

# POLLUTION CONTROL

## Enforcement and Prosecution Policy

### Introduction

- 1 As Lisburn City Council aims to provide a safe healthy environment for all, it will achieve much of this through education, by providing advice and by regulating the activities of others. Securing compliance with legal regulatory requirements, using enforcement powers including prosecution, is an important part of achieving this aim.
- 2 The Council's functions include air pollution, noise control and waste regulation. The activities dealt with range from the regulation of neighbourhood noise to the authorisation of prescribed industrial processes.
- 3 The Council regards prevention as better than cure. It offers information and advice to those it regulates and seeks to ensure co-operation avoiding bureaucracy or excessive cost. It encourages individuals and businesses to put the environment first and to integrate good environmental practices into normal working methods

### Aim of the Policy

- 4 This policy sets out the principles which will enable the Council's Environmental Services Department and its environmental protection officers to provide an effective and fair service, and to ensure consistent and open enforcement
- 5 It is written for the Council's officers and any business representatives or members of the public who enquire about our policy and procedures. It applies to all dealings, whether formal or informal, between businesses and members of the public with officers

### Principles of Enforcement

- 6 The Council believes in firm but fair regulation. Underlying the policy of firm but fair regulation are the principles of: *proportionality* in application of the law and in securing compliance; *consistency* of approach, transparency about how the Council operates and what those regulated may *expect* from the Council, and *targeting* of enforcement action

## Proportionality

- 7 Proportionality means relating enforcement action to the risks and costs.

The Council will minimise the costs of compliance by ensuring that any action it requires is proportionate to the risks. As far as the law allows, the Councils will take account of the circumstances of the case and the attitude of the offender (operator or member of the public) when considering action

- 8 Some incidents or breaches of regulatory requirements cause or have the potential to cause serious environmental damage, others may interfere with people's enjoyment or rights. When officers are deciding on the most appropriate enforcement action, they will take account of:-

- The degree of any risks posed
- The seriousness of any breach of the law
- The burden which would be placed on the business in taking action, compared with the benefit of risk reduction
- The attitude and intent of the offender, individually or corporately
- Foreseeability of offence or circumstances leading to it
- Relevant good practice as detailed in codes of practice and published guidance

## Consistency

- 9 Consistency means taking a similar approach in similar circumstances to achieve similar ends. The Council aims to achieve consistency in, advice tendered, the response to incidents and complaints, the use of powers and decisions on enforcement action

- 10 The Council recognises that consistency does not mean simple uniformity. Officers need to take account of the many variables, the scale of environmental impact, the degree of interference with people's enjoyment or rights, the attitude and actions of offenders and the history of previous incidents or breaches. Decisions on enforcement action are a matter of professional judgement and the Council, through its Officers, needs to exercise discretion. The Council will continue to develop arrangements to promote consistency including effective arrangements for liaison with other enforcing authorities

## Transparency

- 11 Transparency is important in maintaining public confidence in the Council's ability to regulate. It means helping those regulated and others to understand what is expected of them and what they should expect from the Council. It also means making clear why an Officer intends to take, or has taken, enforcement action
- 12 Transparency is an integral part of the role of Council Officers and the Council continues to train its staff and to develop its procedures to ensure that:-
- Where remedial action is required, it is clearly explained (in writing, if requested) why the action is necessary and when it must be carried out; a distinction being made between best practice advice and legal requirements
  - Opportunity is provided to discuss what is required to comply with the law before formal enforcement action is taken, unless urgent action is required, for example, to protect the environment or to prevent evidence being destroyed
  - Where urgent action is required, a written explanation of the reasons is provided as soon as practicable after the event
  - Written explanation is given of any rights of appeal against formal enforcement action at the time the action is taken

## Targeting

- 13 Targeting means making sure that regulatory effort is directed primarily towards those whose activities give rise to either the most significant harm to its citizens or risk of serious environmental damage. Action will be primarily focused on lawbreakers or those directly responsible for the risk and who are best placed to control it

