

SOUTH STAFFORDSHIRE COUNCIL

LICENSING AND REGULATORY COMMITTEE – 21 MARCH 2024

PROPOSED CORPORATE ENFORCEMENT POLICY FOR CONSULTATION

REPORT OF THE ENVIRONMENTAL HEALTH AND LICENSING TEAM MANAGER

**LEAD CABINET MEMBER – COUNCILLOR RITA HESELTINE, CABINET MEMBER FOR
REGULATORY SERVICES**

PART A – SUMMARY REPORT

1. SUMMARY OF PROPOSALS

- 1.1 The Regulator's Code issued by the Department for Business Innovation and Skills requires that local authorities review and update their Enforcement Policy on a regular basis.
- 1.2 The Enforcement Policy provides guidance to all officers engaged in enforcement work on behalf of the Council and gives all businesses and individuals clear guidance on how we go about enforcement.
- 1.3 The revised draft Enforcement Policy is contained in Appendix 1. It has been updated to reflect changes in legislation and service standards.
- 1.4 This report proposes a draft Enforcement Policy for engagement with stakeholders prior to its implementation.

2. SUMMARY IMPACT ASSESSMENT

POLICY/COMMUNITY IMPACT	Do these proposals contribute to specific Council Plan objectives?	
	Yes	The Corporate Enforcement Policy supports Prosperous Communities (Provide business friendly services through locality hubs to enable businesses to set up and grow) and Vibrant Communities (Provide a quality environment that we can all be proud of).
	Has an Equality Impact Assessment (Equal) been completed?	
	Yes	An EqlA has been completed but is subject to the results of the consultation process.
Has a Data Protection Impact Assessment been completed?		

	No	The Corporate Enforcement Policy does not propose a significant new policy that involves the handling of personal data.
SCRUTINY POWERS APPLICABLE	Yes	The Constitution and associated protocol provides that front line Councillors, the Monitoring Officer and the Section 151 Officer will have five clear working days following dispatch of a notification of a proposed decision in which to call in for scrutiny, decisions proposed by the Cabinet or its members. In accordance with the provisions of the Constitution and associated protocol, any two or more members wishing to request that this proposed decision should be called in for scrutiny should do so by giving notice to the Corporate Director of Governance either by e-mail or in writing before the end of the fifth day specifying the reason or reasons therefore. The Corporate Director of Governance will then call in the proposed decision and arrange for it to be considered by the Overview and Scrutiny Committee/relevant Scrutiny Panel. A copy of such notice must also be sent to the Lead Cabinet Member either by email or in writing by the end of the fifth day. This proposed decision will be confirmed and implemented or, where appropriate, referred to the Council for consideration at its next meeting, on or after the date to be notified upon circulation of the minutes of the meeting of the Cabinet, unless called in for scrutiny by that date.
KEY DECISION	No	
DECISION ROUTE/TIMELINE	LICENSING AND REGULATORY COMMITTEE: 21 March 2024	
TARGET COMPLETION/ DELIVERY DATE	July 2024	
FINANCIAL IMPACT	No	There are no financial implications as this is an update of existing policy. LG
LEGAL ISSUES	Yes	The Council is required to have an enforcement policy. The draft policy accords with the guidance prescribed by the Department for Business Innovation and Skills. RC
STRATEGIC RISK	No	

OTHER IMPACTS, RISKS & OPPORTUNITIES including climate impacts and health impacts if applicable	None	
IMPACT ON SPECIFIC WARDS	No	

PART B – ADDITIONAL INFORMATION

3. INFORMATION

3.1 In April 2014 the Department for Business Innovation and Skills, through the Better Regulation Delivery Office issued a new Regulator's Code. This Guidance is for Local Authorities to take account of in developing their Enforcement Policies.

3.2 The principles of good regulation in the Code are reflected in the draft updated Policy stating that regulatory activities will be carried out in a way which is:

- Transparent
- Accountable
- Proportionate
- Consistent
- Targeted

3.3 The policy has been rewritten to be user friendly including expectations of officers and documenting a clear scale of enforcement action.

The draft revised policy is contained in Appendix 1.

3.4 There is no legal requirement to carry out consultation on an Enforcement Policy. In addition, the Policy is largely prescriptive and follows the guidance in the Regulator's Code.

3.5 Informal engagement is taking place with councillors through the Licensing and Regulatory Committee, also with Team Managers, statutory and voluntary stakeholders.

4. IMPACT ASSESSMENT – ADDITIONAL INFORMATION

4.1 An initial EqIA is attached at Appendix 2. This report proposes a document for consultation and the EqIA will be amended in the light of information gathered during the consultation process.

5. PREVIOUS MINUTES

5.1 This is a revised Corporate Enforcement Policy which has not been considered previously.

6. BACKGROUND PAPERS

None

7. APPENDICES

Draft Corporate Enforcement Policy Report – Appendix 1 – Draft Corporate Enforcement Policy

Draft Corporate Enforcement Policy Report – Appendix 2 – EqIA

8. RECOMMENDATIONS

- 8.1 That Licensing and Regulatory Committee approve the draft Enforcement Policy for engagement with stakeholders and that subject to no significant comment being received through the engagement process recommend the Policy to Cabinet for approval.

