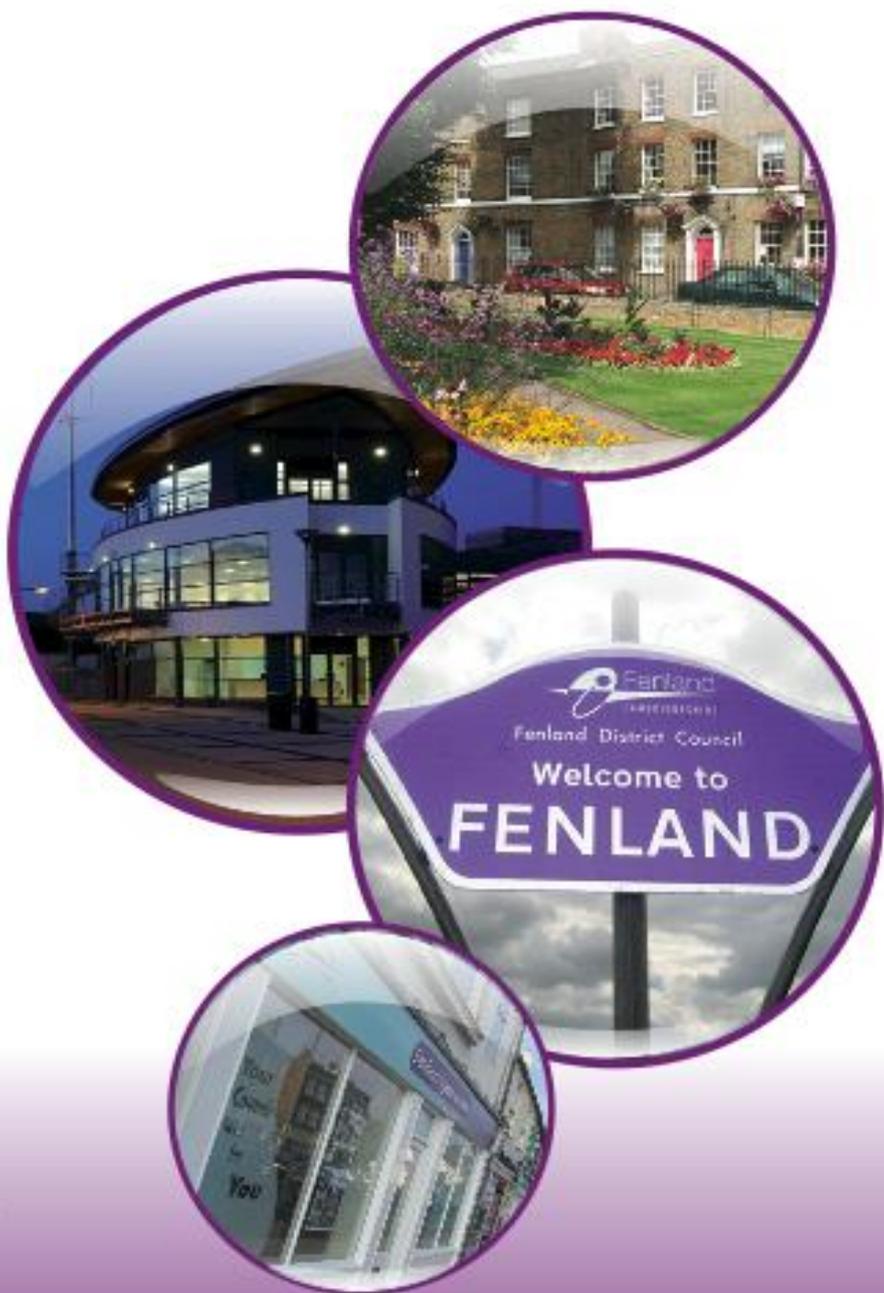


Corporate Enforcement Policy
2018



1. INTRODUCTION

1.1 The purpose of this policy is to set out Fenland District Council's intended approach to bring about compliance with the regulatory requirements it enforces. It is not intended to be, and should not be considered to be, legal advice to third parties or a definitive guide to the law.

