

# Enforcement Policy of South Staffordshire District Council

## 1.0 Introduction

The enforcement policy provides guidance to officers, businesses and the general public on the range of options that are available to achieve compliance with legislation enforced by South Staffordshire Council. The policy has been approved by South Staffordshire Council. It applies to all areas – although specific guidance on the particular approach taken by certain areas may also be provided – any additional guidance will be in accordance with the approach taken by this policy.

We believe that most businesses want to abide by the law and the Council will assist them where possible. We recognise that prevention is better than cure, but firm action will be taken against those who break the law or act irresponsibly.

We believe that businesses should know the approach that will be taken by the Council in its enforcement and should have confidence that officers will ensure that their approach is focused, fair, accountable, consistent, proportionate and transparent.

The Council seeks to follow the principles of good enforcement contained in the Regulators' Compliance Code and the Enforcement Concordat. These principles help businesses to comply with regulations, and help enforcers to achieve higher levels of voluntary compliance.

Our key approach is summarised as follows:

- Focused enforcement - Our enforcement resources will be targeted primarily on activities giving rise to the most serious risks to the environment, health and safety or the public.
  - Any enforcement will be fair, accountable, consistent, proportionate and transparent.
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- The burden on business will be reduced through improved partnership working and more consistent working as a Council
- The public and businesses will be involved in our enforcement approach and policies.
- Improved communication.

## **2.0 AIMS**

### **2.1 Focused Enforcement**

We will take account of both national priorities for local government enforcement together with local priorities based on evidence or emerging need. We will focus enforcement towards matters with the greatest risk to public health, safety, animal health, the economic or environmental well being of the community, or to the other stated priorities of South Staffordshire Council including those set out in the Council's plan<sup>1</sup>.

Focusing enforcement means making sure that regulatory effort is directed primarily towards those whose activities give rise to the most serious risk or where the risks are less well controlled. Action will be primarily focused on those directly responsible for the risk and who are best placed to control it.

The services prioritise regulatory effort. Factors include response to complaints from the public; the existence of statutory powers and the assessment of risk (e.g. the potential for a particular breach of regulations to cause environmental damage or damage persons' health and safety).

Management actions are important in the assessment of risk. Repeated incidents or breaches of regulatory requirements, which are related, may be an indication of an unwillingness to change behaviour, or an inability to achieve sufficient control. A relatively low hazard site or activity poorly managed has potential for greater risk than a higher hazard site or activity where proper control measures are in place.

Where formal enforcement action is necessary the person responsible should be held to account. Where several persons share responsibility, the services will take action against those who can be regarded as primarily in breach.

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<sup>1</sup>See the Council's plan for the Council's priorities at [www.sstaffs.gov.uk](http://www.sstaffs.gov.uk)

We will

- aim to change the behaviour of the offender;
- aim to eliminate any financial gain or benefit from non-compliance;
- be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
- be proportionate to the nature of the offence and the harm caused;
- aim to remedy any harm caused by regulatory non-compliance, where appropriate; and
- aim to deter future non-compliance.

## 2.2 Fairness/Consistency/Accountability/Transparency

**Fairness** - Whilst responsibility for compliance with legislation falls to businesses or individuals, we will provide relevant advice and guidance. We will advise businesses and individuals of relevant requirements by publicity, use of the Council website and information leaflets. Where direct contact is made officers will identify themselves by name, and a contact telephone number will be provided.

We will take account of the circumstances of small regulated businesses or individuals, including any difficulties they may have in achieving compliance.

We will provide appropriate advice or signposting, where we can, in response to requests. Officers will consider statutory codes of practice and other relevant 'good practice' guidelines or standards as well as current legislation. Where appropriate, officers will highlight forthcoming legal developments.

**Consistency** - The Service will maintain systems designed to ensure, so far as practicable, that enforcement activities are carried out to a consistent standard and will monitor compliance with our enforcement policy. Officers will continue to work with colleagues in other authorities to seek to ensure consistency and continuous learning.

