

**Operations
Enforcement Policy
2022**

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1 Scope Legal Status, Equalities and Diversity

1.1 Scope

This policy covers all enforcement activities of Operations, in particular services covering the following:

- Animal Health and Welfare
- Bereavement Services
- Community Protection
- Control of Disease
- Environmental Crime
- Food Safety
- Health and Safety
- Health Protection
- Licensing
- Pest Control
- Pollution Control
- Private Water Supplies
- Statutory Nuisance
- Waste Management

1.2 Legal Status

This policy statement is intended to provide information for officers, businesses, consumers and the public. It does not affect the discretion of the Council to take legal proceedings where this is considered to be in the public interest.

1.3 Equalities and Diversity

When taking action under the Enforcement Policy Statement, Officers of the Authority must have regard to the Council's Equal Opportunity Policy and, without prejudice to the generality of that Policy, the need to conduct such actions will be conducted irrespective of race, ethnicity, gender or disability.

1.4 Corporate Priorities

This enforcement policy supports Stafford Borough Council's corporate priorities. These are published online at www.staffordbc.gov.uk/corporate-plan.

1.5 National Framework

The Legislative and Regulatory Reform Act 2006 requires regulators including Stafford Borough Council to have regard to the Regulators'

Code, published by the Department for Business Innovation and Skills Better Regulation Delivery Office. At the time of publication, this Code was available online at [Regulators' Code - GOV.UK \(www.gov.uk\)](http://www.gov.uk). This policy and all associated documents have regard to this Code.

The Council's Head of Operations will authorise Officers in writing, specifying the limits of their authorisation.

Persons other than Stafford Borough Council employees may be authorised, where it is legally permissible to do so and the Head of Operations considers that the Council's objectives, policies and procedures will be applied.

1.6 Complaints, Contact Details and Other Information

Complaints about the operation of this policy should be made through the Council's Complaints process, details of which can be found on its website at <http://www.staffordbc.gov.uk/complaints>.

The Head of Operations has discretion to add any additional policy and/or procedure covering areas of legislation enforced by authorised officers in environmental and health services. Any such policy and/or procedure will be published via the council website; www.staffordbc.gov.uk

This Policy will be amended or updated, when necessary, by the Head of Operations in the light of any significant changes in legislation, Codes of Practice, or other guidance.

Copies of the Operations Enforcement Policy are available through the Council web site www.staffordbc.gov.uk/corporate-plan.

This document is available in alternative formats. If you would like this policy in another language or format, then contact 01785 619000.

2 Principles of Enforcement

The Council aims to protect the public, visitors, residents and businesses from unacceptable levels of risk. This includes identifying and dealing with any failure to comply with safeguards provided for in law to prevent such risks. This being the case, there will be circumstances in which enforcement is unavoidable, and in such situations the Council will seek to use its full legal powers.

In general, officers will adopt a graduated approach to any enforcement activity. This means that, where possible, officers will attempt to identify solutions which are arrived at by agreement and co-operation and will keep in mind the maxim that prevention is better than cure.

The enforcement policy will promote efficient and effective approaches to regulatory inspection and enforcement without imposing unnecessary burdens. To achieve this, the Council has adopted the principles of the following:

- The Regulators Code
- The Code for Crown Prosecutors
- The Food Standards Agency Code of Practice and Practice Guidance
- The Health and Safety Executive's Enforcement Policy Statement
- The Licensing Act 2003 Guidance, issued under section 182

2.1 Enforcement Actions

There is a wide range of methods of enforcement available to authorised officers of the Environmental and Health Service. These can include, but are not limited to the following:

- Written Warnings/ Informal Notices
- Fixed Penalty Notices
- Statutory Notices/Orders
- Seizure/Detention of Goods and Equipment
- Revocation, suspension, modification or refusal of a licence, approval or registration
- Simple Caution
- Prosecution
- Proceeds of Crime Applications

2.2 Written Warnings and Informal Notices

As a guide, written warnings, informal notices and letters, will normally consist of some or all of the following: -

- a clear statement of the nature of the problem
- specific remedies for the problem or a standard to be achieved
- a statement of the actions which may follow if matters do not improve
- a named Officer as point of contact
- a clear distinction between a legal requirement and recommendations
- an indication of any likely follow-up action
- an offer to work with the person(s) responsible in finding a solution.
- an indication where specialist advice or additional information is available from, where appropriate.

2.3 Fixed Penalty Notices

Fixed penalty notices (FPNs) can be issued to deal with a wide range of offences.

Authorised Officers will only issue an FPN when all of the following apply:

- an offence has been committed
- an FPN is a proportionate response
- there is evidence to support prosecution if the offender fails to pay the fixed penalty
- the authorised officer believes that the name and address offered by the offender are correct

All FPNs are subject to a right of appeal and FPNs will be issued with information about how to appeal, including:

- how, when and where to appeal
- what happens if the appeal is successful (no further action will be taken and the FPN will be cancelled)
- what happens if the appeal is rejected and the offender fails to pay
- how to complain

All FPNs must normally be paid within 14 days (unless otherwise specified) and any non-payment of FPNs may result in offenders being taken to court. Further details on FPN enforcement are at www.staffordbc.gov.uk/corporate-plan.