1.2 Effective and well-targeted enforcement is essential in promoting fairness and protection from harm and Fenland District Council will adopt a positive Prevention, Intervention and Enforcement approach to ensure compliance by helping and encouraging Business and the wider community to understand and meet their regulatory duties and by responding proportionately to regulatory issues that we identify.

1.3 As an integral part of this policy we will work with individuals, businesses and our communities throughout Fenland for the benefit of residents and the Fenland economy. The Council recognises that enforcement can be successful only if the policy has the support of both our local communities and local businesses. This policy is an update from when the Council first adopted it in 2014

1.4 The Council also recognises that we need to work in partnership with other agencies in providing enforcement services. For example, Fenland District Council works closely with the Police and others in the development of neighbourhood policing to build safer, stronger communities.

1.5 The Corporate Enforcement Policy is at the core of our approach to enforcement. It incorporates best practice and sets common principles that we will follow. This Enforcement Policy describes the range of enforcement activities we use and how we intend to comply with the Regulators' Code.

The Regulators' Code ('the Code') provides a flexible, principles based framework for regulatory delivery that supports and enables regulators to design their service and enforcement policies in a manner that best suits the needs of businesses and other regulated entities.

1.6 The Council must have regard to the Code when developing policies and operational procedures that guide our regulatory activities. The Council must equally have regard to the Code when setting standards or giving guidance which will guide the regulatory activities of other regulators. If the Council concludes, on the basis of material evidence, that a specific provision of the Code is either not applicable or is outweighed by another relevant consideration, the Council is not bound to follow that provision, but should record that decision and the reasons for it.

1.7 To ensure consistent performance across a broad range of activities and duties, we will produce from time to time, supplementary operational policy documents that give details of our range of services, the standards of service our customers can expect and the criteria we will use when deciding on how we will deal with infringements.

2. A BALANCED APPROACH TO ENFORCEMENT

2.1 The main purpose of local government enforcement work is to protect the public, the environment, consumers and legitimate businesses by making sure that legal requirements are complied with and that everyone acts/operates within the law. It does not mean simply taking formal action, such as prosecution, but includes a wide range of actions and measures to make sure that things are as they should be.

This includes amongst other things, giving help or advice. We will generally endeavour to support both businesses and individuals to meet their legal obligations before considering any kind of enforcement action; but all relevant factors will be taken into account before determining whether the Council can give an opportunity for the business / individual to address the concern before formal enforcement action is taken.

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2.2 We recognise that most business owners, their employees and the public want to comply with the law and thereby operate legitimately and responsibly. We will help and advise wherever possible but will take firm action against those who ignore legal requirements or act irresponsibly.

To achieve this we will:

Make available information and advice on the law in electronic formats and printed formats on request.

Publicise enforcement campaigns, especially for new initiatives and new or changed laws.

Make promotional visits to increase awareness to groups within our communities and to business forums.

Work with our partner agencies where appropriate to co-ordinate enforcement activities for the benefit of our communities and where a more effective resolution can be achieved.

Carry out inspections and investigate complaints.

Examine goods, documents or notices, take samples or make test purchases.

Talk to witnesses and obtain witness statements, where appropriate.

Conduct interviews to investigate offences and obtain, as best we can, the relevant facts.

2.3 So we can see things from the point of view of a customer or ordinary member of the public, we may carry out informal visits and not introduce ourselves as Council officers. There is a range of actions available to us and that we may take where we find problems, regulatory breaches or contraventions:

Give verbal or written guidance.

Give written instruction.

Send a cautionary letter or notice.

Issue Fixed Penalty Notices.

Serve formal Statutory Notices including making a charge to do so.

Take samples and seize goods or documents.

Carry out a formal interview under caution.

