

# **Shepway District Council Corporate Enforcement Policy**

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## **1. Introduction**

- 1.1 The Legislative and Regulatory Reform Act 2006 (2006 Act) requires Local Authorities to have regard to the Principles of Good Regulation when exercising a specified regulatory function.
- 1.2 A new Regulators' Code came into force in April 2014 and Regulators must have regard to the Code when developing policies and operational procedures that guide their regulatory activities. If a regulator 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 regulator is not bound to follow that provision but should record that decision and the reasons for it.
- 1.3 The Council fully supports the principles set out in the 2006 Act and the Regulators Code and has set out within this Enforcement Policy the procedures to be adopted by all services and officers exercising any enforcement functions. The Council is committed to services which are courteous and helpful and seeks to work with individuals and businesses, wherever possible, to help them comply with the law.
- 1.4 Where possible, the first step in enforcement will always be prevention, promoting good practice, ensuring policy compliance and preventing contravention of the law by raising awareness and promoting good practice.
- 1.5 The Council, nevertheless, acknowledges the need for firm action against those who flout the law and put consumers and others at risk. The Council expects all officers taking enforcement decisions to take this Policy as a guide when making their decision. Every case must be decided on its own individual facts. Officers must ensure that, if they depart from the Policy when they make their decision, they can provide reasons for doing so.
- 1.6 This document represents the Council's Corporate Enforcement Policy, and supersedes any previous corporate policy statements on enforcement. It may be supplemented in some cases, by more specific and detailed service enforcement policies.

## **2. Enforcement activity**

- 2.1 The Council has a duty to enforce a wide range of statutes relating to:
  - public health and safety
  - quality of life
  - preservation of public and residential amenity
  - maintenance of the environment and
  - protection of public funds

- 2.2 All of these activities will be carried out having regard to the general principles of good enforcement practice outlined in this Policy. Although not exhaustive the service areas falling within the scope of this policy include:

### **Environmental**

Noise pollution and control	Public Health
Health and Safety at Work	Food Safety
Environmental Protection	Private Sector Housing including HMOs
Animal Welfare	Pest Control
Pest Control	Development and use of land – planning
Licensing	Advertisements
Building regulation applications	Plan assessments and site inspections
Building regulations and building related advice	Safety at sports grounds and temporary stands
Naming and numbering of streets and properties	Approved inspector notifications
Competent persons schemes	Advanced payments
Relaxations and dispensations	Demolition notices
Dangerous structures	Street Trading
Markets and other street licensing Functions	Listed Buildings
Conservation Areas	Tree Preservation
High hedges	River Mooring

### **Financial**

Revenue Recovery and investigating Council Tax Reduction	Council Tax and National nondomestic rate fraud
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### **Community**

Antisocial Behaviour and neighbour nuisance	Harassment and Illegal Evictions
Parking regulation and nuisance parking	Abandoned Vehicles
Street, open spaces, littering and waste enforcement	Graffiti and Fly posting
Unauthorised distribution of free printed matter on designated land	

Although primary responsibility for compliance with the law rests with individuals and businesses, the Council will provide information and advice to help them understand their legal obligations and will seek to raise awareness about the need to comply.

### **3. Delegation of authority**

The Council's Scheme of Delegations specifies the extent to which enforcement powers are delegated to officers. Whilst delegation is mainly to

officers, in some specific circumstances the decision to take enforcement action lies with the relevant Council Committee.

#### **4. Objective**

The approach adopted by services when carrying out the Council's duty to apply or enforce a wide range of legislation is intended to:

- Assist businesses and others in meeting their legal obligations without unnecessary expense
- Focus on prevention rather than cure
- Ensure that we enforce the law in a transparent, fair, equitable and consistent manner
- Take firm action when it is necessary and appropriate to do so
- Carry out enforcement that is risk-based, targeted, proportionate and effective

#### **5. Principles of enforcement**

##### **5.1. Overview**

The Council's believes in the principles of good enforcement, as set out in the 2006 Act, which must be adopted by the Council's services. The principles covered are:

- Courtesy and Helpfulness
- Openness
- Clear Standards and Practices
- Proportionality
- Consistency
- Training of Staff

5.2 The Council will employ the provisions of the Regulators' Code ('RC'). [www.gov.uk/government/publications/regulators-code](http://www.gov.uk/government/publications/regulators-code). We will observe any requirements of national bodies and, where practicable, national good practice guidance. Where appropriate, services will provide enforcement advice and information in accessible formats such as minority languages, large print, Braille and face to face.