Report prepared by: Jenny Rhodes, Team Manager Environmental Health and Licensing.

Enforcement Policy

Draft February 2024

South Staffs Council – Enforcement Policy

1.0 Background

- 1.1 This document sets out what businesses, landowners, tenants and others being regulated can expect from South Staffs Council ('The Council') and its Enforcement Officers. What constitutes an Enforcement Officer is defined in paragraph 2.0 below.
- 1.2 It commits the Council to good enforcement practice with effective procedures and clear policies.
- 1.3 Our policy does not aim to provide a 'one size fits all' approach to enforcement across the wide range of regulatory services and sets out how the Council and its Officers will undertake regulatory and enforcement action as part of their day-to-day work. Enforcement action will, in the main, follow the 4 E's approach of Engage, Educate, Encourage and Enforce, unless specific circumstances dictate otherwise.
- 1.4 Where there is a specific enforcement policy for a specific service area e.g. Planning Enforcement, the service specific policy will take precedent in any conflict between the two policies.

2.0 Scope and Meaning of Enforcement

This Policy applies to all the legislation enforced by Officers with delegated enforcement powers employed by the Council.

'Enforcement' includes any criminal or civil action taken by the Council aimed at ensuring that individuals or businesses comply with the law.

The term 'enforcement action' has been given a general statutory definition, which is:

- (a) Action to secure compliance with a restriction, requirement or condition in relation to a breach or supposed breach.
- (b) Action taken in connection with imposing a sanction for an act or omission; and
- (c) Action taken in connection with a statutory remedy for an act or omission.

'Enforcement Officer' includes any individual who has been duly authorised by the Council under the terms of the South Staffs Council Constitution and/or scheme of Officer delegations to undertake 'Enforcement' and 'Enforcement Action' in accordance with paragraphs (a)-(c) above.

3.0 What Guides Our Enforcement Approach?

3.1 The Principles of Good Regulation

The Legislative and Regulatory Reform Act 2006 requires every local authority to have regard to the five Principles of Good Regulation when carrying out specific regulatory functions.

- 1. Proportionate

Our activities will reflect the level of risk to the public and enforcement action will relate to the seriousness of the offence.

- 2. Accountable

Our activities will be open to public scrutiny, with clear and accessible policies, and a fair and efficient complaints procedure.

- 3. Consistent

Our advice to those that 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 similar ways to other local authorities.

4. Transparent

We will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return.

5. Targeted

We will focus our resources on higher risk enterprises and activities, reflecting both local need and national priorities.

3.2 The Regulators' Code 2014¹

The Council has had regard to the Regulators' Code in the preparation of this policy. This provides for an efficient and effective approach to all Council regulatory inspection and enforcement functions to improve compliance with legislation whilst minimising the burden on businesses, individuals, organisations and the Council itself.

However, in certain circumstances we may determine that a provision of the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, documented and based on material evidence.

¹ [Regulators' Code \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

3.3 Human Rights Act 1998

The Council is a public authority for the purposes of the Human Rights Act 1998. This Policy and all associated enforcement decisions therefore take account of the provisions of the Human Rights Act 1998. We therefore apply the principles of the European Convention for Human Rights and Fundamental Freedoms and in particular, due regard is had to the right to a fair trial and the right to respect for private and family life, home and correspondence.

3.4 Data Protection Act 2018 and General Data Protection Regulations 2018 (GDPR)

Where there is a need for South Staffs Council to share enforcement information with other agencies, we will follow the provisions of the Data Protection Act 2018 and General Data Protection Regulations 2018 (GDPR) and in line with the Council's Data Protection Policy.

3.5 The Code for Crown Prosecutors²

When deciding whether to prosecute, the Council will have regard to the provisions of The Code for Crown Prosecutors as issued by the Director of Public Prosecutions.

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. The Code sets out two tests that must be satisfied, commonly referred to as the 'Evidential Test' and the 'Public Interest Test'.

1. Evidential Test: Is there enough evidence against the defendant?

When deciding whether there is enough evidence to prosecute, the Council will consider what evidence can be used in court and whether it is reliable and credible. We must be satisfied there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. As part of this assessment we need to consider the impact of any defence or any other information that may be put forward or relied upon by the defendant.

2. Public Interest Test: Is it in the public interest for the case to be brought to court?

The Council will balance factors for and against prosecution carefully and fairly, considering each case on its merits. The following public interest criteria will normally be considered when deciding on the relevance of legal proceedings, although this list is not exhaustive.

- The seriousness of the offence committed.
- The level of responsibility of the suspect.
- The circumstances of and the harm caused to the victim or community.
- The past and current performance or actions of any business and/or individual concerned.
- A person's age in relation to young people (termed 'juveniles') aged under 18.
- The impact on the community.
- Statutory requirements, guidance or Codes of Practice.
- Legal advice.
- Whether prosecution is a proportionate response.
- The need to protect sources of information.

