

SUBJECT:	HEALTH & ENVIRONMENT ENFORCEMENT POLICY 2019 - 2024
DIRECTORATE:	COMMUNITIES AND ENVIRONMENT
REPORT AUTHOR:	SIMON COLBURN, ASSISTANT DIRECTOR

1. Purpose of Report

1.1 To seek approval from Executive for the proposed Health & Environment Enforcement Policy 2019 – 2024 prior.

2. Executive Summary

2.1 The policy seeks to clarify the principles under which the Health and Environment service area will undertake regulatory activity. These are

- We will ensure that we enforce the law in a fair, equitable and consistent manner;
- We will work to assist businesses and others in meeting their legal obligations;
- Our focus will be on prevention rather than cure, where appropriate;
- We will take action against those who breach the law or act irresponsibly.

2.2 The policy clarifies other principles and adoption of guidance regarding our approach to good regulation and enforcement.

2.3 The policy proposes the adoption and use of civil penalties and penalty charge notices for certain offences and the introduction of charging for enforcement activity for appropriate offences.

2.4 This policy applies to the functions carried out by the following services:-

- Environmental Health – Food Safety, Health & Safety, Pollution Control and Private Sector Housing
- Licensing
- Anti-social behaviour & Public Protection

2.5 The policy was presented to Policy Scrutiny Committee on 8 October 2019.

3. Background

3.1 The City of Lincoln Council's Health & Environment services are responsible for protecting people's health, safety and wellbeing as well as the environment and amenities. They do this by using a range of tools, powers and approaches which varies from team to team. A non-exhaustive list of the legislation covering this area is in annex 1 of the policy.

- 3.2 While the type of resource and approach may differ across teams the framework and principles of enforcement activity should be clear and consistent. This policy aims to clarify those principles and that framework.
- 3.3 Health and Environment Services covers a diverse range of regulatory services including –
- Food Safety;
 - Health & Safety;
 - Pollution Control;
 - Private Sector Housing;
 - Licensing;
 - Anti-social behaviour & Public Protection.

The area covers a range of licensing, permitting and enforcement activities based around the regulation of businesses and direct enforcement against individuals. This includes everything from formal warning letters and fixed penalty notices for things like littering and dog fouling through to revocation of licences and prohibition notices which may prevent a business operating and prosecutions with potentially large fines. The highest we have seen in the service area was £404,000 in 2018 (although this was later reduced on appeal to £84,000).

- 3.4 This overarching policy provides the context and framework for more detailed policies and procedures such as our existing Licensing Policy Statement and detailed procedures may be developed in particular service areas to assist officers in specific enforcement activities.

4. The City of Lincoln Council regulatory principles

- 4.1 Our regulatory focus is based around four central principles:

- We will ensure that we enforce the law in a fair, equitable and consistent manner
- We will work to assist businesses and others in meeting their legal obligations
- Our focus will be on prevention rather than cure, where appropriate
- We will take action against those who breach the law or act irresponsibly

- 4.2 In addition to these four principles the policy clarifies that we will follow relevant good practice guidance in all of our regulatory activities. This includes the following

- The Principles of Good regulation;
- The Regulator's Code;
- The Code for Crown Prosecutors;
- Any other relevant legislation or guidance.

- 4.3 The Principles of Good regulation (under the Legislative and Regulatory Reform Act 2006) to ensure our regulation is –

- Proportionate – our enforcement activities will reflect the impact of the offending on those living in, working in and visiting the city and enforcement

action taken will relate to the seriousness of the offence;

- Accountable – our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures;
- Consistent – our advice to those we regulate will be robust and reliable and we will respect advice provided by others. Where circumstances are similar, we will endeavour to act in a consistent manner;
- Transparent – we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return, and
- Targeted – we will focus our resources on higher risk businesses and activities, reflecting local need and national priorities and intelligence.

4.4 The Regulator's Code (Department of Business, Innovation and Skills) which is, in summary -

- Regulators should carry out their activities in a way that supports those they regulate to comply and grow;
- Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views;
- Regulators should base their regulatory activities on risk;
- Regulators should share information about compliance and risk;
- Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply;
- Regulators should ensure that their approach to their regulatory activities is transparent.

