Service Enforcement Policy (Part 1)

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Introduction

Fair and effective enforcement is essential to protect the health, safety and interests of the residents, visitors and businesses of Redcar and Cleveland.

This Service Enforcement Policy is designed to make sure that everyone knows the principles that the Service will apply when carrying out enforcement work, ensuring that the same principles are routinely applied, and that everyone involved in the process is treated fairly, consistently, and effectively.

The primary aim of enforcement activities is to achieve regulatory compliance to protect the general public, legitimate businesses, the environment, and groups such as consumers, residents and workers.

Enforcement includes actions aimed at ensuring that individuals or businesses comply with the law, carried out in the exercise of, or against the background of, appropriate statutory powers. This is not limited to formal enforcement action such as prosecution but includes, for example, the provision of warnings and advice to aid compliance.

Part 1: Common Enforcement Policy

The Authorities Enforcement Policy consists of two distinct parts:

Part 1 is an 'umbrella' policy which contains information that is common to all enforcement activities across the Service.

Part 2 is a Team specific policy which includes details of enforcement options and the circumstances where each option will be used. The specific Team areas covered by Part 2 are:

- Environmental Protection
- Environmental Health (Commercial)
- Trading Standards and
- Housing Standards.

Part 2 policies are available separately on request.

This Policy applies to all Teams within the Service. The purpose of this Part of the policy is to summarize the Authority's approach to the enforcement of legislation. This part should be read in conjunction with the relevant team specific policies (see Part 2).

"Enforcement" is defined as including any advice, inspection, action, instruction or warning, caution, prosecution (or other types of court action) taken in relation to a person or organisation who is or is believed to be acting unlawfully.

The Authority will take a graduated approach to enforcement of legislation, where this is permitted. All person(s) and Businesses will be encouraged to understand the nature and extent of their responsibilities and comply voluntarily. The Authority will pursue prosecution where circumstances indicate a significant risk or crime or where formal action is otherwise in the public interest.

There may be limited circumstances where the Authority will decide to prosecute without prior warning.

Any departure from the policy or decision to prosecute without prior warning will be capable of justification and be fully considered by the Head of Service or the Assistant Director, before a decision is made, unless it is considered that there is a significant risk in delaying the decision.

This policy commits the Service to good enforcement practice, in considering whether to initiate enforcement action the Authority will take account of the following:

- the Code for Crown Prosecutors.
- the Enforcement Concordat.
- the Regulators Compliance Code.
- Police and Criminal Evidence Act 1984 (and associated Code of Practice).
- Criminal Procedure and Investigations Act 1996 - Attorney General's Guidelines on Disclosure. – made under the Criminal Procedure and Investigations Act 1996, Code of Practice Order 2020
- The Regulation of Investigatory Powers Act 2000 (RIPA)
- Criminal Justice and Police Act 2001.
- Regulatory Enforcement and Sanctions Act 2008.
- Investigatory Powers Act 2016.
- Forensic Science Regulator Code of Practice.
- Council procedures: codes of conduct & Corporate Complaints Procedure.
- Investigation Process: Legal process guidelines.
- UK General Data Protection Regulation and The Data Protection Act 2018.
- Have regard to the provisions of any other Code of Practice published by a Government Department or other advisory body as necessary and
- other service specific codes or guidance.

Further information on individual documents is provided in Part 2.

Principles of Enforcement

The Service is committed to firm but fair regulation. Underlying this policy are the principles of:

- **Proportionality** in the application of the law and in securing compliance.
- **Consistency** of approach and application
- **Transparency** about how the Service operates and what those regulated may expect from the Service, and
- **Targeting** of enforcement action.

Proportionality
Any enforcement action taken to achieve compliance or bring duty holders/ individuals to account for non–compliance action will be proportionate to the seriousness of the breach. This does not preclude court action as a first step, although no prosecution will be undertaken without subjecting the case to the tests outlined in the Code for Crown Prosecutors published by the Crown Prosecution Service.

