

**Access Selby**

*A new approach to public service*

**SELBY**

DISTRICT COUNCIL

*Moving forward with purpose*

# Corporate Enforcement Policy

*A new approach to public service*



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# 1. Introduction

- 1.1 At Selby District Council we have a number of duties to protect our district from harm. Therefore, we take a very serious approach to protecting individuals, animals, the environment and businesses from those who do not comply with the relevant laws or regulations. We regulate a number of functions within the district including: licensing (including alcohol and taxi), planning, fraud, housing and environmental health.
- 1.2 The purpose of this policy is to set out the main ways in which we can protect our residents, visitors, businesses, animals and the environment, whilst following the principles of good enforcement. It is not the purpose of this policy to provide an exhaustive list of all those laws we regulate or the powers of regulation available to us.
- 1.3 This policy is overarching for enforcement and sets out our general approach to enforcement (including civil and criminal enforcement action); it outlines what you can expect from us and what approach we will be taking to enforcement.
- 1.4 Through this policy we are looking to promote trust between us and those we regulate. We want you to have confidence in the advice we give and feel able to seek advice without fear of triggering unnecessary enforcement action.
- 1.5 We are always trying to improve the district and believe that effective enforcement through this policy will help us achieve our Corporate Plan 2015-2020 (available to view at [www.selby.gov.uk](http://www.selby.gov.uk)) by making Selby a great place to:
  - a. **do business** – by building confidence that effective and fair enforcement will see businesses treated with respect. We will also provide those businesses that operate lawfully the opportunity to thrive. We will achieve this by adopting a consistent approach to enforcement.
  - b. **enjoy life** – confidence that resources are utilised effectively to tackle higher risk cases; ensuring the district remains a safe and pleasant place to live.
  - c. **make a difference** – this policy will empower confidence in businesses, residents and visitors alike to report any breach(es). We will achieve this through ease of reporting and keeping those who report breaches informed of progress throughout the case.
- 1.6 Success of this policy is measured by the Enforcement Team's performance. The performance of the team is measured against the team's action plan, specifically, against any relevant service standard(s) and/or success measure(s).
- 1.7 This policy replaces our previous Corporate Enforcement Policy adopted in September 2012.
- 1.8 We take a proactive and risk based approach to enforcement. As part of this approach we will, from time to time, introduce specific campaigns where we will

target an area deemed to be a priority. Any breaches from the area deemed as a priority will be assigned more resources. This will give the priority area a higher profile providing more public education on how to remain compliant and make an example of those who flout the rules by adopting a zero tolerance approach to its enforcement. The priority area will be chosen by the Executive following a steer provided by elected members at Policy Review Committee.

- 1.9 In certain circumstances we will seek to raise awareness and increase compliance levels by publicising unlawful practices or criminal activity. Where appropriate the results of specific court cases may also be published. These publications will always be in accordance with the Data Protection Act 1998.

## 2. Principles of good enforcement

- 2.1 As previously mentioned we aim to protect our district whilst maintaining the principles of good enforcement. These principles are set out in law in the Legislative and Regulatory Reform Act 2006. We will exercise our regulatory activity in a way which is:
- 2.2 **Proportionate** – This means we will use risk based regulation and will not undertake enforcement for enforcement’s sake. Priorities will include those corporately chosen from time to time as mentioned in Para 1.8 and those breaches which are a high risk to individuals, animals, businesses and the environment. As part of measuring risk we will look at the likely consequence of action on the accused in comparison with the seriousness of the offence and only proceed with action where the potential punishment fits the offence. Repeated similar offences will be regarded as higher risk than if only a single incident of that offence had occurred. This can mean that where continued/persistent low risk offences become higher risk offences they may attract a more serious punishment.
- 2.3 **Consistent** – We recognise that enforcement is not and cannot be solved with a ‘one size fits all’ approach; each case is individual and we will assess them as such. Consistency comes through the application of these principles, this policy (and any other more specific ones), any relevant procedure(s) and the officers making the most of their professional experience, training and judgement. This will allow the officer to provide reliable, relevant and robust information and allow discretion to choose the most suitable route of enforcement in each case.
- 2.4 **Transparent** – It is our aim to be as honest with everyone involved with a case as we can be. We will let you know, clearly, what we expect of you and what you can expect from us in return. As part of our aim to be transparent we target all our publications to be appropriate to their audience; this will also include differentiating between legal guidance and best practice where necessary.
- 2.5 **Accountable** – To remain accountable, we aim to make it as easy as possible for you to give us feedback. We do this by following our Comments, Compliments and Complaints Policy, more details of which can be found at paragraph 10.

