

TEWKESBURY BOROUGH COUNCIL
CORPORATE ENFORCEMENT POLICY

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1. Introduction & General Principles of Enforcement

1.1 Purpose of the Policy

The purpose of this Policy is to set out the guiding principles by which legislation will be enforced by the Council to protect public health, safety, amenity and the environment within Tewkesbury Borough.

It provides an enforcement framework in accordance with the:

- Central and Local Government Concordat on Good Enforcement¹
- the Legislative and Regulatory Reform Act 2006²
- the Regulators Compliance Code³
- the Crime and Disorder Act 1998⁴ and
- the Regulatory Enforcement and Sanctions Act 2008⁵

Enforcement plays an important role in enabling the Council to achieve its priorities which are:

- Building Safer and Stronger Communities
- Prosperous Communities
- Environment
- Delivering the Entrepreneurial Council
- Your Council, Your Services

1.2 Aims

- Strive to raise awareness of Council's enforcement duties through education and promotion to achieve understanding and commitment and secure ownership of compliance arrangement.
- Offer advice and support to individuals, businesses and community groups and voluntary organisations and charities workforce representatives to help them meet their obligations to ensure compliance.
- Provide a courteous and efficient service where our employees are accountable and identify themselves by name.
- Provide contact points and telephone numbers to encourage further contact in a way that is convenient and accessible.
- Respond to complaints about our enforcement activities quickly and fairly and within the terms of the Council's complaints procedure.

1.3 Enforcement Concordat and Principles of Good Regulation

Tewkesbury Borough Council has adopted the Central and Local Government Concordat on Good Enforcement¹. The Legislative and Regulatory Reform Act 2006 also places a duty on the Council to have regard to the 'Principles of Good Regulation' when exercising specified regulatory functions.

The 'Principles of Good Regulation' together with the principles set out in the Concordat, are intended to ensure:

- **Standards:** Provide/publish clear and published standards setting out the level of service and performance provided by the Council
- **Openness:** Provision of information and advice in plain language about how we carry out our work, including consultation with stakeholders

- **Helpfulness:** Provision of advice and assistance on compliance in a courteous, efficient and prompt manner
- **Proportionality:** Action taken to be proportional to the risks
- **Consistency:** Duties to be carried out in a fair, equitable and consistent manner and with arrangements in place to promote consistency
- **Transparency:** access to information regarding regulatory procedures and decisions to be freely available
- **Accountability:** Tewkesbury Borough Council will be accountable for the efficiency and effectiveness of its regulatory activities
- **Targeting:** Regulatory activities should be targeted only at cases in which action is needed

1.4 The Regulators' Compliance Code

The Regulators' Compliance Code is a central part of the government's better regulation agenda and is based on the recommendations of the Hampton Report⁶. Its aim is to embed a risk-based, proportionate and targeted approach to regulatory inspection and enforcement. Local Authorities are required by law to have regard to the Code in determining general policy when exercising specified regulatory functions.

Specified regulatory functions are those detailed in the Legislative and Regulatory Reform (Regulatory Functions) Order 2007⁷ and these include functions relating to Environmental Health Services (Residential and Commercial).

The Council will have regard to the Regulators' Compliance Code with a view to achieving regulatory outcomes without imposing unnecessary burdens on businesses, organisations and other regulated entities, in particular:

- **Supporting economic progress** – to allow and encourage economic progress and only to intervene when there is a clear case for public health, safety or environmental protection
- **Risk assessment** – to use comprehensive risk assessment to concentrate resources in the areas that need them most
- **Advice and guidance** – to provide authoritative, accessible advice to businesses easily and cheaply
- **Targeted actions** - Inspections and other visits must be justified and targeted on the basis of risk assessment
- **Information requirements** – businesses should not have to give unnecessary information or give the same piece of information twice
- **Compliance and enforcement actions** – the few businesses that persistently break the law should be identified quickly and face proportionate and meaningful sanctions
- **Accountability** – the Council will be accountable for the efficiency and effectiveness of its activities, while remaining independent in the decisions it takes

1.5 Scope, Implementation and Training

This document covers all enforcement activities carried out by the Council.

