

Tendring
District Council



Corporate Enforcement Strategy

Draft for consultation

December 2016

Foreword

Tendring District Council's Enforcement Ethos

Encouraging businesses to come to Tendring and keeping a clean and safe district is critical for our residents, visitors and businesses. Our Council recognises the strong link between quality of the environment and people's health, safety and quality of life.

Council enforcement services across the Council have a key role to play in helping to deliver an ethos of open for business whilst addressing issues adversely affecting our residents. It underpins Tendring Council's ethos and objectives to deliver high quality affordable services, engaging with the community and effective partnership working to promote healthier lifestyles and well-being in the district. It is important to ensure that enforcement solutions are developed to meet local needs and to engage with local stakeholders in the development of local action planning.

Our enforcement services seek to ensure that advice and information is available to individuals and local businesses about their responsibilities and duties and, when appropriate, uses its powers to make sure that those who disregard the law are held to account for their behaviour. Our approach to enforcement and the decisions that we make will be set out within our enforcement policies. Information on services individual Enforcement Policies may be obtained from the relevant department and the Council's website at *[address and link to be inserted]*.

Our approach to enforcement will be one of an initial proactive engagement, to discuss issues, in a positive manner. If initial approaches are unsuccessful then a firm but fair stance will be adopted which will address issues quickly and transparently, whilst protecting members of the community and the environment.

We want to engage with residents who are often unaware that they require certain permissions to help them through processes; however if they are unwilling to engage then we take appropriate action. With new businesses, we want to encourage them to open and expand in Tendring and identify what are the blockages for them, rather than our first contact being one of enforcement; but we are prepared to take a proactive approach to enforcement if required.

The Council shares the Government's view that effective and well-targeted regulation is essential in promoting fairness and protection from harm and that as regulators we should adopt a positive and proactive approach towards ensuring compliance by:

- helping and encouraging regulated entities to understand and meet regulatory requirements more easily; and
- responding proportionately to regulatory breaches

Where possible, the Council will reward good compliant businesses by lighter touch, fewer or no visits, alternative interventions, and/or other incentives. However, adopting a risk based approach, we will not hesitate to take all necessary enforcement action against those who, e.g. commit serious breaches, flout the law, and refuse to work with us to seek compliance or commit offences which are prevalent in the district.

The Council will work with local ward members on the approach to enforcement where appropriate. The Council approach will be proportionate to the outcome achievable and will seek to not undertake effort disproportionate to the outcome achievable.



Cabinet Member for Enforcement and Community Safety

Councillor Giancarlo Guglielmi

Details will be included of where copies of the strategy can be obtained, accessibility statement, how the Policy has been approved and issue date.

1. Introduction

- 1.1 The purpose of this Corporate Enforcement Strategy is to set out the overarching “umbrella” principles to apply to all service departments and its officers within the Council which undertake enforcement functions. The Council’s enforcement responsibilities and powers cover a wide range of legislation with a variety of formal and informal sanctions, which aim to protect the interests and rights of people in relation to the environment that they use. The enforcement of regulatory legislation enables the Council to achieve its’ priorities contained within the Corporate Plan and fits with national policy, codes and guidance.
- 1.2 It is important that these enforcement functions are carried out in an equitable, practical and consistent manner, and that both those subject to regulation and those on whose behalf enforcement is carried out can understand the approach we take. The purpose of this Corporate Enforcement Strategy is to explain clearly and publicly summarise Tendring District Council's intended approach towards enforcement and dealing with non-compliance.
- 1.3 All authorised officers when making enforcement decisions shall abide by this Strategy, and the supporting documented procedures, both within the appendices and departmental processes.
- 1.4 This Strategy will be/has been developed through external consultation with our partners in the Community Safety Hub and internally with elected members across political parties sitting on the following Committees:
 - Licensing and Registration
 - Planning
 - Community, Leadership and Partnership

2. Principles of Good Regulation:

- The Council is committed to following good enforcement practice in accordance with current legislation, guidance, codes of practice that influence policy listed at Appendix A.
- We aim to carry out our activities in a robust but fair way that supports those we regulate to comply without creating unnecessary business burdens.
- We will exercise our regulatory activities in a way which delivers:
 - (i) openness & transparency
 - (ii) helpfulness

