

EPPING FOREST DISTRICT COUNCIL

Corporate Enforcement Policy

1. Introduction and Objective

1.1 Epping Forest District Council (“we”, “us” or “our”) has a very wide range of duties and responsibilities, many of which involve enforcing Acts of Parliament and regulations. Some of these responsibilities are well known, such as food safety, planning stray dogs, off-street car parking and littering. But there are other areas which may not be so obvious but also constitute enforcement. Examples of these include debt collection, rent arrears, repossession of property and bailiff action.

1.2 In undertaking these enforcement duties we will try to help people comply with the law through a combination of advice, education and where necessary legal action. In so doing we seek to be fair and open. We generally seek to resolve breaches of the law without recourse to the Courts unless there are issues relating to public safety or other factors which require us to take immediate legal action.

1.3 In this policy, the following terms are used:

enforcement officers: Council officers whose duties include enforcement of any type. These officers include people employed by contractors who are working for us, for example car park wardens.

duty holder(s): People who have a legal requirement to behave in a certain way including employers, licence holders and members of the public.

2. General Approach

2.1 In enforcing the law, enforcement officers must use considerable discretion when dealing with individuals and businesses, most of whom are anxious and willing to comply with the law. A growing number also realise the economic benefits of complying properly, for example, in reducing absence caused by occupational accidents or increasing sales due to improved quality standards.

2.2 Our enforcement officers will try to help businesses and individuals by giving guidance. Where possible we will also act as arbiters in disputes (for example, complaints of nuisance) and will try to negotiate a solution which is acceptable to all parties. However, there will be circumstances where we have a duty to take appropriate action.

2.3 If enforcement officers find evidence that the law is being broken, they can respond in various ways. They may:

instruct or warn by letter;

issue formal notices requiring immediately compliance or compliance within a certain specified time; or

prosecute.

Failure to remedy the breach following warning may lead to the next more formal stage. Notices can be effective in requiring employers and individuals to remedy unsatisfactory situations without delay, which reduces the costs and uncertainty associated with legal proceedings. However, if the circumstances warrant, or if the public good demands it, we may prosecute without prior warning or discussion. These circumstances only rarely arise.

- 2.4 Sometimes the law is prescriptive and sets out in detail what needs to be done. Prescriptive law limits the discretion of the duty holder and the Council. However, much of modern law sets out what must be achieved but does not set out how it is to be achieved. Guidance on how to comply with the law is often set out in codes of practice. There is also a wide variety of books and publications setting out good practice. Codes and guidance material are not necessarily appropriate for every case. In considering whether good practice has been adopted, officers will take relevant codes and guidance into account, and use their professional judgement as to the extent of the breaches of law and the effort that has been applied to remedy them.

3. Rights of Entry to Premises

- 3.1 Many of our enforcement officers have rights of entry to premises, including people's private homes. The powers provided by the law vary, but in most case allow entry to commercial and business premises without prior notice. Entry to private premises generally requires prior notice or consent. All enforcement officers carry identity cards showing their name and position, and whether they have powers of entry.
- 3.2 A person is within their rights to refuse an enforcement officer entry, unless that identity card is presented and the reason for the entry is explained. This safeguard is particularly important in respect of private premises, and even more so for the vulnerable and elderly. We have a "Campaign against Bogus Callers" scheme where any enforcement officer will be pleased to allow a person to check with the Council to make sure the officer is genuine.
- 3.3 In most cases, these powers will not need to be exercised because the reason for an officer's visit is understood, and consent is given for the officer to enter, for example, to carry out a safety inspection. However, a person who chooses to prevent an enforcement officer from carrying out their lawful duties may be committing an offence, which is punishable in the Courts. In serious instances, enforcement officers may have the power to enter premises by force, and to seize and take away equipment, papers or other material. These instances are rare.

4. Principles of Enforcement

- 4.1 The Council's enforcement officers will adhere to the principles laid down by the Cabinet Office "Enforcement Concordat", which is attached to this policy statement as Appendix 1. This Concordat was officially adopted by the Council in May 1998. It sets out how our enforcement officers should act, and covers the following areas:

- standards (knowing what to expect from the Council and consultation on services);
- openness (providing information in a clear way);
- helpfulness (assisting people to comply with the law, not just prosecuting breaches);
- dealing with complaints (having an accessible complaints and appeals procedure (see part 9.0));
- proportionality (using the law in a way which is appropriate to the degree of risk); and
- consistency (being fair, treating similar businesses and all people the same).

4.2 These principles will be applied to local enforcement activities. They are explained in more detail on pages 2 and 3 of the Concordat. Each service area will establish standards and procedures for the areas of enforcement for which it is responsible. There are however, three areas which require additional comment and these are set out below.

(a) Some duties are specific and mandatory, whilst others require a duty holder to act “so far as is reasonably practicable”. In general, proportionality and fairness are built into the legal system through the principle of complying with the law “so far as is reasonably practicable”. This means that a duty holder should have done everything possible to comply with the law. Deciding what is reasonably practicable involves the exercise of judgement by duty holders and discretion by enforcement officers. When a duty holder and enforcement officer cannot agree, the final decision on what is reasonably practicable in a particular circumstance may be decided through the Council’s complaints or appeals procedure (see part 9.0), or ultimately by the Courts.

(b) When a matter of what is reasonable is referred to the Council, we will always take account of costs as well as the nature of the offence. Where relevant good practice in particular cases is not clearly established, the Council will assess the significance of the offence to determine what actions need to be taken. Some offences may be so serious that they cannot be permitted irrespective of the economic consequences. At the other extreme, some offences may be so trivial that it is not worth spending more to deal with them.

