

Enforcement Policy

South Lakeland District Council

March 2022

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Introduction

South Lakeland District Council (the council) carries out a wide range of regulatory roles in meeting its many statutory duties to protect the public and the environment. These statutory duties are met by a number of activities- including programmed inspections and visits, responding to complaints and issuing licences, consents and permissions. This document is intended to be the council's over-arching enforcement policy. It is supplemented in some cases by more specific and detailed service policies.

The policy seeks to illustrate how the council will apply its enforcement powers. This could range from a criminal prosecution to informal warnings and advice. The policy is underpinned by detailed procedures that ensure consistency of approach by officers regardless of service area.

The aim of the council is to protect the health, safety, wellbeing and welfare of the public and to protect the environment of South Lakeland. Most of the council's powers in relation to such functions is contained in legislation. The council's role covers several different enforcement areas, including but not limited to food safety, health and safety at work, noise and nuisance control, contaminated land, air quality, pollution prevention and control, infectious disease control, private water supplies, licensing functions, housing standards, planning and building control functions and revenues and benefits.

Each area of work uses different legislation and guidance to secure its aims. The legislation has been developed by central Government with contributions from Legal Authorities, Public Authorities and Industry. This policy does not capture all of this detailed, complex and often changing legislation and guidance, but in all of its enforcement activities the council gives due weight to current relevant guidance. This policy may therefore be supplemented by appendices attached to this policy and more specific documents, where appropriate, relating to the areas of works mentioned above and detailing working protocols and procedures.

This policy commits the council to implementing procedures which officers shall follow when undertaking their statutory duties, ensuring that they act in an equitable, practicable and consistent manner.

The policy cannot be absolutely prescriptive because of the circumstances of each individual case and due to the fact that the evidence available is likely to vary. This policy sets out the way in which any member of the public can expect the council to act in relation to enforcement matters.

This policy accords with the principles of the Human Rights Act 1998, The European Convention on Human Rights 1950, The Freedom of Information Act 2000, The Regulation of Investigatory Powers Act 2000, The Data Protection Act 2018, the UK General Data Protection Regulations (UK GDPR), the Legislative and Regulatory Reform Act 2006 and the Protection of Freedoms Act 2012.

Where appropriate, individual service areas may introduce a service-specific policy which will complement this policy. When taking enforcement action, officers will have regard to this policy and any relevant service-specific policy.

The principles of good enforcement – policy and procedures

The primary function of central and local government enforcement work is to protect the public and the environment. However at the same time, it is expected that enforcement agencies will carry out enforcement functions in an equitable, practical and consistent manner to promote a thriving nation and local economy. The council is committed to promoting compliance and maintaining a fair and safe environment.

The effectiveness of legislation in protecting consumers or sectors in society depends crucially on the compliance of those that are subject to regulation. It is recognised that most businesses and individuals want to comply with the law, therefore care will be taken to help them meet their legal obligations without unnecessary expense, whilst taking firm action, including prosecution where appropriate, against those who flout the law or act irresponsibly.

The principles of good regulation

This policy is based on the five principles of good regulation in accordance with the Regulator's Compliance Codes: these are transparency, accountability, proportionality, consistency and targeted only at cases for which action is needed.

Transparency

We will communicate in plain English or in the appropriate language or method. The council has interpreting and translation services available for businesses and the public who do not have English as their first language. 3.2.2 In most circumstances when carrying out enforcement action we will ensure that people affected by formal action are aware of what is planned, and will allow for discussion and time to respond before that action is taken. However this is not always possible if immediate action is required (for example, in the interest of health and safety, environmental protection or to prevent evidence being destroyed).

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 (this advice will usually be issued with any type of enforcement notice).

Accountability

The council will actively work with businesses and the public to advise and to assist with compliance and complaints.

Where appropriate, in consultation with businesses and other relevant interested parties, including technical experts, the council will produce and publish standards setting out the service and performance the public and businesses can expect to receive. The council's performance team monitors performance against these standards. Any service standard such as speed of response will be available on request, and information will be provided in plain language where possible. Where the council receives a complaint against an individual/organisation, it will keep the complainant informed of the progress of the council's investigation. Where appropriate, the council will also keep those complained of informed as to the status of any investigation.