4.5 Under the Legislative and Regulatory Reform Act 2006 we must have regard to this code in formulating our enforcement policy.

4.6 The policy also clarifies that we will always have regard to the Code for Crown Prosecutors and the two tests specified therein -

(a) **Evidential Test** - is there enough evidence against the defendant? Is it reliable and do we have a "realistic prospect of conviction".

(b) **Public Interest Test** - is it in the public interest for the case to be brought to court? Our decision will reflect the impact of the offending on those living and working in the City.

4.7 The policy clarifies that while the Council cannot enforce against themselves, breaches of legislation found in premises owned or run by the Council will be treated in the spirit of this policy as would a breach in other premises and therefore action required to mitigate any problems in council premises would be consistent with those in non-council premises. In addition, details of the breach will be brought to the attention of the Chief Executive, appropriate Director and Assistant Director and also the City Solicitor.

4.8 The policy specifically introduces and adopts the use of

- Civil Penalties,
- Penalty Charge Notices and
- Charging for Enforcement Activity under the Housing Act 2004.

- 4.9 The first two can be used as an alternative to prosecution to tackle private sector landlords that do not maintain their properties to a suitable standard by disposing of the offence by way of a fine rather than court.
- 4.10 Charging for enforcement activity is in addition to any final regulatory action and is a legal mechanism for recovering some of the costs associated with having to provide additional resource to undertake enforcement.
- 4.11 Civil penalties were introduced by the Housing and Planning Act 2016 as an alternative to prosecution for specific offences under the Housing Act 2004 relating to private rented properties.
- 4.12 The overriding principle when considering civil penalties is that the person on whom the civil penalty has been issued should not make any financial gain as a result of their failure to comply with the relevant legislation. Effectively the penalty is a bespoke fine, imposed by the council, based on the circumstances of the case.
- 4.13 Under the policy we will consider civil penalties for all landlords that are in breach of one or more relevant sections of the Housing Act 2004 on a case by case basis following the legislation and any national guidance. We have produced detailed guidance for calculating civil penalties based on good practice to support this decision making.
- 4.14 Civil penalty payments will be retained by the Council provided that it is used to further the Council's statutory function in relation to their enforcement actions covering the private rented sector as specified in the regulations.
- 4.15 The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 allows for the issuing of penalty charge notices as an alternative to prosecution for offences where smoke or carbon monoxide alarms are either not present or not working. The penalty charge is only considered if the landlord has first failed to comply with a legal notice.
- 4.16 The policy proposes that the charge is set at £5,000 with a reduction to £2,500 for the first breach if the penalty charge is paid within 14 days, repeat breaches will be £5,000 with no discount for early payment. This will be subject to a separate report to full Council to approve the charges.
- 4.17 Charging for enforcement activity is available for certain offences under the Housing Act 2004. This would be in addition to any final regulatory action, including prosecution and fines imposed by the court. It is rather a mechanism identified in the 2004 Act for recovering some of the costs associated with having to provide additional resource to undertake enforcement activity. A specific charge for this will be identified based on officer time and taken to full Council for approval under the fees and charges process.
- 4.18 The policy will be published on our website to ensure businesses and individuals are aware of the standards expected and our approach to enforcement.
- 4.19 The policy will be reviewed no later than 2024.

4.20 The policy was presented to Policy Scrutiny committee on 8th October. Comments from committee have been incorporated into the final policy attached at appendix one.

5. Strategic Priorities

5.1 The policy once adopted will contribute to all of the strategic priorities due to the wide reach of the services it will cover.

5.2 Let's drive economic growth

Our enforcement principles are based on working to assist businesses in meeting their legal obligations and focusing on prevention rather than cure. This is an existing approach based around supporting our businesses to comply with legislative requirements and ultimately succeed.

5.3 The policy will also ensure consistent risk based enforcement across our businesses ensuring that those that do not comply with legal requirements or standards, do not benefit.

5.4 Let's reduce inequality

The Health and Environment services are responsible for protecting the health, safety, wellbeing of our residents and environment and ensuring consistent and proportionate enforcement for those that do not comply with legislation. Often it is our most vulnerable residents that are impacted by those committing offences whether that is ASB or landlords failing to maintain their premises.

