



CITY OF  
*Lincoln*  
COUNCIL

## **CITY OF LINCOLN COUNCIL**

### **DIRECTORATE OF HOUSING AND COMMUNITY SERVICES**

### **ENFORCEMENT POLICY**

*This Policy is subordinate to the City of Lincoln's  
Corporate Enforcement policy, which was adopted on 1  
July 2003*

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**CITY OF LINCOLN COUNCIL**

**PRIVATE SECTOR HOUSING  
ENFORCEMENT AND PROSECUTION POLICY**

**This document is issued for use by the members of the Directorate of Housing and Community Services under the authority of the Director of Housing and Community Services**

**Signed:** ..... **Date:** .....

**Director of Housing and Community Services**

## 1 INTRODUCTION

- 1.1 The City of Lincoln Council has adopted a Corporate Enforcement Policy This Policy expands upon the Corporate policy and is subordinate to it.
- 1.2 Both policies have regard to the guidance set out in the Enforcement Concordat. This Concordat was published by the Government's Better Regulation Unit and sets out the principles by which local authorities should carry out their enforcement duties in a fair, open, consistent and proportionate manner. This policy sets out the range of enforcement options, which is available to the Directorate of Housing and Community Services. It considers the circumstances in which it would be appropriate to use these options and links their use to the principles mentioned above.
- 1.3 The City of Lincoln Council fully subscribes to these principles. It supports this initiative and has set out within this Enforcement Policy the approach to be adopted by the Council's Directorate of Housing and Community Services when enforcing housing and environmental health law. In adopting this Enforcement Policy the Directorate places great importance on its role in assisting individuals and businesses to comply with housing and environmental health law through the provision of advice and information. At the same time it acknowledges that there will be occasions when formal enforcement action is necessary to protect the public and individuals and will not hesitate to take such action when this is the case.
- 1.4 In drafting this policy the Council has taken the provisions of the Human Rights Act 1998 into account. In the Council's view this Enforcement Policy is compatible with Convention Rights. As a public authority the City Council will ensure that its staff apply the principles of the European Convention on Human Rights in accordance with the provisions of the Act.
- 1.5 The decision making process within the Council is described by The Constitution of the City of Lincoln. The decisions taken as a consequence of this Policy will be consistent with The Constitution
- 1.6 Approval. This policy was approved by the City of Lincoln Executive on *14 March 2005*
- 1.7 Access. This policy is available on the Council's web site and in hard copy at the City Hall in Lincoln. Copies can be obtained by telephoning 01522 873787 or by writing to the Director of Housing and Community Services, City of Lincoln Council, City Hall, Beaumont Fee, Lincoln LN1 1DE, or by e-mailing [housing@lincoln.gov.uk](mailto:housing@lincoln.gov.uk). It is available in large print on request.

## **2. APPROACH TO HOUSING LAW ENFORCEMENT**

- 2.1 The City of Lincoln Council, through the Directorate of Housing and Community Services, has a duty to enforce statutory law and instruments made under those statutes in respect of matters of private sector housing.
- 2.2 In general, these laws seek to protect the health and safety of the community, to protect individual householders and to prevent the occurrence of statutory nuisance. In doing so they support one of the Council's main aims which is that of securing better housing within the city.
- 2.3 These laws place responsibilities on individuals and businesses alike.
- 2.4 The housing renewal services which this policy covers include housing standards, overcrowding, statutory nuisance, the securing of empty dwellings, closing orders, compulsory purchase orders and the control of houses in multiple occupation.
- 2.5 Depending on the circumstances, the Council may use a variety of means to ensure that individuals and businesses meet their responsibilities under the housing and environmental health laws, which the Council enforce. These measures include advice, education, guidance, warning letters, abatement and other notices, formal cautions, the carrying out of works in default, compulsory purchase, and prosecution. It may also include the provision of financial assistance where this is consistent with the Council's Housing Assistance Policy.
- 2.6 The City Council; may have to address issues of enforcement as a consequence of its reactive work e.g. investigating complaints about poor housing, or it may arise following proactive work e.g. a planned programme of inspections.
- 2.7 This Policy does not remove any individual's right to take action in respect of poor housing conditions or other related matters

