



COUNCIL: 12th December 2018

Report of: Director of Leisure and Environment Services.

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SUBJECT: COUNCIL ENFORCEMENT POLICY

Wards affected: Borough wide

1.0 PURPOSE OF THE REPORT

1.1 To advise Members of a new draft Corporate Enforcement Policy.

2.0 RECOMMENDATION TO COUNCIL

2.1 That Members agree the Corporate Enforcement Policy proposed in Appendix 1b.

3.0 BACKGROUND

3.1 In 2009 Members agreed the contents of a Corporate Enforcement Policy and an Enforcement Policy for the Community Services Division.

3.2 The original corporate policy was written following numerous pieces of guidance and set out the approaches to enforcement that the Council would take across the various sections. The Community Services policy was based on the corporate policy, but covered the specific legislation enforced.

3.3 The Better Regulation Office of the Department for Business Innovation and Skills produced a Regulator's Code (the Code) in April 2014. In introducing the Code, the Minister detailed the purpose of Regulators which is "to regulate for the protection of the vulnerable, the environment, social or other objective". He also indicated that "This Code does not detract from these Core Purposes but seeks to promote proportionate, consistent and targeted regulatory activity through the development of transparent and effective dialogue and understanding between regulators and those they regulate".

- 3.4 Given that the two old codes were broadly very similar, to avoid duplication it was considered that just one corporate code would be necessary going forwards. The new document at Appendix 1a details the tracked changes from the original document and there is also a clean copy at Appendix 1b to assist Members.

4.0 ENFORCEMENT POLICY DETAILS

- 4.1 The policy is underpinned by several principles, namely

- The Council will support those they regulate to comply and grow.
- The Council will provide simple and straightforward ways to engage with those regulated and listen to their views.
- Regulation will be based on risk.
- Information about compliance and risk should be shared.
- Clear information, guidance and advice will be provided.
- Regulatory approaches will be transparent.
- Enforcement options and decision making.

- 4.2 The policy also sets out some of the issues that will be considered when officers are making the decision whether to prosecute or not, which include

- Blatant disregard for law;
- Placing law-abiding citizens at a disadvantage;
- Gravity of offence;
- Offender record, public expectation that offence is serious enough to warrant prosecution;
- Deterrent to others;
- Wilful intent;
- Previous history;,,
- Poor attitude;
- Significant penalty likely;
- Public concern;
- Public interest;
- The offence is contrary to Council's aims and priorities;
- The offence is commonplace and requires attention;
- Officers safety was compromised;
- Additional costs were incurred by the Council due to approach and the Council is the most appropriate body to act.

- 4.3 A corporate policy assists the Council demonstrate that relevant legal action is being taken at the appropriate time in line with Government guidance.

5.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY

- 5.1 One of the aspects of the policy relates to avoiding imposing unnecessary burdens on businesses to ensure they are compliant and support economic growth. This could improve the economic prosperity of businesses and the Borough.

6.0 FINANCIAL AND RESOURCE IMPLICATIONS

6.1 There should be no financial or resource implications associated with this policy.

7.0 RISK ASSESSMENT

7.1 The Council's enforcement policy should always be based on the most recent guidance and this update was therefore necessary. Given the number of cases the Council takes to court, by not having an up to date policy the Council could be left open to challenge.

Background Documents

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

Equality Impact Assessment

There is a direct impact on members of the public, employees, elected members and / or stakeholders, therefore an Equality Impact Assessment is required. A formal Equality Impact Assessment is attached as an Appendix to this report, the results of which have been taken into account when undertaking the actions detailed within this Article.

Appendices

Appendix 1a – Draft new policy (with tracked changes).
Appendix 1b – Draft new policy (clean version)
Appendix 2 – Equality Impact Assessment.

West Lancashire Borough Council



Corporate Enforcement Policy

October 2018

VERSION 2

July 2009

VERSION 1.

