

Nottingham City Council - Enforcement Policy

1. Introduction

This document sets out what businesses, individuals and the community as a whole can expect from the Council's enforcement officers. It commits us to good enforcement procedure.

The primary function of the Council's enforcement work is to protect citizens and the environment. At the same time, fair and consistent enforcement helps to maintain a level playing field for local businesses, individuals and our other service users. The Council aims to be risk based, proportionate, timely and reasonable in exercising its statutory powers and responsibilities. This approach supports and promotes the Council's Plan to make Nottingham a Great City with citizens at the heart of everything we do.

We recognise that the effectiveness of legislation depends upon the compliance of those regulated and that most businesses and individuals want to comply with the law. We will therefore assist and advise wherever possible, while taking firm action against those who break the law or act irresponsibly. We work closely with partners such as the Police and other enforcement bodies to ensure citizens are protected and safeguarding of vulnerable persons is fully considered while carrying out our diverse range of enforcement activities.

This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. The safety of citizens is the first priority but regard will also be had to the impact of the Council's regulatory activities on economic progress where appropriate. In certain instances we may conclude that a provision in 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 and based on material evidence.

The Regulators Code applies to most of the Council's regulatory and enforcement functions. However Nottingham City Council has also formally adopted the Government's Concordat on Good Enforcement which applies to all the Council's enforcement and regulatory activities.

2. Policies

Standards

In consultation with businesses and other interested parties, we will draw up clear standards setting out the level of service and performance that the public and business can expect to receive. We submit a range of data returns to Central Government each year to report our performance achievements.

Openness

We will provide accessible information, advice and guidance in plain language to make it easier for everyone to understand the legislation that we enforce.

We will be open about how we set about our work, consulting local business and other interested parties.

Helpfulness

We believe that prevention is better than cure; we will actively work with businesses and individuals to advise on, and support, compliance.

We will provide a courteous and efficient service, and our staff will identify themselves by name. Officers will carry and be prepared to show clear identification and authorisation documentation. We will provide details of how to discuss any concerns you may have, agree timescales, expectations and preferred methods of communication with you and ensure that you are kept informed of progress and outstanding issues.

Appeals and Complaints about our service

Where we take formal enforcement action, there is often a statutory right to appeal. We will always tell you about this at the appropriate time.

We are always willing to discuss with you the reasons why we have acted in a particular way, or asked you to act in a particular way. If you have been unable to resolve your concerns with the inspecting officer then you can contact the officer's line manager for an informal review of the matter.

We manage formal complaints about our service, or about the conduct of our officers, through Nottingham City Council's Corporate Complaints Policy, please visit the Council's website at nottinghamcity.gov.uk

Proportionality

Where we identify any failure to meet legal obligations we will respond proportionately, taking account of the circumstances including the costs of compliance for business by ensuring that any enforcement action we take or remedial action we require is proportional to the risks. Where available we will apply national schemes for assessing risks and targeting enforcement. Where appropriate, positive feedback will be given and where applicable changes may be made to risk ratings as a result of performance.

We will carry out our duties in a fair and consistent manner. While officers necessarily exercise judgement in individual cases, there are general principles that apply in every case to promote consistency, including liaison with other authorities and enforcement bodies. Our duties will also be carried out with full regard to the City Council's Equality and Diversity Policy.

Police and Criminal Evidence Act 1984 (PACE), Human Rights Act 1998 and Regulation of Investigatory Powers Act 2000 (RIPA) Criminal Procedure and Investigation Act 1996 (CPIA)

All enforcement action will be undertaken with due regard to the provisions of the above legislation which is derived from the European Convention on Human Rights, especially:

- Article 6 – the right to a fair trial
- Article 8 – the right to respect for private and family life
- Article 1 of the First Protocol – the protection of property
- RIPA – the written authorisation of covert human intelligence sources and/or surveillance techniques
- The Protection of Freedoms Act 2012
- CPIA – makes provisions for retaining and disclosing material obtained during criminal investigations to ensure your human rights are protected.

