

Enforcement Policy

August 2019

Neighbourhoods and Public Protection

Introduction

Cornwall Councils Neighbourhoods and Public Protection Service is committed to promote the health of the public, our environment and local economy. Also to be recognised as an excellent cost effective regulatory service that engages with and involves our communities, business and partners. To continually improve public health, environmental and economic outcomes.

The Service has five outward facing priorities to:

- We will protect and improve health, wellbeing and safety by providing information, advice, and enforcement action, in partnership with our communities (Healthy Cornwall)
- We will protect and improve Cornwall's environment to safeguard people and support economic growth and consumer confidence, by providing targeted advice, and enforcement action, in partnership with our communities (Green and prosperous Cornwall)
- Provide residents and visitors with access to services so that they may contribute to and benefit from the local community and national society (Democratic Cornwall)
- We will be innovative in service delivery, through devolution, securing income, efficiencies and use of intelligence to focus on community priorities (Sustainable Services)
- We will protect the health, safety and wellbeing of our staff and develop their talent and productivity to ensure we are agile and resilient for future changes (Our People)

The Neighbourhoods and Public Protection Service operates in three units:

1. The Public Protection Service
2. The Library and Information Service
3. The Registration Service

Regulation by Neighbourhoods and Public Protection is primarily conducted by the Public Protection Service which is further subdivided into two operational units as follows:

Business Standards and Registration

Purpose:

To advise and enforce legal compliance of businesses trading in Cornwall in order to ensure a fair trading economy, protect public health and improve standards of animal welfare by;

- Inspection and enforcement for food and feed safety and standards, Health and Safety, Trading Standards, Animal Health, Port Health
- Consumer and business advice and protection
- Accident investigation
- Infectious disease control
- Food alerts
- Calibration/testing
- Food/feed sampling
- Smoke Free enforcement

Community Protection, Licensing and Enforcement

Purpose:

To protect Cornwall's Environment and Neighbourhoods from harm that undermines the quality of life and Public Health in relation to:

- Air Quality
- Water (drinking and bathing) quality and standards
- Contaminated land
- Specialist planning consultations
- Destitute burials
- Permitted processes
- Licensing enforcement
- Investigation of statutory nuisance
- Environmental crime
- Dog welfare and enforcement
- Civil parking enforcement (not covered by this policy)

In carrying out these functions, the Neighbourhoods and Public Protection Service is committed to ensuring that no one is discriminated against on the basis of their: age, disability, employment status, ethnic or national origins, race or colour, marital status, religious or political beliefs, responsibilities for children or dependents, gender or gender reassignment, sexuality, social class or unrelated criminal convictions.

The Service will not be affected by improper or undue pressure from any source in carrying out these functions. The Service will always act in the interests of justice and not solely for the purpose of obtaining a conviction.

The service is also committed to ensuring that our enforcement activities do not interfere with any persons human rights, other than to the extent that it is lawful, necessary and proportionate to do so in the wider public interest.

Our Enforcement Policy

This enforcement policy sets out what action the public and regulated community can expect from the Neighbourhoods and Public Protection Services. It specifies the range of enforcement options available to the Service, and sets out when and in what circumstances enforcement action is likely to be taken.

'Enforcement' includes any action taken by officers of this Service aimed at ensuring that businesses or individuals comply with the law.

Our enforcement policy reflects the Principles of Good Regulation set out in the Legislative and Regulatory Reform Act 2006, namely that regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent, and that regulatory activities should be targeted only at cases in which action is needed.

In drafting this policy, we have taken account of the Enforcement Concordat and Regulators Code, and the Code for Crown Prosecutors.

As we are continually seeking to improve our standards, this enforcement policy will be subject to regular review.

Our Principles of Inspection and Enforcement

Economic Progress

Key Principle: Good regulation and its enforcement is an enabler to economic activity.

The Neighbourhoods and Public Protection Service recognises that encouraging and supporting economic progress is a key element of our work. We understand that most businesses want to comply with the law, and we will reward compliance with positive feedback. Wherever possible we will work in partnership with businesses and other organisations to assist them in meeting their legal obligations without unnecessary expense. We will only intervene where there is a clear case for protection.

Advice and Guidance

Key Principle: Regulators should provide authoritative, accessible advice.

