

APPENDIX A



Regulatory Services, Housing and Wellbeing

Enforcement Policy

What you can expect when dealing with an Officer from Regulatory Services, Housing and Wellbeing

September 2020

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Introduction

This enforcement policy is designed to:

- Help you understand our objectives and methods for achieving compliance.
- Outline the criteria we consider when deciding what the most appropriate response is to a breach of legislation.

Lichfield District Council is committed to the principles of the Regulators' Code (Department for Business Innovation and Skills, April 2014).

The Regulators' Code states:-

1. Regulators should carry out their activities in a way that supports those they regulate to comply and grow.
2. Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views.
3. Regulators should base their regulatory activities on risk.
4. Regulators should share information about compliance and risk.
5. Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply.
6. Regulators should ensure that their approach to their regulatory activities is transparent.

In certain instances we may conclude that the provision of the Regulators' 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.

Lichfield District Council has signed both the Greater Birmingham and Solihull Local Enterprise Partnership Regulators' Charter and the Stoke-On-Trent and Staffordshire Local Enterprise Partnership Regulatory Charter. We are committed to the principles of both of these documents.

When undertaking enforcement action we will also have regard for:

- Requirements in guidance published by Government and the relevant professional bodies.
- The Human Rights Act 1998
- The Code for Crown Prosecutors 2018.

Our primary enforcement objective is to achieve regulatory compliance. There are a wide range of tools available to us to achieve compliance. Where

enforcement action is deemed appropriate we will choose an enforcement method that is relevant and proportionate to the offence or contravention.

Activities Covered by the Policy

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This document covers all enforcement activities carried out by Regulatory Services, Housing and Wellbeing staff and / or authorised under the delegated authority granted by Lichfield District Council.

'Enforcement' includes all actions taken by officers aimed at ensuring legal compliance. This is not limited to formal enforcement actions such as prosecution.

This policy applies to all legislation authorised for enforcement by Regulatory Services, Housing and Wellbeing. Delegated Authority to use these powers can be seen in Lichfield District Council's Constitution. The Constitution is available on the Council's website www.lichfielddc.gov.uk.

All officers carry authorisation cards with them that detail the legislation they are authorised to enforce, these are known as 'instrument of appointment' cards.

All officers are required to comply with this Enforcement Policy in full. Any proposed variation must be referred to the Head of Regulatory Services in the first instance or to the Chief Executive where the matter cannot be determined under existing terms of delegation.

Notification of policy

A copy of this policy is available on the Council's website, as well as an Enforcement Action Summary Leaflet. Enforcement Action Summary Leaflets may be distributed with formal letters and notices (Appendix A).

General Principles

Each case is unique and will be considered on its own facts and merits.

In arriving at a decision to recommend formal action officers will be fair, independent, and objective. They will not let any personal views about ethnic or national origin, sex, age, religious beliefs, political views, or sexual orientation of the suspect, victim or witness influence their decisions. They will not be affected by improper or undue influence from any source.

Officers will comply with the relevant codes of the Police and Criminal Evidence Act 1984. This Act applies to all enforcement bodies, including Local Authority enforcement teams.

Deciding what level of enforcement action is appropriate

There are a range of potential enforcement outcomes. The option chosen varies from no action through to proceedings in Court. Examples of the main types of action that can be considered are shown below:

- No action
- Informal Action
- Simple Caution
- Fixed Penalty Notices
- Formal Notice / Orders
- Seizure of goods / equipment
- Refusals / suspension/ revocation of a licence
- Prosecution
- Injunctive Actions

Informal Action

For minor breaches of the law we may give verbal or written advice. Officers will clearly identify those matters that are contraventions of the law and those that are simply recommendations. Persons receiving an informal action will be given the opportunity to discuss the requirements with the investigating officer. Regular contact with the investigating officer to assist the person or business as the works progress will be encouraged. Failure to comply could result in an enforcement action.

Criteria for Adopting Formal Action

The use of enforcement action will at all times be consistent with the principles set out in the Regulators' Code. In coming to a decision officers will have regard to:

- The seriousness of the offence
- The individual's or company's past history in terms of compliance
- Confidence in management
- The consequences of non-compliance in terms of risk and harm to people, property, or the environment
- The likely effectiveness of the various enforcement options, and
- The risk to public health.

Other factors that will be considered, where relevant, include:

- Case law
- The overall record of the company
- The significance of the proposed action in national terms, and

- The application of any legislative requirements, statutory guidance, codes of practice and guidance published by relevant professional bodies to the matter in question.
- Primary Authority advice

Fixed Penalty Notice

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Certain offences are subject to Fixed Penalty Notices (FPNs) where permitted in legislation. FPNs are recognised as a low level enforcement tool. Paying fixed penalty notices within the permitted timescale gives the offender the opportunity to discharge the offence committed and does not result in a criminal conviction. Failure to discharge liability for the offence by payment of the fixed penalty notices may result in a prosecution.

Formal Notices

Certain legislation allows notices to be served requiring offenders to take specific action or cease certain activities. The time period stated on the notice will be reasonable.

