

Work Plan Study into Regulatory Enforcement



***Report of the
Environmental
Scrutiny Panel***
December 2010

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Chair's Commentary

This has proven to be a very interesting and informative study. I'm sure that even the more experienced members of the Panel now have a much greater understanding of the many and varied enforcement powers available to the Council. I'm as guilty as most, sometimes, in badgering officers over possible enforcement action over planning, health and environmental contraventions in my ward. This study will certainly assist me in dealing with such matters in the future.

Whilst it was decided to use the planning function when looking at case studies, Members' thoughts were never far away from environmental matters (such as dog fouling and fly-tipping) and I fully support the Panel's recommendation that we look at the operation of the proposed new Dog Control Orders next year once they are in force and officers have had time to assess their effectiveness.

As always, on behalf of the Panel, may I thank all the officers who have assisted the Panel with this study.

Yours truly,

Councillor Pauline Brown



Councillor P Brown
Chair
Environmental Scrutiny Panel

2. Membership of the Panel

Councillor Pauline Brown (Chair)
Councillor Nicholas Pomfret (Vice-Chair)

Councillor Julie Buttle
Councillor Joyce Cartwright
Councillor Linda Crompton
Councillor Phil Crowe
Councillor Tom Davies
Councillor David Hammond
Councillor Javed Iqbal
Councillor Margaret McManus
Councillor Bhikhu Patel
Councillor Taalib Shamsuddin

3. Scoping Document

Scrutiny Review – Regulatory Enforcement Scope of the Review

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3.	Departmental Link Officer: Craig Sharp, Assistant Director (Chief Environmental Health Officer)	Ext 6301

1. **Which of our Corporate Priorities does this topic address?**

In the Council's Corporate Plan 2010 – 13 the Council sets out four corporate priority areas. Regulatory enforcement activities across the Council contribute to all four areas:

Brighter Futures – Regulatory service areas aim to protect and improve the health and wellbeing of the City's residents, workers and visitors.

Safe and Strong Neighbourhoods – Regulatory services aim to reduce anti social behaviour and certain types of criminal activity, which impact directly on people’s lives, and protect and enhance the local physical environment.

Well Run - The Council has statutory duties to deliver a range of regulatory services. Services delivered in an efficient and effective manner with a high level of customer satisfaction serve to enhance the Council’s reputation.

City Vision – Well delivered regulatory services can make a positive contribution to encouraging and supporting the growth of the local economy; but poorly planned, resourced and delivered services can inadvertently act to restrict the growth of existing businesses, discourage the redeployment of businesses into the City and discourage the creation of new businesses.

2. **What are the overall aims and objectives in doing this work?**

- To review the Council’s Corporate Enforcement Policy and the mechanisms to ensure that individual regulatory services act in accordance with that policy.
- Using Planning as a regulatory services example, review the effectiveness of enforcement activity in delivering the four corporate priorities.
- Using Planning as a regulatory services example, review partnership working on enforcement activity, both corporately across Council departments and with appropriate external partners, to ensure the efficient and effective use of resources.
- Using Planning as a regulatory service example, review the use of publicity of enforcement action taken, both as a means of deterring others from committing offences and of ensuring public confidence in the Council’s role as a regulator.
- Using Planning as a regulatory service example, review the provision of information to Members about enforcement action taken, as a means of ensuring Member confidence in the Council’s role as a regulator.

3. **Possible outputs/outcomes to this review are:-**

- Recommendations for a revised Corporate Enforcement Policy.
- Recommendations for revised mechanisms to ensure that all Council regulatory services act in accordance with that policy.
- Increased Member understanding of the role that enforcement plays as one tool for ensuring regulatory compliance.

- Increased Member understanding of the partnership working that occurs between Council departments and external partners to ensure the efficient and effective use of regulatory resources, together with any recommendations for how that working could be improved.
- Recommendations on the use of publicity following enforcement action.
- Recommendations on the provision of information to Members on enforcement action taken.
- Recommendations for any future scrutiny review of regulatory service areas other than Planning enforcement.

4. **What specific value can Scrutiny add to this work area?**

Bring an objective assessment on the fitness of purpose of the Council's Corporate Enforcement Policy.

5. **Duration of the Review?**

Estimated 4 - 6 months.

6. **What category does the review fall into**

Policy Review

7. **What information do we need to undertake the Scrutiny Review**

- a) Preston CC Corporate Enforcement Policy: December 2005.
- b) Regulators' Compliance Code – Statutory Code of Practice for Regulators: BERR December 2007.
- c) "Map" of all Council regulatory service areas.
- d) Planning Policy Guidance PPG18 – Enforcing Planning Control: DoE 1991.
- e) Draft Preston CC Planning Enforcement Charter.
- f) Example case studies of Planning enforcement activities.

8. **Who can provide us with relevant evidence?**

Assistant Director (Chief Environmental Health Officer)

Assistant Director (City Planning Officer) and/or officer(s) from the Planning Department

What areas do we want them to cover when they give evidence

The Council's regulatory roles.
The range of regulatory compliance tools, including enforcement.
The Corporate Enforcement Policy.

Planning enforcement practices, including joint working with other Council departments and external agencies.

Frontline officer(s) from the Environmental Health Department	Examples of liaison and joint working at a frontline level between the Planning Department and the Environmental Health Department on enforcement actions.
Head of Communications	Use of publicity of enforcement actions.
Head of Legal Services	Restrictions on the use of publicity of enforcement actions

Who can provide us with relevant evidence?

What areas do we want them to cover when they give evidence

Chair of Planning Committee	Confidence of Planning Committee on the enforcement of compliance with imposed planning conditions and the adequacy of information available to Committee members to reach that conclusion.
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9. **What processes can we use to feed into the review (site visits/observations, face to face questioning, telephone surveys, written questionnaires etc?)**

- Verbal evidence from officers
- Written case studies from officers
- Face to face questioning of officers
- Interview with Chair of Planning Committee

10. **Diversity – How will we address the diversity standards in order to uphold the Council’s Single Equality Scheme?**

Any recommended revised Corporate Enforcement Policy will include an equality impact assessment.

4. Deliberations

This topic was selected by the Council's Overview and Scrutiny Management Committee at its meeting on 21 May 2010 and referred to the Environmental Scrutiny Panel to undertake, within the remit laid down in the scoping document contained elsewhere in this report. Below is a summary of the Panel's deliberations, highlighting the key issues identified and discussed. There are also web links to the corresponding minutes, which also incorporate presentations received by the Panel.

12 August 2010

The Panel received a detailed presentation from Craig Sharp, the Council's Chief Environmental Health Officer and lead officer for this study. Mr Sharp outlined the range of regulatory enforcement undertaken across the Council, and in partnership with other organisations. The presentation can be accessed via the link to the minutes below, which also gives details of the Regulators' Compliance Code.

