

# West Lancashire Borough Council



## Corporate Enforcement Policy

July 2009

VERSION 1.

## 1.0 **West Lancashire Borough Council and Enforcement**

- 1.1 Set in the heart of the North West of England, West Lancashire is home to a growing number of UK and international businesses. It's world class for business and can help companies succeed and grow. Companies are reaping competitive advantage thanks to:
- Cost-effective land and property
  - Outstanding communication links
  - Quality of life for work and pleasure.
- 1.2 The Council seeks to maintain a balance between the businesses operating in its area, the residents living in its area and the people visiting the area. Accordingly, the Council is seeking to provide an attractive Borough. By engaging and consulting with the community, the Council is seeking to:
- Improve the quality of life for all in the Borough;
  - Reduce the levels of crime and disorder in the Borough;
  - Promote a strong and sustainable economy;
  - Aim to reduce levels of poverty and social exclusion in the Borough by developing a more inclusive community;
  - Help to improve the health and well being of the Borough's residents.
- 1.3 The Council acts as a regulatory body across a wide range of services including Building Control, Community Safety, Environmental Health, Financial Services, Housing and Planning.
- 1.4 This Council supports the use of statutory enforcement powers. This includes the use of a wide range of enforcement options, as an effective means of ensuring that the practices and activities of individuals and local premises comply with statutory requirements. This is to attempt to ensure that the health, safety and well being of the general public, employees, consumers and the environment are not put at risk.
- 1.5 The Department for Business Enterprise and Regulatory Reform (B.E.R.R.) published a Regulators' Compliance Code in 2007. This document stated that "Effective and well targeted regulation is essential in promoting fairness and protection from harm. However, the Government believes that in achieving these and other legitimate objectives, regulation, and its enforcement should be proportionate and flexible enough to allow or even encourage economic progress".
- 1.6 The Council regards prevention as better than cure. It offers (and encourages the request of) information and advice to those it regulates and seeks to secure co-operation avoiding bureaucracy, ensuring efficient compliance with legislation, whilst, at the same time, minimising the burden on businesses and individuals to put safety and welfare first and to integrate good working practices into normal working methods.
- 1.7 This policy sets out the general principles, which the Council intends to follow, in relation to its enforcement options. It is intended to be used in conjunction with any more-detailed guidance on enforcement practice issued by or for the various specific functions of the Council.

## 2.0 Influences on our approach

2.1 Various bodies/reviews/documents and agreements have and will continue to influence the approach to enforcement taken by the Council. These include:-

- **The Human Rights Act 1998.** This places Enforcement Bodies under a duty to interpret all legislation compatibly with the Convention Rights incorporated by The Act and requires West Lancashire Borough Council, as a Public Authority, to act in accordance with the Convention Rights. Authorised Officers will, accordingly, ensure that respect for human rights is at the core of their day-to-day work.
- **The Government's Enforcement Concordat.** West Lancashire Borough Council has formally adopted the Government's Enforcement Concordat on good enforcement. The principles underlying the Concordat require a policy of firm but fair regulation. Commitment to these principles will be demonstrated by:-
  - Taking all enforcement decisions in a proportionate manner.
  - Striving for high standards of consistency.
  - Ensuring that all enforcement staff are helpful, courteous and efficient.
  - Measuring performance against agreed standards, where appropriate.
- **The Macrory Review.** This review sets out that regulators should:-
  - Aim to change the behaviour of the offender.
  - Aim to eliminate any financial gain or benefit from non-compliance.
  - Be responsive and consider what is appropriate for the particular offender 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.
  - Aim to restore the harm caused by regulatory non-compliance, where appropriate, and
  - Aim to deter future non-compliance.

This document also suggests that, where possible, all enforcement action will be managed on an outcomes rather than output basis. For example, the serving of notices will relate to the number of notices complied with, not just the number served.
- **The Department for Business Enterprise and Regulatory Reform (BERR) Regulators Compliance Code** and any recommendations from the Local Better Regulation Office (part of the BERR). The Code supports the Government's better regulation agenda and is based on the recommendations in the Hampton Report. Its purpose is to promote efficient and effective approaches to regulatory inspection and enforcement which improve regulatory outcomes, without imposing unnecessary burdens on business, the third sector (charities etc.) and other regulated entities, and
- **The Hampton Review.** This supports the idea that businesses should be supported by regulators to comply with regulations. In

addition it details the principle that it is important that business activity is properly regulated, encouraging the economy to thrive, while protecting public health and supporting consumer interests.

