

1.0 About our Enforcement Procedure - Why we regulate and the Purpose of Enforcement

1.1 This procedure is subordinate to, and in support of, the Dorset Council General Statement of Enforcement Policy. All Dorset Council policies can be found on the Dorset Council website here <https://www.dorsetcouncil.gov.uk/policies-and-strategies-library>

1.2 It is written to specifically cover the Community and Public Protection function of Dorset Council. This includes certain specific enforcement activities including Food Safety, Environmental Protection (including statutory nuisance investigation), Health and Safety, Trading Standards, Licensing and Community Safety.

It provides a framework to make sure that we work in an equitable, practical and consistent manner.

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 for residents, businesses, and visitors.

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 and consistent 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 only be taken if it is in the public interest to do so.

1.3 This procedure provides information on:

- the purpose of our enforcement procedure
- our principles of investigation and enforcement
- our enforcement options, and how we use them
- what you can expect of us – our standards and commitments
- how to complain, compliment, or comment on our services
- the availability of civil sanctions and guidance as to their specific use

2.0 Principles of investigation and enforcement

2.1 General Principles

2.1.1 We are committed to the principles of good enforcement, as set out in the Legislative and Regulatory Reform Act 2006 and the [Regulators' Code](#).

2.2 Targeted

2.2.1 We will prioritise and direct our regulatory activities effectively using available intelligence and relevant risk assessment schemes. Risk assessments will take account of all available, relevant, and good-quality data.

2.2.2 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.

2.2.3 We will ensure that persistent offenders are identified quickly, and their history of non-compliance is considered.

2.3 Necessity and proportionality

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

2.4 Accountability

2.4.1 We will be accountable for the efficiency and effectiveness of our activities.

2.4.2 If further action is necessary from the intelligence we receive, we may contact you to request further information and at this time we will provide the name and contact details of the officer dealing with your case.

2.5 Reasonableness, fairness and consistency

2.5.1 We will treat everyone we deal with reasonably and fairly.

2.5.2 We will give positive feedback to businesses and others where it is due.

2.5.3 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.

2.5.4 We will have regard to national guidelines in our decision-making processes.

2.5.5 We will deal with any complaint made against an officer's actions in accordance with the Dorset Council Whole Authority Complaints Policy, which can be found via the link in 1.1.

2.6 Accessibility, openness and transparency

2.6.1 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 and possible, information will be made available in other languages.

2.6.2 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.

2.6.3 We may publicise the results of court proceedings to raise awareness, or to increase compliance.

2.6.4 We will seek the views of those we regulate using appropriate mechanisms.

2.7 Working in partnership

2.7.1 We will co-ordinate our enforcement activities and appropriately share intelligence between Dorset Council services and other external agencies when it will minimise unnecessary overlaps or time delays, and to maximise our overall collective effectiveness.

2.7.2 We will work in partnership with businesses, particularly SME's, and with voluntary/community/business representative organisations wherever possible, to help ensure legal obligations are met, without unnecessary expense or imposing unnecessary burdens.

2.7.3 We support the Primary Authority scheme and Home Authority Principle, which has been developed to promote good enforcement practice and reduce burdens on business.

We will therefore:

- provide Dorset based businesses, including those businesses for whom we are the 'Primary Authority' with appropriate guidance and advice
- maintain records of our contacts with these businesses to reduce the amount of information they have to provide to us
- support efficient liaison between local authorities and partner agencies
- provide a system for the resolution of problems and disputes

2.7.4 We reserve the right to charge a fee on a cost recovery basis for our business advice provision and certain other business facing services. Businesses will be made aware of and must agree to the costs and the terms of the contract before the advice or service is provided.

3.0 Our enforcement options

3.1 Proportionality

In a situation that requires action to ensure compliance, we aim to change the behaviour of the offender and protect the public. We will do this by being responsive and considering the most appropriate sanction for the offender and the regulatory issue concerned. The action taken will be proportionate to the nature of the offence and the harm/potential harm caused. We will consider the following when deciding on the most appropriate enforcement method:

- the degree of risk from the situation to both the individual concerned, the wider population and to Dorset Council
- the seriousness of the contravention

