

# South Kesteven District Council

## Corporate Enforcement Policy

### ***Document Location***

This document will be held on the internal ICT server.

### ***Revision History***

**Date of this revision:** 30<sup>th</sup> November 2016

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| Revision date | Previous revision date | Summary of Changes   | Changes marked |
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|               | March 2016             | Original document created  |                |
| 30.11.2016    | March 2014             | <ul style="list-style-type: none"><li>• <b>Overarching Corporate Enforcement Policy</b></li></ul> <p>Paragraph 1.2.2 (ii) insert updated link for the Regulatory Compliance Code</p> <p>Paragraph 1.2.9 deleted as repeated at paragraph 1.2.2</p> <p>Paragraph 1.12.5 inserted updated link to Home Office Guidance (Circular 30/2005)</p> <p>Paragraphs 1.12.7 &amp; 1.1.3.1 Change title of officer from Head of Service to Executive Manager to reflect organisational structure changes</p> <p>Paragraph 1.15.1 insert link to the Council fair Collection &amp; Debt recover Policy.</p> <p>Paragraph 1.17.4 insert link to the Council's Gambling Act 2014 – Statement of Principles &amp; Statement of Licensing Policy</p> <p>Paragraph 1.8.1 Insert link to Lincolnshire Anti Social Behaviour Partnership Strategy</p> <p>Paragraph 8.2 remove reference to anti-social behaviour and insert Neighbourhoods to reflect organisational structure changes</p> <p>Paragraph 9.3 Change to the monitoring and review to link with changes in law and organisational changes with a substantive review changed from annually to four yearly.</p> |                |

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|  |  | <ul style="list-style-type: none"> <li>• <b>Development Management Enforcement Policy</b></li> </ul> <p>Changes under the heading <b>National Guidelines at page 18 to reflect changes and the introduction of new legislation:</b></p> <ul style="list-style-type: none"> <li>• <b>Amend at the 2<sup>nd</sup> bullet point</b> The Town and Country Planning (General Permitted Development) (England) Order 2015 (As Amended) from the Town and Country Planning (General Permitted Development) Order 1995</li> <li>• <b>Insert at the 9<sup>th</sup> bullet point</b> Anti-social Behaviour, Crime and Policing Act 2014</li> <li>• <b>Environmental Services Enforcement Policy</b></li> </ul> <p>This has been re-written to reflect the organisational change.</p> |  |
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## ***Approvals***

This document requires the following approvals.

| <b>Name</b>                   | <b>Title</b>                                      | <b>Date of Issue</b>        | <b>Version</b> |
|-------------------------------|---|-----------------------------|----------------|
| Councillor Paul Carpenter     | Portfolio Holder for Governance and Communication | 10 <sup>th</sup> March 2014 | V1             |
| Councillor Francis Cartwright | Executive Member for Governance                   |                             | V2             |
|                               |   |                             |                |

## ***Distribution***

This document has been distributed to:

| <b>Name</b> | <b>Title</b>               | <b>Date of Issue</b> | <b>Version</b> |
|-------------|----------------------------|----------------------|----------------|
|             | <b>Business Managers</b>   |                      |                |
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|             | <b>Strategic Directors</b> |                      |                |
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|             | <b>Executive</b>           |                      |                |
|             | <b>Communities PDG</b>     |                      |                |

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## **1.1 Commitment to Principles of Good Enforcement**

1.1.1 This policy covers the enforcement activities across all of the Council's Regulatory Services and sets out what regulated businesses and individuals can expect from the Council in terms of regulation. The policy is targeted only at cases where action is needed, and is based on the guiding principles of consistency, transparency, proportionality, accountability. Its purpose is to secure compliance with the law whilst minimising the burden on individuals, businesses and the Council itself. The policy will not affect the discretion of the Council to take legal proceedings where it is considered to be in the public interest. Enforcement actions will be carried out in compliance with the relevant legislation. This includes ensuring that, in compliance with the Public Sector Equality Duty, no individual will be discriminated against on the grounds of age, race, religion or belief, gender, sexual orientation, pregnancy and maternity, marriage and civil partnership.