The Neighbourhoods and Public Protection Service is committed to the principle that prevention is better than cure. We will therefore provide information, advice and guidance to businesses and consumers that is targeted, practical, accurate and consistent.

We will also engage in media campaigns to raise general awareness of issues affecting the public and businesses.

We will use clear, concise language, and a range of formats and media, to ensure that our services are accessible to all and appropriate to the different needs of all sections of the community.

We will ensure that there is always a clear distinction between those actions which are necessary to comply with the law and those which this Service recommends as best practice, but which are not compulsory.

Targeted Action

Key Principle: Regulatory activities should be targeted only as cases in which action is needed.

The Neighbourhood and Public Protection Service will use intelligence-led risk assessment to concentrate our resources in the areas that need them most.

We will continue to use an element of random inspection in order to test the effectiveness of our work and to fulfil our preventative duties. However, the majority of our activities will be focused on those areas which give rise to the most serious risks and concerns, or where the hazards are most difficult to control.

Action will be focused on those persons who are responsible for the risk, or who are best placed to control it.

Enforcement Action

Key Principle: Enforcement action should be carried out in a way which is transparent, accountable, proportionate and consistent.

The Neighbourhoods and Public Protection Service believes that the appropriate use of enforcement action, including prosecution, is fundamental to securing compliance with the law and to ensuring that those who have duties under it are held to account for any failures.

Transparency

The Neighbourhoods and Public Protection Service will endeavour to help businesses and members of the public to understand what they should expect from the Service, and what rights of complaint are open to them.

Accountability

The Neighbourhoods and Public Protection Service will be accountable both locally and nationally for efficiency and effectiveness of our activities. We will publish our service standards, together with information about our performance against those standards.

We will publish on our website the names of all the companies and individuals who have been prosecuted by the Service and convicted, except where those convictions are spent.

We will ensure that media attention is drawn to any conviction where it may help to publicise the need for consumers to be vigilant against particular practises, the need for businesses to comply with the law, or to deter anyone who may be tempted to disregard their legal responsibilities.

Proportionality

The Neighbourhoods and Public Protection Service will relate our enforcement action to the risks. We will always take account of how far the duty holder has fallen short of what the law requires, and the actual or potential harm arising from the breach.

We may proceed straight to a prosecution when the need arise. For example: Deliberate fraud, imminent risk of blatant disregard of the law.

Consistency

Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends. The Neighbourhoods and Public Protection Service will work to promote consistency through effective liaison with other enforcing authorities, and will have regard to national guidelines in our decision-making processes. The Service will, however, retain the discretion to depart from national guidelines where doing so will better meet local priorities and circumstances.

Investigation

A full investigation into the circumstances during inspections or following incidents or complaints is essential before any enforcement action is taken.

The Neighbourhoods and Public Protection Service will ensure that, during the investigation process, any person who is at risk of being prosecuted is given the opportunity to be interviewed, in accordance with the Police and Criminal Evidence Act 1984, so that any explanation they have to offer and any circumstances they wish to draw to our attention can be taken into account.

Investigations will be carried out in an expeditious manner.

Formal Action

Formal action includes, but is not limited to, serving of Statutory Notices, obtaining a court order under the Enterprise Act 2002, offering a Simple Caution and initiating a prosecution.

The Neighbourhoods and Public Protection Service recognises that it is neither necessary nor possible to take formal action in respect of every breach of the law. We will therefore consider all information, including the surrounding circumstances, gathered during the investigation before deciding whether formal action is appropriate.

If a decision to take formal enforcement action against a person or entity is made, we will ensure that clear reasons for the decision are given to the person or entity affected.

Where sanctions are imposed or sought by this Service, we will take that action in accordance with one or more of the six Macrory Penalties Principles, namely to;

- Change the behaviour of the offender
- Eliminate any financial gain or benefit from non-compliance
- Be responsive and consider what is appropriate for the particular offender and regulatory issue
- Be proportionate to the nature of the offence and the harm caused
- Restore the harm caused by the regulatory non-compliance
- Deter future non-compliance

Our Enforcement Options

There are a number of enforcement options open to us, depending on the specific circumstances of the case:

No Action

Contravention of the law will not always warrant further action being taken.

Referral

In certain circumstances a contravention will be referred to another local authority or an external agency (such as the Police or the Environment Agency) for information or further action.

