

ENVIRONMENT ENFORCEMENT POLICY

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1. INTRODUCTION

Eastleigh Borough Council (the Council) has duties and responsibilities delegated to it by Central Government. Some of the duties involve enforcement of a wide variety of laws designed to protect the health and wellbeing of the population of the Borough and the environment in which they work and live. To this end the Council has produced an overarching [enforcement strategy](#) for all aspect of this work . This document should be referred to when reading this policy.

The Council recognises the need for effective and timely enforcement of legislation and also recognises the effects of enforcement action on individuals and businesses. In order to ensure that enforcement action is proportionate, consistent, transparent and targeted the Council has become a signatory of the Enforcement Concordat which details the Principles of Good Enforcement.

This policy outlines what the Council mean by 'environmental crime' and the broad approach we will take in order to minimise the detrimental effect of environmental crime on residents, visitors and persons who work in the Borough.

This policy does not define detailed procedures of how we will deal with individual incidents of environmental crime.

The Council fully acknowledges and endorses the rights of individuals and will ensure that all enforcement action occurs in strict accordance with the Police and Criminal Evidence Act 1984; the Criminal Procedures and Investigations Act 1996; the Human Rights Act 1998; the Regulation of Investigatory Powers Act 2000 and its amendments; the Equality Act 2010; the Protection of Freedoms Act 2012 and other relevant legislation and guidance.

Where there is specific guidance on enforcement action, for example, statutory guidance or other relevant guidance and codes of practice issued by professional organisations and bodies, this will be followed, unless there are specific Council policies, which would achieve at least equivalent standards.

The Council recognises that some individuals may have specific difficulties and have different needs in terms of accessing the service. This will be taken into account so as to ensure that the legislation is enforced fairly. Interpreters will be used where the stakeholder has difficulty in understanding English and help will be provided for people with impaired hearing, vision or any other impairment.

Enforcement action taken against an individual, business or other duty holder will be consistent with the Council's commitment to equality and diversity. When making a decision to take enforcement action we aim to ensure that there is no discrimination against an individual regardless of race, gender, disability, age, religious belief or sexual orientation.

All Authorised Officers will abide by this policy. Any departure from this policy must be justified and fully considered by senior management before the decision is taken.

2. PURPOSE OF ENFORCEMENT

The purpose of enforcement is to ensure that preventative or remedial action is taken to protect health and the environment by securing compliance with the regulatory system. Whilst the Council seeks to ensure full voluntary compliance with relevant legislative requirements whenever possible, it will not hesitate to use its enforcement powers if necessary.

The Council may utilise social media and other publications in order to advertise positive outcomes from Environmental Enforcement. Publicity around this form of enforcement may also take place in order to support behavioural change campaigns.

3. DEFINITION OF ENVIRONMENTAL CRIME

Environmental crime includes all offences either as defined in legislation or developed under common law that relate to the environment. The environment is defined for the purposes of this policy as the surroundings in which we live. Section 1 of the Environmental Protection Act 1990 defines the environment as 'all, or any, of the following media, namely the air, water, and land'.

The Council has the power to take enforcement action against persons that commit a variety of environmental crimes. The following are considered to be the core offences upon which action will be taken:

- Pest control
- Odour
- Drainage
- Noise
- Air Pollution
- Fly-tipping
- Contaminated Land
- Dog fouling
- Accumulations on private land
- Light
- Filthy and verminous premises
- Private water supplies
- Duty of care offences
- Littering
- Abandoned vehicles

This list is not exhaustive and represents the most common offences. We will always seek to take the appropriate action for these offences using a wide range of enforcement actions as prescribed by legislation.

4. ENFORCEMENT PRINCIPLES

This policy provides a framework to aid enforcement officers in deciding what form of enforcement is the most appropriate. Following these guidelines helps to maintain a consistent, proportionate and balanced approach to enforcement.

