



# **CORPORATE ENFORCEMENT POLICY**

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## 1.0 Introduction

This is Durham County Council's Enforcement Policy and applies to all of its regulatory functions. This policy will help to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens.

The Council is a signatory to and committed to the principles of the Government's Enforcement Concordat<sup>1</sup>. Anyone undertaking an enforcement role on behalf of the Council in any capacity must have regard to the Enforcement Concordat together with any additional requirements of a specific Service area as laid down by codes of conduct, legislation or other provisions contained in this Enforcement Policy. The principles of the Concordat are:-

- Standards: setting clear standards
- Openness: clear and open provision of information
- Helpfulness: helping business by advising on and assisting with compliance
- Complaints: having a clear complaints procedure
- Proportionality: ensuring that enforcement action is proportionate to the risks involved
- Consistency: ensuring consistent enforcement practice.

The Concordat also expects stakeholder consultation on the content of this policy and service standards.

## 2.0 Objective

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

Whilst doing this we aim to:-

- have regard to the Regulators' Compliance Code<sup>2</sup> and the five principles of good regulation<sup>3</sup>
- adopt the Hampton<sup>4</sup> principles for risk based enforcement
- have regard to current statutory guidance and codes of practice including the Enforcement Concordat, the Code for Crown Prosecutors<sup>5</sup> and the Human Rights Act 1998<sup>6</sup>

Sanctions and penalties will be used to ensure compliance, consistent with the principles set out in the Macrory Review<sup>7</sup>. These are detailed below:-

- change the behaviour of the individual
- eliminate any financial gain or benefit from non-compliance

<sup>1</sup> Concordat can be found at [www.berr.gov.uk](http://www.berr.gov.uk)

<sup>2</sup> Code can be found at [www.berr.gov.uk](http://www.berr.gov.uk)

<sup>3</sup> The principles can be found at <http://archive.cabinetoffice.gov.uk/brc/upload/assets/www.brc.gov.uk/principles.pdf>

<sup>4</sup> Additional information on the Hampton principles can be found at [www.berr.gov.uk](http://www.berr.gov.uk)

<sup>5</sup> Code can be found at [www.cps.gov.uk](http://www.cps.gov.uk)

<sup>6</sup> Copy of the Act can be found at [www.opsi.gov.uk](http://www.opsi.gov.uk)

<sup>7</sup> Additional information on the Macrory Review can be found at [www.berr.gov.uk](http://www.berr.gov.uk)

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

### **3.0 General Principles**

We will carry out enforcement functions in an equitable, practical and consistent manner using a risk-based approach, whilst helping to promote a thriving local and national economy

We recognise that most individuals and businesses want to comply with the law. We will therefore help business and others meet their legal obligations without incurring unnecessary expense.

We will provide information and advice in a way that enables individuals to clearly understand what is required by law and what is 'best practice' advice.

We will take firm action, including prosecution where appropriate, against those who flout the law or act irresponsibly.

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

We understand that each case is unique and must be considered on its own merits so before taking enforcement action we will give consideration to the seriousness of the compliance failure, past performance and current practices, the risks being controlled and professional guidance.

We will provide access to information 24 hours a day via a webpage accessible through Durham County Council's website. Voicemail is available to leave messages for staff, when we are ordinarily closed.

We have access to interpreters and translators, for those occasions when individuals do not have English as their first language.

Wherever practicable our enforcement services will be co-ordinated with other enforcement agencies in order to minimise any unnecessary duplication and delay and to increase our overall effectiveness. Joint working may be undertaken with agencies such as the Police, HM Customs and Excise and DEFRA. This work will be subject to that agency complying with the underlying principles of this policy.

Senior officers will decide on what course of action to take in line with Home Office Guidelines, which detail a two-stage decision making process, whilst bearing in mind the Macrory principles on sanctions. We will give reasons for our enforcement actions.

In certain instances we may conclude that a provision in the Regulators' Compliance 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.

Enforcement decisions will be fair, independent, objective and will not be influenced by social issues. Decisions will not be affected by improper or undue pressure from any source.

To ensure that our local economy is not prejudiced by unfair competition, we monitor the standards of traders in similar sectors. This work is complemented by joint enforcement and advice initiatives carried out across the North East region generally.

We try to minimise costs to business by reducing the frequency of data collection, by obtaining it from other sources and, where practicable, by sharing data with other agencies

We provide consultation and feedback opportunities for those we regulate

#### **4.0 Enforcement Actions**

Occasionally enforcement staff have to deal with problems which can 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 courteously and thoroughly investigated to establish all the facts. During this period of investigation, it is not unusual for officers to use their powers 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. The Authority has a policy of taking a graduated approach to enforcement actions. Examples of the main types of action which can be considered are:-

- No action
- Informal Action and advice
- Fixed Penalty Notice
- Penalty Charge Notice
- Formal Notice
- Revocation/suspension of a licence
- Forfeiture Proceedings
- Seizure of goods/equipment
- Enforced Transfer of Management Responsibility
- Injunctive Actions
- Written warning
- Simple caution
- Prosecution

#### **4.1 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.

No action may also be taken where formal enforcement is 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 account the circumstances of each individual case and individuals will be advised of the reasons for taking no action.

## **4.2 Informal Action and Advice**

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.

## **4.3 Fixed Penalty Notice**

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 fine is not paid within the required time-scale the Council would normally commence legal proceedings to prosecute the offender.

## **4.4 Penalty Charge Notice**

Certain offences are 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.

## **4.5 Formal Notice**

Some legislation allows notices to be served requiring individuals to take specific actions or cease certain activities. Notices may require activities to cease immediately especially where the circumstances relate to health, safety, environmental damage or nuisance. In other instances the time allowed will be reasonable and take into account the seriousness of the contravention and the implications of the non-compliance.

