



PRESTON CITY COUNCIL

CORPORATE ENFORCEMENT POLICY

MARCH 2019

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1. INTRODUCTION

- 1.1 Preston City Council has a statutory duty to enforce a number of laws which relate to areas of local authority law enforcement. These predominantly seek to affect and improve the quality of life and the safety of those people who visit or live, work and study in Preston. This document outlines the Council's policy and sets out how it will support the achievement of the overall aims of Preston City Council. The purpose of the policy is to secure effective compliance with legislation while minimising the burden to the Council, to citizens and to businesses.
- 1.2 In publishing this policy, the Cabinet of Preston City Council is demonstrating its commitment to protecting the rights, quality of life and the environment in Preston by providing robust and effective enforcement services.

2. SCOPE

- 2.1 This policy applies to the operation of the following Preston City Council Services –
- Building Control
 - Environmental Health (including Licensing, and Housing)
 - Parks and Horticulture
 - The Internal Audit Service
 - Community Engagement
 - Planning Enforcement
 - Waste Management
 - Revenues and Benefits
 - Housing Advice Services
 - Clean Environment
- 2.2 The application of the Licensing Act 2003 and the Gambling Act 2005 are the subject of a separate policy with regard to the issuing, conditions and revocation of such licences.

3 ENFORCEMENT FORUM

3.1 In establishing a Corporate Enforcement Policy, there is a need to ensure that the effects of the policy reach all enforcement activities in the Council. To this end, the Council has established a Corporate Enforcement Group. The agreed aims and objectives are as follows:

3.2 AIM:

To align the skills, information and activities of enforcers within Preston City Council to maintain and enhance the safety, quality, enjoyment of life and the economic well-being of people living, working or studying in Preston by providing effective regulation and enforcement.

3.3 OBJECTIVES:

1. To agree and implement an Authority wide enforcement policy.
2. To deliver enforcement services that comply with nationally agreed standards such as the Enforcement Concordat and have regard to the Regulators' Code.
3. To share processes to ensure that investigations meet legal requirements to deliver successful outcomes.
4. By pooling information and experience, deliver enforcement results that exceed the expectations of stakeholders.
5. Deliver a series of combined and themed actions to preserve the amenity and environment in Preston.
6. Set a standard of knowledge for Preston regulators and underpin this with a standard set of procedures supported by learning and development programmes to deliver this.
7. Establish processes for maximising media impact of successful enforcement.
8. Provide liaison with enforcement agencies external to Preston City Council.
9. Demonstrate clear outputs for enforcement action taken.

4 Strategic Aims of the Council

- 4.1 The vision for Preston is that of a growing a vibrant city in the North West.
- 4.2 In support of this the Council aims to be rated as a high performing Authority which is recognised as delivering innovative, high quality, value for money services. The Council will have a deserved reputation for listening to citizens and involving them in decision making. Where appropriate the Council will work with external regulators and partners to ensure it achieves its aims and objectives through joint working. The Council aims to deliver well run, value for money services demonstrating good governance, openness and transparency with fairness being at the heart of decision making. The Council aims are comprised within a set of three priorities:
- Your City – Securing investment to improve the assets and infrastructure and create high quality jobs.
 - Your Council – Delivering well run, value for money services, valued by the public; demonstrating good governance, openness and transparency and a strong democratic process
 - Fairness for You – Fairness at the head of our decision making. Building an economy which supports prosperity and promotes fairness in working lives and practices. Accessibility to affordable energy and decent affordable living.
- 4.3 The range of enforcement matters dealt with by the Council is such that there may well be occasions when there is a need to work with other agencies to maximise effective enforcement. Where appropriate the Council will work with external regulators and partners to ensure it achieves its aims and objectives through joint working.
- 4.4 The provision of efficient, effective and economic enforcement services cuts across the Corporate vision and the 3 Core Priorities. These services work to protect the environment, economy and social well-being of Preston. Without that, the success of regeneration is hampered. The way that modern enforcement services work is to be efficient and to involve stakeholders to help them realise their potential to foster citizenship in the community which we serve.

5 STATEMENT OF POLICY

- 5.1 The policy is intended to be applied in a wide range of situations and describes in general terms the approach which will be adopted by officers when carrying out the Council's legislative duties.
- 5.2 The policy acknowledges the fact that the Authority is a signatory to the nationally recognised Enforcement Concordat.
- 5.3 This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. In particular, the Council will have due

regard to the Regulators' Code. In certain circumstances we may conclude that a provision in the 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.

