



Environmental Health & Licensing

Local Enforcement Plan

DRAFT March 2021

DRAFT

Environmental Health & Licensing Enforcement Plan

1. Introduction

- 1.1 Hart District Council is responsible for enforcing a wide range of legislation within the District. This Plan deals with the Council's Environmental Health and Licensing functions and sets out the principles and the standards the service businesses and members of the public should expect. It outlines our enforcement objectives; methods for achieving compliance; and the criteria we consider when deciding the most appropriate response to a breach of legislation.
- 1.2 This Plan sets out the framework by which Hart District Council's authorised Officers will make decisions in respect of the Council's compliance and enforcement activities. It summarises how we prioritise our work, the enforcement tools available, and how complaints are investigated. The Council is committed to ensuring that all Officers abide by this policy.
- 1.3 The Council seeks to promote an efficient and effective approach to enforcement, which improves outcomes without imposing unnecessary burden.
- 1.4 In Hart the enforcement functions are carried out under the Scheme of Delegation to Officers. The Head of Place has delegated authority to investigate and to take enforcement proceedings relating to environmental health and licensing functions. Many of these functions are further delegated to Officers according to their qualifications and competency. These delegations are regularly updated and published at:
www.hart.gov.uk/EHdelegations

2. Key Principles

- 2.1 The Council follows the principles of the central and local government Concordat on Good Enforcement (the Concordat). The Concordat sets out the principles of good enforcement practice. These are:

Standards: to publish clear standards of service and performance.

Openness: to provide information and advice in plain language, to discuss problems with anyone experiencing difficulties and to be transparent in decision making processes.

Helpfulness: to work with all parties to advise on and assist with compliance. To provide contact details for further information.

Consistency: to carry out duties in a fair, equitable and consistent manner.

Proportionality: to take action in proportion to the risks posed and how serious the breach is.

Complaints about the Service: to provide well publicised, effective and timely complaints procedures.

2.2 The Legislative and Regulatory Reform Act 2006 sets out the following regulatory principles:

- a) regulatory activities should be carried out in a way that is transparent, accountable, proportionate and consistent; and
- b) regulatory activities should be targeted only at cases in which action is needed.

2.3 The Council will apply the principles of the Regulators' Compliance Code to promote an efficient and effective approach to enforcement, improving the outcome without imposing unnecessary burdens on businesses by being:

Transparent – we will provide clear information, guidance and advice in plain language on the rules that we apply so that those whom we regulate can understand what is expected of them and why. Our guidance will reflect guidance and codes of practice issued by government and other relevant bodies.

Accountable – we will provide a well publicised, effective and easily accessible complaints procedure. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process.

Proportionate – we will allow businesses and others to meet their legal obligations and enforcement requirements without unnecessary expense by ensuring that any action we require is proportionate to risk. We will consider the circumstances of the case, the harm or potential harm caused, and the attitude and history of the business or person when considering formal action. Firm action, including prosecution and other legal or enforcement action will, however, be taken where appropriate against those who flout or persistently fail to comply with the law.

Consistent – we will carry out our duties in a fair, equitable and consistent manner. While Officers are expected to exercise judgement in individual cases, we will have arrangements in place to promote consistency, including effective arrangements for liaison with other enforcement bodies.

Targeted - we will prioritise our resources according to risk, through intelligence-led activities, and focused on those least likely to comply with the law. The Council will consider past compliance records and potential future risks, presence of good systems for managing risks, evidence of recognised

external accreditation, management competency, and willingness to comply with the law.

2.4 The Council has adopted a long term Vision to 2040. The Vision is for Hart 'To become the best place, community and environment to live, work and enjoy'. This is considered under these four themes:

- a) A Thriving Local Economy;
- b) A Clean, Green and Safe Environment;
- c) Healthy Communities and People; and
- d) An Efficient and Effective Council.

2.5 Our 2040 Vision provides a clear direction for Hart and will help to improve our use of resources and align our strategies to reach the outcomes our communities deserve.

2.6 Hart District Council has adopted the HART Core Values of:

Helpful – we will really listen to what our citizens, customers and residents want to achieve and help them reach their goals.

Approachable – we will be open, friendly and fair, working with others and helping others to succeed.

Responsive – we will strive to do things well and look for ways to innovate and improve.

Take Ownership – we will take responsibility, do what we say we will and see things through. People and teams will be required to work collaboratively with others both inside and outside the organisation and actively share learning and best practice.

