

Corporate Enforcement Policy



North Kesteven
DISTRICT COUNCIL

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Introduction

1. Introduction

This document details the Corporate Enforcement Policy of North Kesteven District Council, and provides guidance to officers, businesses, consumers and the general public on the range of options that are available to achieve compliance with the legislation that it enforces.

North Kesteven District Council believes that effective, well-targeted and a balanced approach to enforcement is essential in promoting fairness and protection from harm. We also recognise that effective and timely guidance and advice on compliance supports and enables economic growth for businesses, without imposing unnecessary burdens.

This Enforcement Policy is the core of our approach to enforcement and supports this Authority's purpose of being and our priorities.

It incorporates best practice and sets common principles that we will follow and how we will comply with good enforcement principles, and best practice including the Regulators' Code¹. This seeks to promote an efficient and effective approach to regulatory inspection and enforcement, improving the outcome of regulation without imposing unnecessary burdens on businesses.

The prime consideration of all enforcement activities undertaken by the council is to protect the public from harm. North Kesteven District Council recognises the key role its enforcement function has in safeguarding and will carry this out at all times with adherence to national and regional safeguarding policy².

What is this policy for

This policy outlines our approach to dealing with non-compliance with legislative requirements of businesses and individuals affected by our activities. It also informs local authority enforcement officers of the standards and expectations placed upon them.

Authorised officers will act in accordance with this policy by being properly trained and qualified; by having knowledge of this policy; and through management and oversight of their activities.

¹ [Regulators' Code - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

² [Safeguarding | North Kesteven District Council \(n-kesteven.gov.uk\)](https://www.n-kesteven.gov.uk)

The primary purpose of enforcement is to achieve regulatory compliance in order to protect the public, businesses and the environment at large. Despite this, we reserve the right to take enforcement action in some cases after compliance has been achieved if it is in the public interest to do so.

There are a wide range of options available to the council as an enforcing authority, and actions that we may take include but may not be limited to:

- No action
- Informal action and advice
- Fixed penalty notices
- Formal notice
- Formal orders e.g., Public Space Protection Order
- Forfeiture proceedings
- Seizure of goods/equipment
- Injunctive actions and other civil sanctions
- Refusal / suspension / revocation of a licence
- Simple caution
- Civil penalty
- Works in default
- Prosecution
- Prohibition / stop notices
- Proceeds of crime applications

When considering the above approaches, we will, where appropriate and where reasonably practicable, discuss the circumstances of the breach in legislation with the appropriate person, and take their response in to consideration when determining the most appropriate course of action.

However, we reserve the right to not apply the aforementioned principle when immediate action is required to prevent, or respond to, a serious breach or contravention, or where doing so would defeat the purpose of the proposed action.

Scope

This corporate enforcement policy is an overarching policy for all enforcement functions undertaken by North Kesteven District Council. Under this there are more detailed policies³ which cover specific service functions in more detail, for example The Statement of Licensing Policy, The Private Sector Housing Policy, The Anti-Social Behaviour Policy etc.

Where no service specific enforcement policy is in place and enforcement action is being considered, this overarching policy will apply.

All service specific policies will meet the overall aims and objectives of this corporate enforcement policy, and any new policies will also be developed having specific regard to this policy.

Where functions of the council are carried out on a shared service basis with other authorities or agencies, enforcement will be carried out to the policy of the host authority. Similarly, where North

³ [Enforcement | North Kesteven District Council \(n-kesteven.gov.uk\)](https://www.n-kesteven.gov.uk/enforcement)

Kesteven District Council hosts any other authorities enforcement function, this policy will apply to all authorities included in that service.

In addition to this policy there are also various other specific enforcement procedures, service plans, codes of practice, and best practice guidance notes that are adhered to.

Our Approach to Enforcement

North Kesteven District Council is committed to dealing firmly with those that deliberately or persistently fail to comply with their legal responsibilities and requirements. However, we also recognise that each enforcement situation is unique and will be considered on its own merit. Any enforcement action taken will be proportionate to the risks posed, and the seriousness of the offence.

To this end, our approach to enforcement will aim to:

- Change or challenge the behaviours of the offender.
- Eliminate any damage, risk or harm caused as a result of any offence.
- Eliminate any financial gain or benefit from non-compliance.
- Be responsive and appropriate for the particular offender and regulatory issue, including the punishment and public stigma associated with a criminal conviction.
- Be proportionate to the nature of the offence and the harm caused, and where possible, restore the harm caused by non compliance.
- Seek to deter future non-compliance.

Where a business or individual proactively approaches us for advice or guidance on compliance, or where they believe they are non-compliant, we will offer advice and guidance as to how they can reach the required standard. If an approach of this nature is made, provided the individual or business demonstrates a willingness to comply, we are unlikely to take direct enforcement action, but will instead offer advice and guidance to ensure compliance is achieved.