Enforcement activities include all formal and informal actions as specified in paragraphs 2.1 to 2.7 below, carried out in the exercise of statutory powers.

The policy is implemented by the Council's officers through the documented procedure for the delegation of powers and authorisation of officers.

The responsible Chief Officer will be accountable to the Council for the implementation of this Policy.

Enforcement activities will be implemented in accordance with this Policy and protocols specific to each service area.

A documented training programme will be implemented by each service area within the Council to ensure that all authorised officers receive adequate training, and to ensure delivery of this Policy is consistent with their authorisation and duties.

Enforcement officers will receive full initial training and refresher training following periodic appraisal by line managers.

1.6 Publication, Consultation and Revision

The Policy will be published by the Council, made available in leaflet form and through its website following consultation with interested parties. Feedback from stakeholder representatives following consultation will be considered and where appropriate included in subsequent revisions to the Policy.

This Enforcement Policy will be reviewed and updated annually or whenever there are changes to relevant legislation or centrally issued guidance. The review will take account of changes in the law, operational experience and feedback from individuals and businesses.

1.7 Fairness and Equality

All enforcement actions will be carried out in accordance with:

Equality Schemes and Policies 2008-2011

- Equality Schemes and Policies 2008-2011⁸
- The Human Rights Act 1998⁹;
- The European Convention on Human Rights¹⁰;
- The Freedom of Information Act 2000¹¹;
- The Data Protection Act 1998¹²;
- Police and Criminal Evidence Act 1984¹³;
- Criminal Proceedings and Investigations Act 1996¹⁴;
- Regulation of Investigatory Powers Act 2000¹⁵;
- The Race Relations Act 2000;
- The Race Relations (Amendment) Act 1976; and
- Relevant anti-discrimination legislation.

It is the responsibility of the officer in charge of the case, in conjunction with the Council's Solicitor/Legal Representative, in any enforcement action to ensure that:

- communications with all those involved are in a fair, clear and courteous manner;
- communications will be in plain English or in the appropriate language or method;
- any special needs of those involved are met as far as possible, (for example by providing an out of hours contact facility or translation services where necessary);
- help, information and advice will be given where needed;
- before formal action is taken there will be an opportunity for the offender to discuss the circumstances of the case with an officer;

- where there are rights of appeal against formal action advice on the appeal mechanism will be clearly set out in writing.

In carrying out its enforcement activity the Council will take into account the interests of all consumers within the Authority's area including business owners, employees and the public and will endeavor to support economic progress wherever possible.

1.8 Consistency and Transparency

All officers carrying out enforcement activities on behalf of the Council will:

- provide clear advice and information on how to comply with relevant legislation, codes of practice or guidance;
- distinguish between statutory requirements and advice or guidance about what is desirable but not compulsory;
- advise individuals and businesses of a named officer responsible for dealing with their case;
- comply with any performance standards set by the Council for dealing with enforcement matters;
- adopt a consistent approach to ensure that comparable issues are dealt with in a similar way.

To ensure consistency all enforcement officers will be suitably trained, qualified and authorised and monitoring of enforcement actions will be undertaken by managers. Monitoring reports will be maintained and any variations from the policy addressed.

Relevant specialist regional liaison group meetings will be attended where they exist, to ensure consistency with other Authorities in the region.

1.9 Guidance, Legislation and References

This Policy takes into account and reflects legislation and guidance published by both government and the relevant professional bodies. A list of documentation referred to in this Policy is given in Section 7 however this list is not an exhaustive list of all legislation and guidance which may be relevant to enforcement action and should not be relied on as such.

2. Enforcement Activities

2.1 Enforcement Action

All enforcement action, whether informal or formal, will be carried out in accordance with the principles set out in this Policy.

In deciding to take formal action and if so what type of action to take, officers will consider the following criteria:

- the seriousness of the offence;
- the consequences of non-compliance in terms of risk to people, property, the community or the environment;
- the individual's or company's past history in terms of compliance;
- confidence in management, level of awareness of statutory responsibilities and willingness to prevent a recurrence;
- the likely effectiveness of the various alternative enforcement options;

- the public interest, public expectation and the importance of the case in setting a precedent;
- the application of any national or local guidance to the matter in question;
- information received following liaison with other external enforcing agencies;
- relevant case law and guidance;
- the likelihood of the offender being able to establish a defense;
- the consumer/complainants attitude towards formal action;
- the information received following liaison with other authorities;
- the reliability of witnesses.