5.5 Let's deliver quality housing

The policy seeks to ensure that regulation and enforcement is fair and consistent across our private rental sector within the city and introduces new powers to make that more streamlined and robust.

5.6 Let's enhance our remarkable place

The policy applies to services areas dealing with a variety of environmental offences. Whether it is a highly visible offence (littering, dog fouling) or less visible (pollution) the policy seeks to ensure a consistent risk based approach.

6. Organisational Impacts

6.1 Finance (including whole life costs where applicable)

The policy proposes to adopt two types of sanction that may generate income -

- Civil penalties;
- Penalty charge notices;

6.2 These will be subject to a separate 'fees and charges' report to full council.

6.3 As per section 4.9 above, it is proposed that the charge for penalty charge notices under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 is set at £5,000 with a reduction to £2,500 for the first breach if the penalty charge is paid within 14 days, repeat breaches will be £5,000 with no discount for early payment.

- 6.4 It is not possible to set a specific charge for civil penalties as, by their very nature, they will vary from case to case.
- 6.5 The fees and charges report will also set a specific rate for 'Charging for enforcement activity' as per section 4.10 above.
- 6.6 Given that the council follows the principles of good regulation so that regulatory activity focuses on prevention and helping businesses to comply with legal requirements it is not appropriate to set financial income targets for enforcement activities such as Civil Penalties or Fixed Penalty Notices.
- 6.7 Legal Implications including Procurement Rules
- As outlined in the report.
- 6.8 Equality, Diversity and Human Rights
- 6.9 The Public Sector Equality Duty means that the Council must consider all individuals when carrying out their day-to-day work, in shaping policy, delivering services and in relation to their own employees.
- 6.10 It requires that public bodies have due regard to the need to:
- Eliminate discrimination
 - Advance equality of opportunity
 - Foster good relations between different people when carrying out their activities
- 6.11 The equality assessment is attached as appendix 2 and concludes that overall there should be a positive impact by ensuring fairness and consistency in our enforcement activities while considering the individual facts of a case.
- 6.12 The policy will have a positive impact on several human rights and freedoms including
- Right to a fair trial
 - No punishment without law
 - Respect for an individual's private and family life, home and correspondence
- 6.13 Human Resources
- Most staff within the service areas will already be carrying out enforcement activities in line with the principles of the proposed policy and the guidance it refers to. All staffed will be briefed on the new policy once adopted using team meetings or similar formats to ensure it is embedded. Any training requirements will be identified using existing processes such as 1-2-1's and appraisals.

7. Risk Implications

7.1 (i) Options Explored

The most significant alternative option is to not develop and adopt the policy. This would have two impacts –

- Penalty charge notices and civil penalties would not be adopted;
- Our approach to enforcement would be less robust – While individual enforcement activities are unlikely to be affected (as all enforcement under goes some form of scrutiny to ensure it complies with basic good principles) this policy provides a clear framework that can be used to enhance training for staff and makes it clear to residents, visitors and business alike what our approach to enforcement is.

7.2 (ii) Key risks associated with the preferred approach

The adoption of the proposed policy actually reduces risk by setting a clear policy framework for the delivery of enforcement activities which will lead to improvements in consistency, transparency and quality of enforcement activities.

There is a risk that as we introduce penalty charge notices and civil penalties these will be challenged however this is mitigated by having structured guidance in place.

8. Recommendation

8.1 That Executive adopt the proposed policy and support the introduction and use of civil penalties, penalty charge notices and charging for enforcement activity.

Is this a key decision?

No

Do the exempt information categories apply?

No

Does Rule 15 of the Scrutiny Procedure Rules (call-in and urgency) apply?

No

How many appendices does the report contain?

TWO
 Appendix 1 – Health and Environment Enforcement Policy
 Appendix 2 – Equality Impact Assessment
 Appendix 3 – Minutes from Policy Scrutiny Committee
 8 Oct 2019

List of Background Papers:

None

Lead Officer:

Simon Colburn
 Assistant Director – Health and Environment
 873241