- (iii) consistency
 - (iv) proportionality
 - (v) targeting resources on higher risk; and
 - (vi) accountability
- We will assess whether similar social, environmental and economic outcomes to achieved by less burdensome means.
- The Strategy accords with the government’s ‘Better Regulation Agenda’. Specifically, it implements good practice recommended by the Cabinet Office Enforcement Concordat, the Regulators’ Code; and the regulatory principles required under the Legislative and Regulatory Reform Act 2006 (“the 2006 Act”), including the duty to have regard to economic growth (‘the Growth Duty’). The provisions of Section 6 of the 2006 Act include an expectation that local authorities will publish a clear set of service standards, setting out what those they regulate should expect from them. These Service Standards we be included within Annex A to this document and available on the Council’s website through *(insert link)*.

3. Scope and interpretation

- 3.1 “Enforcement” includes any action taken by officers 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. 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.
- 3.2 Whilst it is acknowledged that the Regulators Code relates principally to the Council activities for Environmental Health and Licensing, the principles outlined are considered to be equally relevant to other Council services undertaking enforcement functions. The scope of the Strategy is therefore intended to include:
- Building Control and Dangerous structures
 - Community Safety and Anti-Social Behaviour
 - Environmental Health (including food hygiene, health & safety, housing, pollution control and smoking)
 - Housing
 - Licensing (including alcohol, animal establishments, gambling, public entertainment and taxis) (some of these activities are also subject to specific policies on the application of legislation adopted by Full Council)
 - Parks, Open Spaces and the Seafront (including Bylaws, Trespass and unauthorised encampments)
 - Planning; and
 - Street Care (including dog fouling, fly tipping, fly posting, littering, trade & domestic waste);

- 3.3 In many instances, enforcement activity relates to businesses, and accordingly this Strategy generally makes reference to 'business' and 'business premises' throughout. But sometimes - for example within planning enforcement work, issues of public nuisance, or public carriage driver licensing - the enforcement activity relates not to a business but to a private individual.
- 3.4 Clearly not all aspects of this Strategy are appropriate to circumstances involving private individuals, but wherever they are appropriate - for example in the approaches used to determine whether serious enforcement action should be taken - this Strategy should be read as applying to such private individuals in the same way as it applies to businesses.

4. Our approach to dealing with non-compliance

- 4.1 A range of activities will be undertaken to ensure compliance with legislation. Advice and guidance will be provided; proportionate, targeted, programmed and intelligence-led inspections will be undertaken and, where necessary, inspections will be undertaken in response to complaints from third parties. Some enforcement services will also have officers patrolling the streets.
- 4.2 In achieving compliance, we will work within the principles of good enforcement and exercise our regulatory activities in a way which delivers:

(i) Openness & Transparency:

- We will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return.
- Provide information and advice in a timely manner and in plain language on the rules that we apply and any action to be taken. This may be provided either verbally, by telephone, by personal visit where appropriate, or in writing.
- Be open about our work, including any charges that are set.
- Discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.
- Make it clear what should be expected from the Council as an Enforcement Authority.
- Respond to requests for information under the Freedom of Information Act 2000 or Environmental Information Regulations, within 20 working days.
- Our document retention policy will detail our commitment to records management.

- Make a record of decisions accessible, in full or partially, to the public to ensure openness and transparency of the criteria by which we will judge whether to take action or not. Information will only be withheld from the public, if there is a statutory reason to do so (for example personal information to third parties or exemptions under Freedom of Information or Environmental Information Regulations).

(ii) Helpfulness:

Formal enforcement action should be taken as a last resort and the Council believes that communication and conciliatory involvement are key to successful positive compliance outcomes. We will actively work with individuals and businesses to ensure that advice and information about their responsibilities and duties is available.

- We encourage compliance by providing guidance and liaising with stakeholders on how this can best be presented and disseminated – a request for advice will not directly trigger enforcement action where there is a willingness to resolve any non-compliance which may be identified.
- Our staff will identify themselves and provide a courteous and efficient service.
- We will provide a contact point and telephone number to encourage individuals and businesses to seek advice/information from us.
- Applications for approval of applications, licensing, registration, or authorisation will be dealt with efficiently and promptly.

