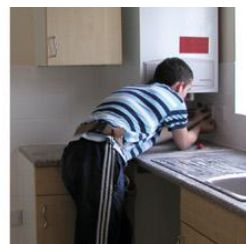




COTSWOLD
DISTRICT COUNCIL

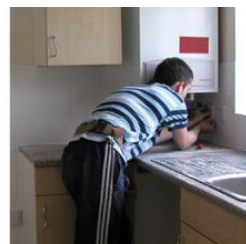
Enforcement policy

March 2015



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1. Introduction

Fair and effective enforcement is essential for the economic interests and health and safety of the public and businesses and the environment.

The decisions of the Council and its officers about enforcement action, and in particular the decision to prosecute, have serious implications for all involved. The aim of this policy is to set out the principles that apply when the Council conducts its enforcement work. By applying the same principles, everyone involved in the decision making process is treated fairly and our business is conducted effectively. This Policy is adopted by Cotswold District Council (hereafter referred to as the Council unless otherwise specified,). It applies to all the legislation enforced by officers of the Council and in particular, the following service areas:

Public Protection (including Environmental Protection, Private Sector Housing, Food Safety, Health & Safety, Community Safety and Licensing)

Environmental Services

Development Services (including Building Control)

Benefits and Fraud

General principles

There are general principles that apply to the way enforcement must be approached.

Firstly, for some services, there is a statutory obligation to conduct our work as set out in the Regulator's Code as published by the Better Regulation Delivery Office. You can download the Code at www.gov.uk/government/publications/regulators-code

Secondly there is Government's Enforcement Concordat, to which the Council is a signatory. It commits the Council to conducting its business following the six principles as detailed:

- Standards – setting clear standards
- Openness – clear and open provision for information
- Helpfulness – helping business by advising and assisting with compliance
- Complaint – having a clear complaint procedure

- Proportionality – ensuring action is proportionate
- Consistency – ensuring consistent enforcement practice

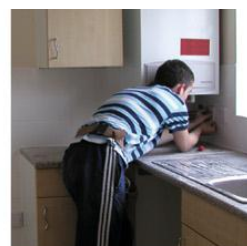
In addition, the Council works to Government policies, guidance, national frameworks, local policies and best practice. Housing benefit and fraud investigation policy are subject to the Council's Benefits Prosecution Policy adopted on the 23rd of March 1999 authorising the Principal Solicitor to take prosecutions on behalf of the Council and amended on the 11th October 2001 also enabling the Council to undertake prosecutions on behalf of the Department for Work and Pensions.

This document sets out the overall policy that the Council will take with regards to enforcement activities. Individual services may produce service specific procedures. Those services with additional enforcement plans/policies are:

- Development Services – Development Management Enforcement Plan

Equalities

Enforcement officers must be fair, independent and objective and must not let any personal views about issues such as ethnic or national origin, sex, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender influence their decisions. They must not be affected by improper or undue pressure from any source. It is the duty of enforcement officers to make sure that enforcement action is taken against the right person. In doing so it must act in the interests of justice and not solely for the purpose of obtaining a conviction.



Protection of human rights

This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is given to:

- article 6 - right to a fair trial
- article 8 - right to respect for private and family life, home and correspondence
- article 14 - prohibition of discrimination on any grounds

Officers operate to a range of internal guidance documents that support the principles of primary human rights legislation, for example guidance relating to the Data Protection Act 1998 and Regulation of Investigatory Powers Act 2000. These guidance documents will be monitored by scheduled internal quality audits.

Enforcement objectives

The following summarises enforcement objectives that apply across the Council's services:

- a. Protect the natural and built environment, biodiversity and public health;
- b. Protect the amenity of the district from unauthorised planning activity and breaches of planning legislation;
- c. Protect persons at work, the public, interested parties and the environment from harm caused by failure to comply with licensing regulation;
- d. Ensure the impact of alcohol is regulated effectively in partnership with Responsible Authorities;
- e. Prevent accidents and ill health of employees, members of the public and others who visit relevant premises;
- f. Ensuring that responsible persons manage and control risks effectively, thus preventing harm, and take action to deal immediately with serious risks in commercial and domestic premises;
- g. Ensure that food and drink intended for people to consume, which is produced, handled, served

and or sold within the district meets food hygiene requirements and does not pose a safety risk to the consumer;

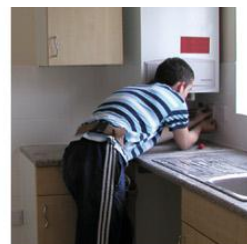
- h. Ensure measures are taken to reduce the impact and occurrences of environmental crime;
- i. Ensure that private sector residents live in safe and decent homes;
- j. Protect and promote the welfare of animals whether in licensed or registered premises or otherwise; and
- k. Taking firm but fair enforcement action, ensuring that responsible persons who breach statutory requirements are brought to account, which may include prosecuting alleged offenders.
- l. Maintaining a fair and safe trading environment;
- m. Promoting and achieving sustained compliance with the law;
- n. Helping responsible persons to meet their legal obligations without unnecessary expense;
- o. Protection from harm.
- p. Prevention of nuisance and annoyance and conduct that is likely to cause harassment, alarm or distress.

