

East Cambridgeshire District Council

Corporate Enforcement Protocol

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A. INTRODUCTION AND GENERAL PRINCIPLES OF ENFORCEMENT

1. Purpose of the Protocol

- 1.1 The purpose of this protocol is to set out the Corporate guiding principles by which legislation will be enforced by the Council to protect public health, safety, amenity and the environment within East Cambridgeshire.
- 1.2 The Council has specific enforcement policies covering Environmental/ Food/ Licensing and Smoking (listed at the back of this document) and Regulatory Investigatory Powers Act (“RIPA”) Policy.
- 1.3 This document does not seek to duplicate these specific policies, but to provide an over-arching enforcement framework that follows the principles of the Central and Local Government Concordat on Good Enforcement (1) the Legislative and Regulatory Reform Act 2006 (2), the Regulators Code (3) and the Crime and Disorder Act 1998(4).
- 1.4 Enforcement plays an important role in enabling the Council to achieve:
 - A safe and healthy environment;
 - A well planned place to live which encourages vibrant communities; and
 - A prosperous place to live and work.

All individuals, businesses and employees are stakeholders under the protocol and will benefit from a consistent and fair approach, which tries to ensure that the above principles are met.

- 1.5 This protocol sets out the agreed basis for all enforcement proceedings to be carried out by the Council. The Council covers many areas where enforcement action may be considered, for example, car parking penalty enforcement, planning, food safety prosecutions, and civil proceedings (recovery of debts owed to the Council).
- 1.6 The Council recognises that any enforcement action is a serious step and will consider alternatives; generally the Council will try informal action, before considering formal action (defined below). In doing so, each case will be considered on its own facts and merits and the Council will have due regard to all relevant legislation; and in particular to the Human Rights Act 1998 and RIPA and any other relevant Codes that cover enforcement/ and Prosecution. Furthermore, the Council will ensure that:
 - the ethnic or national origin, gender, religion or belief or political views, disability, marriage, civil partnership, pregnancy or maternity, age sexual orientation or gender identity of a Defendant or witness have no bearing on decisions on enforcement;

- no improper/un-due pressure from any source inside or outside the Council affect those decisions; and
 - all relevant information is given to the Defendant and to the Court as appropriate (as part of the informal action and/ or in accordance with any relevant civil or criminal requirements).
- 1.7 It should be noted that the Anglia Revenues Partnership (ARP) has provided a shared delivery of services for Council Tax, NNDR, Benefits and fraud protection and investigation between Council's in Cambridgeshire and Suffolk of which East Cambridgeshire District Council is a partner. ARP has delegated authority on behalf of East Cambridgeshire District Council to undertake specific investigations, as set out in legislation, including sanction prosecutions, in relation to alleged offences and to undertake Council Tax and NNDR recovery processes, as provided for within the ARP Enforcement Policies [listed in Appendix A].

2. Enforcement Concordat

- 2.1 East Cambridgeshire District Council adopted the Enforcement Concordat, which set out the principles of good enforcement. These include:
- *Standards* – the setting and publishing of clear standards which set out the level of performance expected;
 - *Openness* – information and advice provided in plain language on the rules that we apply;
 - *Helpfulness* – working with businesses to advise and assist with compliance in an efficient and prompt manner;
 - *Complaints about service* – details of complaints procedure which are easily accessible;
 - *Proportionality* – ensuring action required is proportionate to the risk; and
 - *Consistency* – to carry out duties in a fair equitable and consistent manner.

3. Principles of Good Regulation

- 3.1 In carrying out enforcement activities the Council will have regard to the principles set out in the Legislative Regulatory Reform Act 2006, and ensure that these activities are:
- Transparent;
 - Accountable;
 - Proportionate;
 - Consistent; and
 - Targeted at cases in which action is needed.

3.2 The Regulators Code was published by the Better Regulation Delivery Office (BRDO) in April 2014 and provides a *'flexible principles based framework for regulatory delivery that supports and enables regulators to design their service and enforcement policies in a manner that best suits the needs of businesses and other regulated entities'*.

