



# **Environmental Health & Licensing Enforcement Policy**

**2026 - 2031**

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1.0	New Joint Policy	Steven Greener Simon Llewellyn	15/01/2026

### Corporate Plan 2025-28

Council ambition	Linked?
<b>Working for a prosperous future</b> <i>We want to ensure the best possible local economy, with opportunities for our residents to succeed and achieve</i>	Yes
<b>Healthier, safer communities</b> <i>Residents should feel safe in our Borough and supported to be more active in order to improve their health and wellbeing</i>	Yes
<b>A greener and cleaner environment</b> <i>It's important to everyone that we look after our environment</i>	Yes
<b>Restoring the Council to good health</b> <i>We will place our Council on a sound financial footing and ensure resilience – delivering the service our residents deserve and expect</i>	Yes
<b>We ♥ Castle Point</b> <i>We will help create and maintain the best possible place to live in, work in and visit</i>	Yes

### Links to other strategies and policies:

- [Statement of Licensing Policy](#)
- [Statement of Gambling Licensing Policy](#)
- [Hackney Carriage and Private Hire Policy](#)

**Lead Officer responsible for owning the policy and internal approval body (meeting / board where the policy is approved for adoption or approved for referral to PFH or Committee for adoption)**

Name: Janette Parker-East, Assistant Director of Environmental Health, Licensing & Community

Approved by: Cabinet

### Lead Member and Committee responsible for approving policy

Cllr Robert Lillis – Portfolio Holder for Health, Wellbeing & Housing

Cllr Russell Savage - Portfolio Holder for People & Community

Cllr Michael Fuller – Portfolio Holder for Environment

To be approved at Cabinet

**Equality Impact Assessment undertaken? Yes**

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## 1. Introduction

- 1.1. The Council's Environmental Health and Licensing functions play a vital role in protecting and supporting the public, the environment and groups such as residents, workers and businesses. It is important that the enforcement functions carried out by officers is undertaken in an equitable, practicable and consistent manner and that both those subject to regulation and those on whose behalf enforcement is carried out can understand the approach taken.
- 1.2. This policy (the "Policy") is designed to be a single policy for both regulatory services and to be compliant with the Regulators' Code<sup>1</sup>, legislative requirements and codes of practice governing Environmental Health and Licensing enforcement. It should be read in conjunction with the Council's published service standards.  
<https://www.castlepoint.gov.uk/w/customer-service-standards>

### What is 'Enforcement'?

- 1.3. The Council's delegates its functions to the Environmental Health and Licensing officers who have a duty to enforce a range of legislation and apply the appropriate formal and informal sanctions. This can include anything from advising a licensed premises or dog breeding business what they need to do to comply with the law, to prosecuting a private landlord for failing to carry out essential repairs to a domestic property. This places the Council and its officers in a position of responsibility to ensure that the approach fits with national and local policy, codes and guidance. This is particularly important with regard to the economic challenges facing local government and business.

### What is this policy for?

- 1.4. This Policy explains to anyone affected by the Council's Environmental Health and Licensing functions (see Appendices One and two) what to expect in respect of its approach to dealing with non-compliance. This includes individuals and businesses who are subject to regulation by the Council and members of the public, businesses and organisations with an interest in the Council pursuing sound enforcement cases.
- 1.5. The policy is designed for anyone who runs a business for which the Council provides a regulatory function – such as a food outlet or taxi company – and anyone employed in those businesses. It is also aimed at anyone who complains to the Council about a business, so they understand the actions the Council could take.

### Authority to enter/act

- 1.6. The [Council's Scheme of Delegation](#) gives the Assistant Director of Environmental Health, Licensing and Community overall responsibility for managing investigations and making decisions on enforcement action.
- 1.7. The Environmental Health and Licensing officers have extensive legal powers to investigate, gather evidence and prosecute under various public health and environmental protection laws.

