforcing Authorities](#) requires authorities that enforce health and safety law to have an enforcement policy that follows the [Health and Safety Commission \(HSC\) Enforcement Policy Statement](#). This Policy demonstrates the Council's compliance with this statutory Statement.

3. Scope and Meaning of 'Enforcement'

- 3.1. 'Enforcement' includes any action taken by officers aimed at ensuring that individuals or businesses that the law places duties upon (including employers, the self employed, employees and others) are returned to compliance or encouraged to comply with the law. This is not limited to formal enforcement action such as prosecution.
- 3.2. In certain circumstances we will seek to raise awareness and increase compliance levels by publicising unlawful trade practices or criminal activity. Where appropriate the results of specific court cases may also be published.
- 3.3. The Council places great importance on the consistent use of enforcement action and does not measure itself by the quantities of enforcement action it takes and so does not set targets. The Council does not take enforcement for enforcements sake. Enforcement is distinct from civil claims for compensation and is not undertaken in all circumstances where civil claims may be appropriate, or to assist such claims.

4. General Principles

- 4.1. Prevention is better than cure and our role therefore involves actively working with businesses and residents to advise on, and assist with compliance.
- 4.2. Where it is considered 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 in the [Regulators' Compliance Code](#) issued in 2007 by the Department for Business, Enterprise and Regulatory Reform.
- 4.3. Enforcement decisions will be fair, independent and objective, proportionate in applying the law, consistent in approach and transparent about how we operate and what those regulated may expect. Decisions 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. Such decisions will not be affected by improper or undue pressure from any source.
- 4.4. 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, and its significance, in making the decision to take formal action.
- 4.5. South Derbyshire 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.
- 4.6. This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement such as targeting enforcement actions, which improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulator's Compliance Code.
- 4.7. In exceptional instances we may conclude that a provision in the code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and be documented.

5. Resourcing Effective Regulation

- 5.1. The Regulator's Compliance Code section 6 requires that regulators ensure that "*risk assessment precedes and informs all aspects of their approaches to regulatory activity, including ... inspection programmes*". The services covered by this Policy will publish an annual Inspection Plan which will identify;
 - The frameworks used to identify the risks of relevant businesses which are subject to programmed inspections;
 - A quantification of the predicted numbers of inspections required based on the risk assessment framework and the resources necessary to deliver these;
 - A summary of service standards and performance targets for the respective services.

6. Conduct of Investigations

- 6.1. All investigations will be carried out under the following legislation and in accordance with any associated guidance or codes of practice, in so far as they relate to South Derbyshire District Council:
 - the Police and Criminal Evidence Act 1984
 - the Criminal Procedure and Investigations Act 1996
 - the Regulation of Investigatory Powers Act 2000
 - the Criminal Justice and Police Act 2001
 - the Human Rights Act 1998

- 6.2. These Acts and associated guidance control how evidence is collected and used and give a range of protections to citizens and potential defendants.
- 6.3. Our authorised officers will also comply with the requirements of the particular legislation under which they are acting, and with any associated national and local guidance or codes of practice.

7. Notifying Alleged Offenders

- 7.1. If we receive information [for example from a complainant] 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.
- 7.2. During the progression of enforcement investigations (prior to any convictions), business proprietors or individuals and witnesses will be kept informed of progress. Confidentiality will be maintained and personal information about individuals will only be released to a Court when required and in accordance with the [Data Protection Act 1998](#).

8. Deciding what level of enforcement action is appropriate

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

Levels of enforcement action:

- 8.2. There are a large number of potential enforcement options. The level of the action taken varies from no action through to proceedings in Court, depending on increasing seriousness
 - No action;
 - Informal Action and Advice;
 - Voluntary undertakings
 - Fixed Penalty Notices;
 - Penalty Charge Notices;
 - Formal Notices;
 - Forfeiture Proceedings;
 - Seizure of goods/equipment;
 - Injunctive Actions;
 - Refusal/revocation of a license;
 - Simple Caution;
 - Prosecution.
- 8.3. In assessing what enforcement action is necessary and proportionate, consideration will be given to:
 - The seriousness of compliance failure;
 - Past performance and current practice;
 - The risks being controlled;
 - Legal, official or professional guidance;
 - Local priorities of the Council.

Outcomes of Enforcement Action

- 8.4. Ultimately it is the outcome of any enforcement action that is the measure of whether the activity of the regulator has been positive or not. In considering the most appropriate enforcement action the regulator should be seeking to;
- Aim to change the behaviour of the offender;
 - Aim to eliminate financial gain or benefit from non-compliance;
 - Consider what is appropriate for any particular offender and regulatory issue, such as the risk of punishment and public stigma associated with a criminal conviction;
 - Be proportionate to the nature of offence and harm caused;
 - Aim to restore the harm caused by the non-compliance;
 - Deter future non-compliance.
- 8.5. Where the law has been contravened, there is a range of enforcement options available. Under normal circumstances, a process of escalation will be used 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 or negligently or involve deception, or where there is significant economic detriment.

