

REGULATORY SERVICES

Compliance and Enforcement Policy

1.0 Introduction

- 1.1 This document details the enforcement policy of Peterborough City Council's Regulatory Services. It reflects current legislation, guidance, best practice and codes of practice and was developed in consultation with stakeholders.

Within the context of this policy, 'enforcement' is defined as including any advice, inspection, action, notice, instruction or warning, caution or prosecution given to a person or organisation who is or is believed to be acting unlawfully.

The purpose of enforcement action is to achieve compliance with the relevant legislation for which Peterborough City Council has a responsibility. Since 1st April 2017 the Council's legislative responsibilities have expanded to include the delivery of Cambridgeshire County Council's statutory functions with regards to its Trading Standards functions under the newly merged 'Cambridgeshire and Peterborough Trading Standards Service'. This Policy applies equally to the execution of those functions delivered on behalf of Cambridgeshire County Council as it does to the execution of its own functions as the City Council.

In carrying out its regulatory functions, including where necessary enforcement action, the Council effectively safeguards the interests of consumers, residents and the local economy, ensuring unsafe, illegal and dishonest trading practices are not able to prevail and damage the reputation of legitimate businesses and the wellbeing of consumers. Licensing provisions help promote best practice, safe, fair and responsible trading practices, ensuring businesses are able to compete on a level playing field. Peterborough City Council is committed to the principles of good enforcement as set out in the Legislative and Regulatory Reform Act 2006, and the Council has had regard to the Regulators' Code¹ in the preparation of this Policy.

Peterborough City Council is committed to avoiding the imposition of unnecessary regulatory burdens, and to assessing whether similar outcomes could have been achieved through less burdensome means.

This Compliance and Enforcement Policy also accords with the principles of the Human Rights Act 1998, the European Convention on Human Rights, the Freedom of

¹ Section 1 Regulators' Code requires regulators to have mechanisms in place to ensure that their officers act in accordance with their published service standards, including their enforcement policy

Information Act 2000, and should be read in conjunction with a number of other pieces of legislation and corporate or service area procedures relating to enforcement; these include but are not limited to:

- The Protection of Freedoms Act 2012 Code of Practice – Powers of Entry
- The Criminal Procedure and Investigations Act 1996 (CPIA)
- The Police and Criminal Evidence Act 1984 (PACE)
- The Regulatory Enforcement and Sanctions Act 2008

as amended from time to time.

The Policy is owned by the Head of Regulatory Services.

2.0 Purpose of this Policy

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

3.0 Scope of this Policy

- 3.1 This policy applies to enforcement practices undertaken by Peterborough City Council Regulatory Services in respect of trading standards, food hygiene, health and safety, licensing, environmental and pollution control. It does not apply to its planning function for which a separate policy has been published or carrier bag enforcement for which a standalone enforcement policy has been published as prescribed by legislation.

Related policy includes but is not limited to:

- Trading Standards Business Advice Charging Policy
 - Hackney Carriage and Private Hire Licensing Policy
 - Regulation of Investigatory Powers Act (RIPA) Policy
 - Licensing Act 2003 - Statement of Licensing Policy
 - Gambling Act 2005 – Statement of Licensing Principles
- 3.2 In addition to this policy there are other specific enforcement procedures, plans or codes of practice that are followed.

4.0 Our Approach to enforcement

Peterborough City Council is committed to dealing firmly with those that deliberately or persistently fail to comply with legal requirements. We also recognise however that each enforcement situation is unique and will be considered individually on its own merits.

Any enforcement action taken will be proportionate to the risks posed and to the seriousness of the offence. We will also take into account other factors such as the size and capacity of the business

Where a shared enforcement role exists between council services or with an external body, there will be arrangements in place to ensure there is effective, open, proportionate and consistent enforcement. These arrangements will follow statutory guidelines where applicable.

4.1 Principles of Good Regulation

Peterborough City Council Regulatory Services 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 2006. Enforcement and regulation can still be delivered with great customer service and the Council will exercise its regulatory activities in a way which is:

Proportionate – we will endeavour to minimise costs of compliance for businesses. Its activities will reflect the harm and impact on victims (both individuals and the wider community) and action taken will relate to the seriousness of the offence, and to previous action 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. The Council will carry out its duties in line with the relevant Service Standards and wherever possible it will use its reasonable endeavours to act in similar ways to other local authorities.