1.1.2 We recognise that most individuals and businesses want to comply with the law and we will, therefore, take care to help them meet their legal obligations. Where a breach is so severe that an immediate response is required, or the circumstances of the case require it, the Council can decide to depart from all or some of the principles set out in this policy. Where such a decision is made, it will be properly reasoned, based on material evidence and documented appropriately.

1.1.3 We believe that prevention is better than cure, so our role involves working with businesses, especially small and medium sized, to help them keep to the law. We also believe in taking the same approach when dealing with people who live in and visit the district.

## **1.2 Enforcement Options**

1.2.1 We recognise the importance of achieving and maintaining consistency in our approach to enforcement. We also recognise that in many cases the decision to enforce is discretionary and that any enforcement action taken must be

proportionate to the risks posed, and to the seriousness of any breach of the law.

1.2.2 All enforcement activities, including investigations and formal actions, will be conducted in accordance with:

- i. the statutory powers of the officer dealing with the matter;
- ii. all other relevant legislation including the Enforcement Concordat - <http://webarchive.nationalarchives.gov.uk/+/http://www.berr.gov.uk/files/file10150.pdf>

| Regulators' | Compliance | Code | - |
|-------------|------------|------|---|
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| <a href="https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf">https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf</a> | <a href="http://www.bis.gov.uk/files/file45019.pdf">http://www.bis.gov.uk/files/file45019.pdf</a> | Health and Safety Executive (HAS) <a href="http://www.hse.gov.uk">www.hse.gov.uk</a> , the Food Standards Agency (FSA) <a href="http://www.food.gov.uk">www.food.gov.uk</a> , Police and Criminal Evidence Act 1984, the Criminal Procedure and Investigations Act 1996, the Human Rights Act 1998, the Regulation of Investigatory Powers Act 2000 and the Criminal Justice and Police Act 2001 <a href="http://www.legislation.gov.uk">www.legislation.gov.uk</a> ; |  |
|---|---|---|--|

- iii. any formal procedures and codes of practice made under the above legislation, in so far as they relate to our enforcement powers and responsibilities.

1.2.3 'Enforcement' includes any action taken by officers aimed at ensuring that individuals or businesses comply with the law. The term is not limited to formal enforcement action (such as prosecution or issue of notices) but does include the inspection of premises for the purpose of checking compliance with regulations and the provision of advice to aid compliance.

1.2.4 Officers will be properly trained in how to take enforcement action and systems are in place to ensure that they keep their skills and knowledge up to date. If we do any work outside normal office hours, the principles of this policy will still apply.

1.2.5 We will generally take a staged approach to enforcement providing individuals and businesses with the opportunity to discuss and remedy problems before we take action. However, we may however, deviate from this staged approach if immediate action is required or previous warnings have been ignored.

1.2.6 Suspected offenders may be offered the opportunity to give an explanation of the circumstances surrounding the commission of any alleged offence. Also provided for by the legislation, suspected offenders will also be given the

chance to put forward any statutory defences, including any “due diligence” precautions that may have been taken to prevent such an incident occurring. Officers will record this explanation at a formal interview, which will take the form of a question and answer discussion. This interview will be conducted under the rules of the Police and Criminal Evidence Act 1984 (PACE) and will be written down or recorded as appropriate. Suspected offenders will be invited to seek legal advice prior to such an interview, and given the opportunity to be accompanied by a legal representative at the interview itself.

1.2.7 Prior to considering action, as far as the law allows, we will take account of the circumstances of the case and the attitude of those subject to regulation. We will take particular care to work with small businesses and with voluntary and community organisations, so that they can meet their legal obligations without unnecessary expense wherever possible.

1.2.8 Where we consider that formal action is necessary each case will be considered on its own merits subject to the general over-riding principles that apply to the way each case must be approached. These principles are set out in this document and in the Regulators’ Compliance Code.

