



Knowsley Council

KNOWSLEY COUNCIL ENFORCEMENT POLICY

Knowsley Council Enforcement Policy

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Knowsley Council

Enforcement Policy

1.0 INTRODUCTION

- 1.1 This policy sets out Knowsley Council's approach to dealing with regulatory non-compliance. It describes what businesses and others being regulated can expect from Knowsley Council and its enforcement officers who are required to follow this policy. It is supplemented by additional statements of enforcement policy in relation to specific council services that provide more clarity on the areas of responsibility.
- 1.2 This policy has been developed after consultation with key stakeholders such as Knowsley Chamber of Commerce and other relevant interested parties. The Council believes in fair but firm enforcement of the law. Enforcement includes any criminal or civil action taken by officers aimed at ensuring that businesses and individuals comply with the law. We recognise that most businesses and individuals want to comply with the law. Officers will assist with help and advice on relevant legislative requirements and will be committed to the principle of avoiding unnecessary regulatory burdens on businesses and individuals. However, the Council will take firm action against those who flout the law or act irresponsibly.
- 1.3 Knowsley Council has had regard to the Regulators' Code and the principles of good regulation in the preparation of this policy. We recognise that our enforcement activities should be carried out in a way which is: necessary, proportionate, accountable, consistent, transparent and targeted. 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 is properly reasoned, based on material evidence and documented.
- 1.4 Knowsley 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 policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard will be taken of the right to a fair trial and the right to respect for private and family life, home and correspondence. Where there is a need for Knowsley Council to share enforcement information with other agencies, we will follow the provisions of the General Data Protection Regulation and the Data Protection Act 2018.
- 1.5 When deciding whether to prosecute Knowsley Council will have regard to the provisions of The Code for Crown Prosecutors as issued by the Director of Public Prosecutions. This 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'. Prosecution will only be considered where Knowsley Council is satisfied that it has sufficient evidence to provide a realistic prospect of conviction against the defendant(s) and it is in the public interest. In relation to the latter, we will balance factors for and against prosecution carefully and fairly considering each case on its merits.

- 1.6 The Regulatory Enforcement and Sanctions Act 2008, as amended, established the Primary Authority scheme in relation to trading standards and environmental health functions. 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. We recognise that where a business has entered into a partnership with a primary authority, the Primary Authority will provide compliance advice and support. We will take such advice into account when considering the most appropriate enforcement action to take. We may discuss any need for compliance advice and support with the Primary Authority. The Primary Authority has a right to object to the proposed action in which circumstances either they or we may refer the matter to the Office for Product Safety and Standards if appropriate.

2.0 PRINCIPLES OF GOOD REGULATION

- 2.1 The Legislative and Regulatory Reform Act 2006 requires the Council to have regard to the principles of good regulation when exercising a specified regulatory function. For local authorities, the specified functions include environmental health, trading standards, licensing, building control and planning.
- 2.2 We will exercise our regulatory activities in a way which is:
- **Necessary-** We will aim to provide advice and support to assist businesses and individuals to comply and will only consider enforcement action where this is necessary.
 - **Proportionate-** our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence.
 - **Accountable-** our activities will be open to public scrutiny with clear and accessible policies and 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-** Our resources will be targeted where they would be most effective by assessing the potential impact and risk of non-

compliance. Such risk assessments will inform our approach to regulatory activity.

3.0 APPLICATION

- 3.1 All Council officers and Elected Members should have regard to this policy when making enforcement decisions.

