

## **WAVERLEY BOROUGH COUNCIL**

**EXECUTIVE - 2 DECEMBER 2014**

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### **Title:**

## **DRAFT WAVERLEY BOROUGH COUNCIL ENFORCEMENT POLICY FOR REGULATORY SERVICES**

**[Portfolio Holder: Cllr Donal O'Neill]**

**[Wards Affected: All]**

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### **Summary and purpose:**

The report informs the Executive of the progress on the introduction of the proposed Enforcement Policy for Regulatory Services following the consultation process.

This updated Enforcement Policy reflects current legislation, guidance and best practice. It helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens on business and others subject to regulation. The policy sets out the approach to regulation across a wide range of functions and service areas and explains the principles aimed at securing compliance. The emphasis is on advice and guidance, with escalation to formal enforcement sanctions dependant on each individual situation. The policy identifies and explains the sanctions that may be used by the Council.

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### **How this report relates to the Council's Corporate Priorities:**

This Policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens on business and others subject to regulation. This relates to the corporate priorities of Leisure & Lives, and Environment.

### **Financial Implications:**

There are no finance implications.

### **Legal Implications:**

It is vital for regulatory services of the Council to ensure that their enforcement policies are brought up-to-date to be compliant with the Regulators' Code which was introduced on 6 April 2014.

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### **Introduction**

1. To comply with the law and set out how we will enforce legislation, the Council must publish an enforcement policy.

2. A new Regulators' Code came into effect on 6 April 2014 and replaces the previous Regulatory Compliance Code. Regulators whose functions are specified under the Act must have regard to the Code when developing policies and operational procedures that guide their regulatory activities. Regulators must equally have regard to the Code when setting standards or giving guidance which will guide the regulatory activities of other regulators.
3. The areas of the Council's work in which regard must be had to the new Code are:
  - Environmental Protection
  - Food Safety
  - Public Health
  - Licensing
  - Health and Safety
  - Environmental Services (Fly Tipping, Littering, etc.)
  - Private Sector Housing
4. The proposed enforcement policy sets out how the services responsible for ensuring compliance and its officers will conduct themselves and how other parties can expect to be treated as we discharge our key duties. An enforcement policy is required in order to guide those responsible for enforcement, and those who are regulated. Unjustified departure from an enforcement policy's provisions could be the subject of legal challenge.

### **Consultation Undertaken**

5. The draft policy was brought to the Executive on 2 September and the Licensing and Regulatory Committee on 18 September. It received the support of both Committees.
6. The formal public consultation on the policy opened on 3 September and closed on 15 October 2014.
7. The consultation documents were made available on the Council website, on the homepage under 'Have your say/Consultations' with a link to the draft policy inviting response.

### **Matters raised by the consultation**

8. We received no responses from the public as a result of the consultation.

The Licensing and Regulatory Committee requested clarification regarding some wording in respect to the cost of compliance. This has been incorporated into the revised policy document attached at [Annexe 1](#).

Waverley Legal Services suggested the addition of financial penalties as an enforcement action. This enforcement action is included in the current Environmental Health Enforcement Policy. The suggestion has been incorporated into the revised policy document attached at Annexe 1 and the wording reflects the template enforcement policy included within the Toolkit produced by Better Regulation Delivery Office to accompany the Regulators Code.

## **Conclusion**

10. This Policy will help to promote efficient and effective approaches to regulatory inspection and enforcement, which improves regulatory outcomes without imposing unnecessary burdens on business and others subject to regulation.

## **Recommendation**

That the Executive recommends to the Council that the draft Waverley Borough Council Enforcement Policy for Regulatory Services, attached at Annexe 1, be approved to come into effect at the earliest opportunity.

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## **Background Papers**

There are no background papers (as defined by Section 100D(5) of the Local Government Act 1972) relating to this report.

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## **CONTACT OFFICERS:**

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# **DRAFT - Waverley Borough Council Enforcement Policy for Regulatory Services**

**To be approved by Council 9 December 2014**

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## **1. Introduction**

Fair and effective enforcement is essential to protect the health, safety and economic interests of the public, businesses and the environment. Decisions about enforcement action and in particular the decision to prosecute have serious implications for all involved. The Policy is applied to ensure that:

- Decisions about enforcement action are fair, proportionate and consistent.
- Officers apply current Government guidance and relevant Codes of Practice.
- Everyone understands the principles that are applied when enforcement action is considered.
- To make best use of resources enforcement is shared where there is complimentary role within the Council and with other agencies e.g. Police, Health and Safety Executive.

