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# **CORPORATE STATEMENT OF ENFORCEMENT POLICY**

**January 2022**

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## 1. Introduction

The purpose of this Policy is to set out North Hertfordshire District Council's enforcement principles, practice and provide guidance to Council officers, businesses and the public.

Enforcement action is a wide term which includes informal and formal steps and covers a range of options detailed below. When undertaking such action the Council will have regard to this Policy, and any service specific enforcement policy/ procedure. This overarching Policy does not seek to duplicate the specific ones detailed in the Appendices, but to provide a framework. In developing and updating these policies, regard has been given to the Regulators' Code 2014<sup>1</sup> issued under section 23 of the Legislative and Regulatory Reform Act 2006 ('the Act'), and good practice. This Policy explains the approach that will be adopted by officers when carrying out the Council's duties and how the Council will respond to noncompliance. Each service area has its own procedures and protocols that will have regard to this Policy, though there may be local variations within them; these are contained in the Appendices below. The Policy covers both criminal and civil enforcement practices and is based on the Council's enforcement mission statement.

## 2. Enforcement Mission Statement

A consistent and proportionate approach to enforcement that is targeted, and contributes to achieving the Council's priorities, policy aims and meets the needs of the community.

## 3. General Principles

In line with the requirements of the Act, the Council will have regard to the following principles when considering enforcement action:

- **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. Where possible the Council shall be sharing information about compliance and risk.
- **Accountability:** to ensure that the Council is answerable for its enforcement practices and can be held to account for the actions it takes.
- **Proportionality:** to consider whether proposed action is proportionate considering all relevant factors, including the severity of the offence, likely outcome, risk and costs of proceedings.
- **Consistency:** to ensure that similar issues are dealt with in an equitable way, making full use of guidance produced by Government and other agencies.

Where any rights contained within the Human Rights Act 1998 may be affected, officers should consider whether the action is both necessary and proportionate, and ensure that the provisions of the Act are taken into consideration where applicable.

## 4. Shared Enforcement and Corporate Approach

The range of enforcement matters dealt with by the Council may sometimes require officers to work with other departments or agencies to maximise effective enforcement.

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<sup>1</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/300126/14-705-regulators-code.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf)

Consideration should be given as to whether it is appropriate to share information with external agencies or colleagues in other departments. Where activity impacts across different Council departments, officers should adopt a corporate approach, working together to seek the best results overall. All instances of data sharing must comply with relevant Data Protection Legislation<sup>2</sup>.

## 5. Aims of Enforcement Action

If enforcement action is necessary, then the Council utilises the sanctions and penalties available to it in order to:

- change the behaviour of the offender;
- change attitudes in society to offences which may not be serious in themselves, but which are widespread;
- eliminate any financial gain or benefit from non-compliance;
- be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
- be proportionate to the nature of the offence and the harm caused;
- address the harm caused by regulatory non-compliance, where appropriate; and
- deter future non-compliance.

## 6. Levels of Enforcement Action

Prior to taking enforcement action, Council officers must ensure that they are authorised to do so under the Council's Constitution and their delegations. Officers will generally consider the following enforcement options when taking action:

**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 occur and it is not appropriate to take formal action. Warnings are more likely to be appropriate for minor contraventions where it can be reasonably expected that informal warnings will achieve compliance. Warnings issued in respect of more significant breaches of the law should include timescales within which the breaches should be remedied. Monitoring should be undertaken as appropriate where there are ongoing breaches.

**LEVEL 3 - Formal Action:** this includes the use of statutory (legal) notices and is generally taken if informal advice or warnings are not considered to be the most appropriate route. Before formal action is taken, other than where immediate action is required, officers will

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<sup>2</sup> Means: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended, or any successor legislation.

provide an opportunity to discuss the circumstances of the case and, where possible, attempt to resolve points of difference.

**LEVEL 4 - Legal Proceedings:** this includes, amongst other things, the issue of fixed penalty tickets, simple cautions, prosecutions, injunction proceedings, review and revocation of licences and execution of works in default.

Enforcement will normally move from Level 1 through to Level 4, although depending on the facts of a given matter, it may be appropriate to adopt a fluid approach to how a matter proceeds through the above Levels. For example in certain circumstances a matter may begin at Level 1 but then, if required, go straight to Level 3 or 4. Likewise it may be suitable to commence proceedings at Level 3 or 4 if the criteria for formal action or prosecution are met.

Different service areas may have their own service specific sanctions available to them; including such things as civil penalties that can be utilised as an alternative to prosecution. Where these specific sanctions are available to a given service area, these will be set out in the relevant procedure document in the appendices below.

## **7. No Action**

In certain circumstances, contraventions may not warrant any action. This can be where the cost of compliance significantly outweighs the detrimental impact of the contravention, or where the cost of the required enforcement action to the Council significantly outweighs the detrimental impact of the contravention on the community. A decision of no action may also be taken where action is inappropriate in the circumstances, such as where an organisation has ceased to trade, or the offender has mental capacity considerations or is elderly and frail and formal action would seriously damage their well being.

## **8. Statutory 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.

## **9. Works in Default**

In general, it is Council policy to either 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 in default and recovering all costs. In such cases the expenses associated with default works will usually be recovered

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by issuing an invoice to the relevant party. Where appropriate, these costs may be recovered by way of a charge against land/ property, and such a charge may be further enforced through sale of the land/ property.

In calculating the recovery of costs incurred when undertaking works in default the Council will have regard to the following:

- Contractor's costs or expenses;
- Costs associated with officer time (including overhead costs); and
- Legal costs or expenses.

## 10. Fixed Penalty Notice ('FPN')

For certain offences, e.g. fly-tipping, household waste duty of care offences, breaches of community protection notices (CPN's), depositing of litter, abandoned vehicles, there is provision for fixed penalty notices to be issued. Where there is evidence that an offence has been committed, authorised officers from the Council may issue the appropriate penalty ticket. The issue of an FPN gives an offender the opportunity to discharge their liability to prosecution by the payment of set fine within a specified period. FPNs will only be issued when there is adequate evidence to support a prosecution. If the fine is not paid in full within the stated period then the Council is likely to mount such a prosecution.

Details of the Council's FPN scheme, including which offences are included, the level of fine and early payment discounts amongst other things, can be viewed on the council's website<sup>3</sup>

## 11. Simple Cautions

A simple caution is a non-statutory, non-conviction disposal for adult offenders aged 18 or over. Under certain circumstances, a simple caution may be used as an alternative to prosecution and will usually be considered before making a decision to prosecute. A simple caution is a serious matter. It may be used to influence any decision whether or not to prosecute should the individual, organisation or business reoffend, and it may be referred to in any subsequent court proceedings. Regard will be given to government guidance by the Ministry of Justice – Simple Caution for Adult Offenders<sup>4</sup>.

Simple cautions are intended to:-

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

Before issuing a caution the following will be relevant:

- i. there must be evidence of guilt sufficient to give a realistic prospect of conviction and it must be in the public interest to offer a simple caution;
- ii. that it is a low-level first time offending situation;
- iii. not a repeat offence *and where relevant and appropriate* a victim's views will be taken into account;
- iv. the offender must understand and be capable of understanding the significance of the simple caution and admit the offence by signing a declaration;
- v. the person against whom a caution is issued must have legal responsibility for the

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<sup>3</sup> [Home | North Herts Council \(north-herts.gov.uk\)](http://www.north-herts.gov.uk)

<sup>4</sup> <https://www.gov.uk/government/publications/simple-cautions-guidance-for-police-and-prosecutors> or any subsequent guidance

offence(s), for example in the case of a company, and be 18 years or over.

Where an individual chooses not to accept a simple caution the Council will normally consider prosecution.

The decision to offer a caution will normally be taken in consultation between the relevant service manager and the Service Director – Legal and Community, or those officers delegated to make that decision under a scheme of delegation.

## **12. 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, including cases of dishonesty or fraud, or other serious health and safety cases, prosecution may be taken without prior warning.

In addition the decision to prosecute will always take into account the CPS Code for Crown Prosecutors<sup>5</sup>. This Code includes the requirement that both the evidential test and public interest test referred to above are met before issuing proceedings.

Most prosecution proceedings require the authorisation of the Service Director: - Legal and Community under the Council's Constitution, although some require specific officers to do so, such as Health and Safety, in consultation with the Service Director. Officers must ensure that Legal Services are consulted at the appropriate stage to consider the evidential and public interest tests and institute proceedings where appropriate.

## **13. Unauthorised Encampments**

An Unauthorised Encampment "UE" is defined by the Government as:

*"Encampments of caravans and/or other vehicles on land without the landowner or occupier's consent and constituting trespass"*

For the purpose of this Policy, UE is defined as the occupation of land for the purpose of habitation, without the expressed permission of the landowner, or without the necessary planning approval and caravan sites licences, where necessary.

Unauthorised encampments may arise where land is (a) privately owned and occupied by an owner(s) or (b) with the landowner's consent but without the benefit of planning permission or caravan site licence.

The law provides for a range of possible responses to trespass. In simple cases, the landowner may apply for an order of repossession. In others the local authority can use its powers but, where there are aggravating factors of crime and disorder, the police can exercise their powers given under Section 61 of the Criminal Justice and Public Order Act 1994.

Where the UE is on council land the council has exercised common law powers given under Halsbury's Laws of England, Paragraph 1400, Volume 45 of the Fourth Edition. It has been

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<sup>5</sup> [http://www.cps.gov.uk/sites/default/files/documents/publications/code\\_2013\\_accessible\\_english.pdf](http://www.cps.gov.uk/sites/default/files/documents/publications/code_2013_accessible_english.pdf)

established that a landowner has the common law right where someone has trespassed on their land to get possession of their lands back without getting a specific court order, by use of Certified Bailiffs now known as Certified Enforcement Agents.

Each case must be treated on its merits with the safety of all concerned, including those who are involved in the UE and the potential for disorder or disruption as major guiding factors.

#### **14. Licences**

The Council is responsible for licensing a wide range of activities from taxis and the sale of alcohol to scrap metal dealers and dog breeders. These administrative documents are normally subject to certain conditions that are imposed either by legislation or the Council. When licence conditions are breached, the licensing regime, which is covered in many different acts of Parliament, sets out the circumstances in which licences can be suspended or revoked by the Council.

As the process of suspending or revoking a license is statute driven, the Council will be bound to follow the processes set out in the relevant legislation from time to time, however the Council's licensing team will normally be able to advise parties of what action it intends to take.

If revocation action is taken, the relevant parties will be made aware of any rights of appeal open to them at that time.

Where revocation is not being immediately considered, however the Council is able to issue other types of enforcement sanctions for breach of condition and will follow relevant service specific policies and statutory guidance when reaching a decision on what action is appropriate.

#### **15. Proceeds of Crime Applications**

The Council, either through its own officers or in cooperation with the Police, may make an application under the Proceeds of Crime Act 2002 to restrain and/or confiscate the assets of an offender. The purpose of any such proceedings is to recover the financial benefit that the offender has obtained from his criminal conduct. Proceedings are conducted according to the civil standard of proof. Officers should consider whether such an application is appropriate when initiating a prosecution.

#### **16. Considering the views of those affected by offences**

The Council undertakes enforcement on behalf of the public at large and not just in the interests of any particular individual or group. When considering the public interest test and whether enforcement action is appropriate, any views expressed by those affected by the offence(s) will be taken into account.

Those people affected by an offence will be kept informed of any decision that makes a significant difference to the case in which they are involved.

The Council understands that people making complaints may not wish their identity to be made known to the party about whom the complaint is being made. Accordingly, it will take care to respect the confidentiality of complainants wherever possible. However, most types of formal enforcement action, such as a prosecution, cannot take place unless the complainant is prepared for their identity to be revealed and they may be required to attend

court. The Council will endeavour to make it clear whether or not complainant confidentiality can be maintained in these circumstances, although it should be made clear that this is a matter for the Court and it is unlikely in the majority of cases.

Most complaints require an investigation to be mounted and this may, on occasion, require a regular dialogue with the complainant in order to establish evidence. Accordingly, it is not possible for the Council to initiate such an investigation where the complainant does not wish to provide their name and contact details. Therefore, anonymous complaints will only be investigated wherever it is appropriate, practicable and in the public interest to do so.

## **17. Publication of Enforcement Action**

Where enforcement action is successful, officers may want to publicise the outcome to inform the public and deter potential offenders, this may be done through press releases as well as other means. In doing so, officers should have regard to the relevant Council procedures.

## **18. Waste Management**

Waste management is a shared service with East Hertfordshire Council and the council do not have dedicated waste enforcement team. Currently enforcement work is undertaken on an ad hoc basis by the Council's legal department. Should the Council require the shared service to undertake enforcement then this will have to be arranged and agreed with East Hertfordshire Council.

## **19. Victim's right to review**

The Victims' Right to Review only applies to decisions made on or after 1 April 2015 in cases where a suspect has been identified, formally interviewed under caution and either:

- the Police decide to take 'no further action' (NFA), or
- the Crown Prosecution Service (CPS) decide not to prosecute.

VRR applies to cases where a suspect has been identified and interviewed under caution. This happens either after they've been arrested or because they've volunteered to be interviewed.

There is a VRR scheme for both Police and CPS and an application can be made under either, depending on who the decision maker is.

### **Police VRR scheme**

When there has been a decision to take 'no further action', and close an investigation by the police, the victim is entitled to have the reasons for such a decision explained. The information provided should be sufficient enough for them to make a decision as to whether they want to make a VRR request.

Each police force has its own VRR process, which should be conducted by a police officer who is independent of the original investigation and senior to the initial officer dealing.

A police VRR would usually challenge the assessment of evidence, further investigations, consideration of alternative offences, the decision not to refer the case to the CPS and a request to re-open the case and refer it to the CPS.

How to apply for a police VRR in Hertfordshire, simply fill in the simple [online form](#) or write to:

Victim Services Team  
Hertfordshire Constabulary  
Stanborough Road  
Welwyn Garden City  
Herts  
AL8 6XF

### **CPS VRR scheme**

Where a decision has been taken not to pursue a prosecution the CPS should provide the victim with a detailed written explanation, and for certain offences conduct a meeting to explain the decision.

There are two stages to the CPS VRR scheme:

**Stage 1: Local resolution**— a review is undertaken by a different local prosecutor i.e. from the same office. If the decision to prosecute is upheld at this stage the victim can within 10 days refer the decision to the Appeal and Review unit (stage 2)

**Stage 2: Appeal and Review unit** – a full independent review conducted by the Appeals and Review Unit of the CPS

Following a VRR the original decision not to prosecute/close the investigation can be upheld or overturned along with other possible outcomes.

### **Time frames**

There are strict time limits which apply and therefore a VRR should be requested as soon as practicable and/or the CPS/Police put on notice of such.

**Police VRR:** VRR request should be made within three months from date of the decision

**CPS VRR:** VRR request preferred within five working days from the date of the decision. The CPS can consider a request made within three months of the original decision.

If you're not happy with the decision, you can apply to the High Court for a judicial review.

