

MEDWAY COUNCIL

CORPORATE ENFORCEMENT POLICY

1. INTRODUCTION

- 1.1 Medway Council has a statutory duty to enforce a number of laws which relate to areas of local authority law enforcement. These predominantly seek to affect and improve the quality of life and safety of those people who visit or live, work and study in Medway. This document outlines the Council's policy and sets out how it will support the achievement of the overall aims of Medway Council. The purpose of the policy is to secure effective compliance with legislation while minimising the burden to the Council, to citizens and to businesses.
- 1.2 In publishing this policy, The Cabinet of Medway Council is demonstrating its commitment to a protection the rights and quality of life and environment in Medway by providing robust and effective enforcement services.

2. SCOPE

- 2.1 This policy applies to the operation of the following Medway Council Services –
- Building Control
 - The Educational Welfare Service
 - Environmental Health
 - Greenspace Services
 - The Internal Audit Service
 - The Licensing Unit
 - The Safer Communities Service
 - Planning Enforcement
 - Private Sector Housing
 - Trading Standards
- 2.2 The application of Licensing Act 2003 issues is subject to a separate policy as far as the issuing, conditions and revocation of such licences are concerned.

3 ENFORCEMENT FORUM

- 3.1 In establishing a Corporate Enforcement Policy, there is a need to ensure that the effects of the policy reach all enforcement activities in the Council. To this end, the Council has established a Corporate Enforcement Forum. The agreed aims and objectives follow:

3.2 AIM:

To align the skills, information and activities of enforcers within Medway Council to maintain and enhance the safety, quality and enjoyment of life and economic well-being of people living, working or studying in Medway by providing effective regulation and enforcement.

3.3 OBJECTIVES:

1. To agree and implement an Authority wide enforcement policy.
2. To deliver enforcement services that comply with nationally agreed standards such as the Enforcement Concordat.
3. To share processes to ensure that investigations meet legal requirements to deliver successful outcomes.
4. By pooling information and experience, deliver enforcement results that exceed the expectations of stakeholders.
5. Deliver a series of combined and themed actions to preserve the amenity and environment in Medway.
6. Set a standard of knowledge for Medway regulators and underpin this with a standard set of procedures supported by learning and development programmes to deliver this.
7. Establish processes for maximising media impact of successful enforcement.
8. Provide liaison with enforcement agencies external to Medway Council
9. Demonstrate clear outputs for enforcement action taken.

4 Strategic Aims of the Council

- 4.1 The vision for Medway, reflected by the Council and its partners, contained in both the Community Plan and the Best Value performance Plan is:

The More to Medway partnership is committed to transforming Medway. It will develop Medway into a fine and welcoming city where people want to achieve in all aspects of their life, through work, leisure and learning.

Medway will be a healthy, safe and exciting place with a good environment and major cultural attractions, yet Medway's communities will be recognised for their care, fairness and vibrancy; where people work together to realise their needs and ambitions.

4.2 The Council underpins its delivery of services with 6 Core Values –

- Promoting physical, social and economic regeneration
- Improving the environment
- Realising everyone's potential
- Equal opportunities and access
- Fostering citizenship
- Value for money

4.3 The provision of efficient, effective and economic enforcement services cuts across the Corporate vision and all 6 of the Core Values. These services work to protect the environment, economy and social well being of Medway. Without that, the success of regeneration is hampered. The way that modern enforcement services work is to be efficient and to involve stakeholders to help them realise their potential to foster citizenship in the community which we serve.

5 STATEMENT OF POLICY

5.1 The policy is intended to be applied in a wide range of situations and describes in general terms the approach which will be adopted by officers when carrying out the Council's legislative duties.

5.2 The policy acknowledges the fact that the Authority is a signatory to the nationally recognised Enforcement Concordat.

5.3 Often Council officers will work in partnership with other agencies to conduct enforcement action. Council officers must have regard to the policies of partner organisations.

