



**Isle of Wight
Council**

Isle of Wight Council

Community Services

Enforcement Policy

2025 - 2030

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1.0 Background

- 1.1 The [Legislative and Regulatory Reform Act 2006](#) ('LRRRA 2006') requires local authorities to publish an enforcement policy which is periodically reviewed. This policy should demonstrate how the regulators within Isle of Wight Council promote the legislative principles of good regulation (Part 2, s21 LRRRA 2006):
- a) regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent;*
 - (b) regulatory activities should be targeted only at cases in which action is needed.*
- 1.2 In addition, the Regulators' Code ('the Code') specifies that regulators must have regard to the Code when developing standards, policies or procedures that guide their regulatory activities.
- 1.3 The Code provides a framework for how regulators should engage with those it regulates.
- 1.4 There are six main principles within the Code which Regulators must consider that they:
- 1) Carry out their activities in a way that supports those that they regulate to comply and grow.*
 - 2) Provide simple and straightforward ways to engage with those that they regulate and hear their views.*
 - 3) Base their regulatory activities on risk.*
 - 4) Share information about compliance and risk.*
 - 5) Ensure clear information, guidance and advice is available to help those that they regulate to meet their responsibilities to comply.*
 - 6) Ensure that their approach to their regulatory activities is transparent.*

2.0 Purpose and Scope

2.1 This policy applies to all the legislation enforced by officers with delegated enforcement powers within the following services:

- 1) Community Safety
- 2) Environmental Health
- 3) Licensing
- 4) Trading Standards
- 5) Environment Officers
- 6) Waste Management

2.2 All of these services have enforcement responsibilities in order to protect the public, businesses, the environment and groups such as consumers, workers, residents and visitors as well as reducing criminal activity.

2.3 Enforcement action is at the discretion of the Local Authority and enforcement action may be taken after compliance has been achieved if it is in the public interest to do so.

2.4 This policy supports and supplements specific guidance, for example statutory codes of practice and other relevant documents produced by government bodies.

2.5 Enforcement includes any criminal or civil action taken by officers aimed at ensuring that individuals or businesses are legally compliant, do not increase crime, disorder or antisocial behaviour and that financial benefit from criminal activity is recovered.

2.6 The purpose of this policy is to ensure transparency in the approach to regulatory activities and provide guidance to enforcement officers, businesses and members of the public.

2.7 All officers shall abide by this policy when making enforcement decisions, unless it is considered by the relevant Service Manager or a nominated deputy that there would be immediate or significant risk to the public or the environment. Any departure from this policy must be justified in writing and approved by a member of the relevant service management

team. Officers who make these decisions must be appropriately qualified with relevant authorisations in place.

- 2.8 Regulatory and enforcement functions will be undertaken in a fair, equitable, non-discriminatory and consistent manner. Consistency will be promoted by following clear standards of enforcement and where necessary through liaison with other authorities and enforcement bodies.

3.0 Approach

- 3.1 Services within the Communities Directorate as set out in paragraph 2.1 (Purpose and Scope) recognise the importance of providing advice and support to businesses in order to achieve compliance as well as supporting economic development and growth. However, where it becomes necessary to take enforcement action against a business, or individual, such action will be taken. Regulators must strive to apply the enforcement policy consistently, but ultimately decisions will be made on a case-by-case basis.
- 3.2 There is a wide range of tools available to officers. In principle, a logical process of regulation and enforcement should take place where offences have been committed. This should be a graduated approach with stages of informal/formal warnings prior to consideration of prosecution, revocation or other restrictive enforcement. Although there may be situations where the context and severity would result in more immediate enforcement.
- 3.3 The actions which can be considered are:
- 1) No action;
 - 2) Informal action and advice;
 - 3) Referral to another agency;
 - 4) Fixed Penalty Notices;
 - 5) Statutory notice or order or civil injunction under the Anti-Social Behaviour Policing and Crime Act 2014;
 - 6) Seizure/forfeiture;

- 7) Refusal, suspension of a licence, permit or consent;
- 8) Revocation of a licence, permit or consent;
- 9) Review of Premises Licence;
- 10) Simple Caution;
- 11) Prosecution;
- 12) Work in default;
- 13) Restrictions on trading activities;
- 14) Other injunctions;
- 15) Criminal behaviour order;
- 16) Proceeds of Crime application (confiscation); and
- 17) Closure (under the Anti-Social Behaviour Policing and Crime Act 2014).