- 2.6 **Targeted** – we will target our enforcement resources towards those higher risk cases and those deemed to be a local or national priority. This does not mean we will ignore any reported cases. It is simply a matter of best using the resources we have available to tackle those cases which have the potential to harm our district the most.
- 2.7 To help target resources and activities we also use the information we collect wisely, following the ‘collect once, use many times’ principle. Where the law allows we will agree secure mechanisms to share information with other regulators and businesses.

### 3. General (Officer) Principles

- 3.1 When looking into a case we recognise that each and every one is unique and this is why we follow principles of good enforcement rather than a strict procedure. These principles are those defined above, those defined in the Regulator’s Code and those defined in the Cabinet Office’s Enforcement Concordat.
- 3.2 Only those officers duly authorised to do so by our scheme of delegation will undertake enforcement activities.
- 3.3 Our officers will give due regard to their training, legislation and supporting guidance, allowing them to make reliable, accurate and robust decisions and to give appropriate and accurate information, when necessary.
- 3.4 Our officers will be independent, fair and objective when dealing with a case. they will not allow any political view and prejudice or personal belief regarding any protected characteristic of any of those involved in the case cloud their judgement. The protected characteristics are found in the Equality Act 2010. We do not permit our officers to be affected by improper or undue pressure from any source.
- 3.5 All our relevant officers have been made aware of this policy and its requirements. Any departure from this policy will have to be justified and endorsed by the Lead Officer for Enforcement or other duly authorised officer.
- 3.6 Officers will always give regard to the policy when conducting any work; this ensures that we take action that is appropriate to the risk and to the seriousness of any breach of legislation. In most circumstances the officers have a range of actions available to them. However, in certain circumstances legislation is prescriptive and this will limit the discretion of the officer. In some circumstances persistent breaches will result in formal action being taken for what would normally be regarded as less serious breaches.
- 3.7 We understand that our customers have varied and busy schedules, and that, for example, some hours of operation will not coincide with normal office hours. For this

reason, where possible, we will try to find a mutually acceptable time or visit businesses during their normal trading hours.

- 3.8 Our officers will comply with the requirements of the particular legislation from which they are acting along with any associated guidance or codes of practice.

## 4. Regulator's Code

- 4.1 When developing policies and operational procedures relating to the regulatory functions and activities within the scope of the Regulator's Code ('the Code') we will duly regard the requirements of the Code. The Code only applies to those enforcement activities that we carry out under the relevant laws and regulations which are listed under Part 3 of the Legislative Reform (Regulatory Functions) Order 2007 as amended.
- 4.2 However, in certain circumstances we may need to depart from the Code. This may be for example because we conclude that a certain provision from the Code is not relevant or is outweighed by another relevant consideration. In any event, any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

## 5. Reporting the issue(s)

- 5.1 Investigations can occur either as a result of issues being reported to us, or we can discover the issues ourselves as part of our proactive approach to enforcement. When an issue is reported to us, this can be by: a member of the public, another business or a regulated person, another regulator or other third party. We may also provide information to another regulator if they are best placed to deal with any breaches of legislation we discover.
- 5.2 We have several ways in which you can report issues to us. You can:
- Complete an online form on the relevant page (for example fly-tipping or anti-social behaviour) on our website [www.selby.gov.uk](http://www.selby.gov.uk)
  - Call us on 01757 705101
  - Email us at [enforcementteam@selby.gov.uk](mailto:enforcementteam@selby.gov.uk)
  - Tell us at Access Selby, Market Cross Shopping Centre, Selby, YO8 4JS
  - Write to us at: Enforcement Team, Selby District Council, Civic Centre, Doncaster Road, Selby, YO8 9FT
  - Tell your local Community Officer
  - Tell your local Councillor – Councillor details can be found on our website
- 5.3 When an issue is reported to us, we will assess the information received and may make further enquiries to determine if the issue requires a full investigation – this may include us sending an officer out to do a preliminary investigation. This may be one of our Community Officers, Environmental Health Officers, Asset Coordinators

