

Southampton City Council Enforcement Policy 2017



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Scope and Definitions

1. The Southampton City Council Enforcement Policy is a general policy which outlines the principles of enforcement that the council will follow and apply. This policy indicates the different enforcement options that the council may follow and apply, and how decisions are made on enforcement; it also explains the role and authorisation of officers who have enforcement responsibilities. This policy sets out the high level principles of enforcement procedures and, where applicable, is supported by additional enforcement policies specific to individual services of the council.
2. Enforcement is defined as any action by an officer which encourages compliance with legislation enforced by the council. A range of actions are available – including informal interventions (e.g. offering advice) through to more formal measures such as prosecution.
3. Southampton City Council is committed to carrying out its duties in a fair and consistent manner and ensuring that enforcement action is proportional to the seriousness of failure to comply with statutory requirements.

Legislation and Guidance

4. This policy is linked to a number of different pieces of legislation and guidance, and linked service specific policies will relate to further legislation. The council will adhere to all relevant legislation and guidance including:
 - Human Rights Act (1998)
 - Data Protection Act (1998)
 - Legislative and Regulatory Reform Act (2006)
 - Equality Act (2010)
 - Code for Crown Prosecutors (2013)
 - The Anti-social Behaviour, Crime and Policing Act (2014)
 - Regulators' Code (2014)

Policy Statement

5. Southampton City Council recognises that the vast majority of people in Southampton abide by the law. The appropriate use of enforcement powers is important, both to secure compliance with legislation and to ensure that those who have duties in law may be held to account for failures to safeguard health, safety and welfare or breach of legislation enforced by the council.
6. Enforcement action can be taken by a range of council services, who may set out more detail on their approach in individual service level enforcement policies.

7. Enforcement decisions and actions will be made with due regard to the provisions of the Human Rights Act 1998, Equality Act (2010) and the council's Equality Policy.
8. In the public interest, matters concerning non-compliance may be shared, where appropriate and possible, with other enforcement agencies and within the council. Where this takes place, due regard will be paid to the provisions of the Data Protection Act 1998.

Enforcement Principles

9. The council's enforcement policies will have regard to the [Regulators' Code \(2014\)](#). Enforcement activity undertaken by Southampton City Council should be:
 - **Proportionate** – our enforcement activities should reflect the level of risk to the public and enforcement action taken should correspond to the seriousness of the offence.
 - **Accountable** – our activities should be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures.
 - **Consistent** – our advice to those we regulate should be reliable and we will respect advice provided by other regulators. The council should seek to ensure fair and level enforcement, however the council recognises that consistency is not the same as uniformity. Officers should exercise their professional judgement and discretion according to the circumstances of each individual case.
 - **Transparent** – those we regulate should be able to understand what is expected of them and what they can anticipate in return; regulations and enforcement procedures should be as clear and simple as possible.

Enforcement Procedure

10. The decision to pursue enforcement action will depend on the severity of the noncompliance. Factors that will be taken into consideration include:
 - the risk that the non-compliance poses to the safety, health or economic welfare of the public at large or to individuals;
 - evidence that suggests that there was pre-meditation in the commission of an offence;
 - the alleged offence involves a failure to comply in full or in part with the requirements of a statutory notice, order, or policy;
 - there is a recorded history of previous warnings or the commission of similar offences; and
 - aggravated circumstances such as obstruction of an officer or aggressive/violent behaviour.

Enforcement Options

11. There are range of actions that are available to the council as set out in the different legislation the council enforces. This includes, but is not limited to:

- No Further Action
- Education/Advice
- Verbal or Written Warnings
- Civil Enforcement Measures
- Fixed Penalty Notices
- Simple Cautions
- Prosecutions.

No Further Action

12. This will be appropriate for minor offences or technical breaches that are immediately remedied.

Education and Advice

13. The provision of education and advice is an informal option available to officers. Information on legal requirements and education on compliance may be issued during the course of routine inspection visits, following complaints, investigations or from applications to approve licenses and or permissions.

Verbal or Written Warnings

14. Verbal warnings are appropriate for advising about contraventions that are easily remedied. The officer will usually give the person, business or organisation suitable advice and set an appropriate timescale for any remedial action to take place.

15. Written warnings shall be issued for more serious contraventions, or those that have not been remedied by the offender when requested, or where the offender had a responsibility to know they should comply. Written warnings should be recorded on internal council systems. Written warnings should state clearly and simply:

- The requirements contravened
- What remedial action is required
- The consequences of non-compliance i.e. fixed penalty notice, legal proceedings, revocation of licence, etc.

Civil Enforcement Measures

16. There are a range of civil enforcement measures used in different services including, but not limited to: detention, seizure, prohibition, and injunction. These measures allow officers to deal promptly with circumstances that represent a risk to public health or safety.

Fixed Penalty Notices

17. A significant number of offences are covered by a fixed penalty regime. Such notices may also be referred to as penalty charge notices and are identified within applicable legislation.
18. Failure to pay a fixed penalty notice within the relevant statutory period will, save in exceptional circumstances, result in prosecution.
19. Fixed Penalty Notices may be issued as a more efficient enforcement action than prosecution where it is more proportionate to the offence. Fixed penalty notices should be used under the same guidelines for prosecution (see below).

Simple Cautions

20. A simple caution is an alternative to a prosecution. The Defendant must admit to the offence and the simple caution will be disclosable in any further criminal proceedings for a period of three years. A simple caution can only be considered where the factors for a full prosecution are met; there is not a lesser test. A caution may only be considered where there is an acceptance of guilt and remorse is shown.
21. Cautions may be issued by officers with appropriate delegated powers as set out in the council's Scheme of Delegation.

Prosecutions

22. The decision to prosecute is very significant and is related to the seriousness of the offence. In general it is reserved for those persons who blatantly disregard the law, refuse to implement basic legal requirements and those who put the public at risk.
23. Officers other than the Prosecuting Solicitor may make recommendations to the solicitor to pursue prosecution. Any officer recommending prosecution should ensure that there is sufficient evidence to provide a realistic prospect of conviction.
24. Where a decision to prosecute is made, this decision will be taken in accordance with the Code for Crown Prosecutors and the Regulator's Code. A decision to prosecute will be taken by the council's Prosecuting Solicitor.

Seizure of Goods

25. In certain cases the council has the power to seize goods, or vehicles, from any offender, as evidence of the offence or when deemed necessary. In appropriate cases application will be made for destruction orders at court.

Recovery of Costs

26. Southampton City Council will always attempt full recovery of enforcement costs.

Governance

Authorisation of Officers

27. Officers are only authorised to enforce regulations in accordance with the council's [Scheme of Delegation](#).

28. Officers must be competent by appropriate training, qualification and/or experience will be authorised to take enforcement action relevant to that training, qualification and/or experience. Officers will also have sufficient training and understanding of this enforcement policy to ensure a consistent approach to their duties.

Appeals and Complaints

29. Appeals in relation to enforcement action taken should be via the statutory appeals process outlined in the relevant legislation.

30. Complaints about the conduct of officers should be made via the council's corporate complaints procedure.

Policy Review Process

31. This policy will be reviewed when there is any significant change in legislation or other circumstances that affect its effectiveness and validity.

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