



Corporate Enforcement Policy

Contents

1. Introduction
2. Aims
3. Scope
4. General principles of enforcement
5. Authorisation
6. Service Requests
7. Enforcement actions
8. Deciding whether to prosecute
9. Common Public Interest Factors
10. Liaison
11. Death at Work
12. Restarting a Prosecution
13. Publicity
14. Recovery of costs
15. Accountability

1. INTRODUCTION

Derbyshire Dales District Council (“The District Council”) functions as a regulator and enforcement agency with a wide range of legal powers and duties. The authority has an essential role in the protection of the environment and of the health, safety and interests of residents, visitors and businesses within the District.

This Corporate Enforcement Policy (“The Policy”) is designed to ensure a consistent, fair, proportionate and effective approach to regulatory inspection and enforcement across a number of services. The Policy highlights the aims and principles each enforcement service should consider when exercising their duties.

The Policy is also designed to make sure that everyone knows the principles that the District Council applies when carrying out enforcement work to ensure stakeholders are treated consistently, fairly but effectively.

2. AIMS

The District Council's aim is to undertake its regulatory and enforcement role in an impartial, open, and consistent manner. This is achieved through education, mediation, advice, inspections, monitoring, and by regulating the activities of individuals and business as necessary. The Policy is based on the principles of openness (about our policies and practices), clear standards (performance and levels of service), proportionality (to secure compliance), consistency (of approach), targeting (of enforcement action) and transparency (of methods and organisation). The Policy follows the principles of the Human Rights Act 1998.

Securing compliance through the use of enforcement powers and sanctions, including prosecution, is sometimes necessary to achieve this. In doing this, the District Council's enforcement officers will act in accordance with the guidance and standards set out in this policy.

In particular Derbyshire Dales District Council will:

- Work with people and businesses to help them understand and comply with their legal responsibilities, obligations and whether the outcomes can be achieved by less burdensome means while supporting economic growth.
- Undertake proportionate, fair and effective enforcement activities
- Robustly challenge the actions of individuals who have a negative effect on the community
- Liaise and co-operate closely with partner agencies to ensure the most appropriate and proportionate action is taken in each case
- Ensure enforcement staff are competent, appropriately trained, and apply this policy and its principles professionally and consistently
- Make information about this policy widely available to the public and businesses within and outside Derbyshire Dales
- Act in accordance with the Code for Crown Prosecutors and the Regulators' Code.
- Have regard to other Council policies and procedures that sit underneath this overarching policy.

3. SCOPE

This Policy sets out the general principles of enforcement and applies to all enforcement functions carried out by the District Council. It supports and supplements existing specific guidance on enforcement action contained in the statutory Regulators Code and other relevant guidance documents, and guidelines issued by other government departments.

Further more detailed guidance on certain functions (for example on Food Safety and Health and Safety at Work enforcement) is contained within specific departmental protocols. These are consistent with and are intended to support this document and, provide detailed information about the use of specific legal powers having regard to any relevant statutory codes of practice and guidance.

Included in the District Council's functions is the ability to deal with Anti-Social behaviour matters. The District Council has various powers in order to tackle Anti-Social behaviour, some of which include criminal sanctions. This policy is not intended to deal with Anti-Social behaviour enforcement and any policy on Anti-Social behaviour takes precedent and nothing in this Policy is intending to limit the options available to tackle such behaviour.

4. GENERAL PRINCIPLES

In enforcing relevant legislation, the District Council will pay due regard to the following principles of good enforcement practice.

Standards: where appropriate, clear standards will be drawn up to set out the level of service and performance that can be expected by service users.

Openness: against whom enforcement action is considered will receive sufficient explanation in plain English to enable them to understand what is expected of them. The District Council will give clear explanations of things which are legal requirements, and things which are recommendations. Our correspondence and advice, where appropriate will set out clear deadlines as to when and what appropriate action is required.

Helpfulness: prevention is better than cure and the District Council will actively work with people and businesses to advise on and assist with compliance.

Consistency: Broadly similar approaches will be used in similar circumstances in order to achieve consistent ends. The District Council recognises that businesses and people expect consistency from different enforcement officers, The District Council will continue to take steps to promote consistency of enforcement.

Proportionality: Enforcement action will be related to the risk and the public interest. Any action taken by enforcement officers to achieve compliance with the law will depend on the seriousness of any breach.

