

Knowsley Council Enforcement Policy

1. Introduction

- 1.1 This policy sets out Knowsley Council's approach to dealing with regulatory non-compliance. It describes what businesses and others being regulated can expect from the Council's enforcement officers who are required to follow this policy. It will be supplemented by additional statements of enforcement policy in relation to specific council services.
- 1.2 This policy has been developed after consultation with key stakeholders such as Knowsley Chamber of Commerce and other relevant interested parties. The Council believes in fair but firm enforcement of the law. We recognise that most businesses and individuals want to comply with the law. Officers will assist with help and advice on relevant legislative requirements and will be committed to the principle of avoiding unnecessary regulatory burdens on business. However, the Council will take firm action against those who flout the law or act irresponsibly.
- 1.3 Knowsley Council has had regard to the Regulators' Code in the preparation of this policy. In certain instances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.
- 1.4 Knowsley Council is a public authority for the purposes of the Human Rights Act 1998. We therefore apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard will be taken of the right to a fair trial and the right to respect for private and family life, home and correspondence. Where there is a need for Knowsley Council to share enforcement information with other agencies, we will follow the provisions of the Data Protection Act 1998.
- 1.5 When deciding whether to prosecute Knowsley Council will have regard to the provisions of The Code for Crown Prosecutors as issued by the Director of Public Prosecutions. This is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases. The Code sets out two tests that must be satisfied, commonly referred to as the 'Evidential Test' and the 'Public Interest Test':

a. Evidential Test- is there enough evidence against the defendant?

When deciding whether there is enough evidence to prosecute, we will consider what evidence can be used in court and is reliable. We must be satisfied that there is enough evidence to provide “a realistic prospect of conviction” against each alleged offender.

b. Public Interest Test- is it in the public interest for the case to be brought to court?

We will balance factors for and against prosecution carefully and fairly, considering each case on its merits. The public interest factors that we will take into account are detailed in Section 6.1 (h)

1.6 The Regulatory Enforcement and Sanctions Act 2008, as amended, established the Primary Authority scheme. We will comply with the requirements of the Act when we are considering taking enforcement action against any business or organisation that has a primary authority and will have regard to guidance issued by the Secretary of State in relation to Primary Authority.

2. Principles of Good Regulation

2.1 The Legislative and Regulatory Reform Act 2006 requires the Council to have regard to the principles of Good Regulation when exercising a specified regulatory function¹. For local authorities, the specified functions include environmental health, trading standards and licensing.

2.2 We will exercise our regulatory activities in a way which is:

- **Proportionate-** our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence;
- **Accountable-** our activities will be open to public scrutiny with clear and accessible policies and a fair and efficient complaints procedure;
- **Consistent-** our advice to those we regulate will be robust and reliable and we will respect advice provided by others. Where circumstances are similar, we will endeavour to act in similar ways to other local authorities;

¹ Specified by the Legislative and Regulatory Reform (Regulatory Functions) Order 2007, available at www.legislation.gov.uk

- **Transparent-** we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return;
- **Targeted-** we will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities.

3 When does this policy apply?

- 3.1** All officers and Members will have regard to this policy when making enforcement decisions.

4. Our approach to dealing with non-compliance

- 4.1** We believe that prevention is better than cure and that our role involves actively working with local business, especially small and medium sized businesses, to assist with compliance. This approach will also apply to other stakeholders who may be subject to our regulatory duties. Our officers will be courteous and efficient at all times and will identify themselves by name, showing appropriate means of identification. We will provide contact details for further dealings with us and we will encourage business to seek advice and information from us. We will discuss general issues, specific compliance failures or problems with any relevant stakeholder.
- 4.2** Advice from an officer will be put clearly and simply and will be confirmed in writing on request using plain language. The advice will explain why any remedial work is necessary and over what timescale and legal requirements will be clearly distinguished from best practice advice.
- 4.3** Officers will provide an opportunity to discuss the circumstances of the non-compliance and, if possible, will resolve points of difference before any formal action is taken. This is unless immediate action is required e.g. in the interests of health and safety or environmental protection or to prevent evidence being destroyed. Where immediate action is carried out, an explanation will be given at the time and confirmed in writing within 10 working days. Where there are rights of appeal against formal action, advice on the appeal mechanism will be set out in writing at the time the action is taken.
- 4.4** Our officers will minimise the costs of compliance for business by ensuring that any action required is proportionate to the risks. As far as the law allows, we will

take account of the circumstances of the case and the attitude of the business or individual when considering action. We will also consider the size and capacity of a business in determining our approach to non-compliance. We will take particular care to work with individuals, small businesses and voluntary and community organisations so that they can meet their legal obligations without unnecessary expense where practicable.