Advice or a Warning

Where a relatively minor offence has been committed and it is not thought appropriate to take any formal action, advice will be given. This advice will recommend corrective action and provide a timescale for compliance. If it is likely that a future similar breach would result in formal action, the advice will include a warning to this effect.

Fixed penalty Notices

Where the relevant legislation provides for this option, we may issue a Fixed Penalty Notice (FPN), as an effective and visible way of responding to low level offending. A FPN provides an opportunity to avoid prosecution by payment of a penalty. It does not result in a criminal record for the offender.

A FPN will be issued only where there is sufficient evidence to support prosecution.

Where a FPN is not paid within the specified time limit, a prosecution will be bought against the offender for the original offence. The result may be a fine that is higher than the original penalty offered.

We will not offer a FPN for a repeat of the same offence if committed within twelve months of the first or previous offence. In such circumstances we will commence prosecution proceedings against the offender.

Cornwall Council's Neighbourhoods and Public Health Protection Service have adopted a policy regarding the issue of Fixed Penalty Notices to Juveniles under the age of eighteen years. Restorative Justice will be offered as an alternative to the issuing of a Fixed Penalty for a first offence.

Community Protection Warnings & Community Protection Notices

Community Protection Warnings and Community Protection Notices can be issued by the Service for antisocial behaviour, such as an individual who regularly allows their dog to foul a communal area or playing loud music at their premises at night.

Statutory Notices and Orders

A number of statutory notices may be issued by the Neighbourhoods and Public Protection Service. These include: Improvement notices for premises that do not meet food safety, or Health and Safety standards, prohibition notices to stop overloaded goods vehicles being driven on the roads, suspension notices to prevent the supply of unsafe products; or licensing suspension notices (for example, under the Licensing Act 2003 for failure to pay licence fees); abatement notices requiring the recipient to stop making unreasonable noise and closure notices for premises when applicable.

These notices will be issued when criteria in the relevant legislation are met it is felt appropriate to do so. Statutory notices may be used instead of or in addition to other forms of enforcement action.

Variation or Revocation of Licences, Approvals, Authorisations and Permits

Where the holder of a licence, approval authorisation or permit is in breach of its conditions, contravenes any relevant law, or demonstrates by his acts or omissions that he is not a suitable person to be a holder we may use our statutory powers to vary its terms or revoke it.

Alternatively, we may refer the matter to the relevant committee within the Council, who will consider whether it would be appropriate to suspend revoke or alter the terms of the licence, approval, authorisation or permit.

Emergency Remedial Action

Where the Neighbourhoods and Public Protection Service has identified a hazard that presents an imminent risk of harm we may take emergency enforcement action and carry out the necessary remedial work. We will always seek to recover the costs of this work, using the statutory powers available.

Enterprise Act Action

Part 8 of the Enterprise Act 2002 enables consumer protection enforcement bodies to obtain court orders (which are similar to injunctions) against businesses that do not comply with their legal obligations towards consumers e.g. by refusing to give a refund when goods are faulty.

Before seeking a court order, the Neighbourhoods and Public Protection Service will usually invite the business concerned to respond to the allegations against it. In most cases, the business will be offered an opportunity to give a binding commitment (undertaking) to stop the

conduct that is harming consumers' interests, and a court order may only be sought if that undertaking is breached. However in cases where the Service considers that the business's conduct must be prohibited or prevented immediately, we will seek an interim.

Simple Caution

The aim of a Simple Caution is to deal quickly and simply with less serious offences and to avoid unnecessary appearances in the criminal courts.

Simple Cautions are issued in accordance with Home Officer Circular 16/2008. It is only possible to offer a Simple Caution if the offender has already made a clear, reliable and voluntary admission to each element of the offence.

Simple Caution is an admission of guilt, but it is not a criminal conviction, nor a form of sentence. A record of the Simple Caution will be sent to those bodies that are required to be notified, such as the Police. The fact that a Simple Caution has been accepted may be cited in court if further offences are committed.

Please note: the Service is currently exploring the possibility of being accredited to offer Conditional Cautions, which include a requirement for the offender to complete certain actions e.g. paying compensation, or attending a training course.