5.4 Often Council officers will work in partnership with other agencies to conduct enforcement action. Council officers must have regard to the policies of partner organisations.

5.5 The policy is based on five key principles:

Proportionality – to ensure that any enforcement action taken with regard of to any breach of legislation is in proportion to the actual or potential risk to health, the environment, or significant economic disadvantage to the citizen or business. In particular, an individual's human right to privacy will require the Council to show that consideration of less intrusive methods for surveillance or use of communications data, has been made by applying the principles of the Regulation of Investigatory Powers Act 2000.

Consistency – to ensure that similar issues are dealt with in the same way. This does not mean uniformity as there are always a number of different factors that need to be taken into consideration when deciding upon a course of action.

Fairness – to ensure a fair and even handed approach encouraging among other things that decisions are not influenced by gender, or ethnic origin, or religious, political or any other beliefs or preferences that make up the social identity of any potential offender or victim.

Transparency – to ensure that any enforcement action taken is easily understood by citizens and businesses, and in addition that anyone making an allegation or is the subject of an allegation will be kept as well informed of progress of any investigation as is reasonable.

Accountability – to ensure that the Authority has policies and standards against which it can be judged, and an effective and easily accessible mechanism for dealing with comments and the handling of complaints.

5.6 The Council will have regard to advice provided by Central Government Departments and Agencies including the Better Regulation Delivery Office, the Health and Safety Executive, the Food Standards Agency, the Offices of the Surveillance Commissioners and the Interception of Communications Commissioner that seek to provide guidance and instructions on local authority law, enforcement issues, and have regard to the Regulators' Code as appropriate. The Council will also have regard to advice provided by the Local Government Association.

5.7 Officers will conduct themselves in a professional and efficient manner. A contact telephone number for the service will be provided on request. If a customer indicates that they wish to complain about any aspect of

enforcement work then officers will clearly explain the mechanisms for doing so. The Council's corporate standards for customer care will apply in so far as they do not conflict with the objectives of the investigation.

5.8 The following components will, as appropriate, be included in the Council's operational approaches to enforce legislation.

- Planned and risk assessed general visits
- Planned thematic surveys or enforcement initiatives
- Investigation of complaints by the public, businesses and external agencies relating to the enforcement of local authority legislative issues
- The provision of advice to both the public and business –Are you sure that this can be undertaken. Our client is PCC. Surely members of the public and businesses will need to seek their own independent legal advice.
- Planned surveillance of areas to check for particular activities

5.9 In planning and delivering these activities, the Council will ensure that relevant statutory provisions such as the Regulation of Investigatory Powers Act 2000 are followed.

5.10 The Council will endeavour to ensure that enforcement decisions are consistent, balanced, fair, transparent and relate to common standards.

5.11 In deciding what enforcement options to use, officers will have regard to the relevant legislation, statutory codes of practice, current guidance from Central Government departments and agencies including the Better Regulation Delivery Office, the Health and Safety Executive, the Food Standards Agency, the Offices of the Surveillance Commissioners and the Interception of Communications Commissioner. In particular Preston City Council will follow the broad principles of the Enforcement Concordat and have regard to the Regulators' Code as appropriate.

5.12 The Council acknowledges the fact that the Human Rights Act 1998 provides a right to a fair trial and that the way that an investigation is carried out can affect that right.

5.13 It is recognised that enforcement can take many forms on a continuum, starting from a position of advising and challenging behaviour or conduct which is illegal through informal and formal actions culminating in prosecution.

5.14 Officers shall have regard to the views of any person making a complaint about the actions of a third party which may allege that the law has been broken. Officers can also consider the motivation for making a complaint and if it can be considered vexatious that will be a factor in deciding how to progress any further investigation.

6 INFORMAL ACTION

6.1 Informal action to secure compliance with legislation includes offering advice, verbal warnings, requests for undertakings to cease certain actions and requests for remedial action, the use of letters and the issue of written notes at the time of a visit.

6.2 Informal action is appropriate in the following circumstances:

- Non-compliance will not involve a significant risk to public health, safety, community safety, the protection of minors, the environment, or cause a significant economic disadvantage to the public or business.
- The issue is not serious enough to warrant formal action.
- From historical information or a risk assessment, it can be reasonable to assume that informal action will achieve compliance.
- The officer is confident that the matters will be corrected.

6.3 Even if some of the above criteria are not met there may be circumstances in which informal action will be appropriate.

