



Environmental Protection and Animal Control Enforcement Policy

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Contents

Environmental Protection and Animal Control Enforcement Policy.....	1
1. Introduction.....	2
1.1. Areas we regulate.....	3
Policy Rationale and Scope	3
Deviation from the Policy	3
2. Legal and Policy Context	4
2.1. Legislative Framework.....	4
2.2. The Principles of Regulation.....	4
2.3. The Regulators’ Code.....	4
2.4. Information Sharing	5
3. Managing non-compliance	5
3.1. Authorisation of Officers.....	5
3.2. Requests for our services	5
3.3. Identifying the need for action.....	5
3.4. Conduct of investigations	6
3.5. Prioritising cases	6
3.6. Decision to take enforcement action	7
3.7. Enforcement good practice	7
3.8. Explaining non-compliance	7

3.9. Multi-agency enforcement.....	8
3.10. Publicity.....	8
3.11. Complaints and appeals.....	8
3.12. Performance monitoring.....	8
4. Enforcement Powers.....	8
4.1. No formal action and informal action.....	8
4.2. Voluntary undertakings.....	9
4.3. Statutory (Legal) Notices.....	9
4.4. Seizure of goods, equipment or records.....	9
4.5. Financial Penalties (Fixed Penalty Notices).....	10
4.6. Refusal/Suspension/Revocation of Licences or Permits.....	10
4.7. Simple Caution.....	10
4.8. Prosecution.....	11
4.9. Court orders/injunctions.....	11
4.10. Decision to prosecute or issue a simple caution.....	12
4.11. The evidential test.....	12
4.12 The Public Interest Test.....	12
4.13 Proceeds of Crime.....	12
5. Community Protection Notices (CPNs).....	12
5.1 The Written Warning (CPW).....	13
5.2 Failure to Comply with the CPW.....	13
5.3 Penalty on Breach of CPN.....	13
5.4 Remedial Action by the Local Authority.....	13
5.5 Remedial Orders by the court on conviction.....	14
5.6 Forfeiture Orders by the Court on Conviction.....	14
5.7 Seizure.....	14
5.8 Appeals Process.....	14
6. Review of Policy.....	15

1. Introduction

The Environmental Protection (EP) Team sits within Gravesham Borough Council's Community Protection Service and is responsible for undertaking regulatory activity across a wide range of public services.

This Policy relates to the functions of the EP Team only and does not extend to, nor reflect, the functions of other teams with regulatory functions within the council.

Our aim is to protect the interests, safety and wellbeing of all those who live, work and visit the Borough by ensuring the actions of businesses and individuals comply with relevant legislation and Codes of Practice. We aim to adopt a fair and consistent approach towards ensuring compliance, by

helping businesses and individuals understand and meet regulatory requirements easily and responding proportionately when our intervention is required.

It is the responsibility of individuals and businesses to comply with the law, statutory guidance and Codes of Practice, and we recognise that the failure to comply sometimes stems from carelessness, or a lack of understanding, training and/or management control. Educating through the provision of information and advice, as well as serving warnings and notices that provide the opportunity to remedy a breach, are examples of the important tools that officers will use to resolve issues and manage risks. However, in some cases failure to comply may risk causing serious harm, be the result of deliberate behaviour, or fail to correct an identified serious problem. In these instances, we will not hesitate to take more formal enforcement action.

1.1. Areas we regulate

We deliver a range of regulatory functions, including in relation to:

- Statutory nuisances (including in relation to noise, bonfires, accumulations, artificial lighting, etc.)
- Pollution control (e.g., Smoke Control Areas)
- Environmental Permitting (Permits in relation to authorised industrial processes in respect of their emissions to air and in some circumstances water, land and noise).
- Animal activities (licensing of activity involving animals e.g. hiring out horses, selling animals as pets, boarding of dogs and cats, animal breeders, animals kept or trained for exhibition)
- Dog control (including stray dogs, microchipping and aggressive dogs)
- Drainage (e.g., insufficient drainage, cesspools, septic tanks, etc.)
- Pest control (e.g., rodent infestations in properties or on land)
- Air Quality (Review and Assessment of Local Air Quality)
- Contaminated land (identification and investigation of potentially contaminated land, feedback on contaminated land searches for conveyancing)
- Public health
- Unauthorised Encampments
- Filthy and Verminous properties

We are also key consultees in relation to environmental matters for planning and licensing applications.

