

NEWARK AND SHERWOOD DISTRICT COUNCIL

CORPORATE ENFORCEMENT POLICY

JUNE 2013

NEWARK & SHERWOOD DISTRICT COUNCIL

CORPORATE ENFORCEMENT POLICY

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APPENDIX 1

List of current service enforcement policies

NEWARK & SHERWOOD DISTRICT COUNCIL

CORPORATE ENFORCEMENT POLICY

1.0 INTRODUCTION

- 1.1 The Council is responsible for ensuring that a wide range of legislation is being properly complied with. In doing this, the Council must ensure that its actions are in accordance with the European Convention on Human Rights (as implemented by the Human Rights Act 1998) and the Government's Regulatory Compliance Code. Many of the Council's activities are directed at ensuring that all sectors of society within the Newark & Sherwood District avoid infringements. However, it is inevitable that offences will occur and the purpose of this policy is to ensure that they are resolved in a consistent, balanced and fair manner.
- 1.2 This document contains the detailed statement of policy in respect of the enforcement of legislation by the officers of Newark and Sherwood District Council and the framework upon which executive action is based. It should be noted that this is a generic policy covering the whole of the Council's enforcement activities and that individual service areas will have specific policies and guidance appropriate to their functions. Where these have been adopted by the Council they are listed in Appendix 1.
- 1.3 This policy acknowledges that in certain circumstances services will be required to comply with specific legislative requirements. Such requirements would override any provisions contained in this corporate policy.

2.0 GENERAL STATEMENT

- 2.1 In seeking to secure the highest possible level of compliance with relevant legislation whilst conforming to the spirit of the Human Rights Act 1998, the Cabinet Office Enforcement Concordat, **the Regulator's Compliance Code** and the Code for Crown Prosecutors, the principal enforcement activities of the Council are directed towards avoidance of infringements. It is nevertheless inevitable that offences will occur and the purpose of this policy is to ensure that they are resolved in a consistent, transparent, balanced and fair manner.
- 2.2 All enforcement action, be it verbal warnings, the issue of written warnings, statutory notices or prosecution, is primarily based upon assessment of risk to public health and safety, economic well-being or the environment, and also expediency in planning matters.
- 2.3 This Authority affirms the importance of achieving consistent, balanced and fair enforcement. To achieve this, regard will be had to guidance contained in Statutory Codes of Practice and other nationally recognised courses. Specific procedures and guidance will be prepared and reviewed as necessary by the appropriate Head of Service to enable the realisation and implementation of the

Council's priorities having regard to national guidelines.

- 2.4 To protect privacy, and comply with the Human Rights Act, all investigations where covert surveillance is essential, but which may cause intrusion into an individual's privacy, will be authorised prior to commencement in compliance with the Authority's guidelines and procedures as required by the Regulation of Investigatory Powers Act 2000.
- 2.5 Any departure from enforcement policies must be exceptional, capable of justification and be fully considered by the appropriate officer before the decision is taken, unless it is considered there is significant risk to the public in delaying the decision.
- 2.6 This Authority will ensure that all authorised officers are fully acquainted with requirements of the policy and appropriate training will be given. This Authority will ensure that all persons subject to any enforcement action are fully informed of what is expected and the procedures that will be followed. This is to aim to avoid any misunderstandings and ensure transparency of all enforcement action.
- 2.7 This policy will be fully consulted on to take into account the views of all partners, stakeholders and the local community as a whole.
- 2.8 This document and associated procedures derived from it will be subject to regular review.
- 2.9 **Approval** – this policy is approved by Newark & Sherwood District Council on xxx 2013.
- 2.10 **Access** – this policy is available on the Council's website:

www.newark-sherwooddc.gov.uk

3.0 ENFORCEMENT OPTIONS

- 3.1 The Council's enforcement officers will take a staged approach to the enforcement of legislation. No enforcement action will be taken against any individual or business unless the investigating officer is satisfied that a breach of legislation has been committed under a relevant piece of law. The exceptions to this are in the event of a statutory nuisance occurring or it being likely that a statutory nuisance will occur, in which case the Council has a duty to serve an abatement notice on the person responsible to abate the nuisance or to prevent the likely occurrence.
- 3.2 Enforcement action may be taken as the result of the investigation of a complaint, following a routine inspection or some other activity. In cases where a witness is essential to support the enforcement process, the Council has a policy of not following up complaints from any anonymous source, except in the

case of anonymous calls to our Benefit Fraud telephone hotline.