1.0 West Lancashire Borough Council and Enforcement

~~1.1 1.1—Set in the heart of the North West of England, the Borough of West Lancashire is located at the southern edge of Lancashire and also borders the Merseyside region. 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.~~

~~West Lancashire Borough Council (the Council) is ambitious for our businesses, our places and our people. We are committed to important projects that will benefit the Borough and everyone who lives and works here.~~

~~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.~~ In doing so, the Council aims 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.

Our Vision

The Council's vision is to be a council which is ambitious for West Lancashire – our Economy, Environment and for Health and Wellbeing.

We are ambitious for our economy, and for inclusive growth in West Lancashire, retaining and growing good quality jobs, increasing skill levels and encouraging business and wealth generation. This is matched by our ambitions for a good quality, clean, built and physical environment, and for ensuring the conditions are in place for people in West Lancashire to live healthy and fulfilling lives. These ambitions are reflected in the key priorities and key projects that have been identified.

Our Values underpin our vision which are as follows:

- **Collaborative** – working in partnership to benefit West Lancashire, being open and involving in the way decisions are made, and adopting a co-ordinated "one Council" approach.
- **Empowering** – valuing and developing communities and employees to take responsibility for solutions, and to make the most of our local assets.
- **Enterprising** – being innovative and creative, delivering lasting improvements;
- **Equality** – promoting equality and seeking to reduce inequality;
- **Focussed** – being strategic and prioritising the things that make the biggest difference to our communities.
- **Proud** – of West Lancashire as a place to live, work and invest.

In order to realise these commitments, the Council recognises that fair, proportionate and transparent regulation is essential. As such, the Council first adopted a Corporate Enforcement Policy in 2009, which was based on a number of influences at that time. These included the Human Rights Act 1998, the Government's Enforcement Concordat, the Macrory Review, the Department for Business Enterprise and Regulatory Reform Regulator's Compliance Code and the Hampton Review.

Our Approach

The Better Regulation Office of the Department for Business Innovation and Skills produced a Regulator's Code (the Code) in April 2014. This Enforcement Policy is based on that document and outlines the Council's approach to any enforcement activity. In introducing the Code, the Minister detailed the purpose of Regulators which is "to regulate for the protection of the vulnerable, the environment, social or other objective". He also indicated that "This Code does not detract from these Core Purposes but seeks to promote proportionate, consistent and targeted regulatory activity through the

development of transparent and effective dialogue and understanding between regulators and those they regulate".

Good enforcement secures compliance with legislation and as a result Council Officers will seek to use a combination of assistance, advice and formal action. Accordingly, the Council is required to have regard to the Code. If the Code is not followed, that decision and the reason(s) for it should be recorded.

The Council has a wide variety of regulatory/enforcement options available to it across a number of different legislative regimes. Essentially, these vary from informal verbal advice through to Court action.

~~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.~~

The principles of our approach are as follows:

1. The Council will support those they regulate to comply and grow

The Council will strive to avoid imposing unnecessary burdens and will act in a proportionate matter. This means Officers will balance enforcement action against risks and will consider what alternatives are available.

Supporting economic growth and compliant businesses will be a consideration given to new and reviewed Council policies, operational procedures and practices and as such Officers will strive to:

- Understand and minimise negative economic impacts of their regulatory activities;
- Minimise the costs of compliance;
- Provide greater certainty to improve confidence in compliance, and
- Encourage and promote compliance.

The Council will ensure its staff have the knowledge, skills and competence to support those they regulate and can consider proportionate and effective approaches.

2. The Council will provide simple and straightforward ways to engage with those regulated and listen to their views

When developing new policies and service standards that could affect those they regulate, the Council will engage with and seek the views of

residents and businesses. Unless legislation dictates otherwise, this communication will most frequently be done via the Council's website.

Unless immediate action to prevent or respond to a serious breach is necessary, Officers will ensure that any non-compliance is fully explained and will offer the opportunity to discuss any proposed action to ensure it is proportionate and consistent.

Officers will ensure that appeal mechanisms are highlighted. Any appeal will usually be to the Officer's line manager in the first instance, unless dictated by legislation, where the options for appeal will be clearly explained. The Council also operates a formal complaints procedure, the details of which are available on the Council's website (www.westlancs.gov.uk). Where possible, Officers will also engage with local business forums. Any relevant feedback regarding enforcement given to such groups will be passed on to the relevant section manager.