The council undertakes regular customer satisfaction surveys and regularly reviews comments, compliments, and complaints it receives regarding the nature and quality of its service and enforcement functions. If anyone wishes to complain about enforcement they may do so through the council's complaint procedure, by emailing the complaint to complaints@southlakeland.gov.uk

Proportionality

The council will minimise the costs of compliance for businesses by ensuring that any action required is proportionate to the risks involved and the seriousness of any breach. As far as the law allows, it will take account of the circumstances of the case and the attitude of the person involved when determining action, but will seek to secure the most appropriate standard of compliance.

The council will have regard to various courses of remedial action and will consider what is 'reasonably practicable'. Officers, when considering enforcement, will take into account the degree of risk to the health, safety and wellbeing of others or to the environment. However some risks may be so serious that they cannot be permitted. The most serious formal action, including prosecution, will be used in cases of serious or persistent breaches of the law where there is a significant risk to health, safety of the environment, or where there has been a flagrant disregard for the requirements of the law.

The council will take particular care to work with small businesses, voluntary and community organisations and minority groups so that they can meet their legal obligations without unnecessary expense, where practicable.

Officers of the council will, in appropriate circumstances, facilitate training and education if this is what is most needed to address problems attracting enforcement action.

We will only ask for information to be provided that is needed to carry out our regulatory functions.

Consistency

The council will carry out its duties in a fair, equitable and consistent manner to ensure that similar issues are dealt with in a similar way, making full use of guidance produced by central government and other agencies. Decisions of enforcement always entail a degree of judgement and the circumstances of each case will inevitably differ in detail. Furthermore, guidance upon which officers rely may change over time, and therefore decisions made one day may differ the next. Because of this there may be times when the enforcement appears inconsistent, but through no fault of the council's.

All staff undertaking enforcement duties will be suitably trained, qualified and authorised by the council.

Targeted

All enforcement action will be primarily targeted towards those situations that give rise to the most serious risk (such as high risk processes, poor compliance, poor management, and deliberate or organised crime). Other factors also determine priorities for enforcement activity, including Government targets and priorities, new legislation, national campaigns, and public concerns. This may result in particular types of businesses or particular sectors of the community being targeted from time to time.

Shared enforcement responsibilities

The council recognises there are areas of work within the organisation where there may be shared or complimentary enforcement roles with other agencies, in these circumstances there may be a benefit from an inter-agency or multiagency approach. This can arise where the local authority powers alone are insufficient, shared with other agencies, or required as a matter of good practice or safety. In all such circumstances the council will aim to work in conjunction with all other agencies as appropriate.

Where matters are identified by, or reported to officers, and the enforcement responsibility lies with other council services or an outside agency, officers will refer the matter to the appropriate service or agency. Any persons involved will, so far as reasonably practicable, be informed that the matter has been referred.

Where enforcement action is being taken by another council service or outside agency, officers will provide all reasonable assistance including the production of witness statements and collection and sharing of evidence etc. subject to legal constraints and the meeting of any reasonable expenses.

If a business is part of the Primary Authority scheme for relevant activity e.g. Food safety, the officer will contact the Primary Authority before enforcement action is taken, unless immediate action is required because of imminent danger to health, safety or the environment.

Enforcement agencies exchange information as part of their partnership work to help reduce crime and disorder; this is usually undertaken through information sharing protocols or where there is a legal obligation to provide information (for example, under the Data Protection Act 2018). By capturing coherent and robust intelligence, current and emerging problems can be clearly identified. This approach enables strategic and tactical direction to be provided. Information on trends, history and specific incidents can be used to target regulatory activity on the risks identified, and we support this work.

Enforcement and the 24-hour economy

The council recognises that many activities take place outside normal office hours and can make provision to undertake investigatory visits outside normal office hours, for example, at times when the business is operating. The council and its officers is therefore able to carry out a range of inspection, complaint response and monitoring activities outside the council's normal service hours. The council does not operate an out of hours service to respond immediately to all types of complaints, this service is only provided for emergencies.

