

# Enforcement Policy

## Policy statement

Chesterfield Borough Council (the Council) has a responsibility to enforce a range of legislation. Where possible, we will offer advice and guidance to support businesses and individuals to comply, but where it becomes necessary to take enforcement action, we will do so. There is a wide range of enforcement tools available to deal with non-compliance and includes:

- Compliance advice, guidance and support
- Voluntary undertakings
- Statutory (legal) notices (including orders)
- Works in default
- Financial penalties
- Injunctive actions, enforcement orders and possession orders
- Simple caution
- Prosecution
- Refusal, revocation or suspension of a licence or approval
- Detention/seizure of food/goods/equipment
- Forfeiture Proceedings
- Penalty Charge Notices
- Civil Penalties
- Proceeds of Crime Applications
- Prohibition
- Statutory orders
- Compulsory Purchase Orders
- Use of other legal powers
- No action

We will always choose an enforcement method that is relevant and proportionate to the offence to contravention.

This Policy applies to all services with enforcement duties although it should be noted that some services have specific legislative guidance and regulations which set out the enforcement requirements in these services.

This Policy provides guidance to officers, businesses and the general public on the range of enforcement options that are available to achieve compliance with legislation enforced by the Council. It is designed to help you understand our objectives and methods for achieving compliance and the criteria we consider when deciding the most appropriate response to a breach of legislation.

## 1. INTRODUCTION

The Council carries out a wide range of regulatory roles in meeting its many statutory functions of protecting the individuals, communities and the environment. These duties are mainly met by carrying out programmed inspections of premises, responding to complaints, taking pro-active action (e.g. mandatory grounds for possession on conviction), issuing licenses and offering advice. This Policy outlines the approach we will take when considering enforcement action and is an overarching policy that applies to all the Council's services with enforcement duties. It should be noted that some services have specific legislative guidance and regulations as well as local policies and procedures which set out the enforcement requirements in these services.

The appropriate use and full range of enforcement powers, including prosecution and other legal action is important, both to secure compliance with the law and to ensure that those who have duties under it may be held accountable for failures to safeguard health, safety and welfare, or breach of other regulations enforced by the Council. In deciding on the most appropriate course of action, officers should have regard to the principles set out in this Policy and the need to maintain a balance between enforcement and other activities, including inspection, advice and education.

[The Legislative and Regulatory Reform Act 2006](#) requires Chesterfield Borough Council to have regard to the principles of 'good regulation' when exercising a specified regulatory function.

Chesterfield Borough Council 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, together with a fair and efficient complaints procedure.

**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.

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

The Council has had regard to the [Regulators Code](#) in preparation of this Policy. In certain circumstances 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 this Act. 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 into account the provisions of this Act; in particular, due regard is had to the right to a fair trial and the right to respect for family and private life, home and correspondence.

#### [Police and Criminal Evidence Act 1984](#)

This Act governs how the Police and other enforcement agencies (including the local authority) will conduct investigations, detention, interrogation, entry and search of premises, and the taking of samples (with the Police having additional guidance for their 'stop and search' and 'arrest' powers). Also part of this legislation are the PACE Codes of Practice which must be considered when enforcement officers carry out procedures associated with their work. The Act aims to strike a fair balance between the exercise of power by those in authority and the rights of members of the public. All criminal investigations carried out by authorised officers at the Council will be conducted in compliance with PACE.

#### [Regulation of Investigatory Powers Act 2000 \(RIPA\)](#)

A Council has the power to acquire data under this Act for one of two reasons:

- Protecting public health, or
- Preventing or detecting crime.

During an investigation into an alleged criminal offence, we may need to undertake directed covert surveillance. In such circumstances, we will ensure that any statutory prerequisites under RIPA are complied with.

#### [Data Protection Act 1998](#) and the [General Data Protection Regulations 2018](#)

Where there is a need for Chesterfield Borough Council to share enforcement information with other agencies, we will follow the provisions of these legislative provisions.

#### [The Code for Crown Prosecutors](#)

When deciding whether to prosecute we will have 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'.

#### [Regulatory Enforcement and Sanctions Act 2008](#)

This Act (as amended), established the Primary Authority Scheme. The Council will comply with the requirements of this Act when we are considering taking enforcement action against any business or organisation that has a primary authority; and we will have regard to guidance issued by the Secretary of State in relation to Primary Authority.