or other relevant officer. This officer will then report back with the details to establish if there has been a breach.

## **6. Investigating the issue(s)**

### **6.1 General conduct**

- 6.1.1 Enforcement action may result in us bringing either civil or criminal proceedings against an offender. How our investigations are conducted depends on whether the breach falls under legislation covering civil or criminal law.
- 6.1.2 We will carry out any formal interview(s) in line with this Policy and the Police and Criminal Evidence Act 1984.
- 6.1.3 We will carry out investigations in compliance with the relevant legislation and in accordance with any associated guidance or codes of practice, in so far as they relate to us.
- 6.1.4 By using this legislation (and associated guides) we control how evidence is collected and used. They also offer a range of protections to citizens and potential defendants.
- 6.1.5 In line with our principles we will keep all those involved in the investigations as well informed as possible about the progress of an investigation insofar as their involvement in the process is concerned. There may be times when it would jeopardise the investigation to keep certain people informed. On such occasions we will not provide any information and/or updates until such a time where the risk to the investigation has been deemed to be mitigated to an appropriate level.

### **6.2 Primary Authority**

- 6.2.1 We must consult with any primary authority before we take enforcement action against a business.

### **6.3 Partnership Working**

- 6.3.1 In certain types of enforcement partnership working is crucial to effective enforcement. A good example of this is the 'Safer Selby Hub'. Officers work closely with the Police and Social Services to ensure any issues are flagged and shared at an early stage. This allows for a coordinated approach to resolving issues to be achieved.
- 6.3.2 When tackling enforcement with partners we can have a shared or complimentary role. On occasion it will be more appropriate for other enforcement agencies or local authorities to deal with breaches of legislation, in these cases officers may pass details of the offence(s) to such other parties. In carrying out these duties we will still comply with our Enforcement Policy, but the other agencies will maintain the right to take any enforcement action that they consider to be necessary.

- 6.3.3 If an offender commits offences in a number of Local Authority areas, it may be more appropriate for one Local Authority to take a prosecution for all the offences, including ones that took place outside of its area. In such cases, we will enter into legal agreements with other councils for one authority to take the lead role: making provisions under section 19 of the Local Government Act 2000, section 22 of the Local Government Act 1972 or any other enabling power(s).
- 6.3.4 Our officers do not have the power of arrest. Therefore, as part of partnership working with the Police (or other agencies) instances may arise where the Police (or other agencies) consider that an arrest should be made in connection with our investigation.
- 6.3.5 When working with partners there may be situations where it is necessary to exchange information regarding enforcement activities with a partner organisation. In such circumstances, we will exchange the information, only in accordance with any established methods of information sharing and legal requirements. These include the requirements established by the Data Protection Act 1998, the Crime and Disorder Act 1998 and any information sharing protocols, codes of practice or memoranda of understanding that exist.

## **7. Deciding which action to take**

- 7.1 There is a range of actions available to us to take against those who breach enforcement regulations. These actions are set out across the different pieces of legislation that we regulate. A decision on what enforcement action we will take is based on the merits of each case and after a full consideration of the consequences and the implications of the action.
- 7.2 There are a number of considerations we will take account of when determining which action to take, these include:
- a) The previous history of the breach/accused – whether any similar situation has been found before
  - b) The seriousness of the alleged offence(s), including:
    - i. Risk to the public or the environment
    - ii. Any intent or recklessness of the person(s) committing the alleged offence(s)
    - iii. Any obstruction of our officer(s)
    - iv. Whether the alleged offence(s) are considered to be a special priority locally (as determined by Executive or nationally as determined by Central Government)
  - c) If considering prosecution or the breach may lead to prosecution, whether there is enough evidence to provide a realistic prospect of prosecution
  - d) Whether any further action be in the public interest
  - e) Whether the action is likely to be deemed an adequate deterrent to further breaches
  - f) Whether the action is proportionate to the nature of the breach and the harm caused



