

Luton Borough Council Enforcement Policy

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1. Introduction

This document sets out Luton Borough Council's Enforcement Policy ("the Policy") which details what businesses, individuals, consumers and residents of the Borough of Luton ("the Borough") can expect from Luton Borough Council ("the Council") when it carries out its Regulatory functions.

The Council believes that regulation should avoid the imposition of unnecessary burdens and will seek to achieve compliance by the least burdensome means possible.

This Policy takes into account current principal legislation, including:-

- (a) The European Convention on Human Rights,
- (b) The Human Rights Act 1998,
- (c) The Regulation of Investigatory Powers Act 2000,
- (d) The Police and Criminal Evidence Act 1984,
- (e) Criminal Procedure and Investigations Act 1996, and
- (f) The Regulatory Enforcement and Sanctions Act 2008.

In applying this Policy the Council will take account of any new relevant legislation that applies.

This Policy also takes into account current statutory guidance or schemes, including:-

- (a) The Regulators' Code,
- (b) The Code for Crown Prosecutors, and
- (c) Primary Authority Principle.

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This Policy has been produced in consultation with all relevant stakeholders.

2. Scope

This Policy applies to all legislation included in Parts 3 and 4 the Schedule to the Legislative and Regulatory Reform (Regulatory Functions) Order 2007, as amended from time to time, and the following list of Statutes and successor legislation:-

- (a) Building Act 1984,
- (b) Planning (Hazardous Substances) Act 1990,
- (c) Planning (Listed Buildings and Conservation Areas) Act 1990,
- (d) Local Government Finance Act 1988 and 1992
- (d) Social Security Administration Act 1992,
- (e) Town and Country Planning Act 1990.

Services covered by this Policy include Building Control, Community Safety (Anti Social Behaviour and Environmental Enforcement), Council Tax Reduction Scheme offences, Environmental Health, Highways, Licensing, Parking Services, Planning Enforcement, Private Sector Housing and Trading Standards.

This Policy is supported by service specific enforcement policies, codes of practice and guidance that may be produced from time to time and any guidance issued by the Council on how it will carry out enforcement duties.

3. Guiding Principles of Regulatory Enforcement

The Council is committed to the principle of good enforcement as set out in the Legislative and Regulatory Reform Act 2006 and believes that the purpose of enforcement action should be to achieve compliance with legislation enforced by the Council.

The Council believes that the majority of businesses, individuals, consumers and residents of the Borough wish to comply with the law. The aim of this Policy is:-

- (a) To protect those businesses, individuals, consumers and residents from unlawful activity,
- (b) To work with them to promote economic growth in the Borough, and
- (c) To ensure that the small number of businesses and individuals who intentionally or repeatedly engage in unlawful activity are subject to appropriate enforcement activity.

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Where a business or an individual is found to be in breach of legislation the Council will, in most instances, consider how it can work with that business or individual and any other person to put right the problem.

The Council will deliver regulatory services in a way which is:-

- (a) **Proportionate:** Enforcement activities will reflect the risk and harm to victims (whether to businesses, individuals, consumers and residents of the Borough or the wider community) and will reflect the seriousness of the breaches and any previous action taken by the Council or any other organisation,
- (b) **Accountable:** the Council's activities will be open to public scrutiny, with clear and accessible policies, and a fair and efficient complaints procedure,
- (c) **Consistent:** the Council will carry out its duties in line with relevant service standards where possible and will endeavour to ensure that enforcement action is applied consistently within the Borough and, where appropriate, in similar ways to other local authorities,
- (d) **Transparent:** the Council will give advice and information in plain language and ensure that those it regulates are able to understand what is expected of them. The Council will distinguish between legal requirements and good practice recommendations, and
- (e) **Targeted:** the Council will target its enforcement activity based on threat, risk, harm and intelligence information in order to address those areas causing greatest detriment or concern to businesses, individuals, consumers, residents and other users of services in the Borough, or which address national priorities impacting on these groups.

It is recognised that, in some cases, formal enforcement action will be required.

In exceptional circumstances, or where required by legislation, the Council may depart from this Policy. Any decision to do so will be properly reasoned, based on the evidence and fully documented.

4. Enforcement actions

There are a wide range of enforcement actions available to the Council which range from those intended to inform and support those it regulates, to formal legal proceedings with the potential for a financial or custodial penalty. These include, but are not limited to, the following.