Where non-compliance is identified, officers will clearly explain the reason for non-compliance including the relevant statute, the status (whether guidance, formal or informal) and the action required to address the specific matter within a defined timeframe.

We will aim to communicate with businesses and individuals in a way that is effective and convenient to them, whether this is verbally, in writing or by electronic means. Where we have not done so, we will confirm all information, guidance, decisions and reasoning in writing upon request.

The above commitments do not extend to situations that require immediate enforcement action to prevent or respond to a serious breach, or where providing such an opportunity would be likely to defeat the purpose of the proposed enforcement action.

The Council delegates the powers it has to investigate and enforce various pieces of legislation so that individual enforcement officers with the appropriate levels of competence, and where required qualification, have specific authority to act. This is set out and detailed in the council's constitution.

We will refer matters to other authorities or enforcement bodies where we believe they are the most appropriate authority to deal with a specific matter. We will also accept referrals from others, where we are the most appropriate enforcement body to deal with a particular matter. All exchanges of information will meet the requirements of the Data Protection Act 1998. Where regular or specific

exchanges of information is required between enforcing authorities, this will be in accordance with specific information sharing agreements.

Enforcement decisions will be fair, objective and will not be influenced by any of the protected characteristics of the suspect, victim, witness or offender, and will be in line with the Corporate Equality and Diversity Policy⁴. Decisions will not be influenced by improper or undue pressure from any source.

The outcome of enforcement activity will be publicised where this is deemed necessary, or useful for public education. We may also chose to publicise these outcomes on the council's website and social media sites.

The Regulatory Enforcement and Sanctions Act 2008 introduced the Primary Authority Partnership principle. A Primary Authority is a local authority registered as having responsibility for providing advice and guidance to a particular business or organisation, that operates over more than one local authority area. We will give due consideration to any business that wishes to enter into a Primary Authority Partnership arrangement with North Kesteven District Council. Where any business that we are dealing with has a Primary Authority relationship established with another local authority, officers will communicate with that service at the earliest opportunity.

Principles of Good Regulation

North Kesteven District Council is committed to offering a service that has regard to the "Principles of Good Regulation" as set out in the Legislative and Regulatory Reform Act 2006⁵, namely:-

- *Proportionate* – We will endeavour to minimise costs of compliance for businesses, and activities will reflect the harm and impact on victims. Actions taken will relate to the seriousness of the offence, and to previous actions taken by the Council or its partners.
- *Accountable* – Our activities will be open to scrutiny, with clear and accessible policies and a fair and efficient complaints procedure.
- *Consistent* – Our advice to those we regulate will be robust and reliable and we will respect advice provided by others. We will carry out our duties in line with service standards, and whenever possible will endeavour to act in a similar manner to other enforcement authorities.
- *Transparent* – We will ensure that those we regulate are able to understand their duties and what to expect from us in return. We will make clear the difference between legal requirements and recommendations.
- *Targeted* – We will focus resources on higher risk enterprises and activities, and we will utilise intelligence to direct our priorities wherever possible.

Conduct of Investigations

General

Investigations undertaken by North Kesteven District Council will be conducted in accordance with the relevant and specific legislation relating to the fair and proportionate use of investigatory powers. We will also observe any specific relevant guidance notes and codes of practice issued by the

⁴ [Corporate Policies | North Kesteven District Council \(n-kesteven.gov.uk\)](http://www.n-kesteven.gov.uk/corporate-policies)

⁵ [Legislative and Regulatory Reform Act 2006 - Explanatory Notes \(legislation.gov.uk\)](http://www.legislation.gov.uk/ukpga/2006/52)

appropriate oversight bodies, including but not limited to The Home Office, Crown Prosecution Service, Investigatory Powers Commissioner etc.

On occasions, legislation enforced by the council enables authorise officers to carry out certain activities, for example making test purchases for further analysis and removing goods, equipment or relevant documentation etc. These powers are prescribed under specific statutes, and will vary depending on specific circumstances, however where officers utilise these statutory powers, a full explanation of the procedure will be provided at the time. Where items are seized by officers using these statutory powers, written confirmation of items seized will be provided at the time, or as soon as reasonably practicable.

In the course of an investigation, officers may utilise specific equipment to gather evidence, and carry out overt and covert surveillance. This can include, but is not limited to the use of camera, video, sound level meters, light meters etc. This equipment will be used primarily to gather evidence, but may also be used as a deterrent, however it will only be used where it is necessary and proportionate to do so, and in line with the aforementioned legislation. Any evidence gathered by these means may be used in legal proceedings in court, or to publicise such activities.

