

**ARUN DISTRICT COUNCIL ENFORCEMENT POLICY**  
**ENVIRONMENTAL HEALTH, PRIVATE SECTOR HOUSING,**  
**LICENSING & CLEANSING**

**1.0 INTRODUCTION**

1.1 The Council, through its services and officers, has both a duty and a desire to secure compliance with the law. Through our enforcement activity, we seek to ensure that minimum standards prescribed by law are achieved by individuals and businesses who have legal responsibilities to protect and enhance public health and the environment. We recognise that a key element of our activity will be to support those we regulate to comply and thereby support business growth. It is nevertheless a Council priority to maintain enforcement activity where appropriate to protect and enhance public health and the environment and to maintain a “level playing field” for businesses. Wherever possible, enforcement activity will be co-ordinated with other agencies and will aim to align with other Council policies.

**2.0 PRINCIPLES OF ENFORCEMENT**

2.1 Effective well targeted regulation can play an important role in promoting fairness, competition and addressing market failure, in particular protection from harm. We aim to ensure good regulation acts to enable beneficial economic activity. We will ensure that the action we take is proportional to the risk identified, is consistent in application, is targeted to areas where hazards are least well controlled and is transparent to those who are subject to our enforcement action. All enforcement action we involve ourselves with, even when not expressly referred to in the policy e.g. anti social behaviour control, will follow these principles.

**2.2 Proportionality**

2.2.1 We will relate our enforcement action to the actual and foreseeable risks to health, safety, wellbeing or maintenance of community and wider environments. Those whom the law protects and those on whom it places a duty should be assured that the enforcement action we take to achieve compliance will be proportionate to the risk. In deciding what is reasonably practical to control risks, we will exercise judgement and discretion, recognising that the final determination of the reasonableness of our actions is made by the Courts. Where appropriate models exist to assess risk and relate action to it, we will use these.

2.2.2 We aim to ensure our interventions impose the minimum burden compatible with achieving the desired objectives of regulation. Enforcement action will not be taken in cases of trivial or purely technical contraventions. We will take care to work with small businesses, voluntary and community organisations so they can meet their legal obligations without unnecessary

expense where practicable. We will consider the costs and benefits of regulatory measures and where the costs of any measure significantly outweigh its benefit alternatives will be sought.

- 2.2.3 The degree of risk will be balanced by considerations of statutory requirements, relevant good practice, the significance of the risks (both in extent and likelihood) and finally cost. Serious irreducible risks will not be tolerated, irrespective of the economic consequences.

## 2.3 Consistency

- 2.3.1 Consistency of approach does not mean uniformity. We will endeavour to carry out our duties in a fair and equitable manner and take a similar approach in similar circumstances to achieve similar ends. We will have procedural and managerial arrangements in place to promote consistency of approach and judgement. We will liaise with other Local Authorities and enforcement bodies to assist in this. We will investigate complaints of inconsistency made against us.

## 2.4 Openness and Helpfulness

- 2.4.1 We believe prevention is better than cure and we will actively work with businesses and individuals to advise, encourage and assist them to comply with their legal obligations. As well as on an individual basis, wherever possible we will inform industry sectors of new legal requirements which affect them at the earliest opportunity using media appropriate for those we regulate. We will ensure that the advice we provide is reliable, where possible, not in conflict with advice provided by other regulators. Wherever possible we will avoid charging for the advice or guidance we provide, and we will seek to minimise the costs of legal compliance. Officers will also seek to share best practice where we will believe this will easily assist operators to comply with obligations.
- 2.4.2 We will help those who are subject to, or affected by our regulatory activity to understand what is expected of them and what they should expect from us; we will make clear not only what they have to do, but, where it is relevant, what they do not have to do. In particular, we will clearly differentiate between legal requirements and advice, guidance and recommendations that are desirable but not compulsory. We will clearly specify any changes or time deadlines in any action we take. Where appropriate, required by law, or required by Codes of Practice, we will set out the detail of the Act or Regulation which is the subject of our enforcement action, together with any appropriate sources of information which will assist the recipient to comply with or challenge our enforcement action. Where it would assist those we enforce against, and if they request it, we will provide a follow-up visit to further explain enforcement action underway and to review action following enforcement activity.
- 2.4.3 We will provide a courteous and efficient service. Our staff will identify themselves by name and provide contact points and telephone extension

numbers, e-mail and Minicom addresses to assist in reaching us. We will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties. We will offer translation, interpretation or large print versions of our documents as appropriate. We aim to co-ordinate what we do to prevent overlap and unnecessary delay. We will provide simple and straightforward ways for those we regulate to comment on their perception of our service. This will be undertaken through a variety of means including use of customer feedback questionnaires and where appropriate industry forums. We will use these to ensure Officers have insight into those we regulate and how our regulatory activity affects our customers.

- 2.4.4 We will explain the purpose of our visits and what rights of complaint are open to those visited. This will include the provision of standard leaflets as appropriate. We will offer advice and/or direct those we deal with to sources of helpful information to enable their compliance. We will not treat requests for information as a need for a direct intervention or visit by us.
- 2.4.5 Where Statutory Notices and determinations are served, the appeals process will be clearly set out.
- 2.4.6 Where there is dissatisfaction with our enforcement actions the Council's Corporate Complaints procedure, details of which are clearly available on the Council's website <https://www.arun.gov.uk/corporate-complaints>, will be followed so that our enforcement action may be scrutinised against our policy.
- 2.4.7 We will continue to work within the Council and with other regulators to reduce information requirements of business and individuals and to share data available between regulators for that purpose, where the law allows. Where we collect data we will attempt to do this in a way that best suits those it is collected from where we can do so reasonably.

## **2.5. Transparency**

- 2.5.1 We publish a clear set of service standards so that those we regulate and other service users know what to expect, and what not to expect, from our service. This information will include how we communicate, how we can be contacted, how we provide guidance and advice, and how we check compliance. This information, along with this enforcement policy and links to fees which we charge for aspects of our service, will all be made available from a single point on the Council's website, [www.arun.gov.uk](http://www.arun.gov.uk) and the information kept up to date. We will also publish information on how we perform against our service standards, and customer feedback.

## **2.6 Targeting**

- 2.6.1 We will concentrate our enforcement activities (including prioritising our inspections/visits) on those individuals and businesses whose actions give rise to the most serious risk or where hazards are least well controlled. Where we take formal enforcement action, we will concentrate on the person

or persons who are responsible for creating the risk or those we regard as being primarily in breach.

- 2.6.2 We will utilise a risk-based prioritising system for determining our regulatory practice, the frequency of our visits, the scope of our inspection and action. We will consider both the likelihood of non-compliance and the impact of non-compliance on the outcome we wish to achieve through our intervention. In doing so we will take into account the compliance history of a business or individual, including whether a business has a Primary Authority relationship. Where we determine that the hazards/risks are low, we will consider alternatives to visiting for ensuring that businesses or individuals continue to effectively manage the risks.
- 2.6.3 In undertaking inspection we will generally avoid random inspection except to test methodology or gather intelligence. Where two or more Officers are likely to visit the same entity we will do our utmost to draw up joint inspection programmes to minimise burdens by sharing data. We will work with others to reduce the need for businesses to provide unnecessary information or to provide it more than once.
- 2.6.4 In applying the above principles, we will also take account of guidance contained in Codes of Practice, Industry Guides to compliance, recommendations of local and national co-ordinating bodies and inter-Authority standards.
- 2.6.5 Where we consider that the action we intend to take is inconsistent with the above, the matter will first be referred to the appropriate body for ratification, unless there is significant risk to the public in delaying enforcement.
- 2.6.6 The effectiveness of interventions at securing compliance will be reviewed.