5.3 We will adhere to the principles of the RC, as follows:

- Regulators should carry out their activities in a way that supports those they regulate to comply and grow
- Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views
- Regulators should base their regulatory activities on risk
- Regulators should share information about compliance and risk
- Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply
- Regulators should ensure that their approach to their regulatory activities is transparent

## 5.2. Specific Commitments

### 5.2.1 *Regulators should carry out their activities in a way that supports those they regulate to comply and grow*

Effective and well-targeted regulation is essential in promoting fairness and protection from harm. We will ensure that our enforcement is proportionate and flexible enough to allow and encourage economic progress, and provide help and encouragement to businesses in order that they can meet regulatory requirements more easily. We will keep under review our regulatory activities and interventions to ensure that we do not impose unnecessary burdens, paying particular attention to the impact we may have on smaller businesses. In this connection, we will consider the impact our regulatory interventions may have on such businesses to ensure that our interventions are fair and proportionate (by giving consideration to their size and the nature of their activities).

### 5.2.2 *Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views*

We will create effective consultation and feedback opportunities to enable continuing cooperative relationships with businesses and other interested parties. We will ensure that our employees provide a courteous and efficient service to businesses and seek the comments and views of regulated businesses. The Council has established and published a comprehensive complaints procedure which is available to any aggrieved party. Visit <https://www.folkestone-hythe.gov.uk/council-information> .

In response to non-compliance that we have identified we will clearly explain what the non – compliant item or activity is, the advice being given and the action required or decision taken, and the reasons for these. We will provide an opportunity to discuss any such actions that need to be taken and any appeal process available.

### 5.2.3 *Regulators should base their regulatory activities on risk*

Risk assessment will underpin our approach to planned regulatory activity (comprising inspections, data collection, advice and support, and enforcement and sanctions). We will target our efforts and resources where they would be most effective and rate risks to regulatory outcomes. We will base our risk assessment on all available and good-quality data and consider the combined effect of:

- the potential impact of non-compliance on regulatory outcomes; and
- the likelihood of non-compliance (where we will take into account past compliance and potential future risks and willingness to comply)

### 5.2.4 *Regulators should share information about compliance and risk*

We follow the principle of “collect once, use many times” when requesting information from businesses. To help target resources and activities and minimise duplication we will share wherever possible information with other enforcement agencies

*5.2.5 Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply*

Ensure that businesses are provided with, or signposted to, clear and accessible information on legal requirements relating to their operations. Targeted and practical information will be provided through a variety of means including on-site visits, telephone advice lines and online guidance ( both national and local guidance). We will endeavour to distinguish between legal requirements and advice or guidance which seeks to improve the basic level of practice. The response to a request for advice will be to provide such advice and to help secure compliance rather than directly triggering enforcement action.

*5.2.6 Regulators should ensure that their approach to their regulatory activities is transparent*

In consultation with business and all other relevant interested parties, we will draw up clear standards setting out the level of service and performance that the public and businesses can expect from our enforcement services, our approach to check on compliance, this enforcement policy, the fees and charges, if any and how they are calculated.. We will publish these standards within individual service areas and also our annual performance as measured against them. We will justify our choice of enforcement action to relevant interested parties, follow up enforcement actions where appropriate and enforce in a transparent, fair and consistent manner following the Code for Crown Prosecutors.

The information published will be easily accessible through single point on the Councils website which will be clearly signposted and kept up to date.