Where we suspect a person, company or legal entity of breaching legal requirements, and we are considering taking formal action, we will normally request an interview. The interview will be carried out in accordance with The Police and Criminal Evidence Act 1984 and will usually be recorded.

Prior to a decision being taken to prosecute, the alleged offences will be fully investigated, and throughout the investigation process, regular case reviews will be held with a manager and / or a legal representative.

Authorised Officers

The council has adopted a scheme of delegation that enables authorised officers to take operational decisions when discharging their statutory duties. This is encompassed within the councils Constitution, and is available to view online or by request. Assistant Directors have delegated authority to authorise officers within their own service, to undertake the specific functions which fall within their remit. Only officers that are specifically authorised under this scheme can undertake enforcement work and utilise the provisions encompassed within this policy.

The council assesses the professional competency of its officers on a regular basis, and some enforcement officers are also required to undertake continuous professional development (CPD). The overall approach to competency is closely linked to the relevant qualification frameworks provided by the professional bodies. Authorised officers are required to possess the base line qualification in order to be able to undertake their duties, and those without such qualifications are supervised until such time as they are trained and can demonstrate their competence.

Powers of Entry

Through a wide range of legislative procedures, authorised officers are provided with specific powers of entry (POE), which enables the officer to legally enter a premises, vehicles or land for a specific purpose. These powers enable officers to undertake inspections and investigations for a wide range of regulatory responsibilities, in addition to dealing with emergencies or searching for evidence during those investigations. The POE are often accompanied by what are known as associated powers, which set out what officers are empowered to do once in the premises e.g. conduct a search, seize items, collect samples etc.

In certain circumstances the POE can be utilised to enter residential properties, and normally in such situations, the owner / occupier is afforded a defined period of time prior to entry. In some circumstances however, the council may wish to utilise the provisions of a warrant to enter residential properties, and in this situation no such notice period is required.

Enforcement Actions

Whilst we firmly believe in supporting businesses and individuals to comply with legislation, as demonstrated by our commitment and participation in the Lincolnshire Better Business for All⁶ model (a local partnership between business and regulatory services to promote growth), there are times when a range of actions will need to be utilised by local authorities, as set out in legislation namely:-

Informal Action

- *Compliance advice, guidance and support*

We utilise advice, guidance and support as the first response in the vast majority of cases where legislation has, or is being breached. Advice is provided to assist the individual or business to allow them to rectify the breach as quickly and efficiently as possible, to avoid the need for any formal action .

- *Informal warnings*

This is a warning letter, sometimes referred to as an informal caution, and it identifies the breach in legislation, identifies the remedial action required, the time in which the action must be completed together with the consequences of non conformity.

Formal Enforcement Action

Whilst most issues of non compliance with legislation can be dealt with informally, we will take swift, firm and decisive formal action in the case of continued non compliance or where the seriousness of the offence dictates. The range of formal enforcement actions include:-

- *Voluntary Undertakings*

We may in some circumstances accept voluntary undertakings that breaches in legislation will be rectified and recurrences prevented. However we will consider any failure to honour voluntary undertakings very seriously and further formal enforcement action is likely to follow.

- *Statutory and Formal Notices*

There are a range of notices available to the council and these include, but are not limited to, 'Temporary Stop Notices', 'Stop Notices', 'Improvement Notices', 'Prohibition Notices', 'Suspension Notices', 'Suspension Orders', 'Community Protection Notices' to mention a few. These notices are legally binding and failure to comply with them is a criminal offence, which may lead to prosecution and / or, where appropriate the undertaking of works in default.

All statutory and formal notices issued by the council will clearly set out what the offence being committed is, the actions required and the timescales for compliance. Some notices will be served on individuals, businesses or where issued in respect of premises may be affixed to the premises and / or registered as a local land charge. We also reserve the right where the seriousness of the offence dictates, to instigate prosecution proceedings in

⁶ https://www.businesslincolnshire.com/media/2321/070420_bbfa-advice-pack.pdf

addition to the use of a statutory notice to gain compliance. Where issued, clear guidance will also be provided of the appeals process for the specific notice being issued.

- *Financial Penalties*

The council has powers to issue financial penalties in the form of fixed penalty notices (FPN), and civil penalties (CP) in respect of some breaches in legislation. The aim of the financial penalty is to simplify the enforcement process and penalise a contravention, without the need for court proceedings. Whilst this is not a criminal fine, and does not appear on an individual's criminal record, failure to pay the fine may result in criminal proceedings being taken.

- *Simple Cautions*

These provide a means for dealing with lower level offences, as an alternative to prosecution. These can only be issued where a person admits the offence and consents to the simple caution. Where a simple caution is offered and declined, prosecution will be considered. Simple cautions may appear on an individual's criminal record, and it is likely to influence how we and other enforcement agencies deal with any similar offences in the future, and may be cited for similar or future offences.