3. Regulation will be based on risk

The Council will ensure that resources are allocated appropriately according to risk. In some cases, the priority given to certain risks will be determined by external agencies (for example the Health and Safety Executive or the Food Standards Agency). The most appropriate form of intervention will be used in relation to the risk to employees, the public or the environment at the time the issue arises.

4. Information about compliance and risk should be shared

The Council will try to reduce the amount of information requested from businesses. However, information may be shared with other regulators to promote safeguarding, prevent fraud (including identify fraud) and deter criminal activity. Where information is shared, it shall be in accordance with the General Data Protection Regulation, Data Protection Act 2018 and/or other relevant legislation and Codes of Practice.

5. Clear information, guidance and advice will be provided

Officers will ensure that, when providing advice and support, legal requirements will be clearly distinguished from suggested good practice to prevent unnecessary burdens being imposed.

The Council encourages requests for advice and wants individuals and businesses to feel comfortable seeking advice without the fear of immediate enforcement action.

Officers will ensure that where alternative advice has been provided by other regulators, they will discuss this with the other regulator to reach an acceptable agreement.

6. Regulatory approaches will be transparent

Appendix 1 contains information relating to the inspection regimes operated by the Council. In carrying out these responsibilities, Officers can also provide information on what businesses can expect from them. This could include inspection regimes, the frequency of inspections, any relevant fees, how to contact officers and how to complain.

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.westlincs.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. In some cases, this approach is dictated by national guidelines and/or case 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 matters¹, 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

¹ Matters that relate to planning legislation are addressed directly in the Council's Planning Enforcement Plan, which is referenced below.

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, as, if a caution cannot be agreed, a prosecution must be taken. ~~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).~~

The following non-exhaustive list details some of the issues that can be taken into consideration when a decision is made whether to undertake a prosecution, or not:

- Blatant disregard for law;
- Placing law-abiding citizens at a disadvantage;
- Gravity of offence;
- Offender record, public expectation that offence is serious enough to warrant prosecution;
- Deterrent to others;
- Wilful intent;
- Previous history;
- Poor attitude;
- Significant penalty likely;
- Public concern;
- Public interest;
- The offence is contrary to Council's aims and priorities;
- The offence is commonplace and requires attention;
- Officers safety was compromised;
- Additional costs were incurred by the Council due to approach and the Council is the most appropriate body to act.

A record is kept of which of the above factors influenced the decision to act. In addition to the above, it is necessary to consider whether it is in the public interest to prosecute in accordance with the Code for Crown Prosecutors.

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 Council's 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.~~

Individual Directorate Policies

It is the Council's intention for this Enforcement Policy to apply to all of its Directorates. However, in some instances it is necessary for the Council to operate separate enforcement policies to address specific responsibilities. Where such policies exist, these will normally follow the general principles of this Enforcement Policy. An example is:

- Planning enforcement is based on the Council's Planning Enforcement Plan.

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.

Complaints

Anyone wishing to complain about enforcement action should contact the relevant service manager in the first instance. The Council's website (www.westlancs.gov.uk) contains details of the formal complaints procedure, which starts with the section manager and can progress to a Head of Service, if necessary. If the procedure is followed and there is still dissatisfaction with any response from the Council's Chief Executive, the matter could progress to the Local Government Ombudsman. Court convictions can also attract appeals and the Council would always suggest seeking legal advice regarding this approach.

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.westlincs.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.~~

Appendix 1

The different inspection regimes operated by the Council include:

Local Air Pollution Prevention and Control

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/342158/LAPPC-Risk-Method-July-2013-revision-Final.pdf

<http://www.westlancs.gov.uk/environment/environmental-issues/pollution-control/industrial-pollution-control-and-permits.aspx>

Food Safety

<https://www.food.gov.uk/about-us/local-authorities>

<http://www.westlancs.gov.uk/environment/foodsafety.aspx>

Health and Safety

<http://www.hse.gov.uk/lau/enforcement.htm>

<http://www.westlancs.gov.uk/business/business-services/business-regulation/health-and-safety.aspx>

Building Control

<http://www.westlancs.gov.uk/planning/building-regulations.aspx>

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:.....

