



ENFORCEMENT POLICY

One of the main functions of the Council is to act as a regulator and an enforcement agency for a large range of legal duties and powers applied by Acts of Parliament, and the Regulations and Orders made under them (including various byelaws). The legislation which the Council is responsible for enforcing is extensive and cannot be listed here, but the following exemplify the range and diversity: -

- Education (school attendance, child employment);
- Environmental Protection;
- Health and Safety;
- Highways and Drainage;
- Housing (mainly private sector);
- Licensing;
- Planning (Development Control and Building Control);
- Public Health (including Food Safety);
- Social Services;
- Trading Standards.

This policy sets out the standards and guidance that will be applied by the Council when acting in its role as regulator and enforcement agency across a range of its relevant legal

powers and duties. The policy applies to enforcement and regulation affecting members of the public, (e.g. residents and visitors) and businesses, (e.g. proprietors, employers and employees).

The Council recognises the need to maintain high standards in relation to the way it carries out its business and as such its services may also be subject to inspection and investigation. Any breaches of legislation detected in such services will be reported to the Chief Executive to determine the most appropriate way to deal with the infringement.

Whilst the policy is intended to be reasonably comprehensive, it cannot cover every situation, especially where there are specific national or local codes or standards which have to be met, for example when dealing with child protection, special educational needs, mental health provisions and benefit fraud. Neither will the policy apply to actions of the Council in dealing with matters of contract (including rents, tenancy agreements and leases), issues relating to tenancy enforcement, anti social, behaviour the collection of penalties, debts or fines.

The Council will however endeavour to apply the same general principles as described in the policy wherever possible.

OVERALL AIM

The Council's aim is to undertake its regulatory and enforcement role in a fair, open and consistent manner. In doing this it will act in accordance with the guidance and standards set out in this policy, and in any supplementary Departmental policies. In particular the Council will: -

- ❖ Consult with parties subject to regulation and enforcement by the Council about the standards it sets in undertaking this role;
- ❖ Work with individuals and businesses to assist them in complying with their legal duties and obligations;
- ❖ Ensure its staff are appropriately trained and apply the policy and standards professionally and consistently;
- ❖ Make information about the policy and the standards widely available to the public and businesses within the Borough;
- ❖ Monitor compliance with the policy and review it from time to time in consultation with parties subject to its application.

GUIDING PRINCIPLES

In undertaking its regulatory and enforcement role the Council will have regard to the following Guiding Principles:

- ❖ Any decision regarding enforcement action will be impartial and objective, and will not be affected by the age, disability, ethnicity, gender, HIV status,

- sexuality or religious beliefs of any alleged offender, victim or witness;
- ❖ The Council believes the vast majority of individuals and businesses wish to comply with the legal requirements placed upon them and should be assisted in doing so;
- ❖ In dealing with any enforcement situation, the Council's actions will be proportionate to the scale, seriousness and intentionality of any non-compliance;
- ❖ There will be consistency of enforcement whilst recognising individual circumstances which may modify the appropriate action to be taken in each case;
- ❖ Except in the most serious cases or where advice / warnings have not been heeded, adequate opportunity will be given to rectify non-compliance before formal legal action is commenced;
- ❖ Enforcement is seen as a final means of securing compliance with the appropriate standards, and not as an end in itself;
- ❖ Prosecution will be considered where it is in the public interest to do so and in serious or blatant cases, or where other approaches have failed;
- ❖ Regard shall be had to the relevant legislation and codes of practice, which protect the rights of the individual and guide enforcement action, (e.g. Human Rights Act 1998, Code for Crown Prosecutors);
- ❖ If it is in the public interest and appropriate, information concerning non-compliance will be shared with other enforcement agencies. Where this takes place, we will ensure that the Data Protection Act 1998 and Human Rights Act 1998 are observed. In some cases we will not be the enforcement agency for a

particular matter, and in these cases we will ensure that we refer them on to the right Agency;

- ❖ Regard shall be had to the Council's Equality and Customer Care Policies.
- ❖ Some Services are required to demonstrate that they comply with enforcement policies drafted by central government agencies for example the Health and Safety team must comply with the Health and Safety Commissions Enforcement policy. Such additional requirements complement this policy and where possible have been incorporated in it.

