

Annex A – The Policy



Enforcement Policy

1.0 Introduction

This document is the enforcement policy for the City of York Council. It sets out the general principles officers will apply when using formal enforcement action* to achieve compliance with the legislation they enforce and help ensure a consistency of approach. The services it does not apply to are in Appendix 1.

When required, formal enforcement action will be taken against businesses, other organisations, and individuals. Formal enforcement action will be taken to promote and protect the interests of York's residents, visitors and/or businesses and this will be construed in its widest possible terms.

In taking formal enforcement action, the council aims to achieve the following outcomes:

- Support economic growth, especially in local businesses, by ensuring a fair, responsible and competitive trading environment
- Protect the environment for future generations including tackling the threats and impacts of climate change

- Improve quality of life and wellbeing by ensuring clean and safe neighbourhoods
- Help people to live healthier lives by preventing ill health and harm, and promoting public health
- Ensure a safe, healthy and sustainable food chain for the benefits of consumers and the rural economy.
- To improve housing conditions and raise the standard of management in the private rented sector.
- To provide safer, healthier, affordable and warmer homes in the private sector
- To ensure vulnerable children are safe, and children and young people have childhoods in which they enjoy and achieve
- **To safeguard vulnerable adults**
- To achieve compliance with highway regulations for the benefit of all road users and pedestrians enabling safe access to public highways and free flowing traffic
- **To recover non-payment of council tax, business rates, sundry debts including housing benefit overpayment and adult social care and recovery of government grant (revenues)**

This policy helps ensure that, where applicable, officers adhere to the principles of good enforcement set out in the Regulators' Code (2014) and other relevant codes of practice including those concerned with the investigation of offences or the prosecution of offenders.

All formal enforcement activity undertaken under this policy will also have regard to the Equality Act 2010, Human Rights Act 1998 and the European Convention of the Protection of Human Rights and Fundamental Freedoms.

*For the purpose of this policy 'formal enforcement action' includes serving a legal notice e.g. an improvement, suspension, prohibition, fixed penalty or abatement notice, the carrying out of works in default

and remedial action, management orders, consumer law civil penalties and civil penalty notices to letting agents and landlords, the seizure of goods, suspension or revocation of a licence, a 'simple' caution, prosecution or other court action. It also includes the issuing of civil penalty charge notices to any vehicle for road traffic contraventions.

2.0 Supporting compliance

We will carry out our activities in a way that encourages and promotes compliance, and we recognise that formal enforcement action is only one of the tools available in this regard.

We want to help the businesses we regulate comply and grow, remembering that it is important to maintain a level playing field for all businesses to thrive.

We will consider the impact our actions and regulatory activities may have including consideration of costs, effectiveness and perceptions of fairness. We will only adopt a particular approach if the benefits justify the costs and in doing so will endeavour to try to keep any burdens to a minimum. We will consider how we can best improve confidence in compliance and provide certainty whilst ensuring compliance with equalities legislation.

References to costs and benefits include economic, social and environmental costs and benefits.

We will ensure officers have the necessary knowledge and skills to support compliance.

3.0 Engagement

We have taken on board the views of residents, businesses, partner organisations and key stakeholders including other enforcement agencies as well as any other relevant considerations in the development of this policy.

4.0 Advice and Guidance

We recognise that prevention is better than cure and will actively work to advise on and assist with compliance. We will provide details of how to obtain appropriate advice and guidance on our website york.gov.uk.

We will ensure that:

- Legal requirements are made available and communicated on the web site and any specific cases are dealt with within the legislative timescales officers work to.
- The information we provide will be in clear, concise and accessible language.
- Advice will be confirmed in writing where necessary.
- We will clearly distinguish between legal requirements and guidance aimed at improvements above minimum standards.
- We will signpost towards additional support services where appropriate.

Please note: there may be a fee payable for our advice. Where this is the case you will be informed and provided with details of the charge or an estimate if the exact fee is not known.

5.0 Inspections and visits

All inspections and visits to ensure compliance will be undertaken after consideration of the risk posed by failing to comply with the law, where a visit has been requested or where intelligence/information suggests that a visit is appropriate for example to bring about a swift resolution to an issue.

- Where we carry out inspections/visits (**other than when enforcing a debt**) we will give written feedback on what the officer has found; this will include positive feedback to encourage and reinforce good practice.
- Where practicable we will co-ordinate inspections/visits with other regulators, particularly to minimise the burden on businesses and other organisations.
- Random inspection will be undertaken where government guidelines/ policies or a condition of a licence requires us to do so. A small amount of random inspections may also be undertaken to

test our risk assessments or the effectiveness of any action we have taken or public awareness campaigns.