[Minutes 12 August 2010](#)

9 September 2010

The Panel considered a revised draft corporate enforcement policy endorsed by an officer corporate enforcement group. This raised a good deal of discussion and questions from Members over the enforcement process itself, particularly over communications with interested parties and Members' legitimate role in any action being considered/taken by officers. Members also discussed with senior planning officers a number of planning case studies, which demonstrated the type of enforcement issues that regularly faced the Council's officers. Finally the Panel considered a draft planning enforcement charter, which would be utilised as the basis for dealing with planning matters and, in particular, would inform the public, developers and agents of the service that would be provided.

[Minutes 9 September 2010](#)

4 November 2010

The Panel considered a draft protocol for the release of information etc to the media, focussing on the chapter relating to publication of sentencing outcomes. Members had previously identified the use of such information as a deterrent effect, but were mindful of data protection restrictions in approving the final wording. Members also considered how better to disseminate information on enforcement within the Council, especially to councillors. Legal Services would produce a more comprehensive version of their LS Times, for circulation to Members and officers.

[Minutes 4 November 2010](#)

5. Findings and Conclusions

1. The Council has statutory powers of enforcement, both solely and with partners, over a wide range of activities. These include Food Safety, Environmental Protection, Workplace Health and Safety, Licensing, Pest Control, Housing Standards, Neighbourhood Services, Planning, Building Control and Council Tax/Benefits.
2. Included amongst the many partners are the Police, Fire Service, County Council and a substantial number of Government agencies and departments, for example Health and Safety Executive, Environment Agency and the Vehicle and Operator Services Agency.
3. Enforcement action is taken for a variety of reasons, including deterrence and punishment.
4. Powers are many and varied, ranging from advice and guidance to warnings, fixed penalty fines, statutory notices and to prosecution and seizure of property. Not all powers are available in all regulatory areas.
5. It is acknowledged that prosecution is costly and time consuming and not always commensurate with the offence. Written warnings, fixed penalty notices and simple cautions are used, where appropriate, as an initial attempt to resolve a problem.
6. In exercising its regulatory powers the Council has to have regard to various statutory documents, including the Regulators' Compliance Code and the Council's own Enforcement Policy.
7. The Council's Enforcement Policy has not been reviewed since 2005.
8. With regard to the planning function (although this is probably an equally valid comment for other enforcement areas), officers spend a considerable amount of their time on advising and educating – probably a lower profile activity than enforcement itself.
9. The Panel welcomes proposals to keep appropriate committees, ward councillors and complainants better informed on enforcement matters.
10. The Panel strongly supports enforcement action against the hard core of persistent offenders, with appropriate publicity to act as a deterrent.

6. Recommendations

1. That the attached revised corporate enforcement policy and planning charter documents be approved;
2. That Assistant Directors develop and approve service enforcement policies to “sit below” the corporate enforcement policy;
3. That it be recommended that the attached draft media protocol be approved;
4. That It be recommended to the Overview and Scrutiny Management Committee that this Panel undertakes a review of the operation of the proposed Dog Control Orders, once they have been in force for six months;
5. That LS Times be produced on a quarterly basis and include more information/articles and circulated electronically to all Members (with hard copies on request), as a means of keeping Members informed of enforcement issues..

DRAFT



PRESTON CITY COUNCIL

CORPORATE ENFORCEMENT POLICY

DRAFT

SEPTEMBER 2010

PRESTON CITY COUNCIL'S

CORPORATE ENFORCEMENT POLICY

1. INTRODUCTION

- 1.1 Preston City Council has a statutory duty to enforce a number of laws which relate to areas of local authority law enforcement. These predominantly seek to affect and improve the quality of life and safety of those people who visit or live, work and study in Preston. This document outlines the Council's policy and sets out how it will support the achievement of the overall aims of Preston City Council. The purpose of the policy is to secure effective compliance with legislation while minimising the burden to the Council, to citizens and to businesses.
- 1.2 In publishing this policy, the Cabinet of Preston City Council is demonstrating its commitment to a protecting the rights and quality of life and environment in Preston by providing robust and effective enforcement services.

2. SCOPE

- 2.1 This policy applies to the operation of the following Preston City Council Services –
- Building Control
 - Environmental Health (including Licensing)
 - Parks and Horticulture
 - The Internal Audit Service
 - Community Engagement
 - Planning Enforcement
 - Private Sector Housing
 - Waste Management
 - Revenues and Benefits
 - Strategic Housing
 - Housing Advice Services
 - Clean Environment
- 2.2 The application of Licensing Act 2003 and the Gambling Act 2005 issues is subject to a separate policy as far as the issuing, conditions and revocation of such licences are concerned.

3 ENFORCEMENT FORUM

3.1 In establishing a Corporate Enforcement Policy, there is a need to ensure that the effects of the policy reach all enforcement activities in the Council. To this end, the Council has established a Corporate Enforcement Group. The agreed aims and objectives follow:

3.2 AIM:

To align the skills, information and activities of enforcers within Preston City Council to maintain and enhance the safety, quality and enjoyment of life and economic well-being of people living, working or studying in Preston by providing effective regulation and enforcement.

3.3 OBJECTIVES:

1. To agree and implement an Authority wide enforcement policy.
2. To deliver enforcement services that comply with nationally agreed standards such as the Enforcement Concordat and have regard to the Regulators' Compliance Code.
3. To share processes to ensure that investigations meet legal requirements to deliver successful outcomes.
4. By pooling information and experience, deliver enforcement results that exceed the expectations of stakeholders.
5. Deliver a series of combined and themed actions to preserve the amenity and environment in Preston.
6. Set a standard of knowledge for Preston regulators and underpin this with a standard set of procedures supported by learning and development programmes to deliver this.
7. Establish processes for maximising media impact of successful enforcement.
8. Provide liaison with enforcement agencies external to Preston City Council
9. Demonstrate clear outputs for enforcement action taken.

4 Strategic Aims of the Council

4.1 The vision for Preston is to make Preston the third city in the North West by 2012.

4.2 In support of this the Council aims to be rated as a high performing authority which is recognised as delivering innovative, high quality, value for money services. The Council will have a deserved reputation for

listening to citizens and involving them in decision making. Where appropriate the Council will work with external regulators and partners to ensure it achieves its aims and objectives through joint working. The Council aims to be a sustainable, well run organisation with a set of four priorities

- Brighter futures
- Safe and strong neighbourhoods
- Well run
- City Vision

4.3 The range of enforcement matters dealt with by the Council is such that there may well be occasions when there is a need to work with other agencies to maximise effective enforcement. Where appropriate the Council will work with external regulators and partners to ensure it achieves its aims and objectives through joint working.

4.4 The provision of efficient, effective and economic enforcement services cuts across the Corporate vision and all 4 of the Core Priorities. These services work to protect the environment, economy and social well being of Preston. Without that, the success of regeneration is hampered. The way that modern enforcement services work is to be efficient and to involve stakeholders to help them realise their potential to foster citizenship in the community which we serve.

5 STATEMENT OF POLICY

5.1 The policy is intended to be applied in a wide range of situations and describes in general terms the approach which will be adopted by officers when carrying out the Council's legislative duties.

