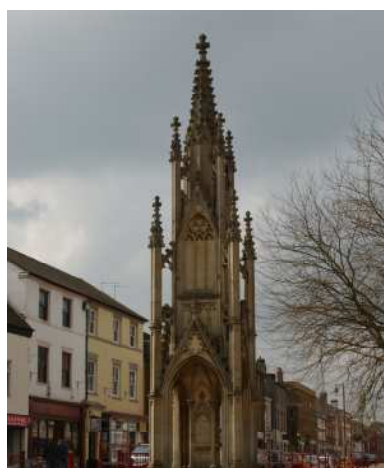


Environmental Health and Housing Enforcement Policy



Document Control

Version	Revision Date	Revision
1.0	19 July 2012	Adopted by Daventry District Council
2.0	12 May 2014	Amended to make reference to the Regulators' Code published by the Better Regulation Delivery Office. Agreed by the Chief Executive at Senior Management Team
3.0	5 October 2017	Inclusion of Housing. Addition of i. Penalty Charge Notices, ii. Banning from the Homechoice Housing Register, and iii. Court action. Addition of paragraph 7.3.2 Re: offences committed by children. Agreed at Council

Environmental Health and Housing Enforcement Policy

Executive summary

The enforcement policy provides guidance to officers, businesses and the general public on the range of options that are available to achieve compliance with legislation enforced by Daventry District Council (the Council) Environmental Health and Housing. The policy was resolved by the Council at its meeting on 19 July 2012 following a six week consultation.

The Council's primary objective is to achieve regulatory compliance. Where it becomes necessary to take formal action against a business, or member of the public, the Council will do so. There is a wide range of tools available to us as an enforcement agency, with prosecution being the most serious. The Council will always choose an enforcement method that is relevant and proportionate to the offence or contravention. The Council will also take account of an individual's or a business's past history when making its decision.

The options available to the Council include:

- No action;
- Informal action and advice;
- Fixed penalty notices;
- Penalty Charge Notices;
- Formal Notice/Prohibition;
- Forfeiture proceedings;
- Seizure of goods/equipment;
- Injunctive actions;
- Refusal, suspension or revocation of a licence;
- Banning from the Homechoice Housing Register
- Simple Caution;
- Prosecution;
- Court action;
- Proceeds of Crime Applications.

The policy is designed to help you understand the Council's objectives and methods for achieving compliance and the criteria the Council consider when deciding what the most appropriate response is to a breach of legislation.

All of the Council's decisions will have regard to current statutory guidance and codes of practice, including the Regulators' Code, the Code for Crown Prosecutors and the Human Rights Act 1998.

1.0 Introduction

1.0.1 Fair and effective enforcement is essential to protect the health & safety and/or environmental interests of the public, businesses and the environment. Decisions about enforcement action and in particular the decision to prosecute have serious implications for all involved. Environmental Health and Housing applies this Policy to ensure that:

- Regulatory activities are carried out in a way which is transparent, accountable, proportionate and consistent;
- Regulatory activities are targeted only at cases in which action is needed;
- Officers apply current Government guidance and relevant codes of practice;
- Everyone understands the principles that are applied when enforcement action is considered.

2.0 Legal Status of the Enforcement Policy

2.0.1 The policy was resolved by the Council at its meeting on 19 July 2012 following a six-week consultation period.

2.0.2 This policy is intended to provide guidance for officers, businesses, consumers and the public.

3.0 Scope and Meaning of ‘Enforcement’

3.0.1 This Policy applies to all the legislation enforced by Officers within Environmental Health and Housing.

3.0.2 ‘Enforcement’ includes any action taken by officers aimed at ensuring that individuals or businesses comply with the law.

3.0.3 Where appropriate the results of specific court cases may be published.

4.0 How to obtain a copy of the Policy or make comments

4.0.1 This Policy is available on the Council’s website:

www.daventrydc.gov.uk

If you would like a paper copy of the Policy and/or you would like to comment on the Policy, please contact us by:

telephoning 01327 871 100;

e-mailing environmentalhealth@daventrydc.gov.uk;

writing to the Environmental Health Manager (Health Improvement), Environmental Health, Daventry District Council, Lodge Road, Daventry, Northamptonshire NN11 4FP.

5.0 General Principles

- 5.0.1 Prevention is better than cure and the Council's role therefore involves working with businesses to advise on, and assist with compliance. It is, nevertheless, the responsibility of the business or individual to comply with relevant legislation.
- 5.0.2 Where the Council determines that formal action is necessary, each case will be considered on its own merits. However, there are general principles that apply to the way each case must be approached. These are set out in this Policy and in the Regulators' Code.

