

East Lindsey District Council

**CORPORATE ENFORCEMENT
POLICY**

Revised 18.2.14

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1 Scope of the Policy

This policy will be considered when officers are initiating formal enforcement actions on behalf of East Lindsey District Council in respect of the following service areas.

- Enforcement
- Environmental Health
- Environmental Services
- Housing Standards
- Community Safety
- Anti-Social Behaviour
- Street Scene.

This policy is implemented by Council officers in accordance with our Constitution. Subsidiary policy and protocols may however exist in specific service areas of the Council. All officers undertaking enforcement activity will be suitably qualified and/or experienced to do so. This policy does not cover the collection and recovery of debt for council tax and business rates or accounts receivable as separate policy documentation covers these specific areas.

2 Purpose of the Policy

The purpose of this Policy is to set out the guiding principles by which legislation for which we are the/a responsible authority will be enforced in order to protect health, safety, amenity, environment and local economy of and for people living in, working in and visiting East Lindsey.

This policy provides an enforcement framework which has been developed in accordance with numerous Acts, codes and other forms of statutory guidance; these include but are not limited to:

- The Human Rights Act, 1998
- The Equality Act, 2010
- The Data Protection Act, 1998
- Central and Local Government Concordat on Good Enforcement
- The Legislative and Regulatory Reform Act, 2006
- The Regulators Compliance Code
- The Crime and Disorder Act, 1998 and
- The Regulatory Enforcement and Sanctions Act, 2008

Enforcement plays an important role in enabling us to achieve the corporate, service and wider objectives that we set out in our many plans and strategies. This policy must be read in conjunction with our Constitution as it is within the Constitution that we set out who and how officers are authorised to undertake enforcement activity. Sitting beneath this policy may be subsidiary enforcement policies that include service specific detail.

There is nothing in this policy affects the discretion of the Council to take legal proceedings where such proceedings are deemed to be in the public interest.

3 Aim of the Policy

This policy is aimed at providing the public, businesses and officers of the Council with guidance in relation to the approach to be taken by the Council when carrying out its functions as a regulatory authority and covers both formal and informal enforcement actions.

4 Objectives of the Policy

The objectives of the Council as a regulatory authority are to:

Promote fair and effective enforcement. This means ensuring that all enforcement actions are applied openly and consistently and represent a proportionate response to the need to protect the health, safety, environment and economic interests of the public, consumers and businesses.

Use prevention as an alternative to prosecution where the Council considers it appropriate. This means working with the public and local businesses where appropriate to ensure compliance with the law whilst recognising that there will at times be a need to take formal enforcement action in order to protect the interests of the public, consumers and businesses.

Only bring prosecution or other legal action where it is necessary and proportionate in order to protect the public, consumers and businesses. Although the Council will never fetter its discretion in taking legal action, it will only take action that is proportionate and in the public interest. This will mean assessing cases on their individual merits based on the facts of the matter to hand.

Note: Legal action includes but will not be limited to prosecution, civil claim or other injunctive processes.

In carrying out its enforcement activity the Council will take into account the interests of business owners, employees and the public and will endeavour to support economic progress wherever possible.

5 Regulatory Compliance

As set out within section 2, the Council bound by numerous Acts of parliament, Statutory Instruments and Codes of Guidance including:

5.1 The Enforcement Concordat and Principles of Good Regulation

East Lindsey District Council will at the same time as adopting this document adopted the Central and Local Government Concordat on Good Enforcement. The Legislative and Regulatory Reform Act 2006 also places a duty on the Council to have regard to the 'Principles of Good Regulation' when exercising specified regulatory functions. The Principles provide that regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent and should be targeted only at cases in which action is needed.

5.2 The Regulators Compliance Code

The Regulators' Compliance Code prescribes a need to embed a risk-based, proportionate and targeted approach to regulatory inspection and enforcement. Local Authorities are required to have regard to the Code in determining general policy when exercising specified regulatory functions. Specified regulatory functions detailed in the Legislative and Regulatory Reform (Regulatory Functions) Order 2007 and include Council functions such as residential and commercial Environmental Health Services.

