

Appendix A

Economy, Transport and Environment Enforcement Policy

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1. Introduction

This document details the Enforcement Policy of Cambridgeshire County Council's Economy, Transport and Environment Directorate ("**ETE**"). The purpose of enforcement action is to achieve compliance with the relevant legislation (such as consumer protection, fair trading laws and highways regulation) for which Cambridgeshire County Council (the "**Council**") has a responsibility.

ETE is committed to the principles of good enforcement as set out in the Legislative and Regulatory Reform Act 2006, and we have had regard to the associated Regulators' Code¹ in the preparation of this Policy.

ETE is committed to avoiding the imposition of unnecessary regulatory burdens, and to assessing whether similar outcomes could be achieved by less burdensome means.

This Enforcement Policy also accords with the principles of the Human Rights Act 1998, the European Convention on Human Rights, the Freedom of Information Act 2000 and the Regulation of Investigatory Powers Act 2000 and should be read in conjunction with a number of other pieces of legislation and corporate or service area procedures relating to enforcement; these include but are not limited to:

The Criminal Procedure and Investigations Act 1996 (CPIA)
The Police and Criminal Evidence Act 1984 (PACE)

¹ Section 1, [Regulators' Code](#) requires regulators to have mechanisms in place to ensure that their officers act in accordance with their published service standards, including their enforcement policy.

The Regulatory Enforcement and Sanctions Act 2008
Cambridgeshire County Council Complaints Procedure
Highways Act 1980
Countryside and Rights of Way Act 2000

(as amended from time to time)

This Policy is approved by the Highways and Community Infrastructure Committee. The Policy will be owned by the Head of Service for Supporting Businesses and Communities, which incorporates Trading Standards, on behalf of ETE and the Council. It will be reviewed annually. Minor amendments to the Policy will be approved through the relevant delegation of authority.

The Council is committed to ensuring that our website is as accessible to all users as possible. Please see our [Accessibility Statement](#).

You can also view the Council's Customer Service Charter and Standards [online](#).

2.0 What is this Policy for?

The Council's Trading Standards team is part of Supporting Businesses and Communities, and sits within the Economy, Transport and Environment Directorate, (ETE), of Cambridgeshire County Council. The role of Trading Standards is to safeguard the interests of consumers and the county's business community.

The Highways team also sits within ETE and their role is to manage the road network. The Traffic Management Act 2004 (TMA) provides the legal basis for the practical management of highways.

This Policy sets out what everyone can expect when the Council undertakes informal and formal enforcement and inspection activities.

It includes how the Council will deal with non-compliance in relation to those affected by its activities. All officers involved in enforcement activities on behalf of ETE will act in accordance with this Policy.

3.0 When does this policy apply?

- 3.1 This policy covers the enforcement activities of ETE with the exception of our parking enforcement activities which are covered by a separate policy.

Related policies include but are not limited to:

- Supporting Businesses and Communities' Business Advice Policy
http://www.cambridgeshire.gov.uk/info/20074/trading_standards/262/advice_for_businesses
- Supporting Businesses and Communities' Consumer Advice Policy
http://www.cambridgeshire.gov.uk/info/20109/consumer_advice
- Age restricted goods enforcement policy
http://www.cambridgeshire.gov.uk/info/20074/trading_standards/261/inspections_and_enforcement

4.0 **Our approach to enforcement**

ETE is committed to robust and proportionate enforcement practice and this Enforcement Policy reflects current legislation, guidance, best practice and codes of practice.

Within the context of this Policy, “**enforcement**” is defined as including any advice, inspection, action, instruction or warning, caution or prosecution given to a person or organisation who is or is believed to be acting unlawfully.

4.1 **Principles of Good Regulation**

The Legislative and Regulatory Reform Act 2006, Part 2, requires the Council to have regard to the Principles of Good Regulation when exercising a specified regulatory function². These specified regulatory functions include Trading Standards and Highways regulation, Licensing services.