4.0 APPROACH TO NON-COMPLIANCE

- 4.1 We believe that prevention is better than cure and that our role involves actively working with the public and businesses to advise on and assist with compliance. Our officers will be courteous and efficient at all times and will identify themselves by name, showing appropriate means of identification. We will provide contact details for further dealings with us and we will encourage businesses and individuals to seek advice and information from us. We will discuss general issues, specific compliance failures or problems with any relevant stakeholder.
- 4.2 Advice from an officer will be put clearly and simply and will be confirmed in writing on request using plain language. The advice will explain why any remedial work is necessary and over what timescale and legal requirements will be clearly distinguished from best practice advice.
- 4.3 Our officers will provide an opportunity to discuss the circumstances of the non-compliance and, if possible, will resolve points of difference before any formal action is taken. This is unless immediate action is required e.g., in the interests of health and safety or environmental protection or to prevent evidence being destroyed. Where immediate action is carried out, an explanation will be given at the time and confirmed in writing later. Where there are rights of appeal against formal action, advice on the appeal mechanism will be set out in writing at the time the action is taken.
- 4.4 Our officers will minimise the costs of compliance for businesses and individuals by ensuring that any action required is proportionate to the risks. As far as the law allows, we will take account of the circumstances of the case and the attitude of the business or individual when considering action.
- 4.5 All enforcement decisions will be fair, objective and consistent. They will not be influenced by ethnicity or national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender. Such decisions will not be affected by improper or undue pressure from any source.
- 4.6 In determining the appropriate action to take in relation to non-compliance, our officers will take into account the particular circumstances of the case and the approach of the business or

individual in dealing with the issues. Where applicable we will also take into account the views of any victim to establish the nature of any harm or loss including harm to the environment. We will deal firmly with those that deliberately or persistently fail to comply. In contrast, we will recognise the willingness of businesses to resolve issues of non-compliance and will encourage such businesses to seek advice from us without directly triggering enforcement action. The following is a summary of the factors that will be taken into consideration by our officers:

- The seriousness of the compliance failure
- The risks associated with non-compliance
- The previous history and current actions of the business/ individual(s) concerned
- Any obstruction of our officers in carrying out their duties
- Statutory requirements or guidance
- Codes of Practice
- Any legal advice
- The existence of a Primary Authority agreement

4.7 We may publish details of our successful prosecutions on our website. The decision to publish will be made by the agency responsible for the prosecution in accordance with the principle of obtaining maximum positive publicity in relation to convictions and other formal enforcement action.

5.0 CONDUCT OF INVESTIGATIONS

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

- Police and Criminal Evidence Act 1984
- Criminal Procedure and Investigations Act 1996
- Regulation of Investigatory Powers Act 2000
- Investigatory Powers Act 2016
- Criminal Justice and Police Act 2001
- Human Rights Act 1998
- Proceeds of Crime Act 2002

5.2 The Acts and associated guidance control how evidence is collected and used and give a range of protections to potential defendants. Our 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.

5.3 Our officers are given various powers of entry, inspection and seizure under a variety of statutes. On occasion, two or more officers may work together on an exercise. Any person who prevents an officer from carrying out any of their powers is likely to be committing an offence of obstruction.

- 5.4 Certain legislation provides our officers with powers to seize goods, equipment or documents. Examples include food that is deemed to be unsafe, sound equipment which is causing a statutory nuisance, dangerous products and items that may be required as evidence in future court proceedings. When goods are seized, our officers will provide the person from whom goods are taken with a receipt or other written record.
- 5.5 Our officers will ensure that businesses or individuals and witnesses are informed of the progress of enforcement investigations/actions. Confidentiality will be maintained and personal information about individuals will only be released to a Court when legally required and/or in accordance with the General Data Protection Regulation and the Data Protection Act 2018.

