

Southend on Sea Borough Council Regulatory Services Enforcement Policy

In preparing this document, regard was given to current laws and statutory guidance

1. Introduction

The purpose of this Policy is to set out the principles which Regulatory Services operates to protect and promote public health, safety, consumer protection and the environment within Southend-on-Sea Borough Council. This Policy relates solely to Regulatory Services and does not detail the enforcement policy for other sections within the Council. The service enforces a wide range of legislation that aims to protect the interest and rights of people in relation to the environment that they use. The enforcement of this legislation enables the Council to achieve its' priorities contained in the Corporate Plan and its' statutory responsibilities.

2. Enforcement Concordat and Principles of Good Regulation

Southend-on-Sea Borough Council has adopted the Central and Local Government Concordat on Good Enforcement. The Legislative and Regulatory Reform Act 2006 and the Regulators' Compliance Code places a duty on the Council to have regard to the 'Principles of Good Regulation' when exercising specified regulatory functions i.e. Environmental Health, Trading Standards and Licensing.

Standards

There are clear standards for each area which set out the levels or service and performance expected to provide compliance with centrally issued guidance and in consultation with partners. These standards and our performance against them will be published and made available to the people and businesses regulated.

Targeted

Contacts are targeted primarily on those whose activities give rise to the most serious risks or where the hazards are least well controlled; action is focussed on those responsible for the risk and are best placed to control it. Service Plans and Action Plans are developed detailing our priorities.

Openness

We will be open about how we undertake our work, including any charges that we set. We will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties. In some circumstances before formal action is taken there will be an opportunity to discuss the circumstances of the case with an officer. A written explanation of contraventions will normally be provided and details of the officer's intended enforcement action.

Oral and written information and advice about the rules that the Council's regulatory services apply will be provided free of charge.

Correspondence will be sent as soon as practicable and as with all communication will be in plain English. Where requested and possible guidance will be made available in community languages. Where officers take formal action, the reasons for action are made clear and any appeal procedures are explained.

The community is diverse with different communication needs. The Council has the facility to provide interpreters and translations of documents in addition to the following methods of communication: Telephone, type talk, induction loop, mini-com, e-mail and fax. Any special needs of those involved will be met as far as possible, for example by providing an out of hours contact facility.

Helpfulness

Those in contact with our services can expect a courteous and efficient service and will always be given the name and contact details of the officer with whom they are dealing. We will encourage business to seek advice / information from us.

Officers will provide clear advice and information on how to comply with relevant legislation, codes of practice or guidance. They will distinguish between statutory requirements and advice or guidance about what is desirable but not compulsory.

Wherever practicable, enforcement services will be effectively co-ordinated on a multi-agency or multi-departmental basis to minimise unnecessary overlaps and time delays. Where an enquiry would be better dealt with by an alternative Council or external regulatory service it will be referred directly to that agency and the enquirer / complainant informed of the referral.

Feedback about our Service

We will obtain the views of those who receive our services about what improvements in service could be made. Complaints about the quality of service received will be handled in accordance with the Council's complaints procedure which is readily available to service users. We will provide guidance on how to make a complaint about our service. The procedure guarantees that where disputes cannot be resolved a senior officer will investigate the complaint and provide a detailed written response with a clear time-scale where appropriate.

Proportionality

The cost of compliance for business will be minimised by ensuring that any remedy we require is proportionate to the risks posed by the breach. All works required will give a reasonable timescale for compliance. The circumstances and attitudes of offenders will be taken into account, where the law allows, when considering enforcement action. We will listen to the views of anyone who has been injured or suffered loss and must take into account any arrangements under the Primary Authority Scheme and to the views of the Home or Lead Authorities. Particular care will be taken to work with small businesses and voluntary and community organisations so that they can meet their legal obligations without unnecessary expense, where practicable.

Consistency

Consistency of approach does not mean uniformity. It means taking a similar approach in a similar circumstance to achieve similar ends. Duties will be carried out in a fair, equitable, non-discriminatory manner. Consistency is promoted by following clear standards of enforcement, through liaison with other authorities and enforcement bodies. Enforcement officers will be properly trained and competent to take decisions about action taken.

Southend-on-Sea Borough Council may conclude that a provision in the Compliance Code for Regulators is either not relevant or is outweighed by another provision. Where we depart from the code we will ensure that the decision will be properly reasoned, based on material evidence and documented.

3. Scope, Implementation and Training

The Head of Public Protection will be accountable to the Council for the implementation of this policy.