3.3 Enforcement decisions must be balanced and fair. They must be consistent and taken in the context of ensuring that individuals, the community and the environment are adequately protected. The criteria which should be considered when deciding whether enforcement action is appropriate are:

- Whether an offence has been committed
- Whether the offence has caused harm or is likely to cause harm
- The seriousness of the offence
- The history of the activity
- Confidence in achieving compliance
- Consequences of non-compliance
- The likely effectiveness of the various enforcement options
- The existence of any guidance in the form of codes of practice, government circulars etc
- Expediency
- The irreversibility of the offence eg in planning breaches
- The alleged offence causes public concern and it is desirable to reassure the public and to deter other offenders
- Whether evidence of the offence/ breach is available.

3.4 These criteria are not exhaustive and those that apply will depend on the particular circumstances in each case. This does not mean that all factors must be in favour of enforcement action, rather that, on balance, the preponderance is in favour.

3.5 Once these criteria have been considered, a number of options for dealing with the situation present themselves. These are:

- To take informal action
- To serve statutory notices
- To suspend, revoke or refuse to renew a licence
- To issue a fixed penalty notice
- To prosecute or to apply for a Court Order (including joint prosecutions) and then follow the options allowed by the relevant legislation
- To offer an Administrative Penalty (including joint Administrative Penalties)
- To issue a formal caution (including joint cautions)
- Deductions from ongoing benefits or other state benefits
- To take no action

In certain circumstances, a combination of the above options may be relevant as a means of dealing with the offence.

3.6 Consideration of each of these options should be informed by the principles of openness, consistency and proportionality, which are discussed later in this policy.

3.7 In the spirit of taking a staged approach to enforcement, in the first instance the individual or business should be given the opportunity to discuss and remedy problems unless immediate action is required.

3.8 **Informal Action**

3.8.1 Informal action will be taken when:

- The offence being committed or having been committed is not serious enough to warrant formal action; or
- From the immediate individual's or business' past history it can be reasonably expected that informal action will achieve compliance; or
- The confidence in an individual or business proprietor is high; and
- The consequences of non-compliance will not pose a significant risk to public health, public safety or to the environment.

3.8.2 When an informal approach is used to secure compliance with legislation, confirmation of what action is required will be in writing within 7 working days of the decision being taken to take informal action. All correspondence will clearly differentiate between legal requirements and recommendations of good practice and must indicate the laws that are being contravened and the measures that will achieve compliance.

3.9 **Statutory Notices**

3.9.1 Statutory Notices will be served where one or more of the following criteria apply:

- There is a statutory duty to do so;
- There are significant contraventions of legislation;
- There is a lack of confidence in the proprietor or business to respond to an informal approach;
- Where informal action has not been complied;
- There is a history of non-compliance;
- Standards are generally poor with little management awareness of statutory requirements;
- The consequences of non-compliance could be potentially serious to public health, public safety or to the environment or cause public nuisance or be irreversible; or
- Where, in addition, to prosecution, measures need to be taken to remedy conditions that are serious, deteriorating or where the service of a notice is needed to support a prosecution.

3.9.2 Statutory Notices will be served within 10 working days of the decision to serve them being taken (subject to confirmation of ownership of land etc having been obtained through a Requisition for Information when appropriate).

3.9.3 Failure to comply with a statutory notice will, in general, result in prosecution and/or works in default where appropriate unless there is a good reason not to do so. Works in default are works which have been the subject of a legal notice served on some individual or company. If the notice expires and these works have not been carried out the council may carry them out in default of the business on whom the notice was served.

3.10 **Suspension, revocation or refusal to renew a licence**

3.10.1 These steps would be taken as a result of failure to meet requirements in connection with the continued or the renewal of a licence. This could follow receipt of a complaint, the result of a routine or a licensing inspection, or follow the service of a statutory notice. Such a failure must be serious enough to justify these actions.