## **2. SCOPE OF THE POLICY**

One of the functions of the Council is to act as a regulator and an enforcement agency for a large range of legal duties and powers applied by Acts of Parliament and the Regulations and Orders made under them (including various byelaws). This Policy sets out standards that will be applied across the Council when acting in its role as regulator and enforcement agency and what residents and businesses can expect from us.

This document also sets out the approach to be followed by the authorised officers when making decisions in respect of the Council's compliance and enforcement activities. The Council is committed to ensuring that all authorised officers will act in accordance with this Policy.

This document is the overarching Enforcement Policy for the Council and outlines our approach to enforcement and lays down the principles which will be followed in deciding upon and taking action.

Enforcement includes any criminal or civil action taken by the Council and is aimed at ensuring individuals and businesses comply with the law.

## **2.1 The Council's Vision and Corporate Priorities**

We make a fundamental contribution to the maintenance and improvement of public health, safety, quality of life and wellbeing. The Council's vision is *"putting our communities first"* and we aim to achieve this by our corporate priorities which are:

**To make Chesterfield a thriving borough.** To deliver this, we will focus on four objectives:

1. To make sure that local people benefit from growth in Chesterfield Borough.
2. To continue delivering regeneration projects that will make Chesterfield Borough a better place.
3. To develop our great town centre.
4. To improve access to technology that meets the needs of our residents, businesses and visitors.

**To improve the quality of life for local people.** To deliver this, we will focus on four objectives:

5. To increase the supply and quality of housing in Chesterfield Borough to meet current and future needs.
6. To increase the quality of public space for which the council has responsibility through targeted improvement programmes.
7. To improve the health and well-being of people in Chesterfield Borough.
8. To reduce inequality and support the more vulnerable members of our communities.

**To provide value for money services.** To deliver this, we will focus on a single objective:

9. To become financially self-sufficient by 2020, so we can continue to deliver the services our communities need.

The Council's ethos in everything we do is centred around the following core values:

- Customer focused – delivering great customer service, meeting customer needs.
- Can do – striving to make a difference by adopting a positive attitude.
- One council, one team –proud of what we do, working together for the greater good.
- Honesty and respect – embracing diversity and treating everyone fairly.

Central to this is the importance of economic development, including tourism. Visitor numbers are influenced by their direct experience which includes the quality and safety of food and drink and of the premises they are sold from and consumed in; the safety and cleanliness of our markets, town centre and residential shopping areas and the control of unauthorised and illegal development.

Priorities for our regulatory and enforcement services include tackling unauthorised town planning development and activities, and protecting and promoting the health and well-being of our communities to ensure they remain safe from harm and able to live healthy life styles.

### **3. ENFORCEMENT AND COMPLIANCE PRINCIPLES**

The Council has set out its strategic objectives and core values and the enforcement services will carry out their duties in support of these. Our approach is intended to provide better information to businesses and the community and, by doing so, lend support to the Council's efforts to deliver best value for money services.

Council services will work with and consult other agencies, and other service areas within the Council as necessary, where there is shared or complementary enforcement role.

Officers will take reasonable steps to assist businesses and individuals to comply with the law. However, officers will be prepared to ensure compliance by exercising formal powers delegated to them in the Councils Scheme of Delegation including, where appropriate, prosecution.

The Council will have regard to the principles of good regulation when exercising its enforcement duties including:

## **Openness**

We will provide accessible information and advice, in plain language, on the legislation that we enforce. We will be open about how we set about our work and any charges that we set, and where necessary consult with local business and other interested parties.

## **Helpfulness**

We believe that prevention is better than cure; we will actively work with local businesses and individuals to advise on, and assist with, compliance. We will provide a courteous and efficient service, and our staff will identify themselves by name, showing their identification card or Certificate of Appointment. We will offer a contact point and telephone number to encourage further liaison. Applications for licences, registrations, approvals etc. will be dealt with efficiently and promptly. We will strive to ensure that wherever practicable, our activities are effectively co-ordinated to avoid unnecessary overlaps and/or delays.

