

Durham County Council

Corporate Enforcement Policy

Contents

Contents

Foreword	4
Introduction.....	5
Statement of Intent	5
Principles of Good Enforcement.....	7
Proportionate.....	7
Accountable	8
Consistent	8
Transparent.....	9
Planning Regulatory Activity and Targeting Resources.....	9
Enforcement Options.....	10
No action.....	11
Informal advice and written warnings.....	11
Fixed Penalty Notices	11
Penalty Charge Notices	11
Statutory Notices	12
Forfeiture Proceedings.....	13
Seizure of goods/equipment/documents.....	13
Injunctive Actions and other Civil Sanctions (including Order applications)	13
Enforced transfer of Management Responsibility	14
Compulsory Purchase Orders	14
Refusal/Suspension/Revocation of a licence or permit	14
Other Regulatory Sanctions.....	15
Simple Caution	15
Prosecution	16
Appeals.....	17
Judicial Review	18

Data collection and Information Sharing..... 18
Implementation and Review..... 18

Foreword

Durham County Council administers and enforces a range of legislation designed to protect public health, safety and welfare, prevent crime, improve the environment and support the local economy.

The Council has a responsibility in exercising its statutory duties to protect the communities it serves using the legislative tools delegated by government.

In doing this, we have flexibility to determine the most appropriate means to achieve compliance, taking account of both national guidance and the Council's Corporate Priorities, Policies and Strategies

This is an overarching policy which seeks to explain the Council's general approach to the use of its regulatory enforcement powers and may be supported or complemented by specific service enforcement strategies and procedures.

Introduction

This policy sets out the key principles under which officers will seek to achieve compliance with the legislation enforced by Durham County Council and will be applied to all relevant enforcement activities.

This policy has been prepared having regard to section 21 and 22 of the Legislative and Regulatory Reform Act 2006 and the Regulators' Code.

This policy may be supplemented by more detailed enforcement procedures that relate to specific work areas across a range of Council services including the following:-

- food safety and standards;
- workplace health & safety;
- private sector housing;
- environmental protection;
- public health & nuisance;
- Anti-Social Behaviour;
- animal health & welfare;
- licensing;
- trading standards;
- building control;
- planning;
- highways.

Officers will ensure that they follow any detailed matters outlined in such procedures or in nationally published enforcement guidance, as well as our general approach to enforcement given in this policy.

Due consideration will also be given to any other specific enforcement policy, or regulatory schemes such as Primary Authority Partnerships as appropriate.

Statement of Intent

It is the policy of the Durham County Council to maintain and enhance the amenity of the County and to protect the health, safety and wellbeing of its residents, as well as people working in, or visiting the area.

The Council considers that its enforcement powers are a vital tool to secure essential improvements to protect health, the environment and our local economy.

Our main objective is to protect the public, the environment and groups such as consumers and workers.

Whilst doing this we aim to: -

- have regard to the Regulators Code¹ and the five principles of good enforcement.
- adopt the Hampton Code of Practice for Regulators, which outlines five principles of good regulation: proportionality, accountability, consistency, transparency and targeting.²
- have regard to current statutory guidance, codes of practice and the Human Rights Act.

Reasonable effort will be made to ensure compliance with the law by a process of advice and education.

Formal action however will be considered in the following circumstances:

- where there is a strict liability to comply and a risk to public health exists;
- where there is a blatant or deliberate contravention of the law;
- where there is a history of non-compliance, or cooperation for an informal approach is not forthcoming; and
- where action agreed as part of an informal process is not being progressed within agreed timescales.

Formal action will be necessary however, where the Council has a Legal Duty to act, sanctions and penalties will be used to ensure compliance, consistent with the Penalties Principles set out in the Macrory Review³ as detailed below to: -

- change the behaviour of the individual.
- eliminate any financial gain or benefit from non-compliance.
- be responsive and consider what is appropriate for the individual and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction.
- be proportionate to the nature of the offence and the harm caused.

¹ Regulators' Code can be found at [Regulators' Code - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

² Additional information on the Hampton principles can be found at <https://www.legislation.gov.uk/ukpga/2008/13/notes/division/1>

³ Additional information on the Macrory Review can be found at https://webarchive.nationalarchives.gov.uk/ukgwa/20071001182243/http://bre.berr.gov.uk/regulation/reviewing_regulation/penalties/index.asp

- restore the harm caused by regulatory non-compliance where appropriate.
- deter future non-compliance.

