



Coventry City Council

PUBLIC SAFETY & HOUSING ENFORCEMENT POLICY

November 2017

1 INTRODUCTION

- 1.1 This policy is intended to provide guidance for officers, business and members of the public on the principle and processes, which will apply when enforcement action is considered or taken.
- 1.2 Coventry City Council follows the principles laid down in the Regulators' Compliance Code when investigating complaints, responding to service requests, carrying out inspections, reviewing and granting licences and permits and completing proactive project work. This enforcement policy will seek to meet the objectives set out in this code as we aim to prevent, risks to public health, employees at work, statutory nuisances, anti-social behaviour, environmental crimes, unfair competition and trading which is detrimental to consumers and businesses. It is also the policy of the Council to promote awareness and understanding of our regulatory and licensing issues through education and working in partnership with other organisations.
- 1.3 It is the aim of Coventry City Council to seek to ensure that premises and persons who require a licence under the provisions of legislation enforced by Public Safety and Housing are properly licensed in order to secure the required standards, protect the safety of the public and employees and ensure compliance with the relevant legislation and licence conditions.
- 1.4 Coventry City Council will ensure that all recipients of regulatory services, from officers within Public Safety and Housing, receive fair and equitable treatment in accordance with equality and diversity legislation and the City Council's policies.
- 1.5 Initial and ongoing training will be given to enforcement officers within Public Safety and Housing, to make sure they understand the requirements of this Policy.
- 1.6 Any departure from this enforcement policy will be exceptional, recorded and the circumstances and reasoning noted.

2 DECISION MAKING

- 2.1 Enforcement action in relation to Public Safety and Housing will be based on risk and we must also have full regard to any statutory duty. Assessment of risk will be based on current legislation and specific guidance.
- 2.2 Enforcement Officers are required to make informed judgements and will be suitably trained for this responsibility. They will decide on appropriate action after considering the criteria within this Policy and any relevant written procedures. A senior officer will give prior approval to all formal action falling outside the scope of this policy.
- 2.3 Where the investigating enforcement officer believes that legal action may be required, evidence will be collected and the case will be reviewed by senior officers before it proceeds.
- 2.4 Where a decision is made to seek authority to prosecute, a report will be prepared for the Licensing and Regulatory Committee, except where specific delegated authority has been given to the Head of Service (these are detailed in the Council's Constitution).

- 2.5 Any person subject to potential prosecution action will be invited to send written representations to the Council for consideration prior to any final decision being made.

3 ENFORCEMENT PRINCIPLES

- 3.1 In enforcing relevant legislation, Coventry City Council will pay due regard to the following principles of good enforcement practice:

3.1.1 **Transparency:** Persons against whom enforcement action is taken will receive sufficient explanation to enable them to understand what is expected of them and what they can expect from us. Clear distinctions will be made between what are legal requirements and what are recommendations. Our correspondence and advice will be delivered in plain, easy to understand, language. Where necessary, translation will be provided and/or correspondence will contain a statement, in the recipient's language, indicating the importance of the correspondence.

3.1.2 **Standards:** Where appropriate, clear standards will be drawn up to set out the level of service and performance that can be expected by service users, e.g. response times to service requests

3.1.3 **Consistency:** Broadly similar approaches will be used in similar circumstances in order to achieve consistent ends. Coventry City Council recognises that businesses and citizens expect consistency from different enforcement officers with whom they come into contact, e.g. in securing compliance with the law, and the investigation of complaints. The City Council will endeavour to effectively co-ordinate enforcement services to minimise unnecessary overlap and time delays.

3.1.4 We will continue to take measures to promote consistency of enforcement. These include training, effective liaison with other local authorities, enforcement bodies and professional organisations, through attending local, regional and national meetings and benchmarking exercises with similar providers.

3.1.5 **Proportionality:** Enforcement action will be related to the risk and the public interest. Any action taken by enforcement officers to achieve compliance with the law will depend upon the seriousness of any breach.

3.1.6 **Accountability:** If any person is aggrieved by the enforcement of legislation by officers from Public Safety and Housing, they may register a complaint either:

- (i) By telephone – 02476 834 333, or
- (ii) In person - by visiting the Customer Contact Centre, Broadgate House, Coventry, CV1 1NH
- (iii) By writing to the Director of Streetscene & Regulatory Services, PO Box 15, The Council House, Coventry, or
- (iv) In the case of a legal notice, by appeal to the appropriate authority (appeal details will be enclosed with each statutory notice).

3.1.7 The complaint or comment will be noted and responded to in accordance with the City Council's "Compliments, Comments and Complaints procedure". Taking this action does not affect any right to complain to a local Councilor or to the Local Government Ombudsman.

