

APPENDIX A
GOSPORT BOROUGH COUNCIL
GENERIC ENFORCEMENT POLICY

1 INTRODUCTION

1.1 This Generic Enforcement Policy is relevant to enforcement action that may be administered by Gosport Borough Council and is supplemented by further policies for specific functions as set out in the schedule to this policy. Any reference to the Council's enforcement policy includes this generic enforcement policy and any relevant supplementary policy.

1.2 Most people want to comply with the law. The Council adopts a positive and proactive approach to enable compliance with the law by providing information and raising awareness, providing advice and assistance whenever possible to the public, businesses and organisations and by responding proportionately to non-compliance process.

1.3 The Council is committed to carrying out its duties in a fair transparent and consistent manner and ensuring that enforcement action is proportionate to the seriousness of the failure to comply with statutory requirements. This policy and the further policies supplementing this policy will always be considered whenever a decision on enforcement action is made. The Council will, where appropriate, consider the guidance given in case law, codes of practice, LACORS circulars, other advisory documents, the Enforcement Concordat and the Code for Crown Prosecutors.

1.4 Elected members have approved this Policy. The Borough Solicitor will review this Policy at regular intervals and any further changes to it will be approved by elected members.

2 APPROACH TO ENFORCEMENT

2.1 The Council recognises the importance of ensuring that all enforcement decisions are proportionate to risk, clearly explained and relate to common standards to ensure the public is adequately protected.

2.2 Enforcement Action should :-

- Aim to change the behaviour of the offender
- Aim to eliminate any financial gain or benefit from offending
- Be responsive and take account of what is appropriate for the particular offender, 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
- Deter further offending

2.3 Each case must be considered on its own merits but Officers will interpret and apply legal requirements and the Council's enforcement policy fairly and consistently.

2.4 The Council recognises the need for its officers to interpret and apply relevant legal requirements and enforcement policies fairly and consistently between like-regulated entities in similar situations.

2.5 Following an investigation and after having considered all the relevant information, the Council's enforcement policy the following enforcement options may be available:

- No action
- Verbal warnings
- Written warnings
- Statutory Notices
- Administrative Penalties
- Fixed Penalty Notices
- Interview Under Caution
- Simple Cautions ('Caution')

- Prosecutions
- Seizure of goods, remedial actions, and recovery of costs
- Anti-Social Behaviour Orders (“ASBOs”)

2.6 The decision whether to prosecute or issue a Caution is delegated to the Borough Solicitor following a written referral by the relevant Service Unit Manager. The Service Unit Manager must outline in the referral how they have considered this policy and any specific enforcement policy relevant to their area of work in reaching their decision to make a referral to the Borough Solicitor for a caution or prosecution.

2.7 The Borough Solicitor and relevant Service Unit Manager will base the decision to prosecute or caution on the relevant legislation and case law, the Council’s enforcement policy, the Code for Crown Prosecutors, any guidance given by LACORS, and other government agencies.

2.8 Where the legislation permits, officers may administer enforcement options other than prosecutions and Cautions where they have authorised to so by their Service Unit Manager in accordance with the scheme of delegation in the Council’s constitution

2.9 The Council is a signatory to the Enforcement Concordat produced by the Local Government Association and Cabinet Office. This Enforcement Policy confirms that the Council is committed to implementing Concordat principles in all enforcement action. The Council’s enforcement policy also has regard to the Regulators Compliance Code, where appropriate.

2.10 The decision to take enforcement action will depend on the severity of the non-compliance. Factors that will be taken into consideration include:

- the risk that the non-compliance poses to the safety, health or economic welfare of the public at large or to individuals;
- evidence that suggests that there was pre-meditation in the commission of an offence;
- whether the alleged offence involves a failure to comply in full or in part with the requirements of a statutory notice or order;
- whether there is a history of previous warnings or the commission of similar

Offences; and

- any aggravating circumstances such as obstruction of an officer or aggressive and / or violent behaviour.