3.6 Regulatory Enforcement and Sanctions Act 2008

The Regulatory Enforcement and Sanctions Act 2008, as amended, established the Primary Authority scheme. We will comply with the requirements of the Act when we are considering taking enforcement

² [The Code for Crown Prosecutors | The Crown Prosecution Service \(cps.gov.uk\)](https://www.cps.gov.uk)

action against any business or organisation that has a Primary Authority relationship and, in those circumstances, will have regard to guidance issued by the Secretary of State in relation to Primary Authority.

Under this Act we may also refer the matter to the Office for Product Safety & Standards (OPSS) who are responsible for nominating partnerships, issuing guidance, and resolving determinations.

4.0 Which functions operate in accordance with this Enforcement Policy?

This policy relates to all Council services that operate a regulatory function within or on behalf of the Council.

Some examples of service areas that have a role to enforce legislation include;

- Environmental Health (food safety, health and safety, environmental protection, public health)
- Licensing (alcohol, gambling street trading)
- Animal Health and Welfare (animal boarders and breeders, zoos, riding schools)
- Housing (housing conditions, licensing of houses in multiple occupation, empty homes, harassment and illegal eviction)
- Unauthorised Gypsy and Traveller encampments
- Planning Enforcement
- Waste & Litter
- Antisocial Behaviour
- Countryside Ranger Service

Please note that this list is not exhaustive.

5.0 Who does this Enforcement Policy affect?

- 5.1 This policy provides a framework for Council employees, Members and contractors whilst they are carrying out their day-to-day duties. It is also designed to provide an overview of the Council's approach and general operating principles to those who might be affected by its use; this would include members of the public, commercial businesses and voluntary organisations.
- 5.2 This policy is also applicable where the Council is the 'Enforcing Authority' for its own premises. In such instances steps are taken to ensure that enforcement decisions are free from any conflict of interest. In particular, any serious breaches of legislation would be brought to the attention of the Team Manager, Environmental Health and Licensing and Corporate Leadership Team.

6.0 Evidence Gathering during an Investigation

- 6.1 Regulatory bodies are empowered to gather evidence by various means and as part of any ongoing investigation. This can include overt methods where the subject is aware of the investigation or, where appropriate, covert methods where the subject is unaware.
- 6.2 Where the Council undertakes to gather information covertly then they will have regard to the procedures and protocols laid down within the Regulation of Investigatory Powers Act 2000 (RIPA), Investigative Powers Act 2016 and the Protection of Freedoms Act 2012 as applicable. The Council has a corporate application and authorisation process for the use of these specific measures in addition to the use of Privacy Risk Assessments. These processes are monitored by senior Officers of the Council.
- 6.3 As part of any investigation, and to support decisions around the need for further action, a wide variety of evidence and intelligence will be gathered; this may include information from other agencies such

as those listed in Section 10. This will take into consideration any statutory process or formal data sharing agreements.

- 6.4 Evidence that is gathered as part of an investigation may be retained indefinitely and/or in accordance with established data retention policies. In certain circumstances the Council may seek to destroy equipment or goods that have been seized as part of an investigation, for example where there is a potential risk to health. This will take into consideration any statutory process.
- 6.5 In gathering evidence the Council routinely undertake recorded investigative interviews. These are carried out in accordance with the Police and Criminal Evidence Act 1984 and associated Codes of Practice and seek to provide an individual or business with the opportunity to provide their version of events as part of an ongoing investigation.
- 6.6 Attendance in person at an interview under caution is expected on the grounds of gathering complete evidence and to maximise the efficiency of the investigation process.
- 6.7 Failure to assist an investigation or the act of obstructing an Officer is an offence under many pieces of legislation used by enforcement agencies. The Council expect cooperation and will take action where appropriate, if this is not forthcoming.
- 6.8 In order to take enforcement action there needs to be sufficient supporting evidence to prove that there is a breach of legislation upon which enforcement action can be taken. In response to anonymous complaints or cases where there is no independent witness the Council will take a view as to whether they can take any further action or whether to retain the details purely for intelligence purposes. Factors that may be taken into account as part of this decision include the availability of corroborating independent evidence or whether evidence exists that undermines the case.

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

- Police and Criminal Evidence Act 1984
- Criminal Procedure and Investigation Act 1996
- Regulation of Investigatory Powers Act 2000
- Investigative Powers Act 2016
- Criminal Justice and Police Act 2001
- Human Rights Act 1998

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

7.0 What does enforcement look like?

- 7.1 The primary objective of enforcement is to achieve regulatory compliance in order to protect the public, legitimate business, the environment, and groups such as consumers and workers. However, we reserve the right to take action in some cases even after compliance has been achieved where we believe it is in the public interest to do so and where doing so will better meet local priorities and circumstances.
- 7.2 The Council is committed to working with its local residents, businesses and volunteer communities to provide practical and proactive help and advice to all parties to assist them to achieve compliance with the law.
- 7.3 If a resident or business operator chooses not to act on advice, an enforcement intervention should be expected. Similarly, the Council is committed to taking firm action against those that deliberately or persistently fail to comply with legislation and where this is considered appropriate.

