

Dorset Councils Partnership: Enforcement Policy – Community Protection

Policy Details

Ref. No.	PL/RE/21
Category(Y/N)	
People	
Place	Yes
Corporate	
In Constitution	

What is this policy for?	<p>The policy takes into account of national codes/guidance and local circumstances and include principles such as proportionality, fairness and consistency.</p> <p>This policy is taken into consideration when enforcement action is being considered. There are overarching policies that apply to the relevant geographical area/enforcement discipline.</p>
Who does this policy affect?	The policy affects residents and businesses. In particular concerning situations where enforcement action may be appropriate, and this may relate to a range of different Community Protection services legislation.
Keywords	Community Protection
Author	Dorset Councils Partnership
Dorset Council policy adopted from	<p>Dorset Councils Partnership: North Dorset District Council, West Dorset District Council, Weymouth & Portland Borough Council.</p> <p>Dorset Council has adopted policies from its constituent councils. Please be aware varying policies apply within the Dorset Council area. Policies will be reviewed and/or harmonised by 1 April 2021.</p>
Does this policy relate to any laws?	The policy relates to all Community Protection legislation where there is the power to take action by enforcement, including prosecution. Some services will have specific additional enforcement considerations e.g. licensing
Is this policy linked to any other Dorset Council policies?	There will be other relevant policies/procedures to consider when taking enforcement action (and during the preceding evidence gathering process) for example the Regulation of Investigatory Powers Act 2000 for which the Council has policies in place. Some services will have additional specific enforcement considerations e.g. licensing. Where appropriate these will be provided with separate cover notes.
Equality Impact Assessment (EqIA)	An EqIA will be completed when the policy is harmonised for Dorset Council.
Other Impact Assessments	None.

Status and Approvals

Status	Live	Version	
Last review date	2016	Next review date	2019
Approved by (Director)		Date approved	
Member/ Partnership Board Approval	Dorset Councils Partnership: North Dorset District Council, West Dorset District Council, Weymouth & Portland Borough Council.	Date approved	18 August 2016

Community Protection Enforcement Policy

Document date 8/16

1.0 About Our Enforcement Policy - Why we regulate and enforce

- 1.1 This policy is subordinate to, and in support of, the DCP Partnership Enforcement Policy Statement. It is written to specifically cover the Community Protection function of the partnership which includes a number of specific enforcement activities such as Food Safety, Pollution Control (including nuisance investigation), Occupational Health and Safety, Licensing and Community Safety. Although it is the responsibility of individuals and business to comply with the law, the local authority must sometimes intervene in the interest of the wider benefit. Responsible businesses, in particular, value the level playing field that this creates.
- 1.2 This policy provides information on:
- the purpose of our enforcement policy
 - our principles of inspection and enforcement
 - our enforcement options, and how we use them
 - what you can expect of us – our standards
 - our accessibility and advice details
 - our commitment to you
 - how to complain, compliment, or comment on our services
- 1.3 We are committed to the principles of good enforcement, as set out in the Better Regulation Delivery Office's Regulators' Code. This means that our enforcement decisions will be fair, impartial, and objective and will not be influenced by issues such as ethnicity or national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender. Decisions will not be influenced by improper or undue pressure from any source.

2.0 The Purpose of our Enforcement Policy

- 2.1 The purpose of our enforcement policy is to provide a framework to make sure that we work in an equitable, practical and consistent manner.
- 2.2 The Partnership councils will support those who comply with regulatory requirements and those who work with us to achieve compliance. However, we **will not hesitate** to take the enforcement action necessary against those who flout the law, or refuse to be advised by us to achieve compliance.
- 2.3 Council services exist to provide and maintain a fair and safe environment for residents, visitors and businesses and as necessary we enforce a wide range of legislation to achieve that end.
- 2.4 We carry out our enforcement duties in various ways and this policy describes the circumstances in which the options available to us are pursued. We recognise that prevention is better than cure and that most people want to comply with the law, so we endeavour to help businesses and others to meet their legal obligations in a fair way without unnecessary expense. When an individual or business does break the law, we will consider all relevant circumstances before deciding what action is appropriate. Formal action, including prosecution, will be taken if it is in the public interest to do so.
- 2.5 Although the principles of this policy apply to all our activities, not all enforcement options are available for use in all activities.