6.0 ENFORCEMENT ACTION

- 6.1 Where appropriate, decisions about what enforcement action to take may involve consultation between:
- Investigating Officer(s)
 - Managers
 - Solicitors and Counsel
 - Elected Members of Knowsley Council
 - Partner Agencies
- 6.2 The range of actions available to Knowsley Council is as follows:
- (a) **No Action.** In certain circumstances, breach of the law may not warrant any action. This may be where the breach is no fault of the individual or business concerned or when it would be disproportionate to do so and not consistent with the aims of this policy.
- (b) **Compliance Advice, Guidance and Support.** Our officers use compliance advice, guidance and support as a first response in the case of many breaches of legislation that are identified. Advice may be provided verbally or in writing in the form of a warning letter. This is intended to assist individuals and businesses in rectifying breaches as quickly and efficiently as possible. Officers will clearly identify any contraventions of the law and give advice on how to put them right including a deadline by which this must be done. There will be a clear distinction between legal advice and good practice. If a similar breach is identified in future, then this could result in an escalation of enforcement action.
- (c) **Statutory (Legal) Notices.** For many breaches of legislation, our officers have power to issue statutory notices requiring offenders to take specific actions or cease certain activities. 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.

Certain types of notice allow works to be carried out in default. This means that if a notice is not complied with then we may carry out any necessary works to satisfy the requirements of the notice. Where the law allows, we may then charge the business or individual served with the notice for any cost we incur in carrying out the work, including administrative and supervisory costs. In some instances, where the business or individual charged for such costs fails to pay within the specified time limit, where the law allows, these charges can be registered against their property with the sale of such property enforced to recover costs due to the Council.

- (d) **Fixed Penalty Notices.** Certain offences are subject to fixed penalty notices where prescribed by legislation. They provide the recipient with an opportunity to avoid prosecution by payment of the penalty. If a fixed penalty notice is paid in respect of a breach then no further action will be taken. Payment of a fixed penalty does not provide immunity from prosecution if similar breaches are committed again. If a fixed penalty is not paid then we will consider escalation of the enforcement action. This may include prosecution.
- (e) **Penalty Charge Notices.** Such notices 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 penalty charge notice will result in the offender being pursued in the County Court for non-payment of the debt.
- (f) **Injunctive Actions, Enforcement Orders etc.** In some circumstances we may seek a direction from the Court (in the form of an injunction or order) that a breach is rectified 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 further breaches. Failure to comply with a court order may constitute contempt of court which is a serious offence that may lead to imprisonment. We are 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 we have serious concerns about compliance with voluntary undertakings or a notice.

- (g) **Seizure.** Certain legislation enables authorised officers to seize goods. Examples include unsafe food, sound equipment that is being used to cause a statutory noise nuisance, unsafe products or any goods that may be required as evidence for future court proceedings. When we seize goods we will give the person from whom the goods are taken an appropriate receipt or written record.

In appropriate cases we will apply the cash seizure provisions of the Proceeds of Crime Act 2002 in all suitable cases where cash is believed to be £1000 or over and the financial investigator has reasonable grounds for suspecting that the cash is recoverable property or intended by any person for use in unlawful conduct. Any seized cash will be dealt with in accordance with the Proceeds of Crime Act 2002 and the code of practice concerning cash seizure.

- (h) **Forfeiture.** 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 re-entering the marketplace or being used to cause a further problem. In appropriate circumstances, we will make an application for forfeiture to the Magistrates' Court.

- (i) **Refusal/ Suspension/ Revocation of Licences.** We issue a number of licences, consents, approvals and permits. We also have a role to play in ensuring that appropriate standards are met in relation to those issued by other agencies. Most licences, consents and permits 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 applications, we will take previous breaches and enforcement action into account. In some cases we also have a role to play in ensuring that appropriate standards are met in relation to licences and permits issued by other agencies.

- (j) **Simple Caution.** We have the power to issue Simple Cautions as an alternative to prosecution for some less serious offences where the offender admits an offence and consents to the simple caution. Where a Simple Caution is offered and declined then we will consider prosecution.

A Simple Caution will appear on the offender's criminal record. It is likely to influence how Knowsley 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 body corporate) it may have consequences if that individual seeks certain types of employment.

Simple Cautions will be issued in accordance with the Ministry of Justice guidance: *Simple Cautions for Adult Offenders*.

