



Hinckley & Bosworth  
Borough Council

*A Borough to be proud of*

Corporate Enforcement Policy

April 2015

Version 1

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## **. Equal Opportunities Statement**

In developing this policy, the Council has recognised its responsibility under the Equality Act 2010 to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not

The Act and the Council seeks to outlaw unlawful discrimination against a person or group of people because of their:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnerships (in respect of the requirement to have due regard to the need to eliminate discrimination)
- Pregnancy and maternity
- Race
- Religion
- Sex
- Sexual orientation.

The Council will not be affected by improper or undue influence from any source. To assist in this:

- The Policy and associated documents will be available on the Internet, and in other formats upon request.
- Multi-language sections may be included in all leaflets upon request.
- Support will be offered to individuals who are socially excluded to assist in their understanding of legislation and legal requirements
- Action will be taken to ensure that all enforcement action, particularly against those individuals from disadvantaged groups or who share protected characteristics, is dealt with fairly.
- An Equality Impact Assessment has been completed for this policy.

This policy shall be reviewed every three years or sooner if there are changes in structure, titles and responsibilities.

## **1. Introduction**

Hinckley and Bosworth Borough Council is required by The Regulators Code (April 2014) to publish a clear set of service standards ([link](#)), including our enforcement policy. In compliance with the Regulators Code this policy sets out the corporate approach of Hinckley and Bosworth Borough Council to dealing with non-compliance. Where required it is supplemented by individual service area Enforcement Policies which, whilst following the corporate approach, will provide information in greater detail on how the specific legislation applicable to that service is applied.

This policy applies to both individuals and businesses

This policy has been developed in consultation with Leicester, Leicestershire Enterprise Partnership through their Regulatory Partnership and Business Focus Panel and demonstrates our commitment to the principles of good enforcement as set out in the Legislative Regulatory Reform Act 2006, the Enforcement Concordat and the Regulators Code.

This policy was approved by the Council's Executive on ----- and has been placed on the Council's website as a downloadable document or requests for copies may be made through [esadmin@hinckley-bosworth.gov.uk](mailto:esadmin@hinckley-bosworth.gov.uk)

## **2. Our General approach to Enforcement**

Our enforcement policies have regard to the principles of good regulation. We will exercise our regulatory activities in a way which is:

- (i) Proportionate – our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence,
- (ii) Accountable – our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures,
- (iii) Consistent – our advice to those we regulate will be robust and reliable and we will respect advice provided by others. Where circumstances are similar, we will endeavour to act in similar ways to other local authorities,
- (iv) Transparent – we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return, and
- (v) Targeted – we will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities.

We think this is important for supporting our communities and good business growth by maintaining a level playing field whilst protecting citizens and the environment.

In our enforcement policies, we have set out our approach to dealing with non-compliance. In making a commitment to good enforcement practices we will avoid imposing unnecessary regulatory burdens and will assess whether similar social, environmental and economic outcomes could be achieved by less burdensome means. We have been clear about which service areas; our enforcement policies apply to so you understand where they apply to you or your business.

We have also highlighted our commitment that individuals or businesses will be able to request advice without triggering enforcement action. The only exception to this policy would be if there is an imminent risk to health, or an assurance is required that business is operating in a safe and compliant manner.

When dealing with non-compliance we will

- Choose risk based approaches based on relevant factors
- Deal firmly with those that deliberately or persistently fail to comply
- Explain our approach to complaints of non-compliance
- Explain our approach to investigating non-compliances
- Outline the range of actions that may be taken if a non-compliance is found
- Explain how decisions are made on any enforcement action
- Outline our commitment to keep you informed of the progress of investigations

In our policies, we have provided a clear route for complaints and appeals against a regulatory decision.

In producing this policy Hinckley and Bosworth Borough Council has had regard to:

### **Regulators' Code**

The [Regulators' Code](#) sets out the principles upon which regulators should have regard to in applying legislation. In certain instances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

### **Human Rights Act 1998**

The Council is a public authority for the purposes of the Human Rights Act 1998. We therefore apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is had to the right to a fair trial and the right to respect for private and family life, home and correspondence.

## **Data Protection Act 1998**

Where there is a need for the Council to share enforcement information with other agencies, we will follow the provisions of the Data Protection Act 1998.