## **Equality**

We will seek to ensure that everyone using our services receives equal treatment and we will take positive action to make our services accessible by using for example, interpreters and translations. The particular needs and interests of consumers within the borough, including business proprietors, their employees and the public will be accommodated wherever possible. A copy of the Council's corporate Equalities Policy is available [online](#).

## **Proportionality**

Proportionality means relating enforcement action to the risks and to the seriousness of any breach of the law. We will take into account the costs of compliance for business and individuals by ensuring that any enforcement action we take or remedial action we require is proportional to the risks. We will, as far as the law allows, work with business and individuals so that they can meet their legal obligations, without unnecessary expense.

## **Consistency**

We will carry out our duties in a fair, equitable and consistent manner. Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends. Whilst officers necessarily exercise judgement in individual cases, we will have arrangements in place to promote consistency, including liaison with other authorities and enforcement bodies.



## **Targeting**

We will target our enforcement services primarily on those whose activities give rise to the most serious risks to the public, workers and the environment. We will take enforcement action against those duty holders who are responsible for the risk and who are best placed to control it.

## **Shared enforcement**

In some circumstances, risks to the public, workers and the environment are also dealt with by other authorities (for example Health & Safety Executive, Police etc.). Where appropriate we will liaise with all other authorities before taking enforcement action. In some situations, risks to the public, workers and the environment, are also addressed by more specific legislation enforced by other authorities. In order to avoid duplication, we will in such circumstances, seek to agree who should ensure that any such risks are adequately controlled. In determining who is the most appropriate enforcing authority, regard will be had to the following principles:-

- relative effectiveness of the available legislation
- degree of expertise held by each authority
- efficient use of resources
- general suitability of the respective authorities to deal with the risks in question
- relevant enforcing authority legislation
- relevant information will be shared with other enforcement bodies, where appropriate.

## **Transparency**

We will ensure that through our interventions and inspections, where regulatory non-compliance is found, our officers make clear the form of action and next steps they propose to take. This can range from specific advice with no further actions through to more formal enforcement action, for example the serving of statutory notices or the instigation of legal proceedings. Where there is a right of appeal or other redress, officers will advise those affected persons or organisations of these. They will also make it clear what are legal requirements and what are recommendations.

### **Intelligence led**

We will adopt an intelligence led approach to our compliance interventions and enforcement actions, using systems, procedures and techniques that provide us with intelligence. We will keep apprised of matters that are relevant to the sectors we regulate at a national, regional and local level and will closely work with other internal regulatory services, other local authorities and enforcement agencies to share information and intelligence on important regulatory issues and enforcement matters.

### **Risk based**

Adapted to the risk posed by non-compliance activities to provide robust, speedy and effective enforcement against those that commit the most serious regulatory offences and those serial offenders who deliberately and wilfully flout the law, including those who seek to take commercial advantage from such offences.

### **Accountable**

We recognise the importance of the public services we provide and the impact they have on protecting the safety and health of the public, the quality of our local environment and the need for direct accountability for our actions or where we decide not to take action, to the public, stakeholders as the corporate body. We will ensure, where this does not compromise our legal responsibilities, that our enforcement actions will be placed in the public arena.

## **4. OUR APPROACH TO NON-COMPLIANCE**

Where evidence is found that a business or other regulated person is showing disregard for the law by deliberately or persistently failing to comply with advice or requests made by the Council, it may be deemed that further informal action is not appropriate. Under these circumstances enforcement action may be escalated directly to prosecution or to other sanctions where available.

Where there is specific legislative guidance and regulations which set out the enforcement requirements these will be followed.

Where a business or individual contacts the Council to ask for advice and it transpires that a breach of legislation is present at the premises, the most appropriate course of action will be determined on the factors set out in section 6.0 (i.e. enforcement options).

If it is clear that the business or individual is keen to resolve the non-compliance quickly, taking on board and completing the steps recommended by the Council, an informal approach is likely to be taken as opposed to triggering enforcement action. However, if there is a serious breach and/or there is an imminent risk to public health or safety, enforcement action may still have to be taken but the Council will seek to work with the business or individual to resolve the problem as quickly as possible.