**Transparency** - Unless immediate action is required to prevent or respond to a serious breach, or where to do so is likely to defeat the purpose of the proposed enforcement action, when considering formal enforcement action, we will normally discuss the circumstances with those

suspected of a breach and take into account their views when deciding on the best approach.

Any applicable rights of appeal against enforcement decisions will be made known to affected persons or organisations at the time and in writing. Officers will clearly distinguish between requirements to comply with legal obligations and other recommendations.

**Accountability** - The Council's complaints policy sets out how to complain or express dissatisfaction about the services we provide.

## 2.3 Reduction of Burden on Business

We recognise that dealing with regulations has a cost to business. We also recognise that businesses wish there to be a level playing field. We will seek to ensure that interventions in businesses are kept to a minimum by

- a) ensuring that we join up across the authority and with other agencies and
- b) focus our enforcement as detailed in this policy

*We will avoid imposing unnecessary burdens on businesses and assess whether similar social, environmental and economic outcomes might be achieved by less burdensome means.*

*When designing and reviewing policies, operational procedures and practices we will consider how they might support or enable economic growth.*

## 2.4 Involvement of Businesses

We believe that businesses, residents and the public should be involved in the way the service runs. We believe that they have valuable insight that

we should take into account when deciding the approach we take. We therefore welcome feedback on the work that we do and comments on our enforcement policy.

We believe that part of our role is to help businesses comply with the law. We will therefore, where possible, provide training and information and advice on the law.

*The Council's Customer Feedback policy sets out how to complain or express dissatisfaction about the services we provide. This can be found at <http://www.sstaffs.gov.uk/pdf/customerfeedbackpolicy.pdf>*

## 2.5 Communication/Customer Focus.

As part of South Staffordshire Council's commitment to customer focus, we continuously seek to improve the service that we are providing to our customers. We aim to be a Council you can trust, delivering good quality efficient customer service.

We are committed to communicating with customers (that is businesses, residents and visitors to the District) in the most appropriate form..

Where we reasonably can, we make provision for the particular interests of consumers, business owners, employers and the public. For example, by visiting businesses outside normal office hours at a time when the necessary people are available. Premises that are open during both daytime and the evening may sometimes be visited outside traditional office hours.

*The Council operates to the following Service Standards:*

- *Acknowledgement - We aim to deal with 95% of responses to an initial request for service within 3 working days of the request being made.*
- *Resolution - We aim to deal with 80% resolution of requests for service from the customer within 35 working days of the request being made, and to deal with 80% of planning enforcement requests within 12 weeks of receipt.*

## **3.0 ENFORCEMENT FOR COMPLIANCE**

### **3.1 Inspection and Intervention Programme**

All business premises are risk assessed to inform an inspection and/or intervention programme, and the level of risk is reviewed regularly.

We will focus our greatest inspection effort on those regulated where risk assessment shows that both:

- A compliance breach or breaches would pose a serious risk to a regulatory outcome or to health or the environment;
- There is high likelihood of non-compliance by those regulated.

Inspection and intervention frequency will generally be risk based, but may additionally be determined by set, or prescribed, intervals and additional interventions may take place as part of a local or national campaigns.

Visits are also made to businesses for other reasons, such as advice, as a result of an allegation or for a sample or test purchase and will probably be without prior notice.

## 3.2 Sampling Programme

The purpose of sampling is to protect public health, for market surveillance, to identify infringements to prevent contraventions. And enable officers to provide information and advice to improve business practices

A sampling programme sets out samples and test purchases taken in response to enquiries, as a part of a planned survey/exercise or as a result of officer initiative. The programme sets out planned activities and targets for the year, concentrating efforts into risk-assessed areas of trade or products in order to ensure the most effective use of resources.

## 3.3 Primary Authority Principle

It is our policy to act as Primary Authority for businesses which have their decision making base in South Staffordshire, where they so desire.

Officers will observe the Primary and Home Authority Principle in respect of businesses with their decision making base outside South Staffordshire by notifying the relevant Primary or Home Authority of our enquiries at the earliest practicable time and at their conclusion.