(iii) Consistent:

We will carry out our duties in a fair, equitable and consistent manner, and

- Our officers are expected to exercise judgement in individual cases but we will endeavour to ensure that a similar approach is taken in similar circumstances.
- Our officers will use corporate systems consistently to maximise efficient use of resources and data management in accordance with the Fair Processing Data Statement. Where possible standardised templates and proformas will be developed and used across service areas. Decisions taken will be recorded with reasons.
- The Council will adopt a cross service enforcement operational team approach seeking joint problem solving of complaints across the District. Communication and efficiency will be strengthened as well as effective use of powers available. A lead officer will be allocated an overarching role to coordinate the team approach.

- Will take account of advice offered to us through bodies such as the Local Government Association (LGA), Food Standards Agency (FSA), Health and Safety Executive (HSE), Government Departments such as the Departments for Communities and Local Government (DCLG) and for Business, Energy and Industrial Strategy (BEIS) and Local Government Ombudsman (LGO).
- Where a Primary Authority Partnership (*) exists, officers will engage with and consider advice previously issued by the Primary Authority when considering the most appropriate course of action. Where, after further liaison with the Primary Authority, officers consider that formal action is still appropriate; the statutory notification process will be followed. This Scheme does not preclude officers from taking immediate action in the event of serious or imminent risks to health or safety.

(*) Primary Authority allows businesses to be involved in their own regulation. It enables them to form a statutory partnership with one local authority or fire and rescue authority, which then provides robust and reliable advice for other local regulators to take into account when carrying out inspections or addressing non-compliance.

- Where there is a wider regulatory interest, we will liaise and co-operate with or pass information to the appropriate enforcement agency. This may include the sharing of intelligence with other Government Agencies, Police Forces, Fire Authorities, Statutory Undertakers or other Local Authorities.
- We will liaise with our colleagues in other Essex Authorities and Regulatory Services, to share information and develop a consistent approach to enforcement, e.g. through the use of common protocols. Reference to the Data Sharing Statement is included within Paragraph 5.2.
- We will consult in developing clear standards, setting out the level of service and performance the public and businesses can expect to receive.
- We will publish our standards.
- Advice from officers will be put clearly and an explanation given as to why remedial works are necessary.
- The timescales for compliance with notices will be reasonable.
- We will raise safeguarding alerts with the appropriate authorities.

(iv) Proportionate:

We will ensure our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence; and

- Aim to minimise the cost of compliance by ensuring that any action required is proportionate to the risk and that we take proper account of the economic consequences of our actions.
- Take into account, as far as the law allows, the circumstances of the case and the attitude of the offender when considering action.
- Help to promote a thriving local economy by maintaining a fair and safe trading and working environment.
- Are committed to choosing proportionate approaches based on relevant factors such as business size and capacity.
- Committed to dealing firmly with those who deliberately or persistently fail to comply.
- Will only take action that is necessary to achieve the aims of the statutory regime being enforced, with reasons for the action being recorded using the Harm & Risk Assessment.
- When we believe there is reasonable cause that a child, young person or vulnerable adult, may be suffering or may be at risk of suffering significant harm, consideration will always be given to referring these concerns to Children's or Adults Social Care (as appropriate) and/or the Police.

(v) Targeted

We will focus our resources on significant harm and higher risk enterprises and activities, reflecting local need and national priorities, and:

- Ensure resources and regulatory activities are targeted primarily on those which give rise to the most serious risks and harm.
- Take an evidence based approach to determining the priority risks and allocate resources where they would be most effective in addressing those priority risks.
- Consider risk and harm at every stage of the decision-making processes, including choosing the most appropriate type of intervention or way of working with those regulated; targeting checks on compliance; and when taking enforcement action. Decisions with reasons will be recorded.

- Ensure that Harm and Risk Assessment Framework principles currently in use by some services are adopted across all the Council's enforcement services. The assessment framework will be reviewed regularly.
- In undertaking the assessment of risk and determining the harm, the compliance record of the business or individual will be considered together with all available and relevant data on compliance, including evidence of any relevant external or other statutory verification.
- Ensure that action is focused on the duty holders who are responsible for the risk and who are best placed to control it through the use of a graduated enforcement approach.
- Seek to ensure our resources are used with maximum effectiveness to avoid burdening businesses with the costs of unnecessary interventions.
- Where more serious non-compliances are identified, we will advise duty holders of the circumstances under which a revisit will be undertaken and the timescale for that revisit.