Factors that influence our response to breaches include:

- Whether or not the Council has previously provided advice or guidance to a business or individual
- The seriousness of the compliance failure
- Business size and capacity
- The past performance of a business or individual
- The current practice of a business or individual
- The risks being controlled
- Legal, official or professional guidance
- Local priorities of Chesterfield Borough Council
- The ease in which the issue can be resolved

## **5. CONDUCT OF INVESTIGATIONS**

Enforcement action may result in either civil or criminal proceedings being instigated by the Council. The process that will be followed by officers in the investigation of alleged breaches of the law will depend on which branch of the law the investigation is being conducted under. As the enforcing authority in any proceedings it instigates, the burden of proof falls to Chesterfield Borough Council.

Investigations will be carried out in compliance in accordance with all associated guidance or codes of practice and the following legislation:

- Police and Criminal Evidence Act 1984
- Criminal Procedure and Investigations Act 1996
- Regulation of Investigatory Powers Act 2000
- Criminal Justice and Police Act 2001
- 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.

The 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.

### **5.1 Powers of Authorised Officers**

There are numerous pieces of legislation which the Council as a local authority either has a duty to enforce or adopts or chooses to enforce. The powers available to the officers under these different pieces of legislation vary considerably and it is not the purpose of this document to provide an exhaustive list of those powers.

If officers come across situations where they believe they are being obstructed in carrying out their duties they will always explain the provisions of the relevant legislation in order to resolve the issue.

The Council recognises the Primary Authority scheme and where appropriate will communicate with any identified primary authority as part of the enforcement/compliance process.

In some cases powers of seizure are used for safety and evidence gathering purposes. Where articles are removed for any of these purposes a receipt or notice will be given at the time of the inspection or as soon as is practicably possible afterwards.

Officers do not have the power of arrest; however, joint working is undertaken with the Police and other agencies. Instances may arise where the Police consider that an arrest should be made in connection with the authorised officers' investigations.

For cases that could result in prosecution (i.e. criminal rather than civil), officers will carry out formal interviews in line with this Policy and the Police and Criminal Evidence Act 1984.

In respect of legislation in England that contains criminal offences, there are strict time limits beyond which the law prevents proceedings being instigated. These time limits vary and are stated in the relevant legislation.

In relevant cases where either criminal or civil proceedings are intended to be brought by the Council a report will be prepared containing all the relevant evidence that has been gathered during an investigation. This report will be reviewed by a manager and will also be reviewed by the Council's Regulatory and Law team before any proceedings are instigated.

## **5.2 Progress of Investigations**

Where appropriate, authorised officers carrying out investigations will keep alleged offenders and complainants informed about the progress of any investigation as far as their involvement in the process is concerned.

All investigations will be documented.

## **6. ENFORCEMENT OPTIONS**

An open, fair and proportionate approach will be taken in dealing with breaches of legislation which are regulated and enforced by Chesterfield Borough Council. Raising awareness and promoting good practice in regulated areas is the first step in preventing breaches, and officers of the Council will signpost people to guidance on aspects of the law where requested to do so.

There are a number of potential enforcement options available to Chesterfield Borough Council. The action taken varies from advice through to proceedings in Court. Examples of the main types of action that can be considered are:

- Compliance advice, guidance and support
- Voluntary undertakings
- Statutory (legal) notices (including orders)
- Works in default
- Financial penalties
- Injunctive actions, enforcement orders and possession orders
- Simple caution
- Prosecution
- Refusal, revocation or suspension of a licence or approval
- Detention/seizure of food/goods/equipment
- Forfeiture Proceedings
- Penalty Charge Notices
- Civil Penalties
- Proceeds of Crime Applications
- Prohibition
- Compulsory Purchase Orders
- Use of other legal powers
- No action

### **Compliance advice, guidance and support**

Where appropriate, 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 influence our decisions in considering the most appropriate course of action to take on that occasion. Such a letter cannot be cited as a previous conviction but may be presented in evidence.

We recognise 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 the primary authority.

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

### **Voluntary undertakings**

Chesterfield Borough Council may accept voluntary undertakings that breaches will be rectified and/or recurrences prevented. Chesterfield Borough Council will take any failure to honour voluntary undertakings seriously and enforcement action is likely to result.

