

# **West Suffolk Enforcement Policy**

**Effective 1 April 2019**

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# 1 Introduction – scope and purpose

- 1.1 This policy applies to the enforcement activities carried out by West Suffolk Council (the Council). It is an overarching document that describes our approach to our regulatory functions. Additional specific requirements are set out in separate policies and guidance for some specific services, such as licensing.
- 1.2 This policy does not apply to the Anglia Revenues Partnership as there is a separate enforcement policy.
- 1.3 Effective regulation plays an important part in how West Suffolk Council works to protect and support our residents, businesses and the environment. Our regulatory activity supports the objectives of the council to safeguard individual and community health and well-being and to engage effectively with businesses to provide confidence in investment in our area and to support business success. Our regulatory activities are undertaken for the collective benefit of all residents and business.
- 1.4 Within the context of this Policy, 'enforcement' includes action carried out in the exercise of, or against the background of, statutory enforcement powers or other regulatory measures the council may take in the interests of our council area. This is not limited to formal enforcement actions, such as prosecution or issue of notices, and includes prevention measures such as inspections to check compliance with legal or other requirements and the provision of advice and guidance to support regulatory compliance.
  - 1.4.1 The aim of this Enforcement Policy is to explain the principles that the council follows, and typical enforcement actions, when taking enforcement/regulatory decisions that we make in support of a fair and safe trading environment, and to protect our residents and the environment. This policy aims to ensure that decisions are consistent, fair and proportionate to the circumstances, and taken in an accountable manner.
  - 1.4.2 The policy is consistent with the Principles of Good Regulation<sup>1</sup> and has due regard to the Regulator's Code<sup>2</sup>.
- 1.5 This policy is intended to provide guidance for officers, businesses and residents rather than to set down a prescriptive set of rules. Nothing in this policy should be construed as restricting the discretion of the Council to take enforcement action in cases where it is considered to be in the public interest.
- 1.6 This enforcement policy will be subject to regular review and amendments will be made when necessary as a result of identified improvements which contribute to the aims of the council. Review of the enforcement policy will take account of any responses received from affected persons and any other

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<sup>1</sup> S21, Legislative and Regulatory Reform Act 2006

<sup>2</sup> Last issued 6<sup>th</sup> April 2014 in accordance with s23, Legislative and Regulatory Reform Act 2006

relevant comments. Compliance with this policy will be monitored on an ongoing basis.

## **2 Principles of enforcement**

### **2.1 General**

- 2.1.1 The council has a duty to protect public safety and the environment and to ensure that our resources used for enforcement purposes are effective.
- 2.1.2 To meet this duty, the council has the duty or power to enforce a wide range of rules and regulations which affect individuals and businesses for the benefit of all in the West Suffolk area.
- 2.1.3 To reduce the administrative burdens on those that are subject to regulation, a risk based approach will be used where appropriate to target council resources on the areas that need them most. We apply the principle that no regulatory activity should take place without a reason.
- 2.1.4 The council supports the principle of self-regulation to reduce the burden on businesses, and will, as part of its ongoing assessment of how regulatory services are provided, always look to find ways for those that are regulated to comply with the rules with minimal intervention from the council.
- 2.1.5 Everyone in West Suffolk can play a part in the way regulation is achieved. By providing advice and signposting we can support the public and businesses to avoid problems and resolve any issues they identify.

### **2.2 Transparency**

- 2.2.1 Where possible the council will seek to ensure that people affected by formal action are informed of what is planned, and allow for discussion and time to respond before the action is taken. These arrangements must have regard to legal constraints and requirements.
- 2.2.2 When an enforcement notice is served it will say what needs to be done, why, and by when. There will be a clear distinction between legal requirements and recommended actions.
- 2.2.3 The council is committed to equality and all communications will be in a clear, accessible, concise, format using media appropriate to the target audience, in plain language. Where businesses or the public do not have English as a first language translations of correspondence will be provided on request.
- 2.2.4 This Enforcement Policy is published on the West Suffolk Council website, and further guidance about specific areas, may also be published.
- 2.2.5 The publicity generated by legal proceedings acts as a deterrent to others, and reassures the general public that the council takes a serious view of illegal behaviour. Therefore the outcome of court proceedings may be published,

including required undertakings; as part of this the name of the defendant(s) may be included, unless otherwise directed by the courts.