5.4 The policy is based on four key principles:

Consistency – to ensure that similar issues are dealt with in the same way. This does not mean uniformity as there are always a number of different factors that will weigh on deciding a course of action.

Fairness – to ensure a fair and even handed approach encouraging among other things that decisions are not influenced by gender, or ethnic origin, or religious, political or any other beliefs or preferences that make up the social identity of any potential offender or victim.

Transparency – to ensure that any enforcement action taken is easily understood by citizens and businesses, and in addition that anyone making an allegation or subject to an allegation will be kept as well informed of the progress of any investigation as is reasonable.

Proportionality – to ensure that any enforcement action taken in regard of any breach of legislation is in proportion to the actual or

potential risk to health, the environment, or significant economic disadvantage to the citizen or business. In particular, an individual's human right to privacy will require the Council to show that consideration of less intrusive methods for surveillance or use of communications data, has been made by applying the principles of the Regulation of Investigatory Powers Act 2000.

- 5.5 The Council will have regard to advice provided by Central Government Agencies including DfES, DWP, LACORS, the Offices of the Surveillance Commissioners and the Interception of Communications Commissioner that seek to provide guidance and instructions on local authority law enforcement issues.
- 5.6 Officers will conduct themselves in a professional and efficient manner. A contact telephone number for the service will be provided on request. If a customer indicates that they wish to complain about any aspect of enforcement work then officers will clearly explain the mechanisms for doing so. The Council's corporate standards for customer care will apply in so far as they do not conflict with the objectives of the investigation.
- 5.7 The following components will, as appropriate, be included in the Council's operational approaches to enforce legislation.
 - Planned and risk assessed general visits
 - Planned thematic surveys or enforcement initiatives
 - Investigation of complaints by the public, businesses and external agencies relating to the enforcement of local authority legislative issues
 - The provision of criminal and civil advice to both the public and business
 - Planned surveillance of areas to check for particular activities
- 5.8 The Council will embrace the concept of the Home Authority Principle as promoted by the Local Authority Coordinators on Regulatory Services.
- 5.9 In planning and delivering these activities, the Council will ensure that relevant statutory provisions such as the Regulation of Investigatory Powers Act 2000 are followed.
- 5.10 The Council will endeavour to ensure that enforcement decisions are consistent, balanced, fair, transparent and relate to common standards.

- 5.11 In deciding what enforcement options to use officers will have regard to the relevant legislation, statutory codes of practice, current guidance from Central Government agencies including the DfES, DWP and LACORS. In particular Medway Council will follow the broad principles of the Enforcement Concordat.
- 5.12 The Authority acknowledges the fact that the Human Rights Act 1998 provides a right to a fair trial and that the way that an investigation is carried out can affect that right.
- 5.13 It is recognised that enforcement can take many forms on a continuum starting from a position of advising and challenging behaviour or conduct which is illegal through informal and formal actions culminating in prosecution.
- 5.14 Officers shall have regard to the views of any person making a complaint about the actions of a third party which may allege that the law has been broken. Officers can also consider the motivation for making a complaint and if it can be considered vexatious that will be a factor in deciding how to progress any further investigation.

6 INFORMAL ACTION

- 6.1 Informal action to secure compliance with legislation includes offering advice, verbal warnings, requests for undertakings to cease certain actions and requests for remedial action, the use of letters and the issue of written notes at the time of a visit.
- 6.2 Informal action is appropriate in the following circumstances:
- Non-compliance will not involve a significant risk to public health, safety, community safety, the protection of minors, the environment, or cause a significant economic disadvantage to the public or business.
 - The issue is not serious enough to warrant formal action.
 - From historical information or a risk assessment it can reasonably be assumed that informal action will achieve compliance.
 - The officer is confident that the matters will be corrected.
- 6.3 Even if some of the above criteria are not met there may be circumstances in which informal action will be appropriate.
- 6.4 All written communication issued or sent to people who may be liable to receiving enforcement action will:

- Contain all necessary information to enable an understanding of action required and why it is necessary.
- Indicate the legal requirements contravened the measures necessary to ensure compliance, and that other means of achieving the same effect may be chosen.
- Clearly indicate any recommendations of good practice to show that they are not legal requirements.
- The name and telephone number of a contact officer.

