



LANCASTER CITY COUNCIL
HEALTH & STRATEGIC HOUSING

ENFORCEMENT POLICY

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Health & Strategic Housing

1. INTRODUCTION

- 1.1 Lancaster City Council's Health & Strategic Housing Section carries out a wide range of duties seeking to ensure compliance with legislative standards designed to protect consumers and safeguard public health and safety. This includes carrying out programmed inspections of business premises.
- 1.2 This policy explains the approach adopted by the Council when carrying out its enforcement duties and is designed to ensure efficient compliance with legislation whilst, at the same time, minimising the burden on businesses, individuals, organisations and the Council itself.
- 1.3 Fair and effective enforcement is essential to protect the health, safety and interests of the residents, visitors and businesses of Lancaster district.
- 1.4 The Policy is also designed to make sure that everyone knows the principles that Health and Strategic Housing Services apply when carrying out enforcement work. By applying the same principles, everyone involved in the process is helping to treat stakeholders fairly but effectively.

2. SCOPE OF THE POLICY

- 2.1 This policy applies to the enforcement activities under the legislation enforced by Environmental Health, Strategic Housing, Cemeteries and Street Warden functions.
- 2.2 Enforcement, in the context of this policy, includes action carried out in the exercise of, or against the background of, statutory enforcement powers. This is not limited to formal enforcement action such as prosecution and includes, for example, the inspection of premises for the purpose of checking compliance with acts and regulations and the provision of advice to aid compliance.

3. APPROACH TO ENFORCEMENT

- 3.1 The purpose of enforcement is to ensure that preventative or remedial action is taken to achieve compliance with legislation. Although the Council expects full voluntary compliance with legislative requirements and licence provisions, it will not hesitate to use its enforcement powers where necessary. The Council, nevertheless, recognises that enforcement activity will depend on prevailing circumstances, level of risk, central and local government politics and stakeholder will as well as other external influences. The particular interests of consumers, businesses, employees and the public must all be taken into account.

- 3.2 A balance of techniques and approaches, including education, advice and enforcement, will be used in order to ensure the safety and well being of the public and of the environment. Prevention is regarded as better than cure and assisting compliance is every bit as important as detecting non-compliance. The targeting of resources where they are most effective and at areas of highest risk is considered essential in providing the public with an effective service.

4. ENFORCEMENT CONCORDAT

- 4.1 Lancaster City Council has formally adopted the central and local government Concordat on Good Enforcement. This sets out principles and procedures for enforcement of regulations, based on best practice.
- 4.2 The principles underlying the Concordat include **proportionality** in applying the law and securing compliance; **consistency** of approach; **targeting** of enforcement action; **transparency** and **openness** about methods of operation and what those regulated may expect; **helpfulness** in the way enforcement responsibilities are approached as well as **accountability** for actions taken.
- 4.3 The Council will demonstrate its commitment to the principles of the Concordat by:
- taking all enforcement decisions in a proportionate manner
 - striving for high standards of consistency
 - ensuring that all enforcement staff are helpful, courteous and efficient
 - measuring its performance against agreed standards

5. HUMAN RIGHTS ACT

- 5.1 The Human Rights Act 1998 places everyone under a duty to interpret all legislation compatibly with the Convention Rights incorporated by the Act and requires Lancaster City Council, as a public authority, to act in accordance with the Convention Rights. Authorised officers will, accordingly ensure that respect for human rights is at the core of their day to day work. This covers all aspects of the City Council's activities including:-
- Drafting rules and regulations
 - Internal staff and personnel issues
 - Administrative procedures
 - Decision making
 - Policy implementation
 - Interaction with members

6. PRINCIPLES OF ENFORCEMENT

Proportionality

- 6.1 Achieving proportionality requires relating the enforcement action taken to the risks involved. Those whom the law protects and those regulated can

expect that specific actions taken to achieve compliance will be proportionate to the risks involved or to the seriousness of any breach of the law.

- 6.2 Some duties are specific and absolute whereas others require action “so far as reasonably practicable”. Whilst deciding what is reasonably practicable to control risks involves the exercise of judgement, in the final analysis, it is the courts who determine what is reasonably practicable in the particular circumstances of each case. Where risks must be controlled so far as is reasonably practicable, consideration of the protective measures taken to comply will take account of the degree of risk on the one hand, and on the other the cost, whether in money, time or trouble involved in averting the risk.
- 6.3 The Council is conscious of the costs of compliance faced, in particular by small and medium sized business. It will ensure that these are kept to a minimum by ensuring that any enforcement action it takes will be proportionate to the risks posed and to the seriousness of any breach of the law.

