

NORTH LINCOLNSHIRE COUNCIL

**HIGHWAYS AND NEIGHBOURHOODS
CABINET MEMBER**

**TECHNICAL AND ENVIRONMENT SERVICES –
ENFORCEMENT POLICY 2013**

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 To agree the adoption of a revised Enforcement Policy for Technical and Environment Services.
- 1.2 The key points in this report are as follows:
 - The current Enforcement Policy contains a requirement for a regular review of the policy.
 - The review has been completed and enhancements made.

2. BACKGROUND INFORMATION

- 2.1 The functions covered by this report are delegated to the Director of Places. The Director in turn appoints officers and makes decisions on the most appropriate course of action in any given legal proceeding. The Director of Policy and Resources provides advice in support of these arrangements.
- 2.2 Officers have reviewed the existing policy. This is in line with our normal service planning and review processes. We have updated the policy to make sure that it continues to meet statutory guidance and reflect best practice.
- 2.3 The revised Technical and Environment Enforcement Policy 2013 is appended to this report. The key changes are as follows:
 - 2.3.1 This was previously the Neighbourhood and Environmental Services Enforcement Policy. Changes reflect the new directorate structure and council priorities.
 - 2.3.2 Updates reflect changes to statutory and non-statutory guidance. However the principles of the policy remain unchanged by these updates.
 - 2.3.3 Details relating to the Evidential and Public Interest tests provide more clarity.

3. OPTIONS FOR CONSIDERATION

3.1 Option 1 – To approve the revised enforcement policy.

3.2 Option 2 – To continue with the existing enforcement policy.

4. ANALYSIS OF OPTIONS

4.1 Option 1

4.1.1 The updated Technical and Environment Enforcement Policy 2013 reflects new and amended legal requirements as well as statutory and non-statutory guidance.

4.2 Option 2

4.2.1 The existing Enforcement Policy is no longer fit for purpose.

5. RESOURCE IMPLICATIONS (FINANCIAL, STAFFING, PROPERTY, IT)

5.1 Enforcement officers will need briefing on the new policy.

5.2 There are no other resource implications to consider.

6. OUTCOMES OF INTEGRATED IMPACT ASSESSMENT (IF APPLICABLE)

6.1 The Enforcement Policy is based on the statutes, statutory and non-statutory guidance referred to in the policy.

7. OUTCOMES OF CONSULTATION AND CONFLICTS OF INTERESTS DECLARED

7.1 Relevant officers were consulted on the proposed changes to the policy. The revised policy reflects the outcomes of these discussions.

7.2 There are no known conflicts of interest that require consideration.

8. RECOMMENDATIONS

8.1 That the Cabinet Member approves the adoption of Technical and Enforcement Policy 2013 (appendix 1).

DIRECTOR OF PLACES

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Background Papers used in the preparation of this report: None.

North Lincolnshire Council
Technical & Environment Services
Enforcement Policy (2013/14)

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EXECUTIVE SUMMARY

The enforcement policy provides guidance to officers, businesses and the general public on the range of options that are available to achieve compliance with legislation enforced by North Lincolnshire Council Technical and Environment Services. The Cabinet Member for Highways and Neighbourhood has approved the policy.

Our primary objective is to achieve regulatory compliance. We recognise that prevention is better than cure, but where it becomes necessary to take formal action against a business, or member of the public, we will do so. There is a wide range of tools available to us as an enforcement agency, with prosecution being the most serious. We will always choose an enforcement method that is relevant and proportionate to the offence or contravention. We will also take account of an individual's or a business's past history when making our decision.

The policy is built around a process of escalation. We will only prosecute in circumstances where a defendant had acted wilfully and where their actions are likely to cause material loss or harm to others, or where they have ignored or are likely to ignore, written warnings or formal notices, endangered, to a serious degree, the health, safety or well being of people, animals or the environment, or assaulted or obstructed an officer in the course of their duties.

The options available to us include:

- No action;
- Informal Action and Advice;
- Fixed Penalty Notices;
- Penalty Charge Notices;
- Formal Notice;
- Forfeiture Proceedings;
- Seizure of goods/equipment;
- Destruction of an animal;
- Injunctive Actions;
- Refusal/revocation of a licence;
- Simple Caution;
- Prosecution;
- Proceeds of Crime Applications.