N.B. This list provides a broad overview of the main functions of the EP Team. These functions are however subject to periodic change, e.g. following restructures or reallocation of responsibilities, within the Council.

Policy Rationale and Scope

This Policy applies to all functions of the Environmental Protection team (listed above), setting out our intended enforcement approach and guidelines in dealing with them. It also provides a framework to aid our officers in deciding what form of enforcement is appropriate and ensures that their powers are transparent and consistently applied.

Deviation from the Policy

This policy provides the general framework for enforcement within the Environmental Protection team. Because the circumstances of each individual case, the law being applied, and the evidence available will vary, prescriptive details cannot be provided.

Each case will therefore be considered on its individual merits, but with due regard to this policy.

If there is a need to deviate from the policy this will be done where considered reasonable, proportionate and justifiable, and the reasons recorded.

2. Legal and Policy Context

2.1. Legislative Framework

We will act in accordance with the relevant legislation, guidance and case law as appropriate, when investigating breaches of regulatory compliance and when considering enforcement action including:

- Human Rights Act 1998
- Data Protection Act 1998
- General Data Protection Regulation (GDPR) 2018
- Regulation of Investigatory Powers Act 2000
- Police and Criminal Evidence Act 1984 Codes of Practice
- Criminal Procedures and Investigations Act 1996
- Legislative and Regulatory Reform Act 2006
- Code for Crown Prosecution
- Regulatory Enforcement and Sanctions Act 2008
- Criminal Justice and Police Act 2001
- Freedom of Information Act 2000
- Environmental Protection Act 1990
- Clean Neighbourhoods & Environment Act 2005
- Control of Pollution Act 1974
- Clean Air Act (various)
- Animal Welfare Act 2006

Our authorised officers will comply with the requirements of the particular legislation under which they are acting, and with any associated guidance or codes of practice. The above list is not exhaustive but provides a list of the most relevant and most frequently used legislation.

2.2. The Principles of Regulation

The Legislative and Regulatory Reform Act 2006 requires Local Authorities to have regard to the principles of good regulation when exercising a specified regulatory function. We will exercise our regulatory activities in a way that is:

- *Proportionate*: our activities will reflect the level of risk or harm and enforcement action taken will relate to this and the seriousness of the offence
- *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.
- *Targeted*: we will focus our resources on higher risk activities using an evidence-based approach and reflect local policies, corporate commitments, and need and where appropriate in line with national priorities and guidance.
- *Transparent*: we will ensure that those we regulate, and victims of non-compliance, are able to understand what is expected, and what they can anticipate in return.
- *Accountable*: our activities will be open to public scrutiny with clear and accessible policies and fair and efficient complaint procedures.

2.3. The Regulators' Code

The Regulators' Code under the Legislative and Regulatory Reform Act 2006 provides a clear, flexible, and principles-based framework for how regulators should engage with those they regulate. All enforcement action will be carried out with regard to the principles specified in this Code.

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.

2.4. Information Sharing

Section 5 of the Crime and Disorder Act 1998 places a duty on the Environmental Protection team to do all it can to reasonably prevent crime and disorder in the district. The team will fulfil this obligation by sharing information regarding its investigations with other council services and partner agencies including, (though not exhaustively):

- Police
- Department of Business Energy and Industrial Strategy
- Department for Environment, Food and Rural Affairs
- Health and Safety Executive
- Environment Agency
- Kent Fire and Rescue Service
- HM Revenue and Customs
- UKHSA
- Other Gravesham Borough Council Teams

All disclosures will be in accordance with the provisions of the General Data Protection Regulations (GDPR) 2018.

3. Managing non-compliance

3.1. Authorisation of Officers

The Environmental Protection Team's Enforcement Officers will be authorised (in accordance with the Council's constitution) to undertake enforcement action once the Regulatory Services Manager (or above) and the delegated authorising officer is satisfied that they are competent to do so. Assessment of their competency is based on a number of factors and can include a period of assessment, qualifications, experience and/or specific training. Authorised officers will act in accordance with the policy.