Authorisation of officers

The council's Constitution, which is available on the council's website, describes the powers that are available to officers. These powers are supplemented by various legislative provisions relating to the different functions of the council.

The Constitution gives delegated power to the relevant director to appoint authorised officers subject, where appropriate, to officers possessing such qualification as required in accordance with the council's policy and procedures, and having the necessary competency and experience.

The authorisation of each officer is dependent on the duties they have been appointed to undertake, their training, experience and competency. The authorisation of officers is reviewed regularly (at least annually) and updated as necessary.

Training of officers

The council will ensure that its officers have the necessary knowledge and skills to support those it regulates, including having an understanding of those it regulates that enables officers to choose proportionate and effective approaches. The council will also ensure that its officers understand the statutory principles of good regulation and the Regulators' Code, and how they deliver its activities in accordance with them.

The level of authorisation for each officer will be determined by their qualifications, experience and competence having regard to any relevant national guidelines and statutory requirements for competency.

The council supports the principle of Continuing Professional Development and will ensure that all officers are given additional inpost training to maintain up to date knowledge and skills.

Exercise of powers of entry

In some cases, council officers may have a power of entry in relation to the council's various enforcement activities; the powers of entry prescribed under the applicable legislation vary. Such powers may allow an officer to require entry to a business address without notice. Alternatively officers seeking access to primarily residential addresses may be required to give notice to an owner/occupier that the officer wishes to gain entry for a specified purpose on a specified day. Entry may be sought for a number of purposes, including inspection, collection of evidence, checking compliance, and to undertake works in default etc. Where an officer needs to exercise a power of entry, they will do so in accordance with the relevant legislative provisions that apply in the circumstances of the case.

The obstruction of an officer is a criminal offence and it is the policy of the council to refer cases of obstruction to the Monitoring Officer, with a view to prosecution. In such cases, the investigating officer will also apply to a Magistrate for a warrant to enter the premises by force if necessary, to enable the purpose of such entry to be fulfilled.

It is the policy of the council to issue all investigating officers with identification cards which have a photographic image of the officer indelibly imprinted on them. Officers will carry their I.D. cards with them at all times and will produce them on request to verify their identity. If any person has any doubts or suspicions concerning an officer's identity they can contact the council to confirm identification.

Levels of enforcement action

This policy applies to the enforcement activities undertaken by all of the council's enforcement teams. For the purpose of this document 'enforcement' includes action carried out in the exercise of, or against the background of, statutory enforcement powers. This is not limited to formal enforcement action such as prosecution or issue of notices, but also includes activities such as the inspection of premises for the purpose of checking compliance with legal requirements, the provision of advice, and support to aid compliance.

This Enforcement Policy helps to promote an efficient and effective approach to regulatory inspection and enforcement, and to improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulators' Code.

In certain instances the council may conclude that a provision in the Code is either not relevant or is outweighed by another provision. The council will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented following advice from the council's legal specialists or external legal advisors.

Following an inspection, monitoring visit, investigation, or referral from another authority, there are several enforcement options available to the council and its officers to secure compliance with the law. Having suitably considered all the relevant information these options are:

- To take no action
- To take informal action
- To take formal action (either written or oral) which can include any or all of the following:-
 - To issue statutory notice(s)
 - To issue fixed penalty notices
 - To prohibit (e.g. an activity or use of a premises)
 - To seize equipment, articles or records (paper or computer)
 - To execute work required by a statutory notice where the recipient has not complied
 - To issue an administrative penalty (in some circumstances)
 - To issue a simple caution
 - To review, amend, condition, vary, revoke or suspend a licence
 - To take out an injunction
 - To prosecute

There are occasions when a business may have entered into a Primary Authority arrangement with a council other than South Lakeland District Council. A Primary Authority arrangement is one where a business can form a legal partnership with one local authority which provides tailored advice on complying with certain legislation; local regulators must respect that advice. If a business has a Primary Authority the council will contact the Primary Authority before enforcement action is taken, unless immediate action is required because of imminent danger to health, safety or the environment.

