



**PUBLIC PROTECTION
ENFORCEMENT POLICY**

Reviewed May 2015

Introduction

This Enforcement Policy is one of a number of policies produced by West Lindsey District Council with the aim of providing the public, businesses Council Members and Officers with help and guidance in relation to how the Council carries out its enforcement role across a range of service areas. Whilst the policy aims to provide a clear understanding to the reader, it cannot be considered as being exhaustive due to the complexity of some circumstances.

Scope

Public Protection Services is divided into four sections:

- Food Safety
- Environmental Protection
- Health and Safety
- Licensing

This policy applies to all areas of work carried out by the officers within the above sections.

Policy Principles

The policy incorporates the following principles, provided through guidance from many organisations and relevant documents including, the Health and Safety Commission, Food Standards Agency, Home Office, Better Regulation Unit, Department of Culture Media and Sport, LACORS, the Environment Agency, the Chartered Institute of Environmental Health, Regulatory Compliance Code and the Enforcement Concordat, which has been signed up to by the Authority:

Standards	We will advise on the level of service that can be expected with the production of annual service plans.
Openness	We will provide information freely, in plain English
Helpfulness	We will provide a courteous and efficient service
Complaints	We will provide details on the corporate complaints procedure
Proportionality	The degree of enforcement action taken will be proportionate to the risk involved and the seriousness of breaches of the law
Consistency	We will be fair and take a similar approach in similar circumstances, however as each case is unique, it must be considered on the individual fact and merits
Transparency	We will ensure that our role is clear to businesses, employees and customers and that all action required is clearly understood
Targeting	We will inspect premises on a risk-based programme and deal with other requests in line with the performance plan

Accountability We are answerable for our actions to the Employment Tribunal, the Courts and the Local Government Ombudsman, and Elected Members

Legislation, Guidance and Policies affecting Enforcement action

Prior to any enforcement action taking, place Public Protection Officers will seek to comply with and be guided by the following:

- The Human Rights Act 1998
- The Police and Criminal Evidence Act 1984 and it's code of practice
- The Code for Crown Prosecutors in relation to the evidential and public interest test
- The Regulators Compliance Code
- The Cabinet Office Enforcement Concordat
- Ministry of Justice Simple Caution for Adult Offenders Guidance (MoJ Guidance)
- The Council's Corporate Policy in respect of the Regulation of Investigatory Powers Act 2000 (RIPA)
- Disability Discrimination Act 1995
- Crime and Disorder Act 1998
- Codes of Practice and Government Guidance, issued under the various legislation, together with appropriate recognised Industry Guides and Good Manufacturing Practice. In the case of Health and Safety Enforcement regard will be had to the Enforcement Management Model.
- The Authority's Enforcement Policy

Approach to Enforcement

The work carried out by officers within Public Protection is wide ranging, diverse and involves the enforcement of various pieces of legislation. The legislation may affect individuals, organisations or businesses residing, operating or visiting the District.

Depending upon the particular circumstances Officers may use a variety of means including education, advice, and guidance, warning letters and legal notices to ensure compliance with a wide variety of legislation.

The Council will work to ensure that enforcement decisions are necessary, consistent, proportionate, well balanced, fair, and relate to common standards both locally and nationally. The available options for action are:

- No action
- Informal Action – written or verbal advice
- Formal Action- including the service of Fixed Penalty Notices, Statutory Notices,
- Improvement and Prohibition Notices, remedial action notices, Regulation 27 notice, hygiene improvement notices, hygiene emergency prohibition notices, seizure and detention of foodstuffs, revocation or suspension of licences/environmental permits etc.
- Use of Simple Cautions
- Seizure of equipment, food articles, etc.
- Carrying out works in default
- Prosecution

Enforcement Decisions

Enforcement action will be based on an assessment of the severity of any legislative breaches and/or risks found and will not constitute a punitive response to minor technical breaches of the legislation.

All Officers, when making enforcement decisions, shall abide by this policy. Any departure from this policy must be exceptional, capable of justification and approved by the Public Protection Services Manager, unless there is a significant risk in delaying any decision.

Authority to take enforcement action including service of legal notices will only be granted to those officers that are suitably qualified and authorised by the Director of Communities and Localism (as detailed in the Constitution and the Scheme of Delegation). All authorised officers will have received appropriate training and suitable relevant experience to demonstrate competence through an understanding of legislation and enforcement powers.