Transparent – we will try to ensure that those we regulate are able to understand what is expected of them and what they can expect from us in return. The Council will make clear the difference between legal requirements and recommendations on good practice.

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

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

4.2 Regulators' Code

This policy has been written in accordance with the Regulators' Code² which as a Regulator we are required to have regard to. In certain circumstances we may

² The Regulators' Code which came into statutory effect in 2014 provides a clear, flexible and principles-based framework for how regulators should engage with those they regulate.
<https://www.gov.uk/government/publications/regulators-code>

conclude that a provision of the Code is either not relevant or is outweighed by another provision. Any decision to depart from the Code will be properly reasoned and documented.

4.3 Human Rights Act 1998

The Council is a public authority for the purposes of the Human Rights Act 1998. It therefore applies the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This policy and all associated enforcement decision take account of the provisions of the Human Rights Act 1998. 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.

4.4 Data Protection Act 1998

Where there is a need for Peterborough City Council to share enforcement information/intelligence with other agencies, the Council will follow the provisions of the Data Protection Act 1998.

4.5 Code for Crown Prosecutors

When deciding whether to prosecute, Peterborough City Council has 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':

- a) 'Evidential Test': is there enough evidence against the defendant?
When deciding whether there is enough evidence to prosecute, Peterborough City Council will consider the suitability and reliability of all evidential material. Peterborough City Council must be satisfied any such evidence provides a 'realistic prospect of conviction'
- b) 'Public Interest Test': Is it in the public interest for the case to be brought to court?
Peterborough City Council will balance factors for and against prosecution carefully and fairly, considering each case on its merits. The public interest factors that Peterborough City Council will take into account are detailed under the available enforcement options set out in Section 8 ('How decisions are made') of this Policy

In addition, officers will follow the principles of The Code for Crown Prosecutors³ and in particular:

- i) Officers will be fair, independent and objective.

³ The Code for Crown Prosecutor's as issued by the Director of Public Prosecutions sets out the general principles to follow when investigating and making decisions in prosecution cases.

- ii) Officers will not be affected by improper or undue pressure from any source.
- iii) The right person must be dealt with for the right offence and officers will act in the interests of justice and not solely for the purpose of obtaining a conviction.
- iv) Officers will seek to ensure that the law is properly applied, that all relevant evidence is considered, and that obligations of disclosure are complied with.

4.6 Regulatory Enforcement and Sanctions Act 2008 ('the RES Act')

The Regulatory Enforcement and Sanctions Act 2008, as amended, established the Primary Authority Scheme⁴. The Council will comply with the requirements of the Act when it is considering taking enforcement action against any business or organisation that has a Primary Authority Partnership, and will have regard to guidance issued by the Secretary of State in relation to Primary Authority.

4.7 Equal access to our services

Officers will follow the Council's Equality and Diversity Policy⁵ which underpins all decisions taken by the council and actions by its employees.

Persons and businesses regulated by us are able to request advice on non-compliance. When there is a demonstrable willingness to resolve the issue, this will be taken into consideration when considering whether any enforcement action in addition to the provision of advice is appropriate.

The Council will facilitate the provision of translators for interviews where we deem it necessary.

Where possible, the Council will carry out enforcement visits outside normal office hours when the activity concerned operates at those times.

5.0 Dealing with non-compliance

5.1 General Principles

Where something is wrong, the Council will in most cases consider first how it can work with individuals, businesses and the community to regularise and put right the problem without enforcement.

Whilst the fundamental responsibilities for complying with legislative requirements falls to those regulated, Peterborough City Council will provide relevant advice and guidance. In doing so the Council will have particular regard to information from legislative guidance notes, and Statutory and Voluntary Codes of Practice.

⁴ The principles of Primary Authority are set out in the Regulatory Enforcement and Sanctions Act 2008 as amended by the Enterprise and Regulatory Reform Act 2013

⁵ The Council's Equality and Diversity Policy is in place to ensure that there is a consistent approach across the authority to all areas of equalities work.