All notices will include details of any applicable appeals procedure.

## **4.6 Revocation/suspension of a Licence**

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 Council or relevant Committee may revoke or suspend the licence on hearing evidence from objectors.

#### 4.7 Forfeiture Proceedings

These proceedings may be used in conjunction with seizure and/or prosecution where there is a need to dispose of goods in order 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.

#### 4.8 Seizure

Some legislation enables authorised officers to seize goods, equipment and documents. When we seize goods we will give the person from whom the goods were seized a receipt.

#### 4.9 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 Residential Property Tribunal 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 in particular 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.

#### 4.10 Injunctive Action

Where individuals are repeatedly found guilty of similar offences, where there is serious consumer detriment or where it is considered to be 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.

Anti Social Behaviour Orders (ASBO) and Criminal Anti Social Behaviour Orders (CRASBO) may be sought where the non-compliance amounts to anti-social behaviour.

#### 4.11 Simple Caution

A simple caution may be used as an alternative to prosecution. The main aim of a simple caution is to prevent individuals re-offending.

A simple caution will only be issued if:

- There is evidence an individual is guilty
- the individual is 18 years of age or over
- the individual admits they committed the crime by signing a declaration

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.

#### 4.12 Prosecution

The decision to prosecute will always take into account the criteria laid down in the Code for Crown Prosecutors. The more serious the offence, the more likely it is that a prosecution will be in the public interest.

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 give an explanation of 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 tape 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.

Whilst these interviews can be very stressful, they 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.

Senior Officers decide on what course of action to take in line with Home Office Guidelines, which detail a two stage decision making process:

- **AN EVIDENTIAL TEST**
- **A PUBLIC INTEREST TEST**

The initial stage ensures that there is enough evidence to provide a “realistic prospect of conviction”, before going on to decide whether a prosecution is in the public interest. If the evidential criteria is lacking, a prosecution will not be pursued.

Clearly, these are both complex issues to which substantial amounts of text have been devoted in the guidelines themselves, published by the Crown Prosecution Service in the “Code for Crown Prosecutors” document.



The final decision on the outcome of the infringement is always made in the light of all the circumstances identified. However, even if the evidence in the report is satisfactory, the public interest factor allows discretion not to automatically proceed with a prosecution.

The eventual course of action taken may be one of the following:-

- **A WRITTEN WARNING**
- **OFFER A SIMPLE CAUTION**
- **PROCEED WITH A PROSECUTION**

A prosecution is likely to be pursued if the alleged infringement is shown to be:-

- Fraudulent,
- Involved deliberate or persistent breach of legal obligation (e.g. disregarding warnings and/or formal notices) in circumstances which caused or were likely to cause material loss or prejudice to others,
- Caused or was likely to cause substantial loss or prejudice to others through negligence or gross carelessness,
- Seriously endangered the health, safety or well-being of people, animals or the environment,
- Involved obstruction of an authorised officer carrying out their duties.

## **5.0 Use of our policy and review**

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

This Policy will be reviewed annually or when there are significant changes in regulatory legislation.

A summary of this document will be made available.

## **6.0 Legal Status**

Whilst officers of the service have developed this policy in consultation with both consumers and traders, the Members are responsible for policy adoption. Each revision will therefore be taken to the appropriate Member forum, for formal approval.

## 7.0 Complaints

The County Council has a corporate complaints procedure to which we adhere.

- On request we will provide a copy of the complaints procedure.
- Complaints will be dealt with quickly, fairly and consistently.
- We will explain our decisions and aim to provide an appropriate remedy.
- If a complaint cannot be resolved we will outline your rights of appeal.
- Where there are rights of appeal against a formal action - advice on the appeal process will be given at the time the action is taken.
- Where there is a statutory right of appeal against a Statutory Notice we will inform you of the provisions.
- If you are unhappy with any aspect of our service you may pursue a formal complaint by telephoning the Customer Services Helpdesk on 0300 123 7070.

## 8.0 Protection of Human Rights

This policy and all associated enforcement decisions will take account of the Human Rights Act 1998 in particular the right to a fair trial.

Durham County Council is committed to promoting a just society that gives everyone an equal chance to learn, work and live, free from discrimination and prejudice.

## 9.0 How to obtain a copy of the Policy

This policy is available on the County Council's website:-

<http://www.durham.gov.uk>

If you need this information summarised in another language or format such as Braille or talking tape, please call the number below.

إذا اردت معرفت ملخص هذه المعلومات باللغة العربية اتصل علي الرقم التالي

Arabic

Jezeli potrzebujesz streszczenia tych informacji w jezyku polskim zadzwon prosze na ponizszy numer

Polish

আকারে এই তথ্যটি পেতে নিচের নম্বরে ফোন করুন:

Bengali

ਜਾਂ ਤੁਸੀਂ ਇਹੁ ਖਬਰ ਦਾ ਨਿਚੋੜ ਪੰਜਾਬੀ ਵਿਚ ਚਾਹੁੰਦੇ ਹੋ, ਤਾਂ ਕਿਰਪਾ ਥੱਲੇ ਦਿੱਤੇ ਹੋਏ ਨੰਬਰ ਤੇ ਸੰਪਰਕ ਕਰੋ।

Punjabi

假如您需要這份資料的中文摘要，請致電下面的號碼。

Chinese

यदि आप यह जानकारी का संक्षेप हिन्दी में चाहते हैं, तो कृपया निचे दिए हुए नम्बर में सम्पर्क करें।

Hindi

اگر آپ کو یہ معلومات اردو میں درکار ہیں تو اس نمبر پر کال کیجیے۔

Urdu



**0300 123 7070**