~~1.2.9 For more information about the Regulators’ Compliance Code [www.bis.gov.uk](http://www.bis.gov.uk) and the Enforcement Concordat visit: [www.berr.gov.uk](http://www.berr.gov.uk)~~

1.2.9 When deciding whether a caution or a prosecution is the appropriate course of action, we will take in to account (among other factors) the Code for Crown Prosecutors.

1.2.10 In assessing what enforcement action is necessary and proportionate, consideration will be given to:

- \* The seriousness of compliance failure;
- \* The business’s past performance and its current practice;
- \* The risks being controlled;
- \* Legal, official or professional guidance received from third parties.

1.2.11 Having considered the enforcement criteria the options available to us include:

- i. No action.
- ii. Informal action and advice.
- iii. Fixed Penalty Notices.
- iv. Formal notice.

**Comment [j1]:** Comment duplication with 1.2.2

- v. Forfeiture proceedings.
- vi. Administrative penalties.
- vii. Seizure of goods/equipment.
- viii. Injunctive actions.
- ix. Refusal/revocation of a licence.
- x. Simple caution.
- xi. Prosecution.
- xii. Demand for Payment
- xiii. Work in default (We may take any action needed and recharge the costs to the offender)
- xiv. Prohibition/Stop Notices and Injunctions
- xv. Proceeds of Crime applications.

### **1.3. No Action**

- 1.3.1 In certain circumstances, contraventions of the law may not warrant any action. This may be because the cost of compliance to the offender outweighs the detrimental impact of the contravention, or the cost of the required enforcement action to the Council outweighs the detrimental impact of the contravention on the community.

### **1.4. Informal Action and Advice**

- 1.4.1 For minor breaches of the law we may give verbal or written advice. In such cases we will clearly identify any contraventions of the law and give advice on how to put them right. This advice will include a timeframe for compliance.
- 1.4.2 We will also advise offenders of any relevant 'good practice'. Where good practice advice is issued we will make clear what needs to be done to remedy any breach of law and what is advice only.
- 1.4.3 We will make offenders aware that failure to comply with any information, action or advice given could result in an escalation of enforcement action.
- 1.4.4 We may take informal action when;
- \* the act or omission is not serious enough to warrant formal action;
  - \* from the individual's or businesses past history we can reasonably expect that informal action will achieve compliance;

- \* we have high confidence in an individual or business proprietor;
- \* the consequences of non-compliance will not pose a significant risk to public health, public safety or the environment.

### **1.5. Forfeiture Proceedings**

- 1.5.1 This procedure may be used in conjunction with seizure and/or prosecution. This course of action should be used where there is a need to dispose of goods in order to prevent them re-entering the market place or to avoid a further problem. In appropriate circumstances, we will make an application for forfeiture to the Magistrates Courts.

### **1.6. Administrative Penalties**

- 1.6.1 Administrative penalties may be used where an allegation of Housing/Council Tax Benefit fraud has been investigated and officers are satisfied that an offence has been committed. When considering whether this is an appropriate course of action (as opposed to prosecution), the officer will take in to account the severity of the offence and the other factors of the case.
- 1.6.2 If the offender does not accept the offer of an administrative penalty, or it is refused after its initial acceptance, the case will generally be prepared for prosecution. In all cases the Council will pursue full repayment of any benefit which has been unlawfully received by the offender, and which remains recoverable.

### **1.7. Seizure**

- 1.7.1 Certain legislation enables authorised officers to seize goods, equipment or documents for example unsafe food, sound equipment or any items that may be required as evidence for possible future court proceedings. An appropriate receipt will be given for any goods taken.

### **1.8. Injunctive Actions**

- 1.8.1 Injunctive action may be used where offenders are repeatedly found guilty of similar offences or where it is considered the most appropriate course of enforcement i.e. to deal with dangerous circumstances, significant consumer detriment or serious anti social behaviour problems.



## **1.9. Fixed Penalty Notices**

1.9.1 Where legislation permits an offence to be dealt with by way of a Fixed Penalty Notice (FPN), we may choose to administer an FPN on a first occasion, without issuing a warning.