Issue a formal caution.

Suspend or revoke a license or permit

Take out an injunction.

Prosecute offenders through the judicial system or other methods such as Civil Penalties if legislation allows e.g. 'A local authority may impose a Civil Penalty (up to a maximum of £30,000.00) upon a landlord or his/her agent as an alternative to prosecution for specified offences under the housing Act 2004 for each individual breach, provided the criminal standard of proof is satisfied

Issue legal proceedings (civil or criminal)

The Council may make a charge for some of these services should it be lawful to do so, for example, charging to serve a notice.

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2.4 The Council will take an evidence based approach to determine the priority risks in our areas of responsibility and will allocate resources where they would be most effective in addressing those priority risks. The Council will consider risk at every stage of their decision-making processes, including choosing the most appropriate type of intervention or way of working with those regulated; targeting checks on compliance; and when taking enforcement action. In carrying out our responsibilities we will follow all relevant and up to date guidance and legislation.

2.5 Guiding Principles:

Regulators' Code <https://www.gov.uk/government/publications/regulators-code> -Fenland District Council has adopted the Code which has been laid before Parliament in accordance with the Legislative and Regulatory Reform Act 2006. The Council is committed to its aims and will abide by the following principles when considering and undertaking enforcement.

Openness -We will provide accessible information and advice on the legislation we enforce, wherever possible in plain language and in languages understood by those affected. We will be open about how we work and why it may be necessary to take enforcement action.

Helpfulness -We believe that prevention is better than cure and we will actively work to advise and assist to achieve compliance with the law. Our staff will be courteous and efficient, identify themselves by name where appropriate, and carry an identity card with a photograph. We will offer a contact point, telephone number and email address for further help.

Clarity -We will work with our customers to help them meet their legal obligations without incurring unnecessary expense. Advice will be put clearly and simply, confirmed in writing on request, explaining what is necessary, why and when, together with the implications of non-compliance. Legal requirements will be clearly distinguished from best practice advice.

Consistency -We will carry out our duties in fair and consistent ways. We have arrangements in place to promote consistency, including liaison with other Local Authorities and agencies e.g. The Police, Health & Safety Executive, parish councils, etc., particularly where we may share an enforcement role.

Suitable Action -Every case is unique and must be considered on its own facts and merits. When making decisions on the actions we will take, we will always take account of our service standards (see section 4).

Human Rights -We will have regard to fairness and individuals' human rights in all of our enforcement work through conforming to the European Convention on Human Rights (as implemented by the Human Rights Act 1998).

Equal Opportunities and Diversity -We believe in openness and equality in the way we provide services and that every individual is entitled to dignity and respect. When making enforcement decisions we aim to ensure that there will be no discrimination against any individual on the basis of culture, ethnic or national origins, gender, disability, age, sexual orientation, political or religious beliefs, socio-economic status, or previous criminal conviction or caution which is not relevant to the current issue.

3. POLICY APPLICATION

3.1 The policy is relevant to services in the following service areas (this should not be considered to an exhaustive list):

Hackney Carriage and Private Hire Vehicle Driver and Operator Licensing, Licensing Act 2003, Public Entertainment, Sex Establishments, House to House and Street Collecting Licensing, Gaming Act and Scrap Metal Dealing.

Revenue recovery and the investigation of Housing Benefit, Council Tax and Business Rates fraud.

Planning Development Control, Building Control Environmental Services, Environmental Protection, Anti-social Behaviour, Food and Safety, Public Space Protection Orders and Port Health. Private Sector Housing Conditions.

Off street parking at specified locations and any other service which carries out enforcement duties.

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3.2 Certain services require detailed specific enforcement policies and when this is the case these policies will follow and complement the principles and practice of this Corporate Enforcement Policy. Therefore, detailed policies must be read in conjunction with this policy.

4. SERVICE STANDARDS

4.1 If officers find breaches of the law they have to choose the most appropriate method of achieving compliance from the range of possible actions available to them.