3.0 Our Principles of Investigation & Enforcement

3.1 Targeted

- 3.1.1 We will prioritise and direct our regulatory effort effectively using available intelligence and relevant risk assessment schemes. Risk assessments will take account of all available, relevant and good-quality data.
- 3.1.2 We will give due consideration to the combined effect of the potential impact and likelihood of non-compliance. This enables us to focus our resources on the areas that need them most.
- 3.1.3 We will ensure that persistent offenders are identified quickly and their history of non-compliance is taken into account.

4.0 Necessity and Proportionality

- 4.1 We will ensure that enforcement action is necessary and proportionate to the risks involved and that sanctions applied are meaningful.

5.0 Accountability

- 5.1 We will be accountable for the efficiency and effectiveness of our activities.
- 5.2 We will provide the name and contact details of the officer dealing with your case.

6.0 Reasonableness, Fairness and Consistency

- 6.1 We will treat everyone we deal with reasonably and fairly.
- 6.2 We will give positive feedback to businesses and others where it is due.
- 6.3 We will ensure that our enforcement practices are consistent – this means that we will adopt a similar approach in similar circumstances to achieve similar outcomes.
- 6.4 We will have regard to national guidelines in our decision-making processes.
- 6.5 We will deal with any complaint made against an officer's actions fairly and expeditiously.

7.0 Openness and Transparency

- 7.1 We are committed to the open provision of information, advice and instruction in formats which are accessible and easily understood. This includes electronic formats. Where requested, information/our requirements will be made available in other languages.
- 7.2 We will ensure that there is always a clear distinction between those actions necessary to comply with the law and those that we recommend as best practice but which are not compulsory.
- 7.3 We may publicise the results of court proceedings in order to raise awareness, or to increase compliance.

7.4 We will seek the views of those we regulate by the use of appropriate mechanisms.

8.0 Supporting the local economy by working in partnership

8.1 We will co-ordinate our enforcement activities between services, and with other agencies, such as Dorset County Council, other local authorities and the Police, when it will minimise unnecessary overlaps or time delays and to maximise our overall effectiveness.

8.2 We will work in partnership with businesses, particularly small traders, and with voluntary/community organisations, wherever possible, to help them meet their legal obligations without unnecessary expense. We recognise that a key element of our activity when dealing with business will be to facilitate and encourage economic progress against a background of protection.

8.3 We recognise the importance of not imposing unnecessary burdens on businesses.

8.4 We will seek to minimise contact with businesses by working across disciplines within the Partnership including by sharing of information and where possible by working with other non-partnership regulators.

9.0 Our Enforcement Options

9.1 In a situation that requires action to ensure compliance we will consider the following when deciding on the most appropriate enforcement method: -

- The degree of risk from the situation
- The seriousness of the contravention
- The different technical means of remedying the situation
- The particular circumstances of the case and likelihood of its continuation or recurrence
- The general attitude of the offender to his or her responsibilities
- The compliance history of the offender
- The impact of the enforcement choice in encouraging others to comply with the law
- The likely effectiveness of the various enforcement options
- Overriding legal imperatives. For example, we must serve an abatement notice if a statutory nuisance exists
- Any legal guidance, e.g. advice contained in Government circulars and case law

9.2 In deciding what enforcement action to take against an offender some or all services will have regard to the following aims:

- To be responsive and consider what is the most appropriate sanction for the particular offender and the regulatory issue concerned
- To take action that is proportionate to the nature of the offence and the harm/potential harm it caused, is causing, or may cause.
- To change the behaviour of the offender
- To eliminate any financial gain or benefit from non-compliance
- To minimise financial losses to the council
- To restore the harm caused by non compliance, where appropriate
- To deter future non-compliance

9.3 The range of enforcement options available to us could include the following:

9.4 No action

No action may be warranted where the detrimental impact on a community of a contravention of the law is small, or there is no public benefit in enforcement.

9.5 Indirect action

A notification of non-compliance may be referred to a more appropriate authority or agency for information or action.

9.6 Verbal warning

Where a relatively minor offence has been committed by a person with no history of non-compliance and there is good reason to expect them to put right the matters in question without the need for further intervention, we may verbally require corrective action within a certain time.