2.2.6 Where there are ongoing breaches of the law the council may also use publicity in order to raise awareness, warn residents and increase compliance. This may involve publishing the name of an individual(s) and/or business found to be breaching the law. In reaching a decision as to whether to publish such information, the council will consider the following factors:

- The specific details of the offence committed or detrimental activity.
- The public interest in disclosing personal information e.g. the deterrent effect of the publication.
- Whether the publication would be proportionate.
- The personal circumstances of the offender.
- Community cohesion.

## **2.3 Consistency**

2.3.1 Officers are required to act in accordance with this enforcement policy and the council's conduct standards.

2.3.2 The council will carry out its enforcement and advisory functions in an equitable, practical and consistent manner. Relevant policy and guidance will be adopted and adhered to and officers carrying out regulatory functions will be suitably trained, qualified and authorised to undertake their enforcement duties, and understand the principles of good regulation.

2.3.3 Where appropriate, we will publish clear service standards providing information on:

- a. how the council communicates and how the appropriate officers and council services can be contacted
- b. the council's approach to providing information, guidance and advice
- c. any applicable fees and charges
- d. how to comment or complain about the service provided and the routes to appeal.

## **2.4 Proportionality**

2.4.1 The council is committed to avoiding the imposition of unnecessary regulatory burdens and will endeavour to minimise the cost of compliance for business by ensuring that any action taken, or advice offered, is proportionate to the seriousness of the breach, as well as the risk to people, property, the community or the environment. In doing so the chosen approaches will be based on relevant factors including, for example, business size and capacity.

2.4.2 Notice of routine inspection visits will usually be given, unless there is a legal requirement to visit unannounced, or there is a specific reason for not giving prior notice. For example this would include where the identity of the person or premises is unknown, or where it would defeat the objectives of the inspection visit to give such notice.

- 2.4.3 As far as the law allows, account of the circumstances of the case and attitude of the people involved when considering action will be taken. Care will be taken to work with businesses and individuals so that, where practicable, they can meet their legal obligations without unnecessary expense, to support and enable economic growth will also be taken.
- 2.4.4 The most serious formal action, including prosecution, will be reserved for persistent and/or serious breaches of law.

## **2.5 Accountability**

- 2.5.1 The council will actively work with businesses and individuals to advise and to assist with compliance and requests for help. Contact points and telephone numbers will be provided for business and public use.
- 2.5.2 The council will endeavour to carry out visits and inspections at a reasonable time where appropriate to do so. Council officers will show their identification (and authority if requested) at the outset of every visit and explain the reason for the visit, unless the nature of any investigation requires otherwise.
- 2.5.3 Out of hours contact for services will be provided where there is a need for an immediate response/risk to public health, safety or damage to property, infrastructure or the environment.
- 2.5.4 The whole range of enforcement activities will be dealt with as promptly and efficiently as possible in order to minimise time delays.
- 2.5.5 Where appropriate, feedback questionnaires will be used to gather and act upon information about the services we provide.
- 2.5.6 The council may include information to highlight new legal requirements on its website, with information provided following an inspection or visit; and by providing or signposting advice and information to help businesses and individuals keep up to date.

## **3 Good practice**

### **3.1 Targeted (intelligence and risk led) enforcement**

- 3.1.1 Enforcement will be primarily targeted towards those situations that give rise to the most serious risks, and against deliberate breaches. Other determining factors will include local priorities, Government policy and priorities, new legislation, national campaigns and public concerns.
- 3.1.2 By having a coherent and robust intelligence system, effective strategies can be formed to enable and coordinate solutions to particular problems. This enables the identification of new, current and emerging issues, allowing provision of strategic and tactical solutions on how the issues can best be tackled.

## **3.2 Supporting the local economy**

- 3.2.1 A key element of the council's activity will be to facilitate and encourage economic progress against a background of protection.
- 3.2.2 Wherever possible, the council will work in partnership with businesses and individuals, and with town and parish councils, voluntary and community organisations, to assist them with meeting their legal obligations without unnecessary expense.

## **3.3 Reducing enforcement burdens**

- 3.3.1 If there is a shared enforcement role with other agencies, for example the Police, Environment Agency or other local authorities, the council will consider coordinating with these agencies to minimise unnecessary overlaps or time delays and to maximise its overall effectiveness. The council will also liaise with the other regulators to ensure that any proceedings instituted are for the most appropriate offence.
- 3.3.2 The council will follow the principle of 'collect once, use many times' and share information collected with other local authority regulatory services to minimise business impact. Partner enforcement agencies routinely exchange information and in doing so we will ensure we follow the requirements of the data protection legislation, and other relevant legislation, in force at the time.