*5.2.7 Other considerations*

- The Council will consider the desirability of using formal enforcement in the case of a person who is elderly or is, or was at the relevant time, suffering from significant mental or physical ill health. It will balance this with the need to safeguard others, taking into account the public interest.
- The Council will consider its Safeguarding Policies when determining what enforcement action we are considering. We are committed to safeguarding and promoting the welfare of children, young people and vulnerable adults. We take our responsibilities seriously and expect all of our staff to share this commitment.
- The Council will consider its Equality and Diversity Policy when determining what enforcement action we are considering and how we communicate the message. <https://www.folkestone-hythe.gov.uk/policies-plans-documents/equality-diversity>
- The Council will have regard to the Crown Prosecution Service public policy statements on dealing with cases which involve victims and witnesses who have a learning disability and victims and witnesses who have mental health issues.
- The Council's approach to the collection of Local Taxes (Council Tax and Business Rates) and in the recovery of overpaid Council Tax Benefit is one which seeks to strike a balance between the need to maximise

income to the Council and the desire not to cause further hardship to the poorest within the community

## **6. Enforcement options**

6.1 The Council recognises the importance of achieving and maintaining consistency in its approach to enforcement. For many areas of our enforcement activity government guidance already exists in the form of Codes of Practice, Planning Policy Guidance, and Government Circulars etc. There may also be local or regional Codes of Practice such as the Charter and Code of Practice for the collection of debts, which have been produced locally to promote consistency in our enforcement activity. When making enforcement decisions officers must have regard to any relevant national or local guidance as well as the provisions of the Human Rights Act 1998, Equalities Act 2010 and this Enforcement Policy.

### **6.2 Prevention**

We believe that the first step in enforcement is to promote good practice, ensure policy compliance and prevent contravention of the law by raising awareness and promoting good practice. Methods of achieving this include training courses, seminars, special promotions, the issuing of press releases, newsletters, the Council's web site, the production of leaflets and other forms of written guidance and opportunities presented by day to day contact with businesses and other customers. This approach will be applied when we are not aware of any specific contraventions of the law.

### **6.2 Approvals, Consents and Licences**

We provide a range of approvals consents and licences as specified by individual pieces of legislation. Most of these are compulsory, such as planning applications, licensing applications and building regulation approvals, but a few are optional. These are an important part of the preventative aspect of our work. We will work with applicants to help them to understand what is required to gain approval through pre-application advice, published guidelines, and post application discussion.

Applications may be approved as they are submitted, varied by agreement and then approved, approved subject to conditions, or rejected. Applicants, or their agents, will always be notified, in writing, of the outcome of their application, including the reasons if rejected. Details of any rights of appeal will be provided at the time the decision is notified.

Depending on which service is being provided, the kind of circumstances in which conditions may be attached include (but are not restricted to):

- Building work is not inherently wrong but plans need to be modified or further plans are required
- Developments would be refused if conditions were not attached
- Conditions are necessary to ensure that the purpose of an approval, licence or registration is adhered to (for example animal welfare conditions for a Pet Shop licence)

- Where a food premises meets all the infrastructure and equipment requirements for approval but does not fully comply with some other requirements

The circumstances in which applications may be refused include (but are not restricted to):

- Where plans do not show compliance with Building Regulations
- Where a reply to a plan assessment letter is not received, is received too late to allow an adequate response, or is unsatisfactory
- Where work, at inspection stage, does not meet minimum standards and remedial action is required
- Where contraventions exist
- Where an application is against local policy
- Where there is reason to believe that the applicant will not comply with the purpose of a licence or registration or any conditions attached to it (for example where there have been previous infringements)
- Where a food business operator fails to meet all the structural and equipment requirements

Any rejection notice will inform the applicant, or their agent, of the reasons for refusal and any right of appeal.

### 6.3 Informal Action

We would prefer to avoid unnecessary costs for the customer, preferring their time and money to be invested in solutions rather than legal procedures. We will therefore use our best efforts to resolve situations where the law may have been broken without issuing formal notices, or taking other kinds of formal action.

Informal action will involve offering advice, mediation where appropriate, requests for action, or warnings, or seeking and monitoring the delivery of undertakings or timetabled schedules of action. General advice will not necessarily be confirmed in writing. Where more than the most minor contravention exists, we will confirm the situation in writing in a clear manner and explain why any recommendations are necessary and over what timescale they should be met. When we write we will make sure that legal requirements are clearly distinguished from recommendations. Informal action will be supported throughout by contact between the customer and Council officers.

