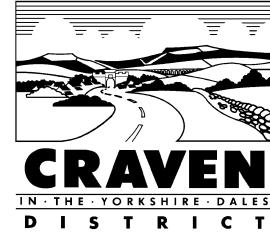


Policy Committee – 15 December 2015

ENFORCEMENT POLICY



Report of the Solicitor to the Council and Monitoring Officer

Lead Member for Internal Services

Ward(s) affected: All

1. **Purpose of Report** – To inform Members on the Council's duties in relation to enforcement action, in particular under the Regulators' Code.
2. **Recommendations** – Members are recommended to:
 - 2.1 note the Council's duties in relation to enforcement action under the Regulators Code
 - 2.2 adopt the Corporate Enforcement Policy at Appendix A
3. **Background**
 - 3.1 The Council undertakes a wide range of enforcement action in a wide range of areas. In relation to some of these areas the Council is also the Regulator (for example food safety).
 - 3.2 The type of enforcement action available to the Council is also wide ranging and a decision on the most appropriate type of enforcement action can only be taken following investigation.
4. **Regulators' Code**
 - 4.1 The Regulators' Code came into statutory effect on 06 April 2014, replacing the Regulators' Compliance Code.
 - 4.2 Members will be aware that the Government is committed to reducing regulatory burdens on business and supporting the growth of compliant businesses. One way in this is being promoted is through open and constructive relationships between Regulators and those they regulate.
 - 4.3 The services covered by the Regulators' Code are mainly covered by the Council's Environmental Health Department. There are also a number of other regulatory and enforcement services which are not covered by the Code most notably

Planning. However the broad principles contained within the Enforcement Policy are equally applicable to all council enforcement actions and it is therefore recommended that this is adopted as a corporate approach to enforcement.

5. Corporate approach to enforcement

5.1 The Regulators' Code is based on 6 broad principles;

1. Regulators should carry out their activities in a way that supports those they regulate to comply and grow
2. Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views
3. Regulators should base their regulatory activities on risk
4. Regulators should share information about compliance and risk
5. Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply
6. Regulators should ensure that their approach to their regulatory activities is transparent

These principles are reflected in the Enforcement Policy.

5.2 The key aim of regulatory enforcement is to protect the public, the environment, consumers and workers through enforcing the law in a fair, equitable and consistent manner.

5.3 The Council undertakes enforcement work in a wide range of areas, a single property or business may be subject to regulation from different Council Services (for example, Licensing and Environmental Health) or even the same Department but in relation to various pieces of legislation (for example, Food Safety and Health and Safety). One aim of the Corporate Enforcement Policy is to encourage the sharing of relevant information to reduce the regulatory burden on businesses.

6. Enforcement Group

6.1 The Council has introduced an Enforcement Group for all Officers who have a role in enforcement across the different Services. The Enforcement Group is chaired by Legal Services and is a forum for Officers to discuss enforcement cases and best practice. The Enforcement Group will bring a consistent approach to the Council's enforcement actions.

6.2 The Enforcement Group will also produce templates to be used in investigations.

Implications

- 7.1 **Financial Implications** None arising directly from this report.
- 7.2 **Legal Implications** If the Council does not have an Enforcement Policy consistent with the Regulators' Code the Council risks challenge (Judicial Review) of any enforcement action taken
- 7.3 **Contribution to Corporate Priorities** Taking enforcement action in accordance with the Enforcement Policy will contribute to delivering the Council's priorities of enterprising Craven and Greener Craven. The Policy also contributes to furtherance of the Council's Values.
- 7.4 **Risk Management** In accordance with legal implications.
- 7.5 **Equality Impact Assessment**

The Council's Equality Impact Assessment Procedure **has been** followed. An Equality Impact Assessment **has not** been completed on the proposals as completion of **Stage 1- Initial Screening** of the Procedure identified that the proposed policy, strategy, procedure or function **does not have** the potential to cause negative impact or discriminate against different groups in the community based on •age • disability •gender • race/ethnicity • religion or religious belief (faith) •sexual orientation, or • rural isolation,

7. **Consultations with Others** Enforcement Officers
8. **Access to Information : Background Documents** None
9. **Author of the Report** Lisa Lord, Solicitor LLord@cravenc.gov.uk

Note : Members are invited to contact the author in advance of the meeting with any detailed queries or questions.