## **4 Enforcement actions**

- 4.1 For the purposes of this document 'formal action' includes: prosecution, simple cautions, enforcement orders, issue of notices, monetary penalties, seizure, suspension, forfeiture, revocation/suspension of a licence, registration or approval, works in default or any other criminal or civil/injunctive proceedings or statutory sanctions, applied either separately or in any other combination.
- 4.2 When formal enforcement action is taken, and where appropriate, the council may seek to recover its enforcement costs, including the making of formal applications for costs through the courts.
- 4.3 Nothing in this policy shall be taken to compel the council to take enforcement action. In certain instances the council may conclude that an enforcement response is not appropriate given the circumstances. Any decision to deploy enforcement powers will be taken in the context of operational priorities and this policy.
- 4.4 In deciding what enforcement action to take, the council will have regard to the following aims:
- to change the behaviour of the offender
  - to eliminate 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

- to be proportionate to the nature of the offence and the harm/potential harm caused
- to repair the harm caused to victims, where appropriate to do so
- to deter future non-compliance
- to maintain the trust and confidence of our communities.

4.5 Any decision to undertake formal enforcement action will be taken in the context of the evidence available, operational priorities, this policy and the council constitution and scheme of delegations.

4.6 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 is taken.

4.7 Where formal enforcement action, such as a simple caution or prosecution, is taken, the council recognises that there is likely to be an ongoing need for compliance advice and support, to prevent further breaches.

4.8 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 requirements, time limits and all other relevant legislation (and relevant codes of practice), including the requirements of:

- Police and Criminal Evidence Act 1984 (PACE)
- Criminal Procedure and Investigations Act 1996 (CPIA)
- Regulation of Investigatory Powers Act 2000 (RIPA)
- Criminal Justice and Police Act 2001 (CJPA)
- Human Rights Act 1998 (HRA)

(This list is not exhaustive and there are requirements from specific legislation enforced.)

4.9 As part of any criminal investigation process, persons suspected of having committed a criminal offence will, wherever possible:

- be formally interviewed in accordance with PACE
- be given the opportunity to demonstrate a statutory defence
- have the opportunity to give an explanation or make any additional comments about the alleged breach
- be offered translation services where English is not their first language.

4.10 Some officers have a wide variety of powers, including the power to enter premises and inspect goods, to require the production of documents or records and, when necessary, the power to seize and detain such material where they believe it may be required as evidence.

4.11 Officers may also take with them such other persons as may be necessary as part of their investigations, or when exercising their powers. This may include police officers where there is the possibility of an arrest. In certain cases, officers may exercise an entry warrant issued by a magistrate in order to gain access to premises. Officers may also use investigation equipment as part of



their duties, including hand held and body-worn video (BWV) cameras. BWV devices are capable of recording both visual and audio information and can provide a number of benefits to enforcement agencies, including a deterrent to aggressive, verbal and physical abuse towards officers, and in providing additional evidence to support investigations. BWV will usually be deployed on an overt basis for a specific purpose, and where it is necessary and proportionate to do so. Any decision to deploy BWV on a covert basis will be made in accordance with the Regulation of Investigatory Powers Act 2000 (RIPA), related legislation, codes of practice and associated council policy.

4.12 Whilst recognising that most people want to comply with legal requirements, some will operate outside the law (both intentionally and unintentionally). A staged approach to enforcement will therefore be adopted, with advice and informal action fully explored to resolve the matter in the first instance, if appropriate. However, the council will consider taking immediate formal action for the most serious breaches, which may include any of the following circumstances:

- where there is a significant risk to public health, safety or wellbeing, or damage to property, infrastructure or the environment
- fraud or deceptive/misleading practices, including those seeking an unfair 'competitive advantage'
- for matters where there has been recklessness or negligence, causing or likely to cause significant loss or prejudice to others
- illegal practices targeted at the young, the elderly or other vulnerable people
- a deliberate or persistent failure to comply with advice, warnings or legal requirements
- where food fails food safety requirements
- any act likely to affect animal health or welfare, disease prevention measures, or the integrity of the food chain
- obstruction or assault (including verbal assault) of an officer in the execution of their duties
- If it is in the public interest to do so.

4.13 In addition to our statutory responsibilities under the Health and Safety at Work Act 1974, we expect our staff to be able to undertake their work without experiencing any risk of harm to their health or property. We operate a range of provisions to protect our staff from any actions targeted at them that may constitute violence at work. Furthermore, we will not tolerate, and will take appropriate action in response to any such behaviour towards our staff, including obstruction, whilst they are undertaking their enforcement duties.