4.2 Action taken will be proportionate to the risk to people and property caused by the breach and as far as the law allows will take account of the circumstances of the case and the attitude of the alleged offender.

4.3 Emphasis will be given to informal enforcement actions that support the achievement of the Council's long term objectives.

4.4 Before we take formal enforcement action, there will be an opportunity to discuss the circumstances of a case, unless immediate or emergency action is required (e.g. to prevent destruction of evidence, or where there is an imminent risk to health and safety, damage to property or the environment or in some situations when an officer has reason to issue a fixed penalty notice.)

4.5 Where immediate action is considered necessary, an explanation of why such action is required will, where possible, be given at that time. However, in certain cases, where emergency action is deemed necessary, no notice is required to be given in law. Nevertheless, we will endeavour to give notice, if possible, in such cases.

4.6 Where there are rights of appeal against formal action, advice on how to appeal will be clearly set out in writing at the time the action is taken.

4.7 All communications will be clear and in plain English and will distinguish between practical advice, best practice and legal requirements. Appropriate translated material will be provided where necessary and practical help provided for people with impaired hearing, vision or other impairment.

4.8 Enforcement action may be taken by the Council alone or in conjunction with other agencies such as the Police, Department of Works and Pension, Inland Revenue, and County Council.

5. FORMAL ENFORCEMENT ACTION

This part of our Enforcement Policy sets out how we will deal with any alleged breach of law, which the Council is empowered, or duty bound to enforce:

5.1 Verbal Warnings and Advice

The Council may seek to resolve matters informally whenever possible. Accordingly, advice and/or verbal warnings may be sufficient in the majority of cases as a means of resolving minor offences and technical infringements that are capable of being sorted out immediately and are unlikely to be repeated. Failure by alleged offenders to act on verbal warnings or advice may result in more serious enforcement action being taken against them.

5.2 Written Warnings and Advice

Where the issue demands a more formal approach than verbal advice, written guidance clearly identifying the infringement involved and advising on how to put it right along with a deadline by which to do it, will be provided. Failure to comply with written warnings or advice may result in more serious enforcement action being taken. The circumstances of each case and the implications of infringements will be taken into account.

5.3 Fixed Penalty Notices (FPNs)

5.3.1 FPNs are a means to impose an immediate financial penalty on an offender for certain criminal offences. The Council will use FPNs wherever a local or district-wide need is identified to deal with offences such as a breach of a declared public space protection order, (for example for dog fouling), littering, fly tipping, street drinking workplace smoking and off street parking at specified locations.

5.3.2 We will carry out campaigns and produce information about the use of FPNs.

5.4 Formal Statutory Notices

Notices may be served to require offenders to stop illegal activities immediately and to give them a reasonable time to remedy a breach. Any time allowed putting things right will be reasonable within the circumstances, taking into account the implications of the contravention. The Council may charge for notices which will be set out in the policy concerned and updated through annual fees and charges process.

Statutory Notices may be issued where:

- There is a statutory duty to do so;
- There are significant contraventions of legislation;
- There is a lack of confidence in the individual or management of a business to respond to an informal approach or this approach has previously failed;
- There is a history of non-compliance;
- Standards are generally poor with little management awareness of statutory requirements;
- The consequences of non-compliance could be potentially serious to public health, or cause public nuisance, or be irreversible;
- Where, in addition to prosecution, measures need to be taken to remedy conditions that are serious or deteriorating;
- Any other justifiable breach to which the statutory notice applies

Failure to comply with a statutory notice will usually result in prosecution or we may carry out works in default and recover our costs.

5.5 Formal Caution

A formal caution will only be considered once the evidential requirements necessary to bring a prosecution have been met, but the circumstances surrounding the infringement are such that a more lenient approach to prosecution is appropriate. Any formal caution will follow the criteria laid down in relevant Home Office Guidelines. If a decision to offer a formal caution is rejected by the alleged offender, then a prosecution will normally follow.

