

North Lincolnshire Council

Operations Enforcement Policy 2019/20

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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 the Operations Service, North Lincolnshire Council.

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 are 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' past history when making our decision.

The policy is built around a process of escalation. We will only prosecute in circumstances where a defendant has 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 wellbeing 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;
- Written warning
- Fixed Penalty Notices;
- Penalty Charge Notices;
- Formal Notices;
- Forfeiture Proceedings;
- Seizure of goods/equipment/food;
- Destruction of an animal;
- Works in default;
- Injunctive Actions;
- Refusal/revocation of a licence;
- Simple Caution;
- Prosecution;
- Criminal Behaviour Orders
- 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' 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 key outcomes:
- Safe
 - Well
 - Prosperous
 - Connected
- 1.3 Decisions about enforcement action and in particular the decision to prosecute have serious implications for all involved. We apply 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 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 and the evidential test is met.
- 2.2 All enforcement officers carry identity cards 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 the Operations Service.
- 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.
- 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:

- E-mail: kath.jickells@northlincs.gov.uk
- Telephone: 01724 297702
- Write to:

Waste and Public Protection

PO Box 42

Church Square House

Scunthorpe

North Lincolnshire

DN15 6XQ

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 All Officers will be appropriately trained and competent in the area of legislation they are tasked to deal with. Officers will also have an awareness of this policy and guidance associated with this document.

5.3 When officers find contraventions of the law, where possible 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.

5.4 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 2018, the Protections of Freedoms Act 2012 and any codes of practice currently in use connected with the legislation.

- 5.5 Where the Council has an interest in premises for which it is the enforcing authority its officers will apply the principles of the enforcement policy and practices in the same way that it does for all other premises to ensure a consistent approach.
- 5.6 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 Regulators' Code, the Code for Crown Prosecutors and Primary Authority Guidance.

For more information about the Regulators' Code:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf

For more information about the Code for Crown Prosecutors:

<https://www.cps.gov.uk/sites/default/files/documents/publications/Code-for-Crown-Prosecutors-October-2018.pdf>

For more information about the Primary Authority Guidance visit:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/707382/primary-authority-statutory-guidance-2017.pdf

- 5.7 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.
- 5.8 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.
- 5.9 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.
- 5.10 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.
- 5.11 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 Who will be considered for formal action

- 6.1 The legislation enforced by the Council covers a wide range of offences which can be committed by either individuals, businesses or both.
- 6.2 When deciding who formal action should be taken against, the Council will primarily be guided by the individual pieces of legislation, which set out who commits the offences contained within that legislation.
- 6.3 Where the legislation allows for formal action to be taken against individuals or businesses thought will be given as to the most appropriate course of action.
- 6.4 Where any potential offences involve a business, formal action will normally be considered against the business operator in the first instance, rather than an individual working for that business. However formal action against an individual will be considered where it is felt the potential offence was as a result of the act or default of that individual and the company had taken all reasonable precautions to prevent the commission of the offence.
- 6.5 In the case of offences committed by a limited company, formal action will normally be taken against the limited company and not officials of that company. Unless it is felt the offences were committed as a direct result of the consent or contrivance of named company representatives.

7.0 Notifying Alleged Offenders

- 7.1 If we receive information (for example, from a complainant) that may lead to an investigation against a business or individual we will notify that business or individual as soon as is practicable of the outcome of the investigation, unless this could impede an investigation or pose a safety risk to those concerned or the general public.
- 7.2 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 2018.

8.0 Deciding what level of enforcement action is appropriate

- 8.1 A number of factors are considered when determining what enforcement actions to take:
- 8.2 Levels of Enforcement Action:

8.2.1 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;
- Written warning
- Fixed Penalty Notices;
- Penalty Charge Notices;
- Formal Notices;
- Forfeiture Proceedings;
- Seizure of goods/equipment/food;
- Destruction of an animal;
- Works in default
- Injunctive Actions;
- Refusal/revocation of a licence;
- Simple Caution;
- Prosecution

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

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

8.2.3 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.

8.2.4 When deciding what course of action to take, certain cases may be referred to regional or national Liaison groups for further opinion. This will ensure any enforcement action taken is consistent with that taken by other authorities.

8.2.5 In constructing cases the council will have due regard for any relevant sentencing guidelines. Sentencing guidance considered may include but not limited to;

- Magistrates' Court Sentencing Guidelines, <https://www.sentencingcouncil.org.uk/wp-content/uploads/Sept-2015-MCSG-pdf1.pdf>
- Sentencing Council guidelines for Environmental Offences, https://www.sentencingcouncil.org.uk/wp-content/uploads/Final_Environmental_Offences_Definitive_Guideline_web1.pdf
- Sentencing Council guidelines for Health and Safety Offences, <https://www.sentencingcouncil.org.uk/wp-content/uploads/Health-and-Safety-Corporate-Manslaughter-Food-Safety-and-Hygiene-definitive-guideline-Web.pdf>

8.2.6 In certain circumstances, it may be decided to refer a matter to an external enforcement body to take action. In such cases any decision as to what enforcement action to be taken, will be subject to their enforcement policy and not that of North Lincolnshire Council.