### 3.0 **AUTHORISATION OF OFFICERS, COMPETENCE AND ARRANGEMENTS FOR CRIMINAL PROCEDURES INVESTIGATIONS**

- 3.1 All Officers will be authorised through the Council's Constitution and Scheme of Delegation. Officers will receive their authority in writing and will produce this when requested to do so.
- 3.2 Officers undertaking enforcement action will be suitably competent through qualification, training and experience. Competence training will be provided both "in-house" and externally. The training objectives will always include legal, technical, proportionality and consistency aspects. Management arrangements will include periodic checks on the competencies and consistency of Officers carrying out enforcement duties and will include a "peer review" procedure for Notices and other formal enforcement action (see Section 7.0 and Section 11.0). An Officer authorisation matrix will be maintained and used to review authority given to Officers by the relevant Manager of the service area.

- 3.3 All authorised Officers will abide by this Policy. Any departure from this Policy must be exceptional, justified to and sanctioned by a manager within Environmental Health, Licensing, Private Sector Housing, Cleansing , or the Group Head of Technical Services unless there is a demonstrable, significant and imminent risk to public health or the environment in delaying enforcement.
- 3.4 Where the case Officer determines that a case should not proceed beyond formal action to prosecution, this decision must be agreed and signed off by a manager within Environmental Health, Licensing, Private Sector Housing, Cleansing or Group Head of Technical Services using the appropriate pro forma.
- 3.5 In the case of licences, registrations and approvals, these should always be a counter-checked by a different authorised officer to the authorised officer granting/approving prior to issuing any licence, registration or approval.
- 3.6 In any investigation we will respect human rights and dignity in general compliance with the European Convention on Human Rights and Human Rights Act.
- 3.7 Fully acknowledge rights such as right to respect for private, home and family life; right against discrimination; right to protection of property and right to a fair trial. We will, however, balance these against the legitimate rights and responsibilities prescribed by the law which we will uphold, especially in areas such as public safety, prevention of serious crime and disorder, protection of health or morals and protection of rights and freedom of others.
- 3.8 . In carrying out our regulatory functions we will only interfere with human rights if there is lawful justification to do so and where it is necessary and proportionate. We will demonstrate this by adherence to the Regulation of Investigatory Powers Act 2000 and any code or guidance provided under it.
- 3.9 In all cases where prosecution is considered to be necessary or highly likely to be the only effective action (see later for criteria), administrative arrangements will comply with the Criminal Procedure and Investigations Act 1996 (CPIA) and Regulation of Investigatory Powers Act. (RIPA). Evidence will be gathered in accordance with the requirements of the Police & Criminal Evidence Act (PACE).
- 3.10 **Surveillance**
- 3.10.1 While day-to-day reaction to events is allowed, any specific surveillance work of a covert nature, i.e. when investigations are carried out in a manner that is calculated to ensure that persons who are subject to the surveillance are unaware of it taking place, have to be authorised in advance.
- 3.10.2 In considering a proposed surveillance activity, due regard must be given to a number of factors, in order to comply with appropriate legislation (e.g. RIPA, Human Rights Act, etc.), including:-

- ❖ what is to be subject to surveillance
- ❖ the purpose and potential outcome of the surveillance
- ❖ consideration of the impact on the privacy of individuals
- ❖ whether the activity can be demonstrated as being necessary and proportionate
- ❖ whether the activity falls within the definitions of RIPA, requiring approval by both an Authorising Officer (members of the Council's Corporate Management Team) and a Magistrate.

Further information may be obtained from the Council's policy on the Regulation of Investigatory Powers Act **and Guidance on the Use of Social Media in Investigations** and advice may be obtained from Corporate Management Team members, Legal Services and/or Internal Audit.

3.10.3 A central register of RIPA authorisations is kept by the Chief Internal Auditor and retained for a period of three years for audit and Investigatory Powers Commissioner's Office (IPCO) inspection purposes. All authorisations must be forwarded to the Chief Internal Auditor within one week of the authorisation, review, renewal, cancellation or rejection.

3.10.4 As part of recent legislative changes, it has also been recommended that any non-RIPA surveillance activities are documented, authorised (by a Corporate Management Team member), and registered in a similar way. Procedures and documentation for this will be agreed by the Corporate Management Team and provided to appropriate staff within the Council.

3.10.5 Where activities are undertaken jointly with another body e.g. the Police, Trading Standards, Department Work and Pensions, etc., the written authorisation should be confirmed as adequately covering the activities of all parties involved. Third party authorisations covering activities of Council staff should be obtained and passed to the Chief Internal Auditor as above

### 3.11 Criminal Investigations

3.11.1 At the commencement of a criminal investigation, that is any investigation where an Officer is ascertaining whether a person should be cautioned with a view to a possible prosecution, or where the caution is administered in order to gather evidence for a possible prosecution, the following "roles" must be established:

- ❖ The Investigator
- ❖ The Officer In Charge of the investigation
- ❖ The Disclosure Officer
- ❖ The Prosecutor

#### 3.11.2 The Investigator

This can be any duly authorised Officer. The investigator will pursue all reasonable lines of enquiry, whether these point towards or away from any

suspect. The investigating Officer must remain open-minded to all relevant information obtained. Relevant information must be recorded, collated and retained at the time it is obtained or as soon as practicable after that time in accordance with CPIA (Criminal Procedure and Investigations Act 1996) and its associated Code of Practice.

### **3.11.3 The Officer in Charge of the Investigation (OIC)**

This will be any Officer designated by the Chief Executive, but will usually be the Team Manager. However, if the Team Manager is the investigating Officer, then the relevant Group Head will assume the role of OIC. The OIC will direct the investigation and will ensure that effective procedures exist and are followed so that all relevant material is retained and made available to the Disclosure Officer (see CPIA and Code for details).

### **3.11.4 Disclosure Officer (DO)**

This will usually be a manager within Environmental Health, Licensing, Private Sector Housing or Cleansing . In the event that these Officers are the investigating Officer or OIC, then this role will be assumed by another Manager within these services . The Disclosure Officer will examine retained material gathered by the IO and OIC and ensure it is revealed to the Prosecutor in the preparation for taking proceedings. The DO will seek advice from the Prosecutor on relevant material for disclosure and draw up and maintain schedules of material to be disclosed, not disclosed and sensitive (in line with the CPIA and Code).

### **3.11.5 The Prosecutor**

Will be a lawyer in Legal Services or other individuals acting on behalf of the Council.

3.11.6 Management arrangements will include periodic checks to ensure that the CPIA and its Code are being appropriately and effectively applied.

