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Legal and Democratic Service – Licensing Enforcement Policy

The Legal and Democratic Service undertakes several enforcement roles. This policy applies when undertaking those roles and supports and supplements guidance on enforcement contained in the Statutory Code of Practice for Regulators and the Enforcement, Statutory Codes of Practice and relevant guidance documents and guidance issued by Government Departments and other relevant bodies.

Any enforcement undertaken by the Council will embrace the principles contained within this general policy and will be in accordance with the law and statutory guidance.

Principles of Good Regulation

The Legislative and Regulatory Reform Act 2006, Part 2, requires Test Valley Borough Council to have regard to the Principles of Good Regulation when exercising a specified regulatory function. For local authorities, the specified functions include those carried out by the Licensing Section such as enforcement of the:

- a) Licensing Act 2003
- b) Gambling Act 2005
- c) Town Police Clauses Act 1847 and Local Government (Miscellaneous Provisions) Act 1976 as it relates to hackney carriages and private hire vehicles
- d) Local Government (Miscellaneous Provisions) Act 1982 as it relates to Sex Establishments
- e) Highways Act 1980 and Business and Planning Act 2020 as they relate to pavement cafes and similar
- f) Scrap Metal Dealers Act 2013
- g) House to House Collections Act 1939 and Police, Factories, Etc. (Miscellaneous Provisions) Act 1916 as it relates to charitable collections

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, corporate and national priorities.

Regulators' Code

Test Valley Borough Council has had regard to the [Regulators' Code](#) in the preparation of this policy. 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

Test Valley Borough 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.

Freedom of Information Act 2000 and Data Protection Act 2018

Information will be recorded on departmental files and where there is a need for Test Valley Borough Council to share enforcement information with other agencies, we will follow the provisions of the Data Protection Act and the General Data Protection Regulation. The information recorded will be used as a basis for relevant future enforcement action or in any other process carried out by the Council where the information could be material. Information held will be done so in compliance with the Council's retention policy

The Code for Crown Prosecutors

When deciding whether to prosecute Test Valley Borough 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':

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

When deciding whether there is enough evidence to prosecute, Test Valley Borough Council will consider what evidence can be used in court and is reliable and credible. 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?

Test Valley Borough Council will balance factors for and against prosecution carefully and fairly, considering each case on its merits. The public interest factors that we will consider are detailed in the Public Interest section of The Code for Crown Prosecutors.

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. Please also see section A below for further mention of Primary Authority.

We are committed to avoiding imposing unnecessary regulatory burdens and assessing whether similar outcomes could be achieved by less burdensome means than enforcement.

This policy will be published and made publicly available on the Test Valley Borough Council website.

This policy was first approved at a meeting of the Council's Licensing Committee held on 1 December 2016 and was readopted at the meeting held on **TBC**

We will undertake our approach to enforcement by:

Complying with the Council's Equality Policy in being non discriminatory and treating all persons and businesses fairly.

Providing a courteous and efficient service, with officers identifying themselves by name, providing a contact point, telephone number, & e-mail address.

Responding to all service requests and to administer and implement the local authority's statutory responsibilities.

Actively working with business and the public to advise on and assist them to comply with the law.

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Responding to requests for information or advice and as necessary pass the enquirer to the relevant statutory agency if the subject matter falls outside the jurisdiction of the Service.

Providing guidance, in plain language, and advice to business, the public and other interested parties except where this may give rise to conflict of interests.

Ensuring that those affected by our activities are aware of the local authority's complaints procedure. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely timescales involved.

Aiming to ensure that the enforcement of the statutory provisions are in accordance with the relevant guidance and codes of practice made there under.

Aiming that before enforcement action is taken, officers will provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference, unless immediate action is required e.g. imminent risk to safety (which may include safeguarding concerns relating to children or vulnerable adults).

Giving an explanation at the time and confirming in writing within five working days, in cases where immediate action is considered necessary. In some specific cases e.g., immediate suspension of a taxi driver on public safety grounds, there are specific timescales within which formal notification must be given which may exceed 14 days.

Ensuring, where there is a right of appeal against such formal action, advice on the appeal mechanism is clearly set out in writing at the time the action is taken.

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 Test Valley 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
- and any other relevant amending legislation

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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 and individual policies relating to the function involved i.e. Licensing Act 2003 Statement of Licensing Policy, Gambling Act 2005 Statement of Licensing Principles and Hackney Carriage and Private Hire Licensing Policy.

Enforcement Actions available to Test Valley Borough Council in respect of Criminal and Civil breaches

A. Compliance Advice, Guidance and Support

Test Valley 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 or operational advice, 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 caution’) 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.

Test Valley 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 Test Valley 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, Test Valley Borough Council recognises that there is likely to be an on-going need for compliance advice and support, to prevent further breaches.

B. Voluntary Undertakings

Test Valley Borough Council may accept voluntary undertakings that breaches will be rectified and/or recurrences prevented. Test Valley 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 Test Valley Borough Council has powers to issue statutory notices. These include but are not limited to: Community Protection Notices, 'Stop Notices', '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. Injunctive Actions, Enforcement Orders etc.

In some circumstances Test Valley 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.

Test Valley 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, Test Valley Borough Council will usually only seek a court order if it has serious concerns about compliance with voluntary undertakings or a notice.

E. Simple Caution

Test Valley 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, Test Valley Borough Council is likely to consider prosecution.

A simple caution will be recorded by the Authority. It is likely to influence how Test Valley 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 be necessary to declare it on work or immigration applications.

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

F. Prosecution

Test Valley 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 Test Valley Borough Council has regard to the provisions of [The Code for Crown Prosecutors](#) as issued by the Director of Public Prosecutions. Any prosecution will need to pass both the evidential and public interest test.

A successful prosecution will result in a criminal record. The court may impose among other options a fine, an order for community service, probation and in respect of particularly serious breaches a prison sentence. The court may order the forfeiture and disposal of vehicles, 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 and orders to pay restitution.

G. Refusal/Suspension/Revocation of Licences

Test Valley Borough Council issues a number of licences and permits. Test Valley 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 include conditions which require the licence 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 which may result in its revocation or amendment.

When considering future licence applications, Test Valley Borough Council may take previous breaches and enforcement action into account.

Test Valley Borough Council

Date to be confirmed 2023