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

When officers become aware of a non-compliance, they will explain in plain English what the law requires, how that/those laws have been infringed, what measures are needed to become compliant and the timescales for progress and completion if applicable. A clear distinction will be made between legal requirements and best practice. Where non-compliances are identified and advice and guidance has been provided, re-visits may be carried out to determine if they have been rectified.

In most cases the Council will provide the business or individual concerned with the opportunity for dialogue in relation to advice given, actions required or decisions taken. The exceptions to this are where an opportunity for dialogue is likely to defeat the purpose of the proposed enforcement action, or where immediate action has been required e.g. to prevent the destruction of evidence or where there is imminent risk to health and safety or environment. In such cases, the need and reasons for this will be explained at the time, and in many cases reinforced with immediate effect by notice(s). This will be confirmed in writing as soon as practicable, usually within 10 working days.

Where there are rights of appeal against specific actions or decisions, written advice will be given on the appropriate appeal mechanism to be followed. This will normally be included with the enforcement notice or letter.

Peterborough City Council will take a proportionate approach to enforcement based on relevant factors such as the harm and impact on people, property, animals or the economy caused by the breach and as far as the law allows will take into account the circumstances of the case.

Peterborough City Council will take a graduated approach to enforcement action in most cases, with the majority of infringements being dealt with through informal action such as advice and guidance or written warning. The Council is committed to dealing firmly with those that deliberately or persistently fail to comply. If non-compliance continues, enforcement action will be escalated to the appropriate formal action and the Council recognises that some crimes/incidents require immediate/robust actions.

When the Council has made a decision about enforcement action it will explain the reasons for those decisions and what those decisions mean in practice.

Where a business has an existing Primary Authority Partnership, the Council will ensure that it liaises with that business's Primary Authority to clarify what advice has previously been given. If the business has previously been advised on the particular compliance issue and are following the advice given, the Council will not take enforcement action against that business.

Where an enforcement role is shared with another agency, it is the policy of the Council to undertake joint enforcement activity in order to minimise any unnecessary duplication and delay. Joint working may be undertaken with agencies including the Police, Customs and Excise, DEFRA or any other relevant agency as appropriate. This work will be subject to that agency complying with the underlying principles of this Policy.

Communication may be carried out in different ways depending on the individual circumstances, and any agreement made between the officer and the regulated party. Officers will be courteous and professional in all methods of communication.

Peterborough City Council will publicise enforcement action taken where it considers that it is in the public interest to do so, or where it is considered that doing so may

inform or deter others. Care will be taken to ensure that our actions will not prejudice a fair trial.

There will be instances where the Council becomes aware of criminal offences that have taken place outside its jurisdiction or which fall within the remit of another law enforcement agency. In these cases the Council will make a referral to that agency. Likewise matters may be referred to the Council by other authorities. Where there is a need for us to share information with other agencies, we will follow the provisions of the Data Protection Act 1998.

5.2 Authorised Officers

The Council has delegated responsibility for taking operational decisions necessary to discharge its statutory function that fall within the remit of Trading Standards, Environmental Health and Licensing. Part 3, section 3 of the Councils Constitution details the delegations which fall to each Director. Directors further authorise officers within his/her Department to undertake functions which lie within the scope of his/her delegated powers. This scheme of authorisation can also be viewed within the Constitution. It is the Council's policy that only officers authorised under this Scheme of Authorisation can undertake enforcement work.

In relation to the authorisation of Peterborough City Council Trading Standards Officers to fulfil the statutory responsibilities of Cambridgeshire County Council, the responsibility was delegated by Cambridgeshire County Council to Peterborough City Council by virtue of an amendment to Part 3 of the County Council's constitution on 1st April 2017. The delegated authority was subsequently delegated by the City Council to the Corporate Director Resources as above, and officers authorised under the Scheme of Authorisation.

The responsibility for managing investigations and for decisions on enforcement actions sits with the appropriate Team Leader within the respective Services.

The Council's authorised officers have powers under the pieces of legislation listed in the Council's Scheme of Authorisation.

Anyone having a duty to enforce the law must ensure that they deal with those subjected to enforcement action courteously, fairly and objectively in line with the City Councils Service Standards.