## **The Code for Crown Prosecutors**

When deciding whether to prosecute the Council has regard to the provisions of [The Code for Crown Prosecutors](#) as issued by the Director of Public Prosecutions.

The Code for Crown Prosecutors is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases. The Code sets out two tests that must be satisfied commonly referred to as the 'Evidential Test' and the 'Public Interest Test':

- a. Evidential Test - is there enough evidence against the defendant?

When deciding whether there is enough evidence to prosecute, the Council will consider what evidence can be used in court and is reliable. We must be satisfied there is enough evidence to provide a "realistic prospect of conviction" against each alleged offender.

- b. Public Interest Test - is it in the public interest for the case to be brought to court?

The Council will balance factors for and against prosecution carefully and fairly, considering each case on its merits. The public interest factors that we will take into account are detailed under the enforcement options available to us in Section 7.

## **Regulatory Enforcement and Sanctions Act 2008 ('the RES Act')**

The Regulatory Enforcement and Sanctions Act 2008, as amended, established the Primary Authority scheme. We will comply with the requirements of the Act when we are considering taking enforcement action against any business or organisation that has a primary authority, and will have regard to guidance issued by the Secretary of State in relation to Primary Authority.

### **3. What is this Policy For ?**

This policy communicates Hinckley and Bosworth Borough Councils policy in respect of its approach to dealing with non-compliance to:

- a) those affected by our activities; and
- b) officers of Hinckley and Bosworth Borough Council.

All enforcement officers of Hinckley and Borough Council will conduct their role and responsibilities on behalf of the Council in accordance with this policy.

#### **4. When does this policy apply ?**

This policy sets out the general approach of Hinckley and Bosworth Borough Council to enforcement.

Enforcement, in the context of Hinckley and Bosworth's Borough Councils policies includes any actions taken by officers aimed at ensuring that businesses or individuals comply with the law. These actions may range from providing advice, information and issuing public warnings, serving notices and issuing fixed penalties, closing businesses or specific activities, to cautioning and instituting legal proceedings/ prosecutions.

This policy is supplemented where required by individual service area Enforcement Policies which, whilst following the corporate approach, will provide information in greater detail on how the specific legislation applicable to that service is applied.

Whilst as a general rule all council services will work towards these standards, the policy specifically applies to the following service areas of the Council:

<b>Environmental Protection</b>	<b>Smoke Free</b>	<b>Food Hygiene</b>
<b>Health and Safety</b>	<b>Licensing</b>	<b>Private Sector Housing</b>
<b>Public Health</b>	<b>Planning</b>	<b>Litter and Waste</b>
	<b>Building Control</b>	

#### **5. Our Approach to dealing with non -compliance**

Hinckley and Bosworth Borough Council believes in firm but fair enforcement of the law. This should be informed by the principles of proportionality in applying the law and securing compliance; consistency of approach; targeting of enforcement action; transparency about how we operate and what those regulated may expect; and accountability for our actions.

In deciding what action to take where there is non – compliance, we will try and achieve one or more of the following outcomes:

- To change the behaviour of the individual or business
- To eliminate any financial gain or benefit from non- compliance
- To restore the harm caused by regulatory non –compliance, where appropriate
- To deter future non –compliance

- To deal firmly with those that deliberately or consistently fail to comply
- Refer in suitable cases breaches to another enforcement body

Where we require you to take action to remedy any failings we will:

- Explain the nature of the non-compliance
- Discuss what is required to achieve compliance, taking into account your circumstances
- Clearly explain any advice, actions required or decisions that we have taken
- Agree timescales that are acceptable to both you and us , in relation to any actions required
- Provide in writing details of how to appeal against any advice provided, actions required or decisions taken, including any statutory rights to appeal
- Explain what will happen next
- Keep in touch with you, where required, until the matter is resolved

## **6. Conduct of Investigations**

All investigations will be carried out under the following legislation and in accordance with any associated guidance or codes of practice, in so far as they relate to Hinckley and Bosworth Borough Council:

- the Police and Criminal Evidence Act 1984
- the Criminal Procedure and Investigations Act 1996
- the Regulation of Investigatory Powers Act 2000
- the Criminal Justice and Police Act 2001
- the Human Rights Act 1998

These Acts and associated guidance control how evidence is collected and used and give a range of protections to citizens and potential defendants.