3.4 Initial decisions regarding enforcement action will be the responsibility of the authorised officer dealing with each particular case. If the officer believes the most appropriate course of action is one of those outlined from 3.3 (8) onwards (Revocation of a licence, permit or consent), they will instigate a meeting, to be known as an authority panel.

3.5 An authority panel will consist of a minimum of two members of the relevant Service Management Team or an appointed senior officer and a representative from Legal Services. The investigating officer(s) will be present at the panel but will be impartial from the decision making process.

3.6 The accused will be contacted a minimum of 10 working days prior to the authority panel meeting and invited to make a written submission. The panel will discuss the most appropriate course of action after considering the submissions, along with the evidence collated as part of the investigation and the public interest test.

3.7 When taking enforcement action, the services will:

- 1) Seek to adopt the most effective approach to enforcement by co-ordinating action between enforcement agencies both internal and external to the council as well as other organisations who also have powers to take action.
- 2) Take account of any relevant approved code of practice or other guidance document.

- 3) Clearly explain what needs to be done to comply with the law and confirm in writing including expectations of timescales.
- 4) Distinguish between requirements that are stated in law and recommendations that are intended to achieve higher standards, i.e. best practice.
- 5) Provide an opportunity for the individual or business suspected of an offence to make representations before an enforcement decision is taken, unless immediate action is required.
- 6) Where immediate action is considered necessary and there is a departure from this policy, provide an explanation of why such action is required in writing within 10 working days of that decision, to the affected person.
- 7) Provide information of the right of appeal, where one is available.
- 8) Where applicable, contact the nominated Primary Authority (as established by the Regulatory Enforcement and Sanctions Act 2008) before giving detailed advice or taking enforcement action, unless in an emergency situation.
- 9) Where applicable, liaise with the Accredited Financial Investigator in relation to confiscation proceedings under the Proceeds of Crime Act 2002.

4.0 Considerations

4.1 In order to ensure that decisions are consistent, balanced, fair and relate to common standards ensuring the public and/or environment are adequately protected, the following principles will be considered by the investigating officer and the authority panel:

- **Proportionality to the circumstances**

Proportionality in securing compliance will involve taking account of the degree of the risk of harm caused by non-compliance. Sometimes, however, the precautionary principle will require enforcement action to be taken even though the risks may be uncertain. The Communities directorate reserves the right to take enforcement action after compliance has been achieved, where it is in the public interest to do so.

- **Consistencies as to process and outcome**

Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar outcomes within which a degree of discretion is available.

- **Transparencies to all duties**

Transparency means helping those regulated to comprehend what is required of them at the outset and setting out what they may expect from the Communities directorate in return. It also involves making clear what remedial action is required from the regulated person and providing details of any rights of appeal etc.

Transparency will also include ensuring that the complainant/aggrieved receives feedback (where requested) and informed of the decision-making processes and the outcome of any enforcement activity undertaken within the scope of this policy.

- **Targeted at the more serious risks**

Targeting of enforcement action means prioritising and directing regulatory effort effectively. This means concentrating on the activities which create the most serious risk, previously identified through risk prioritisation.

- **Public interest and evidential tests**

When considering further action in accordance with this policy and deciding on the most appropriate sanction, the public interest and evidential tests will always be considered under the Criminal Procedure and Investigations Act 1996. These tests will be regularly reviewed throughout the investigation and consideration will be given to cease an investigation if these tests are no longer satisfied. The evidential test is a crucial stage in determining whether a criminal case should proceed and requires prosecutors to assess if there is sufficient evidence to provide a realistic prospect of conviction against each defendant on each charge. Relevant public interest tests that will be considered throughout will be the seriousness of the offence, the harm caused, the impact of communities and the age and maturity of the suspect at the time of the offence.