7 FIXED PENALTY NOTICES (FPN's)

- 7.1 Certain legislation allows for offences to be dealt with by way of the issuing of a FPN. The issuing of a FPN allows the offender to discharge any liability to prosecution for the offence. This will generally be done for first time offenders where the offence is not of a serious nature and a record of offenders will be kept. For further offences prosecution will generally be initiated in line with this Policy.
- 7.2 Fixed Penalty Notices will be issued when:
- The case warrants prosecution
 - There is enough evidence to prosecute for the offence
 - It will act as a sufficient deterrent against re-offending.
- 7.3 If the FPN remains unpaid after the specified period a prosecution file will be prepared and passed to legal services to initiate a prosecution for the offence.
- 7.4 FPNs issued to young people will be issued with due regard to the Children's Act 2004 and the DEFRA guidance on issuing fixed penalties notices to juveniles 2006.

Notices may be issued to 16 and 17 year olds using the same procedures as for adults. However, authorised officers will consider whether a written warning is appropriate for a first offence, depending upon the nature and seriousness of the offence.

In most circumstances a written warning will be issued to the parents of a child under the age of 16 in the first instance. If the offence occurs in school hours or in school uniform an advisory letter will be sent to the Head Teacher.

If the child continues to offend, despite this intervention, enforcement action (including a Fixed Penalty Notice) may be taken following discussions with relevant local agencies responsible for law enforcement and children' services. (e.g. Police, Youth Service, Youth Offending Team). The Council will consult with partners to determine

whether a FPN is the most appropriate measure for a person under 16 or if other measures (e.g. warnings; Acceptable Behaviour Contract) are more appropriate

In all circumstances the parent or legal guardian will be advised as soon as possible.

8 PLANNING AND BUILDING CONTROL NOTICES

- 8.1 The use of Planning and Building Control Notices deals with issues relating to physical danger, health or safety risks. They also impact on issues which can damage the quality of life of stakeholders, the property stock in Medway and the quality of the environment.
- 8.2 The notices include –
 - S215 of the Town and Country Planning Act 1990 can be used to deal with damage to the amenity of an area.
 - Planning Contravention notices – to ask for preliminary information in investigating breaches of planning controls
 - Planning Enforcement Notices – to deal with unauthorised developments
 - Breach of Condition Notices – where conditions attached to Planning permissions are not complied with
 - Injunctive Powers and Stop Notices – to give powers to deal with the most serious breaches
 - Discontinuance Notices – to deal with unauthorised advertising.
- 8.3 Civil and criminal proceedings are also available to the Council under Building Regulations. The Building Act 1984 gives the Council powers to serve notices to deal with dangerous or dilapidated structures.
- 8.4 Good practice, issued by Central Government indicates that enforcement notices should be used where illegal developments or practices are causing significant harm. The length of existence and use of a development are also mitigating or aggravating factors.
- 8.5 The rights of appeal, to the Department of Communities and Local Government or in the case of a notice 215 to a Magistrates' Court will be made known to the recipient of a notice as soon as the notice is served.

9 IMPROVEMENT NOTICES:

- 9.1 The use of improvement notices will relate to risks to health and safety and will not be issued for minor technical contraventions. At present, powers are given to issue such notices under the Health and Safety at Work etc Act 1974 relating to the storage and dispensing of petroleum

spirit and explosives. They will only be issued when one or more of the following criteria apply:

- Significant contraventions of legislation.
- Lack of confidence in the business or person receiving the notice to respond to an informal approach.
- History of non-compliance with informal action.
- Non-compliance could be potentially serious to health or safety.