Principles of Good Enforcement

The Council aims to undertake its regulatory and enforcement role in an impartial, open, and consistent manner. This is achieved through education, mediation, advice, inspections, monitoring, and by regulating the activities of individuals and business as necessary.

Compliance is secured through informal and formal action and, if necessary, through the courts via a prosecution.

We will work to ensure compliance with the law by:

- Helping and encouraging businesses and individuals to understand their responsibilities by providing the necessary advice and guidance to allow them to comply with the law,
- Responding proportionately and fairly to breaches of the law, and
- Using the service planning process to ensure that resources and regulatory activities are appropriately targeted to where they will have the greatest impact considering the associated risks.

In accordance with the Legislative and Regulatory Reform Act 2006 any officer authorised by Durham County Council to undertake regulatory functions will have regard to the following key principles for good enforcement:

Proportionate

It is recognised that most businesses and individuals wish to comply with the law, and the Council's approach will aim to secure compliance through advice and guidance. Whilst we will take a graduated approach to enforcement, there will be occasions where a formal approach is deemed appropriate.

The need to take enforcement action will be related to the risk and the public interest. Any action taken by enforcement officers to achieve compliance with the law will depend on the seriousness of any breach. Firm action will be taken against those who flout the law or act irresponsibly.

We understand that each case is unique and must be considered on its own merits and any decision regarding enforcement action will be impartial and objective. Decisions will not be affected by improper or undue pressure from

any source and will not be affected by race, disability, socio economic factors, age, politics, gender, sexual orientation or religious beliefs of any Council employee, offender, victim or witness. However, where a victim has been targeted by an offender by virtue of their status, protected characteristic or where the perpetrator is young or vulnerable, this will be taken into account when deciding on any course of action.

Accountable

Officers will adhere to the Council's Code of values, behaviours and conduct, being courteous, fair and efficient at all times and will identify themselves by name and, where appropriate, identity or warrant card.

Officers shall record details of enforcement actions and decisions.

If enforcement action is taken, it shall be carried out without unnecessary delay.

Where appropriate, the Council will ensure that customers are informed of any standards in place which detail the level of service and performance that can be expected by service users, and we will provide consultation and feedback opportunities for those we regulate.

Where enforcement activities are undertaken because of a service request/enquiry/complaint from a customer, we will keep the customer updated with the progress of the investigation and inform them of the outcome or resulting actions as appropriate.

Where formal enforcement action is taken, we will provide details of any appeals process which is applicable.

Should a business or individual have concerns or wish to complain about the service they have received they are able to do so via the Council's complaint procedure, however in most cases this would not be used as an appeal process in relation to a decision where formal action has occurred.

Consistent

The Council recognises that businesses and people expect consistency from different enforcement officers with whom they come into contact e.g. in the investigation of complaints and service of notices.

Broadly similar approaches will be used in similar circumstances to achieve consistent outcomes.

The Council will continue to take steps to promote consistency of enforcement. Steps will include development of enforcement procedures in line with relevant guidance and good practice, training, effective liaison with other local authorities, other enforcement agencies and professional organisations.

Transparent

We will provide and signpost to basic information and advice in a way that enables individuals to clearly understand what is a legal requirement and those matters which are recommendations.

Those whom enforcement action is considered appropriate will receive sufficient explanation in plain English to enable them to understand what is expected of them, and what they may expect from us including clear indication of any charges that may apply.

We will use the services of interpreters and translators as appropriate, for those occasions when individuals do not have English as their first language.

Our correspondence and advice, where appropriate will set out clear deadlines as to when and what appropriate action is required. Verbal advice can be confirmed in writing if requested. If appropriate, the Council will signpost persons to organisations where they are able to get additional support and advice.

Individuals will be able to access advice from services without directly triggering an enforcement action unless non-intervention would endanger the health and/or safety of people or animals.

Planning Regulatory Activity and Targeting Resources

The Council is committed to helping businesses grow. We will consider the impact that our regulatory activities may have on businesses and members of the public.

We will only adopt a particular approach if the effectiveness and benefits of action taken justify the costs. In doing so, we will endeavour to help businesses achieve compliance without unnecessary expense.

We will allocate our resources where they will be most effective by assessing the risks associated with non-compliance with the law.

In determining risk, we will consider a range of factors that include:

- The potential impact on residents, employees, consumers and business in failing to meet legal requirements.
- The likelihood of non-compliance considering such matters as past history, any systems the business has in place, management competence and willingness to comply.

