

High Peak Borough Council

Corporate Enforcement Policy

1 Introduction

The Council carries out a range of different enforcement activity with the aim of making sure that:

- compliance with those laws that fall within the Authority's remit is promoted and encouraged;
- law abiding businesses, individuals and others are not disadvantaged.
- the risks and harm to the community are reduced by dealing effectively with breaches of the law; and
- offenders are held to account where appropriate.

This policy sets out the Council's general approach to enforcement. It is not intended to provide procedures for any particular action that may be contemplated or taking place. The Council may produce more specific policies on certain areas or aspects of enforcement and this policy should be read in conjunction with any such guidance.

The protocol has been drawn up with regard to the Regulators' Code (published by the Department for Business Innovation & Skills) that came into statutory effect on 6 April 2014; the earlier Regulators' Compliance Code (2008) and Enforcement Concordat (1998), the Code for Crown Prosecutors and other enabling legislation and guidance.

The enforcement policy reflects the principles of the Council's Corporate Aims:

- supporting communities to create a healthier, safer, cleaner High Peak.
- a responsive, smart, financially resilient and forward-thinking Council.
- protect and create jobs by supporting economic growth.
- protect and improve the environment.

2 The Principles of Enforcement

The Council believes in firm but fair enforcement of the law. It will apply the following principles when engaging in enforcement activity:

- **Openness.** We will be open about how we work and about the rules that we apply. We will discuss compliance failures or problems with anyone experiencing difficulties. We will seek to establish mechanisms to engage with those that we regulate, residents and others and allow them to contribute to the development of our policies and service standards. Before changing policies, practices or service standards, we will consider the impact on any affected groups and engage with those groups where possible and appropriate.
- **Avoid unnecessary regulatory burdens.** We will seek to carry out our activities in a way that supports those that we regulate to comply and grow. We will take steps to understand and minimise negative economic impacts of enforcement activity, minimise the costs of compliance, and encourage and promote compliance.
- **Consistency.** Whilst officers are expected to exercise judgement in individual cases, we will strive to carry out our duties in a fair, equitable and consistent manner.
- **Helpfulness.** We believe that prevention is better than cure and our role involves working with businesses, individuals and others to advise on, and assist with, compliance where possible. We will seek to provide advice and guidance to help people understand and meet their responsibilities. We will consider providing an opportunity for discussion before taking formal enforcement action; although there may be times when immediate enforcement action is required to prevent or

respond to a serious breach or where providing such an opportunity would be likely to defeat the purpose of the proposed enforcement action.

- **Clarity.** We will clearly explain what the non-compliant activity, item, behaviour, etc is; the advice being given; actions required, or decisions taken; and the reasons for these. Where appropriate, we will clearly explain the potential consequences of failing to comply with the law. We will distinguish wherever necessary between legal requirements (“*must do*”) and good practice advice (“*should do*”).
- **Targeted activity based on risk.** The Council will take an evidence based approach to determining the priority risks and allocate resources where they would be most effective in addressing those priority risks. The Council will prioritise those persons or activities that give rise to the most serious risks or where hazards are least well controlled. It will focus on those who are responsible for the breach of legislation and those who are best placed to control or prevent it. Poorly managed businesses or other areas of high risk are likely to receive more frequent inspections so that the Council can give public assurance that such risks are properly controlled.
- **Proportionality.** Any enforcement action will be proportionate to the risks to health, safety and wellbeing, or to the seriousness of any breach, which includes any actual or potential harm arising from the breach. We will take account of how far an offender has fallen short of what the law requires and any steps that have been taken to prevent or remedy the breach.
- **Partnership approach.** The Council will seek to provide a joined-up approach to enforcement by taking account of the complaints received, and actions taken, by our partners and other Council services. Where the law allows, we will share information with others to help target resources and minimise duplication.

3 Relevant Factors

Decisions on enforcement action are largely discretionary, involving judgements by the officer in charge of the case. Officers will consider a range of factors when considering action including:

Factors relating to the offence committed:

- Seriousness of the offence, especially involving risk to the public.
- The age of the offence and, particularly, whether it falls outside any limits on taking legal action.
- Whether the offence is likely to be continued or repeated.
- Whether the offence has come to light as the result of a complaint or information from an outside body.
- Whether there has been a blatant disregard of legislation.
- Whether previous action has been unable to resolve the problem.
- Whether the offence undermines the Council's Corporate aims and objectives including the protection and improvement of the environment (for example fly tipping and dog fouling).

Factors relating to the victim:

- The impact on the safety, quality of life, etc of the people affected.
- Whether the victim was a staff member (the Authority will not tolerate abuse, violence, etc directed at staff members and will normally prosecute in such circumstances).
- The views of the aggrieved person/people.
- Impact on the wider community.

