



# **ENFORCEMENT AND PROSECUTION POLICY**

## 1. Introduction

- a. Council has a variety of enforcement functions, the purpose of which are to promote public safety and to protect public amenities, the environment and consumers.
- b. The Council's intention is to promote a balanced, thriving and safe local community by carrying out enforcement in a practical and proportionate manner, whilst having regard to the impact the enforcement is likely to have upon local businesses and people.
- c. The Council also has a statutory duty to have regard to the need to safeguard the welfare of children<sup>1</sup> and vulnerable adults<sup>2</sup> and to prevent and detect crime<sup>3</sup> in exercising any of its other statutory functions.
- d. This policy sets out the general standards that will be applied in relation to enforcement of legislation by the Council in its role as regulator and enforcer. It must be noted that this policy cannot describe every piece of legislation or every national or local code or standard. The Council will use its best endeavours to apply all the general principles in this policy wherever possible whilst recognising that each case must be dealt with lawfully on its own merits.

## 2. The Council's Statutory Functions

The following list contains the categories of statutory enforcement functions the Council's enforcement services are empowered to carry out:

- Environmental protection
- Envirocrime
- Housing Standards

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<sup>1</sup> Section 11 Children Act 2004

<sup>2</sup> Care Act 2014

<sup>3</sup> Section 17 Crime and Disorder Act 1998

- Planning, Building Control and Highways (including parking)
- Licensing
- Trading standards and consumer protection
- Community Safety- Anti-Social Behaviour
- Food law
- Feed law
- Health and safety at work
- Education – Unauthorised Absence from School / Breach of School Attendance Order

## **2. Principles of Enforcement**

The Council hereby commits to the principles of proportionality, consistency, transparency, targeted/prioritised enforcement action and accountability, all of which are set out in the statutory Regulators' Code (the Code)<sup>4</sup>. It is a statutory duty for all regulators to have regard to the Code when considering exercising a regulatory function.<sup>5</sup> All these principles have been taken into account in this policy but in the event of any perceived inconsistencies the Regulators Code will prevail (save that it shall not override the status of the Code for Crown Prosecutors in relation to prosecutions.)

## **3. Proportionality**

- a) Any enforcement action taken by the Council will be proportionate to the seriousness of the harm or likely harm which the enforcement is designed to prevent. An assessment of any harm being suffered by the victims or complainants and the effects of that harm upon them should be done where relevant in order to decide what action would be most appropriate.

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<sup>4</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/300126/14-705-regulators-code.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf)

<sup>5</sup> Section 22 of the Legislative and Regulatory Reform Act 2006  
<http://www.legislation.gov.uk/ukpga/2006/51/contents>

- b) In accordance with the Regulators' Code, the Council's enforcement services should also assess whether similar social, environmental and economic outcomes could be achieved by less burdensome means, taking into account, for example, business size and capacity. They should also ensure that their officers have the necessary knowledge and skills to understand those they regulate so that they are better able to choose proportionate and effective approaches<sup>6</sup>.
- c) The role of the Council's enforcement services is to obtain and maintain compliance, the preferred method being by means of engagement, inspection, advice and education. Formal enforcement actions are viewed as a means of helping to secure appropriate standards and changes in behaviour, not an end in themselves.
- d) The Council will take into account all the circumstances of the particular case but will also take into account the attitude of the business or person who is being investigated. Full co-operation with any investigation is likely to be a mitigating feature which will be taken into account when the Council is making a decision as to the type of enforcement action to take. Deliberately ignoring warnings will be an aggravating feature.
- e) A prosecution will normally only be taken in cases where the harm or risk of harm is most serious or in cases where the more informal types of enforcement, including repeated written and/or oral warnings, have been unsuccessful in changing the illegal behaviour of the offender, or where there are unpaid fixed penalty notices<sup>7</sup> (e.g. littering or non-school attendance or persistent anti-social behaviour).

#### **4. Consistency**

- a) Arrangements are in place to promote consistency in the interpretation and enforcement of legislation through national or local standards. Such

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<sup>6</sup> See para 1.1 and 1.3 of the Regulators' Code

<sup>7</sup> or other unpaid civil penalties where the statute prescribes prosecution as the enforcement method

standards are set by liaising with other local authorities and taking advice provided by professional organisations such as National Trading Standards, the Association of Chief Trading Standards Officers, the Chartered Institute of Environmental Health, the Institute of Licensing, Chartered Association of Building Engineers (CABE), Royal Institute of Chartered Surveyors (RICS), Royal Town Planning Institute (RTPI), National Association of Planning Enforcement (NAPE), Ofsted and other central government departments e.g. Regulatory Delivery, DfE, MHCLG, DoE, Health and Safety Executive.