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<sup>1</sup> a set of principles issued by the UK government, specifically the Secretary of State under the Legislative and Regulatory Reform Act 2006 for most non-economic regulators to follow, promoting good regulation like being proportionate, accountable, consistent, transparent, and targeted

- 1.8. Within the limits of their statutory functions, officers are legally empowered to enter commercial premises, land and vehicles during the normal operating hours of the business in order to determine whether the law is being complied with. In the case of domestic premises, the law usually requires reasonable notice to be given to the occupier before an officer has a right of entry.
- 1.9. An officer who wishes to gain entry to private areas of a property will explain who they are and the purpose of their visit. The officer will also show their official identification and will seek permission to enter and will produce their full authorisation on request or where required.
- 1.10. A person unreasonably refusing a council officer entry may be guilty of obstruction where the relevant legislation grants officers specific statutory powers of entry to perform their duties. In such circumstances, such refusal may amount to a criminal offence to intentionally hinder officers, which may result in prosecution if there is a lawful reason for entry and the refusal hinders the investigation or action required for public safety or law enforcement. Any attempt by an officer to conduct a forced entry into a premises must be in the presence of a police officer.
- 1.11. Officers may take other persons into premises in order to assist with the execution of the Council's statutory functions, for example a colleague, a police officer or an expert in the field of the investigation.
- 1.12. Those being visited / inspected will be invited to accompany officers whilst on the premises and where possible officers will carry out their duties in a way that minimises detrimental effects on the legal activities at the premises. Nevertheless, it may be necessary to enter businesses during busy periods.
- 1.13. No officer will carry out enforcement duties unless authorised by the Council in line with its scheme of delegation. The specific authorisation for each officer is kept on file and will be presented on request.
- 1.14. Environmental Health and Licensing officers will be authorised to initiate enforcement action but should discuss all aspects of the case with their managers and consult with the Council's legal advisers as appropriate.
- 1.15. The Assistant Director of Environmental Health, Licensing and Community will make the final decision concerning referral for formal action. Once a decision to refer for prosecution has been made the case will be forwarded to the Council's legal advisers without delay.
- 1.16. Training will be provided for all enforcement officers as required to meet changes in legislation and enforcement procedures.

## **2. The Principles of Good Regulation**

- 2.1. In achieving compliance with the relevant legislation, the Council will employ the principles of good enforcement which include openness, helpfulness, proportionality, consistency, targeting, transparency and accountability. On occasions this will involve the Council working in partnership with other enforcement agencies.
- 2.2. 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 our Environmental Health and Licensing services.

2.3. The Council will exercise its 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 the Council regulate will be robust and reliable and implemented fairly. Where circumstances are similar, the Council will endeavour to act in similar ways to other local authorities;

**Transparent** – the Council will ensure that those the Council regulate are able to understand what is expected of them and what they can anticipate in return;

**Targeted** – the Council will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities.

### Regulators' Code

2.4. The Regulators' Code came into statutory force in April 2014 and provides a clear framework for transparent, open and accountable regulatory delivery. A copy can be found at [www.gov.uk/government/publications/regulators-code](http://www.gov.uk/government/publications/regulators-code).

2.5. The Regulators' Code is a UK statutory framework setting out principles for how regulators (like local councils) should interact with those they regulate, aiming for proportionate, transparent, and risk-based approaches that help compliance, not hinder growth, by ensuring clear communication, simple processes, and fair complaint mechanisms. It applies by requiring these bodies to develop policies aligning with principles like proportionality, consistency, transparency, and risk-targeting, ensuring businesses understand requirements, can give feedback, and have effective appeal routes, making regulation supportive rather than burdensome.

### Human Rights Act 1998

2.6. The Council is a public authority for the purposes of the [Human Rights Act 1998](#). The Council 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

2.7. Where there is a need for the Council to share enforcement information with other agencies, the Council will follow the provisions of the [Data Protection Act 2018](#), the [General Data Protection Regulation](#) (retained and adapted on 1<sup>st</sup> January 2021) and the [Data \(Use and Access\) Act 2025](#).

## The Code for Crown Prosecutors

2.8. 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 (a) Evidential Test; and the (b) Public Interest Test:

**(a) The Evidential Test** - is there enough evidence against the defendant?

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

2.10. This is an objective test and means that a jury or Magistrate, who have been properly directed in accordance with the law, will be satisfied beyond reasonable doubt that the defendant has committed the offence.

2.11. An investigation leading to a possible prosecution is scrutinised through [peer review](#), then by the service manager and then by the Assistant Director of Environmental Health, Licensing & Community before a prosecution file is sent to Legal Services.

2.12. If the matter is referred to legal by the Assistant Director, legal officers (prosecutors) not connected with the investigation apply the [Council's Prosecution Policy](#) to see if there is sufficient evidence to commence criminal proceedings.