For more information about the Regulators' Code visit:

<https://www.gov.uk/government/publications/regulators-code>

- 5.0.3 Enforcement decisions will be fair, independent and objective and will not be influenced by personal characteristics protected under the Equality Act 2010 such as ethnicity, or political views of the suspect, victim, witness or offender. Such decisions will not be affected by improper or undue pressure from any source.
- 5.0.4 Daventry District Council is a public authority for the purposes of the Human Rights Act 1998. It will, therefore, apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
- 5.0.5 This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes. This is in accordance with the Regulator's Code.
- 5.0.6 In certain instances, the Council may conclude that a provision in the code is either not relevant or is outweighed by another provision. It will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.
- 5.0.7 The Regulators' Code does not replace the Enforcement Concordat.

6.0 Notifying Alleged Offenders

- 6.0.1 If the Council receives information (for example, from a complainant) that may lead to enforcement action against a business or individual it will notify that business or individual of any intended enforcement action, unless this could impede an investigation or pose a safety risk to those concerned or the general public.
- 6.0.2 During the progression of enforcement investigations/actions, business proprietors or individuals and witnesses will be kept informed of progress. Confidentiality will be maintained and personal information about individuals will only be released to a Court when required by Law or if necessary to proceed with enforcement action.

7.0 Enforcement Action

7.0.1 There are a number of potential enforcement options. The level of the action taken varies from no action through to proceedings in Court. Examples of the main types of action that can be considered are shown below:

- No action;
- Informal action and advice;
- Fixed penalty notices;
- Penalty Charge Notices;
- Formal Notice/Prohibition;
- Forfeiture proceedings;
- Seizure of goods/equipment;
- Injunctive actions;
- Refusal, suspension or revocation of a licence;
- Banning from the Homechoice Housing Register
- Simple Caution;
- Prosecution;
- Court Action;
- Proceeds of Crime Applications.

7.0.2 The order in which the enforcement actions are listed above is not necessarily in absolute order of escalating seriousness relative to each other.

7.0.3 In deciding what enforcement action is necessary and proportionate, consideration may be given to, amongst other things:

- The nature of the alleged offence(s)
- The seriousness of the alleged offence(s)
- Previous history
- Likelihood of a due diligence defence
- Relevant information provided by the home/primary authority for the business, where appropriate
- Cooperation of witnesses
- Willingness to prevent a recurrence
- Public benefit
- Any explanation offered
- Whether a simple caution is appropriate (Ministry of Justice – Simple Cautions for Adult Offenders)
- The effect on the environment of the alleged offence, where appropriate.

7.1 No Action

7.1.1 In certain circumstances, contraventions of the law may not warrant any action. For example, where the cost to the offender of complying is higher than the impact caused by the contravention, or the cost of the

required enforcement action outweighs the effect the offence has on the community. A decision of no action may also be taken where formal enforcement is inappropriate in the circumstances, such as where a trader has ceased to trade, or the offender is elderly and frail and formal action would seriously damage their wellbeing and failure to do so would not put the public at risk. In such cases, the Council will advise the offender of the reasons for taking no action.

7.2 Informal Action and Advice

- 7.2.1 For minor breaches of the law the Council may give verbal or written advice. It will clearly identify any contraventions of the law and give advice on how to put them right, including a deadline by which this must be done. The time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of the non-compliance.
- 7.2.2 Sometimes the Council will advise offenders about 'good practice', but it will clearly distinguish between what they must do to comply with the law and what is advice only.
- 7.2.3 Failure to comply with informal action and/or advice may result in an escalation of enforcement action.

7.3 Fixed Penalty Notices

- 7.3.1 Certain offences are subject to fixed penalty notices where prescribed by legislation. They are recognised as a low-level enforcement tool and avoid a criminal record for the defendant. Where legislation permits an offence to be dealt with by way of a Fixed Penalty Notice (FPN), the Council may choose to administer a FPN on a first occasion, without issuing a warning.
- 7.3.2 The parents or guardians of children aged 10 – 15 will be held accountable for prescribed offences committed by their children. They rather than their children will be given a written warning for the first offence and issued with a FPN for any subsequent offence. Children aged 16 and 17 will be treated as adults and a FPN will be issued in the normal way without any form of warning.
- 7.3.3 In circumstances where a person or body corporate fails to accept or pay a FPN, then in order to maintain the integrity of these legislative regimes, Environmental Health will consider an escalation of enforcement action.