4 ENFORCEMENT OPTIONS

- 4.1 Coventry City Council recognises and affirms the importance of achieving and maintaining consistency in approach to making decisions that concern regulatory enforcement action, including prosecution. To achieve and maintain consistency, relevant guidance and advice is always considered and followed where appropriate.
- 4.2 Coventry City Council will seek to secure compliance with regulatory legislation through the use of the following courses of action:
- Use of informal action, written guidance, advice and notices
 - By refusal, revocation or the attachment of conditions to a licence
 - By issuing fixed penalty notices
 - By using civil legislation where appropriate
 - By the use of various management orders
 - By the use of statutory notices
 - By issuing simple cautions
 - By carrying out work in default
 - By prosecution
 - By using anti social behaviour orders and/or court injunctions
 - By compulsory purchase, enforced sale or lease
- 4.3 Coventry City Council in deciding upon enforcement options will also have due regard to statutory guidance, approved codes of practice and relevant industry or good practice guides.

5 INFORMAL ACTION

- 5.1 Informal action includes:
- Offering advice
 - Giving verbal and written warnings
 - Negotiating agreements between complainants and other residents or businesses
 - The negotiation of specific conditions with licences, and
 - The use of informal notices

This will be the normal means of securing compliance with legislation, except where more formal courses of action are warranted.

- 5.2 It is generally considered appropriate to take informal action in one or more of the following circumstances:
- The act or omission is not serious enough to warrant formal action.
 - From the business'/member of public's past history it can be reasonably expected that informal action will achieve compliance with the law.
 - The consequences of non-compliance will not pose a significant risk
- 5.3 Written documentation issued or sent to customers will:
- Contain all the information necessary to understand what work is required and why it is necessary.
 - Clearly indicate any "recommendations of good practice" to show that they are not legal requirements.

- Give the officer's contact details to allow the opportunity for further clarification if required.

6 LICENSING

6.1 Licensing Acts

- 6.1.1 Licences made under Licensing legislation may be reviewed by responsible authorities or interested parties on application in accordance with the Licensing Policy and guidance issued in conjunction with that policy.
- 6.1.2 The Committee will hear the reviews and can choose to take no action, modify the licence, exclude a licensable activity, remove the designated premises supervisor, suspend for a period not exceeding three months, or to revoke the licence.
- 6.1.3 Rights of appeal are to the Magistrate's Court in accordance with current licensing legislation.

6.2 Housing Acts

- 6.2.1 Licences made under Housing Acts can be reviewed on an application made by the licence holder, or a relevant person, or on the authorities own initiative, in accordance with the licensing guidance and statutory requirements.
- 6.2.2 Rights of appeal are to the Residential Property Tribunal in accordance with current housing legislation.

6.3 Caravan Sites

- 6.3.1 Caravan Sites present a special case. Legal requirements are not enforced by service of statutory notice but by conditions attached to the Site Licence
- 6.3.2 Such Licences are issued by the Licensing and Regulatory Committee. Conditions attached are based on the "Coventry Standard", approved by the Licensing and Regulatory Committee to achieve consistency throughout the City.
- 6.3.3 Any decision concerning breaches of Licence conditions is likely to be complex. Works involving alterations to site layout often need to be undertaken over a lengthy time period. They may need negotiation with residents. The only alternative option is direct prosecution, leading eventually to removal of the site licence and closure of the site, rendering residents "homeless".
- 6.3.4 For these reasons, the Licensing and Regulatory Committee authorise appropriate action where breaches occur.
- 6.3.5 An Officers interpretation of breaches of Site Licence conditions will have regard to any written report submitted from the Fire Authority, when considering those conditions which relate to fire precautions.

7 FIXED PENALTY NOTICES

- 7.1 An authorised officer may issue fixed penalty notices, where there is reason to believe an offence has been committed under specific legislation and there is sufficient evidence to meet any subsequent prosecution. This notice will give the offender the opportunity to avoid prosecution for that offence by the payment of a fixed penalty.

- 7.2 A fixed penalty notice will be issued only where a member of the public has committed the specific offence and is unable to provide a satisfactory explanation or defence. The notice will be issued with verbal and where possible, written advice.
- 7.3 A report will be prepared for the Licensing and Regulatory Committee, or the Head of Service, where specific delegated authority has been given in the Council's Constitution, with a view to instigating prosecution proceedings when:
- The offender fails to pay the fixed penalty, within the permitted time period, or
 - Where an offender has previously been issued with a fixed penalty notice for the same offence
- 7.4 In cases where the offender is aged 16 or less, action will only be taken after consultation with the Youth Offending Service.