The Council may also appoint and or authorise representative outside bodies to carry out enforcement functions in highly specialist areas where it is considered appropriate and there are powers to do so.

3.2. Requests for our services

In responding to requests for services, including requests for advice and complaints about breaches of the law, the Environmental Protection Team will;

- Aim to acknowledge the request within 5 business days
- Advise when a substantive response can be expected
- Seek to fully understand the nature of the request
- Explain what may or may not be actionable, so that expectations are managed
- Inform of progress at appropriate intervals throughout
- Inform of the final outcome as appropriate

All contact with the Environmental Protection Team is in confidence unless the complainant has given permission to share their details with others as part of the investigation, or there is an operational reason why confidentiality is not maintained. In some circumstances, the complainant should be aware that it might become naturally apparent to an alleged offender who the complainant is.

Anonymous complaints and enquiries will not normally be responded to due to the associated difficulties in subsequently being able to gather evidence and or assess/demonstrate impact.

3.3. Identifying the need for action

The need for enforcement action may be identified in a number of ways including (but not limited to):

- programmed, ad-hoc and intelligence-led visits, inspections or monitoring
- response to a complaint or referral from a third party

- request for assistance from other agencies with enforcement action or advice
- receipt of evidence

The decision whether to inspect/investigate a business, premises, or activity to determine whether a risk of non-compliance exists will be made by officers on a case-by-case basis after reviewing the information and evidence provided. Notice of an intended visit will usually be given to the complainant unless there is reason to believe that an unannounced visit is more appropriate.

3.4. Conduct of investigations

All investigations will be carried out under the following legislation and in accordance with any associated guidance or codes of practice:

- 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
- the Data Protection Act 2018

The legislation and associated guidance specify how evidence is collected and used and gives a range of protections to citizens and potential defendants. Authorised Environmental Protection officers will also comply with the requirements of the legislation under which they are authorised, and with any associated guidance or codes of practice. As part of the investigation process, persons suspected of breaching legal requirements will wherever appropriate:

- be provided verbally, or in writing, with the appropriate caution as required by the Police and Criminal Evidence Act
- have the reasonable opportunity to provide an explanation or make any comments about the alleged breach
- be formally interviewed in accordance with the Police and Criminal Evidence Act
- be given the opportunity to raise a statutory defence

Digital evidence collected during a health and safety enforcement inspection will be handled in accordance with Gravesham Borough Council's data protection and information security policy and our privacy statement. All photographs, videos, audio recordings and digital documents will be securely stored within approved council systems with controlled access restricted to authorised officers involved in the investigation.

Evidence will be retained only for as long as necessary to fulfil statutory duties, support any enforcement actions, or comply with legal or regulatory requirements, after which it will be securely deleted in line with the Council's retention schedule and GDPR obligations. Appropriate measures will be taken to ensure the integrity, confidentiality and lawful processing of all digital evidence throughout its lifecycle.

Gravesham Borough Council is committed to ensuring that all enforcement actions are fair, proportionate and free from discrimination. An Equality Impact Assessment will be considered as part of the decision-making process where enforcement action may have the potential to affect individuals or groups with protected characteristics.

3.5. Prioritising cases

Factors that will be taken into account when allocating resources include:

- severity and scale of potential or actual harm
- existence of any continuing risk or breach of law
- individual or businesses compliance history with relevant legal responsibilities
- current enforcement priorities of the relevant service
- practicality of achieving results including any evidential gap

- wider relevance of the event, including serious public concern and interest
- vulnerability of any group affected

3.6. Decision to take enforcement action

The decision to take enforcement action will be made on a case-by-case basis, ensuring consistency of approach by referencing this policy, any other policies which may be applicable and the relevant statutory guidance. The action taken, which may be immediate in some circumstances, will be proportionate to the gravity and nature of the non-compliance.

Where appropriate, the views of any victim, injured party or relevant person will be taken into account to establish the nature and extent of any harm of loss - including potential harm and loss - and its significance when making the decision.