### **3. ENFORCEMENT OPTIONS**

- 3.1 The Council enforcement officers will take a staged approach to enforcement and housing and environmental health law. No enforcement action will be taken against any individual or business unless the investigating officer is satisfied that an offence has been committed under a relevant piece of law, or that a statutory standard has not been achieved, or that there is a likelihood of an occurrence or recurrence of a particular problem or defect.
- 3.2 Enforcement action may be taken as the result of the investigation of a complaint, or following a routine inspection or some other activity.
- 3.3 Enforcement decisions must be balanced and fair. They must be consistent and taken in the context of ensuring that individuals and the community are adequately protected. The criteria which should be considered when deciding whether enforcement action is appropriate are set out in the Corporate Enforcement Policy , and may also include:
- whether a statutory standard has not been achieved
  - whether an offence has been committed
  - whether the offence has caused harm or is likely to cause harm
  - the history of the activity
  - confidence in achieving compliance
  - consequences of non-compliance
  - the existence of any guidance in the form of Codes of Practice, Government Circulars etc.
- 3.4 These criteria are not exhaustive and those that apply will depend on the particular circumstances in each case. This does not mean that all factors must be in favour of enforcement action, rather that, on balance, the preponderance is in favour.
- 3.5 Once these criteria have been considered a number of options for dealing with the situation present themselves. These are:
- to take no action
  - to take informal action
  - to serve statutory notices
  - to issue a formal caution
  - to suspend, revoke or refuse to renew a licence

- to prosecute or to apply for a Court Order

or a combination of two or more of the above.

3.6 Consideration of each of these options should be informed by the principles of openness, consistency and proportionality, which are discussed later (part 4) in this Policy.

3.7 In the spirit of taking a staged approach to enforcement, in the first instance the individual or business should be given the opportunity to discuss and remedy problems unless immediate action is required.

### 3.8 **No action**

There may be instances when the authority following the investigation of a complaint or the carrying out of an inspection takes no action. For example:

- following the investigation of complaints it may be found that there is no offence committed, nor breach of a statutory standard.
- where the offence, or breach of a statutory standard, is not causing harm or it is not expedient to take action
- where the cost of compliance to the offender outweighs the impact of the contravention on the community or individual households
- where the cost of taking action to the enforcing authority outweighs the impact of the offence on the community
- formal action would be inappropriate in circumstances such as where the offender is elderly or frail or where formal action could seriously damage their well-being

A decision to take no action must be recorded in writing, along with the reason(s) for taking no action and must take into account the health, safety, environmental damage or nuisance implications of not taking action. All parties involved will be informed, in writing, within 5 working days of the decision to take no action.

### 3.9 **Informal Action**

Informal Action will be taken when:

- the offence being committed or having been committed is not serious enough to warrant formal action; or
- the standard not achieved is not serious enough to warrant formal action; or
- from the individual's or business' past history it can be reasonably expected that informal action will achieve compliance; or
- the confidence in an individual or business proprietor is high; and

- the consequences of non-compliance will not pose a significant risk to public health, public safety or to the environment.

When an informal approach is used to secure compliance with legislation, confirmation of what action is required will be confirmed in writing within seven working days of the decision being taken to take informal action. All correspondence will clearly differentiate between legal requirements and recommendations of good practice and must indicate the laws, which are being contravened, and the measures that will achieve compliance.

### 3.10 **Statutory Notices, and other formal actions**

Statutory Notices will be served where one or more of the following criteria apply:

- there is a statutory duty upon the Council to do so
- there are significant contraventions of legislation
- there is a lack of confidence in the proprietor or business to respond to an informal approach
- there is a history of non-compliance
- standards are generally poor with little management awareness of statutory requirements
- the consequences of non-compliance could be potentially serious to an individual householder, public health, public safety or cause public nuisance or be irreversible; or
- where, in addition to prosecution, measures need to be taken to remedy conditions which are serious, deteriorating or where the service of a notice is needed to support a prosecution.

Statutory notices will be served within 10 working days of the decision to serve them being taken.

Failure to comply with a statutory notice will, in general, result in prosecution, or works in default or both prosecution and works in default where appropriate unless there is a good reason not to do so. Works in default are works which have been the subject of a legal notice and which have not been carried out by the person served with the notice, and which are subsequently carried out by the Council.

