

## Appendix 1 – Proposed Enforcement Policy

# Coventry City Council – Regulation, Communities and Environmental Enforcement Policy

This Policy outlines the overarching enforcement principles of the Regulation, Communities and Environmental Teams.

For details of specific enforcement principles adopted by the following teams, reference must also be made to the below:

Housing Enforcement Team [Private Sector Housing Enforcement Policy](#)

Sports Ground Safety Team [Sports Ground Enforcement Policy](#)

Licensing Team [Statement of Licensing Policy](#) and [Gambling Policy](#)

Taxi Licensing [Taxi Licensing Policy](#)

All other Regulation, Communities and Environmental Teams will abide by the guiding principles of enforcement laid out in this Policy.

### A. Principles of Good Regulation

The Legislative and Regulatory Reform Act 2006, Part 2, requires Local Authorities to have regard to the 'Principles of Good Regulation' when exercising a specified regulatory function. For Coventry City Council, the specified functions include those carried out by Regulation, Communities and Environmental Teams.

Coventry City Council will exercise its regulatory activities in a way which is:

- a) Proportionate – the Regulators' Code promotes proportionate regulatory activity, which includes taking appropriate action where non-compliance is identified. The 'Public Interest Stage' contained in the Code for Crown Prosecutors:

[http://www.cps.gov.uk/publications/code\\_for\\_crown\\_prosecutors/](http://www.cps.gov.uk/publications/code_for_crown_prosecutors/)

will always be considered when determining whether it is right to prosecute. Our activities will reflect the impact of the offending on those living in, working in and visiting the area and enforcement action taken will relate to the seriousness of the offence;

- b) Accountable – our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures;
- c) Consistent – our advice to those we regulate will be robust and reliable and we will respect advice provided by others. Where circumstances are similar, we will endeavour to act in a consistent manner;
- d) Transparent – we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return; and
- e) Targeted – we will focus our resources on higher risk enterprises and activities, reflecting local need, national priorities and intelligence.

### B. Regulators' Code

The Regulators' Code is central to the Governments' better regulation principles. Its aim is to embed a risk based, proportionate and targeted approach to regulatory inspection and enforcement.

Coventry City Council has had regard to the [Regulators' Code](#) in the preparation of this Policy. In certain instances, we may conclude that a provision in the Code is either not relevant, is

outweighed by another provision or does not legally apply to some aspects of regulatory activity. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and be documented.

### **C. The Code for Crown Prosecutors**

When deciding whether to prosecute or offer a Simple Caution as an alternative to prosecution, the Council will have regard to the provisions of the Code for Crown Prosecutors as issued by the Director of Public Prosecutions.

The Code for Crown Prosecutors is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases or offering Simple Cautions. The Code sets out two tests that must be satisfied, commonly referred to as the 'Evidential Test' and the 'Public Interest Test':

- a) Evidential Test - is there enough evidence against the defendant?

When deciding whether there is enough evidence to prosecute or offer a Simple Caution, the Council will consider what evidence can be used in court, is reliable and credible. The Council will also consider if there is any material which might undermine the case or assist the defence. The Council must be satisfied there is enough evidence to provide a "realistic prospect of conviction" against each alleged offender for each offence.

- b) Public Interest Test - is it in the public interest for the case to be brought to court?

Coventry City Council will balance factors for and against prosecution and Simple Cautions, carefully and fairly, considering each case on its merits. Before deciding that prosecution or Simple Caution is appropriate the Council will consider the matters detailed in the Code which, in the opinion of the Council, are relevant and will have regard to the public interest.

### **D. Regulatory Enforcement and Sanctions Act 2008 ('the RES Act')**

The Regulatory Enforcement and Sanctions Act 2008, as amended, established the Primary Authority scheme. Coventry City Council will comply with the requirements of the Act when we are considering taking enforcement action against any business or organisation that has a Primary Authority and will have regard to guidance issued by the Secretary of State in relation to Primary Authority.

### **E. Conduct of Investigations**

All investigations will be carried out under the following legislation and in accordance with statutory powers and controls and any associated guidance or codes of practice, in so far as they relate to Coventry City Council:

- The Police and Criminal Evidence Act 1984.
- The Criminal Procedure and Investigations Act 1996.
- The Regulation of Investigatory Powers Act 2000.
- The Criminal Justice and Police Act 2001.
- The Human Rights Act 1998.
- The Protection of Freedoms Act 2012 (Code of Practice for Powers of Entry and Description of Relevant Persons) Order 2015.
- General Data Protection Regulation (GDPR).
- Data Protection Act 2018.
- Consumer Rights Act 2015.
- Any other legislation which may be enforced.

The Council's authorised officers will also comply with the requirements of the legislation under which they are acting, and with any associated guidance or codes of practice.

Subject to the needs of an investigation, and where appropriate, officers will notify the individuals or business that they are subject to investigation as soon as is reasonably practicable. The Council will endeavour to make timely decisions about the progress of the investigation and decisions on the most appropriate action. The person or business subject to any investigation will be informed of the outcome.