Consistency
The Service will endeavor to carry out activities in a fair, equitable and consistent manner. However, consistency is not a simple matter. In each case officers will consider a few variables including:

- the degree of risk.
- the attitude and competence of management/duty holder.
- the previous history of the duty holder and
- the seriousness of the breach/offence.

The Service has systems in place to promote consistency between officers and other authorities and enforcement bodies.

Transparency
Officers will help duty holders to understand what is expected of them and what they should expect from the Service.

Individuals or businesses may have a right to query or appeal against enforcement action where there are statutory appeal mechanisms. Details of these will be provided where appropriate.

Targeted
Targeting means making sure that regulatory effort is directed primarily towards those whose activities give rise to the most serious risk or where the risks are less well controlled. Action will be primarily focused on those directly responsible for any breach and who are best placed to control it.

Where necessary, statutory powers that exist to enable investigations to continue outside the Council's boundary will be used.

Authorisation of Officers

The Authority has a system for delegating authorisation to individual officers. This delegation is contained in the Authority's constitution which is available online.

It is the Council's procedure that only officers authorised through the delegated powers described in the Council's Constitution will take enforcement action.

Only officers who are competent by training, qualification and/or experience will be authorised to take enforcement action.

Penalties and Offences

The courts have considerable scope to punish offenders and to deter others, including imprisonment or unlimited fines for some offences. The offences will be made clear to prospective defendants throughout the investigation.

Where enforcement includes the issuing of civil penalties, officers will have regard to any applicable statutory guidance when determining the appropriate level of those penalties, and the council's adopted policy. Each breach will be considered on a case by case basis, and the maximum penalty amount will only be reserved for the worst offenders.

Primary Authority Scheme

The Authority is committed to the Primary Authority Scheme, that gives companies the right to form a statutory partnership with a single local authority, which then provides robust and reliable advice for other councils to take into account when carrying out inspections or dealing with non-compliance.

In taking enforcement action officers will notify and agree any legal action with the Primary Authority associated with a business (if such a partnership exists) before taking action unless enforcement action is required to deal with an imminent risk e.g. health and safety prohibition notice.

More information on the Primary Authority scheme is available from:
Local regulation: Primary Authority - GOV.UK

Investigation with other Agencies

Where an enforcement role is shared with another Agency, it is the policy of this authority to undertake joint enforcement activity in order to minimise any unnecessary duplication and delay. Joint working may be undertaken with agencies including other local authorities, other council services, the Police and HM Revenue & Customs Office for Product Safety and Standards (OPSS), National Trading Standards Teams or any other relevant agency as appropriate.

Equality and Diversity

The Authority has a firm commitment to ensuring full and equal access to all services. This may include:

- The provision of translators for interviews where the interviewee's first language is not English.

- The carrying out of enforcement visits outside normal office hours when the business concerned operates at those times.

- The explanation of actions to fulfil commitments under the UK General Data Protection Regulations under the Data Protection Act 2018.

All enforcement decisions will be fair, independent, and objective. They will not be influenced by issues such as the ethnicity or national origin, gender, religious beliefs, political views, or the sexual orientation of the suspect, victim, witness, or offender.

When dealing with juveniles or people who are vulnerable due to learning difficulties, mental illness or any other factor, due regard will be taken of this.

The Council is a public authority for the purposes of the Human Rights Act 1998 and will apply the principles of The European Convention of Human Rights with particular regard to the right of a fair trial and the right to respect for private and family life, home, and correspondence.

Status and Review

This policy will be reviewed on a regular basis but any interim need to make amendments, such as in the case of a change in legislation, addition of any new civil penalty policies, will not trigger a full review.

Should you have any queries about this policy please contact:

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Enforcement Policy (Part 2) Environmental Protection

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Introduction

Aim

To protect the public from adverse environmental pollution to land, air and water which may affect their health and well-being, and to fulfil mandatory statutory obligations.