2.7 The Council's vision is a District that appreciates and celebrates its diversity, challenges intolerance and discrimination, and positively promotes equality. It also, through the effective delivery of services and activities, is a District where all residents have the opportunity to contribute towards and benefit from the district's success. The Council is committed to working towards the elimination of discrimination, and to achieve equality of opportunity and outcomes for the residents and communities of Hart, and all employees of the Council.

2.8 The Council is committed to ensuring equality of opportunity for all. We will:

- Ensure equality of opportunity for all
- Ensure fair treatment of all
- Ensure equal access to services, to information and to employment
- Eliminate unlawful discrimination on the grounds of the protected characteristics of our employees and service users
- Promote good relations between different groups and individuals within our community

- Actively seek to address inequality, taking a lead where necessary, to ensure quality services for everyone in the community

2.9 In all enforcement activity it is important that Council adopts the legal concept that the guilt of an accused person cannot be presumed and that they must be assumed to be innocent until proven otherwise. All enforcement investigations will be kept confidential.

2.10 In designing this Plan we have sought to embed these principles and ensure our enforcement activities are undertaken in a way that supports businesses and people to comply and grow.

3. What We Deal With

3.1 The Council's Environmental Health & Licensing Enforcement Plan applies to the following functions:

- a) Animal Welfare
- b) Environmental Health including statutory nuisance, food safety, health and safety, public health, infectious diseases, and contaminated land
- c) Environmental Permitting
- d) Fly Tipping
- e) Hackney Carriage and Private Hire Vehicle Licensing (Shared Service with Basingstoke & Deane BC)
- f) Premises Licensing (Shared Service with Basingstoke & Deane BC)
- g) Scrap Metal Dealer Licensing
- h) Street trading
- i) Registration of Special Treatments

3.2 A list of some of the relevant legislation and guidance is included in the Annex to this Plan.

4. How to Make Contact with Us

4.1 If you are concerned with an environmental health or licensing matter, please inform us through one of the following channels:

Webform: www.hart.gov.uk/environmental-health-reporting-form

Email: eh@hart.gov.uk

Post: Hart District Council
Civic Offices
Harlington Way
Fleet
Hampshire
GU51 4AE

4.2 You will need to provide:

- The address of the site
- Your own contact details, including your name and address
- Details of the alleged breach, including the start date, if known
- An indication of what harm is being caused, and to whom
- Any details you have about the persons responsible

4.3 Complaints can be made by telephone, but will not be dealt with unless sufficient information is provided to allow the Officer to undertake an initial investigation. If the information given is found to be false, the enquiry will not be continued unless the breach is seriously harmful to the area. Similarly, anonymous complaints will not be investigated unless they are of a very serious nature, it is in the public interest to do so and the investigation is not reliant on the evidence of the complainant.

4.4 The identity of a complainant will be treated as confidential. However, if the complaint results in a court case, the success of that case may rely on evidence being given by the complainant. In such a case, the Council will discuss this with any potential witnesses before taking a decision about whether to prosecute an offender.

5. How we Prioritise our Investigations

5.1. Although we appreciate that all allegations of breaches of control are important to those they affect, to make the most effective use of the resources available, cases will be prioritised, taking into account the significance of the incident and the level of likely harm caused. These timescales are the longest period in which we intend to respond to a complaint and in all instances the service will seek to visit as soon as possible.

5.2 Any enforcement taken will aim to produce the highest reasonable standards of compliance within the shortest time. Officers will consider the following factors when determining the most appropriate enforcement action:

- a) Seriousness of the breach;
- b) Options for remedying the breach;
- c) Degree of risk;
- d) Circumstances of each case and the likelihood of recurrence;
- e) Previous history of the offender;
- f) Age and circumstances of the offender;
- g) Date of offence;
- h) Likelihood of achieving a satisfactory outcome;
- i) Precedent effect;
- j) Attitude of the offender;
- k) Legal imperatives, e.g. statutory requirement to serve a notice;
- l) Relevant guidance and codes of practice;
- m) Weight and admissibility of evidence;

- n) Public Interest; and
- o) Prevalence of the offence locally or nationally.

5.3 Our first response times are outlined as follows:

Priority 1 High Priority	Site visit up to 2 working days Major accident Notification of infectious disease Public health emergency Service of notice from date of witness of serious / urgent breach. Stray dog Notification of premises with imminent risk of health
Priority 2	Site visit up to 5 working days All other cases

6. Our Approach to Enforcement

6.1 We recognise that most people want to comply with the law. We want to cooperate with businesses and individuals to achieve compliance. If there is a problem, we want to resolve it by communicating clearly and encouraging people to behave responsibly. We will follow the “4 Es” approach to enforcement:



6.2 First, we will engage and explain how we think the person or business are not complying with the law and encourage them to change their behaviour to reduce the risk to public health, safety, welfare or to the environment.