3. Procedures

We will provide clear advice that can be clearly understood and implemented, distinguish legal requirements from suggested best practice advice and ensure that any verbal advice you receive is confirmed in writing if requested.

In appropriate circumstances officers will provide an opportunity for discussion of the relevant circumstances before any decision to take formal enforcement action is made. Examples of when it is not appropriate to discuss the matter may include certain types of test purchase scenario, cases where it is necessary to prevent the destruction of evidence, or where there are reasonable grounds to suspect that an offence has been committed and it is appropriate either to issue a fixed penalty notice (if applicable), or commence an interview under the Police and Criminal Evidence Act 1984 (PACE).

Where immediate action is taken, reasons for such action will be given at the time. Where there are statutory rights of appeal against formal action, notification of the appeal mechanism will be clearly set out in writing at the time the action is taken. Complaints about the service are dealt with in section 8 of this document.

4. Application of our policy

All Officers must have regard to the principles contained in this policy statement when making enforcement decisions. It must be read in conjunction with approved statutory, governmental or other national guidance on enforcement action. Regard must also be had to any internal quality procedures.

Options may include;

A. Compliance Advice, Guidance and Support

Nottingham 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. A warning letter or 'letter before action') 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 to take on that occasion. Such a letter cannot be cited in court as a previous conviction but it may be presented in evidence.

Nottingham City 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 Nottingham City 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.

Where more formal enforcement action, such as a simple caution or prosecution, is taken, Nottingham City Council recognises that there is likely to be an ongoing need for compliance advice and support, to prevent further breaches.

B. Voluntary Undertakings

Nottingham City Council may accept voluntary undertakings that breaches will be rectified and/or recurrences prevented. Nottingham City Council will take any failure to honour voluntary undertakings very seriously and enforcement action is likely to result.

C. Statutory (Legal) Notices

In respect of many breaches Nottingham City Council has powers to issue statutory notices. These include: 'Stop Notices', 'Prohibition Notices', 'Suspension Notices', 'Emergency Prohibition Notices', and 'Improvement 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.

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 prevented from recurring. It may also prohibit specified activities until the breach has been 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.

Some notices issued in respect of premises may be affixed to the premises and/or registered as local land charges.

D. Financial penalties

Nottingham City Council has powers to issue fixed penalty notices in respect of some breaches. A fixed penalty notice is not a criminal fine, and does not appear on an individual's criminal record. If a fixed penalty is not paid, Nottingham City Council may commence criminal proceedings or take other enforcement action in respect of the breach.

If a fixed penalty is paid in respect of a breach Nottingham City Council will not take any further enforcement action in respect of that breach. Payment of a fixed penalty does not provide immunity from prosecution in respect of similar or recurrent breaches.

Nottingham 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 at Nottingham City Council's discretion. 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. In some circumstances the Police may issue fixed penalty notices in connection with investigation work carried out by the Council such as breaches of Licensing legislation discovered through test purchasing.

E. Injunctive Actions, Enforcement Orders etc.

In some circumstances Nottingham City Council may seek a direction from the court (in the form of an order or an injunction) 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.

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

Nottingham 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, Nottingham City Council will usually only seek a court order if it has serious concerns about compliance with voluntary undertakings or a notice.

F. Simple Caution

Nottingham City Council has the power to issue simple cautions (previously known as 'formal cautions') as an alternative to prosecution for some less serious offences, where a person admits an offence and consents to the simple caution. Where a simple caution is offered and declined, Nottingham City Council will consider prosecution.

A simple caution will appear on the offender's criminal record. It is likely to influence how Nottingham City Council and others deal with any similar breaches in the future, and may be cited in court if the offender is subsequently prosecuted for a similar offence. If a simple caution is issued to an individual (rather than a corporation) it may have consequences if that individual seeks certain types of employment.

Simple cautions will be used in accordance with Home Office Circular 016/2008 and other relevant guidance.

G. Prosecution

Nottingham City Council may prosecute in respect of serious or recurrent breaches, or where other enforcement actions, such as voluntary undertakings or statutory notices have failed to secure compliance. When deciding whether to prosecute Nottingham City Council has regard to the provisions of [The Code for Crown Prosecutors](#) as issued by the Director of Public Prosecutions.