5.2 The policy acknowledges the fact that the Authority is a signatory to the nationally recognised Enforcement Concordat.

5.3 This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. In particular, the Council will have due regard to the Regulators' Compliance Code. In certain circumstances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

5.4 Often Council officers will work in partnership with other agencies to conduct enforcement action. Council officers must have regard to the policies of partner organisations.

5.5 The policy is based on four key principles:

Consistency – to ensure that similar issues are dealt with in the same way. This does not mean uniformity as there are always a number of different factors that will weigh on deciding a course of action.

Fairness – to ensure a fair and even handed approach encouraging among other things that decisions are not influenced by gender, or ethnic origin, or religious, political or any other beliefs or preferences that make up the social identity of any potential offender or victim.

Transparency – to ensure that any enforcement action taken is easily understood by citizens and businesses, and in addition that anyone making an allegation or subject to an allegation will be kept as well informed of the progress of any investigation as is reasonable.

Proportionality – to ensure that any enforcement action taken in regard of any breach of legislation is in proportion to the actual or potential risk to health, the environment, or significant economic disadvantage to the citizen or business. In particular, an individual's human right to privacy will require the Council to show that consideration of less intrusive methods for surveillance or use of communications data, has been made by applying the principles of the Regulation of Investigatory Powers Act 2000.

- 5.6 The Council will have regard to advice provided by Central Government Departments and Agencies including LBRO, HSE, FSA, DfES, DWP, the Offices of the Surveillance Commissioners and the Interception of Communications Commissioner that seek to provide guidance and instructions on local authority law enforcement issues and have regard to the Regulators' Compliance Code as appropriate. The Council will also have regard to advice provided by the Local Government Association through LG Regulation (formally LACORS).
- 5.7 Officers will conduct themselves in a professional and efficient manner. A contact telephone number for the service will be provided on request. If a customer indicates that they wish to complain about any aspect of enforcement work then officers will clearly explain the mechanisms for doing so. The Council's corporate standards for customer care will apply in so far as they do not conflict with the objectives of the investigation.
- 5.8 The following components will, as appropriate, be included in the Council's operational approaches to enforce legislation.
- Planned and risk assessed general visits
 - Planned thematic surveys or enforcement initiatives
 - Investigation of complaints by the public, businesses and external agencies relating to the enforcement of local authority legislative issues

- The provision of criminal and civil advice to both the public and business
 - Planned surveillance of areas to check for particular activities
- 5.9 In planning and delivering these activities, the Council will ensure that relevant statutory provisions such as the Regulation of Investigatory Powers Act 2000 are followed.
- 5.10 The Council will endeavour to ensure that enforcement decisions are consistent, balanced, fair, transparent and relate to common standards.
- 5.11 In deciding what enforcement options to use officers will have regard to the relevant legislation, statutory codes of practice, current guidance from Central Government departments and agencies including the LBRO, HSE, FSA, DfES and DWP. In particular Preston City Council will follow the broad principles of the Enforcement Concordat and have regard to the Regulators' Compliance Code as appropriate
- 5.12 The Authority acknowledges the fact that the Human Rights Act 1998 provides a right to a fair trial and that the way that an investigation is carried out can affect that right.
- 5.13 It is recognised that enforcement can take many forms on a continuum starting from a position of advising and challenging behaviour or conduct which is illegal through informal and formal actions culminating in prosecution.
- 5.14 Officers shall have regard to the views of any person making a complaint about the actions of a third party which may allege that the law has been broken. Officers can also consider the motivation for making a complaint and if it can be considered vexatious that will be a factor in deciding how to progress any further investigation.

6 INFORMAL ACTION

- 6.1 Informal action to secure compliance with legislation includes offering advice, verbal warnings, requests for undertakings to cease certain actions and requests for remedial action, the use of letters and the issue of written notes at the time of a visit.
- 6.2 Informal action is appropriate in the following circumstances:
- Non-compliance will not involve a significant risk to public health, safety, community safety, the protection of minors, the environment, or cause a significant economic disadvantage to the public or business.
 - The issue is not serious enough to warrant formal action.
 - From historical information or a risk assessment it can reasonably be assumed that informal action will achieve compliance.

- The officer is confident that the matters will be corrected.
- 6.3 Even if some of the above criteria are not met there may be circumstances in which informal action will be appropriate.
- 6.4 All written communication issued or sent to people who may be liable to receiving enforcement action will:
- Contain all necessary information to enable an understanding of action required and why it is necessary.
 - Indicate the legal requirements contravened, the measures necessary to ensure compliance, and that other means of achieving the same effect may be chosen.
 - Clearly indicate any recommendations of good practice to show that they are not legal requirements.
 - The name and telephone number of a contact officer.

7 FIXED PENALTY NOTICES (FPN's)

- 7.1 Certain legislation allows for offences to be dealt with by way of the issuing of a FPN. The issuing of a FPN allows the offender to discharge any liability to prosecution for the offence. This will generally be done for first time offenders where the offence is not of a serious nature and a record of offenders will be kept. For further offences prosecution will generally be initiated in line with this Policy.
- 7.2 Fixed Penalty Notices will be issued when:
- The case would otherwise warrant prosecution, and
 - There is enough evidence to prosecute for the offence, and
 - It will act as a sufficient deterrent against re-offending.
- 7.3 If the FPN remains unpaid after the specified period a prosecution file will be prepared and passed to legal services to initiate a prosecution for the offence.
- 7.4 FPNs issued to young people will be issued with due regard to the Children's Act 2004 and the DEFRA guidance on issuing fixed penalties notices to juveniles 2006.

Notices may be issued to 16 and 17 year olds using the same procedures as for adults. However, authorised officers will consider whether a written warning is appropriate for a first offence, depending upon the nature and seriousness of the offence.

In most circumstances a written warning will be issued to the parents of a child under the age of 16 in the first instance. If the offence occurs in school hours or in school uniform an advisory letter will be sent to the Head Teacher.

If the child continues to offend, despite this intervention, enforcement action (including a Fixed Penalty Notice) may be taken following discussions with relevant local agencies responsible for law enforcement and children's services. (e.g. Police, Youth Service, Youth Offending Team). The Council will consult with partners to determine whether a FPN is the most appropriate measure for a person under 16 or if other measures (e.g. warnings; Acceptable Behaviour Contract) are more appropriate.

In all circumstances the parent or legal guardian will be advised as soon as possible.