2.4 Statutory Notices / Orders

Certain legislation allows authorised officers to serve legal notices or orders on individuals, businesses or other organisations requiring them to meet specific legal requirements.

Where a Statutory Notice is served which has a right of appeal to the recipient, the method of appealing against the notice and the timescale for doing so will be provided in writing at the same time. A Notice will explain what is wrong, require the person on whom the notice is served to put things right, state what the likely consequences are if the notice is not complied with and set out the time period to comply.

Where it has been necessary for the Council to undertake works in default of a person served with a statutory notice or an order of the court, it will seek to recover the full costs incurred from any person responsible.

2.5 Seizure/Detention of Goods and Equipment

Certain legislation enables authorised officers to seize and detain goods, equipment or documents where it is necessary to protect public health and safety or remove nuisance or secure evidence for legal proceedings.

2.6 Revocation, suspension, modification or refusal of a licence, approval or registration

Where the conditions of a licence or registration issued by the service have not been met, the licence, approval or registration may be suspended, modified, revoked or refused. When offences contrary to the licensing objectives are discovered, due consideration will be given by the Licensing Authority for a review of the Licence. The purpose of the review will be to modify, attach conditions, suspend or revoke the Licence. On conviction of any relevant offences, the Council may also ask a Court to use its powers to suspend or forfeit any licence.

2.7 Injunctions

Where an individual or organisation fails, or appears unlikely, to comply with an obligation under the law an injunction may be sought for the purpose of prohibiting specified acts or behaviour or requiring the individual to take certain steps.

2.8 Simple Caution

In accordance with the Home Office Guidelines on the cautioning of adult offenders, a simple caution may be used as an alternative to prosecution in certain circumstances, for example:

- Where public interest can be met by a simple caution
- To divert certain offences away from the Courts but at the same time reducing the chance of repeat offences.
- Where the Council feels that a simple caution would be effective given the individual circumstances, attitude and the history of the offender.

Simple cautions can only be used where the offender admits the offence, is willing to accept a caution and there is a realistic chance of a successful prosecution if a caution is refused. A caution is a written acceptance by an offender that that they have committed an offence and can only be used where a prosecution could have been properly brought. Cautions will only be used for first offences. The Council can refer to cautions that have been issued if any subsequent offences are prosecuted.

In accepting a caution, the offender will be deemed to have consented to this course of action being publicised in the Council's website and any other form of publicity the Council considers appropriate.

2.9 Prosecution

Where circumstances warrant and normally alternative actions are considered inappropriate then a prosecution may be brought. Any decision to prosecute will take into account the criteria set down in the Code for Crown Prosecutors, Sentencing Council Guidelines and in consultation with the Council's Legal Services. The criteria to be considered will include where relevant: -

- (a) The nature of the alleged offence;
- (b) Where appropriate, the previous history of the party concerned;
- (c) The likelihood of a successful prosecution.
- (d) The availability and quality of evidence and of any witnesses and their willingness to co-operate;
- (e) The public benefit from prosecution and the significance of the case.

Before a decision to prosecute is taken the case must satisfy, in general terms, both the Evidential Test and Public Interest Tests as set out in the Code for Crown Prosecutors available from www.cps.gov.uk/.

2.10 Proceeds of Crime Applications

Applications may be made under the Proceeds of Crime Act (POCA) for confiscation of assets in serious cases. Their purpose is to recover the financial benefit that the offender has obtained from his criminal conduct. Proceedings are conducted according to the civil standard of proof. Applications are made after a conviction has been secured.

3 Cost Recovery, Partnership Working, Civil Claims, Publicity

3.1 Cost Recovery

Whenever possible, the Authority will seek to reclaim all reasonable costs incurred in pursuing any enforcement activity. These will be set out in the Council's annual statement of fees and charges. The Council will use its discretion not to charge where it considers doing so would cause undue hardship.

Additionally, on conviction of any criminal actions, the Authority will advise any person adversely affected by the offence of their right to pursue compensation for any harm. Examples could include confiscation, civil recovery of money and other actions under Proceeds of Crime Act 2002.

3.2 Partnership Working

The Council aims to work in partnership with other Agencies to achieve common goals on matters of mutual concern.

Where joint enforcement or consultation on enforcement is necessary, this will be undertaken prior to any action being undertaken by the Service. The Operations service aims to work with other agencies to develop appropriate collaboration on enforcement.

Any information gathered as a result of enforcement activities, where appropriate, will be shared with other Enforcement agencies and in accordance with data protection legislation.

3.3 Civil Claims

Where any enforcement/investigation has been undertaken and a request for assistance to support a civil claim is subsequently received any support provided by Operations will be at the discretion of the Group Manager.

A charge for the work undertaken will be made as set out in the Council's Fees and Charges.

3.4 Publicity

In addition to the legal requirements to maintain statutory registers, the details of any successful prosecutions and cautions will be announced via the council website www.staffordbc.gov.uk/corporate-plan and any other form of publicity the Council considers appropriate.

Operations Document Control

Title Operations Enforcement Policy

Owner Regulatory Services

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