

Food Safety Procedure

Food Safety Enforcement Policy	
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Aims of procedure

Northampton Borough Council has developed and implemented an enforcement policy to help promote a fair, efficient and effective approach to all regulatory inspection and enforcement functions. This policy is intended to provide guidance for Northampton Borough Council Enforcement Officers, businesses, consumers and the public.

1. Introduction

- 1.1. The purpose of enforcement is to protect the public, the environment and groups such as consumers and workers. Enforcement can include offering advice and assistance as well as more formal action such as serving notices or bringing a prosecution. In exercising an enforcement role Northampton Borough Council is not acting on behalf of any individual, but is acting in order to promote the wider public interest within the respective legislative frameworks for the purposes outlined in law. The Council is committed to the effective delivery of its regulatory function for the purpose of promoting, protecting and enhancing the health, safety, welfare and overall wellbeing of all residents, workers and visitors to Northampton.
- 1.2. The Councils approach to enforcement will aim to:
 - Change the behaviour of the offender;
 - Change attitudes in society to offences which may not be serious in themselves, but which are widespread;
 - Eliminate any financial gain or benefit from non-compliance;
 - Be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
 - Be proportionate to the nature of the offence and the harm caused;
 - Restore the harm caused by regulatory non-compliance, where appropriate;
 - Deter future non-compliance.
- 1.3. All regulatory functions will be transparent, accountable, proportionate, consistent, and targeted only at cases in which action is needed.

2. Application

- 2.1. This policy will be used by officers when deciding what action to take when carrying out their statutory duties on behalf of Northampton Borough Council. Due to the individual nature of many cases covered by this Policy, the Policy cannot be considered to be exhaustive.
- 2.2. All authorised officers will abide by this Policy when making enforcement decisions. Any departure from the Policy will only occur in exceptional circumstances. Officers will be able to justify any deviation and their decision making process will be properly reasoned and based on material evidence. Such action will only be taken after full consideration and authorisation by an officer with delegated power.
- 2.3. Instances of non-compliance with this Policy will be recorded and reported directly to the Environmental Health and Licensing Manager as soon as is reasonably practicable.

3. Authorisation

- 3.1. Northampton Borough Council is responsible for the approval of this policy and any amendment to it. Enforcement action will be initiated by suitably qualified, experienced and competent enforcement officers. Officers who are competent through training, qualification and/or experience will be authorised in writing to undertake enforcement duties.

4. Equality and diversity

- 4.1. All staff will recognise and comply with Northampton Borough Council's Equality Strategy. The Council is committed to ensure that everyone is fairly and equally treated and as such enforcement decisions will be made irrespective of race, gender, disability, sexual orientation, age, religion or belief or any other characteristic, including pregnancy and maternity, gender reassignment and socio-economic factors.

5. Freedom of Information

- 5.1. Northampton Borough Council recognises the importance of open government and the national statutory framework relating to the disclosure of information as provided by the Freedom of Information Act 2000 and the Environment Information Regulations 2004. Individual requests for information will be provided with such assistance and such information as provided for in the law and codes of practice.

6. Regulator's Code

- 6.1. The Regulators' Code is a statutory code which aims to promote efficient and effective approaches to regulatory inspection and enforcement, improving the outcome of regulation without imposing unnecessary burdens. It sets out what businesses and others being regulated can expect from enforcement officers. The Legislative and Regulatory Reform Act 2006 requires Northampton Borough Council as a Regulatory Authority to have regard to the Code when determining its Enforcement Policy.
- 6.2. In certain instances the Council may conclude that a provision in the Code is either not relevant or is outweighed by another provision. When this occurs the Environmental Health and Licensing Manager will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and fully documented.
- 6.3. Enforcement action will be carried out having regard to the 6 provisions within in the Regulator's Code;
- 6.3.1. Regulatory activities will be carried out in a way that supports those we regulate to comply and grow.
- We recognise that a key element of our activity is to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection.
 - No inspection should take place without a reason.
 - The few businesses that persistently breach regulations will be identified and face proportionate and meaningful sanctions.
 - We will have effective arrangements in place to promote consistency in our enforcement practice.
 - We will have a range of mechanisms in place, both internal and external, to ensure that we are operating consistently both as an authority and in comparison with other authorities.