8 SIMPLE CAUTIONS:

- 8.1 Simple Cautions will be issued in accordance with instructions given in current Home Office Circulars. Simple Cautions will be issued in the following circumstances:
- To deal quickly and simply with less serious offences.
 - To divert less serious offences away from the courts.
 - To reduce the chances of repeat offences.
- 8.2 Before the offer of a Simple Caution is made, the relevant Head of Service must be satisfied that there is sufficient evidence to prove that an offence has occurred and that it is in the public interest and an effective administration of justice to do so. Such Simple Cautions will be notified to any Home or Originating Authority and any national body, such as the Office of Fair Trading or the Department for Work and Pensions, that is entitled to receive such notification.
- 8.3 Decisions to issue Simple Cautions must be made in accordance with this policy having had regard for the Regulators' Compliance Code, the Enforcement Concordat and the Code for Crown Prosecutors as appropriate.
- 8.4 Line Management must be informed before a Simple Caution is offered.
- 8.5 No more than one Simple Caution will be issued to the same business or person for a similar offence within the expiry period. If a further, similar offence is committed before the expiry of the Simple Caution, then prosecution will normally be taken in all but the most exceptional circumstances.

8.6 Unless the circumstances are wholly exceptional, details of any outstanding Simple Caution will be placed before the Court in any prosecution taken within the expiry date of the Simple Caution.

8.7 If accepted, the Simple Caution will be fully recorded and a copy of the documentation held on a Register of Simple Cautions.

9 PROSECUTIONS:

9.1 Prosecution will be considered when one or more of the following factors apply:

- It is appropriate in the circumstances as a way to draw general attention to the need for compliance with the law and the maintenance of standards required by law, especially where there would be a normal expectation that a prosecution would be taken or where through the conviction of offences others may be deterred from similar failures to comply with the law.
- It is considered that there has been potential harm arising from the breach.
- There is a continued significant risk to health and safety, harm to minors, financial loss to the community or damage to the quality of the environment.
- Other forms of enforcement action have been ineffective and there is a lack of confidence in the business rectifying the breach.
- Where the alleged offence relates to the failure to comply in full or with a significant part of a statutory notice.
- There is evidence of fraud, gross negligence or guilty knowledge.
- Where the alleged offence relates to obstruction, failure to disclose information or knowingly making a false statement to authorised officers.
- The decision to prosecute will take account of the guidance given in the Code of Practice to Crown Prosecutors to assess whether prosecution of the offence is in the public interest.

9.2 Before consideration of any prosecution is made an assessment of the weight of admissible evidence shall be made by the relevant Head of Service to establish the likely chance of proving the case. Included in this assessment will be the possibility of a satisfactory defence being proved by the accused.

9.3 This is an objective test and means that a jury or bench of Magistrates, properly directed in accordance with the law, is more likely than not to convict each defendant on each charge.

- 9.4 Each prospective prosecution is scrutinised throughout the Line Management chain before the papers are sent to Legal Services, in accordance with Procedures. This ensures the evidence is assessed and challenged by officers not directly involved in the preparation of the case.

10 REVOCATION

- 10.1 In some circumstances, the revocation of a Licence or Permit may be used as an enforcement method.
- 10.2 Whilst this is a legitimate enforcement action, it is always remembered that the above may involve the removal of livelihood, sometimes without reference to an independent arbiter or the Courts. Accordingly, revocation is used only as a last resort, when other sanctions are either inappropriate, or have been tried without success.
- 10.3 When revocation action is taken, those concerned will be informed of any rights which they may have to appeal and be told of any time limits or other constraints which may apply.

11 ENFORCEMENT ACTIONS

- 11.1 The decision to use enforcement action will be taken on a case by case basis and, to ensure consistency of approach, in accordance with this and any other more specific policies which may be relevant. Each department has its own written policy on enforcement action which embraces the principles contained in this document. There are a range of enforcement actions available to the authority such as Improvement Notices, Prohibition Notices, administrative penalties and Planning and Building Control Notices. The action taken, which may be immediate, will be proportionate to the gravity of the non-compliance. Factors that will be taken into consideration include, but are not limited to:
- The risk that the non-compliance poses to the safety, health or economic welfare of the public at large or to individuals
 - Evidence that suggests that there was pre-meditation in the commission of an offence
 - The alleged offence involves a failure to comply in full or in part with the requirements of a statutory notice or order
 - There is a history of previous warnings/cautions, or the commission of similar offences
 - Aggravated circumstances such as obstruction of an officer or aggressive behaviour towards the public

- The offence, although not serious itself, is widespread in the area where it is committed
- There has been reckless disregard of health and safety requirements
- False information has been supplied wilfully, or there has been an intent to deceive

12 COMMITMENT TO THE POLICY

- 12.1 The Council is committed to ensuring that all authorised enforcement officers carrying out enforcement work are trained and fully acquainted with the requirements of this policy. All authorised officers must abide by this policy whenever making decisions on enforcement. Any departure from this policy will be exceptional, documented, justified and approved by the relevant service manager or Head of Service unless the delay in decision-making would result in a significant risk to the public.
- 12.2 All authorised enforcement officers should be trained and authorised in those aspects of legislation relevant to their duties. The authority will ensure that officers are competent to carry out their duties and that the level of delegated authority for each officer has been approved.

13 REVIEW

This policy was amended in September 2010 and will be reviewed on an annual basis by the Corporate Enforcement Group. Any significant changes to the policy will be reported to Cabinet for approval.

APPENDIX - LIST OF DEPARTMENTAL ENFORCEMENT POLICIES

The following departmental enforcement policies exist to provide specific details on enforcement options available to the Council's various regulatory services:

- Environmental Health (including Licensing)
- Housing Benefit
- Building Control
- Buildings Management
- Strategic Housing
- Neighbourhood Services
- Revenues
- Planning Enforcement Charter

PLANNING ENFORCEMENT CHARTER

1 Introduction to Planning Enforcement

- 1.1 The planning system exists to control the development and use of land in the public interest. The planning system can only achieve this if planning controls are enforced when necessary. The enforcement of planning controls is therefore a fundamental part of the planning system.
- 1.2 The main objectives of the planning enforcement function are to remedy harm to public amenity resulting from a breach of planning control and to manage it, making sure that the integrity of the planning system is not undermined. A breach of planning control is development carried out without the requisite consent from the Council.
- 1.3 One of the fundamental principles of planning enforcement is that of 'expediency', and the resolution of breaches of planning control is not therefore limited to taking formal action. A large number of identified breaches are in fact resolved by negotiation.
- 1.4 Most breaches of planning control are not criminal offences and the resulting development is unauthorised rather than illegal. Criminal offences in relation to planning only occur in the following circumstances:
 - ✦ Unauthorised works to listed buildings;
 - ✦ The demolition of some unlisted buildings in conservation areas;
 - ✦ Causing damage to a tree protected by a Tree Preservation Order or within a Conservation Area;
 - ✦ Displaying unauthorised advertisements; and
 - ✦ Failing to comply with the requirements of an Enforcement Notice or other formal notice.
- 1.5 The framework within which Planning Enforcement operates within Preston is set out within this Charter. This has been formulated with regard to a number of documents, the most relevant of which are:

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- ✦ The Town and Country Planning Act 1990 (as amended)
 - ✦ The Planning (Listed Buildings and Conservation Areas) Act 1990
 - ✦ The Planning and Compulsory Purchase Act 2004
 - ✦ The Town and Country Planning (Temporary Stop Notice) (England) Regulations 2005
 - ✦ The Town and Country Planning (General Permitted Development) Order 1995 (as amended)
 - ✦ The Town and Country Planning (Use Classes) Order 1987 (as amended)
 - ✦ The Town and Country Planning (General Development Procedure) Order 1995 (as amended)
 - ✦ Planning Policy Guidance Note18: Enforcing Planning Control
 - ✦ Circular 10/97 – Enforcing Planning Control
 - ✦ The Town and Country Planning (Control of Advertisements) (England) Regulations 2007
 - ✦ Preston Local Plan and Local Development Framework
 - ✦ The Human Rights Act
 - ✦ The City Council's Corporate Enforcement Policy 2005

1.6 The Planning Enforcement Charter makes it clear what those undertaking unauthorised development and those objecting to it can expect from the Local Planning Authority. The Charter also explains how the LPA will prioritise and undertake its investigations.