2.2 Good enforcement secures compliance with regulations and as a result Council Officers will seek to use a combination of assistance, advice and formal action.

### 3.0 Principles of our approach

#### 3.1 Economic Progress.

3.1.1 This Authority fully supports the principles of the Hampton review and the idea that businesses should be supported by regulators to comply with regulations. In addition, the principle that it is important that business activity is properly regulated, encouraging the economy to thrive, while protecting public health and supporting consumer interests. It will make sure that any enforcement action it takes is strictly proportionate to the risks posed and to the seriousness of any breach of law. Consideration will also be given to the costs of any regulation.

#### 3.2 Proportionality.

3.2.1 In general, the concept of proportionality is included in much of the regulatory system through the balance of action to protect the employee, the environment, or the public against risks and costs. Achieving proportionality requires that the enforcement action taken is directly related to the risks involved or where there is no alternative.

#### 3.3 Consistency.

3.3.1 Consistency means taking a similar approach in similar circumstances to achieve a similar result. All those involved need to know that they are being treated fairly. Businesses in particular need to know that they are competing with others on level terms. The Council will endeavour to ensure that all its enforcement decisions are uniform. In coming to a decision to take enforcement action, the factors in Section 4.6 below will be considered, along with the issues detailed in section 4.8 and Appendix 1 or 2 below.

3.3.2 The Council will continue to develop the necessary arrangements to promote consistency, including the effective arrangements for liaison with other enforcement agencies, such as the police. In relation to "Enviro-crimes" such as littering, waste offences, dog-fouling etc., the Council will continue to follow a "zero-tolerance" approach and therefore aims to assist building safer cleaner communities.

#### 3.4 Targeting of Resources.

3.4.1 Targeting of resources means making sure that regulatory effort is directed primarily towards those whose activities give rise to the most serious risks or where the hazards are poorly controlled or against

deliberate or organised crime or guided by legislation, where appropriate. Action will be primarily focused on those that break the law or those directly responsible for the risk and who are best placed to control it. In addition, issues or locations where greater numbers of substantiated complaints are received, will merit greater attention. Planning Services will respond to all issues brought to their attention. This action will, however, be prioritised in accordance with the seriousness of the breach and ensure breaches of planning control are rectified in the most appropriate manner.

3.4.2 Systems have been introduced for prioritising regulatory effort. They include guidance contained in Codes of Practice and legislation, the response to complaints from the public about regulated activities, the assessment of risks posed by a person's operations and the gathering and acting on intelligence about illegal activities.

3.4.3 In evaluating the likelihood of non-compliance in non-planning related matters, the Council will give consideration to all relevant factors, including:

- Past compliance records and potential future risks
- The existence of good systems for managing risks, in particular within regulated entities or sites
- Evidence of recognised external accreditation, and
- Management competence and willingness to comply

### **3.5 Transparency of Regulatory advice and guidance.**

3.5.1 The Council will endeavour to ensure that all legal requirements relating to its regulatory activities, as well as changes to them, are promptly communicated to relevant organisations. It will also provide general information, advice and guidance to make it easier for regulated entities to understand and meet their regulatory obligations. This information, advice and guidance will be provided in clear, concise and accessible language, using a range of appropriate formats and media

3.5.2 Where a remedial intervention is required, it will be clearly explained (and confirmed in writing, if requested) why the action is necessary and when it must be carried out; a clear distinction will always be made between legal requirements and best practice advice. Opportunity will be provided to discuss the circumstances of the case, clarify what is required to comply with the law and if possible, resolve any points of difference, before formal enforcement action is taken, unless urgent action is required, for example, to prevent serious harm or prevent evidence being destroyed.

3.5.3 Where prompt action is required, a written explanation of the reasons will be provided as soon as practicable after the event where appropriate and certainly upon request.

3.5.4 Written explanation will be given of any rights of appeal against formal enforcement action at the time the action is taken. This will explain the appeal procedure, where and when an appeal may be made as well as

confirming the grounds on which it may be brought. It will make clear whether action will be suspended pending the outcome of the appeal. Information from the Council can be provided on audio tape, in large print, in Braille or in other languages if requested and a large portion of it is available on the Council's website ([www.westlancs.gov.uk](http://www.westlancs.gov.uk)).

3.5.5 This document and any enforcement policies produced by individual Divisions or Services, is/are freely available to businesses and individuals and we will actively promote this.