- Our findings and reports may be released into the public domain in response to Freedom of Information or Environmental Information requests.

6.0 Non-compliance

We will carry out all of our enforcement duties in a fair, equitable and consistent manner. Whilst officers (**including enforcement contractors**) exercise judgement in individual cases, we will have arrangements in place to promote consistency including liaison with other agencies and authorities.

Where non-compliance is identified we will clearly explain what the non-compliance is and the action required giving the reason(s). There will be an opportunity for discussion. However, this will not apply if immediate action is required e.g. to prevent the destruction/loss of evidence or there is an imminent risk to the environment, public health or health and safety. Any discussion may also be in the form of an interview under caution if a prosecution is being considered.

We will provide the opportunity for further dialogue about the proportionality or consistency of our action upon request.

Please note that the opportunity for discussion and dialogue described in the paragraphs above will not apply in the case of low level fixed penalties and similar sanctions such as, but not limited to, those issued for illegal parking (Penalty Charge Notices), school absences, **littering**, smoking in public places and anti-idling enforcement which are designed to facilitate a swift resolution to a matter.

We will inform parties when matters are closed, **apart from debt recovery cases where final payment will conclude the matter.**

7.0 Formal enforcement action

We recognise that most businesses, other organisations and individuals wish to comply with the law and we will take a staged approach to enforcement with advice and warnings generally given in the first instance. However, firm action – including formal enforcement action - will be taken in appropriate circumstances.

Examples of situations that may result in formal enforcement action, even in the first instance are included in Appendix 2.

Formal enforcement action will also be considered where previous advice or warnings have been ignored or in other situations where the Director of Governance (in discussion with the relevant officer) considers it appropriate. This will include, but is not limited to, those who appear to be deliberately breaking the law or acting irresponsibly and it is in the public interest to take such an approach.

Where formal enforcement action is necessary, we will consider the most appropriate course of action (from the range of sanctions and penalties available) with the intention of: -

- Aiming to change the behaviour of the offender
- Aiming to eliminate any financial gain or benefit for non-compliance
- Being responsive and considering what is appropriate for the particular offender and issue involved, including punishment and the public stigma that may be associated with criminal convictions
- Being proportionate to the nature of the offence and harm caused
- Aiming to restore the harm caused by non-compliance
- Aiming to **prevent** future non-compliance.

When formal enforcement action is taken:

- Where there are rights of appeal against formal enforcement action, notification of the appeal mechanism will be clearly set out in writing at the time the action is taken.
- Clear reasons will be given for any formal enforcement action taken

If the formal enforcement action being considered is a prosecution we will also consider a number of additional factors in line with the Code for Crown Prosecutors. We will also take into consideration and any other nationally recognised guidance such as the Enforcement Management

Model published by the Health and Safety Executive. These factors, not an exhaustive list, may include the following:

- The seriousness of the alleged offence
- The history of the party concerned
- The willingness of the business or the individual to prevent a recurrence of the problem and co-operate with officers
- Whether it is in the public interest to prosecute
- The realistic prospect of conviction
- Whether any other action (including other means of formal enforcement action) would be more appropriate or effective
- The views of any complainant and other persons with an interest in prosecution.

These factors are NOT listed in order of significance. The rating of the various factors will vary with each situation under consideration.

When formal enforcement action is being considered for an acquisitive crime i.e. the acquiring of assets (including money) from offences such as fraud or intellectual property crime, we will undertake a financial investigation into the circumstances of the case. In serious cases this may result in the seizure of a suspect's cash and legal proceedings for money laundering and confiscation of assets under the provisions of the Proceeds of Crime Act 2002.

8.0 Activity based on risk

We will allocate resources, including our officers, to where they will be most effective in addressing the risk concerned. The greater the impact of non-compliance, the greater the risk will be. In relation to businesses, previous history of compliance, external validation of procedures and other publicly available information and data will be used to help assess the risk of non-compliance.