No Action:

- 8.6. 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 where a trader has ceased to trade, or the offender is elderly and frail and formal action would seriously damage their wellbeing. In such cases we will advise the offender of the reasons for taking no action. The decision to take no action rests exclusively with the Council and for example the cost benefit equation described above will not rule out formal action if it is judged in the Public Interest.

Informal Action and Advice

- 8.7. 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.
- 8.8. 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.
- 8.9. Failure to comply could result in an escalation of enforcement action.

Voluntary Undertakings

- 8.10. We may accept voluntary undertakings that breaches will be rectified and/or recurrences prevented. We will take any failure to honour voluntary undertakings very seriously and enforcement action is likely to result.

Fixed Penalty Notices

- 8.11. Certain offences are subject to fixed penalty notices where prescribed by legislation. They are recognised as a low-level enforcement tool and avoid a criminal record for the defendant. Where legislation permits an offence to be dealt with by way of a Fixed Penalty Notice (FPN), the Council will normally administer a FPN on a first occasion, without issuing a warning.

Penalty Charge Notices

8.12. 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 regulator 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 the Council will normally issue a PCN without first issuing a warning.

Formal Notice

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

8.14. All notices issued will include details of any applicable Appeals Procedures.

8.15. Certain types of notice 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 to satisfy the requirements of the notice. Where the law allows, the Council may then charge the person / business served with the notice for any cost incurred in carrying out the work. Whenever the urgency of the notice allows, the Council will ensure any works required in default are achieved, economically, e.g. by obtaining multiple competitive quotes for the work, unless it is a matter of urgency.

Forfeiture Proceedings

8.16. This procedure may be used in conjunction with seizure and/or prosecution where there is a need to dispose of goods in order to prevent them re-entering the market place or being used to cause a further problem. In appropriate circumstances, we will make an application for forfeiture to the Magistrates Courts.

Seizure

8.17. Certain legislation enables authorised Officers to seize goods, equipment or documents for example unsafe food, sound equipment that is being used to cause a statutory noise nuisance, unsafe products or any goods that may be required as evidence for possible future court proceedings. When we seize goods we will give the person from whom the goods are taken an appropriate receipt.

Injunctive Actions

8.18. 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 may be used to deal with repeat offenders, dangerous circumstances or significant consumer detriment.

8.19. Action under the [Enterprise Act 2002](#); proceedings may be brought where an individual or organisation has acted in breach of community or domestic legislation with the effect of harming the collective interests of consumers. In most circumstances action will be considered where there have been persistent breaches or where there is significant consumer detriment. Action can range from:

- Informal undertakings;
- Formal undertakings;
- Interim Orders;
- Court Orders;
- Contempt Proceedings.

8.20. Anti Social Behaviour Orders (ASBO) and Criminal Anti Social Behaviour Orders (CRASBO). Where the non-compliance under investigation amounts to anti-social behaviour such as persistent targeting of an individual or a group of individuals in a particular area then, following liaison with the Council's Safer Communities Team, where appropriate, an ASBO or CRASBO may be sought to stop the activity.

Refusal, Suspension and Revocation of Licence

8.21. We issue a number of licences and permits and we also have a role to play in ensuring that appropriate standards are met in relation to licences issued by other agencies. Most licences include conditions which require the licence holder to take steps to ensure that, for example, a business is properly run. Breach of these conditions may lead to a review of the licence which may result in its revocation or amendment.

8.22. When considering future licence applications, we may take previous breaches and enforcement action into account.

Simple Caution

8.23. A Simple Caution includes a formally documented admission of guilt, but is not a form of sentence, nor is it a criminal conviction.

8.24. 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.

8.25. For details on the [Home Office guidance \(Circular 16/2008\)](http://www.homeoffice.gov.uk) visit:
<http://www.homeoffice.gov.uk>.

8.26. Furthermore South Derbyshire Policy is that the offender should not have received a simple caution for a similar offence within the last 2 years.

8.27. A record of the Caution will be sent to the Office of Fair Trading and the Local Government Regulation (LGR) if appropriate, and will be kept on file for 2 years. If the offender commits a further offence, the Caution may influence our decision to take a prosecution. If during the time the Caution is in force the offender pleads guilty to, or is found guilty of, committing another offence anywhere in England and Wales, the Caution may be cited in court, and this may influence the severity of the sentence that the court imposes.