Informal Enforcement Actions

- (a) **Verbal and written advice**
The Council will use advice on compliance, guidance and support where appropriate and will seek to do so in the majority of cases. The objective of this action is to assist individuals and businesses to comply without the need to resort to more formal action.

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(b) **Informal warnings**

The Council will set out in detail the nature of any alleged breaches and what action is needed to rectify these. The warning will include details of the potential consequences of continued non-compliance.

(c) **Request for undertakings**

For certain legislation, the Council can ask a business or an individual to provide a written undertaking that they will cease certain activities which is in breach of legislation and will detail the potential consequences if this is refused.

The Council may also attach Enhanced Consumer Measures to these, which is an undertaking to bring about compliance, enhance consumer choice or affect redress for consumers.

(d) **Inspection of premises and other interventions**

The Council will take a risk based approach, taking into account the potential harm and any intelligence in deciding whether a revisit or contact is required to ensure that breaches have been rectified.

Formal Enforcement Actions

(a) **Formal or statutory notices**

The Council may use a range of formal or statutory notices, including abatement notices for statutory nuisance, suspension notices for unsafe products and closure notices for anti social behaviour. These notices will normally require a businesses or an individual to either do something, or cease doing something.

Failure to comply will, in most cases, result in some other formal action being taken against that business or individual.

(b) **Fixed penalty notices (“FPN”), Penalty charge notices (“PCN”) or other administrative financial penalties**

This covers a range of civilly enforceable penalty notices which can be issued by the Council. Where the Council believes a business or an individual is in breach of certain legislation, it may issue a financial penalty requiring that business or individual to pay the Council within a specified period. There will normally be a representations period and an appeal should that business or individual disagree with the penalty.

The Council may increase the penalty in default, and may take action for the recovery of unpaid penalties.

(c) **Refusal/Suspension/Revocation or review of a licence**

The Council issues a number of licences and permits and may take into consideration any information that a business or an individual has acted in breach of legislation when considering any application for a licence or permit.

Where a business or an individual already holds a licence or permit, the Council may review this and decide whether to suspend, append conditions to revoke or take some other action in respect of that licence or permit to ensure future compliance with legislation.

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(d) **Simple Cautions**

A Simple Caution (previously known as a Formal Caution) may be offered as an alternative to prosecution for some less serious offences or for first time offences to a business or individual where there is a realistic prospect of conviction, and where that business or individual has admitted the offence. Where a Simple Caution is declined, it is likely that a prosecution will be instituted.

(e) **Injunctive, Enforcement Orders or other civil sanctions**

The Council has both general and specific powers to obtain injunctions against businesses or individuals that breach legislation. The injunction is obtained in court and normally requires a person to do, or cease doing, specific activities.

The Council may also attach Enhanced Consumer Measures to these or an Enforcement Order to bring about compliance, enhance consumer choice or affect redress for the consumer.

Failure to comply with an injunction is contempt of court and may be punished with imprisonment.

(f) **Forfeiture proceedings**

Where the Council believes that there is a need to dispose of goods to prevent them re-entering the market, for example because they are unsafe or counterfeit, it may apply to the court for forfeiture of those goods.

(g) **Prosecution**

The Council may prosecute in respect of serious, or repeated breaches, or where other enforcement actions have failed to secure compliance.

A prosecution will result in a criminal record, and may result in a fine or, in the case of more serious offences, a prison sentence, community service and/or some other penalty as the court may decide.

(h) **Restraint and confiscation proceedings**

Where a business or an individual has enjoyed substantial financial gain as a result of criminal activity, the Council may seek to prevent the access to assets, such as bank accounts, property and investments and may seek confiscation of those assets under the Proceeds of Crime Act 2002.

In the carrying out of its functions the Council may choose to exercise any statutory power including entry to premises, examination of goods and documents and seizure of goods and documents.

The Council is not limited to taking only one enforcement action and, if appropriate, will make use of more than one, for example, following a prosecution, a review of a licence may also take place.

Where formal enforcement action is identified as the most appropriate course of action, the Council may offer alternative sanctions including those where the alleged offender meets the cost of the sanction.