9.0 Sharing information

We will only ask for information that is necessary after considering the cost and benefit to obtaining the information. Where possible we will

share this information with our partners (taking account of data protection) to prevent the need for providing the information more than once. Details of our privacy policies including who we share information with is on our website york.gov.uk

10.0 Transparency

- We will provide details of our service standards on our website york.gov.uk. This includes how we can be contacted, any fees and charges that apply and links to this enforcement policy.
- We provide opportunities for feedback on our service and make the results publicly available
- Officers will be courteous, fair and efficient at all times, and will identify themselves by name or officer identification and, where appropriate, show their identity card.
- Any complaints about the way you have been treated will follow the City of York Council's complaints procedure. A copy of the complaints procedure can be obtained from our website at www.york.gov.uk

11.0 Application of our enforcement policy

All officers will have regard to this document when making enforcement decisions.

Any departure from this policy must be exceptional, capable of justification and be fully considered by the head of service before a final decision is taken. This proviso shall not apply where a risk of injury or to health is likely to occur due to a delay in any decision being made. In cases of emergency or where exceptional circumstances prevail, the chief operating officer may suspend any part of this policy where it is necessary to achieve the effective running of the service and/or where there is a risk of injury or to health of employees or any members of the public.

12.0 Review

There will be an annual review of the action taken under this policy. This document will also be subject to review as and when required.

Improvements will be made if there are any changes in legislation or in local needs.

If you have any comments please contact the Head of Legal Services 01904 551550 or by writing to City of York Council, West Offices, Station Rise, York, YO1 6GA or email to ycc@york.gov.uk

This information can be provided in your own language.

我們也用您們的語言提供這個信息 (Cantonese)

এই তথ্য আপনার নিজের ভাষায় দেয়া যেতে পারে। (Bengali)

Ta informacja może być dostarczona w twoim własnym języku. (Polish)

Bu bilgiyi kendi dilinizde almanız mümkündür. (Turkish)

یہ معلومات آپ کی اپنی زبان (بولی) میں بھی مہیا کی جاسکتی ہیں۔ (Urdu)

 (01904) 551550

Appendix 1

This enforcement policy does not apply to cases involving:

- Fraud against the council – Any fraud committed against the council is covered by the council's Counter Fraud and Corruption Policy
- National Trading Standards

Appendix 2

Examples of situations in which formal action may be taken, even in the first instance:

Animals

Cruelty to animals

Failing to meet licensing obligations

Dog attacks

Failing to comply with requirements relating to farming and livestock

Children and education

Children persistently or severely absent from education

Unauthorised leave of absence in term time including for family holidays or trips overseas

Failing to licence children working at a business

Illegal sales of age restricted products

Environmental Health

Failing to take steps to ensure food safety

Non-compliance with warnings about food allergens

Failing to meet health and safety obligations

Disease outbreaks

Smoking in public places

Environmental Protection

Noise and other nuisance such as smoke and odours

Clean air offences such as dark smoke, cable burning and smoke control breaches.

Failing to have appropriate pollution prevention and control measures in place

Unnecessary vehicle idling

Highways

Failing to comply with pavement café licence conditions
A-boards obstructing the highway
Failing to manage street works
Failing to keep public rights of way accessible
Blue badge and parking permit fraud
Illegal parking
Illegal use of bus lanes and mandatory cycle lanes
Moving traffic enforcement

Housing

Poor health and safety in private rented homes
Where the council has a duty to serve a notice or take specified action to meet minimum legal requirements/actionable hazards
Licensing evasion
Illegal evictions
Failing to meet minimum energy standards in private rented homes
Non-compliance with laws relating to tenants fees and/or failing to belong to a redress scheme
Long term empty properties

Licensing

Unlicensed licensable or regulated activities
Failing to comply with conditions relating to the sale of alcohol
Illegal street trading
Failure to run events safely

Neighbourhood Enforcement

Unauthorised traveller encampments
Fly tipping
Littering and dog fouling offences
Street urination

Planning

Works and alterations to, and the demolition of listed buildings
Changes of use including to houses in multiple occupation
Non-compliance with planning conditions and approved plans
Felling works to trees in a conservation area or protected by a tree preservation order
Harm to residential amenity through noise and disturbance
On-going development

Taxis

Unlicensed drivers

Unsafe taxis

Drivers and Operators who fail to comply with the required standards

Illegal plying for hire

Trading Standards and Consumer Protection

Fraudulent, aggressive or otherwise unfair trading practices targeting consumers or businesses

Scams or otherwise cheating consumers at home

Supply of unroadworthy vehicles

Sale of cheap and illegal tobacco, alcohol and vapes

Supply of counterfeit goods and other intellectual property crime

Supplying products that fail to meet safety standards

Version control: Final draft for Executive approval