Where non-compliance with a statutory notice enables the council to pursue works in default the presumption will be that it shall do so promptly. In certain case, however, it maybe appropriate to delay instigating works in default and in this respect the Council will take into account:

- the nature and seriousness of the defect
- whether there are any residents directly affected by the defect
- whether the property is occupied
- whether the property is advertised for sale

### 3.11 **Formal Cautions**

A formal caution may be issued as an alternative to prosecution. Formal cautions will be issued to:

- deal quickly and simply with less serious offences
- divert less serious offences away from the courts; or
- reduce the chance of repeat offences

To safeguard the offender's interests the following conditions must be fulfilled before a caution is administered:

- there must be evidence of the suspected offender's guilt sufficient to offer a realistic prospect of conviction; and
- the suspected offender must admit the offence; and
- the suspected offender must understand the significance of a formal caution and give an informed consent to being cautioned.

No pressure should be applied to a person to accept a formal caution.

The advice given with Home Office circular 18/1994 should be taken into account.

A formal caution will not be considered in the case of a second or subsequent offence.

The offer of a formal caution will be made within 5 working days of the decision to issue one being taken. The caution will then be issued within 20 working days of the offer being accepted. Should a person offered a formal caution refuse to accept it then a course of prosecution will normally be followed.

### 3.12 **Suspension, revocation or refusal to renew a licence**

These steps would be taken as a result of failure to meet requirements in connection with the continued operation or renewal of a licence. This could follow receipt of a complaint or be the result of a routine or a licensing inspection or follow the service of a statutory notice. Such a failure must be serious enough to justify these actions.

### 3.13 **Prosecution**

The Directorate of Housing and Community Services recognises that the decision to prosecute is significant and could have far reaching consequences for the offender.

The decision to prosecute will normally be taken by the Director of Housing and Community Services and will be subject to the Council's Legal Services

Manager being satisfied with the evidence. If there are significant financial or policy implications the matter may be referred to the Housing Portfolio holder for consultation or for a decision to be taken. This decision should then be referred to the next available meeting of the Council's Executive for endorsement.

The criteria for the commencement of legal proceedings are:

- a flagrant breach of the law such that the safety or well being of an individual, or the community has been put at risk or irreversible damage has been caused
- the integrity of the licensing framework is threatened
- the alleged offence involves a failure by the suspected offender to correct an identified potential risk having been given a reasonable opportunity to comply with the lawful requirements of an authorised officer
- the alleged offence involves a failure, in full or in part, to comply with the requirements of a statutory notice
- there is a history of similar offences
- the alleged offence causes public concern and it is desirable to reassure the public and to deter other offenders

All relevant evidence and information will be considered before deciding to commence legal proceedings in order to enable a consistent, fair and objective decision to be made.

Regard shall be had to the Guidance contained in the Code for Crown Prosecutors.

Once the decision has been made to commence legal proceedings the relevant paperwork will be normally forwarded to the Legal Services Manager within 20 working days of that decision. The Legal Services Manager will issue proceedings within 20 working days of receipt of instructions. These time scales will be affected by the complexity of each case and the requirement to collect evidence.

The person or business, which is to be the subject of legal proceedings, will be informed in writing within 5 working days of the decision to commence legal proceedings being taken.

### 3.14 **Prosecution without warning**

As a general rule a person or business will be given a reasonable opportunity to comply with the law although, in some circumstances, prosecution may be undertaken without prior warning, e.g.

- the contravention is a particularly serious one
- there has been a particularly blatant disregard of the law

- a statutory notice has previously been issued for a similar offence
- the integrity of the licensing framework is threatened

- 3.15 **Determining whether formal *caution or prosecution* is viable and appropriate**
- 3.15.1 There are two tests, which the Council must apply in making this decision. The tests must always be applied in the same order; first the evidence test, followed by the public interest test.
- 3.15.2 The evidential test means that the Council, as prosecutor, must be satisfied that there is enough evidence to provide a realistic prospect of conviction. This is an objective test. It means that a jury or magistrates' bench, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged.
- 3.15.3 The public interest involves balancing a number of factors against each other which are for or against prosecution, for example, "for" can be whether a conviction is likely to result in a significant sentence, or whether it is a repeated offence and "against" could be whether the offence is minor or whether the offender is elderly or vulnerable.
- 3.15.4 Whilst, as outlined, these tests apply when considering prosecution, it is important that consideration should also be given to the evidential test before taking formal enforcement action of any kind.
- 3.15.5 Advice from the Legal Services Manager will usually be sought when determining whether the evidential test is satisfied.
- 3.15.6 Deciding on the matter of public interest requires careful consideration of each of the factors involved. For each case these factors will have to be considered separately and given an appropriate weight. A decision will then be taken in terms of the case as a whole.
- 3.15.7 Further information on the application of the evidential and public interest tests can be found in the Crown Prosecution Service Code for Crown Prosecutors.
- 3.16 **Dissatisfaction with a decision to take or not to take formal action**

