

Corporate Enforcement Policy

1. Introduction

- 1.1. The Council recognises that fair and effective enforcement is essential to protect the economic interests and health and safety of the public, businesses and the environment. This policy sets out what the public, businesses and others being regulated by the Council can expect from enforcement officers.
- 1.2. This policy commits the Council to fair enforcement policies and procedures and where required is supplemented by additional policies and statements of service standards relating to the specific enforcement service areas.
- 1.3. This policy seeks to support the Council's corporate aims, objectives and approved strategies.

2. Aims and Objectives

- 2.1. The purpose of adopting a Corporate Enforcement Policy is to create one overarching policy encompassing the key factors and principles common to all aspects of enforcement undertaken by the Council.
- 2.2. The policy is intended to create a framework to ensure that there is a fair and consistent approach to the way enforcement activity is carried out.
- 2.3. A clear enforcement policy is required to ensure that all those who live in, work in and visit West Lindsey are able to have a clear understanding of what they can expect from the Council when we deal with an enforcement matter.

3. Scope of the Policy

- 3.1. This policy sets out the broad principles upon which the Council will carry out its duties under the laws that it is responsible for enforcing. The Council has due regard to Section 21 of the Legislative and Regulatory Reform Act 2006 and the regulators code, as well, as the broad range of investigatory laws applicable to the manner in which this work must be undertaken.
- 3.2. This policy applies to all legislation enforced by officers of the Council and part IV of the Council's constitution sets out the relevant legislation and identifies who will undertake these functions.
- 3.3. These laws almost all create criminal offences and where enforcement leads to prosecution the matters are dealt with in the Magistrates' Courts or sometimes in the Crown Court, where guilty persons may be fined and in some cases imprisoned.
- 3.4. Overarching all of these powers are rules and codes that govern how officers must lawfully go about doing this work. The broadest explanation for why and how this is done is set out in Article 8 of the Human Rights Act 1998. This provides that everyone has a right to be entitled to respect for their private and family life. This in turn is further clarified in

investigatory legislation, such as, the Police and Criminal Evidence Act 1984 and the Data Protection Act 1998.

4. Approach to Enforcement Matters

4.1. The Council believes in firm but fair regulation and acknowledge that the majority of individuals and businesses are law abiding. The Council will provide assistance and advice to encourage compliance wherever possible, however, the Council will take firm action against those who contravene the law or act irresponsibly.

4.2. This policy intends to ensure that;

- Enforcement of these powers will be carried out in a way which is transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed.
- Officers will engage with those they regulate and hear their views and base their regulatory activities on risk.
- The Councils resources will be focussed on the matters which provide the highest risk and harm

4.3. Enforcement includes any actions carried out by officers aimed at ensuring that individuals or businesses comply with the law. This is not limited to formal action including the service of statutory notices or starting prosecutions, but includes investigation of potential infringements, inspections, giving advice and informal steps taken to ensure compliance with Acts of parliament, regulations and approved Code of Practice.

4.4. Officers will maintain confidentiality so far as it is appropriate to do so and will not divulge information which is not relevant to the case, however the Council has a duty to inform certain government bodies of statutory notifications.

4.5. In undertaking our duties, in line with the regulators code we will;

- Carry out our activities in a way that supports those that we regulate to comply and grow;
- Provide simple and straightforward ways to engage with those that we regulate
- Base our regulatory activities on risk
- Share information about compliance and risk
- Ensure that clear information, guidance and advice is available to help those that we regulate to meet their responsibilities to comply
- Ensure that our approach to regulatory activities is compliant

5. Shared Regulatory Roles

5.1. Where the Council has a shared regulatory role or is required to inform an outside regulatory agency of an incident or occurrence it will do so. These external agencies could include (but are not limited to):

- Police
- Fire Authority
- Other Local Authority
- Health and Safety Executive
- Environment Agency
- Utility Providers
- The Food Standards Agency
- Department for Environment, Food and Rural Affairs

5.2. The Council will look to work in partnership with the relevant agencies in order to ensure the most effective use of resources and to minimise the impact on the persons involved within any enforcement action.

5.3. Where there is a shared enforcement role the most appropriate authority will carry out the enforcement action. Information will be shared as part of this process where applicable in line with the relevant data protection requirements and information sharing agreements.