2.13. In considering the need to take action, evidential records will be retained by officers and the following will be borne in mind throughout the investigation:

- a) The validity and relevance of any tape-recorded interviews;
- b) The continuity of evidence;
- c) The quality of any notes and records kept during the investigation;
- d) The level of compliance with the Regulator's Code; and
- e) The legislation having a bearing on enforcement practice and any internal procedures.

2.14. If there have been substantive departures from accepted practice on any of the above, this will be made known to line management and the Council's legal advisers, so that decisions on whether to proceed can be properly informed.

2.15. Officers may obtain evidence from many different sources and in different forms throughout an investigation.

2.16. All material will be retained, logged and provided to the Council's legal advisers who will deal with disclosure in accordance with the requirements of the [Criminal Procedure and Investigation Act 1996](#) should offences be authorised for prosecution.

2.17. During the investigation, and when reviewing the evidence, the following will be considered before referral for prosecution:

- a) Any factors that might reduce the reliability of an admission made during a taped interview such as, for example, a defendant's age, or lack of understanding.
- b) Any factors which might have a bearing on the reliability of any witness.
- c) If, after balancing the above, it is concluded that there is unlikely to be a realistic prospect of conviction, the case will not be referred to the Legal Services Department for consideration of the case for possible prosecution.

**(b) Public Interest Test** - is it in the public interest for the case to be brought to Court?

- 2.18. The Council will balance factors for and against prosecution carefully and fairly, considering each case on its merits. Several factors will determine whether a particular prosecution is in the public interest and a balance in favour or against will be made between these factors, any of which might be present.
- 2.19. Those factors that will tend towards prosecution include positive answers to the following, which may not be an exhaustive list:
- a) number of people affected by the offence.
  - b) degree to which people are affected (seriousness of the offence).
  - c) evidence that the offence was committed deliberately or maliciously.
  - d) evidence that the defendant intimidated or harassed those affected.
  - e) evidence of previous or on-going offences of a similar type.
  - f) likelihood of repeated offences that may be deterred by prosecution.
  - g) defendant was in a position of authority.
  - h) lack of co-operation on the part of the defendant.
  - i) offence is widespread, at least in the general area in which it was committed.
- 2.20. Factors which might argue against a prosecution will include:
- a) the court is likely to impose a very small penalty on conviction.
  - b) the offence appears to have been the result of a genuine misunderstanding or mistake.
  - c) the harm done was minor and was the result of a single incident, particularly if it was caused by a misjudgement.
  - d) the willingness on the part of the defendant to co-operate and to ensure that no future offences of a similar nature are committed.
  - e) the long delay between the offence and trial, unless:
    - i. The offence is serious.
    - ii. The delay has been caused, at least in part, by the defendant.
    - iii. The offence has only recently come to light.
    - iv. The complexity of the investigation results in unavoidable delays.
    - v. defendant is elderly, in poor health or confused (unless there is a real possibility that the offence will be repeated).
    - vi. the defendant has, so far as possible, put right the harm caused by the offence.
    - vii. a key witness has refused to testify or to provide a Witness Statement or, if they are the only victim, they have strongly indicated opposition to a prosecution.

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

- 2.21. The [Regulatory Enforcement and Sanctions Act 2008](#), as amended, established the [Primary Authority scheme](#)<sup>2</sup>. The Council will comply with the requirements of the Act when the Council 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.

### Other relevant Legislation

- 2.22. Apart from the specific laws relating to the technical aspects of Environmental Health work, there are several other legal and regulatory provisions relating to or having a bearing on enforcement as a whole which the council must have regard to. These include:

[The Legislative and Regulatory Reform Act 2006](#);  
[The Council's Prosecution Policy which incorporates and follows the Code for Crown Prosecutors](#)  
<https://www.cps.gov.uk/publication/code-crown-prosecutors>  
[Police and Criminal Evidence Act \(PACE\) 1984](#);  
[Regulation of Investigatory Powers Act 2000](#);  
[Freedom of Information Act 2000](#);  
[Data Protection Act 2018](#);  
[Environmental Information Regulations 2004](#);  
[Employment legislation concerning diversity including the Equality Act 2010](#);  
Local Government Acts; and  
Codes of Practice/Guidance, such as those issued by the Food Standards Agency and the Health and Safety Executive.

- 2.23. Whenever possible, the Council will work in partnership with other agencies to achieve common goals on matters of mutual concern.
- 2.24. These Agencies will include, for example, the Environment Agency, UK Health Security Agency and the Health and Safety Executive, and many others, as may be appropriate.

