#

### General

### Enforcement Policy

**Executive Summary**

The purpose of this General Enforcement Policy is to explain clearly the approach of Hartlepool Borough Council towards enforcement. It has been drafted in line with these principles, and aims to ensure all enforcement:

* is consistent, transparent, accountable, proportionate and targeted;
* is risk-based to ensure an effective use of resources;
* improves protection for the community and businesses;
* and reduces the regulatory burden on businesses.

# Scope and meaning of ‘Enforcement’

This policy summarises Hartlepool Council’s approach to bringing about compliance with the legislation it enforces. It is an ‘umbrella’ policy which applies to the enforcement activities of the Council. Where additional service specific policies, procedures, codes and guidance exist that detail the enforcement options and requirements for a function, those documents will also comply with this policy where appropriate.

‘Enforcement,’ in the context of this policy, includes any criminal or civil action taken by the Council aimed at ensuring that individuals or businesses comply with the law. The term ‘enforcement’ therefore has a wide meaning and applies to all dealings between the Council and those upon whom the law places responsibilities i.e. the duty holder.

Within the context of this policy the term ‘duty holder’ applies to all individuals or corporate bodies who have a statutory duty under any of the legislation enforced by the Council.

It is not limited to formal enforcement action such as prosecution, but can include a range of interventions that seek to achieve compliance with the law, such as the provision of advice.

This policy is intended to provide guidance for officers, businesses, consumers and the public. It is not in itself a statement of law and does not affect the discretion of the Council to take legal proceedings where this is considered to be in the public interest.

Where practical, beneficial and cost effective we will co-ordinate our work and share data with other regulators, when there are planned inspections of the same business. This is to avoid duplication and to minimise burdens on the business.

This General Enforcement Policy does not cover the collection and enforcement of payment of Council Tax and Business Rates which are administered in accordance with the Local Government Finance Act 1992 and associated regulations.

# Introduction

We have a responsibility to protect the communities we serve, using the legislative tools delegated by Central Government. Councils implement, administer and enforce a raft of legislation designed to protect health, local economies and the environment. In doing this, we have flexibility to determine the most appropriate methods for enforcement, to suit local needs and ensure value for money.

Our vision for the borough is:

### *“Hartlepool will be a vibrant, welcoming and inspiring place to live, visit, work, invest and grow up in.”*

Consistent and fair application of our enforcement powers is in delivery of this vision.

**General Principles**

This policy is written in accordance with the Government’s ‘Better Regulation Agenda’. Specifically, the policy and its appendices implement regulatory principles required under the Legislative and Regulatory Reform Act 2006 and other relevant guidance. It is based on the following reports, legislation and guidance:

* The Enforcement Concordat;
* The Regulators’ Compliance Code;
* The Hampton Review and the Macrory Review;
* Advice from government departments and agencies;
* Existing legislation, such as the Human Rights Act 1998 and Regulation of Investigatory Powers Act 2000;
* Corporate policies, such as the Corporate Complaints, Comments and Compliments Policy;
* Best practice; and
* ‘The Code for Crown Prosecutors’.

The policy aims to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens, in accordance with the Regulators’ Code.

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.

Council enforcement officers should act within the scope of their delegated authority and all enforcement activities, including investigations and formal actions, should be conducted in compliance with the statutory powers of the officer and all other relevant legislation.

This legislation includes, but is not limited to, the Police and Criminal Evidence Act 1984, the Criminal Procedure and Investigations Act 1996, the Regulation of Investigatory Powers Act 2000, the Human Rights Act 1988, the Protection of Freedoms Act 2012, the Equality Act 2000 and in accordance with any procedures and Codes of Practice made under this legislation in so far as they relate to enforcement powers and responsibilities.

Where there is a need for Hartlepool Borough Council to use, store or share enforcement information with other agencies, we will follow the provisions of the Data Protection Act 2018, which is the UK’s implementation of the General Data Protection Regulation (GDPR) 2018.

### Aims - General Enforcement

We aim to ensure our enforcement actions are:

* **Proportionate**

The enforcement action will relate to the risks to health and safety, the environment or amenity and/or the extent of nuisance to the public. Enforcement actions will be proportionate to any risks, or to the seriousness of any breach. Care will be taken to ensure that no unnecessary costs are incurred;

* **Fair and accountable**

Officers employed by the Council must comply with the principles set out in this Enforcement Policy. Our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures;

* **Consistent**

We will seek to be consistent in applying our enforcement powers by, as far as possible, dealing with similar circumstances in a similar manner. However consistency of approach does not mean uniformity. Each case is unique and will be considered on its own facts and merits;

* **Transparent**

Hartlepool Council will help individuals, organisations or businesses to understand what is expected of them and what they should expect from us. We will also ensure that everyone can distinguish advice from legal obligations. Requirements and recommendations will be put in writing if requested;

* **Targeted and risk-based**

Our resources will be targeted primarily on activities by the individuals, organisations or businesses giving rise to the most serious risks to health and safety, the environment or statutory nuisance to the public.