Enforcement and regulation can still be delivered with great customer service and the Council will exercise its regulatory activities in a way which is:

- (i) *Proportionate* – The Council will endeavour to minimise costs of compliance for businesses. Its activities will reflect the harm and impact on victims (both individuals and the wider community) and action taken will relate to the seriousness of the offence, and to previous action taken by the Council or its partners.
- (ii) *Accountable* – The Council's activities will be open to public scrutiny, with clear and accessible policies, and a fair and efficient complaints procedure.
- (iii) *Consistent* – The Council's advice to those it regulates will be robust and reliable and the Council will respect advice provided by others. The Council will carry out its duties in line with the relevant Service Standards and wherever possible it will use its reasonable endeavours to act in similar ways to other local authorities.

² Specified by the Legislative and Regulatory Reform (Regulatory Functions) Order 2007, available at www.legislation.gov.uk

- (iv) *Transparent* – The Council will give advice and information in plain language and will ensure that those it regulates are able to understand what is expected of them and what they can anticipate in return. The Council will make a clear distinction between legal requirements and recommendations on good practice.
- (v) *Targeted* – The Council will focus its resources on higher risk enterprises and criminal activities, reflecting local need and national priorities.

4.2 Regulators' Code

ETE has had regard to the Regulators' Code in the preparation of this Policy. In certain instances the Council may conclude that a provision in the Code is either not relevant or is outweighed by additional considerations. The Council will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

4.3 Human Rights Act 1998

The Council is a public authority for the purposes of the Human Rights Act 1998. It therefore applies the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is had to the right to a fair trial and the right to respect for private and family life, home and correspondence.

4.4 Data Protection Act 1998

Where there is a need for ETE to share enforcement information/intelligence with other agencies, the Council will follow the provisions of the Data Protection Act 1998.

4.5 The Code for Crown Prosecutors

When deciding whether to prosecute, ETE has regard to the provisions of The Code for Crown Prosecutors as issued by the Director of Public Prosecutions.

The Code for Crown Prosecutors is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases. The Code sets out two tests that must be satisfied, commonly referred to as the 'Evidential Test' and the 'Public Interest Test':

- a. *Evidential Test* - is there enough evidence against the defendant?

When deciding whether there is enough evidence to prosecute, ETE will consider the suitability and reliability of all evidential material. ETE must be satisfied any such evidence provides a "realistic prospect of conviction".

- b. *Public Interest Test* - is it in the public interest for the case to be brought to court?

ETE will balance factors for and against prosecution carefully and fairly, considering each case on its merits. The public interest factors that ETE will take into account are detailed under the available enforcement options set out in section 8.0 (How Decisions are made) of this Policy.

4.6 Regulatory Enforcement and Sanctions Act 2008 ('the RES Act')

The Regulatory Enforcement and Sanctions Act 2008, as amended, established the Primary Authority scheme³. The Council will comply with the requirements of the Act when it is considering taking enforcement action against any business or organisation that has a Primary Authority partnership, and will have regard to guidance issued by the Secretary of State in relation to Primary Authority.

4.7 Equal access to our services

The Council has a firm commitment to ensuring full and equal access to all the services that it provides. The Council will ensure:

- the provision of translators for interviews where the interviewee's first language is not English.
- where possible, the carrying out of enforcement visits outside normal office hours when the business concerned operates at those times.

5.0 Dealing with non-compliance

5.1 General principles

Where something is wrong, the Council will in most cases consider first how it can work with individuals, businesses and the community to regularise and put right the problem without enforcement.

Whilst the fundamental responsibilities for complying with legislative requirements fall to the proprietors of businesses themselves, ETE will provide relevant advice and guidance. In doing so ETE will have particular regard to information from legislative guidance notes, and Statutory and Voluntary codes of Practice.

When ETE becomes aware of a non-compliance, it will explain in plain English what the law requires, how that/those laws have been infringed and what measures are needed to become compliant.