## 3. The approach to complaints of non-compliance

### Specific Enforcement Actions

- 3.1. The Council will consider and, where appropriate, investigate all complaints of non-compliance and take action as appropriate. Any follow-up on anonymous complaints will be dependent on the circumstances of each report. The Council will keep complainants informed of action taken in response and let them know the outcome.
- 3.2. In exercising the legal functions of the Council, Environmental Health and Licensing officers will ensure that regulatory effort is focussed on those individuals and businesses where non-compliance is likely and impact is high.

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<sup>2</sup> [The Primary Authority Scheme](#) is a system where a business partners with one local authority to receive legally-recognised, consistent regulatory advice that all other local regulators must follow. It ensures uniform enforcement and prevents conflicting decisions across different councils. This is the business's Primary Authority.

## The principles on which decisions are made on enforcement action

- 3.3. The Council follows the principles set out in the Macrory Review<sup>3</sup>, for policies 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.
- 3.4. The Council will consider risk to public safety, to public health, to the environment, of financial and economic harm and of non-compliance continuing or escalating at every stage of its decision-making process and will choose the most appropriate type of enforcement action taking into consideration the compliance record of those being regulated.
- 3.5. The Council recognises the statutory requirement under the Primary Authority scheme to notify the Primary Authority of proposed enforcement action.
- 3.6. The Council will keep under review the effectiveness of their chosen regulatory activities in delivering the desired outcomes and make any necessary adjustments accordingly.
- 3.7. The procedures or guidance to be followed when conducting specific types of non-compliance enforcement are contained in the following sections:
- (a) [Prosecutions](#)
  - (b) [Alternatives to Prosecutions](#)
    - (i) [Simple cautions](#)
    - (ii) [Notices](#)
    - (iii) [Works in default](#)
    - (iv) [Written warnings](#)
  - (c) [Refusal/Suspension/Revocation of Licences](#)
  - (d) [Compliance Advice, Guidance and Support](#)
- (a) Prosecutions**
- 3.8. Where statutory powers to prosecute exist, the decision to investigate and to refer the matter to the Council's legal advisers for prosecution is not taken lightly.
- 3.9. Each case is unique and will be processed according to its own merits. There is no suggestion that prosecution will automatically follow the discovery of an alleged offence.

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<sup>3</sup> The Macrory Review refers to a 2006 UK government report, officially titled "Regulatory Justice: Making Sanctions Effective", which proposed a new, flexible, and proportionate system for regulatory sanctions. The Macrory Review's core finding was that regulators needed a broader "toolkit" of sanctions to address a "compliance deficit" where non-compliance might go unaddressed because criminal prosecution was too disproportionate or time-consuming. [[Regulatory Enforcement and Sanctions Act 2008 - Explanatory Notes](#)]

Alternative actions to prosecution are outlined below and will be considered in all cases and at every stage.

- 3.10. The decision whether to prosecute is taken in accordance with the Council's Prosecution Policy (<https://www.castlepoint.gov.uk/documents/d/guest/cpbc-prosecution-policy-and-charging-code-2020-pdf> ) and is constantly reviewed. If there is no longer a realistic prospect of conviction, then criminal proceedings will be withdrawn or the Council will offer no evidence depending on the status of the case in the Courts.

**(b) Alternatives to Prosecution**

- 3.11. The following will be considered as alternatives to prosecution, where applicable, as part of the decision-making process. However, each must be examined considering the Public Interest Test

Before a decision to prosecute is taken, the case must satisfy the Evidential test and the Public Interest test.

**(i) Simple Cautions**

- 3.12. Where it is felt that prosecution may not be proportionate, the use of the Simple Caution may be considered. In all such cases, the Home Office Guidance on the use of Simple Cautions will be closely followed <https://www.gov.uk/government/publications/simple-cautions-guidance-for-police-and-prosecutors> .
- 3.13. Before a caution is administered there must be evidence of the offender's guilt sufficient to give a realistic prospect of conviction. The offender must admit the offence, must understand the significance of a caution and give informed consent to being cautioned.
- 3.14. If a Simple Caution is refused, this would most likely lead to the matter being prosecuted.
- 3.15. Other factors governing the use of a Simple Caution include:
- a) No more than one Simple Caution will be issued to the same business or person for a similar offence within the expiry period.
  - b) If a further similar offence is committed before the expiry of the Simple Caution, then a referral for consideration of prosecution will be made to the Assistant Director for approval in all but the most exceptional circumstances.
- 3.16. Usually, the details of any outstanding Simple Caution will be placed before the Court in any prosecution proceedings.
- 3.17. When considering whether or not to accept a Simple Caution, the suspect will be given the opportunity, if she/he so wishes, of viewing the evidence in the case, including any which may undermine the prosecution. This is to enable them, and/or their legal advisor, to assess the evidence and make an informed decision whether or not to accept the Simple Caution.
- 3.18. If accepted, the Simple Caution will be recorded, and a copy held on a Register of Simple Cautions by the Council and will be referred to should further offences be committed.