Inevitably there will be occasions when an individual, group, business or organisation is aggrieved by a decision taken following consideration of this policy. Where this is the case they will be offered the opportunity to discuss the matter with the relevant line manager, or team leader. If the allegation is that the decision is contrary to this policy, that allegation will be tested. Where a decision is in compliance with the policy the rationale behind it will be explained to the aggrieved party. Where a decision is found not to be in compliance with a policy it should be reconsidered, having had due regard to 4.3.2 below (the Housing and Community Services complaints procedure). This is without prejudice to any statutory appeals mechanism or to the Council's formal complaints procedure.

#### **4. PRINCIPLES OF ENFORCEMENT**

4.1 The Council believed in firm but fair regulation. This policy is underpinned by the principles of about how the Council operates, of approach and in the application of the law.

#### **4.2 Openness**

4.2.1 Openness is important in maintaining public confidence in the Council's ability to regulate. It means helping people who have to abide by housing and environmental health law to understand what is expected of them and what they should expect from the Directorate of Housing and Community Services. It also means making it clear why an officer intends to take or has taken enforcement action.

4.2.2 The Directorate of Housing and Community Services will set about its enforcement work in as open a way as possible. It will make clear to anyone who may be affected by its enforcement actions what the results of those actions may be.

4.2.3 The Directorate of Housing and Community Services will strive to ensure that all stakeholders in the service have a say in the way in which work is done. The Housing Renewal Team's approach to information and consultation is set out in part 6 of this policy.

4.2.4 The Housing Renewal Team will discuss any issues, either general or in relation to specific compliance failures or problems with anyone experiencing difficulties. The Housing Renewal Team will ensure that people know who they are dealing with by quoting the name and contact number of the officer dealing with any enforcement matter on all correspondence or giving those details at the beginning of a telephone conversation.

#### **4.3 Consistency**

4.3.1 The Directorate of Housing and Community Services aims to achieve consistency in advice tendered, the response to complaints and other incidents, the use of powers and decisions whether to prosecute. This policy document will inform that process.

4.3.2 This does not mean that the Directorate will commit itself to following a certain course of action in any particular situation. It is recognised that every situation will have its own circumstances and the correct course of action can only be arrived at following full and careful consideration of all of these circumstances. Officers will need to use professional judgement in order to determine the correct course of action. These circumstances include, but not exclusively, the criteria set out in 3.3, the points for consideration against each of the enforcement options and the principles of openness, consistency and proportionality which inform the decision making process.

#### **4.4 Proportionality**

- 4.4.1 The action taken by the Directorate of Housing and Community Services will be proportionate to the risks posed and to the seriousness of any breaches of the law.
- 4.4.2 Some incidents or breaches of regulatory requirements have the potential to cause serious risks to public health or to the individual. There may be occasions when the breach of legislation will justify statutory action. The circumstances in which the various enforcement options available will be appropriate are discussed in detail in part 3 of this policy. Any such action will only be taken in accordance with the law and after due consideration has been given to any Convention Rights under the Human Rights Act 1998 that may be affected by such action.

**5. LIAISON**

- 5.1 The Directorate of Housing and Community Services will liaise with other Council Departments to ensure co-ordinated and effective enforcement is carried out where the matter is related to more than one of the Council's services.
- 5.2 The Directorate will liaise with other local authorities, agencies and organisations where it is appropriate. This may be where an enforcement matter extends beyond the city boundary or where the Council shares responsibility with another organisation.

## **6. INFORMATION AND CONSULTATION**

- 6.1 The Directorate will strive to help individuals and organisations to comply with the law wherever possible, especially individuals and small and medium sized businesses. The Directorate will seek to do this by offering advice and information. Any letter relating to enforcement will include an offer to discuss the matter further if the recipient so wishes.
- 6.2 The Directorate will try to make people aware of what their rights and responsibilities are in respect of housing and environmental health law. Where information and advice leaflets or a digest of the law or the Council's enforcement procedures are available these will be made accessible to people or businesses which may be affected by the Council's enforcement activities. The Directorate will seek to increase the range of this sort of literature so that advice and information is available to everyone having dealings with the Directorate of Housing and Community Services in its role as an enforcer.
- 6.3 The Directorate of Housing and Community Services will publicise this enforcement policy in order to ensure that, as many stakeholders in the service as possible are aware of it. This publicity will take the form of abstracts of the policy being printed and distributed, the policy being posted on the Council's web site and groups representing interested parties being made aware of it.
- 6.4 Structured consultation with interested parties in all areas of enforcement within the framework of housing and environmental health will be carried out. The views of individuals and organisations will be canvassed and taken into account when the policy is reviewed.