5.0 Conduct of Investigations

5.1 All investigations will be carried out in accordance with the following legislation where applicable (as amended from time to time), and in accordance with any associated guidance or codes of practice, in so far as they relate to Peterborough City Council:

- The Police and Criminal Evidence Act 1984;⁶

⁶ The Police and Criminal Evidence Act 1984 implements statutory codes of practice for police and other enforcers covering activities such as searching premises or interviewing alleged offenders

- The Criminal Procedure and Investigations Act 1996;⁷
- The Regulation of Investigatory Powers Act 2000;⁸
- The Criminal Justice and Police Act 2001;⁹
- The Human Rights Act 1998;¹⁰
- Proceeds of Crime Act (POCA) 2002

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

Where a business we are investigating has a primary authority partnership or a home authority relationship established with another local authority, we will communicate with that authority at the earliest opportunity. We will comply with the requirements of the Regulatory Enforcement and Sanctions Act 2008 when we are considering taking enforcement action against any business or organisation that has a primary authority partnership as determined by this legislation.

Legislation enforced by Regulatory Services will sometimes provide powers to authorised officers to carry out certain activities. For example: making a test purchase; taking a sample; inspecting premises, goods, equipment or documents. Sometimes where officers suspect an offence or require items to be taken as evidence, they will have the power to seize goods and documents. Powers are prescribed under legislation and they will vary depending on the individual circumstances that they are dealing with. Where officers are using statutory powers, an explanation will be provided at the time.

Officers may also use investigation equipment as part of their duties, and carry out overt and covert surveillance. This will in some cases involve the use of hand held and body-worn video equipment for recording still and moving images and sound. Such equipment will be used primarily to gather evidence, but may also be used to deter aggressive or abusive behaviour towards officers. It will only be used where it is necessary and proportionate to do so, and such activities will be carried out in compliance with the Regulation of Investigatory Powers Act 2000 and related legislation and codes of practice. Any evidence gathered by such means may be produced as evidence in court.

Where items are seized by officers using statutory powers, written confirmation of items seized will be provided at the time or as soon as possible afterwards.

Some legislation that we use will include offences of obstructing officers. If we believe that actions taken by the alleged offender are obstructive we will advise them of this.

⁷ The Criminal Procedure and Investigations Act 1996 & 2003 sets out rules on how we record and retain information gained during an investigation and how we disclose information in the event of a matter going to court

⁸ The Regulation of Investigatory Powers Act 2000, known as RIPA, governs the use of covert surveillance by public bodies and how we can access communications data

⁹ The Criminal Justice and Police Act 2001 provides powers to police and investigators on the seizure and examination of evidence

¹⁰ The Human Rights Act 1998 is in place to safeguard certain rights and freedoms and gives further effect to rights within the European Convention on Human Rights. As a public authority we must ensure that everything we do is compatible with these rights, for example the right to a fair trial.

Our officers do not have powers of arrest, although in some circumstances we will work with the police who may choose to use their powers of arrest should they deem this necessary.

Where we suspect a person, company or other legal entity of breaching legal requirements, and we are considering taking formal action such as prosecution, we will normally request an interview. This interview will be carried out in accordance with the Police and Criminal Evidence Act 1984. It will usually, but not exclusively be, audio recorded. We will allow the person/s being interviewed to have legal representation. We will give them the opportunity to demonstrate that the elements of a statutory defence have been met. We will also ensure that they have the opportunity to give an explanation or make additional comments about the alleged breach.

Before a decision to prosecute is taken, the alleged offences will be fully investigated. Throughout the investigation process, regular case reviews will be held with a manager. On completion of the investigation the investigating officer will compile a report for review by a senior manager.

6.0 Enforcement Actions

The range of actions that are available to local authorities are set out in legislation.

6.1 Informal action

a) Compliance advice, guidance and support

Peterborough City Council uses compliance advice, guidance and support as a first response in the vast majority of cases where breaches of legislation are identified. Advice is provided to assist individuals and businesses in rectifying breaches as quickly and efficiently as possible, avoiding the need for further enforcement action.

Furthermore, where formal enforcement action, such as a simple caution or prosecution is taken, we recognise that there is likely to be an ongoing need for compliance advice and support to prevent further breaches.

b) Informal warnings

A warning letter, sometimes also called an “informal caution”, will set out what should be done to rectify the breach and to prevent re-occurrence, and will highlight the consequences if the issue is not resolved or is repeated in the future. Such a letter cannot be cited in court as a previous conviction but it may be presented as evidence.