Authorisation and training of officers

Officers are authorised in accordance with the constitution's scheme of delegation. The Council will ensure that officers are appropriately trained and are competent. The Anti-Social Behaviour Crime and Policing Act 2014 which allows for Registered Social Landlords to be given delegated powers to investigate relevant cases of anti-social behaviour. The Police can be delegated powers to serve fixed penalty notices under this legislation. The Council will give full consideration to training and competence before delegating powers to outside bodies.

Indemnification (Protection from loss)

The Council will indemnify officers against the whole of any damages and costs or expenses which may be involved, if it is satisfied that the officer honestly believed that the act complained of was within their powers and



that their duties entitled them to do it or was within the scope of their employment, providing they were not wilfully acting against instructions.

Anonymous complaints

All anonymous complaints will be assessed. They will be investigated further if the matter complained of is likely to result in serious harm to the environment, public health, natural and built environment and biodiversity, or where it may be of particular public interest

2. Choice of appropriate enforcement procedures

The Council's Services have a range of tools at its disposal in seeking to secure compliance and to ensure a proportionate response to offences. This may include issue of licences and or registration and notices. In most cases officers will act informally when dealing with responsible persons. However, officers may also use formal action to secure compliance with legal requirements or the remedying of defects or statutory nuisance. Note that in respect of premises where the Council is itself the responsible person, action will be limited to informal action.

Liaison with other regulatory bodies and enforcement agencies

Where appropriate, enforcement activities within the Council will be co-ordinated with other regulatory bodies and enforcement agencies, such as Gloucestershire Constabulary and the Environment Agency, to maximise the effectiveness of any enforcement. Where wider regulatory matters can be more effectively addressed through joint working we will, where appropriate, enter into formal 'Enforcement Liaison Policies', 'Enforcement Protocols' or 'Memorandum of Understandings'.

Primary authorities

Primary Authorities enable business, usually those with multiple outlets, to form statutory partnerships with environmental health and licensing regulatory services to provide robust and reliable advice for other councils to

take into account when carrying out inspections or dealing with non-compliance. The Council and all local authorities are 'enforcing authorities' and must understand how the scheme affects their interactions. Therefore all enforcement activities concerning businesses which have entered into a primary authority partnership will have regard to any agreement and the direction given by the primary authority.

Considering the views of those affected by breaches and offences

The Council undertakes enforcement on behalf of the public at large and not just in the interests of any particular individual or group. However, the consequences for those affected by a breach, and any views expressed by those affected will, where appropriate, be taken into account. Those people affected by the offence or breach, will be told about any decision that makes a significant difference to the case in which they are involved.

Notifying alleged offender

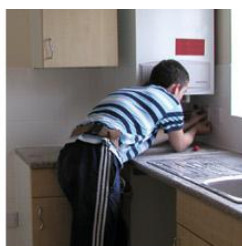
Businesses, or individuals, who are the subject of enforcement action, will be notified of any action against them as soon as practicable provided such action won't be impeded as a result and there is no safety risk.

Prioritisation and risk assessment – a staged approach to enforcement

The Council has a three stage approach to enforcement to ensure solutions are initially sought through education, co-operation and agreement. Every case will undergo a risk assessment by an officer to determine its priority for action.

Each service will have its specific procedures according to the complaint raised for assessing appropriate response times. These may be dictated internally, through the adoption of service standards or they may be dictated externally; for example, legislation and statutory guidance require risk assessments for food safety inspection programmes which will determine future inspection frequency.

However, situations brought to light through inspections or complaints will be dealt with according to their seriousness.



At one extreme, this would mean no action for minor and trivial issues, whilst at the other; it could mean the prohibition of an activity or business operation.

Priority, risk and action relate to each other through this staged approach to enforcement.

A low risk offence will usually proceed through each stage until compliance is achieved, but a high risk offence is likely to proceed directly to stage 3.