The Council will have regard to the Regulators' Compliance Code with a view to achieving regulatory outcomes without imposing unnecessary burdens on individuals, businesses, organisations and other regulated entities.

5.3 The National Local Authority Enforcement Code

The Council will implement and comply with the requirements of the prevailing National Local Authority Enforcement Code as it applies to health and safety regulation. This will ensure a risk based approach to targeting health and safety regulatory interventions.

6 Our Approach to Enforcement and the Role of Officers

"Enforcement" includes any action taken by officers aimed at ensuring that individuals or businesses comply with the law. Where individuals or businesses do not comply with the law that the Council is responsible for enforcing there are four broad options available: do nothing, take informal action, take formal action or take legal action. Each 'enforcement case' will be considered on its merits in accordance with the requirements of this policy. Any action deemed necessary and proportionate will be approved by a duly authorised officer with delegated authority as set out in our Constitution.

It is the responsibility of the officer in charge of the case, seeking managerial, professional or legal advice where necessary, to ensure that:

- communications with all those involved are entered into in a fair, clear and courteous manner;
- communications will be in plain language;
- any special needs of those involved are met as far as possible,
- help, information and advice will be given where needed;
- where possible, before formal action is taken there will be an opportunity for the offender to discuss the circumstances of the case with an officer (there will however be cases of such severity that urgent action/legal action may be taken without any prior notification);
- where there are rights of appeal against formal action advice on the appeal mechanism will be clearly set out in writing.

In deciding to whether to take action and if so what type of action to take, officers will consider, amongst other factors:

- the seriousness of the offence;
- the consequences of non-compliance in terms of risk to people, property, the community or the environment;
- the individual's or company's past history in terms of compliance;
- confidence in management, level of awareness of statutory responsibilities and willingness to prevent a recurrence;
- the likely effectiveness of the various alternative enforcement options;
- the public interest, public expectation and the importance of the case in setting a precedent;
- the application of any national or local guidance to the matter in question;
- information received following liaison with other external enforcing agencies;
- relevant case law and guidance;
- the likelihood of the offender being able to establish a defence;
- the consumer/complainants attitude towards formal action;
- the information received following liaison with other authorities;
- the reliability of witnesses.

The most effective action will be taken to achieve the desired compliance with the most current legislation. The decision will be taken in an objective and fair way in accordance with the principles set out in this policy.

Depending on the merits of each case and in consideration of any subsidiary enforcement policy, there may be a graduated approach to enforcement which starts with informal action (if appropriate) followed by formal action/legal action where compliance is not achieved, however, where there are matters that pose serious and high impact risks, prosecution or other legal action may be taken immediately.

7 Forms of Action

Many forms of action are available to the Council and include but are not limited to:

7.1 Informal Enforcement Action

Where minor breaches of law are discovered or reported that pose low risks, informal action may be appropriate and can be an effective way of achieving compliance.

Informal Action may include one or more of the following:

- inspection of premises, equipment, food etc;
- verbal advice;
- verbal request for action;

- written request for action;
- written warning of formal action if contraventions are not corrected.

7.2 Formal Enforcement Action

Where informal action has not been successful or where an offence presents a serious risk to public health, safety, amenity, environment or the economy, formal action may be taken.

Formal action may include one or more of the following:

- the service of statutory notices and orders;
- the issue of simple cautions;
- prosecution;
- application for injunction;
- revocation or suspension of licences, approvals or registrations;
- issue fixed penalty notices;
- use of other enforcement powers by officers authorised by specific legislation in accordance with the Council's Constitution (e.g. sampling, forfeiture or seizure of goods, the seizure or detention of equipment or food, or the prohibition of processes or activities).

7.3 Statutory Notices and Orders

Statutory Notices are legal documents normally requiring the recipient to carry out work or to cease specified activities, to ensure compliance with legislation. They are issued by an officer to whom authority is delegated by the Council.

A wide variety of Notices and Orders provided in legislation are enforced by the Council. Different Notices and Orders carry specific procedures for their issue and each carries different requirements for appeal and dispute. Time limits specified in Notices must be realistic and should reflect the scale of the matters to be addressed.

