

TITLE OF REPORT: **Gateshead Enforcement Policy**

REPORT OF: **Colin Huntington, Acting Strategic Director, Communities and Environment**

Purpose of the Report

1. To recommend the adoption of Gateshead Councils Enforcement Policy for the Communities and Environment Directorate.

Background

2. The Enforcement Policy outlines Gateshead Council's approach to dealing with non-compliance with the legislation it enforces.
3. It applies to the following teams within the Communities and Environment Directorate:
 - Private Sector Housing
 - Trading Standards
 - Environmental Health
 - Environmental Protection
 - Environmental Enforcement
 - Licensing
 - Planning Enforcement
 - Building Control
4. It should be noted that additional team-specific policies might exist which outline the processes that all officers operating within that team will follow when deciding what enforcement action to take. Where such policies exist, they should be read alongside this policy.
5. The Council recognises that most people and businesses want to comply with the law. The Council will always endeavour to ensure it helps them to meet their obligations as a good citizen or business in order to help Gateshead's community's thrive.
6. The purpose of the Enforcement Policy is to set out what those being regulated, residents of the Borough and the public can expect from the enforcement teams. Its aim is to ensure that regulatory inspections and enforcement is carried out in a way that is transparent, accountable, proportionate, consistent, in accordance with relevant legislation, guidance and codes, and in a manner that will stand up to scrutiny from all persons, businesses or agencies affected by our actions and decisions.
7. All enforcement officers will have regard to the Enforcement Policy when exercising their duties. The Council will ensure that its officers have the necessary knowledge and skills to be able to do their job effectively and this includes having an understanding of those they regulate.

Proposal

8. It is proposed that Cabinet recommend that Council adopt the Enforcement Policy as set out in appendix 2.

Recommendations

9. It is requested that Cabinet recommends that Council adopts the Enforcement Policy as set out in appendix 2 to the report.

For the following reason:

To ensure that enforcement action is carried out successfully by the Council to protect and promote the health and safety of the public and residents and to protect the environment.

APPENDIX 1

Policy Context

1. Work on producing an Enforcement Policy In devising this policy reference has been made to the [Regulators Code](#) , the [Legislative and Regulatory Reform Act 2006](#), the [Crown Prosecution Service's Code for Crown Prosecutors](#), and [Corporate Complaint Policy](#).

Background

2. The Enforcement Policy has been produced to set out the approach the Council will adopt to dealing with non-compliance with the legislation it enforces.

Consultation

3. The Cabinet Members for Environment and Transport have been consulted.

Alternative Options

4. To continue without an Enforcement Policy.

Implications of Recommended Option

5. **Resources:**
 - a) **Financial Implications** – The Strategic Director, Corporate Resources confirms income generated will assist in achieving the current service income budgets.
 - b) **Human Resources Implications** – none
 - c) **Property Implications** - none
6. **Risk Management Implication** - Once adopted, risk is reduced with an enforcement policy in place
7. **Equality and Diversity Implications** –. None
8. **Crime and Disorder Implications** – non-compliance with legislation will be more successfully prosecuted or deterred
9. **Health Implications** – non-compliance with legislation will be more successfully prosecuted or deterred
10. **Sustainability Implications** - none
11. **Human Rights Implications** – none
12. **Area and Ward Implications** - All

APPENDIX 2
Enforcement Policy

Communities and Environment Enforcement Policy

Gateshead Council

2019

Contents

1. Introduction
2. Enforcement Action
3. Principles of Enforcement
4. Prosecution
5. Ancillary Orders and Costs
6. Selecting Appropriate Charges
7. Other Regulators
8. Companies and Individuals
9. Advice
10. Complaints
11. Contacts

1. Introduction

1.1 This policy outlines Gateshead Council's approach to dealing with non-compliance with the legislation it enforces.

1.2 It is a policy which applies to all teams within the Communities and Environment Directorate, with the exception of Car Parking Enforcement, as listed below:

- Private Sector Housing
- Trading Standards
- Environmental Health
- Environmental Protection
- Environmental Enforcement
- Licensing
- Planning Enforcement
- Building Control

1.3 It should be noted that additional team-specific policies might exist which outline the processes that all officers operating within that team will follow when deciding what enforcement action to take. Where such policies exist, they should be read alongside this policy.