- the different technical means of remedying the situation and the enforcement powers available under the legislation being enforced
- the particular circumstances of the case and likelihood of its continuation or recurrence
- the general attitude of the offender to their responsibilities
- the compliance history of the offender and any other relevant intelligence available
- the impact of the enforcement choice in deterring the offender and others from future non-compliance
- the likely effectiveness of the various enforcement options
- the overriding legal imperatives, e.g. we must serve an abatement notice if a statutory nuisance exists
- any legal guidance, e.g. advice contained in Government circulars and case law
- our ability to restore the harm caused by the regulatory non-compliance
- our ability to eliminate any financial gain or benefit from the non-compliance

3.2 Enforcement options available

3.2.1 No action

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

3.2.2 Indirect action

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

3.2.3 Verbal warning

Where a relatively minor offence has been committed and there is good reason to expect the offender to put right the matters in question without the need for further intervention, we may issue business advice and verbally require corrective action within a specified timeframe.

3.2.3 Written advice or warning

Where a relatively minor offence has been committed but is not thought appropriate to take any further action, a written warning about the non-compliance, including details specifying any mandatory corrective action and/or recommendations on non-compulsory best practice may be given. This may take the form of a letter or written advice issued by the officer at the time of the inspection.

Such a written warning will be given 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 recommendations of 'best practice'
- indicate any follow-up action intended within a stated timescale

- offer to work with the person(s) responsible in finding a solution, or signpost to specialist advice or additional information
- state the enforcement actions that may follow if matters do not improve

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.

3.2.4 Administrative penalty notices, direction notices and civil sanctions

For some offences a penalty notice, direction notice or other civil sanction can be issued to require the offender to pay a specified fine or take some other stated corrective action in recognition of the breach.

Where legislation permits an offence to be dealt with by way of a civil sanction, it may be issued on the first occasion of non-compliance, without a preceding warning. In other legislative circumstances it requires a notice to be served which then enables a prompt return to compliance by using the Fixed Penalty Notices for less serious breaches. Settlement avoids a criminal record for the defendant.

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

Appendix 1 provides a list of the legislation under which civil sanctions can be issued by Dorset Council's Community and Public Protection Services and offers guidance on the issuing of these in specific cases where it is mandated that we must publish it. This list will be subject to annual review.

3.2.5 Statutory notice

We will use statutory notices in accordance with the law, associated guidance and assessment of the particular circumstances.

A statutory notice will usually require offenders to take specific action, such as ceasing certain activities, or undertaking works, within a certain time. Examples include improvement notices, prohibition notices and suspension notices, together with notices covering seizure, forfeiture or voluntary surrender of items such as goods/documents/food etc.

3.2.6 Seizure

Certain legislation permits our officers to seize equipment that causes nuisance, or goods or documents that may be required as evidence or which may present a risk to public health.

When we seize items, we will give an appropriate receipt to the person from whom they are taken, or, if no one is available to take responsibility of the seized items we will leave a receipt on the premises from which they were taken. On some occasions, we may ask the person to voluntarily surrender the items to the control of Dorset Council.

3.2.7 Review of licences

Where there is a requirement (such as the Licensing Act) for a business to be licensed or 'permitted' by a local authority, a review of the licence or permit may be sought where; the activities or fitness of the licence holder is in question, there is evidence of non-compliance to conditions attached to the licence, or there has been failure to pay annual fees etc. This may result in a variation, suspension, or the loss of the licence.

3.2.8 Injunctions and Injunctive actions

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 where applicable. This may be done in conjunction with other partners or agencies.

We may also take a range of injunctive actions where they are available under the Enterprise Act 2002, including:

- informal undertakings
- formal undertakings
- interim orders
- court orders
- contempt proceedings

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 circumstances.

3.2.9 Simple caution

A simple caution may be used to deal quickly and simply with less serious offences and to avoid unnecessary appearances in criminal courts.

They may be offered where there is sufficient evidence to undertake a prosecution but a clear and reliable admission of guilt has been made by the defendant(s).

They will be carried out in accordance with the current Home Office advice. It is not a criminal conviction, although it may be cited in court in certain circumstances.

Failure to accept a caution will lead to the matter being heard in court.

A record of the caution will be sent to bodies that are required to be notified.

3.2.10 Prosecution

Where it is necessary to carry out a full investigation, the case will be progressed without undue delay.

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 and member of Dorset Council's legal services team.