2.11 Enforcement decisions and actions will be made with due regard to the provisions of the Human Rights Act 1998 and anti-discrimination legislation. In the public interest, matters concerning non-compliance will be shared, where appropriate, with other enforcement agencies and within the Council. Where this takes place, due regard will be paid to the provisions of the Data Protection Act 1998.

3 ENFORCEMENT OPTIONS

The following enforcement options may not be available in all cases.

No action

3.1 This will be appropriate for minor offences or technical breaches that are immediately remedied.

Verbal warnings

3.2 Verbal warnings are appropriate for advising about contraventions that are easily remedied. The officer will usually give the person, business or organisation suitable advice and set an appropriate timescale for remedial action. It should, however, be noted that such verbal warnings may not be appropriate to all potential enforcement action, for example, in health and safety inspections they are expressly not permitted under statutory guidance. All verbal warnings will be recorded on the Council's internal systems.

Written warnings

3.3 Written warnings should be issued for more serious contraventions and those that have not been remedied by the offender when requested. Written warnings will be recorded on the Council's internal systems.

Written warnings will state clearly and simply:

- The requirements contravened

- What remedial action is required
- The consequences of non-compliance i.e. fixed penalty notice, legal proceedings, revocation of licence, etc

Statutory Notices

3.4 In order to prevent the commission of criminal offences where there is a likelihood of non compliance with statutory requirements specific legislation permits the Council to serve Statutory Notices on the person likely to be responsible for the contravention. Statutory notices are also served where there has been non compliance with statutory requirements as a corrective enforcement action. The Council will normally carry out works in default of a statutory notice where the legislation allows. If works are carried out in default the Council will normally seek to recover the costs of such works from the person responsible.

Administrative Penalties

3.5 In cases of Housing Benefit/Council Tax Benefit fraud, an Administrative Penalty will be considered as an alternative to prosecution. An Administrative Penalty is a financial penalty equivalent to 30% of the benefit overpayment. There must be grounds for criminal proceedings, but it may be considered that prosecution is not the most expedient action. An Administrative Penalty cannot be offered as an alternative where it is considered that a prosecution would be unlikely to succeed - there must still be sufficient evidence to justify court action.

Fixed Penalty Notices

3.6 A significant number of criminal offences are covered by the Fixed Penalty regime. An authorised officer may offer a person a Fixed Penalty as an alternative to prosecution or caution where there is evidence that an offence has been committed for which a Fixed Penalty can be offered and administered. Fixed Penalties should be issued as a more efficient enforcement action than prosecution where it is more proportionate to the offence. Fixed Penalties should be used under the same guidelines for prosecution. If a Fixed Penalty is accepted by a person and paid in full within 14 days to the Council this discharges the person's liability to prosecution or caution. Failure to pay a Fixed Penalty fine within 14 days may result in a prosecution or caution in respect of the offence that the Fixed Penalty was issued for. The administration of Fixed Penalties is undertaken

by officers who have been authorised to do so by their relevant Service Unit Manager in accordance with the scheme of delegation in the Council's constitution.

Interview Under Caution

3.7 If there is evidence that suggests that a person or organisation may have committed a criminal offence the Council may ask that person or organisation to attend an Interview Under Caution at the Town Hall. The interview is held in order to give the person or organisation an opportunity to provide an explanation of the events that have occurred, although should evidence emerge during the interview that the person or organisation has committed an offence, they may be prosecuted. The interview **may be** taped and **will be** conducted in accordance with the Police and Criminal Evidence Act 1984.

3.8 Simple Cautions ('Caution')

A Caution is an alternative to a prosecution for some enforcement actions. The Defendant must admit to the offence and agree to accept a Caution. Where a Caution is not accepted the Council will consider prosecution through the Courts. A criminal **record** check will be undertaken by the Council before this option is considered. A Caution can only be considered where the factors for a prosecution are met; there is not a lesser test. A Caution may be considered where there is an acceptance of guilt and remorse is shown. A caution may be issued by post. Cautions should be used under the same guidelines for prosecution (see below).