This Policy sets out what business and others can expect from Waverley Borough Council's Regulatory Services and its officers. It commits the Council to good enforcement policies and procedures. The Services covered by this policy and the contact details are set out in Appendix A. This policy does not cover Planning Enforcement.

This policy was developed in consultation with stakeholders from the business sector, private individuals and other interested parties. The Policy was available for a period of consultation on the Council's website prior to approval.

## **A Policy Consistent with Best Practice and Statutory Requirement**

This Enforcement Policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens on business and others subject to regulation. This Policy has been developed with due regard to the following:

- **Principles of Good Regulation**

The Legislative and Regulatory Reform Act 2006, Part 2, requires The Council to have regard to the Principles of Good Regulation when exercising a specified regulatory function. For local authorities, the specified functions include those carried out by the Services covered by this Policy.

We will exercise our regulatory activities in a way which is:

- Proportionate – our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence,
- Accountable – our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures,
- Consistent – our advice to those we regulate will be robust and reliable and we will respect advice provided by others. Where circumstances are similar, we will endeavour to act in similar ways to other local authorities,
- Transparent – we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return, and
- Targeted – we will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities.

- **Regulators' Code**

The Council has had regard to the Regulators' Code in the preparation of this policy. 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, based on material evidence and documented.

- **Human Rights Act 1998**

The Council is a public authority for the purposes of the Human Rights Act 1998. We therefore apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This Policy and all associated enforcement decisions 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.

- **Data Protection Act 1998**

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

- **The Code for Crown Prosecutors**

When deciding whether to prosecute The 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':

- **Evidential Test - is there enough evidence against the defendant?**

When deciding whether there is enough evidence to prosecute, The Council will consider what evidence can be used in court and is reliable. We must be satisfied there is enough evidence to provide a "realistic prospect of conviction" against each alleged offender.

- **Public Interest Test - is it in the public interest for the case to be brought to court?**

The Council will balance factors for and against prosecution carefully and fairly, considering each case on its merits. The public interest factors that we will take into account are detailed under the enforcement options available to the Council detailed in Section 6 of this Policy.

- **Regulatory Enforcement and Sanctions Act 2008 ('the RES Act')**

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

### **Targeted, Proportionate and Risk-based Enforcement**

We will ensure that any action we require is proportionate to the risks. We will adopt a risk-assessment approach to target resources where most needed. In line with the codes referred to above, we will take account of the circumstances of the case and the response of those subject to regulation when considering action. We will take particular care to work with small businesses and with voluntary and community organisations, to help them meet their legal obligations without unnecessary expense. At the same time we will use intelligence and direct resources to identify those who flout the law or act irresponsibly and take firm action against them, including prosecution where appropriate.

### **Publication**

Following adoption this policy will be made available to all interested parties, including businesses and consumers. It will be published on the Council's website and in printed form.

The Council is committed to avoiding imposing unnecessary regulatory burdens, and to assessing whether similar social, environmental and economic outcomes could be achieved by less burdensome means. Details of the Council's accessibility statement can be found on the Council's website. [www.waverley.gov.uk/accessibility](http://www.waverley.gov.uk/accessibility)

## **2. What is this policy for?**

2.1 The primary function of local government regulatory activity is to protect the public, the environment and groups such as consumers, residents and tenants, workers and businesses. However, it is important that these enforcement functions are carried out in an equitable, practical and consistent manner, and that those subject to regulation and those on whose behalf enforcement is carried out are aware of the Council's policy on enforcement.

This document communicates The Council's policy in respect of its approach to dealing with non-compliance to:

- a) those affected by its activities; and
- b) officers of Regulatory Services covered by this policy (See Annexe A)

All authorised officers will be expected to act in accordance with the policy.

### **3. When does this policy apply?**

3.1 The Council's Regulatory Services comprises of the following Teams:-

- The Environmental Health Service, which comprises of two teams:-
  - The Food, Health & Safety Team; covering food safety, health & safety at work, infectious disease control and special treatment registrations.
  - The Environmental Protection Team; covering statutory nuisances, contaminated land, air quality, water supplies, industrial installation pollution control, street trading consents, scrap metal licences, pest control, animal welfare licensing and control of stray dogs.
- The Private Sector Housing Team; covering housing conditions in private sector housing, illegal evictions and landlord harassment, licensing houses in multiple occupation and caravan site licensing.
- The Licensing Team; covering licences for alcohol, entertainment and late night refreshment, gambling, sex establishments. hackney carriage and private hire licensing.
- The Environmental Services Team, covering waste, fly tipping, dog fouling, litter and graffiti.