- 7.4 Where non-compliance is identified then the Council will seek compliance through a combination of promotion, compliance advice, guidance and support, regularisation, informal warning and formal enforcement action.

7.4.1 Promotion

This typically involves a push of information to residents and businesses about specific matters of legislation. This is usually achieved by methods such as direct correspondence, press releases, face to face contact and website information.

7.4.2 Compliance Advice, Guidance and Support

The 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 to rectify breaches as quickly and efficiently as possible, avoiding the need for further enforcement action. If a similar breach is identified in the future, this advice will be persuasive in considering the most appropriate enforcement action to take on that occasion. Such advice cannot be cited in court as a previous conviction, but it may be presented in evidence. Failure to comply could result in an escalation of enforcement action.

The Council recognises that where a business has entered into a partnership with a Primary Authority, the Primary Authority will provide compliance advice and support, and the Council will take such advice into account when considering the most appropriate enforcement action for it to take. It may discuss any need for compliance advice and support with the Primary Authority in accordance with the Regulatory Enforcement and Sanctions **Act 2008**.

7.4.3 Informal Warnings

This method is used in circumstances where there has been a breach of legislation, usually minor, and where it is not thought appropriate to take more formal action. In these cases, the remedy may be simple and easily achieved following a written or verbal warning. In some cases, a warning can be challenged by the recipient and a review by a senior Officer can be requested. Where this is the case information on how to make a challenge will be included with the details of the warning and in line with individual service procedures.

7.4.4 Formal Enforcement

This includes a wide variety of sanctions including statutory (legal) notices, written undertakings, the refusal to grant or the revocation of an existing licence or registration, fixed penalty notices, powers of seizure and detention, cautions and prosecution. Formal enforcement action is taken in line with corporate procedures and having regard to Codes of Practice and professional guidance notes. Formal enforcement action also extends beyond the prosecution process as the Council may apply for further post-conviction sanctions.

7.4.5 Statutory (legal) Notices

Many pieces of legislation enforced by the Council provide for the service of statutory notices to seek compliance with legal requirements. A statutory notice will require a person, business or organisation to comply with specific legal requirements, usually within a specified time period. A notice shall explain what legislation has been breached, how to comply with the notice and the consequences of not complying with a notice. Notices will be accompanied by any relevant appeal information.

In general, failure to comply with a notice makes the person or business named in the notice liable for prosecution. Further, the Council may, in some cases carry out the works identified within the notice and recover costs from the recipient of the original notice (work in default). Prosecution and work in default may run in parallel.

7.4.6 Written Undertakings (Voluntary and Formal)

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 causing the breach. If appropriate and proportionate, this action may preclude the need for further formal action whilst the agreement is met.

Failure by an individual or business to agree to a written undertaking or, breach of agreement in the case where an agreement is in place, can lead to further formal action being taken by the Council in accordance with the relevant legal provisions.

7.4.7 Injunctions/ Enforcement Orders etc. and other civil sanctions including financial and civil penalties

In certain circumstances the Council may consider it necessary or expedient to seek a direction from the court (in the form of an order or an injunction) to control behaviour or an activity. The court may also direct that specified activities be suspended until the breach has been rectified and/or safeguards have been put in place. Injunctions are orders of the court, breach of which are punishable as a contempt of court by imprisonment or a fine.

Where applicable legislation permits the Council may also seek civil sanctions including financial and civil penalties.

7.4.8 Seizure proceedings

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

7.4.9 Fixed Penalty Notices

A Fixed Penalty Notice may be used as a means of dealing with a low-level offence instead of prosecution action and enables a defendant to avoid a criminal record by discharging their liability to a prosecution for the original offence. Certain lower-level offences such as littering, dog fouling and smoking in prohibited places are subject to Fixed Penalty Notices and they enable the offender to discharge their liability and avoid a criminal record.

The Council will comply with any current relevant guidance on the use of Fixed Penalty Notices.

a) There must be sufficient evidence to give a realistic prospect of conviction; and

b) The offence is not so serious as to warrant a prosecution and is of a nature suitable for being dealt with by a Fixed Penalty Notice.

Where an adult recipient does not pay the penalty offered or is a repeat offender there will be a presumption that prosecution will follow in relation to the actual offence.

The Issue of FPN's to Juveniles

Juveniles under the age of 10 years

An FPN cannot and will not be issued to a juvenile under the age of 10 years.

Where an offence has been committed, the young offenders name, address and age shall be ascertained, together with that of their parents or legal guardian. The young offender will be informed that the offence will be shared with the local Youth Justice Service and relevant Early Help and Children's Services for their information in accordance with the Data Protection Act 2018. in accordance with the Data Protection Act 2018.