- g) When appropriate whether the action will aim to restore the harm caused by regulatory non-compliance
- h) Whether the action will eliminate any financial gain or benefit from the non-compliance.

7.3 Where appropriate decisions about what enforcement action we will take may involve consultation between two or more of the following:

- a) Investigating Officer(s)
- b) Senior Manager(s)
- c) Lead Officer(s)
- d) Senior Officer(s)
- e) Our Legal department
- f) Primary Authorities
- g) Other regulators

7.4 The decision to prosecute a case will be taken by those with authority to do so in accordance with our scheme of delegation.

7.5 The following lists some of the more common enforcement actions available to us. This list is not exhaustive and other actions may be used where appropriate:

## **7.6 Compliance Advice, Education and Support**

We are aware that the majority of our residents and businesses want to comply with the legal requirements. Therefore, where possible and appropriate, we will offer compliance advice education or support to the accused as the first form of enforcement action. This can be in several forms, for example verbal & written warnings. We take this approach as it offers a good use of resources and promotes a culture of trust and confidence. If a warning letter is issued and a similar breach is identified again, this letter will be considered when determining the most appropriate enforcement action.

## **7.7 Voluntary undertakings**

We may accept a voluntary undertaking from the accused where they accept responsibility and will correct any breaches accordingly and to the appropriate standard. Failure to adequately complete this undertaking will result in further enforcement action.

## **7.8 Statutory/Formal Notices**

7.8.1 Sometimes we are required to send a notice to stop an offender from doing an action that is a contravention of any relevant legislation. These notices include (but are not limited to):

**Planning Notices**

Breach of conditions  
Enforcement Notice  
Temporary Stop Notice  
Stop Notice

**Health and Safety:**

Improvement Notice  
Prohibition Notice

**Licensing:**

Notice to suspend Premises Licence  
Notice to suspend driver/operator  
Notice to suspend vehicle licence  
Closure order (imminent risk)

**Environmental Protection:**

Abatement Notice  
Variation Notice for an Environmental  
Protection Permit

**General:**

Detention Notice  
Closure Notice

**PSH & LA Housing:**

Improvement Notices  
Prohibition Notice  
Emergency Remedial Notice  
Hazard Awareness  
Demolition Order  
ASB/civil Injunction  
Notice Seeking Possession  
Introductory Tenancy Notice  
Introductory Extension Notice

**Food Hygiene:**

Detention of Food Notice  
Food Condemnation Notice  
Hygiene Emergency Prohibition notice  
Hygiene Improvement Notice  
Withdrawal of Detention of Food Notice  
Remedial Action Notice  
Notice of Determination that the Health Risk  
Condition Remains in Existence  
Notice of Intention to Apply for a Hygiene  
Emergency Prohibition Order

7.8.2 If you are issued a notice, it will clearly set out any actions that we need you to undertake. Common actions include stopping an activity immediately or steps which must be taken to rectify the breach. If we have included steps which must be taken to rectify the breach we will always include a reasonable timeframe in which to carry out these actions.

7.8.3. Failure to comply with a notice can be a civil or criminal offence and therefore may result in prosecution or in certain circumstances, where appropriate, we will carry out the work 'in default' and then we may recover our costs for doing so.