5.6 Prosecutions

5.6.1 Before a prosecution is considered the Council will have regard to The Code for Crown Prosecutors (a document issued by the Director of Public Prosecutions giving guidance to prosecutors)

. <https://www.cps.gov.uk/publication/code-crown-prosecutors>

The decision to prosecute or to recommend an out of court disposal is a serious step that affects suspects, victims, witnesses and the public at large and must be undertaken with the utmost care. It is the duty of prosecutors to make sure that the right person is prosecuted for the right offence and to bring offenders to justice wherever possible.

Prosecutors should not start or continue a prosecution which would be regarded by the courts as oppressive or unfair and an abuse of the court's process.

Prosecutors must only start or continue a prosecution when the case has passed two stages: (i) the evidential stage; and (ii) the public interest stage.

- **The Evidential Stage**

Prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. They must consider what the defence case may be, and how it is likely to affect the prospects of conviction. A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be.

- **The Public Interest Stage**

In every case where there is sufficient evidence to justify a prosecution, prosecutors must go on to consider whether a prosecution is required in the public interest.

A prosecution will usually take place unless the prosecutor is satisfied that there are public interest factors tending against the action which outweigh those tending in favour.

When deciding the public interest, prosecutors should consider each of the following questions so as to identify and determine the relevant public interest factors tending for and against prosecution (these questions are not exhaustive).

- a) How serious is the offence committed?**
- b) What is the level of culpability of the suspect?**
- c) What are the circumstances of and the harm caused to the victim?**
- d) Was the suspect under the age of 18 at the time of the offence?**
- e) What is the impact on the community?**
- f) Is prosecution a proportionate response?**
- g) Do sources of information require protecting?**

5.6.2 Before making a decision whether or not to prosecute, consideration will also be given to:

How well prosecution supports the achievement of corporate aims or the delivery of corporate priorities.

Action taken by other enforcement agencies in relation to the same facts to avoid duplication

The likelihood of the alleged offender being able to establish a statutory defence

The potential public benefit of a prosecution and the importance of the case -e.g. the possibility of establishing legal precedent

Cost effectiveness of prosecution -a need to balance likely overall cost against the “value” of the likely outcome.

5.7 Through the Courts or Civil Penalty Prosecution

Depending on the offence and the policy and legislation with which the Council is legislating prosecution will either be through the Courts or through a Civil Penalty action. A civil penalty or civil fine is a financial penalty imposed by a [government agency](#) for wrongdoing against a policy or regulation within legislation.

The civil fine or penalty is not considered to be a [criminal punishment](#), because it is primarily sought in order to compensate the state for harm done to it, rather than to punish the wrongful conduct.

As such, a civil penalty, in itself, will not carry jail time or other legal penalties. The use of Civil Penalties and fines will be set out in the relevant policy.

5.8 Injunctive Action

Injunctive action may be considered where an alleged offender persistently acts in a way that contravenes the interests of the public or where formal undertakings are ignored.

In cases involving the use or threat of violence, we will consider in appropriate circumstances applying for an urgent injunction without giving the relevant individual prior notice.

5.9 Works in Default

Some legislation gives power to the Council to carry out works itself to achieve compliance, e.g. with a Statutory Notice. These powers will be used in situations where it is clear that the works required will not be carried out within a reasonable or statutory time frame, , taking account of all the circumstances of each individual case.

Any time frame will always be in terms of at least the minimum required by law. The Council will always seek to recover all costs reasonably incurred in carrying out works in default.

5.10 Anti-social Behaviour

In relation to anti-social behaviour the Council acts through the Fenland Community Safety Partnership and its partnership members. Our work here embodies the Prevention Intervention Enforcement approach and uses a range of measures in the context of the Government’s policy.