8.2.7 Where legislation allows it, a charge will also be made for officer time and the administration involved in having to take formal action.

8.3 No Action

8.3.1 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.

8.4 Informal Action and Advice

8.4.1 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.

8.4.2 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.

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

8.5 Written Warning

8.5.1 Certain legislation requires a written warning to be issued to the perpetrator of problem behaviour requesting them to stop and advising of the consequences of continuing.

8.6 Fixed Penalty Notices

8.6.1 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.

8.7 Penalty Charge Notice

8.7.1 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.

8.8 Formal Notice

8.8.1 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.

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

8.9 Works in Default

8.9.1 Certain legislation allows the council to carry out the actions specified within a formal notice where the recipient of the notice fails to comply within the time specified for compliance. The council can carry out 'work in default' and then recover the full costs which may include administration costs. Procedures for cost recovery vary but may include recovery as a civil debt or registering a local land charge on the property. Where the debt relates to work on a premises, the enforced sale of the premises to recover the debt may also be an option.

8.10 Forfeiture Proceedings

8.10.1 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.

8.11 Seizure

8.11.1 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.

8.12 Injunctive Actions

8.12.1 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.

8.12.2 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.

8.12.3 Civil Injunctions and Criminal 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, a Civil Injunction and Criminal Behaviour Order will be sought to stop the activity.

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

8.13.1 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 wellbeing of people, animals or the environment
- Obstructed an Officer during undertaking their duties.

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

8.14 Simple Caution

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

8.14.2 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.

8.14.3 Further details on Simple Cautions can be found at;
www.justice.gov.uk/downloads/oecd/adult-simple-caution-guidance-oecd.pdf

8.14.4 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.

8.14.5 A central register of Cautions 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.

8.15 Prosecution

8.15.1 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 wellbeing of people, animals or the environment;
- Assaulted or obstructed an Officer in the course of their duties.

8.16 Civil Penalties

8.17 In certain circumstances housing offences can be progressed via a Civil Financial Penalty rather than seeking prosecution via the courts. In such circumstances the council's Housing Policy and Civil Penalty Procedure and Guidance will be followed.

9.0 **Financial Matters**

9.1 Sundry Debts

9.1.1 Where ever possible, the Council will look to recover its expenses in taking any form of formal action, whether that is officers time related to the service of a formal notice, the cost of works in default or court costs.

9.1.2 In such circumstances, with the exception of court proceedings, a sundry debt will be raised and the appropriate individual or business will receive an invoice detailing the amount of money owed to the council and how and where it should be paid. A daily interest rate may also be charged on the debt.

9.1.3 Failure to pay the sundry debt is likely to result in formal proceedings to recover the outstanding amount via the county court and/or bailiffs. The outstanding amount may also be secured as a land charge on relevant premises until the debt has been paid off. In extreme circumstances, enforced sale of the premises on which the land charge is secured may result from non-payment of the debt.

9.2 Proceeds of Crime Applications

9.2.1 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.

9.3 Rent Repayment Orders

9.3.1 In certain circumstances, where a successful prosecution takes place under the Housing Act 2004, a rent repayment order may be made requiring that all rent paid to the defendant during a prescribed period is paid back to either the tenant(s) or the Local Authority housing benefit department.

9.4 Further information is available on request on the recovery of expenses.

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

10.1 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.

10.2 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.

10.3 The Evidential Test

10.3.1 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.

10.3.2 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.

10.3.3 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.

10.4 The Public Interest Test

10.4.1 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.

10.5 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.

11.0 Who decides what enforcement action is taken?

11.1 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.

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

- Investigating Officer(s);
- Senior managers and Head of Service for the relevant Service;
- Council Solicitors;
- Head of Legal and Democracy;

12.0 Liaison with other regulatory bodies and enforcement agencies

12.1 Where appropriate, enforcement activities will be coordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement.

12.2 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.

12.3 We will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies, and examples include:

- Government Agencies;

- Police Forces;
- Fire Authorities;
- Health and Safety Executive
- HMRC
- UK Border Agency
- Statutory undertakings;
- Other Local Authorities.

13.0 Considering the views of those affected by offences

13.1 We undertake 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.

14.0 Protection of Human Rights

14.1 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.

15.0 Subordinate Policies

15.1 In addition to this main policy, it may be necessary to have additional service specific policies, which are available upon request from the relevant departments. These subordinate policies include;

- Parking enforcement policy
- Licensing policies
- Health and safety policy
- Housing enforcement policy

16.0 Review of the Enforcement Policy

16.1 This Policy will be reviewed annually.