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5. Enforcement Decisions

Where there has been a breach in legislation the Council will take into account the following principles in arriving at a decision on the most appropriate course of action. (For the purposes of this Policy, the terms “breach” and “non-compliance” include behaviour which causes or is likely to cause anti-social behaviour and requires enforcement under anti-social behaviour legislation):-

- (a) Whether the breach was committed deliberately or recklessly, caused by neglect or without due diligence or, if a breach by a corporate body, whether caused by consent, connivance or neglect of a company officer.
- (b) Whether the breach was intended to cause gain for the offender or loss to another.
- (c) Any complaints, previous history or other information relevant to the business or individual including any previous advice given.
- (d) The business’s or the individual’s attitude and in particular, whether they were open, co-operative and prepared to assist the Officers, or obstructive and non-cooperative.
- (e) If the business has a registered Primary Authority Partnership, any ground on which the Primary Authority objects to the proposed enforcement action.
- (f) Where the business has received and followed any advice provided by any regulator or enforcement agency.
- (g) Whether enforcement action could act as a deterrent and encourage compliance generally.
- (h) Inadequate mitigation or explanation given by the individual, business or trader (including the failure to provide an explanation).
- (i) The effect of the breach on the victim, in particular where the victim is in some way vulnerable.
- (j) Whether the breach was intentionally targeted at vulnerable persons.
- (k) The level of risk that persons or the environment could suffer harm as a result of the breach.

Investigations, enforcement decisions and actions will be made in good time, in accordance with statutory time limits, taking into account the complexity, size and nature of the investigation. Where appropriate, the Council will provide updates on the progress of investigations to all parties, including witnesses and suspects.

Decisions on the appropriate enforcement action will take into account the principles of this Policy.

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Where evidence that 5(a) or 5(b) above applies, the Council will normally consider formal enforcement action to be the most appropriate action unless circumstances suggest otherwise.

The Council will make the decision in consultation with:-

- (a) The investigating officer
- (b) The relevant manager(s)
- (c) The Council's Legal Services and
- (d) Where appropriate, the relevant Council committee or sub-committee.

The decision to prosecute or take injunctive action will be taken by a person authorised under the Council's relevant Scheme of Delegation.

The Council reserves the right, in accordance with the Code for Crown Prosecutors or principle contained within that Code, to review any decision to prosecute or take other formal action, and restart enforcement action.

Nothing in this Policy should be taken obliging the Council to take enforcement action in any specific case.

6. Standards

The Council will aim to meet the highest standards of service. The following list of service standards will apply:

- (a) The Council will ensure its Officers are suitably trained and/or qualified, are competent to undertake its enforcement activities and have been appropriately authorised in accordance with the Council's Schemes of Delegation.
- (b) Officers will comply with the Council's Codes of Conduct and any applicable regulatory or professional standards or Codes of Practice.
- (c) Officers will not be able to act as consultants or legal advisors to individuals or business unless in connection with a Primary Authority agreement or other similar arrangement. Officers will be able to provide general advice or advice with the aim of helping or guiding the business or individual to comply with the law.
- (d) Officers will not appear as witnesses in relation to any dispute between individuals, businesses and third parties unless directed to do so by a court.
- (e) The Council will keep the details of persons providing it with information relevant to an investigation confidential unless these details need to be disclosed in order to investigate the complaint. No disclosure will be made without consent of the informant.
- (f) The Council will, where appropriate, cooperate, co-ordinate and share information with any relevant regulatory body and/or enforcement agency to maximise the effectiveness of any enforcement.

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- (g) Where Officers identify contraventions that are the responsibility of the Council, the principles contained in this Policy will apply and the matter will be taken up directly with the relevant senior manager of the Service.

7. The interests of Council stakeholders

The Council does not want its enforcement activities to have a negative effect on businesses or individuals who comply with the law. The Council will undertake its work to ensure, as far as possible, that the circumstances of each case are taken into consideration to make sure that compliant businesses or individuals are not affected.

8. Enforcement Policy implementation

The Council will review this Policy no later than three years from approval by the Council's Executive.

9. Comments and complaints about enforcement activity

This Policy is available on the Council's website at *[address to be added once Policy has been approved]*.

If you wish to comment on this Policy, please contact the Council by emailing ERfeedback@luton.gov.uk.

This Policy will be made available in Braille, large type, as an audio recording or in other languages on request.

The Council's formal complaint procedure may be used to deal with an issue, but only if it is not part of any legal action by or against it.