



Corporate Enforcement Policy

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1.0 Introduction

- 1.1** Cumbria County Council carries out a wide range of regulatory roles in meeting its many duties of protecting the public, individuals and the environment. This policy summaries the Council's approach to bring about compliance with the legislation it enforces. The Council commits to good enforcement practice with clear and effective policies and procedures.
- 1.2** This policy and any additional service specific policies, procedures, codes and guidance complies with The Regulators' Compliance Code, "the Code", issued by the Minister of State under section 22(1) of the Legislative and Regulatory Reform Act 2006 and includes the principles contained within the Enforcement Concordat.

2.0 Scope of the Policy

- 2.1** The policy sets out what those being regulated by the Council can expect from the Council and its Officers. Enforcement includes any criminal or civil action taken by the Council.
- 2.2** This policy is an overall policy which sets out the standards that will be applied across the council when acting in its role as a regulator and enforcement body. Specific service policies, procedures, codes and guidance may also exist which detail the processes that officers operating within that service area will following when carrying out enforcement activity.
- 2.3** The purpose of this enforcement policy is to promote an efficient and effective approach to enforcement that is always consistent, transparent, and fair. The aim is to improve compliance with legislation whilst minimising the burden on businesses, individuals and organisations.
- 2.4** Examples of Service area that enforce legislation and have regulatory functions (Please note that this list is not exhaustive):
- Trading Standards
 - Planning and Development Control
 - Flood and Water Management
 - Parking Services
 - Licensing
 - Highways and Transport
 - Countryside Management
 - Waste Services
 - Education (school attendance, child employment)
 - Fire and Rescue Services

3.0 Supporting Residents, Local Economy and Reducing the Burden

- 3.1** The Council recognises that most individuals and businesses want to comply with the law and the Council's officers will, work with them to advise on, and assist with, compliance. We recognise that a key element of our activity will be to allow and encourage economic progress and will only intervene when there is a clear case for enforcement. We will work closely with businesses, individuals and voluntary organisations to help them comply with the relevant legislation. The Council will provide advice and support to local businesses to help them thrive in a fair and equitable trading environment.
- 3.2** Where appropriate or practicable, the Council's services will co-ordinate their activity to reduce the impact on the subject of any investigation and to avoid unnecessary duplication.
- 3.3** The Council will co-ordinate its enforcement activities with those of other local authorities, or appropriate local or national agencies such as the Police, the Department for Environment, Food, and Rural Affairs (DEFRA), the Environment Agency, the Food Standards Agency, the Health and Safety Executive the Department for Work and Pensions (DWP)

4.0 Principles of Good Regulation

- 4.1** Our principles are informed by 'the Code', the Enforcement Concordat and Government guidance. We will ensure that enforcement action is proportionate to the risks involved and sanctions are meaningful. Whilst we will exercise discretion in individual cases, we will aim to ensure that enforcement is applied consistently and fairly. This means we will adopt a similar approach in similar circumstances to achieve similar outcomes.
- 4.2** We will be accountable for the effectiveness of our enforcement activities. We will direct our regulatory effort effectively using intelligence and relevant risk based schemes. We will target those who persistently or deliberately break the law.
- 4.3** We are committed to the open provision of information and advice in a format that is accessible and easily understood. All decisions will be properly reasoned and recorded, and based upon material evidence.
- 4.4** The Council is committed to recovering the costs of any enforcement action, where we are permitted to do so, and will ensure that such recovery is appropriate and proportionate.

4.5 In accordance with the Code, the purpose of our enforcement action will be:

- to change the behaviour of offenders
- to eliminate the gain or benefit of non-compliance
- to be responsive and consider what is the most appropriate sanction for the particular offender and the regulatory issue concerned
- to restore the harm caused by regulatory non-compliance, where appropriate
- to be proportionate to the nature of the offence and harm caused
- to deter future non-compliance

4.6 When deciding whether to institute criminal proceedings the Council will have regard to the provisions of The Code for Crown Prosecutors, which sets out the general principles to follow when decisions are made in respect of prosecuting cases, these include:

- Evidential Tests – is there enough evidence against the defendant
- Public Interest Tests – is it in the public interest for the case to be brought to court

5.0 Standards

5.1 The Council will undertake its regulatory and enforcement role in a fair, open and consistent manner. The Council will endeavour to meet the highest standards of service when undertaking its regulatory and enforcement activities. To achieve this, the following standards will apply:

- All officers engaged in enforcement functions are appropriately authorised and trained.
- The council believes prevention is better than cure and therefore will encourage businesses and others to comply with the law. We will provide clear information, guidance and advice to those that we regulate to help them meet their responsibilities. If a resident or business chooses not to follow this advice then enforcement action is more likely.
- Enforcement action relies on there being sufficient evidence to prove or support action being taken. The council cannot act formally where there is insufficient evidence or independent witnesses, in these cases the details will be used for intelligence purposes only.
- In cases where there is an imminent risk to health or the environment, enforcement action may be taken before the right to challenge can be heard.

- The Council will endeavour to ensure that any action it takes is proportionate to and balanced against the risks. As far as the law allows, the Council will take account of the circumstances of each case when considering action. This includes the seriousness of the offence, past history, confidence in management, the consequences of non-compliance and the likely effectiveness of the various enforcement options.