.....

(Continue overleaf if necessary)

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

Reason:

.....

.....

Decision of EM - PROSECUTE YES / NO /?

Notes:.....

.....

.....

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:.....

West Lancashire Borough Council



Corporate Enforcement Policy

October 2018

Version 2.0

West Lancashire Borough Council and Enforcement

Set in the heart of the North West of England, the Borough of West Lancashire is located at the southern edge of Lancashire and also borders the Merseyside region. West Lancashire Borough Council (the Council) is ambitious for our businesses, our places and our people. We are committed to important projects that will benefit the Borough and everyone who lives and works here.

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. In doing so, the Council aims to ensure that the health, safety and wellbeing of the general public, employees, consumers and the environment are not put at risk.

Our Vision

The Council's vision is to be a council which is ambitious for West Lancashire – our Economy, Environment and for Health and Wellbeing.

We are ambitious for our economy, and for inclusive growth in West Lancashire, retaining and growing good quality jobs, increasing skill levels and encouraging business and wealth generation. This is matched by our ambitions for a good quality, clean, built and physical environment, and for ensuring the conditions are in place for people in West Lancashire to live healthy and fulfilling lives. These ambitions are reflected in the key priorities and key projects that have been identified.

Our Values

Our Vision is underpinned by our Values which are as follows:

- **Collaborative** – working in partnership to benefit West Lancashire, being open and involving in the way decisions are made, and adopting a co-ordinated "one Council" approach.
- **Empowering** – valuing and developing communities and employees to take responsibility for solutions, and to make the most of our local assets.
- **Enterprising** – being innovative and creative, delivering lasting improvements;
- **Equality** – promoting equality and seeking to reduce inequality;
- **Focussed** – being strategic and prioritising the things that make the biggest difference to our communities.
- **Proud** – of West Lancashire as a place to live, work and invest.

In order to realise these commitments, the Council recognises that fair, proportionate and transparent regulation is essential. As such, the Council first adopted a Corporate Enforcement Policy in 2009, which was based on a number of influences at that time. These included the Human Rights Act 1998, the Government's Enforcement Concordat, and the Macrory Review,

the Department for Business Enterprise and Regulatory Reform Regulator's Compliance Code and the Hampton Review.

Our Approach

The Better Regulation Office of the Department for Business Innovation and Skills produced a Regulator's Code (the Code) in April 2014. This Enforcement Policy is based on that document and outlines the Council's approach to any enforcement activity. In introducing the Code, the Minister detailed the purpose of Regulators which is "to regulate for the protection of the vulnerable, the environment, social or other objective". He also indicated that "This Code does not detract from these Core Purposes but seeks to promote proportionate, consistent and targeted regulatory activity through the development of transparent and effective dialogue and understanding between regulators and those they regulate".

Good enforcement secures compliance with legislation and as a result Council Officers will seek to use a combination of assistance, advice and formal action. Accordingly, the Council is required to have regard to the Code. If the Code is not followed, that decision and the reason(s) for it should be recorded.

The Council has a wide variety of regulatory/enforcement options available to it across a number of different legislative regimes. Essentially, these vary from informal verbal advice through to Court action.

The principles of our approach are as follows:

1. The Council will support those they regulate to comply and grow

The Council will strive to avoid imposing unnecessary burdens and will act in a proportionate matter. This means Officers will balance enforcement action against risks and will consider what alternatives are available.

Supporting economic growth and compliant businesses will be a consideration given to new and reviewed Council policies, operational procedures and practices and as such Officers will strive to:

- Understand and minimise negative economic impacts of their regulatory activities;
- Minimise the costs of compliance;
- Provide greater certainty to improve confidence in compliance, and
- Encourage and promote compliance.

The Council will ensure its staff have the knowledge, skills and competence to support those they regulate and can consider proportionate and effective approaches.

