

Corporate Regulation & Enforcement Policy

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Corporate Regulation & Enforcement Policy

1. Introduction

The Council carries out a wide range of regulatory roles in meeting its many statutory duties of protecting the public, individuals and the environment. These duties are mainly met by carrying out programmed inspections of premises, responding to complaints, issuing licenses and offering advice. This Policy outlines the approach we take when considering enforcement action. This policy is an overarching policy that applies to all the Council's Services with enforcement duties, although it should be noted that some services have specific Legislative Guidance and Regulations which set out the enforcement requirements in these services.

The appropriate use of the full range of enforcement powers, including prosecution, is important, both to secure compliance with the law and to ensure that those who have duties under it, follow the correct procedures to prevent failures to safeguard our environment, health, safety and welfare or breach of legislation/regulations enforced by the Council.

In deciding on the most appropriate course of action officers should have regard to the principles set out in this policy and the need to maintain a balance between enforcement and other activities, including inspection, advice and education. This should be conducted in a manner which is proportionate, accountable, consistent and transparent.

a) Principles of Good Regulation

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 other regulators. The Council shall seek to ensure consistency of enforcement; however the Council realises that consistency is not a simple matter of uniformity. Officers and management will need to exercise their professional judgement and discretion according to the circumstances of each individual case and the relevant responsibilities and intervention systems maintained by the Council;
- (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.

b) Regulators' Code (April 2014)

The Council has had regard to the Department for Business Innovation & Skills Better Regulation Delivery Office's Regulators' Code April 2014 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. Where Statutory Guidance and legislation specifies the action to be taken this legislation takes precedence.

c) Human Rights Act 1998

The 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.

d) Data Protection Legislation

Where legislation allows, it is expected information will be shared between departments in early case reviews to assist with any enforcement action. Disputes will be decided by the Monitoring Officer.

Where there is a need for the Council to share enforcement information with other agencies, we will follow the provisions of the Data Protection Act 2018, the General Data Protection Regulations 2018 (as amended) and any other relevant legislation.

e) The Code for Crown Prosecutors

When deciding whether to institute criminal proceedings the 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':

- (i) **Evidential Test** - is there enough evidence against the defendant?
When deciding whether there is enough evidence to prosecute, the Council will consider what evidence can be used in court and is reliable. We must be satisfied there is enough evidence to provide a "realistic prospect of conviction" against each alleged offender.
- (ii) **Public Interest Test** - is it in the public interest for the case to be brought to court?
The Council will balance factors for and against prosecution carefully and fairly,

considering each case on its merits. The public interest factors that we will take into account are detailed under the Council's graduated enforcement policy under Section 6.

2. Purpose of this Policy

The Council acts as a regulator and an enforcement agency for a large range of legal duties and powers applied by Acts of Parliament and the Regulations and Orders made under them (including various Lancaster City byelaws).

The Council acknowledges the crucial role enforcement plays in safeguarding public health and our quality of life by ensuring adherence to regulations designed to prevent ill health and injury. By holding individuals and organisations accountable for their actions, enforcement deters negligence and promotes proactive measures to protect health and ensures our community remains safe, clean and fair for everyone.

This policy sets out standards that will be applied across the Council when acting in its role as regulator and enforcement agency and details what residents, businesses, consumers and workers can expect from Lancaster City Council when subject to enforcement action or after making a complaint about non-compliance and to enable them to hold us to account when we are undertaking such activity.

This policy also sets out the approach to be followed by authorised Officers when making decisions in respect of the Council's compliance and enforcement activities. The Council is committed to ensuring that all authorised officers will act in accordance with this policy.

3. Scope of the Policy

This policy is the overarching enforcement policy for Lancaster City Council. It outlines the approach to enforcement and lays down the principles, which will be followed in deciding upon, and taking action.

As an overarching policy it provides a framework to decision making with regards to enforcement.

This policy sits alongside other departmental specific enforcement policies held by the Council, which are available on our website.

Enforcement includes any criminal or civil action taken by the Council aimed at ensuring that individuals or businesses comply with the law.

The Corporate Regulations and Enforcement Policy will take into account the Council's set strategic aims and objectives. This approach is intended to provide better information to

businesses and the community and, by doing so, lend support to the Council's efforts to deliver best value services.

Council services will work with and consult other agencies, and other service areas within the Council, as necessary where there is a shared or complementary enforcement role. This may include early case conferences for major cases of non-compliance where services share information and discuss the most expedient and proportionate response to offences.