Juveniles aged between 10 and 15 years

Young people aged between 10 and 15 years will not be issued with an FPN. The young offenders name, address and age shall be ascertained, together with that of their parents or legal guardian. The young offender will be informed that the offence will be shared with the local Youth Justice Service and relevant Early Help and Children's Services for their information in accordance with the Data Protection Act 2018.

Juveniles aged between 16 and 17 years

In certain circumstances, an FPN can be issued to a young person between the age of 16 and 17 in accordance with the procedure for adults.

Before the issue of the FPN the following factors shall be considered;

- (a) Whether an FPN been issued previously
- (b) Whether a warning, or preventative intervention more appropriate
- (c) Whether there are family circumstances or other vulnerabilities

(d) Whether there is evidence of mental incapacity

(e) Whether the individual is demonstrating any signs of substance abuse

In all cases, the Youth Justice Service, relevant Early Help and Children's Services should be liaised with, and the parent/guardian of the young person will also be informed either in person or in writing.

If the Authorised Officer is in any doubt regarding the age of a young offender, then the procedures set out for those individuals between the ages of 10 and 15 will be applied.

7.4.10 Penalty Charge Notices

Penalty Charge Notices are issued in relation to contraventions of parking restrictions whereby an individual pays an amount of money as a consequence of the breach.

The method and circumstances for issuing a Penalty Charge Notice is prescribed by specific legislation. Failure to pay a Penalty Charge Notice may ultimately result in the individual being pursued by enforcement agents where their fees will also apply.

The notices issued are no longer breaches of criminal law enforceable through the criminal justice system, but instead 'Penalty Charge Notices' (PCN's) are a debt owed to the Council, enforceable through the civil justice system.

7.4.11 Revocation, suspension and withdrawal of licences and permits

Where the Council has issued a permit, approval, licence or other form of permission, removal of that permission in line with the relevant guidance or legislation can be considered as an enforcement remedy. This action does not preclude further parallel formal enforcement action by the Council for the same offence e.g., the instigation of prosecutions proceedings.

When considering future licensing applications, the Council may take previous breaches and enforcement action into account.

7.4.12 Forfeiture Proceedings

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 re-entering the marketplace or being used to cause a further problem. The Council may seek an order of the court for forfeiture of goods it has seized either as part of criminal investigations or during the exercise of its enforcement functions.

7.4.13 Simple Caution

As an alternative to prosecution and in appropriate circumstances a simple caution may be considered as a means of formal enforcement action. A caution is not a criminal conviction, but it will form part of an offender's criminal record and may be referred to in any subsequent proceedings.

For a caution to be issued the following criteria must be met:

- a) There is sufficient evidence to provide a realistic prospect of conviction and it is in the public interest to caution;
- b) There has been a reliable admission of guilt by the offender; and
- c) The offender is over 18 years of age.

Consideration will be given to the Ministry of Justice - Simple Caution for Adult Offender guidance (MoJ Guidance).³

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

7.4.14 Prosecutions

The Council will consider a prosecution when:

- a) It is appropriate in the circumstances as a way to draw attention to the need for compliance with the law, especially where there would be a normal expectation of a prosecution, or where;
- b) Through the conviction of offenders, others may be deterred from offending; or
- c) There is potential for considerable harm arising from the breach; or

³ [Simple Cautions guidance \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/guidance/simple-cautions)

d) The gravity of the offence, taken together with the general record and approach of the offender justifies it.

The decision to prosecute will always consider the criteria set down in the Code for Crown Prosecutors (section 3.5). The Council will use discretion in deciding whether to initiate a prosecution and may do so without prior warning taking place.

7.4.15 Proceeds of Crime

There are some cases where an application under the provisions of the Proceeds of Crime Act is considered appropriate. This seeks to confiscate assets from an offender in order to recover the financial benefit they have gained during the course of their criminal activities. Where such an approach is considered then the Council will seek the advice of an Accredited Financial Investigator at the earliest opportunity so that a parallel financial investigation can be undertaken.

There is a defined timescale for the application to proceed with confiscation; it must be made after conviction but prior to any sentencing.

7.4.16 Charges

Certain enforcement activities incur a charge designed to solely recover the cost of the enforcement action taken and are recoverable from the offender or perpetrator. Some charges are set by statute whilst others are determined by the Council and must demonstrate financial transparency in how they are calculated.

The Council also has the power to apply interest charge rates to any expense it incurs in the course of enforcement action including works in default. Such charges will be applied with regard to advice provided by financial services.

7.4.17 No Action

In certain circumstances, contravention of the law may not warrant formal action by the Council. In making this decision the Council may take the following factors into consideration to help provide transparency to the agreed approach.

- Whether the cost of compliance to the offender outweighs the detrimental impact of the contravention (the harm).
- Whether the cost to the Council to take any required enforcement action outweighs the detrimental impact of the contravention on the local community.
- The availability of sufficient evidence to proceed with action.
- Whether it is in the public interest to proceed with formal action.