## Enforcement Action

- 14 Officers will determine what, if any, enforcement action is appropriate, in accordance with the aforementioned principles, from the following informal and formal options

### Informal action

- Verbal advice
- Advisory letter where advice is being confirmed or remedial action requested informally

## Formal action

- Verbal warning
- Warning/enforcement letter
- Enforcement notice, eg statutory nuisance abatement notices, IPC enforcement and prohibition notices
- Formal caution where a business admits to an offence and extenuating circumstances exist which make prosecution inappropriate
- Prosecution

## Prosecution

- 15 The use of the criminal process to institute a prosecution is an important part of enforcement. It aims to punish wrongdoing to avoid a recurrence and to act as a deterrent to others. It follows that it may be appropriate to use prosecution to ensure certain requirements are met. Where the circumstances warrant it, prosecution without prior warning or recourse to alternative sanctions will be pursued
- 16 The Council recognises that the institution of a prosecution is a serious matter that should only be taken after full consideration of the implications and consequences. Decision about prosecution will take into account of the Code for Crown Prosecutors (Crown Prosecution Service)
- 17 A prosecution will not be commenced or continued by the Council unless it is satisfied that there is sufficient, admissible and reliable evidence that the offence has been committed and that there is a realistic prospect of conviction. If the case does not pass this evidential test, it will not go ahead, no matter how important or serious it may be. Where there is sufficient evidence, a prosecution will not be commenced or continued by the Council unless it is in the public interest to do so
- 18 Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the offender and whether, through the conviction of offenders, others may be deterred from similar failures to comply with the law
- 19 Where there is sufficient evidence, the council will normally prosecute in any of the following circumstances:-
  - Where the offence involves a failure to comply in full or in part with the requirement of a statutory notice
  - Where there is a history of similar offences in relation to the non-compliance with notices

- Precedents or breaches which have serious consequences for the environment.
- Carrying out operations without a relevant Industrial Pollution Control authorisation
- Excessive or persistent breaches of regulatory requirements
- Failure to supply information without reasonable excuse or knowingly or recklessly supplying false or misleading information
- Obstruction of Council staff in carrying out their powers.

### Alternative to Prosecution

- 20 In the cases where a prosecution is not the most appropriate course of action, the alternatives of a caution or warning will be considered, the choice depending on the factors referred to above

A caution is the written acceptance by an offender that they have committed an offence and may only be used where a prosecution could properly have been brought. It will be brought to the Court's attention if the offender is convicted of a subsequent offence. A warning is a written specification that in the Council's opinion, an offence has been committed. It will be recorded and may be referred to in subsequent proceedings.

### Working with other Regulators

- 21 Where the Council and another enforcement body both have the power to prosecute, the Council will liaise with that other body to ensure effective co-ordination, to avoid inconsistencies, and to ensure that any proceedings instituted are for the most appropriate offence.

### Complaints Procedure

- 22 In the event that the "customer" is dissatisfied with the service provided, there are a number of forms of recourse available as outlined below, which Officers will ensure the customer is made aware of. The exact procedure followed in any particular case will depend not only upon the nature of the grievance itself but also the course of action the complainant wishes to pursue -

a) *Complaints related to enforcement action decisions*

- Officers will advise persons whom they have required to take any action, of their right to make representation to the Officer's Manager and, if not satisfied, to the Chief Executive and ultimately the Local Government Ombudsman

- Officers will, when serving notices, provide with those notices appeal details to be used should the recipient wish to lodge a formal appeal against same.

b) *Complaints relating to issues other than enforcement action decisions*

The Council's formal complaints procedure will be used to investigate those complaints which relate to dissatisfaction with the service, for example:-

- Failure to follow Council procedure, policy or standards
- Conduct of authorised Officers
- Discrimination
- Failure to respond quickly enough to requests for service