All investigations into alleged breaches of legislation will be conducted in compliance with statutory powers and all other relevant legislation and codes of practice including the requirements of:

- Police and Criminal Evidence Act (PACE)
- Criminal Procedure and Investigations Act (CPIA)
- Regulation of Investigatory Powers Act (RIPA)
- [The Enforcement Concordat](#), March 1998, to which we are a signatory
- [The Regulator's Code](#)
- [The Food Standards Agency Framework Agreement](#)
- [The Code of Practice for Crown Prosecutors, Crown Prosecution Service](#)
- [The Human Rights Act 1998 and the European Convention on Human Rights](#)

As part of the investigation process, persons suspected of breaching legal requirements will, wherever appropriate:

- be formally interviewed in accordance with applicable legislation; translation services can be arranged where required
- be given the opportunity to obtain appropriate advocacy
- 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

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

A prosecution will only be considered when the evidence is deemed adequate and passes the 'evidential test' and when it is in the public interest to do so.

3.2.11 Proceeds of crime actions

A legal process exists to recover the financial benefit that an offender has obtained from their criminal conduct after a conviction has been secured. We will proactively consider the application of the Proceeds of Crime Act at the outset of any relevant investigation.

We may, in serious cases, make an application under the Proceeds of Crime Act for restraint or confiscation of assets. Proceedings are conducted according to the civil standard of proof.

3.2.12 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.

3.2.13 Approved Premises

Some food premises who process products of animal origin need to be approved under EU 853/2004 (assimilated) before they can start operating. This provides additional enforcement powers, to revoke, suspend or refuse approval. Along with these are powers provided under The Food Hygiene (England) Regulations 2006 for the use of Remedial Action Notices in premises which are or would be subject to approval requirements.

3.3 Limitations

3.3.1 Although the principles of this procedure apply to all our activities, not all enforcement options are available for use in all activities.

4. What you can expect of us

4.1 Our behaviours

In our dealings with service users we expect all parties to apply by our [Customer Promise](#).

In addition, you can expect our staff to:

- give clear and correct advice
- confirm advice in writing on request or where required, explaining in plain English* why action is required and over what time-scale
- allow reasonable time to comply (unless immediate action is necessary in the interest of health, safety or to prevent evidence being lost)
- clearly distinguish between what you must do to comply with the law and what is recommended as best practice
- pursue a risk based and intelligence led approach in all enforcement matters
- take into account the compliance history of an individual or business
- minimise the cost of compliance by requiring proportionate action
- notify you if the matter is to be reported for legal proceedings
- have due regard for adult and child protection policies and guidance and the wellbeing of our service users
- maintain confidentiality where appropriate
- respect cultural or religious requirements where prior knowledge is available
- 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
- advise you of the procedure for making a complaint or representations in cases of a dispute

*Where requested, written communication may be able to be subsequently translated into other dialects.

4.2 Our commitment to you

4.2.1 This Procedure and all associated enforcement decisions take account of your Human Rights. We will have due regard to your:

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

5.0 Complaints, compliments, and comments

5.1 Complaints

If you are not happy with the service you have received, or we have failed to live up to our promises, please raise this in the first instance with the officer assigned to your case if you have one. If you remain dissatisfied with their attempts to remedy the situation or, if you do not know who the officer dealing with your case is, 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.

5.2 Feedback

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

- please contact the relevant service and ask for the matter to be referred to a manager, or
- you can use our online complaints procedure by going to our [website](#), or
- you can talk directly to your Dorset Council 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

We understand that all feedback is valuable and will use the information provided as part of our continuous improvement aspirations.

Appendix 1 Civil Sanctions and Guidance

A1.1 List of legislation

The following legislation is enforced by Dorset Council's Community and Public Protection team services and contains the provision to issue a civil sanction:

- Air Quality (Domestic Solid Fuels Standards) (England) Regulations 2020
- The Animals (Penalty Notices) Act 2022
- Antisocial Behaviour Crime and Policing Act 2014

- Calorie Labelling (Out of Home Sector) (England) Regulations 2021*
- Children and Families Act 2014 (S91) via The Proxy Purchasing of Tobacco, Nicotine Products etc. (Fixed Penalty Notice) (England) Regulations 2015
- Consumer Rights Act 2015
- Control of Pollution (Amendment) Act 1989
- Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015
- Energy Performance of Buildings (England and Wales) Regulations 2012
- Environmental Protection (Microbeads)(England) Regulations 2017*
- Environmental Protection Act 1990
- Environmental Protection (Plastic Plates etc. and Polystyrene Containers etc.) (England) Regulations 2023*
- Environmental Protection (Plastic Straws, Cotton Buds and Stirrers) (England) Regulations 2020*
- Equine Identification (England) Regulations 2018
- Estate Agents Act 1979
- Food (Promotion and Placement) (England) Regulations 2021*
- Health Act 2006
- The Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018
- Novel Foods (England) Regulations 2018
- Quality Schemes (Agricultural Products and Foodstuffs) Regulations 2018
- Refuse Disposal (Amenity) Act 1978
- Scotch Whisky Regulations 2009
- Single Use Carrier Bags Charges (England) Order 2015*
- Spirit Drinks Regulations 2008
- Tenant Fees Act 2019 and the Housing and Planning Act 2016 as it relates to Client Money Protection Schemes