2. The Council will provide simple and straightforward ways to engage with those regulated and listen to their views

When developing new policies and service standards that could affect those they regulate, the Council will engage with and seek the views of residents and businesses. Unless legislation dictates otherwise, this communication will most frequently be done via the Council's website.

Unless immediate action to prevent or respond to a serious breach is necessary, Officers will ensure that any non-compliance is fully explained and will offer the opportunity to discuss any proposed action to ensure it is proportionate and consistent.

Officers will ensure that appeal mechanisms are highlighted. Any appeal will usually be to the Officer's line manager in the first instance, unless dictated by legislation, where the options for appeal will be clearly explained. The Council also operates a formal complaints procedure, the details of which are available on the Council's website (www.westlancs.gov.uk). Where possible, Officers will also engage with local business forums. Any relevant feedback regarding enforcement given to such groups will be passed on to the relevant section manager.

3. Regulation will be based on risk

The Council will ensure that resources are allocated appropriately according to risk. In some cases, the priority given to certain risks will be determined by external agencies (for example the Health and Safety Executive or the Food Standards Agency). The most appropriate form of intervention will be used in relation to the risk to employees, the public or the environment at the time the issue arises.

4. Information about compliance and risk should be shared

The Council will try to reduce the amount of information requested from businesses. However, information may be shared with other regulators to promote safeguarding, prevent fraud (including identify fraud) and deter criminal activity. Where information is shared, it shall be in accordance with the General Data Protection Regulation, Data Protection Act 2018 and/or other relevant legislation and Codes of Practice.

5. Clear information, guidance and advice will be provided

Officers will ensure that, when providing advice and support, legal requirements will be clearly distinguished from suggested good practice to prevent unnecessary burdens being imposed.

The Council encourages requests for advice and wants individuals and businesses to feel comfortable seeking advice without the fear of immediate enforcement action.

Officers will ensure that where alternative advice has been provided by other regulators, they will discuss this with the other regulator to reach an acceptable agreement.

6. Regulatory approaches will be transparent

Appendix 1 contains information relating to the inspection regimes operated by the Council. In carrying out these responsibilities, Officers can also provide information on what businesses can expect from them. This could include inspection regimes, the frequency of inspections, any relevant fees, how to contact officers and how to complain.

As a general rule, legal proceedings will not be undertaken without the offender being given reasonable opportunity to comply with the law. In some cases, this approach is dictated by national guidelines and/or case 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.

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.

For non-planning matters², 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, as, if a caution cannot be agreed, a prosecution must be taken.

The following non-exhaustive list details some of the issues that can be taken into consideration when a decision is made whether to undertake a prosecution, or not:

- Blatant disregard for law;
- Placing law-abiding citizens at a disadvantage;
- Gravity of offence;

² Matters that relate to planning legislation are addressed directly in the Council's Planning Enforcement Plan, which is referenced below.

- Offender record, public expectation that offence is serious enough to warrant prosecution;
- Deterrent to others;
- Wilful intent;
- Previous history,;
- Poor attitude;
- Significant penalty likely;
- Public concern;
- Public interest;
- The offence is contrary to Council's aims and priorities;
- The offence is commonplace and requires attention;
- Officers safety was compromised;
- Additional costs were incurred by the Council due to approach and the Council is the most appropriate body to act.

A record is kept of which of the above factors influenced the decision to act. In addition to the above, it is necessary to consider whether it is in the public interest to prosecute in accordance with the Code for Crown Prosecutors.

Individual Directorate Policies

It is the Council's intention for this Enforcement Policy to apply to all of its Directorates. However, in some instances it is necessary for the Council to operate separate enforcement policies to address specific responsibilities. Where such policies exist, these will normally follow the general principles of this Enforcement Policy. An example is planning enforcement which is based on the Council's Planning Enforcement Plan.

