

MILTON KEYNES COUNCIL ENFORCEMENT POLICY

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1. Purpose

- 1.1 To seek the adoption of a revised Milton Keynes Council Enforcement Policy.

2. Recommendation

- 2.1 That the Milton Keynes Council Enforcement Policy be agreed as being applicable to the regulatory functions of this Committee.
- 2.2 That any suggested amendments to the Enforcement Policy be recommended to the Cabinet to adopt, prior to recommendation of the Policy to Council.

3. Details and Outcomes

- 3.1 The **annexed** draft Cabinet report details how Milton Keynes Council must publish an enforcement policy setting out how we will enforce legislation. As a quasi-judicial committee, this Policy can only apply if this Committee agrees it is applicable.

4. Implications**4.1 Policy**

See attached draft policy and accompanying draft Cabinet report.

4.2 Resources and Risk

There are no resource implications. By not formally adopting the Milton Keynes Council enforcement policy, there will not be a consistent message to those who are regulated as to how we will conduct ourselves. Furthermore, a separate policy will need to be drafted and agreed by this committee.

4.3 Legal

It is a legal requirement for enforcing authorities to publish an enforcement policy.

Background Papers: Draft Cabinet report and Milton Keynes Council Enforcement Policy

Wards Affected:

All Wards

ANNEX

MILTON KEYNES COUNCIL ENFORCEMENT POLICY

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Executive Summary:

To comply with the law and set out how we will enforce legislation, the authority must publish an enforcement policy. This policy supersedes all previous published enforcement policies.

The proposed enforcement policy sets out how the services responsible for ensuring compliance and its officers will conduct themselves and how other parties can expect to be treated as we discharge our key duties. An enforcement policy is required by law, it is integral to our performance management and it could be challenged by defence solicitors looking to make headway due to alleged non-adherence to its provisions. This will be the first time the authority will have one overarching enforcement policy covering all regulatory functions, if it is adopted.

Consultation was undertaken whereby an explanatory email was sent to all consultees together with a copy of the proposed policy. Responses were received from just a few stakeholders and where appropriate suggested amendments have been included in the final draft. (Appendix).

1. Recommendation(s)

- 1.1 That Cabinet recommend the policy to Council to be adopted for all relevant Council regulatory functions.

2. Issues

- 2.1 Cabinet must be satisfied that the revised policy takes account of issues such as recent legislative changes, that it covers the breadth of council regulatory functions, that it is proportionate and that it does not infringe legislation such as the Human Rights Act 1998.
- 2.2 Currently there are a number of enforcement policies across the Authority but no one overriding policy.
- 2.3 By law, the authority has a duty to have regard to the Regulators' Compliance Code and must take into account the Code's provisions when developing policy
- 2.4 The compliance areas covered by the regulatory code of practice include the enforcement functions carried out by Education Welfare Officers, Housing Officers, Transport & Highways Officers, as well as all officers in the Regulatory Unit.
- 2.5 A full 12 week consultation was undertaken with relevant officers, regulatory partners, ward members and parish/town councils along with private sector partners who are commonly in contact with the service. Responses were

received from all categories of stakeholder and where possible have been included in the final draft.

3. Options

- 3.1 The one alternative option is to keep the current disparate number of enforcement policies already in place for the service areas, though many of these have not been consulted on, have not been seen by Cabinet for approval and are not published.

This approach is not recommended as the policy should apply to the council as a whole and not differing policies for different enforcement areas because the overriding principles are the same. Furthermore, apart from the current Regulatory Services Enforcement Policy, all the other policies are not fully compliant with the legal requirements set out in the Regulatory Compliance Code.

4. Implications

4.1 Policy

The current Regulatory Services Enforcement Policy has been adapted to ensure it includes within its scope other enforcement policy requirements and functions.

4.2 Resources and Risk

There are no resource implications to agree this new policy, however, if the current enforcement policies are not fit for purpose, prosecution cases may be lost on a technicality and costs will have been incurred by Milton Keynes Council up to the point of the investigation folding.