10. **Appendices**
Appendix A: Corporate Enforcement Policy
Appendix B: Regulators' Code



Craven District Council

Corporate Enforcement Policy

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Introduction

The Council implements, administers and enforces a wide range of legislation designed to protect health, communities, local economies and the environment. The Council has flexibility to determine the most appropriate methods for enforcement, to suit local needs and ensure value for money.

The purpose of this Policy is to;

- i. raise public awareness of the Council's enforcement powers;
- ii. encourage compliance with the law;
- iii. ensure that enforcement action taken is proportionate; and
- iv. ensure a consistent approach in determining how and when enforcement action is taken.

This Policy has been prepared with regard to the current principal legislation and statutory guidance including the Regulators Code.

Scope

This policy applies to the Council's departments carrying out enforcement activities prescribed in the Regulators Code.

The Council undertakes enforcement action in relation to a wide range of matters including;

- Licensing;
- Environmental Health;
- Waste Management;
- Community Safety;
- Building Control;
- Private Sector Housing Management;
- Health and Safety; and
- Planning Enforcement

Where a relevant department has a specific enforcement policy this Corporate Enforcement Policy should be read in conjunction with the specific relevant policy.

The Council also undertakes enforcement action in relation to other areas that are outside of the Regulators Code, such as Revenues and Benefits.

Methodology

Decisions concerning enforcement actions will be;

fair and accountable	Officers undertaking enforcement actions must comply with the principles set out in this enforcement policy.
consistent	The same approach will be adopted to achieve similar results under similar circumstances
transparent	The Council will help individuals, organisations or businesses to understand what is expected of them and what they can expect from the

	Council.
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Enforcement actions should be;

an effective use of resources through a risk based methodology	The Council's resources will be targeted primarily on activities by the individuals, organisations or businesses giving rise to the most serious risks to the public purse, health and safety, the environment or statutory nuisance to the public.
proportionate	The enforcement action will relate to the risks to health and safety, the environment or the extent of nuisance to the public. Enforcement actions must be proportionate to any risks or to the seriousness of any breaches. Care will be taken to ensure that no unnecessary costs are incurred.

This will;

improve protection for the community and businesses	By targeting our resources to those who deliberately and persistently breach the law.
reduce the regulatory burden on businesses	Risk assessments and joint working will reduce the inspection burden on compliant businesses.

The Council will adhere to these principles to when taking enforcement action and when setting policies, principles and providing guidance relating to enforcement activities. If, in a particular case, it is determined that a provision of this policy is irrelevant or outweighed by the circumstances, the decision to depart from this policy will be properly reasoned, based on material evidence and documented.

Communication with the Council

The Council aims to respond to telephone messages within three working days and to letters and emails within five working days. Complex matters may take longer, and we will give a full reply or progress report within 15 days.

Council Officers will

- i. be courteous and helpful
- ii. give clear and simple advice
- iii. give a reasonable time to comply (unless immediate action is necessary in the interests of health, safety, the environment or to prevent evidence being lost)
- iv. maintain confidentiality, except where the Council has a legal obligation to disclose information.

Aims of enforcement action

The aims of enforcement action are:

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

Investigation

Enforcement action may result in either civil or criminal proceedings being instituted by the Council. The process that will be followed by Officers in the investigation of alleged breaches will depend on the nature of the breach. As the Enforcing Authority in any proceedings it instigates, the burden of proof falls to the Council.

Investigations will be carried out in compliance with the following legislation and in accordance with any associated guidance or codes of practice, in so far as they relate to the Council:

- 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
- the Data Protection Act 1998

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

Methods of enforcement

The Council will strive to use advice and persuasion as the main methods to ensure that individuals and businesses comply with legal requirements.

The Council recognises that advice and persuasion may not be sufficient in all cases and will take alternative and/or additional enforcement action where it is proportionate to do so. All the circumstance of the matter including the following factors will be taken into account when determining what action to take;

- seriousness of the alleged offence;
- previous history of the alleged offender;
- any action taken to resolve the situation;
- the course of action that will best serve the community and protect them or the environment;

Review

This Policy will be reviewed every two years by the Council's Policy Committee (or sooner if required due to legislative or other material changes).