Planned inspections and other visits will be undertaken after consideration of the risk. Further visits may be carried out upon request by a business, or where there is a service request (complaint), intelligence or information received which suggests that an inspection or visit is necessary.

Where matters involve other regulatory or enforcement agencies the Council will refer case details and other relevant information received with other enforcing authorities as deemed appropriate and in accordance with our data sharing arrangements.

Where practicable we will co-ordinate inspections or visits with other regulators to minimise the burden on recipients of our services, avoid any unnecessary duplication and to increase our overall effectiveness.

Where Durham County Council is the statutory duty holder, inspection and informal enforcement in these premises will be undertaken as normal. Any serious or repeated breach of legislation will be immediately reported to the relevant Service Manager, who will notify the Head of Service and relevant Corporate Director without delay.

Enforcement Options

Occasionally enforcement staff must deal with problems which constitute criminal offences, for which legal proceedings may be taken against an individual or a business.

These offences could be of a minor or serious nature but will be thoroughly investigated to establish all the facts. During this period of investigation, it is not unusual for officers to use their powers, for example, to take samples, inspect records or seize goods and documents.

At the conclusion of the officer's enquiries, a decision will be made whether to deal with the matter informally, or whether to pursue a more formal course of action which may ultimately lead to prosecution.

When considering formal enforcement action, we will, where appropriate, discuss the circumstances with those suspected of a breach and take these into

account when deciding the best approach. This does not apply where immediate action is required to prevent or respond to a serious breach or where to do so is likely to defeat the purposes of the proposed enforcement action.

There are a wide range of tools available to us as an enforcement authority that we may use to secure compliance with legislation. The range of actions we may take are as follows:

No action

In some circumstances, contraventions of the law may not warrant any action. This could be where the cost of compliance to the offender outweighs the detrimental impact of the contravention, or the cost of enforcement action to the Council outweighs the detrimental impact on the community.

Taking no action may also be considered where formal enforcement is deemed inappropriate in the circumstances, for example if the offender is elderly and frail and formal action would seriously damage their wellbeing. Such decisions will take into consideration the circumstances of each individual case and individuals will be advised of the reasons for taking no action.

Informal advice and written warnings

Minor incidents are normally dealt with at the time of the visit and involve the enforcement officer drawing the matter to the attention of an individual or their employees, giving advice where necessary. On occasions, the officer's explanation may be followed up by a verbal or written warning. Rarely will a minor or technical infringement result in more formal action being taken, particularly if it is capable of immediate rectification.

However, if repeated previous advice has been ignored, an officer may choose to treat the incident in a formal way.

Fixed Penalty Notices

Certain offences are subject to fixed penalty notices (FPN) prescribed by legislation. Where legislation permits an offence to be dealt with by way of a FPN, we may choose to administer the notice on a first occasion without issuing a warning. If the fixed penalty is not paid within the required timescale the Council would normally commence legal proceedings to prosecute the offender.

Penalty Charge Notices

As an alternative to prosecution certain offences may be subject to penalty charge notices (PCN) prescribed by legislation. An individual pays an amount of

money to the enforcer in recognition of the breach. Enforcement does not take place in the Magistrates' Courts as PCNs are enforced through the civil justice system hence failure to pay will result in the individual being pursued in the County Court for non-payment of the debt. Where legislation permits an offence to be dealt with by way of a PCN we may choose to administer the notice on a first occasion without issuing a warning. Use of this notice avoids a criminal record for the individual.

Statutory Notices

Certain legislation gives powers which may be discretionary or in some cases mandatory, for the Council to issue a statutory notice on individuals to take specific actions or cease certain activities.

Notices will normally be served where:

- informal action has not achieved the desired effect,
- there is a lack of confidence that the individual/company will respond to an informal approach,
- there is a history of non-compliance with informal action,
- standards are generally poor with little management awareness of statutory requirements,
- where the Council is satisfied that a statutory nuisance exists, or is likely to occur or recur,
- the consequences of non-compliance could be potentially serious to the health and safety of the public.

Some notices may require activities to cease immediately especially where the circumstances relate to health, safety, environmental damage or nuisance. Reasonable time limits will be attached to notices and wherever possible these will be agreed in advance with the recipient person or business. In some circumstances, requests for extension of time can be made. These should be made in writing to the officer issuing the notice, prior to the expiry date, explaining the reason for the request.