- We will choose proportionate approaches to those we regulate based on relevant factors such as business size and capacity.
 - We will identify remedies for non-compliance that are appropriate to the risks posed with a view to identifying and minimising costs to business.
- 6.3.2. As regulators we will provide simple and straightforward ways to engage with those we regulate and hear their views.
- 6.3.3. Regulatory activities will be based on risk.
- Regulators should use comprehensive risk assessment to concentrate resources in the areas that need them most. We will base our inspection programme on the Food Establishment Intervention Rating Scheme in the Food Standard Agency Food Law Code of Practice.
 - Enforcement activities will be targeted at areas of highest priority in terms of risk to health and food safety and achieving Northampton Borough Council's overall priorities.
 - Enforcement actions that are taken will be appropriate to the actual risk or potential to cause harm to health or the economic disadvantage of a person or business.
- 6.3.4. As regulators we will share information about compliance and risk. We will follow the principle of "collect once, use many times" when requesting information from those we regulate.
- 6.3.5. We will provide clear information and advice to help those we regulate meet their responsibilities to comply.
- We will help businesses and individuals to understand what is expected of them and what they should expect from Northampton Borough Council.
 - All enforcement staff will be helpful, courteous and efficient.
 - We will provide clear and open information.
 - Enforcement requirements will be easy to understand by individuals, businesses or organisations and a clear distinction will be made between legal requirements and advice, guidance, or good practice.
 - We will help business by advising on and assisting with compliance.
- 6.3.6. We will ensure our approach to regulatory activity is transparent.
- Whether individuals or businesses, all regulated entities will be treated with equal fairness, irrespective of differences in race, gender, religious or sexual beliefs.
 - We have a clear complaints procedure in place in case things go wrong.
 - We are accountable for the efficiency and effectiveness of our activities.
 - We are willing to justify enforcement decisions.
- 7. Enforcement action – a graduated approach**
- 7.1. We will follow a graduated approach to enforcement through informal action to formal action where necessary. However, where there is the potential for serious harm, where the offence is serious, or the offender has repeatedly failed to comply with a legal requirement, we will consider prosecution.
- 7.2. We recognise that prevention is better than cure, but where it becomes necessary to take formal enforcement action against a business, or member of the public, we will do so.
- 7.3. When considering formal enforcement action, Northampton Borough Council will, where appropriate and where reasonably practicable, discuss the circumstances with those suspected of a breach and take these into account when deciding on the best approach. This paragraph does not apply where immediate action is required to prevent or respond to a breach or where to do so is likely to defeat the purpose of the proposed enforcement action.

- 7.4. If a business is operating in more than one Local Authority and has chosen to have a registered Primary Authority Partnership under The Regulatory Enforcement and Sanctions Act 2008 we will, where required, comply with the agreement provisions for enforcement and notify the Primary Authority of the enforcement action we propose to take.
8. **Potential Action** - There are a wide range of tools available to us as an enforcement agency. The actions we may take include:
 - 8.1. Informal Action
 - 8.1.1. In certain circumstances, contraventions of the law may not warrant any formal action. This can be where the cost of compliance to the offender outweighs the detrimental impact of the contravention, or the cost of the required enforcement action to Northampton Borough Council outweighs the detrimental impact of the contravention on the community.
 - 8.1.2. Northampton Borough Council recognises that facilitating compliance through a positive and proactive approach can achieve higher compliance rates and reduce the need for reactive enforcement actions. We will provide advice and education through campaigns, leaflets, newsletters and one-to-one visits, aimed at raising awareness of a particular requirement or issue, at disseminating new information or guidance, or providing an opportunity to educate businesses and individuals on best practice. Compliance achieved through education, support, advice and guidance will be considered in order to adopt a balanced approach to decisions regarding enforcement to those it regulates.
 - 8.1.3. For minor breaches of the law we may give verbal or written advice. We 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. The time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of the non-compliance.
 - 8.1.4. Sometimes we will advise offenders about 'good practice', but we will clearly distinguish between what they must do to comply with the law and what is advice only. Failure to comply could result in an escalation of enforcement action.
 - 8.2. Formal action
 - 8.2.1. Formal action can be taken in the form of legal notices, suspension or revocation of approval, simple cautions, or prosecution. The decision to take formal action will be made following consideration of guidance laid down in the Food Standard Agency Food Law Code of Practice and Food Standards Agency official guidance and advice notes. In all cases the offender will be provided with information to help them to understand how to comply or make an appeal against the action that has been taken should they choose to do so.
 - 8.2.2. Formal Notice
 - 8.2.3. Certain legislation allows notices to be served requiring offenders to take specific actions or cease certain activities. Notices may require activities to cease immediately where the circumstances relating to food safety demand. In circumstances, the time allowed will be reasonable, take into account the seriousness of the contravention, the implications of the non-compliance and the appeal period for that notice. All notices issued will include details of any applicable appeals procedures.
9. **Seizure**
 - 9.1. Certain legislation enables authorised Enforcement Officers to seize food deemed not to comply with food safety requirements or any goods that may be required as evidence for possible future court proceedings. When we seize goods we will give the person from whom the goods are taken an appropriate receipt as soon as possible following the seizure.
10. **Simple Caution**