Prosecution

A prosecution will only be brought by the Neighbourhoods and public Protection Service where the two-stage test in the code for Crown Prosecutors is satisfied:

- i) That there is sufficient evidence to provide a realistic prospect of conviction
- ii) That a prosecution is in the public interest

Aggravating features that make a prosecution more likely include:

- The offender was in a position of authority or trust
- There is evidence that the offence was premeditated
- The victim of the offence was vulnerable
- The offender has relevant previous convictions or cautions
- The offence is likely to be continued or repeated

- The offence is widespread in the area where it was committed
- A prosecution would have a significant positive impact on maintaining community confidence

Mitigating features that may make a prosecution less likely include:

- The offence was committed as a result of a genuine mistake or misunderstanding (this must be balanced against the seriousness of the offence)

The full text of the Home Office Circular may be found at:

<https://www.gov.uk/government/publications/simple-cautions-guidance-for-police-and-prosecutors>

- A prosecution is likely to have a bad effect on the victim's physical or mental Health
- The offender is elderly or is, or was at the time of the offence, suffering from significant mantle of physical ill health (unless the offence is serious or there is real possibility that it may be repeated)
- The defendant has put right the loss or harm that was caused (but defendants cannot automatically avoid prosecution by paying compensation)

The law allows action to be taken against a wide range of persons: limited companies, partnerships and sole traders, manufactures, wholesalers and retailers, employers, employees and self-employed professionals, company directors and officers and licence holders.

In considering who should be prosecuted, the Neighbourhoods and Public Protection Service will focus on the person(s) who were responsible for the breach of the law, either because they caused it, or because they were in a position to prevent it and failed to do so.

Costs

At the conclusion of every successful prosecution, the Neighbourhoods and Public Protection Service will seek to recover both the investigating and legal costs, in order to ensure that the costs incurred in enforcing such matters are not the responsibility of Council Tax payers.

Proceeds of Crime Actions

Where an offender has obtained a financial benefit from his criminal conduct, an application under the Proceeds of Crime Act 2002 for confiscation of an offender's assets may be made. Applications are made after a conviction has been secured, but a restraint order may be obtained in the meantime to prevent the offender disposing of his assets.

What can you expect from the Neighbourhoods and Public Protection Service

You are entitled to expect Neighbourhoods and Public Protection staff to:

- Be courteous and helpful
- Identify themselves by name and produce identification if requested
- Confirm advice in writing on request, explaining why action is required and over what timescale
- Clearly distinguish between action that must be taken to comply with the law, and action that is recommended as best practice
- Minimise the cost of compliance (unless immediate action is necessary)
- Keep you updated with the progress of any investigation
- Give you an opportunity to comment before any matter is reported for formal action
- Carry out their duties in accordance with the applicable law
- Explain their powers and decisions to you, and advise you of the procedure for making a complaint or lodging an appeal
- Work in accordance with the legal requirements that govern data protection and the disclosure of information

What we expect from you:

In return, we ask all users of our service to respect the right of our staff to carry out their duties free from violence, threatening behaviour and abuse. All incidents of assault, intimidation or harassment of Neighbourhoods and Public Protection Service Staff, in connection with the carrying out of their duties, will be reported to the Police.

Comments, Compliments and Complaints

If you are unhappy with the service you have received from the Neighbourhoods and Public Protection Service, or we have failed to live up to our promises, our managers are always willing to discuss the matter with you, to try and find a solution.

If you wish to make a formal complaint about the Neighbourhood and Public Protection Service, or send us a compliment or comment about the Neighbourhoods and Public Protection Service you can do so by:

- Writing to the Service Director at the address below
- By email comments@cornwall.gov.uk
- By telephoning 0300 1234 100
- By talking directly to your local Councillor
- By calling into any of Cornwall Council's offices

Access to the Neighbourhoods and Public Protection Service

You can contact the Neighbourhoods and Public Protection Service at:

New County Hall
Treyew Road
Truro
TR1 3AY

Or on: 0300 1234 191. Consumer Advice is available by telephone from Citizens Advice Consumer Service on 08454 04 05 06, or online at www.adviceguide.org.uk

Please note: Cornwall Council does not accept service of any legal proceedings or legal process via e-mail or any other electronic means.

We can produce this document in large print, on audio tape, and in other languages. If you would like a copy in one of these formats, please telephone 0300 1234 191

The Cornwall Council Neighbourhoods and Public Protection Enforcement Policy will be subject to review to ensure that it remains relevant.