



Environment Directorate

Enforcement Policy

Executive Board Approval: 2nd May 2006
Amended: 25th September 2006

Environment Directorate

Enforcement Policy

Contents

1. Introduction
2. Approval of the Enforcement Policy
3. Scope and meaning of 'Enforcement'
4. How to obtain a copy of the Policy or make comments
5. General Principles
6. Enforcing the Law
7. Notifying Alleged Offenders
8. Covert Surveillance
9. Deciding what level of enforcement action is appropriate
10. Determining whether a Prosecution or Formal Caution is viable and appropriate
11. Who decides what enforcement action is taken
12. Liaison with other regulatory bodies and enforcement agencies
13. Offences
14. Considering the views of those affected by the offences
15. Actions by the Courts
16. Protection of Human Rights
17. Publicity
18. Complaints, Appeals and Accountability
19. Review of the Enforcement Policy

Appendices

- A. Food Safety Enforcement Policy – Under review
- B. Health and Safety Enforcement Policy – Under review
- C. Public Health Enforcement Policy – Under review
- D. Integrated Pollution Prevention Enforcement Policy – Under review
- E. Licensing Enforcement Policy – Under review
- F. Development Control Enforcement Policy – Under review
- G. Building Control Enforcement Policy – Under review
- H. Street Scene Enforcement Policy – Under review

1. Introduction

- 1.1 Fair and effective enforcement is essential to protect the economic interests and health and safety of the public, businesses, and to protect the environment.

A decision about enforcement action, and in particular the decision to prosecute, has serious implications for all involved. The Environment Directorate applies this Policy to ensure that:-

- Decisions about enforcement action are fair, proportionate and consistent.
- Officers apply current Government guidance and codes of practice.
- Everyone understands the principles that are applied when enforcement action is considered.

- 1.2 The purpose of this Enforcement Policy is to set out what those being regulated can expect from the Environment Directorate when enforcement activities are undertaken.

- 1.3 This Policy should be read in conjunction with the Council's General Enforcement Policy.

- 1.4 Enforcement Policies for specific areas of work within the Environment Directorate are appendices to this document.

- 1.5 This document covers the following areas of work:-

Environmental Health
Licensing
Development Control
Building Control
Street Scene including Car Parking

2. Approval of the Enforcement Policy

- 2.1 This Policy was approved by the Executive Board on 2nd May 2006 and all enforcement officers carry warrant cards showing their identity and a list of legislation that they are authorised to enforce.

3. Scope and meaning of 'Enforcement'

- 3.1 This Policy applies to enforcement activities under all the legislation enforced by Officers from the Environment Directorate.

- 3.2 'Enforcement' includes any action taken by Officers aimed at ensuring that individuals or businesses comply with the law. This is not limited to formal enforcement action such as prosecution; it also includes, for example, the inspection of premises for the purpose of checking compliance with Acts of Parliament and regulations, and the provision of advice to facilitate compliance.

4. **How to obtain a copy of the Policy or make comments**

- 4.1 This Policy, its appendices and the Council's General Enforcement Policy will be available in printed format at the council office. It will also be posted on the council's website at : www.nwleics.gov.uk and will be available in other formats or on disc on request.
- 4.2 If you need any help in understanding this Policy, or you would like to comment on the contents, please contact us by:
- telephoning 01530 454545
 - e-mailing environment@nwleicestershire.gov.uk
 - writing to the Director of Environment, North West Leicestershire District Council, Council Offices, Coalville, Leicestershire, LE67 3FJ

5. **General Principles**

- 5.1 Each set of circumstances is unique and must be considered on its own merits. However, there are general principles that apply to the way each case must be approached. The principles of good enforcement contained in the Enforcement Concordat have been formally agreed and adopted by the Council.

