



# **HERTSMERE BOROUGH COUNCIL**

**CORPORATE ENFORCEMENT POLICY**  
**November 2008**

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ਜੇ ਤੁਹਾਨੂੰ ਕੋਈ ਦਸਤਾਵੇਜ਼ ਕਿਸੇ ਹੋਰ ਥੇਲੀ ਵਿਚ, ਜਾਂ ਕਿਸੇ ਹੋਰ ਰੂਪ ਵਿਚ ਚਾਹੀਦਾ ਹੈ, ਤਾਂ ਕਿਰਪਾ ਕਰਕੇ ਨੰਬਰ 020 8207 7445 'ਤੇ ਫ਼ਨ ਕਰ, ਜਾਂ ਇਸ ਪਤ [customer.services@hertsmere.gov.uk](mailto:customer.services@hertsmere.gov.uk) 'ਤੇ ਈਮੇਲ ਭੇਜੋ। ਅਸੀਂ ਤੁਹਾਡੀ ਮਦਦ ਕਰਨ ਦੀ ਪੂਰੀ ਕੋਸ਼ਿਸ਼ ਕਰਾਂਗੇ। ਕਿਰਪਾ ਕਰਕੇ ਇਹ ਯਾਦ ਰੱਖੋ ਕਿ ਦਸਤਾਵੇਜ਼ ਦਾ ਤਰਜਮਾ ਹੋਣ ਨੂੰ ਕੁਝ ਸਮਾਂ ਲਗਦਾ ਹੈ।

## CONTENTS

1.	Executive Summary	4
2.	Introduction	5
3	Statement of Policy	6-11
4.	Legislative Framework	11
5	Definitions	11-12
6.	The Principles of [AREA OF STRATEGY/POLICY]	12
7.	Date Quality	12
8.	Partnership Working	12-13
9	Responsibilities	13
10.	Equalities and Diversity	13
11.	Risk Management [TO BE COMPLETED]	13
12.	Implementation	13
13.	Evaluation	14
14.	Contact Details	14

## 1. Executive Summary

The Council's main priority is to provide a cost-effective and a value for money service to the residents of Hertsmere, whilst focusing on the reduction of crime, the improvement of services and making the Borough a safer place to live and socialise.

Section 222 of the Local Government Act 1972, gives the Council power to set up its own enforcement policy and take Criminal enforcement actions as necessary to secure compliance with legislation. Ancillary powers are also given to Local Authorities through various legislations contained within this policy, including civil enforcement.

Hertsmere Borough Council has several enforcement activities and policies within different areas of services. However, this policy sets out a corporate aim and objective, guidelines and procedures that cover all enforcement activities within the council.

The policy stands a reminder of good practice to the Council's employees and provides adequate information and warning to members of the public and businesses with regards to the type of treatment that they can expect from the council when dealing with Criminal and Civil enforcement.

The principles behind this policy whilst recognising individual and corporate responsibilities are: accountability, co-operation, fairness, consistency, proportionality and transparency.

The primary aim of this policy is the achievement of regulatory compliance through proportional avenues.

## 2. Introduction

Section 222 of the Local Government Act 1972 and a considerable number of statutes gives a local authority the power to prosecute offences in the interest of its local inhabitants.

Hertsmere Borough Council is responsible for a number of functions that may result in criminal prosecutions being brought or sanctions being imposed. Possible areas of enforcement for the borough arise from its functions in the following areas: Housing, Housing and Council Tax Benefit, Environmental Health, Licensing and Planning and Building Control, Parking Operations, as well as its commercial interests. This list is not exhaustive.

Enforcement covers a wide range of actions and activities and applies to enforcement and regulation affecting members of the public, (ie residents and visitors), volunteers and voluntary activities and businesses (i.e. proprietors, employers and employees). Enforcement within the Policy means any action undertaken by Hertsmere carried out in accordance with its statutory powers and duties and which is intended to secure compliance with relevant legislation.

This policy is a public declaration of the principles upon which Hertsmere Borough Council employ in determining criminal and civil enforcement and prosecution. This policy takes into account the Code for Crown Prosecutors, the principles of the enforcement concordat and good practices from other local authorities. The Council adopted the enforcement concordat on 6 November 2000.