## **1.10. Penalty Charge Notices**

1.10.1 Penalty Charge Notices (PCN) are prescribed by certain legislation as a method of enforcement by which the offender pays an amount of money to the enforcer in recognition of the breach. Once issued the PCN takes the form of a civil debt and failure to pay the PCN will result in the offender being pursued in the County Court for non-payment. A PCN does not create a criminal record and we may choose to issue a PCN without first issuing a warning.

## **1.11. Formal Notice**

1.11.1 Certain legislation allows notices to be served requiring offenders to take specific actions or cease certain activities. Notices may require activities to cease immediately if they relate to health, safety, environmental damage or nuisance. In other circumstances, the time permitted to remedy the breach will be reasonable and will take into account the seriousness of the contravention and the implications of the non-compliance.

1.11.2 All notices issued will include details of any applicable appeals procedures.

## **1.12. Simple Caution**

1.12.1 Where appropriate, a caution may be issued as an alternative to prosecution.

1.12.2 A caution will be issued to:

- \* deal quickly and simply with less serious offences
- \* divert less serious offences away from the courts
- \* reduce the chance of repeat offences

1.12.3 For a Simple Caution to be issued a number of criteria must be satisfied:

- i. Sufficient evidence must be available to prove the case.
- ii The offender must admit the offence.
- iii It must be in the public interest to use a Simple Caution.

- iv The offender must be 18 years or over.
- v The offender should not have received a simple caution for a similar offence within the last 2 years.

1.12.4 A simple caution will not be considered in the case of a second or subsequent offence.

1.12.5 For details on the Home Office Guidance (Circular 30/2005) visit:

<http://webarchive.nationalarchives.gov.uk/20130125102358/http://www.homeoffice.gov.uk/about-us/corporate-publications-strategy/home-office-circulars/circulars-2005/030-2005>

<http://www.homeoffice.gov.uk>

Comment [j2]: Revised

1.12.6 If the offender commits a further offence, the caution may influence our decision to prosecute. If during the time the caution is in force the offender pleads guilty to, or is found guilty of, committing another offence anywhere in England and Wales, the caution may be cited in court, and this may influence the sentence that the court imposes.

1.12.7 Simple Cautions are administered and issued by the relevant Executive Manager Head of Service

### 1.13. Prosecution

1.13.1 We recognise that the decision to prosecute is significant and could have far reaching consequences for the suspected offender. In all cases, the final decision rests with the Executive Manager Corporate, Head Responsible for of Legal and Democratic Services, is responsible for making the final decision when deciding about whether to prosecute after consultation with the relevant Executive Manager Head of Service and/or Strategic Director

1.13.2 The criteria for the issue of proceedings are;

- i. the alleged offence involves a deliberate breach of the law with the result that public health, safety or well being is, or has been, put at risk, or there has been irreversible damage;
- ii there has been a reckless disregard for the environment;
- iii where someone has died as a result of the law being broken;
- iv where someone has failed to pay a Fixed Penalty Notice;
- v where officers have been intentionally obstructed while carrying out their duties;

- vi the alleged offence involves deception which may or may not result in a loss or potential loss of public funds;
- vii a serious potential risk has been identified which the suspected offender has not rectified despite having been given a reasonable opportunity to comply with the law;
- viii the alleged offence involves a failure to comply in full, or in part, with the requirements of a statutory notice;
- ix there is a history of similar offences;
- x the alleged offence is considered to be anti-social behaviour or causes public alarm, and it is desirable to reassure the public and deter other potential offenders;
- xi a prosecution is in the public interest, there is realistic prospect of conviction and sufficient evidence to support proceedings.

1.13.3 We will consider all material evidence and information before deciding upon a prosecution in order to make a consistent, fair and objective decision.