Prosecutions

3.10.1 In all cases where prosecution is being considered the investigating officer must consider both the Evidential and the Public Interest tests as defined in the Code for Crown Prosecutors. Prosecutions should be brought without unnecessary delay. Failure to do so may be a breach of Human Rights legislation and lead to a prosecution being dismissed by the Court.

3.10.2 The first stage of the test is consideration of the strength of the evidence that will be relied upon at Court. The officer must be satisfied that there is sufficient evidence which is admissible in court and which is reliable so that there is a realistic prospect of conviction if the matter were to be prosecuted at Court. Officers may wish to seek the advice of the Borough Solicitor with regard to the evidence in individual matters.

Ultimately it is for the Borough Solicitor to decide whether or not the evidential test is satisfied.

3.10.3 If the evidential test is satisfied the officer must consider whether it is in the public interest to prosecute or Caution in accordance with the Council's enforcement policy, Code for Crown Prosecutors, the Enforcement Concordat. The decision to prosecute is very significant and is related to the seriousness of the offence. In general it is reserved for those persons who blatantly disregard the law, refuse to implement basic legal requirements and those who put the public at risk.

3.10.4 Public Interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the offender. Some factors may increase the need to prosecute but others may suggest that another course of action would be better.

3.10.5 The following lists of some common public interest factors, both for and against prosecution, are not exhaustive. The factors that apply will depend on the facts in each case.

3.10.6 Some common public interest factors in favour of prosecution.

The more serious the offence, the more likely it is that a prosecution will be needed in the public interest. A prosecution is likely to be needed if:

- A conviction is likely to result in a significant sentence;
- A conviction is likely to result in a confiscation or any other order;
- A weapon was used or violence was threatened during the commission of the offence;
- The offence was committed against a person serving the public;
- The defendant was in a position of authority or trust;
- The evidence shows that the defendant was a ringleader or an organiser of the offence;
- There is evidence that the offence was premeditated;
- There is evidence that the offence was carried out by a group;

- The victim of the offence was vulnerable, has been put in considerable fear, or suffered personal attack, damage or disturbance;
- The offence was motivated by any form of discrimination against the victim's ethnic or national origin, disability, sex, religious beliefs, political views or sexual orientation, or the suspect demonstrated hostility towards the victim based on any of those characteristics;
- There is a marked difference between the actual or mental ages of the defendant and the victim, or if there is any element of corruption;
- The defendant's previous convictions or cautions are relevant to the present offence;
- The defendant is alleged to have committed the offence while under an order of the court;
- There are grounds for believing that the offence is likely to be continued or repeated, for example, by a history of recurring conduct, response to previous enforcement action;
- The offence, although not serious in itself, is widespread in the area where it was committed; or
- A prosecution would have a significant positive impact on maintaining community confidence.
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3.10.7 Some common public factors against prosecution

A prosecution is less likely to be needed if:

- The court is likely to impose a nominal penalty;
- The defendant has already been made the subject of a sentence and any further conviction would be unlikely to result in the imposition of an additional sentence or order, unless the nature of the particular offence requires a prosecution or the defendant withdraws consent to have an offence taken into consideration during sentencing;
- The offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence);
- The loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement;

- There has been a long delay between the offence taking place and the date of the trial, unless:
 - .> the offence is serious;
 - > the delay has been caused in part by the defendant;
 - > the offence has only recently come to light; or
 - > the complexity of the offence has meant that there has been a long investigation;
- A prosecution is likely to have a bad effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence;
- The defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill-health, unless the offence is serious or there is real possibility that it may be repeated.
- The defendant has put right the loss or harm that was caused (but defendants must not avoid prosecution or diversion solely because they pay compensation);
- Details may be made public that could harm sources of information, international relations or national security.