## **4.14 The council's enforcement options**

### **4.14.1 Advice, guidance and support**

The council is committed to using advice, guidance and support as a first response to the majority of breaches of legislation and any initial requests for advice from individuals or businesses on non-compliance will not in themselves directly trigger enforcement action. The council will seek to assist in rectifying

such breaches as quickly and efficiently as possible, where there is a clear willingness to resolve the matter, thus avoiding the need for further enforcement action. Any correspondence will clearly differentiate between legal requirements and good practice, and indicate the regulations contravened and the measures which will enable compliance. Follow up checks will be carried out on a risk and intelligence-led basis and where a similar breach is identified in the future, previous advice will be taken into account in considering the most appropriate enforcement action to take on that occasion.

- 4.13.2 Compliance advice can be provided in the form of a verbal or written warning. In doing so we will clearly explain what should be done to rectify the problem, and how to prevent re-occurrence. Warnings cannot be cited in court as a previous conviction, but may be presented in evidence.

## **4.15 Verbal or written warning**

Compliance advice can be provided in the form of a verbal or written warning. In doing so we will clearly explain what should be done to rectify the problem, and how to prevent re-occurrence. Warnings cannot be cited in court as a previous conviction, but may be presented in evidence.

## **4.16 Statutory (legal) notices**

- 4.16.1 Statutory Notices are used as appropriate in accordance with relevant legislation. Such notices are legally binding. Failure to comply with a statutory notice can be a criminal offence and may lead to prosecution and/or, where appropriate, the carrying out of work in default.
- 4.16.2 A statutory notice will clearly set out actions which must be taken and the timescale within which they must be taken. It is likely to require that any breach is rectified and/or prevented from recurring. It may also prohibit specified activities until the breach has been rectified and/or safeguards have been put in place to prevent future breaches. Where a statutory notice is issued, an explanation of the appeals process for such notices will be provided to the recipient.

## **4.17 Monetary penalties**

- 4.17.1 Fixed or variable monetary penalties may be issued where there is a specific power or delegated authority to do so and under the following circumstances:
- To provide an effective and visible way to respond to less serious crimes without going to court.
  - As a response to genuine problems or as part of a wider enforcement strategy.
- 4.17.2 Where the offender fails to discharge their liability resulting from any monetary penalty issued, alternative enforcement action will be considered under this policy (including prosecution of the initial offence). Where prosecution is

brought; an assessment will be made of other offences that may also have been committed in order that those charges may be considered at the same time.

- 4.17.3 Consideration will be given to the adoption of alternative remedies to the issue of a monetary penalty, such as those involving dedicated advice and training sessions, which aim to change the behaviour of the offender, whilst remaining proportionate to the nature of the offence and the harm/potential harm caused.

## **4.18 Licences, permits, registrations and approvals**

The council has a role to play in ensuring that appropriate standards are met in relation to licences, permits, registrations and approvals. If deemed necessary, the council may seek to review, temporarily remove or revoke any licence, registration or approval if made aware that actions have been carried out which undermine scheme objectives and/or would be unlawful. This includes those issued by other agencies.

## **4.19 Seizure**

- 4.19.1 Some legislation permits the seizure of items such as goods and documents that may be required as evidence. When goods are seized, an appropriate receipt will be given to the person from whom they are taken. Occasionally, the voluntarily surrender and transfer ownership of illegal goods to the council may be requested.
- 4.19.2 When officers seize food for failing food safety requirements, or animal feed for non-compliance with feed law, an application will be made to the Court for a condemnation order, for the illegal product to be destroyed. Details of where and when this application will be made will be provided to allow interested parties to attend the hearing.

## **4.20 Detention**

Where food is suspected of failing food safety requirements, or where animal feed does not comply with specified feed law, it may be detained to allow further investigation. When food or animal feed is detained, a notice of detention will be provided, detailing the detention arrangements, including the location where the product(s) will be detained.

## **4.21 Forfeiture**

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

## **4.22 Injunctive actions, enforcement orders and so on.**

4.22.1 The council will consider formal civil enforcement action in pursuance of breaches of law which have a detrimental impact on the collective interests of consumers or businesses.

4.22.2 When considering formal civil enforcement action, an officer will, where appropriate, first discuss the circumstances with those suspected of a breach and, through consultation, attempt to resolve any issues. Alternatively a range of enforcement actions will be considered to redress detrimental practices. These include the following:

- informal and formal undertakings
- interim and other court orders
- contempt proceedings.

