

## Environmental Services Enforcement Policy

Much modern legislation is goal setting - setting out what must be achieved, but not how it must be done. Guidance on how to achieve the goals is often set out in Codes of Practice and there is also a wide variety of advisory material describing good practice. Neither Codes nor guidance material are in terms which necessarily fit every case. In considering whether good practice has been adopted, officers will take relevant Codes and guidance into account, using sensible judgement about the extent of the risks and the effort that has been applied to counter them.

This Policy must be read in conjunction with the Council's **Corporate Enforcement Policy**

### 1.1 INTRODUCTION

Environmental Services has responsibility for enforcing a wide range of legislation that may affect individuals, organisations or businesses residing, visiting or operating within the district. Enforcement action is taken by the following services :-

- Environment Health Services
- Licensing and Community Safety – under separate policy
- Waste and Recycling - under separate policy

#### **Environmental Health Services**

Environmental Health Services is formed by the following teams

**Commercial** (deals with food safety, health and safety, infectious disease and drinking water)

**Environmental Protection** (deals with dog control, noise and other nuisances air quality, contaminated land, fly tipping, littering, etc)

**Private Sector Housing**, (deals with disrepair and housing standards, grants and caravan sites)

Depending upon the particular circumstances, Environmental Health Services may use a variety of means, including education, advice, guidance, warning letters and legal notices (including "Fixed Penalty" notices which can be issued by an authorised officer of the Council or a PCSO) to ensure that individuals, organisations or businesses meet their legal responsibilities. Where there are serious breaches of legislation or risks to health, safety or the

environment, activities may be prohibited, licences revoked, formal cautions issued, legal notices served, works done in default and prosecutions instigated. Sometimes the law is prescriptive - spelling out in detail what must be done. For example, contact with live wires must be avoided or failure to clean up after a dog has fouled in a prescribed area.

Prescriptive law limits the discretion of the duty holder and the enforcer. This document is intended to provide members of the public, organisations and businesses with information and guidance about the practical application of the enforcement policy operated by Environmental Health Services.

Whilst the document aims to provide the reader with a clear understanding of the policy due to the individual nature of many of the circumstances, it cannot be considered either exhaustive or complete. The document also incorporates and adopts the principles set out by The Food Standards Agency ([www.food.gov.uk](http://www.food.gov.uk)) and the Health and Safety Executive ([www.hse.gov.uk](http://www.hse.gov.uk)). A Booklet entitled "Your Inspection Your Business", is available which sets out how food and health and safety inspections will be carried out This publication gives information on specific complaints and services dealt with by Environmental Health Services commercial team and the processes followed.

## **1.2 COMPLAINTS OF INJURY INVESTIGATIONS**

In selecting which complaints or reports of injury or occupational ill health to investigate and in deciding the level of resources to be used, we will take account of the following factors:

- The severity and scale of potential or actual harm
- The seriousness of any potential breach of the law
- Knowledge of the duty holder's past health and safety performance
- The enforcement priorities
- The practicality of achieving results

The wider relevance of the event, including serious public concern

## **1.3 LEAD/HOME AUTHORITY AND PRIMARY AUTHORITY PARTNERSHIP SCHEMES**

The Lead Authority Partnership Scheme and Home Authority Arrangement promote consistency of enforcement among businesses with multiple outlets in different local authority areas. These have been superseded by the Primary Authority principle. This Primary Authority partnership, is a legally binding agreement that provides assured advice, ensures consistency of regulation and reduces duplication of inspections and paperwork. If we are considering formal

action against a participating company we will except in the case of situations requiring immediate action refer the matter to the primary authority.

#### **1.4 SHARED ENFORCEMENT RESPONSIBILITY**

In circumstances where enforcement responsibility is shared between enforcement agencies, for example in relation to waste offences (where both local Councils and the Environment Agency can take enforcement action), Environmental Health Services will have regard to procedures agreed with other enforcement agencies, particularly where memoranda of understanding exist.