The purpose of this policy is to ensure consistency, efficiency and fairness in the procedures adopted by the Council when taking criminal and civil enforcement action.

This policy is an “umbrella” policy intended to apply to all service areas although additional service specific policies may be required in relation to specific enforcement activities to suit their particular needs and requirements. Some of these are set out in Appendix A.

## 3. Statement of Policy

### *(a) General*

The Council recognises the importance of reviewing its strategies, policies and practices to ensure that they continue to reflect the Council's vision, corporate goals, and key objectives.

The Council's regulators will maintain consistency and transparency in their approach and will adopt the Statutory codes of practice, the LACOR Guidance, Macrory Guidelines for sanctions and penalties and the LBRO guidelines.

The decision to use enforcement action will be taken on a case-by-case basis and, to ensure consistency of approach, in accordance with this and any other more specific policies that may be relevant. The action taken, which may be immediate, will be proportionate to the gravity of the non-compliance.

The Council's regulators aim to promote economic progress by working under the principle of co-operating with local businesses by focusing on risk assessment and securing compliance through advice, guidance and implementing proportionate penalties for persistent offenders.

This policy operates under a wide-ranging legislative framework. The Council's constitution contains the list of enactments. This list is not exhaustive.

The Council aims to balance its resources in meeting its targets under this policy.

The Council will ensure their practice with respect to sanctions and penalties are consistent with the principles set out in the Macrory Guidelines. This means that our sanctions and penalties should:-

- Aim to change the behaviour of the offender;
- Aim to eliminate any financial gain or benefit from non compliance;
- Be responsive and consider what is appropriate for the particular offender and regulatory issue in question which can include punishment and the public stigma that could be associated with a criminal conviction; be proportionate to the nature of the offence and the harm caused; aim to restore the harm caused by regulatory non compliance where appropriate; and
- Aim to deter future non-compliance.

Hertsmere will ensure that their employees provide a courteous and efficient service to regulated entities and others. The Council will take account, as appropriate, of comments from regulated entities and other interested parties regarding the behaviour and activities of inspectors and other enforcement staff.

*(b) What is enforcement?*

A range of activities are used to ensure compliance with legislation. Enforcement activities include inspections of premises on a routine programme basis and as a response to complaints from the public about businesses and individuals. It also includes education and intelligence led activities. Some enforcement activities include patrolling the streets e.g. dog fouling, littering etc.

Taken further, enforcement is for example, issuing a statutory notice requiring individuals to carry out specified certain steps, to desist in an activity, or to

remove a specified item, seizure of documents/goods, closure of premises, injunctions, revocations/ variations.

Enforcement can also mean administering penalties and sanctions including cautions, warnings and prosecutions.

*(c) What can happen when Non-Compliance/Possible Illegalities are discovered?*

Where non compliance is discovered options to seek/promote compliance include:

- ❑ Explaining legal requirements and where appropriate the means/method to achieve compliance.
- ❑ Providing an opportunity to discuss the point raised.
- ❑ Consideration of reasonable time scales to achieve compliance.
- ❑ Service of advisory letters, warnings, statutory notice or prohibitions of dealing with non-compliance.

*(d) The decision to enforce*

The decision to use enforcement action will be taken on a case-by-case basis and, to ensure consistency of approach, in accordance with this and any other more specific policies, which may be relevant. The action taken, which may be immediate, will be proportionate to the gravity of the non-compliance. Factors that will be taken into consideration include, but are not limited to:

- ❑ The risk that non-compliance poses to the safety, health or economic welfare of the public at large or to individuals.
- ❑ Evidence that suggests that there was a pre-meditation in the commission of the offence.
- ❑ The alleged offence involves a failure to comply in full or part with the requirements of a statutory notice or order.
- ❑ There is a history of previous written or oral warnings/cautions or the commission of similar offences.
- ❑ The offence, although not serious itself, is wide spread in the area where it is committed.
- ❑ Aggravated circumstances such as assault/obstruction of an officer or aggressive behaviour towards the public.
- ❑ There has been a reckless disregard of legal requirements.
- ❑ False information has been supplied wilfully or there has been intent to deceive.
- ❑ The views of any victims
- ❑ Likelihood of witnesses to provide evidence against the offender
- ❑ Sufficiency of evidence to support the case.