- b) Council procedures require that senior managers maintain oversight of formal enforcement activity and that enforcement officers receive appropriate training and supervision.
- c) Consistency is not a simple matter of uniformity. As well as comparing similar cases, and looking at national or local standards, officers will also need to exercise their professional judgement and discretion according to the circumstances of each individual case and be able to justify their actions accordingly.
- d) Any decision regarding enforcement action must be impartial, reasonable, take into account all relevant considerations and discount irrelevant considerations.

## **5. Transparency and clarity**

- a) Transparency is important in maintaining public confidence in the Council's ability to regulate. Transparency and clarity means helping those the Council regulates to understand what is expected of them and what they should expect from the Council (including the use of plain English standards). It also means making clear why the Council intends to, or has taken enforcement action.
- b) The Council's enforcement services must, in their dealings with individuals and businesses who may be in breach of regulations, ensure that they

make it clear which requirements are legal requirements which must be complied with and which are best practice or policy guidance.

- c) The Council will from time to time publish specific enforcement policies for specific legislative functions. See clause 12.4 below as to their status.
- d) Some pieces of legislation also advocate transparency. For example, the Council's enforcement services are also required under section 51 Protection of Freedoms Act 2012 to have regard to the Code of Practice on Powers of Entry<sup>8</sup> which requires the reasonable exercise of those powers as well as ensuring that the enforcing officers keep the occupier properly informed in undertaking their rights of entry into premises under the various pieces of legislation.
- e) The Council will ensure that where they request an individual or a business to take remedial action, they will explain why the action is necessary and by when it must be carried out. The Council will ensure that a written explanation is given of the relevant legislation and give details of any rights of appeal against formal enforcement action and the appeal limitation period.
- f) The Council will accommodate all requests for information unless it is exempt under the Freedom of Information Act 2000, the Environmental Information Regulations 2004 or other statutory restriction e.g. as exists in the Enterprise Act 2002<sup>9</sup>.

## **6. Targeting/Prioritising/Assessing risks/threats**

- a) Targeting means making sure that the Council's enforcement services are directed primarily towards those whose activities actually or potentially give rise to the most serious breaches of legislation or tackling issues which cause the most concern to

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/383079/Code\\_of\\_Practice\\_-\\_Powers\\_of\\_Entry\\_web\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/383079/Code_of_Practice_-_Powers_of_Entry_web_.pdf)

<sup>9</sup> Section 237 onwards

stakeholders and/or 'hot spots' in relation to the matters set out in paragraph 1.1 above.

- b) Systems of prioritising enforcement include responding to complaints from individuals in the community about regulated activities, the inspection of premises/areas according to the threats assessed and the gathering and acting on intelligence about potential illegal activities. Intelligence-led threat assessments may be made from time to time by each of the Council's enforcement services. Resources for enforcement should be allocated in such a way as will be most effective in addressing these priorities.

## **7. Accountability**

The Council's enforcement services are accountable to the public for their actions while remaining independent in the decisions taken. Any complaints about the Council's services should be addressed to:--

[feedback@blackburn.gov.uk](mailto:feedback@blackburn.gov.uk) or in writing to:

Corporate Complaints Manager,  
Blackburn with Darwen Borough Council,  
Town Hall,  
King William Street,  
BB1 7DY.

## **8. Human Rights and Equality**

- a) In carrying out its enforcement activities the Council's enforcement services will have regard to the rights and freedoms guaranteed to individuals under the Human Rights Act 1998 (HRA). Particular attention will be given to the human rights aspect in cases where either the perpetrator or the victim of the breach is considered to be vulnerable.

- b) The Council considers the right of an individual to the right to respect for their private and family life<sup>10</sup> to be significant when exercising enforcement. The Council will ensure that where it is proposed to interfere with that right it is done lawfully, only when needed and proportionately. The right to a fair trial<sup>11</sup> and the interests of justice should be taken into account particularly where the Council is considering taking away a licence to operate a business. The right to the peaceful enjoyment of one's possessions<sup>12</sup> should also be taken into consideration particularly when considering the rights of entry to property and seizure.
- c) The Council will ensure that it complies with the Equality Act 2010 and whilst undertaking enforcement will not adopt practices which discriminate directly or indirectly as defined by that Act.

## **9. Authorisation**

Any officer carrying out enforcement work should be authorised to do so by the Council (through the relevant schemes and delegation/ delegated powers). All enforcement officers should carry their identity cards and a list of legislation they are authorised to enforce.