Enforcement includes council officers giving advice, carrying out visits and inspections, responding to complaints and service requests, assisting consumers and businesses to comply with statutory duties & licensing requirements and taking formal enforcement action where warranted against those who breach the law.

This Policy is supplemented where necessary by other documents, which set out in greater detail the specific policies, procedures and standards which apply to particular regulatory services. These include for example the [Licensing Policy](#) , The [Hackney Carriage and Private Hire Licensing Policy](#) , [The Food Sampling Policy](#). Copies of these documents are available on the Council's website [www.waverley.gov.uk](http://www.waverley.gov.uk)

Planning enforcement and benefit fraud enforcement are not covered by this enforcement policy but by the [Benefits Prosecution Policy](#) and the [Local Planning Enforcement Plan](#) which are available on the Council's website [www.waverley.gov.uk](http://www.waverley.gov.uk)

### **4. Our approach to dealing with non-compliance**

A number of factors are considered when determining what enforcement action to take:

#### **4.1 Explanation of the local authority's approach to dealing with non-compliance**

In responding to non-compliance identified, officers shall clearly explain what the non-compliant item or activity is, the advice being given, actions required or decisions taken, and the reasons for these. Officers shall provide an opportunity for dialogue in relation to the advice, requirements or decisions, with a view to ensuring that they are acting in a way that is proportionate.

This paragraph does not apply where the Officer can demonstrate that immediate enforcement action is required 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.

Where there is a wider regulatory interest, enforcement activities will be co-ordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement.

Where an enforcement matter affects a wider geographical area beyond the Council boundaries, or involves enforcement by one or more local authorities or organisations, where appropriate all relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activity co-ordinated with them.

If the matter relates to a business that has a registered Primary Authority Partnership under the Regulatory Reform Act 2006, the Council will, where required, comply with the agreement provisions for enforcement and notify the Primary Authority of the enforcement action that it proposes to take. The Council may also under the Act refer the matter to the relevant enforcement body if appropriate.

The Council will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies including:

- Government Agencies
- Police Forces
- Fire Authorities
- Statutory Undertakers
- Other Local Authorities

The Council's constitution sets out the Council's [Scheme of Delegation](#). This is available on the Council's website. Delegated authority has been given to authorised officers to act in varying capacity according to their professional background and seniority. Delegated authority is exercised within a decision making process that is managed to ensure that the most appropriate action is taken, based upon professional judgement, legal guidelines, statutory codes of practice and priorities set by the Council and/or Central Government.

The Council will manage enforcement in relation to premises in which it may have an interest to ensure that decisions are free from any conflict of interest. The Council:



- Have arrangements in place to pro-actively identify and resolve potential conflicts of interest. For example, considering whether steps can be taken to manage any conflict of interest whilst remaining the enforcing authority or whether, for example, health and safety responsibilities should be passed to the HSE;
- has plans and contingencies in place for dealing with exceptional circumstances where a conflict of interest comes to light after an incident has occurred;
- Carries out its enforcement policy and practice in exactly the same way that it does for all other premises and duty holders.
- Officers will carry out enforcement responsibilities fairly and objectively. Details of the [Council's Equalities Objectives](#) can be found on our website
- Where appropriate the Council will publicise details of any convictions which could serve to draw attention to the need to comply with the law or deter others. Where relevant the media will also be provided with factual information about convictions by the courts.

#### **4.2 Helping Businesses and Others to Compliance – Supporting Economic Progress**

The effectiveness of legislation in protecting consumers, other businesses and the community depends crucially on the compliance of those regulated. We recognise that most people and most businesses want to comply with the law. We will, therefore, take care to help businesses and others meet their legal obligations without unnecessary expense.

We will strive to ensure that when information is needed from businesses it is assessed to avoid duplication of requests and amended where necessary. We aim to seek feedback on the forms we use to collect information from business.

Whenever practicable we will promote positive incentives for businesses that comply, such as the Food Hygiene Rating Scheme. We will, where practicable and appropriate, provide feedback to business when there are changes in business risk ratings as a result of their performance.