# APPENDIX A: REVENUES RECOVERY

The Revenues Recovery team have a statutory duty to collect debts accrued in relation to Council Tax, Non Domestic Rates, Business Improvement District Levy, Housing Benefit Overpayments (from Final Notice Stage), Sundry Debts and Penalty Charges Notices (from Warrant Stage)

The relevant legislation which governs the Revenues Recovery team's work are as follows:

## Council Tax

- Primary - The Local Government Finance Act 1992
- Secondary - The Council Tax (Administration & Enforcement) Regulations 1992

## NNDR

- Primary - The Local Government Finance Act 1988
- Secondary - The Non Domestic Rates (Collection & Enforcement) (Local Lists) Regulations 1989

## BIDS

- Primary – The Local Government and Housing Act 1989 and Local Government Act 2003
- Secondary - The Business Improvement Districts (England) Regulations 2004 & The Non Domestic Rates (Collection & Enforcement) (Local Lists) Regulations 1989

## Enforcement for Council Tax, NNDR & BID

- Primary – The Tribunals Courts and Enforcement Act 2007
- Secondary – The Taking Control of Goods Regulations 2013 & The Taking Control of Goods (Fees) Regulations 2014

## Enforcement for Parking

- Primary – The Traffic Management Act
- Secondary - The Taking Control of Goods Regulations 2013 & the Taking Control of Goods (Fees) Regulations 2014

With regard to Council Tax, once a Liability Order has been granted, this secures the Council's debt and allows the Council to consider using one of the following methods to recover the amount:

Attachment of a Welfare Benefit

Attachment of Earnings

Attachment of Members Allowances

Refer the case to an Enforcement Agent; this will incur the fees laid out in the Taking Control of Goods (Fees) Regulations 2014

If the above fails, then consideration can be given to making an application for a Warrant of Commitment to prison

Make an application for a Charging Order to be placed over a property, where this is

owned by the debtor.

Consideration of personal bankruptcy, if there are believed to be assets that could realise the debt.

With regard to NNDR and BID Levy, once a Liability Order has been granted, this secures the Council's debt and allows the Council to consider using one of the following methods to recovery the amount:

Refer the case to an Enforcement Agent; this will incur the fees laid out in the Taking Control of Goods (Fees) Regulations 2014

If the above fails, then consideration can be given to making an application for a Warrant of Commitment to prison if the business is a sole trader

Make an application for a Charging Order (Security of Rates) to be placed over a property, where this is owned by the debtor.

Consideration of personal bankruptcy if the business is a sole trader

Consideration of a Winding up order if the business is a partnership or Limited Company.

In all cases the Council can only consider Bankruptcy if the debt exceeds £5,000 or in the case of a Charging Order the debt must exceed £1,000.

With regard to Warrants of Execution for Parking Fines, the Council refers these to an External Enforcement Agent to pursue. The Agents work in line with the Taking Control of Goods Regulations 2013, but ultimately can clamp and remove a vehicle once a Taking Control of Goods Agreement has been sought

# APPENDIX B: ENVIRONMENTAL HEALTH 1.0

## Introduction

1.1 The Environmental Health Service exercises a wide range of regulatory powers, most of which relate to the protection of public health or the prevention of nuisance. The main activities delivered by the service are:

- Food safety
- Occupational health and safety
- Pollution control
- Private sector housing
- Public health
- Stray dogs

1.2 This Enforcement Policy is part of the Council's Corporate Enforcement Policy. It follows the principles laid down in the core policy and does not seek to duplicate these except where necessary to aid clarity or context.

1.3 In framing this policy, regard has been had to the Regulators' Code, corporate policies and national guidance relating to the functional areas covered by the environmental health remit.

1.4 This policy is not intended to be an operational policy but to provide a basis for framing operational policies and procedures regarding enforcement activities. Any particular operational case needs to be dealt with on its merits and due to the range of activities covered by the Environmental Health Service, this policy can not be considered to be exhaustive.

### ENFORCEMENT AND REGULATORY ACTIVITIES

1.5 The enforcement and regulatory activities undertaken by the environmental health service normally are related to either statutory inspection programmes or service requests. Where possible and relevant, risk assessment is undertaken to guide the deployment of resources, in particular with regard to programmed inspection activities. The following table sets out the risk based systems normally used with regard to the Service's inspection programmes.

Area	Activity	Risk methodology
Food safety	Food premises inspection programme	Food Standards Agency Food Law Code of Practice
Health and safety	Health and safety intervention programme	Health and Safety Executive Guidance
Pollution	Environmental Permitting	Defra risk assessment methodology

Private Housing	Sector	Houses in multiple occupation	Local risk assessment system
Private Housing	Sector	Park home and caravan sites	Local risk assessment system
Private supplies	water	Water sampling	Legislation, DWI guidance and local risk assessment

- 1.6 Risk principles are used where appropriate in deciding how to respond to service requests including accident reports and ID notifications, complaints, and notifications from other agencies.

#### ENFORCEMENT OPTIONS

- 1.7 The core part of the Council's Enforcement Policy sets out the general enforcement options, ranging from no action up to prosecution or a similar level sanction. The Environmental Health Service follows this approach, taking a number of factors into consideration when deciding what enforcement response is appropriate in each case.
- 1.8 The Service also has a number of unique options in service specific areas such as seizing noise making equipment, issuing a hygiene emergency prohibition notice for a serious food safety issue, or making a rent repayment order against a landlord. These are set out in detail in the relevant functional area below.
- 1.9 A principle that the Service follows is that enforcement action should follow a graduated approach, starting with a lower sanction for less serious, one off offences, ranging upwards to higher sanctions for serious and/or repeat offences. However, each case needs to be considered on its merits having regard to all relevant factors. For more serious situations prosecution or another higher level sanction may be the first course of action if the circumstances justify such an approach. In every case, the appropriate enforcement option is carefully considered and approved in line with the Council's scheme of delegation.

## 2.0 Food Safety

### 2.1 Scope

- 2.1.1 This is a documented policy on food safety enforcement including prosecution. This Policy will be reviewed periodically and in response to new legislation, the Food Standards Agency (FSA), Department of Health (DoH), Department for Food, Environment and Rural Affairs (Defra) and other guidance etc as necessary. This document encompasses the principles of the Regulators' Code.
- 2.1.2 This Policy directs that enforcement action, be it the issue of written warnings, statutory notices, or prosecution, is based primarily upon an assessment of risk to public health. This risk is the probability of harm to health occurring due to non-compliance with food safety law. Formal action should not, therefore, be the normal response to minor technical contraventions of legislation.

- 2.1.3 This Policy encompasses the guidance set out in the Food Standard Agency publication 'Framework Agreement on Local Authority Food Law Enforcement' and the Food Law Code of Practice (England) issued under Section 40 of the Food Safety Act 1990.
- 2.1.4 Where appropriate this Policy will be read in conjunction with this Authority's Health and Safety Enforcement Policy.
- 2.2 Other relevant considerations
- 2.2.1 In this context, formal action includes the following:
- Written warning
  - Hygiene Improvement Notice
  - Hygiene Emergency Improvement Notice
  - Voluntary (closure) procedure
  - Emergency prohibition procedures
  - Seizure and detention of food
  - Voluntary (surrender of food) procedures
  - Remedial Actions Notices
  - Prosecution procedures (including simple cautions)
- 2.2.2 The competency of officers specialising in food safety must follow the guidance in the Food Law Code of Practice and other guidance issued from time to time by recognised bodies.
- 2.2.3 Signing of Improvement Notices under the Food Safety and Hygiene (England) Regulations 2013 Food Safety Act 1990 will only be undertaken by officers who have been authorised to do so by the Council after demonstrating the relevant competencies. These must be qualified officers with experience in food law enforcement, in accordance with the Food Law Safety Act Code of Practice i.e.
- a. Environmental Health Officers enforcing food hygiene
  - b. Holders of the Higher Certificate in Food Control Premises Inspection who are authorised to carry out food hygiene inspections
  - c. Equivalent qualifications with assessment of equivalency approved by the Food Standards Agency Holders of the Ordinary Certificate in Food Premises Inspection in relation to the premises they are authorised to inspect
- 2.2.4 The officer who signs the notice must have witnessed the contravention and be satisfied that it constitutes a breach of the Food Safety and Hygiene (England) Regulations 2013.
- 2.2.5 Emergency Prohibition Notices should be signed only by Environmental Health Officers who have two years post qualification experience in food safety matters, are currently involved in food law enforcement and who are properly trained, competent and duly authorised. The Officer will ensure a second opinion is obtained prior to the notice being issued.
- 2.2.6 The Council will ensure that any authorised officer is competent to take action under The Food Safety and Hygiene (England) Regulations 2013, is fully qualified, and possess experience in a variety of food enforcement situations

which would allow him / her to undertake the duties for which he/she has been authorised.

- 2.2.7 The Council recognises and affirms the importance of achieving and maintaining consistency in their approach to making all decisions which concern food safety enforcement action, including prosecution. To achieve and maintain consistency, it is important that the guidance in statutory Codes of Practice, other recognised and relevant guidance and advice offered through any relevant Primary Authority is always considered and followed where appropriate.
- 2.2.8 The Council will seek to ensure that enforcement decisions are always consistent, balanced, fair and relate to common standards that ensure that the public is adequately protected. The Council will base all enforcement decisions on an assessment of risk to the public health and will consider a number of factors set out in the Food Law Code of Practice including seriousness of offence, the enterprise's past history, confidence in management, the consequences of non-compliance and the likely effectiveness of the various enforcement options.
- 2.2.9 Officers should be aware of possible conflicts of interest that may arise in an enforcement situation as a result of Primary Authority responsibilities or through the promotion of North Herts District Council services.
- 2.2.10 In premises where North Herts District Council are the proprietor of a food business any breaches of the law must be brought, without undue delay, to the attention of the relevant Service Director.
- 2.2.11 Where the Council is considering taking enforcement action which is not consistent with current guidance or not subject of guidance, the matter should be brought to the attention of the Hertfordshire and Bedfordshire Food Liaison Group and where consensus cannot be reached to the FSA via the Food Focus Group.
- 2.2.12 Compliance should normally be achieved through letters and advice, and only in the more serious instances should formal enforcement through Improvement or Prohibition Notices be considered. Prosecutions and other higher level sanctions should be reserved for the most serious offences which either result or could have resulted in serious risk to public health or which represent a blatant disregard by employers, employees or others of their responsibilities under food safety legislation.

## 2.3 The use of formal enforcement tools

### FORMAL ACTION

- 2.3.1 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 (for example, in the interests of health and safety or environmental protection or to prevent evidence being destroyed).

### STATUTORY NOTICES AND RELATED PROCEDURES

- 2.3.2 In relation to the following formal actions:

- Hygiene Improvement Notice
- Hygiene Emergency Improvement Notice
- Voluntary (closure) procedure
- Emergency prohibition procedures
- Seizure and detention of food
- Voluntary (surrender of food) procedures
- Remedial Actions Notices

consideration will be given to the guidance in the Food Law Code of Practice. Other relevant guidance will also be considered as well as the site specific and case specific factors.

## PROSECUTION

2.3.3 The Authority recognises that the following are circumstances which are likely to warrant prosecution:

- i) The alleged offence involves an obvious breach of the law such that the public health, safety or well-being is or has been put at risk.
- ii) The alleged offence involves a failure by the suspected offender to correct an identified serious potential risk to food safety, having been given a reasonable opportunity to comply with the lawful requirements of an authorised officer.
- iii) The offence involves a failure to comply in full or in part with the requirements of a statutory notice.
- iv) There is a history of similar offences, related to risk to public health.

2.3.4 The Officer, must be satisfied that there is relevant, admissible substantial and reliable evidence that an offence has been committed by an identifiable person / company.

2.3.5 The following guidance criteria are some of the factors that it may be relevant to have regard to when considering the instigation of legal proceedings.

- i) the seriousness of the alleged offences;
- ii) the previous history of the party concerned;
- iii) the likelihood of the defendant being able to establish a due diligence defence;
- iv) the availability of any important witnesses and their willingness to co-operate;
- v) the willingness of the party to prevent a recurrence of the problem;
- vi) the probable public benefit of a prosecution and the importance of the case;
- vii) whether other action (Simple Cautioning, improvement notices) will be more appropriate or effective.

## SIMPLE CAUTIONS

2.3.6 In certain circumstances when legal proceedings are being considered, the Council may consider offering to discharge the matter by way of a Simple Caution. The procedure adopted and the form and content of the caution will be in

accordance with relevant guidance. Any internal guidance will also be considered.

## **3.0 Occupational Health and Safety**

### **3.1 Scope**

3.1.1 This section of the Policy directs that the enforcement of health and safety law should be informed by the principles of proportionality in applying the law and securing compliance; consistency of approach, targeting of enforcement action and transparency about how the regulator operates and what those regulated may expect.

3.1.2 This document provides detailed guidance applicable to the various options for enforcement action.

### **3.2 Other relevant considerations**

3.2.1 Officers will carry out duties in a fair, equitable and consistent manner. While inspectors are expected to exercise judgement in individual cases, arrangements will be in place to promote consistency, including effective arrangements for liaison with other authorities and enforcement bodies through schemes such as those operated by the Health and Safety Executive (HSE), Local Authority and Safety Unit (LASU), HELA and the Hertfordshire and Bedfordshire Environmental Health Officers' Health and Safety Group.

3.2.2 Where there may be a shared or complimentary enforcement role with other agencies (e.g. The Health and Safety Executive) consideration should be given to liaison in appropriate circumstances (e.g. enforcement in Council owned premises).

3.2.3 Where a Primary Authority Partnership arrangement is in place for a particular employer, the Primary Authority will be contacted in appropriate cases and will be kept advised of the progress and outcome of any formal action.

3.2.4 Health and safety enforcement action may only be initiated by duly authorised officers. The Council will ensure that officers who are appointed under Section 19 of the Health and Safety at Work etc. Act 1974 are authorised to initiate enforcement action, are competent to do so, are suitably qualified and have relevant and adequate experience in health and safety enforcement, in accordance with HSE guidance, currently set out in LAC 22/8.

### **3.3 The use of formal enforcement tools**

3.3.1 Having considered all relevant information in the light of the HSE Enforcement Management Model and all other evidence, the choices for action are:

- to give verbal advice
- to take no action
- to take informal action
- to use statutory notices

- to use Simple Cautions where local policy dictates
- to prosecute
- to use other relevant provisions of legislation, for example to seize or destroy unsafe items, plant or equipment
- or a combination thereof

3.3.2 Where the Council is considering taking enforcement action which is in an unfamiliar area presently not subject to guidance the matter should be discussed with the relevant body e.g., Enforcement Liaison Officer (ELO), the LASU.

3.3.3 Compliance should normally be achieved through letters and advice, and only in the more serious instances should formal enforcement through improvement or prohibition notices be considered. Prosecutions should be reserved for the most serious offences which either result or could have resulted in serious injury or ill health or which represent a blatant disregard by employers, employees or others of their responsibilities under health, safety, or welfare legislation.

3.3.4 The Council recognises and affirms the importance of achieving and maintaining consistency in their approach to making all decisions that concern health and safety enforcement action, including prosecution. To achieve and maintain consistency, it is important that the guidance in statutory Codes of Practice, HELA circulars and advice offered in relation to the Primary Authority Partnerships is always considered and followed where appropriate.

3.3.5 The Council will ensure that enforcement decisions are always consistent, balanced, fair and relate to common standards that ensure that persons affected by work activities are adequately protected. In coming to any decision the Council will consider many criteria including seriousness of offence, the enterprise's past history, confidence in management, the consequences of non-compliance and the likely effectiveness of the various enforcement options.