6.4 All written communication issued or sent to people who may be liable to receiving enforcement action will:

- Contain all necessary information to enable an understanding of action required and why it is necessary.
- Indicate the legal requirements contravened, the measures necessary to ensure compliance, and that other means of achieving the same effect may be chosen.
- Clearly indicate any recommendations of good practice to show that they are not legal requirements.
- The name and telephone number of a contact officer.

7 FINANCIAL PENALTIES

7.1 Fixed Penalty Notices

7.1.1 Certain legislation allows for offences to be dealt with by way of the issuing of a FPN. The issuing of a FPN allows the offender to discharge any liability to prosecution for the offence. This will generally be done for first time offenders where the offence is not of a serious nature and a record of offenders will be kept. For further offences prosecution will generally be initiated in line with this Policy.

7.1.2 Fixed Penalty Notices will be issued when:

- The case would otherwise warrant prosecution, and
- There is enough evidence to prosecute for the offence, and
- It will act as a sufficient deterrent against re-offending.

7.1.3 If the FPN remains unpaid after the specified period a prosecution file will be prepared and passed to Legal Services to initiate a prosecution for the offence.

7.1.4 FPNs issued to young people will be issued with due regard to the Children Act 2004 and the Department for Environment, Food and Rural Affairs guidance on issuing fixed penalties notices to juveniles.

Notices may be issued to 16 and 17 year olds using the same procedures as for adults. However, authorised officers will consider whether a written warning is appropriate for a first offence, depending upon the nature and seriousness of the offence.

In most circumstances a written warning will be issued to the parents of a child under the age of 16 in the first instance. If the offence occurs in school hours or in school uniform an advisory letter will be sent to the Head Teacher.

If the child continues to offend, despite this intervention, enforcement action (including a Fixed Penalty Notice) may be taken following discussions with relevant local agencies responsible for law enforcement and children's services. (e.g. Police, Youth Service, Youth Offending Team). The Council will consult with partners to determine whether a FPN is the most appropriate measure for a person under 16 or if other measures (e.g. warnings; Acceptable Behaviour Contract) are more appropriate.

In all circumstances the parent or legal guardian will be advised as soon as possible.

7.2 Monetary Penalties

7.2.1 Some legislation prescribes certain types of monetary penalties as a method of enforcement by which the person at fault pays an amount of money in recognition of the breach. Failure to pay the monetary penalty will result in a civil action in the County Court. These monetary penalties do not create a criminal record.

8 **SIMPLE CAUTIONS:**

8.1 Simple Cautions will be issued in accordance with instructions given in the current Guidance from the Ministry of Justice https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/708595/cautions-guidance-2015.pdf

Simple Cautions will be considered in the following circumstances:

Simple Cautions will be considered in the following circumstances:

- To deal quickly and simply with less serious offences.
- To divert less serious offences away from the courts.
- To reduce the chances of repeat offences.

8.2 Before the offer of a Simple Caution is made, the relevant Head of Service must be satisfied that there is sufficient evidence to prove that an offence has occurred, that it is in the public interest, and it demonstrates an effective administration of justice.. Such Simple Cautions will be notified to any Home or Originating Authority and any national body, such as the Office of Fair Trading or the Department for Work and Pensions which is entitled to receive such a notification.

8.3 Decisions to issue Simple Cautions must be made in accordance with this policy having had regard for the Regulators' Code, the Enforcement Concordat and the Code for Crown Prosecutors as appropriate.

8.4 Line Management must be informed before a Simple Caution is offered.

8.5 No more than one Simple Caution will be issued to the same business or person for a similar offence within at least two years of being cautioned or convicted of the same or similar offence. If a further, similar offence is committed before the expiry of the two years period, then prosecution will normally be taken in all but the most exceptional of circumstances.

8.6 A caution is an admission of guilt and forms part of an offender's criminal record. it may also be disclosed to the Court in any future prosecutions.

8.7 If accepted, the Simple Caution will be fully recorded and a copy of the documentation held in a Register of Simple Cautions.

9 PROSECUTIONS:

9.1 Prosecution will be considered when one or more of the following factors apply:

- it is appropriate in the circumstances as a way to draw general attention to the need for compliance with the law and the maintenance of standards required by law, especially where there would be a normal expectation that a prosecution would be taken or where through the conviction of offences others may be deterred from similar failures to comply with the law.
- it is considered that there has been potential harm arising from the breach.
- There is a continued significant risk to health and safety, harm to minors, financial loss to the community or damage to the quality of the environment.