#### **1.14 Work in Default**

1.14.1 In place or as well as prosecutions we have certain powers to carry out work in default (we may carry out any action necessary and recharge the costs to the offender). We will only use these powers after a notice to carry out work has ended. We will claim back all our charges either through the courts or as a land charge on the property

#### **1.15 Demand for Payment**

1.15.1 The Council's Fair Collection and Debt Recovery Policy <http://www.southkesteven.gov.uk/CHttpHandler.ashx?id=14633&p=0> -sets out a method of collecting money owed to the Council in a fair and efficient manner. The Council will ensure early contact is made to minimise large debts accumulating and ensure the debtor does not suffer from unnecessary hardship

### **1.16. Prohibition/ Stop Notices and Injunctions**

1.16.1 Where an offender is required to take immediate action, it may be necessary for a statutory notice to be served. These include Prohibition Notices, Planning Enforcement Notices, Closing Orders, Stop Notices or Injunctions, and can be issued in one or more of the following circumstances;

- i. there is an imminent risk of injury to health or safety;
- ii. there is serious hazard to residential premises;
- iii. there is an imminent risk of serious environmental pollution;
- iv. the consequences of not taking immediate and decisive action, to protect the public, would be unacceptable;
- v. where an unauthorised development is unacceptable and is causing serious harm to public amenity near to the site, or where there has been breach of a condition notice;
- vi. where unauthorised development is unacceptable, and continuing work is or may cause irreversible damage, and remedial action is not a satisfactory option;
- vii. the guidance criteria on when prohibition may be appropriate are met;
- viii. we have no confidence in the integrity of an unprompted offer by a proprietor to close premises voluntarily, or stop using any equipment, process or treatment associated with the imminent risk;
- ix. a proprietor is unwilling to confirm in writing his/her unprompted offer of a voluntary prohibition;
- x. where it would be the most effective remedy available.

1.16.2 We will make offenders aware of any right of appeal they may have against any action we have taken. The act of serving a prohibition/stop notice or injunction does not prevent us from deciding to prosecute depending on the seriousness of the circumstances that led to the serving of that notice.

### **1.17 Licensing and Registration – Breaking Conditions**

1.17.1 We issue Licences and approval for a variety of activities such as hackney carriages, caravan sits, food premises, selling alcohol and providing entertainment, horse riding, animal boarding kennels and catteries, houses in multiple occupation etc. we will usually specific conditions which control how facilities at the premises are managed and provided.

1.17.2 If there has been a relatively minor incident where licence conditions have been broken and the duty holder is willing to take the necessary action to have things right, we will usually give a verbal or written warning first. If there are serious failures to meet the licence conditions or if the informal approach failed to make the necessary improvements we will present a formal report to the relevant Council Committee or panel and make representations as to whether or not a licence will be granted, renewed or withdrawn. The duty holder will be entitled to make a statement to support their case.

1.17.3 If there is a serious incident where licensing or registration conditions have been broken, we will consider it in line with the conditions relating to prosecutions and if appropriate, start legal proceedings. In some cases, we may need to suspend a licence or approval until the relevant Committee or panel can consider the matter.

1.17.4 There are a number of separate Policies relating to Licensing, for example, Gambling Act 2014 Statement of Principles, Statement of Licensing Policy <http://www.southkesteven.gov.uk/index.aspx?articleid=8552>

etc.

## **1.18 Anti Social Behaviour**

1.18.1 We will only consider taking action against those who commit anti social behaviour in line with the [Lincolnshire Anti Social Behaviour Partnership Strategy](http://www.southkesteven.gov.uk/index.aspx?articleid=8355) <http://www.southkesteven.gov.uk/index.aspx?articleid=8355>

~~Anti Social Behaviour Enforcement Policy and Tenancy Services Anti Social Behaviour Strategy.~~

## **2. Officers Powers of entry and obstruction**

2.1 Enforcement officers have a wide variety of duties and have to act as investigators. This is supported by strong powers of entry, seizure and inspection contained in various statutes. If individuals or businesses obstruct officers or refuse to provide information, they could be subject to criminal

sanctions. Officers use these powers at their discretion with the support of the Council who will uphold them.

- 2.2 Officers will use their powers of entry only when necessary, but usually to carry out an inspection of premises or in the process of an investigation. The Council will always support officers who act in good faith. This includes prosecuting those individuals who obstruct or assault officers during investigations or inspections.
- 2.3 If the legislation allows, officers may examine premises and articles, remove articles, label samples, request information, issue enforcement notices and may in some instances be accompanied by other persons. In appropriate cases a warrant from a Magistrate may be obtained to obtain entry to premises.
- 2.4 An officer must be able to explain the legal basis for any action and justify all separate actions used.