2 When the Council takes action

2.1 The City Council operates its planning enforcement activities in accordance with Government advice. This means that:

- ✦ The Council must decide whether a breach of planning control unacceptably affects the character of an area or the amenity of neighbours.
- ✦ It is usually inappropriate to take formal enforcement action against a technical breach of planning control which causes no significant harm to either the amenity of the area or the amenity of neighbours.

- ◆ Action should not be taken just because development has been undertaken without the necessary consent or permission.
- 2.2 In deciding whether or not to take action, the Local Planning Authority must consider if it is 'expedient' to do so, that is whether the action proposed to be taken is appropriate and commensurate with any alleged harm that has been or is being caused. This involves deciding whether the breach of planning control unacceptably affects public amenity or the existing use of land or buildings meriting protection in the public interest. A judgement has to be made in each case as to the seriousness of the breach and the level of any harm that it causes.
- 2.3 The City Council undertakes all enforcement action within Preston with the exception of that which relates to minerals and waste development, and that which relates to works on adopted highways, for which Lancashire County Council as Local Planning Authority and Highways Authority respectively is responsible.
- 3 Non-planning issues
- 3.1 There are often matters which concern local communities that do not involve a breach of planning control. Such matters will be outside the remit of planning enforcement, and the City Council as Local Planning Authority will not therefore take action. It may be possible to address issues such as these by way of civil action but this is a matter for the individual to pursue and is not an area where the Local Planning Authority could become involved. If such matters arise during the course of our investigations, we will however seek to direct you to the relevant department or outside body where possible. Examples of issues which may not be planning matters include:
- ◆ Unauthorised use of a highway;
 - ◆ Dangerous structures;
 - ◆ Internal refurbishment of buildings that are not listed;
 - ◆ Party wall disputes;
 - ◆ Disputes regarding right to light;
 - ◆ Neighbour disputes;
 - ◆ Boundary/ownership disputes; and
 - ◆ Pests or vermin.

4 Making a complaint about unauthorised development

- 4.1 Complaints about unauthorised development can be made on-line, in writing, by phone or by email. Contact details are provided at the end of this document.
- 4.2 In order to deal with a complaint, we will need the following information:
- ◆ Your name, address and contact details (preferably an email address or telephone number to enable us to contact you more quickly);
 - ◆ The address where the alleged breach is taking place;
 - ◆ What the breach is;
 - ◆ When the breach occurred;
 - ◆ How it affects you;
 - ◆ If possible or known, the name or contact details of the property/land owner.
- 4.3 Please be aware that anonymous complaints will not be investigated unless there is considered to be irreparable and immediate harm to public amenity, or the natural or built environment.
- 4.4 If complainants still wish to remain anonymous but are concerned that the alleged breach would not fall into the exception above, they will be advised to contact one of their ward councillors and refer the matter to the Council through them.
- 4.5 All complainants will be made aware of the City Council's final decision following the investigation.

5 If a Complaint is made about you and your property

- 5.1 If you are contacted about an alleged breach of planning control, you are entitled to know what the allegation is (but not who made it). You are also entitled to explain the situation from your side. If a breach is established, you will be advised of the details and how it may be put right.
- 5.2 Your cooperation in remedying the breach will be sought and you will be given a reasonable amount of time to do this. In some circumstances you may be invited to

submit an application to retain the unauthorised works or development, if it is considered that permission may be granted. Most breaches are resolved through negotiation and discussion, and you will therefore be encouraged to maintain an open dialogue with our enforcement team.

- 5.3 If you are issued with a formal notice, you will be given the precise details of the breach, the reasons for the action, the steps required to overcome the problem and the time period for compliance.

6 Power to enter land

- 6.1 Due to the nature of planning enforcement work, it is not normally prudent or possible to arrange a site visit ahead of time, and officers will not therefore ordinarily make an appointment. This may mean that access cannot be gained on the first attempt and as such it may take longer than the initial site visit period to conduct an effective visit. Officers of the Local Planning Authority have the power to enter land for the purpose of effective planning control. This right will be exercised where there are reasonable grounds to enter land to determine whether a breach of planning control has taken place and the nature and degree of the breach or to check for compliance with any requirements imposed. In the case of a property being used as a dwelling house, 24 hours notice has to be given prior to officers entering a property.

- 6.2 Where entry is refused, a warrant may be sought. Prosecution will be considered where wilful obstruction of an officer attempting to exercise the right of entry takes place. Officers carry identity cards bearing their name, post title and photograph and details of the legislation which gives them the powers to enter land for the purposes of investigating planning enforcement complaints.

7 Confidentiality

- 7.1 The Local Planning Authority will protect the identity of complainants and will treat such details as confidential. Although the general public will not have access to the Local Planning Authority's enforcement files, if the investigation proceeds to formal action, resulting in prosecution or a public inquiry, it may not be possible for the Local

Planning Authority to guarantee the anonymity of the complainant. In these cases the complainant will be informed of the situation in advance.

8 Decision-making

8.1 In making decisions regarding enforcement, the following principles will be followed:

- ◆ The City Council will only take enforcement action when it is expedient to do so. Enforcement action will not be instigated solely to regularise breaches of planning control.
- ◆ In considering whether to take enforcement action, the City Council will not give weight, either way, to the fact that development may have commenced.
- ◆ Decisions not to take enforcement action will normally be made by the planning enforcement team in consultation with the Head of Development Management or the Principal Planning Officers. Reasons for not taking action will be recorded.
- ◆ The City Council will not allow prolonged negotiation to delay essential enforcement action.
- ◆ In situations where an unauthorised development may only be made acceptable by the imposition of appropriate conditions, an application will be sought to regularise the development. Where such an application is not submitted within a pre-agreed period of time, enforcement action will be pursued, with the caveat that the City Council would be prepared to grant planning permission subject to specific conditions.
- ◆ In considering whether to take enforcement action, the City Council will not give weight to non-planning considerations.
- ◆ In considering whether to take enforcement action, the Local Planning Authority will have regard to the use of powers under other legislation, as such powers may be able to secure the desired outcome more efficiently.