This document covers enforcement activities undertaken by Regulatory Services. Enforcement activities include all formal and informal actions as specified within this document carried out in the exercise of statutory powers.

The policy is implemented by the Council's officers through the documented procedure for the delegation of powers and authorisation of officers and Officers will adhere to the principles contained within this Policy for the legislation they enforce.

The Council has Investors in People status and as such has a documented training programme for each officer to identify training needs and to ensure the delivery of this Policy consistent with their authorisation and duties. Training needs will usually be identified through the appraisal system and as part of induction for new members of staff and through competency frameworks where appropriate.

4. Publication, Consultation and Revision

The Policy was approved by Cabinet and is available through the Council's website and has been produced following consultation with regulated entities and other interested parties.

This Enforcement Policy will be reviewed and updated whenever there are changes to relevant legislation or centrally issued guidance. The review will take account of changes in the law, operational experience and feedback from individuals and businesses.

5. Our powers

The general powers that officers have are dependent on the legislation being enforced and include powers to:

- enter
- apply

- require
- inspect
- sample
- seize
- detain
- prohibit
- close

In general enforcement officers are legally empowered to enter commercial premises and vehicles during normal operating hours in order to determine whether the law is being complied with. In the case of domestic premises the law usually requires reasonable notice to be given to the occupier before an officer has a right of entry.

A person refusing an officer entry may be guilty of obstruction which is liable to prosecution by the Council.

An officer who wishes to gain entry to private areas of a property will, where circumstances permit, explain who they are and the purpose of their visit. The officer will also show their official identification and will seek permission to enter and will produce their full authorisation on request. Persons in charge of premises are encouraged to refuse access to officers who are unable to show any official identification until their identity and authority has been confirmed, in order to prevent access by people imitating Council officers.

Enforcement officers may take other persons into premises in order to assist, for example a police officer or an expert in the field of the investigation. Those being visited / inspected will be invited to accompany enforcement officers whilst on the premises and where possible officers will carry out their duties in a way that minimises detrimental effects on the legal activities at the premises. Nevertheless, it may be necessary to enter businesses during busy periods.

6. Investigation of Suspected Contraventions

The need for enforcement only arises when the law is being breached or suspected of or likely to be breached. The Council will determine this through investigation following the receipt of allegations or other intelligence or through planned monitoring e.g. inspection, sampling etc.

Enforcement officers are legally empowered to ask questions and collect evidence in relation to offences they are investigating.

Where enforcement officers need to carry out covert surveillance of persons or use informants during the course of an investigation the Council will comply with the Regulation of Investigatory Powers Act 2000 which seeks to balance the individual's rights to privacy with the need to undertake a criminal investigation.

7. Prevention

To assist businesses to comply with legislation and help prevent contravention of the law the teams will raise awareness and promote good practice. We will provide tailored advice, guidance at forums and events and use marketing opportunities. We will also review planning applications where appropriate.

8. Enforcement Action

All enforcement action whether informal or formal, will be carried out in accordance with principles set out in this policy.

Informal Enforcement Action

Where breaches of the law exist, informal action will normally be taken in the first instance providing the breach is a first occurrence, does not result in a serious risk to public health, safety, amenity or the environment and the officer is confident that informal action will be effective.

Informal action may include one or more of the following:

- inspection of premises, equipment, food etc
- verbal advice;
- verbal request for action;
- written request for action;
- written warning of formal action if contraventions are not corrected

All informal action details will be recorded for future reference.

The name of the officer's Manager will be given to encourage feedback and facilitate complaint/appeal. Regular contact with the investigating officer, as the works progress will be encouraged.

Formal Enforcement Action

In deciding to take formal action and if so what type of action to take, officers will consider the following criteria:

- The seriousness of the offence;
- the consequence of non-compliance in terms of risk to people, property, the community or the environment;
- the individual's or company's past history in terms of compliance;
- confidence in management, level of awareness of statutory responsibilities and willingness to prevent a recurrence;
- the likely effectiveness of the various alternative enforcement options;
- the public interest, public expectation and the importance of the case in setting a precedent;
- the application of any national or local guidance to the matter in question;
- information received following liaison with other external enforcing agencies;
- relevant case law and guidance;
- the likelihood of the offender being able to establish a defence;
- the consumer / complainants attitude towards formal action;
- the reliability of witnesses.

Formal action consists of one or more of the following:

- the service of statutory notices and orders;
- the issue of simple cautions;
- prosecution;
- application or injunction;
- revocation or suspension of licences, approvals or registrations;
- community penalties;
- fixed penalty notices;
- sampling;
- closure notices;
- forced entry;
- forfeiture proceedings;
- enterprise act proceedings;
- seizure of non-conforming products; unsafe food and products; counterfeits;
- detention of food;
- prohibition of process, premises or equipment;
- proceeds of crime applications;

As part of enforcement activity information may be communicated to other authorities.