Statutory notices may also be served in conjunction with prosecutions. Accompanying every notice served will be notes explaining the appeal procedure, schedules where appropriate, and each notice will include officer contact details

Having regard to statutory powers, and where the law allows, a charge may apply to statutory notices. All charges will be levied on the person upon whom the notice is served and will be made at a level fixed within the Council's agreed charges having regard to a written record assessing costs reasonably incurred. In all cases of non-payment, the Council will instigate debt recovery action.

Where a schedule of work is specified within a statutory notice, certain legislation allows the local authority to undertake the work required if the recipient of the notice does not do so within the timescale specified and to recover their costs for undertaking the work. Notification will be given to inform the person on whom the notice was served of the intention to carry out the work in default. In all cases we will seek to recover the money spent in carrying out the required work.

Where a notice is not complied with by the expiry date, a prosecution may be considered appropriate. In these circumstances a report, in accordance with the Constitution, will be made to decide what further enforcement action is appropriate.

Forfeiture Proceedings

These proceedings may be used in conjunction with seizure and/or prosecution where there is a need to dispose of goods to prevent them re-entering the marketplace or being used to commit further offences. Application for the forfeiture will be made to a criminal court.

Seizure of goods/equipment/documents

Some legislation enables authorised officers to seize property such as goods, equipment and documents. When we seize goods, we will give the person from whom the goods were seized an inventory or receipt.

Injunctive Actions and other Civil Sanctions (including Order applications)

Where individuals are repeatedly found guilty of similar offences, where there is serious consumer detriment or where it is the most appropriate course of enforcement, then injunctive action may be used. Injunctive action includes agreements and formal undertakings to improve compliance which, if breached, may lead to an injunction in the civil law courts. Action can range from informal undertakings, formal undertakings, interim orders, court orders and contempt proceedings.

Enforced transfer of Management Responsibility

The use of Management Orders allows the Council to effectively take over the management of certain dwellings or buildings. Management Orders will normally only be used as a last resort, and in the absence of any other enforcement powers being effective. The Council must apply to the First-Tier Tribunal (Property Chamber) for an interim management order, for a prescribed period of time, followed by a final management order where required.

Such an order transfers the management of a residential property to the Council, and allows the Council:

- Possession of the house against the immediate landlord, and subject to existing rights to occupy;
- To do anything in relation to the house, which could have been done by the landlord, including repairs, collecting rents etc;
- To spend monies received through rents and other charges for carrying out its responsibility of management, including the administration of the house;
- To create new tenancies (with the consent of the landlord).
- To appoint a third party to manage the properties which are subject to a management order.

Compulsory Purchase Orders

The Council may compulsorily purchase property under, for example, Section 17 of the Housing Act 1985 (as amended) or The Town and Country Planning Act 1990. This procedure may sometimes follow the exercise of another statutory power or may be carried out without prior action. The consent of the Secretary of State is required, and compensation provisions flow from the exercise of this power.

Refusal/Suspension/Revocation of a licence or permit

Where there is a requirement for an individual or business to be licensed by the local authority, the licence may be granted unless representations or objections are received against the application. In some cases, the matter is referred to the relevant Committee who will hear the case and decide to grant, grant with conditions, or refuse the licence application.

Where a licence is already in force, the relevant authorised officer or Committee may revoke or suspend the licence on hearing representations made in relation to the application in question.

Other Regulatory Sanctions

Under the Regulatory Enforcement and Sanctions Act 2008, a range of alternative sanctions may become available to the Council. These include:

- A discretionary requirement -
 - a requirement to pay a monetary penalty to the Council as regulator
 - a requirement to take such steps as the Council may specify
 - a requirement to take such steps as the Council may specify, to put right a breach
- A Stop Notice
- An Enforcement Undertakings

Simple Caution

A simple caution may be used as an alternative to prosecution.

The use of Simple Cautions is advocated by the Home Office in situations where there is evidence of a criminal offence, but the public interest does not support a prosecution. The main aim of a simple caution is to prevent individuals re-offending.

It may be used for cases involving first time low-level offences where a Simple Caution can meet the public interest. A decision to issue Simple Cautions must be made in accordance with the Director of Public Prosecutions' Guidance on Charging

A simple caution will only be issued if:

- There is sufficient evidence to support prosecution
- the individual is 18 years of age or over
- the individual admits they committed the offence (s) and accepts the simple caution. Failure to accept a simple caution leaves the authority with an option to instigate legal proceedings instead.

A simple caution is not a criminal conviction. The caution will remain on record for at least 2 years and may influence a decision to prosecute should the individual re-offend.