#### **Helpfulness through Clear Accessible Guidance**

We believe that it is in the interests both of regulated businesses and the wider public to get things 'right first time', and that therefore our enforcement role should involve actively working with all those subject to regulation, especially small and medium sized businesses, to guide and assist with compliance.

We will provide a courteous and efficient service and our staff will identify themselves by name and carry a photograph identification card.

We will provide a contact point and telephone number for further dealings with us and we will encourage businesses and others to seek guidance or information from us. Those regulated can request advice on non-compliance without directly triggering enforcement action, where they show a willingness to resolve the non-compliance.

All requests for service, including applications for approval of establishments, licences, registrations, etc., will be dealt with efficiently and promptly within the resources available. We will ensure that, wherever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

We will:

- Give clear and simple advice and confirm in writing, if requested, explaining what you must do to comply with the law, and the recommended best practice.
- Minimise the cost of compliance wherever possible.
- Give you a reasonable time to comply, unless immediate action is necessary in the interest of health, safety, the environment, or to prevent evidence being lost.
- Maintain confidentiality, except where we have a legal obligation to disclose information.
- We will deal firmly with those that deliberately or persistently fail to comply.

#### **4.3 Explanation of the factors that influence the local authority's response to breaches of the rules:**

To ensure we take proportionate action and targeted at cases requiring action, the following factors will be taken into consideration:

- a. The seriousness of any alleged breach.
- b. Risks to public health.
- c. Risks to the safety of individuals or groups.
- d. Risks to the environment, animals and their habitats, air and water and land contamination.
- e. The previous history of the individual (in accordance with the Rehabilitation of Offenders act 1974), group or business, and where relevant, confidence in management.
- f. Any action taken by the responsible person/organisation, to resolve the situation.
- g. The courses of action that will best serve the community, and protect them or the environment.
- h. Whether the Council has a duty or discretionary power to take action.
- i. Where the business has a Primary Authority Partnership, the Primary Authority may in some circumstances prevent proposed enforcement action.
- j. Consideration will be given to proportionate approaches based on relevant factors such as business size and capacity.

## **5. Conduct of investigations**

### **5.1 Explanation of the processes for investigating alleged breaches**

All investigations will be carried out under the following legislation and in accordance with any associated guidance or codes of practice, in so far as they relate to The Council:

- the Police and Criminal Evidence Act 1984
- the Criminal Procedure and Investigations Act 1996
- the Regulation of Investigatory Powers Act 2000
- the Criminal Justice and Police Act 2001
- the Human Rights Act 1998

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

Our authorised officers will also comply with the requirements of the particular legislation under which they are acting, and with any associated guidance or codes of practice.

#### **Powers used by authorised officers.**

Authorised officers have powers *including* the power to:

- enter premises (in some circumstances they must first obtain a warrant of entry);
- take samples and photographs, and inspect records
- write informally asking the proprietor to put right any problems they find – where breaches of the law are identified, which must be put right, they may serve an Improvement Notice
- detain or seize equipment
- in serious cases they may decide to recommend a prosecution (if the prosecution is successful, the Court may impose prohibitions on processes and the use of premises and equipment, impose fines and possibly imprisonment for serious offences)
- if there is an imminent risk to the public or employees, inspectors can serve a Prohibition Notice that forbids the use of part or all of a premises or equipment
- Carry out Emergency Remedial Action or serve an Emergency Prohibition Order in situations where a housing hazard presents an imminent risk of serious harm to the occupiers
- Obstruction of an officer in the exercise of his/her powers can amount to an offence. Officers may attend premises accompanied by police officers if there is reason to require their presence. Police officers may exercise powers of arrest, for example if violence is used/threatened against a council officer.

- Issue a Closure Notice - an authorised officer may issue a closure notice under the terms of section 19 of the Criminal Justice and Police Act 2001.

**Seizure of Equipment and Other Items.** Some legislation enables authorised officers to seize equipment or other items including faulty, dangerous items, unwholesome or contaminated or food, equipment responsible for causing a noise nuisance. This is to prevent them causing harm or a nuisance. Some items may be seized for evidential purposes.

**Details of interview procedures.** All formal interviews will match national legal standards, known as 'PACE', (the Police and Criminal Evidence Act). The PACE Code of Practice sets an individuals rights and what the interviewer must and must not do to ensure that interview under caution is fair. If an interview doesn't meet these standards it may be that the interview record can't be used in court.