- Other forms of enforcement action have been ineffective and there is a lack of confidence in the business rectifying the breach.
- Where the alleged offence relates to the failure to comply in full or with a significant part of a statutory notice.
- There is evidence of fraud, gross negligence or guilty knowledge.
- Where the alleged offence relates to an obstruction, failure to disclose information or knowingly making a false statement to authorised officers.
- The decision to prosecute will take account of the guidance given in the Code of Practice to Crown Prosecutors to assess whether prosecution of the offence is in the public interest.

9.2 Before consideration of any prosecution is made an assessment of the weight of admissible evidence shall be made by the relevant Head of Service to establish the likely chance of proving the case. Included in this assessment will be the possibility of a satisfactory defence being proved by the accused.

9.3 This is an objective test and means that a jury or bench of Magistrates, properly directed in accordance with the law, is more likely than not to convict each defendant on each charge.

9.4 Each prospective prosecution is scrutinised throughout the Line Management chain before the papers are sent to Legal Services, in accordance with agreed procedures. This ensures the evidence is assessed and challenged by officers not directly involved in the preparation of the case.

10 REVOCATION

10.1 In some circumstances, the revocation of a Licence or Permit may be used as an enforcement method.

10.2 Whilst this is a legitimate enforcement action, It must be remembered that the above may involve the removal of a livelihood, sometimes without reference to an independent arbiter or the Courts. Accordingly, revocation is used only as a last resort, when other sanctions are either inappropriate, or have been tried without success.

10.3 When revocation action is taken, these concerned will be informed of any rights of appeal and will be told of any time limits or other constraints which may apply.

11 ENFORCEMENT ACTIONS

11.1 The decision to use enforcement action will be taken on a case by case basis and, to ensure consistency of approach, in accordance with this and any other more specific policies which may be relevant. Each department has its own written policy on enforcement action which embraces the principles contained in

this document. There are a range of enforcement actions available to the Council such as Improvement Notices, Prohibition Notices, administrative penalties and Planning and Building Control Notices. The action taken, which may be immediate, will be proportionate to the gravity of the non-compliance. Factors that will be taken into consideration include, but are not limited to:

- The risk that the non-compliance poses to the safety, health or economic welfare of the public at large or to individuals.
- Evidence that suggests that there was pre-meditation in the commission of an offence.
- The alleged offence involves a failure to comply in full or in part with the requirements of a statutory notice or order.
- There is a history of previous warnings/cautions, or the commission of similar offences.
- Aggravated circumstances such as obstruction of an officer or aggressive behaviour towards the public.
- The offence, although not serious itself, is widespread in the area where it is committed.
- There has been reckless disregard of health and safety requirements.
- False information has been supplied wilfully, or there has been an intent to deceive.

12 COMMITMENT TO THE POLICY

12.1 The Council is committed to ensuring that all authorised enforcement officers carrying out enforcement work are trained and fully acquainted with the requirements of this policy. All authorised officers must abide by this policy whenever making decisions on enforcement. Any departure from this policy will be exceptional, and must be documented, justified and approved by the relevant service manager or Head of Service unless the delay in decision-making would result in a significant risk to the public.

12.2 All authorised enforcement officers should be trained and authorised in these aspects of legislation relevant to their duties. The Council will ensure that officers are competent to carry out their duties and that the level of delegated authority for each officer has been approved.

13 REVIEW

This policy was amended in November 2015 and will be reviewed on an annual basis by the Corporate Enforcement Group. Any significant changes to the policy will be reported to Cabinet for approval.

APPENDIX - LIST OF DEPARTMENTAL ENFORCEMENT POLICIES

The following departmental enforcement policies exist to provide specific details on enforcement options available to the Council's various regulatory services:

- Environmental Health (including Licensing and Housing)
- Building Control
- Buildings Management
- Neighbourhood Services
- Revenues and Benefits
- Planning Enforcement Charter
- Fraud

NB

1. All enforcement decisions will be fair, independent and objective. They will not be influenced by issues such as ethnicity or national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender. Such decisions will not be affected by improper or undue pressure from any other source.
2. We will take into account the views of any victim, injured party or relevant person to establish the nature and extent of any harm or loss and its significance in making the decision to take formal action. This may include actual or potential harm, or loss, or the impact on the well-being of individuals or potential or actual harm to communities or the environment.
3. We will apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
4. Proceeds of Crime Applications – The Council may make an application under appropriate legislation to restrain and/or confiscate the assets of an offender. The purpose of any such proceedings is to recover the financial benefit that the offender has obtained from his criminal conduct.