The policy is designed to help you understand our objectives and methods for achieving compliance and the criteria we consider when deciding what the most appropriate response is to a breach of legislation.

All our decisions will have regard to current statutory guidance and codes of practice, particularly the Regulators' Compliance Code, the Code for Crown Prosecutors and the Human Rights Act.

1.0 Introduction

1.1 Fair and effective enforcement is essential to protect the health and safety and economic interests of the public, businesses and the environment.

1.2 Fair and effective enforcement will contribute to North Lincolnshire Council's four shared priorities:

- Excellence in customer service
- Provide value for taxpayers' money
- Make our communities stronger
- Regenerate our area and increase prosperity

1.3 Decisions about enforcement action and in particular the decision to prosecute have serious implications for all involved. Technical and Environment Services applies this Policy to ensure that:

- Decisions about enforcement action are fair, proportionate and consistent;
- Officers apply current Government guidance and relevant codes of practice;
- Everyone understands the principles that are applied when enforcement action is considered.

2.0 Legal Status of the Enforcement Policy

2.1 The Cabinet Member for Highways and Neighbourhoods approved this policy on (to be confirmed).

2.2 This policy is intended to provide guidance for officers, businesses, consumers and the public. It does not affect the discretion of the Council to take legal proceedings where this is considered to be in the public interest.

2.3 All enforcement officers carry cards showing their identity and a list of legislation that they are authorised to enforce.

3.0 Scope and Meaning of 'Enforcement'

3.1 This Policy applies to all the legislation enforced by Officers of Technical and Environment Services.

3.2 'Enforcement' includes any action taken by officers aimed at ensuring that individuals or businesses comply with the law. This is not limited to formal enforcement action such as prosecution.

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- 3.3 In certain circumstances we 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.

4.0 How to obtain a copy of the Policy or make comments

- 4.1 This Policy is available on the Council's website:

www.northlincs.gov.uk

If you would like a paper copy of the Policy and/or you would like to comment on the Policy, please contact us by:

- Telephoning Trevor Laming 01724 297603
- E-mailing trevor.laming@northlincs.gov.uk
- Writing to:

Trevor Laming
Assistant Director:
Technical and Environment Services
Civic Centre
Ashby Road
North Lincolnshire
DN16 1AB

- 4.2 On request, this Policy will be made available on tape, in Braille, large type, or in a language other than English.

5.0 General Principles

- 5.1 Prevention is better than cure and our role therefore involves actively working with businesses and members of the public to advise on, and assist with compliance.
- 5.2 When officers find contraventions of the law they will warn and advise those involved (orally or in writing, on request) of the steps needed to put things right and the time scale for this, unless more formal enforcement action is the most appropriate way of dealing with the matter.
- 5.3 Whilst carrying out enforcement activities officers will have due regard to all necessary procedural requirements contained in legislation such as the Criminal Procedure and Investigations Act 1996, the Regulation of Investigatory Powers Act 2000, the Police and Criminal Evidence Act 1984, the Data Protection Act 1998 and any codes of practice currently in use connected with the legislation.

Appendix 1

- 5.4 Where we consider that formal action is necessary each case will be considered on its own merits. However, there are general principles that apply to the way each case must be approached. These are set out in this Policy, the Enforcement Concordat, the Regulators' Code, the Code for Crown Prosecutors and Primary Authority Guidance.

For more information about the Enforcement Concordat visit:

<http://www.berr.gov.uk/files/file10150.pdf>

For more information about the Regulators' Code:

<http://www.bis.gov.uk/assets/brdo/docs/publications-2013/13-1016-regulators-code.pdf>

For more information about the Code for Crown Prosecutors:

http://www.cps.gov.uk/publications/docs/code2013english_v2.pdf

For more information about the Primary Authority Guidance visit:

<http://www.lbro.org.uk/docs/pa-guidance.pdf>

- 5.5 Enforcement decisions will be fair, independent and objective and will not be influenced by issues such as ethnicity or national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender. Such decisions will not be affected by improper or undue pressure from any source.
- 5.6 We will take into account the views of any victim, injured party or relevant person to establish the nature and extent of any harm or loss, and its significance, in making the decision to take formal action.
- 5.7 North Lincolnshire Council is a public authority for the purposes of the Human Rights Act 1998. We will, therefore, apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
- 5.8 This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulator's Code.
- 5.9 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.