### **Statutory (legal) notices (including orders)**

In respect of many breaches, Chesterfield Borough Council has powers to issue statutory notices and orders. Examples of these include

- Abatement Notices,
- Stop Notices,
- Prohibition Notices,
- Prohibition Orders,
- Emergency Prohibition Notices,
- Improvement Notices,
- Emergency Remedial Action,
- Rent Repayment Orders,
- Compulsory Purchase Orders, and
- Enforced Sale.

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 'works in default'.

Some statutory notices/Orders will clearly set out actions which must be taken and the timescale within which they must be taken. The statutory notice/Order may also list the actions that the authority intend to take or are considering taking 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/order 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 a local land charges.

### **Works in default**

We will normally carry out 'works in default' of a statutory notice where:

- Works required by the statutory notice have not been carried out, and
- There is an imminent risk to public health/safety or the environment, such that the consequences of not taking immediate action would be unacceptable or
- Statute does not permit prosecution for non-compliance with a statutory notice.

### **Financial penalties**

The Council has the 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 notice is not paid, Chesterfield Borough Council may commence criminal proceedings or take other enforcement action in respect of the breach.

If a fixed penalty notice is paid in respect of a breach, Chesterfield Borough Council will not take any further enforcement action in respect of that breach. Payment of a fixed penalty notice does not provide immunity from prosecution in respect of similar recurrent breaches.

Chesterfield Borough Council is only able to issue fixed penalty notices where it has a specific powers to do so. If fixed penalty notices are available, their issue is at Chesterfield 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.

The service of a fixed penalty notice will be carried out when the circumstances of the offence satisfy the following criteria: -



- The offence is sufficiently serious to warrant prosecution having regard to the nature of the matter and the Council's corporate priorities.
- There is sufficient evidence of the offender's guilt to give a realistic prospect of conviction in case of non-compliance with the fixed penalty notice.
- The officer believes that a fixed penalty notice will prevent repeat offences.
- The offender will accept the fixed penalty notice and understands its significance.
- It is in the public interest to issue a fixed penalty notice rather than start prosecution proceedings.

Fixed penalty notices may be cited in prosecution proceedings in relation to a similar offence committed within three years of the issue of the fixed penalty notice. Offenders shall normally only be offered a fixed penalty notice once for the same offence. In cases of repeat offenders, simple cautions, prosecutions and court orders shall be considered.

Also available is the 'Fixed Penalty Notice – supplementary guidance' document which details:

- The scope of the legislation such as the application of byelaws, adopted powers, designated areas, and similar provisions to ensure enforcement is consistent with the prevailing laws and orders such as when and where it applies.
- How to deal with juvenile offenders (i.e. those under 18 years of age) and conditional alternative measures available in lieu of a fixed penalty notice.
- Payment timescales and options for reduced early payment and deferred payment in cases of specified hardship.

A copy of this document is available separately.

### **Injunctive actions, enforcement orders and possession orders**

In some circumstances we may seek a direction from the court (in the form of an order or an injunction), that a breach be 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, we will usually only seek a court order if it has serious concerns about compliance with voluntary undertakings or a notice.

### **Possession Orders**

A possession order may be sought in the civil court to enforce a breach of the tenancy agreement under the [Housing Act 1985](#), as amended by successive legislation.

### **Closure Orders**

A closure order may be sought in the Magistrate's court under the [Anti-social Behaviour Crime and Policing Act 2014](#). The Council may seek a closure order where a person has engaged, or (if the order is not made) is likely to engage, in disorderly, offensive or criminal behaviour on the premises, or serious nuisance behaviour or there has been, or there is likely to be disorder near those premises associated with the use of those premises. The order must be necessary to prevent the behaviour, nuisance or disorder. The closure order prohibits access to the premises for no more than three months. An application to extend the period may be made to the magistrate court.

### **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, Chesterfield Borough 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.

The service of a simple caution will normally be considered in the following cases:

- There is sufficient evidence of the suspect's guilt to meet the Threshold Test i.e. there is reasonable suspicion of the suspect having committed the offence and that it is in the public interest to issue a simple caution; and
- The suspect has made a clear and reliable admission of the offence (either verbally or in writing); and
- The suspect is 18 years or over; and
- It is a first offence

If all the above requirements are met, the officer must consider whether the seriousness of the offence makes it appropriate for a Simple Caution to be issued. To assist officers in their decision making process the factors listed in table 1 must be considered. Simple cautions may be cited in prosecution proceedings in relation to a similar offence committed within three years of the caution's issue. A central register of simple cautions issued will be maintained.