7.4 Penalty Charge Notices

- 7.4.1 Landlords who fail to comply with statutory requirements relating to the provision of smoke and carbon monoxide alarms within their tenanted property will be issued with a Penalty Charge Notice.
- 7.4.2 The level of charge will be reviewed regularly and published in a Statement of Principles, but will be high enough to cover the cost of works in default and penalise the landlord for putting their tenant's lives at risk.
- 7.4.3 In the event of a landlord failing to pay a Penalty Charge Notice the amount specified can be pursued by obtaining a court order.

7.5 Formal Notice/Prohibition

- 7.5.1 Certain legislation allows notices to be served requiring offenders to take specific actions or cease certain activities/processes. Notices may require activities to cease immediately where the circumstances relating to health, safety, environmental damage or nuisance demand. In other circumstances, the time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of the non-compliance and the appeal period for that notice.
- 7.5.2 All notices issued will include details of any applicable Appeals Procedures.
- 7.5.3 Certain types of notice allow works to be carried out at default. This means that if a notice is not complied with (a breach of the notice) the Council may carry out any necessary works to satisfy the requirements of the notice itself. Where the law allows, the Council may then charge the person/business served with the notice for any cost it incurs in carrying out the work.

7.6 Forfeiture Proceedings

- 7.6.1 This procedure may be used in conjunction with seizure and/or prosecution where there is a need to dispose of goods in order to prevent them being used to cause a further problem. In appropriate circumstances, the Council will make an application for forfeiture to the Magistrates Courts.

7.7 Seizure

- 7.7.1 Certain legislation enables authorized Officers to seize goods, equipment or documents for example unsafe food, sound equipment that is being used to cause a statutory noise nuisance, or any goods that may be required as evidence for possible future court proceedings.

When the Council seizes goods it will where possible give the person from whom the goods are taken an appropriate receipt.

7.8 Injunctive Actions

7.8.1 In certain circumstances, for example, where offenders are repeatedly found guilty of similar offences or where otherwise it is considered that injunctive action is the most appropriate course of enforcement, then injunctive actions may be used to deal with repeat offenders, dangerous circumstances or significant consumer detriment.

7.8.2 Action under the Enterprise Act 2002; proceedings may be brought where an individual or organisation has acted in breach of European Union or domestic legislation with the effect of harming the collective interests of consumers. In most circumstances action will be considered where there have been persistent breaches or where there is significant consumer detriment. Action can range from:

- Informal undertakings;
- Formal undertakings;
- Interim Orders;
- Court Orders;
- Contempt Proceedings.

7.9 Refusal, Suspension and Revocation of Licence

7.9.1 Where there is a requirement for a business to be licensed by the local authority, the licence may be granted unless representations or objections are received against the application. In such cases the Licensing Committee will hear the case and decide to grant, grant with conditions, or refuse the licence application.

7.9.2 In addition to the above, in relation to the Gambling Act 2005, applications for premises Licence, the Licensing Committee can exclude a condition of licence.

7.9.3 A Licence may be suspended or revoked with immediate effect if such a decision is deemed necessary in the interests of public safety and/or animal welfare.

7.10 Banning from the Homechoice Housing Register

7.10.1 Section 171 of the Housing Act 1996 makes it an offence for anyone seeking assistance from a local authority to:

- Knowingly or recklessly give false information to the authority; or

- Knowingly withhold information which the authority has reasonably required him/her to give in connection with the exercise of their functions under part VI of the Housing Act 1996.

7.10.2 A person guilty of the offence of misrepresentation as defined in [Daventry District Council's Allocations Scheme 2017](#) can find themselves banned from the Homechoice Housing Register for a period of time and/or facing a fine of up to £5,000.

7.10.3 The circumstances in which an offence is committed could include providing false information:

- On an application form for social housing.
- In response to a request for further information in support of the application.
- During review/appeal proceedings.

7.11 Simple Caution

7.11.1 In appropriate circumstances, where a prosecution would otherwise be justified, a Simple Caution may be administered with the consent of the offender.

7.11.2 A Simple Caution is an admission of guilt, but is not a form of sentence, nor is it a criminal conviction.

7.11.3 For a Simple Caution to be issued a number of criteria must be satisfied:

- Sufficient evidence must be available to prove the case;
- The offender must admit the offence;
- It must be in the public interest to use a Simple Caution;
- The offender must be 18 years or over.