Informal Action

Initially, officers will consider an informal approach. All verbal and written advice will clearly differentiate between legal requirements and recommendations of good practice.

Informal action should be considered when:

- Past history is good
- The contravention is insufficiently serious to warrant formal action
- Confidence in the individual/management is high
- Non compliance will not pose a significant risk

All reports, notices or letters following any inspection, visit or monitoring activity will clearly state the breaches of legislation identified and the remedial measures required. Where recommendations are made which relate to good practice or advice, then these will be clearly distinguished from any legal requirements. Clear guidance, information or advice will also be given positively to encourage compliance. We will seek to ensure that people understand what is expected of them, taking into account any particular needs of consumers and business owners.

Formal Action

Whilst the initial approach to enforcement will generally involve an informal approach there may be cases where either the informal approach does not resolve the problem and more formal action is required or the circumstances warrant a more formal approach from the outset. Authorised Officers have powers to serve a range of legally binding enforcement notices upon businesses or persons in breach of legislation in order to prohibit activities or effect necessary improvements. These notices are usually served where serious breaches of legislation have been identified or where there are risks to health, safety or wellbeing, including economic wellbeing of the public or the environment.

The use of formal enforcement notices will normally be restricted to circumstances where:

- a) There is a history of non-compliance involving previous formal action.
- b) The legislation requires that a Statutory Notice is served i.e. there is a “statutory duty” to serve a notice.

- c) There are potential or real risks to health, safety or wellbeing of the public, including economic wellbeing or the environment.
- d) An informal approach has proved unsuccessful.
- e) The officer has witnessed the contravention.

Failure to comply with a formal notice will generally result in prosecution and/or the carrying out of works in default where appropriate.

Shared Enforcement Responsibility

In circumstances where enforcement responsibility is shared between enforcement agencies, the section will have regard to procedures agreed with other enforcement agencies, particularly where a memorandum of understanding exists.

In some cases, enforcement powers will rest with another agency. In such cases the section will ensure that the case is transferred to the enforcing agency promptly and in accordance with any agreed procedures.

Licensing, Registration and Environmental Permitting – Breaches of Conditions

The Council issues licences, permits, notices and approvals covering a variety of activities including, Alcohol and Entertainment, Gambling, Taxis, Riding and Animal Boarding Establishments, etc. Licences are usually issued subject to specific conditions, which control the management and provision of appropriate facilities at such premises. The Council also permits processes to control air quality.

Where relatively minor breaches of licence and permit conditions occur and there is a willingness of the businesses or person to undertake the necessary remedial measures, a verbal or written warning will usually be given in the first instance. Where there are more substantial failures to comply with the conditions, or where the informal approach has failed to effect the necessary improvements, a formal report will be submitted to the relevant Council Committee and where relevant, recommendations made as to whether or not a licence/permit will be granted, renewed, suspended or revoked. In order to ensure a fair hearing takes place, as part of the natural justice procedure, the licence/permit holder will be entitled to make written representations in support of their case and be represented when required.

Where substantial breaches of licensing, registration or permit requirements occur they will be considered in accordance with the criteria relating to prosecutions and, if appropriate, legal proceedings will be instigated.

Prosecutions

Alleged offenders may be invited to offer an explanation by way of interview in accordance with Code C of the Police and Criminal Evidence Act 1984. The officer will at all times have regard to the requirements of the Police and Criminal Evidence Act 1984 and the Criminal Procedure and Investigation Act 1996 regarding disclosure. Invitation to attend a PACE interview should be

considered for all offences carrying anything more than a minor fine and should always be offered where an offence carries imprisonment as a penalty or can be tried at the Crown Court.

Where prosecution is being considered the case must pass both the evidential test and the public interest test.

Evidential test

Before considering whether the public interest requires a prosecution the case must pass the evidential test. This means that there must be admissible evidence which identifies a specific offender and all the elements needed to make out the offence so that a conviction is more likely than not. If there is not enough evidence to make a conviction more likely than not the case would fail at this stage.

Public Interest test

The next stage is to consider whether prosecution is in the public interest. There are certain circumstances in which it will be appropriate for prosecutions to be recommended following breaches of legislation.

Examples of situations which would warrant recommendation of prosecution are given below.