(vi) Accountable

Our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures, and:

- We will ensure that we have policies and procedures against which our work can be judged.
- We will ensure there is an effective and accessible mechanism for dealing with comments and complaints and information is provided within the Council's Service Standards and available on the website.
- Officers are responsible to elected members(*), the public and government bodies for their actions.
- Officers will provide general updates to the relevant ward councillor when requested to do so (this will not be automatic and only where the ward councillor has been involved in raising awareness of a potential non-compliance). Detailed information will not be provided if to do so would prejudice further action or involve disclosure of personal or sensitive information.
- In exceptional circumstances and only upon the agreement of the Chairman of the Licensing & Registration or Planning Committees together with the Portfolio Holder for Enforcement and Community Safety, a Case Review of a particular matter will be held with the enforcement officer and their Head of Service. The purpose of the review would be to discuss and understand the reasons for the action and decisions taken on an alleged non-compliance, taking into

consideration the principles of Good Regulation as set out in this Strategy and the harm risk assessment.

- In order to maintain the integrity and impartiality of the Council's enforcement service it is vital that the system has the trust and confidence of all concerned.

5. A ward councillor's role in relation to enforcement matters is to:

- a. Respond to residents' enquiries and representations, fairly and impartially and assist in the resolution of concerns and grievances. This may involve working directly with the community to seek positive outcomes.
- b. Effectively represent the interests of their ward and of individual residents, whereby acting fairly to understand the differences of opinions, personal circumstances and situations.
- c. Represent their communities and bring their views into the Council's decision-making process by becoming an advocate for their communities, whilst understanding and articulating the principles of good regulation and the Council's approach to non-compliance.
- d. Raise alleged non-compliance with the relevant service responsible for the enforcement activity and carefully consider the advice of the enforcement officer as to future involvement.
- e. Ensure their involvement does not compromise their position or put at risk failure to comply with their own Members' Code of Conduct and Member/Officer Relations Protocol.
- f. Understand the provisions of the Data Protection Act 1998 and to ensure confidential or personal information is not disclosed to third parties.

6. Working in Partnership with others:

- 6.1 On occasions (currently decided upon on a case by case basis) this will involve working in partnership with other enforcement agencies (includes Essex County Council, RSPCA, Natural England, Police, CPS, Health and Safety Executive, Food Safety Agency and Housing associations.

After consultation with external organisations - Include details of any requirements to consult with another organisation before taking action, including details of the statutory requirement under Primary Authority to notify proposed enforcement action.

6.2 Data Sharing Statement

A Data Sharing Statement was produced between the Community Safety Hub and Tendring District Council. This statement also applies across Tendring District Council's internal services.

The statement aims to provide a common understanding of the data that can be shared between public bodies undertaking enforcement activities and includes Councils (all tiers), Police and Fire Authorities, Central Government agencies and Statutory Undertakers.

The sharing of personal data between delivery bodies involved in the enforcement of legislation is subject to the requirements of the Data Protection Act 1998 (DPA).

This statement aims to clarify how such data should be handled to ensure openness, transparency and consistency in compliance with the DPA and any other applicable legislation. It also promotes best practice to encourage effective working relations.

The statement may be found *[insert link]*.

7. Publicity

We will consider, in all cases, drawing media attention to factual information about charges that have been laid before the courts, but will take care to avoid publicity that could prejudice a fair trial. We will also consider publicising any conviction that could serve to draw attention to the need to comply with the legal requirements or deter anyone tempted to disregard their duties.

8. Comments, compliments or complaints

Tendring District Council is committed to responsive, good quality customer services to the people of the district and would welcome comments and feedback about the Corporate Enforcement Strategy may have on local residents and/or business through our X service team.

9. How often is the Strategy Reviewed?

It is considered good practice to review Council policies and a 5 yearly review will provide a reasonable timetable for this Strategy however, a review may also be appropriate in the intervening period if there is a significant change in legislation, national codes, guidance or national or local policy.