6. Investigation of Potential Infringements

6.1. Where a service request has been received which may result in enforcement action against a business or individual the Council will notify the business or individual as soon as is practicable and explain what is being investigated. In some instances, the Council may have to take immediate or emergency action without the consent of the business or individual.

6.2. Where appropriate warrants for entry may be required to access premises or land. In some circumstances these warrants will be executed unannounced in order to ensure that the purpose of entry is not defeated.

6.3. In some circumstances surveillance may be considered appropriate in order to gather evidence, however this will only be authorised when it is demonstrated to be both necessary and proportionate and the relevant legal authorisation is in place.

6.4. Enforcement officers will utilise, where appropriate, body worn video cameras, which will be overt in their nature. This equipment will only be used in line with the respective policy relating to body worn video cameras. The usage of this equipment is aimed at collecting evidence relating to offences and to reduce the risk of confrontational situations.

6.5. Enforcement officers will identify themselves and provide contact details. All enforcement officers are required to carry identification in the form of an identity card bearing their photograph. It will include the legislation and powers they are authorised to use and this will be produced if so requested or where powers may need to be implemented.

6.6. The Council will treat all individuals with courtesy and respect regardless of whether they have reported an issue or whether they are subject to an

investigation. We will take into consideration any likely impact upon the individual reporting the matter in regards to their safety and confidentiality.

6.7. The Council will comply with the Human Rights Act 1998 and the requirements of the appropriate legislation regarding investigations and evidence gathering, including the Regulation of Investigatory Powers Act 2000 and the Police and Criminal Evidence Act 1984.

7. Choice of Appropriate Enforcement Options

7.1. The Council recognises the importance of achieving and maintaining consistency in our approach to enforcement. The Council also recognise that in many cases the decision to enforce is a discretionary one and so the Council have a choice whether to pursue enforcement action.

7.2. For many areas of our enforcement activity, guidance already exists in the form of codes of practice, planning policy guidance, government circulars, local or regional codes of practice and recognised industry guides. When making enforcement decisions officers must take into account any relevant national or local guidance as well as the provisions of the Human Rights Act 1998 and this enforcement policy and any enforcement policy or code specific to a particular service area.

7.3. Enforcement decisions must be consistent, balanced, and fair and relate to common standards to protect public health and safety, economic wellbeing or the environment. Each case is unique and must be considered on its own merits. The criteria the Council will consider includes:

- The seriousness of the offence
- Whether the offence has caused harm or is likely to cause harm
- The history of the activity
- The confidence in achieving compliance
- The consequences of non-compliance
- The likely effectiveness of the various enforcement options
- The ability of any witnesses and willingness to co-operate
- The public benefit of any proposed action
- The compliance history and any previous formal action taken against the individual or owner
- These criteria are not exhaustive and it does not mean that all factors must be in favour of enforcement action rather than on consideration that the balance is in favour

7.4. Consideration will also be given to the following;

- Circumstances where a person is in ill health or was at the relevant time
- Our policies and duties for safeguarding in relation to children and adults
- Our policies and duties in relation to equality and diversity

- The codes of practice in place for our closed circuit television (CCTV) and body worn cameras

7.5. The options available to the Council to resolve an enforcement matter are as follows

- Take no action
- Take informal action
- Take formal action (including serving of statutory or fixed penalty notices)
- Suspend, revoke or refuse to renew a licence
- Take samples and seize goods or documents
- Impose an administrative penalty
- Issue simple cautions
- Prosecute
- Take action or do works in default and recover the costs from a householder or landowner

There may also be instances where no action is taken by the Council even when a breach has been established. These may include:-

- Where the breach is not causing harm or it is not expedient to take action
- Where the cost of compliance to the offender outweighs the impact of the contravention on the community
- Where the breach has ceased or been remedied
- Where it fails to meet the public interest test.
- Where it falls outside the Council's remit

8. Enforcement Actions

8.1. Informal Action

Informal action may be taken in the form of advice, guidance, monitoring and warning letters. This will be aimed at ensuring prevention of the matter being dealt with in the present and in the future. This approach will be considered where;

- The breach occurring is not serious enough to warrant formal action
- The immediate past history of the individual or business suggests that it is reasonably likely that informal action will achieve compliance
- The consequences of non-compliance will not pose a significant risk to public health, public safety, the environment or animal welfare