Prosecution

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

- Deliberately, negligently or persistently breached legal obligations, which were likely to cause material loss or harm to others;
- Deliberately or persistently ignored written warnings or formal notices;
- Endangered, to a serious degree, the health, safety or well being of people, animals or the environment;
- Assaulted or obstructed an Officer in the course of their duties.
- In the case of Food or Health and Safety where death was a result of a breach of legislation
- Where circumstances warrant it and evidence to support a case is available we will prosecute without prior warning or recourse to alternative sanctions.

Proceeds of Crime Applications

8.29. Applications may be made under the [Proceeds of Crime Act](#) for confiscation of assets in serious cases. Their purpose is to recover the financial benefit that the offender has obtained from his criminal conduct. Proceedings are conducted according to the civil standard of proof. Applications are made after a conviction has been secured.

9. Determining whether a Prosecution or Simple Caution is viable and appropriate

- 9.1. We apply two 'tests' to determine whether a Prosecution or Caution is viable and appropriate. We follow guidance set by the Crown Prosecution Service when applying the tests:
- 9.2. For more information about the '[Code for Crown Prosecutors](#)' visit: http://www.cps.gov.uk/victims_witnesses/code.html
- 9.3. A Caution or Prosecution proceedings will only be progressed when the case has passed both the evidential test and the public interest test. The principles outlined apply equally to the other types of formal enforcement action that are available.

The Evidential Test

- 9.4. We 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.

The Public Interest Test

- 9.5. The public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. We will balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the suspect. Some factors may increase the need to prosecute but others may suggest that another course of action would be better. The message sent to the Community by a decision to prosecute or not and its potential to affect future levels of compliance will be given consideration.

10. Who decides what enforcement action is taken

- 10.1. 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 South Derbyshire District Council and/or Central Government.
- 10.2. Where appropriate, decisions about enforcement will involve consultation between or approval from:
 - Investigating Officer(s);
 - Senior Managers;
 - Legal Services;
- 10.3. The decision to prosecute must be ratified by the relevant Head of Service.
- 10.4. Any enforcement decisions about activities directly operated by South Derbyshire District Council must be entirely free from any conflicts of interest. All decisions will be clearly evidenced and any of the actions under section 8 above will be signed off at Head of Service level.

11. Liaison with other regulatory bodies and enforcement agencies

- 11.1. Where appropriate, enforcement activities will be coordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement.
- 11.2. It is a statutory requirement that before any legal action is initiated against a business which has signed up to a Primary Authority partnership, that the Primary Authority is consulted about the proposed legal action. A Primary Authority partnership is a legally binding agreement between a business and a local authority that is endorsed by the Better Regulatory Delivery Office (BRDO) and that provides assured advice giving consistency of regulation and reducing duplication of inspections and paperwork.
- 11.3. Details of all Primary Authority partnerships are available on the [BRDO](#) website. Details of the statutory notification procedures when specified enforcement action is proposed against a business in a registered primary authority partnership are contained in section 60 and 92 of the [Primary Authority Guidance](#).
- 11.4. Where an enforcement matter affects a wide geographical area beyond the boundaries of South Derbyshire District Council, or involves enforcement by one or more other local authorities or organisations, where appropriate, all relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activity coordinated with them.
- 11.5. We will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies. Examples include:
 - Government Agencies;
 - Police Forces;
 - Fire Authorities;
 - Statutory undertakers;
 - Other Local Authorities.

12. Considering the views of those affected by offences

- 12.1. Environmental Services 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 enforcement decisions.

13. Protection of Human Rights

- 13.1. 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 of respect for private and family life, home and correspondence.

14. Monitoring of the Enforcement Policy

- 14.1. We use an number of processes to monitor compliance with this policy and we will continue to develop these;
- 14.2. We monitor monthly performance indicators that provide a reflection of the quality of the service delivered by the services covered by this Policy. These are reviewed annually and are either reported as Corporate Plan performance indicators (and therefore reported to Councilors) or as local indicators (and therefore reported to and scrutinised by the Head of Housing and Environmental Services). These indicators are reviewed annually and published in the Service Plan produced by the Head of Housing and Environmental Services.

15. Review of the Enforcement Policy

15.1. This Policy will be fully reviewed every 2 years, minor amendments or changes in law will be amended at the discretion of the Head of Service.

ANNEX A Bibliography

South Derbyshire District Council Constitution (May 2010)

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Home Office guidance (Circular 16/2008), Simple Cautioning of Adult Offenders

Proceeds of Crime Act 2002

Code for Crown Prosecutors', 2010

Primary Authority Guidance, LBRO, 2009

Work Related Deaths, a Protocol for Liaison, 09/11

Document Control

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