#### FORMAL ACTION

3.3.6 Any enforcement action will be directed against duty holders responsible for the breach. This may be employers in relation to employees or others; the self-employed; owners of premises; suppliers of equipment; designers of equipment or clients of projects; or employees themselves. Where there are several duty holders enforcement authorities may take action against more than one.

#### STATUTORY NOTICES

3.3.7 Before formal enforcement action is taken, officers will provide the duty holder an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference, unless immediate action is required (for example, in the interests of health and safety or environmental protection, or to prevent evidence being destroyed).

3.3.8 Where immediate action is considered necessary, an explanation of why

such action was required will be given at the time and confirmed in writing in most cases within 5 working days and, in all cases, within 10 working days.

- 3.3.9 An Improvement Notice will be issued only when the officer is of the opinion that there is or has been a contravention of one or more of the relevant statutory provisions at the time of the visit in circumstances that make it likely that the contravention will continue.
- 3.3.10 Prohibition Notices can be issued to have an immediate or deferred effect. The Notice will only be served if the officer is of the opinion that there is, or will be a risk of serious personal injury.
- 3.3.11 Where there are rights of appeal to an Employment Tribunal against formal action, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken.
- 3.3.12 The officer will provide employees or their representatives with certain information where it is necessary for the purpose of keeping them informed about matters affecting their health, safety and welfare. The type of information that an officer will provide includes matters which an inspector considers to be of serious concern and details of any action taken. Depending upon the circumstances, the officer may provide this information orally, or in writing.
- 3.3.13 When an Improvement or Prohibition Notice is served, a second copy must be enclosed, marked for the attention of employees or their representatives.
- 3.3.14 Officers can consider both prosecution and notice procedures in the following circumstances:-
- (i) occasionally a situation may be so hazardous that even when a prohibition notice has been issued prosecution may also be merited; and
  - (ii) if a prosecution is taken due to the circumstance of an accident, a notice may also be used to enforce the remedy.

In these situations the information should not be laid until after the appeal period for the notice has passed (21 days) and any appeal has been heard. It is highly undesirable that there should be a hearing in a court where a possibly contrary decision could be reached subsequently in the Employment Tribunal. On occasions, however, this will be unavoidable where a tribunal has agreed to accept a late appeal.

- 3.3.15 Non-compliance with a served Notice will normally result in prosecution.

#### PROSECUTION

- 3.3.16 The most serious offences where, in the public interest and following an investigation, a prosecution would be the appropriate course of action as in the following circumstances:

- (i) where there is a death as a result of a breach of the legislation;
- (ii) where there is a blatant disregard for the law, particularly where the economic advantages of breaking the law are substantial and the law abiding are placed at a disadvantage to those who disregard it;
- (iii) when there appears to have been reckless disregard for the health and safety of work people or others;
- (iv) where there have been repeated breaches of legal requirements in an establishment, or in various branches of a multiple concern, and it appears that management is neither willing nor structured to deal adequately with these. An examination of the company safety policy, if any, would be particularly useful in such a situation;
- (v) where a particular type of offence is prevalent in an activity or an area;
- (vi) where, as a result of a substantial legal contravention, there has been a serious accident or a case of ill health;
- (vii) where a particular contravention has caused serious public alarm;
- (viii) where there are persistent poor standards for control of health hazards.
- (ix) where there has been failure to comply with an improvement or prohibition notice; repetition of a breach that was subject to a Simple Caution.
- (x) inspectors have been intentionally obstructed in the lawful course of their duties.
- (xi) where inspectors are assaulted, enforcing authorities will seek police assistance with a view to seeking prosecution of offenders.

The decision to prosecute in the above cases does not preclude the issue of notices as well

#### PROSECUTION WITHOUT PRIOR WARNING

3.3.17 As a general rule a person or a company should be given a reasonable

opportunity to comply with the law, although in some circumstances it is right to prosecute without giving prior warning. Examples of such circumstances include those where the contravention is a particularly serious one, or where there has been a particularly blatant disregard by employers, employees or others of their responsibilities under health and safety legislation. For example, the commission of an offence, similar to one for which a Notice has previously been issued to that person or organisation, should normally result in prosecution. Failure to comply with an Improvement Notice or a Prohibition Notice should normally result in prosecution and unless this happens the value of notices will be seriously undermined.

#### PROSECUTION FOLLOWING AN ACCIDENT

3.3.18 Seriousness of the contravention (not the severity of the accident) is the

prime consideration in deciding whether to take a prosecution following an accident. The extent to which management was responsible for the circumstances which led to the accident, and whether the employer had been previously warned of a similar infringement, are also relevant. An important question for inspectors to ask themselves is what they would have done if they had discovered the contravention in the absence of an accident. However, an accident may contribute to the strength of the evidence and therefore to the chances of achieving a successful prosecution, it may therefore provide a useful occasion for a salutary prosecution of a generally unco-operative employer. In cases where there

is any possibility of a charge of manslaughter being made the matter must be referred to the Crown Prosecution Service, having regard to the 'Work Related Death Protocol'.

#### SIMPLE CAUTIONS

- 3.3.19 In certain circumstances when legal proceedings are being considered, the Council may consider offering to discharge the matter by way of a Simple Caution. The procedure adopted and the form and content of the caution will be in accordance with relevant guidance. Any internal guidance will also be considered.

#### ENFORCEMENT ACTION AGAINST EMPLOYEES

- 3.3.20 Enforcement action may be taken against employees and others, including managers, company officers etc., under HSW Act s.7, 8, 36(1) and 37(1).
- 3.3.21 When inspectors discover a contravention of HSW Act s7, it will be their duty to consider what action (if any) they should take in regard to the employee, by way of warning or prosecution. A letter warning any employee about subsequent contraventions may be desirable in some cases.
- 3.3.22 The issue of a notice against the employee may also be appropriate on occasions although the value of the notice is limited since in general a continuing obligation should not be imposed. For example, notices should not be served on employees requiring them to wear goggles. Not only can employees be required by HSW Act s.7 (1) to use appliances provided for their health and safety, but they can be required to co-operate in a more general way, e.g., by adjusting a guard properly or by reporting promptly a defect in the arrangements for health and safety which comes to their notice.
- 3.3.23 In certain circumstances proceedings against an employee may be appropriate if there is evidence of negligence on their behalf. In such cases consultation with workers' representatives will be undertaken prior to any decision to prosecute. Prosecution will be considered only if the employee had been warned before (either by an inspector or by the business) or if the employer can demonstrate that he/she has taken all reasonably practicable steps to see that relevant health and safety controls were brought to the attention of the employee safety devices were used and the offence by the employee was flagrant.

## 4.0 Pollution Control

### 4.1 Scope

- 4.1.1 The Environmental Health Service undertakes regulatory duties relating to the following pollution control areas:
- Noise pollution arising from both domestic and commercial premises (including noise/vibration from construction sites) and, in certain circumstances, equipment or vehicles in the street.

- Out of hours service for statutory noise nuisances.
- Air pollution control, including smoke, odour and dust statutory nuisances.
- Other statutory nuisances e.g. excess artificial light, insects.
- Permitting of industrial processes having the potential to release harmful pollutants to the air.
- Enforcement of controls over contaminated land, to ensure that contaminants do not interfere with human health, animal/plant health or the built environment. Also to assess whether contaminants are likely to affect rivers, aquifers or other controlled water courses.
- Local Air Quality Management (LAQM) duties as regards the Environment Act 1995

4.1.2 This section of the Environmental Health Enforcement Policy provides specific guidance on regulatory activities associated with pollution control. However, the Council has separate policies relating to contaminated land enforcement: (a) financial support for householders affected by contamination, and (b) the scope and extent of formal enquiries.

#### 4.2 Other relevant considerations

4.2.1 Regard will be had to statutory guidance, and any other relevant guidance or good practice documentation considered to be relevant to a particular enforcement situation.

4.2.2 Signing of formal notices will be undertaken in line with the Council's scheme of delegation.

4.2.3 Officers will have regard to any issues that may arise as a result of a Primary Authority interest.

#### 4.3 The use of formal enforcement tools

4.3.1 The general principals relating to enforcement decision making in relation to pollution control activities are as outlined in the core section of the Council's enforcement policy and in the introduction to the Environmental Health Enforcement Policy.

#### ENFORCEMENT ACTIVITY RELATING TO STATUTORY NUISANCES

4.3.2 Abatement notices can be an effective and quick method of securing compliance with the requirements of the Environmental Protection Act 1990 in that they require problems to be rectified without the potential delays and uncertainty of going to Court. The Council has a separate Statutory Nuisance Policy that sets out its approach to fulfilling its duties and responsibilities under Part III Environmental Protection Act 1990.

4.3.3 On the rare occasions when abatement notices are breached the above legislation provides for a number of enforcement sanctions. Paragraphs 4.3.4 – 4.3.7 indicate the likely response of the Council when a notice is breached in a residential situation. However, the Council reserves the right to consider the use of all enforcement mechanisms in accordance with the principles outlined in this Policy. SEIZURE OF NOISE MAKING EQUIPMENT FROM DOMESTIC PREMISES

4.3.4 Where the requirements of the notice are not carried out, in many

instances the Council is empowered to do whatever is necessary to abate the nuisance. This can include the seizure of noise making equipment.

4.3.5 In domestic settings the Council is likely to favour the seizure of noise-making equipment for the first evidenced breach of an abatement notice as this is likely to offer rapid relief to those adversely affected by the noise in question. Furthermore, this intervention is likely to be a more cost effective approach than formal prosecution.

4.3.6 If appropriate, the Council will seek a warrant from a Magistrate authorising entry to premises, if necessary by force, to facilitate seizure of noise making equipment. The Council will seek to recover the full costs associated with the seizure of noise making equipment.

#### FORFEITURE OF NOISE MAKING EQUIPMENT

4.3.7 If, after noise making equipment has been returned to the recipient of the abatement notice or a successful prosecution has taken place, further breaches are witnessed the Council is likely to repeat the seizure of equipment and seek permission from a Magistrates' Court for its permanent forfeiture.

#### ENFORCEMENT ACTIVITY RELATING TO CONSTRUCTION SITE NOISE

4.3.8 A certain amount of noise is inherent in most types of construction and building operations, which can rarely be completely prevented. However, noise from construction and demolition sites can be very disturbing.

4.3.9 The Council can control excessive noise from construction and demolition sites by using powers available to it under the Control of Pollution Act 1974 (COPA) and the Environmental Protection Act 1990 (EPA). Contractors can apply for a 'prior consent' under COPA which sets out allowable working hours and noise limits – the Council encourages the use of prior consents since they represent a proactive method of pollution control.

4.3.10 The Council can serve a notice imposing requirements as to how construction works should be carried out so as to minimise noise and disturbance. The notice can cover controls such as working hours and noise limits; failure to comply with a notice may result in a prosecution being taken.

4.3.11 Whilst each construction site is different (and will be assessed as such) the generally acceptable hours for noisy work within populated areas of the District are:

Monday to Friday	08:00-18:00
Saturdays	08:00-13:00
Sundays and Bank Holidays	At no time

- 4.3.12 For particularly noisy work, e.g. piling and de-watering, it may be necessary for authorised officers of the Council to further restrict these times.
- 4.3.13 However, the Council recognises that some operations, for safety or practical reasons, cannot always be undertaken within the above time restrictions. Operations outside of the above hours may, however, be agreed by the Council if it can be demonstrated that the works cannot be carried out at any other time and that items of plant and equipment are operated and maintained so that their use causes the minimum amount of noise.
- 4.3.14 Sometimes, emergency works have to be undertaken, for example a burst water main. In such circumstances the normal daytime hours of operation would not apply. The work would be undertaken as soon as possible, which if undertaken at night, may cause some disturbance.
- 4.3.15 Also, works on main roads would normally be undertaken outside peak times in order to minimise traffic congestion. Therefore evening and nighttime working may be permitted. Noise would however be kept to as low a level as reasonably practicable.

#### ENFORCEMENT ACTIVITY RELATING TO PERMITTED PROCESSES

- 4.3.16 Regulation 23 of the Pollution Prevention and Control (PPC) Regulations 2000 places a duty on local authorities to take the necessary action to ensure that permit conditions are complied with. North Hertfordshire District Council recognises that appropriate regulation of organisations covered by the PPC pollution control regime is necessary in order to protect local communities and the wider environment; the following type of offences will be considered for enforcement action:
- Operating without a permit
  - Failure to comply with a condition
  - Failure to notify a relevant change in operation
  - Failure to supply without reasonable excuse information requested under the regulations
  - Making false or misleading statements
  - Making false entries in any record
  - Forgery and deception in relation to documents
  - Failure to comply with a court order
  - Obstruction of Council officers in carrying out their duties
- 4.3.17 If, in the opinion of authorised officers of the Council, the operation of the installation (or part of an installation) poses an imminent risk of serious pollution, the Authority will serve a suspension notice unless it intends to carry out the works in default under regulation 26 (this will involve the recovery of costs).

#### PROSECUTION

- 4.3.18 The Authority recognises that the following are circumstances which are likely to warrant prosecution. The following are examples of such circumstances but this is not an exhaustive list.
- i) The alleged offence involves an obvious breach of the law such that the public health has been put at risk, there has been a serious adverse environment impact or serious nuisance caused
  - ii) The offence involves a failure to comply in full or in part with the requirements of a statutory notice.
  - iii) There is a history of similar offences
- 4.3.19 The Officer, must be satisfied that there is relevant, admissible substantial and reliable evidence that an offence has been committed by an identifiable person / company.
- 4.3.20 Legal proceedings may be taken in conjunction with other sanctions such as works in default accompanied by enforcement action for the recovery of costs.

## **5.0 Private Sector Housing**

### **5.1 Scope**

5.1.1 This Environmental Health Service has regulatory responsibilities with regard to private sector housing including the following:

- Regulating standards of repair, amenity and safety in the private rented sector and dealing with housing hazards.
- Restoring vacant properties and bringing them back into occupation.
- Regulating standards of management, repair, amenity and safety in houses in multiple occupation.
- Administration of the mandatory Houses in Multiple Occupation Licensing Scheme.
- Inspection of bed and breakfast establishments and any private accommodation used for the temporary housing homeless and asylum seekers as appropriate.
- Investigation and abatement of public health nuisances relating to housing.
- Investigation and elimination of pests and vermin infesting land, premises and persons as may be appropriate.
- Regulation of standards in relation to mobile home sites

### **5.2 Other relevant considerations**

5.2.1 Regard will be had to statutory guidance, and any other relevant guidance or good practice documentation considered to be relevant to a particular enforcement situation.

5.2.2 Signing of formal notices will be undertaken in line with the Council's scheme of delegation.

5.2.3 Officers will have regard to any issues that may arise as a result of a Primary Authority interest.

### 5.3 The use of formal enforcement tools

5.3.1 The general principals relating to enforcement decision making in relation to private sector housing activities are as outlined in the core section of the Council's enforcement policy and in the introduction to the Environmental Health Enforcement Policy.

5.3.2 The Council may undertake works in default as well as or in place of taking other enforcement action. Where works in default are undertaken, the Council will seek to recover the cost of undertaking such works, as outlined in the core section of the Council's enforcement policy.

#### STATUTORY NOTICES

5.3.3 The Council has a range of options for service of statutory notices under different pieces of legislation. In some cases, the Council is under a duty to serve a particular notice and in other cases, there is a power to serve a notice with the aim of resolving a particular situation. This power will be exercised in accordance with the general principles set out in the Council's core policy and the Environmental Health Enforcement policy.