## 3.4 Statutory Notifications

Where appropriate we will report incidents and enforcement actions to relevant bodies, such as the Department of Trade and Industry, Health and Safety Executive and the Office of Fair Trading, and respond appropriately to notifications, such as Health and Safety alerts and alerts from the Food Standards Agency. Information will be shared with other regulators where it is appropriate to do so.

Performance will also be reported where required and publicised in the relevant annual corporate plans.

### 3.5 Enforcement Visits

When conducting enforcement visits, other than for test purchasing or covert purposes, officers will make their identity known and explain why they are there.

Public Health Protection officers may make combined visits with other agencies where there is a shared and/or complimentary enforcement role.

### 3.6 Enforcement in Local Authority Establishments

Officers will carry out enforcement within local authority run premises in a manner consistent with any other business.

Any serious breaches of law that may be detected in such establishments will be brought to the attention of the Chief Executive without delay.

Contract caterers that operate within Local Authority establishments will be assessed in accordance with the Food Law Code of Practice and be inspected accordingly.

## **4.0 ENFORCEMENT OF NON-COMPLIANCE**

### 4.1 Levels of enforcement action:

In assessing what enforcement action is necessary and proportionate, consideration will be given to the seriousness of compliance failure; the business's or individual's past performance and its current practice; the risks being controlled; legal, official or professional guidance; and the local priorities of South Staffordshire Council.

Where the law has been contravened, there are a range of enforcement options available to seek compliance with the law. Under normal circumstances, a process of escalation will be used until compliance is reached. Exceptions to this process of escalation would include

- serious risk to public health,
- safety,
- community safety or the environment (such as fly tipping),
- risk to animal health or welfare, and
- where the offences have been committed deliberately or negligently or involve deception or where there is significant economic detriment.



The sanctions or penalties that are used will:-

- aim to change the behaviour of the offender;
- aim to eliminate any financial gain or benefit from non-compliance;
- be responsive and consider what is appropriate for the particular offender and the particular regulatory issue (this can include punishment and the public stigma that should be associated with a criminal conviction);
- be proportionate to the nature of the offence and the harm caused;
- aim to restore the harm caused by regulatory non-compliance, where appropriate; and
- Aim to improve non-compliance and deter future non-compliance

There are a large number of potential enforcement options. The level of the action taken varies from no action through to proceedings in Court. Examples of enforcement actions include the following:-

#### 4.1.1 No Action

In certain circumstances, contraventions of the law may not warrant any action. Consideration will be given to whether the resultant cost of action would outweigh the detrimental impact of the contravention. A decision of no action **may** also be taken where formal enforcement is inappropriate in the circumstances, such as where the offender is elderly and frail and formal action would seriously damage their wellbeing. In such cases we will advise the offender of the reasons for taking no action.

#### 4.1.2 Informal Action and Advice

For minor breaches of the law we may give verbal or written advice. We will clearly identify any contraventions of the law and give advice on how to put them right, including a deadline by which this must be done. The time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of the non-compliance.

Failure to comply could result in an escalation of enforcement action.

#### 4.1.3 Fixed Penalty Notices

Certain offences may be dealt with by fixed penalty notices where prescribed by legislation. They are recognised as a low-level enforcement tool and avoid a criminal record for the defendant. Where legislation permits an offence to be dealt with by way of a Fixed Penalty Notice we may choose to administer one on a first occasion, without issuing a warning.

#### 4.1.4 Penalty Charge Notices

Penalty Charge Notices (PCNs) are prescribed by certain legislation as a method of enforcement by which the offender pays an amount of money to the enforcer in recognition of the breach. Failure to pay the PCN will result in the offender being pursued in the County Court for non-payment of the debt. A PCN does not create a criminal record and we may choose to issue a PCN without first issuing a warning.

#### 4.1.5 Formal/Statutory Notice

Certain legislation allows notices to be served requiring offenders to take specific actions or cease certain activities. Notices may require activities to cease immediately. In other circumstances, the time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of the non-compliance.