1.4 The purpose of this policy document is to set out what those being regulated, residents of the Borough and the public can expect from our enforcement teams. Its aim is to ensure that our regulatory inspections and enforcement is carried out in a way that is transparent, accountable, proportionate, consistent, in accordance with relevant legislation, guidance and codes, and in a manner that will stand up to scrutiny from all persons, businesses or agencies affected by our actions and decisions.

1.5 All enforcement officers will have regard to this policy when exercising their duties. The Authority will ensure that its officers have the necessary knowledge and skills to be able to do their job effectively and this includes having an understanding of those they regulate.

1.6 In devising this policy reference has been made to the [Regulators Code](#) , the [Legislative and Regulatory Reform Act 2006](#), the [Crown Prosecution Service's Code for Crown Prosecutors](#), and [Corporate Complaint Policy](#).

2. ENFORCEMENT ACTION

2.1 We take very seriously incidents where persons or businesses have acted negligently, dangerously, irresponsibly, or have caused a risk to the public or the environment. In these situations, it may be necessary for us to carry out a full investigation and enforcement action may follow.

2.2 Where it is necessary to carry out an investigation in to a potential offence, we will progress the matter without delay. All investigations will be conducted in compliance with the relevant legislation and guidance.

2.3 We will explain to the person what the alleged breach is and will provide an opportunity to discuss it with the investigating officer, this might be through an informal discussion or an interview under caution (often referred to as a PACE interview). Anything said during an informal discussion or interview under caution, and any other relevant information about the individual or the offence will be taken in to account when deciding what, if any, enforcement action to take.

2.4 The Powers available to enforcement officers to enforce a breach include, but are not restricted to:

- Inspections and visits
- Verbal and written warnings
- Penalty notices for disorder (PND)
- Statutory orders
- Refusal, suspension, amendment of licences
- Enforcement notices
- Abatement notices
- Simple cautions
- Fixed penalty notices and Financial Penalties
- Work carried out in default and emergency remedial action
- Forfeiture and seizure of goods
- Undertakings and injunctive action under the [Enterprise Act 2002](#)
- Taking possession of animals
- Prosecution

2.5 We will apply the following principles to our enforcement activities:

- Direct people to appropriate services within the Council where we believe additional help is required.
- Ensure that enforcement action is carried out in such a way as to avoid negative impacts on the economic prosperity of Gateshead, whilst ensuring that public and resident safety is achieved.
- Flexibility will be used where appropriate
- All enforcement action will be justified
- Enforcement action will be carried out in a timely manner
- Any Action taken will be properly reasoned and documented by the enforcing officer. The action taken and what should be done will be fully explained to the individual.

3. PRINCIPLES OF ENFORCEMENT

3.1 The purpose of enforcement action is to ensure action is taken to protect and promote the health and safety of the public and residents, and to protect the environment. Underpinning our enforcement policy are the five principles of good regulation, as defined in section 21 of the Legislative and Regulatory Reform Act 2006, which we will apply to all enforcement decisions we take:

- Targeting of enforcement action

We will use intelligence and relevant risk assessments to help us prioritise and focus our resources in the areas that need them most and to ensure that persistent offenders are identified quickly.

- Proportionate and reasonable

We will treat everyone fairly and will ensure that any enforcement action we take is proportionate to the risks involved and the sanctions applied are meaningful.

- Transparency

We are committed to the provision of information and advice in a format that is accessible and easily understood.

We will ensure that there is always a clear distinction between those actions necessary to comply with the law and those which we recommend as best practice, as best practice advice is not compulsory for a business to follow.

Where businesses and individuals have acted against the law we may use publicity in order to raise awareness, to increase compliance and to improve the monitoring of trade practices.

- Consistency

We will ensure that our enforcement practices are consistent, this means that we will adopt a similar approach in similar circumstances to achieve similar ends. We will have regard to national guidelines in our decision-making processes.

- Accountability

We will be accountable for the efficiency and effectiveness of our activities and will justify our decisions by ensuring all decisions made are properly reasoned, recorded and based on material evidence.