### 3.6 **Helpfulness.**

3.6.1 Advice and assistance are regarded as central to the implementation of the enforcement policy and are used to inform both businesses and residents of their rights and responsibilities. Help will be given to businesses, voluntary or community groups, workplace representatives and the public to assist them to comply with statutory requirements. By adopting this approach and by positively encouraging businesses and others to seek advice and information it is hoped that many issues can be resolved without having to resort to more formal stages of enforcement action.

3.6.2 A courteous approach and efficient service will be provided with all staff identifying themselves by name. The purpose of any visit will be properly explained and a contact point or telephone number for any further dealings will be given when required. Applications for licences, registrations, approvals notifications and requisitions for information etc., will be dealt with efficiently and promptly. Every effort will be made to ensure that, wherever practicable, the Council's enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

3.6.3 The Council offers a flexible approach to service delivery, which takes account of the diverse needs of the public and business community. Services will, if necessary, be made available by prior arrangement, possibly out of office hours and will be tailored to meet the specific needs of both the public and businesses. In delivering the service, special arrangements will be made, wherever appropriate, to accommodate ethnicity, disability, gender and age. The Council has access to translation services and will use them where necessary.

### 3.7 **Accountability.**

3.7.1 The Council recognises that it is accountable to government, citizens, and Parliament for its actions. Policies and Standards have been adopted against which it can be judged, along with effective and easily accessible mechanisms for dealing with comments and handling complaints.

### **3.8 Information requirements.**

- 3.8.1 The Council will endeavour to request only the information it needs and will, where possible, share relevant data in order to reduce the burden, on businesses or individuals, of providing data.

### **4.0 Enforcement Options and Decision Making.**

- 4.1 There are four main types of enforcement options available to the Council. These are
- Advice and guidance, including the provision of leaflets and verbal or written guidance.
  - Informal warnings, including advice in relation to acts or omissions or minor contraventions.
  - Formal action, including the use of legal notices and licensing.
  - Legal proceedings, including cautions, prosecutions and injunctions.

In some cases a combination of these options may be appropriate.

- 4.2 A hierarchical approach will be adopted in selecting the most appropriate enforcement sanctions. Although decisions will clearly vary depending upon the circumstances, non-criminal sanctions will always be considered before criminal sanctions.
- 4.3 As a general rule, legal proceedings will not be undertaken without the offender being given reasonable opportunity to comply with the law. It is recognised, however, that there are circumstances where a contravention is particularly serious and would result in harm to members of the public or the environment or there is a blatant or reckless disregard for the law, in which case legal proceedings may take place without a prior warning. Failure to comply with a Statutory Notice, will normally result in legal proceedings, except in cases where works in default may be more appropriate
- 4.4 It is recognised that the instigation of legal proceedings is a serious and important part of enforcement that should only be taken after full consideration of the implications and consequences. Decisions about legal proceedings will take account of Council policies and procedures and the Code for Crown Prosecutors.
- 4.5 For non-planning matters, legal proceedings will not be commenced or continued unless there is sufficient admissible and reliable evidence that the offence has been committed and that there is a realistic prospect of a conviction. A bare prima facie case is not enough. If the case does not pass this evidential test, it will not go ahead, no matter how important or serious it may be. In addition, any possible defence, which could successfully be utilised, will be considered and may prevent a case being taken. The issue of a caution will not be used as an alternative in such circumstances. There is likely to be a greater use of cautions in future and guidance is available on this course of action

from a variety of sources. (The Community Services Division has its own guidance note on this area of work).

4.6 The circumstances that are likely to warrant legal proceedings may be characterised by one or more of the following:-

- There has been a blatant disregard for the law, particularly where the economic advantages of breaking the law are substantial and the law-abiding are placed at a disadvantage to those who disregard it.
- The gravity of the offence taken with the general record and approach of the offender warrants a strong legal sanction. For example, a reckless disregard for standards, repeated breaches or persistent poor standards.
- Where the offence and or the circumstances leading to it are reasonably foreseeable.
- It is considered to be an appropriate way of drawing attention to the need for compliance with the law and the maintenance of standards, especially where there would be a normal expectation that a prosecution would be taken.
- The offender and particularly others may be deterred from similar failures through the conviction.
- Evidence of wilful intent of the offender, individually and/or corporately.
- There has been a previous history of offending, poor standards or lack of co-operation.
- The poor attitude of the offender, particularly in respect of any explanations offered and any remedial action taken.
- If the prosecution is successful, a significant penalty is likely to result.
- The particular contravention or circumstances have caused serious public concern or alarm.
- Prosecution would serve the public interest.
- The offence is contrary to the Councils aims and priorities.
- The lack of ability to establish a robust defence.
- The offence, although not serious in itself is widespread in the area where it is committed and requires attention.
- In cases of obstruction or where officers safety has been put in doubt, prosecution will always be considered, especially where undue delay, or additional works/costs/visits have arisen.
- West Lancashire Borough Council, as opposed to another authority or agency, is the most appropriate body to institute proceedings.