3.10.8 Deciding on the public interest is not simply a matter of adding up the number of factors on each side. Officers must decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

3.10.9 The Council does not act for victims but make their decisions and take enforcement action on behalf of the public and not just in the interest of any particular individual.

3.10.10 However when considering the public interest officers should always take into account the consequences for the victim of whether or not to prosecute and any views expressed by the victim.

3.10.11 All legal proceedings are subject to the requirements of the Police and Criminal Evidence Act 1984 and Codes of Practice made under Section 66 of that Act. They are all subject to the Criminal Procedure and Investigations Act 1996 and the Criminal Justice Act 2003. Reference should be made to these by the officer, especially in relation to the procedures for gathering evidence. In all cases for prosecution written

evidence on the file that the enforcement officer and the legal officer have considered the Council's enforcement policy in reaching the decision to prosecute/caution.

4. Seizure of Goods, Remedial Actions & Recovery of Costs

4.1 The Council will seize goods from any offender, as evidence of the offence or when deemed necessary. In appropriate cases application will be made to the Court upon conviction for forfeiture and destruction orders. Where provision is made to carry out remedial works in default, the Council may do so and recover its reasonable costs, as appropriate. In all prosecutions the Council will endeavour to recover in full its legal costs and costs incurred by the investigating officers.

5. ANTI SOCIAL BEHAVIOUR ORDERS ('ASBOs')

Types of ASBO

5.1 If an offender is convicted of a criminal offence the Council may apply to the Court for a Post-Conviction ASBO. The act or conduct that has led to the offence must satisfy the statutory threshold criteria for the Court to make an ASBO. In addition the Court must be satisfied that there is a need for an ASBO to protect members of the public in the Borough. In considering the need for an ASBO the Court may have regard to whether the offender has a history of committing similar offences in the Borough and a likelihood that the offender will continue to offend in the Borough despite the conviction.

5.2 The Council may also apply to the Court for an ASBO where there has not been a conviction. This is known as a Civil ASBO application. The principles that apply to a Post-Conviction ASBO are also relevant to a Civil ASBO. The Council may apply to the Court for a Civil ASBO where there is evidence of the person repeatedly acting in a manner that is considered anti-social that may satisfy the statutory threshold criteria in order for the Court to make an ASBO.

Evidence

5.3 The investigating officer should consider whether a post-conviction or Civil ASBO would assist the Council in its enforcement role. The investigating officer's referral to their Business Unit Manager should address what evidence will be before the Court when it considers the Council's application for an ASBO and why there is need for the Court to make an ASBO in order to protect the public in the Borough. The Borough Solicitor will ultimately consider whether there is sufficient evidence and necessity to make an application to the Court for an ASBO.

Enforcement

5.4 Breach of an ASBO is a criminal offence, which is imprisonable. Council officers, Police, Accredited Community Safety Officers ("ACSOS"), and Police Community Safety Officers ("PCSOS") will monitor the person's compliance with the ASBO. The Council and Crown Prosecution Service can prosecute for breach of an ASBO. However the usual practice is for the Crown Prosecution Service to take the lead.

6. AUTHORISATION OF OFFICERS

6.1 Only Council officers who are competent by training, qualification and/or experience will be authorised to take enforcement action. Officers will also have sufficient training and understanding of the Council's enforcement policy to ensure a consistent approach to their duties. Authorisation of an Officer by the Council is always in writing, and each authorisation will have a photograph of the Officer in question. Officers are required to carry their authorisation and show it on demand.

7. APPLICATION OF THIS POLICY

7.1 Officers will interpret and apply legal requirements and the Council's enforcement policy fairly and consistently. The investigating officer will ensure that there is a written record on each case setting out actions taken, decisions made and the reasons for such actions and decisions.

SCHEDULE

Further Enforcement Policies

Environmental Health Enforcement Policy

Policy in effect from 13 March 2008