Factors relating to the offender:

- The circumstances, state of mind and attitude of the offender.
- Whether the offender has taken any action to resolve the problem.
- Whether there has been an element of fraud, negligence or recklessness in the commission of the offence.
- Past conduct and previous history of the offender including previous similar convictions or cautions.

Legal considerations:

- Alternative remedies.
- The likely penalty as opposed to the cost of investigation.
- The effect of likely defences and mitigation.
- Whether a prosecution could test an important legal point or set a precedent.
- Whether it would be in the public interest, having regard to all the circumstances of the case, to institute legal proceedings.

Officers should be mindful of the principles set out in this protocol when taking any action and the relevant factors outlined above. Any deviation from this approach should only take place where an officer believes that a specific provision is not applicable or is outweighed by another relevant consideration. Such decisions should be made on the basis of material evidence and officers should clearly record the reasons for the decision.

4 Enforcement Options

Where there has been an alleged breach of legislation, there are several alternatives for action depending on the nature, seriousness and public interest of the alleged infringement. The possible courses of action include (not all actions are available to all areas of enforcement):

- providing oral and written information and advice (which may include warnings that in the opinion of the Council there is a failure to comply with the law and setting out the potential consequences of such activity/behaviour);
- seeking improvements or cessation of activity;
- taking immediate or subsequent direct action to remedy the breach;
- prohibiting activities or withdrawing approval of their continuance;
- varying conditions or exemptions in licences;
- issuing fixed penalty notices;
- formal cautions. A caution will only be issued if there is sufficient evidence of guilt, the offender is over eighteen years old, the offender admits the offence, and consents to the caution.
- immediate or direct action.
- prosecution through the courts if there is sufficient evidence to provide a realistic prospect of conviction and the Authority decides that prosecution would be in the public interest; and
- injunctions and other civil sanctions.

Council employees carry out important functions on behalf of local communities and often in difficult circumstances. The Council recognises that it has a duty to protect its staff members and therefore wants to send a clear message that any physical or verbal assaults on Council officers whilst carrying out their duties will not be tolerated. The Council will generally seek to prosecute anyone assaulting or otherwise abusing its workforce by either liaising with the local police or by taking a private prosecution.

5 Appointment, Training and Development of Officers

All officers will undergo a rigorous recruitment and selection process prior to appointment to make sure that they are able to meet the Council's expectations in terms of professionalism, discretion, impartiality, balanced decision-making, etc.

Appropriate training will be provided to officers to ensure that they have the skills and knowledge to perform their role competently.

The performance of officers will be monitored and steps will be taken to address any deviation from expected standards.

6 Shared Regulatory Roles

The Council recognises that problems experienced by members of the community may be complex and require the input of several sections of the Council to resolve. The Council will seek to provide a joined-up response wherever possible. This means that the local authority will:

- Identify a single point of contact, so that members of the public do not have to speak to multiple Council officers about their problem;
- Check with other Council services to see if they have had any involvement with the reported issue;
- Seek to use the full range of powers available to the Authority to resolve problems.

7 Role of Councillors

Councillors play an important role in supporting enforcement activity by the local authority, such as by:

- Developing the Authority's enforcement policies and reviewing their implementation;
- Serving on regulatory committees, such as those covering planning and licensing functions;
- Responding to constituents' concerns about enforcement action including cases where the Authority decides not to take action; and
- Encouraging members of the public to report breaches of the law where appropriate.

8 Reporting problems

The trigger for enforcement action will often be the receipt of a complaint from a member of the public about a problem that is affecting them. We encourage people to report problems and they can do so by completing one of the “Do it online” forms on the Council’s website, by calling 0345 605 3010 or 01538 395400, or by writing to Buxton Town Hall, Buxton, SK17 6DZ.

Complainants will be asked to give their full contact details and to describe in detail the nature of the problem. Where the Council can lawfully refuse to disclose information, details will not be made known to anyone other than those professional officers dealing with the case. Complainant’s details are confidential and, as personal information under the General Data Protection Regulation and the Data Protection Act 2018, are exempt from release under Section 40 of the Freedom of Information Act 2000.

We will acknowledge your enquiry within 5 working days of receiving the complaint. Our officers will then carry out an initial investigation of the problem. We will keep you aware of the progress of our investigations and, where applicable, any subsequent enforcement action.

9 Complaints process

Many of the pieces of legislation under which the Council enforces contain procedures for appeal against enforcement decisions to independent bodies such as the Planning Inspectorate and Magistrates’ Court. Any such appeal mechanisms will be communicated at the time of enforcement action.

Anyone wishing to complain about the Council’s services or officers can do so by contacting the Council’s Complaints Officer. This can be done by completing our on-line

complaints form at www.highpeak.gov.uk or by writing to the Complaints Officer at Buxton Town Hall, Buxton, SK17 6DZ.