Targeting

- 6.4 Effective targeting is achieved by making sure that regulatory effort is targeted primarily towards those whose activities give rise to the most serious risks or where the risks are least well controlled or against, deliberate or organised crime. Action will, accordingly, be primarily focused on those that break the law or those directly responsible for the risk and who are best placed to control it.
- 6.5 Systems are in place for prioritising regulatory effort. As well as detailing how complaints are responded to, these systems take account of the hazards and the nature and extent of risks that arise in a variety of different undertakings. The Council is aware that a relatively low hazard business poorly managed can entail greater risk than a higher hazard operation where proper and adequate risk-control measures are in place. The targeting of resources will take account of this.
- 6.6 Persons breaking the law will be held to account with enforcement action being directed against those responsible. Where several persons have responsibilities, action will be taken against those who can be regarded as primarily in breach. Where a company is involved, it will be usual practice to prosecute the company where the offence resulted from the company’s activities. However, the Council will also consider any part played in the offence by the officers of the company, including directors, managers and the company secretary. Action may also be taken against such officers (as well as the Company) where it can be shown that the offence was committed with their consent, was due to their neglect or that they ‘turned a blind eye’ to the offence or the circumstances leading to it. In appropriate cases, the Council will consider seeking disqualification of directors under the Companies Act.
- 6.7 Enforcement action against employees will receive special consideration. In deciding any action, the Council will look at any deliberate breaches of the law or company policies and any previous warnings issued by the employer or the Council.

Consistency

- 6.8 Consistency is achieved by taking a similar approach in similar circumstances to achieve similar ends. Those managing similar risks can expect a consistent approach to enforcement in respect of the advice given; the use of enforcement notices, approvals etc and decisions on whether to prosecute.
- 6.9 It is recognised that, in practice, consistency is not a simple matter and does not just mean uniformity. Variables include the severity of hazard, the attitude and competence of management, as well as their compliance history. Decisions on enforcement action are a matter of professional judgement and the Council, through its officers, will exercise discretion in an appropriate way. Robust arrangements will be maintained to promote consistency in the exercise of discretion, including effective arrangements for liaison with other enforcing authorities.
- 6.10 Businesses need to know that they are being treated fairly and are competing with one another on level terms. The Council will, accordingly, endeavour to ensure that all its enforcement decisions are consistent, balanced, fair and relate to common standards. In coming to any decision the Council will take account of the seriousness of the offence, past history, confidence in management, the consequences of non-compliance and the likely effectiveness of the various enforcement options.
- 6.11 The Council recognises the importance of achieving and maintaining consistency in its approach to making all decisions which concern enforcement action, including prosecution. Authorised officers will, accordingly, follow the specific guidance for their area of responsibility set out in statutory Codes of Practice and other guidance issued by Central Government and Co-ordinating Bodies will always be considered and followed where appropriate.

Transparency and Openness

- 6.12 Transparency is vitally important in maintaining public confidence. It means helping both those regulated and others to understand what is expected of them and what they should expect from the Council.
- 6.13 The Council and its officers will make it clear to business what their responsibilities and duties are and what can be expected of the Council's enforcement officers. In particular, staff will be trained and procedures will be developed to ensure that:-
- where remedial action is required, it is clearly and simply explained (and confirmed in writing, if requested) why the action is necessary and when it must be carried out; a clear distinction will always be made between what is best practice advice and legal requirements.
 - opportunity is provided to discuss what is required to comply with the law before formal enforcement action is taken, unless urgent action is required, for example, to prevent serious harm or injury or to prevent evidence being destroyed.

- where urgent action is required, an explanation of the reasons will be provided at the time with written confirmation following as soon as practicable after the event.
 - written explanation will be given of any rights of appeal against formal enforcement action at the time the action is taken.
- 6.14 Every effort will be made to ensure that information and advice is provided in plain language without abbreviations or jargon and is disseminated as widely as possible. Details of the ways in which the Service works, as well as the charges it sets for any of its services and arrangements for consulting with its stakeholders will be made freely available. Where found necessary explanatory leaflets will be produced for both businesses and the public.