- **Proportionality** – Any action that is taken will relate to the seriousness of the breach. Officers will consider the full range of powers available to them as outlined below.
- **Consistency** – Officers act in a similar way when faced with similar circumstances. The Council will also work with other services and Authorities to ensure that consistency is maintained at a local and national level as far as possible. This does not imply uniformity; rather a full and proper consideration of all the circumstances of a case, guided by the Council's adopted policies and priorities, to establish what reasonable and adequate requirements will remedy the breach.
- **Transparency** – The Council will try to help people understand what the law requires of them and make clear what needs to be done to achieve compliance. The Council will also make clear what people should do if they are not happy about any action taken or a decision not to take action. The Council will also provide transparency and clarity on courses of action that will be undertaken.
- **Targeting** – Our enforcement efforts will be directed against those whose activities pose the most serious risks or create the most danger to the public interest and those who have a history of non-compliance.

5. HOW WE INVESTIGATE

The Council operates a complaints-based service for the majority of environmental issues. In order to take enforcement action there needs to be sufficient supporting evidence to prove that there is a breach of legislation upon which enforcement action can be taken. In relation to anonymous complaints or cases where there is no independent witness, corroborating independent evidence or evidence exists that undermines a case the Council will take a view as to whether they can take any further action or whether to retain the details purely for intelligence purposes.

The identity of reporters will therefore be treated as confidential during the course of investigations, although reporters may be called upon to give evidence in matters brought before the courts. All customer data will be stored in accordance with the Data Protection Act 1998.

The source of the complaint will generally be notified of the complaint by the investigating officer at the beginning of the investigation. The exceptions to this are:

- Where following receipt of the complaint, initial evidence gathering is carried out to assess the validity/currency of the complaint (usually by Case Management Officers). Any evidence gathered will need to comply with the requirements below. If assessed as valid/current the source will be notified.

- Where immediate action is required in response to serious/imminent risk.
- Where notifying the source would impede the investigation (but see below).

Where the Council undertakes to gather information covertly they will have regard to the procedures and protocols laid down within the Regulatory Investigation Powers Act 2000 (RIPA) as applicable. The Council has a corporate application and authorisation process for the use of these specific methods which is monitored by senior officers.

During an investigation the type of evidence or intelligence gathered can be wide ranging and may include one or more of the following:

- Photographs
- Computer Records and open source investigations including information from social media websites
- Communications data
- CCTV images including body camera footage
- Paper Records
- Samples (food, water, environmental, counterfeit goods)
- Equipment
- Plans or sketches made at the scene
- Noise recording records
- Invoices
- Witness Statements
- Expert reports
- Forensics (including forensic examination of electronic devices)
- Information from other agencies such as those listed in section 11

This list is not exhaustive and will depend upon the circumstances of the investigation. Evidence may be retained indefinitely and in certain circumstances the Council may seek to destroy equipment and items that has been seized as part of an investigation, for example where there is a potential risk to health.

In gathering evidence, the Council may undertake recorded investigative interviews. These are carried out in accordance with the Police and Criminal Evidence Act 1984 and associated Codes of Practice and seek to provide an individual or business with the opportunity to provide their version of events as part of an ongoing investigation.

All investigations will be carried out lawfully having regard to the following legislation and in accordance with any associated guidance or codes of practice, in so far as they relate to the Council:

- Police and Criminal Evidence Act 1984
- Criminal Procedure and Investigations Act 1996

- Criminal Justice and Police Act 2001
- Human Rights Act 1998

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

Decisions on whether to take action will be made at the earliest possible opportunity following conclusion of officer investigations in accordance with the criteria laid down in this policy. It will however be necessary for investigations to be prioritised taking account of staff and financial resources. Therefore, High Priority will be given to the Council's statutory obligations, strategic priorities and cases presenting a significant risk of harm to health or pollution of the environment. Low Priority will be assigned to non-statutory obligations or those cases where there is no imminent risk to public health.

6. INTERVENTIONS AND ENFORCEMENT

In making any decision on enforcement, officers will consider the following criteria:

- the seriousness of the offence
- the offender's past history
- consequences of non-compliance
- the known or likely public benefit of the chosen enforcement action
- the willingness of the offender to prevent a recurrence and in the case of a business, the confidence in management
- the likely ability of any witnesses to give evidence and their willingness to cooperate
- the Crown Prosecution Service's Code of Practice for Crown Prosecutors

Before proceeding with any action officers shall consider if there is a shared or complementary enforcement role with other teams or agencies, e.g. Planning, Licensing, Police, Environment Agency, Highways Agency, Social Landlords, and will liaise with that team/agency.