In every case a decision to take enforcement action will seek to:

- promote and achieve sustained compliance with codes of practice or the law
- ensure that businesses or individuals take action to deal immediately with serious risks and areas of non-compliance
- eliminate financial gain or benefit from non-compliance
- repair the harm done by the offence, where appropriate
- ensure that individuals and businesses who breach prescribed conditions or legislative requirements, including directors, employees or managers who fail in their responsibilities, are held to account. This may include bringing alleged offenders before the courts

The appropriate use of enforcement powers is important both to secure compliance with the law, and to ensure that those who have duties and responsibilities may be held to account for breaches of legislation or causing harm to the community. It is also important that compliant business and individuals can be assured that action is targeted against the worst offenders, and that their compliance and efforts are part of a coherent system.

3.7. Enforcement good practice

It is recognised that robust enforcement is essential for public confidence in upholding the integrity of the regulatory regimes that are administered, In addition, good, proportionate regulation is supportive to the economic vitality and growth of the economy and local businesses. Enforcement action will be taken against those who commit serious offences, flout the law, fail to follow advice or warnings to achieve compliance, or breach matters that are of key priority to the Council. If there is a serious or imminent risk of harm, danger, nuisance or injury then immediate formal enforcement action will be taken as required.

It is likely that advice or a warning will be offered in the first instance if the breach is not so serious as to require immediate enforcement action, if it is not a persistent breach, if there has been a history of good compliance, or we are confident there will be compliance as a result of the advice or warning. In some instances, legislation requires that an initial warning be issued. In certain, specific cases of non-compliance where the level of risk of actual harm is very high, the Environmental Protection Team considers it necessary to adopt a zero-tolerance approach towards for the protection of the quality of life of its residents, and these will be enforced without given warning.

3.8. Explaining non-compliance

When taking informal and formal enforcement action, individuals and businesses will be provided with clear explanations of what the breach is, what action is needed and the reasons for this. Where appropriate, advice will also be offered, but it will be made clear what actions are legal requirements and what is classed as advice and good practice.

Individuals/businesses will be provided with an opportunity to discuss advice given, actions required, or decisions taken in relation to non-compliance. The exception to this is where immediate enforcement action is required to respond to or prevent serious or imminent risk.

3.9. Multi-agency enforcement

There will be occasions where joint working or inspections will be needed with other agencies. These will be in accordance with jointly agreed protocols for example with the Police, Kent County Council, Environment Agency or Kent Fire and Rescue Services.

In determining the most appropriate form of investigation and enforcement action, officers will have regard to other agencies' interests as far as is reasonably practicable. Where enforcement action is being taken by another service, all reasonable assistance will be provided including witness statements and evidence sharing (subject to legal and data protection constraints).

3.10. Publicity

Consideration will be given in drawing the media's attention to factual information about charges which have been laid before the courts, within the limitations of avoiding publicity which could prejudice a fair trial. Successful results or convictions may also be publicised, to help inform others and improve awareness and compliance.

3.11. Complaints and appeals

The Environmental Protection Team is always willing to discuss with the complainant or the subject the reasons why particular actions have been taken or why someone is being asked to act in a particular way. In the first instance it would be most appropriate that this discussion is with the enforcement officer involved in the case.

Where formal enforcement action is taken, there is often a statutory right to appeal against a regulatory decision or if there has been a failure to act in accordance with the Regulators' Code. All Enforcement Notices will detail the reasons that an appeal can be made and how to make an appeal e.g. to the Magistrates Court. In many circumstances, a covering letter will also accompany the Enforcement Notice which will also explain about the rights to appeal and how to go about doing so.

Complaints about the service, or about the conduct of our officers, are managed through our Corporate Complaints Policy. Details can be found at <https://www.gravesham.gov.uk/contact-us/make-official-complaint>

3.12. Performance monitoring

The council publishes an annual Audit and Performance Report, which describes our performance (including enforcement) against the council's Corporate Plan and the Service Business Plan. It provides analysis, explanations and commentary in respect of outstanding, good and poor performance, including achievement of targets and details of remedial actions being taken where appropriate.