6.0 Notifying Alleged Offenders

- 6.1 If we receive information (for example, from a complainant) that may lead to enforcement action against a business or individual we will notify that business or individual as soon as is practicable of any intended enforcement action, unless this could impede an investigation or pose a safety risk to those concerned or the general public.
- 6.2 During the progression of enforcement investigations/actions, business proprietors or individuals and witnesses will be kept informed of progress. Confidentiality will be maintained and personal information about individuals will only be released to a Court when required and/or in accordance with the Data Protection Act 1998.

7.0 Deciding what level of enforcement action is appropriate

A number of factors are considered when determining what enforcement actions to take:

7.1 Levels of enforcement action:

7.1.1 There are a number of potential enforcement options. The level of the action taken varies from no action through to proceedings in Court. Some actions may be taken in combination e.g. seizure of goods and prosecution. Examples of the main types of action that can be considered are shown below:

- No action;
- Informal Action and Advice;
- Fixed Penalty Notices;
- Penalty Charge Notices;
- Formal Notice;
- Forfeiture Proceedings;
- Seizure of goods/equipment;
- Destruction of an animal;
- Injunctive Actions;
- Refusal/revocation of a licence;
- Simple Caution;
- Prosecution.

7.1.2 In assessing what enforcement action is necessary and proportionate, consideration will be given to:

- The seriousness of compliance failure;
- Past performance and current practice;
- The risks being controlled;
- Legal, official or professional guidance;
- Local priorities of the Council.

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7.1.3 Where the law has been contravened, there is a range of enforcement options available to seek compliance with the law. Under normal circumstances, a process of escalation will be used until compliance is reached. Exceptions would be where there is a serious risk to public safety or the environment. Also where the offences have been committed deliberately or negligently or involve deception, or where there is significant economic detriment. Offences involving children or animal welfare may also be subjected to an escalated response.

7.2 No Action

7.2.1 In certain circumstances, contraventions of the law may not warrant any action. This can be where the cost of compliance to the offender outweighs the detrimental impact of the contravention on the community, or the cost of the required enforcement action to the Council outweighs the detriment of the contravention on the community. A decision of no action may also be taken where formal enforcement is inappropriate in the circumstances, such as where a trader has ceased to trade, or the offender is elderly and frail and formal action would seriously damage their wellbeing. In such cases, we will advise the offender of the reasons for taking no action.

7.3 Informal Action and Advice

7.3.1 For minor breaches of the law we may give verbal or written advice. We will clearly identify any contraventions of the law and give advice on how to put them right, including a deadline by which this must be done. The time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of the non-compliance.

7.3.2 Sometimes we will advise offenders about 'good practice', but we will clearly distinguish between what they must do to comply with the law and what is advice only.

7.3.3 Failure to comply could result in an escalation of enforcement action.

7.4 Fixed Penalty Notices

7.4.1 Certain offences are subject to fixed penalty notices where prescribed by legislation. They are recognised as a low-level enforcement tool and avoid a criminal record for the defendant. Where legislation permits an offence to be dealt with by way of a Fixed Penalty Notice (FPN), we may choose to administer a FPN on a first occasion, without issuing a warning.

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7.5 Penalty Charge Notice

7.5.1 Penalty Charge Notices (PCN) are prescribed by certain legislation as a method of enforcement by which the offender pays an amount of money to the enforcer in recognition of the breach. Failure to pay the PCN will result in the offender being pursued in the County Court for non-payment of the debt. A PCN does not create a criminal record and we may choose to issue a PCN without first issuing a warning.