4.2 Where possible, regulators will take into account the views of any victim, injured party or relevant person to establish the nature and extent of any harm or loss and its significance in making the decision to take formal action.

4.3 When considering what may be the most appropriate enforcement action, the following factors will be considered (included but not limited to);

- 1) The seriousness of the regulatory failure.
- 2) The past performance of any business and/or individual concerned.
- 3) The extent of cooperation by the offender and evidence of remedial actions.
- 4) Any obstruction by the offender of authorised officers in the lawful execution of their duties.
- 5) Any identified risks to public health or safety.
- 6) Any statutory guidance or relevant codes of practice.
- 7) Situations where it is evident that vulnerable individuals or vulnerable groups have been exploited.
- 8) Offences involving deceptions, fraud or negligence.
- 9) Evidence of wilful disregard for the law.
- 10) Offences which create significant financial burden to the taxpayer or impact at a community-wide level or that undermine local business confidence.

When deciding on the most appropriate method of enforcement the officer and authority panel will also consider aggravating factors and mitigating factors. These include but are not limited to;

Aggravating factors:

- 1) The seriousness of the offence;
- 2) Consequence of non-compliance/continued non-compliance;
- 3) Previous history of non-compliance and whether the offence continued over a long period of time or involved a series of offences against the same or different victims;
- 4) Age and/or vulnerability of the victim(s);
- 5) Prevalence of the offence and the community impact including the impact on the victim, vulnerable groups or quality of life of those in the community;
- 6) Where there is any evidence of the crime being motivated by hate (hate crimes), i.e. racial hatred;

- 7) Any obstruction on the part of the offender, including (but not limited to) the offender(s) attempting to conceal their identity, whether directly or indirectly such that the victim and/or investigating agencies cannot easily identify or trace the person(s);
- 8) Lack of remorse;
- 9) Wilfulness of non-compliance;
- 10) The offender(s) have acted fraudulently, is reckless or negligent in their activities; and
- 11) There is significant risk to public health, animal health, safety or to the environment;

Mitigating factors:

Admission of guilt (given under caution);

- 1) Making timely and appropriate compensation to the victim(s);
- 2) Co-operation with authorities throughout the investigative process;
- 3) The existence of a primary authority agreement;
- 4) Effectiveness of the enforcement options;
- 5) Previous history and good character;
- 6) Age and health of the suspect(s) under investigation;
- 7) Degree of culpability;

5.0 Enforcement Options

5.1 **No Action**

This will be appropriate for less serious offences or minor technical breaches, which are immediately remedied whilst the officer is still on the premises or where it is anticipated that the problem will be removed shortly afterwards. A decision of no action may also be taken where formal enforcement is inappropriate in the circumstances.

5.2 **Informal Action & Advice**

Informal action includes offering advice, written warnings and requests for action, the use of letters, informal notices and inspection reports. Such correspondence will be in writing identifying the non-compliance, giving advice on how to comply and a deadline by which to do it. Time allowed for rectifying breaches must be reasonable. Failure to comply with warnings could later escalate to enforcement action.

5.3 **Referral to another Agency**

Sometimes the infringement may be more appropriately dealt with by means of referral to another agency or local authority. Any existing memorandums of understanding or other written agreements, as well as informal discussions with relevant agencies, will be considered when determining the most appropriate enforcement agency.

5.4 **Fixed Penalty Notices**

Certain offences can be dealt with by issuing fixed penalty notices where prescribed by legislation. The fixed penalty notice is recognised as an enforcement tool and enables an offender to avoid a criminal record by discharging their liability to a prosecution for the original offence. Where legislation permits, an offence may be dealt with by way of a Fixed Penalty Notice, on the first occasion without issuing a warning.

If a fixed penalty notice is not paid, then the process will automatically proceed to an authority panel to determine what further action is required. In other cases where prosecution is not an option, the non-payment of the notice will be pursued through the civil recovery process.

The setting of fixed penalty notices (where it is required to be set by the local authority) will be agreed by the Chair of the Environment and Community Protection committee in consultation with the Strategic Director for Communities and Legal Services.

5.5 **Statutory Notice, Order or Civil Injunction**

A Statutory Notice includes Community Protection Notice and Emergency Prohibition notice/orders along with other notices prescribed by statutory legislation.