4.7 These factors are not exhaustive and those that apply will depend on the particular circumstances of each case and each case will be judged on its merits. The importance of each factor will be determined in the circumstances of each case and will be used to make an overall assessment.

4.8 In making a decision about whether or not to undertake legal proceedings, an officer will use one of the pre-prosecution assessment forms contained at Appendix 1, or a relevant similar document specific to an individual service. The officer will fill in the relevant form for an

individual or a company. The form will assist the officer and their relevant manager to decide if a prosecution is the most appropriate course of action. There is no hard and fast rule in relation to how many items are needed for a prosecution, as some issues will be more important than others. Space is available for further comment. The assessment should be included with the prosecution file that is sent to the Legal Services Division. This will assist them recognise the officer thought process as to why a prosecution is necessary.

- 4.9 All investigations into alleged breaches of legislation will follow best professional practice and the requirements of the legislation listed below or successive legislation:
- The Human Rights Act 1998 (HRA)
  - The Regulation of Investigatory Powers Act 2000 (RIPA)
  - The Police & Criminal Evidence Act 1984 - Codes of Practice
  - The Criminal Procedures & Investigations Act 1996 (CPIA)
  - The Code for Crown Prosecutors
- 4.10 Where necessary, criminal proceedings will be taken against those persons responsible for the offence. Where a Company is involved, it will be usual practice to prosecute the Company where the offence resulted from the Company's activities. However, any part played in the offence by the officers of the Company, including Business Proprietors, Directors, Managers, and the Company Secretary or employees of the Company will also be considered.
- 4.11 Action may also be taken against such officers (as well as the Company) where it can be shown that the offence was committed with their consent, was due to their neglect or they had "turned a blind eye" to the offence or the circumstances leading to it. In appropriate cases, consideration will be given to seeking the prohibition of the business proprietor under the appropriate specific statutes.
- 4.12 Enforcement action against employees will receive special consideration. Where appropriate, a warning letter will be issued unless the matter is serious and/or that the employee had received a prior warning from either his employer or the Council.

#### **NOTE**

The Exchequer Services Division of the Council has a separate Benefit Sanctions and Prosecution Policy approved by Members. This governs their action taken against benefit fraudsters and is based on specific legislation covering this area of work. Enforcement action in this area of work may therefore deviate from this policy. For further details, the Exchequer Services Manager can be contacted via 01695 577177.

The Planning and Development Division has an enforcement protocol, which is based on Planning Circular 10/97 and the 1997 Good Practice Guide. For further details contact the Planning Enforcement section via 01695 577177.

## 5.0 **Individual Divisional/ Sectional policies.**

- 5.1 The Council has several sections/Divisions that can and do take enforcement action. Officers undertake some of this work, under a scheme of delegation approved by Council. These enforcement interventions cover a wide range of regulatory activities. These include:-
- The Community Services Division, which undertakes regulatory activity in relation to noise pollution, food safety, health and safety, public health matters, licensing issues, fly tipping and litter, amongst other issues.
  - The Planning Services Division, which undertakes regulatory activity in relation to planning and building control matters.
  - The Housing and Property Maintenance Services Division, who undertake action in relation to breaches of tenancy (including the recovery of debt and anti-social behaviour), housing standards and caravan sites
  - The Exchequer Services section, which undertakes the recovery of debts relating to Business Rates, Council Tax, Sundry Debts and Benefits in accordance with relevant regulations and good practice.
  - Anti-social behaviour unit which investigates complaints regarding anti-social behaviour from the public and relevant partners, and takes appropriate action ranging from education up to enforcement including Acceptable Behaviour Contracts (ABC's), injunctions, evictions and Anti-Social Behaviour Orders (ASBO's).
  - Technical Services unit which supervises external contractors to enforce "off street" parking offences and the regulation of any markets in Ormskirk.