## **5.2 Progress of investigations**

We will keep those who are the subject of investigation, and witnesses, informed of the progress of investigations, unless to do so would be likely to defeat the purpose of proposed enforcement action or the situation is so serious that immediate action is required to prevent/respond to a serious breach.

## **6. Decisions on enforcement action**

### **6.1 Enforcement Actions available to The Council in Respect of Criminal and Civil breaches**

There are a number of potential enforcement options. The level of the action taken can vary from no action through to proceedings in Court. Examples of main types of action that can be considered are shown below:

- A. Compliance Advice, Guidance and Support
- B. Voluntary Undertakings
- C. Statutory (Legal) Notices
- D. Financial penalties
- E. Injunctive Actions, Enforcement Orders etc.
- F. Simple Caution
- G. Prosecution
- H. Refusal/Suspension/Revocation of Licences

#### **A. Compliance Advice, Guidance and Support**

The Council uses compliance advice, guidance and support as a first response in the case of many breaches of legislation that are identified. Advice is provided, sometimes in the form of a warning letter, to assist individuals and businesses in rectifying breaches as quickly and efficiently as possible, avoiding the need for further enforcement action. A warning letter 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.

The Council recognises that where a business has entered into a partnership with a primary authority, the primary authority will provide compliance advice and support, and The Council will take such advice into account when considering the most appropriate enforcement action for it to take. It may discuss any need for compliance advice and support with the primary authority.

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

## **B. Voluntary Undertakings**

The Council may accept voluntary undertakings that breaches will be rectified and/or recurrences prevented. The 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 The Council has powers to issue statutory notices. These include: 'Stop Notices', 'Overcrowding Notices', 'Prohibition 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**

Waverley Borough 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, Waverley Borough 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 Waverley Borough 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.

Waverley Borough 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 Waverley Borough 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.

#### **E. Injunctive Actions, Enforcement Orders etc.**

In some circumstances The 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.

The 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 usually only seek a court order if it has serious concerns about compliance with voluntary undertakings or a notice.

In some circumstances, The Council has a duty under the Housing Act 2004 to make a Management Order to take over the management of a House in Multiple Occupation (HMO), for example where it is required to be licensed but where there is no reasonable prospect of its being licensed in the near future or where it is necessary to protect the health and safety of the occupiers or others in the vicinity of the property. In some circumstances the Council has a power to make a Management Order, rather than a duty, including the power to take over the management of other properties in certain circumstances.

The Council has powers to charge for administration and other expenses involved with investigation and serving some notices, for example an enforcement notice under the Housing Act 2004.

#### **F. Simple Caution**

The 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, The Council is likely to consider prosecution.

A simple caution will appear on the offender's criminal record. It is likely to influence how The 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**

The 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 The 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 The Council is satisfied that it has sufficient evidence to provide a realistic prospect of conviction against the defendant(s).

Before deciding that prosecution is appropriate, The Council will consider all relevant circumstances carefully and will have regard to the following public interest criteria:

- a) the seriousness of the offence;
- b) the risks to public health;
- c) the risks to the safety of individuals or groups;
- d) the risks to the environment, animals and their habitats, air and water and land contamination;
- e) the previous history of the individual, group or business and, where relevant, confidence in management;
- f) the level of culpability of the offender
- g) any action taken by the responsible person/organisation to resolve the situation;
- h) the circumstances of and the harm caused to the victim
- i) the impact on the community
- j) the courses of action that will best serve the community, and protect them or the environment;
- k) whether prosecution is proportionate to the likely outcome;
- l) in the unlikely event of the offender being under 18, the specific youth considerations outlined in the Code for Crown Prosecutors;
- m) Whether sources of information require protecting.

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.

## **H. Refusal/Suspension/Revocation of Licences**

The Council issues a number of licences and permits. The 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.

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

### **6.2 Explanation of how decisions are made on enforcement action**

Our aim is to ensure that any necessary enforcement action is in line with the findings of the Macrory Review, enforcement actions will be taken in order to:

- a) aim to change the behaviour of the offender;
- b) aim to eliminate any financial gain or benefit from non-compliance;
- c) 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;
- d) be proportionate to the nature of the offence and the harm caused;
- e) aim to restore the harm caused by regulatory non-compliance, where appropriate; and,
- f) Aim to deter future non-compliance.

Where appropriate, decisions about enforcement may involve consultation between or approval from:

- Investigating officer(s)
- Service/Team Manager
- Heads of Service
- Corporate Management Team
- Council solicitor(s)

Decision making models may be consulted when making a decision as to the most appropriate action e.g. HSE's Enforcement Management Model. Decision making will include considering risk.

