

# NORTH HERTS DISTRICT COUNCIL

This document about Enforcement Policy can be made available in a range of languages, large print, Braille, on tape, electronic and accessible formats on application to the Officer who sent you this (direct dial their number if you know it, otherwise phone the Council Offices Switchboard on 01462 474000 and ask for the Officer) or Minicom (01462 474587).

## STATEMENT OF ENFORCEMENT POLICY

March 2004

## Introduction

The purpose of this policy is to secure compliance with the law while minimising the burden on individuals, businesses and the Council.

North Herts District Council has adopted the central and local government Concordat on Good Enforcement Practice and this policy explains the approach that will be adopted by officers when carrying out the Council's duties. Each service area will have its own procedures and protocols that will have regard to this policy, though there may be local variations within them. You should refer to any specific procedures in addition to this general one.

The policy is based on 5 guiding principles, which are set out below:-

- ☞ **Consistency:** to ensure that similar issues are dealt with in the same way, making full use of guidance produced by Government and other national agencies.
- ☞ **Fairness:** to ensure a fair and even-handed approach.
- ☞ **Proportionality:** to ensure that action taken relates directly to the actual or potential risk to health, safety or the environment.
- ☞ **Transparency:** to ensure enforcement action to be taken by the Council is easily understood. Clear distinctions will be made between legal requirements and recommendations about good practice which are not compulsory.
- ☞ **Objectivity:** to ensure that decisions are not influenced by the ethnic origin, gender, religious or political beliefs, r sexual preferences or mental or physical ability of the offender, complainant or witnesses.

### • **Human Rights Act 1998**

Regard will be had to the rights contained within the Human Rights Act when enforcement action is considered to ensure that action taken is both necessary and proportionate.

### • **Shared Enforcement**

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. Each service area has its own procedure, which lists all of the various bodies with which it may need to liaise in an enforcement situation. For example, for the Environmental Health Service this may include the Police, Fire Authority, Health and Safety Executive,

Trading Standards Agency, Food Standards Agency, Department of Food, Rural and Agriculture Affairs, Trading Standards.

### • **Provision for Particular Interests**

The services are committed to ensuring fair and effective enforcement and effective access to their services. Each service area has its own specific arrangements in place. For example Planning has its own enforcement policy and practice statement, Environmental Health has specific food and health and safety policies and the Benefits Service has its own policy. The principles in this generic policy will apply to all but nothing in the generic policy overrides the specific provisions within service policies, which have been developed with the statutory purpose of that service in mind.

All documents, which will be produced in plain language can also be made available on request in the recipient's own language, in Braille, large type or on cassette tape. Provision is also made for the use of interpreters where appropriate.

### **Levels of enforcement action**

Council officers will seek compliance with legislation by one or a combination of methods set out below:-

- 📖 **LEVEL 1 - Advice and Guidance:** to assist individuals, existing and prospective businesses and other organisations to comply with their legal obligations. This will be achieved by providing written and verbal advice, information leaflets and the opportunity for face-to-face contact to discuss and help resolve potential problems.
- 📖 **LEVEL 2 - Informal Warnings:** these will be used to reinforce advice and guidance where minor breaches of the law may have been discovered but it was not thought appropriate to take formal action. These warnings can be oral or written and are often selected as the most appropriate course of action when minor contraventions are discovered and it can be reasonably expected that informal warnings will achieve compliance. Where warnings are issued, follow-up visits are often made to ensure steps are being taken to rectify the problem. Warnings issued in respect of more significant breaches of the law will include timescales within which the breaches should be remedied and will always result in follow-up visits to ensure compliance, usually within 21 days, depending on the significance of the breach and nature of the work required.
- 📖 **LEVEL 3 - Formal Action:** this includes the use of statutory (legal) notices and is generally taken if informal advice or warnings are ignored. Before formal action is taken officers will provide an

opportunity to discuss the circumstances of the case and, if possible resolve points of difference, unless immediate action is required.

📁 **LEVEL 4 - Legal Proceedings:** this includes the issue of fixed penalty tickets, formal cautions and prosecutions and execution of works in default.

Enforcement will normally move from level 1 through to level 4 although it may be appropriate to commence proceedings at level 3 or 4 if the criteria for formal action or prosecution are met. The following guidance will be followed where formal enforcement options are being considered.

### Statutory (legal) notices

Some legislation provides for the service of statutory notices, which require a person, business or organisation to comply with specific requirements.

Generally, the notice will explain:-

- what is wrong
- what is required to put things right
- the timescale in which to put things right
- what will happen if the notice is not complied with.

In some circumstances where a formal notice has been served there might be a right of appeal against the Council's decision. In such cases an explanation of the method of appeal will be provided at the time the notice is issued.

### Works in Default

In general, it is Council policy to either formally caution or prosecute individuals, organisations or businesses that do not comply with a statutory notice. In addition, failure to carry out specified work may result in the Council carrying out the works and recovering all costs.

### Fixed Penalty Tickets

For certain offences e.g. dog fouling and depositing of litter there is provision for fixed penalty tickets to be issued. Where there is evidence that an offence has been committed, authorised officers from the Council will issue the appropriate penalty ticket.

### Formal Cautions

Under certain circumstances, a formal caution may be used as an alternative to prosecution and will usually be considered before making a decision to prosecute.

A formal caution is a serious matter. It is recorded as a conviction on the Central Register of Convictions held by the Office of Fair Trading. It may be used to influence any decision whether or not to prosecute

the individual, organisation or business offend again and it may be referred to in any subsequent court proceedings. Formal cautions remain on record for a period of 3 years.