3.3 The Council will therefore:

- Support those they regulate to comply and grow – by choosing proportionate approaches to those they regulate based on relevant factors i.e.: business size and capacity and intervening only where there is a clear case for protection;
- Provide simple and straightforward ways to engage with those they regulate and hear their view – Consider the impacts on businesses before changing policies
- Base regulatory activity on risk – use a comprehensive risk assessment that concentrates resources in the areas that need them the most;
- Share information about compliance and risk – follow the principle “collect once and use many times” and agree secure mechanisms to share information with other regulators to minimise duplication
- Provide clear information, guidance and advice to those they regulate to help them meet their responsibilities to comply;
- Ensure the approach to regulatory activities is transparent – publish clear service standards which set out what those they regulate should expect from them; including their approach to checks on compliance¹ and details of the risk assessment framework used to target those checks and protocols for their conduct.

4. Other versions of this Protocol

4.1 If you would like a copy of this protocol to be provided in an alternative format (i.e.: large type, Braille or audio tape) or translated, please contact the Council's main reception on 01353 665555.

5. Complaints

5.1 If you are unhappy with the outcome of enforcement proceedings taken against you by the Council, you must seek immediate independent legal advice.

5.2 If your concern is with the way in which the Council has handled your case, then the Council has a formal complaints procedure, which can be used. Details of this are available from the Council's reception area or on its website: <http://www.eastcambs.gov.uk>

¹ including inspections, audit monitoring and sampling visits and test purchases

6. Publication, consultation and revision

- 6.1 Before being finalised, the Council will undertake internal consultation with interested parties. Feedback will be considered and where appropriate included in subsequent revisions to the Protocol. The Protocol will then be made available on the Council website and will be reviewed every 2 years 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 officers.

B. ENFORCEMENT ACTION, TOOLS AND REMEDIES

1. Definition of Enforcement Action

- 1.1 The Council recognises that equal duties are owed to both the complainant and the alleged contravener and seeks to resolve matters of concern as equitably as possible. Decisions on enforcement action will depend on the information received and any subsequent investigation that is undertaken (as well as the more detailed criteria set out below).
- 1.2 When a complaint or information is received, Officers will undertake some preliminary enquiries (unless the action is likely to be fixed penalty in nature - for example car parking, dog fouling or smoking), and decide what action to take, in consultation with other Council Officers.
- 1.3 Enforcement action may be either informal or formal, and all actions will be carried out in accordance with the principles set out in this Protocol.
- 1.4 A file, or papers / instructions may be prepared (*dependent on the nature of the case and whether civil or criminal in nature*) with reference to relevant guidance issued below. The Investigating Officer will inform the complainant about the investigation or enforcement outcome once it has been concluded. In appropriate cases, periodical updates should be supplied.

2. Informal action

- 2.1 The vast majority of cases will be resolved informally through negotiation, discussion or advice - which is generally the Council's preferred method, 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.

- 2.2 Informal Action can be one or more of the following:
- Verbal advice;
 - Verbal request for action;
 - Written request for action; and/ or
 - Written warning of formal action, if contraventions are not corrected.
- 2.3 In dealing with members of the public, Officers will clearly distinguish between those matters that are contraventions of the law and those that are simply recommendations reflecting good practice.
- 2.4 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 timetable for completion where appropriate. Regular contact with the Investigating Officer, as the works progress, will be encouraged.

3. Formal action

- 3.1 Where informal action has not been successful, or where there is a risk to public health, safety, amenity or the environment, or there has been a deliberate contravention, then formal action will be taken. These are described in more detail below.
- 3.2 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 or in more serious cases, an application for a Criminal Behaviour Order (CBO) which replaces the ASBO.
 - Debt recovery work or possession action
 - Housing or Council Tax Administrative Penalties
 - Council Tax and NNDR Recovery Processes
 - Revocation or non-renewal of licenses, approvals or registrations
 - The issue of fixed penalty notices
 - Use of other enforcement powers by Officers authorised by specific legislation (e.g. detention of food, sampling of food or substances, seizure of equipment or food, prohibition of processes or activities).
- 3.3 When coming to the decision as to whether to take informal or formal action and type, 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 and 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 defence;
 - The reliability of witnesses.
- 3.4 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 document. There will be a graduated approach to enforcement, commencing with informal action but followed by an appropriate level of formal action where compliance is not achieved, proportionate to the seriousness of the offence.