This approach may be applied provided that the consequences of noncompliance are considered acceptable. This includes (but is not restricted to) occasions where the time period allowed to seek compliance does not present a significant risk to or impact on health, safety, welfare or the environment, and either:

- The contravention is not serious enough to warrant immediate formal action
- There is no demonstrable harm to the amenity of the area

- The past history (of the individual or business) suggests that informal action will achieve legal compliance in a reasonable timescale
- Standards are generally good, suggesting a high level of awareness of, and compliance with, statutory responsibilities
- The action is being taken on behalf of a customer, who prefers the matter to be handled informally

#### 6.4 Formal Action

Circumstances where formal action will be considered include (but are not restricted to):

- There is a significant contravention of legislation
- The wording of legislation requires the Council to take a specified action
- An informal approach has failed
- There is a history of non-compliance with informal action
- There is a lack of confidence in the successful outcome of an informal approach
- Standards are generally poor, suggesting a low level of awareness of, and compliance with, statutory responsibilities
- The consequences of non-compliance, for health, safety, the environment, or other Council priorities, are unacceptable and/or immediate
- There is demonstrable harm to the amenity of the area
- Effective action needs to be taken quickly in order to remedy conditions which are deteriorating
- Formal action is expected to achieve the desired outcome without incurring expense or inconvenience that is disproportionate to the risks
- Legal requirements, relevant formal guidance, or other Council policies or strategies require formal action to be taken
- A charge applied by a Fixed Penalty Notice has not been paid

In most situations before formal action is taken, we will provide an opportunity to discuss matters and, hopefully, resolve points of difference. The extent of this will depend on the seriousness of the contravention, and may not be possible where immediate action is considered necessary, e.g. where there is an immediate risk to health, safety or the environment, or where the formal action takes the form of a fixed penalty notice. Only officers who have reached a sufficient level of competence will be given the delegated authority to take formal action. Formal action can take any form that the Council is empowered by legislation to take. The following will be the most commonly used.

#### 6.5 Statutory Notices

Many of the various pieces of legislation that we enforce provide for the service of 'statutory notices' on individuals, businesses and other organisations requiring them to meet specific legal obligations. Where a 'statutory notice' is served, the method of appealing against the notice and the timescale for doing so will be provided in writing at the same time. The notice will explain what is wrong, what is required to put things right and what the likely consequences are if the notice is not complied with. In some cases a 'statutory notice' can be served to prevent the occurrence or recurrence of a problem e.g. a noise



nuisance. In most cases, failure to comply with a 'statutory notice' will result in more severe formal action being taken.

#### 6.6 Fixed Penalty Notices

These are notices that apply a fixed penalty for specific offences, such as littering. The notice will describe the method of payment and the options and timescales for doing so. Failure to make a payment will result in prosecution for the original offence, unless there are exceptional circumstances. Charges are set through the Council's fees and charges work where discretionary, otherwise they are based on statutory rates

#### 6.7 Work In Default

In general, it is the responsibility of others to achieve compliance with the law. In certain cases the Council may undertake work to achieve compliance on behalf of others, and may seek a warrant to gain entry to land or premises to do so. This may occur if the responsible person fails to comply, cannot comply by virtue of genuine hardship, or is unable to comply by virtue of being absent. In these cases the Council's costs will be recovered from the responsible person. If the costs cannot be recovered, they will usually be placed as a charge against the property, to be recovered at a later date. This kind of formal action will be considered (but is not restricted to) occasions where:

- A 'statutory notice' requiring work to be undertaken has not been complied with
- Immediate work is required and it is not practicable to contact the responsible person, or they are not willing to respond immediately
- There is no responsible person e.g. burial or cremation of a deceased person with no next-of-kin

#### 6.8 Cautions

A simple caution (previously known as a formal caution) may be issued as an alternative to a prosecution and will be considered during any decision to prosecute. Cautions will be issued to:

- deal quickly and simply with less serious offences;
- divert less serious offences away from the courts; or
- reduce the chances of repeat offences.

To safeguard the suspected offender's interests the following conditions will be fulfilled before a caution is administered:

- there must be evidence of the suspected offender's guilt sufficient to give a realistic prospect of conviction; and
- the suspected offender must admit the offence; and
- the suspected offender must understand the significance of a caution and give an informed consent to being cautioned.