5.3.4 Section 49 of the Housing Act 2004 gives local authorities the power to make a reasonable charge as a means of recovering certain expenses incurred in:

- serving an improvement notice;
- making a prohibition order;
- serving a hazard awareness notice;
- taking emergency remedial action;
- making an emergency prohibition order;
- making a demolition order

5.3.5 It is the Council's policy to levy an appropriate charge in all situations where the above notices are served, with the exception of Hazard Awareness Notices served on owner-occupiers, unless there are extenuating circumstances. The charge will reflect the costs incurred by the Authority in undertaking the inspection and preparing and serving the relevant notice.

#### HOUSING ACT 2004 CATEGORY 1 AND CATEGORY 2 HAZARDS

5.3.6 The Housing Act 2004 puts authorities under a duty to take appropriate action in relation to a Category 1 hazard found under the Housing Health and Safety Rating System (HHSRS). A 'Category 1' hazard arises when a hazard reaches a score of 1000, or more, under the HHSRS. In such cases the Authority must take the most appropriate of the following courses of action:

- to serve an Improvement Notice;
- to make a Prohibition Order;
- to serve a Hazard Awareness Notice;
- to make a Demolition Order in accordance with s265 of the Housing Act 1985;

- to declare a clearance area in accordance with s289 of the 1985 Act;
- to serve an Emergency Remedial Action notice;
- to make an Emergency Prohibition Order.

5.3.7 Only one of these courses of action can be taken at any one time (except for emergency measures). It is for the local authority to decide which course of action is the best in all the circumstances. The basis of this decision will be provided with each notice served in the format of a “Statement of Reasons”. The views of the manager and occupier of the property should, if possible, be considered in the decision making process.

5.3.8 Where there are concerns about a vulnerable person the appropriate agencies should be consulted to help make a decision regarding the appropriate enforcement action.

5.3.9 The Fire Authority must be consulted where a fire hazard exists in an HMO or in any common parts of a building containing one or more flats.

5.3.10 Authorities have similar powers to deal with Category 2 hazards as those listed in above, except that they cannot use the emergency measures and can make a Demolition Order, and declare a clearance area, only in circumstances prescribed in Regulations. In deciding whether to take action to address Category 2 hazards (where action is discretionary) the following factors should be considered:

- Where the owner is being asked to deal with ‘Category 1’ hazards the ‘Category 2’ hazards should be dealt with at the same time where they materially affect the comfort of the occupying tenant or they cause the property to be in serious disrepair
- Multiple hazards may be found which on their own are not too serious but in combination present a more serious situation than one single ‘Category 1’ hazard
- If the hazard relates to fire safety the Fire Authority should be consulted and the appropriate action taken based on their recommendations
- If the hazard or combination of hazards materially affects the comfort of the occupying tenant or causes property to be in serious disrepair the appropriate enforcement action should be taken.

## PROSECUTION

5.3.11 The Authority recognises that the following are circumstances which are likely to warrant prosecution. The following are examples of such circumstances but this is not an exhaustive list.

- i) The alleged offence involves an obvious breach of the law such that the public health, safety or well-being is or has been put at risk.
- ii) The offence involves a failure to comply in full or in part with the requirements of a statutory notice.
- iii) There is a history of similar offences relating to housing conditions

- 5.3.12 The Officer, must be satisfied that there is relevant, admissible substantial and reliable evidence that an offence has been committed by an identifiable person / company.

#### CIVIL PENALTIES

- 5.3.13 The Housing and Planning Act 2016 enables Local authorities to impose civil penalties as an alternative to prosecution for certain offences under the Housing Act 2004.

- 5.3.14 In particular the relevant offences are:

- Section 30 – Failing to comply with an Improvement Notice
- Section 72 – Offences in relation to the licensing of Houses in Multiple Occupation
- Section 95 – Offences in relation to the licensing of houses under Part 3 of the Housing Act 2004 (Selective Licensing of Residential Accommodation)
- Section 139 – Offences in relation to the contravention of an overcrowding notice
- Section 234 – Failure to comply with Management Regulations in respect of Houses in Multiple Occupation.

- 5.3.15 In deciding how to proceed, the Council has to be satisfied that they have sufficient evidence to prove that an offence has been committed and this needs to be to the criminal burden i.e. beyond reasonable doubt. In determining that the issuing of a civil penalty as opposed to prosecution is the appropriate course of action the Council will consider each case individually and will take into consideration factors including the seriousness of the offence; the culpability of the offender; the harm, or potential harm to tenants; and the impact on the wider community.

- 5.3.16 In making a decision as to what, if any, enforcement action is appropriate the Council will refer to its own Enforcement Policy, and must also have regard to the Code for Crown Prosecutors. Due regard must also be given to any potential defences and it may be appropriate to undertake an interview under caution in accordance with the Police and Criminal Evidence Act 1984 (PACE) to explore this.

- 5.3.17 When the Council is satisfied that a relevant offence has been committed and that it is in the public interest to proceed formally it must decide whether to prosecute or issue a civil penalty.

- 5.3.18 The following, whilst not exhaustive, are situations where prosecution may be appropriate:

- The offence was serious, for example breach of a prohibition order or where there was imminent risk of injury or loss of life;
- The offender has been prosecuted for similar Housing Act offences

- 5.3.19 The following factors, whilst not exhaustive, are situations where the issuing of a civil penalty may be appropriate:

- No history of previous non-compliance with relevant legislation
- No previous convictions of relevant offences
- The offence was committed as a result of a genuine mistake or misunderstanding, but this must be balanced against the seriousness of the offence.
- Prosecution is likely to have a serious adverse effect upon the offender's physical or mental wellbeing, but this must be balanced against the seriousness of the offence.

5.3.20 The Housing and Planning Act 2016 also specifies that the amount of penalty that can be imposed is to be determined by the Council but must not be more than £30,000. The Government's desire is that the penalty should be a punishment which has a real economic impact to the offender.

5.3.21 In determining the amount of penalty the Council will use a Penalty Matrix (see table below) which takes into account relevant matters including, but not limited to:

- The penalty should act as a deterrent to repeating the offence, and to others from committing similar offences;
- The penalty should remove any financial benefit obtained as a result of the commission of the offence;
- The severity and seriousness of the offence;
- The culpability and past history of the offender;
- The harm, or potential harm, caused to the tenant;

5.3.22 The use of the matrix generates a score which corresponds to a representative penalty as follows.

Score	Penalty
1-5	£250
6-10	£500
11-20	£750
21-30	£1,000
31-40	£2,500
41-55	£5,000
56-65	£10,000
66-75	£15,000
76-85	£20,000
86-95	£25,000
96-100	£30,000

Factors when considering the harm, or potential harm, caused

5.3.23 In determining the level of harm the Council will have regard to:

- The persons affected in terms of physical injury, negative impacts on their health, and any psychological distress;
- Any Vulnerability of the persons affected
- The number of persons affected

- The community in terms of economic loss and the effects on public health, public complaints and the effects of poor housing condition on the neighbourhood

5.3.24 The degree of harm will depend on the personal characteristics and circumstances of the person affected, normally the tenant. Where no actual harm has resulted from the commission of the offence the Council will consider the relative danger and the potential of harm that could have resulted as a result of the offences.

#### Factors when considering culpability

5.3.25 In determining the level of culpability the Council will have regard to the following:

- Whether there was the intention to commit the offence
- Whether the offence has resulted from reckless behaviour for example where the offender had some appreciation of the effects their actions would have but proceeded regardless.
- Whether the offender had knowledge of the risks of harm that their actions could cause
- Whether the offender's actions are considered to be negligent.

#### Aggravating Factors

5.3.26 The amount of penalty can be increased if there are any relevant aggravating factors. Furthermore, the amount of penalty can be reduced if any relevant mitigating factors are disclosed by the offender.

#### Multiple Offences

5.3.27 Where the Council are satisfied that more than one offence has been committed a multiple Civil Penalty Notice can be issued, for example multiple breaches of the Management regulations in a House in Multiple Occupation. However the Council will consider whether the issuing of multiple penalties would result in an excessive cumulative amount and this policy gives discretion in this situation. For instance the Council could decide that it is appropriate to issue a civil penalty for the most significant offences and warn the offender that continuation or repeating of the other offences may result in further formal enforcement action being taken.

#### The Process for Imposing Penalty Charges

5.3.28 Where it has been determined that a Civil penalty Charge as opposed to prosecution is the appropriate course of action the Council will follow the following process:

1) A 'Notice of Intent' will be served on the person(s) responsible for the commission of the offence(s). The Notice will specify:

- The amount of the proposed penalty

- The reasons for the proposed penalty
  - Information relating to the right of the recipient to make representation to the Council.
- 2) The recipient of the Notice is given 28 days to make representation to the Council regarding the proposal to impose a Civil Penalty.
  - 3) Following the 28 day period the Council will decide; Whether to impose the proposed financial penalty and the appropriate value. This could be varied taking into account any comments received from the recipients.
  - 4) If the Council decides that a Civil Penalty is still appropriate, it will issue a Final Notice which will specify:
    - The amount of the financial penalty
    - The reasons for imposing the penalty
    - Information on how and when to pay the penalty
    - Information regarding the right of appeal against the imposition of a Civil penalty to the First Tier Property Tribunal
    - The consequences of failure to comply with the Notice

Consequences of non-payment and miscellaneous provisions

- 5.3.29 If the penalty charge is not fully paid within the prescribed time, including after an appeal has been finally determined and the charge upheld , the Council will seek to recover the penalty by order from a County Court including the costs incurred in taking such action where deemed appropriate.
- 5.3.30 The Council may at any time withdraw any Notices it has served or amend the amount of penalty specified.

Links with the National Database of 'Rogue Landlords and Letting agents'

- 5.3.31 Upon the commencement of the statutory provisions contained on the Housing and Planning Act 2016 relating to the national Landlord and Letting Agent Database, where two Final Civil Penalty Notices have been issued to the same recipient within a 12 month period, the Council may make an entry on the database. When considering if this is an appropriate course of action the Council will have regard to any guidance issued by the Government.

<b>Penalty Matrix</b>						
	<b>Factors</b>	<b>Score = 1</b>	<b>Score = 5</b>	<b>Score = 10</b>	<b>Score = 15</b>	<b>Score = 20</b>
1	<b>Culpability</b>	Low;  Offence committed with little or no fault on the part of the responsible person	Low/Medium;  An awareness of the legal framework and systems in place to ensure compliance but these were not implemented	Medium/High;  Despite an awareness of the legal responsibilities the responsible person failed to put in place suitable systems in place to ensure compliance	High;  There was some awareness of the law but the responsible person still allowed/committed the offence.	Very High;  Intentional breach by responsible person. For example non compliance with a Formal Notice

2	<b>Removal of Financial Incentive</b>	No Significant assets.  No or very low financial profit made by offender.	Little asset value.  Little profit made by offender.	Small portfolio  Landlord (between 2-3 properties).  Low profit made by offender.	Medium portfolio  Landlord (between 4-5 properties) or a small Managing Agent.  Medium asset value.  Medium profit made by offender.	Large portfolio  Landlord (over 5 properties) or a medium to large Managing Agent.  Large asset value.  Large profit made by offender.
3	<b>Offence &amp; History</b>	No previous enforcement history.  Single low level offence.	Minor previous enforcement. Single offence.	Recent second time offender.  Offence has moderate severity or small but frequent impact(s).	Multiple offender.  Ongoing offences of moderate to large severity or a single instance of a very severe offence or multiple breaches.	Serial offender.  Multiple enforcement over recent times.  Continuing serious offence.
4	<b>Harm, or potential harm, to tenant(s) [Score is doubled for this section]</b>	Very little or no harm caused.  No vulnerable occupants. Tenant provides no information on impact.	Likely some low level health/harm risk(s) to occupant.  No vulnerable occupants. Tenant provides poor quality information on impact.	Likely moderate level health/harm risk(s) to occupant.  Vulnerable occupants potentially exposed. Tenant provides some information on impact but with no primary or secondary	High level of health/harm risk(s) to occupant.  Tenant(s) will be affected frequently or by occasional high impact occurrences. Vulnerable occupants more than likely exposed;(High HHSRS score) Small HMO (3-4 occupants),  multiple occupants exposed. Tenant provides good information on impact with primary evidence (e.g. prescription drugs present, clear signs of poor health witnessed) but no secondary evidence	Obvious high level health/harm risk(s) and evidence that tenant(s) are badly and/or continually affected.  Multiple vulnerable occupants exposed; (high HHSRS Score)  Large HMO (5+occupants), multiple occupants exposed. Tenant provides excellent information on impact with primary and Secondary evidence provided (e.g. medical, social services reports)

## RENT REPAYMENT ORDERS

- 5.3.32 Rent Repayment Orders were introduced by the Housing Act 2004. Local authorities were given to the power to apply for a rent repayment order in circumstances where a landlord has failed to licence a house in multiple occupation.
- 5.3.33 The Housing and Planning Act 2016 extended their use. Local authorities are now under a duty to consider applying for a rent repayment order may in respect of the following:

- Failure to comply with an Improvement Notice under section 30 of the Housing Act 2004;
- Failure to comply with a Prohibition Order under section 32 of the Housing Act 2004;
- Breach of a banning order made under section 21 of the Housing and Planning Act 2016;
- Using violence to secure entry to a property under section 6 of the Criminal Law Act 1977;
- Illegal eviction or harassment of the occupiers of a property under section 1 of the Protection from Eviction Act 1977.

5.3.33 The Council's policy is that it will normally apply for a rent repayment order in all circumstances where there is sufficient evidence to do so, unless there are extenuating circumstances.

5.3.34 Application for a rent repayment order may be made in addition to any other sanction route that it chooses to pursue such as prosecution or levying a civil penalty.

## 6.0 Drinking Water Quality

### 6.1 Scope

6.1.1 Local authorities have a general duty under the Water Industry Act 1991 to keep themselves informed about the wholesomeness and sufficiency of water supplies provided to premises in their area, including every private supply to any such premises. Local authorities have specific remedial powers in relation to private water supplies. The Environmental Health Service is responsible for fulfilling the Council's duties and powers in respect of drinking water quality matters.

### 6.2 Other relevant considerations

6.2.1 Regard will be had to guidance from the Drinking Water Inspectorate and Public Health England in fulfilling the Council's roles.

6.2.2 Signing of formal notices will be undertaken in line with the Council's scheme of delegation.

### 6.3 The use of formal enforcement tools

6.3.1 The general principals relating to enforcement decision making in relation to water quality activities are as outlined in the core section of the Council's enforcement policy and in the introduction to the Environmental Health Enforcement Policy. However, the criticality of safe drinking water is paramount to public health and this will be the significant factor in deciding the appropriate course of action in any particular situation

6.3.2 The majority of private water supplies in North Hertfordshire are domestic supplies, often serving single properties. In such instances, the Council's preferred approach is to address issues informally except where there is a specific requirement to take a formal approach.