*(e) Sharing Information with others*

If it is in the public interest matters of non-compliance (where appropriate) may be shared with other enforcement agencies. Any such action will be undertaken in compliance with the Data Protection Act 1998.

*(f) Advice and Guidance*

Hertsmere commits to continue to provide general information, advice and guidance to make it easier for regulated entities to understand and meet their

regulatory obligations. Such information advice and guidance will be provided in a clear concise and accessible format.

Hertsmere commits to continue to provide targeted and practical advice that meets the needs of regulated entities. Such advice will continue to be provided in a range of formats such as through face-to-face interactions, telephone contact etc. There may however remain a need for regulated entities with particularly complex practices to use specialist or professional advisers as appropriate.

Hertsmere commits to continue the practice of when offering compliance advice to clearly distinguish between statutory requirements and advice or guidance aimed at improvements above minimum legally enforceable standards. Advice will also be confirmed in writing if so requested. The provision of general advice where possible will be provided free of charge but it may be appropriate for the Council to charge a reasonable fee for services beyond basic advice and guidance necessary to help ensure compliance.

## The decision to prosecute in Criminal Cases

The Code for Crown Prosecutors is a public document, issued by the Director of Public Prosecutions that sets out the general principles Crown Prosecutors should follow when they make decisions on cases. As such, this authority will use the code as a benchmark for prosecuting. When deciding whether to prosecute, the Code for Crown Prosecutors requires a full code test to be applied to each case. This has two stages;

1. The evidential test; *and*
2. The public interest test

### **3.1 The evidential test**

The evidential test has to be fully satisfied before a decision is taken to proceed with a charge. It requires the Head of Legal & Democratic Services or her representative to be satisfied that there is sufficient evidence to provide “a realistic prospect of conviction”. The evidence must therefore be considered in its entirety. The Head of Legal & Democratic Services must be satisfied that a jury, Bench of Magistrates or a judge hearing the case, (properly directed in accordance with the law) is more likely than not to convict the defendant of the offences charged.

The evidence must be capable of being used in court and the integrity of the evidence is to be considered, i.e. identity, confessions, age and intelligence of the witness.

The investigating officer must also consider any possible defences and explanations given by the defendant.

If the Head of Legal and Democratic Services is not satisfied that the evidential test has been met, under no circumstance should the matter proceed any further. The evidential test can be reviewed if additional investigatory work is undertaken which secures new and persuasive evidence.

### **3.2 The public interest test**

Once the requirements of the evidential test are met; only then is the public interest test considered. Before a prosecution is initiated, this test must be satisfied. Several factors will be taken into consideration when determining whether it is in the public interest to prosecute.

#### Factors in favour of prosecuting are:

- a. Seriousness of offence
- b. Conviction is likely to result in a significant penalty
- c. Conviction is likely to result in a confiscation or any other order;
- d. A weapon was used or violence was threatened during the commission of the offence
- e. The offence was committed against a person serving the public (for example, a police or prison officer, or a nurse)
- f. The defendant was in a position of authority or trust
- g. The evidence shows that the defendant was a ring leader or an organiser of the offence
- h. There is evidence that the offence was premeditated
- i. There is evidence that the offence was carried out by a group
- j. The victim of the offence was vulnerable, has been put in considerable fear, or suffered personal attack, damage or disturbance;
- k. The offence was committed in the presence of, or in close proximity to a child,
- l. 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 the suspect demonstrated hostility towards the victim based on any of those characteristics
- m. 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
- n. The defendant's previous convictions, cautions or warnings are relevant to the present offence
- o. The defendant is alleged to have committed the offence while under the order of a court
- p. There are grounds for believing that the offence is likely to be continued or repeated,
- q. The offence, although not serious in itself, is widespread in the area where it was committed; or
- r. A prosecution would have a significant positive impact on maintaining community confidence.

