



## **Maldon District Council**

# **Corporate Enforcement Policy**

**October 2018**

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## **1.0 Scope**

- 1.1. This Policy covers all enforcement activities carried out by the Council. It applies to all officers with delegated authority to undertake such enforcement action.
- 1.2. This Policy is implemented by officers in accordance with the Council's Constitution. Subsidiary policy and protocols may however exist in specific service areas of the Council. All officers undertaking enforcement activity will be suitably authorised and qualified and/or experienced to do so.
- 1.3 This document supersedes any previous corporate policy statements on enforcement.

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## 2.0 Introduction

- 2.1. In April 2014 The Regulators Code of Compliance (“the Code”) was published by The Better Regulation Delivery Office, made under section 23 of the Legislative and Regulatory Reform Act 2006 (“the Act”).
- 2.2. Regulators whose functions are specified by the Act **must** have regard to the Code when developing policies and operational procedures that guide their regulatory activities.
- 2.4. Section 6 of the Code sets out the Government’s expectation that local authorities will ensure that their approach to their regulatory activities are published in a clear set of service standards, setting out what those they regulate should expect from them and how they respond to non-compliance.
- 2.5. The enforcement policy (“the Policy”) aims to provide consistency of approach within Maldon District Council (“the Council”).
- 2.6. The Policy has been prepared having regard to:
  - The Enforcement Concordat: Good Practice Guide for England and Wales
  - The Police and Criminal Evidence Act 1984
  - The Human Rights Act 1998
  - The Code for Crown Prosecutors
  - The Legislative and Regulatory Reforms Act 2006 (LRRRA)
  - The Regulatory Enforcement and Sanctions Act 2008
  - The Regulators’ Compliance Code Human Rights Act 1998, the European Convention on Human Rights
  - The Freedom of Information Act 2000
  - Regulation of Investigatory Powers Act 2000.
- 2.7. This Policy reiterates the basic principles of enforcement activity that “reduce administrative burdens through effective inspection and enforcement through transparency, accountability, proportionality, consistency and targeted action”.
- 2.8. The Council nevertheless acknowledges the need for firm action against those who flout the law and puts residents, consumers and others at risk. The Council expects all officers taking enforcement action decisions to take this Policy as a guide when making those decisions.

### 3.0 Objectives

- 3.1 The approach adopted by services when carrying out the Council's duty to apply or enforce a wide range of legislation is intended to:
- Focus on prevention rather than cure
  - Ensure that we enforce the law in a fair, equitable and consistent manner
  - Take firm action when it is necessary and appropriate to do so.
  - Carry out enforcement that is risk-based, consistent, proportionate and effective.
  - Assist businesses and others in meeting their legal obligations without unnecessary expense.
- 3.2 Although primary responsibility for compliance with the law rests with individuals and businesses, the Council will endeavor to provide information and advice to help them understand their legal obligations and will seek to raise awareness about the need to comply.

## **4.0 Enforcement Activity**

4.1 The Council has a duty and a power to take action to enforce a wide range of statutes relating to:

- public health and safety
- preservation of public and residential amenity
- maintenance of the environment and
- protection of public funds
- quality of life

4.2 All of these activities will be carried out having regard to the general principles of good enforcement practice outlined in this Policy. Although not exhaustive the service areas falling within the scope of this Policy include:

- Food Safety
- Health and Safety
- Environmental Protection
- Private Sector Housing
- Licensing
- Planning Enforcement
- Building Regulation Enforcement
- Waste/Street Scene
- Anti-Social Behaviour
- Debt Recovery and Fraud
- River Crime

4.3 Individual service areas may have separate service standards specific to the legislation they enforce. Those standards must accord to this Policy.

## **5.0 Delegation of Authority**

- 5.1 The Council's Scheme of Delegation specifies the extent to which enforcement powers are delegated to officers. Whilst delegation is mainly to officers, in some specific circumstances the decision to take enforcement action lies with the relevant Council Committee.

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## 6.0 Principles of Good Regulation

6.1 For the purpose of this document the Council includes the general principles for good enforcement within the Regulators Code of Compliance dated April 2014, which specify that regulators should:

- Carry out their activities in a way that supports those they regulate to comply and grow
- Provide simple and straightforward ways to engage with those they regulate and hear their views
- Base their regulatory activities on risk
- Share information about compliance and risk
- Ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply
- Ensure that their approach to their regulatory activities is transparent



## **7.0 Other Policy Considerations**

These include:

- Council's Safeguarding for Children and Vulnerable Adults Policy
- Council's Equality Policy
- Applying the principles of the Regulation of Investigatory Powers Act 2000 (RIPA) wherever they are relevant.