- 6.3.3 In relation to large domestic private water supply systems and commercial supplies, the Council is more likely to take a formal approach but every case will be judged on its merits, having regard to the public health circumstances.
- 6.3.4 If any private water supply is not deemed to be wholesome or any domestic supply is not deemed to be have a supply that is wholesome and sufficient, the Council may serve a notice stating its reasons and the remedial steps that it believes are required, giving a suitable time period for compliance. If the notice is confirmed, the Council may undertake works in default. Whether the Council chooses to do so will depend on the circumstances of the case. Where the Council decides to undertake works in default, it will seek to recover its full costs, unless there are exceptional reasons not to do so.
- 6.3.5 If any private supply of water intended for human consumption constitutes a potential danger to human health, the Council must serve a notice stating the grounds for serving the notice and the remedial action required. Failure to comply with the notice is an offence and the Council may consider prosecution proceedings in accordance its normal procedure for such matters.
- 6.3.6 The Council will normally seek to recover its full costs in fulfilling its duties under this section where it is empowered to do so, unless there are exceptional circumstances.

## 7.0 Stray Dogs

### 7.1 Scope

7.1.1 The Council has a duty under the Environmental Protection Act 1990 to deal with stray dogs in the district. Any stray dogs on public land must, if practicable, be seized and detained. Attempts must be made to advise the owner of the dog that the dog has been seized. Where any dog has been detained for seven clear days without the dog being claimed and the Council's expenses having been paid in full, the Council may dispose of the dog.

7.1.2 Regulations made in 2014 under the Animal Welfare Act 2006 made it mandatory from 6<sup>th</sup> April 2016 for dog owners to microchip any dog over 8 weeks old.

### 7.2 The use of formal enforcement tools

7.2.1 The Council may:

- serve on the keeper of a dog which is not microchipped a notice requiring the keeper to have the dog microchipped within 21 days;
- where the keeper of a dog has failed to comply with a notice under paragraph (a), without the consent of the keeper (i) arrange for the dog to be microchipped; and (ii) recover from the keeper the cost of doing so;
- take possession of a dog without the consent of the keeper for the purpose of checking whether it is microchipped or for the purpose of microchipping it in accordance with the above.

7.2.2 The Council's policy in relation to microchipping is to encourage voluntary compliance. Formal action will normally only be considered in the case of repeat offences. The

Council will incentivise dog owners to have their dogs microchipped in setting fees for handling stray dogs.

7.2.3 The Council will normally seek to recover its full costs in fulfilling its duties under this section where it is empowered to do so, unless there are exceptional circumstances

# APPENDIX C: LICENSING

## 1. SCOPE

The purpose of licensing is, in the majority of cases, the protection of the general public. In order to achieve this, legislation requires licences, permits or registrations to be obtained for a wide range of activities. These administrative documents are normally subject to certain conditions, imposed either by legislation or the Council. The Licensing Service undertakes the Council's licensing functions, as outlined in 1.1. to 1.6., below.

### 1.1 ANIMAL LICENSING

- Animal boarding establishments
- Home boarding of dogs
- Dog day crèche
- Dog breeding
- Pet shops
- Riding establishments
- Keeping or training animals for exhibition
- Dangerous wild animals
- Zoos

### 1.2. CHARITABLE COLLECTIONS

- Street collections
- House to house collections

### 1.3. PREMISES AND EVENT LICENSING (LICENSING ACT 2003)

- Sale or supply of alcohol
- Provision of regulated entertainment  
(plays, films, boxing/wrestling, indoor sporting events, live/recorded music, dancing)
- Late night refreshment

### 1.4. GAMBLING (GAMBLING ACT 2005)

- Premises licences  
(bingo, betting, amusement arcades, casinos, track betting)
- Gaming machine permits
- Small society lottery registration

### 1.5. HACKNEY CARRIAGE AND PRIVATE HIRE

- Hackney carriage drivers
- Hackney carriage vehicles
- Private hire drivers
- Private hire vehicles
- Private hire operators

## **1.6. MISCELLANEOUS LICENSING**

- Street trading
- Sex shops/cinemas
- Sexual entertainment venues
- Scrap metal dealers (sites and collectors)

## **2. OTHER RELEVANT CONSIDERATIONS**

In addition to the Regulators' Code this Policy is designed to reflect the following sources of primary legislation and any secondary legislation and guidance issued thereunder:

- Licensing Act 2003
- Gambling Act 2005
- Local Government (Miscellaneous Provisions) Act 1976
- Local Government (Miscellaneous Provisions) Act 1982
- Town Police Clauses Act 1847
- Animal Welfare Act 2006
- Dangerous Wild Animals Act 1976
- Zoo Licensing Act 1981
- Scrap Metal Dealers Act 2013
- House to House Collections Act 1939
- Police, Factories & c (Miscellaneous Provisions) Act 1916

## **3. THE USE OF FORMAL ENFORCEMENT TOOLS**

The general principles relating to enforcement decision making are explained within the main body of this Policy.

### **3.1 GENERAL ENFORCEMENT PRINCIPLES FOR LICENSING**

The main purpose of licensing enforcement activity is to secure compliance with legislative requirements ensuring the safety of the public. Ordinarily, a staged approach to enforcement will be undertaken to achieve this objective although this will not preclude formal enforcement action being the first intervention when appropriate e.g. serious risk to the public or deliberate/repeated non-compliance.

### **3.2. SPECIFIC ENFORCEMENT ACTIVITY RELATING TO EACH ACTIVITY**

Each licensing activity has its own specific policy which includes activity-specific enforcement options e.g. licence reviews under the Licensing Act 2003 or penalty points for licensed hackney carriage/private hire drivers. These policies are to be read in conjunction with the corporate enforcement policy.

# APPENDIX D: COMMUNITY SAFETY

## 1. SCOPE

'Community Safety' is a term that is used to define keeping communities a safe place free from the fear of crime (perceived or actual) encompassing education, awareness (crime prevention) and reassurance as well as enforcement (anti-social behaviour and crime reduction). It is a multi-faceted concept used to encompass a diverse and broad range of topics that relate to anti-social behaviour, crime and disorder issues.

The Council undertakes a range of duties in connection with community safety. It has a statutory duty to work with other Responsible Authorities; including the police, fire and rescue service, county council, NHS and the probation service to address wider community safety and crime and disorder issues. The Council is a committed member of the North Herts Community Safety Partnership (NHCSPP), and interventions aimed at improving community safety and reducing crime and disorder (and equally its perception) in North Herts is coordinated via the Partnership's Responsible Authorities Group (RAG – a strategic partnership group) and operationally by the Joint Action Group (JAG).

The Council deals with community safety matters in two principle ways: firstly, by means of the provision of advice, diversionary activities, community reassurance events, and the encouragement of responsible behaviour; secondly, it may make use of its enforcement powers, in a proportionate and appropriate way, to manage antisocial behaviour, crime and disorder.

Aside from the strategic planning and coordination of services to tackle local crime and disorder, the Council also undertakes a range of duties in connection with antisocial behaviour. This includes, but is not limited to the following;

- Abandoning a vehicle
- Accumulation of waste
- Bonfires
- Commercial and domestic bin waste bin offences
- Dog fouling
- Drug paraphernalia (e.g. discarded needles)
- Fly-tipping
- Graffiti
- High hedges
- Misuse of street litter bin offences
- Noise Nuisance
- Nuisance Vehicles
- Repairing of vehicles on the public highway
- Waste Duty of Care (domestic and commercial)
- Waste Carriers Licence
- Unauthorised Encampments
- Littering
- Stray dogs

These duties and responsibilities are dealt with by a number of different council departments including those listed above as well as other areas included within this Enforcement Policy (e.g. environmental health, licensing and planning services).

In addition to the Council undertaking its statutory duties in this regard, the law provides for a wide range of powers that can be considered in relation to different types of anti-social

behaviour. The Council will also work with, and support, a wide range of organisations to deal with anti-social behaviour including the police, fire service and housing providers.

The Council's Community Safety team is responsible for the operational management of the community crime and environmental crime function. These terms are used to classify anti-social actions and behaviour that degrade local amenities and the environment and impact on the enjoyment and safety of the wider community.

## 2. OVERVIEW OF CORE COMMUNITY SAFETY TEAM FUNCTIONS

The Community Safety team are involved in dealing with a wide range of community crime and enviro-crime issues which negatively affect the wider community's quality of life, including but not limited to, the following core functions;

**Abandoned Vehicles:** Section 2 of the Refuse Disposal (Amenity) Act 1978, makes it an offence to abandon a motor vehicle, or any part of a motor vehicle, on a highway or any land in the open air. This includes any trailer intended or adapted for use as an attachment to a motor vehicle. Enviro-Crime Officers in the Community Safety team will assess the vehicle to decide whether it is abandoned. There is no statutory definition of an abandoned vehicle and factors to take into consideration include but are not limited to; length of time at location, condition and damage to vehicle (e.g. unroadworthy, burnt out, contains waste), lacking one or more of its number plates, no registered keeper and is untaxed. The Council is under a duty to remove what is determined to be an abandoned vehicle. Section 3(2) and 3(2)(A) of the Refuse Disposal (Amenity) Act 1978 provides the notice periods before removal. A fixed penalty notice can be issued to anyone who abandons a vehicle and offenders can also be prosecuted.

**Bonfires:** There is no specific law that makes it illegal to have a bonfire or prohibits the times they can be lit. However, the Council will take action if a smoke nuisance from a bonfire is caused. A bonfire that leads to complaints about smoke may be classified as a statutory nuisance under the Environmental Protection Act 1990. The person responsible may be served with a warning notice for persistent problems or if their actions are likely to interfere with other residents' comfort and enjoyment of their properties. The burning of industrial or commercial waste that cause black smoke is an automatic offence and can lead to prosecution. These offences are dealt with by the Environmental Health department; however the Community Safety team will investigate initial complaints and aim to resolve issues informally in the first instance.

**Dog Fouling:** The Anti-social Behaviour, Crime and Policing Act, 2014 provides powers to take enforcement action. Anyone reported for allowing their dog to foul may be served with a Community Protection Notice for the persistent, un-reasonable behaviour, detrimental to quality of life in a locality. Any person found guilty of an offence could be liable to a level 4 fine (currently up to £2,500). Officers can offer the opportunity of discharging any liability to conviction for the offence, by payment of a Fixed Penalty Notice of £100. A Fixed Penalty Notice may be issued by any authorised Council Officer if it is witnessed by the officer or there is sufficient evidence by a third party (e.g. a witness statement). Subject to sufficient evidence the Community Safety team will investigate complaints about dog fouling and carry out patrols in problem areas.

**Fly tipping and other waste related offences:** Section 33 of the Environmental Protection Act 1990 states that a person shall not deposit controlled waste or knowingly cause or permit controlled waste to be deposited in or on any land, without an environmental permit authorising the deposit. Section 34 of the Environmental Protection Act 1990 covers domestic and business duty of care offences relating to individuals and businesses ensuring that their waste is not illegally deposited. Officers will investigate all reports of significant illegal deposits of waste (fly

tipping) where it is believed that there is evidence that can lead to enforcement action being taken against offenders. The Community Safety team will also consider taking enforcement action against other waste related offences, such as littering and misuse of a street litter bin, subject to sufficient evidence being obtained. However the Team recognises that other departments of the Council that act in the capacity of Waste Collection Authority or Principle Litter Authority will take primacy in these types of offences and may take their own enforcement action directly.

**Nuisance Vehicles:** Section 3 Clean Neighbourhoods and Environment Act 2005 makes it an offence to expose vehicles for sale on a road and a person is guilty of an offence if at any time he leaves two or more motor vehicles parked within 500 metres of each other on a road or roads where they are exposed or advertised for sale. Section 4 Clean Neighbourhoods and Environment Act 2005 makes it an offence for a person to carry out repairs to vehicles on a road unless they have been in an accident within the last 72 hours or have broken down and repairs are necessary. Officers will investigate nuisance vehicle reports and assess in accordance with the Act. A fixed penalty notice can be issued to anyone who is found guilty of these offences and offenders can also be prosecuted.

**Community Crime (e.g. anti-social behaviour in parks and open spaces and car parks):** The Community Safety team will work with all relevant partners to take appropriate action against 'community crime' issues which can significantly impact on resident's enjoyment and use of their local amenities. This can include but is not limited to anti-social behaviour and crime in parks and open spaces, car parks and town centres. The Community Safety team will consider all options available and will either take appropriate enforcement action directly or assist other partners in undertaking appropriate enforcement action. Due to community crime encapsulating a multitude of anti-social or criminal behaviours and circumstances that are detrimental to the local community's quality of life enforcement action will be considered on a case by case basis.

### **3. THE LEGAL FRAMEWORK AND USE OF ENFORCEMENT TOOLS**

In considering community crime and environmental crime enforcement action the Council will take into account all legislation and statutory guidance including:-

- Anti-social Behaviour Act, 2003
- Anti-social Behaviour, Crime and Policing Act, 2014
- Clean Neighbourhoods and Environment Act 2005
- Control of Pollution (Amendment) Act 1989/Control of Waste (Dealing with Seized Property) (England and Wales) Regulations 2015
- Counter Terrorism and Security Act 2015
- Crime and Disorder Act 1998
- Criminal Justice and Public Order Act 1994
- Domestic Violence, Crime and Victim Act 2004
- Drugs Act 2005
- Environment Act, 1995
- Environmental Protection Act 1990
- Highway Act 1980 (subject to agreement with the Highways Authority)
- Modern Slavery Act 2015
- Police and Criminal Evidence Act 1984
- Police and Justice Act 2006
- Police Reform Act 2002
- Police Reform and Social Responsibility Act 2011
- Policing and Crime Act 2009
- Refuse Disposal Act 1978

## Scrap Metal Dealers Act 2013

In relation to community and environmental crime the Council has a number of enforcement 'tools' and powers available, in addition to informal enforcement action<sup>6</sup>, examples include:

- Civil Injunction
- Closure Order
- Community Protection Notice
- Criminal Behaviour Order
- Fixed Penalty Notice
- Notice to require the provision of information
- Powers to take remedial action/works in default
- Powers of forfeiture and seizure
- Prosecution
- Public Space Protection Order
- Simple Caution

The general principles relating to enforcement decision making are explained within the main body of this Policy. However, it is important to note that whilst community and enviro-crime rarely constitutes a significant threat to public safety or health it can, nevertheless, cause a significant blight to local communities and can lead to neighbourhood decline. In recognition of the above, this Council takes these issues very seriously and will use its formal enforcement powers to deal with offenders. Certain community and enviro-crime offences, such as fly tipping, will be dealt with more rigorously as they are a) unlikely to be inadvertent breaches of the law, and b) are often associated with the pursuit of unfair competitive trading advantage by for example, the illegal and inappropriate disposal of waste.

Where there is sufficient evidence the Authority will commence proceedings at level 3 and 4 if the criteria for formal action (such as issuing of fixed penalty notices or a simple caution) or prosecution are met. For certain enviro-crime offences, e.g. dog fouling, depositing of litter and fly tipping offences, there is provision for fixed penalty notices to be issued. These notices can, in appropriate cases, provide a quick, visible and effective way of dealing with these types of environmental problems and offer a more cost-effective alternative to a prosecution. FPN's will generally be served for first time offenders of lower-level offences. For more serious offences and/or repeat offenders the Council will normally seek to prosecute. The Council, however, reserves the right to consider alternative enforcement mechanisms on a case-by-case basis.

FPNs will only be issued when there is adequate evidence to support a prosecution. If the fine is not paid within the stated period then the Council is likely to mount such a prosecution.

The income to the Council arising from the payment of FPNs will be used to fund environmental related expenditure in accordance with the relevant provisions of the primary legislation and any relevant regulations.

#### **4. LEVEL OF DELEGATION**

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<sup>6</sup> Advice, no action, verbal warning, written warning

All decisions relating to formal enforcement matters are delegated by the Council to the Service Director – Legal and Community, who sub delegates as appropriate.