Breaches of legislation found in premises owned or run by Coventry City Council will be treated in accordance with this Policy as would a breach in other businesses. In addition, details of the breach will be brought to the attention of the appropriate Head of Service and/or Director.

Where action and sanctions are considered in relation to juveniles i.e. anyone under the age of 18 years old, the Council will:

- Take appropriate and fair action;
- Liaise with the relevant youth offending body; and
- Comply with the relevant Government guidance.

Enforcement information is likely to be predominantly communicated through digital channels. Although most people are now digitally connected, some people may not have the confidence or ability to access digital information. Where this is the case, officers will provide hard copies of documents on request and give verbal advice in person or over the phone, if requested to do so.

Upon request and where available, information will be made in accessible formats and meetings will be held in accessible locations. Where enforcement action against a pregnant or nursing mother is considered necessary, we will upon request, provide reasonable and practical support e.g. arranging appointments to suit the parent.

We will ensure that information and communications are written in plain English, and where available, and upon request, resources will be provided in other languages.

## **F. Sanctions**

### **Compliance Advice, Guidance and Support**

The Council will issue compliance advice, guidance and support as a first response in the case of many breaches of legislation that are identified.

Advice is provided, sometimes in the form of a warning letter, to assist individuals and businesses in rectifying breaches as quickly and efficiently as possible, avoiding the need for further enforcement action. A warning letter will set out what should be done to rectify the breach and to prevent re-occurrence. We will always make it clear what is a legal requirement and what is best practice. If a similar breach is identified in the future, this letter will be persuasive in considering the most appropriate enforcement action to take on that occasion. Such a letter cannot be cited in court as a previous conviction, but it may be presented in evidence.

Coventry City Council recognises that where a business has entered into a partnership with a Primary Authority, the Primary Authority will provide compliance advice and support, and the Council will take such advice into account when considering the most appropriate enforcement action for it to take. It may discuss any need for compliance advice and support with the Primary Authority.

Where more formal enforcement action, such as a Simple Caution or prosecution, is taken, the Council recognises that there is likely to be an ongoing need for compliance advice and support, to prevent further breaches.

### **Voluntary Undertakings**

Unless there is a duty on Coventry City Council to take formal action, the Council may accept voluntary undertakings that breaches will be rectified and/or recurrences prevented. The Council will take any failure to honour voluntary undertakings very seriously and enforcement action is likely to result.

### **Statutory (Legal) Notices**

In respect of many breaches the Council has powers to issue statutory notices. These include but are not limited to: 'Abatement Notices,' 'Prohibition Notices,' 'Emergency Prohibition Notices', and 'Improvement Notices'. Such notices are legally binding. Failure to comply with a statutory notice is a criminal offence and may lead to prosecution or as an alternative a financial penalty, and/or, where appropriate, the carrying out of work in default, the costs of which may be recovered at a later date.

A statutory notice will clearly set out actions which must be taken and the timescale within which they must be taken. It is likely to require that any breach is rectified and/or prevented from recurring. It may also prohibit specified activities until the breach has been rectified and/or safeguards have been put in place to prevent future breaches. Where a statutory notice is issued, an explanation of the appeals process will be provided to the recipient. Some notices issued in respect of premises may be affixed to the premises and/or registered as local land charges.

### **Seizure and Forfeiture**

Certain legislation enables authorised officers to seize goods, equipment or documents that may be required as evidence for potential future court proceedings. This may include, for example, unsafe food, unsafe products or any goods. When officers seize goods, equipment or documents, an appropriate receipt will be given to the person from whom the items are taken.

### **Financial Penalties**

The Council has powers to issue Civil Penalties and Fixed Penalty Notices (FPN) in respect of some breaches. A penalty is an opportunity for an individual to discharge liability. It is not a criminal conviction and does not appear on an individual's criminal record. If a penalty is not paid, the Council may commence criminal proceedings or take other enforcement action in respect of the breach.

If a penalty is paid in respect of a breach, the Council may not take any further enforcement action in respect of that breach, however, this is dependent on the legislation being enforced and alleged offenders will be advised of this at the time of issue.

Payment of a penalty does not provide immunity from prosecution in respect of similar or recurrent breaches.

If financial penalties are available, it is at the discretion of the Council to opt to issue one. In some circumstances, in particular where breaches are serious or recurrent, it may be that prosecution is considered more appropriate than the issue of a penalty.

### **Injunctive Actions, Enforcement Orders etc.**

In some circumstances the Council may seek a direction from the court (in the form of an Order or an Injunction) that a breach is rectified and/or prevented from recurring. The court may also direct that specified activities be suspended until the breach has been rectified and/or safeguards have been put in place to prevent future breaches.

In certain circumstances Community Protection Notices (CPNs) or Criminal Behaviour Orders (CBOs) can be issued and obtained in respect of anti-social behaviour (ASB).