Civil Injunction relates to those applied for under the Anti-Social Behaviour, Crime and Policing Act 2014.

This should be used in circumstances where:

- 1) There is an imminent risk; or
- 2) The consequences of not taking action would be unacceptable; or
- 3) There is no confidence in that voluntary compliance will be gained; or
- 4) Legislation and/or Codes of Practice deem it necessary; or behaviour is unreasonable, persistent and has a detrimental impact on the quality of life of those in the locality; or
- 5) There is antisocial behaviour likely to cause harassment, alarm or distress.

Any time allowed to rectify the offence will be reasonable in all circumstances. Where there is an opportunity to appeal a notice, information on how to appeal will be provided with the notice.

5.6 **Seizure**

Authorised officers are able to seize goods, equipment or documents where appropriate. In some circumstances voluntary disposal or surrender of goods may be permitted.

5.7 **Refusal, Suspension of a Licence, Permit or Consent**

This will be used in circumstances where there:

Is an imminent risk; or

- 1) The consequences of not taking action would be unacceptable; or
- 2) There is no confidence in that voluntary compliance will be achieved; or
- 3) Where Legislation and/or Codes of Practice deem it necessary or justified.

5.8 **Revocation of a Licence, Permit or Consent**

This will be used in circumstances where there:

- 1) is an imminent risk; or
- 2) the consequences of not taking action would be unacceptable; or
- 3) there is no confidence that voluntary compliance will be gained; or
- 4) where legislation and/or codes of practice deem it necessary or justified.

5.9 **Review of a Premises Licence**

Under the Licensing Act 2003, responsible authorities are able to call for a review of the Premises Licence where one or more of the four licence objectives are not being met. The licensing objectives are:

- 1) the prevention of crime and disorder
- 2) public safety
- 3) the prevention of public nuisance
- 4) the protection of children from harm

5.10 **Simple Caution**

A Simple Caution will only be issued for offences where there is no imminent risk or where the offence is readily admitted, and immediate action has removed the imminent risk. A caution can be used to:

- 1) deal quickly and simply with less serious offenders
- 2) to divert them from unnecessary appearance in the criminal courts
- 3) to reduce the chances of their re-offending

Simple cautions won't be used as an alternative to prosecutions where insufficient evidence is available. A simple caution is an admission of guilt and does not constitute a criminal conviction. Prior to a simple caution being considered, checks will be made to ascertain whether any cautions are in place for the offender that may make a simple caution not an option to consider to be administered.

5.11 **Prosecution**

The Communities directorate acknowledge that prosecution should always be the last resort for effective regulation. There are certain circumstances which justify immediate prosecution which are:

- 1) the offence involves a failure to comply in full or in part with the requirements of a statutory notice;
- 2) there is an obstruction or assault of an officer performing their duties;
- 3) false or misleading information is provided to officers during any investigation or inspection.

A decision to prosecute will be independently assessed by the IWC's criminal prosecutor; this decision is separate to any decision of the authority panel and before any charges are authorised to be put before a criminal court. The prosecutor will apply the Code for Crown Prosecutors, which requires prosecutors to objectively review a matter and determine whether it satisfies both an evidential and public interest test.

5.12 **Work in Default**

Certain legislation provides the power to allow for the enforcing agency to carry out works in default to ensure the issue or problem is resolved. The costs of this work will, where possible, be recharged to the person responsible for causing the problem or issue. This will be recovered as a civil debt and may be placed on a property as a land charge.

5.13 **Restriction on Trading Activities**

Proceedings for Enforcement Orders may be considered under Part 8 of the Enterprise Act 2002 regarding continuous and/or multiple infringements of specified civil and criminal legislation as prescribed in Schedule 13. The trader's history, previous guidance or business advice provided by Trading Standards and the trader's response will be a relevant consideration.

5.14 **Injunctions**

An injunction will be considered where it is necessary for activity to be prohibited or forced compliance is required. The Communities directorate acknowledges that this would not be a normal course of action but may be required in circumstances where other remedies are not as effective.