Our authorised officers will also comply with the requirements of the particular legislation under which they are acting, and with any associated guidance or codes of practice.

## **7. Decisions on enforcement action**

### **A. Compliance Advice, Guidance and Support**

Hinckley and Bosworth Borough Council uses compliance advice, guidance and support as a first response in the case of many breaches of legislation that are identified. Advice is provided, sometimes in the form of a warning letter, to assist individuals and businesses in rectifying breaches as quickly and efficiently as possible, avoiding the need for further enforcement action. A warning letter (sometimes called an ‘informal letter’) will set out what should be done to rectify the



breach and to prevent re-occurrence. If a similar breach is identified in the future, this letter will be persuasive in considering the most appropriate enforcement action to take on that occasion. Such a letter cannot be cited in court as a previous conviction but it may be presented in evidence.

Hinckley and Bosworth Borough Council recognises that where a business has entered into a partnership with a primary authority, the primary authority will provide compliance advice and support, and Hinckley and Bosworth Borough Council will take such advice into account when considering the most appropriate enforcement action for it to take. It may discuss any need for compliance advice and support with the primary authority.

Where more formal enforcement action, such as a simple caution or prosecution, is taken, Hinckley and Bosworth Borough Council recognises that there is likely to be an ongoing need for compliance advice and support, to prevent further breaches.

### **B. Voluntary Undertakings**

Hinckley and Bosworth Borough Council may accept voluntary undertakings that breaches will be rectified and/or recurrences prevented. Hinckley and Bosworth Borough Council will take any failure to honour voluntary undertakings very seriously and enforcement action is likely to result.

### **C. Statutory (Legal) Notices**

In respect of many breaches Hinckley and Bosworth Borough Council has powers to issue statutory notices. These include, 'Prohibition Notices', 'Emergency Prohibition Notices', and 'Improvement Notices'. Such notices are legally binding. Failure to comply with a statutory notice can be a criminal offence and may lead to prosecution and/ or, where appropriate, the carrying out of work in default.

A statutory notice will clearly set out actions which must be taken and the timescale within which they must be taken. It is likely to require that any breach is rectified and/or prevented from recurring. It may also prohibit specified activities until the breach has been rectified and/or safeguards have been put in place to prevent future breaches. Where a statutory notice is issued, an explanation of the appeals process will be provided to the recipient.

Some notices issued in respect of premises may be affixed to the premises and/or registered as local land charges.

### **D. Financial penalties**

Hinckley and Bosworth Borough Council has powers to issue fixed penalty notices in respect of some breaches. A fixed penalty notice is not a criminal fine, and does not appear on an individual's criminal record. If a fixed penalty is not paid, Hinckley and

Bosworth Borough Council may commence criminal proceedings or take other enforcement action in respect of the breach.

If a fixed penalty is paid in respect of a breach Hinckley and Bosworth Borough Council will not take any further enforcement action in respect of that breach. Payment of a fixed penalty does not provide immunity from prosecution in respect of similar or recurrent breaches.

Hinckley and Bosworth Borough Council is only able to issue fixed penalty notices where it has specific powers to do so. If fixed penalty notices are available, their issue is at Hinckley and Bosworth Borough Council's discretion. In some circumstances, in particular where breaches are serious or recurrent, it may be that prosecution is more appropriate than the issue of a fixed penalty notice.

#### **E. Injunctive Actions, Enforcement Orders etc.**

In some circumstances Hinckley and Bosworth Borough Council may seek a direction from the court (in the form of an order or an injunction) that a breach is rectified and/or prevented from recurring. The court may also direct that specified activities be suspended until the breach has been rectified and/or safeguards have been put in place to prevent future breaches.

Failure to comply with a court order constitutes contempt of court, a serious offence which may lead to imprisonment.

Hinckley and Bosworth Borough Council is required to seek enforcement orders after issuing some enforcement notices, providing the court with an opportunity to confirm the restrictions imposed by the notice. Otherwise, Hinckley and Bosworth Borough Council will usually only seek a court order if it has serious concerns about compliance with voluntary undertakings or a notice.

#### **F. Simple Caution**

Hinckley and Bosworth Borough Council has the power to issue simple cautions (previously known as 'formal cautions') as an alternative to prosecution for some less serious offences, where a person admits an offence and consents to the simple caution. Where a simple caution is offered and declined, Hinckley and Bosworth Borough Council is likely to consider prosecution.