Enforcement action will be reviewed on a regular basis by the Council's Enforcement Group to share information, best practice and promote consistency.

Appeals

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

Complaints about the conduct of officers should be made through the Council complaints procedure.

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Types of enforcement action

For guidance, the following is a brief explanation of the key regulatory sanctions.

Verbal and written warnings

These informal actions would be used if it is considered that they will achieve compliance. This would be based on past history/confidence in management, or where the consequences of non-compliance will not pose a significant risk to public health or, are of a minor technical nature.

Voluntary Undertakings

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

Minded to notices

Only available under some legislation. Normally used when verbal or written warnings have not lead to improvements, but there is no imminent risk to public health.

Statutory Notices

Various statutory notices are available which can be used when;

- there is, or may be, a significant risk to public health
- a statutory nuisance is occurring, or is likely to occur or recur

Fixed penalty notices

This sanction is only available for certain matters for example dog fouling. The decision to issue a fixed penalty notice rather than adopt other forms of enforcement action may be chosen as a more effective and efficient way of dealing with the offence.

Refusal/Suspension/Revocation of a licence

This sanction is only available in certain circumstances. These actions will be proportionate to the risk to public health or safety.

Injunctions/Court Orders

In some circumstances the 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.

Work in default

This refers to the Council carrying out work usually as a result of a failure to comply with a statutory notice. In deciding whether to carry out works in default the following will be considered:

- The seriousness of the defect, and the urgency of the need to remedy the situation
- The ability of the Council to reclaim the costs of the remedial work

Simple caution

A simple caution may be offered as an alternative to prosecution but only in case where the evidential criteria for prosecution has been satisfied. The purpose of a caution is to deal quickly and simply with less serious offences, divert less serious offences away from the Courts, reduce the chances of repeat offending

The investigator must compile a prosecution file before the simple caution is offered.

In order for a caution to be offered the offence must be admitted.

Prosecution

The Code for Crown Prosecutors will be considered when decisions are made concerning prosecutions.

The following circumstances are factors which may indicate that a prosecution is warranted;

- failure to comply in part or full with a statutory notice;
- where, the consequence of not taking immediate and decisive action would give rise to the significant risk to public health or continuing statutory nuisance that would be unacceptable particularly for financial or other reward;
- where there has been a blatant disregard for the law, where previous notices or warnings have been issued.

This is not an exhaustive list and each case will be considered on its own merits taking into account all the circumstances of the case.

The perceived public benefit of a prosecution may be considered when its outcome impacts on

- a section of the community whose protection health safety wellbeing legal rights or
- the environment as a whole

was placed at risk of being affected or was adversely affected.

The importance of establishing a significant precedent or to draw public attention to national or local campaigns or issues may also be considered.



Department
for Business
Innovation & Skills

Better
Regulation
Delivery Office

Regulators' Code

April 2014

Foreword



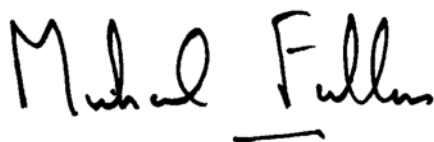
In the Autumn Statement 2012 Government announced that it would introduce a package of measures to improve the way regulation is delivered at the frontline such as the Focus on Enforcement review of appeals, the proposed Growth Duty for non-economic regulators and the Accountability for Regulator Impact measure.

This Government is committed to reducing regulatory burdens and supporting compliant business growth through the development of an open and constructive relationship between regulators and those they regulate. The Regulators' Code provides a flexible, principles based framework for regulatory delivery that supports and enables regulators to design their service and enforcement policies in a manner that best suits the needs of businesses and other regulated entities.

Our expectation is that by clarifying the provisions contained in the previous Regulators' Compliance Code, in a shorter and accessible format, regulators and those they regulate will have a clear understanding of the services that can be expected and will feel able to challenge if these are not being fulfilled.

Regulators within scope of the Regulators' Code are diverse but they share a common primary purpose – to regulate for the protection of the vulnerable, the environment, social or other objective. This Code does not detract from these core purposes but seeks to promote proportionate, consistent and targeted regulatory activity through the development of transparent and effective dialogue and understanding between regulators and those they regulate.