4.22.3 The court may be asked to consider other remedies as part of any proceedings, including compensation for victims.

## **4.23 Other sanctions**

The council will consider other sanctions where legally available and appropriate to do so, including criminal behaviour orders under the Antisocial Behaviour, Crime and Policing Act 2014, injunctions under the Local Government Act 1972 or equivalent orders to disrupt and/or prevent activities that may contribute to crime or disorder.

## **4.24 Taking animals into possession/banning orders**

Under the Animal Welfare Act 2006, if a veterinary surgeon certifies that 'protected animals' are suffering or are likely to suffer if their circumstances do not change, the council will consider taking them into its possession and applying for orders for re-imburement of expenses incurred and subsequent disposal. Other legislation may be appropriate to ensure that similar standards of care and/or control of animals is properly maintained. In some circumstances the council will also consider applying to the court to ban a person(s) from keeping animals.

## **4.25 Simple cautions**

4.25.1 In certain cases a simple caution may be offered as an alternative to a prosecution. The purpose of a simple caution is to deal quickly with less serious offences, to divert less serious offences away from the courts, and to reduce the chances of repeat offences.

4.25.2 Officers will comply with the provisions of relevant Home Office circulars. The following conditions must be fulfilled before a caution is administered:

- The offender has made a clear and reliable admission
- there is a realistic prospect of conviction
- it is in the public interest to offer a simple caution, and

- the offender is 18 years old or older at the time that the caution is to be administered.

4.25.3 A simple caution will appear on the offender's criminal record. It is likely to influence how the council and others deal with any similar breaches in the future, and may be cited in court if the offender is subsequently prosecuted for a similar offence. If a simple caution is issued to an individual (rather than a corporation) it may have consequences if that individual seeks certain types of employment. Simple cautions will be issued with regard to Home Office and other relevant guidance.

## 4.26 Prosecution

4.26.1 The council may prosecute in respect of serious or recurrent breaches, or where other enforcement actions, such as statutory notices have failed to secure compliance. The council recognises that the decision to prosecute is significant and could have far reaching consequences on the offender.

4.26.2 Before a decision to prosecute is taken, the alleged offence(s) will be investigated, a report compiled by the investigating officer and the file independently reviewed and authorised in accordance with the council's procedures. A prosecution will only be considered if the sufficiency of the evidence and the public interest falls within the guidelines as laid down by the Attorney General and Crown Prosecution Service Code for Crown Prosecutors. Prosecution proceedings will only be undertaken if authorised in accordance with the council's procedures and delegations.

4.26.3 Before making a decision whether or not to prosecute, consideration will also be given to:

- how well the prosecution supports the council's aims and priorities
- wider public interest
- the factors contained in paragraphs 4.4 and 4.12 above of this policy
- action taken by other enforcement agencies for the same facts
- the nature and extent of any harm or loss, including potential harm and loss, and any offer of redress made by the offender to victims
- the willingness of the alleged offender to prevent a recurrence of the infringement
- the likelihood of the alleged offender being able to establish a statutory defence
- the reliability of witnesses
- the probable public benefit of a prosecution and the importance of the case, for example the possibility of establishing legal precedent
- the scope for alternative routes for redress for victims and their likelihood of success
- the impact of the intervention on small businesses in particular, to ensure action is proportionate.

4.26.4 A conviction will result in a criminal record and the court may impose a fine and, for particularly serious breaches, a prison sentence. The court may order

the forfeiture and disposal of non-compliant goods and/or the confiscation of assets.

- 4.26.5 On the conviction of a director connected with the management of a company the prosecutor will, in appropriate cases, draw to the court's attention their powers to make a disqualification order under the Company Directors Disqualification Act 1986.

## **4.27 Proceeds of crime actions**

- 4.27.1 Where appropriate, the council may seek to recover the benefit that the offender has obtained from their criminal conduct through financial investigation.
- 4.27.2 Financial investigations will be undertaken in accordance with the Proceeds of Crime Act 2002. Such investigations may include applications to the court requiring financial information to be provided (production orders) or in serious cases applications to freeze and/or confiscate criminal assets (restraint and confiscation orders). Where appropriate, consideration will also be given to seek compensation for victim losses as part of financial investigations.

## **5. Comments, compliments and complaints**

- 5.1 If you are unhappy with the action we take or any information or advice we give, you can discuss the matter with the relevant manager. This won't affect our formal complaints procedure or any formal appeal you may make.
- 5.2 If you wish to make a formal complaint you may either email [xxx] or write to the freepost address at [XXXX] West Suffolk House, Western Way, Bury St Edmunds Suffolk IP33 3YU. Complaints are fully investigated and responded to within 15 working days.