The most efficient and effective action will be taken to achieve the desired compliance with the law. The decision will be taken in an objective and fair way in accordance with the principles set out in this Policy.

There will be a graduated approach to enforcement, commencing with informal action where appropriate, followed by formal action where compliance is not achieved, proportionate to the seriousness of the offence.

Enforcement action will be targeted towards situations which give rise to the most serious risk.

2.2 Informal Enforcement Action

Where breaches of the law exist, informal action will normally be taken in the first instance providing the breach is a first occurrence, does not result in a serious risk to public health, safety, amenity or the environment and the officer is confident that informal action will be effective.

Informal Action may include one or more of the following:

- inspection of premises, equipment, food etc;
- verbal advice;
- verbal request for action;
- written request for action;
- written warning of formal action if contraventions are not corrected.

Recipients of informal action will be given the opportunity to discuss the requirements with the investigating officer and agree an appropriate programme of work and time for completion. The name of the officer's Manager will be given to encourage feedback and facilitate complaint/appeal. Regular contact with the investigating officer, as the works progress will be encouraged.

2.3 Formal Enforcement Action

Where informal action has not been successful or where an offence presents a serious risk to public health, safety, amenity or the environment, formal action will be taken.

Formal action consists of one or more of the following:

- the service of statutory notices and orders;
- the issue of simple cautions;
- prosecution;
- application for injunction;
- revocation or suspension of licenses, approvals or registrations;
- issue fixed penalty notices;

- use of other enforcement powers by officers authorised by specific legislation (eg. sampling, seizure or detention of equipment or food, prohibition of processes or activities).

2.4 Statutory Notices and Orders

Statutory Notices are legal documents normally requiring the recipient to carry out work or to cease specified activities, to ensure compliance with legislation. They are issued by the officer to whom authority is delegated by the Council.

A wide variety of Notices/Orders are provided in the legislation enforced by the Council, therefore specific procedures for their issue are necessary. These are set out in the service area protocols.

Time limits specified in Notices must be realistic and wherever possible requirements set out will be discussed and agreed with the intended recipient/s prior to issue. Representations from the recipient requesting a reasonable time limit for compliance will be considered.

Failure to comply with a Statutory Notice will be referred to the Service Manager to determine further action.

2.5 Prosecution

The decision as to whether to prosecute (or offer Simple Caution) will always be made following a case conference consisting of the following members:

- Chief Officer (or his/her deputy);
- the investigating/case officer; and
- a solicitor/legal representative acting for the Council.

Each case will be treated as unique and considered on its own facts and merits. All the circumstances surrounding the case will be considered including the social benefits and costs associated with bringing the matter to the attention of the Courts.

At case conference the facts relating to the case will be presented in a standard format, to ensure that all of the necessary criteria for prosecution have been satisfied.

Legal advice will be taken to ensure that only those cases presenting a realistic prospect of conviction will be pursued. Due regard will be had to the availability of any defences and to any explanation, apology or other issue referred to by the suspect by way of mitigation.

The final decision to prosecute will be taken by the appropriate Chief Officer following the case conference having regard to the recommendations made by officers.

The decision to prosecute will be made in accordance with the Code for Crown Prosecutors produced by the Crown Prosecution Service¹⁷ and the Director of Public Prosecutions Guidance on Charging¹⁸.

Both stages of the 'Full Code Test' as set out in the Code for Crown prosecutors will be applied:

- a) **The Evidential Test** – there must be enough evidence to provide a realistic prospect of conviction and the evidence must be admissible and reliable.
- b) **The Public Interest Test** – the public interest must be considered in each case and public interest factors for and against prosecution must be fairly balanced.