In any situation which requires action to ensure compliance with the law, officers will consider the following when deciding the most appropriate enforcement method:

- The degree of risk or actual harm from the situation
- The seriousness of the legal contravention
- The different technical means of remedying the situation
- The particular circumstances of the case and the likelihood of its continuation or recurrence

- The general attitude of the offender to his or her responsibilities
- The past history of the person(s) or company involved
- The impact of the enforcement choice in encouraging others to comply with the law
- The likely effectiveness of the various enforcement options
- Any legal imperatives e.g. the obligation to serve an abatement notice if a statutory nuisance exists

No action

If it has been found that there has been no breach of relevant legislation or licence condition, then no further action by the council may be required. The investigating officer, however will note their findings and the reason for the decision, which must be recorded in writing for future reference. This information will be retained in accordance with the council's retention guidelines.

Informal action

This sort of action will be appropriate where the degree of risk or actual harm (or in some cases environmental impact) from any given situation is minor, or is insignificant. The person would have no recent history of noncompliance and the officer would have good reason to expect them to put right the matters in question without the need for further investigation. The other enforcement options would be inappropriate and disproportionate bearing all of these things in mind. In some instances, the law allows discretion in whether formal or informal action should be taken. Examples of informal action would include written and oral warnings. Other legislation may not allow such discretion.

Informal action will be recorded on files and will be used as a basis for judgments on future enforcement action if there are recurrent problems with an offender or premises.

Formal action

There may be circumstances when it is appropriate to take formal action. There are a number of options open to the council when it is considering formal action ranging from serving a statutory notice to prosecution.

Statutory Notices

Notices are served where there is a clear breach of the law and require offenders to cease contravening activities. The time period allowed for compliance will be dependent on the degree of risk and how long realistically it would take to comply. In some instances service of a notice will be compulsory as the law allows us no discretion. All notices will contain information on how to lodge an appeal or request a time extension if there is a power for such an appeal to be lodged or an extension to be requested/granted. This information is

made available at all times when the notice is served. Those served with a statutory notice will be monitored to ensure compliance with the notice. Should there be any non-compliance with the notice, the council is likely to take further formal action, subject to consideration of the evidence available.

Fixed Penalty Notices (FPN)

Certain legislation allows for an authorised officer of the council to issue fixed penalty notices (FPN) for low-level crime when contravention of the legislation has occurred or is witnessed; for example, dog fouling, dropping litter or fly-tipping. The issue of a FPN gives an offender the opportunity to avoid a prosecution and attending court by the payment of a set fine within a specified period. FPN's will only be issued when there is adequate evidence to support a prosecution. If the fine is not paid in full within the stated period then the council can consider a prosecution.

FPNs will not be issued to repeat offenders or if the offence is not a low-level crime as in these circumstances other enforcement action is the appropriate action.

The availability of FPNs as a means of enforcement will not restrict the options open to the council where other options are also available. For example, if the legislation allows the council to bring prosecution proceedings against an offender, it may choose to do so without issuing an FPN.

Prohibition

Some legislation will provide the council with the power to prohibit certain activities or use of a premises/dwelling. For example, the council could issue a notice prohibiting the use of premises as a food preparation premises in the event that there was a risk of serious harm to the public.

The power will be used where there are statutory grounds (e.g. that there is an imminent risk of injury to health or risk of serious personal injury) and where the situation cannot be allowed to continue because of the risks involved. This course of action is usually associated with food and health and safety enforcement.

Seizure of Equipment, Food, Article or Substances

Officers are entitled to seize certain items and remove them from a premises where they are used unlawfully, or where they are required as evidence during part of an investigation. This approach will be used generally in association with other powers; for example equipment may be seized where there has been a repeated, persistent, or extreme use of sound equipment which has caused a nuisance at one or more neighbouring properties, and where it is practical to seize the equipment.