3.11 **Issue of a Fixed Penalty Notice**

3.11.1 Fixed penalties provide enforcement agencies with an effective and visible way of responding to low level environmental crimes. Government wishes to encourage their use by local authorities and other agencies including parish councils.

3.11.2 The use of fixed penalty notices should only be used for the more minor of offences. Further, if someone is found to be a repeat offender, and has been issued with a fixed penalty notice on more than one occasion, it can be argued that the sanction of a fixed penalty notice has clearly failed to change that person's behaviour. In this instance, to continue to issue fixed penalty notices is futile and as a result consideration should be given to taking legal action against such a repeat offender in the magistrates' court.

3.11.3 The District Council has a policy for the issuing of fixed penalty notices for offences under the Cleaner Neighbourhoods and Environment Act 2005. The issuing of a fixed penalty takes the place of prosecution under these Acts and is carried out in accordance with statutory guidance.

3.11.4 Other Acts allow for the issue of fixed penalty notices and in all cases these are issued following the guidance and advice issued in relation to that particular legislation.

3.12 **Prosecution**

3.12.1 The District Council recognises that the decision to prosecute is significant and could have far reaching consequences for the offender.

3.12.2 **The decision to prosecute will normally be taken by the appropriate Business Manager or Director in consultation with the Solicitor to the Council.** There are specific exceptions to this principle. For instance, officers authorised under the Health and Safety at Work Act have the authority to take a decision to commence legal proceedings for offences committed under that Act or under any subordinate legislation. Where the decision to prosecute is delegated to officers rather than a committee but there are significant financial or policy implications, the matter may be referred to the relevant Committee for consultation prior to a decision to be taken. The criteria for the commencement of legal proceedings will be considered in the following cases where:

- A flagrant breach of the law such that the safety or well-being of an individual, the community or the environment is or has been put at risk or irreversible damage has been caused;
- The integrity of the licensing framework is threatened;
- The alleged offence involves a failure by the suspected offender to correct an identified potential risk, having been given a reasonable opportunity to comply with the lawful requirements of an authorised officer;
- The alleged offence involves a failure, in full or in part, to comply with the requirements of a statutory notice;
- There is a history of similar offences;
- The alleged offence causes public concern and it is desirable to reassure the public and to deter other offenders;
- Where an authorised officer has been intentionally obstructed in the course of his or her duties;
- A formal caution or Administrative Penalty has been offered and refused.

3.12.3 All relevant evidence and information will be considered before deciding to commence legal proceedings in order to enable a consistent, fair and objective decision to be made.

3.12.4 Regard shall be had to the guidance contained in the Code for Crown Prosecutors.

3.12.5 Once the decision has been made to commence legal proceedings the relevant paperwork will normally be forwarded to the Council's Legal Officers within 20 working days of that decision or, in the case of joint prosecutions for housing and council tax benefit offences, the relevant paperwork will be forwarded to the Solicitors Branch of the Department for Works and Pensions. Legal Officers will then ensure service of the summons, normally within 20 working days of receiving those instructions. These timescales will be affected by the complexity of each case and the requirement to collect evidence.

3.12.6 The person, other interested parties or business which is to be the subject of legal proceedings will be informed, in writing, within 5 working days of the decision to commence legal proceedings being taken. This undertaking applies to

environmental health law enforcement only.

3.13 **Prosecution without warning**

3.13.1 As a general rule, a person or business will be given a reasonable opportunity to comply with the law, although in some circumstances, prosecution may be undertaken without prior warning, eg

- The Contravention is a particularly serious one
- There has been a particularly blatant disregard of the law
- A statutory notice has previously been issued for a similar offence
- The integrity of the licensing framework is threatened

3.14 **Administrative Penalty**

3.14.1 Where an allegation of Housing/Council Tax Support fraud has been investigated and officers are satisfied that an offence has been committed, it may, dependant on the severity of the offence and other factors of the case, be considered more appropriate to give the offender opportunity to pay an Administrative Penalty instead of prosecution.

The Administrative Penalty is calculated as 30% of the amount overpaid. If the offer is not accepted, or is refused after initial acceptance, the case will generally be prepared for prosecution. In all cases the Council will pursue full repayment of any benefit deemed to have been overpaid and recoverable in addition to any Administrative Penalty.