**7.9 Financial penalties – Fixed penalty notice (FPN)**

7.9.1 FPNs can be issued by different authorities, as a district council we can issue FPNs for:

- a. Littering
- b. Graffiti
- c. Fly-posting
- d. Nuisance parking (people selling or repairing cars on the road)
- e. Dog control offences
- f. Alarm noise (no nominated key holder)
- g. Noise Act offences
- h. Unauthorised distribution of free literature on designated land

- i. Abandoning a vehicle
- j. Waste receptacle offences

<b>When we will issue an FPN</b> We will only issue when <b>all</b> of the following apply	<b>When we won't issue an FPN</b> We won't issue if <b>any</b> of the following apply
✓ an offence has been committed	✗ there is no criminal liability
✓ an FPN is a proportionate response	✗ enforcement action is inappropriate or would be disproportionate for the offence
✓ there's evidence to support prosecution if the offender doesn't pay the fixed penalty	✗ prosecution is more suitable
✓ the offender understands why the FPN is being issued	✗ littering is done accidentally
✓ we believe that the name and address offered by the offender is correct	

7.9.2 When we issue an FPN we must state: the alleged offence, details about the offence, when and where the offence took place, how the FPN has been issued (in person or by post), the fine imposed (and if there is a prompt payment discount), when the fine must be paid by (we must give you at least 14 days) and how the fine can be paid.

7.9.3 Failure to pay your fixed penalty is a criminal offence. Therefore, if you do not pay your fixed penalty within the time given, we will initiate prosecution proceedings – unless there are exceptional circumstances for failure to pay. These legal proceedings must be commenced within 6 months of the failure to pay.

7.9.4 We cannot issue an FPN to any person younger than the age of 10 years old, we will, however, contact the parent or guardian of the child to make them aware of the child's behaviour. For those offenders aged less than 18 years old we will use special procedures and work with both the youth offending team and children's services.

## 7.10 Injunctive Actions, Enforcement Orders etc

7.10.1 Where appropriate we may seek an injunction or an order from the court. If granted this will mean that the court is giving direction to the offender that the breach is rectified and/or is prevented from re-occurring. Courts may also order that specified activities must be suspended until the breach has been rectified and/or safeguards have been put in place to prevent future breaches.

7.10.2 We seek enforcement orders following the issue of enforcement notices to allow the court the 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.

7.10.3 Failure to comply with a court order by an offender is considered to be contempt of court. This is a serious offence which may result in imprisonment.

- 7.10.4 In certain cases (eg Housing Benefit Fraud) administrative penalties can be used as an alternative to prosecution.

### **7.11 Simple Caution (previously known as a formal caution)**

We will use a simple caution to offer a proportionate response to low-level offending where the offender has admitted the offence. Simple cautions offer the delivery of swift, simple and effective justice which reduces the need for prosecutions. This still allows us to record an individual's criminal conduct for possible reference in future criminal proceedings or in a criminal record (or other similar checks). These are all contributory factors to the simple caution being an effective tool which reduces the likelihood of re-offending occurring. A simple caution can only be issued to an adult.

### **7.12 Prosecution**

- 7.12.1 Deciding to prosecute an offender is not a decision we take lightly. Before we decide to prosecute we will look at such things as:

- a. the seriousness of the offence
- b. whether the likely punishment of prosecution is proportionate to the seriousness of the offence
- c. if there has been any other enforcement action taken
- d. if the offender is purposefully and/or persistently breaking their legal obligations and this is likely to cause harm or loss to others
- e. if the breach is endangering to a serious degree the health and safety or wellbeing of people, animals or the environment
- f. if the offender has failed to comply with an enforcement notice, including non-payment of a fixed penalty notice

- 7.12.2 Any decision to prosecute must have regard to the Code for Crown Prosecutors (see paragraph 8). We will prosecute should our officers be assaulted or obstructed in the course of their duty.

- 7.12.3 A successful prosecution may result in the offender receiving a criminal record. In addition, the court will have power to add additional punishment as dictated by relevant legislation; this may include fines, prison sentences, the forfeiture and disposal of non-complaint goods and in some circumstances the disqualification of individuals from acting as company directors.

### **7.13 Refusal/Suspension/Revocation of licences**

- 7.13.1 As previously mentioned certain types of people and businesses/premises require a licence, registration or authorisation to legally operate. We therefore take the granting and continued use of these licences, registrations and authorisations very seriously.