Table 1: Simple caution aggravating and mitigating factors

Factors indicating that a simple caution may not be appropriate	Factors indicating that a simple caution may be appropriate instead of prosecution
Conviction is likely to result in a significant sentence.	Conviction is likely to result in a small or nominal penalty.
Weapon used or violence threatened during commission of offence.	Prosecution is likely to have bad effect on victim's physical or mental health.
Offence against public servant (e.g. council employee).	Offender supplied information which reduced risk, loss or harm to others.
Offender abused a position of trust	Offender was influenced by others more criminally sophisticated.
Offender was ringleader/organiser.	Genuine mistake or misunderstanding.
Evidence of premeditation.	Vulnerability of the offender.
Offender was part of an organised team or offence was committed by a group.	Provocation from victim or victim's group and offender reacted impulsively.
Victim was vulnerable, deliberately put in considerable fear or suffered personal attack, damage or disturbance.	The offence is minor and offender has put right harm or loss caused; has expressed regret; offered reparation or compensation.
Evidence of exploitation.	Offender is or was at time of offence suffering from significant mental or physical ill-health and offence is not likely to be repeated.
There are grounds for believing the offence is likely to be repeated or continued – e.g. by a history of recurring conduct.	The offence is so old that the relevance of any response is minimised, i.e. there has been a long delay between the offence occurring and the point of decision making – Unless the offence is serious; the offender contributed to the delay; the offence only recently came to light; or the complexity of the offence has contributed to long investigation.

## **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, we have 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).

### *Simple caution or prosecution?*

When determining whether a prosecution or simple caution is viable and appropriate two 'tests' will be applied. Enforcement officers will follow guidance set by the [Crown Prosecution Service](#) when applying the tests.

A simple caution or prosecution will only be progressed when the case has passed both the '*evidential test*' and the '*public interest test*'. The principles outlined apply equally to the other types of formal enforcement action that are available.

### *The Evidential Test*

The Council must be satisfied there is sufficient evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. A realistic prospect of conviction is an objective test that means that a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a separate test from the one that the criminal courts themselves must apply.

### *The Public Interest Test*

The public interest will be considered in each case where there is sufficient evidence to provide a realistic prospect of conviction. Chesterfield Borough Council will balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the suspect. Some factors may increase the propensity to prosecute but others may not.

A successful prosecution may 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

### **Refusal, revocation or suspension of a licence or approval**

The Council issues a number of licences and permits and has a role to play in ensuring that appropriate standards are met in relation to licenses issued by other agencies. Most licences include conditions which require the licence holder to take steps to ensure that, for example, a business complies with specified standards; either set in legislation, guidance or local agreements. Breach of a licence condition may lead to a review of the licence which may result in its revocation or amendment.

When considering future licence applications we will take previous breaches and enforcement action into account.

### **Detention/seizure of food/goods/equipment**

Certain legislation enables authorised officers to seize goods, for example, unsafe food, documents, sound equipment that is being used to cause a statutory noise nuisance, unsafe products or any items that may be required as evidence for possible future court proceedings. When we seize goods we will give the person from whom the goods are taken a receipt.

### **Forfeiture Proceedings**

This procedure may be used in conjunction with seizure and/or prosecution where there is a need to dispose of goods in order to prevent them from re-entering the market place or being used to cause a further problem. In appropriate circumstances, the Council will make an application for forfeiture to the Magistrates Court.

### **Penalty Charge Notices**

Penalty Charge Notices (PCNs) are prescribed by certain legislation as a method of enforcement by which the offender pays an amount of money to the enforcer in recognition of the breach. Failure to pay the PCN will result in the offender being pursued in the County Court for non-payment of the debt. A PCN does not appear on the person's criminal record and we may choose to issue a PCN without first issuing a warning.