Each case will be kept under review to ensure that the appropriate level of enforcement action is taken. Written records will be kept which explain why a particular course of action has been taken. These records will refer, as necessary, to this policy.

### **6.3 Explanation of how decisions are communicated to those affected**

The Council is committed to provide a timely explanation in writing of any rights to representation or rights to appeal, and practical information on the process involved.



## 7. Review of this policy

This Policy will be reviewed in the light of experience and in light of any relevant legislative changes by the relevant Service Managers. Where changes are required these will be referred through the appropriate management process.

To ensure this policy continues to be suitable for business and community of Waverley, it will be necessary to review its effectiveness periodically.

It is essential to gain feedback from those who have been subject to enforcement action and where appropriate, the business or community affected by an infringement. Ongoing feedback shall be used and complaints data will be collated.

Feedback will be sought from the wider community, and from businesses through the Waverley Business Forum. Awareness of the policy, within the business community, will be assessed as part of this feedback process.

## 8. Comments and Complaints

### Details of processes for complaints and appeals

We want to resolve your complaint as soon as possible. If you have a problem with a Council Service, please talk to the member of staff or contact the Manager of the Service concerned (for contact details please see Appendix A). They may be able to resolve the issue straight away.

If you are unsatisfied with the service from the Council you can make a complaint via [the Council's Complaints Procedure](#) available on the Council Website or on request.

If it is not possible to speak to a member of staff or you prefer to contact us in a different way, you may do so:

**By phone.** See Appendix A for direct contact numbers of services covered by this policy or call 01483 523333.

**In person.** You can call into the office during working hours. Waverley Borough Council, The Burys, Godalming, Surrey, GU7 1HR.

**By email.** See Appendix A for email addresses of Service Managers.

**Online Complaints Form on our website** [on line complaints form](#)  
[www.waverley.gov.uk](http://www.waverley.gov.uk)

**By letter.** You can write to the service concerned at Waverley Borough Council, The Burys, Godalming, Surrey, GU7 1HR.

Where enforcement notices are served, detailed information will be provided to the person concerned regarding their statutory rights of appeal. The information will include, where appropriate, the necessary forms.

If you feel that the Council has failed to act in accordance with the Regulators Code the Council's Complaints Procedure detailed above should be used.

### **What do I do if I am still unhappy?**

If you remain unhappy after the final stage of Waverley's complaints procedure, you can take your complaint to an ombudsman.

### **Housing complaints**

If your complaint concerns a housing matter, you can make your complaint to the Housing Ombudsman.

Contact details for the Housing Ombudsman are:

Housing Ombudsman Service  
81 The Aldwych  
London  
WC2B 4HN

Tel: 0300 111 3000

Email: [info@housing-ombudsman.org.uk](mailto:info@housing-ombudsman.org.uk)

### **All other complaints**

You can complain to the Local Government Ombudsman.

Contact details for the Local Government Ombudsman:

PO Box 4771  
Coventry  
CV4 0EH

Text 'call back' to: 0762 480 3014

Tel: 0300 061 0614

Please note that before raising your concerns with the Local Government Ombudsman or the Housing Ombudsman, you should give Waverley a chance to resolve your complaint.

**This Enforcement Policy supersedes and replaces  
all earlier enforcement policies relating to  
Waverley Borough Council Regulatory Services.**

## **Appendix A: Teams Responsible for the Council Services Covered by this Enforcement Policy**

### **Environmental Health (Food, Health & Safety, Environmental Protection, Pest Control)**

Victoria Buckroyd, Environmental Health Manager

Telephone 01483 523393

Email [environmentalhealth@waverley.gov.uk](mailto:environmentalhealth@waverley.gov.uk)

### **Environmental Services (Waste & recycling, parking)**

Jennifer Carson, Environmental Services Manager

Telephone 01483 523397

Email [Jennifer.carson@waverley.gov.uk](mailto:Jennifer.carson@waverley.gov.uk)

### **Licensing**

Emma McQuillan, Democratic Services Manager

Telephone 01483 523351

Email [emma.mcquillan@waverley.gov.uk](mailto:emma.mcquillan@waverley.gov.uk)

### **Private Sector Housing**

Simon Brisk, Private Sector Housing Manager

Telephone 01483 523421

Email [simon.brisk@waverley.gov.uk](mailto:simon.brisk@waverley.gov.uk)