ALLERDALE BOROUGH COUNCIL
ENFORCEMENT POLICY

1 Introduction

1.1 Allerdale Borough Council has wide range of Regulatory and Enforcement powers and functions.

This Policy is designed to provide a framework for the consistent and transparent use of those powers, in line with both the Council’s priorities and the need to protect the public. Regulatory and Enforcement activity can impact upon both businesses and individuals and the Policy will seek to address the needs of those ‘enforced against’ as well as the wider community who may be affected by the breach.

1.2 The Policy should be read in conjunction with the individual service-based policies which provide a more service-specific guide within the context of this wider policy. The Policy also incorporates the principles of the Regulators’ Compliance Code which has replaced the Enforcement Concordat.

1.3 The services covered by this Policy are:

- Building Control
- Environmental Health
- Environmental Services
- Housing
- Legal Services
- Licensing
- Planning Control

The principles of the Policy (section 3) also apply to Parking Services and Revenues and Benefits, however these services’ statutory procedures relating to prosecution do not allow for the discretion set down in section 4 of this document.

1.4 Allerdale Borough Council frequently undertakes its Regulatory and Enforcement activity in partnership with other agencies who are consultees to this Policy. Wherever possible the Council will share information with such agencies in line with the principles set down in Section 3 below.

1.5 Appendix 1 to this Policy contains definitions of the various terms used.
2 Regulators’ Compliance Code

2.1 This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulator’s Compliance Code.

In certain instances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

3 Principles of Regulation and Enforcement

3.1 The over-riding principle of this Policy is that the Council will carry out its Regulatory functions in a constructive manner and use Enforcement as a last resort.

The following principles will be adopted by the Council in the discharge of its Regulatory and Enforcement functions:

Standards

Where appropriate we will establish standards for the levels of service we aim to provide. Wherever possible these standards include measurable targets. We will make details of these standards and targets freely available together with reports of our performance against the stated targets through the Group plans.

To this end each service area will;

a) Produce written statements defining what level of service customers can expect. Where appropriate performance targets exist they will be clearly stated in the division’s service plans.

b) Regularly review its performance with respect of (a) above and make changes as necessary.

No service will set performance targets for individual officers relating to the numbers of enforcement actions taken. Neither will enforcement activity be undertaken as a means of generating revenue for the Council.
Openness

Within the restraints of the confidentiality our customers have a right to expect and the requirements of law, we will endeavour to be open about how we set about our work.
To this end each service will:-

a) Ensure that documents are produced in clear language, are readily available and in a format accessible to all our customers.

b) If requested, provide a written account of its actions or proposed actions to persons or organisations affected by them.

c) Always ensure a customer is aware of the existence of any appeals procedures or methods to review our actions/decisions where they are available.

Where a member of the public has cause to complain about an activity by a business or individual that may lead to enforcement action, the Council will maintain the confidentiality of the complainant unless otherwise agreed by the complainant.

The Council seeks to operate openly and transparently and as such would encourage complainants to provide their name and address, not least so that actions taken can be reported back. It is recognised however that in certain circumstances the Council will need to act on anonymous complaints or reports.

In the event that a complainant is required to provide a witness statement, the Council will provide help and support including for court attendance.

Helpfulness

We believe that prevention and co-operation are preferable to cure and confrontation. The Council will make information available on the full range of Regulatory and Enforcement functions in a variety of formats and media. When new legislation is introduced that affects these functions, the Council will publicise the changes in advance of any Enforcement action.

We will assist all customers in their efforts to understand and comply with the requirements placed on them. Such advice will be free of charge and is seen as an aid to compliance.

To this end each service will:
a) Ensure staff deal with customers courteously and always identify themselves by name.

b) Provide clear details of who is dealing with a case and how and when they may be contacted.

c) Review at least annually all standard correspondence to ensure it is clear and contains all relevant information to the matter that it aims to address.

d) Undertake customer satisfaction surveys to check our performance and identify areas for improvement.

e) Consult with customer and client groups on the wording and content of guidance documents and published information.

f) Work in partnership across all Council regulatory functions and as far as possible with partner agencies, to ensure that actions affecting individuals or organisations are coordinated. Where legislation permits, this will involve the sharing of information.

The Council will, by arrangement, undertake visits and inspections outside of normal working hours where this is considered necessary to undertake our statutory enforcement role.

Service Complaints

We accept that despite our best efforts customers will occasionally be unhappy with the service we provide. We recognise the role service complaints can play in identifying areas for improvement. To this end each service area will:

a) Ensure that at the earliest opportunity all customers are made aware of the existence of and the method by which they may register a service complaint.

b) Ensure that should an investigation reveal a defect in the service that defect will be rectified as soon as possible.

Proportionality and Targeting

We will endeavour to ensure that the requirements imposed by us, the approaches we adopt and the action we take are proportionate to the seriousness of the matter/s in hand.
We will seek to change the behaviour of offenders, seek to remedy the harm caused by non-compliance and deter future non-compliance.