- 10.1. In appropriate circumstances, where a prosecution would otherwise be justified, a Simple Caution may be administered with the consent of the offender. A Simple Caution is an admission of guilt, but is not a form of sentence, nor is it a criminal conviction. For a Simple Caution to be issued a number of criteria must be satisfied:
- Sufficient evidence must be available to prove the case;
 - The offender must admit the offence;
 - It must be in the public interest to use a Simple Caution;
 - The offender must be 18 years or over.
- 10.2. We will also take into account whether the offender has received a simple caution within the last 2 years when determining whether a simple caution is appropriate for any subsequent offending. If during the time the Simple Caution is in force the offender pleads guilty to, or is found guilty of, committing another offence anywhere in England and Wales, the Caution may be cited in court, and this may influence the severity of the sentence that the court imposes. The refusal of an offender to be cautioned does not preclude the matter being passed for prosecution. In fact, any such failure will be a material consideration when deciding whether the offender should then be prosecuted for that offence.

11. Prosecution

- 11.1. While the primary purpose of enforcement decisions are to ensure that businesses and individuals manage and control risks effectively, thus preventing harm, prosecution is an essential part of enforcement. The decision whether to prosecute will take account of the evidential test and the relevant public interest factors set down by the Director of Public Prosecutions in the Code for Crown Prosecutors. This is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases.
- 11.2. No prosecution may go ahead unless there is sufficient evidence to provide a realistic prospect of conviction, and that prosecution would be in the public interest. The Code for Crown Prosecutors requires the decision to prosecute to be kept under continuous review, so that any new facts or circumstances, in support of or undermining the prosecutions cases, are taken into account in the decision to continue or terminate the proceedings.
- 11.3. Where, in the course of an investigation, Northampton Borough Council has collected sufficient evidence to provide a realistic prospect of conviction and has decided, in accordance with this policy and taking account of the Code for Crown Prosecutors, that it is in the public interest to prosecute, then that prosecution will go ahead.
- 11.4. Northampton Borough Council will consider the following factors in deciding whether prosecution is the most appropriate course of action:
- Seriousness of the offence;
 - Foreseeability of the offence or the circumstances leading to it;
 - Intent of the offender, individually and/or corporately;
 - The past and current performance of any business and/or individual concerned;
 - Attitude of the offender;
 - Deterrent effect of a prosecution, on the offender and others;
 - Personal circumstances of the offender;
 - Likelihood of the offender being able to establish a due diligence defence.
 - Statutory guidance;
 - Codes of Practice;
 - Any legal advice;
 - Policies and priorities of Government and Northampton Borough Council.
 - A person's age in relation to young people (termed 'juveniles') aged under 18.

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- 11.5. These factors are not exhaustive and those, which apply, will depend on the particular circumstances of each case. The investigating officer will decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

Comments

If you would like to make any comments about this policy please write to:

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This information can be made available in other languages and formats upon request. To discuss this and for any other help you may need in order to understand this document, please contact 0300 330 7000.

This Policy will be reviewed annually.