STANDARDS

The Council will always endeavour to meet the highest standards of service in undertaking its regulatory and enforcement function. The following specific level of service standards will be applied:

- ❖ Matters relating to enforcement and regulation will be dealt with promptly with enquiries and complaints receiving a response or acknowledgement within ten working days;
- ❖ Except in the case of necessary and approved covert investigations, (e.g. the making of test purchases by Trading Standards Officers, covert surveillance to obtain evidence in relation to the commission of environmental crimes), officers will announce themselves on arrival at premises and show identification unless they are already well known to the person. All criminal investigations, covert or overt, will be carried out in accordance with the Regulation of Investigatory Powers Act 2000;

- ❖ Officers will provide their name and a contact telephone number to those persons or businesses with whom they are in contact concerning a regulatory or enforcement matter;
- ❖ Complaints relating to enforcement or regulatory matters will normally only be dealt with if the name and address of the complainant is given. Any such identification will be treated in confidence, but may need to be disclosed (with prior consent) should formal legal proceedings be taken against the person or business to which the complaint relates. Anonymous complaints may however be investigated if they relate to benefit fraud, protection of children or other vulnerable groups, or matters relating to serious health, safety or environmental issues etc.
- ❖ Officers will not be able to act as consultants or legal advisors to individuals or businesses, but will be available (by appointment if necessary) to discuss general issues or matters of specific enforcement with the aim of assisting or guiding compliance.
- ❖ Officers will not appear as witnesses in relation to any disputes between third parties unless directed to do so by a Court.
- ❖ Officers will be professional, courteous and helpful in their conduct of regulatory or enforcement matters, and wherever possible will seek to work with individuals and businesses towards compliance;
- ❖ Officers will endeavour to provide advice in a clear and simple manner and where any corrective or remedial work is necessary, an explanation will be given as to why it is necessary, and over what time scale it is required. Where non-

compliance may result in further enforcement action or prosecution the matter will normally be confirmed in writing within ten working days, and any legal requirements will be identified separately from best practice advice;

- ❖ Officers will generally seek an informal resolution to cases of non-compliance except where immediate formal enforcement action is required, (e.g. serious issues relating to Health and Safety, Environmental Protection, evidence gathering etc);
- ❖ Where there are rights of appeal against formal action, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken, (e.g. when the enforcement notice is served);
- ❖ Where there is known to be an involvement of any other enforcement agency, or any case involves joint enforcement arrangements, the Council will consult with that other agency prior to taking any formal enforcement action;
- ❖ Where any charges or fees are to be levied for a service, individuals and businesses will be informed of the cost or rate of charge prior to the service being provided;
- ❖ Any dissatisfaction with the actions of an officer of the Council will be dealt with under the Council Complaints Procedure, copies of which are available from offices of the Council, by accessing the Council's Web site www.luton.gov.uk or by telephoning the Council on 01582 546000 and asking for the appropriate Service.

CONSISTENT ENFORCEMENT ACTIONS

Consistent enforcement action is desirable, but absolute uniformity would be unfair by failing to recognise individual circumstances that may modify action to be taken. Consistency of approach whilst allowing a degree of discretion will be encouraged by:

- ❖ Appropriate training and supervision of enforcement officers;
- ❖ Ensuring there is compliance with the standards set out in this policy by all enforcement officers of the Council;
- ❖ Recognition of defences that would be available at law and exercising appropriate discretion where formal action is unwarranted;
- ❖ Recognition that we should not normally take formal enforcement action or prosecution in the case of minor infringements;
- ❖ Recognition that in some situations, (e.g. pursuing legal action when a statutory nuisance, such as excessive noise is identified and confirmed, or a fixed penalty fine notice is issued as in the case of a parking ticket), we have no legal discretion but to serve a formal legal notice, take formal legal action, or pursue the collection of a fine.

ASSESSING APPROPRIATE ACTION IN CASES OF INFRINGEMENT

Enforcement actions have to be taken within the context of the legal and policy framework set for all enforcement agencies.

Luton Borough Council has adopted the Enforcement Concordat produced by the Government's Better Regulation Unit, which lays out the principles of good enforcement. A full version of the Enforcement Concordat is available by accessing the Cabinet

office's website at www.cabinet-office.gov.uk.

Internal guidance provides consistent starting points for action to be taken in particular circumstances. Final action taken will depend on any modifying or mitigating factors present, and account will be taken of any national or local guidance available.