## **10. Purpose and Methods of Enforcement**

- a) The purpose of enforcement is to ensure that preventative or remedial action is taken to secure compliance with the legal requirements. Enforcement action may be taken as a result of an incident, a service request, intelligence or an inspection.
- b) The Council's enforcement services will deal with service requests in a manner which reflects the principles stated above, by

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<sup>10</sup> Article 8 of the ECHR

<sup>11</sup> Article 6 “ “ “

<sup>12</sup> Article 1 of the first Protocol of the ECHR

prioritising resources accordingly and will investigate offences with a view to prosecution where appropriate.

- c) As a general rule and where there may be options, the level of enforcement contemplated will be the minimum at which a satisfactory solution is thought to be achievable. The possible deterrent effect a prosecution may have on compliance in the Council's area will also be considered.
- d) It is anticipated that most of the Council's enforcement service's dealings with those they regulate will be through informal avenues providing education, advice and assistance. However, where informal methods have been unsuccessful, or a serious or repeated breach of legislation has, or is likely to, occur, formal enforcement action will be taken to ensure compliance with the law.
- e) In some circumstances, specially developed schemes may be available by way of restorative justice<sup>13</sup> to deal with offenders as an alternative to formal action but only where the enforcement service is satisfied that there is sufficient evidence of a breach and only with the consent and full co-operation of the person in breach.<sup>14</sup>
- f) Decisions on the appropriate enforcement actions and when and how to carry out investigations, will be made by authorised officers of the relevant enforcement service. The Council Solicitor has delegated powers to issue summonses when prosecution is contemplated or to issue civil claims when civil action is contemplated. The decision to proceed to legal action in the courts is delegated to the Director of HR, Legal & Governance in accordance with the constitution and further delegated to the

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<sup>13</sup> Now recognised as a sentencing power of a court under Section 1ZA Powers of Criminal Courts (Sentencing) Act 2000 provided the offender agrees to that course of action as an alternative to a formal court fine or other sentence.

<sup>14</sup> For example, a training course aimed at educating offenders in under age sales cases may be offered as an alternative to formal action; a scheme which provides for offenders' attendance at a litter clearing event might be offered as an alternative to formal action in cases of envirocrime.

Council Solicitor, save that Health & Safety Officers alone can commence prosecutions under the health & Safety at Work (etc) Act 1974

- g) Other enforcement officers have delegated powers to issue civil penalty notices or fixed penalty notices, as well as other enforcement powers e.g. to apply for warrants and serve statutory notices. However, in relation to civil penalty notices for housing standards offences, statutory guidance makes it clear that it must first be determined that there is a realistic prospect of conviction in accordance with the Code for Crown Prosecutors<sup>15</sup> prior to the civil penalty being issued.
- h) Council members set priorities and guide decision making in relation to determining the types of enforcement action that might be taken in relation to offences, and will approve general policies. Decision-making in respect of individual breaches is however delegated under the Council constitution to the requisite officers thereby assuring that no conflicts of interest can arise.
- i) Council enforcement services will be proactive in adopting a partnership approach to tackling issues within the Council's area and to that extent will seek to establish these as formal written agreements with both internal and external partners particularly where data sharing is concerned.

## **11. Enforcement Action Available**

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<sup>15</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/697644/Civil\\_penalty\\_guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/697644/Civil_penalty_guidance.pdf)

- a) There are a variety of enforcement actions available to the Council. It is not feasible to list every type of action that the Council is empowered to take under the many pieces of legislation applicable to each area of enforcement. Generally, the following can be considered examples:
- i. general powers of investigation, making enquiries, use of powers of entry, powers to search premises and seize items used in the commission of offences;
  - ii. provision of advice to particular individuals or businesses or other means of education such as leafleting or other wider publicity,
  - iii. warnings to individuals or businesses, written or oral;
  - iv. informal or formal mediation between complainants and those individuals or businesses that are complained about resulting in behaviour agreements or undertakings (statutory under the EA 2002 or non-statutory);
  - v. service of statutory notices such as abatement notices, community protection notices, stop notices, breach of condition notices, enforcement notices, request for information notices;
  - vi. Issue of fixed and civil penalty notices requiring payment of a fine; some whose non-payment results in prosecution, some whose non-payment results in a civil debt recovery process;
  - vii. issuing of simple and informal cautions, (which may include restorative justice),
  - viii. applications to the civil court for:

- confiscation of assets/financial benefit obtained as a result of commission of a crime,
  - forfeiture of items used in the commission of offences,
  - closure of business premises or
  - Enforcement orders under the Enterprise Act 2002,
  - injunction under Town and Country Planning Act 1990
  - anti-social behaviour injunctions;
- ix. Prosecutions which result in a punishment by the criminal court such as a statutory fine or imprisonment – and which may also include ancillary applications as set out in g) above;
- x. The recovery of civil debt arising from works done by the Council in default e.g. in planning breaches where the owner fails to rectify the breach or housing cases where the owner fails to undertake required safety works.
- xi. Refusal of an application for a licence or permit for which the Council is the issuing body or the review, suspension or revocation of such a licence or permit e.g. taxi licenses, premises licenses (which cover licensable activities such as sale of alcohol and food) and HMO (Houses in Multiple Occupation) or other selective housing licences
- b) Note that this list is not exhaustive and the Council will rely on the powers set out in each particular statute and consider all the facts of a particular case before making a reasoned decision as to how to proceed. This decision will take into account available threat assessments made from time to time by each enforcement team.
- c) The Council officers will also adhere where appropriate to guidance which is either statutory or advisory. Statutory guidance is issued in accordance with the various specific statutes e.g. the Home office Guidance on the Anti-

Social Behaviour Crime and Policing Act 2014<sup>16</sup>. However, there will also be advisory policies and guidance issued by the various statutory, central government or professional bodies for each function. One example is the detailed guidance produced by the Health and Safety Executive in relation to enforcement decision making (the Enforcement Management Model, or EMM)<sup>17</sup> and officers must have regard to this document when determining what action to take in relation to health and safety breaches<sup>18</sup>.

- d) In addition to the matters referred to in 12.3 above there may also be other enforcement policies adopted by the Council for each specific enforcement function which are published from time to time on the Council's website. This policy shall be general. In the event of an inconsistency the specific enforcement policy will prevail.

## **12. Conduct of Investigations.**

Investigations carried out by the Council's enforcement officers will be carried out in accordance with relevant legislation and associated statutory codes of practice where they are applicable. Some specific pieces of legislation such as food safety legislation also provide procedures for specific evidence gathering by means of multiple sample collection and recording. The most notable pieces of legislation which apply to all investigations of criminal offences across the different Council functions are:

- The Police and Criminal Evidence Act 1984 and PACE Codes of Practice A to H, which cover procedures for such matters as search warrants and interviews under caution;

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<sup>16</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/679712/2017-12-13\\_ASB\\_Revised\\_Statutory\\_Guidance\\_V2.1\\_Final.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/679712/2017-12-13_ASB_Revised_Statutory_Guidance_V2.1_Final.pdf)

<sup>17</sup> <http://www.hse.gov.uk/enforce/enforcement-management-model.htm>

<sup>18</sup> Other examples include policies developed by such organisations as the Association of Greater Manchester Authorities (AGMA) which develop policies for licensing and other matters, and more particularly it has recently developed a policy on civil penalties as an alternative to prosecution for relevant housing offences which authorities can adopt.

- Criminal Procedure and Investigations Act 1996 and the associated Code of Practice, which covers procedures for identifying, recording, retaining and disclosing unused material;
- Regulation of Investigatory Powers Act 2000 and Human Rights Act 2000 which govern the use of investigation techniques which have an impact upon the privacy of the individual.

### **13. Code For Crown Prosecutors**

#### **Factors Determining Prosecution**

- a) Where statutory powers to prosecute exist, the decision to refer for prosecution is not taken lightly and is always considered in line with the Code for Crown Prosecutors<sup>19</sup>.
- b) Before a decision to refer for prosecution is taken the case must firstly satisfy the evidential test and then secondly the public interest test. A case which does not pass the evidential stage must not proceed no matter how serious or sensitive it may seem.
- c) Once prosecution has been determined as the appropriate course of action, consideration will automatically be given to supplementary sanctions available through the Courts (such as applications for forfeiture, compensation, Criminal Behaviour Order on a case by case basis.
- d) If a person who is accused or convicted of an offence can be shown to have a criminal lifestyle and to have benefitted financially from his crimes then the Council enforcement officers will consider appointing an Accredited Financial Investigator to undertake an investigation under the Proceeds of Crime Act 2002 and its accompanying Code of Practice<sup>20</sup>. This investigation may run parallel with the criminal investigation and

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<sup>19</sup> [http://www.cps.gov.uk/publications/docs/code\\_2013\\_accessible\\_english.pdf](http://www.cps.gov.uk/publications/docs/code_2013_accessible_english.pdf)

<sup>20</sup> <https://www.gov.uk/government/publications/proceeds-of-crime-act-codes-of-practice>

which could result in a formal application to the Crown Court for an order to confiscate an amount of money commensurate with the amount by which the offender has found to have benefitted.

## **15 Evidential Test**

- a) Before commencing a prosecution the Council must be satisfied that there is sufficient evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. This is an objective test based on the assessment of the evidence and any information about the defence that may be put forward.
  