### **3. Appointment of Officers and Identification**

- 3.1 All officers are trained and authorised to act under relevant legislation enforced or administered by the service in which they are employed. Their authorisation will follow the scheme of delegations procedure adopted by the Council.
- 3.2 All officers are issued with an identification card bearing their photograph. This identification must also be produced on request

### **4. Liaison With Other Regulatory Bodies and Enforcement Agencies**

- 4.1 Where appropriate, enforcement activities within all regulatory services will be coordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement.
- 4.2 Where an enforcement matter affects a wide geographical area beyond the boundaries of the district, or involves enforcement by one or more other local authorities or organisations, the relevant authorities and organisations will be informed as soon as possible and all enforcement activity coordinated with them.

4.3 Regulatory Services will share information relating to wider regulatory matters with other regulatory bodies and enforcement agencies. Examples include:

- i Government Agencies;*
- ii. Health and Safety Executive*
- iii Police Forces;*
- iv. Fire Authorities;*
- v. Statutory undertakers;*
- vi. Other Local Authorities.*

4.4 Confidentiality, data protection and information sharing are covered in detail in separate Council policies and all information shared will be in accordance with the principles of data protection and freedom of information legislation.

## **5. Openness and Transparency**

- 5.1 We will provide information and any advice on the legislation we enforce in plain language and will be open and transparent in our actions.
- 5.2 We believe that it is in the interests of everyone, including ourselves, to get things 'right first time'. As a result we ensure that our enforcement role involves us actively working with all those subject to regulation, especially small and medium sized businesses, to advise on and assist with compliance.
- 5.3 We will provide a courteous and efficient service. Our staff will identify themselves by name and carry proof of their identity. We will provide a contact point and telephone number for further dealings with us and we will encourage businesses and others to seek advice or information from us.
- 5.4 All requests for service, including applications for approval of establishments, licences, registrations, etc, will be dealt with efficiently and promptly. We will ensure that, wherever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

## **6. Complaints About Our Service**

- 6.1 We will provide well-publicised, effective and timely complaints procedures, which are easily accessible to businesses, the public, employees and consumer groups. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely time-scales involved.

## 7. Publication

- 7.1 Following adoption of this policy it will be made available to all interested parties, including businesses and consumers. It will be published on the Council's website and will be made available in printed form.

## 8. Responsibilities

- 8.1 Each manager of a regulatory service covered by this Policy will be responsible for its effective implementation throughout the enforcement activities of their team. Each officer within these teams will be responsible for applying it in relation to any enforcement activity covered by this policy.
- 8.2 The following services will apply this Policy and principals to their individual Service policy
1. Environmental Health and Private Sector Housing
  2. Neighbourhoods
  3. Development Management Planning
  4. Building Control
  5. Waste and Recycling Services
  6. Finance
  7. Tenancy Services

## 9. Review

- 9.1 This Policy has been drawn up with full regard to the requirements of the Enforcement Concordat - <http://webarchive.nationalarchives.gov.uk/+/http://www.berr.gov.uk/files/file10150.pdf>), Regulators' Compliance Code - <http://www.bis.gov.uk/files/file45019.pdf> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/300126/14-705-regulators-code.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf), statutory obligations, national standards and codes of practice and benchmarked against best practice elsewhere.
- 9.2 We recognise the potential burdens on business and individuals who have to comply with regulation and we will promote more efficient approaches to regulatory inspection and enforcement without compromising regulatory



standards or outcomes. We will endeavour to form partnerships with local businesses, and will consult them about the contents of this policy and any significant changes that may arise from time to time.

- 9.3 We will make arrangements to monitor and review this Policy and make organisation structure and legislative changes as and when required ~~on an annual and do a substantive review on a four yearly basis basis~~ to ensure that it is used fairly and consistently.