Any decision to take formal enforcement action is taken by the following officers;

Authorisation and Issue of Notices (e.g. Community Protection Notices) – Environmental Crime Officer in consultation with the Community Safety Team Leader, or Community Safety Team Leader in consultation with the Community Protection Manager

Authorisation and Issue of Fixed Penalty Notices - Environmental Crime Officer in consultation with the Community Safety Team Leader, or Community Safety Team Leader in consultation with the Community Protection Manager

Authorisation and Issue of Simple Cautions – Community Safety Team Leader in consultation with the Community Protection Manager (or in their absence in consultation with Legal Service), or Community Protection Manager in consultation with Legal Services

Commencement of legal proceedings such as Criminal Prosecutions - Service Director – Legal and Community (or Legal Team Manager, or Manager as per any delegation or in the Service Director's absence).

# APPENDIX E: PLANNING ENFORCEMENT

## 1.0 What is Planning Compliance (Enforcement)

- 1.1 Planning Compliance is concerned with works which have taken place in breach of planning control as set out in the Town and Country Planning Act 1990 (as amended). This Plan sets out what you can expect the Council as Local Planning Authority to do when a breach of planning control takes place in North Hertfordshire.
- 1.2 A breach of planning control is defined in the Town and Country Planning legislation as "the carrying out of a development without the required planning permission or failing to comply with any condition or limitation subject to which planning permission has been granted".
- 1.3 Breaches of planning control occur in many ways, for example where:
  - Building work, engineering operations, and material changes of use are carried out without planning permission having been granted.
  - Development has planning permission but is not carried out in accordance with the approved plans.
  - Failure to comply with conditions or the terms of a legal agreement (Section 106 obligations) attached to a permission or consent.
  - Demolition takes place in conservation areas, without planning permission, when it is required.
  - Works carried out to a "listed" building which affect the historic character or setting, without listed building consent being granted.
  - Removal of, or works carried out, to protected trees and hedgerows without consent being granted or proper notification given.
  - Advertisements, which require consent under the Advertisement Regulations, which are displayed without express consent.
  - Failure to comply with the requirements of a planning legal notice, e.g. enforcement, discontinuance, stop notice, breach of condition notice, etc.
- 1.4 It should be noted that it is not a criminal offence to carry out development without planning permission. However, where this takes place it cannot be assumed that planning permission will always be granted for the development retrospectively. An offence only occurs if the development involves unauthorised advertisements, works to protected trees or listed buildings, or if a formal notice is not complied with.
- 1.5 The legal basis for planning enforcement is set out in the Town and Country Planning Act 1990 (as amended). Further guidance and advice is set out in the National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (NPPG). These set out the discretionary basis of the provision of the service and provide further background and guidance in relation to the delivery of the service. The guidance in the NPPG sets out that a Planning Enforcement Plan should be produced by the Council.

- 1.6 Government Guidance makes it clear that enforcement action should not be taken simply to remedy the absence of a planning permission where development is otherwise considered acceptable on its planning merits.
- 1.7 Parliament has given the Council in its role as Local Planning Authority the primary responsibility for taking whatever enforcement action may be necessary, in the public interest, in their administrative area. Affected or interested parties cannot initiate planning enforcement action nor require the Council to act when it considers there is no case to do so.

## **2.0 How the Planning Compliance service is delivered by the Council**

- 2.1 The service is discretionary - the provision of the Planning Compliance service is discretionary, and the Council can decide, following consideration if it wants to undertake planning enforcement action or not for every reported breach of planning control it receives.
- 2.2 The Council considers that planning compliance is an important aspect of the services that it provides as it maintains control of development that is undertaken within the district ensuring that harmful development is controlled and not allowed to affect the amenity and character of the district. Each potential planning enforcement case that is reported to it will be subject to initial inspection and consideration. Information can be shared between Planning Enforcement and other partners of the Council to assist this initial consideration. A decision will then be made as to whether further action should be taken. Officers are delegated to make these decisions on behalf of Councillors.
- 2.3 Action to be taken is proportionate - the action that can be taken must be proportionate to the harm that is being caused by the breach of planning control. In some cases, whilst uses or works may be in breach of planning control, the impact of them may be very minor, or de minimis. In such cases, after investigation, the Council may decide to take no further action.
- 2.4 In all other cases, where some further action is warranted, this will be implemented considering the degree of harm caused by the unauthorised works or uses.
- 2.5 How new compliance cases are logged with the Council - potential cases where planning enforcement action may be required can be reported to the Council in person, by phone, in writing, by e-mail or by using our online reporting form. You may also contact your local Councillor to report a breach of planning control, details of you Councillor can be found on the Council website here:

<https://www.north-herts.gov.uk/home/council-and-democracy/councillors/your-councillors>

- 2.6 Contact details to report a breach of planning control are set out at the end of this document
- 2.7 Anonymity in reporting of breaches of planning control to the Council - the Council does not release the identity of those who have requested it to investigate a matter to those who are under investigation. Only in very advanced stages of an investigation, for example where court action is being pursued, would it potentially be of assistance if the person who had raised the matter with the Council to be identified, for example to submit evidence on behalf of the Council. However, the Council will not make any person's identity known without their prior agreement.

- 2.8 As a result, any party who wishes to submit a request to investigate is encouraged to provide their name and contact details so that feedback can be provided, or further information sought.
- 2.9 If the party still wishes to remain anonymous, they are requested to approach their local Ward Councillor or Parish/Town Council, to submit the matter on their behalf.
- 2.10 In the absence of that support the matter may receive no further attention at the discretion of the Council.
- 2.11 Investigation Process. All requests will be registered on the Council's recording system and the party who has raised it with us will receive an acknowledgement setting out the name of the Officer who is dealing with the matter and a reference to quote in future communication. That Officer may seek further information from the party in relation to the matter. A search of the planning history of the site will be undertaken. If it is determined that planning permission is in place, further checks will be undertaken to establish whether there is any reason to believe that work is not being undertaken in accordance with the permission.
- 2.12 Officers will visit the location of the potential breach within the timescales set out below in relation to the priority of the case.
- 2.13 Where no planning permission is in place, checks will be undertaken to establish whether permitted development (PD) rights are being exercised.
- 2.14 The site visit will seek to establish the nature and extent of the works or the use which may be taking place. Often, it may be that works are still in progress, so information will be sought as to the anticipated scale of the works when complete.
- 2.15 Next Steps. It is necessary for the Council to determine what action should be taken next - and whether formal action is expedient. The possible courses of action are as follows:
- 2.16 Take no action. If the works or uses being undertaken are within the scope of a planning permission that has been granted, or fall within the scope of permitted development, then no further action will be taken.
- 2.17 No further action could also be considered as an outcome where the works or intended use fall outside the scope of a planning permission or permitted development rights, but the impact of them is very modest with no discernible impact.

**Typical Examples of this could be:**

- Minor breaches of planning conditions.
- Fences, gates, boundary walls, or outbuildings being erected which exceed the heights allowed under a planning permission of PD rights by a modest amount.
- Very minor changes to the works that have been granted planning permission which are likely to have very little impact beyond the application site.
- Minor works that require planning permission but have no discernible impact on its surroundings or people.
- Development has not occurred as a matter of fact.

This list is not extensive and should not be considered as binding. The Council looks at each case on an individual basis and treats each case on its merits.

- 2.18 Seek regularisation through a planning application. Where works have taken place or a use has been commenced which does have an impact but are considered to be acceptable within the planning policies that are applicable, then a retrospective planning application to regularise these would be invited.
- 2.19 This should not be taken as indicating that the Council will simply approve any application without due scrutiny. The application process allows the works and/or use to be considered fully against relevant planning policies by the Council or its Planning Committee. The owner of the site will be permitted a limited amount of time at the discretion of the Council to make such a submission and any person who has contacted the Council in relation to the matter and has left appropriate contact details, will be contacted by the enforcement team and informed of any such retrospective planning application when it is submitted, in order that they can make representations on that application if they wish.
- 2.20 If planning permission is granted officers will continue to monitor the site to ensure that the development and/or use implemented are in accordance with the permission granted. If permission is refused, the landowner has a right of appeal against this decision. If, after the expiry of the timescale within which an appeal should be made has expired and none has been submitted, the Council will then decide about which enforcement action which would be appropriate.
- 2.21 The Council will continue to monitor the site during this time. It may be that, if work continues to be undertaken, the appropriate course of action may change from seeking regularisation to taking no further action if the development is acceptable when considered against planning policies, to taking formal enforcement action if the development appears to be harmful.
- 2.22 Undertake formal action. Where it appears to the Council that the impact of unauthorised works and/or use of a site is unacceptably harmful and it is not appropriate to seek a planning application, formal action will be taken if the matter cannot be resolved through negotiation. Formal enforcement action will also be considered following the refusal of any retrospective planning application or appeal which is dismissed for any such planning refusal. The range of formal steps available to the Council, the processes relevant to each, outcomes and timescales are set out in the Appendix A to this document.
- 2.23 Outcomes you can expect if you are the owner of a site under investigation. The Council will seek to ensure that all matters in relation to the enquiry are dealt with professionally, politely, and efficiently. It will be necessary for Council Officers to attend the site. At all times the Officer approach should be polite and respectful. It is often the case that Council Officers will visit without a pre-arrangement however, they will make themselves known on arrival at a site if it possible to do so. If the time of the visit is not convenient to you, they will seek to arrange a mutually acceptable time to visit.
- 2.24 Officers will be able to advise on the purpose of the visit and what action the Council can take and what options are available to you as Owner. They can provide advice

about the planning and enforcement process, but if you require specific planning advice, this should be sought independently.

- 2.26 The Council will endeavour to deal with your case quickly, ensuring that uncertainty is removed. However, we will need your co-operation and ask that, in all circumstances, you provide any information Officers request and answer any questions they put to you.

### **3.0 Priorities and timescales**

- 3.1 The Council adopts a prioritised approach to the consideration of potential enforcement matters. The identified priorities are:

#### **Urgent Cases (Priority A)**

- Unauthorised alterations to listed buildings.
- Unauthorised alteration to or demolition of buildings in Conservation Areas.
- Unauthorised developments having a severe and possibly irreversible impact on surroundings e.g., the felling of protected trees.
- Development causing danger to highway users.

#### **All Other Cases (Priority B)**

- 3.2 All other unauthorised developments or changes in use of land and buildings.

#### **Timescales**

- 3.3 The following table sets out the timescale within which the Council endeavours to undertake the actions set out in this Plan. These are related to the date that the Council has received a request to investigate. This date is identified as the 'start date' and is the first working day on which a request is received. In relation to the start date the timescales (all of which refer to working days) are set out as follows subject to resources being available:

### **3.4 Urgent Cases**

#### **Within 5 working days:**

Undertake site visit. Acknowledge receipt of request to investigate.

#### **Within 20 working days of start date:**

Reach a decision in relation to whether it is expedient to take action where it is practicable to do so.

### **3.5 All Other Cases**

#### **Within 10 working days of start date:**

Acknowledge receipt of the request to investigate.

#### **Within 20 working days of start date:**

Undertake site visit where it is practicable to do so.

#### **Within 20 further working days:**

Reach a decision on the next steps and where required reach a decision on the expediency of taking further action where it is practicable to do so

**Then, if an application is to be invited:**

Request that the Owner submit such an application setting out the timescale within which it should be received and accepted by the Council

**Or, if the impact is harmful:**

If it is expedient, serve an Enforcement (or other relevant) Notice.

**4.0 Maintaining contact with the Council**

- 4.1 The Council seeks to advise those who have requested an investigation at each stage in the timescales above where key decisions are to be made. The Councils preference is to be able to contact parties by email.
- 4.2 The Council will not provide ongoing updates on enforcement cases as to do so may prejudice legal action the Council seeks to take later. The content of all open and live enforcement files is confidential and not released under FOI/EIR requests until such time as the matter is resolved and the file is closed. If no breach has been established the case will be closed and all evidence deleted.
- 4.3 If complainants or Members of the Council and Parish Councils contact the enforcement service seeking updates on particular cases and there is no new matter or decision to report they will be informed that the matter remains under investigation. There are no timescale within which action can be taken or decisions made as each case will have its own process of investigation and resolution and/or action.

**5.0 Section 106 and Condition Monitoring**

- 5.1 The Council recognises the importance of condition monitoring for its planning approvals, however due to the staff resources that are available for this work to be undertaken, the Council, has to prioritise what developments are monitored on a regular basis to ensure development is undertaken in accordance with the approved plans and associated conditions.
- 5.2 The Council will proactively monitor strategic and other major development sites once planning permission has been granted and work has commenced, this is to ensure that the development is being undertaken in accordance with planning approvals and conditions that have been imposed on them.
- 5.3 The Council will also monitor other developments at its own discretion where it is considered necessary in the public interest, this is to ensure such developments are undertaken in accordance with planning approvals and conditions that have been imposed on them.
- 5.4 Requests that development sites are regularly monitored will be considered by the Council; however, the Council will only act on these requests if it is considered that such a monitoring activity is in the wider public interest.
- 5.5 The Council is responsible for the administration of Section 106 agreements that form part of planning permissions. These Section 106 agreements are legal agreements (planning obligations) between the Council and Developers and are a

mechanism which make a development proposal acceptable in planning terms, that would not otherwise be acceptable.

- 5.6 The common uses of planning obligations such as Section 106 agreements are to secure affordable housing, to specify the type and timing of this housing, to secure financial contributions to provide local infrastructure on or off site, or other affordable housing elsewhere.
- 5.7 The Council will monitor all its Section 106 agreements to ensure that the terms of those agreements are met, and that any breaches of these agreements are identified and subsequently enforced.

## **6.0 Listed Buildings**

- 6.1 The Council attaches particular importance to ensuring that any alterations to listed buildings are properly authorised. The statutory provisions for the preservation of buildings of special architectural or historic interest are contained in the Listed Buildings and Conservation Areas legislation. It is an outright offence under the legislation to carry out unauthorised works to a listed building which could affect its character. The owner of a listed building or those who have an interest in the property or who have carried out the works may be prosecuted by the Council irrespective of whether consent is later obtained retrospectively, or the unauthorised works later made satisfactory. A person found guilty of an offence may be liable to a substantial fine, and/or a term of imprisonment. There is no time limit upon the Council to pursue Listed Building Enforcement Action.
- 6.2 A Listed Building Enforcement Notice may also be served requiring remedial works to the building within a certain time scale. There is a right of appeal to The Planning Inspectorate but failure to comply with the Notice is an offence, which is liable to a substantial fine on summary conviction.

## **7.0 Complaints**

- 7.1 If any party is dissatisfied with the service that has been received there is an expectation that they will contact the Council and discuss it with officers first to attempt a resolution to the matter. The contact details are set out below. In that way we can seek to resolve the matter of concern.
- 7.2 If the concern cannot be resolved in this informal way and dissatisfaction remains, or if the party wishes not to discuss the matter informally the Council has a formal complaints procedure. The details of this are set out on the Council's website:

[www.north-herts.gov.uk/home/customer-services/complaints](http://www.north-herts.gov.uk/home/customer-services/complaints)

### **Contact Details**

If you want to inform us about a potential breach of planning control that you want us to investigate, please contact us by:

Via the reporting page on our website:

<https://www.north-herts.gov.uk/home/planning/planning-enforcement>

e-mail: [planning.enforcement@north-herts.gov.uk](mailto:planning.enforcement@north-herts.gov.uk)

Phone: 01462 474000 (ask for the duty planning officer)

Post: Planning Enforcement, North Hertfordshire District Council, Council Offices,  
Gernon Road Letchworth SG6 3JF.