Helpfulness

- 6.15 Advice and assistance are regarded as central to the implementation of the enforcement policy and are used to inform both businesses and individuals of their rights and responsibilities. Help will be given to businesses to assist them to comply with statutory requirements. By adopting this approach and positively encouraging businesses to seek advice and information it is hoped that many issues can be resolved without having to resort to the more formal stages of enforcement.
- 6.16 A courteous and efficient service will be provided with all staff identifying themselves by name. All officers carrying out enforcement will carry an official Lancaster City Council identification card. The purpose of any visit will be properly explained and a contact point or telephone number for any further dealings will be given when required. Applications for licences, registrations, approvals etc. will be dealt with efficiently and promptly and every effort will be made to ensure that, wherever practicable, the Council's enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

7. ENFORCEMENT OPTIONS

- 7.1 Enforcement options available include prosecution, enforcement notices, prohibition notices (where there is an imminent or serious risk) formal caution, suspension or revocation of licences, variation of licence conditions, injunctions and the carrying out of remedial works as well as verbal or written warnings. A hierarchical approach will be adopted in choosing the most appropriate enforcement sanctions which will clearly vary with circumstances. Generally, informal action will be considered first with more formal action being considered if the breach is serious or where informal warnings have been ignored.
- 7.2 Informal Action (verbal advice, warnings, written warnings) will be taken for minor breaches of the law or where there is no major risk and the Council has complete confidence the contravention will be remedied within a reasonable timescale, taking into account the health, safety and nuisance implications by the contravention.

- 7.3 Formal Action (enforcement notices, formal caution, seizure, prosecutions/injunctions, revocation of licences) will be considered where there is evidence of intent, negligence, persistent or deliberate breaches, significant risks to health, safety or well being of people or environment or obstructing an officer carrying out their duties.
- 7.4 As a general rule a prosecution will not be undertaken without the offender being given a reasonable opportunity to comply with the law. The Council recognises however, that there are circumstances where a contravention is particularly serious or there has been a blatant or reckless disregard for the law and it is right to prosecute without prior warning. Failure to comply with a Statutory Notice will normally result in a prosecution except in cases where works in default may be more appropriate.
- 7.5 When deciding upon the best course of action, regard will be had to the specific guidance on enforcement action contained in the various codes of practice guidelines and guidance documents issued by the relevant co-ordinating bodies and decisions about prosecution will take account of the Code for Crown Prosecutors. A prosecution will not be commenced unless there is sufficiency of evidence and the public interest factors are satisfied.

8. RESPONSIBILITY AND AUTHORISATION

Responsibility for implementation of the policy rests with the Head of Health & Strategic Housing. Day to day enforcement activities are carried out by authorised officers in the Health & Strategic Housing Services. Officers authorised in accordance with relevant codes of practice or national guidance will carry out inspections, sampling, complaints investigation and training. The appropriate line managers are responsible for the planning, organising and subsequent monitoring of all aspects of the policy. Enforcement decisions will be taken in accordance with the Council's Scheme of Delegation.

9. DEPARTURE FROM POLICY

All authorised officers when making enforcement decisions will abide by this policy. Any departure from policy will only be accepted in exceptional circumstance capable of justification and only after full consideration and authorisation by the Head of Health & Strategic Housing or a designated alternative officer. Any instances of non-compliance with the policy will be recorded and reported upon.

10. WORKING WITH OTHER REGULATORS

The Council's staff work with a wide range of other regulators (HSE, Environment Agency, Meat Hygiene Service, Fire Service, Trading Standards Officers, etc). Accordingly, where the Council and another enforcement body both have the power to prosecute, it will liaise with that other body, to ensure effective co-ordination, to avoid inconsistencies, and to ensure that any proceedings instituted are for the most appropriate offence.

11. HOME AUTHORITY PRINCIPLE

The Council is committed to the Home Authority Principle and will seek to promote the Principle in accordance with the guidance issued by the Local Authorities Coordinators of Regulatory Services (LACORS). The purpose of the scheme is to help businesses avoid contraventions of food law by the Council offering advice at source and encouraging any enforcement authority to work in liaison with the Council on enforcement issues concerning that business. This arrangement can, however, only be made where the head office of the business is located within the Lancaster district.

12. COMPLAINTS

The Council has a “How we deal with your complaints” procedure for dealing with complaints about services which is clearly set out in its leaflet. Where a business or other member of the public makes a complaint or expresses dissatisfaction with a service provided or any action taken, the officer receiving the complaint will notify the Head of Health & Strategic Housing or appropriate Line Manager as soon as possible. Complaints and expressions of dissatisfaction are seen as opportunities to identify possible weaknesses in service delivery and as the first step towards making improvements. Information obtained from the investigation of complaints will be used to examine possible action to improve service provision.