7.6 Formal Notice

7.6.1 Certain legislation allows notices to be served requiring offenders to take specific actions or cease certain activities. Notices may require activities to cease immediately where the circumstances relating to health, safety, environmental damage, nuisance, animal health or welfare demand. In other circumstances, the time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of the non-compliance.

7.6.2 All notices issued will include details of any applicable Appeals Procedures.

7.6.3 Certain types of notice allow works to be carried out in default. This means that if a notice is not complied with (a breach of the notice) we may carry out any necessary works to satisfy the requirements of the notice ourselves. Where the law allows, we may then charge the person/business served with the notice for reasonable costs we incur in carrying out the work.

7.7 Forfeiture Proceedings

7.7.1 This procedure may be used in conjunction with seizure and/or prosecution where there is a need to dispose of goods in order to prevent them re-entering the market place or being used to cause a further problem. In appropriate circumstances, we will make an application for forfeiture to the Magistrates or Crown Courts.

7.8 Seizure

7.8.1 Certain legislation enables authorised Officers to seize goods, equipment or documents for example unsafe food, sound equipment that is being used to cause a statutory noise nuisance, unsafe products or counterfeit goods or any goods that may be required as evidence for possible future court proceedings. When we seize goods we will give the person from whom the goods are taken an appropriate receipt.

7.9 Injunctive Actions

7.9.1 In certain circumstances, for example, where offenders are repeatedly found guilty of similar offences or where it is considered that injunctive action is the most appropriate course of enforcement, then injunctive actions may be used to deal with repeat offenders, dangerous circumstances or significant consumer detriment.

7.9.2 Action under the Enterprise Act 2002; proceedings may be brought where an individual or organisation has acted in breach of community or domestic legislation with the effect of harming the collective interests of consumers. In most circumstances action will be considered where there have been persistent breaches or where there is significant consumer detriment. Action can range from:

Informal assurances;
Formal undertakings;
Interim Orders;
Court Orders;
Contempt Proceedings.

7.9.3 Anti Social Behaviour Orders and Criminal Anti Social Behaviour Orders: Where the non-compliance under investigation amounts to anti-social behaviour such as persistent targeting of an individual or a group of individuals in a particular area then, following liaison with the Council's Anti-Social Behaviour Unit where appropriate, an ASBO or CRASBO will be sought to stop the activity.

7.10 Refusal, Suspension, Revocation of a Licence or Environmental Permit

7.10.1 Certain types of premises/businesses require a licence or permit to operate legally, for example premises emitting pollution into the air. In order to warrant refusal/suspension/revocation of a licence, the controlling individual or organisation must meet one or more of the following criteria:

- Deliberately or persistently breached legal obligations, which were likely to cause material loss or harm to others
- Deliberately or persistently ignored written warnings or formal notices
- Endangered, to a serious degree, the health, safety or well being of people, animals or the environment
- Obstructed an Officer during undertaking their duties.

For activities covered by either the Licensing Act 2003 or Gambling Act 2005 please refer to the separate statutory policies available from the Licensing Unit.

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7.11 Simple Caution

7.11.1 A Simple Caution is an admission of guilt, but is not a form of sentence, nor is it a criminal conviction.

7.11.2 For a Simple Caution to be issued a number of criteria must be satisfied:

- Sufficient evidence must be available to prove the case;
- The offender must admit the offence;
- It must be in the public interest to use a Simple Caution;
- The offender must be 18 years or over.

For details on the Home Office guidance (Circular 30/2005) visit: <http://www.homeoffice.gov.uk>

7.11.3 We will also take into account the following when making our decision:

- The offender should not have received a simple caution for a similar offence within the last 2 years.

7.11.4 A record of the Caution will be sent to the Office of Fair Trading, and will be kept on file for 2 years. If the offender commits a further offence, the Simple Caution may influence our decision to take a prosecution. If during the time the Simple Caution is in force the offender pleads guilty to, or is found guilty of, committing another offence anywhere in England and Wales, the Caution may be cited in court, and this may influence the severity of the sentence that the court imposes.