- 4.5** There may be occasions where our officers share enforcement responsibilities with other enforcement agencies including Health and Safety Executive, Environment Agency, the Police and Fire and Rescue Services and other local authorities. In such situations, officers will ensure that there is adequate liaison and effective co-operation and co-ordination in gathering and sharing information. This will avoid inconsistencies of approach.

- 4.6** Where a business has chosen to register a Primary Authority partnership under The Regulatory Enforcement and Sanctions Act 2008, our officers will comply with the agreement provisions for enforcement and notify the Primary Authority of the enforcement action that is proposed. The Primary Authority has a right to object to the proposed action in which circumstances either they or we may refer the matter to the Better Regulation Delivery Office if appropriate.

- 4.7** All enforcement decisions will be fair, independent and objective. They 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. Such decisions will not be affected by improper or undue pressure from any source.

- 4.8** We will target our enforcement services primarily on those whose activities give rise to the most serious risk to the public, workers and the environment. In determining the appropriate action to take in relation to non-compliance, our officers will take into account the particular circumstances of the case and the approach of the business or individual in dealing with the issues. We will deal firmly with those that deliberately or persistently fail to comply. In contrast, we will recognise the willingness of businesses to resolve issues of non-compliance and will encourage such businesses to seek advice from us without directly triggering enforcement action. The following is a summary of the factors that will be taken into consideration by our officers:
 - The seriousness of the compliance failure
 - The risks associated with non-compliance

- The previous history of the business/individual
- The attitude of the business/individual to the non-compliance
- Whether the business/individual has followed advice given
- Any obstruction of our officers in carrying out their duties
- The size and capacity of the business
- Statutory guidance
- Codes of Practice
- Any legal advice
- The existence of a primary authority agreement
- Complaints against the business

4.9 We will publish details of our successful prosecutions on our website. The decision to publish will be made by the agency responsible for the prosecution in accordance with the principle of obtaining maximum positive publicity in relation to the offences. The following is the link to the convictions site: [access to prosecution site](#)

5. Conduct of investigations

5.1 All investigations will be carried out under the following legislation and in accordance with any associated guidance or codes of practice, in so far as they relate to Knowsley Council. The Acts and associated guidance control how evidence is collected and used and give a range of protections to citizens and potential defendants. Our officers will also comply with the requirements of the particular legislation under which they are acting and with any associated guidance or codes of practice:

- Police and Criminal Evidence Act 1984 (PACE)
- Criminal Procedure and Investigations Act 1996 (CPIA)
- Regulation of Investigatory Powers Act 2000 (RIPA)
- Criminal Justice and Police Act 2001
- Human Rights Act 1998

5.2 Our officers are given various powers of entry, inspection and seizure under a variety of statutes. On occasion, two or more officers may work together on an exercise. Any person who prevents an officer from carrying out any of their powers will be committing an offence of obstruction. Examples of the powers available to officers include:

- To enter any business premises at all reasonable hours
- To inspect any goods, food, articles or equipment
- To take samples of any goods, food, articles or substances
- To inspect any documents to ensure compliance and where offences are suspected
- To seize, remove or detain food, articles, substances, goods, equipment and documents when it is suspected that an offence has been committed
- To direct that premises, or anything within premises, are left undisturbed
- To take photographs, measurements and recordings

5.4 Certain legislation provides our officers with powers to seize goods, equipment or documents. Examples include food that is deemed to be unsafe, sound equipment which is causing a statutory nuisance, dangerous products and items that may be required as evidence in future court proceedings. When goods are seized, our officers will provide the person from whom goods are taken with an appropriate receipt. At the conclusion of any investigation, the following options are available:

- The items will be returned to the person from whom they were seized
- The person will be asked to voluntarily hand over ownership of the items to enable destruction of them
- An application for forfeiture of the items will be made to the Magistrates Court. This will be to prevent the items from re-entering the market place.

5.5 Most investigations into alleged offences will involve an interview with the alleged offender. Such interviews will be conducted in accordance with the Codes of Practice under PACE. It will be usual practice for the interviews to be recorded using either tape or CD and the alleged offender will be entitled to be accompanied by a legal representative. Upon completion of the interview, the interviewee will be offered a copy of the interview record.