## **(ii) Works in Default**

- 3.19. Works in Default refers to the powers given to the Council under specified legislation to undertake works required in a Notice that have not been completed within the time permitted. A charge is normally made for carrying out such work, which the person(s) named on the Notice, would be required to pay.
- 3.20. It should be noted that not all legislation dealt with by Environmental Health and Licensing contains the power to serve a notice and complete works in default. Where these powers are utilised, the legislation being used will be clearly specified on the notice, so that a person in receipt of the notice can satisfy themselves of the legality of the document.
- 3.21. The approval of the manager of the service will be sought before arrangements are made to carry out Works in Default. At the time that approval is sought, the case officer will provide full details of the perceived need to undertake the work and be prepared to discuss alternatives.
- 3.22. There are two distinct types of Works in Default, these being:
- a) Seizure of equipment causing a statutory nuisance, for example stereo equipment in respect of noise problems.
  - b) Physical works undertaken by the Council to abate a statutory nuisance or comply with specified standards, for example carrying out drainage works where there may be a risk to health.
- 3.23. In deciding whether to carry out Works in Default, the Council will consider:
- a) The urgency of the need to rectify the nuisance or public health hazard.
  - b) The wishes of the person responsible for the problem which must be balanced against the detrimental effect the problem / issue is causing others.
  - c) Whether the evidence available provides a realistic prospect of defending the Council's action if the person responsible contests recovery of costs.
  - d) Where the Work in Default are required in an emergency, the Council may instruct a contractor to carry out the works without recourse to a formal tendering procedure. The Council may recover the costs of the work from the person responsible as a civil debt or by placing a charge on the property.
- 3.24. Where specified in legislation, authorised officers may have the right to enter premises at any reasonable time to carry out any action or works authorised in accordance with this Policy.
- 3.25. An officer who wishes to gain entry to private areas of a property will explain who they are and the purpose of their visit. The officer will also show their official identification and will seek permission to enter and will produce their full authorisation on request or where required.
- 3.26. Entry to any residential property shall not, except in an emergency, be demanded as of right unless 24 hours' notice has been given. If entry is refused, an officer may apply to the Magistrate's Court for a warrant to enter the premises, if needs be, by force.

### **(iii) Notices**

- 3.27. Notices are served in line with the relevant legislation to require offenders to cease contravening activities or give offenders reasonable time to rectify a contravention.
- 3.28. It should be noted that not all legislation dealt with by Environmental Health and Licensing contains the power to serve a notice. Where these powers are utilised, the legislation being used will be clearly specified on the notice, so that a person in receipt of the notice can satisfy themselves of the legality of the document.
- 3.29. Notices may require contravening activities to cease immediately where the circumstances relating to health, safety, environmental damage, or nuisance demand. In other circumstances, the time allowed must be reasonable but must also consider the implications of the contravention.
- 3.30. Officers will only consider service of Notice where there is sufficient evidence to justify their issue. All relevant guidance in statutory codes of practice and guidance issued by the Government or co-ordinating bodies will be followed as appropriate. For example, for Hygiene Improvement Notices and Hygiene Prohibition Notices full regard shall be made to the Food Law Code of Practice (<https://www.food.gov.uk/about-us/food-and-feed-codes-of-practice#food-law-code-of-practice>) and Guidance (<https://www.food.gov.uk/about-us/food-and-feed-codes-of-practice#practice-guidance>) issued by the Food Standards Agency.
- 3.31. The service of statutory notices is a routine part of the work of the Environmental Health team, and is prescribed by the relevant supervening legislation. However, there are some points of commonality affecting all types of Notice, as follows:

#### ***Peer Review***

- a) A peer review is a process where someone's work is evaluated by others with similar expertise to check its quality, accuracy and reliability.
- b) There are occasions when speed of service is of the essence and in such cases a peer review may not be practicable.
- c) Wherever possible, the use of standardised Notices will be used when a peer review is not possible, to ensure the greatest level of uniformity of approach.
- d) When a peer review is possible, and this should be in most cases, each Notice will be scrutinised by a member of the team unconnected with the case.