Where available we will apply national schemes for assessing risks and targeting enforcement.

We must adhere to these principles to be compliant with the aims of this policy. This applies not only when carrying out the enforcement, but also when setting policies, principles and standards, and providing guidance relating to enforcement activities.

### Methodology

We will take a balanced approach to enforcement, using compliance advice, guidance and support as a first response in the case of many breaches of legislation that are identified.

We may give talks to community and business groups, and provide a variety of leaflets. We also offer free advice on a wide range of subjects via telephone, personal visit or via our website.

You can expect our staff to:

* be courteous and helpful;
* identify themselves by name and provide a contact point for further dealings;
* give clear and simple advice;
* 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); and
* maintain confidentiality, except where we have a legal obligation to disclose information.

Decisions on enforcement action are taken in accordance with the principles set out by the Macrory Review of Regulatory Penalties. Policies are expected to aim to:

* change the behaviour of the offender;
* eliminate any financial gain or benefit from non-compliance (where possible);
* be responsive, and consider what is appropriate for the particular offender and regulatory issue;
* be proportionate to the nature of the offence and the harm caused;
* restore the harm caused by regulatory non-compliance, where appropriate; and
* deter future non-compliance.

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

* the nature and seriousness of any alleged offence;
* the previous history of the individual, group or business and confidence in management (if relevant);
* the consequence of non-compliance;
* any action taken by the responsible person / organisation, to resolve the situation;
* the likely effectiveness of various enforcement options;
* what is in the public interest;
* the views of any victim, injured party or relevant person to establish the nature and extent of any harm or loss, and its significance;
* sufficiency of evidence to support the action; and
* whether it is considered expedient to take enforcement action.

We have a range of enforcement options available to us, which are set out in **Appendix 1**.

In choosing which enforcement sanction(s) to take Hartlepool Council will aim to change the inappropriate behaviour causing the problem and to deter future non-compliance.

The enforcement sanction(s) chosen will be proportionate to the nature of the non-compliance and the harm caused by it and appropriate to the individual/business which the action is taken against.

Enforcement action will be followed up as appropriate and further enforcement sanctions may be pursued if the initial action has not achieved the desired outcome. For example, non-compliance with a statutory notice may result in prosecution.

In some circumstances matters may be referred from or to another agency for enforcement action. Our staff will liaise and may take joint action with other Council teams and/or appropriate local or national agencies and/or external organisations in order to achieve enforcement aims.

Enforcement activities will be conducted in compliance with the statutory powers of the officer and relevant legislation, statutory guidance and Codes of Practice.

The Authority is committed to recovering the costs of any enforcement action, where permitted to do so, and will ensure that such recovery of costs is appropriate and proportionate. The use of the Proceeds of Crime Act will be considered as a means to ensure that profits derived from criminal activity are recovered from those responsible.

### Appeals

You can appeal against our action, for certain forms of enforcement, such as statutory notice and prosecution. We will advise you if you can appeal and the timescale in which you must make the appeal.

We are always willing to discuss with you the reasons why we have acted in a particular way, or asked you to act in a particular way. If you have been unable to resolve your concerns with the inspecting officer you can contact the officer’s line manager for an informal review of the matter.

### Complaints

If you are concerned that any enforcement action taken by us is not in accordance with this policy, you can complain. It will be dealt with in line with the Council’s Complaints Policy. This can be accessed at: [**https://www.hartlepool.gov.uk**](https://www.hartlepool.gov.uk/info/20004/council_and_democracy/429/complaints_comments_and_compliments)

In respect of health and safety advice given which you think is incorrect, or goes beyond what is required to control the risk adequately, there is an additional means of challenging this if the above Council process has not resolved your concern. In such cases you may appeal to the Independent Regulatory Challenge Panel.

Details can be found at:

[**http://www.hse.gov.uk/contact/challengepanehtm**](http://www.hse.gov.uk/contact/challengepanehtm)

### Review

This policy will be reviewed periodically to accommodate changes in legislation, local needs and the views of our customers.

### Appendix 1 Enforcement Sanctions

It is outside the scope of this General Enforcement Policy to discuss, in detail, specific legislation relating to the various regulatory sanctions available to the Council. (See **Appendix 2** for a list of these policies).

All policies will be written in line with this General Enforcement Policy. For guidance, the following is a brief explanation of the regulatory sanctions available.

### Verbal and Written Warnings

We will take a balanced approach to enforcement, using 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.

If a similar future breach is identified, a warning 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.