6.3 Formal enforcement action is always a last resort. The Council consider facts of the case and assess them against the Regulators’ Code in determining whether it is expedient to take formal enforcement action.

6.4 The Council is committed to fair and objective enforcement ensuring that all its policies are applied in a non-discriminatory manner and aimed at promoting good community relations. This policy is applied in accordance with the principles of the Council’s Equality Policy.

6.5 Hart District Council is a public authority for the purposes of the Human Rights Act 1998. The Council will, therefore, apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

- 6.6 Should the Council conclude that a provision in this policy does not apply or is outweighed by another provision, it will ensure that any decision to depart from the policy will be properly reasoned, based on material evidence and documented.
- 6.7 Anonymous complaints, under normal circumstances, will not be actioned unless they are of a very serious nature and it is in the public interest to do so.

7. Enforcement Options

- 7.1 A variety of enforcement options available to the Council are set out below:

a. Advice

In the first instance, consideration will be given to whether advice regarding a breach or potential breach of legislation is appropriate. When advice is given it will normally be put in writing unless the breach is very minor or the matter is rectified on the spot.

b. Warning Letters

In certain circumstances it may be appropriate to issue a warning letter highlighting alleged offences to the person responsible for the alleged breach on how to avoid committing of similar offences in the future. A warning letter will set out what should be done to rectify the breach and the time-scale required for compliance. There must be sufficient admissible evidence available to substantiate the offence before a warning letter is issued.

c. 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 formal enforcement action is likely to result to secure compliance.

d. Statutory Notices

Subject to the specific rules governing the use of different statutory notices, they would generally be used where: there is a clear breach of the law, the degree of risk or environmental impact or harm from the situation is significant, and a remedy needs to be secured within a set period of time. In some instances, the service of a notice will be mandatory, for example, abatement notices under the Environmental Protection Act 1990. Subject to consideration of the evidence, it is likely that the negligent or wilful non-compliance with a statutory notice will result in prosecution.

Statutory notices may also be used to escalate enforcement action where a warning letter has been issued in relation to a breach but has not been complied with.

e. Seizure and Detention of Property, Documents and Equipment

Officers will, on occasion, require evidence for their investigation and will use their statutory powers to seize property, documents, samples and/or equipment. A receipt will always be given to the relevant person detailing what has been taken and why.

f. Fixed Penalty Notices

Fixed Penalty Notices (FPNs) can be issued for a variety of different offences. Prior to service, the officer must have sufficient evidence to support a prosecution should the FPN not be paid. The FPN provides the offender with an opportunity to pay a financial penalty as an alternative to being prosecuted and receiving a criminal conviction. If a fixed penalty is not paid, the Council will commence criminal proceedings or take other suitable enforcement action in respect of the breach. FPNs will not normally be considered where the breach is more serious or recurrent, for example, the offender has already received a FPN for the same offence in the same year.

g. Simple Caution

The Council may issue a Simple Caution where there is sufficient evidence to prosecute but where the public interest is not served by prosecution. A caution can only be administered where the offender consents to the caution and admits the offence. It will be formally recorded and may be cited in subsequent court proceedings.

h. Prosecution

The Council will take into account the criteria set down in the Code for Crown Prosecutors, when deciding when to prosecute. The Council will also consider whether there is a reasonable prospect of conviction based on the strength of the evidence against any statutory defence, mitigation and any other factors which may preclude a successful conviction.

i. Criminal Behaviour Orders (CBOs)

The Council has the power to apply to the court for a CBO where there has been successful conviction of a breach under the Anti-social Behaviour, Crime and Policing Act 2014. A CBO is an order designed to tackle the most serious and persistent anti-social individuals where their behaviour has brought them before a criminal court. The court can issue a CBO where it is satisfied that the offender has engaged in behaviour that caused or was likely to cause harassment, alarm or distress to any person, and it considers that making the order will help in preventing the offender from engaging in such behaviour in future.

8. Implementation

- 8.1 When considering formal enforcement action the Officer will discuss the circumstances with those suspected of a breach and take these into account when determining the best approach. This will not apply where immediate action is required to prevent or to respond to a serious breach or where to do so is likely to defeat the purpose of the proposed enforcement action.