#### ***Associated Documentation***

Under normal circumstances, the following information will accompany a formal Notice:

- a) A covering letter, setting out the background to the Notice and designating a case officer or other point of contact.
- b) Appeal provisions.
- c) Schedule of Works, where appropriate.
- d) Any other information that may help the person served to understand and comply with the terms of the Notice.

## **Method of Service**

This may be specified in individual legislation and in such cases, the method of service will be followed exactly. Where there is no prescribed method, any of the following may be used:

- a) Hand delivery:  
The Notice will be given directly to the person(s) identified as being responsible. Where this method is used, the date, time, place, and other relevant details will be entered on the office copy of the Notice.
- b) Recorded Delivery:
  - a. The Notice is sent by first class, recorded delivery post.
- c) Normal Post:
  - a. Where normal post is used, a short Witness Statement may be provided giving details of the contents of the envelope, the date, time, and place of posting, and the address to which sent. The Statement will be in addition to an entry into the case officer's official notebook. This will be sent by first class post.
- d) Left at Scene:
  - a. The Notice may be left at the scene, i.e., a premises or vehicle. If this method is used, service will normally be by two officers. Each will make a contemporaneous entry in their official notebook, and each may provide a short Witness Statement giving details of the contents of the envelope left at the scene, the date, time, and place of service.

## **(iv) Written Warnings**

- 3.32. Perhaps the most common and most versatile form of enforcement is the use of a written warning, which may result from an investigation, or a routine inspection/intervention visit.
- 3.33. A written warning may be considered in the following circumstances:
  - a) The breach is not serious enough to warrant other action.
  - b) From the individual/company's history, it can be reasonably expected that action will achieve compliance.
  - c) Confidence in the individual/company's management involved is high.
  - d) The consequences of non-compliance will not pose a significant risk to the public.
  - e) In the first instance when dealing with voluntary and charitable organisations and small businesses.
- 3.34. There are few rules governing the use of this type of action, as it is not a regulated or statutory function. However, a written warning will normally:
  - a) Clearly state the nature of the breach/problem, with reference to the legislation, as appropriate.
  - b) Clearly state the remedial action needed to achieve compliance, why it is necessary and setting out the timescale for compliance against each item.
  - c) State the action that may be taken if the written warning is not heeded.
  - d) Designate a named officer as point of contact

- e) Clearly distinguish between a legal requirement and a recommendation of good practice.
- f) Indicate any follow-up action intended, (such as a re-visit in 14 days, etc) having regard to any special circumstances when a timescale for compliance is specified.
- g) Offer the opportunity for discussion or for the recipient to make representations.
- h) Point the way to specialist advice or additional information.

### **(c) Refusal/Suspension/Revocation of Licences**

- 3.35. 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.
- 3.36. 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, suspension or amendment.
- 3.37. When considering future licence applications, the Council may take previous breaches and enforcement action into account. A person convicted of a relevant offence may be judged to be no longer a 'fit and proper person' and their application refused.
- 3.38. In some circumstances, notably licences and permits made under the [Environmental Protection Act 1990](#), the revocation of a licence or permit may be used as an enforcement method.
- 3.39. Whilst this is a legitimate enforcement action, it is always remembered that the above may involve the removal of livelihood, sometimes without reference to an independent arbiter or the Courts. Accordingly, revocation is used only as a last resort, when other sanctions are either inappropriate, or have been tried without success.
- 3.40. No revocation or suspension action will be considered without the approval of the Assistant Director of Environmental Health, Licensing and Community and support from Legal Services.
- 3.41. Where revocation action is taken, it will normally follow at least two warnings, in writing. However, it is recognised that this will not always be possible, especially in the case of some types of Licensing offence.
- 3.42. When suspension or revocation action is taken, those concerned will be informed of any rights which they may have to appeal and be told of any time limits or other constraints which may apply.
- 3.43. All suspensions and revocations will be approved in accordance with the scheme of delegated authority by the appropriate officer or committee as contained within the Castle Point Borough Council Constitution which can be found at: <https://castlepoint.cmis.uk.com/castlepoint/Documents/PublicDocuments.aspx>

### **(d) Compliance Advice, Guidance and Support**

- 3.44. 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.