### Voluntary Undertakings

Under certain circumstances Hartlepool Council may accept voluntary undertakings that breaches will be rectified and/or recurrences prevented. Hartlepool Council will take any failure to honour voluntary undertakings very seriously and enforcement action is likely to follow.

### Statutory (Legal) Notices

In respect of many breaches, Hartlepool Council has powers to issue various statutory notices, for example: Minded to Notices, Stop Notices, Suspension Notices, Community Protection Notices, Improvement Notices, Prohibition Notices and Emergency Prohibition Notices.

Statutory Notices can be used in situations including:

* where there is, or may be, a significant risk to public health or the environment;
* a statutory nuisance is occurring, or is likely to occur or recur; and
* the consequences of not taking immediate and decisive

action to abate, or prohibit, the activity giving rise to the significant risk to public health, or statutory nuisance, would be unacceptable; or

* where unauthorised development has occurred.

A statutory notice will clearly set out actions which must be taken and the timescale within which they must be taken. The notice is likely to require that any breach is rectified and/or prevented from recurring. It may also prohibit specified activities until such time as the breach has been rectified and/or safeguards put in place to prevent a recurrence.

Where a statutory notice is issued and there is a statutory right of appeal, an explanation will be provided to the recipient.

Statutory notices are legally binding and failure to comply can be a criminal offence which can lead to prosecution and/or (where appropriate) the carrying out of work in default.

Some notices issued in respect of premises may be affixed to premises and/or registered as local land charges.

### Work in Default

This is a generic term for work carried out, usually as a result of failure to comply with a statutory notice. The following circumstances may apply:

* there has been no appeal against the notice, or an appeal has been quashed;
* it is considered more appropriate/effective than prosecution, or a successful prosecution has been taken and the problem remains;
* the problem may be so serious that it requires quick remediation through work in default at the same time as prosecution; and
* the recipient of the notice has requested this and given an undertaking in writing to pay.

When deciding whether to carry out works in default, the following will be considered:

* the seriousness of the defect, and the urgency of the need to remedy the situation;
* the ability of the Council to reclaim the cost of remediating the works, including an administration charge, if the recipients appeal against the costs; and
* the recipient’s comments on the notice.

In commissioning any works to enable work in default, the Council’s standing orders governing financial matters will apply. This includes the provisions requiring works in emergency situations.

We will seek to recover all of our costs associated in undertaking works in default.

### Enforced Sale Policy

This enables the Council to recover debts associated with the taking of enforcement action which have not been recovered, pursuant to the Council’s usual debt recovery processes. It may also result in the return to occupation of problematic vacant properties following an ownership change.

### Detention and/or Seizure of Goods / Equipment

In respect of some breaches the Council has powers to detain or seize goods and/or equipment and may initiate a prosecution.

Where a statutory notice is issued and there is a statutory right of appeal, an explanation will be provided to the recipient.

### Penalty Notices

The Council has powers to issue penalty notices, which include administrative, financial and civil penalties, in respect of some breaches. This course of action may be chosen as a more efficient and effective way of dealing with the offence.

A penalty notice is not a criminal fine and does not appear on an individual’s criminal record. If a financial penalty is not paid, we may commence criminal proceedings or take other enforcement action in respect of that breach.

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

The Council is only able to issue penalty notices where it has specific powers to do so. If penalty notices are available, their use is at the Council’s discretion.

### Orders and Injunctions

In some circumstances, for example where there is an immediate risk to public health, the environment or a heritage asset or extraordinary statutory nuisance, Hartlepool 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.

Hartlepool 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, Hartlepool Council will usually only seek a court order if it has serious concerns about compliance with voluntary undertakings or a notice.

### Simple Caution

A Simple Caution may be offered as an alternative to prosecution for some less serious offences, where a person admits an offence and consents to the caution.

Normally a Simple Caution will only be offered for first offences. The offender should not have received a Simple Caution for a similar offence within the last two years.

The aim of a Simple Caution is to:

* deal quickly and simply with less serious offences;
* divert less serious offences away from the courts; and
* reduce the chances of repeat offences.

This course of action is normally considered when the criteria for prosecution are met but extenuating circumstances suggest a more lenient approach would achieve the same objectives.

It may be appropriate when:

* the interests of justice will not be served by court action;
* offences of a minor nature are not actioned following service of a statutory notice and there is no risk to health/safety; or
* a ‘technical’ offence has been committed that must be formally recorded.

The investigating officer must compile a prosecution file before the Simple Caution is offered to the alleged guilty party. They must be given sufficient information to understand the significance of a Simple Caution.

If the Simple Caution is refused, the Council will pursue the offence through a prosecution, except in exceptional circumstances.

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.