4. Enforcement Powers

The range of civil and criminal enforcement options available to the council's Environmental Protection Team is wide and is dependent on the legislation being used. Enforcement options include no action, informal action (letters, verbal advice, voluntary undertakings), statutory/legal notices, Fixed Penalty Notices, seizure of equipment, revocation / suspension / enforcement/prohibition notices, cautions, works in default, prosecution, court order/injunction. These options are explained in more detail below.

Any enforcement carried out by authorised Environmental Protection officers will be set out in the legislation or under national/local policy. Officers will comply with the requirements of the particular legislation being used and with any associated guidance or codes of practice.

4.1. No formal action and informal action

A decision not to take any action at all will be made where there is insufficient or no evidence that a problem exists, or officers have not witnessed a problem when monitoring the situation.

Informal action includes compliance advice, guidance and support and is used as a first response in many cases where potential breaches of legislation are identified. Advice can be provided verbally or in writing and is often given where the significance of the risk is low and it is anticipated that the advice or guidance will help to rectify the situation or offences as quickly and efficiently as possible, avoiding the need for further enforcement action.

A warning letter or Community Protection Warning (CPW) will set out what should be done to rectify the breach and to prevent reoccurrence. 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 may be presented in evidence should the issue escalate to the court.

4.2. Voluntary undertakings

Voluntary undertakings that breaches will be rectified and/or recurrences prevented, may be accepted on a case-by-case basis. This is more likely to be associated with a business premises rather than a domestic situation. Failure to honour voluntary undertakings will be taken very seriously and enforcement action is likely to result.

4.3. Statutory (Legal) Notices

In respect of many breaches, Environmental Protection has the power to issue statutory notices such as an Abatement Notice. Such notices are legally binding. They are issued in situations where there is considered to be sufficient evidence to prove an offence in court, informal action has failed, is the only realistic option to resolve a problem and secure compliance or there is a risk to public health. Failure to comply with a statutory notice can be a criminal offence and may lead to prosecution and/or other sanctions, e.g., seizure of belongings.

A statutory notice will clearly set out actions which must be taken and the timescale within which they must be taken. Timescales will be realistic depending on the situation. The notice will 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. Notices can also require certain works to be undertaken, and a schedule of works may accompany the notice. Where a statutory notice is issued, an explanation of the appeals process will be provided to the recipient.

The service also has the option of following a Community Protection Warning (CPW) with a Community Protection Notice (CPN) where the warning letter has not been effective. There is comprehensive guidance on when and how to serve CPNs. If a CPN is not complied with a Fixed Penalty Notice (FPN) can be served or the matter referred to the council's Legal Services with a view to progress to prosecution.

4.4. Seizure of goods, equipment or records

All authorised officers can seize goods, equipment, articles, substances or records, where specified in law, especially if required as evidence to prove an offence. Articles or substances, which are a cause or likely to be a cause of immediate danger, may be seized under consumer protection laws. Officers may also seize goods or records which are deemed dangerous or required as evidence.

Equipment may be seized to abate (stop) nuisance where there are repeat offences, or the nuisance is such that its removal is the most effective remedy. Additionally, other articles, records and notices may be seized by officers, if required as evidence to prove an alleged offence.

Failure to comply with the terms of a statutory notice (in particular a noise abatement notice served under the Environmental Protection Act 1990) can also result in officers being granted permission by the court to enter property and seize noise making equipment.

To take this action, officers will have evidenced that the nuisance is continuing even though a notice has been served. The equipment is seized to abate the nuisance and prevent further recurrence. The

owner of the equipment will be given information regarding how they can apply to the court to take back possession of the equipment.

4.5. Financial Penalties (Fixed Penalty Notices)

Fixed penalty notices (FPNs) may be issued for certain offences such as breaches of Public Space Protection Orders (PSPOs). In some circumstances, in particular where breaches are serious or recurrent, it may be that prosecution is more appropriate than the issue of an FPN. An FPN is not a criminal conviction and does not appear on an individual's criminal record.