- 8.2 The Officer will give clear reasons for any formal enforcement action to the relevant person or business at the time of the action. The reasons will be confirmed in writing at the earliest opportunity. The complaints and relevant appeals procedure for redress will also be explained.
- 8.3 If a business has a Primary Authority, the Officer will contact the Primary Authority before enforcement action is taken, unless immediate action is required because of imminent danger to health, safety or the environment. Officers will abide by OPSS guidance to Local Authorities in relation to the Primary Authority scheme.
- 8.4 When the Officer takes the view that enforcement action is required this will be discussed with their line manager who will decide on the appropriate action to be taken. This discussion should be recorded on the case file. Implementation will then be monitored by the Head of Place. The Council's Scheme of Delegation specifies the extent to which enforcement powers are delegated to Officers and is available at www.hart.gov.uk/EHDelegations

9. What you can expect from the Council

- 9.1 You are entitled to expect our Officer to:
- a) Be courteous, helpful and efficient.
 - b) Be consistent, transparent and accountable.
 - c) Identify themselves by name and show identification.
 - d) Provide a contact point for any communication.
 - e) Give clear advice in plain English.
 - f) Confirm advice in writing on request, explaining the action required and the time-scale for compliance.
 - g) Clearly distinguish between what you must do to comply with the law and what is recommended as best practice.
 - h) Minimise the cost of compliance by requiring action that is proportionate to the risk.
 - i) Give you reasonable time to comply (unless immediate action is necessary in the interests of public health or to prevent evidence being lost).
 - j) Notify you if the matter is to be escalated to legal proceedings.
 - k) Advise you how to make a complaint or representation in cases of dispute about our actions.
 - l) Maintain confidentiality, except where there is a legal obligation to disclose information.
 - m) Deal with applications for approval of establishments, licenses, registrations, etc. will be dealt with efficiently and promptly.
 - n) Ensure that, wherever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary duplication and delay.
 - o) Coordinate enforcement activities, share data and good practice with other enforcement agencies to support compliance and to ensure consistency of approach.

10. What to do if you are not satisfied with our service

- 10.1 We make every effort to provide good customer service and to follow correct procedures at all times. However, we are only human and make mistakes. If you are still not satisfied, the Council has a Complaints Procedure. Full details on how to make a formal complaint can be found at: www.hart.gov.uk/feedback
- 10.2 Please note that the Complaints Procedure only deals with processes and procedures in making a decision, it does not deal with matters where we have followed proper procedures, relevant legislation and guidance but came to a decision that you disagree with, i.e. that it was not expedient to take enforcement action or to serve an enforcement notice.
- 10.3 In some cases, there will be a legal right to appeal an enforcement decision, such as the right to appeal a legal notice. Where such a right exists, it will take precedence over Hart District Council's Corporate Complaints Procedure.
- 10.4 If, having gone through the formal Complaints Procedure, you remain dissatisfied, you may refer your complaint to the Local Government Ombudsman. Details of how to do this are on the Council's website at the link above, or on the Ombudsman's website www.lgo.org.uk

11. Review of Policy

- 11.1 This policy will be reviewed and updated with changes in legislation, guidance or other circumstances which may impact on the principles set out in this document. It will be routinely reviewed every 5 years.

Annex

All enforcement activities, including investigations and formal actions, will be conducted in compliance with delegated statutory powers and in accordance with formal procedures and codes of practice made under this legislation in so far as they relate to the Council's enforcement powers and responsibilities.

Legislation and guidance include, but is not limited to:

- [Anti-Social Behaviour, Crime and Policing Act 2014](#)
- [Code for Crown Prosecutors](#)
- [Co-ordination of Regulatory Enforcement \(Procedure for References to LBRO\) Order 2009 SI670/2009 \(The CRE LBRO Order\)](#)
- [Crime and Disorder Act 1998 – community safety](#)
- [Criminal Justice and Police Act 2001 – Community Safety](#)
- [Criminal Procedure and Investigations Act 1996](#)
- [Data Protection Act 2018](#)
- [The Enforcement Concordat: Good Practice Guide for England and Wales](#)
- [Human Rights Act 1998](#)
- [Legislative and Regulatory Reform Act 2006 \(LRRRA\)](#)
- [Legislative and Regulatory Reform \(Regulatory Functions\) Order 2007](#)
- [Police and Criminal Evidence Act 1984](#)
- [Primary Authority: A guide for Local Authorities](#)
- [Protection of Freedoms Act 2012 \(Code of Practice – Powers of Entry December 2014\)](#)
- [Regulation of Investigatory Powers Act 2000](#)
- [Regulators' Code, 6 April 2014](#)
- [The Regulatory Enforcement and Sanctions Act 2008 \(The RES Act\).](#)
- [Regulatory Reform Co-ordination of Regulatory Enforcement \(Enforcement Action\) Order 2009SI665/2009 \(The CRE Enforcement Order\).](#)