For more information about the Enforcement Concordat visit: <http://www.cabinet-office.gov.uk/regulation/publicsector/enforcement/enforcement.htm>

- 5.2 Enforcement officers must be fair, independent and objective and must not let any personal views about issues such as ethnic or national origin, sex, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender influence their decisions. They must not be affected by improper or undue pressure from any source.
- 5.3 All authorised officers will have regard to the Policy and take action which is proportionate to the risk and to the seriousness of any breach of legislation where appropriate. In the first instance, action will often consist of an educational and advisory approach with those persons responsible for securing compliance and improvements. However, in certain circumstances legislation is prescriptive and this will limit the discretion of the Enforcement Officer. In some circumstances persistent breaches will result in formal action being taken for what would normally be regarded as less serious contraventions.
- 5.4 Consideration will be given to the particular interests of customers including business owners, employees and the public. For example, where the hours of operation of a business do not coincide with normal office hours, we will endeavour to agree a mutually acceptable time or visit during normal trading hours. Similarly, where English is not spoken as a first language, and there is particular difficulty in communication, the services of a suitable translator/interpreter will be sought. Where formal action is proposed, the assistance of an interpreter will be obtained to ensure fairness. Officers will seek to confirm that their statements and questions are clearly understood.
- 5.5 Advice and information will be freely available and given, and businesses, employees and the public will be encouraged to contact the Directorate regarding relevant matters.

- 5.6 All officers undertaking enforcement activities will be duly authorised under the Council's scheme of delegation and will be appropriately trained.
- 5.7 All authorised officers will be made fully aware of the requirements of this Policy. Any departure from this Policy will have to be justified to, and endorsed by, the Director of Environment.
- 5.8 This Council is committed to the Equality of Opportunity in employment and the provision of services. Accordingly, this policy will take into account all equality and diversity issues.

6. **Enforcing the Law**

- 6.1 The Council believes in firm but fair regulation, and its enforcement activities follow these essential principles:-

- **Openness**

Openness means helping individuals and businesses to understand what we expect of them and what they should expect from us.

- **Consistency**

Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends.

- **Targeting**

Targeting means making sure that, whilst all requests for service are responded to, regulatory effort is directed primarily towards those whose activities actually or potentially give rise to the most serious risks to public safety and the environment.

- **Proportionality**

Proportionality means relating enforcement action to the risks posed. Any action taken by officers will be proportionate to the seriousness of any breach.

- **Accountability**

Officers are accountable to the public for their actions. The actions of officers will be judged against this Policy.

7. **Notifying Alleged Offenders**

- 7.1 If we receive information that may lead to enforcement action against a business or individual we will notify that business or individual as soon as is practicable of any intended enforcement action, except in the circumstances described in 7.3 below.
- 7.2 During the progression of enforcement investigations/actions, business proprietors, individuals and witnesses will be kept informed of the progress of the matter under investigation. Confidentiality will be maintained and personal information about individuals will only be released to a Court when required and/or in accordance with the Data Protection Act 1998.

7.3 In certain circumstances, we may choose not to keep business proprietors or individuals or witnesses informed of progress if this could impede enforcement action.

8. **Covert Surveillance**

8.1 During an investigation into suspected non-compliance with legislation the Council may need to undertake directed covert surveillance from time to time. This may include remote sound or video monitoring equipment as well as personal observation. When this is necessary the requirements of the Regulation of Investigatory Powers Act 2000 will be complied with.

9. **Deciding what level of enforcement action is appropriate**

9.1 A decision on enforcement action will be taken on its own merits and after full consideration of the implications and consequences of the action. While fair and effective enforcement is essential to the maintenance of law and order, a breach of criminal law may not necessarily result in enforcement action.

9.2 A number of factors are considered when determining what action to take. These factors are detailed in **Appendix 1 [Factors we consider when taking enforcement action]**.

Levels of enforcement action:

We will take steps to help individuals and organisations comply with their legal obligations without unnecessary expense, while at the same time taking firm enforcement action where appropriate against those who flout the law or act irresponsibly. Officers have a range of tools at their disposal in seeking to secure compliance with the law and to ensure a proportionate response to apparent offences.