Statutory Notices and Orders:

- 3.5 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 relevant Council Officers with delegated authority. Only Officers who have attained a sufficient level of competence will be given the delegated authority to take formal action.
- 3.6 A wide variety of Notices/Orders are provided in the legislation enforced by the Council and specific procedures are employed when these are issued. Where applicable, these may be set out in Service policies. Time limits specified in Notices must be realistic *and wherever possible* requirements set out in Notices 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. Confirmation of details of the person responsible will be sought by reference to relevant registration documents where available or through the use of Requisitions for Information or Company Searches, where identity cannot be positively established through other means.
- 3.7 Failure to comply with a Statutory Notice will be referred in the first instance to the next senior officer/ or manager with delegated powers to discuss and determine whether a prosecution should be initiated. As indicated below, after that, the relevant section or department will refer the case to Legal Services for advice.

Simple Cautions:

- 3.8 A 'Simple Caution' replaces what used to be known as a formal caution and is used to deal quickly and simply with those who commit low level crime and first time offenders. It aims to divert offenders away from Court, and to reduce the likelihood that they will offend again and is a formal mechanism that can be offered as an alternative to prosecution by the Council. The caution is offered in writing and if accepted will be administered at a formal interview. If it is not accepted then a prosecution will usually be undertaken. A Simple Caution is not a criminal conviction, but a record will be kept and it may be used in Court as evidence of bad character, as part of an injunction or Criminal Behaviour Order application, or when making relevant representations to the Court on sentencing for any subsequent prosecution. An offender must be made aware of this and be given the opportunity to seek their own independent legal advice before agreeing to accept a Simple Caution.
- 3.9 The Council will only issue a Simple Caution if:
- there is sufficient evidence to provide a realistic prospect of conviction if the offender were to be prosecuted;
 - the offender is 18 years of age or over;
 - the offender admits they committed the crime and has not raised a defence;
 - the offender agrees to be given a caution – if the offender does not accept the caution, then a prosecution will generally be undertaken.
- 3.10 When considering whether to offer a Simple Caution, the following factors will be considered:
- The offence is low level and/or a first time offence.
 - Any Court sentence is likely to be minimal;
 - The loss to public funds is small;
 - Any alternative penalty appropriate to the alleged offence is considered unsuitable;
 - Whether the offender has any unspent previous convictions, cautions or administrative penalties.

Further information regarding Simple Cautions is available in the following publications:-

- *Ministry of Justice: Simple Cautions for Adult Offenders 14 November 2013;*
 - *Guidance to Police Officers and Crown Prosecutors issued by the Director of Public Prosecutions under Section 37A of PACE Act 7th Edition April 2013;*
- 3.11 There are no rigid rules about the particular situations in which cautions should be used – this is at the discretion of Investigating Officers/ their

line managers, having discussed the appropriateness with Legal Services.

Records of Cautions will be retained for up to 5 years.

Prosecution:

- 3.12 If Officers are considering a prosecution, then they should seek legal advice early on in the preparation of the Prosecution file and Legal Services will review the case file in accordance with the Code for Crown Prosecutors and Guidance issued thereunder, and will provide timely advice within the current published guidelines.
- 3.13 The file will then be finalised by the Investigating Officer having been authorised through the appropriate line manager and Service Lead using the Corporate Prosecution template, and forwarded to Legal Services, within agreed timescales.

These are not less than one month before the expiry of any relevant time limit, or in other cases within a reasonable time period of the known offence – namely within 1 year. Prosecution must be authorised by the relevant Director or Service Lead and the decision on the action to be taken, if any, will be taken by the Principal Solicitor in consultation with the investigating department.