9.7 Written advice or warning

Where a warning about non-compliance, or recommendations on non-compulsory best practice is to be given, a letter might be appropriate. Such a written warning will be written in plain English and will normally:

- Identify the case officer and their contact details
- Clearly state the nature of the problem and suggest either specific remedies or a standard to be achieved
- Clearly distinguish between a legal requirement and 'desirable standard'
- Indicate any follow-up action intended, such as a re-visit within a stated timescale etc
- Offer to work with the person(s) responsible in finding a solution, or signpost specialist advice or additional information.
- State the enforcement actions that may follow if matters do not improve

9.7.1 The tone of a written warning will be firm, businesslike, unambiguous, polite and helpful. Informal action will be recorded and will be used as a basis for judgements on future enforcement action if there are recurrent instances of non-compliance.

10.0 Administrative Penalty Notices

10.1 For some minor offences such as littering or dog controls, a Fixed Penalty Notice can be issued to require the offender to pay a specified fine to the council in recognition of the breach. Where legislation permits an offence to be dealt with by way of an Administrative Penalty Notice, it may be issued on the first occasion of non-compliance, without a preceding warning. Settlement avoids a criminal record for the defendant.

10.2 Failure to pay will result either in the offender being pursued for non-payment, or – more likely – an escalation of enforcement action.

10.3 An Administrative Penalty Notice does not create a criminal record and we may choose this sanction without first issuing a warning.

11.0 Statutory Notice

- 11.1 A statutory notice will usually require offenders to take specific action, such as ceasing certain activities, within a certain time. Examples include improvement notices, prohibition notices and suspension notices.
- 11.2 We will use statutory notices to deal with offences that have significant impact in accordance with relevant legislation.

12.0 Seizure

Certain legislation permits our officers to seize equipment that causes nuisance, or goods or documents that may be required as evidence. When we seize goods, we will give an appropriate receipt to the person from whom they are taken. On some occasions, we may ask the person to voluntarily surrender the goods.

13.0 Review of Licences

Where there is a requirement (such as the Licensing Act) for a business to be licensed by a local authority then a review of the licence or permit may be sought where the activities or fitness of the licence holder is in question. This may result in the loss of the licence.

14.0 Injunctions to Prevent Nuisance & Annoyance (previously Anti-Social Behaviour Orders)

Where applicable and in conjunction with other organisations, we will take all appropriate action to prevent anti-social behaviour, including the use of formal measures including applying for injunctions, orders and the serving of notices.

15.0 Simple Caution

A formal or 'Simple' caution is applied where a clear and reliable admission of guilt has been made. It will be used to deal quickly and simply with less serious offences and to avoid unnecessary appearances in criminal courts. It will be carried out in accordance with the current Home Office circular. Failure to accept a caution will however lead to the matter being heard in court.

It is not a criminal conviction – although it may be cited in court in certain circumstances. A record of the caution will be sent to bodies that are required to be notified.

16.0 Prosecution

- 16.1 A prosecution will only be considered when the evidence is deemed adequate and when it is in the public interest to do so.
- 16.2 Where it is necessary to carry out a full investigation, the case will be progressed without undue delay. All investigations into alleged breaches of legislation will be conducted in compliance with statutory powers and all other relevant legislation (including Codes of Practice).
- 16.3 As part of the investigation process, persons suspected of breaching legal requirements will, wherever appropriate,
- be formally interviewed in accordance with applicable legislation
 - have the benefit of appropriate advocacy or translation services

- be given the opportunity to demonstrate their statutory defence, where available
- have the opportunity to give an explanation or make any additional comments about the alleged breach.

16.4 Before a decision to prosecute is taken, the alleged offence(s) will be fully investigated and a file compiled by the investigating officer for review by a senior manager.

16.5 We will take into account the views of any complainant, victim, injured party or other relevant person to establish the nature and extent of any existing or potential harm and loss and its significance in making the decision.

17.0 Works in Default

In certain cases where the owner has failed to comply with a requirement to carry out specified works within a timescale, the council has powers to carry out the works in their default. We aim to recover our costs from the person(s) on whom the notice was served, by means of a charge on the land if needs be.