## **4.0 ENFORCEMENT OPTIONS**

4.1 We will decide on the appropriate enforcement option by having regard to the Principles of Enforcement mentioned in section 2.0 above, together with the following considerations:

- ❖ Evidential Sufficiency. Whether there is a realistic prospect of conviction on each charge against each suspect.
- ❖ That the public interest will be served;
- ❖ The likelihood that action proposed will reduce the significant risks;
- ❖ The requirements of specific Council policy;

- ❖ That vulnerable groups will be protected;
  - ❖ The seriousness of the offence and risk presented;
  - ❖ The past history of individuals, businesses and informants involved and potential future risk;
  - ❖ Confidence in those involved in the issue, whether as individuals, representatives of the business/enterprise or informants (this will be assessed by consideration of relevant factors including any system of managing risk, external accreditation, competence and willingness to comply);
  - ❖ The intentions of those involved in non-compliance;
  - ❖ Consequences of non-compliance;
  - ❖ The likely effectiveness of the option to secure compliance.
- 4.2 Except in cases of wilful non-compliance or where immediate action is necessary to prevent a serious regulatory breach, we will allow those in suspected breach reasonable opportunities to discuss the circumstances of the case and to achieve compliance before taking formal enforcement action.
- 4.3 We will seek to reward good performers through positive incentives, including “lighter” inspections, where risk profiling justifies this, and less onerous reporting requirements where practicable.
- 4.4 We will also ensure that clear reasons for any formal enforcement action are given at the time and confirmed in writing at the earliest opportunity. Complaints procedures must also be explained at the time any enforcement action is taken.
- 5.0 **TESTING PUBLIC INTEREST**
- 5.1 In assessing “the public interest”, we will consider whether the proposed action will produce a net benefit to the wider community in terms of reducing environmental impact risks, in targeting public resources on the most serious risks, and in the opportunity costs of pursuing a particular course of action.
- 5.2 Those factors which will tend towards formal action and prosecution include positive answers to any or all of the following, which may not be an exhaustive list:
- (a) number of people affected by the offence;
  - (b) degree to which people are/were affected (seriousness of the offence);
  - (c) evidence that the offence was committed deliberately, maliciously or for clear economic advantage;



- (d) evidence that the defendant intimidated or harassed those affected;
- (e) evidence of previous or on-going offences of a similar type;
- (f) likelihood of repeated offence which may be deterred by prosecution;
- (g) defendant was in a position of authority;
- (h) lack of co-operation on the part of the defendant;
- (i) offence is widespread, at least in the general area in which it was committed;
- (j) failure to settle fixed penalty or comply with other statutory notices.

5.3 Factors which might argue against formal action and prosecution will include:

- (a) Court is likely to impose a very small penalty on conviction;
- (b) offence appears to have been the result of a genuine misunderstanding or mistake;
- (c) harm done was minor and was the result of a single incident, particularly if it was caused by a misjudgement;
- (d) willingness on the part of the defendant to co-operate and to ensure that no future offences of a similar nature are committed;
- (e) long delay between offence and trial, unless:
  - (i) the offence is serious;
  - (ii) the delay has been caused, at least in part, by the defendant;
  - (iii) the offence has only recently come to light;
  - (iv) the complexity of the investigation results in unavoidable delays.
- (f) defendant is in poor health or confused or lacking the appropriate mental capacity (unless there is a real possibility that the offence will be repeated);
- (g) defendant has, so far as possible, put right the harm caused by the offence;
- (h) a key witness has refused to testify or to provide a Witness Statement or, if they are the only victim, they have strongly indicated opposition to a prosecution;

- (i) the defendant is a juvenile and under the age of 17 (see Section 5.7)
- 5.4 Whether a particular decision meets the public's expectations can only be judged in the circumstances by the staff involved. Public expectation should not determine the action taken, since the public do not have possession of all the facts in any particular case or, indeed, the professional training, experience or organisational support which Enforcement Officers utilise in their decisions.
- 5.5 This is a difficult area to assess, but it may be possible to apply a "**reasonableness test**" to the questions: what would a reasonable person expect from the Local Authority in the circumstances? A further test may be whether the particular decision could be justified in any public forum or Inquiry.
- 5.6 Having carefully considered all these criteria, we will choose one or more of the following courses of action:
- ❖ to take no action, giving reasons to all parties concerned; this will only be appropriate where there have been no contraventions of relevant legislation and the Officer does not feel it necessary to give further advice or recommendations. All necessary inspection forms and computer records must be completed indicating Officer activity and confirming why no further action needed. This is to be formally agreed and "signed off" by the Officer in charge of the investigation and investigating Officer; or
  - ❖ to take informal action, clearly separating those items which are legal requirements and those which are not compulsory; and/or
  - ❖ to serve Statutory Notices (including "intention to serve" Notices); and/or
  - ❖ to seize or detain items or to suspend or revoke individuals' right to exercise a duty or permission; and/or
  - ❖ to accept voluntary closure of a premises/activity and/or;
  - ❖ to issue a fixed penalty fine where available; and/or

For offences under the Housing Act 2004 consider serving a civil penalty notice.(See Section 13) and/or

- ❖ to prosecute or recommend prosecution through the appropriate Court or by way of Simple Caution; and/or
- ❖ to refer the matter to another body where they possess a more effective procedure for securing compliance (e.g. Applying to the Court for an Injunction). In the majority of cases, the Primary Home Authority (as defined and registered by Department of Business, Energy & Industrial

Strategy) will be consulted prior to the institution of formal action; and/or to consider instigation of work in default; and/or

- ❖ To exercise any other legislative power pertaining to the particular circumstances of the case.

## 5.7 Juveniles

- 5.7.1 The Council is aware of its duty to ensure that it is acting in accordance with the Children’s Act 2004 and in particular to have regard to the need to safeguard and uphold the welfare of children. Alongside this duty, the Council takes seriously its role in making sure young people are aware of their responsibilities and its role in educating them to encourage good behaviour in the first instance.
- 5.7.2 Formal action including prosecution will be a measure of last resort. In developing its approach to young people who offend, the Council will work closely with the Youth Offending Service and the Police.
- 5.7.3 If in extreme circumstances the Council does issue fixed penalty notices it will go down the route of enforcing these through prosecution in the Youth Court and hope to recover unpaid penalties. Any fixed penalty notice served on a young person will be reported to the Youth Offending Service.
- 5.7.4 As with any other statutory action, a fixed penalty notice will not be issued if a young person is suffering from mental impairment, mental health problems or if they appear stressed or confused or appear to be under the influence of alcohol or drugs. In such circumstances, the relevant support agency and/or the police will be contacted.
- 5.7.5 This policy differentiates between various age bands when dealing with juveniles. No formal action will be taken against anyone under 10, however, separate approaches are taken for those aged 10 – 15 and those of ages 16 and 17.
- 5.7.6 The differential approach to different age groups is set out below:-

DEALING WITH DIFFERENT AGE GROUPS	
Age Group	Action
All young people	<p>On approach, following an alleged offence, the name, address, age and date of birth of the alleged offender should be obtained, together with the name and address of his or her parents or legal guardian.</p> <p>They should be informed that this information will be shared with the local youth offending team.</p>

	<p>In all instances, a young person's parents or legal guardian of this age group should be informed at the earliest opportunity, ideally by letter, explaining the action taken, and to give the opportunity to discuss the case with a relevant Officer of the Authority.</p> <p>No caution should be given or interview be undertaken without the presence of a 'responsible' adult unless the young person is 17 (a further explanation is given below).</p>
10-15 year olds	<p>When an offence is straightforward and 'clear cut' (such as a littering offence) and a formal interview is not required, a fixed penalty notice or warning fixed penalty notice <u>may</u> be issued. (see section 5.7.3 and 5.7.4 above)</p> <p>However, we will attempt to consult with the Youth Offending Service before any type of fixed penalty notice is issued. Any fixed penalty notice would be issued at a later date, i.e. through the mail, after a discussion with the Youth Offending Team.</p> <p>In all instances, a young person's parents or legal guardian of this age group should be informed at the earliest opportunity, ideally by letter, explaining the action taken, and to give the opportunity to discuss the case with a relevant Officer of the Authority.</p> <p>If the Youth Offending Service is not consulted on the issuing of a fixed penalty notice, it should be informed that one has been issued and given the chance to comment, where appropriate, on any follow-up action that might be necessary.</p>
16-17 year olds	<p>Once the age of the alleged offender has been ascertained, fixed penalty notices can be issued to this age group.</p> <p>However, if there are any doubts over the alleged offender's age, i.e. they could be aged under 16, the procedures set out above for 10-15 year olds should be followed.</p> <p>As with 10-15 year olds, where an offence is straightforward and 'clear cut' and a formal interview is not required, a fixed penalty notice may be issued, however, again we will as a general rule issue a fixed penalty notice which includes a financial penalty after</p>