In relation to Community Protection Notices (CPN), a FPN may be issued in cases of non-compliance with the CPN. Fixed penalty notices offer perpetrators an opportunity of escaping criminal liability if they pay the Council a fixed monetary penalty within a set period. A Fixed Penalty Notice may be appropriate, but it does not alleviate the impact on the community

Payment of a fixed penalty does not provide immunity from prosecution in respect of similar or recurrent breaches. An FPN must only be issued where there is sufficient evidence to take a prosecution should the fixed penalty not be paid within the specified time period.

4.6. Refusal/Suspension/Revocation of Licences or Permits

The Environmental Protection Team is responsible for issuing licences for various animal activities such as hiring out horses, selling of animals as pets, the boarding of dogs or cats, dog and cat breeding and the keeping or training animals for exhibition. These licences include conditions, which require the licence holder to take steps to ensure that, for example, a business is properly run and that the welfare of the animals is protected. Breach of these conditions may lead to a review of the licence which may result in its revocation, suspension or variation, or the refusal of the renewal of a licence.

As well as issuing licences for the above, the Environmental Protection Team also has a role to play in ensuring that appropriate standards are met in relation to licences issued by other council services. For example, Premises Licences issued to pubs or bars by the Licensing Team.

The Environmental Protection Team is also responsible for issuing Permits in relation to certain prescribed industrial/commercial processes in respect of their emissions to air (and in some circumstances water, land and noise). These Permits contain conditions that must be adhered to and emission limits that must be met. In situations where the conditions are not being complied with or emission limits exceeded, enforcement action can include enforcement or prohibition notices. These notices could result in the operation of the business being suspended until the required action has been taken. Revocation notices can also be served in situations where the permitted process has stopped operating.

4.7. Simple Caution

A Simple Caution can be issued for some less serious offences, where a person admits an offence, understands the significance of it and consents to the simple caution. The main difference in deciding that a simple caution is the correct enforcement route to take as opposed to serving an FPN, a statutory notice or taking a prosecution is the fact that the offender admits the offence.

There are three preconditions, which must all be satisfied by an enforcing officer if a matter is to be dealt with by simple caution, as follows:

- There is sufficient evidence to give a realistic prospect of conviction,
- The offender admits their guilt,
- The person being cautioned agrees to it, having been made aware that the caution may be cited in Court if the person is found guilty of other offences in the future.

The reasons for issuing a simple caution instead of prosecution in the courts would commonly be that the offender has no previous history in relation to the offence and has done everything in their power

to make amends. Depending on the circumstances, this would usually entail remedial work to premises and/or taking proper steps to ensure that the offence cannot recur. If a simple caution were to be offered and refused by the offender, then the case would proceed to court. All decisions to issue a simple caution will be recorded, including justification that the case satisfies the preconditions set out above.

Following the acceptance of a caution, the offender may be invited to contribute towards the Council's costs in investigating and preparing the case, if these are significant. However, a caution cannot be granted on condition that the Council's costs are paid.

A simple caution will appear on the offender's criminal record. It is likely to influence how similar breaches or offences are dealt with in the future. They 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.

4.8. Prosecution

The Council has the power to prosecute offenders for a range of criminal offences, and a successful criminal prosecution can be a severe punishment. Additionally, any successful prosecution may result in an application for a claim for the full recovery of costs incurred in the investigation and prosecution of the offender.

Where appropriate, disqualification of directors will be sought under the Company Directors Disqualification Act 1986. We will consider prosecuting directors if they are culpable as individuals. For example, if the offence was committed with their consent, connivance or neglect; or they ignored warnings from employees.

Prosecution may occur in respect of serious or recurrent breaches of the law, where other enforcement action has failed to secure compliance or failure to pay an FPN. When deciding whether to prosecute, the Code of Crown Prosecutors will be followed. Prosecution will only be considered where there is sufficient evidence to provide a realistic prospect of conviction against the defendant(s), and that prosecution would be in the public interest. Again, guidance in the Crown Prosecution Service Code of Practice will be followed.

Any successful prosecution will result in a criminal record. The sentence that the court imposes will depend on the legislation involved, the seriousness of the offence, any mitigating factors, and the courts sentencing guidelines.