10. ENFORCEMENT PROCEDURES AND OPTIONS

Procedures:

- 10.1 Our enforcement services will investigate alleged breaches and complaints that are reported in writing and we will only register and investigate anonymous complaints where the alleged breach is extremely serious and/or is readily apparent. In all cases we will proceed on the common law principle that the person or business under investigation is “presumed innocent until proved guilty”.
- 10.2 Only officers who are competent by training, qualification and/or experience will be authorised to take enforcement action. Officers will also have sufficient

training and understanding of this enforcement policy to ensure a consistent approach to their duties. Officers are required to show their written authorisation on demand.

- 10.3 A record of Officers authorised within services to undertake enforcement activities is contained within the Council's Scheme of Delegation within the Council's Constitution and maintained by the Monitoring Officer.
- 10.4 In coming to a decision on how to deal with non-compliance, we will have regard to the following principles which are set out in the Macrory Review. In particular our actions should:
- 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.
- 10.5 All services undertaking enforcement activities undertake a Harm Risk Assessment scheme to produce indications of risks that may be broadly described as "High, Medium or Low", or similar.
- 10.6 The decision to use enforcement action will be taken on a case by case basis and, to ensure consistency of approach, in accordance with this and any other more specific policies which may be applicable. Enforcement action will include reference to Harm Risk Assessments. The action taken, which may be immediate, will be proportionate to the gravity and nature of the non-compliance.
- 10.7 Factors that may be taken into consideration include, but are not limited to:
- the risk that the non-compliance poses to the safety, health or economic welfare of the public at large or to individuals
 - the alleged offence involved a failure to comply in full or in part with the requirements of a statutory notice or order
 - there is a history of previous warnings or the commission of similar offences
 - aggravated circumstances such as obstruction of an officer or aggressive behaviour towards the public
 - the offence, although not serious itself, is widespread in the area where it is committed
 - death was a result of a breach of legislation
 - the gravity of an alleged offence, taken together with the seriousness of any actual or potential harm
 - the general record and approach of the offender

- there has been reckless disregard of health and safety requirements
- there has been a repetition of a breach that was subject to a formal caution
- false information has been supplied wilfully, or there has been an intent to deceive

10.8 Tendring District Council will balance the relevant factors carefully and fairly, considering each case on its merits and recording the outcome of the decision. The enforcement options available to the Council are summarised below but set out in more detail in Appendix C.

Options:

10.9 Where non-compliance is found, options to promote/seek compliance will include:

- undertaking pro-active education programmes
- explaining legal requirements and, where appropriate, the means to achieve compliance
- providing an opportunity to explore alternative approaches and reasonable timescales to achieve compliance including voluntary undertakings
- service of advisory letters, warnings, statutory (legal) notices or prohibitions detailing non-compliance
- enforcement actions including, but not limited to:
 - formal caution
 - fixed penalty notices
 - seizure of documents or goods
 - review/refusal/suspension/revocation of Licenses
 - closure of premises
 - prosecution and/or injunction
- Immediate, without notice, enforcement action may be taken, but only where deemed necessary, reasonable and proportionate.

Appendix A

Legal and Policy context

A. Principles of Good Regulation

The Legislative and Regulatory Reform Act 2006, Part 2, requires Tendring District 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, trading standards and licensing services.

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

- (i) Proportionate - our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence,
- (ii) Accountable - our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures,
- (iii) 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,
- (iv) Transparent - we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return, and
- (v) Targeted - we will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities.

B. Regulators' Code

Tendring District Council has had regard to the [Regulators' Code](#) in the preparation of this policy. In certain instances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

C. Human Rights Act 1998

Tendring District Council is a public authority for the purposes of the Human Rights Act 1998. We therefore apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This Strategy 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.

D. Data Protection Act 1998

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

E. The Code for Crown Prosecutors

When deciding whether to prosecute Tendring District Council has regard to the provisions of [The Code for Crown Prosecutors](#) as issued by the Director of Public Prosecutions.

The Code for Crown Prosecutors is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases. The Code sets out two tests that must be satisfied, commonly referred to as the 'Evidential Test' and the 'Public Interest Test':

- a. Evidential Test - is there enough evidence against the defendant?

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

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

Tendring District Council will balance factors for and against prosecution carefully and fairly, considering each case on its merits. The public interest factors that we will take into account are detailed under the enforcement options available to us in Appendix B.