## Civil Penalties

A civil penalty is a financial penalty imposed by the local housing authority on an individual or organisation as an alternative to prosecution for certain housing offences under the [Housing Act 2004](#). The same criminal standard of proof is required for a civil penalty as for prosecution. This means that before taking formal action, a local housing authority should satisfy itself that if the case were to be prosecuted in the Magistrates Court, there would be a realistic prospect of conviction. For this purpose, local housing authorities should consult the Crown Prosecution Service Code for Crown Prosecutors' as it provides advice on the extent to which there is likely to be sufficient evidence to secure a conviction. Local housing authorities are expected to develop and document their own policy on when to prosecute and when to issue a civil penalty and should decide which option to pursue on a case-by-case basis in line with that policy.

## Proceeds of Crime Applications

Applications may be made under the '[Proceeds of Crime Act 2002](#)' for confiscation of assets in appropriate cases. Their purpose is to recover the financial benefit that the offender has obtained from his criminal conduct. Proceedings are conducted according to the civil standard of proof. The Council will seek to recover proceeds of crime in appropriate circumstances.

## Prohibition

This power will be used where there are valid grounds (e.g. there is an imminent risk of injury to health or a risk of serious personal injury) and where the situation cannot be allowed to continue because of the risks involved. This course of action is usually associated with food and health and safety enforcement, but there will be other occasions, for example prohibiting part of a dwelling under housing legislation.

## Use of other legal powers

Certain authorised officers have additional powers that enable them to carry out their duties; for example take photographs, leave a workplace undisturbed as part of an accident investigation, and take samples or measurements. These powers are to allow Chesterfield Borough Council to carry out its duties. Where these powers are exercised by Officers they will be carried out lawfully and in accordance with statutory codes of practice and with due regard to guidance and best practice.

Chesterfield Borough Council may seek to recover costs of any enforcement action against a business or individual subject to the enforcement action, where appropriate and legal to do so.

### **No Action**

In certain circumstances, contravention of the law may not warrant any action. This can be where there is insufficient evidence or it is not in the public interest to proceed. Some areas of legislation only allow Chesterfield Borough Council to take action where it is expedient to do so, taking into account the level of harm caused by the contravention. In certain cases it may not be considered expedient to take enforcement action. All such decisions will be made transparently.

## **7. HOW ENFORCEMENT DECISIONS ARE MADE**

In assessing what enforcement action is necessary and proportionate consideration will be given to the following principles for enforcement:

- ✓ aim to change behaviour of the offender;
- ✓ aim to eliminate any financial gain or benefit from non-compliance;
- ✓ 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;
- ✓ be proportionate to the nature of the offence and the harm caused;
- ✓ aim to restore the harm caused by regulatory non-compliance, where appropriate, and
- ✓ aim to deter future non-compliance.

### **7.1 Who decides what enforcement action is taken?**

Decisions about the most appropriate course of action to be taken are based upon professional judgement, legal guidelines, statutory codes of practice and priorities set by the Council and/or Central Government.

Where appropriate decisions about what enforcement action is to be taken may involve consultation between investigating officers, senior managers and Chesterfield Borough Council's solicitors.



The decision to prosecute a case will be taken by those with authority to do so in accordance with the Constitution/Scheme of Delegations.

All decisions will be fully documented.

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

### **Appeals**

In some circumstances a business or individual subject to enforcement action may have a right to appeal the decision. Where such a right exists, the business or individual will be advised in writing of that right, including details of how to exercise that right.

### **Delegation of authority**

The Council's Scheme of Delegations 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.

## **7.2 Liaison with other regulatory bodies and agencies**

Where appropriate, enforcement activities will be co-ordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement and to avoid duplication of regulation.

Where an enforcement matter affects a wide geographical area beyond the Borough boundary, or involves enforcement by one or more other local authorities or organisations; where appropriate all relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activities co-ordinated with them.

Where appropriate, and in accordance with the law, Chesterfield Borough Council will share intelligence with other regulatory bodies, enforcement agencies and partner agencies including:

- Derbyshire Fire & Rescue Services
- Derbyshire Police



- Government Agencies (such as Food Standards Agency and Public Health England)
- Trading Standards
- Public Health
- Environment Agency
- Health & Safety Executive
- Other local authorities

## 8. COMMENTS AND COMPLAINTS

### Complaints and appeals

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

We value input from you to help us ensure our service is meeting your needs. We would like to hear from you whether your experience of us has been good or in need of improvement. This helps us to ensure we keep doing the right things and make changes where we need to. We are constantly looking for feedback on our services. We welcome any feedback that that will assist us in improving our services.