9. Who decides what enforcement action is taken?

Decisions about the most appropriate enforcement action to be taken are based upon professional judgment, legal guidelines, statutory codes of practice, and priorities set by Southend-on-Sea Borough Council and/or Central Government.

Decisions about enforcement will involve consultation between, or approval from:

- The investigating Officer(s);
- Senior manager from Regulatory Services
- Southend-on-Sea Borough Council legal section;
- Chair of the Licensing Committee (where appropriate)

If we receive information that may lead to enforcement action against a business or individual, we will notify them as soon as practicable of any intended enforcement action, unless this could impede an investigation or pose a safety risk to those concerned or the general public.

During the progression of enforcement investigations or actions, business owners or individuals, and witnesses will be kept informed.

10. Primary Authority Partnership Scheme and its Enforcement Provisions

Prior to taking any enforcement action against an individual or business with a registered Primary Authority Partnership we will consult with that Primary Authority.

This will not include urgently required enforcement action to:

- avoid significant risk of serious harm to human health; or
- the environment ; or
- the financial interests of consumers ; or
- where notification would be disproportionate to the action to be taken.

Where the Primary Authority objects to the proposed action and Regulatory Services disagrees with the direction of the Primary Authority either they or Southend-on-Sea Borough Council's Regulatory Services may refer the matter for adjudication.

11. Liaison with Other Bodies and Enforcement Agencies

Where appropriate the results of inspections will be brought to the attention of Safety Representatives, members of staff and Head Office of an organisation. In addition to the duties to co-operate and work with the Primary Authorities we will co-operate and co-ordinate with other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement.

This includes liaising with Home and Lead Authorities and where enforcement matters affect a wide geographical area beyond the Borough boundaries, or involves enforcement by one or more local authorities or organisations.

12. Simple Cautions

A Simple Caution may be used as an alternative to prosecution. A Simple Caution is an admission of guilt, but it is not a form of sentence, nor is it a criminal conviction. The aim of a Simple Caution is to deal quickly and simply with offences, to save court time and reduce the likelihood of re-offending.

A decision to offer a Simple Caution must be made having regard to:

- Home Office Circular 16/2008 Cautioning of Offenders or subsequent revisions
- Guidance to Police Officers and Crown Prosecutors issued by the Director of Public Prosecutions
- Local Government Regulation Guidance on Cautioning of Offenders

There are no definitive rules as to the circumstances in which a Simple Caution is appropriate and in reaching a decision the following must be taken into account where appropriate:

- Whether a Simple Caution is appropriate to the offence and the offender
- Whether a Simple Caution is likely to be effective
- The sufficiency of the evidence
- Public interest considerations
- The views of the victim and the nature of any harm or loss
- Whether the offender has made any form of reparation or paid any compensation
- Any known records of previous convictions or Simple Cautions relating to the offender.

A Simple Caution cannot be given where the offence is indictable only or where the offender is under 18 years of age. It may only be offered where the offence has been fully admitted by the offender.

The person administering the caution will be the relevant Senior Officer. The consequence of accepting the caution must be fully explained:

- It forms part of an offenders criminal record
- It may be cited in Court at any subsequent hearings
- It may influence the authority should the offender come to the Authorities attention again.

If the offender fails to admit the offence and does not agree to the Simple Caution, the case is likely to be referred for prosecution.

13. Prosecution

When deciding whether to prosecute, Regulatory Services applies the Code for Crown Prosecutors as issued by the Director of Public Prosecutions. The Code is a public document that sets out the principles to follow when decisions are made in respect of prosecuting cases.

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

- Death was a result of a breach of the legislation;
- The gravity of an alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender warrants it;
- It is appropriate in the circumstances to deter others from similar failures to comply with the law;
- Breaches which have significant or potentially significant consequences;
- Failure to comply with a statutory notice or respond to advice and warnings about legal requirements; or there has been a repetition of a breach that was subject to a formal caution;
- Disregard of legal requirements for financial reward;
- Significant financial loss, potential or actual, to a third party involved in Trading Standards cases;
- Reckless or blatant breaches of legislation;
- Where fraud, gross negligence or guilty knowledge is a factor;
- Multiple breaches of a number of statutes;
- Failure to supply information without reasonable excuse or knowingly or recklessly supplying false or misleading information;
- Obstruction or assault of authorised staff in the course of their duties;
- Work has been carried out without or in serious breach of an appropriate licence;
- Impersonation of Council staff.