### Prosecution

The Council will use discretion in deciding whether to initiate a prosecution. The primary purpose is to help prevent harm, and while prosecution can draw attention to the need for compliance with the law, other approaches to enforcement can be more effective.

When deciding whether to prosecute Hartlepool Council will have regard to The[**Code for Crown Prosecutors**](file:///%5C%5Cengsrv%5Cwordfile%5CHEALTH%5CKETT%5CEnforcement%20Policies%5CCode-for-Crown-Prosecutors-October-2018.pdf).

Prosecution will only be considered when the Council is satisfied that there is evidence to provide a realistic prospect of conviction against the defendant(s) and that prosecution would be in the public interest.

Circumstances which are likely to warrant prosecution are where:

* death was a result of a breach of legislation;
* there has been a blatant or reckless disregard for the law;
* there have been repeated breaches which give rise to significant risk, or persistent and significant poor compliance;
* the offence involves a risk to public health, safety or wellbeing, harm to the environment or where an unacceptable business advantage is gained;
* the offender has failed to correct potential risks after being given a reasonable opportunity to do so;
* the offence involves failure to comply with a statutory notice or a repetition of a breach which was subject to a Simple Caution;
* evidence suggests that the offence was premeditated; or
* an officer was intentionally obstructed or deceived in the course of their duties.

The Council will also consider prosecution, where the following circumstances apply:

* it is considered appropriate in the circumstances as a way to draw general attention to the need for compliance with the law and the maintenance of standards required by the law, and conviction may deter others from similar failures to comply with the law;
* a breach that gives rise to significant risk has continued despite relevant warnings from employees, or their representatives, or from others affected by a work activity; and
* where officers are assaulted we will also seek Police assistance with a view to seeking the prosecution of offenders.

Throughout the decision making process legal advice will be taken.

Where enforcement action is taken through the courts we will seek to recover legitimate costs from convicted offenders.

### Proceeds of Crime

Any money or assets earned because of, or in connection with, an offence can be recovered under the Proceeds of Crime Act 2002. In relevant cases, we will consider taking action under the Proceeds of Crime Act to confiscate the proceeds of those who benefit from criminal conduct.

### Refusal, Suspension, Revocation of a Licence / Registration / Consent / Permit / Or Similar

A business or individual may require prior approval such as a licence, consent, registration, permit or badge before carrying out a certain activity.

Hartlepool Council administers numerous licensing and permitting regimes, each having different rules for making applications and their determination. Hartlepool Council also has a role to play in ensuring that appropriate standards are met in relation to licences/permits issued by other agencies.

Most licences and other permissions have conditions attached which lay down requirements that a business or individual must have regard to. Breach of a condition may be a civil or criminal matter.

Enforcement sanctions available to Hartlepool Council include:

* refusal to grant a licence/consent /permit/badge;
* suspension/revocation of a licence/registration/permit;
* inspection, seizure and cancellation of a permit or badge;
* refusal to vary a licence/permit; and
* the imposition of conditions to a licence/permit.

These actions will be proportionate to the risk to public health or safety, and will be applied when:

* there is a record of non-compliance with breaches of licence/permit conditions; and
* confidence in the person responsible is low.

Failure to apply for or renew certain licences and registrations in respect of a premises may lead to Hartlepool Council considering whether a Management Order is appropriate.

Reasonable warnings and advice about the consequences of such actions will be provided to duty holders.

When considering future applications Hartlepool Council may take previous breaches and enforcement action into account.

### Retrospective Applications

In certain circumstances the council may seek a retrospective application to regularise any unauthorised activity.

### No Action

In some circumstances it will be appropriate to take no action. This includes where there is no statutory contravention, or risk to public health or safety or the environment, and where there is evidence of satisfactory practices and management controls.

Except for Planning, it may be appropriate to take no action where the cost of compliance to the offender outweighs the detrimental impact of the contravention, or the cost of the required enforcement action to Hartlepool Council outweighs the detrimental impact of the contravention on the community.

A decision to take no action may also be taken where formal enforcement is inappropriate in the circumstances, such as where the offender has ceased to trade, or where formal action would seriously damage their wellbeing. In such cases

Hartlepool Council will take into account the public interest principle and advise the offender and/or the complainant of the reasons for taking no action.

Where the law provides the complainant with other options to resolve issues which affect them, such as civil remedies, we will direct them to relevant information. This may involve referral to other council departments, external organisations or advising them to seek independent legal advice.

**Appendix 2**

## List of Service Specific Enforcement Policies

Public Protection Enforcement Policy

Hartlepool Borough Council Housing Services Enforcement Policy

### www.facebook.com/hartlepoolcouncil

### Tel: (01429) 266522

**If you know someone who needs this information in a different format, for example large print, Braille or a different language, please call (01429) 266522.**

Hartlepool Borough Council December 2021

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