- Stage 1**
 - Advice
 - Verbal warning
 - Informal letters
 - Initial inspections and visits
 - Acceptable Behaviour Contracts
 - Formal letters
 - Written warnings
 - Negotiated solutions
- Stage 2**
 - Formal Notices (requiring remedial action), FPNs
 - Orders
 - Warrants
- Stage 3**
 - Court injunction
 - Emergency action
 - Works in default/seizure of goods
 - Warrants
 - Review and /or revocation of licences and approvals
 - Simple caution
 - Prosecution
 - Removal of unauthorised or dangerous structures

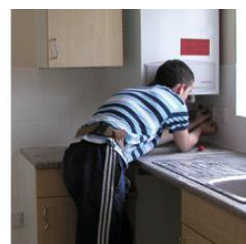
Stage 1: Informal action

Across the Council, informal action will be taken when:

- An act or omission is not serious enough to warrant formal action;
- Our past experience of the responsible person suggests it can be reasonably expected that informal action will achieve compliance;
- Confidence in the responsible person's management is high;
- The consequences of non-compliance will not pose a serious risk;
- Standards are generally high; and
- A good practice recommendation is being made, rather than a legally binding requirement.
- Where a matter is determined to be anti-social behaviour, a written warning is required to be sent to the perpetrator before a Community Protection Notice can be issued.

Even where some of the above criteria are not met, there may be circumstances where informal action will be more effective than a formal approach, e.g. Acceptable Behaviour Contracts. Informal action may be taken at the time of the complaint being made, inspection or visit, or as the result of any subsequent conversations, investigations, meetings or visits that raise additional matters. Any informal action will be put clearly and simply and make clear what are legal requirements and what are recommendations or best practice advice. It will state the legislation contravened and why and provide advice in the measures or works (or equivalent) necessary to achieve compliance and the timescales for compliance. Verbal and written warnings will be recorded on file. Advice and verbal warnings will be confirmed in writing on request.

Where informal action is not appropriate or where informal action has not been successful, formal action (Stage 2) will be necessary. Formal action may ultimately lead to action taken under stage 3 such as prosecution or other summary action.



Stage 2: Formal action

Before formal enforcement action is taken officers will normally:

- a. Provide the responsible person or body an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference, unless immediate action is required to prevent serious harm.
- b. Contact and if necessary liaise with the relevant statutory bodies and guidance.
- c. An interview under caution may be initiated if appropriate.

Complying with formal notices

An offence occurs when the requirements of a formal notice is not complied with. The Council will take firm action to ensure compliance is achieved. Officers will, in general:

- a. At their discretion (upon written request) confirm that a notice has been satisfactorily complied with in the specified time limits.
- b. Vary notices or extend notices (upon written request) at their discretion, provided that the notices have not already expired.

Failure to comply with a formal notice will in general result in stage 3 action being taken, such as an inquiry, court proceedings and/or works in default. The Council will not necessarily withdraw from action even where the breach is rectified; such a decision will be subject to the public interest test.

Fixed Penalty Notices

Fixed Penalty Notices (FPNs) allow the Council to respond in an effective and visible way to reports of low level environmental crime such as the dropping of litter or dog fouling in public areas. These notices can only be issued when enforcement officers have sufficient evidence to support a prosecution. The notice gives an offender the opportunity to avoid such a prosecution by the payment of the penalty.

Persons aged under 16 committing an offence, will not be issued with an FPN by Council employees. As an

alternative, offences will be followed up by notification to the police, parents and the school where appropriate.

Stage 3: Action following non-compliance with Stage 2

Normally Stages 1 and 2 would have taken place and compliance has not occurred or the offence is of a serious nature. The exception is where emergency or urgent action is required, in which case the officer would move straight to Stage 3 action.

Works in default

The use of this power will initially be determined by the legislation under which a statutory notice was served and whether it allows for work to be carried out in default. Examples include securing a dangerous structure, seizure of noisy equipment, cleansing filthy or verminous premises. The relevant legislation and the seriousness of the defect and the urgency of the need to remedy the situation will influence when works in default are carried out.

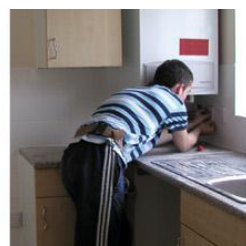
Court injunction

In certain circumstances, for example where offenders are repeatedly found guilty of similar offences or where the Solicitor to the Council agrees that an injunction is a more appropriate course of enforcement action than any other, then injunctions may be used as an enforcement measure to deal with repeat offenders or dangerous circumstances.

Where the matter is concerned with anti-social behaviour such that –

- a) conduct that has caused or is likely to cause harassment, alarm or distress to any person;
- b) conduct capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises;
- c) or conduct capable of causing housing related nuisance or annoyance to any person

the Council may apply for a civil injunction from the magistrate's court.