9.2 Prior to issuing an improvement notice, the officer will discuss the circumstances with their Head of Service.

9.3 Guidance is issued by the Health and Safety Commission on the use of improvement notices. The issuing of improvement notices will follow this advice. The guidance requires that:

- When an officer issues an instruction, the recipient has the right to request written confirmation.
- If an officer intends to issue an improvement notice, the recipient can request a written explanation as the deficiencies and an outline of the corrective action. The recipient has the right, for 14 days, to make representations to the relevant Head of Service regarding the content of issuing the notice.
- When an improvement notice is issued, notification of a right to appeal to an employment Tribunal shall be given.

10 PROHIBITION NOTICES:

10.1 The Health and Safety at Work etc Act 1974 gives the power to issue prohibition notices. The use of prohibition notices will be issued in one or more of the following circumstances:

- The consequences of not taking immediate and decisive action to protect health and safety will be unacceptable.
- An imminent risk of injury to health can be demonstrated.
- There is no confidence in the integrity of an unprompted offer made by a business voluntarily to close premises or cease the use of any equipment, process or working practice.
- A business is unwilling to confirm in writing its unprompted offer of a voluntary prohibition.

10.2 Voluntary prohibitions will never be suggested or agreed as an alternative to formal action.

11 SUSPENSION NOTICES:

11.1 The Consumer Protection Act 1987 provides for the issuing of a Suspension Notice which prohibits a business from supplying goods for a six month period where there is reason to suspect that provisions relating to safety given in the Act have been contravened. A Suspension Notice may be issued where:

- The contravention of a safety provision is suspected and
- The safety provision relates to a matter that poses a significant health or safety risk to the community.

A voluntary undertaking not to distribute the goods shall not in itself preclude the serving of a Suspension Notice.

11.2 Any Suspension Notice will identify the goods, set out the grounds why a failure of a safety provision is suspected and set out how the recipient may appeal against the decision to serve it.

12 ENFORCEMENT ORDERS

12.1 The Enterprise Act 2002 provides for the application to the courts for an Enforcement Order. The enforcement order will require the cessation of or otherwise prohibit certain listed consumer protection infringements. Failure to comply with the Enforcement Order could be found by a court to be contempt of court, which could lead to a fine or imprisonment.

12.2 Whether an Enforcement Order is sought in the first instance will depend on the whether:

- the action is necessary and proportionate, where there is evidence of a breach of the relevant consumer protection law and of consumer harm stemming from the breach
- the business has been given a reasonable opportunity to put matters right
- other guidance issued by the Office of Fair Trading

Any Enforcement Order will clearly state the activities from which the recipient must cease.

13 FORMAL CAUTIONS:

13.1 Formal cautions will be issued in accordance with instructions given in current Home Office Circulars 59/1990. Formal cautions will be issued in the following circumstances:

- To deal quickly and simply with less serious offences.
- To divert less serious offences away from the courts.
- To reduce the chances of repeat offences.

13.2 Before the offer of a caution is made, the relevant Head of Service must be satisfied that there is sufficient evidence to prove that an offence has occurred and that it is in the public interest and an effective administration of justice to do so. Such cautions will be notified to any Home or Originating Authority and any national body, such as the Office of Fair Trading or the Department for Work and Pensions, that is entitled to receive such notification.

13.3 Line Management are informed before a Formal Caution is offered.

13.4 No more than one Formal Caution will be issued to the same business or person for a similar offence within the expiry period. If a further, similar offence is committed before the expiry of the Formal Caution, then prosecution will normally be taken in all but the most exceptional circumstances.

13.5 Unless the circumstances are wholly exceptional, details of any outstanding Formal Caution will be placed before the Court in any prosecution taken within the expiry date of the Formal Caution.

13.6 If accepted, the Caution will be fully recorded and a copy of the documentation held on a Register of Formal Cautions.

14 ADMINISTRATIVE PENALTIES

14.1 Will be issued in accordance with the legislation contained in the Social Security Administration Act 1992, inserted by the SSA (Fraud) Act 1997.

14.2 If a person does re-offend after being given an Administrative Penalty Medway Council could in certain circumstances offer a Formal Caution, however this would be rare and supported with good justification. An example of this would be where it is not in the public interest to prosecute.