After considering all relevant information one or more of the following courses of action shall be taken:

- **No action** – where no problems are witnessed or there is insufficient evidence to proceed.
- **Informal Action**, including:
 - Verbal advice. To be given where the offender shows an understanding and willingness to remedy contraventions of a minor nature.
 - Written advice. To be used where there is no imminent risk to health and the officer believes the offender will co-operate in remedying the offence. Written advice may also be given where it is felt necessary for the offender to consider their liabilities under law.

Informal action is appropriate where;

- the act or omission is trivial in nature and can be simply remedied.
- confidence in the individual/business management is high
- consequences of non-compliance will not pose a significant risk to health.
- there is insufficient evidence for formal action at the time (although formal action may follow at a later date).

- **Community Protection Warning/Notice**

A Community Protection Warning/Notice (CPW/N) can be used to stop anti-social behaviour – it might include graffiti, rubbish, or general noise which negatively affects the community's quality of life. 'Quality of Life' can be assessed by considering the characteristics of the area without the behaviour. It can be used to deal with particular ongoing problems or issues and can be used on individuals aged 16 or over, businesses or organisations.

A CPN can be issued once an officer is satisfied, on reasonable grounds, that the conduct of the individual, business or organisation:

- Is having a detrimental effect on the quality of life of those in the locality
- Is persistent or continuing in nature; and
- Is unreasonable.

AND

- A CPW has already been served.

If a breach of the Community Protection Notice is notified to the investigating officer, they should consider what action should be taken from a range of options available. At this stage it is important to involve all relevant agencies and to consider the wishes of the person or persons being impacted by the behaviour. Consideration should then be given to the following:

- Fixed Penalty Notice Procedure
- Prosecution (On conviction to include Remedial order or Forfeiture order)
- Remedial Action

- **Fixed penalty notice (FPN)**

This option can only be used for certain offences, e.g. littering and failing to remove faeces after a dog has fouled. This option gives the offender the opportunity to discharge liability for the offence by payment of a specified amount. FPNs must only be issued where there is sufficient evidence to prosecute. If the FPN is not paid within a specified time the case should proceed to prosecution.

- **Statutory notice/Abatement Notice**

To be issued where:

- there has been or is a serious breach of the law or;
- there is a serious risk to health or the environment or;

- the Council has a statutory duty to serve notice or;
- an informal approach by the Council has not been successful.

Generally if a notice is being served there is significant evidence to warrant it. Where we believe that there is an imminent or serious risk to health, safety or the environment, or where the law requires it, a notice will be served immediately. In other circumstances people and businesses will be given an opportunity to understand and discuss the justification for the notice and whether alternatives are available.

When drafting notices, realistic time limits shall be imposed and the case officer shall, where possible and appropriate, discuss these with the recipient. The recipient should be advised that alternative methods of compliance should be put in writing along with requests for extension of time limits.

Where we decide to take immediate formal action by the service of a Statutory Notice or Abatement Notice we will provide a written explanation of why such action was required at the time or within five working days from the date of taking such action.

Failure to comply with statutory notices will usually lead to legal proceedings and/or carrying out the works specified in the notice in the recipient's default.

Only officers with the appropriate delegated authority are able to sign any formal notices.

- **Seizure**

- Noise equipment

Where a noise abatement notice served under the Environmental Protection Act 1990 is persistently breached, officers may enter a property to seize noise making equipment to abate the nuisance and/or prevent further recurrence.

- Vehicles

Where a person is convicted for fly-tipping under Section 33 of the Environmental Protection Act 1990 the court can order the seizure of any vehicles involved in the offence. The court can also make an order depriving the owner of rights in any vehicle used in the commission of the offence and vesting these in the Environment Agency or a waste collection authority. The Control of Pollution (Amendment) Act 1989 makes it a criminal offence for a person who is not a registered carrier to transport controlled waste to or from any place in Great Britain. It also provides under, The Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991 for the seizure and disposal of vehicles used for illegal waste disposal.