I believe the Regulators' Code will support a positive shift in how regulation is delivered by setting clear expectations and promising open dialogue. Ultimately this will give businesses greater confidence to invest and grow.

A handwritten signature in black ink that reads "Michael Fallon". The signature is written in a cursive style with a horizontal line underneath the name.

Michael Fallon
Minister of State for Business and Enterprise
Department for Business, Innovation and Skills

Regulators' Code

This Code was laid before Parliament in accordance with section 23 of the Legislative and Regulatory Reform Act 2006 ("the Act"). Regulators whose functions are specified by order under section 24(2) of the Act **must** have regard to the Code when developing policies and operational procedures that guide their regulatory activities. Regulators must equally have regard to the Code when setting standards or giving guidance which will guide the regulatory activities of other regulators. If a regulator concludes, on the basis of material evidence, that a specific provision of the Code is either not applicable or is outweighed by another relevant consideration, the regulator is not bound to follow that provision, but should record that decision and the reasons for it.

1. Regulators should carry out their activities in a way that supports those they regulate to comply and grow

1.1 Regulators should avoid imposing unnecessary regulatory burdens through their regulatory activities¹ and should assess whether similar social, environmental and economic outcomes could be achieved by less burdensome means. Regulators should choose proportionate approaches to those they regulate, based on relevant factors including, for example, business size and capacity.

1.2 When designing and reviewing policies, operational procedures and practices, regulators should consider how they might support or enable economic growth for compliant businesses and other regulated entities², for example, by considering how they can best:

- understand and minimise negative economic impacts of their regulatory activities;
- minimising the costs of compliance for those they regulate;
- improve confidence in compliance for those they regulate, by providing greater certainty; and
- encourage and promote compliance.

1.3 Regulators should ensure that their officers have the necessary knowledge and skills to support those they regulate, including having an understanding of those they regulate that enables them to choose proportionate and effective approaches.

1.4 Regulators should ensure that their officers understand the statutory principles of good regulation³ and of this Code, and how the regulator delivers its activities in accordance with them.

2. Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views

2.1 Regulators should have mechanisms in place to engage those they regulate, citizens and others to offer views and contribute to the development of their policies and service standards. Before changing policies, practices or service standards, regulators should consider the impact on business and engage with business representatives.

¹ The term 'regulatory activities' refers to the whole range of regulatory options and interventions available to regulators.

² The terms 'business or businesses' is used throughout this document to refer to businesses and other regulated entities.

³ The statutory principles of good regulation can be viewed in Part 2 (21) on page 12: http://www.legislation.gov.uk/ukpga/2006/51/pdfs/ukpga_20060051_en.pdf.

- 2.2 In responding to non-compliance that they identify, regulators should clearly explain what the non-compliant item or activity is, the advice being given, actions required or decisions taken, and the reasons for these. Regulators should provide an opportunity for dialogue in relation to the advice, requirements or decisions, with a view to ensuring that they are acting in a way that is proportionate and consistent.

This paragraph does not apply where the regulator can demonstrate that immediate enforcement action is required to prevent or respond to a serious breach or where providing such an opportunity would be likely to defeat the purpose of the proposed enforcement action.

- 2.3 Regulators should provide an impartial and clearly explained route to appeal against a regulatory decision or a failure to act in accordance with this Code. Individual officers of the regulator who took the decision or action against which the appeal is being made should not be involved in considering the appeal. This route to appeal should be publicised to those who are regulated.
- 2.4 Regulators should provide a timely explanation in writing of any right to representation or right to appeal. This explanation should be in plain language and include practical information on the process involved.
- 2.5 Regulators should make available to those they regulate, clearly explained complaints procedures, allowing them to easily make a complaint about the conduct of the regulator.
- 2.6 Regulators should have a range of mechanisms to enable and regularly invite, receive and take on board customer feedback, including, for example, through customer satisfaction surveys of those they regulate⁴.