	<p>consultation with the Youth Offending Team.</p> <p>The local Youth Offending Service should be informed of the offence and given the chance to comment, where appropriate, on the action to be taken.</p> <p>In all instances, a young person's parents or legal guardian of this age group should be informed at the earliest opportunity, ideally by letter, explaining the action taken, and to give the opportunity to discuss the case with a relevant Officer of the Authority.</p>
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5.7.7 Where formal action of any sort is considered against the juvenile, such as issuing a fixed penalty notice it will be appropriate in instances of the first offence to consider cancelling the Notice if the parent or guardian provides proof of age of the child to the authority.

5.7.8 If fixed penalty notices are issued payment will be allowed in instalments over a longer than normal payment window to be agreed with the offender. The option to commute a fixed penalty notice to a final written warning will also be considered. As an alternative to the fixed penalty, other community activity may be offered in lieu of payment such as participating in community clear-ups. Such 'alternative' penalties should always be available.

## 6.0 **INFORMAL ACTION**

6.1 We will take informal action where:

- ❖ the act or omission is not serious enough to warrant formal action; and/or
- ❖ the organisation is a "not-for-profit" organisation with predominantly volunteer staff; and/or
- ❖ from the individual's/enterprise's past history it can be reasonably expected that informal action will achieve the desired standard/compliance; and/or
- ❖ we have high confidence in the individual/management of the enterprise; and/or
- ❖ the consequences of non-compliance, or accepting a reduced standard, will not pose a significant risk to any individual or to the environment;

6.2 Where informal action by way of advice, verbal warnings and request for actions is made, we will confirm in writing the advice, warning or required action, within 7 working days of the decision.

6.3 We will ensure that all verbal and written informal action:

- ❖ contains clear and sufficient information so that WHAT is required and WHY it is required is understood;
- ❖ specifies in detail the legislation/regulation contravened, and specifies measures which will enable compliance and options available for achieving the desired effect;
- ❖ clearly differentiates between legal requirements and advice, guidance and recommendations that are desirable but not compulsory. In the latter case, we will use explicit wording so that the person in receipt of the information realises that they are under no obligation to take any action.

## 7.0 **SERVICE OF STATUTORY NOTICES**

7.1 We will serve Statutory Notices where, in line with the “Principles of Enforcement” in Section 2.0 above, we believe there is sufficient evidence to justify their use and where one or more of the following criteria apply:

- ❖ Where we are obliged to by law or required to by Council policy;
- ❖ Standards are generally poor with little individual or management awareness of legal duties and responsibilities;
- ❖ We have little confidence that the individual concerned or the representative of the business/enterprise will respond to an informal approach;
- ❖ There is a history of non-compliance or reluctance to comply with timescales suggested in the past;
- ❖ The consequences of non-compliance might potentially put the health of an individual at risk or threaten the environment;
- ❖ We intend to prosecute to secure compliance but immediate action is required to remedy conditions which are serious or deteriorating.

7.2 In cases where an “intention to serve” Notice is a legal requirement, the above criteria must still be used. In addition, the “intention to serve” Notice will also contain details of how and to whom the person receiving the Notice can ask for a meeting so that their point of view may be heard prior to the service of any follow-up Statutory Notice.

7.3 These representations will be heard by a manager within Environmental Health, Private Sector Housing, Licensing, Cleansing or Group Head of Technical Services. These Officers will consider the following criteria in reaching a decision on whether the “intention to serve” Notice is to remain in force or be withdrawn:

- ❖ whether the investigating Officer explicitly considered the “Principles of Enforcement” and the criteria above governing Statutory Notices;
- ❖ whether the investigating Officer was correct in fact and in the application of these principles and criteria;
- ❖ whether the recipient of the Notice has a genuine grievance and not just an issue of principle;
- ❖ whether the recipient of the Notice has demonstrated compliance prior to or shortly after the service of the “intention to serve” Notice;
- ❖ whether there are other factors which render the Notice obsolete.

7.4 A manager within Environmental Health, Licensing, Private Sector Housing, Cleansing or Group Head of Technical Services will confirm their decision as soon as possible after the “appeal” and confirm this in writing within 7 working days.

7.5 All Notices will be subjected to the following “peer review” process:

- ❖ Notices will only be signed by authorised Officers;
- ❖ Where the Notice has been drafted by non-authorised Officers, it may only be signed by authorised Officers if they have witnessed the contravention/offence or can adequately deduce the circumstances from the evidence provided AND agree that the “Principles of Enforcement” and the criteria for Statutory Notices (above) have been applied appropriately;
- ❖ Notices will give realistic time limits for compliance and, where appropriate, these time limits should be discussed and agreed with the intended recipient.
- ❖ Notices will only be signed when all relevant schedules accompany the Notice;
- ❖ All Notices will be checked by a line manager within Environmental Health, Private Sector Housing, Licensing, Cleansing or Group Head of Technical Services who will authorise the Notice prior to it being served.
- ❖ All Notices must be accompanied by a clear, detailed explanation of whom to contact for further information, how to appeal where an appeal mechanism exists, and information on the implications of non-compliance.

7.6 All Notices should be served by hand wherever practicable. Where this is not possible, they will be sent by 1<sup>st</sup> Class post or “Royal Mail Signed For” service

or sent to the Local Authority in whose district the recipient resides with a request for them to serve on our behalf.

7.7 Checks will be made with any relevant 'Primary Authority' prior to service of Notice unless in emergency situations.

7.8 We will check on the situation at the expiry of the period given in the Notice (or any agreed extension to that time) or such lesser time as seems appropriate in the circumstances. We will extend time for compliance only when this is likely to secure compliance and only after receiving a written request for such an extension from the recipient. Where received, such a request should be sympathetically considered, having regard to:

- ❖ the requirements of specific Council policy;
- ❖ the seriousness of the offence;
- ❖ the past history of individuals, businesses and informants involved;
- ❖ confidence in those involved in the issue whether as individuals, representatives of the business/enterprise or informants;
- ❖ consequences of non-compliance; and
- ❖ the likely effectiveness of the option to secure compliance.

Agreement to time extension will be sought from a team manager in Environmental Health, Private Sector Housing, Licensing, Cleansing or Group Head of Technical Services.

7.9 In all cases where there is a failure to comply with the Notice after a reasonable time, the matter will be put forward for prosecution and/or works in default in accordance with procedures outlined in Sections 11.

7.10 We will keep a record of all Notices served and report these and any outcomes to the appropriate co-ordinating body or Government Department.

## 8.0 **APPROVALS, REVIEWS, REFUSALS AND REVOCATIONS**

8.1 Approval/refusal/revocation of licence, registration or similar permissive authority will be assessed by authorised Officers against statute, conditions applied, codes of practice, industry standards and similar standards.

8.2 Approval will only be given if relevant standards are achieved. All approvals will be subject to a vetting system whereby the person processing the applications for approval will not authorise its approval. (See Section. 3.5).