F. Regulatory Enforcement and Sanctions Act 2008 ('the RES Act')

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

Appendix B

Conduct on Investigations:

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

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

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

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

Appendix C

Enforcement Actions available to Tendring District Council in Respect of Criminal and Civil breaches

A. Compliance Advice, Guidance and Support

Tendring District 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 (sometimes called an 'informal caution') will set out what should be done to rectify the breach and to prevent re-occurrence. If a similar breach is identified in the future, this letter will be persuasive in considering the most appropriate enforcement action to take on that occasion. Such a letter cannot be cited in court as a previous conviction but it may be presented in evidence.

Tendring District 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 Tendring District Council will take such advice into account when considering the most appropriate enforcement action for it to take. It may discuss any need for compliance advice and support with the primary authority.

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

B. Voluntary Undertakings

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

C. Statutory (Legal) Notices

In respect of many breaches Tendring District Council has powers to issue statutory notices. These include: 'Stop Notices', 'Prohibition Notices', 'Emergency Prohibition Notices', and 'Improvement Notices'. Such notices are legally binding. Failure to comply with a statutory notice can be a criminal offence and may lead to prosecution and/ or, where appropriate, the carrying out of work in default.

A statutory notice will clearly set out actions which must be taken and the timescale within which they must be taken. It is likely to require that any breach is rectified and/or prevented from recurring. It may also prohibit specified activities until the breach has been rectified and/or safeguards have been put in place to prevent future breaches. Where a statutory notice is issued, an explanation of the appeals process will be provided to the recipient.

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

D. Financial penalties

Tendring District Council has powers to issue fixed penalty notices in respect of some breaches. A fixed penalty notice is not a criminal fine, and does not appear on an individual's criminal record. If a fixed penalty is not paid, Tendring District Council may commence criminal proceedings or take other enforcement action in respect of the breach.

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

Tendring District Council is only able to issue fixed penalty notices where it has specific powers to do so. If fixed penalty notices are available, their issue is at Tendring District Council's discretion. In some circumstances, in particular where breaches are serious or recurrent, it may be that prosecution is more appropriate than the issue of a fixed penalty notice.

E. Injunctive Actions, Enforcement Orders etc.

In some circumstances Tendring District 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.

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

F. Simple Caution

Tendring District 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, Tendring District Council is likely to consider prosecution.

A simple caution will appear on the offender's criminal record. It is likely to influence how Tendring District Council and others deal with any similar breaches in the future, and may be cited in court if the offender is subsequently prosecuted for a similar offence. If a simple caution is issued to an individual (rather than a corporation) it may have consequences if that individual seeks certain types of employment.

Simple cautions will be used in accordance with Home Office Circular 016/2008 and other relevant guidance.

G. Prosecution

Tendring District 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 Tendring District Council has regard to the provisions of [The Code for Crown Prosecutors](#) as issued by the Director of Public Prosecutions.

Prosecution will only be considered where Tendring District Council is satisfied that it has sufficient evidence to provide a realistic prospect of conviction against the defendant(s).

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

- a) the seriousness of the offence committed?
- b) the level of culpability of the suspect?
- c) the circumstances of and the harm caused to the victim?
- d) the age of the suspect or suspects?
- e) the impact on the community?
- f) whether prosecution is a proportionate response?

This list is not an exhaustive list of the elements that will, or may be considered when deciding whether a prosecution is appropriate but helps to identify and determine the relevant public interest factors tending for and against prosecution. Not all factors may be relevant in all cases, and in some cases, it is possible that one public interest factor alone may outweigh those factors which suggest the opposite direction. The weight to be given to each factor will vary according to the facts and merits of each case.

A successful prosecution will result in a criminal record. The court may impose a fine and in respect of particularly serious breaches a prison sentence. The court may order the forfeiture and disposal of non-compliant goods and/or the confiscation of any profits which have resulted from the breach. Prosecution may also lead, in some circumstances, to the disqualification of individuals from acting as company directors.

H. Refusal/Suspension/Revocation of Licences

Tendring District Council issues a number of licences and permits. Tendring District Council also has a role to play in ensuring that appropriate standards are met in relation to licences issued by other agencies. Most licences include conditions which require the licence holder to take steps to ensure that, for example, a business is properly run. Breach of these conditions may lead to a review of the licence which may result in its revocation or amendment.