In some cases, enforcement powers will rest with another agency, for example the Health and Safety Executive. In these situations, Environmental Health will act to ensure that the case is transferred to the enforcing agency promptly and in accordance with any agreed procedures.

The following list is not exhaustive but will include most possible alternatives.

- Any animal health matters are to be passed to the Trading Standards Animal Welfare Service at Lincolnshire County Council. It may also be necessary to involve the RSPCA.
- The Lincolnshire Fire & Rescue Service may need to be involved in matters involving Houses in Multiple Occupation and Licensing.
- Lincolnshire County Council Trading Standards may need to get involved where there are safety concerns over appliances or furniture provided by a landlord in a privately rented house or flat.
- Local pollution incidents may fall to the Environment Agency for enforcement, but this may require detailed liaison between the two authorities to determine responsibility.
- Incidents involving Travellers may require involvement by the Lincolnshire County Council Liaison Officer.
- Infectious disease incidents, or mental health matters requiring Section.47 action under the National Assistance Act 1948 will involve liaison with the relevant medical practitioners
- In the event of a food complaint involving another Local Authority or Primary Authority they should be consulted fairly early during the investigative process.
- Any food matters that should be dealt with by Trading Standards will be passed to them.
- Any matters involving meat inspection services, licensed or unlicensed, may require the involvement of the Food Standards Agency.
- Any Health and Safety at Work incidents on premises not enforced by the Council will be passed to the Health & Safety Executive.

## **1.5 DEATH AT WORK (HEALTH AND SAFETY AT WORK ETC ACT 1974)**

Where there has been a breach of the law leading to a work-related death, we will need to consider whether the circumstances of the case might justify a charge of manslaughter.

Due consideration will be given to the “work related deaths: a protocol for liaison” .If the Police or the CPS decide not to pursue a manslaughter case, we may still prosecute or recommend prosecution of a health and safety case if that is appropriate

## **1.6 PRIVATE SECTOR HOUSING TEAM**

Depending upon the particular circumstances, The private sector housing team may use a variety of means, including education, advice, guidance, warning letters and legal notices (including: demand for payment, closure of premises, demolition, management orders and notices prohibiting overcrowding) to ensure that individuals, organisations or businesses meet their legal responsibilities.

Where there are serious breaches of legislation or risks to health, safety or the environment, activities may be prohibited, licences revoked or amended, formal cautions issued, legal notices served, works carried out in default and prosecutions instigated.

## **1.7 WORKS IN DEFAULT**

In place of, or in addition to prosecutions, certain powers exist for the council to carry out work in default. These powers will only be exercised following the expiry of a Notice to undertake works. All charges incurred will be recovered either through the courts or as a land charge on property.

## **1.8 SHARED ENFORCEMENT RESPONSIBILITY**

In some cases, enforcement powers will rest with another agency, for example the Health and Safety Executive. In these situations, the council will act to ensure that the case is transferred to the enforcing agency promptly and in accordance with any agreed procedures.

## **1.9 APPEALS**

There is usually a statutory right of appeal against the requirement of an enforcement notice or action contained in the relevant legislation. Such appeals are usually made to Magistrate's Court; in the case of a Housing Act Notice, the

County Court or residential property tribunal. Individuals, small organisations or businesses may be reluctant to spend a considerable amount of time, effort and money preparing and submitting an appeal against enforcement action. South Kesteven District Council therefore provides an informal appeal mechanism whereby the individual circumstances of the case can be taken into account and considered prior to enforcement action being commenced.

Where necessary, access will be made available to a service providing translation facilities.

#### **1.10 STATUTORY RIGHTS OF APPEAL**

Where enforcement notices are served, detailed information will be provided to the person concerned regarding their statutory rights of appeal. The information will include, where appropriate, the necessary forms and help with completion to enable an appeal to be made.