Formal action will normally be instigated where one or more of the following apply:

- ❖ It is prescribed by law as obligatory;
- ❖ Informal approaches have failed;
- ❖ The matter is of such seriousness or urgency that informal action is inappropriate;
- ❖ Enforcement is necessary to remedy an unsatisfactory condition relating to health, safety, amenity or the environment;
- ❖ There is a need to ensure a decision or policy of the Council is enforced (including planning policy).

Prosecution will be considered where one or more of the following Public Interest criteria are satisfied:

- ❖ There is a significant risk to health or safety of persons, or to amenity or the environment;
- ❖ The offence involves the threat of violence against any person, or obstruction of an Officer of the Council;
- ❖ False information either in written or verbal form is deliberately, recklessly or negligently provided to the Council or to an investigating officer;
- ❖ Fraudulent or reckless practice or the threat of significant economic disadvantage to consumers or businesses is involved;

- ❖ The victim is part of a vulnerable group, e.g. children, elderly persons;
- ❖ The offender has relevant previous convictions, or formal cautions;
- ❖ The offender has repeatedly ignored advice;
- ❖ There is a widespread disregard of the law and appropriate notice has been given to the public or the business community that legal proceedings will be considered for future breaches, (e.g. sale of tobacco products to those under 16 years of age);
- ❖ The offender has failed to comply with a formal enforcement notice within the compliance period;
- ❖ The offender, by action or inaction, risks causing suffering to animals or has increased the risk of the spread of animal disease;
- ❖ Some other significant public purpose would be served.

Mitigating factors could include the examples below, but these should always be balanced against the seriousness of the offence and the likelihood of it being repeated:

- ❖ The problem was revealed by an approach for advice from the person or business;
- ❖ Compliance with previous advice by the local authority or guidance from government departments (we can get things wrong!);
- ❖ Co-operative attitude to prevent recurrence;
- ❖ Legitimate conflict of interpretation (not just disagreement) where it may be more appropriate to seek adjudication through another body, (e.g. Local Authorities Coordinators of Regulatory Services (LACORS) or Food Standards Agency);
- ❖ Previous good history or absence of complaints;

- ❖ Low general awareness of legislation when prosecution would "single-out" an individual or trader unfairly;
- ❖ Reluctance of witnesses to testify;
- ❖ A conviction is likely to result in a very small or nominal penalty;
- ❖ The offence resulted from a genuine mistake and the offender is prepared to rectify the problem;
- ❖ The loss or harm caused was minor;
- ❖ There has been undue delay in bringing the matter to court (unless the delay was the fault of the offender);
- ❖ A prosecution is likely to have a significantly detrimental effect on the victim's physical or mental health;
- ❖ The offender is elderly or a minor, or was, at the time of the offence, suffering from significant mental or physical ill health;
- ❖ The views of the Council's legal advisor, or a relevant expert witness(es).

MONITORING

Producing policies is all very well, but they are not likely to be effective unless they are continually and consistently applied. To ensure this happens and to provide feedback on the effectiveness of its application, it is intended that various monitoring regimes are undertaken and fed back to businesses and the public on an annual basis. The following monitoring and feedback mechanisms will therefore be undertaken:

- ❖ Opportunities for businesses and members of the public to fill in and return questionnaires contained in copies of the full policy and advice leaflet;
- ❖ Sample surveys undertaken on the perception of service users of

particular aspects of the policy, following contact with one of the Council's enforcement services;

- ❖ Further consultation with community groups and business associations on at least an annual basis;
- ❖ Production and making public the results of monitoring, together with any improvements or changes to the policy or its implementation.

ENFORCEMENT ACTIONS AVAILABLE

We take a wide view of this term which includes provision of advice and guidance. Examples of the actions we can take are:

Advice -Advice on how to comply with the law, typically following a request for advice, a programmed inspection or complaint.

Warning letter Warning that recurrence or continuation of an infringement will result in legal action. Please note that formal notices and informal letters relating to matters affecting buildings will be revealed by the Council when a local land charge registry search is made of the property.

Enforcement notice A wide range of legal powers to require persons to perform some act or desist from a course of conduct. In some extreme cases we have the power to close businesses or execute work in default. There are often appeals procedures or a requirement to have emergency action confirmed by a Magistrates' Court. (We provide details of those appeals procedures at the same time as the notice.) Failure to comply with the notice will often result in prosecution.

Official caution (often called 'Home Office Cautions') A special form of