9 The City Council's Priorities

9.1 In order to manage resources appropriately it is necessary for the City Council to adopt a priority system for responding to and dealing with alleged breaches of

planning control. Complaints regarding breaches of planning control will be investigated in accordance with the following order of priority:

Priority 1 – any immediate and irreparable harm to the natural or built environment, or public safety, for example:

- ✦ unauthorised demolition or alteration to listed buildings;
- ✦ substantial demolition to buildings within conservation areas;
- ✦ unauthorised residential sites; or
- ✦ unauthorised works to protected trees where there is a probability that an immediate response would stop any further damage being caused.

Priority 2 – any unauthorised development or activity which causes clear and continuous harm or danger to amenity, for example:

- ✦ development which is unlikely to be granted planning permission without substantial modification;
- ✦ severe nuisance such as noise at unsociable hours or for a prolonged period; or
- ✦ dangerous vehicular access arrangements.

This may also include other unauthorised works to listed buildings and buildings within conservation areas.

Priority 3 – any unauthorised development or activity where there is a risk of material harm to the environment and/or some harm to residential amenity, for example:

- ✦ a breach causing concerns which may be resolved by limited modification (such as the insertion of obscure glazing or restrictions on hours of operation);
- ✦ where works, or uses, have the potential to cause material long term damage to the environment; or
- ✦ developments and uses which are clearly contrary to established policies.

Priority 4 – other breaches of planning, for example:

- ✦ advertisements, satellite dishes and minor works including boundary treatments (except those affecting listed buildings or within conservation areas); or
- ✦ unauthorised uses or development, which would be likely to receive planning permission; or
- ✦ untidy land.

- 9.2 The examples given above are not exhaustive but give an indication of the type of breach which may fall into each category. The priority of an alleged breach may alter during the course of an investigation if circumstances change or new information is obtained. Any change in priority will be agreed by the planning enforcement team in consultation with the Head of Development Management or Principal Planning Officers.
- 9.3 By prioritising cases, the City Council is not condoning unauthorised development or implying that action will not be taken against other breaches of planning control. Some breaches may however, due to their significance, take longer to investigate and resolve.
- 9.4 The monitoring of a selected number of approved developments, for example to ensure compliance with conditions, will generally be dealt with as priority 2 or 3, depending on the particular circumstances and likely impact on amenity. Breaches of condition identified by the planning enforcement team will be dealt with in accordance with the above priorities.

10 Timescales and Targets

- 10.1 In order to ensure that all those involved in the process are aware of what should happen and when, a number of actions and associated target timescales have been agreed. These are intended to give consistency, certainty and transparency to the enforcement process. Complainants will receive an acknowledgement of their complaint within 5 working days of receipt (2 working days for Priority 1 cases). This will outline the main point of contact within the Development Management Division, the initial priority rating and the provisional timescales involved. It will also provide details of the City Council's website where further information, including this Charter, can be found.
- 10.2 We will seek to adhere to the timescales and targets unless the Head of Development Management or Principal Planning Officers consider that exceptional circumstances apply which would allow the timescales to be varied.

10.3 The first phase of investigation is complete when one of the following points has been reached:

1. a case is closed because the investigation identifies that no breach has occurred;
2. a case is closed because an alleged breach has been identified and resolved by negotiation;
3. a planning or other application has been submitted following the investigation which satisfactorily addresses the breach; [Please note: a case may be re-opened if a planning application is subsequently found not to address the breach and is refused or cannot be determined within an appropriate timescale due to insufficient information]
4. a breach of planning control has been identified and an application requested but not submitted. An assessment has been made determining that it is not expedient to take enforcement action in this case at this time; or
5. a breach of planning control has been identified. An assessment has been made determining that it is expedient to take enforcement action in this case. Instructions have been issued to the Council's Legal Services section to instigate proceedings.

10.4 Where the first phase of the investigation leads to further work (ie. where a case remains open), this will be undertaken in accordance with timescales agreed by the enforcement team in consultation with the Head of Development Management or Principal Planning Officers. The agreed timescales will take account of the nature and complexity of each case and the particular issues raised. Complainants will be kept informed of progress in accordance with the timescales set out at the end of this charter.

11 Charter Standards and Principles – what you can expect from the service

11.1 Preston City Council will seek to ensure that enforcement procedures and decisions are *always* consistent, fair and appropriate. The Local Planning Authority therefore makes the following commitments:

1. The Local Planning Authority will, in the first instance, seek to negotiate a resolution by being flexible and considering genuine alternative solutions to resolving breaches.
2. The Local Planning Authority will comply with the timescales for communication and commencing formal enforcement action set out at the end of the charter. Only in exceptional circumstances will different timescales be used. This will be determined by the planning enforcement team in consultation with the Head of Development Management or Principal Planning Officers.
3. In considering whether to take enforcement action the Local Planning Authority will not give weight to the fact that development may have commenced.
4. In considering whether to take enforcement action the Local Planning Authority will not give weight to non-planning considerations.
5. Decisions not to take enforcement action, or to close a case, will be made by the planning enforcement team in consultation with the Head of Development Management or Principal Planning Officers. Reasons for these decisions will be recorded in writing.
6. The Local Planning Authority will only take enforcement action when it is considered expedient to do so. In taking formal enforcement action the Local Planning Authority will be prepared to use all the enforcement powers available and commensurate with the seriousness of the breach.
7. The Local Planning Authority will keep a full and accurate record of its actions and will be clear and precise in specifying breaches and requirements.
8. The Local Planning Authority will deal with all users of the Enforcement and Compliance Service in an honest, responsive and courteous manner.
9. We will not release any information that would identify a complainant as such (the Council can however be required to disclose non-personal information on receipt of a request under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004).
10. Where a complaint has been made about your property, we will ask to enter your property only if necessary and will show you authority and proof of identity.

12 Comments and Complaints

- 12.1 The Local Planning Authority is committed to providing an effective and efficient planning enforcement service. However, anyone not satisfied with the Service should

first discuss any concerns with the relevant member of staff's direct line manager. If you remain dissatisfied, the Council has a formal complaints procedure. Further details can be obtained from the City Council's website. Matters may also, in certain circumstances be referred to the Local Government Ombudsman who may decide to investigate further. However, the Ombudsman may ask that the Council's procedures are completed before carrying out his/her own investigation. The Ombudsman will investigate the way your case has been handled, or the Council's failure to do something but does not question a Council's decision simply because you do not agree with it. Contact details for the Ombudsman can be obtained from the website – www.lgo.org.uk or from the City Council's website.

13 Monitoring & Review

- 13.1 Details of certain enforcement cases (those which can be publicly discussed such as those which are the subject of formal action) are reported to the City Council's Planning Committee every six months. There are also a number of local performance targets in relation to Planning Enforcement which are monitored and measured quarterly.