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

Annex A: Example of an approach to Service Standards

What you can expect from Regulatory Services in [Local Authority]

Contents:

[Areas we regulate](#)

[How we deliver our services](#)

[Working with you](#)

[Helping you to get it right](#)

[Inspections and other compliance visits](#)

[Responding to non-compliance](#)

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[Our Team](#)

[Working with others](#)

[Having your say](#)

This document explains what you can expect of Regulatory Services in [Local Authority]. Whether you are run a business, are an employee or a member of the public, we are committed to providing you with an efficient, courteous and helpful service and this document tells you how we aim to do that and what standards we will meet.

Areas we regulate

We deliver services in a number of areas:

Environmental Protection	Planning	Food Safety
Health and safety	Licensing	Private Sector Housing
Public Health	Housing	Street Care and Waste
Building Control and Dangerous Structures	Community Safety and Anti-Social Behaviour	Parks, Open spaces and Seafront

How we deliver our services

We make a fundamental contribution to the maintenance and improvement of public health, quality of life and wellbeing. Our aims are to:

- Protect the public, businesses and the environment from harm
- Support the local economy to grow and prosper

We determine our activities by assessing the needs of local people and our business community, and considering the risks that require addressing. We do this through [*provide details of engagement with local citizens and businesses*] and through using data and other information available to us and our partners. In this way we ensure our resources are targeted appropriately, in the light of these local needs and of national priorities.

Details of our current work programme are available at [*add link*]

We are committed to being transparent in our activities. We measure what is important and we publish a range of information about our performance data so that you can see how we are doing. This is available at *[add link]*

We carry out all our activities in a way that supports those we regulate to comply and grow:

- We ensure that information, guidance and advice is available to help you to meet legal requirements (see [Helping you to get it right](#)).
- We carry out inspections and other activities to check compliance with legal requirements, and we target these checks where we believe they are most needed (see [Inspections and other compliance visits](#)).
- We deal proportionately with breaches of the law as set out in our Enforcement Policy, including taking firm enforcement action when necessary (see [Responding to non-compliance](#)).
- We provide a range of services to businesses, including *[add list eg. pest control, licences, registrations, issue of certificates]* (see [Requests for our service](#)).

Our services will be delivered in accordance with the requirements of the [Regulators' Code](#).

Working with you

In all your dealings with us you can expect, and will receive, an efficient and professional service. Our officers will:

- Be courteous and polite
- Always identify themselves by name in dealings with you, and provide you with contact details
- Seek to gain an understanding of how your business operates
- Provide details of how to discuss any concerns you may have
- Agree timescales, expectations and preferred methods of communication with you
- Ensure that you are kept informed of progress on any outstanding issues.

We recognise that your business will receive advice and inspections from other organisations, and we will do our best to work with them to ensure that you receive the best service.

Helping you to get it right

We want to work with you to help your business to be compliant and successful and it is important to us that you feel able to come to us for advice when you need it. We won't take enforcement action just because you tell us that you have a problem.

We make information and guidance on meeting legal requirements available *[add details of how information and guidance are made available, including links to relevant websites]*.

Where you need advice that is tailored to your particular needs and circumstances we will:

- Discuss with you what is required to achieve compliance
- Provide advice that supports compliance and that can be relied on
- Provide clear advice that can be easily understood and implemented
- Distinguish legal requirements from suggested good practice
- Ensure that any verbal advice you receive is confirmed in writing if requested

- Acknowledge good practice and compliance.

[Include an explanation of advice services, including Primary Authority]

[Include an explanation of the basis on which any charges are made for advice, with a link to Fees and Charges Schedule]

Inspections and other compliance visits

We monitor and support compliance in a number of different ways including through inspections, sampling visits, test purchases, advisory visits and complaint investigations. These visits will always be based on an assessment of risk – we won't visit without a reason.

We will give you notice that we intend to visit unless we have specific reason to believe that an unannounced visit is more appropriate.

When we visit you our officers will:

- Explain the reason and purpose of the visit
- Carry their identification card at all times, and present it on request when visiting your premises
- Exercise discretion in front of your customers and staff
- Have regard to your approach to compliance, and use this information to inform future interactions with you
- Provide information, guidance and advice to support you in meeting your statutory obligations, if required
- Provide a written record of the visit.