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

4.9. Court orders/injunctions

In cases of serious non-compliance that require urgent/immediate enforcement action or where previous enforcement action has proved ineffective with continued, wilful breaches occurring, the 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.

In issuing an order or injunction, 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.

An example of an order following a criminal conviction for any crime, is a Criminal Behaviour Order (CBO). The council can request that the court issue a CBO to persistent offenders, aged above 10 years old, to stop them from engaging in serious anti-social behaviour by prohibiting certain acts or requiring certain positive actions.

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

4.10. Decision to prosecute or issue a simple caution

Two tests are applied in determining whether a Prosecution or a Simple Caution is viable and appropriate. We follow guidance issued by the Crown Prosecution Service when applying the tests.

A Simple Caution or Prosecution proceedings will only be progressed when the case has passed both the evidential test and the public interest test. Similar principles will also be applied to the other types of formal enforcement actions that are available

4.11. The evidential test

The Environmental Protection Team must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. In considering the evidence, officers should have regard to any lines of defence which are open to or have been indicated by the accused, as well as any other factors likely to affect the prospects of conviction including admissibility of the evidence and reliability of witnesses. This must be an objective test since a conviction will only be obtained if the Court or the jury is sure of a defendant's guilt.

4.12 The Public Interest Test

The public interest test must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. We will balance factors for and against prosecution carefully and fairly.

Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the defendant. Some factors may increase the need to prosecute whilst others may suggest that another course of action would be more appropriate.

4.13 Proceeds of Crime

Any money or assets earned because of, or in connection with, an offence can be recovered under the Proceeds of Crime Act 2002. In relevant cases, we will consider taking action under the Proceeds of Crime Act to confiscate the proceeds of those who benefit from criminal conduct.

5. Community Protection Notices (CPNs)

Under the Anti-Social Behaviour, Crime and Policing Act 2014 Gravesham Borough Council has the authority to issue Community Protection Notices. Community Protection Notices (CPNs) are intended to deal with on-going problems of nuisance, which have a negative effect on the community's quality of life, by targeting those responsible.

The CPN powers are designed to complement rather than replace existing powers and it remains a principle of law that a specific power should still be used where appropriate and if the threshold for use of that specific power is met. Where other powers are available these must be considered and interaction between two powers should be considered. It remains a principle in law that specific powers should be used in preference to a general one

A CPN can only be issued where the Council is satisfied on reasonable grounds that the conduct of an individual (aged 16 or over), a business or an organisation is:

- having a detrimental effect on the quality of life of those in the locality
- persistent or continuing in nature, and
- unreasonable.

For clarification, references to "conduct" include a failure to act. The Council will consider where the above threshold is met, on a case-by-case basis. The Council may consider the full range of enforcement powers as set out in this policy and different legislation may be considered more appropriate or applied in parallel.

A Community Protection Notice should be bespoke to the individual and the behaviour in question so that it is appropriate to the situation and can include any or all of the following:

- a requirement to stop doing specified things;
- a requirement to do specified things;
- a requirement to take reasonable steps to achieve specified results.

This means that not only can the relevant officer stop someone being anti-social, but they can also put steps in place to ensure the behaviour does not recur.

5.1 The Written Warning (CPW)

Before a CPN can be issued, a written warning must be issued to the person committing the ASB. It must make it clear to the individual that if they do not stop the ASB, they could be issued with a CPN.

The written warning will also:

- Outline the behaviour that is considered anti-social
- State the time by which the behaviour is expected to have changed
- Set out the potential consequences of being issued with CPN, sanctions or breach.

It is at the professional judgement of the issuing officer to decide how long should be given for the matter to be dealt with, however, many actions or behaviours can reasonably cease immediately eg the playing of music. The Council will focus on the victims and their expectations, the issuing officer will periodically update those affected by the steps that have been taken, potential timescales and possible implications to the perpetrator. and any actions requested by the complainants.

5.2 Failure to Comply with the CPW

Failure to comply with a Community Protection Warning may allow the enforcing authority to issue a full Community Protection Notice (CPN). Regard will be taken of the complainants and their ability or willingness to present evidence and witness statements.