18.0 Injunction

The council may apply to the County Court or High Court for an injunction where the circumstances of any case require it. This might be where the offence causes a significant problem or threat to health of an individual or group of individuals and other enforcement options are likely to be ineffective because the perpetrator has shown a careless disregard for earlier similar requirements, or where the process of law would take an unacceptably long time having regard to the particular circumstances.

19.0 Proceeds of Crime Actions

A legal process exists to recover the financial benefit that an offender has obtained from his/her criminal conduct after a conviction has been secured. We may, in serious cases, make application under the Proceeds of Crime Act for confiscation of assets. Proceedings are conducted according to the civil standard of proof.

20.0 What You Can Expect of Us

20.1 You can expect our staff to:

- be courteous and helpful and willing to engage in reasonable dialogue about a problem
- identify themselves by name, and produce identification when it will not compromise an investigation
- name a contact for any further dealings
- give clear and correct advice
- confirm advice in writing on request, explaining in plain English why action is required and over what time-scale
- clearly distinguish between what you must do to comply with the law and what is recommended as best practice
- minimise the cost of compliance by requiring proportionate action
- clearly set out in plain English written advice on the appeal mechanism when a right of appeal against a formal action exists
- allow reasonable time to comply (unless immediate action is necessary in the interest of health, safety or to prevent evidence being lost)
- notify you if the matter is to be reported for legal proceedings

- have due regard for child protection policies and guidance
- advise you of the procedure for making a complaint or representations in cases of dispute
- keep information provided to them confidential
- be well informed about the legislation they use and well trained in the principles of good regulation
- respect cultural or religious requirements where prior knowledge is available, such as by providing a female visiting officer or accompanying colleague where appropriate
- take account of people's individual needs in the process of enforcement, liaising with other appropriate agencies
- before changing any enforcement procedure to take into account its impact on businesses and individuals and to take appropriate measures to consult on the impact of such changes
- seek to understand the business environment and thereby not impose unreasonable or impracticable requirements
- pursue a risk based approach in all enforcement matters with issues of low risk being categorised as low priority
- take into account the compliance history of an individual or business

21.0 Our Commitment to You

21.1 This Policy and all associated enforcement decisions take account of your Human Rights. In particular, we will have due regard to your:

- Right to a fair trial, and
- Right to respect for private and family life, home and correspondence

21.2 We are committed to providing open, equal and timely access to our services.

21.3 We will regularly review this policy, as we continually seek to improve our standards,

22.0 Complaints, Compliments and Comments

22.1 The manager of the service you have been dealing with will be willing to discuss with you any dissatisfaction you have had with it. They will seek to find its cause and try to find a solution to it. We aim to live up to our promises.

22.2 If you wish to make a comment, compliment, or complaint about our service:

- please contact the manager of the relevant service, or
- you can use our online complaints procedure by going to our [website](#), or
- you can talk directly to your councillor,
- and if you have to use our complaints procedure and are still not satisfied, we will tell you how to complain to the Local Government Ombudsman.

23.0 Accessibility and Advice

Unless shown otherwise, the contact details for the partnership services are:

West Dorset District Council South Walks House South Walks Road	Weymouth & Portland Borough Council Commercial Road	North Dorset District Council Nordon Salisbury Road
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<p>Dorchester Dorset DT1 1UZ</p> <p>Office Hours; Monday – Thursday 08.30 – 17.00, Friday 08.30 – 16.30</p> <p>Tel; 01305 251010</p> <p>Web: www.dorsetforyou.gov.uk</p>	<p>Weymouth Dorset DT4 8NG</p> <p>Office Hours; Monday – Thursday 08.30 – 17.00, Friday 08.30 – 16.30</p> <p>Tel; 01305 838000</p> <p>Web: www.dorsetforyou.gov.uk</p>	<p>Blandford Forum DT11 7LL</p> <p>Office Hours; Monday – Thursday 08.30 – 17.00, Friday 08.30-16.30</p> <p>Tel; 01258 454111</p> <p>Web: www.dorsetforyou.gov.uk</p>
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24.0 Service Standards

Where appropriate we will list service standards setting out what those regulated should expect from us as regulators. The standard will set out how a regulator will deal with a task including reference to any accepted national guidance.

We can produce this document in Braille, in large print, on audiotape and in other languages. If you would like a copy in one of these formats, please phone 01305 251010