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5.11 No Action

In exceptional circumstances, contraventions may not warrant any action. This can be where, for example, the cost of action taken by the offender to comply outweighs the detrimental impact of the contravention upon the community; or the cost of the required enforcement action to the Council outweighs the detrimental impact of the contravention upon the community.

A decision of 'no action' may also be taken where formal enforcement is inappropriate in the circumstances, such as where a business has ceased to trade or the offender is elderly and frail and formal action could seriously damage their wellbeing.

A decision to take no action will take into account the implications of the contravention. Usually a decision to take no action will only be made where the breach is not a serious one.

5.12 Referral to another Agency

Subject to the provisions of Data Protection and Human Rights legislation information in respect of infringements will be passed to other interested enforcement agencies in appropriate circumstances.

5.13 Naming Offenders

The names and trading addresses of businesses or individuals who act in ways that represent significant risk or detriment to communities, particularly the young and vulnerable, may be published. Offenders may also be named if it is felt that by doing so could act as a deterrent within the community to offences of a similar nature. This action will ordinarily be taken in circumstances where:

It is in the public interest to do so

There is no risk of prejudicing legal proceedings or other formal enforcement action

To do so does not breach Human Rights or Data Protection law or the Children and Young Persons Act 1933.

Following a successful prosecution.

Where legislation prescribes that we do

6. MANAGEMENT SYSTEMS

6.1 Staff competency and the consistency of enforcement will be reviewed by each service where appropriate.

6.2 The Council will maintain management systems to monitor the quality and nature of enforcement activities undertaken, so as to ensure, as far as is reasonably practicable, a uniform and consistent approach.

6.3 Where local or national co-ordinating bodies exist, the Council will ensure that wherever possible its enforcement practices are consistent with best practice identified.

6.4 A review of enforcement activities may involve any of the following (this list is not exhaustive):

- A high level review of enforcement standards by members of the Council;
- Quality Assurance systems;
- Monitoring visits by line managers;
- Shadowing visits by colleagues;
- Monitoring of correspondence and statutory notices;
- Peer review exercises;
- Internal training sessions and workshops on enforcement issues;
- Customer satisfaction surveys;
- Business focus groups.

7. TRAINING AND APPOINTMENT OF OFFICERS

7.1 The Council will ensure that our officers have the necessary knowledge and skills to support those we regulate, to ensure a proportionate and effective approach. The Council will also ensure that our officers understand the statutory principles of good regulation and of the Regulators Code, and how they deliver its activities in accordance with them.

7.2 All officers will be formally authorised to exercise specified powers in accordance with the constitution.

7.3 The level of authorisation for each officer will be determined by their qualifications, experience and competence having regard to any relevant national guidelines.

7.4 Authorisation will be in writing and in a warrant card form, which will be shown on request. A copy of an officer's authorisation will be held in their personal file.

7.5 The Council supports the principle of continuing professional development through the annual appraisal and one to one meetings and will ensure that all officers are given additional in-post training to maintain up to date knowledge and skills.

8. APPEALS & COMPLAINTS

8.1 The Council will have a range of mechanisms to enable and regularly invite, receive and take on board customer feedback, including, for example, through customer satisfaction surveys of those we regulate.

8.2 The Council will provide an impartial and clearly explained route to appeal against a decision or a failure to act in accordance with this Code. Individual officers of the Council who took the decision or action against which the appeal is being made will not be involved in considering the appeal.

8.3 The Council will provide a timely explanation in writing of any right to representation or right to appeal. This explanation will be in plain language and include practical information on the process involved.

8.4 The Council will make available to those we regulate, a clearly explained complaints procedure, allowing them to easily make a complaint about the conduct of the Council.

8.5 The Council also has its own complaints procedure and further information about this can be obtained from the leaflet entitled:

“What to do if you feel that the Council has provided an unsatisfactory service”

This leaflet is available on the Council's website at:

https://www.fenland.gov.uk/media/1146/3Cs-Policy-and-Procedure/pdf/3Cs_Booklet.pdf