A1.2 Guidance on the issuing of civil sanctions

Where indicated by a * the enforcing authority is required to provide guidance regarding the issuing of civil sanctions and detail the amount of any fixed monetary penalty. These have been indicated below in brackets after the legislation.

Calorie Labelling (Out of Home Sector) (England) Regulations 2021 **(FMP £2500)**

Environmental Protection (Microbeads)(England) Regulations 2017 **(FMP £200)**

Environmental Protection (Plastic Plates etc. and Polystyrene Containers etc.) (England) Regulations 2023 **(FMP £200)**

Environmental Protection (Plastic Straws, Cotton Buds and Stirrers) (England) Regulations 2020 **(FMP £200)**

Food (Promotion and Placement) (England) Regulations 2021 **(FMP £2500)**

Single Use Carrier Bags Charges (England) Order 2015 **(FMP £200 or £100, VMP either £5000 or £20,000 dependent on the breach)**

As an alternative to prosecution, a civil sanction can be imposed in relation to a specified offence(s) under the above-mentioned legislation.

Fixed Monetary Penalties (FMP) can be issued at the discretion of the enforcing authority where the authorised officer is satisfied beyond all reasonable doubt that a person has committed the offence, or in the case of Single User Carrier Bags Charges (England) Order 2015, an FMP or Variable Monetary Penalty (VMP) can be imposed on the balance of probabilities that a breach has occurred. The three Environmental Protection regulations and Single Use Carrier Bags Charges legislation also carry the provision to issue a compliance notice (CN).

Where an FMP, VMP or CN is to be imposed, a written notice of intent will be given. This notice will specify the grounds for proposing to impose the FMP, VMP or CN, the requirements for the CN or amount to be paid for the FMP or VMP, how to discharge the liability, how to make written representations or objections, and when it is not appropriate to issue a FMP or VMP.

Liability will be discharged if 50% of the FMP or VMP amount is paid, or the CN is complied with satisfactorily, within 28 days of receiving the notice of intent. By discharging the liability, that person may not at any time be convicted of the offence in relation to that specific act or omission.

Where no payment is made within 28 days of receiving the notice of intent, the authorised officer may issue a final notice imposing the FMP or VMP if they are satisfied that the person would not, by reason of any defence, be liable to be convicted of the offence to which the notice relates. An appeal process is available, and details will be provided on issuing the final notice.

Payment in full of the FMP or VMP must be made within the timescales specified on the final notice to discharge the liability, failure to do so will result in the final notice increasing by 50%.

The three Environmental Protection Regulations also allow for the service of a Stop Notice (SN), the agreement to issue Enforcement Undertakings (EA) and Third Party Undertakings (TPU), and provide the enforcement body with the option to issue non-compliance monetary penalties (NCP) in the event of non-compliance/non-payment of any of the above.

Stop Notices may be issued where there is a person carrying on an activity which is causing or could present a significant risk of harm to the environment.

The Single Use Carrier Bags (England) Order 2015 also makes provision for imposing Variable Monetary Penalties (VMP) on the seller, these range from £5000 to £20,000 depending on the nature of the breach, as well as non-monetary discretionary requirements and NCP's.

Where an NCP is proposed, the procedure above in respect of FMP's and VMP's will be followed, and a notice of intent issued.

These additional civil sanctions can be issued at the discretion of the enforcement authority and will follow the principles of this enforcement procedure in terms of proportionality and risk. Liabilities may be discharged by complying with any issued CN or other non-monetary discretionary requirement or by paying the VMP or NCP within the specified payment timeframe.

These additional civil sanctions are accompanied by an appeal process, the details of which will be made available at the time of issuing.

Failure to comply with any of the requirements of these civil sanctions could lead to further action, including a court order to recover any outstanding monetary penalty or, in some cases, the commencement of criminal proceedings.