8 CIVIL LEGISLATION

- 8.1 Where appropriate, the City Council will use civil legislation in the fulfilment of its duties. For example, an injunction may be sought to prevent a business from continuing to breach consumer's rights and causing financial harm.

9 MANAGEMENT ORDERS – Houses in Multiple Occupation

- 9.1 Management orders are a specific enforcement tool and if an officer deems an order is appropriate, authorisation will be sought from the Licensing and Regulatory Committee. This decision may be made separately and in addition to consideration of other appropriate enforcement action.
- 9.2 A management order *will* be made in the following circumstances;
- 9.2.1 Where it appears to Officers that there is no reasonable prospect of a House in Multiple Occupation (HMO) being licensed in the near future and that it is necessary to protect the health and safety or welfare of persons occupying it or having an estate or interest in any premises in the vicinity.
- 9.2.2 On expiry of the interim management order where the house would be required to be licensed but Officers consider that they are unable to grant a licence a final management order will be made.
- 9.3 A management order *may* be made in the case of an HMO that is not required to be licensed, where it is considered necessary for the purpose of protecting the health and safety or welfare of persons occupying it, or persons having an estate or interest in any premise in the vicinity. The Head of Service would have delegated authority to authorise an application for a management order to the Residential Property Tribunal.

10 EMPTY DWELLING MANAGEMENT ORDERS

- 10.1 If an officer deems an interim management order is appropriate authorisation will be sought from the Licensing and Regulatory Committee. This decision may be made separately and in addition to consideration of other appropriate enforcement action.
- 10.1.1 If after serving an interim empty dwelling management order the officer considers that there are no steps it can appropriately take under the order to ensure that the property becomes occupied, it will either;-

- Make a final empty property management order, or
- Revoke the order without taking any further action

11 STATUTORY NOTICES

11.1 A wide range of legislation contains provisions for the use of statutory notices, which legally require the execution of works, the removal of statutory nuisances or the protection of public health and/or safety. Only officers specifically authorised in writing are permitted to serve statutory notices.

11.2 Notices will normally be served where:

- informal action has not achieved the desired effect,
- there is a lack of confidence that the individual/company will respond to an informal approach,
- there is a history of non-compliance with informal action,
- standards are generally poor with little management awareness of statutory requirements,
- the consequences of non-compliance could be potentially serious to the health and safety of the public

11.3 Realistic time limits will be attached to notices and wherever possible these will be agreed in advance with the person or business on which they are served. In some circumstances, requests for extension of time can be made. These should be made in writing to the officer issuing the notice, prior to the expiry date, explaining the reason for the request.

11.4 Statutory notices may also be served in conjunction with prosecutions. Accompanying every notice served will be notes explaining the appeal procedure, schedules where appropriate and each notice will include officer contact details

11.5 Having regard to statutory powers, and where the law allows, a charge will apply to statutory notices. All charges will be levied on the person upon whom the notice is served and will be made at a level fixed within the Council's agreed charges having regard to a written record assessing costs reasonably incurred. In all cases the Council will instigate debt recovery action.

11.6 Where a notice is not complied with by the expiry date, a prosecution maybe considered appropriate. In these circumstances a report, in accordance with the Constitution, will be made to decide what further enforcement action is appropriate.

12 SIMPLE CAUTIONS

12.1 The use of Simple Cautions is advocated by the Home Office in situations where there is evidence of a criminal offence but the public interest does not require a prosecution.

12.1.1 The Simple Caution has been renamed to distinguish it from a Conditional Caution which is a different enforcement option for adult offenders.

12.1.2 It may be used for cases involving first time, low-level offences where a Simple Caution can meet the public interest. Decisions to issue Simple Cautions must be made in accordance with the Director of Public Prosecutions' Guidance on Charging

12.2 Before a Simple Caution can be given, it is important to try to establish:

- The views of the victim about the offence,
- The nature and extent of any harm or loss, and its significance, relative to the victim's circumstances
- Whether the offender has made any form of reparation or paid compensation

12.3 A simple caution must be accepted in writing by the offender (or officer of a limited company which is the alleged offender), who is then served a copy of the caution. A second copy is held as the official record. Failure to accept a simple caution leaves the authority with an option to instigate legal proceedings instead.

12.4 Simple cautions are viewed as valuable enforcement tools because they can be cited in court if the same person or organisation, within three years of the original offence, commits similar offences and typically both save officer time and reduce the burden placed upon the court system.