[Include an explanation of the risk framework(s) used to target visits, with links to these frameworks]

[Include an explanation of the basis on which any charges are made in relation to visits, with a link to Fees and Charges Schedule]

Responding to non-compliance

Where we identify any failure to meet legal obligations, we will respond proportionately, taking account of the circumstances, in line with our Enforcement Policy [*add link*].

We deal proportionately with breaches of the law as set out in our Enforcement Policy, available at [*add link*], including taking firm enforcement action when necessary

Where we require you to take action to remedy any failings we will:

- Explain the nature of the non-compliance
- Discuss what is required to achieve compliance, taking into account your circumstances
- Clearly explain any advice, actions required or decisions that we have taken
- Agree timescales that are acceptable to both you and us, in relation to any actions required
- Provide in writing details of how to appeal against any advice provided, actions required or decisions taken, including any statutory rights to appeal
- Explain what will happen next
- Keep in touch with you, where required, until the matter is resolved

Requests for our services

We clearly explain the services that we offer, including details of any fees and charges that apply: *[add links to further information]*

In responding to requests for our services, including requests for advice and complaints about breaches of the law, we will:

- Acknowledge your request within *[add timescale]*
- Tell you when you can expect a substantive response
- Seek to fully understand the nature of your request
- Explain what we may or may not be able to do, so that you know what to expect
- Keep you informed of progress throughout our involvement
- Inform you of the outcome as appropriate

A detailed breakdown of our response times and expected resolution times is available at *[add link]*, however, please be aware that our officers will exercise their judgment to determine whether a more prompt response is required.

How to contact us

You can contact us by:

Telephone: *[insert number]*

Email: *[insert email address]*

Web: *[insert website address]*

By post: *[insert address]*

Or in person: *[insert address and opening hours]*

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.

If you contact us we will ask you for your name and contact details to enable us to keep in touch with you as the matter progresses. We treat all contact with the service in confidence unless you have given us permission to share your details with others as part of the matter we are dealing with on your behalf or there is an operational reason why we need to do so. We will respond to anonymous complaints and enquiries where we judge it appropriate to do so.

Personal data will be managed in accordance with *[Local Authority]*'s Data Protection Policy. *[add link]*.

Our Team

We have a dedicated team of officers who have the appropriate qualifications, skills and experience to deliver the services provided. We have arrangements in place to ensure the ongoing professional competency of all officers.

Where specialist knowledge is required in an area outside of our expertise we have arrangements in place, with both neighbouring authorities and other regulatory organisations, to call on additional resources as necessary.

Working with others

We work closely with other council services such as Planning and Economic Development and our aim is to provide a streamlined service to you.

We are part of a much wider regulatory system in [*the Local Authority area*]. We have good working relationships with other regulators such as [*insert details*], and this enables us to deliver a more joined up and consistent service. This includes sharing information and data on compliance and risk, where the law allows, to help target regulatory resources.

Our officers are familiar with the work of our partners and can signpost you to the advice and guidance you need. We are members of the [*add details of local Regulatory Services Partnership/ Local Enterprise Partnership*] and if you have any comments or concerns regarding the way in which the local regulatory system is operating you can contact the partnership at [*insert contact details*].

Having your say

Complaints and appeals

Where we take enforcement action, there is often a statutory right to appeal. We will always tell you about this at the appropriate time.

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. You can contact [*insert named officer, other than the officer who dealt with the matter*].

We manage complaints about our service, or about the conduct of our officers, through [*Local Authority*]'s Corporate Complaints Policy. Details can be found at [*add link*] or by telephone [*insert number*]

Feedback

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 use customer satisfaction surveys from time to time but we would welcome your feedback at any time. You can provide feedback in the following ways:

Telephone: [*insert number*]

Email: [*insert email address*]

Web: [*insert website address*]

By post: [*insert address*]

Or in person: [*insert address and opening hours*]

Any feedback that we receive will be acknowledged, considered and responded to.

Developing our services with you

We have a number of groups that we consult with to ensure that we are delivering our services to meet your needs. We are always happy to welcome new members to these groups. We currently work with the following:

[Include details eg. Business Panel, Residents Panel, Residential Landlords Panel, with links to further information]

If you are interested in finding out more about the work of these groups, or participating in one, please visit *[add link]* or contact us using the contact details above.

Dated: *[insert date]*

Name:

Job title:

Review Due: *[insert date]*