The decision to prosecute will be made in accordance with the Code for Crown Prosecutors produced by the Crown Prosecution Service, which may be found by following the attached link http://www.cps.gov.uk/publications/code_for_crown_prosecutors/codetest.htm and the Director of Public Prosecutions' Guidance on Charging issued thereunder.

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

- The evidential test; and
- The public interest test.

If the case does not pass the evidential test, it must not proceed, no matter how important or serious it may appear to be. If the case passes the evidential test, the next decision is whether a prosecution is needed in the public interest, or whether a warning or Simple Caution would be more appropriate.

- 3.14 Legal Services will only proceed with a prosecution when the case passes both the evidential and the public interest tests.

3.15 ***The evidential test:***

- The instructing Officers and Legal Services must be satisfied there is enough usable evidence to provide a realistic prospect of conviction against any Defendant in the case.
- They must consider what the defence case may be and how it is likely to affect the prosecution case.
- This means they must believe that a Court is likely to find the Defendant guilty of the alleged offence at the criminal standard of proof, namely beyond a reasonable doubt.
- Legal Services and the instructing department will also need to consider:
 - (i) whether all the evidence can be used in Court, for example hearsay evidence, and
 - (ii) whether the evidence is reliable – can an admission be used? whether there is there any suggestion of ulterior motive on the behalf of the witness? and whether the identity of the Defendant is clear.
- When assessing the case for prosecution, Legal Services cannot simply ignore evidence which is unreliable, cannot be used in Court or which does not assist the prosecution case so therefore they must look closely at **all** evidence, including that more likely to assist the defence case, when deciding there is a realistic prospect of conviction.
- The instructing Officers and Legal Services will also look at any material that has been obtained or created during the investigation under the provisions of the Criminal Procedure and Investigations Act 1996 (“CPIA”) and will expect instructing Officers to ensure that relevant Schedules and Certificates (and where necessary documents) are provided to consider as part of that process. These will be records/ or documents that have to be listed because they may harm the prosecution case, or assist the defence.

3.16 ***The Public Interest test:***

The public interest must be considered in every case where there is enough evidence to provide a realistic prospect of conviction. Legal Services must balance all of the factors for and against prosecution carefully and fairly. Public interest factors can affect the decision to prosecute because of the seriousness of the offence or the circumstances of the offender.

Some factors may increase the need to prosecute but others may suggest another course of action would be more appropriate. The more serious the offence the more likely it is that a prosecution would be

needed in the public interest, so a prosecution is more likely to be warranted in the following instances:

- a conviction is likely to result in a significant sentence;
- the Defendant was in a position of authority or trust;
- the evidence shows that the Defendant organised the offence - there is evidence that the offence was pre-meditated;
- the victim of the offence was vulnerable, had been put in considerable fear or suffered personal attack, damage or disturbance;
- the offence was motivated by any form of discrimination against the victims' ethnic or national origin, gender, religion or belief or political views, disability, marriage, civil partnership, pregnancy or maternity, age sexual orientation or gender identity;
- there is a marked difference between the actual or mental ages of the Defendant and the victim;
- if there is any element of corruption;
- the Defendant's previous convictions or cautions are relevant to the present offence;
- the Defendant has alleged to have committed the offence while under an order of the Court;
- there are grounds for believing that the offence is likely to be continued or repeated; and/ or
- the offence, although not serious in itself, is widespread in the area where it was committed.

3.17 Some common public interest factors **against** prosecution are that:

- the Court is likely to impose a very small or nominal penalty;
- the offence was committed as a result of a genuine mistake or misunderstanding (but balance against this the seriousness of the offence);
- the loss or harm can be described as minor and was as a result of a single incident, particularly if it was caused by a mis-judgement;
- there has been a long delay between the offence taking place and the date of the trial unless the offence is serious, the delay has been caused in part by the Defendant, the offence has only recently come to light, or the complexity of the offence has meant that there has been a long investigation;
- a prosecution is likely to have a very bad effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence;
- the Defendant is elderly or is or was at the time of the offence suffering from significant mental or physical ill health and there is a real possibility that the offence may not be repeated; and/ or
- the Defendant has put right the loss or harm that was caused.