A caution is a serious matter, which will influence any future decision should the company or individual offend again. It can be referred to in any subsequent court proceedings, but this will not apply if the caution was issued more than 3

years before. Where the offer of a caution is refused, a prosecution will generally be pursued.

No pressure will be applied to a person to accept a caution. The Council maintains a central register of cautions administered.

#### 6.9 Prosecution

The Council recognises that the decision to prosecute is significant and would be a last resort and could have far reaching consequences on the offender.

The decision to undertake a prosecution will normally be taken by the relevant Director/Head of Service/ Planning Regulatory Committee in consultation with the Council's Legal team.

All relevant evidence and information will be considered before deciding upon a prosecution in order to enable a consistent, fair and objective decision to be made. The Council will have regard to the Attorney General's Code for Crown Prosecutors, which means that the following criteria will be considered:

- Whether the standard of evidence is sufficient for there to be a realistic prospect of conviction;
- Whether the prosecution is in the public interest;
- The public interest test will be considered in each case where there is enough evidence to provide a realistic prospect of conviction. The Council will consider whether there are public interest factors tending against prosecution which clearly outweigh those tending in favour, or it appears more appropriate in all the circumstances to divert the person from prosecution.

To determine the public interest test the following questions should be considered:

*a) How serious is the offence committed?*

The more serious the offence, the more likely it is that a prosecution is required. When deciding the level of seriousness we will include amongst the factors for consideration the suspect's culpability and the harm to the victim

*b) What is the level of culpability of the suspect?*

The greater the suspect's level of culpability, the more likely it is that a prosecution is required. Culpability is likely to be determined by the suspect's level of involvement; the extent to which the offending was planned and whether there are previous convictions.

*c) What are the circumstances of and the harm caused to the victim?*

The greater the vulnerability of the victim the more likely it is that a prosecution is required. A prosecution is also more likely if the offence has been committed against a victim who was a person serving the public. We will take into account the views of the victim and the impact it would have on the victim and families.

*d) Was the suspect under the age of 18 at the time of the offence?*

The best interests and welfare of the child or young person must be considered including whether a prosecution is likely to have an adverse impact on his or her future prospects that is disproportionate to the seriousness of the offending.

*e) What is the impact on the community?*

The greater the impact of the offending on the community the more likely it is that a prosecution is required. In considering this question, prosecutors should have regard to how “community” is an inclusive term and is not restricted to communities defined by location

*f) Is prosecution a proportionate response?*

We will consider whether prosecution is proportionate to the likely outcome, and in doing so the following may be relevant to the case:

- The cost to the Council especially where it could be regarded as excessive when weighed against any likely penalty.
- Cases should be capable of being prosecuted in a way that is consistent with principles of effective case management.

*g) Do sources of information require protecting?*

In cases where public interest immunity does not apply, special care should be taken when proceeding with a prosecution where details may need to be made public that could harm sources of information. It is essential that such cases are kept under review. In deciding on the public interest the Council will make an overall assessment based on the circumstances of each case.

Where there has been a breach of the law leading to a work-related death, the Council will liaise with the police, coroner and the Crown Prosecution Service (CPS) and, if there is evidence of manslaughter, we will pass the case to the police or, where appropriate, to the CPS and /or the Health & Safety Executive (HSE).

#### 6.10 Restorative Justice

Where appropriate and available, the Council will consider the use of Restorative Justice. Restorative Justice is a process through which parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future.

#### 6.11 Proceeds of Crime

Where appropriate the Council will consider the use of the Proceeds of Crime Act 2002. The Proceeds of Crime Act allows Local Authorities to recover assets that have been accrued through criminal activity.