The level of the action taken 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
- Verbal Warning and/or Advice
- Written Warning and/or Advice
- Fixed Penalty Notices (FPN)
- Formal Notice
- Seizure
- Court Injunction
- Refusal, Revocation or suspension of a Licence
- Formal Caution
- Prosecution

i) **No Action**

In exceptional circumstances, contraventions of the law may not warrant any action. This can be where the cost of compliance to the offender outweighs the detrimental impact of the contravention on the community, or the cost of the required enforcement action to the District Council outweighs the detrimental impact of the contravention on the community. A decision of no

action may also be taken where formal enforcement is inappropriate in the circumstances, such as where a trader has ceased to trade, or the offender is elderly and frail and formal action would seriously damage their well being. A decision to take no action will be recorded in writing and must take into account the health, safety, environmental damage or nuisance implications of the contravention.

ii) **Verbal Warning and/or Advice**

For minor breaches of the law verbal advice will generally be given to the offender. We will clearly identify the contraventions of the law and give advice on how to put them right and include a deadline by which this must be done. Sometimes we will advise offenders about 'good practice', but we will clearly distinguish between what they must do to comply with the law and what is advice only.

Failure to comply could result in more severe enforcement action being taken. The time allowed must be reasonable, but must also take into account the health, safety and nuisance implications of the contravention.

iii) **Written Warning and/or Advice**

For some contraventions we will send the offender a firm but polite letter clearly identifying the contraventions, giving advice on how to put them right and including a deadline by which this must be done. Failure to comply could result in a notice being served or more severe enforcement action being taken. The time allowed must be reasonable, but must also take into account the health, safety and nuisance implications of the contravention.

iv) **Fixed Penalty Notices (FPN)**

Fixed Penalty Notices are issued once an offence has been committed, requiring the offender to pay a fine. Failure to pay the fine will result in a prosecution being instigated unless there are exceptional circumstances.

v) **Formal Notice**

Notices are served to require offenders to cease activities contravening the relevant legislation or to give offenders reasonable time to rectify a contravention. Notices may require such activities to cease immediately where the circumstances relating to health, safety, environmental damage or nuisance demand. In other circumstances, the time allowed must be reasonable, but must also take into account the health, safety, environmental damage or nuisance implications of the contravention.

All notices issued will include details of any applicable Appeals Procedures.

Certain types of notice allow us to 'carry out work at default'. This means that if a notice is not complied with [i.e. a breach of the notice] we may carry out any necessary works to satisfy the requirements of the notice ourselves. Where the law allows, we may then charge the person/business served with the notice for any cost we incur in carrying out the work.

Failure to comply with a notice is an offence and we may then instigate prosecution proceedings.

vi) **Seizure**

Certain legislation enables authorised Officers to seize goods or equipment, for example food that is unsafe or sound equipment that is being used to cause a statutory noise nuisance. When we seize goods we will give the person from whom the goods are taken an appropriate receipt. Where the law requires, we will produce seized goods before the Magistrate Court.

vii) **Court Injunction**

In certain circumstances, for example where offenders are repeatedly found guilty of similar offences or where an injunction is a more appropriate course of enforcement action than any other, then injunctions may be used as an enforcement measure to deal with repeat offenders or dangerous circumstances.

viii) **Refusal, Revocation or Suspension of a Licence, Registration or Authorisation**

Certain types of premises/businesses require a licence, registration or authorisation to operate legally. In order to warrant refusal/revocation one of the following criteria must apply to the controlling individual or organisation:-

- No longer a fit and proper person.
- Deliberately or persistently breached legal obligations, which were likely to cause material loss or harm to others.
- Deliberately or persistently ignored written warnings or formal notices.
- Endangered, to a serious degree, the health, safety or well being of people, animals or the environment.
- Obstructed an Officer undertaking their duties.
- Any other reasonable cause.

ix) **Formal Caution**

This procedure is used as an alternative to prosecution to deal quickly and simply with less serious offenders to divert them from the criminal courts. It derives from advice issued by the Home Office and has already been successfully used by this Authority to deal with contraventions of Environmental Health legislation. For a formal caution to be issued a number of criteria must be satisfied:-

- Sufficient evidence must be available to prove the offence, and;
- The offender must admit the offence, and;
- The offender must understand the significance of the caution and give informed consent to being cautioned.