### Factors against prosecution

- a. The offence is minor
- b. The likely penalty on conviction is nominal
- c. The accused has already been convicted and sentenced by the courts for a similar offence, and the further conviction is unlikely to result in the imposition of an additional sentence; unless the nature of the particular offence requires a prosecution or the defendant withdraws consent to have the matter taken into consideration
- d. The commission of the offence was as a result of a genuine mistake or misunderstanding
- e. The loss or harm is minor
- f. Prosecution is likely to have an adverse effect on the victim's physical or mental wellbeing
- g. Long delay in bringing the prosecution
- h. Details may be made public that could harm sources of information, international relations or national security

### **Selection of the Charges**

The investigating officer should select charges which:

- (a) reflect the seriousness and extent of the offending;
- (b) give the court adequate powers to sentence and impose an appropriate post conviction order; and
- (c) enable the case to be presented in a clear and simple way

Charges will be revised by the head of Legal and Democratic Services or her representative.

### **Mode of Trial**

Some offences can be tried either in the Magistrates' Court or in the Crown Court, (either way offences)

The National Guidelines will be taken into account for Mode of Trial when deciding the appropriate venue for the case to be heard. The guidelines for Magistrates' will be applied when deciding the mode of trial on an indication of a Not Guilty plea. The more serious the case is, i.e. high monetary value, the more likely it is to be heard in the Crown Court. Speed is never a basis to request that a matter is dealt with in the Magistrates' Court.

For an either way offence the defendant is entitled to opt for a jury trial.

## **Accepting Guilty Pleas**

Guilty pleas can be accepted for some of the offences charged and not others if the prosecutor is sure that the seriousness of the offences will be reflected in the possible sentence. The prosecutor can also accept pleas for a lesser offence based on the same principle.

A prosecutor at Court must not act without instructions from the client department in accepting guilty pleas for anything other than all offences charged.

## **Sentence**

During the sentencing exercise, following a guilty plea or a conviction after trial, the Council is entitled to respond to the defendant's mitigation as appropriate, drawing attention to any inaccuracies advanced by the defence.

The Council is also allowed to bring the impact of the offence to the court's attention.

### **3.3 Civil Enforcement/Sanctions**

The Civil enforcement areas covered by the council relate to Debt recovery, Planning and Environmental Health and Parking Services.

#### **DEBT RECOVERY**

Hertsmere Borough Council has a duty to its residents and local businesses to take all reasonable steps to recover debts. This includes all unpaid invoices for sundry debt plus council tax, community charge, non-domestic rates and rent arrears.

#### **Principles**

When debts are incurred, the Council will:

- Deem all debts as payable
- Identify debtors who are in genuine difficulties and those who refuse to pay
- Consider people's personal circumstances when communicated
- Offer repayment advice and payment plans
- Provide different methods of payments for bills and invoices

- Provide money advice and referral service to other agencies such as the Citizen Advice Bureau.

### **Legal Action**

Failure to pay an overdue amount could result in the Council taking legal enforcement action for recovery, depending on the type of debt.

The following recovery steps will be taken:

- The Council will first of all issue a pre-action letter requesting full payment or a reasonable offer of payments by instalments.
- For council Tax debt, the Council could obtain a liability order from the court. Once an order is in place the council can refer cases to a certified bailiff, set up an attachment of earnings, set up a deduction from income support or job seekers allowance, a warrant of execution or apply for bankruptcy if the debt is over £750 or a charging order if the debt is over £1000 and the debtor owns the property. **A step by step guide to Council Tax recovery is on the Council's website.**
- The council will instigate possession proceedings where its tenants are in substantial arrears.
- Interest and costs will be added to outstanding amounts when legal action has been taken.

In accordance with the guidelines from the Regulatory and enforcement Sanctions Act 2008, (C13) the Council may be directed by the LBRO to make Civil Sanctions such as fixed monetary penalties or discretionary requirements for businesses or individuals to take remedial action.

### **Parking Services**

Hertsmere's Parking Services enforces the parking restrictions within the borough, in line with the Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations.

Once a penalty charge notice has been served and the Council has received no payment or challenge within the period of 28 days beginning with the date

on which the PCN was served, the following enforcement of the charge notice will commence:

A Notice to Owner will be served to who the Council believes to be the owner. If no payment or representations are received after 28 days a Charge Certificate will be served, increasing the amount payable by 50%.