- **Simple Caution (See [guidance](#) issued from the Ministry of Justice).**

Cautions should only be issued when

- there is enough evidence to prosecute

- the offender admits the offence
- the offender understands the significance of, and is willing to accept, the caution

If the offender refuses a simple caution the case should proceed to prosecution.

Any cases where it is felt a simple caution is warranted, must be discussed with the Executive Head of Environment or Neighbourhood in conjunction with Legal Services

- **Works in default**

Under certain pieces of legislation the Council is empowered to carry out works in default and recover the costs. Works in default may be carried out where:

- a notice has not been complied with within the specified time
- there is no prospect of the person responsible carrying out the work, e.g. the person is absent or infirm
- speedy abatement is required, e.g. a misfiring burglar alarm
- the circumstances are such that works in default are a more appropriate or effective remedy than prosecution
- the problem persists after prosecution.

- **Prosecution**

When considering prosecution officers must follow the guidance in the [Code of Practice for Crown Prosecutors](#).

Prosecution may be initiated when one or more of the following are met:

- there is a history of similar offences and/or written warnings have been ignored
- non-compliance with a statutory notice
- failure to pay a fixed penalty notice
- refusal to accept a simple caution
- serious breach of the law leading to a risk to the health of residents and/or the environment
- there is enough admissible and reliable evidence to show an offence has been committed by an identifiable individual/business

Any cases where it is felt a prosecution is warranted, must be discussed with the Executive Head of Environment or Neighbourhood in conjunction with Legal Services. On conviction we will seek to recover the costs that we have incurred in bringing the prosecution.

- **Injunction**

On rare occasions action under the relevant legislation may be considered ineffective, e.g. where previous prosecution has not resulted in improvement or continued wilful breaches of legislation. Any cases where it is felt an injunction is warranted must be discussed with the Executive Head of Environment or Neighbourhood and Legal Services.

- **Warrants**

Should any Authorised Officer be unreasonably refused access to a property and has strong grounds to believe that an illegal activity is taking place, or it is believed that an activity would temporarily cease and would continue at a later date, an application for a warrant may be necessary.

Although Authorised Officers have powers of entry in most circumstances they may apply for a warrant and request assistance from the Police in appropriate circumstances. All Officers identifying the need for a warrant will discuss the matter, prior to an application being made, with the Executive Head of Environment/Neighbourhood /Legal Services to ensure it is in-line with this Policy.

Not all of these options are available in every case. This underlines the need to consider powers available under each piece of legislation individually.

- **Private Action**

Where statutory action undertaken by the Council has not been upheld or there is insufficient evidence to proceed, advice may be given on provisions within existing legislation for complainants to pursue their own action.

7. AUTHORISATIONS

In accordance with the Council's constitution Senior Managers have a duty to appoint officers with suitable qualifications, experience and level of competency to enforce, or to ensure that appropriate officers are trained to the required level to undertake an enforcement role.

Authority to exercise executive functions in relation to Environmental Protection and Environmental Crime has been delegated to the Executive Head of Environment and Neighbourhood as detailed in the Council's Constitution. These powers have then been further delegated where considered appropriate and necessary, as outlined in the Council's Scheme of Delegation.

8. POLICY MONITORING

To ensure compliance with this policy, the enforcement activities of the Council will be monitored regularly by the Executive Head of Environment and Neighbourhood and are subjected to a regular audit process.

This policy will be reviewed every three years by the Executive Head of Environment and Neighbourhood

9. TRAINING AND DEVELOPMENT

Appropriate resources will be made available for training officers to enable them to successfully carry out their duties within this policy.

10. CUSTOMER COMPLAINTS AND FEEDBACK

We are committed to providing a high-quality customer-focused service and welcome feedback about what we are doing well and where we can make improvements. We also recognise that sometimes things can go wrong. When they do, we will work with customers to try and resolve the problem and learn from this to improve our services in future. As a first step we encourage customers to contact the responsible person who is dealing with the case or their supervisors so that we can work together to resolve the problem as soon as possible. Where this is not possible you can make a complaint by visiting <https://www.eastleigh.gov.uk/council/customer-care/our-complaints-procedure>