



Enforcement Policy

Environmental and Housing
Services

1. Introduction

This policy aims to set out the approach by Fylde Council in dealing with non-compliance and a commitment to good enforcement practice, informed by the principles of good regulation.

The Environmental and Housing Services departments aim to:

- protect the public and the environment
- promote the health, safety and welfare of all our residents and visitors
- enhance the quality of life for all residents and visitors and
- allow compliant businesses to flourish

Much of this work is achieved through education and advice. However where this fails to motivate individuals and business to improve then enforcement powers exist to ensure regulatory compliance.

We endeavour to adopt a graduated approach to enforcement action, and it will be taken in a fair, proportionate and consistent manner. All enforcement action will be considered with regards to this policy, in combination with current legislation, guidance and relevant Codes of Practice. We aim to carry out our regulatory functions without imposing unnecessary burdens on businesses.

2. Scope

This Enforcement Policy sets out standards and guidance for all officers involved in regulatory enforcement work at Fylde Council, and all stakeholders regulated by Fylde Council on the approach that will be adopted in the event of non-compliance.

Enforcement includes any civil or criminal action taken by enforcement officers aimed at ensuring individuals or businesses comply with the law.

The department deals with a myriad of legislation and enforcement options in the following regulatory areas:

- Licensing
- Housing
- Food Control
- Health and Safety Enforcement
- Environmental Protection (air quality, contaminated land, environmental nuisance, Public Health Act funerals, flytipping, Local Air Pollution Prevention and Control (LAPPC))
- Antisocial Behaviour
- Animal welfare
- Waste and litter enforcement
- Public Health
- Public Space Protection Orders (active orders within Fylde include ban on open fires in certain areas e.g. barbeques, dog control, restrictions on alcohol).

This policy intends to be reasonably comprehensive but cannot cover every situation which this department may have to deal with.

3. Legislative framework

In producing this enforcement policy we have had regard to various relevant pieces of legislation and guidance including:

The Legislative and Regulatory Reform Act 2006 which requires regulators to carry out their regulatory activities in a way which is proportionate, accountable, consistent, transparent and targeted.

The Regulators Code which came into effect on 6 April 2014 and provides a clear, flexible and principles-based framework for how regulators should engage with those they regulate. It provides a set of principles for Regulators to consider:

1. Regulators should carry out their activities in a way that supports those they regulate to comply and grow
2. Regulators should provide simple and straight forward ways to engage with those they regulate and hear their views
3. Regulators should base their regulatory activities on risk
4. Regulators should share information about compliance and risk
5. Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply
6. Regulators should ensure that their approach to their regulatory activities is transparent – this includes an expectation that Regulators have an enforcement policy explaining how they respond to non-compliance.

The provisions within ***The Human Rights Act 1998*** are considered in this policy and all associated enforcement decisions. Due regard is given to the right to a fair trial and the right to respect for private and family life.

Where there is a need for the Council to share enforcement information with other agencies we will follow the provisions of the ***Data Protection Act 2018***.

When deciding whether to prosecute the Council has regard to the provisions of ***The Code for Crown Prosecutors*** which sets out two tests that must be satisfied, commonly referred to as the 'Evidential test' and 'The Public Interest test'.

The Regulatory Enforcement and Sanctions Act 2008 established the Primary Authority scheme and we will comply with the requirements of this Act and associated guidance when we are considering taking enforcement action against any business or organisation that has a Primary Authority agreement.

Investigations will be carried out in accordance with the following legislation and associated guidance, in so far as they relate to the Council:

The Police and Criminal Evidence Act 1984
The Criminal Procedure and Investigations Act 1996
The Regulation of Investigatory Powers Act 2000
The Criminal Justice and Police Act 2001
The Human Rights Act 1998
Attorney Generals Guidelines
The Protection of Freedoms Act 2012

4. General Approach

The Environmental and Housing Services departments aim to carry out their regulatory and enforcement duties without imposing unnecessary burdens on businesses or individuals.

We will endeavour to carry out our activities in an open and transparent way.

We shall have regard to all legal framework and guidance including that mentioned above. Each service area will have specific legislation, guidance, Codes of Practice which will guide appropriate enforcement decisions.

All regulatory work will be carried out by appropriately authorised officers who have received appropriate training, qualifications and/or supervision and have been trained in this policy to ensure it is applied consistently.

Authorised officers will be responsible for carrying out initial complaint investigations, inspections etc in the first instance. Any issues will be escalated to the Principal Officer/Manager.

Access to premises is normally achieved by informal means with the consent of the operator but where this fails the relevant legislation will usually provide a power of entry. Sometimes prior notice would be counterproductive or impractical in which case a visit will be made without prior notice. In some circumstances failing to allow entry to a premises is an offence of obstruction, and sometimes an application can be made to Magistrates Court for a warrant to enter premises.

Officers will always provide their name and contact information in relation to a regulatory or enforcement matter. Officers will be helpful, courteous and professional in their conduct.