Officers will take reasonable steps to assist businesses and individuals to comply with the law. However, officers will be prepared to ensure compliance by exercising the formal powers delegated to them in the Council's Scheme of Delegation including, where appropriate, prosecution.

In certain circumstances, the Council will seek to raise awareness and increase compliance levels by publicising unlawful trade practices or criminal activity. Where appropriate the results of specific court cases may also be published.

4. Non-Compliance

4.1 Approach to dealing with non-compliance

An open, fair and proportionate approach will be taken in dealing with breaches of legislation, which are regulated and enforced by the Council. Raising awareness and promoting good practice in regulated areas is the first step in preventing breaches, and officers of the Council will signpost to guidance on aspects of the law where requested to do so.

Whenever possible, best efforts will be used to resolve any issues where the law may have been broken without having to take formal action or referring the matter to the courts when the circumstances indicate that a minor offence may have been committed and the Council is confident that appropriate corrective action will be taken.

However, there may be occasions when the breach is considered to be serious and/or where informal action is not appropriate. In such cases immediate enforcement action may be taken without prior notice and as noted above some services have specific Legislative Guidance and Regulations which set out the enforcement requirements in these services.

Advice regarding the non-compliance, the actions required and decisions taken at the time of our intervention, along with the reasons for these must be transparent. Where immediate enforcement action is required, the opportunity for alternative resolutions may not be available. This may be the case where there is a serious breach or public health or safety is at risk.

Officers investigating potential breaches of legislation are responsible for managing investigations. As part of this process, they may consult with colleagues and

managers in determining the best and most appropriate course of action. Officers have the power to use a variety of legislation in the course of their duties, and senior management has delegated these to them.

In relation to prosecutions, officers' cases are to be reviewed by a manager in line with this enforcement policy before submitting expeditiously to the Council's Legal department for expeditious consideration.

In some instances, the Council may have shared responsibilities or a complementary role with another enforcement agency. In these circumstances, officers will liaise with that other agency to ensure effective co-ordination, to avoid inconsistencies and to ensure that any proceedings taken are proportionate and appropriate.

4.2 How action taken is determined

Where evidence is found that a business, regulated person or individual is showing flagrant disregard for the law by deliberately or persistently failing to comply with advice or requests made by the Council, it may be deemed that informal action is not appropriate. Under these circumstances enforcement action may be escalated directly to prosecution or other more severe sanctions where available.

Where there is specific Legislative Guidance and Regulations which set out the enforcement requirements these will be followed.

Where a business or other regulated person contacts the Council to ask for advice and it transpires that a breach of legislation is present at the premises, the most appropriate course of action will be determined based on the factors outlined in section 6 below.

If the regulated person or business is keen to resolve the non-compliance quickly, taking on board and completing the steps recommended by the Council, an informal approach is likely to be taken as opposed to triggering enforcement action. However, if there is a serious breach and/or there is an imminent risk to public health or safety, enforcement action may still have to be taken but the Council will seek to work with the business or regulated person to resolve the problem as quickly as possible.

4.3 Factors that influence our response to breaches

Where a breach of legislation is being investigated, the approach taken will be proportionate. The following non-exhaustive list of factors may assist the Officer in this process –

- The degree of risk or actual harm from the situation
- The seriousness of the legal contravention
- The different technical means of remedying the situation
- The particular circumstances of the case and the likelihood of its continuation or recurrence

- The general attitude of the offender to his or her responsibilities
- The past history of the person(s) or company involved
- The impact of the enforcement choice in encouraging others to comply with the law
- The likely effectiveness of the various enforcement options
- Any legal imperatives e.g. the obligation to serve an abatement notice if a statutory nuisance exists

If the Council has provided advice or guidance to a business or regulated person, our officers will make the necessary checks to ensure that, where this relates to a legal requirement rather than best practice, the non-compliance has been rectified.

The Council may receive referrals from other enforcement bodies, which require investigation. These referrals will typically be because of the other bodies' inspections, investigations, or intelligence, which they have received.

The Council will also refer to other enforcement bodies where breaches of legislation, which are dealt with by that body, are found.

In deciding on which approach to adopt the public interest test will include whether the subject has a poor history of compliance/offending which may lead to more formal enforcement measures such as prosecution.