There is no legal obligation for any person to accept a formal caution.

For details on the Home Office guidance [Circular 18/1994] visit: <http://www.homeoffice.gov.uk/circulars/1994/hoc9418.htm>

A record of the Formal Caution will be sent to the Office of Fair Trading and the Local Authorities Coordinators of Regulatory Services (LACORS) if appropriate, and will be kept on file for 3 years. If the offender commits a further offence, the Formal Caution may influence our decision to take a 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 court, and this may influence the severity of the sentence that the court imposes.

If the offender refuses to accept a caution then legal proceedings will normally be instigated.

The caution will also be recorded in the Council's Register of Convictions.

x) **Prosecution**

A prosecution will normally ensue where one of the following criteria are met by the individual or organisation:-

- Deliberately or persistently breaching legal obligations, which were likely to cause material loss or harm to others.
- Deliberately or persistently ignoring written warnings.
- Failure to comply with an enforcement notice.
- Endangering, to a serious degree, the health, safety or well being of people, animals or the environment.
- Assaulting or obstructing an Officer in the course of their duties.

10. **Determining whether a Prosecution or Formal Caution is viable and appropriate**

10.1 We apply two 'tests' to determine whether a Prosecution or Formal Caution is viable and appropriate. We follow guidance set by the Crown Prosecution Service when applying the tests:

- **The Evidential Test** –
There must be enough evidence to provide a 'realistic prospect of conviction' against any defendant charged.
- **The Public Interest Test** –
There may be public interest factors which are in favour of, or are against prosecution. These have to be considered before enforcement action is taken.

For more information about the 'Code For Crown Prosecutors' visit:
<http://www.cps.gov.uk/Home/CodeForCrownProsecutors/>

10.2 If the case does meet the evidential test, the Director will recommend appropriate formal action to the Head of Legal and Democratic Services. The Head of Legal and Democratic Services, following consultation about the case with the Head of Service, may then authorise a formal caution.

10.3 Formal Caution or Prosecution proceedings will only be progressed when the case has passed both tests. Paragraphs 10.4 to 10.8 below, detail how this Policy applies to the consideration of taking a prosecution.

- 10.4 The Head of Legal and Democratic Services must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. A realistic prospect of conviction is an objective test that means that a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a separate test from the one that the criminal courts themselves must apply. A jury or magistrates' court should only convict if it is sure of a defendant's guilt.
- 10.5 When deciding whether there is enough evidence to prosecute, the Head of Service and Legal Services must consider whether the evidence can be used and is reliable.
- 10.6 The public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. A prosecution will usually take place unless there are public interest factors tending against prosecution, which clearly outweigh those tending in favour. Although there may be public interest factors against prosecution in a particular case, often the prosecution should go ahead and those factors should be put to the court for consideration when sentence is being passed.
- 10.7 The Investigating Officer(s), along with senior managers from the Environment Directorate and the Council Solicitors must balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the suspect. Some factors may increase the need to prosecute but others may suggest that another course of action would be better. The following lists include some common public interest factors, both for and against prosecution. These are not exhaustive and the factors that apply will depend on the facts in each case.

The more serious the offence, the more likely it is that a prosecution will be in the public interest. A prosecution is likely to be appropriate if:-

- A conviction is likely to result in a significant sentence.
- The evidence shows that the defendant was a ringleader or an organiser of the offence.
- There is evidence that the offence was premeditated.
- The victim of the offence was vulnerable, has been put in considerable fear, or suffered personal, damage or disturbance.
- The offence was motivated by any form of discrimination against the victim's ethnic or national origin, sex, religious beliefs, political views or sexual orientation, or the suspect demonstrated hostility towards the victim based on any of those characteristics.
- There is a marked difference between the actual or mental ages of the defendant and the victim, or if there is any element of corruption.
- The defendant's previous convictions or cautions are relevant to the present offence.
- There are grounds for believing that the offence is likely to be continued or repeated, for example, by a history of recurring conduct.