3.18 In terms of which Court, the types of prosecutions undertaken by Councils are usually “Summary” offences or “Either way” offences and the Council will follow the current Guidance for Magistrates in making representations on the suitable Court to deal with the offences.

3.19 Legal Services will only recommend a Crown Court trial to the Magistrates if they are satisfied that the guidelines require them to do so.

Civil Proceedings:

3.20 Civil proceedings cover a variety of actions including applications for injunctions, or Criminal Behaviour Orders, debt recovery or possession actions, housing or Council Tax enforcement proceedings. In deciding to begin civil proceedings the Council will consider the evidence available and the Council will then consider the range of enforcement options that are available to it in each case.

3.21 The Evidential Test:

Legal Services must be satisfied there is enough usable evidence for the case to succeed, on the civil standard of proof, namely on the balance of probabilities.

Once Legal Services are satisfied that there is sufficient evidence for a case to proceed, they will then consider the range of options available taking into account:

- the possibility of the matter to being remedied without further action;
- the likelihood of the Defendant having the means to meet the claim, e.g. a debtor having the means to pay;
- the length of time between the events giving rise to the case and the decision to take legal action;
- the nature of the Defendant (their age, health, etc); and
- the consequences of the matter for the Council (e.g. the size of the debt).

Having considered the above having decided to proceed with some form of formal action, the Council will consider what civil remedy to use.

3.22 Anti-social Behaviour is a broad term used to describe the day to day incidents of crime, nuisance and disorder that makes people’s lives a misery from litter and vandalism, to public drunkenness or aggressive dogs, to noisy or abusive neighbours. The new powers contained within the Anti-social Crime and Policing Act 2014 allow the police, councils and social landlords and others to deal with problems quickly whilst working together where appropriate to ensure the best results for the victim.

3.23 The new powers available to the District Council include:

- Community Protection Notices (CPN) to curb environmental related anti-social behaviour
- Public Space Protection Orders (PSPO) to prohibit nuisance behaviour in public spaces
- Closure Notices / Orders to close premises and open spaces likely to be subject to anti-social behaviour for a specified period
- Civil Injunctions to restrain anti-social behaviour and positive requirements compelling individuals to address the underlying causes of their behaviour
- Criminal Behaviour Orders (CBO) available by application of the prosecutor on conviction of an offence, which can contain prohibition and mandatory requirements to prevent the individual from engaging in further anti-social behaviour

3.23 The East Cambridgeshire Community Safety Partnership holds a monthly Anti Social Behaviour Case Work Group. This includes representation from the District Council, Social Services, Youth Offending Services, and the Probation Service amongst others and is lead by Cambridgeshire Constabulary. The Multi Agency Group reviews cases of perpetrators and victims and determines a suitable intervention for a given case. Acceptable Behaviour Contracts (ABC's), Guardian Awareness Programme (GAP's) are some of the tools taken forward by the Constabulary after Partnership endorsement. The Council will contribute to joint partnership working in determining a suitable case intervention, but will not directly lead on issuing ABC/GAP/CBO / Closure Orders, which are lead by the Constabulary.

3.24 Housing or Council Tax Administrative other Penalties: As indicated above, enforcement and administration action is now dealt with by ARP and will be undertaken in accordance with their agreed policies / protocols and procedures. Please see section A paragraph 1.5 above.

4. Costs

4.1 The costs of undertaking proceedings can be substantial and therefore the Council will usually seek to recover the full costs including the investigation costs as well as legal costs of taking Court proceedings, from the Defendant. Repayment of disbursements (i.e.: expert witnesses, Counsel or search fees) will always be sought in addition to any Council legal/ officer fees.