Seizure may also be used for food which fails to meet food safety requirements. This power will be used where there may be a serious risk to health from food available for human consumption, seizure allows a method to rapidly remove it from the food chain and protect public health.

Articles or substances which are a cause of immediate danger may be seized under health and safety law.

These powers of seizure are in addition to any powers to seize items for evidential purposes.

Works in default

Some legislation allows the local authority to undertake the works required by a notice if the recipient of the notice does not do so within the times specified within it; often this is the case with notices served in respect of dangerous structures.

Where such a notice has been served, and where without adequate excuse or reason, the work has not been done, then work in default would generally follow subject to the practical constraints of the case and the financial circumstances. Prior to carrying out works in default the council will consider carefully the prospect of recovery of any costs incurred in accordance with any current council policy.

The council will make every effort to recover the full costs of doing the works in default. In circumstances where this is not achievable, the council will attempt to place a charge on the property to enable costs to be recovered in future sale of the property.

Simple caution

A simple caution is used as an alternative to prosecution to deal quickly and simply with less serious offenders. Simple cautions will be issued in accordance with guidance issued by the Ministry of Justice guidance “Simple Cautions for Adult Offenders” and other guidance available to prosecutors. The aim of the simple caution is to deal quickly and simply with less serious offences, divert offenders from unnecessary appearance in the criminal courts and reduce the chances of their re-offending. A simple caution is likely to be appropriate where there has been a minor contravention of the law or a failure to put a matter right.

For a simple caution to be issued, a number of criteria must be satisfied:-

- Sufficient evidence must be available to prove the offence; o The offender must admit the offence; and
- The offender must understand the significant of the caution and give informed consent to being cautioned.

There is no legal obligation for any person to accept a simple caution. A record of the simple caution will be kept on the appropriate local and/or national database. If the offender commits a further offence, the simple caution may influence any decision to prosecute the further offence. If during the time the caution is in force, the offender is prosecuted for any other offence in England and Wales, the caution may be cited in court and this may influence the severity of the sentence that the court imposes.

If the offer of a simple caution is refused, prosecution proceedings will normally be commenced.

Prosecutions

The decision to prosecute an individual is a serious step. Fair and effective prosecution is essential to maintain law and order. Prosecution can have serious implications for all involved. The council has regard to the Code for Crown Prosecutors so that it can make fair and consistent decisions about prosecutions.

The authorisation to prosecute is delegated to the Monitoring Officer.

The council has the discretion whether or not to prosecute for an offence and the decision to prosecute will be based on the circumstances of each individual case. The criteria for prosecution must be related to the risk or the seriousness of the offence. Not every breach of legislation will result in legal action. Relevant factors will be assessed by the investigating officer, team leader, operational lead, the relevant Director (where appropriate) and the Monitoring Officer or their nominated representative.

A prosecution will normally be brought where one of the following criteria are met by the individual or organisation:

- Deliberately or persistently breaching legal obligations, which were likely to cause material loss or harm to others
- A significant or serious breach of legal obligations
- Deliberately or persistently ignoring written warnings
- Failure to comply with an enforcement notice, including the non-payment of a
- Fixed Penalty Notice
- Endangering to a serious degree, the health, safety or well-being of people, animals or the environment
- Knowing or wilfully failing to comply in full or in part with the requirements of a statutory notice or statutory instrument

The prosecutor must be satisfied that there is relevant, admissible, substantial and reliable evidence that an offence has been committed by an identifiable person/company. This is known as the evidential test.

Having satisfied the evidential test the following factors will be taken into consideration, forming the basis of the public interest test:

- The seriousness of the alleged offence
- The previous history of the person or business concerned
- The ability of witnesses and their willingness to co-operate

- The willingness of the party concerned to prevent recurrence of the offence
- The probable public benefit of prosecution
- Any explanation offered by the alleged offender
- The likelihood of the defendant being able to establish, where appropriate, a due diligence/best practicable means defence and
- Whether other action (formal cautioning, improvement notices) will be more appropriate or effective

Officers investigating offences will seek to ensure that their investigations and decision making is not unduly prolonged and that complainants, witnesses and other parties are kept informed of progress with the case.