We will identify and prosecute individuals if we consider that a conviction is warranted and can be secured. Additionally we will actively consider the management chain and the role played by individual directors and managers. We will take action against them where it can be shown that the offence was committed with their consent or

connivance or to have been attributable to neglect on their part. Where appropriate we will seek disqualification of directors under the Company Directors Disqualification Act 1986.

Factors may include:

- Prompt acknowledgement of guilt
- Timely and appropriate compensation to the victim(s)
- Previous good character
- Age of defendant
- Degree of culpability
- Other strong mitigation

Consideration will also be taken of whether a due diligence defence exists for the particular offences under consideration.

14. Action by the Courts

Where appropriate we will draw the court's attention to all the factors that are relevant to the court's decision as to what sentence is appropriate on conviction. The Court of Appeal has given some guidance on some of the factors that should inform the courts in health and safety cases (R v F. Howe and Son (Engineers) Ltd [1992] 2 All ER, and subsequent judgments).

15. Representation to the Courts

We will consider indicating to the magistrates that the offence is so serious that they may send it to be heard or sentenced in the higher court where higher penalties can be imposed.

16. Proceeds of Crime Applications

Applications may be made under the Proceeds of Crime Act 2002 for confiscation of assets in serious cases. Their purpose 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. Applications are made after a conviction has been secured.

17. Conflicts of Interest and Undue Influence

Any potential conflicts of interest on behalf of any officer or any instances of undue influences being brought to bear on enforcement decision will be dealt with to ensure that decisions are taken in an impartial way.

18. The Keeping and Disclosure of Information

Information collected or recorded as part of the Council's enforcement activities will be securely retained in a paper and / or electronic format for a period defined by legislation or required for future reference by the service. This information will include decisions taken about the choice of enforcement options.

The identity of a person providing the Council with information about other people committing crime will remain confidential unless prior agreement by the person is obtained, or its disclosure is required by law or by a court of law.

Personal data held manually or as computer records will be handled in accordance with Data Protection legislation. This information will be used in accordance with the Council's DPA registration. Exemptions to this include where information is disclosed to other agencies or used for another reason for the purposes or preventing crime. This will include sharing of information between Council services and with the police and other enforcement agencies. Sharing of information relating to the Crime and Disorder Act will be undertaken in accordance with the protocol of sharing of information through the Council's designated officer.

19. Public Information

The Policy will be available on the Council's website and also in hard copy available on request.

The Council will publicise convictions and information concerning significant detrimental trading behaviour. The publicity generated by prosecutions and other enforcement action acts as a deterrent to others. It also reassures the general public that Regulatory Services take a serious view of such detrimental behaviour.

This includes publicising the name and address of each person convicted of or subject to other enforcement action, together with details of the issues involved. In reaching a decision as to whether to publish such information we will consider the following factors:-

- The specific details of the offence committed or detrimental activity.
- The public interest in disclosing personal information e.g. the deterrent effect of the publication.
- Whether the publication would be proportionate
- The personal circumstances of the offender

This list is not exhaustive and other factors may be relevant in the circumstances of an individual case.

Simple Cautions will be notified where possible to the relevant regulatory authority. The outcome of food hygiene inspections will also be published.

The Council will comply fully with the Freedom of Information Act 2006, Data Protection Act 1998 and the Environmental Information Regulations 2004 regarding the release of information on enforcement activities within Regulatory Services.

20. Civil Claims

Officers will not become involved in any negotiations on awarding reparation or compensation to victims following offences being committed. Where a victim is considering civil proceedings the Council must have regard to the Data Protection Act 1988 and the Enterprise Act 2002 before disclosing any information.

Any enforcement action taken by the Council is separate and distinct from any civil claims likely to be made by individuals. Enforcement action is not necessarily undertaken in all circumstances where civil claims may be pursued, nor is it undertaken to assist such claims. The Council may, on request, provide solicitors acting for individual pursuing a civil claim, a factual report of the investigation. There will be charge for this report.

How to get a copy of the Policy or make comments

This Policy is available on the Southend-on-Sea Borough Council website:
www.southend.gov.uk

If you would like a paper copy of the Policy and/or you would like to comment on the Policy, please contact us by:

- Telephoning 01702 215005
- Emailing regulatoryservices@southend.gov.uk
- Writing to the Group Manager, Regulatory Services, Civic Centre, Victoria Avenue, Southend-on-Sea, SS2 6ER