N	Capital	Y	Revenue	N	Accommodation
N	IT	N	Medium Term Plan	N	Asset Management

4.3 Carbon and Energy Management

It is not anticipated that the proposals will impact on the Carbon and Energy Management Policy.

4.4 Legal

By virtue of the Regulatory Enforcement and Sanctions Act 2008, Legislative and Regulatory Reform Act 2006, and the Legislative and Regulatory Reform (Regulatory Functions) Order 2007 (as amended), the Regulators' Compliance Code was issued with parliamentary approval and specified regulators must have regard to the code when determining policies, setting standards, or giving guidance in relation to their duties.

As well as the enforcement functions normally carried out by trading standards and environmental health, the Order includes the local authority functions carried

out under Part 2 of the Children and Young Persons Act 1963, the Housing Acts of 1985, 1996 and 2004, the Anti-social Behaviour Act 2003, as well as the Road Traffic Act 1988 and Transport Act 1981.

4.5 Other Implications

An enforcement policy which is incompatible with key legislation such as the Human Rights Act 1998 could leave the council open to the challenge that their conduct is in breach of such legislation, which may result in formal proceedings being struck out.

This obviously has associated consequences not just in terms of costs for failed proceedings but also in terms of damage to council reputation and the likely corresponding adverse coverage in the media.

Complete the boxes at the end of this section to indicate with a 'Y' if there are any implications and an 'N' if not. Where a 'Y' has been entered the implications should be addressed in the text.

Y	Equalities/Diversity	N	Sustainability	Y	Human Rights
N	E-Government	N	Stakeholders	Y	Crime and Disorder

Background Papers: Appendix 1 – Milton Keynes Council enforcement policy



Enforcement Policy

Contents

1. Introduction
2. Aims
3. Scope
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6. Enforcement actions
7. Recovery of costs
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1. Introduction

Milton Keynes Council functions as a regulator and enforcement agency with a wide range of legal powers and duties enabled through legislation. The authority has an essential role in the safeguarding of children, protection of the environment, health, safety and interests of residents, visitors and businesses within and where relevant, outside of Milton Keynes.

This enforcement policy was produced through consultation with all relevant stakeholders and is designed to ensure a consistent, fair, proportionate and effective approach to regulatory inspection and enforcement.

2. Aims

The council's aim is to undertake its regulatory and enforcement role in an impartial, open and consistent manner. This is achieved through education, mediation, advice, inspections, monitoring and by regulating the activities of individuals, families, businesses and other trading entities as necessary. Securing compliance through the use of enforcement powers and sanctions, including prosecution is sometimes a necessary means to achieving this outcome. In doing this, Milton Keynes Council enforcement officers will act in accordance with the guidance and standards set out in this policy. In particular Milton Keynes council will:

- Work with individuals, families and businesses to help them to comply with their legal responsibilities and obligations

- Undertake fair and effective enforcement activities
- Robustly challenge the actions of individuals that negatively affect the community
- Liaise and co-operate closely with partner agencies to ensure the most appropriate and proportionate action is taken in each case
- Ensure enforcement staff are competent, appropriately trained and apply this policy and its principles professionally and consistently
- Make information about this policy widely available to the public and businesses within and outside Milton Keynes
- Monitor compliance with the policy and review it on an annual basis in consultation with relevant stakeholders
- Act in accordance with the Government Enforcement Concordat, Code for Crown Prosecutors and where relevant, the Regulators' Compliance Code.
- Have regard to other council policies and procedures that sit underneath this overarching policy

A further aim of this policy is to ensure that Milton Keynes Council can tackle the needs of individual communities by engaging with them, identifying issues of particular importance to them and using enforcement sanctions appropriately to bring about compliance. This approach will provide swift resolution to community problems through the use of intelligence and effective community engagement.