Prosecution

All decisions to prosecute will be made by the relevant authorised officer in accordance with any scheme of delegation made under the Council's Constitution

Enforcement officers are required to prepare a report for senior officers of the Service. This report contains a full and balanced account of the facts surrounding the case and will be used to decide if the matter should proceed to prosecution. Individuals are always given the opportunity to explain the circumstances surrounding the commission of the offence and any "due diligence" precautions that may have been taken to prevent such an incident occurring.

Officers must record this explanation and where a formal interview takes place this will take the form of a question-and-answer discussion. This interview is always written down or audio recorded. Individuals will be invited to seek legal advice prior to these interviews taking place or to be accompanied by a legal representative at the interview itself.

These interviews are intended to ensure that a complete picture of the incident is obtained and are conducted strictly in accordance with the provisions of the Police and Criminal Evidence Act 1984.

Decisions to prosecute will take account of The Code for Crown Prosecutors. In particular, the following criteria will be considered:

- Whether this enforcing authority has collected sufficient evidence to provide a realistic prospect of a conviction, and
- It is in accordance with this policy and the Code for Crown Prosecutors, and
- It is in the public interest to proceed to court.

Subject to the above criteria, a decision in favour of prosecution will normally arise where one or more of the following circumstances apply:

- It is warranted by virtue of the gravity of an alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender;
- There have been repeated breaches of legal requirements and it appears that business proprietors or members of the public are neither willing nor able to deal adequately with the causes of the offence;

- There has been a reckless disregard for the safety and health of people, or where a particular contravention has caused serious public alarm;
- There has been a failure to comply with a legal notice or a repetition of a breach that was subject to a formal caution, or failure to pay a fixed penalty notice within the permitted payment period;
- There is a blatant disregard for the law;
- False information has been supplied wilfully, or there has been an intent to deceive, in relation to a matter which gives rise to significant risk;
- Officers have been intentionally obstructed in the lawful course of their duties.
- Where officers are assaulted we will seek prosecution of offenders.

This is not an exhaustive list of the enforcement actions available and new powers and sanctions may be introduced through new legislation.

In addition, not all the above enforcement options will apply to all of the Council's functions and may be limited to certain legislation.

The power for Council officers and relevant Committees to undertake enforcement action will be dependent upon the Council's Constitutional arrangements, relevant scheme of delegation and individual officer authorisations.

Appeals

Any applicable rights of appeal, against enforcement decisions, will be made known to affected persons, at the time and in writing, and will form part of any statutory notice.

If a valid appeal is lodged in accordance with the applicable legislation against any action taken or notice served, the Council will review the grounds for the action or notice and where these are considered to still be sound and appropriate will defend the action in the relevant Court or Tribunal.

Where a complaint is received about an enforcement action taken by the Council from the recipient of the action and there exists a formal right of appeal to the relevant Court or Tribunal, the Council will not consider the matter under its formal complaint procedure.

Judicial Review

Judicial review is a type of court proceeding in which a judge reviews the lawfulness of a decision or action made by a public body. In other words, judicial reviews are a challenge to the way in which a decision has been made, rather than the rights and wrongs of the conclusion reached.

Data collection and Information Sharing

The Council will take a proactive approach to data collection and the sharing of information via agreed secure mechanisms with other regulatory agencies and other local authorities about businesses and individuals to help target resources and activities and to minimise duplication of enforcement activity.

Personal and business information held by the authority will only be shared in accordance with the relevant information sharing protocol or legislation. Confidentiality will be maintained unless with the express agreement of the individual concerned.

The Council will normally publicise details of any convictions, which are in the public interest. Where appropriate, the media may also be provided with factual information about hearings that have gone before the Courts and are in the public domain.

Implementation and Review

The content of this document must be well known, understood, and applied by officers in their everyday work.

Application of this policy will be monitored through audits conducted on completed case files, complaint forms and letters of caution. This process is seen as a positive aid to improving the quality of our service.

All officers will have regard to this policy, and any relevant policy or procedure made under it, when making enforcement decisions.

In situations where exceptional conditions prevail, the relevant head of service in consultation with the Head of Legal and Democratic Services may authorise departure from any part of this policy.

This Policy will be reviewed every 3 years or when there are significant changes in regulatory legislation.

This policy document is freely available to the public on the internet
<http://www.durham.gov.uk>

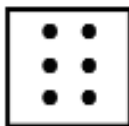
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