- Public confidence and the confidence of partners and agencies in the Council's role in protecting public safety and health, and in preventing or detecting crime or preventing disorder would not be jeopardised
- It is appropriate to seek voluntary co-operation before taking formal action
- Compliance can be achieved by a retrospective action via the required regulatory process

8.2. Statutory Notices

There are a wide range of statutory notices available to the Council. The Council will issue statutory notices where there is a statutory duty to do so. These notices will be considered where;

- There are significant contraventions of legislation
- There is a lack of confidence in the offender to respond to an informal approach or a history of non-compliance
- The consequences of non-compliance could be irreversible, potentially harmful to public health or cause a statutory nuisance
- Where measures are needed to remedy conditions that are serious or deteriorating or where a notice needs to be served to support a prosecution

The Council may issue statutory notices requiring the recipient to take immediate action or cease an activity with immediate effect. These notices include Prohibition Notices, Closing Orders, Stop Notices and Temporary Stop Notices or Injunctions. These types of Notices may be necessary where:

- There is an imminent risk of injury to health, safety or wellbeing of the public, including the economic wellbeing of the environment
- There is an imminent risk of serious pollution to the environment
- An informal approach has proved unsuccessful
- The officer has witnessed the contravention
- Where unauthorised development is unacceptable and is causing serious harm to public amenity
- Where unauthorised development is unacceptable, continuing causing irreversible damage and remedial action is not a satisfactory option
- Where the consequences of not taking immediate and decisive action to protect the public would not be acceptable
- Failure to comply with a formal notice will generally result in prosecution and / or the carrying out of works in default where appropriate

8.3. Fixed or Civil Penalty Notices

The Council may issue Fixed or Civil Penalty Notices or Penalty Charge Notices for offences including:

- Car parking
- Dog fouling
- Littering and fly-tipping
- Graffiti and flyposting
- Smoking in enclosed spaces (Health Act 2006)
- Housing Standards and Licensing (Planning and Housing Act 2016)
- Breach of a Community Protection Notice

8.4. Approvals, Consents and Licenses

The Council issues a wide range of licences and approvals most of which are subject to specific conditions.

Where there are minor breaches and there is apparent willingness to comply or undertake remedial action a verbal or written warning may be given in the first instance. Where there are more serious breaches or there is a failure to comply with informal approaches a formal report may be submitted to the relevant committee as to whether a licence should be granted, suspended, revoked or not renewed, these being heard under the Council's natural justice procedure.

8.5. Impose an Administrative Penalty

Where an allegation of benefit fraud has been investigated and officers are satisfied an offence has been committed but the offender does not admit to committing an offence it may, dependent upon the severity of the offence and other factors of the case, be considered appropriate to offer the offender the opportunity to pay an Administrative Penalty rather than prosecute. The Council will pursue full repayment of any benefit overpaid and recoverable in addition to any administrative penalty.

8.6. Issue Simple Cautions

Under relevant legislation there is provision for the use of simple cautions. The use of cautions may be considered where the criteria for prosecutions are met and it would be appropriate to:

- Deal swiftly and simply with a less serious offence
- Avoid unnecessary appearances in court
- To reduce the likelihood of re-offending.

Any simple caution will be recorded and may influence the decision to prosecute in the event of any further offence. Simple cautions may be cited in any subsequent court proceedings.

Before a simple caution can be issued the following conditions must be fulfilled:

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

When issuing a simple caution regard will be had to the Home Office guidance. As a general rule a simple caution will not be considered in the case of a second or subsequent offence.

8.7. Prosecution

The Council recognises that the decision to prosecute is significant and could have far reaching consequences for the person accused.

Prosecution may be considered where;

- The alleged offence includes a significant breach of the law affecting public health safety or well being
- There is reckless disregard for the environment or animal welfare
- There is fraud theft or dishonesty
- There is non-compliance with any statutory notice or fixed penalty notices have not been paid
- There is a history of similar offences

Before any prosecution is commenced the Council will take into account the Crown Prosecution Service code of practice and action will only be taken where the individual case passes both the evidential and public interest tests. Each case will be based on its own merit.