(c) Consistency of approach does not mean doing everything in the same way. It means taking a similar approach in similar circumstances to achieve a similar result. The Council recognises that achieving consistency is not a simple matter. The decision on enforcement action is a matter of professional judgement and discretion must be available and properly exercised. The Council will ensure that arrangements are in place to promote consistency by enforcement officers through:

liaison with other enforcing authorities;

applying guidance provided by national bodies and Central Government; and

the proper and effective training and supervision of enforcing officers.

5. Prosecution

- 5.1 We normally try to resolve an enforcement issue without resorting to legal action through the Courts. However, although we have our own appeals and complaints procedures (see part 9.0), prosecution or recourse to alternative sanctions may be commenced, with or without prior warning, where circumstances required it.
- 5.2 Any decision to prosecute will take account of criteria set down in the code for Crown Prosecutors and will include the following factors:
- (a) The seriousness of the alleged offence:
 - the risk or harm to the general public;
 - failure to comply with a statutory or other legal notice served for a significant breach of legislation; and
 - disregard of the law for financial reward
 - (b) the previous history of the duty holder concerned:
 - history of similar offences;
 - failure to respond positively to past warnings; and
 - failure to comply with statutory or other legal notices.
 - (c) Whether the law states time constraints for formal action to be initiated (even though such action may then be temporarily suspended).
 - (d) Any explanation offered by the duty holder including any offer of reparation.
 - (e) The probable public benefit of a prosecution, the importance of the case or whether some other legal action would be more appropriate or effective.
 - (f) Whether the evidence provides a realistic prospect of conviction.
 - (g) The likelihood of the defendant being able to establish a defence.
 - (h) The willingness of the offender to prevent a recurrence of the problem.
 - (i) The effectiveness of important witnesses and their willingness to participate in the legal process.
 - (j) The views and opinions of the person offended against.
- 5.3 When formal enforcement action is necessary, the duty holder should be held to account for it. When several duty holders share a responsibility, we will take action against all those who can be regarded as in breach of the law, unless circumstances dictate otherwise.

6. Formal Cautions

- 6.1 A formal caution is a process we can use instead of proceeding with a case in a Court of law. They are intended to be used for the less serious offences, where a previous offence has not been committed or where there would be no particular benefit to the public in our taking expensive legal action.

- 6.2 A formal caution should not be viewed as an easy option for the duty holder concerned. For a formal caution to be issued, the duty holder has to admit the offence (this is the same as pleading guilty in a Court of law). A formal caution remains on someone's record in the same way as a conviction in Court. Therefore, in any future Court case, a formal caution can be put forward as a previous conviction. The benefit of a formal caution is that there is no appearance in Court, and the likelihood of adverse publicity is significantly reduced.
- 6.3 We will use the process of formal caution strictly in accordance with Home Office Circular 18/1994 "The Cautioning of Offenders", which requires a caution to be considered only in the following circumstances:
- (1) there must be evidence of the offender's guilt sufficient to give a realistic prospect of conviction;
 - (2) the offender must admit the offence; and
 - (3) the offender (or, in the case of a juvenile, his parent or guardian) must understand the significance of a caution and give informed consent to being cautioned.
- 6.4 Because the use of the formal caution procedure carries with it the same burdens as going to Court, the same basic rules as set out in 5.2 apply. It is important to emphasise that a caution is part of a person's criminal record and it may be cited in future cases. It is also particularly important that where there is a "victim", they are consulted on the appropriateness of a formal caution rather than a prosecution in a Court of law.
- 6.5 Each case will be considered on its merits, but where an offer of a formal caution is rejected by the offender, a full Court hearing will be pursued.
- 6.6 Under no circumstances shall the formal caution process be seen as or used as an alternative to a full Court hearing on the grounds of cost or potential cost alone.

7. Death

- 7.1 If there has been a breach of the law leading to a death, we will consider whether the circumstances of the case might justify a charge of manslaughter. We will liaise with the Police Service, the Coroner and the Crown Prosecution Service (CPS) and if evidence is found suggesting manslaughter, we will pass on all available evidence to them. If the Police or the CPS decide not to pursue a manslaughter case, we will consider our own prosecution under legislation relevant to the breach of law concerned.

8. Offences against Council employees

- 8.1 Because of the nature of the work carried out by our enforcement officers, there are occasions when they can become the victims of physical assault. We have a policy of protecting our officers when they carry out their duties. In the event of an assault we will either:
- pass all the available evidence to the Police and Crown Prosecution Service (CPS), with a request that proceedings be taken in Court; or

- where the Police or CPS are unwilling (for whatever reason) to pursue criminal proceedings, provide reasonable financial support to officers to enable them to pursue the matter privately, should they wish to do so.

8.2 There are no circumstances where physical assault upon a Council officer is acceptable.

9. The Council's complaints and appeals procedures

9.1 This policy document refers to the Council's complaints and appeals procedures. These are two different procedures. The complaints procedure exists to enable a person dissatisfied with the Council's service to have that matter investigated. There is a leaflet available to the public which explains simply and clearly how the process works. It is available from all Council officers and information points, and public libraries.

9.2 The appeals process applies to legal processes, and operates in a way similar to a Court of Law, although it has no such status. Matters dealt with by appeal include refusal to licence premises or vehicles, housing benefit determinations and decisions not to give a discretionary house renovation grant.

9.3 The appeals procedure also includes a decision to serve formal notices relating to food safety, if a duty holder requests a review of the enforcement officer's decision to take action against him or her. In each case the person or duty holder will receive details of how the appeals process works when that action is considered.

9.4 These appeals procedures do not in any way prevent a person who remains unhappy with the action of the Council from appealing to or making some other application to a Court of Law in respect of the matter under consideration.