## **Appendix A**

This appendix sets out further background to the planning enforcement service, the actions that can be undertaken and the procedures that the Council will follow, where appropriate.

### **Legal Framework**

Paragraph 58 of the National Planning Policy Framework states that:

"Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate."

The ability of the Council to undertake planning enforcement action is set out in primary legislation. The government has also produced a wide range of secondary legislation, policy, guidance, and good practice notes that support that primary legislation, and the Council are also guided by case law.

In considering planning enforcement action the Council will take into account all primary and secondary legislation as well as national planning policy and guidance including: -

Town and Country Planning Act 1990 (as amended); Planning (Listed Buildings & Conservation Areas) Act 1991; Planning & Compensation Act 1991;

Planning & Compulsory Purchase Act 2004.

Police and Criminal Evidence Act 1984 ('P.A.C.E.');

Criminal Procedure and Investigations Act 1996 ('C.P.I.A.');

Protection of Freedoms Act 2012

Human Rights Act 1998; Localism Act 2011.

Caravan Sites and Control of Development Act, 1960.

Town and Country Planning (General Permitted Development) Orders; Town and Country Planning (Control of Advertisements) Regulations; The Town and Country Planning (Use Classes) Orders.

The National Planning Policy Framework.

Department of the Environment, Transport and the Regions Circular 10/97 (Enforcing Planning Control).

Department of the Environment, Transport, and the Regions Enforcement Good Practice Guide.

## **Enforcement Tools Available**

In relation to planning, the Council has a number of planning enforcement "tools" available; examples include:

- notices to require the provision of information.
- planning enforcement notices.
- listed building notices.
- repairs notices.
- urgent works notices.
- stop and temporary stop notices.
- discontinuance notices.
- S106 planning obligations.
- injunctions.
- prosecution.
- direct action.
- planning enforcement orders.

## **`` RIPA/PACE**

All work of the Council including investigations will be subject to prioritisation. Once started, investigations will be conducted in a timely manner, in accordance with the requirements of relevant legislation, including the Police and Criminal Evidence Act 1984 (PACE), Regulation of Investigatory Powers Act 2000 (RIPA), Criminal Procedure and Investigation Act 1996, Human Rights Act 1998 and Protection of Freedoms Act 2012. Regard will also be had to the requirements of associated Codes of Practice and Guidance. Investigations will be brought to a timely conclusion where possible.

It may be necessary to undertake surveillance to assist with an investigation. Any surveillance covered by the definitions contained in RIPA will be conducted in accordance with that Act as amended by the Protection of Freedoms Act 2012, appropriate guidance, corporate policy, and Codes of Practice. Covert Surveillance will only be undertaken:

- if it is in the interests of preventing crime
- if the use of covert surveillance is necessary and proportionate to the potential offence being investigated
- if it has been authorised by a Council authorising officer and the authorisation has been brought into effect by a magistrate.

It is sometimes necessary to conduct an interview with a person (or duly authorised representative of a corporate body) suspected of committing an offence. These interviews will be conducted in accordance with the PACE Codes of Practice. Wherever possible, recorded interviews with persons will generally take place at the Council Offices.

## **Officer Identification**

All officers always wear a picture identification card. Upon request, or where statute demands, officers will produce appropriate and necessary identification.

## **Photography**

As part of any investigation, it may be necessary to take digital photographs to assist with the case, procedures are in place to ensure the evidential continuity of any images made.

## **Immunity**

Breaches of planning control become immune from enforcement action, and lawful, if they have been in existence for a given length of time. The relevant time limits are:

- 4 years for operational development (physical development of the land such as buildings, extensions and fences);
- 4 years for changes of use of an existing building to a single dwelling house; and
- 10 years for any other breaches of planning control.

These are mainly material changes of use of land and breaches of planning conditions.

However, Section 124 of the Localism Act 2011 has introduced a new power for local planning authorities which override the above time limits in certain circumstances. If the apparent breach of planning control, has (to any extent) been deliberately concealed by any person or persons the Council may apply to the local Magistrates for a planning enforcement order. Such an order gives the Council a further year (known as a 'the enforcement year') to issue and serve a planning enforcement notice irrespective of the time limits referred to above.

## **Freedom of Information**

The personal details of any party who has requested an investigation and the files relating to each case are confidential. This situation has not been altered by publication of the Freedom of Information Act 2000 or the Environmental Information Regulations 2004. However, depending upon individual circumstances, the Council or the Information Commissioner may decide access to a file is appropriate. Does this need changing following Brexit?

## **Retrospective Applications**

When it is considered that a breach of planning control may be acceptable or lawful, a planning application or an application for a certificate of lawful use or development may be invited to allow the local planning authority to fully consider the full detail of the case leading to a formal decision. However, this does not imply that planning permission will be granted as with any other application.

## **Permitted Development**

The government has granted 'deemed' planning permission for many developments, generally referred to as 'permitted development rights'. These range from building a small scale shed to the rear of the property to extending the main house.

Advice on what may be permitted development is available on the government planning portal website located at <http://www.planningportal.gov.uk/permission/>. The council will not be able to take any action against such authorised developments.

## **Prosecution/Direct Action**

Following the service of certain types of formal notices requiring work to be carried out to cease or remedy a breach of planning control and those works/actions have not been undertaken within the timeframe given via the notice, it is open to the authority to pursue a prosecution in the courts for the non-compliance of the notice. If it is considered that prosecution would not satisfactorily resolve the breach of planning control, it is open to the authority to take direct action by way of employing contractors to carry out the works required by the notice and seek payment for those works from the owner of the land/property or by placing a legal charge on the land/property.

## **Level of Delegation**

All decisions relating to enforcement matters are delegated by the Council to the Director of Regulatory Services, who sub-delegates as appropriate:

### **Decisions to close enforcement cases**

(i.e., take no action as there is no breach, a breach has been resolved or it in the opinion of the Council, not expedient to take formal enforcement action based on assessment of the development under the development plan and other material considerations) are delegated to the Senior Compliance Officer, Area Planning Officer and the Development and Conservation Manager.

A review of decisions to close files can be undertaken by the Development and Conservation Manager following any complaint regarding a decision to close a case.

Any decision to take formal enforcement action is taken by the following officers:

- **Planning Contravention Notices**, a legal requirement to provide information to the Council - Senior Planning Compliance Officer in consultation with the Development and Conservation Manager.
- **Breach of Condition Notices**, a notice requiring the recipient to carry out the requirements of a condition on a planning permission or listed building consent to the satisfaction of the Council - Senior Planning Compliance Officer in consultation with the Development and Conservation Manager.
- **Enforcement notices**, notices relating the enforcement of all legislation within direct control or remit of the Development and Conservation service - Development and Conservation Manager.
- **Criminal Prosecution and Direct Action** - Director of Regulatory Services and Director of Legal and Community Services

# APPENDIX F: PARKING ENFORCEMENT

## 1 Background

North Hertfordshire District Council adopted Decriminalised Parking Enforcement (DPE) powers in January 2005. This followed an application submitted by Hertfordshire County Council in September 2004 for the designation of the District Council of North Hertfordshire as a Special Parking Area (SPA) and a Permitted Parking Area (PPA) under Section 43 of the Road Traffic Act (RTA) 1991. The SPA and the PPA share the same boundary and covers the whole of District Council area, including the off street car parks where Parking Places Orders apply. This excludes enforcement on the A1(M) and its on and off slip roads for its entire length within the District.

In respect of on-street parking (public roads and streets) enforcement, the Council acts on behalf of Hertfordshire County Council (the highway authority) under the terms of an agency agreement between the two authorities<sup>7</sup>. As the parking authority North Herts Council is responsible for the management and enforcement of its own off-street car parks.

Local authorities have had powers to manage and enforce their own off-street car parks for many years; however until recently most on-street parking enforcement was undertaken by police officers or police-employed traffic wardens.

In the mid-1990s central government gave local authorities the right to apply for powers to enforce on-street parking restrictions. The adoption of what was then called Decriminalised Parking Enforcement (DPE) but is now termed Civil Parking Enforcement, or CPE under the Traffic Management Act 2004.

## 2. Parking Legislation

NHDC parking enforcement operates under The Traffic Management Act 2004 (TMA 2004). This act supersedes the RTA 1991 and allows Civil Parking Enforcement to be carried out by local authorities who have permission from the Secretary of State for Transport to introduce a Civil Enforcement Area (CEA), (previously referred to as an SPA). This is a geographical area in which NHDC may carry out Civil Parking Enforcement.

North Hertfordshire is also a SEA (Special Enforcement Area) that allows for the enforcement of Double Parking, Dropped Footways and Raised Footways.

## 3. The Purpose of Civil Parking Enforcement (CPE)

The primary purpose of CPE, as identified in statutory guidance, is to support local authorities in their delivery of their overall transport objectives in areas such as those detailed below:

- Managing the traffic network to ensure expeditious movement of traffic, (including pedestrians and cyclists), as required under the TMA Network Management Duty;
- Improving road safety;
- Improving the local environment;
- Improving the accessibility of public transport;
- Meeting the needs of people with disabilities, some of whom will be unable to use public transport and depend entirely on the use of a car;

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<sup>7</sup> Highway Agency Agreement dated 24 January 2002 and Parking and Traffic Order Agency Agreement dated 17 January 2005.

- Managing and reconciling the competing demands for kerb space.

**To achieve these aims we enforce:**

On-street

- Permitted parking places on-street where waiting restrictions apply;
- Restricted parking where parking is allowed at particular times (single Yellow Lines);
- Restricted parking where parking is not allowed at any time (double yellow lines);
- Controlled Parking Zones (CPZ);
- Restricted Parking Zones (RPZ);
- Dropped Kerb parking.

Off-street

- Parking without payment or valid permit;
- Parking for longer than permitted or after expiry of paid for time;
- Parked in a restricted area;
- Not parking correctly within the marking of a bay.

Central government is also clear in explaining what CPE is not about. In particular, government emphasises that CPE is not to be regarded as a revenue raising exercise. Whilst Government accepts that local authorities will seek to make their CPE operations as close as possible to self-financing as soon as possible, it advises that any shortfall must be met from within existing budgets rather than falling on the local or national taxpayer.

The traffic management objectives of CPE are achieved primarily through encouraging compliance with parking restrictions – and it is with this objective in mind that the Council enforces parking both on and off-street throughout the District.

#### **4. Enforcement**

Civil Parking Enforcement in North Hertfordshire is undertaken by a team of Civil Enforcement Officers (CEOs) and a Parking Team Leader. The team is managed by a Parking Enforcement Manager, whose duties are carried out in accordance with North Hertfordshire District Council’s Parking Strategy<sup>8</sup>.

NHDC does not clamp or remove vehicles. Clamping is no longer favoured as an enforcement tool, as it often results in a “problem” vehicle being made to remain at an inappropriate location for longer than is necessary. The cost of setting up and running a removal operation, including a vehicle pound for the purpose of storing vehicles would be disproportionate to the benefit it might create for a smaller, rural district council such as North Herts.

When exercising prescribed functions a CEO must wear a uniform that is readily distinguishable from the Police and clearly show:

- That the wearer is engaged in Parking Enforcement
- The name of the local authority on whose behalf her or she is acting
- A personal identity number

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<sup>8</sup> The current Parking Strategy is the NHDC Parking Strategy 2009-2019 (revised Aug 2012) available on the Council’s website <https://www.north-herts.gov.uk/home/parking/parking-strategy>

## 5. Penalty Charge Notices (PCN) and Legal Requirements

A regulation 9 PCN - is the name given to a PCN that is issued by a CEO either on-street or off-street, under the TMA 2004. The way in which a Regulation 9 PCN can be served is by two methods:

- Affixed to vehicle in a special envelope; or
- Handed to the person appearing to be in charge of the vehicle.

In terms of legal requirements, under the TMA 2004, a Regulation 9 PCN must contain the following:

- Date of service;
- Issuing Authority;
- Vehicle Registration Mark;
- Date and time of alleged contravention;
- Location of contravention;
- Grounds of issue (Legislation);
- PCN amount and payable period;
- Discount amount and discount period;
- How and where to pay;
- What will happen if payment not made;
- How to make representations.

Under section 80 of the TMA 2004, a person may who is liable to pay a penalty charge may make representations to the enforcement authority to challenge the charge (i.e. NHDC) and then appeal to an adjudicator if their representations are not accepted.

The processing of PCNs and consideration of representations made are carried out by a separate team within the Council under the Management Support Unit. A Flowchart outlining the Regulation 9 PCN Process is attached at Appendix 1.

Regulation 10 PCNs are not used by NHDC as they are served on the owner of the vehicle by first class post.

## 6. Contravention Codes

Below is a list of the most common contravention codes used to issue PCNs

Code	DESCRIPTION ON-STREET	Differential Charging level	Observation Period
01	Parked in a restricted street during prescribed hours	HIGHER	2 MINUTES
02	Parked or loading/unloading in a restricted street where waiting and loading/unloading restrictions are in force	HIGHER	INSTANT
05	Parked after the expiry of paid for time.	LOWER	10 MINUTES

06	Parked without clearly displaying a valid pay and display ticket or voucher	LOWER	5 MINUTES
12	Parked in a residents' or shared use parking place/zone without clearly displaying either a permit or voucher or pay and display ticket issued for that place	HIGHER	5 MINUTES
18	Using a vehicle in a parking place in connection with the sale or offering or exposing for sale of goods when prohibited	HIGHER	5 MINUTES
19	Parked in a residents' or shared use parking place/zone displaying an invalid permit or voucher or pay and display ticket	LOWER	5 MINUTES
21	Parked in a suspended bay or space or part of bay or space	HIGHER	INSTANT
22	Re-parked in the same parking place or zone within one hour* of leaving	LOWER	INSTANT
23	Parked in a parking place or area not designated for that class of vehicle	HIGHER	5 MINUTES
24	Not parked correctly within the markings of the bay or space	LOWER	INSTANT
25	Parked in a loading place during restricted hours without loading	HIGHER	5 MINUTES
26	Parked in a special enforcement area more than 50 cm from the edge of the carriageway and not within a designated parking place	HIGHER	5 MINUTES
27	Parked in a special enforcement area adjacent to a dropped footway	HIGHER	2 MINUTES
30	Parked for longer than permitted	LOWER	10 MINUTES
40	Parked in a designated disabled person's parking place without displaying a valid disabled person's badge in the prescribed manner	HIGHER	INSTANT
45	Parked on a taxi rank	HIGHER	INSTANT
47	Stopped on a restricted bus stop or stand	HIGHER	INSTANT
48	Stopped in a restricted area outside a school when prohibited	HIGHER	INSTANT
49	Parked wholly or partly on a cycle track or lane	HIGHER	5 MINUTES
55	A commercial vehicle parked in a restricted street in contravention of the Overnight Waiting Ban	HIGHER	5 MINUTES
61	A heavy commercial vehicle wholly or partly parked on a footway, verge or land between two carriageways	HIGHER	5 MINUTES

62	Parked with one or more wheels on or over a footpath or any part of a road other than carriageway	HIGHER	INSTANT
99	Stopped on a pedestrian crossing and/or crossing area marked by zig-zags	HIGHER	INSTANT

Code	DESCRIPTION OFF-STREET	Differential Charging level	Observation Period
71	Parked in an Electric Vehicle' charging place during restricted hours without charging	HIGHER	INSTANT
74	Using a vehicle in a parking place in connection with the sale or offering or exposing for sale of goods when prohibited	HIGHER	5 MINUTES
80	Parked for longer than the maximum period permitted	LOWER	10 MINUTES
81	Parked in a restricted area in a car park	HIGHER	INSTANT
82	Parked after the expiry of paid for time	LOWER	10 MINUTES
83	Parked in a car park without clearly displaying a valid pay & display ticket or voucher or parking clock	LOWER	5 MINUTES

84	Parked with additional payment made to extend the stay beyond time first purchased	LOWER	INSTANT
86	Parked beyond the bay markings	LOWER	INSTANT
87	Parked in a designated disabled person's parking place without displaying a valid disabled person's badge in the prescribed manner	HIGHER	INSTANT
91	Parked in a car park or area not designated for that class of vehicle	HIGHER	INSTANT
92	Parked causing an obstruction	HIGHER	INSTANT
93	Parked in car park when closed	LOWER	INSTANT

### Differential Charging Level

Differential parking charging was introduced in 2008 under the TMA 2004 to address the perception of fairness to the motorist.