Certain types of notice allow works in default to be carried out. This means if the notice is not complied with (known as a breach of notice) we may carry out the necessary works to satisfy the requirements of the notice ourselves. Where the law allows, we will normally recover our costs from the person / business served with the notice, through the Courts if necessary. Sometimes costs are recovered via a charge on the property. Every formal notice will be issued with clear guidance on your rights of appeal.

Seizure

Certain legislation enables authorised officers to seize goods, equipment or documents. We can also seize goods that may be required as evidence for possible future court proceedings. If we seize goods we will give the person / business from whom the goods are taken a receipt.

Refusal, Suspension and Revocation of a licence

Certain individuals, premises, and / or businesses require a licence to operate legally. Licences may be refused, suspended or revoked following consideration with authorised supervisors / management. We will follow appropriate procedures and consideration of all relevant evidence and have regard to relevant guidance.

Simple Caution

The 'Simple Caution', may be used as an alternative to Prosecution. It is an admission of guilt, but is not a form of sentence, nor is it a criminal conviction.

The aims of a simple caution are:

- To offer a proportionate response to low level offending where the offender has admitted the offence;
- To deliver swift, simple, and effective justice that carries a deterrent effect.
- To record an individual's offences for reference in future formal action.
- To reduce the likelihood of re-offending;
- To increase the amount of time officers spend dealing with more serious offences and reduce the amount of time officers spend completing paperwork and attending court, whilst simultaneously reducing the burden on the courts.

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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 old or over

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

The investigating officer in agreement with the delegated departmental manager or supervisor will determine if a Simple Caution is the most appropriate form of sanction having regard to the recommendations from the case meeting. The individual or company concerned will be advised of the decision and requested to confirm acceptance. The 'cautioning officer' for offences will be the delegated Senior staff member.

A record of the Simple Caution will be kept on file for 2 years. If the offender commits a further offence, the Simple Caution may influence our decision to proceed to prosecution. If during the time the 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 the court, and this may influence the severity of the sentence that the court imposes.

Prosecution

When considering whether or not to prosecute we will determine if there is sufficient evidence to prove the case and whether the intended action is 'in the public interest'.

The final decision to initiate Court proceedings will be taken by the appropriately delegated service manager following a case review.

Prosecution action is taken on the behalf of the public at large and not just in the interest of any particular individual or group. However, when considering the public interest test, the consequences to those affected by the offence,

and any views expressed by those affected will, where appropriate, be taken into account when making enforcement decisions.

As soon as the decision to prosecute has been made the investigating officer will instruct the Council's appointed Solicitors to commence proceedings.

Court Injunction

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In certain circumstances, for example where offenders are repeatedly found guilty of similar offences, injunctions may be used as an enforcement measure to deal with offenders or dangerous circumstances.

Proceeds of Crime Applications

Applications 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 the criminal conduct. Proceedings are conducted according to the civil standard of proof. Applications are made after a conviction has been secured.

Determining whether a Prosecution or Simple Caution is viable and appropriate

We apply the Full Code Test 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:

- The **Evidential Stage-**

There must be enough evidence to provide a 'realistic prospect of conviction' against each defendant on charge.

- The **Public Interest Stage-**

There may be public interest factors which are in favour of, or are against prosecutions. These have to be weighed-up before such enforcement action is taken.

A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be.

The Evidential Stage

The finding that there is a realistic prospect of conviction is based on the prosecutor's objective assessment of the evidence, including the impact of any defence and any other information that the offender has put forward or on which he or she may rely. It means that an objective, impartial, and reasonable jury or bench of magistrates or judge hearing a case alone properly directed and acting in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a different test from the one that the courts themselves must apply. A court may only convict if it is sure that the defendant is guilty.

When deciding whether there is enough evidence to prosecute, the Investigating Officer(s), along with the service Managers must consider the following questions:

- Can the evidence be used in Court?
- Is the evidence reliable?
- Is the evidence credible?

The Public Interest Stage

In every case where there is sufficient evidence to justify a prosecution, prosecutors must go on to consider whether a prosecution is required in the public interest.

When deciding the public interest, prosecutors should consider each of the following questions:

- How serious is the offence committed?
- What is the level of culpability of the suspect?
- What are the circumstances of and the harm caused to the victim?
- Was the suspect under the age of 18 at the time of the offence?
- What is the impact on the community?
- Is the prosecution a proportionate response?

The questions identified are not exhaustive, and not all the questions may be relevant in every case. The weight to be attached to each of the questions, and the factors identified, will vary according to the facts and merits of each case.

It is quite possible that one public interest factor alone may outweigh a number of other factors which tend in the opposite direction. Although there may be public interest factors tending against prosecution in a particular case, prosecutors should consider whether nonetheless a prosecution should go ahead and those factors put to the court for consideration when sentence is passed.

Liaison with other regulatory bodies and enforcement agencies

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

Juveniles

Juveniles are anybody under 18 years old. Where prosecution action takes place against a juvenile defendant the case is taken to the Youth Court. When dealing with a case involving a juvenile we will:

- Take appropriate and fair action.
- Liaise with the relevant youth offending body.
- We will comply with the relevant Government guidance.

Review of Enforcement Policy

This Policy will be reviewed following significant changes to relevant legislation or Government guidance.