Whilst it is a fundamental principle of this Policy that each case will be considered on its own facts and merits, one or more of the following factors may indicate that prosecution is likely to be pursued:

- a flagrant breach of the law such that public health, safety, amenity or the environment have been put at risk;
- the offence has resulted in a serious risk to, or impact on public health, safety, amenity or the environment;
- the offence was clearly foreseeable, or where there have been a series of breaches or incidents, the offender is clearly aware of and he has failed to take effective remedial action;
- the offender knew that a course of action (or inaction) was likely to lead to the commission of an offence or there was an element of intention or willfulness;
- a history of non compliance exists;
- the offender shows reluctance to take the appropriate remedial action to prevent further offences;
- failure to comply with a Statutory Notice or Order;
- fraudulent, deceptive or misleading trading practices that affect or are likely to affect the economic interests of businesses or consumers;
- for matters where there has been recklessness or negligence;
- a deliberate or persistent failure to comply with advice, warnings or legal requirements;
- any act likely to affect animal health or welfare, disease prevention measures, or the integrity of the food chain;
- activities, which adversely affect vulnerable groups and/or ethnic minorities;
- obstruction or assault (including verbal assault) of an officer in the execution of their duties.

As soon as the decision to prosecute has been made the Council's Solicitor will be instructed to commence proceedings.

2.6 Simple Cautions

A Simple Caution may be used as an alternative to prosecution for first time minor offences. The aim of a Simple Caution is to deal quickly and simply with offences, to save court time and reduce the likelihood of re-offending.

Following the case conference the Chief Officer for the service area in question, having regard to the recommendations made by the officers, will determine if a Simple Caution is the most appropriate form of sanction. If so, the individual or company concerned will be advised of the decision and requested to confirm acceptance within 14 days.

A decision to offer a Simple Caution must be made having regard to:

- Home Office circular 30/2005 Cautioning of Offenders¹⁹;
- Guidance to Police Officers and Crown Prosecutors issued by the Director of Public Prosecutions¹⁸;
- LACORS Guidance on Cautioning of Offenders²⁰.

There are no definitive rules as to the circumstances in which a Simple Caution is appropriate and in reaching a decision at case conference the following must be taken into account:

- Whether a Simple Caution is appropriate to the offence and the offender;
- Whether a Simple Caution is likely to be effective;
- The sufficiency of the evidence;
- Public interest considerations;
- The views of the victim and the nature of any harm or loss;
- Whether the offender has made any form of reparation or paid any compensation;
- Any known records of previous convictions or Simple Cautions relating to the offender.

A Simple Caution cannot be given where the offence is indictable only or where the offender is under 18 years of age. It may only be offered where the offence has been fully admitted by the offender.

The person administering the caution will be the relevant Service manager.

If the offender fails to admit the offence and does not agree to the Simple Caution, the case will be referred for prosecution.

2.7 Other Formal Actions

Other types of formal enforcement action provided by specific legislation will be used in accordance with service area protocols, for example:

- detention or seizure of food or equipment;
- application for a search warrant;
- sampling;
- prohibition of use of equipment or processes;
- issue of fixed penalty notices;
- work in default
- administrative penalty (in the case of Housing / Council tax benefit fraud)

3. Powers of Officers

Officers can have a range of delegated powers legislation to assist them in undertaking their duties; these can include the power to require answer to questions and power to enter premises.

Officers will carry an identity badge and their authorisation card (warrant) with them at all times.

In the event of any doubt as to an officer's powers, confirmation can be obtained by contacting the officer's manager from any Statutory Notice describing their powers or at the Council. It is an offence to obstruct an authorised officer who is conducting an inspection or investigation, which could lead to prosecution.

4. Liaison with other Agencies

Tewkesbury Borough Council recognises that in many areas of its enforcement activity there will be an overlap with the work of other Regulatory Authorities (e.g. Gloucestershire County Council, Health and Safety Executive, Environment Agency, Food Standards Agency, Meat Hygiene Service, Department for Environment, Food and Rural Affairs and Utility Providers).

Where possible, officers will attempt to coordinate activities and actions with other agencies to achieve the most efficient outcomes and to minimise inconvenience.

Liaison and exchange of information with other enforcement teams within Tewkesbury Borough will take place wherever applicable. Liaison will also take place between relevant Services within the Council to avoid any potential conflict of interest.

Where enforcement action is contemplated against an organisation with a Home/Originating, Primary or Lead Authority that Authority will be consulted prior to the action and kept informed, as appropriate.