In most instances of non-compliance ETE will provide the business or individual concerned with the opportunity for dialogue in relation to advice given, actions required or decisions taken. Where immediate action has been required e.g. to prevent the destruction of evidence, or where there is imminent risk to health and safety, or the environment, the need and reasons

³ The principles of Primary Authority are set out in the Regulatory Enforcement and Sanctions Act 2008 as amended by the Enterprise and Regulatory Reform Act 2013.

for this will be explained at the time, and in many instances reinforced with immediate effect by notice(s). This will be confirmed in writing as soon as practicable, usually within 10 working days.

ETE will take a proportionate approach to enforcement based on relevant factors such as the harm and impact on people, property, animals or the economy caused by the breach and as far as the law allows will take into account the circumstances of the case.

ETE will take a graduated approach to enforcement action in most cases, with the majority of infringements being dealt with through informal action such as advice and guidance or written warning. ETE is committed to dealing firmly with those that deliberately or persistently fail to comply. If non-compliance continues, enforcement action will be escalated to the appropriate formal action and ETE recognise that some crimes/incidents require immediate/robust actions.

When ETE has made a decision about enforcement action it will explain the reasons for those decisions and what those decisions mean in practice.

Where a business has an existing Primary Authority partnership, ETE will ensure that it liaises with that business's Primary Authority to clarify what advice has previously been given. If the business has previously been advised on the particular compliance issue and are following the advice given, ETE will not take enforcement action against that business.

Where an enforcement role is shared with another agency, it is the policy of the Council to undertake joint enforcement activity in order to minimise any unnecessary duplication and delay. Joint working may be undertaken with agencies including the Police, Customs and Excise, DEFRA and Environmental Health departments or any other relevant agency as appropriate. This work will be subject to that agency complying with the underlying principles of this Policy.

There will be instances where ETE becomes aware of criminal offences that have taken place outside its jurisdiction or which fall within the remit of another law enforcement agency. In these cases ETE will make a referral to that agency. Likewise matters may be referred to ETE by other authorities.

The names and trading addresses of traders, who act in ways that represent significant risk of detriment to consumers, particularly the young and vulnerable or the interests of legitimate businesses, may be published following a successful prosecution by the Council.

5.2 Authorised officers

The Council has delegated responsibility for taking operational decisions necessary to discharge its statutory functions that fall within Trading Standards remit (amongst others) to the Executive Director for Economy, Transport and Environment Services. This delegation is set out in Part 3 of the Council's Constitution. The Executive Director for Economy, Transport

and Environment Services has further authorised officers within his/her Directorate to undertake functions which lie within the scope of his/her delegated powers. This Scheme of Authorisation can be viewed under the heading Economy, Transport and Environment Scheme of Authorisation under the Constitution. It is the Council's policy that only officers authorised under this Scheme of Authorisation can undertake enforcement work.

The responsibility for managing investigations and for decisions on enforcement actions sits with the appropriate Supporting Businesses and Communities Lead Officer, or Highway Lead Officer and Enforcement Officer.

Anyone having a duty to enforce the law must ensure that they deal with those subjected to enforcement action courteously, fairly and objectively in line with ETE's Service Standard.

6.0 Conduct of investigations

6.1 The processes for investigating alleged breaches

All investigations will be carried out under the following legislation (as amended from time to time) and in accordance with any associated guidance or codes of practice, in so far as they relate to the Council, these shall include but not be limited to:

- the Police and Criminal Evidence Act 1984
- the Criminal Procedure and Investigations Act 1996
- the Regulation of Investigatory Powers Act 2000
- the Criminal Justice and Police Act 2001
- the Human Rights Act 1998
- Proceeds of Crime Act (POCA) 2002
- Highways Act 1980
- Countryside and Rights of Way Act 2000

These Acts and associated guidance control, amongst other things, how evidence is collected and used and give a range of protections to citizens and potential defendants.

The Council's authorised officers will also comply with the requirements of the particular legislation under which they are acting, and with any associated guidance or codes of practice.

The Council's authorised officers have powers under the pieces of legislation listed in the Council's Scheme of Authorisation referred to in Section 5.2 above.

The Council is committed to keeping alleged offenders and witnesses informed of the progress of investigations

7.0 Enforcement actions

7.1 The range of actions available to the Council

The range of actions that are available to local authorities are set out in legislation.