8.3 Contentious applications, requests for review, revocation and refusals that can be determined by an authorised officer within the law will normally be determined by a manager within Environmental Health, Private Sector Housing, Licensing Cleansing or Group Head of Technical Services except



where the law does not permit this. Such decisions may, at the discretion of a manager, be referred to a Licensing Subcommittee. Where revocation or refusal is of an administrative nature, such as for non-payment of fees, it shall be undertaken by an authorised officer.

8.4 In this context, “contentious” means applications which have been formally objected to or relevant representations have been made, have contravened licence etc. conditions, or are subject to complaint.

8.5 Review, refusal or revocation of permissive authorities will be considered on the basis of appropriate prescribed grounds and may include:

- ❖ closure of premises following the issue of a Prohibition or Emergency Prohibition Order (primarily in relation to premises authorised under the auspices of legislation reflecting EU Directives on meat, fish and dairy products);
- ❖ a serious and manifest breach of conditions, limitations, or statutory objectives, subject to which the authority was granted and which is unlikely to be corrected;
- ❖ the conviction of a Licence holder for breach of Licence conditions;
- ❖ conviction for offences of dishonesty, indecency or violence, or other relevant legislation;
- ❖ Conviction for relevant offences as defined in the appropriate statute.
- ❖ evidence of a recent previous revocation/refusal;
- ❖ the number of other similar permissive Authorities issued to persons or premises already excessive;
- ❖ the person applying is not “fit and proper” as defined by the appropriate statute;
- ❖ those persons and organisations that have no right to work in the UK
- ❖ the application is inappropriate to the relevant locality;
- ❖ false or inadequate information has been provided as part of the application;
- ❖ fees due have not been paid;
- ❖ the premises/activity is conducted in a manner so as to cause nuisance , or disorder or public safety issues or safe guarding issues or risk to animal welfare as relevant to the particular case.

8.6 We will revoke a licensed driver and/or vehicle owner if we find evidence of the following:

- ❖ Driving without insurance
- ❖ Driving without road tax
- ❖ Driving in an unsafe vehicle
- ❖ Failure to disclose a prosecution or caution subsequent to the issue of a Licence
- ❖ When requested to by the Police and the evidence meets with our “Principles of Enforcement”
- ❖ A licensed driver driving an unlicensed vehicle
- ❖ A licensed vehicle being driven by an unlicensed driver
- ❖ Repeated failure to comply with a request for vehicle or driver checks.
- ❖ Licence holder no longer meets the requirement to be a fit and proper person.

8.7 A driver will be invited to re-apply free of charge for the remaining licensed period when officers are satisfied that there has been compliance and/ or there is no danger to public safety.

8.8 Revocation decisions will be confirmed in writing and explain the reasons for revocation. An explanation of the recipient’s rights of appeal, and how that appeal might affect the revocation, will also be given.

## 9.0 **SEIZURE, DETENTION AND SUSPENSION**

### 9.1 **Seizure and Detention**

9.1.1 We will only use the powers to seize or detain items (goods, equipment, records, etc.) where we believe that a clear blatant breach of statute has or is about to occur AND that there is a power which authorises such seizure and/or detention OR where we need to secure compliance with a Notice.

9.1.2 We will consider the “Principles of Enforcement” in Section 2.0 above, refer to Codes of Practice and guidance issued by co-ordinating and other recognised authorities and apply the following detailed criteria in coming to our decision:

- ❖ There is a clear need to protect individuals, relevant animals or the environment from imminent risk;
- ❖ Failure to act will result in vital evidence being destroyed;
- ❖ Other remedies (such as voluntary surrender) will not achieve the desired level of compliance;
- ❖ Previous history or other information in our possession indicates a repeat incident is likely to occur;

- ❖ We are formally requested to use our powers in support of other enforcement agencies.

9.1.3 We will inform all interested parties of the effect of our intention to seize and/or detain, the legal basis for such action, the processes involved in such action and any rights they have to appeal, make representation and/or seek compensation. We will confirm these matters in writing either at the time or as soon as practicable after such action and, in any event, not later than one working day after taking the action. Where time permits, then the “peer appraisal” process outlined in Section 7.5 above should be followed.

9.1.4 In most cases, we will put the matter forward for prosecution in accordance with procedures outlined in Section 11.0.

## 9.2 **Suspension**

9.2.1 Powers to suspend permissive authorities will be used in accordance with the relevant statutory requirements and the general principles of enforcement set down in Section 2 of this policy.

9.2.2 Grounds for suspension are various and often specific to the type of Authority concerned; they may, however, include:

- ❖ conviction of an offence of a relevant statute;
- ❖ breach of conditions;
- ❖ imminent risk of serious pollution;
- ❖ serious risk to public safety or wellbeing;
- ❖ lack of adequate procedures, records and trained staff.
- ❖ non-payment of fees

9.2.3 Suspension will normally be authorised by a manager within Environmental Health, Private Sector Housing, Licensing, Cleansing or Group Head of Technical Services but can also be authorised by the Enforcement Review Panel or by a Licensing Subcommittee.

9.2.4 We will inform the person who has had their permission suspended in writing including the reason their permission has been suspended and that they have the right to appeal

9.2.5 Suspensions will only be lifted as and when authorised officers are satisfied that reasons for initial suspension have been rectified. Lifting of a suspension will be granted by a manager within Licensing, Environmental Health, Private Sector Housing or the Group Head of Technical Services when satisfied compliance has been achieved. This will be confirmed in writing within 5 working days of such a decision being made.

## 10.0 **CLOSURE/VOLUNTARY CLOSURE OF PREMISES**

- 10.1 Where an authorised Officer believes that an imminent risk of injury to health exists in respect of a premises, a piece of equipment or a process, then he/she may serve a Hygiene Emergency Prohibition Notice.
- 10.2 When this occurs, an application will be made by the Officer to the Court for a Hygiene Emergency Prohibition Order to be made.
- 10.3 Proprietors must be given at least one-day's notice of such an application.
- 10.4 Before taking prohibition action involving chemical contamination, medical and other expert advice should be sought. Similar action should also be considered in respect of microbiological hazards or in respect of unusual or complex processing situations.
- 10.5 The situations below are illustrative of where an authorised Officer may consider closure or prohibition action:
- 10.6 Conditions where Prohibition of Premises may be Appropriate:
- (a) Infestation by rats, mice, cockroaches or other vermin (including birds) or a combination of these infestations resulting in actual food contamination or a significant risk of food contamination;
  - (b) Very poor structural condition and poor equipment and/or poor maintenance of routine cleaning and/or serious accumulations of refuse, filth or other extraneous matter resulting in an actual or significant risk of food contamination;
  - (c) Serious drainage defects or flooding of the premises leading to actual contamination or a significant risk of food contamination;
  - (d) Premises or practices which seriously contravene the Food Laws and have been or are implicated with an outbreak of food poisoning;
  - (e) Any combination of (a), (b), (c) and (d) or the cumulative effect of contraventions which together represent an imminent risk of injury to health.
- 10.7 Conditions when Prohibition of Equipment may be Appropriate
- 10.7.1 In addition to the above, the following circumstances may be in existence:
- (a) Use of defective equipment, for example, a pasteuriser incapable of achieving the required pasteurising temperature;
  - (b) Use of equipment involving high-risk foods which has been inadequately cleaned or disinfected or which is obviously grossly contaminated and can no longer be properly cleaned.
- 10.8 Conditions when Prohibition of a Process may be Appropriate.