There is now a two-tier approach to the cost of a PCN to recognise that there are contraventions which are more serious and should receive a higher charge, and that there are less serious contraventions which should receive a lower charge.

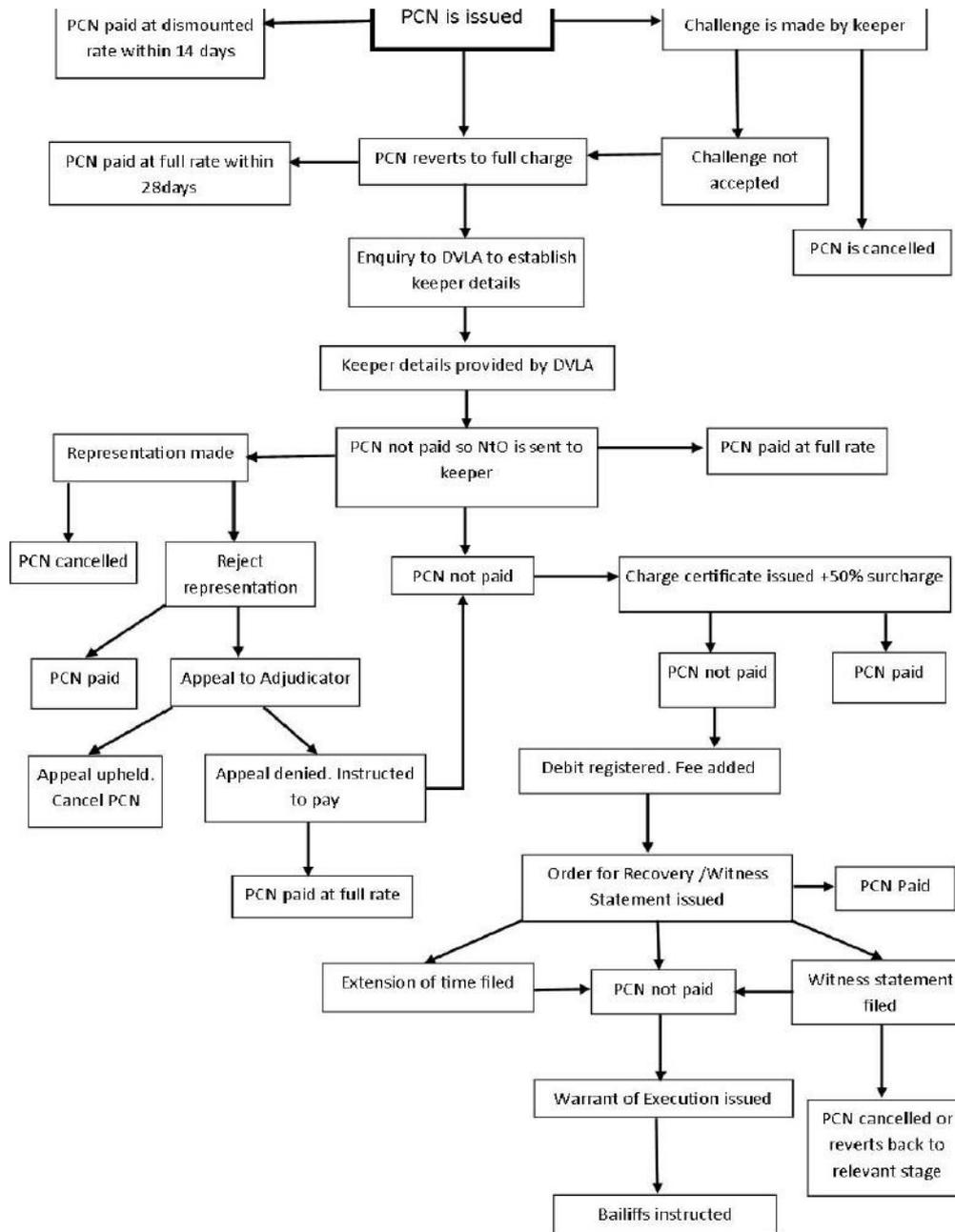
Differential parking charging is prescribed by the type of contravention and not at the discretion of the CEO. The type of contravention is set nationally and not locally.

### Observation Period

The observation times listed are those most commonly used for Parking Enforcement.

The CEOs will under normal circumstances seek to give a 10 minute grace period to vehicles parked in designated parking places, when the period of permitted parking ends. If a vehicle is parked legally in a designated parking place when it is initially parked and stays beyond the permitted parking period, then the 10 minute grace period will in normal circumstances be given before a Penalty Charge Notice is issued.

Regulation 9 PCN process flowchart



# **APPENDIX G: ACCESS TO HOUSING**

## **1. SCOPE**

The Council undertakes a range of duties in connection with helping the public to access housing.

The Council is an enforcing authority for the Protection from Eviction Act 1977 and will exercise the discretion under this legislation to protect residential tenants from illegal eviction or harassment.

It is an offence under Sections 171 and 214 of the Housing Act 1996 for a person to make a statement which is false, or to knowingly withhold information from the Council which would be relevant to their application for housing assistance. Where fraud or deception is suspected, the Council will consider all enforcement options, including prosecution.

The Council's Housing Team is responsible for the operational management of these functions (for illegal eviction/harassment cases, any action would be carried out in conjunction with the Environmental Health team).

## **2. THE USE OF ENFORCEMENT TOOLS**

The general principles relating to enforcement decision making are explained within the main body of this Policy.

# APPENDIX H: FRAUD SANCTIONS AND PROSECUTIONS

## INTRODUCTION

The Council takes its responsibility to protect public funds seriously and expects its business to be conducted to the highest ethical and legal standards. The Council has a zero tolerance to fraud, theft and corruption. Where there is evidence of fraud, theft or corruption against the Council, those responsible, whether internal or external to the Council, will be held accountable for their actions using the full range of sanctions available. The use of sanctions is governed by this policy that sets out appropriate action to take.

This Policy forms part of the Council's Overarching fraud policy (it includes matters of fraud, bribery, corruption, misconduct) and its objectives are:

1. To ensure sanctions are applied fairly and consistently;
2. To ensure sanctions are applied in an efficient and cost-effective way;
3. To set out the range of sanctions available;
4. To ensure the sanction decision making process is robust, transparent and fair
5. To make it clear that the Council will not tolerate fraud.

The Council will investigate allegations of fraud, theft, corruption or irregularity in line with the Council's anti-fraud plan. Following an investigation, a range of factors will require consideration before deciding on appropriate sanction, including the individual circumstances of each case, the impact on the individual and the wider community, and the seriousness of the offence.

## OPTIONS

Where there is evidence of fraud, theft or corruption, the following options will be considered:

- 1) No further action;
- 2) Referral to professional bodies;
- 3) Disciplinary action;
- 4) Civil proceedings;
- 5) Criminal prosecution;
- 6) Sanctions as alternatives to prosecution.

The Council will consider any of the above options and parallel sanctions as noted below may be pursued.

### **No further action**

The Council may consider, following an investigation, closing a case without taking any further action. This may occur where there is no evidence of fraud or misconduct, or where it is not in the public interest to take action.

## **Referral to professional bodies.**

Where there is adequate evidence that a person or entity has breached professional duties or responsibilities, the Council will refer the matter to the relevant professional body.

## **Disciplinary Action**

In the event that an allegation is made against a Council employee, The Shared Anti-Fraud Service (SAFS) will consult with the Council's Human Resources Service and appropriate action will be taken following the Disciplinary Policy.

The investigating officer may be a member of Internal Audit & Counter Fraud Services or may be appointed through the HR Disciplinary process. Sanctions may include warnings or dismissal and alongside this, additional sanction options will be considered including referral to professional bodies, civil proceedings and criminal prosecutions.

If during the course of an investigation or disciplinary action, the employee suspected of fraud, theft or corruption chooses to resign, the Council will continue to pursue referral to professional bodies, civil proceedings or criminal prosecution where appropriate.

In the event of an allegation against a Councillor in relation to fraud, theft or corruption against the Council, this will be reported to the Monitoring Officer, who will agree the action to be taken with the Managing Director. Depending on the circumstances of the case, criminal proceedings may also be considered.

## **Civil Proceedings**

The Council may take civil proceedings where appropriate. Regardless of whether or not any sanction action is taken, the Council will seek, where appropriate, to recover any overpaid, misused or unfairly gained monies.

The following measures may be considered in the pursuit of financial recovery:

- Consultation with the Council's Human Resources Teams to redress financial loss caused by employees. The Council will attempt to recover the loss from the capital value of the individual's accrued benefits in the Pension Scheme if they are a member, which are then reduced as advised by the actuary;

- Recovery of money through appropriate legal proceedings;
- Legal action such as freezing orders / restraint orders to preserve evidence and assets.

There will be overpayments which are not due to fraud, and the Council will determine appropriate recovery in these cases.

## **Criminal Prosecution**

Where the Council considers it 'expedient for the promotion or protection of the interests of the inhabitants of their area', Section 222 of the Local Government Act 1972 empowers the Council to prosecute or appear in legal proceedings and, in the case of civil proceedings, institute them in their own name.

Furthermore, Section 223 of the Local Government Act 1972 allows a 'Local Authority to authorise any member or its staff to prosecute or defend designated matters in magistrates' court'.

In the most serious of cases, the Council will consider the prosecution of those offenders suspected to have committed fraud or theft. Where the Council considers there is sufficient evidence (based on the Code for Crown Prosecutors) to indicate a criminal act has taken place, a decision will be made whether to undertake a criminal prosecution utilising the Council's Legal Services (or contracted legal representatives) the police or another law enforcement partner (such as DWP or HMRC). This decision will be made by the Head of SAFS, the Director: Legal and Community, and the relevant Director/Head of Service (or delegated appropriately).

Before a decision is taken whether or not to prosecute, the Council will be guided by the Code for Crown Prosecutors and will only initiate legal action if, following legal advice, it has satisfied the following two tests:

- 1) Evidential Test – the evidence must be:
  - Clear, reliable and admissible in court; and
  - Strong enough for a realistic chance of prosecution. i.e. to prove a case 'beyond reasonable doubt'.

2) Public Interest Test – the prosecution is in the public interest, taking into account:

- Seriousness and / or monetary value of the offence;
- Cost and proportionality of the prosecution;
- Age and health of the suspect;
- Culpability of the suspect;
- Circumstances of and harm caused to the victim; and
- Impact on the community.

Where a case has been referred to the Police to investigate, the final decision as to whether or not to pursue the case will be taken by the Police and the Crown Prosecution Service.

The Council will conduct the investigations in accordance with the Criminal Procedure and Investigations Act 1996 and the Police and Criminal Evidence Act 1984 (PACE). Criminal proceedings may be brought for a suspected offence under the following legislation:

- The Theft Act 1968 (as amended);
- The Fraud Act 2006;
- Local Government Finance Act 1992;
- Housing Act 1996;
- Prevention of Social Housing Fraud Act 2013;
- Forgery and Counterfeiting Act 1981;
- Computer Misuse Act 1990;
- Identity Documents Act 2010;
- The Bribery Act 2010;
- Road Traffic Regulation Act 1984;
- Any other relevant provision in law.

Any criminal proceedings can include an attempt to recover money under the Proceeds of Crime Act 2002 (POCA) or Prevention of Social Housing Fraud Act 2013.

### **Sanction as Alternatives to Prosecution**

The Local Government Finance Act 1992 allows the Council to consider financial penalties as alternatives to prosecution and these should always be considered. However, in serious cases of fraud or where repeat offending occurs, the option to prosecute offenders will be kept under review.

## **Civil Penalties**

Regulation 13. Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013 and Schedule 3 Local Government Finance Act 1992 permit 'billing authorities' to impose financial penalties where a person fails to report a material fact affecting their council tax liability or where a person fails, without good reason, to correct an error.

The Revenues Manager will make the decision about the imposition of any Civil Penalties.

All penalties will be recovered by adding the debt to a person's Council Tax liability for the current year and recovered only once that annual liability has been settled in full.

## **Administrative Penalties.**

*Regulation 11(4) Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013*, provide for Administrative Penalties to be offered to persons as alternatives to prosecution. The legislation allows for Administrative Penalties amounting to 50% of the gross reduction can be offered. In all such cases of fraud the Council will seek to recover the excess award as well any penalty.

The Council's Revenues Manager will make the decision about the offer of any Administrative Penalties on advice from the SAFS. The Head of SAFS will arrange for the administrative penalty to be offered to the person liable for it and any cooling off period required by legislation.

## **Parallel Sanctions**

It is preferable for the appropriate sanctions to proceed simultaneously, but it is not necessary for anyone to await the result of another before concluding. However, due consideration must be given to all proceedings to ensure that one does not impact improperly upon another. The decision to run parallel sanctions will be determined on a case by case basis.

## **PARTNERSHIPS**

Where appropriate, the Council will work in partnership with other organisations such as the Police, other Local Authorities, Social Housing Providers, Department for Work and Pensions, Her Majesty's Revenue and Customs, UK Borders Agency and the Home Office, to bring joint proceedings or assist the other organisation to bring its own proceedings.

## **RECORDING DECISIONS**

For an effective regime of sanctions to be successful accurate records of all convictions, penalties and cautions must be maintained. This will enable the correct decisions to be made taking full account of the defendant's background.

All sanctions will be recorded by both SAFS and the Council, and copies of all documents used to consider and issue the sanction should be retained, in accordance with the relevant retention policies.

In the case of prosecution, all cases that result in successful convictions will be reported to the police for recording on the Police National Computer (PNC) central databases. This is usually dealt with via court administration following a hearing.

## **PUBLICITY**

It is the Council's intention to positively promote this Policy, as well as the outcome of any prosecutions, to deter others from fraudulent activity and reassure the public that the Council acts against those committing fraudulent and or corrupt acts.

Consideration will be given to whether the outcome of any case should be reported to the community via various media channels. Publicity, where appropriate, will ensure the profile of counter fraud activity remains at a level which will contribute to ensuring the key objective of preventing fraud is met.

## **REVIEW**

This Policy will be kept under regular review by the, s151 and Monitoring Officers to ensure compliance with current legislation and best practice.