Notices for emergency / immediate actions

This is where a hazard or development is such that:

- a. the consequences of not taking immediate and decisive action to protect public health/safety/environment would be unacceptable;
- b. An imminent risk of injury to health/environment can be demonstrated. This may include evidence from relevant experts e.g. food analysts or food examiners;
- c. the case fulfils the guidance criteria on conditions for prohibition, as specified in the Code of Practice and Practice Guidance;
- d. officers have no confidence in the integrity of an unprompted offer made by a proprietor to voluntarily close premises or cease to use any equipment, process or treatment associated with the imminent risk; or
- e. A proprietor is unwilling to confirm in writing his or her unprompted offer of a voluntary prohibition.

The notice may require the prohibition or suspension of an activity, which could include the development of a site, the destruction of a tree protected by a Tree Preservation Order, the use of certain equipment, or the use of a premises (residential or commercial) or part thereof. It may require the seizure of goods or equipment, for example, food that is deemed unsafe or sound equipment that is being used to cause a statutory noise nuisance. Where immediate action is considered necessary, an explanation of why such action is required will be given at the time and confirmed in writing.

As soon as practicable after service of a formal notice requiring emergency or immediate action, officers will contact and if necessary liaise with relevant enforcement bodies and statutory agencies

Refusal, revocation or suspension of a licence

Certain types of premises and businesses require a licence to operate legally. In order to warrant refusal, revocation or suspension of a licence, the controlling

individual or organisation must meet one or more of the following criteria:

- Deliberately or persistently breached legal obligations, which were likely to cause material loss or harm to others
- Deliberately or persistently ignored written warnings or formal notices
- Endangered, to a serious degree, the health, safety or well-being of people, animals or the environment
- Obstructed an officer during undertaking their duties

Simple cautions and prosecutions

Simple cautions and prosecutions are important ways to bring responsible persons to account for alleged breaches of the law.

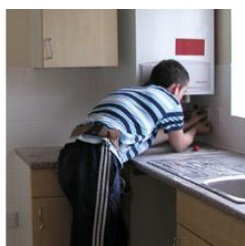
Where it is appropriate to do so in accordance with this policy, the Service will use one of these measures in addition to or instead of issuing statutory notices.

Deciding to take legal proceedings does not rule out the issuing of statutory notices or taking other enforcement action as well.

A simple caution is a statement by an officer that is accepted in writing by the responsible person that they have committed an offence for which there is a realistic prospect of conviction.

An alleged offender will only be offered a simple caution when the circumstances of the offence meet the criteria identified in Home Office Circular 18/1994 as amended or superseded.

The caution will remain on record for three years and may influence a decision to prosecute should the individual or organisation re-offend. If relevant, the service will notify the Environment Agency, Police or Health and Safety Executive of the details of the caution. Where the offence relates to a complaint, we will notify the complainant that a formal caution has been issued.



Prosecution

Prosecution is an essential element in the range of enforcement options. The Council always has the discretion whether or not to prosecute for an offence and the decision to prosecute shall be based upon the circumstances of each case. A breach of law will not automatically result in legal proceedings. The criteria for prosecution must, in general, be related to risk or the seriousness of the offence, rather than being a punishment for minor technical breaches. Before a prosecution proceeds, the officer must be satisfied that there is sufficient admissible, substantial and reliable evidence that a criminal offence has been committed by an identifiable person or company and a realistic prospect of a conviction; a case based on first impressions is not sufficient. Where the circumstances warrant it and the evidence to support a case is available, the Council may prosecute without prior warning or recourse to alternative sanctions.

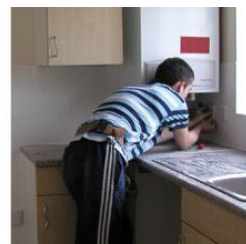
Prosecution of individuals, including managers or anyone with an interest in the land

The policy of the Council is that prosecution of individuals or a manager will only be considered when:

- a. An act or omission leading to the offence being committed was within their managerial control, occurred with their consent or connivance or was attributable to neglect on their part; and
- b. Subject to the criteria for prosecution, that it would be appropriate to do so in accordance with this policy and if the officer considers that a prosecution is warranted.

Recovery of costs

In all cases where the controlling legislation allows, the Council may seek to recover costs of enforcement work incurred plus a reasonable charge for administration and compound interest where payment is delayed. In some situations, the Council may recover its costs at a later date by placing a charge on a property.