10.8.1 In addition to the above, the following circumstances may be in existence:

- (a) Serious risk of cross-contamination;
- (b) Inadequate temperature control, for example, failure to achieve sufficiently high cooking temperatures;
- (c) Operation outside critical control criteria, for example, incorrect pH of a product which might allow clostridium botulinum to multiply;
- (d) The use of a process for a product to which it is inappropriate.

10.9 In general, authorised Officers will issue Hygiene Emergency Prohibition Notices. Under no circumstances will they try to persuade proprietors to voluntarily close their premises/processes or necessary equipment. However, should the proprietor offer to close it down, then the following criteria must be fulfilled before agreement is reached:

- (i) There must be no risk of the premises, process or piece of equipment being re-opened without the express agreement of the Council;
- (ii) The proprietor must be willing to sign and date the Voluntary Closure Form setting out the extent of the offer to close;
- (iii) The person signing the form, if not the proprietor, must have the authority of the proprietor/employer to agree to such voluntary action;
- (iv) The informal offer to close the premises/practice voluntarily must have at least the equivalent effect of any appropriate prohibition action.

10.10 It must be remembered that authorised Officers have no legal sanction against a proprietor who re-opens for business, even if they have signed a Voluntary Closure Form.

10.11 It must be pointed out to the proprietor that, by making the offer to close, he is relinquishing his rights to compensation.

10.12 Checks must be carried out to ensure that a premises, process or piece of equipment which has voluntarily closed remains closed until such times as a written statement is issued by the authorised Officer to confirm that the premises can re-open.

10.13 Upon agreeing to voluntary closure, the Officer must make it very clear to the person in charge why the premises, process or piece of equipment have been closed and what works must be carried out. This must be confirmed in writing and served on the proprietor along with a copy of the agreement.

10.14 The above considerations will be applied in respect of closures of food premises. The Council may seek to use powers available under other legislation for closure on grounds of health and safety, licensing, housing or other issues to which this policy applies.

## 11.0 **PROSECUTIONS**

11.1 We will restrict the use of prosecutions to those cases where, having considered the “Principles of Enforcement” in Section 2.0 above, we believe an individual or person(s) having control of the business/enterprise has:

- ❖ obviously disregarded a foreseeable risk; and/or
- ❖ deliberately sought to gain an economic advantage by disregarding/breaking the law; and/or
- ❖ created a serious nuisance; and/or
- ❖ seriously or repeatedly threatened another’s health, safety, quality of life or the maintenance of community environments; and/or
- ❖ refused to comply with a Statutory Notice or conditions; and/or
- ❖ failed to achieve the basic minimum legal requirements after receiving written advice or a Statutory Notice; and/or
- ❖ blatantly breached a Council Order/Byelaw.

11.2 Evidence will be gathered in accordance with Sections 3.0 above. If evidence is established suggesting manslaughter, we will liaise with the Police, Coroner and/or CPS as appropriate.

11.3 The evidence will initially be reviewed by the relevant Officer and their line manager (i.e. the investigator and the Officer in charge of the investigation). A request to recommend prosecution will not be referred to the Enforcement Review Panel:

- (i) If the above-mentioned criteria are not met;
- (ii) If there is insufficient relevant, admissible, substantial and reliable evidence that an offence has been committed by an identifiable person or Company;
- (iii) Where other enforcement action would be more appropriate;
- (iv) Where the breach is not a legal one but rather one of an industry guideline or Code of Practice;
- (v) Where the offence involves an organisation operated by volunteers except in extreme circumstances;
- (vi) If a decision is made not to consider prosecution, an alternative enforcement action will be decided upon and agreed to by a member of the Enforcement Review Panel in writing using the appropriate pro forma.

In general there is a presumption against prosecution of juveniles, the elderly, the infirm or mentally or severely physically infirm.

#### **11.4 The Enforcement Review Panel**

11.4.1 With the exception of following through unpaid Fixed Penalty Notices, in cases where prosecution is considered to be the preferred option, Investigating Officers will prepare a case file for submission to a meeting of the Enforcement Review Panel. Those who are subject of any reports to the Panel will be contacted, usually in writing, advised of the meeting, its purpose and date and given the opportunity to submit written comments for the Panel's consideration.

11.4.2 The file will contain the following details:

- ❖ an introduction setting out the key events and/or outcomes;
- ❖ the facts and background history to the case;
- ❖ a statement of the legislation involved; the alleged offences and any options concerning the specific sections which may be appropriate to pursue by way of prosecution;
- ❖ any mitigating circumstances, representations from the accused or similar material which ensures that a balanced and impartial decision can be attempted by the Panel;
- ❖ any specific defences available to the accused;
- ❖ officer conclusions and recommendations;
- ❖ Witness Statement (if taken);
- ❖ transcripts of all taped interviews under caution (Police & Criminal Evidence Act 1984);
- ❖ relevant photographs;
- ❖ other supporting and evidential material.

11.4.3 The Enforcement Review Panel will comprise at least one Lawyer plus two managers from within Environmental Health, Private Sector Housing, Licensing, Cleansing or Group Head of Technical Services. Each will be given and study the case file submitted in accordance with Section 11.4.2 above.

11.4.4 The Enforcement Review Panel will consider the evidence having regard to the "Principles of Enforcement" mentioned in Section 2.0 above, relevant Codes of Practice and guidance including any guidance issued by the Crown Prosecution Service and the following criteria:

- ❖ That evidence presented is valid and relevant, that continuity is complete and quality is satisfactory;
- ❖ There must be a realistic prospect of conviction;
- ❖ That it is in the public interest to prosecute and that demonstrable public benefit will accrue from conviction (e.g. It may establish an important legal precedent);
- ❖ That the offence is sufficiently serious;
- ❖ That the previous history of the accused indicates that other remedies are unlikely to secure compliance;
- ❖ That the accused will be unlikely to establish a defence in law (e.g. “All due diligence”, “best practicable means”, “reasonably practicable”);
- ❖ That the accused appears unwilling to prevent a recurrence of the problem;
- ❖ That important witnesses are both credible and willing to co-operate;
- ❖ Any explanation offered by the accused.

11.4.5 The Enforcement Review Panel will decide a relevant course of action, namely, one of the following:

- (1) to refuse to recommend prosecution and to return the file to the investigating Officer for other, alternative enforcement action or no action;
- (2) to defer or to agree in principle a decision subject to the Lawyer of the Council’s opinion on a legal technicality;
- (3) to defer a decision until further evidence is supplied by the investigating Officer or the Officer in charge of the investigation;
- (4) to authorise prosecution, revocation, review and/or suspension with or without the option for Simple Caution - see Section 12.0 below);
- (5) to authorise prosecution, revocation and/or suspension as above and to request the investigating Officer to take further enforcement action/investigations;
- (6) to authorise prosecution as above with a further recommendation that the matter be considered by a higher Court where previous convictions have failed to secure compliance or where circumstances are so serious or significant that action by a lower court will not bring about a sufficient remedy;
- (7) to authorise prosecution as above, but with a further recommendation that a simple caution be offered in lieu of prosecution;



- (8) a combination of the above; and/or
- (9) to issue a fixed penalty in lieu of prosecution.
- (10) For Housing Act 2004 to issue a civil penalty notice in lieu of prosecution

11.4.6 In all cases, the decision of the Panel will be recorded and signed by the members in attendance. Wherever possible the relevant person(s) will be written to within seven days of the decision, informing them of the outcome of the Enforcement Panel.

## 12.0 **SIMPLE CAUTIONS/FIXED PENALTIES**

12.1 A Simple Caution is not an alternative to a Fixed Penalty Notice, or vice versa. They are however both alternatives to prosecution for less serious offences, and their use is governed by some shared principles. A Simple Caution will not be recommended or Fixed Penalty Notice issued where there is judged to have been potential for or actual serious harm or a reckless disregard for standards.