8.0 How do we determine the most appropriate enforcement action?

- 8.1 The Council will carry out its duties in a fair and consistent manner. Whilst Officers are expected to exercise judgement in individual cases the Council has formal documented arrangements in place to review proposed enforcement actions in the more serious cases and local schemes for officer delegation. This could include an internal case review and discussion on whether the proposed action is the most suitable means of achieving compliance.
- 8.2 As part of its decision making process, the Council will also consider the role of supplementary decision making policies and tools that are available across the wide range of regulatory functions; this could include the use of the HSE Enforcement Manager Model, Codes of Practice or the role of Primary Authority protocols etc.
- 8.3 Where there is a shared enforcement role with other local authorities and/or enforcement agencies, the Council will ensure that effective liaison and consultation takes place to ensure that the needs of all parties are considered and to help achieve the best outcome from formal enforcement action.

9.0 What can you expect from your enforcing Officer/Council?

- 9.1 All Officers engaged in enforcement functions are appropriately trained and authorised in line with the provisions of the South Staffs Council Scheme of Delegation to ensure the highest standards of service delivery. Officers will always carry suitable identification that can be checked
- 9.2 Authorised Officers will carry out their enforcement activities in accordance with the principles of this Policy and the requirements of the particular legislation and other Council Policy under which they are acting and any associated guidance or Codes of Practice. Officers do not have to make an appointment and will often visit businesses without notice. They may enter premises at any reasonable time to carry out their work. It is against the law to stop an officer carrying out their duties or exercising their powers. Officers will follow statutory codes of practice when doing this.
- 9.3 The Council believes that prevention, including education, is better than cure and encourages businesses and individuals to seek advice on matters that they are unsure of, without fear that this will trigger direct enforcement action. In return the Council will be clear about issues that constitute direct non-compliance with legislation and those matters which are examples of good practice. Where appropriate, advice and guidance will be followed up by dedicated compliance checks or will form part of any routine inspection programme.
- 9.4 The Council will endeavour to provide information and advice in plain language. The Council will discuss general issues, individual compliance failures or problems with anyone experiencing difficulties should it be requested. To support this, the Council will identify a point of contact in any correspondence that it issues.
- 9.5 The Council will have regard to the challenges faced by individuals and businesses, particularly small businesses. It will ensure that any action it requires is proportionate and balanced against risk. As far as the law allows, the Council will take account of the individual circumstances of each case when considering action. This includes the seriousness of the offence, past history, confidence in management, the consequences of non-compliance and the likely effectiveness of the various enforcement options.
- 9.6 A business or individual will be notified of any intended enforcement action as soon as possible, unless this could undermine an investigation or pose a safety risk to those concerned, the environment or the general public.
- 9.7 In cases where there is an imminent risk to health or the environment, enforcement action may be taken before any right of challenge can be heard.
- 9.8 The Council will provide information on how to challenge or appeal any enforcement decision as part of the enforcement action and where a statutory appeal process exists; where no statutory appeal process exists, guidance on how to challenge or make a representation is provided at the time the action is taken. In addition, the Council will also provide details of its formal complaints procedure for those wishing to use this approach.
- 9.9 The Council will make businesses and individuals aware of the current Enforcement Policy through the website, direct correspondence or as part of day-to-day contact.
- 9.10 In certain circumstances we will seek to raise awareness and increase compliance levels by publicising unlawful trade practices or criminal activity. Where appropriate the results of specific court cases may also be published.

What can I expect from an officer during an inspection?

- To be shown identification and authorisation.
- To be treated politely.
- To be given a contact name and telephone number so you can get in touch for more advice.
- To be told at the end of an inspection if anything needs attention or if everything was fine.
- To receive a written report of the inspection or visit detailing any changes that need making. This will clearly explain which are needed by law, and those that are

recommended. We will tell you how much time you have to complete and implement the changes. Or:

- Be given clear and simple advice about any requirements. You can ask for this to be confirmed in writing.
- Officers will tell you if they need to take action straight away and follow this in writing within 10 working days letting you know the reasons.
- An opportunity will be given to discuss the matter and any rights of appeal, complaint or further representation will be advised. This will not, however, be possible where immediate action is considered necessary.

Service standards

Our Service Standards can be found here:

[Our commitment to customer care | South Staffordshire District Council \(sstaffs.gov.uk\)](https://www.sstaffs.gov.uk/our-commitment-to-customer-care)

10.0 Which other agencies might we work with?

- 10.1 The Council will aim to maximise its effectiveness by working with other authorities and other agencies to share intelligence and resources where it is lawful to do so. Where issues are identified that extend beyond the remit of one agency and into the role of another, then joint operations will be undertaken to maximise resources and improve any enforcement outcome.

Some examples of agencies that the Council might work with include.