If no payment is received after 28 days of this notice being served the Council may apply to the Traffic Enforcement Centre at Northampton County Court to recover the increased charge as if it were payable under a county court order.

**The full parking enforcement policy is available on the council's website.**

### **Write-Offs**

As stated above, the Council is obliged to take all reasonable steps in recovering debts. However, ONLY when all the steps taken have been futile, the Council will decide on a case-by-case basis if a debt should be written-off. Irrecoverable debts will be referred to the Council's Section 151 officer (Director of Resources), who will then make a recommendation based on the circumstances of the debtor. Some of the factors taken into account at this time include:

- Genuine hardship
- Where the person dies and there are no funds available from their estate
- Where the person no longer resides in the borough and they are untraceable
- When the person is made bankrupt or insolvent
- When it is uneconomical for the council to recover the debt

## **4. Legislative Framework**

4.1 Enforcement decisions and actions will be made with due regard to the provisions of:

- Criminal Procedure and Investigations Act 1996
- Civil Procedure Rules 1998
- The Human Rights Act 1998
- The Crime and Disorder Act
- Criminal Justice and Immigration Act 2008
- Equal Rights and Anti Discrimination Legislation.

- Regulatory Enforcement and Sanctions act 2008 (c13)
- Service specific Legislation.
- Police and Criminal Evidence Act 1984
- All other relevant legislation applicable from time to time.

## 5 Definitions

To aid the understanding of this strategy/policy the following definitions are provided:

- **Administrative Penalty:** this is a financial penalty that is offered to the defendant and it amounts to 30% of the amount owed. Again, the person has to admit to the penalty and acknowledge that they have no right of appeal.
- **Caution:** This is a formal warning issued by appropriately authorised officers to defendants who admit their guilt to an offence or offences. A caution will be recorded on the Police National Computer where appropriate. The refusal of a caution could result in prosecution.
- **Enforcement:** Regulatory Action taken by the council in order to ensure compliance with the law.
- **Full Code Test:** A two-tier test set out by the government to assist prosecutors.
- **LACORS:** LACORS (the Local Authorities Coordinators of Regulatory Services) is the local government central body responsible for overseeing local authority regulatory and related services in the UK.
- **Macrory Guidelines:** In 2006, Professor Richard Macrory reviewed regulatory systems and made recommendations to regulators based on his findings.
- **Prosecution:** This is where the Council instigates criminal proceedings in the Magistrates' Court.
- **LBRO:** The Local Better Regulation Office

## 6. The Principles of the Policy

This policy takes into account the Code for Crown Prosecutors, the principles of the enforcement concordat and good practices from other local authorities.

The Council will adopt the Statutory codes of practice, the LACOR Guidance, the Macrory Guidelines for sanctions and penalties and the LB.

The Council will take enforcement action that is proportional to the gravity of the offence.

## 7. Data Quality

The Audit Commission publication *Improving information to support decision making: standards for better data quality* describes the six characteristics of data quality: complete, valid, accurate, reliable, timely and relevant.

Hertsmere Borough Council is committed to the very highest levels of data accuracy. This includes data used internally for management decision-making, and data reported externally on the performance of the Council and its services.

In order to meet its commitments to data quality, the Council will ensure that:

- Data quality is owned and understood across the organisation
- The appropriate level of resources are invested in data quality in order to meet the Council's data quality commitments
- Robust quality control procedures are in place
- Independent external audits of data are reported internally and externally, and that improvement actions are acted upon in order to continuously improve the Council's approach

## 8. Partnership Working

Hertsmere Borough Council has the power to prosecute with other enforcement bodies such as the Department of Work and Pensions, Her Majesty's Customs and Revenues and the Police. For example, the Council is able to ask the police to use their extended powers of arrest. The Council will often liaise with other bodies to ensure effective, fair and consistent enforcement action.

## 9. Responsibilities

The Members of the Council will be requested to approve this policy at their Executive meeting, so that the policy forms part of the Council's policy framework.

It shall be the responsibility of the Head of Legal & Democratic Services to review this policy from time to time, in conjunction with colleagues across the Council who have responsibility for enforcement of criminal and civil activities.