- 7.13.2 Should we see the need to refuse, suspend or revoke one of these licences, registrations or authorisations we will usually require one or more of the following statements to apply:

- a. The individual is not/is no longer a fit and proper person

- b. Legal obligations which were likely to cause material loss or harm to others have been deliberately and/or persistently breached by an individual/the organisation
- c. An officer has been obstructed from doing their duty by an individual/the organisation
- d. The individual/organisation has deliberately and/or persistently ignored written warnings or formal notices
- e. There has been deliberate and/or persistent breach(es) of licence conditions or byelaws by the individual/organisation
- f. The individual/organisation have endangered, to a serious degree, the health, safety or wellbeing of people, animals or the environment.

#### **7.14 Seizure and Detention**

7.14.1 Certain legislation enables authorised officers to seize goods, vehicles or equipment. For example food that is unsafe or sound equipment that is being used to cause a statutory noise nuisance. When the council seizes goods an appropriate receipt will be given. Where the law requires, the council will produce seized goods before the Magistrates' Court.

7.14.2 In certain circumstances officers will make an application to the Magistrates' Court for forfeiture of the goods, vehicles or equipment. Forfeiture may be used in conjunction with seizure and/or prosecution where there is a need to dispose of the goods, vehicle or equipment to prevent them being used to cause a further problem or to prevent them re-entering the market place.

#### **7.15 Proceeds of Crime**

7.15.1 We are aware of the impact that the powers given to us under the Proceeds of Crime Act 2002 can have when we enforce against offences where the perpetrator has derived a material gain from the crime. We will therefore commence enforcement action using these powers when they are deemed both applicable and appropriate.

7.15.2 It is also possible for the Courts to instruct us to carry out a Proceeds of Crime Investigation when they consider it to be appropriate.

### **8. Code for Crown Prosecutors ('the CCP')**

8.1 The CCP is a code which is issued by the Director of Public Prosecutions and is widely available to view online. The CCP gives guidance on the general principles that as prosecutors we must apply when making decisions about prosecutions.

8.2 **Full code test** - Before we can prosecute, we must apply the two stages of the full code test. These stages are known as: (1) the evidential stage; and (2) the public interest stage.

8.3 **Evidential stage** - To pass the evidential stage and proceed to the public interest stage we must be satisfied that:

- a. There is enough evidence to justify prosecution of the defendant.
- b. The evidence will provide a “realistic prospect of conviction”
- c. The evidence will be admissible in court, reliable and credible – we are mindful that evidence must meet these criteria throughout our investigations

If we are not satisfied that all these criteria are met, we will not proceed with the prosecution.

8.4 **Public Interest Stage** - Once we are satisfied that we have passed the evidential stage, we then move on to the public interest stage in order to establish if prosecution is in the public’s interest. When determining if the case is in the public interest we must consider:

- a. How serious is the offence committed?
- b. What is the level of culpability of the suspect?
- c. What are the circumstances of and harm caused to the victim?
- d. Was the suspect under the age of 18 at the time of the offence?
- e. Is prosecution the proportionate response (or would another enforcement option be more appropriate)?
- f. Do sources of information require protecting?

The above list is not exhaustive or listed in order of significance.

## 9. Appeals

Generally speaking, appeals in relation to enforcement action are limited to those routes available to the appellant through the processes outlined in the relevant legislation to their case. However, to make this process as transparent as possible, we will inform you of any rights to representation or appeal and give information on the process involved in writing as soon as possible after the decision has been made.

## 10. Comments, Compliments and Complaints

It is our aim to be accountable for our actions. This is why we offer everyone the chance to have their say about how their experience with the Council has been. We offer this through our Comments Compliments and Complaints Policy which is available to view on [www.selby.gov.uk](http://www.selby.gov.uk).

## 11. Review

As a regulatory body, we are always monitoring changes to legislation. When changes take place, we review the policy and update it as necessary. We will also regularly carry out a review to monitor its effectiveness and keep it in line with best practice.