3.2 When considering the most appropriate course of action, we will apply the Macrory principles which state that enforcement and penalties should:

- Aim to change the offender's behaviour and deter future non-compliance
- Eliminate any benefit from their non-compliance
- Be proportionate to the nature of the offending and the overall harm, or potential harm, caused
- Ensure that any action taken is appropriate to that particular offender, and may take into account their personal circumstances
- Provide restitution for the harm caused

3.3 Where the individual circumstances of the case require, the Authority may decide to take a course of enforcement which deviates from these principles. In these situations, any decision will be properly reasoned and documented.

4. PROSECUTION

4.1 The overall decision to prosecute is made by the Service Director for Communities and the Environment, and the prosecuting lawyer, but the decision to prosecute must first be discussed with and agreed by the investigating officer's line manager.

4.2 In determining whether it is appropriate to prosecute, the investigating officer and prosecuting lawyer, will have regard to the [Code for Crown Prosecutors](#). The Code states that two 'tests' must be passed before a prosecution can commence – the evidential test and the public interest test. A prosecution will not commence unless there is sufficient evidence that an offence has been committed and there is a realistic prospect of conviction.

4.3 Regard will also be had to:

- The seriousness of the offence together with the actual or potential harm caused
- Whether the matter was pre-meditated
- Failure on the part of the person to comply either in full or in part with the requirements of a statutory notice/ order, FPN etc.
- Previous history of warnings, cautions, commission of similar or identical offences
- Anything which aggravates the circumstances of the offending, such as behaving aggressively towards members of the public or Council staff
- Whether there was any intent to deceive
- Due regard will also be given to any explanation or information given by the person about their alleged offending, and their own personal mitigating circumstances.

5. ANCILLARY ORDERS AND COSTS

5.1 Following a successful conviction, Gateshead Council may also apply for an ancillary order. These might include:

- Compensation order
- Forfeiture of equipment or vehicles used in the commission of the offence
- Confiscation of assets under the [Proceeds of Crime Act 2002](#)

5.2 Gateshead Council will recover the costs of any enforcement action where permitted to do so and will ensure that the recovery of such costs is appropriate and proportionate.

6. SELECTING APPROPRIATE CHARGES

6.1 It is the duty of the Authority to only select charges which are commensurate with the seriousness of the conduct alleged. Charges must reflect the nature and extent of the conduct alleged and provide the court with adequate sentencing powers.

7. OTHER REGULATORS

7.1 Where another prosecuting authority is involved, the investigating officer will liaise with the other authority to ensure charges aren't duplicated and the most appropriate charges are laid.

8. COMPANIES AND INDIVIDUALS

8.1 Proceedings will be taken against the person responsible for the offence. Where a company is involved, it is likely we will also prosecute the company where the offence resulted from its activities. It is also likely that action will be taken against a manager, director or other officer of the company where it can be shown that the offence was committed with their consent, involvement, was due to their neglect, or that they 'turned a blind eye' to the offending.

9. ADVICE

9.1 We recognise that most people and businesses want to comply with the law and so we will endeavour to help them meet their legal obligations through the provision of free 'compliance advice', more detailed 'comprehensive advice' may be subject to a fee. In most cases the advice provided will be confirmed in writing.

10. COMPLAINTS

10.1 A complaint about the service provided by a member of staff may be made through the Council's [Corporate Complaints Procedure](#). All complaints should be made in writing.

10.2 The complaints procedure cannot be used as a way of determining whether or not an offence has been committed, it is a separate matter which is determined by the court. Legal proceedings will not, save for in exceptional circumstances, be suspended or terminated whilst a complaint is being investigated.

11. CONTACTS

Private Sector Housing 0191 433 2350 privatesectorhousingcivic@gateshead.gov.uk

Trading Standards tradingstandards@gateshead.gov.uk 0191 433 3987 / 3890 / 3930 / 3892.

Environmental Health 0191 433 3000 environmentalhealth@gateshead.gov.uk

Environmental Protection 0191 433 3000 environmentalhealth@gateshead.gov.uk

Environmental Enforcement 0191 4333636 - EnvironmentalEnforcement@gateshead.gov.uk

Licensing 0191 4334741 licensing@gateshead.gov.uk

Planning Enforcement 0191 433 7225 enforcement@gateshead.gov.uk

Building Control 0191 433 3144 buildingcontrol@gateshead.gov.uk