Where the non-compliance under investigation amounts to ASB such as persistent targeting of an individual or a group of individuals in a particular area, or activity that is deemed detrimental to quality of life, a CPN or CBO may be sought or issued to stop the activity.

Failure to comply with some court Orders may constitute contempt of court, a serious offence

which may lead to imprisonment.

The Council is required to seek enforcement Orders after issuing some enforcement notices, providing the court with an opportunity to confirm the restrictions imposed by the notice. Otherwise, the Council will usually only seek a court Order if it has serious concerns about compliance.

### **Simple Caution**

Coventry City Council has the power to issue Simple Cautions (previously known as 'formal cautions') as an alternative to prosecution for some less serious offences, where a person admits an offence and consents to the Simple Caution. Where a Simple Caution is offered and declined, the Council is likely to proceed with a prosecution.

A record will be kept of the Caution, and it may influence a decision to institute proceedings should a person be found to be infringing the law in the future. The Caution may be cited as an aggravating feature should an individual subsequently be found guilty of an offence in a court of law.

If a Simple Caution is issued to an individual (rather than a corporation) it may have consequences if that individual seeks certain types of employment.

### **Prosecution**

Where the circumstances warrant it and the alternative actions detailed previously in this Policy are considered inappropriate, then prosecution may result. Any decision to prosecute will consider the criteria set down in the Code for Crown Prosecutors and will be made in consultation with the Council's legal services.

The criteria to be considered will include, but is not limited to, where relevant:

- a) The nature of the alleged offence;
- b) Where appropriate, the previous history of the party concerned;
- c) Whether there is a realistic prospect of conviction;
- d) The availability and quality of evidence and of any witnesses and their willingness to cooperate; and
- e) The public benefit from prosecution and the significance of the case.

The Council may prosecute without prior warning or recourse to alternative sanctions where the circumstances warrant it and the evidence to support the case is available.

Prosecution will only be considered where the Council is satisfied that it has sufficient evidence to provide a realistic prospect of conviction against the defendant(s). Due consideration will be given to the availability and compliance with any relevant statutory defence.

Before deciding that prosecution is appropriate, the Council will consider all relevant circumstances carefully and will have regard to the public interest and, where appropriate, the views of any victim, injured party or other relevant person or impact on the community.

A successful prosecution may result in a criminal record. The court may impose a fine, a community order with requirements or, in respect of particularly serious breaches, a prison sentence. The court may order the forfeiture and destruction of non-compliant goods and/or the confiscation of any assets or profits which have resulted from the breach. Prosecution may also lead, in some circumstances, to the disqualification of individuals from acting as company directors.

### **Refusal/Suspension/Revocation of Licences**

The Council issue a number of licences and permits and also have a role to play in ensuring that

appropriate standards are met in relation to licences issued by other agencies. Most licences include conditions which require the licence holder to take steps to ensure that, for example, a business is properly run. Breach of these conditions may lead to a review of the licence which may result in its revocation or amendment. A review of a licence may be considered in addition to or as an alternative to any other action. When considering future licence applications, the Council may take previous breaches and enforcement action into account.

### **Proceeds of Crime Applications**

The Council, either in co-operation with the Police or another Local Authority, may make an application under the Proceeds of Crime Act 2002 to restrain and/or confiscate the assets of an offender. The purpose of any such proceedings is to recover the financial benefit that the offender has obtained from their criminal conduct. Proceedings are conducted according to the civil standard of proof.

### **Public Spaces Protection Orders**

Public Spaces Protection Orders (PSPO) are used, following consultation, to prohibit certain activities within identified public spaces or to require specified things to be done by persons carrying on specified activities in that area.

These Orders are introduced if:

- a) Activities carried on in a public space within the authority's area have had a detrimental effect on the quality of life in the locality; and
- b) It is likely that activities will be carried on in a public place within that area and that they will have such an effect.

A PSPO provides for restrictions to be placed on behaviour that apply to everyone in that locality (with the possible use of exemptions). Breach of a PSPO without reasonable excuse is an offence.

## **G. Complaints and Appeals**

Where any enforcement action is conducted under legislation which contains a specific appeals procedure, an individual will be advised of that procedure at the required time.

Should there be any concerns or complaints about the actions of any authorised officers of the Council, then these should be made in the first instance to the manager of the service or team in question.

If the matter is not resolved at this stage, a formal complaint can be made by accessing our comments, compliments and complaints procedure below or by asking the manager of the service to escalate the matter on your behalf:

<https://www.coventry.gov.uk/contact-council/comments-compliments-complaints/2>

## **H. Equal Opportunities**

The Council places equality at the heart of everything we do to meet the needs of those with protected characteristics. The Council is fully committed to ensuring fair and equal services are provided to all. To help ensure this, an Equality Impact Assessment (EIA) has been completed for this Policy.

## **I. Monitoring and Review**

All proposed enforcement actions shall be assessed against this Policy by the investigating officers concerned in conjunction with the line or the service manager and the Council's Legal Services Team, where appropriate.

This Policy will be reviewed every 3 years or at such times as guidance or legislation requires.