- Police
- Environment Agency
- Rural Payments Agency
- Health and Safety Executive
- Food Standards Agency
- Fire Service
- HM Revenue and Customs
- DEFRA
- Animal Plant Health Agency
- Office for Product Safety & Standards
- Citizens Advice
- Department for Work and Pensions
- Department for Transport (DfT)
- Registered providers of social housing
- Other Local Authorities (particularly where a Primary Authority relationship exists)
- Other Enforcement Agencies as appropriate

- Youth Justice Service
- UK Health Security Agency
- RSPCA
- Border Force
- Other Agencies as Appropriate

11.0 Equality and Diversity

The Council is committed to providing high-quality, customer focussed services for all people living, working, or visiting the area. Our aim is to make equality, diversity and inclusion an integral part of the way the Council works by putting it at the centre of everything that we do.

South Staffordshire's Councils equality objectives as set out in its 'Everyone Counts' document reflects our current corporate objectives in relation to Equality and Diversity and help us to improve policy making, and service delivery:

- Know the diversity of our community and understand its need.
- Work in partnership with public, private, voluntary and community organisations to reduce the equality gaps and improve lives.
- Actively engage our community to participate in decision making processes to improve the services we provide.
- Continue to ensure our workforce is representative of the communities we serve and our work place is inclusive and strives to treat people equitably with dignity and respect

This policy has undergone An Equality Impact Assessment.

12. The Council Plan 202-2024 (Extant at the time of Revision – this section likely to be updated before final publication).

Enforcement activity supports the Council Plan:

Prosperous Communities

Provide business friendly services through locality hubs to enable businesses to set up and grow.

Vibrant Communities

Provide a quality environment that we can all be proud of.

13.0 Complaints, compliments and suggestions

- 13.1 Complaints, compliments or suggestions on any aspect of the services the Council provides should be directed to the service area in the first instance.
- 13.2 If the Council's response to a complaint about the service fails to resolve the matter, then you may wish to lodge a formal complaint using our dedicated corporate complaint procedure.
- 13.3 For further details on how to register a complaint, compliment or suggestion, please see our web page detailed below.

[Comments, compliments and complaints | South Staffordshire District Council \(sstaffs.gov.uk\)](https://www.sstaffs.gov.uk)

- 13.4 Where a complaint is received about the conduct of an Officer then this will be investigated separately to run in parallel with the enforcement investigation; this will ensure that there is no unnecessary delay in the enforcement process.

14.0 Monitoring

- 14.1 The Regulators' Code requires that the Council publish details of performance against the Enforcement Policy. This should include feedback from satisfaction surveys and data relating to complaints and appeals against enforcement decisions.
- 14.2 The Council will continue to use a variety of methods to share enforcement related information as and when appropriate. This may include data within general or specific performance reports to a relevant committee, through the completion of statutory returns, and in response to specific requests from interested parties.

15.0 Review of this enforcement policy

- 15.1 This policy will be subject to a general review every five years. Where significant changes are required i.e., if there is a significant change to our enforcement approach then those changes will be subject to the formal approval process in place at that time.
- 15.2 If you have any queries regarding the content of this policy then please contact:
Jenny Rhodes, Environmental Health and Licensing Team Manager.

Draft Corporate Enforcement Policy Report – Appendix 2 – EqIA

Template for recording an Equality Impact Assessment (EqIA)

EqIA guidance can be found at

[https://sstaffsgovuk.sharepoint.com/sites/TheCore/SitePages/Equality-%26-Diversity\(1\).aspx](https://sstaffsgovuk.sharepoint.com/sites/TheCore/SitePages/Equality-%26-Diversity(1).aspx)

Service:	Person responsible for the assessment:	Date EqIA completed:
Env Health and Licensing	John Gerring	26.02.2024 (draft)

PART A - Identification

1	Title or name of proposal	Corporate Enforcement Policy	
2	The commencement date of the proposal and approval e.g., CLT, Cabinet, Committee, Council	2 nd April approval by Cabinet for consultation. July 2024 Cabinet approval post consultation. CLT 6 th March 2024. 29 th February deadline.	
3	What are the aims, objectives, and purpose of the proposal?	Aims: Legal compliance with the Regulator's Code Objectives: To update the existing Enforcement policy that can be used by any service in the Council with a Regulatory function e.g. Env Health, Planning Enforcement, Benefits Purpose: To give all stakeholders clear guidance on how the Council goes about fulfilling its statutory enforcement roles and to provide guidance to those engaged on behalf of the Council about how they should undertake their enforcement activity.	
4	Status of the proposal	Existing proposal	<div><input type="checkbox"/> <input type="checkbox"/> 2015 Date Last Reviewed:</div>
5	Are there any other functions, policies or services which might be linked with this one for the purposes of this exercise?	Yes. There may be other specific enforcement policies that need to be taken into account e.g. Planning Enforcement; and other legislative requirements will also apply where they may be policies e.g. Regulation of Investigatory Powers Act. These are all addressed in the Corporate Enforcement Policy.	
6	Who is it intended to affect or benefit (the target population):	The Regulators themselves and anybody on the receiving end of Regulation, which is pretty much every person in the District.	

