

h. Any explanation offered.

Before the investigating officer commences court action legal advice will be sought from the Council's Solicitor. Then legal proceeding will start without unnecessary delay, and within the legal time limits.

## 7. Alternatives to Prosecution

Under certain circumstances a simple caution or evidence of successful completion of a course of recognised training may be an alternative outcome to prosecution and these options will be considered by the investigating officer.

The purpose of simple cautions are:

- a. to deal quickly and simply with less serious offenders;
- b. to avoid unnecessary appearance in criminal courts;
- c. to reduce the chance of suspected offenders re-offending.

Home Office Circular 30/2005 provides guidance on the cautioning of suspected offenders:

- a. In order to safeguard the suspected offender's interests, the following conditions should be fulfilled before a caution is administered:
  - i. there must be evidence of the suspected offender's guilt sufficient to give a realistic prospect of conviction;
  - ii. the suspected offender must admit the offence;
  - iii. the suspected offender must understand the significance of a simple caution and give an informed consent to being cautioned.
- b. There is no legal obligation for any person to accept a simple caution and no pressure should be applied for the person to accept a caution.
- c. If there is insufficient evidence to consider a prosecution then a simple caution is not appropriate.
- d. When a person declines to accept a simple caution, it will be necessary to consider taking alternative enforcement action. Whilst this may mean taking court action, it is not inevitable.

A simple caution will generally be administered by a Section Manager or Head of Service in Council offices, but if the person is elderly, infirm or otherwise vulnerable, a caution may be administered less formally, perhaps at the offenders' home and in the presence of a friend, relative or other appropriate person.

In certain special circumstances the simple caution may be administered by letter.

Where the offender is a juvenile, the simple caution will be issued in the presence of a parent, guardian or other appropriate person.

In the case of a person who has accepted a simple caution being identified as re-offending for a similar offence, then the caution will be cited in any prosecution case.

## 8. Human Rights

- a. when making decisions on action to be taken the European Convention on Human Rights will always be taken into account.
- b. When a decision has been made on the appropriate action the person(s) directly affected will be informed.

## 9. How to Comment upon the delivery

Darlington Borough Council is committed to providing high quality services that are readily accessible and responsive to comments from the public. This includes services that involve the enforcement of legislation.

If you wish to make a comment or complain about any Council Service, information on how to do this is available on the Council's website [www.darlington.gov.uk](http://www.darlington.gov.uk) or an information leaflet is available from Council reception counters. This information can also be made available in Braille or large type or in audio format. It can also be provided in other languages on request.

In the first instance contact should be made with the manager responsible for the service and, where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely time scales involved.

For further information on the Council's Complaints, Compliments & Comments Procedure contact:

Complaints & Information Governance Team  
Town Hall  
Darlington  
DL1 5QT

Tel: (01325) 388043

Email: [complaints@darlington.gov.uk](mailto:complaints@darlington.gov.uk)

# Making Regulation Work

## Advice for Residents and Businesses in Darlington

# Making Regulation Work

## 1. The Council's Approach

With a duty to enforce a wide range of legislation, the Council's aim is to secure efficient compliance with the legislation while minimising the burden to the Council, businesses and the community.

The Council's Enforcement Officers take into account specific legal requirements and nationally published guidance in carrying out enforcement activities. This includes the Enforcement Concordat and the Regulators Compliance Code.

## 2. Our Principles of Good Enforcement

**Openness:** Information and advice will be provided in plain language on the rules that we apply. We will be open about how we set about our work, consulting businesses, consumers, voluntary organisation and charities. We will discuss specific compliance failures or problems with anyone experiencing difficulties.

**Helpfulness:** Prevention is better than cure and our role therefore involves actively working with people and businesses, to advise on and assist with compliance. We aim to provide a courteous and efficient service and officers will identify themselves by name, We will provide a named person and telephone number for further contact.

Wherever practicable enforcement actions will be effectively co-ordinated to minimise unnecessary overlap and delay.

**Complaints about service:** The Council has published a complaints procedure, available to residents and businesses. See paragraph 8 for more details.

**Proportionality:** Officers will minimise the costs of compliance by ensuring that any action we require is proportionate to the risks or other consequences. We will take particular care to work with small businesses and the community so that they can meet their legal obligations without unnecessary expense where practicable.

**Consistency:** Officers will carry out our duties in a fair, equitable and consistent manner. Whilst authorised officers will exercise judgement in individual cases, we will promote consistency, including effective arrangements for liaison with other authorities and enforcement bodies.

Decisions shall not be influenced by gender, race, ethnic origin, religious beliefs, political beliefs or sexual orientation. Sensitive consideration will be given to individual needs.

## 3. Level of Enforcement Action

The focus for enforcement activity by authorised officers has three consecutive stages:

1. **Advice:** Raising awareness about legal standards and promoting good practice.
2. **Support:** Promoting positive relationships and discussing issues at the earliest opportunity to prevent any breach of regulations and making clear the consequences of non compliance.
3. **Statutory Notice, Fixed Penalty Notice and Legal Proceedings:** Following procedures laid down in legislation, codes of practice and professional guidance notes, officers will take appropriate enforcement action. This formal stage will only be considered where stages 1 and 2 have failed to achieve effective compliance or where there is for example:
  - i. a serious risk to health, safety, the environment or financial detriment;
  - ii. blatant disregard of legal responsibilities;
  - iii. an offence which is of such gravity that other forms of action are inappropriate.

Court action may include Criminal and/or Civil Proceedings.

## 4. Statutory Notices

The legal authority to serve statutory notices, which require a person to comply with specific legal requirements, is provided in many Acts of Parliament. Failure to comply with the terms of a Statutory Notice makes the person liable to court action.

It is possible in exceptional circumstances to prosecute as well as serve a notice; failure to comply with a notice would be an additional offence. When a Statutory Notice is served, written information detailing the method of appealing against the notice will be provided at the same time.

## 5. Fixed Penalty Notices

The use of Fixed Penalty Notices, where the legislation allows, provides a quick and effective way of dealing with a wide variety of offences. It has the benefit of providing precise written confirmation of the offence, the penalty due, the time period for payment and gives the recipient the choice of paying or challenging the Council's actions through an independent appeals mechanism.

## 6. Legal Proceeding - Criminal and Civil

In seeking to achieve a consistent approach to legal proceedings the following matters will be taken into account:

- a. Where an offence is prevalent in an area and legal proceedings may be seen as a deterrent against non compliance e.g. dog fouling, dumping of rubbish or cable burning, where is it improbable a suspected offender will be seen on subsequent occasions.
- b. The seriousness of the offence for example:
  - i. risk of harm to the public health or safety;
  - ii. identifiable victims
  - iii. failure to comply with a statutory notice served for a significant breach of legislation or to effect the abatement of a nuisance;
  - iv. disregard of public health or safety for financial reward.
- c. The previous history of the party concerned for example:
  - i. offences following a history of similar offences;
  - ii. failure to respond positively to past warnings;
  - iii. failure to comply with statutory notices.
- d. Any available defence. This includes statutory defences e.g. due diligence in relation to food safety; best practicable means or best practical environmental option.
- e. The available evidence including witnesses.
- f. Willingness to prevent a further breach.
- g. Whether other action, such as the issue of a simple caution in accordance with Home Office Advice or the service of a statutory notice would be more appropriate or effective.