7.1.1 Informal action

a) Compliance Advice, Guidance and Support

ETE uses compliance advice, guidance and support as a first response in the vast majority of cases where breaches of legislation are identified. Advice is provided to assist individuals and businesses in rectifying breaches as quickly and efficiently as possible, avoiding the need for further enforcement action.

b) Informal Warnings

A warning letter will set out what should be done to rectify the breach and to prevent re-occurrence and will highlight the consequences if the issue is not resolved or is repeated in the future. Such a letter cannot be cited in court as a previous conviction but it may be presented as evidence.

Where ETE has provided advice or guidance it will take a risk-based approach to determine which premises it will re-visit/or contact to ensure that issues have been rectified.

7.1.2 Formal Enforcement Action

Whilst it is hoped that many non-compliances will be dealt with initially by informal action, ETE will take firm and decisive formal enforcement action in the case of continued non-compliance or immediate robust action in matters involving serious (such as fraudulent, unsafe, exploitive, immediate risk to public safety) crime.

a) Voluntary undertakings

ETE may accept voluntary undertakings that breaches will be rectified and/or recurrences prevented. ETE will take any failure to honour voluntary undertakings very seriously and enforcement action is likely to result.

b) Statutory and Formal Notices (including Improvement Notices and Suspension Orders)

In respect of many breaches, ETE has powers to issue statutory notices. These include: 'Stop Notices', 'Prohibition Notices', 'Emergency Prohibition Notices', and 'Improvement Notices'. Such notices are legally binding. Failure to comply with a statutory notice can be a criminal offence and may lead to prosecution and/or, where appropriate, the carrying out of work in default.

A statutory notice will clearly set out what is wrong, the actions which must be taken and the timescale within which they must be taken. It is likely to require that any breach is rectified and/or prevented from recurring. It may also prohibit specified activities until the breach has been rectified and/or safeguards have been put in place to prevent future breaches.

c) Simple Cautions

ETE has the power to issue simple cautions (previously known as 'formal cautions') as an alternative to prosecution for some less serious offences provided there is sufficient evidence to give a realistic prospect of conviction. These can only be issued where a person admits an offence and consents to the simple caution. Where a simple caution is offered and declined, the service is likely to consider prosecution.

A simple caution will appear on the offender's criminal record. It is likely to influence how the Service and others deal with any similar breaches in the future, and may be cited in court if the offender is subsequently prosecuted for a similar offence. If a simple caution is issued to an individual (rather than a corporation) it may have consequences if that individual seeks certain types of employment.

Simple cautions will be used in accordance with Home Office Circular 016/2008 and other relevant guidance.

d) Injunctive Actions, Enforcement Orders etc.

In some circumstances ETE may seek a direction from the court (in the form of an order or an injunction) that a breach is rectified and/or prevented from recurring. The court may also direct that specified activities be suspended until the breach has been rectified and/or safeguards have been put in place to prevent future breaches.

Failure to comply with a court order constitutes contempt of court, a serious offence which may lead to imprisonment.

ETE is required to seek enforcement orders after issuing some enforcement notices, providing the court with an opportunity to confirm the restrictions imposed by the notice. Otherwise, ETE will usually only seek a court order if it has serious concerns about compliance with voluntary undertakings or a notice.

e) Taking animals into possession/banning orders

Under the Animal Welfare Act 2006, if a veterinary surgeon certifies that 'protected animals' are suffering or are likely to suffer if their circumstances do not change, ETE will consider taking them into possession and applying for Orders for re-imburement of expenses incurred and subsequent disposal. In some circumstances we will also consider applying to the court to ban a person(s) from keeping animals.

f) Suspending goods from sale

Where it is necessary to protect the public, the sale of unsafe goods will be suspended using existing legislative powers.

g) Seizure of goods and evidence

Formal action may also include the seizure of goods, documents or other items such as cash where legal power exists and it is proper to exercise it.

h) Prosecution

ETE may prosecute in respect of serious or recurrent breaches, or where other enforcement actions, such as voluntary undertakings or statutory notices have failed to secure compliance. When deciding whether to prosecute ETE has regard to the provisions of The Code for Crown Prosecutors as issued by the Director of Public Prosecutions.