PART B - Evidence, Research and Stakeholder Engagement

7	List relevant examples of data (qualitative and quantitative) or any consultation information available that will enable the impact assessment to be undertaken	The Enforcement Policy follows prescriptive guidance in the Regulator's Code. There is no requirement for the Council to consult on its Enforcement Policy.
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		<p>Consultation with Stakeholders is proposed as part of the approval process.</p> <p>Previous consultation has resulted in a nil response.</p> <p>A period of consultation is proposed as part of the development and approval process for the Policy.</p>	
8	Evidence from the data from Question 7 of any feedback or complaints against the service/policy/procedure on grounds of potential or perceived discrimination	<p>We are not aware of any complaints about the application of the Policy over the last 10 years.</p> <p>Until the recent revision of the website the Enforcement Policy was available to anybody to see.</p>	
9	Does your proposal link with other proposals to have a cumulative negative affect on particular equality groups?	Yes/ No	If yes, give details
		No	

PART C – Assessment and Differential Impacts

Within this table, state whether the policy or function will have a positive or negative impact across the protected characteristics and provide any comments, reason, and evidence to support this.

What is the effect of the change on each characteristic – tick one				Reason		Action* Required
	Positive impact	Negative impact*	Neutral	Explanation of impact analysis	Is this likely to be unlawful?	Yes / No
Age	Positive			Specific guidance and legislation, reflected in the policy, ensures that young people are treated appropriately in any enforcement-based activity.	No	No
Disability	Positive			The specific needs of any group are taken into account across the range of enforcement from education to prosecution. For education purposes material is available in different formats and for formal action support can be organised for specific needs. Working with mental health teams is a regular feature of	No	No

				Environmental Health work in particular.		
Gender reassignment			Neutral	No impact has been identified.	No	No
Marriage & Civil Partnership			Neutral	No impact has been identified.	No	No
Pregnancy and Maternity			Neutral	No impact has been identified.	No	No
Race	Positive			Race is a well-established factor in enforcement activity, particularly around language barriers and cultural expectations. Most enforcement interactions, particularly those of a formal nature, are on an individual basis with enforcement officers who are trained not just in their professional role but in equality and diversity. The individual nature of interactions and the staged approach of escalating enforcement and checks and balances contained within ensure that Race is taken into account.	No	No
Religion or Belief	Positive			As above	No	No
Sex			Neutral	No impact has been identified.	No	No
Sexual Orientation			Neutral	No impact has been identified.	No	No
Other	Positive		Neutral	Mental Health can be a factor in some of the enforcement activities that are undertaken. A multi-agency approach is taken to any enforcement action where mental health is considered to be an issue.	No	No

PART D – Outcomes, Action, and Public Reporting

What Justifiable Action Does the Evidence, Engagement and Consultation Suggest You Take?

	Description	Yes / No
A	No Major Change Required When no potential for discrimination or adverse impact is identified and all opportunities to promote equality have been taken.	Yes
B	Adjustments needed to remove barriers or to better promote equality Are you satisfied that the proposed adjustments would remove the barriers identified?	No
C	Continue despite possible adverse impact For important relevant proposals, compelling reasons will be needed. You should consider whether there are sufficient plans to reduce the negative impact and/or plans to monitor the actual impact.	No
D	Stop and rethink your proposal Actual or potential unlawful discrimination is identified; the proposal will need reviewing immediately.	No

PART E – Monitor Evaluate and Review

Action and Monitoring Plan - where the assessment in Part C & D indicates a potential negative impact, how will this be reduced or mitigated to reduce impact moving forwards?

Conclusions Reached About Potential Impact		
Possible Impact	Group(s) Affected	Evidence
Impact Identified	Action	Responsibility
Timescale	Expected Outcomes	Review Date

PART F – To be completed by Equality Service Group

Date Reviewed	Name of Representatives involved in Review (min of 3). If less than 3 please explain what exceptional circumstances apply
General Comments	
Recommendations	
Publish Results <input type="checkbox"/> Carry out further impact assessment, if yes state the review date and ensure this is diarised for action <input type="checkbox"/>	Specific Recommendations to Consider:
Confirm that the recommendations have been actioned or explain why if any cannot be actioned.	

Remove the red prompt questions and this text and then send the form to your Corporate Director/Assistant Director to review and sign,

Part G – Corporate Director/Assistant Director Approval

- I am satisfied with the results of this EqIA.
- I have seen the Council's Equality Schemes or Equality Action Plan and am satisfied with the contribution it can make.

Approved

Corporate Director/Assistant Director Signature:

Date:

Once signed the author of the EqIA should attach it to the report.

Please send a copy to Thomas Reynolds, Performance & Customer Insight Manager requesting that the EqIA is published on our internal equality site.

Where the EqIA relates to a member report the EqIA should be sent to Member Support at the same time as issuing your report to ensure it is on the CMIS system prior to the Cabinet/Committee/Council meeting.

If the EqIA relates to an Individual Decision, please ensure that the EqIA is attached to the report.