5.2 These sections may have individual policy documents, which provide further details on their enforcement action, however they will all follow the broad principles of this policy. Divisional Managers will check and keep updated these policies.

## 6.0 **Complaints against Officers/the Service.**

6.1 The Council has a clear and well-defined procedure that deals with complaints. Any complainant has the ability to "appeal" against a decision that has been made or against the response they may have had in reply to a letter. In the first instance the Divisional Manager or Service Manager would investigate the response. If the complainant still feels that their complaint has not been answered satisfactorily the Chief Executive of the Council would investigate the matter. If, after the response of the Chief Executive, the complainant was still aggrieved they could ultimately request the attention of the Local Government Ombudsman. Full details of this procedure are available on the Council's website ([www.westlancs.gov.uk](http://www.westlancs.gov.uk))

6.2 There is also an appeal procedure through the relevant Court in relation to Court Convictions following prosecutions.

## 7.0 **Departure From The Enforcement Policy**

- 7.1 All authorised officers will abide by this Policy when making enforcement decisions.
- 7.2 Any departure from the Policy will only be accepted in exceptional circumstances, capable of justification, and only after full consideration and authorisation by the relevant Executive Manager, or designated alternative officer.

**PRE PROSECUTION ASSESSMENT - INDIVIDUAL**

OFFICER:.....DATE OF OFFENCE:.....

NAME:.....

ADDRESS:.....

.....

DETAILS OF OFFENCE:.....

.....

Has previous legal action been taken against the by WLBC? YES / NO /?

Has previous legal action been taken regarding a similar matter? YES /NO /?

Is there evidence of previous written warnings being issued re this matter? YES /NO /?

Has there been blatant disregard for the law to gain economic advantage? YES /NO /?

Was a poor attitude to officers demonstrated? YES /NO /?

Is a significant penalty likely? YES /NO /?

Has the contravention(s) caused serious public alarm/concern/disturbance? YES /NO /?

Would the prosecution serve the public interest? YES /NO /?

Is a defence available? YES /NO /?

Is the contravention contrary to the Council's aims and priorities? YES /NO /?

Is the issue widespread and requires targeting? YES /NO /?

Was the safety of the officer in any doubt? YES /NO /?

Was the officer obstructed in the course of his/her duties? YES /NO /?

Is there a public expectation that the prosecution will be taken? YES /NO /?

Is a prosecution warranted to deter others via ensuing publicity? YES /NO /?

Would a prosecution result in bad publicity for the Council? YES /NO /?

Is a caution appropriate? YES /NO /?

Recommendation from Officer - PROSECUTE YES /NO /?

Reason:.....

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(Continue overleaf if necessary)

Recommendation from the Officer in Charge of the investigation – PROSECUTE YES / NO /?

Reason:.....

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Decision of EM – PROSECUTE YES / NO /?

Notes: .....

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**PRE PROSECUTION ASSESSMENT - BUSINESS**

OFFICER:.....DATE OF OFFENCE:.....

COMPANY:.....

ADDRESS:.....

DETAILS OF OFFENCE:.....

Has previous legal action been taken against the Company by WLBC? YES /NO /?

Has previous legal action been taken regarding a similar matter? YES /NO /?

Is there evidence of previous written warnings being issued re this matter? YES /NO /?

Has there been blatant disregard for the law to gain economic advantage? YES /NO /?

Was a poor attitude to officers demonstrated? YES /NO /?

Is a significant penalty likely? YES /NO /?

Has the contravention(s) caused serious public alarm/concern/disturbance? YES /NO /?

Would the prosecution serve the public interest? YES /NO /?

Is a defence available (e.g. BPM)? YES /NO /?

Is the contravention contrary to the Council's aims and priorities? YES /NO /?

Is the issue widespread and requires targeting? YES /NO /?

Was the safety of the officer in any doubt? YES /NO /?

Was the officer obstructed in the course of his/her duties? YES /NO /?

Is there a public expectation that the prosecution will be taken? YES /NO /?

Is a prosecution warranted to deter others via ensuing publicity? YES /NO /?

Is the issue likely to be a problem again? YES /NO /?

Is a caution appropriate? YES /NO /?

Recommendation from Officer - PROSECUTE YES /NO /?

Reason:.....

(Continue overleaf if necessary)

Recommendation from Officer in Charge of the Investigation – PROSECUTE YES / NO /?

Reason:.....

Decision of EM – PROSECUTE YES / NO /?

Reason:.....