We will usually provide the opportunity to enter dialogue to discuss advice given, actions required, or decisions taken in relation to non-compliance, and we can provide access to translators if required.

We will work with businesses and individuals to assist them in complying with their legal duties as we believe that most businesses wish to comply with the law but may need help in doing so.

We shall provide advice and guidance, including where necessary links to external sources.

All enforcement decisions will be made objectively to ensure that our decisions are not influenced by the gender, ethnicity, religious or political beliefs, disability or sexual preferences of any alleged offender(s).

Fylde Council supports national enforcement campaigns such as the Food Standards Agency's National Food Hygiene Rating Scheme to allow consumers to make informed choices.

We shall put procedures in place to ensure this policy is adhered to and review it on a regular basis, or when change is necessary.

We shall use a risk assessment approach to concentrate resources on to our higher risk areas and premises.

Fylde Council acknowledges their involvement in allowing and even encouraging economic progress and take into consideration the costs, effectiveness and perceptions of fairness when considering any enforcement action.

We will work with partner agencies to deliver multiagency solutions and will share the necessary intelligence to facilitate this.

We will provide clear application forms and explanatory notes where necessary.

We shall ensure efficient and effective compliance with the requirements of the Environmental Permitting (England & Wales) Regulations 2010. We will issue clear environmental permits based on the Secretary of State's guidance, and local circumstances, within the specified timescales where possible. Where the local authority is satisfied that there is an imminent risk of serious pollution of the environment a suspension notice may be served.

The departments will undertake their responsibilities with regards to antisocial behaviour with due regard for safeguarding issues and will have regard to the Community Trigger principles within the Anti-social Behaviour Crime and Policing Act 2014.

5. Enforcement Approach

The general principle will always hinge around negotiation, advice, guidance, education, and support, to achieve maximum benefit from minimum resource input, whilst avoiding unnecessary regulatory burdens.

We will have regard to Primary Authority agreements and take this into consideration where necessary.

Enforcement action will always be proportionate to the scale, seriousness, and intentionality of the offence.

Enforcement action will follow statutory guidance. Officers will also comply with the requirements of the particular legislation under which they are acting. Most of this legislation provides officers with powers of entry at all reasonable times with the associated offence of obstruction if entry is refused.

Enforcement action will usually be graduated. Any individuals/businesses that deliberately or persistently flout the law will usually be subject to enforcement action..

The risk assessment approach and relevant guidance within each service area will guide the need for appropriate enforcement action.

We will ensure consistency whilst recognising individual circumstances which may modify what action should be taken in each case.

Where incidents of non-compliance are revealed voluntarily with a willingness to resolve the issue, the Council will usually provide support and endeavour to avoid formal enforcement action. Enforcement action would not normally be instigated for innocent mistakes.

In certain circumstances, where an offence is thought to have been committed, communications may need to be undertaken in accordance with the requirements of the Police and Criminal Evidence Act (PACE) and its associated Codes. Any alleged offender will usually be invited to a tape recorded interview under caution at these offices to discuss the offence, and they have the right to legal representation at the interview.

The investigating officers will endeavour to keep the alleged offenders up to date with the investigation, and certainly when a decision has been made to instigate legal proceedings.

All staff will demonstrate commitment to equality in exercising their duties and in their professional relationships with regulated persons to ensure fair and effective enforcement.

Prosecution will only be considered where the relevant evidential and public interest tests have been met.

Any relevant complaint and appeal procedures will be brought to the attention of any person who has enforcement action taken against them.

Failure to comply with enforcement action could result in an escalation of enforcement action. For instance failing to comply with a legal notice could result in legal proceedings being instigated.

Escalated enforcement action will be taken where the continuing non conformance is detrimental and there is a high risk of continuing non-conformance.

Where prosecution is being considered, all cases will be reviewed by the relevant Head of Service.

We also reserve the right to take enforcement action in some cases after compliance has been achieved if it is in the public interest to do so.

Media attention will be sought where appropriate for successful prosecutions to emphasise the need to comply with the law, to deter illegal behaviour, and to instil confidence in the public that we are using enforcement tools where appropriate to protect the public.

6. Enforcement Options

Our primary function is to achieve regulatory compliance to protect the public, compliant businesses and the environment. We recognise that prevention is better than cure and work with all our businesses to help them comply with the law. But where it becomes necessary to take enforcement action we will do so.

The available enforcement options include those mentioned below. This is not an exhaustive list and it will change as legislation changes.

Sometimes several enforcement options could be taken at the same time. Failure to comply with enforcement action could result in an escalation of enforcement action. For instance failing to comply with a legal notice could result in legal proceedings being instigated.