12.2 Simple Cautions aim to deal quickly and simply with offences, divert offenders, where appropriate, from appearing in the criminal courts and/or reduce the likelihood of re-offending. Before considering a caution national and local records must be checked and Primary, Authority consulted. If a Simple Caution has been given previously this will count against the issue of a further one. A further caution can still be administered if subsequent offences are trivial or unrelated.

12.3 We will consider recommending a Simple Caution or issuing Fixed Penalty Notice in lieu of a prosecution in the following circumstances:

- ❖ the offence has been clearly committed or there are no aggravating circumstances
- ❖ there is sufficient evidence of the offender's guilt to make conviction a realistic prospect; and
- ❖ there is a clear and reliable admission of the offence; and
- ❖ the offender clearly understands the significance of the offence and is likely to give informed consent to the caution or agree to the issue of a fixed penalty; and
- ❖ that public interest may be best served by this course of action. (In this respect, Simple Cautions or Fixed Penalty Notices may be appropriate to consider where: the offence is trivial (e.g. a dropped crisp), likely penalties will be low; where there is genuine remorse and commitment to correction, and/or no previous history of offending. There is also a general presumption against prosecuting juveniles, the elderly, the infirm or the mentally or severely physically impaired. Cautions will not

generally be given to the under 18's except as in line with the options in 5.7 above).

- ❖ In addition, Fixed Penalty Notices will not be issued when the person is under 10, or is obstructive or non-co-operative or is confused, either through impairment, drugs or alcohol in which case other appropriate agencies should be involved. Simple Cautions will not normally be given to a suspect under 18 – see Section 5.7 above in relation to Juveniles.

12.4 Where the Enforcement Review Panel authorise that a Simple Caution is issued or a Fixed Penalty is served, it must give the balance of reasons for and against this preference in lieu of prosecution. If subsequently the offender does not accept the Simple Caution or fixed penalty, the matter will be dealt with as a prosecution (see Criminal Investigation Procedures in section 3.0 above).

12.5 Where a Simple Caution is considered, the reason for it and its implications should be explained and the caution outlined to the individual or organisation concerned.

12.6 Under no circumstances should a suspect be pressed or induced in any way to admit offences in order to receive a Simple Caution as an alternative to being prosecuted.

12.7 Where a Simple Caution is accepted, it will be issued using a Standard Written Admission format by a manager within Environmental Health, Private Sector Housing or Environmental Amenities and details will be retained on file. The Simple Caution will normally be issued in person.

12.8 Fixed Penalty Notices will be issued by authorised Officers having considered the principles of enforcement and Section 5.2 above. See also Section 5.7 above in relation to action against juveniles.

12.9 Fixed Penalty Notices will not be repeatedly issued against the same individual or organization. The issue of more than two such Notices within the same six months will require agreement of a relevant manager.

12.10 Fixed penalty levels together with early payment discount and warning fixed penalty notices will be kept under review. Unresolved fixed penalty notices will be considered by the Investigating Officer and relevant Manager to determine action. Receipts from fixed penalties are allowed to be kept by local authorities for supporting enforcement activities and will therefore be used as agreed with the relevant Cabinet Member.

### 13.0 **CIVIL PENALTIES FOR OFFENCES UNDER HOUSING ACT 2004**

13.1 These provisions give the Council as the local housing authority the power to issue a financial penalty for certain Housing Act 2004 offences after 06 April 2017 as an alternative to prosecution.

- 13.2 The offences include:
- Failing to comply with an Improvement Notice (Section 30)
  - Offences in relation to licensing of Houses in Multiple Occupation (Section 72)
  - Offences in relation to licensing of houses under part 3 of the Act – Selective licensing (Section 95)
  - Offences in relation to the contravention of an overcrowding notice (Section 139)
  - Failure to comply with management regulations in respect of a House in Multiple Occupation (Section 234)
  - Breach of a banning order
- 13.3 A civil penalty can only be imposed as an alternative to prosecution. The legislation does not permit the Council to impose a civil penalty and prosecute for the same offence. If a person has been convicted or is currently being prosecuted the Council cannot impose a civil penalty in respect of the same offence. Similarly, if a civil penalty has been imposed, a person cannot then be convicted of an offence for the same conduct.
- 13.4 Overall, each case will be considered on an individual basis, however, the principles in determining the form of action will be:
- What outcome is the Council trying to achieve – eg. Set an example, get the works completed or a deterrent to committing future offences (a civil penalty will not be in the public domain unlike prosecution).
  - Severity of the offence – is prosecution a better option based on the significance of the offence and the impact it has had.
  - Type of property and its occupiers – are the occupiers particularly vulnerable.
- 13.5 The same burden of proof is required for a civil penalty as for a prosecution. This means that before formal action is taken the Council must be satisfied that if there was a prosecution there would be a realistic prospect of conviction.
- 13.6 The Council must determine beyond reasonable doubt that the offence has been committed and this evidence would be required if an appeal is made against the civil penalty.
- 13.7 Where the landlord or property agent fails to pay a civil penalty the Council will refer the case to the county court for an Order of the Court. If necessary the Council will use the county court bailiffs to enforce the order and recover the debt.
- 13.8 The Council's powers to carry out works in default under the Housing Act 2004 are unaffected by the civil penalty provisions.
- 13.9 If a landlord receives a civil penalty that fact can be taken into account if considering whether the landlord is a fit and proper person to be the licence holder for a House in Multiple Occupation (HMO) or any other property subject to licensing.

13.10 Where a landlord receives two or more civil penalties over a 12 month period, the Council will include that person's details in the database of rogue landlords and property agents. While it is not a compulsory requirement under the Ministry of Housing, Communities and Local Government guidance to Councils are strongly encouraged to do so. This will help ensure that other councils are made aware that formal action has been taken against the landlord.

13.11 In setting a civil penalty level the Council must consider the following factors:

- Severity of the offence
- Culpability and track record of the offender
- The harm caused to the tenant
- Proportionate punishment of the offender
- Deter the offender from repeating the offence
- Deter others from committing similar offences
- Remove any financial benefit the offender may have obtained as a result of committing the offence
- Assessment of assets and income

13.12 In determining the level of harm the council will have regard to:

- The person ie. Physical injury, damage to health, psychological distress
- To the community ie. Economic loss, harm to public health
- Other types of harm ie. Public concern/feeling over the impact of poor housing conditions on the local neighbourhood.

13.13 The nature of harm will depend on the personal characteristics and circumstances of the victim eg. The tenant.

13.14 Where no actual harm has resulted from the offence the Council will consider the relative danger that persons have been exposed to as a result of the offender's conduct, the likelihood of harm occurring and the gravity of harm that could have resulted.

13.15 Factors that indicate a higher degree of harm include:

- Multiple victims
- Especially serious or psychological effect on the victim
- Victim is particularly vulnerable

Examples of harm categories:

High	Housing defect giving rise to the offence poses a serious and substantial risk of harm to the occupants and/or visitors eg. Danger of electrocution, carbon monoxide poisoning or serious fire safety risk
Medium	Housing defect giving rise to the offence poses a serious risk of harm to the occupants and/or visitors eg. Falls between levels, excess cold, asbestos exposure
Low	Housing defect giving rise to the offence poses a risk of harm to the occupants and/or visitors eg. Localised damp and mould, entry by

intruders
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13.16 In determining culpability the Council will have regard to four levels of culpability.