5.6 Interviews by letter have increasingly become favoured by some alleged offenders. However, for the following reasons it is the policy of Knowsley not to conduct interviews in this manner:

- To enable any explanations to be explored in detail and to allow for any questions that might arise as a consequence of previous answers
- To ensure that all questions are answered by the relevant person
- To ensure the wording of the caution is properly understood by the person receiving it

5.7 Our officers will ensure that the investigation of any case will be progressed in an efficient way. There should not be any unexplained gaps or delays and reports of alleged offences will be completed at the earliest practicable date. The target for submission of all reports should be within half the statutory time limit for the offences concerned. The time limit is the period defined in specific legislation for which any formal enforcement action should be taken.

5.8 We will ensure that alleged offenders and any witnesses will be regularly informed of the progress of an investigation. The decision to prosecute a case will be taken by those officers with authority to do so under Knowsley Council's Scheme of Delegation: [scheme of delegation site](#)

6. Types of enforcement action

6.1 The range of actions available to Knowsley Council are as follows:

- **No Action.** In certain circumstances, breach of the law may not warrant any action. This may be where the breach is no fault of the individual or business concerned or when it would be disproportionate to do so and not consistent with the aims of this policy.
- **Compliance Advice, Guidance and Support.** Our officers use compliance advice, guidance and support as a first response in the case of many breaches of legislation that are identified. Advice may be provided verbally or in writing in the form of a warning letter. This is intended to assist individuals and businesses in rectifying breaches as quickly and efficiently as possible. Officers will clearly identify any contraventions of the law and give advice on how to put them right. There will be a clear distinction between legal advice and good practice. If a similar breach is identified in future, the letter will be persuasive in considering the most appropriate enforcement action to take on that occasion. Such a letter cannot be cited in court as a previous conviction but it may be presented in evidence.

We recognise that where a business has entered into a partnership with a primary authority, the primary authority will provide compliance advice and support and we will take such advice into account when considering the most appropriate enforcement action for it to take. We may discuss any need for compliance and support with the primary authority.

- **Statutory (legal) Notices.** For many areas of non-compliance, our officers have powers to issue statutory notices. These include Stop Notices, Prohibition Notices, Emergency Prohibition Notices and Improvement Notices. Such Notices are legally binding. Failure to comply with a statutory notice can be a criminal offence and may lead to a prosecution and/or, where appropriate, the carrying out of work in default.

A statutory notice will clearly set out actions which must be taken and the timescale within which they must be taken. It is likely to require that any breach is rectified and/or prevented from recurring. It may also prohibit specified activities until the breach has been rectified and/ or safeguards have been put in place to prevent future breaches. Where a statutory notice is issued, an explanation of the appeals process will be provided to the recipient.

Some notices issued in respect of premises may be affixed to the premises and/or registered as local land charges.

- **Financial Penalties.** Our officers have powers to issue fixed penalty notices in respect of some breaches which are prescribed by legislation. They provide the recipient with an opportunity to avoid prosecution by payment of the penalty. A fixed penalty does not appear on an individual's criminal record. If a fixed penalty is paid in respect of a breach then no further action will be taken. Payment of a fixed penalty does not provide immunity from prosecution if similar breaches are committed again. If a fixed penalty is not paid then we will consider escalation of the enforcement action. This may include prosecution.
- **Injunctive Actions/ Enforcement Orders etc.** In certain circumstances, we may seek a direction from the court (in the form of an injunction or order) that a breach is rectified or prevented from happening again. The court may also direct that specific activities be suspended until the breach has been rectified and/ or safeguards have been put in place to prevent further breaches.

Failure to comply with a court order constitutes contempt of court which is a serious offence which may lead to imprisonment.

We are required to seek enforcement orders after issuing some enforcement notices, providing the court with an opportunity to confirm the restrictions imposed by the notice. Otherwise, we will usually only seek a court order if we have serious concerns about compliance with a notice.

- **Review/ revocation of licences.** We issue a number of licences and permits. We also have a role to play in ensuring that appropriate standards are met in relation to licences issued by other agencies. Most licences include conditions which require the licence holder to take steps to ensure that, for example, a business is properly run. Breach of these conditions may lead to a review of the licence which may result in its revocation or amendment. When considering future licence applications, we may take previous breaches and enforcement action into account.
- **Simple Caution.** We have the power to issue simple cautions (previously known as Formal Cautions) as an alternative to prosecution for some less serious offences where the offender admits an offence and consents to the simple caution. Where a Simple Caution is offered and declined then we will consider prosecution.