Enforcement Options Available	
No action	In certain circumstances no action may be considered appropriate such as when an offender is elderly, frail or suffering from mental or physical ill health.
Advice/informal action	For minor breaches we may offer verbal advice/refer to guidance documents. This will always be the preferred course of action where individuals have a good record of compliance and/or appear eager to comply.
Warning letter	<p>A written warning that a recurrence or continuation of an infringement will result in legal action.</p> <p>In some instances a deadline may be set which would be reasonable and take into account the seriousness of the contravention.</p> <p>We shall be clear about what is a legal requirement and what is advice on good practice.</p> <p>Letter shall be laid out in a clear and concise way, it shall detail what work is required, why it is required, and a time frame in which the works should be completed.</p> <p>The letter should be sent as soon as possible after the intervention.</p>
Statutory legal enforcement notices	<p>Certain legislation allows notices to be served requiring specific actions or the ceasing of certain activities. Some notices may require activities to cease immediately (particularly in relation to health, safety, environmental damage or nuisance).</p> <p>In other circumstances the time allowed will be reasonable, taking into</p>

	<p>account the seriousness of the contravention, the implications of the non-compliance and the appeal period for that notice.</p> <p>In some circumstances we have the power to close businesses or carry out work in default, where reasonable costs are recoverable from the offender.</p> <p>Some notices have a requirement to have emergency action confirmed by a Magistrates Court.</p> <p>Any appeal provision will be provided with the notices at the time of service</p>
Simple caution	<p>In appropriate circumstances and where prosecution would be justified a Simple Caution may be administered. The following criteria must be satisfied:</p> <p>The person liable admits the offence A prosecution could be taken There are mitigating circumstances suggesting a Simple Caution is the more appropriate course of action The offender must be over 18 years of age</p> <p>It is an admission of guilt but not a criminal conviction</p>
Prosecution	<p>The institution of legal proceedings against an individual or company in respect of a criminal charge at Magistrates or Crown Court. The Council may seek to prosecute in respect of serious or recurrent breaches or where other enforcement actions have failed to secure compliance.</p> <p>When deciding whether to prosecute we shall have regard to the provisions of the Code for Crown Prosecutors – (1) prosecution will only be considered where the Council is satisfied that it has sufficient evidence to provide a realistic prospect of conviction and (2) whether prosecution is in the public interest.</p> <p>A successful prosecution will result in a criminal conviction and the court may impose a range of sentences.</p>
Licence review	<p>The Council issues a number of licences which include conditions requiring the licence holder to take steps to ensure the business is appropriately run. Breaches of these conditions may lead to a review of the licence which may lead to its revocation or amendment.</p> <p>Where any licensed premises breaches the licensing objectives of the Licensing Act 2003 then one of the ‘responsible authorities’ may apply to review the licence.</p> <p>Hackney carriage and private hire drivers licences may be revoked suspended, or refused a renewal.</p>
Proceeds of Crime Act applications	<p>The Local Authority, or in co-operation with the police may make application under the Proceeds of Crime Act 2002 to restrain and/or confiscate the assets of an offender. The purpose of any such proceedings is to recover the financial benefit that the offender has obtained from his criminal conduct. Proceedings are conducted according to the civil standard of proof.</p>

	This can be a significant contribution to the disruption of criminal enterprises through money laundering investigations to aid criminal investigations and through the recovery of criminal assets.
Community Protection Notices	These are issued under the Antisocial Behaviour Crime and Policing Act after a Community Protection Warning has been issued when the conduct of the individual or body is having a detrimental effect, of a persisting or continuing nature on the quality of life of those in the locality, and the conduct is unreasonable.
Criminal Behaviour Orders	These can be applied for when a person has been convicted of an offence and has engaged in behaviour that has caused or is likely to cause harassment, alarm or distress, and the court believes the making of the order will help prevent the offender from engaging in such behaviour
Public Spaces Protection Order	These are intended to deal with nuisance or problems in an area that cause harm to the quality of life of the local community. They impose conditions or restrictions on people using the specified area.
Fixed penalty notices	Notices served by an authorised officer to a person who has committed a criminal offence, often for antisocial behaviour or environmental crime such as littering or dog fouling. Failure to pay may result in prosecution or civil debt recovery.
Seizure	Certain legislation enables enforcement officers to seize goods, foods, equipment, or documents which may be unsafe or its being used to cause a nuisance, or as evidence for legal proceedings. We will give the person from whom the goods are taken an appropriate receipt and details of any appeals procedures and/or property return procedures.
Civil penalty	The Housing and Planning Act 2016 allows financial penalties to be imposed as an alternative to prosecution for certain offences under the Housing Act 2004. These can only be used when there is a realistic prospect of a conviction.
Permitting	Environmental permits set out limits on the pollution that a business can make at a premises and sets out what it needs to do prevent and control pollution of air, water, or land.

7. Review and Comments

If you would like to discuss or comment on this policy, then please contact us and help us improve.

Any complaints about enforcement action or the actions of our officers can be made through the Councils corporate complaint procedure <https://new.fylde.gov.uk/complaints/>

Our policies will be published on the Fylde Council website.



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