Fully documented contemporaneous notes will be kept of all cases.

Licences/Permits and Conditions

In some cases, the council has the power to attach, amend, or vary licence or permit conditions where these are considered proportionate and necessary, in accordance with council policy or in accordance with advice and guidance issued by Government and advisory bodies. Where changes are made, there are usually rights of appeal; advice on the appeal mechanism will be clearly set out in writing.

If prosecution is taken by this authority and is successful, the court may order the cancellation of a licence or permit permanently or for a prescribed period. Alternatively the council may consider making an application for cancellation of the licence or permit following conviction for a relevant offence, especially where there are sufficient grounds to believe that such action is warranted to prevent an occurrence or halt an existing occurrence.

Injunction

If the council's Monitoring Officer advises that a High Court injunction is the most appropriate course of enforcement action, then an application will be made to the appropriate court. This enforcement action will only be used in exceptional circumstances.

Implementation of the Enforcement Policy

The Monitoring Officer will be responsible for ensuring that all enforcement officers are familiar with the requirements of this Enforcement Policy. The relevant Operational Leads will ensure that officers follow this policy when carrying out their duties.

Publicity

Regulatory authorities have a responsibility to protect the public from detrimental trading and environmental practices. Regulators undertake a range of activities to achieve this. These include actions that are taken after the detection of an offence, as well as measures to prevent offences occurring.

One such measure is the publication of convictions and information concerning significant detrimental trading behaviour. The publicity generated by prosecutions and other enforcement action acts as a deterrent to others. It also reassures the general public that regulators take a serious view of such detrimental behaviour.

Officers will therefore consider publishing the name and address of each person convicted of or subject to other enforcement action, together with details of the matters involved. In reaching a decision as to whether to publish such information, officers will consider the following factors:-

- The specific details of the offence committed or detrimental activity
- The public interest in disclosing personal information e.g. the deterrent effect of the publication
- Whether the publication would be proportionate
- Whether the information is already in the public domain and
- The personal circumstances of the offender

This is not an exhaustive list and other factors may be relevant in the circumstances of an individual case.

Human Rights Act 1998

South Lakeland District council is a public authority for the purpose of the Human Rights Act 1998. The council therefore applies the principles of the

European Convention for the Protection of Human Rights and Fundamental Freedoms. This policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is had to the right to a fair trial and the right to respect for private and family life, home and correspondence.

Data Protection Act 2018

Where there is a need for the council to share enforcement information with other agencies, the council will follow the provisions from the Data Protection Act 2018 and UK GDPR.

The Data Protection Act 2018 Part 3 only applies to competent authorities that are processing personal data for the primary purpose of enforcement. It applies, but is not limited, to: the police, criminal courts, prisons, non-policing law enforcement; and any other body that has statutory functions to exercise public authority or public powers for any of the law enforcement purposes.

This includes the council when it undertakes a function or exercises a power in relation to the prevention, investigation, detection or prosecution of criminal offence(s).

The six law enforcement principles under Part 3, Chapter 2 of the Data Protection Act 2018 are the main responsibilities that the council will follow when processing personal data for law enforcement purposes.

The council recognises the principles are broadly the same as those in the UK GDPR, and are compatible. This will enable the council to manage processing across the two regimes.

The six principles of the Data Protection Act 2018 must be adhered to at all times and the council must demonstrate compliance with these principles in all data processing for law enforcement purposes.

The council in processing personal data for enforcement purposes will ensure that the processing is necessary, targeted and proportionate. The lawful basis for the processing would be either necessary for the performance of a task carried out for law enforcement or based upon consent.

If obtaining consent the UK GDPR will be applied to ensure the consent is unambiguous and involves a clear affirmative action.

If processing under a lawful basis the council will identify the legal statute, common law or royal prerogative or under any other rule of law. It also meets one of the conditions for processing under Data Protection legislation.

Review of the Policy

This policy will be reviewed every three years or in line with changes in relevant legislation, or regulators code. This document was published on 16 March 2022.