A prosecution is less likely to be needed if:-

- The court is likely to impose a nominal penalty.
- The defendant has already been made the subject of a sentence and any further conviction would be unlikely to result in the imposition of an additional sentence or order, unless the nature of the particular offence requires a prosecution.

- The offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence).
- The loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement.
- There has been a long delay between the offence taking place and the date of the trial, unless:-
 - the offence is serious;
 - the delay has been caused in part by the defendant;
 - the offence has only recently come to light; or
 - the complexity of the offence has meant that there has been a long investigation.
- A prosecution is likely to have a bad effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence.
- The defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is a real possibility that it may be repeated.

10.8 Deciding on the public interest is not simply a matter of adding up the number of factors on each side. The Investigating Officer(s), along with senior managers from the Environment Directorate and the Council's Solicitors must decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

11. **Who decides what enforcement action is taken**

- 11.1 For less serious infringements of the law, decisions about the most appropriate course of action is usually determined by the Investigating Officer(s). Decisions are based upon professional judgment, legal guidelines, statutory codes of practice and priorities set by the Council and/or Central Government.
- 11.2 For more serious offences, where the nature of the offence points towards prosecution or formal caution, decisions about enforcement will be recommended by the Director of Environment and authorised and instigated by the Head of Legal and Democratic Services.

Details of '**Who decides what enforcement action is taken**' is shown in **Appendix 2**.

12 **Liaison with other regulatory bodies and enforcement agencies**

- 12.1 Where appropriate, enforcement activities within the Environment Directorate will be co-ordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement.
- 12.2 Where appropriate, for example where there has been a work related death, we will inform and liaise directly with Leicestershire Police. In certain circumstances joint investigations may be undertaken with the Police and or the Health and Safety Executive. These provisions along with other matters relating to workplace health, safety and welfare are detailed within our Health & Safety Enforcement Policy document at appendix B.
- 12.3 Where an enforcement matter affects a wide geographical area beyond the District boundaries, or involves enforcement by one or more other local authorities or organisations; all relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activity co-ordinated with them.

12.4 The Environment Directorate shares intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies, and including:

- Government Agencies, such as the Food Standards Agency, Meat Hygiene Service, Health and Safety Executive and Environment Agency.
- Police Forces, such as Leicestershire Police
- Fire Authorities, such as Leicestershire Fire and Rescue Service
- Public Health Laboratory Service
- Statutory undertakers, such as Severn Trent Water
- Other Local Authorities

12.5 Where wider regulatory matters can be more effectively addressed through joint working we will, where appropriate, enter into formal 'Enforcement Liaison Protocols'.

13. **Offences**

13.1 It is the duty of enforcement officers to make sure that enforcement action is taken against the right person. In doing so they must act in the interests of justice and not solely for the purpose of obtaining a conviction.

13.2 The Investigating Officer(s), along with the Council's Solicitors should select the most appropriate legislation which:

- Reflects the seriousness of the offence.
- Gives the court adequate sentencing powers.
- Are made to the appropriate court.
- Enables the case to be presented in a clear and logical way.

14. **Considering the views of those affected by offences**

14.1 The Environment Directorate undertakes enforcement on behalf of the public at large and not just in the interests of any particular individual or group. However, when considering the public interest test (see section 10.6 above), the consequences for those affected by the offence, and any views they may have expressed, will, where appropriate, be taken into account.

14.2 Those people affected by the offence will be told about any decision that makes a significant difference to the case.