All Notices issued will include details of any applicable appeals procedures.

Certain types of Notice allow works to be carried out in default. This means that if a Notice is not complied with [a breach of the Notice] we may carry out any necessary works to satisfy the requirements of the notice ourselves. Where the law allows, we may then charge the person/business served with the Notice for any cost we incur in carrying out the work. Failure to comply may entail further formal action.

#### 4.1.6 Forfeiture Proceedings

This procedure, dealt with through an application in an appropriate court, may be used in conjunction with seizure and/or prosecution where there is a need to dispose of goods in order to prevent them re-entering the market place or being used to cause a further problem.

#### 4.1.7 Seizure

Certain legislation enables officers to seize goods, equipment or documents, for example. unsafe food, sound equipment that is being used to cause a statutory noise nuisance, workplace articles and/or substances, unsafe products or any goods that may be required as evidence for possible future court proceedings. When we seize goods we will give a receipt to the person from whom the goods are taken.

## 4.1.8 Injunctive Actions/Anti-Social Behaviour

In certain circumstances, for example where offenders are repeatedly found guilty of similar offences or where it is considered that injunctive action is the most appropriate course of enforcement, then injunctive actions may be used to deal with repeat offenders or significant potential or actual environmental or customer detriment. Injunctive action includes agreements and formal undertakings to improve compliance which, if breached, may lead to the obtaining of an injunction in the civil law courts.

Where the non-compliance under investigation amounts to anti-social behaviour, such as persistent targeting of an individual or a group of individuals in a particular area, then an enforcement step under the relevant Anti Social Behaviour legislation may be taken to stop the activity.

## 4.1.9 Simple Caution

A Simple Caution is an admission of guilt, but is not a form of sentence, nor is it a criminal conviction.

For a Simple Caution to be issued there

- must be sufficient evidence available to prove the case,
- the offender must admit the offence,
- it must be in the public interest to use a Simple Caution and
- the offender must be 18 years or over.

The offender should not have received a simple caution for a similar offence within the last 2 years

For details on the Home Office guidance (Circular 016/2008) visit the appropriate link.

A record of the Caution will be kept on file for 2 years. If the offender commits a further offence, the Caution may influence our decision to take a prosecution. If during the time the Caution is in force the offender pleads guilty to, or is found guilty of, committing another offence anywhere in England and Wales, the Caution may be cited in court, and this may influence the severity of the sentence that the court imposes.

Simple Cautions are an alternative to prosecutions in appropriate cases. Simple Cautions can only be issued if the defendant admits the offence, and the circumstances are such the interests of the public and justice would be better served without recourse to legal proceedings in the first instance.

If the caution is not administered, because the suspect refuses to accept it, the facts of the case will be reviewed again, without the option of a Simple Caution, and a prosecution may result.

#### 4.1.10 Prosecution

A prosecution will normally ensue where the individual or organisation meets one or more of the following criteria:

- Deliberately, negligently or persistently breached legal obligations,
- Used an element of deception, theft or fraud
- Made significant gain or caused significant loss
- Deliberately or persistently ignored written advice or formal notices;
- Endangered, to a significant degree, the health, safety or well being of people, animals or the environment;
- Assaulted or obstructed an Officer in the course of their duties.

#### 4.1.11 Proceeds of Crime Applications

Applications may be made under the Proceeds of Crime Act for confiscation of assets in serious cases. Their purpose is to recover the financial benefit that the offender has obtained from his criminal conduct. Proceedings are conducted according to the civil standard of proof. Applications are made after a conviction has been secured.

## **5.0 DETERMINING WHETHER A PROSECUTION OR SIMPLE CAUTION IS APPROPRIATE**

### **5.1 Introduction**

We will attempt to administer the requirements of legislation by advice and assistance wherever possible. Occasionally, however, it will be necessary to consider instituting legal proceedings.

Each case is unique and must be considered on its own facts and merits. However, we apply the same general principles to every case. When deciding whether to prosecute we will have regard to the evidential test in the Code for Crown Prosecutors on Prosecution Policy.