- b) Of particular importance is the following extract from the Code: "The finding that there is a realistic prospect of conviction is based on the prosecutor's objective assessment of the evidence, including the impact of any defence, and any other information that the suspect has put forward or on which he or she might rely. It means that an objective, impartial and reasonable jury or bench of magistrates or judge hearing a case alone, properly directed and acting in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a different test from the one that the criminal courts themselves must apply. A court may only convict if it is sure that the defendant is guilty." The Council Solicitor has the requisite delegated authority to make this decision.
  
- c) 15.3 When deciding if there is sufficient evidence to prosecute the matters below will need to be considered:
  - i. Can the evidence be used in Court or is it likely that the evidence may be found by the court to be inadmissible? (E.g. poor identification evidence, breaches of PACE or reliance on hearsay)
  
  - ii. Is the evidence reliable? Is it accurate? Officer should check all the facts and follow all reasonable lines of inquiry including those that lead away from the guilt of the suspect. Officers should also check

other known associates of the suspect and/or other suspects and consider whether they should be interviewed if the evidence shows they could be involved.

- iii. Is the evidence credible? Investigating officers should test the facts stated by their witnesses so that they are sure that there is no reason to doubt their evidence.
- iv. Is the defendant likely to be able to establish a reasonably credible defence? For example “due diligence” under Section 21 of the Food Safety Act 1990 or “best practical means” under Environmental Protection Act 1990.

## **16. Public Interest Test**

- a) It has never been the rule that a prosecution will automatically take place once the evidential stage is met. A prosecution will usually take place unless the prosecutor is satisfied that there are public interest factors tending against prosecution which outweigh those tending in favour. In some cases the prosecutor may be satisfied that the public interest can be properly served by offering the offender the opportunity to have the matter dealt with by an out-of-court disposal rather than bringing a prosecution. Previously the Code for Crown Prosecutors contained lists of ‘for’ and ‘against’ prosecution, now there are lists of 7 factors to which the Council can apply its own environmental and public protection considerations.
- b) When deciding the public interest, prosecutors should consider each of the factors set out below in paragraphs a) to g) so as to identify and determine the relevant public interest factors tending for and against prosecution. These factors, together with any public interest factors should enable prosecutors to form an overall assessment of the public interest. They are not exhaustive, not all may be relevant in any given case, and their weight will vary depending on the facts. Whatever the decision, it should be capable of justification at court upon challenge.

Those factors are:

- i. **Seriousness** – consider the levels of culpability of the suspect and harm to the victims/complainants as a whole.
- ii. **Culpability level of the suspect** – consider level of involvement, premeditation, planning, previous convictions, offending whilst on bail, breach of undertakings or court orders and continuing, persistent, escalating offending. Also consider the age and maturity of the suspect and whether they are vulnerable e.g. mental health sufferer.
- iii. **Circumstances of the harm caused to the victim** – this is stated to be highly relevant as the greater the victim's vulnerability the more likely a prosecution is needed. Victim impact statements should be obtained. Was there any discrimination<sup>21</sup> against the victim?
- iv. **Under 18 at the time of the offence** – will the process have a disproportionate impact on him taking into account the seriousness of the offence? The child's welfare will need to be considered and the UN 1989 Convention on the Rights of the Child. The starting point is that the younger the child the less likely a prosecution is required.
- v. **Impact on the community** – the greater the impact of the offending on the community, the more likely a prosecution is required.
- vi. **Proportionality** – is a prosecution proportionate to the likely outcome/penalty? Consider the cost of bringing the prosecution to both the prosecuting authority and the criminal justice system. This is a relevant factor when making an overall assessment of the public interest but it should not be a sole reason for not proceeding. Effective case management can also be a factor so that for instance where there are multiple suspects a decision can be made to proceed against the main suspects to avoid excessively long, complex proceedings. Another example is where the offence is likely to attract a low fine (e.g. Band A<sup>22</sup> in the sentencing guidelines where the individual is on benefits.)

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<sup>21</sup> As respects the victim's ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity

<sup>22</sup> Fine Band A – Starting point is 50% of relevant weekly income with a range of between 25 – 75%

Consideration should be given to the alternative monetary penalties e.g. fixed penalty notices to assist in reducing the burden on the wider criminal justice system.

- vii. **Do sources of information require protecting?** In cases where public interest immunity does not apply, special care should be taken when proceeding with a prosecution where details may need to be made public that could harm sources of information, international relations or national security. It is essential that such cases are kept under continuing review.

## **17. Review**

This policy will be reviewed every two years.

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