Any decision regarding enforcement action will be taken on the merits of each case, be impartial and objective. It will not be affected by race, disability, socio-economic factors, age, politics, gender, sexual orientation or religious beliefs of any District

Council employee, offender, victim or witness. However, where a victim has been targeted by an offender by virtue of their status (eg ethnicity) or where the perpetrator is young or vulnerable, consideration will be given to this when deciding on any course of action.

Where appropriate, the District Council will seek to achieve compliance through early engagement, mediation, education and advice. Where this is deemed by officers to be an inappropriate route, their decisions will be recorded and justified. Further if Officers believe that any provision of the Regulators Code does not apply they will record that decision and the reasons for it

5. AUTHORISATIONS

The District Council's Constitution specifies the decision making process and delegates to the relevant Officers of the District Council to undertake enforcement actions. This can include investigating complaints, serving notices and taking legal action.

Enforcement action under the relevant Acts will only be initiated by suitably qualified, experienced and competent Enforcement officers who are properly authorised in writing.

Any decision to instigate a criminal prosecution will have the case reviewed by suitably qualified legal advisors who will apply the Code for Crown Prosecutors before allowing the prosecution to proceed.

6. SERVICE REQUESTS

If the District Council receive a complaint which may result in enforcement action against a business or individual, it will be brought to their attention as soon as practicable. Officers will keep complainants and witnesses informed of the progress of any enforcement action taken. In circumstances where notifying any party could impede enforcement action, notification will not take place until those circumstances no longer exist.

7. ENFORCEMENT ACTIONS

The following courses of action are available to the Council:

- Use of informal warnings
- Provision of written advice and guidance
- Issuing Fixed or Variable Penalty / Monetary Notices
- Suspending, revoking, or attaching conditions to an existing licence or refusing an application for a new one
- Statutory Notices Stop / Prohibition Notices
- Simple Cautions
- Undertaking work in default (in appropriate cases)
- Undertakings / Injunctive Proceedings
- Prosecution

- Confiscation and Seizure / Forfeiture (including Proceeds of Crime Act 2002 applications)
- No action – where it is considered not to be in the public interest to proceed.

Any sanctions and penalties imposed will be consistent, balanced, and fairly implemented. They will relate to common standards which ensure the adequate protection of individual safety and welfare, public safety, financial security, or the environment. Where it is clear that another regulator is responsible for enforcing any matter or imposing any form of sanction, the matter will be passed across to them accordingly; however this will not preclude an investigation from taking place to ascertain relevant facts. The aim of using sanctions and penalties is to: Protect the public and businesses from harm

- Stop the infringing conduct immediately
- Change the behaviour of the offender
- Deter future non-compliance and reassure the community
- Restore the harm caused by regulatory non-compliance
- Eliminate any financial gain or benefit from non-compliance
- Be proportionate to the nature of the offence and the harm, or risk of harm caused and with consideration as to the public stigma that might come with receiving a criminal conviction

8. DECIDING WHETHER TO PROSECUTION

The requirements of the Code for Crown Prosecutors (“The Code”) applies to prosecutions undertaken by the District Council.

Under the General Principles of the Code it states

“The independence of the prosecutor is central to the criminal justice system of a democratic society. Prosecutors are independent from persons or agencies that are not part of the prosecution decision-making process... prosecutors are also independent from theinvestigators. Prosecutors must be free to carry out their professional duties without political interference and must not be affected by improper or undue pressure or influence from any source.”

As such all decisions taken to prosecute will be assessed by suitable qualified legal advisors in their role as the Prosecutor.

There are two further stages in the decision to take formal enforcement action.

- Stage 1 : the evidential test
- Stage 2 : the public interest test.

The first stage is the evidential test. If the case does not pass the evidential test, it must not go ahead, no matter how important or serious it may be.

If the case does meet the evidential test, it must then be decided if formal enforcement action is needed in the public interest. This second stage is the public interest test.

The District Council will only start, and continue, with formal enforcement action when the case, in the opinion of the Prosecutor, has passed both tests.

In applying the Code there is nothing that prohibits the Prosecutor from advising the investigating Officers of what additional evidence is required, suggesting other enforcement options or discussing the public interest test with Officers before making a final decision. However the Prosecutor must be minded to their overriding duty to the rule of law and to the Court.

9. COMMON PUBLIC INTEREST FACTORS

Here is a list of common factors that will be considered, both in favour or against a prosecution. There may be other factors considered that are not listed below, but this is an indication of the sort of issues Officers will be considered when deciding how to proceed.