A simple caution will appear on the offender's criminal record. It is likely to influence how Hinckley and Bosworth Borough Council and others deal with any similar breaches in the future, and may be cited in court if the offender is subsequently prosecuted for a similar offence. If a simple caution is issued to an individual (rather than a corporation) it may have consequences if that individual seeks certain types of employment.

Simple cautions will be used in accordance with Home Office Circular 016/2008 and other relevant guidance.

## **G. Prosecution**

Hinckley and Bosworth Borough Council may prosecute in respect of serious or recurrent breaches, or where other enforcement actions, such as voluntary undertakings or statutory notices have failed to secure compliance. When deciding whether to prosecute Hinckley and Bosworth Borough Council has regard to the provisions of [The Code for Crown Prosecutors](#) as issued by the Director of Public Prosecutions.

Prosecution will only be considered where Hinckley and Bosworth Borough Council is satisfied that it has sufficient evidence to provide a realistic prospect of conviction against the defendant(s).

Before deciding that prosecution is appropriate, Hinckley and Bosworth Borough Council will consider all relevant circumstances carefully and will have regard to the following public interest criteria:

- a) The seriousness of the offence
- b) The foreseeability of the offence or the circumstances leading to it
- c) The intent of the offender, individually and/or corporately
- d) The history of offending
- e) The attitude of the offender
- f) The deterrent effect of a prosecution, on the offender and others
- g) The personal circumstances of the offender
- h) The likelihood of the offender being able to establish a 'Best Practicable Means' defence where available

These factors are not exhaustive and those, which apply, will depend on the particular circumstances of each case. Deciding on the public interest is not simply a matter of adding up the number of factors on each side. We will decide how important each factor is in the circumstances of each case and make an overall assessment.

A successful prosecution will result in a criminal record. The court may impose a fine and in respect of particularly serious breaches a prison sentence. The court may order the forfeiture and disposal of non-compliant goods and/or the confiscation of any profits which have resulted from the breach. Prosecution may also lead, in some circumstances, to the disqualification of individuals from acting as company directors.

## **H. Refusal/Suspension/Revocation of Licences, Approvals and Permits**

Hinckley and Bosworth Borough Council issue a number of licences, approvals and permits. Hinckley and Bosworth Borough Council also has a role to play in ensuring that appropriate standards are met in relation to licences issued by other agencies. Most licences, approvals and permits include conditions which require the holder to take steps to ensure that, for example, a business is properly run. Breach of these conditions may lead to a review of the licence, approval or permit which may result in its revocation or amendment.

When considering future licence, approval or permit applications, Hinckley and Bosworth Borough Council may take previous breaches and enforcement action into account.

## **I. Communicating our decisions**

Once an enforcement decision has been reached we will inform the business and/or individual in a timely manner with an explanation in writing of any rights to representation or rights of appeal, along with practical information of the processes involved.

## **8. Review of this Policy**

This Enforcement Policy will be reviewed at least every three years. Amendments will be made if there are any changes to legislation or in local needs. In developing this policy we have worked with a number of groups that we consult with to ensure that we are delivering our services to meet the needs of our communities including the Leicester, Leicestershire Economic Partnership and Hinckley and Bosworth Business Improvement District.

If anyone wishes to make any comment about the content of this policy, then they may do so by any of the methods outlined in the section below.

Your comments are important as they help us in monitoring and reviewing the effectiveness of the policy, ensure the policy remains up to date and reflects the views of our communities and businesses.

## **9. Comments and Complaints**

### **Complaints and appeals**

Where we take enforcement action, there is often a statutory right to appeal. We will always tell you about this at the appropriate time.

We are always willing to discuss with you the reasons why we have acted in a particular way, or asked you to act in a particular way. If you wish to discuss these issues, other than with the officer who dealt with the matter, you can do so with their direct line manager.

We manage complaints about our service, or about the conduct of our officers, through Corporate Complaints Policy. Details can be found at

<http://www.hinckley-bosworth.gov.uk/info/200025/complaints>

or by Email: [committeeservices@hinckley-bosworth.gov.uk](mailto:committeeservices@hinckley-bosworth.gov.uk) or;

Telephone: 01455 255879.