Primary Legislation

Environmental Damage (Prevention and Remediation) Regulations 2015
Environmental Protection Act 1990
Environmental Permitting (England and Wales) Regulations 2016
Environment Act 1995
Environment Act 2021
Anti-social Behaviour, Crime and Policing Act 2014
Clean Air Act 1993
Control of Pollution Act 1974
Licensing Act 2003
European Bathing Water Directive 2006
Bathing Water Regulations 2013
Human Rights Act 2003
Regulation of Investigatory Powers Act 2000
Criminal Procedures and Investigation Act 1996 – Code of Practice
Data Protection Act 2018
Freedom of Information Act 2000
Environmental Information Regulations (EIR) 2004

Enforcement Options –Nuisance

The Authority may choose to pursue more than one enforcement option for example the service of a Community Protection Warning (CPW)/Community Protection Notice (CPN) at the same time as a Section 80 (S80) abatement notice whilst also seeking a premises license review.

Enforcement Option	Qualifying Criteria for Option (please note the use of each option will only be considered when one or more of the criteria apply)
No action	• Anonymous complaints or unsubstantiated allegation
Informal action –verbal or written advice	• Advice will be provided where allegations of nuisance are unsubstantiated • In the first instance we will try and resolve complaints informally
Warning letters/CPW and / or visits	• There is evidence of a potential nuisance/statutory nuisance e.g. diary sheets, witnessed by officer, or audio recordings and the officer has confidence in the validity of the evidence provided by the complainant • The officer utilises a warning letter/CPW and/or visit in effort to resolve the matter informally as the proportionate first step to prevent formal enforcement action being taken
Service of CPN/S80 notices	• A nuisance/statutory nuisance has been substantiated • The offender or premises causing the nuisance has been identified • An informal approach has failed or has been tried in past complaints • The nuisance/statutory nuisance is continuing or likely to recur • The seriousness of the nuisance/statutory nuisance is such that immediate action is required to abate the nuisance • To allow the Council to carry out works in default e.g. works to disable a burglar alarm
Simple caution (non-statutory method to dispose of first-time, low-level offences)	• To deal quickly and simply with less serious offences • To divert offenders where appropriate from appearing in criminal courts; and • To reduce the likelihood of re-offending • Applied in consideration of the public interest test • The person who signs the caution agrees they have committed an offence and accept the caution. • If a person refuses to sign a caution they will be prosecuted
Service of Fixed Penalty Notices	• A Fixed Penalty Notice may be served following a breach of a CPN to resolve the matter outside of court proceedings e.g. for burning and noise offences
Prosecution	• The terms of an abatement notice have been breached and there is sufficient evidence to demonstrate that the notice has not been complied with • Actioned in consideration of the public interest test
Seizure of noise making equipment	• The person who signs the caution agrees they have committed an offence and accept the caution • If a person refuses to sign a caution they will be prosecuted • The person served with an abatement notice failed to comply with the requirements of the notice • The Council regards seizure to be a more appropriate or effective remedy than prosecution or a successful prosecution has already been undertaken but the problem remains • Seizures may be undertaken with the support of other Council teams/departments, the Police and other outside Agencies such as the RSPCA

Enforcement Option	Qualifying Criteria for Option **(please note the use of each option will only be considered when one or more of the criteria apply)**
High Court Injunction	• For serious and persistent breaches of an abatement notice where the nuisance is affecting multiple complainants
Seek a review of a premises licence as issued by RCBC Licensing service	• This will be in accordance with the provisions of the Licensing Act 2003 • The team would make a representation and attend Licensing Committee as appropriate

Enforcement Options – The Environmental Permitting (England and Wales) Regulations 2016