7.12 Prosecution

7.12.1 A prosecution will normally ensue where the individual or organisation meets one or more of the following criteria:

- Deliberately, negligently or persistently breached legal obligations, which were likely to cause material loss or harm to others or the environment;
- Deliberately or persistently ignored written warnings or formal notices;
- Endangered, to a serious degree, the health, safety or well being of people, animals or the environment;
- Assaulted or obstructed an Officer in the course of their duties.

7.13 Proceeds of Crime Applications

7.13.1 Application may be made under the Proceeds of Crime Act for confiscation of assets in serious cases. Their purpose is to recover the financial benefit that the offender has obtained from his criminal conduct. Proceedings are conducted according to the civil standard of proof. Applications are made after a conviction has been secured.

8.0 Determining whether a Prosecution or Simple Caution is viable and appropriate

8.1 We apply two 'tests' to determine whether a Prosecution or Simple Caution is viable and appropriate. We follow guidance set by the Crown Prosecution Service when applying the tests:

For more information about the 'Code for Crown Prosecutors' visit:
http://www.cps.gov.uk/publications/code_for_crown_prosecutors/

8.2 A Simple Caution or Prosecution proceedings will only be progressed when the case has passed both the evidential test and the public interest test. The principles outlined apply equally to the other types of formal enforcement action that are available.

8.3 The Evidential Test

We must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. A realistic prospect of conviction is an objective test that means that a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a separate test from the one that the criminal courts themselves must apply. A jury or Magistrates' Court should only convict if it is sure of a defendant's guilt.

In assessing evidence the following will be considered;

- Can the evidence be used in court and is there a likelihood of that it will be held as inadmissible
- Is the evidence reliable and credible

Where the evidential test is satisfied, consideration should also be given to any statutory defence and how it is likely to affect the prospects of conviction.

8.4 The Public Interest Test

The public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. We will balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the suspect. Some factors may increase the need to prosecute but others may suggest that another course of action would be better.

8.5 In determining the Evidential and Public Interest Tests, consideration should be given to the following:

- The seriousness of the offence and whether it is likely to cause substantial loss or prejudice to others
- The history of the alleged offender (e.g. number of complaints and convictions, or extent of previous advice given)
- The willingness of the alleged offender to prevent a recurrence of the infringement
- Whether the alleged offender has offered a remedy – e.g. redress, compensation
- The likelihood of the alleged defendant being able to establish a statutory defence
- The calibre and reliability of witnesses
- The probable public benefit of a prosecution and the importance of the case – e.g. the possibility of establishing legal precedent. (It may not be in the public interest to prosecute for matters that could be seen as technical infringements where there is no obvious prejudice to others)
- Whether a formal caution may be more appropriate or effective (see above)
- Cost effectiveness – a need to balance likely overall cost against the “value” of the likely outcome
- Whether the infringement indicates evidence of unfair competition with other traders.

9.0 Who decides what enforcement action is taken?

9.1 Decisions about the most appropriate enforcement action to be taken are based upon professional judgement, legal guidelines, statutory codes of practice and priorities set by the Council and/or Central Government.

9.2 Where appropriate, decisions about enforcement will involve consultation between or approval from:

- Investigating Officer(s);
- Senior managers from Technical & Environment Services;
- Council Solicitors;

10.0 Liaison with other regulatory bodies and enforcement agencies

10.1 Where appropriate, enforcement activities within Technical & Environment Services will be coordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement.

10.2 Where an enforcement matter affects a wide geographical area beyond the Council boundary, or involves enforcement by one or more other local authorities or organisations; where appropriate relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activity coordinated with them.

10.3 Technical & Environment Services will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies, and examples include:

- Government Agencies;
- Police Forces;
- Fire Authorities;
- Statutory undertakings;
- Other Local Authorities.

11.0 Considering the views of those affected by offences

11.1 Technical & Environment Services undertakes enforcement on behalf of the public at large and not just in the interests of any particular individual or group. However, when considering the public interest test, the consequences for those affected by the offence, and any views expressed by those affected will, where appropriate, be taken into account when making an enforcement decision.

12.0 Protection of Human Rights

12.1 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 following:

- Right to a fair trial;
- Right to respect for private and family life, home and correspondence.

13.0 Review of the Enforcement Policy

13.1 This Policy will be reviewed annually.