Contact us

Email: devcon@preston.gov.uk

Internet: www.preston.gov.uk

Phone: 01772 906581

Fax: 01772 906762

Address: Assistant Director (City Planning Officer)

Lancastria House

Lancaster Road

Preston

PR1 2RH

Priority	Acknowledgement of complaint	Site visit	Initial contact with complainant	Completion of first phase of investigation	Update complainant	Further feedback to complainant (where applicable)	Advising complainant of outcome of investigations
1	2 working days	1 working day	10 working days	2 weeks	4 weeks	Every 3 months thereafter	10 working days from date of decision
2	5 working days	Within 5 working days	15 working days	10 weeks	12 weeks	As above	As above
3	5 working days	Within 10 working days	25 working days	13 weeks	15 weeks	As above	As above
4	5 working days	Within 15 working days	30 working days	13 weeks	As above	As above	As above

Protocol for the release of information, films and photographs to the media

1. Application

- 1.1 This policy applies to all officers who may come into contact with the media in relation to releasing information, film and photographs.

2. Purpose

- 2.1 The purpose of this policy is to define the legislation and procedures to be followed in relation to releasing information to the media, including the release of photographs, information or images, images used in publicity material, CCTV images, requests for information from old cases and publishing sentencing outcomes.

3. Release of information to the media

- 3.1 As a publicly accountable body, Preston City Council is committed to openness and accessibility and believes in the greatest possible flow of information to the public through the media.
- 3.2 Preston City Council recognises the media have an important role in influencing and informing the public in Preston and beyond, but it is important to remember that media coverage is not an end, but one means of communication, offering an effective route to many of our stakeholders.
- 3.3 Preston City Council must be proactive in its dealings with the media, taking every opportunity to show how it is working to serve the public.
- 3.4 Preston City Council will aim to build good relations with journalists and news organisations, to create a climate of understanding about the Council, its aims and operations. Preston City Council will be scrupulously even-handed in its dealings with journalists.
- 3.5 When responding to media enquiries Preston City Council should be open and helpful, providing factual information in a timely way, recognising deadlines and pressure on journalists. However, staff should not be giving material or information that is inappropriate, carries potential media risk or which Preston City Council has not had time to verify properly.

- 3.6 It is important that all information released is correct and consistent, so statements and news releases on important or sensitive issues must be properly verified and then cleared by the most appropriate person at the relevant level of seniority as determined by the appropriate Assistant Director and with the Council's Communication's Team. This includes cases of a political or reputational nature, but each case must be considered on its own individual merits.
- 3.7 If legal or operational reasons make it inappropriate for Preston City Council to give certain information to the media, then the Council's Communication's Team will liaise with the appropriate service division and Legal Services to agree what information can be released and then respond to journalists direct.
- 3.8 Interviews, statements or comments must be in plain English, avoiding jargon at all times.
- 3.9 Any interviews, statements or comments must comply with Council policy, In particular care must be taken on issues relating to equality and diversity, taking into account sensitivities around specific groups and their needs. The content and language used must reflect this.

4. Definitions

4.1 Defendant

- Defendant is a person who has been charged or summonsed for an offence and has not yet been convicted/acquitted or informed he/she will not be prosecuted.

4.2 Photograph

- Photograph includes any visual image, representation, computer generated image, artist's impression and image from video or film.

5. Photograph of defendant

5.1 No photograph of a defendant is to be issued without the authority of an Assistant Director or Director. In considering whether or not to release the photograph of a defendant, due regard must be given to:

- Regulation of Investigatory Powers Act 2000 (RIPA);
- Human Rights Act 1998 (HRA)
- Data Protection Act 1998 (DPA)
- Any other relevant legislation; and
- Implication for future court proceedings.

6. Release of photographs to the media

- 6.1 The release of photographs should only be considered where there has been a significant public interest or where the opportunity exists to reassure the public or raise awareness of the role Preston City Council played in a particular success. Where the image is of, or includes a member of the public, their signed consent for its use in publicity must be obtained.
- 6.2 In court cases, photographs of those convicted must only be released after sentencing if authorised by an officer at Assistant Director or Director level. Photographs will only be released where identification will not be an issue in an appeal.
- 6.3 Other than in exceptional circumstances a defendant's photograph will only be released immediately or within a reasonable period following sentencing.
- 6.4 Photographs or images are released on the understanding they will be used immediately or within a reasonable period. Preston City Council retains copyright on photographs and images and they must only be published once and not republished without the written authority of Preston City Council. Media should confirm they will abide by these conditions.

7. Preston City Council and use of photographs

- 7.1 Preston City Council will not issue photographs of people who are acquitted.
- 7.2 When considering the release of any photograph, due regard must be given to the legislation outlined in paragraph 5.
- 7.3 Any photograph or image released by Preston City Council should be reproduced without any reference numbers, such as a criminal record number. Its issue must comply with guidance in section 5.
- 7.4 Any photograph or image that meets relevant criteria for release by Preston City Council must have had the identity of the individual verified by the relevant case officer. No image can be released until this process has taken place and a written record of visual verification has been obtained.

8. Images used in publicity material

- 8.1 Photographs used in Preston City Council material must reflect the diversity of the community in Preston and of the Preston workforce.
- 8.2 Where possible no photograph must be published by Preston City Council showing members of the public without having the signed consent of everyone involved. Separate forms for parental consent must be used when pictures are taken of children for publicity purposes. Any

individual approached for consent must be made aware of the form and the context in which it is used.

- 8.3 Relevant legislation such as the Human Rights Act and the Data Protection Act will also apply to the use of images of members of the public.
- 8.4 No photographs must be published by Preston City Council of officers without the individual's knowledge. Consent must be sought, and the response documented accordingly.
- 8.5 Where exceptional circumstances exist, officers can notify their Assistant Director or Director to explain why they feel it would be appropriate for their photograph to be used on the website and/or on publicity material.

9. CCTV images

- 9.1 CCTV images should only be issued to the media on the authority of the senior investigating officer or appropriate Assistant Director. This may be to identify a possible offender or to trace witnesses. Where necessary the senior investigating officer will obtain permission from the copyright owner to release any images. Wording issued with the CCTV should not attribute blame to the person(s) featured in the image(s) but should suggest the person(s) featured may be able to help with enquiries. This is so not to affect any future court proceedings which may result from the publication of the image(s).
- 9.2 The identity of any member of the public not connected with an inquiry must be obscured visually. This would include passers-by who are not sought as witnesses or those who have already come forward.
- 9.3 CCTV images will only be released on the understanding that they will be used immediately or within a reasonable period. The owner retains copyright and the image must only be published once and not republished without written authority. Media must confirm they will abide by these conditions.

10. Media requests for information from old crime cases

- 10.1 Where requests are made by the media for information about past cases, requests will not be agreed unless releasing information will help solve current crime issues or be in the public interest.
- 10.2 Requests may be made in respect of cases where a trial has taken place irrespective of conviction or acquittal and any cases which remain open pending any further information and/or evidence. Particular care must be taken with cases of acquittal.
- 10.3 If someone is subsequently charged with an offence, then previous disclosure of evidence to the media could become an issue at court.