Prosecution will only be considered where Nottingham City Council is satisfied that it has sufficient evidence to provide a realistic prospect of conviction against the defendant(s) and where a prosecution is required in the public interest. This is detailed further in paragraph 5 below.

H. Refusal/Suspension/Revocation of Licences

Nottingham City Council issues a number of licences and permits. Nottingham City Council also has 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. Failure to apply for or renew certain licences and registrations may lead to the Council considering whether a management order is appropriate; reasonable warnings and advice about the consequences of such actions would be provided to duty holders.

When considering future licence applications, Nottingham City Council may take previous breaches and enforcement action into account.

In choosing which enforcement option(s) to take the Council will aim to change the inappropriate behaviour causing the problem and to deter future non-compliance.

Where appropriate the Council will also aim to restore any harm caused and eliminate any financial gain arising from the non-compliance. The enforcement option(s) chosen will be proportionate to the nature of the non-compliance and the harm caused by it and appropriate to the individual or business which the action is taken against. The use of the Proceeds of Crime Act will be considered as a means to ensure that profits derived from criminal activity are recovered from those responsible.

Enforcement action will be followed up as appropriate and may result in further enforcement options being pursued if the initial action has not achieved the appropriate result eg non-compliance with a notice may result in prosecution.

Where it is apparent that rogue trading activities are recurrent and persistent then targeted enforcement activity will take place to protect citizens from harm and ensure legitimate businesses can operate in a fair trading environment.

In some circumstances matters may be referred from or to another agency for enforcement action. Our staff will liaise and may take joint action with other Council departments and/or external organisations in order to achieve enforcement aims.

Any departure from this policy statement must be exceptional, capable of justification, and be fully considered by a relevant Manager before a final decision is taken. This proviso shall not apply where a risk of injury, harm or to health is likely to occur due to a delay in any decision being made.

5. Decisions on enforcement action

Prosecution will only be considered where Nottingham City Council is satisfied that it has sufficient evidence to provide a realistic prospect of conviction against the defendant(s) and where a prosecution is required in the public interest.

The finding that there is a realistic prospect of conviction is based on an objective assessment of the evidence, including whether the evidence is admissible, reliable and credible and the impact of any defence.

In every case where there is sufficient evidence to justify a prosecution Nottingham City Council must go on to consider whether a prosecution is required in the public interest. When deciding the public interest Nottingham City Council will consider all relevant circumstances carefully and will have regard to the following public interest criteria:

- The seriousness of the alleged offence;
- Culpability;
- Any harm caused to the victim
- The impact on the community;
- Whether prosecution is a proportionate response;

The above criteria are not exhaustive and not all factors may be relevant in every case. The criteria enables Nottingham City Council to form an overall assessment of the public interest and the weight to be attached to each factor will also vary according to the facts and merits of each case. In some cases Nottingham City Council may be satisfied that the public interest can be properly served by an out of court disposal rather than a prosecution.

A successful prosecution will result in a criminal record. The sentence that the court may impose is specified in legislation and varies for each offence; depending on the seriousness of the offence the court may impose a financial penalty, community order or a term of imprisonment. 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. Review of this policy

It is intended that this document will be subject to periodic review to accommodate changes in legislation, local needs and the views of our customers.

7. Comments and Complaints

Should you have any comments about the policy or wish to challenge a regulatory decision you may do so through our 'Have Your Say' process (this does not replace the formal legal appeal process that may be available to you in the legislation concerned). We manage formal complaints about our service, or about the conduct of our officers, through Nottingham City Council's Corporate Complaints Policy. This can be accessed at; <http://www.nottinghamcity.gov.uk>

In respect of health and safety advice given which you think is incorrect or goes beyond what is required to control the risk adequately there is an additional means of challenging this if the above City Council process has not resolved your concern. In such cases you may appeal to the Independent Regulatory Challenge Panel. Details can be found at;

<http://www.hse.gov.uk/contact/challenge-panel.htm>

1 December 2015