Enforcement Option	Qualifying Criteria for Option **(please note the use of each option will only be considered when one or more of the criteria apply)**
No action	• If no breaches of legislation are discovered • If the officer believes that a complaint or contravention does not warrant investigation or action • All parties will be informed as to the reasons why no action is being taken
Informal action: • Advice • Verbal warning • Inspection report • Written information	• The offence is not serious enough to warrant formal action e.g. a minor technical offence which creates little or no risk of pollution • From the site history it can reasonably be expected that informal action will achieve compliance • Confidence in the business management involved is reasonably high
Simple caution (non-statutory method to dispose of first-time, low-level offences)	• To deal quickly and simply with less serious offences • To divert offenders where appropriate from appearing in criminal courts; and • To reduce the likelihood of re-offending • Actioned in accordance with the Public Interest Test • The person who signs the caution agrees they have committed an offence and accepts the caution • If a person refuses to sign a caution they will be prosecuted
Service of statutory notice including: • Enforcement notice • Suspension notice • Revocation notice	• Where the continuing operation of a regulated activity is contravening any condition or is likely to contravene any condition • When the operation of a regulated activity under an environmental permit involves a risk of serious pollution • Where exhaustive use of other enforcement tools has failed to protect the environment
Prosecution	• There is a poor history of compliance • The offence is serious and there is sufficient evidence of the offence • A pollution incident has occurred • Actioned in accordance with the Public Interest Test • The person who signs the caution agrees they have committed an offence and accept the caution • If a person refuses to sign a caution they will be prosecuted

Enforcement Options – Clean Air Act 1993

Enforcement Option	Qualifying Criteria for Option (please note the use of each option will only be considered when one or more of the criteria apply)
No action	• If no breaches of legislation are discovered, or if the officer believes that a complaint or contravention does not warrant investigation or action
Informal action: • Advice • Verbal warning • Written warning • Improvement Notice	• Advice will be provided where allegations of smoke emissions are unsubstantiated • In the first instance we will try and resolve complaints informally • The offence is not serious enough to warrant formal action e.g. a minor technical offence which creates little or no risk of air pollution • An Improvement Notice will be served when smoke emissions (other than initial start-up and refuelling) are observed from a chimney
Formal Action: • Notice of Intent • Final Notice • Financial Penalty	• Following serious or persistent dark smoke emissions or smoke emissions from a chimney in a smoke control area • A Notice of Intent is issued further to the Improvement Notice and follows officer observations of on-going smoke emissions that are not linked to start-up or refuelling • A Final Notice of Intent is served after the appeal period for the Notice of Intent has expired and this informs the level of financial penalty to be imposed (£175-£300 depending on whether 1st, 2nd or 3rd offence
Prosecution following informal action and written warning	• Following first visit and informal warning and witnessing of on-going smoke offences • There has been a cable burning incident which is a direct offence • Obstructing an authorised officer • Actioned in accordance with the Public Interest Test • The person who signs the caution agrees they have committed an offence and accept the caution • If a person refuses to sign a caution they will be prosecuted

Enforcement Options – Contaminated Land, Part 2A Environmental Protection Act 1990

Enforcement Option	Qualifying Criteria for Option (please note the use of each option will only be considered when one or more of the criteria apply)
No action	• If no breaches of legislation are discovered • Following a risk assessment if a contaminant, pathway, receptor linkage is not found to exist • Following a risk assessment if a significant contaminant linkage is not found to exist
Formal action • Part 2A EPA 1990 • Waste management licensing (Part II EPA 1990) • Water Resources Act 1991 • The Environmental Damage (Prevention and Remediation) Regulations 2015 • Environmental Permitting (England and Wales) Regulations, 2016 • The Town and Country Planning Act 1990	• Land determined as contaminated land will be considered for how it should be remediated and a Remediation Notice will be issued • Other legislation can be considered as an alternative to using Part 2A Environmental Protection Act 1990
Informal action (voluntary remediation) agreed in writing	• The land is subject to voluntary remediation or development proposals • It is expected that informal action will achieve compliance
Service of Statutory Remediation Notice	• Land is formally determined as contaminated land, and • The appropriate person will not agree to undertake voluntary remediation, or any other appropriate informal action
Works in default	• Where an appropriate person has not complied with the actions and timescales specified within a Remediation Notice the Council will consider whether to carry out the works itself • Where the Council carries out works itself, it may seek to recover any expenses reasonably incurred from the appropriate person on whom the Remediation Notice was served by serving a Charging Notice
Prosecution	• For non-compliance with a Remediation Notice • Actioned in accordance with the Public Interest Test • The person who signs the caution agrees they have committed an offence and accept the caution. If a person refuses to sign a caution they will be prosecuted