3. Scope

This policy applies to all of the enforcement functions carried out by Milton Keynes Council. It supports and supplements existing, specific guidance on enforcement action contained in the statutory code of practice for regulators and other statutory codes of practice, relevant guidance documents and guidelines issued by other government departments and other bodies. Due consideration will be given to any other enforcement policy or scheme such as the Primary Authority Principle, where relevant.

4. General Principles of Enforcement

Any decision regarding enforcement action will be taken on the merits of each case, be impartial, objective and will not be affected by race, disability, socio-economic factors, age, politics, gender, sexual orientation or religious beliefs of any council employee, offender, victim or witness. However, where a victim has been targeted by an offender by virtue of their status, for example ethnicity or where the perpetrator is young or vulnerable, consideration will be given to this when deciding on any course of action.

A copy of our equality and diversity policy can be found on our website: [Equalities Policy](#) and may also be obtained by applying in writing to: Corporate Equalities & Diversity Officer, Milton Keynes Council, Civic Offices, 1 Saxon Gate East, Milton Keynes, MK9 3EJ.

Where appropriate, we will seek to achieve compliance through early engagement, mediation, education and advice. Where this is not deemed by

officers as the most appropriate route, their decisions will be recorded and justified.

5. Referrals / Service Requests etc

Complaints which may result in enforcement action against a business, individual or family will be brought to their attention as soon as practicable. During the process of taking any enforcement action any significant complainant or witness will be notified of progress on a regular basis and of any new information which may affect the outcome. In circumstances where notifying any party could impede enforcement action, notification will not take place until those circumstances no longer exist.

6. Enforcement actions

The following sanctions are available to the council:

- Informal warnings
- Fixed / Variable Penalty / Monetary Notices
- Refusal, revocation or suspension of licence
- Statutory Notices
- Stop / Prohibition Notices
- Simple Cautions
- Undertakings / Injunctive Proceedings
- Prosecution
- Confiscation / Forfeiture

Any sanctions and penalties imposed will be consistent, balanced, fairly implemented and relate to common standards which ensure that individual safety and welfare, public safety, financial security, or the environment is adequately protected. Where it is clear that jurisdiction for enforcing any matter or imposing any form of sanction rests with another regulator, the matter will be passed across to them accordingly; however this will not preclude an investigation from taking place to ascertain relevant facts. The aim of using sanctions and penalties is to:

- Protect the public and businesses from harm
- Stop the infringing conduct immediately
- Change the behaviour of the offender
- Deter future non-compliance and reassure the community
- Restore the harm caused by regulatory non-compliance
- Eliminate any financial gain or benefit from non-compliance
- Be proportionate to the nature of the offence and the harm, or risk of harm caused and with consideration as to the public stigma that might come with receiving a criminal conviction

In deciding which sanction is appropriate, the service will have particular regard to the following criteria:

- Whether the breach was pre-meditated or committed deliberately or recklessly, or without due diligence;

- Whether there are any prior complaints and convictions or other information relevant to the individual, family, business or trader's history;
- Inadequate mitigation or explanation given by the individual, family, business or trader. Also, the individual, family, business or trader's attitude and in particular, whether they were obstructive or co-operative;
- The prevalence of the type of breach and whether a particular sanction could act as a deterrent and encourage compliance generally;
- The effect of the breach on the victim or affected person, in particular where the victim or affected person is in some way vulnerable or the infringement resulted in death or serious injury.

7. Recovery of costs

Where appropriate, the council will seek to recover all costs incurred in carrying out any proceedings (including staff time) from relevant parties to ensure that the financial burden of the infringement is not borne by the authority and ultimately the tax-payer.

8. Enforcement policy implementation

Scheduled internal quality audits will be undertaken to ensure that all enforcement activity is carried out in accordance with this policy. Significant instances of non-compliance with this policy will be recorded, reported to the Assistant Director and appropriate action instigated.

Complaints about our service will be addressed through our corporate complaints procedure, which can be found on our website: [Complaints](#) and may also be obtained by applying in writing to: Milton Keynes Council, Civic Offices, 1 Saxon Gate East, Milton Keynes, MK9 3EJ.