8.8. Work in Default

In certain cases the Council may undertake work to achieve compliance on behalf of others and may seek a warrant to gain entry to land or premises to enable this to happen. This may occur if a person fails to comply, cannot comply by virtue of genuine hardship, or is unable to comply by virtue of being absent. In these cases the Council will recover the costs from the responsible person. If the costs cannot be recovered, they will usually be placed as a charge against a property, to be recovered at a later date.

8.9. Proceeds of Crime

Where appropriate the Council will consider use of the Proceeds of Crime Act 2002. This Act allows Local Authorities to recover assets that have been accrued through criminal activity.

The Council will also consider the use of Rent Repayment Orders for relevant offences and will consider representing tenants that may wish to pursue their own action under the required legislation.

9. Training and Authorisations

9.1. The Council's Constitution identifies the roles and responsibilities in connection with the enforcement function. A scheme of delegation is also in place which specifies the extent to which each officer is authorised to act and under what legislation they may do so.

9.2. All officers undertaking enforcement duties will be trained and competent in their specific work areas operationally and technically. The performance of officers will be monitored and reviewed and additional training needs identified in line with this.

10. Equality and Diversity

10.1. The Council will take into account our statutory duty to promote equality and the Council's Corporate Equality Scheme when making decisions. Throughout any enforcement investigation, or when making any assessments or decisions on whether or not to recommend any particular course of action, the Council will strive to ensure that no person experience discrimination or is disadvantaged because of disability, race or national origin, gender, religion or belief, sexual orientation or age.

11. Feedback on Our Service

11.1. The Council encourages and welcomes feedback on its services. If you wish to provide feedback you can do so by visiting: www.west-lindsey.gov.uk/feedback

12. Review of the Policy

12.1. This policy will be reviewed on a bi-annual basis or as required by any legislative changes.

Further Information

Housing and Environmental Enforcement Team

West Lindsey District Council
The Guildhall
Marshall's Yard
Gainsborough
DN21 2NA

Phone : 01427 676676

E – Mail: enforcement@west-lindsey.gov.uk

Website: www.west-lindsey.gov.uk

Reference Material

Constitution – sets out how the Council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people.

<https://www.west-lindsey.gov.uk/my-Council/how-the-Council-works/constitution-of-the-Council/>

Human Rights Act 1998 protects the fundamental rights we all have as human beings, and allows us to challenge the authorities if they violate them.

<http://www.legislation.gov.uk/ukpga/1998/42>

Code for Crown Prosecutors essentially poses two questions:

Is there enough evidence against the accused to bring the case? AND Is it in the public interest to prosecute?

http://www.cps.gov.uk/publications/code_for_crown_prosecutors/

Police and Criminal Evidence Act Codes of Practice set out how investigating officers must undertake their role and what defendants can expect in terms of their treatment.

NOTE *Section 67(9) of PACE 1984 requires persons other than police officers who are charged with the duty of investigating offences or charging offenders to have regard to that Code.

<https://www.gov.uk/guidance/police-and-criminal-evidence-act-1984-pace-codes-of-practice>

The Regulators' Code is a statutory Code of Practice.

The Code has been developed following consultation feedback from national regulators, local authorities, businesses and trade bodies. The Code has now been brought into statutory force.

<https://www.gov.uk/government/publications/regulators-code>

Powers of Entry – code of practice

Relevant persons exercising a power of entry must have regard to this new code before, during and after exercising powers of entry (unless the exercise of that power is subject to another statutory code of practice, eg Code B of the Police and Criminal Evidence Act 1984. The code provides guidance and sets out considerations that apply to the exercise of powers of entry, including, where appropriate, the need to minimise disruption to business and is aimed at ensuring greater consistency in the exercise of powers of entry

<https://www.gov.uk/government/publications/powers-of-entry-code-of-practice>

Better Regulation Delivery Office

<https://www.gov.uk/government/news/brdo-and-nmro-combine-to-simplify-regulation-for-british-business>

Simple cautions: guidance for *police and prosecutors - the aims of the simple caution are, amongst others:

- To offer a proportionate response to low level offending where the offender has admitted the offence;
 - To deliver swift, simple and effective justice that carries a deterrent effect;
and
 - To reduce the likelihood of re-offending;
- <https://www.gov.uk/government/publications/simple-cautions-guidance-for-police-and-prosecutors>**