- 3.45. 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.
- 3.46. 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.

## **Voluntary Undertakings**

- 3.47. 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 escalation to formal enforcement action is likely to result.
- 3.48. A voluntary undertaking is a formal, legally binding promise made by an individual or business to the Council to rectify a breach of rules and prevent it from happening again. It is frequently used as a proportionate alternative to formal prosecution, allowing the regulated party to take responsibility and resolve issues without immediately facing court proceedings.
- 3.49. A voluntary undertaking must be proactively offered by the person or business that may have committed an offence. It cannot be imposed by the Council. The undertaking must be offered early in the enforcement process and it must clearly identify the actions to be taken and the outcomes to be achieved. The undertaking must be expressly agreed upon by both the person giving it and the council and it should be confirmed in writing. While an undertaking is voluntary to enter, it is legally binding once accepted.
- 3.50. If a voluntary undertaking is breached, the regulator can proceed to prosecute the person or business for the original offence or impose other sanctions like fixed monetary penalties.

## **Inspections**

- 3.51. It is neither possible nor necessary for the Council to investigate all issues of non-compliance with the law that are uncovered in the course of planned inspections or reported events.
- 3.52. The Environmental Health and Licensing teams will ensure that regulatory effort is focussed on those businesses where non-compliance is likely and impact is high. Whenever an enforcement decision needs to be made, fair regard shall be given to the normal hours of trading of any business under investigation. When necessary, inspections and investigations will be carried out in the early morning, in the evening and at weekends, in order to obtain fair and representative evidence pertaining to the alleged breach(es).
- 3.53. Prior notification of an impending enforcement inspection will not be made where such notification would defeat the purpose for which the inspection was being undertaken.

- 3.54. In conducting investigations, the Council will take account of any likely complementary or shared enforcement roles. The Council will also refer relevant information to other Regulators where there is a wider regulatory interest.

### **Revisits to Premises**

- 3.55. Following service of a Statutory Notice<sup>4</sup> or a written informal warning and/or advice, officers will revisit the premises, etc. to check that compliance has been achieved. The timing of a revisit is a balance between giving the person or business a fair opportunity to rectify the issue and the urgency of the risk involved.
- 3.56. In the case of a Statutory Notice, the revisit date is legally driven by the expiry date stated on the notice. You cannot usually take further enforcement action (like prosecution or works in default) until the time limit given for compliance has passed.
- 3.57. For very minor contraventions officers may advise that a check will be carried out at the next routine inspection. The decision on whether a follow-up visit is necessary will be based upon the seriousness of the non-compliance and the likelihood that further formal action will be taken as a direct result of the visit.
- 3.58. A high or immediate risk level (for example, a serious health and safety breach, an active pollution incident or an immediate food safety risk) would be revisited within 2 working days (or sooner if a Prohibition notice is involved).
- 3.59. A medium risk level (for example, standard housing repairs, minor structural issues or licensing breaches) would be revisited within 14-28 days (aligned with the time given to do the work).
- 3.60. A low risk level (for example, administrative errors, signage issues, or minor good practice advice) would be picked up at the next routine inspection unless the case officer in their experience felt that the time period was inappropriate.
- 3.61. Where practicable, the officer who undertook the original visit or inspection will carry out the revisit.

## **4. Complaints and feedback**

- 4.1. Any complaints about the service will be dealt with using the Councils complaints procedure. This can be found via: <https://www.castlepoint.gov.uk/complaints>.
- 4.2. The Council are committed to the delivery of responsive, good quality customer services to the communities within the Borough and would welcome comments and feedback about the impact this Policy may have on local residents and/or business via email to [info@castlepoint.gov.uk](mailto:info@castlepoint.gov.uk)

## **5. Enforcement in Premises in which the Council may have an interest.**

- 5.1. On occasions there may be a perceived potential for a conflict of interest where the Council has ownership or management interests in premises normally enforced by their own inspectors. Clear internal boundaries exist between enforcement and other officers so that they are not explicitly or implicitly expected to act in a fashion that might cause a conflict of interest.

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<sup>4</sup> A Statutory Notice is a formal legal notice that an authority is required to issue because a statute says they must.

- 5.2. The Council will ensure that the inspector retains their independence of decision and objectivity. Where minor breaches of legislation are observed the outcome will follow that for informal advice. Should more serious breaches be observed a report will be sent to the appropriate Assistant Director with a copy to the manager in control of operations at the facility. The most serious breaches will be reported to the Chief Executive with a copy to the Assistant Director and the manager in control of operations at the facility.