- (k) **Prosecution.** We may prosecute in respect of serious or recurrent breaches or where other enforcement actions have failed to secure compliance. When deciding whether to prosecute, we will have regard to the Code for Crown Prosecutors. This is a public document issued by the Director of Public Prosecutions which sets out the general principles to follow when decisions are made in respect of prosecuting cases.

Prosecution will only be considered where we are satisfied that there is enough evidence to provide a realistic prospect of conviction against the offender and where it is in the public interest to bring the case to court. Factors that we consider include:

- Where there is a history of non-compliance
- Where the offence involves a serious and/or flagrant breach of the law
- Where the offence involves failure to comply with a statutory notice
- Where there is a need to provide a suitable deterrent
- Where there has been a disregard of legal requirements for financial reward
- Where an authorised officer has been intentionally obstructed
- The age of the alleged offender and any victims of the crime

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.

- (l) **Proceeds of Crime Applications.** We may make applications under the Proceeds of Crime Act 2002 to restrain and/ or confiscate the assets of an offender. The purpose of any such proceedings is to recover the financial benefit that the offender has obtained from their criminal conduct. Proceedings are conducted to the civil standard of proof.

7.0 DECISIONS

- 7.1 In determining the most appropriate and proportionate enforcement action, we will have regard to legal guidance, statutory codes and professional judgement and will:

- Aim to change the behaviour of the offender
- Aim to eliminate any financial gain or benefit from non-compliance
- Consider what is appropriate for the offender and regulatory issue

- Be proportionate to the nature of the offence and the harm caused
- Aim to restore the harm caused by non-compliance where appropriate
- Aim to deter future non-compliance
- Aim to change the attitude of the community to certain offences which are not deemed serious and yet have an impact on society

7.2 If we intend to take formal enforcement action against a business or individual, our officers will notify that business or individual as soon as is practicable unless this could impede an investigation or pose a safety risk. We will provide a written explanation of any rights to representation or appeal and practical information on the process involved.

8.0 OTHER AGENCIES

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

8.2 Where an enforcement matter affects a wide geographical area beyond the Council's boundaries 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 activity co-ordinated with them.

8.3 Where appropriate and in accordance with the law, we will share intelligence with other regulatory bodies and enforcement agencies including:

- Government Agencies
- Police Forces
- Fire Authorities
- Other Local Authorities

9.0 REVIEW OF THIS POLICY

9.1 We are committed to ensuring that our enforcement policy reflects current best practice and Government policy including the Regulators' Code. To this end, this policy will be reviewed on a regular basis.

9.2 Our managers will ensure that all officers are familiar with this policy document. They will monitor the activity of officers to ensure that the policy is being implemented in their day to day enforcement duties. The Policy will be reviewed on a 3-year basis and any comments or suggestions will be used to inform its future development.

10.0 COMMENTS AND COMPLAINTS

10.1 If any person believes that they have not received fair or consistent treatment as outlined in this Policy, they can access the Councils' Complaints Procedure. The matter will be considered, and a decision made as to whether the Enforcement Policy has been breached in this instance and the complainant will be given a reply in writing explaining the decision. This is without prejudice to any formal appeal mechanism.

10.2 If you wish to contact the Council to make a complaint, comment or to ask a question relating to this policy then please use the contact details below:

- Web: KMBC: [KMBC - Sign in to your account \(mendixcloud.com\)](https://mendixcloud.com)
- Email: haveyoursay@knowsley.gov.uk
- Post: Customer Liaison Team, Knowsley Council, Archway Road, Huyton L36 9UX
- Telephone: 0151 443 4712

11.0 AVAILABILITY

11.1 This policy is available on the Council's website. If you wish to receive this policy in another format then please contact us using the details above.

12.0 LINKS

Regulators' Code: [Regulators' Code - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

Simple cautions: [Simple cautions: guidance for police and prosecutors - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

Prosecution: [The Code for Crown Prosecutors | The Crown Prosecution Service \(cps.gov.uk\)](https://www.cps.gov.uk)