A Simple Caution will appear on the offender's criminal record. It is likely to influence how Knowsley Council and others deal with any similar breaches in the future and may be cited in court if the offender is subsequently prosecuted for a similar offence. If a Simple Caution is issued to an individual (rather than a body corporate) it may have consequences if that individual seeks certain types of employment.

Simple Cautions will be issued in accordance with Home Office Circular 016/2008 and other relevant guidance.

- **Prosecution.** We may prosecute in respect of serious or recurrent breaches or where other enforcement actions, such as statutory notices, have failed to secure compliance. When deciding whether to prosecute, we will have regard to the *Code for Crown Prosecutors*. This is a public document issued by the Director of Public Prosecutions which sets out the general principles to follow when decisions are made in respect of prosecuting cases.

Prosecution will only be considered where we are satisfied that there is enough evidence to provide a realistic prospect of conviction against the offender and where it is in the public interest to bring the case to court. Factors that we consider include:

- Where the offence involves a flagrant breach of the law
- Where the offence involves a failure to comply with a statutory notice
- Where there is a history of non-compliance
- Where the individual or business has been the subject of previous legal action of relevance
- Where the individual or business is unwilling to prevent a recurrence of the offence or is unwilling to resolve the offence
- Where an authorised officer has been intentionally obstructed in the course of their duties.

A successful prosecution will result in a criminal record. The court may impose a fine and in respect of particularly serious breaches a prison sentence. The court may order the forfeiture and disposal of non-

compliant goods and/ or the confiscation of any profits which have resulted from the breach. Prosecution may also lead, in some circumstances, to the disqualification of individuals from acting as company directors.

- **Proceeds of Crime Applications.** We may make an application under the Proceeds of Crime Act 2002 to restrain and/ or confiscate the assets of an offender. The purpose of any such proceedings is to recover the financial benefit that the offender has obtained from their criminal conduct. Proceedings are conducted according to the civil standard of proof.

7 How decisions are made

7.1 In accordance with the Regulators' Code, we will use sanctions and penalties for non-compliance in order to achieve the following:

- Change the behaviour of the offender
- Change the attitude in the community to certain offences which are not deemed to be serious but which have impacts on society
- Eliminate any financial gain or benefit for 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
- Restore the harm caused by regulatory non-compliance where appropriate
- Deter future non-compliance

7.2 In determining the appropriate way to engage with those we regulate, including the advice to provide and the enforcement action to take in relation to non-compliance, we will consider the risks associated with regulatory breaches and the efforts of those we regulate to seek compliance.

7.3 Our managers will ensure that all officers are familiar with this policy document. They will monitor the activity of officers to ensure that the policy is being implemented in their day to day enforcement duties.

7.4 If we intend to take formal enforcement action against a business or individual, our officers will notify that business or individual as soon as is practicable

unless this could impede an investigation or pose a safety risk. We will provide a written explanation of any rights to representation or appeal and practical information on the process involved.

8. Review of this policy

- 8.1** We are committed to ensuring that our enforcement policy reflects current best practice and Government policy including the Regulators' Code. To this end, this policy will be on a regular basis.

9. Comments and complaints

- 9.1** We are committed to dealing with all complaints fairly and impartially. In cases where disputes cannot be resolved, any right of appeal will be explained with details of the processes and the likely timescales involved. Complaints and expressions of dissatisfaction will be seen as opportunities to identify potential weaknesses in service delivery. This information will be used to examine possible action to improve service provision. Complaints that indicate non-compliance with this policy will be monitored.

10. How to contact us

To make a complaint, comment on the policy or ask a question

- [Complete the online form](#)
- Email haveyoursay@knowsley.gov.uk
- Telephone 0151 443 4031 for corporate complaints
- Write to Customer Liaison Team, Knowsley Metropolitan Borough Council, Archway Road, Huyton, L36 9UX or pass your written comments to a member of staff at one of our One Stop Shops

- Contact us by textphone on 0151 443 4749
- Pick up one of our Have Your Say leaflets from a One Stop Shop or other public building
- This information is also available in other formats. Please phone Customer Services on 0151 443 3197 or email customerservices@knowsley.gov.uk