13.17 Where the offender:

- Has the intention to cause harm, the highest culpability where an offence is planned.
- Is reckless as to whether harm is caused ie. The offender appreciates at least some harm would be caused but proceeds giving no thought to the consequences, even though the extent of the risk would be obvious to most people.
- Has knowledge of the specific risks entailed by their actions even though they do not intend to cause the harm that results.
- Is negligent in their actions.

13.18 Examples of culpability

High (Deliberate Act)	An intentional breach by a landlord or property agent or flagrant disregard for the law. For example, by failing to comply with a notice or regulation
High (Reckless Act)	An actual foresight of, or wilful blindness to the risk of offending, but decides to take the risk nevertheless. For example, failing to comply with a strict liability in the HMO regulations.
Medium (Negligent Act)	The failure of the landlord or property agent to take reasonable care to put in place and enforce proper systems for avoiding the offence. For example, partial compliance with a schedule of work to an enforcement notice but failure to fully comply with all schedule items.
Low (Low or no culpability)	The offence committed has some fault on the part of the landlord or property agent but there are other circumstances for example obstruction by the tenant to allow a contractor access for repairs, or damage caused by tenant negligence.

The table below provides an indication of the level of fine that is likely to be appropriate taking into account both culpability and harm.

Low Culpability/High Harm Band 4	Medium Culpability/High Harm Band 5	High Culpability/High Harm Band 6
Low Culpability/Medium Harm Band 3	Medium Culpability/Medium Harm Band 4	High Culpability/Medium Harm Band 5
Low Culpability/Low Harm Band 1	Medium Culpability/Low Harm Band 2	High Culpability/Low Harm Band 3

### 13.18 Banding Levels

Band 1	£0 - £4,999
Band 2	£5,000 - £9,999
Band 3	£10,000 - £14,999
Band 4	£15,000 - £19,999
Band 5	£20,000 - £24,999
Band 6	£25,000 - £30,000

- 13.19 £30,000 is the maximum level of fine permitted under the legislation.
- 13.20 The starting point in each band will be the mid-point ie. Band 3 the midpoint will be £12,500.
- 13.21 The penalty may be increased by £1,000 for each aggravating factor up to a maximum of the top of the band level determined above.
- 13.22 The penalty may be decreased by £1,000 for each mitigating factor up to a maximum of the top of the band level determined below.
- 13.23 When considering aggravating and mitigating factors the civil penalty imposed must remain proportionate to the offence.
- 13.24 An offender will be assumed to be able to pay a penalty up to the maximum amount unless they can demonstrate otherwise.
- 13.25 Where the Council is satisfied that more than one offence is being committed concurrently in respect of a single property they may issue multiple Civil Penalty Notices for example, where there are multiple breaches of the HMO management regulations.
- 13.26 However, where satisfied on the merits of the case and/or where the council consider that issuing multiple penalties at the same time would result in an excessive cumulative penalty, nothing in this policy shall require the Council to do that. The Council may take action in respect of one or some of the offences and warn the offender that future action in respect of the remaining offences will be taken if they continue.
- 13.27 Income received from a civil penalty can be retained by the Council provided that it is used to further the Council's statutory functions in relation to enforcement activities covering the private rented sector as specified by The Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017.

## **14.0 INJUNCTION**

14.1 Where we consider that the following criteria apply:

- ❖ there has been a conviction for failure to comply with a Statutory Notice; and
- ❖ there is no prospect of securing compliance; or
- ❖ there would be an unreasonable delay in securing compliance; or
- ❖ there has been no previous conviction but the matter is so serious that normal service of Notice and/or prosecution would pose an unreasonable delay in securing compliance; or
- ❖ the penalty for non-compliance is insufficient to deter continued non-compliance.

14.2 We will seek a High Court Injunction subject to Legal Services being satisfied of the evidence and the relevant Cabinet Member and/or Chairman and Vice-Chairman of the Licensing Committee give consent to such action. In the latter case, they may feel it necessary to convene a special meeting of the Committee.

#### 15.0 **TIME LIMITS FOR PROSECUTION**

15.1 Officers must ensure that investigations are carried out without long delays, to ensure that any person charged with an offence is given a fair trial, in accordance with the Human Rights Act 1998. To try to ensure that this happens, each Officer will meet with their line manager regularly (usually monthly) to discuss ongoing cases, to ensure that the next step of the investigation is taken without undue delay.

#### 16.0 **WORK IN DEFAULT**

16.1 Where powers exist to undertake work in default, these will be considered and such work can be undertaken when:

- ❖ there is a reasonable likelihood of recovering the Council's costs; or
- ❖ work is needed to reduce significant fly-tipping or similar accumulation which is seriously detrimental to the neighbourhood; or
- ❖ work is required by Statutory Notice and there is a significant benefit in completing the work required in terms of protecting life or the environment; or
- ❖ work is of such small value that the cost of recovery would exceed the value of the work

16.2 In all cases work in default must be authorised by a manager within Environmental Health, Private Sector Housing, Licensing, Cleansing or Group Head of Technical Services.

16.3 However, where Statutory Notices are not complied with, it is the Council's policy generally to prosecute, repeatedly if necessary, to secure compliance.

## 17.0 **APPEALS/LOST CASES**

17.1 In the event that any court case is lost in full or in part (i.e. dismissed with or without costs) the following action needs to be taken:

- (i) A review of the case will be undertaken by a manager within Environmental Health, Private Sector Housing, Licensing, Cleansing or Group Head of Technical Services, a representative of legal and the case officer(s) to identify difficulties and learning points. As part of any review the possibility of appeal will be considered.
- (ii) In considering the value of an appeal the following needs to be evaluated:
  - a) the legal principles offended and the likely effects that offences have for Arun, and its residents and businesses and those of other Local Authorities;
  - b) the extent of evidence available and the weight it was given by the Court;
  - c) the potential benefits of securing a conviction on appeal;
  - d) the likely costs of any appeal.
- (iii) In determining whether to appeal Counsel's advice may be sought.
- (iv) Officers, in consultation with the Chairman/Vice Chairman of the Licensing Committee will make the decision about whether to appeal.

## 18.0 **POLICY REVIEW**

18.1 The Policy will be reviewed periodically by managers within Environmental Health, Private Sector Housing, Licensing and Cleansing . Views on the Policy and its implementation will be sought to ensure it continues to meet the principles of good enforcement.

18.2 The review in April 2014 has taken account of the replacement of the Regulators' Compliance Code by the Regulators' Code, and changes to the Regulation of Investigatory Powers Act 2000 codes of practice.

18.3 The review in September 2016 took account of the Review of delegations and to the Licensing Committee Terms of Reference.

18.8 The policy was last reviewed in November 2018 to take account of additional enforcement options which included civil penalty notices for Housing Act 2004 offences, Community Protection Warnings and Notices and changes to the structure of the Council.



## **19.0 RELATED DOCUMENTS**

19.1 Documents related to this policy include:

- i. The Code for Crown Prosecutors, Jan 2013 (available from: [www.cps.gov.uk](http://www.cps.gov.uk))
- ii. Criminal Procedure and Investigations Act 1996 (CPIA) and associated Code.
- iii. Police & Criminal Evidence Act 1984 (PACE), and associated Codes.
- iv. DEFRA guidance on use of Fixed Penalty Notices
- v. Regulation of Investigatory Powers Act 2000 and associated Codes
- vi. The Regulators' Code
- vii. Procedure and guidance notes within each team.
- viii. Housing and Planning Act 2016 Section 126 and schedule 9.

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