5.3 Penalty on Breach of CPN

Failure to comply with a CPN is a criminal offence. The evidence of this breach must be able to reach the 'criminal standard and without the correct evidence for court a case may not be able to progress. The officer dealing with the matter may issue witness statement forms or visit the complainant(s) to obtain a statement in person and/or the officer can be satisfied through their own observation that there has been a breach of the CPN. Once a breach has been evidenced there are a few options available; however, consideration should be given to the victims' wishes.

5.4 Remedial Action by the Local Authority

Where a CPN has not been complied with, the Council may have work carried out to remedy the failure, but only on land that is open to the air. Here, the defaulter's consent is not required.

Consent is required where the premises are not open to the air (i.e. indoors). In such circumstances the Council can issue a notice on the defaulter specifying the nature and costs of the intended works and inviting the defaulter to consent to them being carried out. Without such consent the Council cannot proceed.

On completion of the work, a notice of the details of the actual work completed and final amount payable must be issued to the perpetrator. The costs must be 'reasonable' i.e.

- (i) not more than is necessary to restore the land to the standard specified in the notice and
- (ii) not more than was actually incurred by the Council.

The perpetrator is then liable to the Council for the costs, subject to their right to appeal the notice within 21 days of issue to the Magistrates' Court.

The use of a CPW and CPN does not remove the ability by the council to commence action under specific powers if for example the service of enforcement notices or take a prosecution for the original

offence if it is not satisfied that the CPW/CPN will or will have resolved the situation and that sufficient evidence has now been gathered to support the use of the specific powers.

5.5 Remedial Orders by the court on conviction

On conviction for an offence of failing to comply with a CPN, the prosecuting authority may ask the court to impose a remedial order and/or forfeiture order, because:

- The matter may be so serious a court order is warranted
- Works to be carried out need consent and this is not forthcoming
- Issuing authority may believe that forfeiture or seizure of items is required, as a result of the behaviour e.g. sound making equipment.

A Remedial Order may require the defendant:

- To carry out specified work, or
- Allow work to be carried out by, or on behalf of, the local authority.

Even where the court orders remedial works to indoor premises be carried out, the defaulter's consent is still required before the works can proceed. The defaulter does not have to give such consent but failure to do so may constitute contempt of court.

5.6 Forfeiture Orders by the Court on Conviction

Following conviction for an offence under section 48, the court may also order forfeiture of any item that was used in the commissioning of the offence e.g. sound making equipment, poorly socialised dog. Items can be destroyed / disposed of (dogs re-homed). The item must be handed over as soon as reasonable, to either a police officer or council officer.

5.7 Seizure

The court may issue a warrant authorising seizure of items used to commission the offence, due to the failure to comply with the CPN. A police officer or council enforcement officer may use reasonable force to do so including the use of a registered Bailiff. A warrant for seizure can be applied for independently from any prosecution for the offence and must detail on the warrant that the police have the power of entry.

Failure to comply with these orders is a contempt of court, and possibly a custodial sentence. If an individual is convicted under section 48, they may receive a level 4 fine. Businesses or organisations convicted of this offence may be fined up to £20,000.

5.8 Appeals Process

Any person issued with a CPN can appeal; the process is detailed on the CPN. The appeal will be heard in the Magistrates Court and can be made on the following grounds:

- (i) The conduct specified in the CPN:
 - did not take place
 - has not had a detrimental effect on the quality of life of those in the locality
 - was not persistent or continuing
 - was not unreasonable
 - was conduct that the person cannot reasonably be expected to control or affect
- (ii) The CPN requirements or timescales are unreasonable
- (iii) There is a material defect or error with the CPN, or
- (iv) The CPN was issued to the wrong person.

Any appeal must be made within 21 days of the issue of the CPN. Any requirements to do a specific activity to achieve a specific result must be put on hold until the outcome of the appeal. Requirements to stop doing specified things will continue to have effect despite the appeal.

6. Review of Policy

The Council will review this enforcement policy at least every 5 years or when changes in legislation or centrally issued guidance make this necessary. Hard copies will be made available on request.

Policy produced – January 2026

Review Period – 5 years