6.0 Enforcement Action

6.1 In deciding whether to initiate enforcement action, we will have regard to national guidelines and criteria set out in the Code for Crown Prosecutors, Hampton Principles and the Code. In assessing whether to take/or what level of enforcement action to take consideration will be given to the nature of the offending and its impact and enforcement action will be more, rather than less, likely, where non-compliance:

- poses a risk to the health, safety, social or economic wellbeing of the public, or to the environment;
- was pre-meditated ;
- constitutes a failure to comply in full or in part with the requirements of a statutory notice or order;
- is aggravated by a history of previous warnings or the commission of similar offences, or continual offending
- is aggravated by circumstances such as the obstruction of an officer or aggressive behaviour generally;
- is widespread in the area where it is committed;
- is serious causing harm or having the potential to cause harm;
- constitutes negligence, recklessness, fraud, dishonesty or disregard for the law
- is aggravated by previous failures to follow advice and warnings, or is continuing despite simple cautions or other enforcement actions being imposed for similar behaviour in the past
- involves the wilful supply of false information or an intent to deceive;
- supports enforcement in the public interest.

6.2 Enforcement action may also be more likely, rather than less likely where:

- The action can be expected to act as a deterrent
- A conviction is a pre-requisite to other enforcement

6.3 There may be individual circumstances where the council may decide to take enforcement action which departs from these principles. We will ensure that any such decision will be properly reasoned and documented and based on material evidence.

7.0 Sanctions and Penalties

7.1 There are a range of enforcement options available to the Council, as detailed in the different legislation it enforces. The council will aim where appropriate to use compliance advice, guidance and support as a first response in most cases. The following are the types of sanctions and penalties available to the council:

Advice

Where the infringement is minor or of a technical nature and the detrimental impact is very low, and is unlikely to be repeated, advice will be provided to the business.

Written Warnings

Where an offence has been committed but is not thought appropriate to take more formal action, in which case a suggested corrective action and a timescale will be given.

Statutory Notices

Use of legal notices in accordance with relevant legislation which require offenders to take specific action or cease certain activities.

Works in default

Following the failure to comply with some legal notices the council can if the notice is not complied with carry out the works in default and pursue the offender for the costs of the work.

Seizure

Certain legislation allows for the seizure of goods, equipment and documents that may be required as evidence. On some occasions we may ask a person to voluntarily surrender the goods.

Forfeiture

Some legislation allows us to apply to the court to seek forfeiture of goods, either in conjunction with a prosecution, or separately.

Undertakings and Injunctive action

Where a business fails or appears unlikely to comply with an obligation under law, an undertaking or injunction may be sought. Injunctions are used to deal with repeat offenders, dangerous circumstances or significant consumer detriment.

Review of Licences

To carry on certain activities a business may require a licence. The department is able to make representations concerning the fitness of the licence holder which can result in a licence being refused, revoked, suspended or issued with conditions.

Fixed Penalty Notices/Penalty Charge Notices

Some legislation allows for Fixed Penalty Notices (FPN)/Penalty Charge Notices (PCN) to be issued as a means of ensuring compliance. It is the offender's opportunity to avoid a conviction. Non-payment of a penalty notice is not an offence in its own right and should a recipient not pay the penalty offered, prosecution may be necessary for the actual offence.

Simple Caution

A formal or 'Simple' caution is an admission of guilt but it is not a form of sentence, nor is it a criminal conviction - it may be cited in court in certain circumstances. A record of the caution will be sent to bodies that are required to be notified. Cautions are issued following Home Office guidance.

Prosecution

We will carefully consider all the evidence and have regard to national policies and will comply with the Code for Crown Prosecutors before deciding whether to initiate a prosecution.

Proceeds of Crime Actions

Where appropriate, an application may be made under the Proceeds of Crime Act 2002 for confiscation of assets to recover the financial benefit the offender has obtained from a criminal conduct.

Publicity

Where individuals or businesses have acted against the law we may use generic publicity in order to raise awareness, to increase compliance and to improve monitoring of trade practices. We may also publish the results of court proceedings and certain undertakings.

7.2 When an appropriate decision over what enforcement action is to be taken, it will be done so by a suitably authorised officer or manager. The decision to prosecute is not taken lightly and all decisions will be taken in accordance with the Council's Scheme of Delegation.

8.0 Enforcement within Council establishments

- 8.1** Where the Council is the Enforcement Authority for its own premises, steps are taken to ensure that enforcement decisions are free from any conflict of interest. Serious breaches of the law are brought to the attention of the relevant Assistant Director.

9.0 Protection of Human Rights

- 9.1** This policy and all associated enforcement decisions take into account the provisions of the Human Rights Act 1998. In particular; the right to a fair trial (article 6), and the right to respect for private and family life, home and correspondence (article 8).

10.0 Compliments, Comments, Complaints and Appeals

- 10.1** All appeals in relation to enforcement action must be taken via the statutory appeals process outlined in the relevant legislation. Information regarding appeal processes where appropriate will be provided in writing.
- 10.2** Cumbria County Council is committed to providing high quality services. Your feedback is essential to this and we welcome all compliments, comments and complaints. These help us to review and improve our services so we can provide the best possible services for our customers.
- 10.3** Complaints about the conduct of officers or investigations should be made via the Council's corporate complaints procedure.

To contact us:

- Visit our website **www.cumbria.gov.uk**
- Email: **complaints@cumbria.gov.uk**
- Tel: **0800 121 8800**
- Call in to one of our council offices

11.0 Review of the Enforcement Policy

- 11.1** This policy will be reviewed at least every three years and updated in response to changes in legislation or changes in Service delivery.
- 11.2** For further information about this policy please contact

12.0 Status

- 12.1** This policy was approved by the County Council's Cabinet on XXX. All service specific enforcement policies, procedures, codes and guidance will comply with the principles of the policy and will be approved by their appropriate Corporate Director.