15. **Actions by the Courts**

15.1 In cases of sufficient gravity, for example where serious injury or ill health has resulted, consideration will be given to requesting the Magistrates to refer the case to the Crown Court.

15.2 The existing law gives the courts considerable scope to punish offenders and to deter others. Unlimited fines and, in some cases, imprisonment may be imposed by the higher courts. The Council will continue to raise the awareness of the courts to the gravity of offences and will encourage them to make full use of their powers.

15.3 The Directorate will always seek to recover the costs of investigations which result in court proceedings.

16. Protection of Human Rights

- 16.1 This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998.
- 16.2 Officers within the Environment Directorate operate to a range of internal guidance documents that support the principles of primary human rights legislation, for example guidance relating to the Data Protection Act 1998 and Regulation of Investigatory Powers Act 2000. These guidance documents will be monitored by scheduled internal quality audits.

17. Publicity

- 17.1 The Environment Directorate will make arrangements for the publication of the names of all individuals and organisations who have been convicted in the previous 12 months under any of the legislation enforced by the Directorate.
- 17.2 Where appropriate, publicity will be actively sought for any enforcement action taken which could draw attention to the need to comply with the law or deter anyone else from non-compliance.
- 17.3 Information about enforcement actions will be made available on request subject to the restrictions placed on the authority by the Data Protection Act 1998.

18. Complaints, Appeals and Accountability

- 18.1.1 The Council operates a complaints procedure details of which are available on the website www.nwleics.gov.uk and in the leaflet entitled 'Have Your Say – Complaints, Comments and Compliments'
- 18.2 The mechanism for appeals against enforcement action taken will be referenced in all cases.
- 18.3 The actual service standards provided by the Directorate are contained in other service specific information.

19. Review of the Enforcement Policy

- 19.1 The implementation of this Policy will be monitored on an ongoing basis.
- 19.2 Every 5 years the Policy will be fully reviewed to ensure it is relevant.

Factors we consider when taking enforcement action?

Officer(s) carry out investigations/inspections. This can be done in response to a complaint or request for assistance, as part of routine planned inspections of business premises or survey work.

Investigating Officer discovers evidence and is satisfied that a **criminal offence** may have been committed or is about to be committed. This is called *Prima facie* evidence.

Investigating Officer considers a range of factors including:

- Previous History - whether any similar situation has been found before.
- Seriousness of the alleged offence(s), including:
 - Risks to the public or the environment
 - Any intent or recklessness of the person(s) committing the offence
 - Any obstruction of the Investigating Officer
 - Whether the alleged offence(s) are considered a special area of priority by Central Government and/or North West Leicestershire District Council
- Is their enough evidence to provide a realistic prospect of conviction
- Would any further action be in the public interest

For **LESS SERIOUS** infringements of the law and/or where there is no previous history of offences/non-compliance with legislation the following options are considered:

- **Informal Action** – verbal or written advice/warning
- **Statutory Notice** – service of a legal notice that will require certain specified action to be taken by the recipient

In all cases we will advise the alleged offender what he/she needs to do in order to comply with the law.

For **MORE SERIOUS** offences the following options will also be considered:

- **Seizure of goods or equipment** – In certain cases, goods or equipment may be seized to protect the public and/or employees, for example unsafe food or sound equipment being used to cause a nuisance.
- **Formal Caution** – a Formal Caution is an alternative to prosecution and can only be issued if strict criteria are met. The Home Office of Central Government sets these criteria. A Caution stays on public record for three years.
 - If a Formal Caution is offered to an offender, but he/she refuses to accept it then we may prosecute instead.
- **Prosecution** – legal proceedings are taken against the offender that results in the offender being summonsed to appear in Court. Any decision to prosecute is based upon guidelines set by the Crown Prosecution Service

In all cases the alleged offender will be informed of the matters under investigation and invited to attend a formal interview in accordance with the Police and Criminal Evidence Act 1984.

See – Who Decides What Action is taken [Appendix 2]

Who decides what enforcement action is taken ?