10.4 Legal advice should be sought from Legal Services when issuing any information in respect of previous cases.

11. Advance warning of cases to the media

11.1 In cases where publicity would be in the public interest the Communication's Team may give advance warning to the press after consultation with the relevant service division and Legal Services.

12. Requests for information to be used in a film, television/radio programme, book or magazine

12.1 In most cases it will be highly unlikely, in any circumstances, that case files and their contents will be given to the media. The decision about what information to release and the form it should take should be made at Assistant Director or Director level.

12.2 Photographs and/or any audiovisual material of an explicit and potentially distressing nature will not be released to the media under any circumstances.

12.3 Care must be taken when considering the release of items with potential evidential value.

13. Publicising sentencing outcomes

13.1 It is known that the public has greater confidence when they receive or access information about sentencing outcomes from the court. Preston City Council supports the publication of sentences, provided each case is considered against the guidance set out in this policy.

13.2 Preston City Council will publish sentencing outcomes on our website accompanied by a press release to the media in "high profile" cases. The guidance contained within this policy would equally apply to giving the public information about convicted offenders in public meetings, leaflets and local newsletters.

13.3 Personal information about recipients of Fixed Penalty Notices does not meet this test and will not be published. The Council will publish on a monthly basis statistics relating to the numbers of Fixed Penalty Notices issued, broken down into type of offence and geographical area committed.

13.4 The legal, proportionate and justification requirements for publishing sentencing outcomes are contained within the Ministry Of Justice's publication, "Publishing Sentencing Outcome" released in December 2009. Specifically that document highlights the legal framework allowing publication sentencing outcomes, making reference to the following acts;

- Data Protection Act 1998; and
- The Human Rights Act 1998.

13.5 This section applies to sentencing outcomes, which are publicised via;

- Preston City Council's website;
- An editorial to the press
- A newsletter
- Any verbal update to the community, including public meeting.

13.6 A case is considered suitable for reporting where it is not prohibited or is assessed as exceptional circumstances. In each case the following will apply;

- the information must be a legitimate and integral part of Preston City Council's activity to engage communities and increase public confidence in the Judiciary;
- the case relates to a conviction;
- the outcome includes a fine or community sentence; and
- it is timely, generally within a few days of the decision the case relates to.
- Anti-Social Behaviour Orders (ASBO's)

13.7 Prohibited reporting

13.7.1 Preston City Council will not report on any of the following cases;

- where the offender(s) is/are under the age of 18;
- if reporting restrictions have been imposed in a case;
- where the cases involves any third party details without documented consent and
- where the case involves all out of court disposals (caution, conditional caution)

13.8 Exceptional circumstances

13.8.1 Cases that are not prohibited will have to be individually assessed against the following criteria to ensure there are no exceptional circumstances where disclosure may not be appropriate.

13.8.2 Victim and witness identification – care must be taken reporting on a case that will identify a victim or witness, especially if this would cause undue embarrassment or distress, or place them at risk of reprisals from friends or associates of the offender, or expose them to unwanted media attention. Publication may be a breach of their or their family members' human rights.

13.8.3 Vulnerable offenders – it may not be appropriate to release information about a vulnerable offender e.g. one who has mental health problems or learning difficulties, where publicising the conviction warrants adverse

consequences. Publication may be a breach of their or their family members' human rights.

13.8.4 Offenders' families – care must be taken where disclosure of a case could identify offenders' families (over and above a surname that they share with the offender), especially if it places them at risk of harm (e.g. reprisals). Publication may be a breach of their or their family members' human rights.

13.8.5 Prosecuting team – care must be taken over publishing details of the officer in the case where there is, or could be a risk of threats or vigilante action against those individuals. Consents must be obtained prior to publication.

13.8.6 Ongoing investigations – where a person has been convicted of an offence and other offenders are still outstanding or due to be tried. The Investigating Officer will be contacted before the matter is reported on, to establish whether or not disclosure could undermine the ongoing investigation or a future court case. When in doubt, officers should refrain from issuing any publication.

13.8.7 Where exceptional circumstances exist, it does not automatically follow that the information cannot be disclosed. There may be an alternative option to publicise the information at a very localised level, or to provide the outcome without identifying the offender's details. The risks will have to be assessed against the public interest in disclosure and the importance of the outcome to local communities. When in doubt, officers should refrain from issuing any publication.

13.9 Risks and Safeguards

13.9.1 Reporting restrictions – where a court has imposed reporting restrictions on a case. Those restrictions will be strictly adhered to.

13.9.2 Weeding – the information will be removed from a website after one month. There will be no archiving facility.

13.9.3 Appeals – where a subsequent appeal against a conviction is successful, details of the original conviction placed on the website will be removed.

13.9.4 Accuracy – it is imperative that all publicised information is accurate to minimise the risk of mistaken identity.

13.10 Relevant information

The following information is the minimum requirement for all cases:

- Name, age and road name (but not the number) of the offender;
- Offence, plea and sentence.

For Crown Court cases the following additional information may be appropriate:

- Date and location of the offence(s);
- Date and location of the court sentencing;
- Details of the Officer in the case (with their consent), with a quote; and
- Relevant, public interest issues i.e. the offence was a PACT (Partners And Community Together) priority.

13.11 Administration –

13.11.1 To ensure that risks and safeguards are properly considered each case selected for publication will need to be considered and approved by Legal Services who will justify the disclosure.

13.11.2 When details of the sentencing outcome are posted on a website, the page containing the detail should carry the following message in a prominent position:-

“This information is made available for a limited period in order to promote openness, transparency and accountability. This information is made available solely on the basis that it is for the individual use of the person who has accessed this page. The information on this page must not be stored, recorded, republished or otherwise processed without the explicit agreement of Preston City Council.”

13.11.3

In compliance with guidance provided by the Information Commissioner’s Office, any person whose personal details will be made available via the Council’s website should be informed of the fact. This should extend to the offender, the victim and any associated witnesses and officers who will be identified as being involved in the case. This should include the option of being able to contact someone in Legal Services or the Council’s Communication’s Team should they have any queries or concerns. This includes any information that allows an individual to be identified, not just the use of the name. For example, if the release refers to a designated post whereby that officer would be readily identifiable, then the officer’s consent would be required.

13.11.4 To comply with the above requirement witnesses should be informed in writing of the following:

“If the offender is convicted at court that person’s image together with some proportionate, personal details about them and the offence may be used on Preston City Council’s website. In circumstances the Council may send out a press release with this information. This feature is designed to improve public confidence and in some cases encourages other people to come forward. You will not be identified but if you have any concerns please contact the investigating office in charge of the case”.

13.10.5 To comply with the above requirement offenders should be informed in writing of the following:

“Should you be convicted at court your details could be used by Preston City Council for a media release and a feature on the Council’s website. Should your conviction be overturned on appeal you can contact Preston City Council to ask for an update to be sent to the media and placed on the website.”

14. Equality impact assessment

14.1 This policy has been assessed with regard to its relevance to race and diversity equality. As a result of this assessment the policy has been graded as having a medium potential impact.

May 2010

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