4.4 Approach to complaints of non-compliance

Where a complaint of non-compliance relating to a business, or other regulated person, is received the officers investigating this breach will assess the information received and may make further enquiries to determine whether a complaint requires investigation. In assessing a complaint, officers may consult colleagues and managers to help assess what risk may be involved and this will determine what action is taken.

5. Conduct of Investigations

Enforcement action may result in either civil or criminal proceedings being instituted by the Council. The process that will be followed by officers in the investigation of alleged breaches of the law will depend on which branch of law the investigation is being conducted under. As the enforcing authority in any proceedings it instigates, the burden of proof falls to the Council.

Investigations will be carried out in compliance with current legislation.

The authorised officers of the Council will also comply with the requirements of the particular legislation under which they are acting, and with any associated guidance or codes of practice.

5.1 Powers of Authorised Officers

There are numerous pieces of legislation which the Council as a local authority either has a duty to enforce or adopts or chooses to enforce. The powers available to officers under these different pieces of legislation vary considerably and it is not the purpose of this document to provide an exhaustive list of those powers.

In some cases powers of seizure are used for safety and evidence gathering purposes.

Officers do not have the power of arrest; however joint working is undertaken with the Police and other agencies. Instances may arise where the Police or other agencies consider that an arrest should be made in connection with an authorised officer's investigation.

5.2 Progress of Investigations

In respect of Legislation in England that contains criminal offences, there are strict time limits beyond which the law prevents proceedings being instituted. These time limits vary and are stated in the relevant legislation.

Officers carrying out investigations will keep alleged offenders, witnesses and complainants informed and updated, including via our case management systems, about the progress of any investigation as far as their involvement in the process is concerned. All investigations will be carried out as expeditiously as possible.

6. Decisions on Enforcement Action

6.1 *The Range of Actions Available as Set Out in Legislation*

There are a range of actions that are available to the Council as set out in the different legislation the Council enforces. Examples of the main types of actions which may be considered are set out below.

a) Compliance Advice, Guidance and Support

The Council will generally consider 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 to assist individuals and businesses in rectifying breaches as quickly and efficiently as possible, avoiding the need for further enforcement action.

A warning letter 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 may 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.

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

b) Voluntary Undertakings

The Council may accept voluntary undertakings that breaches will be rectified and/or recurrences prevented. The Council will take any failure to honour voluntary undertakings very seriously and enforcement action is likely to result.

c) Statutory (Legal) Notices

The Council has powers to issue statutory notices in respect of many breaches. These include: 'Stop Notices', 'Prohibition Notices/Orders', 'Emergency Prohibition Notices/Orders', Community Protection 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) Fixed Penalty Notice

The Council has powers to issue fixed penalty notices or penalty charge notices in respect of some breaches. A fixed penalty notice or penalty charge notice is not a criminal fine, and does not appear on an individual's criminal record. If a fixed penalty/penalty charge notice is not paid, the Council may commence criminal proceedings in respect of the breach or take regulatory civil enforcement action to recover the penalty charge subject to the provisions of the relevant legislation.

If a fixed penalty/ penalty charge notice is paid in respect of a breach the Council will not take any further enforcement action in respect of that breach. Payment of a fixed penalty does not provide immunity from prosecution in respect of similar or recurrent breaches.

The Council is only able to issue fixed penalty notices where it has specific powers to do so. If fixed penalty notices are available, their issue is at the Council's discretion.

In some circumstances, in particular where breaches are serious or recurrent, it may be that prosecution is more appropriate than the issue of a fixed penalty notice.

e) Injunctive Actions, Enforcement Orders etc.

In some circumstances, 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. 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.

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

f) Simple Caution

The 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, the Council is likely to consider prosecution.

A caution must not be offered to a person who has not admitted to committing the offence, and must not be given to an offender who does not agree to accept it. Offenders retain the right to decline the offer of a caution – even where guilt has been admitted and their refusal may result in prosecution.

A caution may only be given if there is sufficient evidence to provide a realistic prospect of conviction if the offender were to be prosecuted.

g) Prosecution

The 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 the Council has regard to the provisions of The Code for Crown Prosecutors as issued by the Director of Public Prosecutions.

Prosecution will only be considered where the Council is satisfied that it has sufficient evidence to provide a realistic prospect of conviction against the defendant(s).

If the evidential test is satisfied, a prosecution will usually take place unless there are public interest factors tending against prosecution which outweigh those tending in

favour. The more serious the offence or the offender's record of breaches/ criminal behaviour, the more likely it is that prosecution will be required in the public interest.