Where Peterborough City Council has provided advice or guidance it will take a risk based approach to determine which premises it will re-visit or contact to ensure that issues have been rectified.

6.2 Formal Enforcement Action

Whilst it is hoped that many non-compliances will be dealt with initially by informal action, Peterborough City Council will take firm and decisive formal enforcement action in the case of continued non-compliance or immediate robust action in matters

involving serious crime (such as fraudulent, unsafe, exploitive, those posing immediate risk to public safety).

a) Voluntary Undertakings

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

b) Statutory and Formal Notices (including Improvement Notices and Suspension Orders) (*immediate formal action may be taken)

In respect of many breaches, Peterborough City Council has powers to issue statutory notices. These include “Temporary Stop Notices”, “Stop Notices”, “Prohibition Notices”, “Emergency Prohibition Notices”, Recall Notice”, “Requirement to Mark Notice”, “Suspension Notice” “Requirement to Warn Notice ” “Suspension Orders” and a Withdrawal Notice. 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 what is wrong, the actions which must be taken and the timescale within which they must be taken. It is likely to require that any breach is rectified and/or safeguards have been put in place to prevent future breaches. It may also prohibit specified activities until the breach has been fully 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 a local land charge.

Peterborough City Council reserves the right to bring prosecution proceedings, in addition to the use of a statutory notice to gain compliance.

c) Financial Penalties (*Immediate formal action may be taken)

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

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

Peterborough City Council is only able to issue fixed penalty notices where it has specific powers to do so or delegated authority to do so and under the following circumstances:

- To provide an effective and visible way to respond to less serious crimes without going to court
- As a response to genuine problems or as part of a wider enforcement strategy

- Where there is enough evidence to progress with a prosecution or alternative action if non-payment of a fixed penalty notice follow

If fixed penalty notices are available, their issue is discretionary. In some circumstances, in particular where breaches are serious or recurrent, it may be that prosecution is more appropriate than the issue of a fixed penalty notice.

d) Simple Caution

Peterborough City Council has the power to issue simple cautions (previously known as 'formal cautions') as an alternative to prosecution for some less serious offences provided there is sufficient evidence to give a realistic prospect of conviction. These can only be issued where a person admits an offence and consents to the simple caution. Where a simple caution is offered and declined we are likely to consider prosecution. They are offered in accordance with Home Office Guidance where applicable and other relevant guidance.¹¹

A simple caution may appear on the offender's criminal record. It is likely to influence how we 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.

e) Injunctive Actions, Enforcement Orders etc.

(*Immediate formal action may be taken)

In some circumstances we may seek a direction from the court, in the form of an order, injunction or similar, that a breach 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.

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

f) Taking animals into possession/banning orders

(*Immediate formal action may be taken)

Under the Animal Welfare Act 2006, if a veterinary surgeon certifies that 'protected animals' are suffering or are likely to suffer if their circumstances do not change, Peterborough City Council will consider taking them into possession and applying for

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

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

Orders for re-imbusement of expenses incurred and subsequent disposal. In some circumstances we will also consider applying to the court to ban a person(s) from keeping animals.

g) Suspending goods from sale

(*Immediate formal action may be taken)

Where it is necessary to protect the public, the sale of unsafe goods will be suspended using existing legislative powers.

h) Seizure of goods and evidence

(*Immediate formal action may be taken)

Formal action may also include the seizure of goods, documents or other items such as cash where legal power exists and it is proper to exercise it.

i) Prosecution

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

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

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

- a) The offer of a simple caution, in cases where this has been offered, has been declined;
- b) The alleged offence involves a flagrant breach of the law such that public health, safety, amenity, economic interests or wellbeing is or has been put at risk or irreversible damage has resulted;
- c) There has been a reckless disregard for the environment;
- d) Fraudulent, negligent or reckless practice or the threat of significant economic disadvantage to consumers or businesses is involved;
- e) The integrity of the licensing framework is threatened;
- f) The alleged offence involves a failure by the suspected offender to correct an identified serious risk having been given a reasonable opportunity to comply with the lawful requirements of an authorised officer;
- g) The alleged offence involves a failure to comply in full or in part with the requirements of a statutory notice;
- h) There is a repeat offence that has been subject to a formal warning, a simple caution, or there has been failure to pay a fixed penalty notice;
- i) There is a history of similar offences;