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## **8.0 Informal Enforcement Action**

8.1. Where minor breaches of law are discovered or reported that pose low risks, informal action may be appropriate and can be an effective way of achieving compliance. Informal action may include one or more of the following:

- inspection of premises;
- verbal advice;
- verbal request for action;
- written request for action;
- written warning of formal action if contraventions are not corrected.

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## 9.0 Enforcement Action

- 9.1 The Council's Regulatory Officers will have regard to general guidance documents that exist as well as other guidance relevant to the individual service areas.
- 9.2 In determining the nature of enforcement action to be taken, the Council should ensure that any sanction or penalty should:
- Aim to change the behaviour of the offender;
  - Aim to eliminate financial gain or benefit from non-compliance;
  - 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;
  - Aim to restore the harm caused by the regulatory non-compliance where appropriate;
  - Aim to deter future non-compliance

## 10.0 Formal Enforcement Action

10.1 Circumstances where formal action will be considered include (but are not restricted to):

- Where there is a significant contravention of legislation;
- The legislation requires the Council to take a specified action;
- An informal approach has failed;
- There is a history of non-compliance with informal or formal action;
- There is a lack of confidence in the successful outcome of an informal approach;
- Standards are generally poor, suggesting a low level of awareness of, and compliance with, statutory responsibilities;
- The consequences of non-compliance, for health, safety, the environment, or other Council priorities, are unacceptable and/or immediate;
- There is demonstrable harm to the amenity of the area;
- Effective action needs to be taken quickly in order to remedy conditions which are deteriorating;
- Formal action is expected to achieve the desired outcome without incurring expense or inconvenience that is disproportionate to the risks;
- A charge applied by a Fixed Penalty Notice has not been paid;
- The use of formal notices as being more effective than informal action where this would be more time effective.

10.2 In most situations before formal action is taken, we will provide an opportunity to discuss matters and, hopefully, resolve points of difference. The extent of this will depend on the seriousness of the contravention, and may not be possible where immediate action is considered necessary or a statutory notice is being served, e.g. where there is an immediate risk to health, safety or the environment, or where the formal action takes the form of a fixed penalty notice.

10.3 Only officers who have reached a sufficient level of competence will be given the delegated authority to take formal action. Formal action can take any form that the Council is empowered by legislation to take.

10.4 Formal action may include one or more of the following:

- the service of statutory notices and orders;
- the issue of simple cautions;
- issue fixed penalty notices;
- prosecution;
- Proceeds of Crime (including Rent Repayment Orders);
- application for injunction;

- use of other enforcement powers by officers authorised by specific legislation in accordance with the Council's Constitution (e.g. sampling, forfeiture or seizure of goods, the seizure or detention of equipment or food, or the prohibition of processes or activities);
- Works in Default.

10.5 Service areas may refer to individual procedural notes or policies for taking formal action.

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## 11.0 Prosecutions

- 11.1 The final decision to prosecute or take other legal action will be authorised by the relevant authorised officer and/or member of the Corporate Management Team. In all cases the Council will seek to recover all costs (where lawful to do so) associated with any enforcement action, prosecution or other legal action it takes.
- 11.2 Where the appropriate level of action is deemed to be that of prosecution or other legal action, then the case will be judged on its individual merits against the prevailing guidance and procedures associated with prosecution or other legal action (i.e. the Code for Crown Prosecutors) and the application of the evidential and public interest tests.

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## **12.0 Proceeds of Crime**

- 12.1 Where appropriate the Council will consider the use of the Proceeds of Crime Act 2002. The Proceeds of Crime Act allows Local Authorities to recover assets that have been accrued through criminal activity.
- 12.2 Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017. Where appropriate the Council must consider the use of rent repayment orders where a relevant offence has been committed.

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## **13.0 Civil Claims**

- 13.1 Any enforcement action is completely separate and distinct from civil claims made by individuals for compensation or other remedy. Enforcement is not undertaken in all circumstances where civil claims may be pursued, nor is it undertaken to assist such claims. Officers will not provide information or witness statements to support third party civil cases unless required to do so by the Courts.

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## **14.0 Training and Appointment of Officers**

- 14.1. The Council's Constitution identifies the roles and responsibilities in connection with the enforcement function. A scheme of delegation is also in place which specifies the extent to which each officer is authorised to act and under what legislation they may do so.
- 14.2. All officers undertaking enforcement duties will be trained and competent in their specific work areas operationally and technically. The performance of officers will be monitored and reviewed and additional training needs identified in line with this.

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## **15.0 Publication and Review**

- 15.1. The Policy will be published on the Council's website and will undergo a formal review ever 5 years. However, should it become apparent that the Policy contains any weaknesses for whatever reasons i.e. significant changes to law or other guidance, then the Policy will be amended by the Director of Planning and Regulatory Services who has delegated authority to make minor and consequential changes to the Policy, ensuring that any such changes are formally notified to staff and Members.

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