In situations where there is a shared enforcement role the most appropriate Authority will, by mutual agreement, carry out the enforcement action.

Where it is evident that the offender has committed the offence across several local authority areas liaison will take place to co-ordinate a joint prosecution if this is deemed appropriate.

5. Public Information

This Policy will be available on the Council's website and also in hard copy available on request.

Details of Simple Cautions and prosecutions, including the defendants, offences, verdict and sentence will be entered on a public register.

The Council believes that public information about enforcement is important to maintain confidence in the regulatory system and to impress upon perpetrators the gravity with which the Council regards offences. It is therefore the Council's policy to give factual information about convictions to the media.

The Council will comply fully with the Freedom of Information Act 2000¹¹ and the Data Protection Act 1998¹² with regard to the release of information on enforcement activities, in accordance with the Council's Freedom of Information Policy²³ and Data Protection Policy²⁴.

The Council will provide members of the public access to environmental information on request in accordance with the Environmental Information Regulations 2004²⁵.

6. Civil Claims

Officers will not become involved in any negotiations on awarding reparation or compensation to victims following offences being committed.

Where a victim is considering civil proceedings the Council must have regard to the Data Protection Act 1998¹² and the Enterprise Act 2002²⁶ before disclosing any information.

Any enforcement action taken by the Council is separate and distinct from any civil claims likely to be made by individuals. Enforcement action is not necessarily undertaken in all circumstances where civil claims may be pursued, nor is it undertaken to assist such claims.

The Council may, on request, provide solicitors acting for individuals pursuing a civil claim, a factual report of the investigation. There will be a charge for this report.

7. Complaints Procedure/Appeals Mechanism

The Council is committed to providing quality services and encourages suggestions and criticisms from its customers.

Most problems can be resolved with the officer dealing with the matter or with their manager.

The Council will respect confidentiality subject to any requirement to disclose information.

If matters cannot be resolved informally, the Council's Complaint Procedure can be followed, available on line and all complaints received will be acknowledged immediately and a response in writing given within 10 working days.

If a person is still dissatisfied having exhausted the Council's Complaints Procedure, a complaint can be made to the Local Government Ombudsman Service,

The Council aims to provide an efficient and fair enforcement service. However, in the event that a person or business is not satisfied with the way in which an enforcement matter has been handled or a decision made, the Council has a formal complaints procedure which can be used. Details of this are available for the Council's website (www.TewkesburyBorough.gov.uk) or from the offices at Gloucester Road, Tewkesbury, Gloucestershire, GL20 5TT.

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8. References

1. Central and Local Government Concordat on Good Enforcement – Cabinet Office March 1998
2. Legislative and Regulatory Reform Act 2006
3. Regulators Compliance Code: Department for Business Enterprise and Regulatory Reform (17 December 2007)
4. Crime and Disorder Act 1998
5. Regulatory Enforcement and Sanctions Act 2008
6. The Hampton Report: Hampton Review on Regulatory Inspections and Enforcement (HM Treasury 2005)
7. Legislative and Regulatory Reform (Regulatory Functions) Order 2007
8. Tewkesbury Borough Council's Comprehensive Equality Policies and Action Plans 2008 - 2011
9. Human Rights Act 1998
10. European Convention on Human Rights: Council of Europe (1950)
11. Freedom of Information Act 2000
12. Data Protection Act 1998
13. Police and Criminal Evidence Act 1984 and Code of Practice (PACE)
14. Criminal Proceedings and Investigations Act 1996
15. Regulation of Investigatory Powers Act 2000
16. Code for Crown Prosecutors produced by the Crown Prosecution Service
17. Guidance to Police Officers and Crown Prosecutors issued by the Director of Public Prosecutions
18. Home Office Circular 30/2005: Cautioning of Offenders
19. Local Authorities Coordinators of Regulatory Services (LACORS) - Guidance on Cautioning of Offenders
20. Tewkesbury Borough Freedom of Information Policy
21. Tewkesbury Borough Data Protection Policy
22. Environmental Information Regulations 2004
23. Enterprise Act 2002

If you would like a copy of this document in large print, Braille, on audio-tape or translated into other languages please contact environmental health department on 01684 295010