- j) The alleged offence causes public alarm and it is desirable to reassure the public and deter other offenders;
- k) The victim or potential victim was in a vulnerable situation and the offender took or would have taken advantage of this;
- l) The offence involves the threat of violence, harassment or undue influence against any person, obstruction of an Officer of the Council, or the deliberate provision of false information in written or verbal form to an Officer of the Council;
- m) A prosecution is in the public interest, there is a realistic prospect of conviction and sufficient evidence to support proceedings.

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

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 financial assets deemed to be the proceeds of crime. Prosecution may also lead, in some circumstances, to the disqualification of individuals from acting as company directors or from individuals being subject to prohibited activity orders.

j) Forfeiture proceedings

Where there is a need to dispose of goods in order to prevent them re-entering the market and a defendant is unlikely to voluntarily surrender items, the authority may apply to a criminal court for a forfeiture order. Trade Marks, for example, allows forfeiture of illegal goods with or without a conviction.

k) Proceeds of Crime Act 2002¹²

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

l) Refusal/Suspension/Revocation of Licences

(*Immediate formal action may be taken)

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

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

Where a different licensing authority has issued the licence, subject to the provisions of the Data Protection and Human Rights laws, the details of the infringements will be passed to that licensing authority for any action they consider appropriate.

7.0 Cost recovery

Where appropriate Peterborough City Council will seek to recover its costs, including making formal applications for costs through the courts.

8.0 How decisions are made

The action that Peterborough City Council chooses to take will depend upon the specific nature and circumstances of each case and the response/approach taken by the business or individual.

In making decisions about appropriate sanctions and penalties, Peterborough City Council will have regard to the principles set out in the Macrory Review which expect policies to:

- aim to change the behaviour of the offender
- aim to eliminate any financial gain or benefit from non-compliance
- be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction
- be proportionate to the nature of the offence and the harm caused
- aim to restore the harm caused by regulatory non-compliance, where appropriate, and
- aim to deter future non-compliance

Furthermore, Peterborough City Council recognises that where a business has entered into a Primary Authority Partnership with another local authority, they may provide compliance advice. We will take such advice into account when considering the most appropriate enforcement action to take, and may discuss the need for further advice with the primary authority.

9.0 Explanation of how decisions are communicated to those affected

When Peterborough City Council has made a decision about enforcement action it will explain its actions to those involved in the process. Peterborough City Council will include reasons for those decisions and what those decisions mean in practice, including any rights to representation. Peterborough City Council will aim to respond to any communication, in writing, within 10 working days.

10.0 Conflict of Interest

In the event of a non-compliance by Peterborough City Council, we will ensure that our compliance and enforcement decisions are free from conflict of interest. Whilst the City

Council is unable to take legal action against itself, in the case of non-compliance the issue will be pursued with the relevant Director and, if the matter is not satisfactorily addressed, it will be escalated to the City Council's Monitoring Officer.

Any breaches of law relating to premises, land or activities owned or managed by Peterborough City Council should be brought to the attention of the Head of Service without delay. The manager is responsible for ensuring that any decisions taken are free from any conflict of interest.

Where we have a primary authority partnership with a business, any potential conflict of interest will be identified by the assigned officer and any pursuant investigation will be carried out by another officer or the manager.

11.0 Review of this Policy

This Policy will be reviewed annually by the Head of Regulatory Services for Peterborough City Council. Minor amendments to the policy will be approved through the relevant delegation of authority.

Comments and Complaints

We would welcome any comments or feedback on this policy or its application at any time. Complaints about the service can be made to the Council's Central Complaints Office. Details are available at www.peterborough.gov.uk/contact_us.aspx.

Alternatively you can write to us at:

Complaints Team
Peterborough City Council
Customer Services Centre
Bayard Place
Broadway
Peterborough
PE1 1FZ

Contact Us

Regulatory Services
Resources Directorate
Peterborough City Council
Town Hall
Bridge Street
Peterborough
PE1 1HG

Telephone: 01733 747474
Email: ask@peterborough.gov.uk