Any staff who have responsibility for criminal and civil enforcement are requested to ensure that all aspects of proceedings are initiated in line with this policy and do not take any steps to undermine its application accordingly.

## **10. Equalities and Diversity**

The Council has an overriding objective to ensure that it acts with impartiality and consistency when making a decision. As such, the Council will not discriminate against any person on the basis of their Sex, National Origin, age disability, religious beliefs, political views or sexual orientation. Enforcement actions will always reflect the seriousness of the offence and not based on any preconceptions of an individual.

In making any decisions, to take enforcement action, the Council will ensure that it adheres to the principles of the Human Rights Act 1998.

## **11. Risk Management**

TO FOLLOW

## **12. Implementation**

The policy will become effective once it has been agreed by the Council's Executive. A consultation process has been undertaken with all heads of service to raise awareness of the contents of this policy. The Head of Legal and Democratic Services through her staff is convening an enforcement group for officers to discuss this policy and other issues arising from prosecutions.

## **13. Evaluation**

This policy will be reviewed annually to ensure it remains effective and takes account of changes in legislation and best practice. A revised policy will be published every three years.

## **14. Contact Details**

**Hertsmere Borough Council**  
Jill Coule  
Head of Legal & Democratic Services  
Hertsmere Borough Council  
Civic Offices  
Elstree Way

Borehamwood  
WD6 1WA

**Phone:** 020 8207 2277  
**Email:** [legal@hertsmere.gov.uk](mailto:legal@hertsmere.gov.uk)

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Date of Publication

## Appendix A

### Service Specific Information with respect to Criminal Enforcement

#### Corporate Fraud

The Council has a designated anti-fraud unit responsible for investigating fraudulent Housing/Council tax benefit claims. When the full code test is satisfied, a person can be charged under the Social Security or Theft legislation.

Alternatively the Anti-Fraud unit can take an administrative penalty dependant upon the particular circumstances of each case.

#### Planning

The Enforcement Section of the Planning Unit investigates alleged breaches of planning control, together with other breaches of planning law. Breaches of planning control are not per se offences under criminal law but failure to comply with a notice issued to remedy a breach (for example, enforcement notices, stop notices and breach of condition notices) is.

In addition, there are several instances where a criminal offence is committed without the need for a notice to be issued. Examples are: unauthorised works to listed buildings, breaches of tree protection orders and unauthorised advertising.

#### Environmental Health

Environmental Health is key in the Council's regulatory duty and to this end the Council has embraced the government's initiative of targeting five enforcement priorities; Air quality, alcohol licensing, hygiene of food businesses, improving health in the work place and fair trading.

Under Section 38 of the Health and Safety at Work Act 1974, Environmental Health Officers are authorised to initiate proceedings in their own name under the authorisation of the Council.

The above departments adopt the Regulators Compliance Code in promoting efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. However in certain instances it may be concluded that a provision of the Code is either not relevant or is outweighed by another provision. The Council will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

## **APPENDIX B- Policies/guidelines incorporated with this policy.**

- The Code for Crown Prosecution. See [www.cps.gov.uk](http://www.cps.gov.uk)
- Macrory Guidelines can be viewed on:  
[www.justice.gov.uk/docs/guidance-regulatory-penalties-offences.pdf](http://www.justice.gov.uk/docs/guidance-regulatory-penalties-offences.pdf)
- The Lacor Guidelines: <http://www.lacors.gov.uk>
- The Enforcement concordat can be viewed on:  
[www.dti.gov.uk/consumers/enforcement/enforcement-concordat](http://www.dti.gov.uk/consumers/enforcement/enforcement-concordat)

### **The following are on Hertsmere Borough Council Website: [www.hertsmere.gov.uk](http://www.hertsmere.gov.uk)**

- Parking Enforcement Policy:  
<http://www.hertsmere.gov.uk/transportstreets/parking/newparkingenforcementinformation>
- Benefits Fraud:  
<http://www.hertsmere.gov.uk/advicebenefits/benefits/fraudinvestigation>
- Environmental Health policy:  
<http://www.hertsmere.gov.uk/environmentplanning/dnld100006/envpolicy.pdf>
- Planning enforcement policy:  
<http://www.hertsmere.gov.uk/planning/developmentcontrol/enforcement>.