

NON-CIA VERSION

Number 265

Is it a key decision? N
(If it is, delegated power not available)

Does this delegated decision contain "exempt" information?
If "yes" please state relevant exemption paragraph number N

CABINET MEMBER's DELEGATED DECISION

1. Cabinet Member

Mr I. Parry- Cabinet Member for Education, Finance and Transformation.

2. Recommendation of the Director of Law & Democracy.

That the revised Enforcement Policy (attached) be adopted by the County Council.

3. Applicable delegated power of Cabinet Member

General Delegation to Cabinet Member – Section 6 of the Constitution -

(1) Subject to (2) below, to take a decision on any matter which is the responsibility of the Cabinet under the Council's constitution and which falls within the Cabinet Member's portfolio and which is not delegated to an officer or officers in the Council's Scheme of Delegation to Officers.

(2) This delegation does not extend to decisions of the following nature

- Key Decisions i.e. decisions which are significant either in financial terms or in their effects on communities living or working in an area comprising two or more electoral divisions in the county area
- Decisions affecting more than one portfolio
- Decisions which the Cabinet Member considers more appropriate for a full Cabinet decision
- Decisions which are outside the Council's Budget or Policy Framework (if the Cabinet Member is in any doubt as to whether a decision is outside the Council's Budget or Policy Framework they should seek the advice of the Director of Law and Democracy)
- Decisions in relation to which the Cabinet Member has a personal and prejudicial interest or the taking of which by the Cabinet Member would otherwise involve a breach of the Council's Code of Conduct for Members
- Decisions which are unlawful or would lead to the Council acting unlawfully.

4. Background

The County Council has statutory responsibility for enforcing a wide range of civil and criminal sanctions covering a diverse range of enforcement activities.

In order to ensure that decisions to take formal and informal civil and criminal actions are taken in a consistent, transparent and equitable manner it is vital that the County Council has a robust up to date Enforcement Policy

The Policy is intended to provide guidance for officers, businesses, consumers and the public. It does not affect the discretion of the Council to take legal proceedings or any appropriate action where this is considered to be in the public interest.

The current County Council Enforcement policy was published on 4th August 2005, some eight years ago and due to legislative changes, changes in good practice and government guidelines it needs up-dating to ensure the policy is relevant and fit for purpose.

A revised policy has been drawn up with input from a range of practitioners to reflect the current best practice and government standards.

5. Alternative options considered

The current policy is out of date and needs to be updated, the revised policy represents the current thinking on enforcement activities

6. Resources and Value for Money implications

The policy will provide clear guidance to officers, businesses, consumers and the public. It provides transparency on the application of the decisions and will ensure consistency of approach across the whole of the County Council, thereby ensuring efficacy and efficiency.

7. Equal Opportunities implications

The revised policy complies with human rights and equal opportunities legislation.

8. Legal implications

The statutory principles of good regulation (Legislative and Regulatory Reform Act 2006) require transparent and accountable enforcement. The Regulators Compliance Code – Statutory Code of Practice for Regulators embeds a risk based, proportionate and targeted approach to regulatory inspection and enforcement. The revised policy reflects these requirements.

9. Risk implications

Failure to update the policy will leave the County Council open to challenge in the courts and will expose the authority to the risk of legal action. In addition failure to adhere to best practice and current guidelines will risk the reputation and standing of the County Council.

10. Climate Change implications:

The adoption of the revised policy will have no climate change implications.

11. Health Impact Assessment screening:

Impact Neutral

Author:

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Please forward the completed Cabinet Member Delegated Decision form to Mike Bradbury, Democracy Manager, Law and Democracy who will obtain the necessary signatures.

| 12. Consultees | ✓ | Date |
|--------------------------------------|--------------------|----------|
| 1. Director of Law and Democracy | ✓ | 19/03/13 |
| 2. Scrutiny Committee/Panel Chairman | ✓ | 19/03/13 |
| 3. Local Member(s) | N/A | - |
| 4. Leader/Deputy Leader of Council | <i>[Signature]</i> | 20/3/13 |

13 (a) Cabinet Member's decision

Signature of Cabinet Member *[Signature]*
.....
Date *25/3/13*

(b) Cabinet Member's recommendation of urgency

If the matter is urgent – why?

Signature of Chairman of Corporate Review Committee(s)
.....
Date

14. Background documents

15. Date notified to Director of Law and Democracy Date.....

If not urgent, decision may not be implemented until call-in period has expired

16. Call-in.....

Call-in period ends (if not urgent)
(Director of Law and Democracy - to complete) Date: *4/4/13*.....

Staffordshire County Council: Enforcement Policy

This document is not intended to be guidance to third parties in respect of the relevant law.

1. Introduction.

1.1 Staffordshire County Council ('the Council') believes that necessary, proportionate, effective and well targeted regulation is essential in promoting fairness, and in the protection of both the public and environment from harm. Good regulation and its enforcement act as an enabler to economic activity. By complying with this policy we will promote efficient and effective approaches to regulation and enforcement which will improve regulatory outcomes without imposing unnecessary burdens on business, the Third Sector and other regulated entities.

1.2 The Council acts as a regulatory and enforcement agency in a number of areas, including but not limited to:

- Trading Standards - including Animal Health and Welfare and Safety at Sports Grounds
- Town & Country Planning
- Children & Lifelong Learning
- Social Care & Health
- Countryside
- Highways and Street Works

1.3 This Policy will be observed in all such areas, in addition to any other detailed enforcement policies and protocols that may exist in relation to these functions. It will be implemented along side other enforcement policies of partner agencies with complementary enforcement roles. Officers will have due regard to the principles contained within partner agency enforcement policies and any published and relevant guidance. Our officers are cognisant of the requirements of the codes of practices and guidelines issued by organisations such as the Better Regulation Delivery Office; and receive regular training and development in the latest developments in investigatory techniques and requirements.

1.4 This Policy is intended to provide guidance for officers, businesses, consumers and the public. It does not affect the discretion of the Council to take legal proceedings or any appropriate action where this is considered to be in the public interest.

2. Basic Principles

2.1 The role of the Council is to ensure Staffordshire has a thriving economy and is a safe, healthy and aspirational environment in which to live

2.2 The purpose of this Policy is to ensure that the law is applied in a transparent, fair, equitable and consistent manner and to guide officers in

taking the appropriate action. Officers must be unbiased, independent and objective. They will not allow any personal views about the ethnic or national origin, gender, disability, age, religion or belief, political views, sexual orientation, or gender identity of the suspect, victim or any witness to influence of their decision/s. Neither will officers be affected by improper or undue pressure from any source. Officers will always act in the interests of justice, and not solely for the purpose of obtaining a conviction or taking a particular course of action.

2.3 The decision to prosecute or to recommend an out-of-court disposal is a serious step that affects suspects, victims and the public at large and must be undertaken with the utmost care and consideration.. It is the duty of officers to make sure that the correct person is prosecuted for the appropriate offence; and to bring offenders to justice wherever possible. Casework decisions taken fairly, impartially and with integrity will help to secure justice for victims, witnesses, defendants and the public. Officers must ensure that the law is properly applied; that relevant evidence is put before the court; and that obligations of disclosure are complied with.

2.4 Before formal action is taken, officers will normally provide an opportunity to the suspect to discuss the circumstances of the case; and where possible to resolve points of difference, unless immediate action is required (for example, in the interests of health and safety, environmental protection or to prevent evidence being destroyed).

2.5 Officers will have due regard to the principles contained within any relevant guidance, including:

- The code for Crown Prosecutors
- Home Office Circular 016/2008 (The Cautioning of Adult Offenders),
- The Food Safety Act 1990 Code of Practice
- LACORS Chief Officer circulars
- Planning Policy Guidance issued by Central Government.
- Statutory Code of Practice for Regulators
- Police and Criminal Evidence Act 1984
- 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

2.6 The statutory principles of good regulation (Legislative and Regulatory Reform Act 2006) require transparent and accountable enforcement. The Regulators Compliance Code – Statutory Code of Practice for Regulators

embeds a risk based, proportionate and targeted approach to regulatory inspection and enforcement.

Officers will use resources in a way that gets the most value out of the effort that they make, whilst delivering significant benefits to low risk and compliant businesses through focused inspection activity, increased use of advice for business and lower compliance costs. We believe low risk and compliant businesses can benefit from focussed inspection activity. As such officers will use resources in a way that gets the most value out of these activities. Where ever possible Officers will provide advice and guidance to businesses, there by lowering compliance costs.

Officers will exercise their regulatory activities in a way which will be:

- (i) Proportionate - activities will reflect the level of risk to the public and enforcement action taken will correspond to the seriousness of the offence,
- (ii) Accountable – activities will be open to public scrutiny, with clear and accessible policies, and a fair and efficient complaints procedures,
- (iii) Consistent – advice to those we regulate will be robust and reliable and we will respect advice provided by others. Where circumstances are similar, we will endeavour to act in consistent ways to other local authorities,
- (iv) Transparent – will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return, and
- (v) Targeted – we will focus our resources predominantly on higher risk enterprises and activities, reflecting local need and national priorities.

2.7 The Council will take into account the comments of any victim, injured party or other relevant person to establish: -

- his or her views about the circumstances in which enforcement action is deemed appropriate
- The nature and extent of any harm or loss, and its significance relative to the individual circumstances.

2.8 Staffordshire County Council is a public authority for the purposes of the **Human Rights Act 1998**. Officers will therefore apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

3. The Range of Actions Available

3.1 The action taken in each individual case will be decided on its merits. In addition, officers may refer a matter to another agency or service where appropriate.

3.2 The range of options available includes:

- Informal Action and Advice
- Service of a Legal Notice
- Written Undertaking
- Enforcement Orders
- Injunction
- Simple Caution
- Fixed Penalty Notice
- Revocation, suspension, modification or refusal of a licence, approval or registration
- Prosecution
- Action under the Proceeds of Crime 2002
- Applications for Anti-Social Behaviour Orders ('ASBOs') or Criminal ASBOs
- Voluntary surrender or forfeiture applications In the event of illegal, dangerous, unsafe, or mis-described goods being discovered officers will make all efforts to ensure these are disposed of swiftly and effectively. In the event of animals which are diseased, suffering unnecessarily or being subject to any form of illegal activity officers will take all necessary action to ensure the health and well being of animals and the public. In certain circumstances for illegal items this will entail a formal application to the Courts for forfeiture of the goods or animals or agreement to voluntary surrender by owner / keeper.
- Apply for a review of a licence issued under the Licensing Act 2003

3.3 Whatever option is chosen it should:

- Protect the public and environment from harm
- 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 public stigma that should be associated with a criminal conviction
- Be necessary and 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

3.4 Where formal enforcement action is to be taken clear reasons will be given to the person or business against whom the action is to be taken at the appropriate juncture.. The reasons will also be confirmed in writing at the earliest opportunity. Complaints and relevant appeals procedures for redress will also be explained to the relevant partie/s.

4. Informal Action and Advice

4.1 Before deciding to adopt this course, officers will need to be satisfied:

- that the organisation or individual will remedy the situation, without formal action being taken;
- that there is no serious threat to public health, animal health, safety or the environment, the interests of consumers, or serious harm to amenity;
- that previous advice has not been ignored;
- that the organisation or individual has not acted deliberately or negligently; and
- that there has not been a similar previous misdemeanour or breach committed by the same organisation or individual.

4.2 The Council's advice and lawful requirements will be set out clearly and simply in writing, explaining clearly any remedial work required. Legal requirements will be clearly distinguished from best practice advice.

5. Service of a Legal Notice

5.1 In certain circumstances legislation allows an officer to serve upon an organisation or individual a notice requiring action to be taken or, that certain operations/activities be stopped immediately.

5.2 Legal notices are normally used where:

- a serious threat to public health, animal health, safety, the environment, or to amenity will arise or a situation deteriorate, if a breach is not remedied quickly; or
- an informal approach has failed, or in the opinion of the officer is likely to fail to achieve the necessary improvements; or
- the breach is one of a number of matters prescribed under legislation, for example, under the Weights and Measures Act, in planning law and guidance, or where information or action is required pursuant to another Council function.

5.3 In circumstances where actions or neglect by a business or individual cause a threat to public health, safety, the environment, animal health or welfare, consumers or serious harm to amenity, the service of a legal notice may be followed by an investigation into the cause. An investigation may lead to further enforcement action, including prosecution.

5.4 A failure to comply fully with a legal notice will be taken as a disregard for the law and further appropriate action will be taken.

6. Written Undertakings and Enforcement Orders

6.1 Under some legislative regimes, where an individual or organisation persistently fails to comply with the law, the Council may seek a written undertaking from that person that they will cease the action complained of. In such circumstances, the Council may determine that no further formal action will be necessary...

6.2 In cases where an individual or organisation has breached or has refused to provide a written undertaking to cease the action complained of, an application to a court may be made for an enforcement order, or for other formal action in accordance with the relevant legal provisions.

7. Injunctions

7.1 Where an individual or organisation fails, or appears unlikely to comply with an obligation under the law an injunction may be sought in terms that the Court may find appropriate for the purpose of restraining the alleged breach or any anticipated breach.

8. Simple Caution

8.1 A 'simple caution' is used to deal quickly and simply with those who commit less serious crimes. It aims to divert such offenders away from appearing in court and to reduce the likelihood of them re-offending.

8.2 A simple caution is however a serious matter and will be kept on record for 3 years. This will influence future decisions as to whether or not to institute proceedings if the person/business offends again. It may also be cited in any subsequent court proceedings.

8.3 In order to safeguard the offender's interests, the following conditions must be met before a caution can be administered: -

- there must be evidence of the offender's guilt sufficient to give a realistic prospect of conviction in a criminal court;
- the offender must be aged 18 years or over
- the offender must admit the offence; the Council must be prepared to commence formal proceedings if the caution is not accepted.
- the offender agrees to be given a caution – if the offender does not agree to receive a caution then they may be prosecuted instead

8.4 Where the above criteria are met, consideration will be given as to whether a caution is in the 'public interest'. The Council will take into account all of the public interest principles described in the Code for Crown Prosecutors, in particular and including:

- not prosecuting certain categories of offender, such as elderly people or those who suffer from some sort of mental illness or impairment, or a severe physical illness;
- the offender's attitude towards the offence: the wilfulness with which it was committed and their subsequent attitude. A practical demonstration of regret, such as apologising to the victim and/or offering to put matters right, so far as they are able;
- where offenders are involved in group offences an individual's involvement can vary greatly. Consideration of whether to prosecute or caution, will depend upon the part played by each offender. Different methods of dealing with individuals may be appropriate.

9. Fixed Penalty Notices

9.1 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 it may be administered on a first occasion without the issuing of a warning. Non-payment of a fixed penalty notice will usually result in prosecution

10. Revocation, Suspension or Refusal of a licence, approval or registration including applying for a review of a licence issued under the Licensing Act 2003

10.1 Where the conditions of a licence or registration have not been met, the licence, approval or registration may be suspended, revoked or refused.

10.2 When offences contrary to the Licensing Act 2003 are discovered in addition to considering whether criminal proceeding should be initiated in accordance with this policy, consideration will also be given to whether an application should be made to the local Licensing Authority for a review of the Premises Licence. The purpose of the review will be to secure either the revocation or suspension of the Premises Licence or the attachment of conditions to the Premises Licence.

10.3 Where a person is convicted of relevant offences under the Licensing Act 2003, the Court may be asked to use its powers to suspend or forfeit a personal licence held under that Act.

Prosecution

11.1 Prosecution has potentially serious consequences: a criminal record, adverse publicity, an adverse effect upon a business' trading position and even loss of liberty. For this reason the decision to prosecute is not taken lightly.

11.2 Prosecution will normally only be considered where one or more of the following "public interest" criteria are satisfied:

- serious threat to public health or safety or to the environment, suffering caused to animals or the risk of disease, or serious harm to amenity;
- deliberate, fraudulent or reckless practice, or a threat of economic disadvantage to consumers or businesses;
- threats of violence to any person or to any officer of the Council or the obstruction of an officer carrying out his or her statutory duties;
- the victim is part of a vulnerable group, for example children, disabled or the elderly;
- the offence was committed in the presence of or in close proximity to a child;
- a prosecution would have a significant positive impact on maintaining community confidence or on the social, economic and environmental well being of communities;
- the law is being flouted or the actions complained of are irresponsible.
- the matter complained of is seen as being widespread or is of sufficient significance to justify formal action to prevent general disregard for the law and/or public Policy, following appropriate notices being given.

11.3 It is also important that there should not be any unnecessary undue delay between the date of the alleged offence and the institution of legal proceedings.

11.4 In addition, the case must satisfy the following criteria:

There must be:

- a realistic prospect of conviction and
- that the alleged offender will not be able to successfully prove any statutory defence.

11.5 Other factors which may influence the decision to prosecute include whether:

- the conviction(s) is likely to result in a significant sentence or penalty;
- a conviction is likely to result in a confiscation /forfeiture or any other order;
- whether the alleged offence was the result of a genuine mistake and, if so, has the matter been satisfactorily rectified;
- whether the prosecution is likely to have an adverse effect on the victim's physical or mental health of any person who is a victim of the alleged offence; the views of the relevant 'home authority' / Primary Authority - i.e. the local authority in which the alleged offender's head office is based; or the Local Authority which has a Primary Authority agreement with the business.

11.6 Deciding on the public interest is not simply a matter of adding up the number of factors on each side. The Council must decide how important each factor is in the circumstances of each case and then go on to make an overall assessment.

For details of The Evidential Stage test and The Public Interest Stage test please refer to the CPS: 'The Code for Crown Prosecutors'.

12. Action under the Proceeds of Crime Act 2002

12.1 In the event of relevant criminal convictions, it is open to the Council to apply for an order under the Proceeds of Crime Act 2002. This legislation provides for confiscation of property (including money) if it can be demonstrated that a defendant has profited from crime. In appropriate cases, the Council will consider whether an investigation into the defendant's financial affairs is required with a view to pursuing a confiscation order and/or a restraint order.

13 Applications for Anti-Social Behaviour Orders ('ASBOs') or Criminal ASBOs

An application for an ASBO can be made in its own right by way of a civil application; and as a post conviction order at the criminal courts. A court may grant an ASBO where it is satisfied that the person involved (aged 10 or over) (a) has acted, since the commencement date, in an anti-social manner, that is to say, in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself; and (b) that such an order is necessary to protect relevant persons from further anti-social acts by him

14 Voluntary surrender or forfeiture applications for illegal items

In the event of illegal, dangerous, unsafe, or mis-described goods being discovered officers will make all efforts to ensure these are disposed of swiftly and effectively. In the event of animals which are diseased, suffering unnecessarily or being subject to any form of illegal activity officers will take all necessary action to ensure the health and well being of animals and the public. . In certain circumstances this will for illegal items entail a formal application to the Courts for forfeiture of the goods or animals or agreement to voluntary surrender by the owner / keeper.

15 Data Protection Act 1988

Where there is a need for Staffordshire County Council to share enforcement information with other agencies, we will follow the provisions of the Data Protection Act 1988.

16 Review

This policy will be reviewed every 3 years, in consultation with our stakeholders.

17 Comments and Complaints

Should you have a complaint about our service please follow the link to the County Council's Complaints procedure:

NOTE: INSERT LINK HERE

18. Availability of the Policy

19.1 A copy of this Policy and any other relevant guidance or policies will be made available upon request. A version for the partially sighted is also available.

 [The Enforcement Policy is also available in PDF format.](#)

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This policy complies with Section 21 of the Legislative and Regulatory Reform Act 2006.