Formal cautions are intended to:-

- a) deal quickly and simply with certain offences;
- b) avoid unnecessary appearance in criminal courts;
- c) reduce the chance of offenders re-offending.

Before issuing a caution the following conditions must be satisfied:

- i) there must be evidence of guilt sufficient to give a realistic prospect of conviction;
- ii) the offender must understand the significance of the formal caution and admit the offence by signing a declaration.
- iii) The person against whom a caution is issued must have legal responsibility for the offence(s), for example in the case of a company.

Where an individual chooses not to accept a formal caution the Council will normally prosecute.

### Prosecution

The Council will take individual circumstances into account when deciding whether to initiate a prosecution and will only bring proceedings when it is considered to be in the public interest.

Before deciding to prosecute there must be sufficient evidence for a realistic prospect of conviction, taking account of any defence that may be available. In certain circumstances, for example in the case of dishonesty or fraud, prosecution will be taken without prior warning.

**Although not an exhaustive list, the following criteria will normally be taken into account when deciding to initiate legal proceedings:-**

- a) Number of people affected by the offence;
- b) degree to which people are/were affected (seriousness of the offence);
- c) evidence that the offence was committed deliberately or maliciously;
- d) evidence that the defendant intimidated or harassed those affected;
- e) evidence of previous or on-going offences of a similar type;

f) likelihood of repeated offence which may be deterred by prosecution;

g) public health or safety was put at serious risk ;

h) lack of co-operation on the part of the defendant;

i) offence is widespread, at least in the general area in which it was committed;

j) failure to comply with the requirements of a statutory notice;

k) fraud against the State;

l) dishonesty.

In addition the decision to prosecute will always take into account the criteria laid down in the Home Office Code for Crown Prosecutors, extracts of which are reproduced below:

**The more serious the offence, the more likely it is that a prosecution will be considered to be in the public interest. A prosecution is likely to be needed if:**

- there is a serious risk to the public;
- a conviction is likely to result in a significant sentence;
- the evidence shows that the defendant was a ringleader or an organiser of the offence;
- there is evidence that the offence was premeditated;
- the victim (*or potential victims*) of the offence was vulnerable, has been put in considerable fear, or suffered personal, damage or disturbance;
- the offence was motivated by any form of discrimination against the victim's ethnic or national origin, sex, religious beliefs, political views, sexual orientation or mental or physical ability, or the suspect demonstrated hostility towards the victim based on any of those characteristics;
- there is a marked difference between the actual or mental ages of the defendant and the victim;
- there is any element of corruption
- the defendant's previous convictions or cautions are relevant to the present offence;
- there are grounds for believing that the offence is likely to be continued or repeated, for example, by a history of recurring conduct.

**Some common public interest factors against prosecution**

A prosecution is less likely to be needed if:

- the court is likely to impose a nominal penalty;
- the defendant has already been made the subject of a sentence and any further conviction would be unlikely to result in the imposition of an additional

sentence or order, unless the nature of the particular offence requires a prosecution;

- the offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence);
- the loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement;
- there has been a long delay between the offence taking place and the date of the trial, unless; the offence is serious; the delay has been caused in part by the defendant; the offence has only recently come to light; or the complexity of the offence has meant that there has been a long investigation;
- a prosecution is likely to have a significant detrimental effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence;
- the defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is a real possibility that it may be repeated.

**Accepting Guilty Pleas**

- Defendants may want to plead guilty to some, but not all, of the charges. Alternatively, they may want to plead guilty to a different, possibly less serious, charge because they are admitting only part of the offence. The Council will only consider accepting the defendant's plea if they think the court is able to pass a sentence that matches the seriousness of the offending. A guilty plea will not be accepted merely because it is convenient.
- In cases where a defendant pleads guilty to the charges but on the basis of facts that are different from the prosecution case, and where this may significantly affect sentence, the court would be invited to hear evidence to determine what happened, and then sentence on that basis. This is called the "Newton" hearing.

**Considering the views of those affected by offences**

- The services undertake enforcement on behalf of the public at large and not just in the interests of any particular individual or group. However, when considering the public interest test the consequences for those affected by the offence, of the decision whether or not, and how to take enforcement action, and any views expressed by those affected will be taken into account.
- Those people affected by the offence will be told about any decision that makes a significant difference to the case in which they are involved.

## **Re-starting a prosecution**

- People should be able to rely on enforcement decisions taken. Normally, if a suspect or defendant is advised that there will not be a prosecution, or that the enforcement action has been stopped, that is the end of the matter and the case will not start again. But occasionally there are special reasons why enforcement action will re-start, particularly if the case is serious. These reasons include:
- rare cases where a new look at the original decision shows that it was clearly wrong and should not be allowed to stand,
- cases that are stopped so that more evidence, which is likely to become available in the fairly near future, can be collected and prepared. In these cases, the defendant will be told that the enforcement action may well start again,
- cases which are stopped because of a lack of evidence but where more significant evidence is discovered later.

Where possible an offender will be told as soon as sufficient evidence is obtained that a prosecution may follow, Prosecutions will be brought without unnecessary delay.

For more information about this policy \*  
or any other matter enforced by the Council please  
contact :

For information about a specific Service policy please  
contact:

## **Service address and contact details**

[\\*Additional copies of this policy are available on request.](#)