## 6. Shared Delegations

- 6.1. Where the need arises, the Council will maintain a memorandum of understanding to jointly authorise officers from other authorities to act on behalf of the authority, this is so that compliance and enforcement action can be taken on the Council's behalf where conflicts may have arisen or additional support is needed.

An agreement between authorities to jointly authorise officers, enables the use of enforcement powers regardless of which authority within the agreement the officer is employed. Anyone with these delegated powers must hold the same qualifications, experience and training as the Council's officers.

A model for agreeing joint authorisation is contained in the LGA councillors' handbook. <https://www.local.gov.uk/publications/councillor-handbook-taxi-and-phv-licensing-2021>

## Appendix 1 - Environmental Health

Environmental Health Practitioners deliver a wide range of services aimed at safeguarding the environment and improving the health, safety and well-being of our community. They work to ensure that the air is clean; food is fit to eat; housing is suitable for habitation; and workplaces are safe.

The main areas of work are as follows:

Food Safety	<ul style="list-style-type: none"> <li>Inspection of food businesses - enforcement and advice</li> <li>Investigation of complaints about food and food sampling</li> </ul>
Housing	<ul style="list-style-type: none"> <li>Tackling unsatisfactory conditions in private rented accommodation</li> <li>Inspection and licensing of houses in multiple occupation and caravan sites</li> <li>Detection of overcrowding</li> <li>Grants for making repairs, improvements or adaptations to homes</li> </ul>
Occupational Health and Safety	<ul style="list-style-type: none"> <li>Inspection of workplaces - enforcement and advice</li> <li>Investigation of accidents at work.</li> <li>Investigation of complaints about health and safety at work</li> </ul>
Pollution Control	<ul style="list-style-type: none"> <li>Air monitoring and control</li> <li>Regulation of industrial processes that discharge to the atmosphere</li> <li>Investigation and resolution of statutory nuisances</li> <li>Responding to planning and licensing consultations</li> <li>Responding to Freedom of Information and Environmental Information Requests</li> </ul>
Public Health	<ul style="list-style-type: none"> <li>Investigating food poisoning outbreaks and control of communicable disease</li> <li>Promoting public health initiatives</li> <li>Enforcement of smokefree legislation</li> <li>Dealing with filthy and verminous premises</li> <li>Regulation of skin-piercing establishments</li> <li>Funerals for individuals without next of kin</li> </ul>
Animal Welfare	<ul style="list-style-type: none"> <li>Licensing of cat and dog boarding, dog home boarding, dog day care, dog breeders, hire of horses, exhibition of animals, selling animals as pets, primates and dangerous wild animals.</li> <li>Promoting animal welfare</li> <li>Administration of applications</li> <li>Inspection and enforcement</li> </ul>

## Appendix 2 - Licensing

Licensing officers deliver a range of services aimed at protecting public safety and compliance with government legislation covering alcohol and entertainment, gambling, taxis and charitable collections.

The main areas of work are as follows:

Alcohol & Entertainment	Licensing alcohol sale and supply, late night refreshment and regulated entertainment in premises and outdoor events Promoting the licensing objectives Administration of applications Inspections and enforcement Oversight of outdoor events, partnership working with the Safety Advisory Group
Gambling	Licensing of betting, bingo, club machines, licensed premises machines, adult and children's entertainment centres. Promoting the licensing objectives Administration of applications Inspections and enforcement
Taxis (Hackney Carriages) & Private Hire	Licensing (Hackney Carriage & Private Hire) operators, drivers and vehicles Promoting public safety Administration of applications Inspections and enforcement
Charities	Licensing of street and house to house collections on behalf of registered charities Administration of applications and enforcement
Hypnotism	Licensing of hypnotism acts Administration of applications and enforcement
Scrap Metal Dealers	Licensing of scrap metal collectors and sites Administration of applications Inspections and enforcement
Sex Establishments	Licensing of sexual entertainment venues and sex shops Administration of applications Inspections and enforcement
Street Trading	Licensing of street trading on consent streets Administration of applications Inspection and enforcement
Pavement Licensing	Licensing of tables and chairs outside premises Administration of applications Inspections and enforcement
Boatman and Pleasure Boats	Licensing of Boatman and Pleasure boats Administration of applications Inspections and enforcement
Road Closures	Licensing of Road Closures for parades and events Administration of applications and enforcement