3. Decision making

In deciding whether to take enforcement action, the Council will need to satisfy itself that the action is reasonable, expedient proportionate and justifiable. Enforcement action is usually taken as a last resort where discussions about alternative solutions have failed to reach agreement. However, where no attempt has been made to comply or, for example, regularise the breach of planning control, officers will assess the level of harm resulting from the breach/offence. Throughout the decision-making process:

- a. Proper and informed legal advice will be taken;
- b. The assessment will be set against Government policy and guidance;
- c. Investigation and decision making will not be unduly prolonged or delayed; and
- d. Officers will keep witnesses, complainants and other parties informed as to the progress of the case.
- e. The Investigating Officer will present a case for a decision to be made, within two months of the end of investigations, to ensure natural justice is achieved.

Responsibility for decisions at each stage

Stage 1: Decisions to take these actions will rest with the investigating officers

Stage 2: The relevant service manager or their deputy shall be consulted, unless the situation requires urgent or immediate action such as the service of an FPN where the fine is less than £500. Any actions must be approved by the service manager (or their deputy) following a documented case discussion. Where agreement on action cannot be reached these cases shall be referred to a Head of Service or Director.

Stage 3: The investigating officer must compile an enforcement review report detailing the facts and other relevant considerations in the case. A documented case discussion will be held with the investigating officer, service manager, Head of Service

and the solicitor to the council or their deputies before any decision is taken. Certain types of cases, in accordance with the Officer Delegation Rules, may have to be referred to the relevant committee for approval. Where urgent or immediate action is required, decisions will rest with the investigating officers in consultation with a Head of Service or Director

Determining whether a prosecution or simple caution is viable and appropriate

We apply two 'tests' to determine whether a Prosecution or Simple Caution is viable and appropriate. We follow guidance set by the Crown Prosecution Service when applying the tests: The Evidential Test; The Public Interest Test. The principles outlined apply equally to the other types of formal enforcement action that are available.

The evidential test

There must be enough evidence to provide a realistic prospect of conviction against each defendant on charge.

The investigating officer(s), along with senior managers and the Solicitor to the Council must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction' against each defendant on each charge.

If the case does not pass the evidential test, it must not go ahead, no matter how important or serious it may be.

If the case does meet the evidential test, the investigating officer(s), along with senior managers and Council solicitor must decide if a simple caution or prosecution proceedings will only be progressed when the case has passed both tests.

A realistic prospect of conviction is an objective test that means that a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a separate test from the one that the criminal courts themselves must apply.

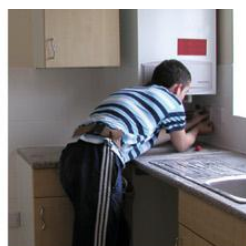
A jury or magistrates' court should only convict if satisfied so that it is sure of a defendant's guilt. When deciding whether there is enough evidence to prosecute, the Council must consider whether the evidence can be used and is reliable.

The public interest test

There may be public interest factors which are in favour of, or are against prosecution. These have to be weighed-up before enforcement action is taken. The public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. A prosecution will usually take place unless there are public interest factors tending against prosecution, which clearly outweigh those tending in favour. The Investigating Officer(s), along with senior managers and the solicitor to the Councils must balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the suspect. Some factors may increase the need to prosecute but others may suggest that another course of action would be better.

For more information about the 'Code for Crown Prosecutors' and public interest tests factors, visit www.cps.gov.uk

Having considered the criteria above and, if it is inappropriate to take formal action in respect of an offence, the officer concerned will write to the offender setting out the Council's view that an offence has been committed but that the Council intends to take no further action in the matter, setting out the reasons for that decision, and reference to the response to future offences.



4. Covert surveillance

Whilst carrying out investigations into suspected non-compliance, the Council may need to undertake directed covert surveillance in order to gain evidence. This may include the use of remote sound or video recording equipment and personal observation. Such work is regulated by the Regulation of Investigatory Powers Act 2000 and the Orders made thereunder. All activities will be undertaken in accordance with this legislation and the Home Office Code of Practice “Covert Surveillance and Property Interference”, December 2014.

5. Publicity

Successful prosecutions, (except where circumstances indicate that this will have an adverse effect on vulnerable members of the community) will normally be reported to the media to send out a positive message that serious offences will not be tolerated and that they are not victimless. Publicising any conviction can serve to draw attention to the need to comply with legal requirements, and deter anyone tempted to disregard their duties or responsibilities.

6. Review of the enforcement policy

This policy will normally be reviewed every 5 years. For more information about this policy contact:

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Trinity Road
Cirencester
Gloucestershire
GL7 1PX

Call: 01285 623000
Visit: www.cotswold.gov.uk