3. Regulators should base their regulatory activities on risk

- 3.1 Regulators should take an evidence based approach to determining the priority risks in their area of responsibility, and should allocate resources where they would be most effective in addressing those priority risks.
- 3.2 Regulators should consider risk at every stage of their 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.
- 3.3 Regulators designing a risk assessment framework⁵, for their own use or for use by others, should have mechanisms in place to consult on the design with those affected, and to review it regularly.
- 3.4 Regulators, in making their assessment of risk, should recognise the compliance record of those they regulate, including using earned recognition approaches and should consider all available and relevant data on compliance, including evidence of relevant external verification.
- 3.5 Regulators should review the effectiveness of their chosen regulatory activities in delivering the desired outcomes and make any necessary adjustments accordingly.

⁴ The Government will discuss with national regulators a common approach to surveys to support benchmarking of their performance.

⁵ The term 'risk assessment framework' encompasses any model, scheme, methodology or risk rating approach that is used to inform risk-based targeting of regulatory activities in relation to individual businesses or other regulated entities.

4. Regulators should share information about compliance and risk

- 4.1 Regulators should collectively follow the principle of “collect once, use many times” when requesting information from those they regulate.
- 4.2 When the law allows, regulators should agree secure mechanisms to share information with each other about businesses and other bodies they regulate, to help target resources and activities and minimise duplication.

5. Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply

- 5.1 Regulators should provide advice and guidance that is focused on assisting those they regulate to understand and meet their responsibilities. When providing advice and guidance, legal requirements should be distinguished from suggested good practice and the impact of the advice or guidance should be considered so that it does not impose unnecessary burdens in itself.
- 5.2 Regulators should publish guidance, and information in a clear, accessible, concise format, using media appropriate to the target audience and written in plain language for the audience.
- 5.3 Regulators should have mechanisms in place to consult those they regulate in relation to the guidance they produce to ensure that it meets their needs.
- 5.4 Regulators should seek to create an environment in which those they regulate have confidence in the advice they receive and feel able to seek advice without fear of triggering enforcement action.
- 5.5 In responding to requests for advice, a regulator's primary concerns should be to provide the advice necessary to support compliance, and to ensure that the advice can be relied on.
- 5.6 Regulators should have mechanisms to work collaboratively to assist those regulated by more than one regulator. Regulators should consider advice provided by other regulators and, where there is disagreement about the advice provided, this should be discussed with the other regulator to reach agreement.

6. Regulators should ensure that their approach to their regulatory activities is transparent

- 6.1 Regulators should publish a set of clear service standards, setting out what those they regulate should expect from them.
- 6.2 Regulators' published service standards should include clear information on:
 - a) how they communicate with those they regulate and how they can be contacted;
 - b) their approach to providing information, guidance and advice;
 - c) their approach to checks on compliance⁶, including details of the risk assessment framework used to target those checks as well as protocols for their conduct, clearly setting out what those they regulate should expect;

⁶ Including inspections, audit, monitoring and sampling visits, and test purchases.

- d) their enforcement policy, explaining how they respond to non-compliance;
 - e) their fees and charges, if any. This information should clearly explain the basis on which these are calculated, and should include an explanation of whether compliance will affect fees and charges; and
 - f) how to comment or complain about the service provided and routes to appeal.
- 6.3 Information published to meet the provisions of this Code should be easily accessible, including being available at a single point⁷ on the regulator's website that is clearly signposted, and it should be kept up to date.
- 6.4 Regulators should have mechanisms in place to ensure that their officers act in accordance with their published service standards, including their enforcement policy.
- 6.5 Regulators should publish, on a regular basis, details of their performance against their service standards, including feedback received from those they regulate, such as customer satisfaction surveys, and data relating to complaints about them and appeals against their decisions.

⁷ This requirement may be satisfied by providing a single web page that includes links to information published elsewhere.

Monitoring the effectiveness of the Regulators' Code

The Government is committed to making sure the Regulators' Code is effective. To make sure that the Code is being used effectively, we want businesses, regulated bodies and citizens to challenge regulators who they believe are not acting in accordance with their published policies and standards. It is in the wider public interest that regulators are transparent and proportionate in their approaches to regulation.

The Government will monitor published policies and standards of regulators subject to the Regulators' Code, and will challenge regulators where there is evidence that policies and standards are not in line with the Code or are not followed.

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This publication is also available on our website at:
<https://www.gov.uk/government/publications/regulators-code>

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