## **7. Training and appointment of officers**

- 7.1 All officers undertaking enforcement duties will be suitably trained and qualified so as to ensure that they are fully competent to undertake their enforcement activities.
- 7.2 Officers will be mentored and shadowed to ensure that there is a consistent approach to enforcement. The Council supports the principle of continuing professional development and will ensure that all officers are given additional in-post training to maintain up to date knowledge and skills. This will be highlighted through their learning and development plan as part of their performance review.
- 7.3 Officers may have a variety of delegated powers to assist them in carrying out investigations. For example, this can include the power to require answers to questions and the power to enter premises, usually during reasonable hours e.g. normal opening times. Officers will carry an identity card and their authorisation with them at all times. We will not insist on entry into a person's home without giving 48 hours notice of the intention before exercising a Power of Entry. In the event of any doubt as to an officer's powers, confirmation can be obtained from any Council notice describing their powers, or by contacting their manager at the Council. It is an offence to obstruct an authorised officer who is conducting an inspection or investigation. Obstruction may lead to prosecution.

## **8. Shared Regulatory Roles**

- 8.1 Where the Council has a complementary regulatory role or is required to inform an outside regulatory agency of an incident or occurrence it will do so. Such external agencies include (but are not restricted to):
- Police
  - Fire Authority
  - Health and Safety Executive
  - Environment Agency
  - County Council services
  - Other Council services
  - Utility Providers
  - Other Councils
- 8.2 Officers will attempt to co-ordinate visits and actions with other agencies to achieve the most efficient and effective outcomes and to minimise inconvenience for those who are being visited, inspected, or subject to other enforcement action.
- 8.3 Wherever possible, in situations where there is a shared enforcement role, the most appropriate authority will, by mutual agreement, carry out the enforcement action.
- 8.4 Exchange of information with other enforcement teams within the Council will take place wherever applicable. Liaison will also take place between relevant services and Members within the Council to avoid potential conflicts of interest.

## 9. What you can expect from us

- We will be objective to ensure that our decisions are not influenced by gender, ethnic origin, religious or political beliefs, disability or sexual orientation
- We will enter into discussion and offer advice to anyone to try to ensure that they do not unnecessarily expose themselves to the possibility of formal action through a lack of understanding or information
- We will be consistent in our approach by following the criteria and guidance set down in relevant legislation, codes of practice, and our own written procedures and work instructions
- We will ensure that before deciding to offer a caution, or take a prosecution, the case will be subject to independent review by a senior manager
- We will provide a courteous and efficient service and our staff will identify themselves by name when they visit you, or speak to you on the telephone
- We will respect confidentiality subject to any legal requirements to disclose information (for example disclosure to support a prosecution)

## 10. How to complain

- 10.1 If you are dissatisfied with the service you have received, please let us know. We are committed to providing quality services and your suggestions and criticisms about any aspect of our service will help us to do this. Most problems can be resolved with the Council employee who has been dealing with the matter, or you may wish to speak to their supervisor.
- 10.2 We will respect confidentiality subject to any requirement to disclose information (for example if it is necessary to do so in order to investigate the complaint or to provide information to the Local Government Ombudsman). We will not normally investigate anonymous service complaints.
- 10.3 If you are still not happy, you can make a formal complaint using the Council's Complaints Procedure. You can ask us to register your formal complaint by phone, fax, letter, e-mail or in person. Once we receive a formal complaint we will acknowledge receipt, in writing, within 5 working days. A manager will investigate the complaint and will normally reply to you, in writing, within 20 working days, either giving a full answer or an indication of the likely time scale for the provision of a full answer. You will also be advised of what further action you can take if you are still dissatisfied. The Complaints Procedure and Policy can be viewed on the Council's web site at: <https://www.folkestone-hythe.gov.uk/council-transparency/complaints-compliments-feedback>

## 11. How to contact us

**By telephone:** You can use the telephone number given on any correspondence we have sent you, or telephone our Customer Services 01303 853555.

**In person:** The Civic Centre is open from 8:30 and closes at 17.00 Monday to Friday (Wednesdays from 9.30), Civic Centre, Castle Hill Avenue, Folkestone, Kent CT20 2QY

**In writing:** You can write to us at the following address: Shepway District Council, Civic Centre, Castle Hill Avenue, Folkestone, Kent CT20 2QY

Further details can be found at [www.folkestone-hythe.gov.uk](http://www.folkestone-hythe.gov.uk). Click on **Contact Us**.

## **12. Review of Enforcement Policy**

This policy document will be reviewed every 5 years or sooner should legislation change. This document was published in March 2016.