5.15 **Criminal Behaviour Order**

Where there is a decision to proceed with a prosecution for an offence for criminal activity and the non-compliance relates to antisocial behaviour, an application for a criminal behaviour order under the Anti-social behaviour Crime and Policing Act 2014 will be considered.

5.16 **Proceeds of Crime Application**

Where we believe that there has been financial benefit from the criminal activity, the authority may make an application under the Proceeds of Crime Act 2002 to restrain assets from satisfying a confiscation order and to compensate victims(s). Where investigations identify money laundering offences, we will prosecute for these offences in accordance with this policy.

5.17 Closure/Voluntary Closure/Restricted Premises Orders or Restricted Sale Orders

Where there is an imminent risk or where premises are being used to commit nuisance or disorder officers will consider that a closure is necessary. Officers will explore the option of voluntary closure where it is appropriate to do so. This will also include consideration of closure notices, restricted premises orders and/or restricted sales orders for age restricted offences relating to alcohol and/or tobacco.

6.0 Equalities and Human Rights

- 6.1 All enforcement decisions will be fair, independent and objective in accordance with the Equality Act 2010. Such decisions will not be affected by improper or undue pressure from any source.
- 6.2 Officers will consider the implications of the Mental Capacity Act 2005 and seek further advice or guidance if necessary.
- 6.3 All enforcement activities, including investigations and formal actions, will always be conducted in compliance with the statutory powers of the officer and all other relevant legislation, including but not limited to the Police and Crime Evidence Act 1984, the Criminal Procedure and Investigations Act 1996, the Human Rights Act 1998, the Regulation of Investigatory Powers Act 2000 and the Criminal Justice and Police Act 2001, and in accordance with any formal procedures and codes of practice made under this legislation in so far as they relate to enforcement powers and responsibilities.

7.0 Conflicts of Interest

- 7.1 The public and those being regulated by the council have a right to expect that all officers and the services provided will be fair, transparent and accountable.
- 7.2 All employees of the council are required to follow the council's code of conduct, which addresses personal conflicts of interest and expectations for officers.

8.0 Data Sharing and Freedom of Information

- 8.1 Data obtained as part of a council officer's activity as a regulator, enforcer or with the provision of discretionary services may be shared with other officers/services within the council. This may also include data/information being shared with other local authorities, regional/national organisations and other enforcement agencies whom we work with as per the Council's privacy notice, which can be found on its website at <https://www.iow.gov.uk/about-us/legal/privacy-notice/>. This will be done in accordance with appropriate information sharing gateways.
- 8.2 We will work with national enforcement teams. Such teams investigate cases which have regional or national interest and they may provide evidence to relevant local authorities, which may include the Isle of Wight Council, or other enforcement bodies who will evaluate the facts in order to make a decision on how to proceed further based on our enforcement policy.
- 8.3 The services do not guarantee the confidentiality of information around enforcement activity and it may receive requests under various statutory requests provisions for information and data. These will be dealt with in accordance with the council's policy on dealing with such enquiries Access to Information Policy.

9.0 Appeals and Complaints

- 9.1 All officers undertaking enforcement action will notify the individual or business of their appeal rights and the mechanism for doing so.
- 9.2 On occasions there may be no legislative mechanism to lodge an appeal. In such circumstances the individual may make a representation through the Nominated Complaints Officer (NCO) as detailed in the council's corporate complaints policy.

10.0 Publication of Enforcement Action

- 10.1 The Regulators' Code stipulates that the council should publish, on a regular basis, details of their performance against their service standards, including feedback, complaints and any appeals against their decisions. We will seek to raise awareness and increase compliance levels by publicising specific enforcement action that is taken where it is in the public domain. Publication of any sanctions detailed within this policy is at the discretion of the members on the relevant authority panel.

11.0 Children and Young People

- 11.1 The Council is aware of its duty to ensure that it is acting in accordance with the Children's Act 2004 and in particular have regard to the need to safeguard and uphold the welfare of children. Alongside this duty, the Council takes its role seriously in making sure young people are aware of their responsibilities and its role in educating them to encourage good behaviour in the first instance. Formal action including prosecution will be a measure of last resort.