7.4 Prosecution or other Legal Action

The decision to pursue prosecution or to commence other legal action (or to offer a 'simple caution') will normally only be made following a case review involving the relevant officer(s) and a relevant Head(s) of Service or member of the Corporate Management Team. Each case will be treated as unique and considered on its own facts and merits. All of the circumstances surrounding the case will be considered including the social benefits and costs associated with bringing the matter to the attention of the Courts.

The final decision to prosecute or take other legal action will be authorised by an appropriate Team Leader or member of the Corporate Management Team in accordance with an approved scheme of delegation. In all cases the Council will seek to recover all costs (where lawful to do so)

associated with any enforcement action, prosecution or other legal action it takes.

Where the appropriate level of action is deemed to be that of prosecution or other legal action then the case will be judged on its individual merits against the prevailing guidance and procedures associated with prosecution or other legal action (the Code for Crown Prosecutors) and the application of the evidential and public interest tests.

For a case to meet the evidential test for prosecution officers, seeking legal advice where appropriate, should ask themselves:

1 - Can the evidence be used in court?

Officers should consider whether there is any question over the admissibility of certain evidence. In doing so, officers should assess:

- a) the likelihood of that evidence being held as inadmissible by the court; and
- b) the importance of that evidence in relation to the evidence as a whole.

2 - Is the evidence reliable?

Officers should consider whether there are any reasons to question the reliability of the evidence, including its accuracy or integrity.

3 - Is the evidence credible?

Officers should consider whether there are any reasons to doubt the credibility of the evidence.

In addition to the necessary evidential requirements, the public interest test must be applied in all cases where there is sufficient evidence to justify a prosecution. The questions set out below are adapted from The Code for Crown Prosecutors, January 2013 and have relevance to the decision to prosecute or take other legal action:

1 - How serious is the offence committed?

The more serious the offence, the more likely it is that a prosecution is required.

When deciding the level of seriousness of the offence committed, officers should include amongst the factors for consideration the suspect's culpability and the harm to the victim by asking themselves the questions 2 and 3.

2 - What is the level of culpability of the suspect?

The greater the suspect's level of culpability, the more likely it is that a prosecution is required.

Culpability is likely to be determined by the suspect's level of involvement; the extent to which the offending was premeditated and/or planned; whether they have previous criminal convictions and/or out-of-court disposals and any offending whilst on bail or whilst subject to a court order; whether the offending was or is likely to be continued, repeated or escalated; and the suspect's age or maturity (see point 4 below for suspects under 18).

Officers should also have regard when considering culpability as to whether the suspect is, or was at the time of the offence, suffering from any significant mental or physical ill health as in some circumstances this may mean that it is less likely that a prosecution is required. However, Officers will also need to consider how serious the offence was, whether it is likely to be repeated and the need to safeguard the public or those providing care to such persons.

3 - What are the circumstances of and the harm caused to the victim?

The circumstances of the victim are highly relevant. The greater the vulnerability of the victim, the more likely it is that a prosecution is required. This includes where a position of trust or authority exists between the suspect and victim.

A prosecution is also more likely if the offence has been committed against a victim who was at the time a person serving the public. Officers must also have regard to whether the offence was motivated by any form of discrimination against the victim's ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity; or the suspect demonstrated hostility towards the victim based on any of those characteristics. The presence of any such motivation or hostility will mean that it is more likely that prosecution is required.

In deciding whether a prosecution is required in the public interest, Officers should take into account the views expressed by the victim about the impact that the offence has had. In appropriate cases, this may also include the views of the victim's family.

Officers also need to consider if a prosecution is likely to have an adverse effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence. If there is evidence that prosecution is likely to have an adverse impact on the victim's health it may make a prosecution less likely, taking into account the victim's views.

However, the CPS does not act for victims or their families in the same way as solicitors act for their clients, and Officers must form an overall view of the public interest.

4 - Was the suspect under the age of 18 at the time of the offence?

The criminal justice system treats children and young people differently from adults and significant weight must be attached to the age of the suspect if they are a child or young person under 18. The best interests and welfare of the child or young person must be considered including whether a prosecution is likely to have an adverse impact on his or her future prospects that is disproportionate to the seriousness of the offending. Officers must have regard to the principal aim of the youth justice system which is to prevent offending by children and young people. Officers must also have regard to the obligations arising under the United Nations 1989 Convention on the Rights of the Child.