A prosecution will not be started or continued unless there is sufficient admissible and reliable evidence that an offence has been committed by an identifiable person, and unless there is a realistic prospect of a conviction. We will also consider any lines of defence which are plainly open to or indicated by the accused and to the public interest.

### **5.2 The Public Interest Test**

Factors for and against prosecution will be balanced carefully and fairly. Deciding on the public interest is not simply a matter of adding up the factors on each side but a consideration of how important each factor is in the circumstances of each case and an overall assessment made.

The following considerations are taken from the Code and adapted for public protection offences. Factors which are less relevant to public protection offences are not repeated here, but would still be considered if they were to be relevant.

#### **5.2.1 Public Interest Factors in Favour of Prosecution**

A prosecution is more likely when:

- a conviction is likely to result in a significant sentence or to result in a confiscation or any other order;
- there is evidence that the offence was premeditated;
- there is evidence that the offence was carried out by two or more people acting together;
- the victim of the offence was vulnerable or has been left frightened;

- the offence was motivated by any form of discrimination against the victim's ethnic or national origin, disability, sex, religious beliefs, political views or sexual orientation, or the suspect demonstrated hostility towards the victim based on any of those characteristics;
- The risk or nuisance presented to individuals, the public, the trade (including unfair competition between traders), the farming community, animal health & welfare, or the environment is significant or widespread.
- The 'defendant' has acted fraudulently/dishonestly, wilfully or negligently or insufficient steps have been taken to prevent the offence.
- The 'defendant' was in a position of authority or trust or the offence was committed in the presence of, or near to, a child.
- The 'defendant's' previous convictions or cautions are relevant to the present offence.
- There are grounds for believing that the alleged offence is likely to be continued or repeated.
- The outcome of the prosecution may serve an important, informative purpose or might establish an important legal precedent or might act as a warning to others or would have a significant positive impact on maintaining community confidence.
- the defendant committed the offence while under an order of the court;

### 5.2.2 Public Interest Factors Against Prosecution

A prosecution is less likely to be needed if:

- The offence was committed due to a genuine mistake/ misunderstanding (this must be balanced against the seriousness of the offence).
- The loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement.
- The 'defendant' has put right the loss or harm that was caused within a reasonable period of time (but 'defendants' cannot avoid prosecution simply because they have offered compensation).
- the defendant has already been made the subject of a sentence and any further conviction would be unlikely to result in the imposition of an additional sentence or order.
- the defendant is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is real possibility that it may be repeated

## 5.3 Deaths at Work

Where there has been a breach of the law leading to a work-related death, we will consider whether the circumstances of the case might justify a charge of manslaughter. We will liaise with the Police, Coroners and the Crown Prosecution Service (CPS) and if they find evidence suggesting manslaughter, pass it on to the Police or where appropriate the CPS. If the Police or the CPS decide not to pursue a manslaughter case, we will bring a health and safety prosecution if that is appropriate. We will take account of "Work Related Deaths: A Protocol for Liaison"

## **6.0 APPLICATION OF OUR POLICY STATEMENT**

This policy statement applies to all officers when making enforcement decisions. Public Health Protection Services commit to ensuring that all officers are appropriately trained on this policy and other relevant aspects of enforcement.

Any departure from this policy must be exceptional, capable of justification and be fully considered by the appropriate manager before a final decision is taken. This proviso shall not apply where a risk of injury or to health is likely to occur due to a delay in any decision being made.

In cases of emergency or where exceptional conditions prevail, the Director of Legal and Public Health Protection may suspend all or part of this policy, but only when necessary to achieve effective running of the service and/or where there is a risk of injury or to health of employees or members of the public.

## **7.0 REVIEW**

The enforcement policy will be reviewed at not more than three yearly intervals and amendments will be made, as appropriate.

Amendments to the policy may also be made at other times as a result of identified improvements which contribute to the main aim of the Service.

Review of the enforcement policy will take account of any responses received from affected persons and any other relevant comments.

Compliance with this policy will be monitored on an ongoing basis.