We will ensure that our resources are primarily targeted

a) towards those activities which give rise to the most serious risks or where the risks are least well controlled.
b) against deliberate crime. Action will be primarily focused on lawbreakers or those directly responsible for the risk and who are best placed to control it.
c) towards supporting those priority themes highlighted in the Corporate Improvement Plan that have a significant impact on the quality of life in the Borough

d) towards supporting the sustainable economic growth of West Cumbria

The Council will only consider the use of powers under the Regulation of Investigatory Powers Act (RIPA) where it is necessary and this clearly supports the priorities set down above.

Consistency

We will endeavour to promote consistency in both the level of service customers receive and the manner in which we respond i.e. taking a similar approach in similar circumstances to achieve similar ends.

To this end each service will:-

a) Ensure that any documents referred to in this policy are made known and are readily accessible to all staff and the public.
b) Review on at least an annual basis operational, supervisory and management practices to identify and address issues of inconsistency.
c) Compare and audit its practices and standards with other Councils.

4 Enforcement

4.1 Where the regulatory framework allows, the following approaches will normally be taken towards enforcement:

Informal Action

We will consider Informal action where:

- The contravention is minor in effect,
- There is no risk to health and safety,
• There is no risk to the environment; and
• From the offenders past history it can be reasonably expected that informal action will result in compliance.
• Where there is no legal remedy open to the Council

Informal action should:

• Contain all the information necessary to understand what is required, why it is necessary, alternative courses of action and the timetable for completion.
• Clearly indicate the legislation contravened and any recommendations.
• Give a point of contact for the purpose of further clarification or query.

Formal Action

Where the circumstances described above do not apply, formal action by service of statutory notice, fixed penalty or order will occur (where appropriate).

Statutory notices or orders will include the following information:

• The legislation which has to be complied with
• The works or other action needed to comply
• The time period for compliance
• The time period for appeal (if appropriate)

Before the service of notices or orders, discussions will take place where possible with the person on whom the notice will be served.

Prosecution

A decision to prosecute is a serious matter which we will only take after full consideration of the implications and consequences. The decision will have regard to the evidential and public interest tests set down by the Director of Public Prosecutions in the Code for Crown Prosecutors.

Prosecutions will not be commenced or continued unless we are satisfied that there is sufficient, admissible and reliable evidence that the offence has been committed and that there is a reasonable prospect of conviction. Where a case does not pass this evidential test, it will not go ahead, no matter how important or serious it may be.

Where there is sufficient evidence, a prosecution will not be commenced or continued unless it is in the public interest to do so. Public interest
factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the offender.

We will consider the following public interest factors in deciding whether or not to prosecute.

- **effect** of the offence or action.
- **foreseeability** of the offence or the circumstances leading to it
- **intent** of the offender, individually and/or corporately
- **history** of offending
- **attitude** of the offender
- **deterrent** effect of a prosecution, on the offender and others
- **personal** circumstances of the offender

These factors are not exhaustive and those which apply will depend on the particular circumstances of each case.

Where there is sufficient evidence we will normally recommend prosecution in any of the following circumstances.

- incidents which have significant consequences
- failure to comply with fixed penalty payment requirements
- carrying out operations without a relevant licence
- excessive or persistent breaches of regulatory requirements
- failure to comply or to comply adequately with formal remedial requirements
- reckless disregard for management or quality standards
- failure to supply information without reasonable excuse or knowingly or recklessly supplying false or misleading information
- obstruction of officers in the course of their work
Alternatives to Prosecution

In cases where a prosecution is not the most appropriate course of action the alternative of a caution will be considered, the choice depending on the factors referred to above.

A caution is the written acceptance by an offender that they have committed an offence and may only be used where a prosecution could properly have been brought.

A caution will be brought to the attention of the Court if the offender is convicted of a subsequent offence.

4.2 Enforcement against Minors

Where an offence is committed by a person under 16 years of age, the Council will not generally issue a Fixed Penalty Notice for a first offence. Council Officers will take details of the offender and will contact the parents or guardians and advise them of the nature of the offence committed.

In the event of repeat offences, the Council will consider the incident against the full range of options described above, including prosecution.
Appendix 1
DEFINITIONS

Service Complaint
A ‘service complaint’ means a criticism of any aspect of the service provided by the Council departments listed in paragraph 1.3

Enforcement
Enforcement covers a wide range of actions and activities other than simply prosecutions. Within the terms of this policy, Enforcement means any action taken to address contravention of statutory requirements with the aim of:

a) securing compliance with statutory provisions

b) imposing a sanction for contraventions

Regulators’ Compliance Code

Regulation of Investigatory Powers Act
This refers to the Regulation of Investigatory Powers Act 2000, in particular part 2, relating to Surveillance.

Code for Crown Prosecutors
The Code for Crown Prosecutors is a public document, issued by the Director of Public Prosecutions that sets out the general principles Crown Prosecutors should follow when they make decisions on cases. (www.cps.gov.uk)
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