As a starting point, the younger the suspect, the less likely it is that a prosecution is required.

However, there may be circumstances which mean that notwithstanding the fact that the suspect is under 18, a prosecution is in the public interest. These include where the offence committed is serious, where the suspect's past record suggests that there are no suitable alternatives to prosecution, or where the absence of an admission means that out-of-court disposals which might have addressed the offending behaviour are not available.

5 - What is the impact on the community?

The greater the impact of the offending on the community, the more likely it is that a prosecution is required. In considering this question, Officers should have regard to how community is an inclusive term and is not restricted to communities defined by location.

6 - Is prosecution a proportionate response?

Officers should also consider whether prosecution is proportionate to the likely outcome, and in so doing the following may be relevant to the case under consideration:

- The cost to the Council and the wider criminal justice system, especially where it could be regarded as excessive when weighed against any likely penalty. (Officers should not decide the public interest on the basis of this factor alone. It is essential that regard is also given to the public interest factors identified when considering the other questions at points 1 - 7, but cost is a relevant factor when making an overall assessment of the public interest.)
- Cases should be capable of being prosecuted in a way that is consistent with principles of effective case management. For example, in a case involving multiple suspects, prosecution might be reserved for the main participants in order to avoid excessively long and complex proceedings.

7 - Do sources of information require protecting?

In cases where public interest immunity does not apply, special care should be taken when proceeding with a prosecution where details may need to be made public that could harm sources of information, international relations or national security. It is essential that such cases are kept under continuing review.

In addition to the public interest test set out within the 2013 Code, one or more of the following factors may point to prosecution or other legal action being proportionate:

- a flagrant breach of the law such that public health, safety, amenity or the environment has been put at risk;
- the offence has resulted in a serious risk to, or impact on public health, safety, amenity or the environment;
- the offence was clearly foreseeable, or where there have been a series of breaches or incidents, the offender is clearly aware of and he has failed to take effective remedial action;
- the offender knew that a course of action (or inaction) was likely to lead to the commission of an offence or there was an element of intention or wilfulness;
- a history of non compliance exists;
- the offender shows reluctance to take the appropriate remedial action to prevent further offences;
- failure to comply with a Statutory Notice or Order;
- fraudulent, deceptive or misleading trading practices that affect or are likely to affect the economic interests of businesses or consumers;
- for matters where there has been recklessness or negligence;
- a deliberate or persistent failure to comply with advice, warnings or legal requirements;
- any act likely to affect animal health or welfare, disease prevention measures, or the integrity of the food chain;
- activities, which adversely affect vulnerable groups and/or ethnic minorities;
- obstruction or assault (including verbal assault) of an officer in the execution of their duties.

Deciding on the public interest is not simply a matter of adding up the number of factors on each side. Officers must therefore decide how important each factor is in the circumstances of each case and make an overall assessment.

The Council's public interest criteria will apply in all cases unless a subsidiary policy sets a specific set of criteria for a particular enforcement activity.

8 Actions that can be taken in addition to Prosecution

In addition to the decision to prosecute the Council may decide to bring additional post conviction legal action, such as those brought under the Enterprise Act 2002 as amended or by applying for an Anti Social Behaviour Order (or their successors) as a means of preventing the continuation of the offender's behaviour. Where a successful prosecution is brought, the Council may also seek an order from the criminal court restraining the offender's future behaviour.

Following a successful prosecution the Council may also make an application for the forfeiture of goods or equipment seized during the investigation and may also make an application for the investigative and legal costs incurred by the Council.

Where the Council have evidence to suggest that an offender has financially benefitted from a crime then following conviction an application can be made to the Crown Court under the Proceeds of Crime Act 2002 for confiscation of the defendant's assets.

9 Publication and Review

This policy will be published on the Council's Website and will undergo a fundamental review every **three** years. However, should it become apparent that the policy contains any weaknesses for whatever reasons (i.e. changes to the law, national or other guidance etc) then the policy will reviewed earlier.