15 PROSECUTIONS:

15.1 Prosecution will be considered when one or more of the following factors apply:

- It is appropriate in the circumstances as a way to draw general attention to the need for compliance with the law and the maintenance of standards required by law, especially where there would be a normal expectation that a prosecution would be taken or where through the conviction of offences others may be deterred from similar failures to comply with the law.
- It is considered that there has been potential harm arising from the breach.
- There is a continued significant risk to health and safety, harm to minors, financial loss to the community or damage to the quality of the environment.
- Other forms of enforcement action have been ineffective and there is a lack of confidence in the business rectifying the breach.
- Where the alleged offence relates to the failure to comply in full or with a significant part of a statutory notice.
- There is evidence of fraud, gross negligence or guilty knowledge.
- Where the alleged offence relates to obstruction, failure to disclose information or knowingly making a false statement to authorised officers.
- The decision to prosecute will take account of the guidance given in the Code of Practice to Crown Prosecutors to assess whether prosecution of the offence is in the public interest.

15.2 Before consideration of any prosecution is made an assessment of the weight of admissible evidence shall be made by the relevant Head of Service to establish the likely chance of proving the case. Included in this assessment will be the possibility of a satisfactory defence being proved by the accused.

15.3 This is an objective test and means that a jury or bench of Magistrates, properly directed in accordance with the law, is more likely than not to convict each defendant on each charge.

15.4 Each prospective prosecution is scrutinised throughout the Line Management chain before the papers are sent to Legal Services, in accordance with Procedures. This ensures the evidence is assessed and challenged by officers not directly involved in the preparation of the case.

16 REVOCATION

- 16.1 In some circumstances, notably Licensing and Authorisations made under the Environmental Protection Act, the revocation of a Licence or Authorisation may be used as an enforcement method.
- 16.2 Whilst this is a legitimate enforcement action, it is always remembered that the above may involve the removal of livelihood, sometimes without reference to an independent arbiter or the Courts. Accordingly, revocation is used only as a last resort, when other sanctions are either inappropriate, or have been tried without success.
- 16.3 No revocation action will be taken without reference to line management, and in the case of licensing the Licensing Committee authority will be required.
- 16.4 Where revocation action is taken, it will normally follow at least two warnings, in writing. However, it is recognised that this will not always be possible, especially in the case of some types of Licensing offence.
- 16.5 When revocation action is taken, those concerned will be informed of any rights which they may have to appeal and be told of any time limits or other constraints which may apply.

17 ENFORCEMENT ACTIONS

- 17.1 The decision to use enforcement action will be taken on a case by case basis and, to ensure consistency of approach, in accordance with this and any other more specific policies which may be relevant. The action taken, which may be immediate, will be proportionate to the gravity of the non-compliance. Factors that will be taken into consideration include, but are not limited to:
 - The risk that the non-compliance poses to the safety, health or economic welfare of the public at large or to individuals
 - Evidence that suggests that there was pre-meditation in the commission of an offence
 - The alleged offence involves a failure to comply in full or in part with the requirements of a statutory notice or order
 - There is a history of previous warnings/cautions, or the commission of similar offences
 - Aggravated circumstances such as obstruction of an officer or aggressive behaviour towards the public
 - The offence, although not serious itself, is widespread in the area where it is committed
 - There has been reckless disregard of health and safety requirements
 - False information has been supplied wilfully, or there has been an intent to deceive

18 COMMITMENT TO THE POLICY

- 18.1 The Council is committed to ensuring that all authorised enforcement officers carrying out enforcement work are trained and fully acquainted with the requirements of this policy. All authorised officers must abide by this policy whenever making decisions on enforcement. Any departure from this policy will be exceptional, documented, justified and approved by the relevant service manager or Head of Service unless the delay in decision-making would result in a significant risk to the public.
- 18.2 All authorised enforcement officers should be trained and authorised in those aspects of legislation relevant to their duties. The authority will ensure that officers are competent to carry out their duties and that the level of delegated authority for each officer has been approved.