Assessing the public interest is not merely a matter of adding up the number of factors on each side and seeing which has the greater number. The public interest must be decided on the merits of each individual case and making an overall assessment. It is quite possible that one factor alone may outweigh a number of other factors which tend in the opposite direction.

h) Refusal/Suspension/Revocation of Licences

The Council issues a number of different Licences, Consents, Registrations and permits. They are applied for by submission of an application, the form and content of which is sometimes specified in law. Applications are generally granted for a limited defined period and will be required to be renewed annually unless otherwise specified.

The Council may be permitted to ask supplementary questions on an application form in order to assist it in reaching a decision on whether the applicant is a fit and proper or suitable person to hold such a Licence.

In some cases, applications are subject to either a public or interested party consultation process and any application that attracts adverse comment or objection or does not meet Council policy requirements will be referred to a Council's Licensing Committee to determine the application.

Most Licences and other permissions have conditions attached which can be standard conditions or specific conditions or a combination of both. These conditions form part of the Licence and lay down requirements that a business or individual must have regard to when trading. Breach of a condition may be a civil or criminal matter.

When considering applications, information supplied with the application together with any previous enforcement action and compliance record can be taken into account when reaching a decision.

i) Confiscation proceedings and/or other financial investigation

In cases where the appropriate tests are satisfied, the Council may also pursue action via the Proceeds of Crime Act (POCA) 2002, to recover funds which are proven to have been obtained illegally.

6.2 Summary of Enforcement options available in the cases of non-compliance

Following receipt of a complaint, inspection, monitoring visit, investigation, or referral from another authority, there are several enforcement options available to the Council and its officers to secure compliance with the law. Such as

- To take no action

- To take informal action
- To take formal action (either written or oral) which can include any or all of the following:-
- To issue statutory notice(s)
- To serve a Fixed Penalty Notice
- To prohibit (e.g. an activity or use of a premises)
- To seize or detain (e.g. equipment, unfit food or food lacking sufficient traceability, articles or records (paper or electronic documents))
- To execute work required by a statutory notice where the recipient has not complied
- To issue an administrative penalty (in some circumstances)
- To issue a simple caution
- To review, amend, condition, vary, revoke or suspend a licence
- To take out an injunction
- To prosecute

6.3 How Decisions are made on Enforcement Action

In assessing what enforcement action is necessary and proportionate, consideration will be given to the following Council aims and objectives –

- 1) The aim to change the behaviour of the offender;
- 2) The aim to eliminate any financial gain or benefit from non-compliance;
- 3) To be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
- 4) To be proportionate to the nature of the offence and the harm caused;
- 5) The aim to restore the harm caused by regulatory non-compliance, where appropriate; and,
- 6) The aim to deter future non-compliance.

Where appropriate, decisions about what enforcement action is to be taken may involve consultation between:

- (a) Investigating Officer(s)
- (b) Senior Managers
- (c) Lancaster City Council Legal Department

The decision to prosecute a case will be taken by those with authority to do so in accordance with the Lancaster City Council Scheme of Delegations.

Individual Council Services will also have regard to any Service-specific enforcement plans or policies prior to taking action.

6.4 How Decisions are Communicated to those Affected.

We will provide a timely explanation in writing, where appropriate, about the details of an enforcement decision including any rights to representation or rights to appeal and practical information on the process involved, taking into account relevant legislation and statutory guidance.

6.5 How Decisions should be recorded

Upon conclusion of an investigation, all material gathered, including a record of the decision making process, will be retained in one of two places, either

- (a) the service department or
- (b) the legal department.

If the investigation concludes within the service department, without submission to legal services, the responsibility for recording the decision-making process rests with the service department who will record the decision and the decision making process. All the material gathered during the investigation will be retained as long as reasonably necessary and stored under the control of the service department.

If the matter has been submitted to legal services, the decision-making process and the retention of this material, will be the responsibility of the Legal Department.

7. Comments and Complaints

7.1 Details of processes for complaints and appeals

All appeals in relation to enforcement action taken should be via the statutory appeals process outlined in the relevant legislation.

Complaints about the conduct of officers should be made via the Council's corporate complaints procedure.

8. Review of this Policy

8.1 Details of when and how the policy will be reviewed

This policy will be reviewed periodically or in line with changes in relevant legislation, or Regulators Code.

Version history

Version	Date	Author	Changes

Appendix 1 – Enforcement flowchart