- *Injunctions, Enforcement Orders and Criminal Behaviour Orders*

In some circumstances we may seek a direction from the court in the form of an injunction or criminal behaviour order or similar, to ensure that a breach of legislation is prevented, 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. North Kesteven District 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, we will usually only seek a court order if it has serious concerns about compliance with voluntary undertakings or a notice.

- *Seizure of Goods and Evidence*

Under various statutes, the council is empowered to seize goods, equipment, documents or other such items as it sees fit.

- *Prosecution*

Where there are serious or recurrent breaches of legislation, or where other enforcement actions have failed to secure compliance, the council may consider prosecution. When determining whether to prosecute, we will have due regard to the provisions of the Code for Crown Prosecutors as issued by the Director of Public Prosecutions.

Prosecutions will only be considered where we are satisfied that we have sufficient evidence to provide a realistic prospect of conviction, and we will consider all relevant circumstances having regard to the following, namely:-

- o Whether a simple caution has been offered, and it is subsequently declined.
- o If the offence involves a flagrant breach of the legislation, or there has been a reckless disregard for the environment.
- o Where the act or omission resulted from fraudulent, negligent or a reckless act.
- o Where the integrity of the licensing framework is threatened.
- o If the alleged offender failed to correct an identified serious risk within the timescales provided.
- o The failure to comply with the requirements of a statutory notice.
- o It is a repeat offence that has been subject to a formal warning, a simple caution, or a failure to pay a fixed penalty notice.

- There is a history of similar offending.
- The victim or potential victim was in a vulnerable situation, and the offender took, or would have taken advantage of this.
- The offence involves a threat of violence, harassment or undue influence against another person; obstruction of an officer of the council from undertaking their duties; or the deliberate provision of false information in written or verbal form to an officer of the council.
- The offence caused public alarm, and a prosecution is in the public interest and there is a realistic prospect of conviction.

The decision to instigate and undertake a prosecution, rests with the Assistant Director of that service, and in line with the councils scheme of delegation within the constitution.

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

- *Proceeds of Crime Act 2002*

The council will utilise the provisions of the Proceeds of Crime Act 2002 (POCA) where it is appropriate, to ensure the recovery of an offenders financial gain or benefit following conviction.

- *Refusal / Suspension / Revocation of Licences.*

The council issues a number of licences and permits across various services, and we also have a role in ensuring other agencies standards are met in relation to other licences etc. Breaches of licences and permits may lead to a review of these and subsequent revocation, or amendment, or in serious cases immediate enforcement action. We also consider the suitability of applicants or renewals based on previous history of compliance.

- *Works in Default*

Certain types of notice allow works to be carried out in default. This means that if a notice is not complied with we have the power to carry out any necessary works to satisfy the requirements of the notice ourselves. Where the law allows, we may then charge the person/business served with the notice for all costs we have reasonably incurred in carrying out the work. The Council will normally seek to recover all of its costs, including on costs and administration.

Decision Making Process

The actions and decisions that the council decides to take will be determined on a case by case basis, and will be judged on its own merits in line with the actions listed above. When making decisions on the most appropriate course of action, the council will have regard to the principles set out in the Macrory Review⁷ which are embedded within the Regulatory Enforcement and Sanctions Act 2008.

⁷ [Regulatory Enforcement and Sanctions Act 2008 - Explanatory Notes \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2008/15/explanatory-notes)

However, the council also recognises the significance of the Primary Authority Partnership Scheme⁸, and where a business has formed a formal partnership with another enforcing body, the principles of the scheme will be adhered to, including the principles surrounding consideration of enforcement action.

Communication of Decisions

When the council has made a decision regarding enforcement action, it will clearly and concisely explain its actions to those involved in the process. This will include, but is not limited to the reason for the decision; what that means in practice and the right of appeal or representations. This will be made in writing as soon as reasonably practicable after the decision is taken.

Complaints, Compliments and Comments

Complaints, compliments or comments on any aspect of the services provided by the council, should in the first instance be directed to the service manager of the relevant department. If this course of action fails to resolve your specific issue, you can escalate the matter through the corporate complaints procedure via:-

- Website - [Customer Feedback | North Kesteven District Council \(n-kesteven.gov.uk\)](https://www.n-kesteven.gov.uk/customer-feedback)
- Email – feedback@n-kesteven.gov.uk
- Telephone – 01529 414155
- Writing – FREEPOST NKDC

Signed:



(Cllr Richard Wright, Leader of Council)



(Ian Fytche, Chief Executive)

⁸ [Local regulation: Primary Authority - GOV.UK \(www.gov.uk\)](https://www.gov.uk/local-regulation-primary-authority)