Whether you wish to make a comment, complaint or a compliment you are encouraged to do so by either:-

<b>In person:</b>	Informing a member of our staff, Customer Service Centre, 85 New Square, Chesterfield, S40 1SN
<b>Telephone:</b>	01246 345345
<b>Text:</b>	07960 910 264
<b>By post:</b>	Chesterfield Borough Council, Town Hall, Rose Hill, Chesterfield. S40 1LP
<b>Online:</b>	<a href="http://www.chesterfield.gov.uk">www.chesterfield.gov.uk</a>
<b>Social media:</b>	Facebook, Twitter

Complaints about the conduct of officers should be made via Chesterfield Borough Councils' [complaints procedure](#).

We will seek to work with you in the most appropriate way to meet your individual needs. We can make information available in different formats, and have access to translation and interpretation services.

## **9. SERVICE DELIVERY STANDARDS, QUALITY AND PERFORMANCE MONITORING**

### **Skills, competencies and experience of regulatory officers**

The Council will ensure that all authorised officers are equipped with the appropriate level of skills, competencies and experience commensurate with their role and responsibilities and the support necessary to undertake their job effectively and efficiently. Continuing Professional Development (CPD), qualifications, training and development to meet statutory codes of practice will always be offered.

Staff training and development will be maintained by using methods such as the Regulators Development Needs Analysis (RDNA) and Guide for Regulators Information Point (GRIP), CPD, development opportunities, appraisals, feedback, personal learning plan, mentoring/shadowing, secondment, peer review and challenge (both receiving and supporting).

### **Service and quality standards**

Chesterfield Borough Council will always strive to meet the highest standards in undertaking enforcement action. The following service standards will be applied:

- ✓ officers will clearly identify themselves and carry the appropriate ID cards and any necessary authorisations.
- ✓ Officers will be professional, courteous and helpful in their conduct, during work on enforcement issues and will work with individuals, groups and businesses to promote compliance.
- ✓ Officers will provide assistance where appropriate and advice will be given to assist in compliance before formal action is instigated, except in those circumstances where the breach of legislation is sufficiently serious to warrant formal action or is punishable by the issuing of a fixed penalty notice.
- ✓ Fairness in appropriate cases – adequate opportunity will be given to rectify the non-compliance before formal proceedings are commenced.
- ✓ Matters relating to enforcement will be dealt with promptly.

## **Benchmarking**

The Council will work with organisations such as the Chartered Institute of Public Finance and Accountancy, the Food Standards Agency, the Health & Safety Executive, the Local Government Association and HouseMark to share data on our performance and facilitate benchmarking.

## **10. OTHER SUPPORTING DOCUMENTS**

This Corporate Enforcement Policy is an overarching policy that applies to all the Council's services. Certain service areas may have additional service specific enforcement requirements (for example Private Sector Housing Team, Tenancy Management Team and Community Safety Team).

Documents that should be considered with this Policy include:

- ✓ Environmental Health: Fixed Penalty Notice – supplementary guidance
- ✓ Environmental Health: Service Standards
- ✓ Anti-Social Behaviour Statement of Policy (Corporate)  
<https://www.chesterfield.gov.uk/media/562585/anti-social-behaviour-policy-2015-2019.pdf>
- ✓ Anti-Social Behaviour Statement of Policy (Tenancy Management Team)  
<https://www.chesterfield.gov.uk/media/499888/statement-of-housing-asb-policy-190213.pdf>
- ✓ Chesterfield Borough Council – Corporate Surveillance Policy  
<https://www.chesterfield.gov.uk/media/563268/surveillance-policy-2017.pdf>

## **11. REVIEW OF THIS POLICY**

This Policy will be reviewed every two years or in line with changes in relevant legislation, or Regulators Code.

## 12. POLICY DETAILS

<b>Document:</b>	<b>Corporate Enforcement Policy</b>
<b>Owner:</b>	<b>Environmental Health</b>
<b>Author:</b>	<b>Esther Thelwell</b>
<b>Agreed by:</b>	<b>Enforcement group INSERT NAME OF COMMITTEE</b>
<b>Date:</b>	<b>December 2017</b>
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<b>Location on CBC website:</b>	