A successful prosecution will result in a criminal record. The court may impose a fine and, in respect of particularly serious breaches, a prison sentence. The court may also order the forfeiture and disposal of non-compliant goods and/or the confiscation of any financial assets deemed to be the proceeds of crime. Prosecution may also lead, in some circumstances, to the disqualification of individuals from acting as company directors or from individuals being subject to prohibited activity orders.

i) Forfeiture Proceedings

Where there is a need to dispose of goods in order to prevent them re-entering the market and a defendant is unlikely to voluntarily surrender items, the authority may apply to a criminal court for a forfeiture order. Trade Marks, for example, allows forfeiture of illegal goods with or without a conviction.

j) Action to recover proceeds of crime.

ETE does not believe that anyone should benefit from their criminal/illegal enterprise/activities. In such cases, ETE will actively consider using the Proceeds of Crime Act 2002 to recover and confiscate any money or assets arising from such activity.

k) Refusal/Suspension/Revocation of Licences

ETE issues a number of licences and permits. It also has a role to play in ensuring that appropriate standards are met in relation to licences issued by other agencies. Most licences include conditions which require the licence holder to take steps to ensure that, for example, a business is properly run. Breach of these conditions may lead to a review of the licence which may result in its revocation or amendment, or immediate enforcement action if deemed to be a safety issue.

When considering future licence applications, ETE may take previous breaches and enforcement action into account.

Where a different licensing authority has issued the licence, subject to the provisions of Data Protection and Human Rights laws, the details of the infringements will be passed to that licensing authority for any action they consider appropriate.

l) Enforcement action in relation to age restricted goods

A sub-policy exists explaining the Council's approach to enforcement in relation to age restricted goods. This can be viewed on our website http://www.cambridgeshire.gov.uk/info/20074/trading_standards/261/inspections_and_enforcement.

m) Fixed Penalty Notices

Fixed Penalty Notices may be issued where there is a specific power or delegated authority to do so and under the following circumstances:

- To provide an effective and visible way to respond to less serious crimes without going to court
- As a response to genuine problems or as part of a wider enforcement strategy
- Where there is enough evidence to progress with a prosecution or alternative action if non payment of a fixed penalty notice follows

8.0 How decisions are made

The action that ETE chooses to take will depend upon the specific nature and circumstances of each case and the response/approach taken by the business or individual.

In making decisions about appropriate sanctions and penalties, ETE will have regard to the principles set out in the Macrory Review, which expect policies to:

- aim to change the behaviour of the offender;
- aim to eliminate any financial gain or benefit from non-compliance;
- be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
- be proportionate to the nature of the offence and the harm caused;
- aim to restore the harm caused by regulatory non-compliance, where appropriate; and,
- aim to deter future non-compliance.

8.1 Explanation of how decisions are communicated to those affected

When ETE has made a decision about enforcement action it will explain its actions to those involved in the process. ETE will include reasons for those decisions and what those decisions mean in practice, including any rights to representation. ETE will aim to respond to any communication, in writing, within 10 working days.

9.0 Review of this policy

9.1 Details of when and how the policy will be reviewed

The policy will be reviewed annually by the Head of Supporting Businesses and Communities, which incorporates Trading Standards, on behalf of the Council. Minor amendments to the policy will be approved through the relevant delegation of authority.

10.0 Comments and complaints

10.1 Details of processes for complaints

If you wish to make a complaint against the service, including a failure to act in accordance with the Regulators' Code or about the conduct of a member of the Council's staff, please view the Council's [Feedback webpage](#) to provide feedback electronically. Alternatively you can write to:

Customer Feedback,
Customer Services,
PO Box 144
St Ives
Cambridgeshire
PE27 9AU

If you wish to make a comment or complaint about this Policy, please contact:

SBC Cambridgeshire County Council
PO Box 450
Great Cambourne
Cambridge
CB23 6ZR