Complaints

Anyone wishing to complain about enforcement action should contact the relevant service manager in the first instance. The Council's website (www.westlancs.gov.uk) contains details of the formal complaints procedure, which starts with the section manager and can progress to a Head of Service, if necessary. If the procedure is followed and there is still dissatisfaction with any response from the Council's Chief Executive, the matter could progress to the Local Government Ombudsman. Court convictions can also attract appeals and the Council would always suggest seeking legal advice regarding this approach.

Appendix 1

The different inspection regimes operated by the Council include:

Local Air Pollution Prevention and Control

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/342158/LAPPC-Risk-Method-July-2013-revision-Final.pdf

<http://www.westlancs.gov.uk/environment/environmental-issues/pollution-control/industrial-pollution-control-and-permits.aspx>

Food Safety

<https://www.food.gov.uk/about-us/local-authorities>

<http://www.westlancs.gov.uk/environment/foodsafety.aspx>

Health and Safety


<http://www.hse.gov.uk/lau/enforcement.htm>

<http://www.westlancs.gov.uk/business/business-services/business-regulation/health-and-safety.aspx>

Building Control

<http://www.westlancs.gov.uk/planning/building-regulations.aspx>

APPENDIX 2

Equality Impact Assessment Form 	
Directorate: Leisure and Environment	Service: Environmental Protection and Community Safety
Completed by: Andrew Hill	Date: 23rd October 2018
Subject Title: Corporate Enforcement Policy	
1. DESCRIPTION	
Is a policy or strategy being produced or revised:	Yes
Is a service being designed, redesigned or cutback:	No
Is a commissioning plan or contract specification being developed:	No
Is a budget being set or funding allocated:	No
Is a programme or project being planned:	No
Are recommendations being presented to senior managers and/or Councillors:	Yes
Does the activity contribute to meeting our duties under the Equality Act 2010 and Public Sector Equality Duty (Eliminating unlawful discrimination/harassment, advancing equality of opportunity, fostering good relations):	Yes
Details of the matter under consideration:	Agreement of revised Corporate Enforcement Policy
<i>If you answered Yes to any of the above go straight to Section 3</i> <i>If you answered No to all the above please complete Section 2</i>	
2. RELEVANCE	
Does the work being carried out impact on service users, staff or Councillors (stakeholders):	Yes
If Yes , provide details of how this impacts on service users, staff or Councillors (stakeholders): <i>If you answered Yes go to Section 3</i>	
If you answered No to both Sections 1 and 2 provide details of why there is no impact on these three groups: <i>You do not need to complete the rest of this form.</i>	
3. EVIDENCE COLLECTION	
Who does the work being carried out impact on, i.e. who is/are the stakeholder(s)?	WLBC residents and businesses
If the work being carried out relates to a universal service, who needs or uses it most? (Is there any particular group affected more than others)?	

Which of the protected characteristics are most relevant to the work being carried out?	
Age	No
Gender	No
Disability	No
Race and Culture	No
Sexual Orientation	No
Religion or Belief	No
Gender Reassignment	No
Marriage and Civil Partnership	No
Pregnancy and Maternity	No
4. DATA ANALYSIS	
In relation to the work being carried out, and the service/function in question, who is actually or currently using the service and why?	
What will the impact of the work being carried out be on usage/the stakeholders?	Consistent enforcement action
What are people's views about the services? Are some customers more satisfied than others, and if so what are the reasons? Can these be affected by the proposals?	Enforcement in relation to offences is usually welcomed
What sources of data including consultation results have you used to analyse the impact of the work being carried out on users/stakeholders with protected characteristics?	n/a
If any further data/consultation is needed and is to be gathered, please specify:	n/a
5. IMPACT OF DECISIONS	
In what way will the changes impact on people with particular protected characteristics (either positively or negatively or in terms of disproportionate impact)?	n/a
6. CONSIDERING THE IMPACT	
If there is a negative impact what action can be taken to mitigate it? (If it is not possible or desirable to take actions to reduce the impact, explain why this is the case (e.g. legislative or financial drivers etc.).	n/a
What actions do you plan to take to address any other issues above?	n/a
7. MONITORING AND REVIEWING	
When will this assessment be reviewed and who will review it?	Andrew Hill January 2023