A prosecution is likely to be needed if:

- A conviction is likely to result in a significant sentence;
- The evidence shows that the defendant was a ringleader or an organiser of the offence;
- There is evidence that the offence was premeditated;
- The victim of the offence was vulnerable, has been put in considerable fear, or suffered personal, damage or disturbance;
- The offence was motivated by any form of discrimination against the victim's ethnic or national origin, sex, religious beliefs, political views or sexual orientation, or the suspect demonstrated hostility towards the victim based on any of those characteristics;
- There is a marked difference between the actual or mental ages of the defendant and the victim, or if there is any element of corruption;
- The defendant's previous convictions or cautions are relevant to the present offence;
- There are grounds for believing that the offence is likely to be continued or repeated, for example, by a history of recurring conduct.
- The defendant's actions were committed in full knowledge that it was illegal and either with no or little disregard to the impact of their actions.
- The actions were an attempt to defraud the public purse

A prosecution is less likely to be needed if:

- The court is likely to impose a nominal penalty;
- 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, unless the nature of the particular offence requires a prosecution;
- The offence was committed as a result of a genuine mistake or misunderstanding (these factors 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;
- There has been a long delay between the offence taking place and the date of the trial unless;
 - the offence is serious;

- the delay has been caused in part by the defendant; the offence has only recently come to light; or
- the complexity of the offence has meant that there has been a long investigation.
- A prosecution is likely to have a significant detrimental effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence
- The defendant is elderly or 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 a real possibility that it may be repeated.

10. LIAISON

Enforcement activity will be co-ordinated to maximise the effective enforcement of any matters that are related to more than one of the services.

Where an enforcement matter affects a wide geographical area beyond the District's boundaries, or involves enforcement by one or more other local authorities or organisations; all relevant authorities and organisation will be informed of the matter as soon as possible and all enforcement activity co-ordinated with them.

11. DEATH AT WORK

Where there has been a breach of the law leading to a work related death, consideration will be given to whether the circumstances might justify a charge of manslaughter. To ensure any investigation and prosecution are properly co-ordinated following a work related death, account will be taken of the publication "*Work Related Death – A protocol for liaison*" jointly agreed between Health and Safety Executive, the Association of Chief Police Officers and the Crown Prosecution Service (CPS).

The police are responsible for deciding whether to pursue a manslaughter investigation and whether to refer a case to the CPS to consider possible charges. The Council is responsible for investigating any possible health and safety offences. If evidence suggesting manslaughter is found it will be passed on to the police. If the police or the CPS decide not to pursue a manslaughter case, the District Council will consider its enforcement under its relevant health and safety legislation. However due to the seriousness of the consequences of the breach, prosecution will be the starting consideration for any enforcement action.

12. RE-STARTING A PROSECUTION

People should be able to rely on enforcement decisions taken. Normally, if a suspect or defendant is advised that there will not be a prosecution, or that the enforcement action has been stopped, that is the end of the matter and the case will not start again. But occasionally there are special reasons why enforcement action will re-start, particularly if the case is serious. These reasons include:

- Rare cases where a new look at the original decision shows that it was clearly wrong and should not be allowed to stand.
- Cases which are stopped so that more evidence, which is likely to become available in the fairly near future, can be collected and prepared. In these

cases, the defendant will be told that the enforcement action may well start again.

- Cases which are stopped because of a lack of evidence but where more significant evidence is discovered later.

13. PUBLICITY

The District Council will consider whether the outcome should be publicised in the media particularly in relation to prevalent or frequent issues. The District Council may publicise a conviction in order to draw wider attention to the need to comply with the law or to deter others who may be tempted to behave in a similar way.

14. RECOVERY OF COSTS

Where appropriate, the District Council will seek to recover all costs incurred in carrying out any proceedings (including staff time) from relevant parties to ensure that the financial burden of the infringement is not borne by the authority and ultimately the tax-payer.

15. ACCOUNTABILITY

If any person or business is unhappy with the implementation of this Policy they are invited to raise the issue with the relevant enforcement officer. If they feel this has not resolved the issue they may raise a formal complaint.

Complaints about our service or decision regarding enforcement action will be addressed through our corporate complaints procedure, which can be found on our website

This Policy is available on the Council's web site and on request, this policy will be made available on tape, large type, or in a language other than English.

<u>Version</u>	<u>Approved by</u>	<u>Detail of Changes</u>	<u>Date</u>
1.0	Governance & Resource Committee	Minute No. 200/20	17/12/2020

NB: The Governance and Resource Committee on 17/12/2020 gave delegated authority to the Director of Corporate and Customer Services to make minor editorial changes to the Corporate Enforcement Policy, which, by definition, make no change to the scope or meaning of the Policy. Any such changes will be noted in the version control table above.