For details on the Ministry of Justice Simple Cautions for Adult Offenders Guidance document visit:

<http://www.justice.gov.uk/downloads/oocd/adult-simple-caution-guidance-oocd.pdf>

7.11.4 The Council will also take into account whether the offender has received a simple caution within the last two years when determining whether a simple caution is appropriate for any subsequent offending.

7.11.5 A record of the Caution will be kept on file for two years. If the offender commits a further offence, the Caution may influence the Council's decision to take a prosecution. If during the time the Caution is in force the offender pleads guilty to, or is found guilty of, committing another offence anywhere in England and Wales, the Caution may be cited in

court, and this may influence the severity of the sentence that the court imposes.

7.11.6 The refusal of an offender to be cautioned does not preclude the matter being passed for prosecution. In fact, any such failure will be a material consideration when deciding whether the offender should then be prosecuted for that offence.

7.12 Prosecution

7.12.1 In circumstances where none of the other forms of enforcement action are considered appropriate a prosecution will be considered and may ensue.

7.12.2 When deciding whether to prosecute the Council applies The Code for Crown Prosecutors as issued by the Director of Public Prosecutions.

7.12.3 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.

7.12.4 The Code for Crown Prosecutors has two tests:

- Is there enough evidence against the defendant? When deciding whether there is enough evidence to prosecute, Environmental Health/Housing must consider what evidence can be used in court and is reliable. Environmental Health/Housing must be satisfied there is enough evidence to provide a "realistic prospect of conviction" against each defendant.
- Is it in the public interest for Environmental Health/Housing to bring the case to court?

Where there is sufficient evidence, a prosecution will take place unless the public interest factors against prosecution clearly outweigh those in favour of prosecution.

For a copy of the Code for Crown Prosecutors visit:

http://www.cps.gov.uk/publications/code_for_crown_prosecutors/

7.13 Court action

7.13.1 In the event of a successful conviction but where the outcome fails to address the underlying cause of the offence, the courts have powers to require the offender to do something specific or cease doing something, and to provide Environmental Health/Housing with powers to supervise compliance with the requirement.

7.13.2 By way of example, Environmental Health/Housing may make application for a Criminal Behaviour Order to address ongoing anti-social behaviour or apply to the court for a Remedial Order to allow them to carry out works in default.

7.14 Proceeds of Crime Applications

7.14.1 Environmental Health/Housing, either through its own Officers or in cooperation with the Police may make application under the Proceeds of Crime Act 2002 to restrain and/or confiscate the assets of an offender. The purpose of any such proceedings is to recover the financial benefit that the offender has obtained from his criminal conduct. Proceedings are conducted according to the civil standard of proof.

8.0 Decisions on enforcement action

8.0.1 Decisions about the most appropriate enforcement action to be taken are based upon those matters set out in Section 7 above.

8.0.2 Where appropriate, decisions about what enforcement action to take may involve consultation between:

- (a) Investigating Officer(s);
- (b) Environmental Health/Housing Manager(s);
- (c) Community Manager;
- (c) Daventry District Council legal advisors.

8.0.3 The decision to prosecute a case will be taken by those with authority to do so in accordance with the Daventry District Council Scheme of Delegations.

9.0 Liaison with other regulatory bodies and enforcement agencies

9.0.1 In addition to the duties imposed upon us by the Regulatory Enforcement and Sanctions Act 2008 in respect of cooperating and working with Primary Authorities and the Local Better Regulation Office; the Council will, where appropriate, cooperate and coordinate with any relevant regulatory body and/or enforcement agency to maximise the effectiveness of any enforcement.

9.0.2 Where an enforcement matter affects a wide geographical area beyond the District boundaries, or involves enforcement by one or more other local authorities or organisations; where appropriate all relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activity coordinated with them.

9.0.3 Environmental Health/Housing may share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies, and examples including:

- Government Agencies;
- Police Forces;
- Fire & Rescue Authorities;
- Statutory undertakers;
- Other Local Authorities.

10.0 Considering the views of those affected by offences

10.0.1 Environmental Health/Housing undertakes enforcement on behalf of the public at large and not just in the interests of any particular individual or group. However, when considering the public interest test, the consequences for those affected by the offence, and any views expressed by those affected will, where appropriate, be taken into account when making enforcement decision.

11.0 Review of the Enforcement Policy

11.0.1 This Policy will be reviewed every three years.