- a) Where there is a blatant disregard for the law, especially where there is an economic advantage to do so (i.e. if it is profitable to flout the law);
- b) Failure to comply with an enforcement notice;
- c) Where there is a reckless disregard for the law which could affect the safety or well-being of an individual or endanger the environment;
- d) Where there have been repeated breaches of legal requirements and management is neither willing nor structured to remedy the situation;
- e) Where an officer has been obstructed in carrying out his/her lawful duty as an enforcement officer;
- f) Where there has been a history of similar offences;
- g) Where there has been a serious accident or a case of ill health arising from a substantial legal contravention;
- h) Where a contravention has caused serious public concern.

Before deciding whether or not to prosecute, a number of factors will be taken into account including:

- a) The seriousness of the offence;
- b) Previous history of the business or person concerned;
- c) The willingness of the business or person to prevent a recurrence of the problem;
- d) The likelihood of the defendant being able to establish a due diligence defence;

- e) The probable public benefit of a prosecution and importance of the case –e.g. whether it might establish a legal precedent, or whether the case would be in the public interest;
- f) Whether other action such as issuing a formal caution in accordance with Home Office Circular or the issue of an enforcement notice would be more appropriate;
- g) Any explanation offered by the affected person, organisation or business;
- h) Any views, concerns or comments of any home enforcement authority or lead primary authority;
- i) That there is sufficient evidence to provide a realistic prospect of prosecution;

Unless there are exceptional circumstances, legal proceedings will be recommended following the failure to comply with any enforcement notice.

When circumstances have been identified which may warrant a prosecution all relevant evidence and information will be considered to ensure a consistent, fair and objective decision is made. A summary report will be sent to the Director of Communities and Localism and the Public Protection Services Manager.

Once the decision to prosecute has been made the matter will be referred to Lincolnshire Legal Shared Services without undue delay.

Prosecution of Individuals

Subject to the above, we may identify and prosecute or recommend prosecution of individuals, including company directors and managers, if it is considered that a conviction is warranted and can be secured.

Death at Work

Where there has been a breach of the law leading to a work-related death, we will need to consider whether the circumstances of the case might justify a charge of manslaughter. Liaison may take place with the Police, the Coroner and the Crown Prosecution Service (CPS), and if evidence is found to suggest manslaughter, action will be taken by the Police or where appropriate, the CPS. If the Police or the CPS decides not to pursue a manslaughter case, we may still prosecute or recommend prosecution of a health and safety case if that is appropriate. Officer must also have regard to the Work-Related Deaths-a protocol for liaison guidance.

Simple Cautions

Reference is made to the Ministry of Justice (MoJ Guidance) in respect of Simple Cautions. A Simple Caution may be considered as an alternative to prosecution.

The Ministry of Justice Guidance states that the purpose of the simple caution is:

- To deal quickly and simply with less serious offences;
- To divert less serious offences away from the Courts;
- To reduce the chances of repeat offences.

To safeguard the alleged offender's interests, the following conditions should be fulfilled before a caution is administered:

- There must be evidence of the alleged offender's guilt sufficient to give a realistic prospect of conviction;
- The alleged offender must admit the offence;
- The alleged offender must understand the significance of a simple caution and give an informed consent to being cautioned.

The person authorised to issue simple cautions will be the Director of Communities and Localism.

Rights of Appeal

There is usually a statutory right of appeal against the requirement of an enforcement notice or action contained in the relevant legislation. Such appeals are usually made to a Magistrates' Court, or in the case of health and safety legislation, an Industrial Tribunal.

Where enforcement notices are served, detailed information will be provided to the person concerned regarding their statutory rights of appeal. The information will include, where appropriate, the necessary forms and help with their completion to enable an appeal to be made.

Consultation, Review and Publication.

The Council will endeavour to form partnerships with local business organisations and will consult them regarding the content of this policy and any significant changes that may arise from time to time.

The Policy will be published and brought to the attention of individuals, organisations and businesses as part of the consultation process.

Primary Authority/Home Authority Principle

The Primary Authority Partnership Scheme and Home Authority arrangement promotes consistency of enforcement among businesses with multiple outlets in different local authority's areas.

We will discuss with the appropriate Home/Primary authority any enforcement action.

Complaints Procedure.

A separate Corporate Complaints leaflet is available that explains the complaints procedure fully. In summary, we want to provide a high quality service and we will properly consider all complaints.

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