### **Feedback**

We value input from you to help us ensure our service is meeting your needs. We would like to hear from you whether your experience of us has been good or in need of improvement. This helps us to ensure we keep doing the right things and make changes where we need to. We use customer satisfaction surveys from time to time but we would welcome your feedback at any time. You can provide feedback in the following ways:

Telephone: 01455 238141

E- mail: [customer.services@hinckley-bosworth.gov.uk](mailto:customer.services@hinckley-bosworth.gov.uk)

Web: [www.hinckley-bosworth.gov.uk](http://www.hinckley-bosworth.gov.uk)

By post: Hinckley Hub, Rugby Road, Hinckley, Leicestershire, LE10 0FR

Or in person: Hinckley Hub, Rugby Road, Hinckley, Leicestershire, LE10 0FR  
Monday –Thursday 8:30am -5:00pm ;Friday 8:30am – 4:30pm.

Any feedback that we receive will be acknowledged, considered and responded to.

Further copies, versions in alternative languages and larger print or audio versions are available from the following address: Hinckley and Bosworth Borough Council, Hinckley Hub, Rugby Road' Hinckley, Leicestershire LE10 0FR

Telephone:01455 238141. Email: [customer.services@hinckley-bosworth.gov.uk](mailto:customer.services@hinckley-bosworth.gov.uk)

অন্যান্য ভাষায় অনুবাদ এবং বড় ছাপা অক্ষর বা অডিও'তে আরো কপি নিম্নের ঠিকানায় পাওয়া যায় :  
Hinckley and Bosworth Borough Council  
Hinckley Hub, Rugby Road, Hinckley, Leics LE10 0FR টেলিফোন : 01455 238141 ই-মেইল :  
[customer.services@hinckley-bosworth.gov.uk](mailto:customer.services@hinckley-bosworth.gov.uk)

બીજી ભાષાઓના ભાષાંતરમાં અને મોટા અક્ષરોમાં અથવા ઓડિઓના રૂપમાં વધારાની નકલો  
નીચેના સરનામા ઉપર ઉપલબ્ધ છે:  
Hinckley and Bosworth Borough Council, Hinckley Hub, Rugby Road, Hinckley, Leics LE10 0FR  
ટેલિફોન: 01455 238141 ઈમેઇલ: [customer.services@hinckley-bosworth.gov.uk](mailto:customer.services@hinckley-bosworth.gov.uk)

ਦੂਸਰੀਆਂ ਭਾਸ਼ਾਵਾਂ ਵਿੱਚ ਅਨੁਵਾਦ ਅਤੇ ਵੱਡੇ ਅੱਖਰਾਂ ਵਿੱਚ ਛਾਪੇ ਜਾਂ ਆਡਿਓ ਦੇ ਰੂਪ ਵਿੱਚ ਅਤੇ ਹੋਰ ਕਾਪੀਆਂ  
ਅੱਗੇ ਲਿਖੇ ਸਰਨਾਵੇਂ ਤੇ ਉਪਲੱਬਧ ਹਨ:  
Hinckley and Bosworth Borough Council, Hinckley Hub, Rugby Road, Hinckley, Leics LE10 0FR  
ਟੈਲੀਫੋਨ: 01455 238141 ਈਮੇਲ: [customer.services@hinckley-bosworth.gov.uk](mailto:customer.services@hinckley-bosworth.gov.uk)

متبادل زبانوں میں ترجمہ اور بڑے حروف یا آڈیو میں ترجمہ کی مزید کاپیاں درج ذیل پتے سے حاصل کی جاسکتی ہیں:

Hinckley and Bosworth Borough Council  
Hinckley Hub, Rugby Road, Hinckley, Leics LE10 0FR  
customer.services@hinckley-bosworth.gov.uk ٹیلیفون: 01455 238141 ای میل

Dalsze kopie, wersie w innych jezykach i drukowane wiekszymi literami lub wersie audio sa dostepne pod nastepujacym adresem:  
Hinckley and Bosworth Borough Council, Hinckley Hub, Rugby Road, Hinckley, Leics LE10 0FR  
Telephone: 01455 238141 Email: [customer.services@hinckley-bosworth.gov.uk](mailto:customer.services@hinckley-bosworth.gov.uk)