4.2 Legal / Officers' costs, which are not subject to fixed rates, will be charged at allotted Council hourly rates.

C. Conclusion / References

Conclusion

- 1.1 This Code is designed to make sure everybody is aware of the basis on which the Council will investigate alleged offences and take enforcement action. The Prosecution section of this Protocol is based on the Code for Crown Prosecutors adopted by the Crown Prosecution Service (© Crown Copyright) whose kind permission to do so is appreciated and acknowledged.
- 1.2. The section relating to the Regulators Code is taken from Department for Business and Innovation & Skills (*BIS*) Regulators Code April 2014 - Crown Copyright 2014.

2. Appendix A: References
[NB this may be updated when Policies change and the Protocol will not require further approval]

Central and Local Government Concordat on Good Enforcement – Cabinet Office
March 1998

Legislative and Regulatory Reform Act 2006

BIS (Better Regulation Delivery Office): Regulators Code April 2014

Crime and Disorder Act 1998,

Human Rights Act 1998

European Convention on Human Rights: Council of Europe (1950)

Police and Criminal Evidence Act 1984 and Code of Practice

Criminal Proceedings and Investigations Act 1996

Regulation of Investigatory Powers Act (“RIPA”) 2000 (& CORPORATE POLICY
FOR THE USE OF COVERT SURVEILLANCE AND COVERT HUMAN
INTELLIGENCE SOURCES (CHIS))

Anti-Social Behaviour, Crime and Policing Act 2014

Code for Crown Prosecutors produced by the Crown Prosecution Service (Edition:
January 2013)

Ministry of Justice: Simple Cautioning of Adult Offenders 14 November 2013

East Cambridgeshire District Council Enforcement Protocol 2005 (reviewed and
updated by this document)

East Cambridgeshire District Council Health and Safety Policy

East Cambridgeshire District Council Food Safety Policy

East Cambridgeshire District Council Smoking Policy

East Cambridgeshire District Council Development Services Enforcement Leaflet

East Cambridgeshire District Council Development Services - Enforcement - what
action can be taken (ECDC's website)

East Cambridgeshire District Council Building Control - How Building Regulations are
enforced (ECDC's website)

Anglia Revenues Partnership Counter Fraud Strategy and Policy 30 October 2012

Appendix B: PUBLIC INTEREST MATRIX
Deciding whether to prosecute or offer a formal caution

The decision to prosecute or offer a formal caution should be made using the following table as a guide:

CRITERION	PROSECUTE	OFFER CAUTION
Was the offence a genuine mistake/misunderstanding?	No	Yes
Is the offence serious and will likely result in significant sentence?	Yes	No
A nominal penalty will follow	No	Yes
Is the offence stale?	No	Yes
Is the offender old or infirm?	No	Yes
Is the offender ill or suffering from stress	No	Yes
Was there violence in the offence or investigation	Yes	No
Has the offender a previous history of offending?	Yes	No
Was the offender a ringleader?	Yes	No
Was the offence premeditated?	Yes	No
Is the offender willing to prevent a recurrence of the problem?	No	Yes
Was the victim vulnerable?	Yes	No
Was the offence motivated by discrimination e.g. racial, sex, religion, political	Yes	No
The offence is widespread in the area	Yes	No
Is the case likely to establish a legal precedent?	Yes	No
Has the offender offered a reasonable explanation?	No	Yes
The offender has put right any loss	No	Yes
Was the offence committed whilst Defendant under order of Court	Yes	No

The defendant's previous convictions are relevant to offence	Yes	No
The offender was in a position of authority or trust	Yes	No
The offence was committed against a public servant	Yes	No
The offence which caused little harm was a misjudgement	No	Yes
TOTALS		

Ring yes or no in one column and add up the totals. If the factors are equal then weight each answer either 1 or 2 and total the number in each column. The decision will be influenced by the final totals in each column.

Recommendation of Investigating Officer

- Formal Caution/Prosecution

Signed..... Date:

- Agree/Disagree (Line Manager)

Signed..... Date:

Decision of Director / Service Lead

Signed..... Date: