

## Compliance and Enforcement Policy

### 1.0 Introduction

- 1.1 This enforcement policy has been written and adopted to help promote efficient and effective approaches to regulatory inspection and enforcement, and to improve regulatory outcomes without imposing unnecessary burdens.
- 1.2 This policy was developed following consultation with stakeholders including businesses that we regulate, members of the public, officers and partner agencies.
- 1.3 Peterborough City Council is committed to offering a service that has regard to the principles of good regulation. We aim to be:

**Proportionate** – our activities should reflect the level of risk or detriment to the public and enforcement action taken will relate to the seriousness of the offence,

**Accountable** – our activities will be open to scrutiny, with clear and accessible policies and a fair and efficient complaints procedure,

**Consistent** – our advice to those we regulate will be robust and reliable and we will respect advice provided by others,

**Transparent** – we will try to ensure that those we regulate are able to understand what is expected of them and what they can expect from us in return,

**Targeted** – we will focus our resources on higher risk enterprises and activities, and we will use intelligence to direct our priorities where possible. We will also ensure that our work reflects local, regional and national needs and priorities.

- 1.4 We are committed to supporting businesses and will take into consideration the impact of our decisions when making regulatory decisions. Where appropriate we will consider whether a similar social, environmental or economic outcome may be achieved by less burdensome means.

- 1.5 This policy has been written in accordance with the Regulators' Code<sup>1</sup> which as a Regulator we are required to have regard to for most of our functions. In certain circumstances we may conclude that a provision of the Code is either not relevant or is outweighed by another provision. Any decision to depart from the Code will be properly reasoned and documented.

## 2.0 Purpose of this Policy

- 2.1 The purpose of this document is to outline and communicate our policy in respect of how we deal with non-compliance with legal requirements. It is accessible to businesses and persons that we regulate as well as the general public who may be affected by our regulatory activities.
- 2.2 The policy is also communicated to officers within Peterborough City Council who have regulatory responsibility. Officers are familiar with this policy and are committed to acting in accordance with it.

## 3.0 Scope of this Policy

- 3.1 This enforcement policy applies to the following enforcement practices undertaken by Peterborough City Council: trading standards; food hygiene; health and safety; licensing including taxi licensing; environmental protection; pollution control; housing enforcement; environmental enforcement; planning enforcement and dealing with anti-social behaviour.
- 3.2 In addition to this general enforcement policy there may be other specific enforcement procedures or codes of practice that are followed.
- 3.3 Where a shared enforcement role exists between council services or with an external body, there will be arrangements in place to ensure there is effective, open, proportionate and consistent enforcement. These arrangements will follow statutory guidelines where applicable.

## 4.0 Our Approach to Dealing with non-compliance

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<sup>1</sup> The Regulators' Code which came into statutory effect in 2014 provides a clear, flexible and principles-based framework for how regulators should engage with those they regulate.  
<https://www.gov.uk/government/publications/regulators-code>

- 4.1 Peterborough City Council is committed to dealing firmly with those that deliberately or persistently fail to comply. We also recognise however that each enforcement situation is unique and will be considered individually on its own merits.
- 4.2 Any enforcement action taken will be proportionate to the risks posed and to the seriousness of the offence. We will also take into account other factors such as the size and capacity of the business
- 4.3 Officers will follow the principles of The Code for Crown Prosecutors<sup>2</sup> and in particular:
  - 4.3.1 Officers will be fair, independent and objective.
  - 4.3.2 Officers will not be affected by improper or undue pressure from any source.
  - 4.3.3 The right person must be dealt with for the right offence and officers will act in the interests of justice and not solely for the purpose of obtaining a conviction.
  - 4.3.4 Officers will seek to ensure that the law is properly applied, that all relevant evidence is considered, and that obligations of disclosure are complied with.
- 4.4 Officers will follow the Council's Equality and Diversity Policy<sup>3</sup> which underpins all decisions taken by the council and actions by its employees.
- 4.5 Persons and businesses regulated by us are able to request advice on non-compliance without directly triggering enforcement action where there is a willingness to resolve the issues.
- 4.6 Advice given by officers in relation to a non-compliance will be explained as clearly as possible, and where appropriate it may be confirmed in writing. Officers will explain any remedial action required and will state timescales for progress and completion if applicable. A clear distinction will be made between legal requirements and best practice.
- 4.7 Where there are rights of appeal against specific actions or decisions, written advice will be given on the appropriate appeal mechanism to be followed. This will normally be included with the enforcement notice or letter.
- 4.8 Where a non-compliance has been identified, officers will normally provide an opportunity for dialogue in relation to any advice given, actions required or decisions

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<sup>2</sup> The Code for Crown Prosecutor's as issued by the Director of Public Prosecutions sets out the general principles to follow when investigating and making decisions in prosecution cases.

<sup>3</sup> The Council's Equality and Diversity Policy is in place to ensure that there is a consistent approach across the authority to all areas of equalities work.

<http://www.peterborough.gov.uk/pdf/diversity-hr-equalityanddiversitypolicy.pdf>

taken. However this may not apply where the officer considers immediate enforcement action is required to prevent or respond to a serious breach, or where providing an opportunity for dialogue would be likely to defeat the purpose of the proposed enforcement action.

- 4.9 Where non-compliances are identified and advice and guidance has been provided, re-visits may be carried out to determine if they have been rectified.
- 4.10 Communication may be carried out in different ways depending on the individual circumstances, and any agreement made between the officer and the regulated party. Officers will be courteous and professional in all methods of communication.
- 4.11 Any breaches of law relating to premises or activities owned or managed by Peterborough City Council should be brought to the attention of the Head of Service without delay. The manager is responsible for ensuring that any decisions taken are free from any conflict of interest.
- 4.12 Where we have a primary authority partnership with a business, any potential conflict of interest will be identified by the assigned officer and any pursuant investigation will be carried out by another officer or the manager.
- 4.13 Peterborough City Council will publicise enforcement action taken where it considers that it is in the public interest to do so, or where it is considered that doing so may inform or deter others. Care will be taken to ensure that our actions will not prejudice a fair trial.

## 5.0 Conduct of Investigations

- 5.1 All investigations will be carried out in accordance with the following legislation where applicable, and in accordance with any associated guidance or codes of practice, in so far as they relate to Peterborough City Council:
  - The Police and Criminal Evidence Act 1984;<sup>4</sup>
  - The Criminal Procedure and Investigations Act 1996;<sup>5</sup>
  - The Regulation of Investigatory Powers Act 2000;<sup>6</sup>
  - The Criminal Justice and Police Act 2001;<sup>7</sup>
  - The Human Rights Act 1998;<sup>8</sup>

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<sup>4</sup> The Police and Criminal Evidence Act 1984 implements statutory codes of practice for police and other enforcers covering activities such as searching premises or interviewing alleged offenders

<sup>5</sup> The Criminal Procedure and Investigations Act 1996 & 2003 sets out rules on how we record and retain information gained during an investigation and how we disclose information in the event of a matter going to court

<sup>6</sup> The Regulation of Investigatory Powers Act 2000, known as RIPA, governs the use of covert surveillance by public bodies and how we can access communications data

<sup>7</sup> The Criminal Justice and Police Act 2001 provides powers to police and investigators on the seizure and examination of evidence

- 5.2 Where a business we are investigating has a primary authority partnership or a home authority relationship established with another local authority, we will communicate with that authority at the earliest opportunity.
- 5.3 Legislation will sometimes provide powers to authorised officers to carry out certain activities. For example: making a test purchase; taking a sample; inspecting premises, goods, equipment or documents. Sometimes where officers suspect an offence or require items to be taken as evidence, they will have the power to seize goods and documents. Powers are prescribed under legislation and they will vary depending on the individual circumstances that they are dealing with. Where officers are using statutory powers, an explanation will be provided at the time.
- 5.4 Where items are seized by officers using statutory powers, written confirmation of items seized will be provided at the time or as soon as possible afterwards.
- 5.5 Some legislation that we use will include offences of obstructing officers. If we believe that actions taken by the alleged offender are obstructive we will advise you of this.
- 5.6 Our officers do not have the powers of arrest, although in some circumstances we will work with the police who may choose to use their powers of arrest should they deem this necessary.
- 5.7 Where we suspect a person, company or other legal entity of breaching legal requirements, and we are considering taking formal action such as prosecution, we will normally request an interview. This interview will be carried out in accordance with the Police and Criminal Evidence Act 1984. It will usually, but not exclusively be audio recorded. We will allow the person/s being interviewed to have legal representation. We will give them the opportunity to demonstrate if a statutory defence can be demonstrated. We will also ensure that they have the opportunity to give an explanation or make additional comments about the alleged breach.
- 5.8 Before a decision to prosecute is taken, the alleged offences will be fully investigated. Throughout the investigation process, regular case review meetings will be held with a manager. On completion of the investigation the investigating officer will compile a report for review by a senior manager.

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<sup>8</sup> The Human Rights Act 1998 is in place to safeguard certain rights and freedoms and gives further effect to rights within the European Convention on Human Rights. As a public authority we must ensure that everything we do is compatible with these rights, for example the right to a fair trial.

- 5.9 Where there is a need for us to share information with other agencies, we will follow the provisions of the Data Protection Act 1998.<sup>9</sup>
- 5.10 We will comply with the requirements of the Regulatory Enforcement and Sanctions Act 2008<sup>10</sup> when we are considering taking enforcement action against any business or organisation that has a primary authority partnership as determined by this legislation.

## 6.0 Decisions on Enforcement Action

### 6.1 Compliance, Advice, Guidance and Support

- 6.1.1 Peterborough City Council uses compliance, advice, guidance and support as a first response in the case of many breaches of legislation that are identified. Advice is provided, sometimes in the form of a warning letter, to assist individuals and businesses in rectifying breaches as quickly and efficiently as possible, avoiding the need for further enforcement action.
- 6.1.2 A warning letter, sometimes also called an “informal caution”, will set out what should be done to rectify the breach and to prevent re-occurrence. If a similar breach is identified in the future, this letter will be persuasive in considering the most appropriate enforcement action. Such a letter cannot be cited in court as a previous conviction but it may be presented in evidence.
- 6.1.3 Peterborough City Council recognises that where a business has entered into a primary authority partnership with another local authority, they may provide compliance advice. We will take such advice into account when considering the most appropriate enforcement action to take, and may discuss the need for further advice with the primary authority.
- 6.1.4 Where more formal enforcement action, such as a simple caution or prosecution is taken, we recognise that there is likely to be an ongoing need for compliance advice and support to prevent further breaches.

### 6.2 Voluntary Undertakings

- 6.2.1 Peterborough City Council may in some circumstances accept voluntary undertakings that breaches will be rectified and recurrences prevented. However we will take any failure to honour voluntary undertakings very seriously and enforcement action is likely to result.

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<sup>9</sup> The Data Protection Act 1998 controls how your personal information is used by organisations, businesses or the government.

<sup>10</sup> The Regulatory Enforcement and Sanctions Act 2008 established what is now known as the Better Regulation Delivery Office (BRDO) and the implementation of the primary authority partnership scheme which oversees agreements between businesses and local authority regulators.

### **6.3 Statutory (Legal) Notices**

- 6.3.1 In respect of many breaches, Peterborough City Council has powers to issue statutory notices. Some examples of notices that we may serve on businesses or members of the public may include “Stop Notices”, “Prohibition Notices”, “Emergency Prohibition Notices”, “Improvement Notices” and “Community Protection Notices”. Such notices are legally binding. Failure to comply with a statutory notice can be a criminal offence and may lead to prosecution and/or, where appropriate, the carrying out of work in default of the notice.
- 6.3.2 A statutory notice will clearly set out actions which must be taken and the timescale within which they must be taken. It is likely to require that any breach is rectified and/or safeguards have been put in place to prevent future breaches. Where a statutory notice is issued, an explanation of the appeals process will be provided to the recipient.
- 6.3.3 Some notices issued in respect of premises may be affixed to the premises for public inspection, and/or registered as a local land charge.
- 6.3.4 Peterborough City Council reserves the right in some circumstances, and in particular in the most serious of cases, to prosecute, in addition to the use of a statutory notice to gain compliance.

### **6.4 Financial Penalties**

- 6.4.1 Peterborough City Council has powers to issue fixed penalty notices in respect of some breaches. This is not a criminal fine and does not appear on an individual’s criminal record. If a fixed penalty notice is not paid, we may commence criminal proceedings or take other enforcement action in respect of the breach.
- 6.4.2 If a fixed penalty notice is paid in respect of a breach, we will not take any further action in respect of that breach. Payment of a fixed penalty does not provide immunity from prosecution in respect of similar or recurrent breaches.
- 6.4.3 Peterborough City Council is only able to issue fixed penalty notices where it has specific powers to do so. If fixed penalty notices are available, their issue is discretionary. In some circumstances, in particular where breaches are serious or recurrent, it may be that prosecution is more appropriate than the issue of a fixed penalty notice.

### **6.5 Injunctive Actions, Enforcement Orders etc.**

- 6.5.1 In some circumstances we may seek a direction from the court, in the form of an order, injunction or similar, that a breach is rectified and/or prevented from recurring. The court may also direct that specified activities be suspended

until the breach has been rectified and/or safeguards have been put in place to prevent future breaches.

6.5.2 Failure to comply with a court order constitutes contempt of court, a serious offence which may lead to imprisonment.

6.5.3 Peterborough City Council is required to seek enforcement orders after issuing some enforcement notices, providing the court with an opportunity to confirm the restrictions imposed by the notice. Otherwise the Council will normally only seek a court order if we have serious concerns about compliance with a voluntary undertaking or a notice.

## 6.6 Simple Caution

6.6.1 Peterborough City Council has the power to issue simple cautions (previously known as formal cautions) as an alternative to prosecution for some offences, where a person admits an offence and consents to the simple caution. Where a simple caution is offered and declined we are likely to consider prosecution. They are offered in accordance with Home Office Guidance where applicable.<sup>11</sup>

6.6.2 Simple Cautions form part of an offender's criminal record. They may influence how we deal with any similar breaches in the future and may be cited in future proceedings in court. In certain circumstances, this information about an individual may be made available to an employer as part of a criminal record check.

## 6.7 Prosecution

6.7.1 Peterborough City Council may prosecute in respect of serious or recurrent breaches, or where other enforcement actions have failed to secure compliance. When deciding whether to prosecute we will have regard to the provisions of the Code for Crown Prosecutors as issued by the Director of Public Prosecutions.

6.7.2 Prosecution will only be considered where we are satisfied that we have sufficient evidence to provide a realistic prospect of conviction against the defendant(s).

6.7.3 Before making a decision about prosecution, we will consider all relevant circumstances carefully and will have regard to the following criteria:

- a) The offer of a simple caution has been declined;

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<sup>11</sup> The document provides guidance on the administration of caution and factors to be taken into account. As a local authority we are not bound by the guidance however we will adopt the principles where it is appropriate to do so.

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

- b) The alleged offence involves a flagrant breach of the law such that public health, safety, amenity, economic interests or wellbeing is or has been put at risk or irreversible damage has resulted;
- c) There has been a reckless disregard for the environment;
- d) Fraudulent, negligent or reckless practice or the threat of significant economic disadvantage to consumers or businesses is involved;
- e) The integrity of the licensing framework is threatened;
- f) The alleged offence involves a failure by the suspected offender to correct an identified serious risk having been given a reasonable opportunity to comply with the lawful requirements of an authorised officer;
- g) The alleged offence involves a failure to comply in full or in part with the requirements of a statutory notice;
- h) There is a repeat offence that has been subject to a formal warning, a simple caution, or there has been failure to pay a fixed penalty notice;
- i) There is a history of similar offences;
- j) The alleged offence causes public alarm and it is desirable to reassure the public and deter other offenders;
- k) The victim or potential victim was in a vulnerable situation and the offender took or would have taken advantage of this;
- l) The offence involves the threat of violence, harassment or undue influence against any person, obstruction of an Officer of the Council, or the deliberate provision of false information in written or verbal form to an Officer of the Council;
- m) A prosecution is in the public interest, there is a realistic prospect of conviction and sufficient evidence to support proceedings.

6.7.4 The decision to undertake a prosecution will be made by the Director or Head of Service in accordance with the Council's scheme of delegations.

6.7.5 A successful prosecution will result in a criminal record. The court may impose a fine and in respect of particularly serious breaches a prison sentence. The court may order the forfeiture and disposal of non-compliant goods and/or the confiscation of any profits which have resulted from the breach. Prosecution may also lead, in some circumstances, to the disqualification of individuals from acting as company directors.

6.7.6 Some criminal offences are recordable<sup>12</sup> on the Police National Computer (PNC). Information may therefore be shared with police and retained by the police for operational reasons and for the purposes of preventing and detecting crime.

## 6.8 Refusal/Suspension/Revocation of Licences

6.8.1 Peterborough City Council issues a number of licences, permits and registrations. We also have a role to play in ensuring that appropriate standards are met in relation to licences issued by other agencies. Most licences include conditions which require the licence holder to take steps to ensure that, for example, a business is properly run. Breach of these conditions may lead to a review of the licence which may result in its revocation or amendment.

6.8.2 When considering future license applications or renewals, we may take previous breaches and enforcement action into account.

## 6.9 Proceeds of Crime Act 2002<sup>13</sup>

6.9.1 We will use the Proceeds of Crime Act (POCA) where it is appropriate to do so, to ensure the recovery of an offender's financial gain or benefit, following conviction.

6.9.2 Investigating officers will refer a suitable case to an Accredited Financial Investigator who will use powers under POCA to secure evidence for asset identification and money laundering where applicable.

## 7.0 Review of this Policy

7.1 The policy will be reviewed on a regular basis and will be amended as appropriate to take into account any changes in legislation.

## 8.0 Comments and Complaints

8.1 We would welcome any comments or feedback on this policy or its application at any time.

9.2 Complaints about the service can be made to the Council's Central Complaints Office, details are available at [www.peterborough.gov.uk/contact\\_us.aspx](http://www.peterborough.gov.uk/contact_us.aspx)

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<sup>12</sup> A recordable offence is a conviction which should be recorded on the police national computer. Recordable offences include any offence punishable by imprisonment plus a number of non-imprisonable offences listed in the National Police Records (Recordable Offences) Regulations 2000

<sup>13</sup> The Proceeds of Crime Act 2002 (as amended) was introduced to reinforce the message that "crime does not pay." Amongst other powers, the Act enables us to seek a compensation order from the courts in relation to specified acquisitive crimes, thus removing the benefit obtained from such criminal conduct.

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## 9.0 Contact Us

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