## **7. SPECIAL INTERESTS OF STAKEHOLDERS**

7.1 The Directorate of Housing and Community Services will attempt to take account of any special needs that any individuals or organisations may have. This includes, but not exclusively:

- making inspection visits outside of normal office hours to businesses which do not trade within those hours
- allowing visitors access to the service by publicising details of the service in public locations
- providing an out of hours emergency telephone number on which complaints can be registered at any time of the day or night
- providing advice and information on enforcement related matters in a manner consistent with the City of Lincoln's Equal Opportunities Policy

## **8. TRAINING AND APPOINTMENT OF OFFICERS**

- 8.1 All officers undertaking enforcement duties in respect of housing and environmental health law will be suitably trained and qualified in order to ensure that they are fully competent to carry out their enforcement duties.
- 8.2 All such officers will be or will have been authorised by the Council to exercise powers under specific statutes and subordinate legislation. The level of authorisation for each officer will be determined by their qualifications, experience and competence having regard to any relevant national guidelines. Authorisations will be in writing and in a form, which can be shown on request. A copy of an officer's authorisation will be held in their personal file.
- 8.3 The Directorate of Housing and Community Services supports the principle of continuing professional development and will ensure that officers are given additional in-post training to maintain up to date knowledge and skills.

## **9. MANAGEMENT SYSTEMS**

- 9.1 Staff competency and consistency of enforcement will be monitored. The Directorate will develop procedures, which will enable compliance of enforcement actions with the requirements of this policy to be monitored and verified.
- 9.2 In every case where a contravention of the law is detected, either as a result of the investigation of a complaint or a programmed inspection, a note will be made on the case file, either a hard copy or electronically or both. Further records will be made to confirm that the enforcement policy has been considered and indicating what form of action has been followed to demonstrate compliance with the policy. A full audit trail of all decisions made taking into account criteria and advice in this policy will be retained on each case file.
- 9.3 The Directorate of Housing and Community Services will maintain management systems to monitor the quality and nature of enforcement actions undertaken so as to ensure, as far as is reasonable practicable, a uniform and consistent approach. Where local or national guidance is available, if mandatory, it shall be followed.
- 9.4 The results of monitoring of compliance with this policy will be published on an annual basis.

**10. REVIEW OF THE POLICY**

- 10.1 This policy document will be reviewed on a regular basis as appropriate in response to changes in the law and in guidance. Where the policy can be improved by being amended it will be amended. Any changes that significantly affect the Council's approach to enforcement and prosecution will be taken to the City Council's Executive for approval.

**Directorate of Housing and Community Services  
Enforcement and Prosecution Policy**

**Appendix 1**

**Reference documents**

Concordat on Good Enforcement (March 1998)

City of Lincoln's Corporate Enforcement Policy

Human Rights Act 1998

Home Office Circular (18/1994)

Crown Prosecution Service: Code for Crown Prosecutor

**Directorate of Housing and Community Services  
Enforcement and Prosecution Policy**

**Appendix 2**

**Approved Time Scales**

<b>Event</b>	<b>Action</b>	<b>Number of Working Days</b>
Decision to pursue informal action (para 3.9)	Confirmation in writing	7 days
Decision to serve statutory notice (para. 3.10)	Service of statutory notice	10 days
Decision to commence legal proceedings (para. 3.13)	Confirmation of decision in writing to Legal Service	20 days
Decision to commence legal proceedings (para.3.13)	Confirmation of decision in writing to person or body against whom prosecution being pursued	5 days
Legal Services receive instruction (para.3.13)	Legal Services issue proceedings	20 days
Decision to issue formal caution (para.3.11)	Formal caution offered	5 days
Formal caution accepted (para.3.11)	Formal caution made	20 days
Decision to take no further action (para 3.14)	All parties notified in writing	5 days