13 WORK IN DEFAULT

13.1 In some circumstances, failure to comply with a notice may result in the City Council arranging for the necessary works to comply with the notice to be carried out (work in default). This power is specific to certain legislation. A letter will be sent informing the person on whom the notice was served of the intention to carry out the work in default. This will detail timescales of the work to be carried out and the officer's contact details. In all cases we will seek to recover the money spent in carrying out the required "works".

14 PROSECUTION

14.1 All decisions to prosecute will be made by the Committee, or in accordance with any delegated authority in the Constitution, or by the Crown Prosecution Service where persons are arrested and charged by the Police in accordance with the "joint arrest protocol".

14.2 Once a decision has been made to prepare a report for the Committee or the Head of Service, a report will be submitted to the first available meeting. As soon as possible after the meeting, evidence will be sent to the Head of Legal Services who will institute legal proceedings. If circumstances change, cases may need to be reported back to the Committee or Head of Service for further consideration.

14.3 Decisions to prosecute will take account of the Crown Prosecutors Guide. In particular, the following criteria will be considered:

- This enforcing authority has collected sufficient evidence to provide a realistic prospect of a conviction, and
- It is in accordance with this policy and the Code for Crown Prosecutors, and
- It is in the public interest.

14.4 Subject to the above, prosecution will normally be reserved where one or more of the following circumstances apply:

- i. It is warranted by virtue of the gravity of an alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender

- ii. There have been repeated breaches of legal requirements and it appears that business proprietors or members of the public are neither willing nor able to deal adequately with the causes of the offence.
- iii. There has been a reckless disregard for the safety and health of people, or where a particular contravention has caused serious public alarm.
- iv. There has been failure to comply with a legal notice or a repetition of a breach that was subject to a formal caution, or failure to pay a fixed penalty notice within the permitted payment period;
- v. There is a blatant disregard for the law;
- vi. False information has been supplied willfully, or there has been an intent to deceive, in relation to a matter which gives rise to significant risk;
- vii. Officers have been intentionally obstructed in the lawful course of their duties. Where inspectors are assaulted we will seek prosecution of offenders.

14.5 In all cases that are reported to Committee, alleged offenders will be invited to send written comments or explanations for consideration by the Committee.

14.6 All prosecution will be reported for inclusion on relevant national or local databases of offenders, the Police National Computer and others as considered appropriate.

15 ANTI SOCIAL BEHAVIOUR ORDERS AND INJUNCTIONS

15.1 Coventry City Council will reserve the right to seek anti social behaviour orders and/or injunctions for either serial offenders or, those persons who in the authority's view have the propensity to commit further similar offences. This action will be considered in line with the City Council's Anti-Social Behaviour Protocol.

16 COMPULSORY PURCHASES, ENFORCED SALES & LEASING

16.1 Where a property has been empty for over 6 months and it appears to officers that there is no reasonable prospect of the property becoming occupied, then officers may seek permission, in accordance with the Council's Constitution, to take legal action to realise a compulsory purchase, forced sale or lease.

17 OTHER RELEVANT LEGISLATION

17.1 Human Rights Act 1998. Consideration will be given to the provisions of this Act when considering action in respect of regulatory enforcement work. Particular attention will be 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.

17.2 Regulation of Investigatory Powers Act 2000 (RIPA). Surveillance techniques employed by this authority will be in accordance with this legislation.

18 **PUBLICITY AND SHARING OF EVIDENCE**

- 18.1 We will endeavor to secure media representation at hearings in the Courts when we are seeking prosecution of offenders with the aim of drawing their attention to the court case. Thereafter we will publicise any conviction, which could serve to draw attention to the need to comply with the law or, deter anyone tempted to act in a similar manner. Details of such cases will also be published on our website
- 18.2 Coventry City Council will share intelligence and evidence, secured in the ordinary course of our business, with other statutory enforcement bodies and relevant partners in accordance with information sharing protocols signed by the City Council and our duties under Crime and Disorder Act 1998 , section 17.
- 18.3 Food business hygiene inspection scores will also be published on our website.
- 18.4 Information will be made available in public registers where the legislation requires it. These will be freely available for the public to view within normal office hours.

19 **REVIEW**

- 19.1 The City Council will periodically review this policy to reflect current political management arrangements, changes in statute, guidance and opinions

20 **COMMENTS ON THIS POLICY**

- 20.1 Organisations or individuals who may wish to comment on this Policy are invited to send their comments, in writing, to the

Assistant Director (Public Safety and Housing),
Broadgate House, Broadgate, Coventry. CV1 1NH, or
By e-mail - customer.services@coventry.gov.uk

- 20.2 This policy is also available on our web page: www.coventry.gov.uk