3.15 **Simple Cautions**

3.15.1 Where appropriate, a caution may be issued as an alternative to prosecution.

Cautions will be issued to:

- Deal quickly and simply with less serious offences;
- Divert less serious offences away from the courts; or
- Reduce the chance of repeat offences.

3.15.2 To safeguard the offender's interests the following conditions must be fulfilled before a caution is administered:

- There must be evidence of the suspected offender's guilt sufficient to offer a realistic prospect of conviction; and
- The suspected offender must admit the offence; and
- The suspected offender must understand the significance of a formal caution and give an informed consent to being cautioned.

3.15.3 No pressure should be applied to a person to accept a caution.

- 3.15.4 Advice given within Home Office Circular 30/2005 will be taken into account when issuing a simple caution.
- 3.15.5 As a general rule, a caution will not be considered in the case of a second or subsequent offence.
- 3.15.6 The offer of a caution will be made within 5 working days of the decision to issue one being taken. The caution will then be issued within 20 working days of the offer being accepted. Should a person offered a caution refuse to accept it then a course of prosecution will normally be followed.

3.16 Deductions from ongoing benefits or other state benefits

The Council treats the recovery of overpayments as a serious matter and will pursue full repayment of any benefit deemed to have been overpaid and recoverable. Each case is considered individually.

If the claimant is still in receipt of benefit then the overpayment will normally be recovered from ongoing entitlement at a weekly rate set out within the Housing Benefit Regulations 2006. The Council will have regard to any special health or financial circumstances of the claimant (that it is aware of) before deciding the level of deduction, or when to commence the deductions, to avoid causing undue hardship to the claimant or their dependants.

Where the claimant is no longer in receipt of housing benefit, and /or has moved away from the area, and there is evidence to indicate that the claimant is in receipt of other state benefits, the Council will consider requesting the Department for Works and Pensions to make deductions from those benefits towards the overpayment.

3.17 **No Action**

3.17.1 There may be instances when no action is taken by the Authority following the investigation of a complaint or the carrying out of an inspection. For example:

- Following the investigation of complaints it may be found that there is no offence committed;
- Where the offence is not causing harm or it is not expedient to take action;
- Where the cost of compliance to the offender outweighs the impact of the contravention on the community;
- Where the cost of taking action to the enforcing authority outweighs the impact of the offence on the community;
- Formal action would be inappropriate in circumstances such as where a trader has ceased to trade, or the offender is elderly or frail or where formal action could seriously damage their wellbeing.

3.17.2 A decision to take no action must be recorded in writing, along with the reason(s) for taking no action and must take into account the health, safety, environmental damage or nuisance implications of not taking action. All parties involved will be informed, in writing, within 5 working days of the decision to take no action.

3.18 **Determining whether a prosecution is viable and appropriate**

3.18.1 There are two tests which the Council must apply in making this decision. The tests must always be applied in the same order; first the evidential test, followed by the public interest test.

3.18.2 The evidential test means that the Council, as prosecutor, (and in the case of joint prosecutions the Solicitors Branch of the Department for Works and Pensions) must be satisfied that there is enough reliable and admissible evidence to provide a realistic prospect of conviction. This is an objective test. It means that a jury or magistrates' bench, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged.

3.18.3 The public interest test involves a number of factors taken together which are for or against prosecution, for example, "for" can be whether a conviction is likely to result in a significant sentence, or whether it is a repeated offence and "against" could be whether the offender is elderly or vulnerable.

3.18.4 Whilst, as outlined, these tests apply when considering prosecution, it is important that consideration should first be given to the evidential test before taking formal enforcement action of any kind.

3.18.5 Deciding on the matter of public interest requires careful consideration of each of the factors involved. For each case these factors will have to be considered

separately and given an appropriate weight. A decision will then be taken in terms of the case as a whole.

3.18.6 Further information on the application of the evidential and public interest tests can be found in the Crown Prosecution Service Code for Crown Prosecutors.

3.19 Dissatisfaction with a decision to take/not to take formal action

3.19.1 Inevitably there will be occasions when an individual, group, business or organisation is aggrieved by a decision taken following consideration of this policy. Where this is the case they will be offered the opportunity to discuss the matter with the relevant line manager. If the allegation is that the decision is contrary to this policy, that allegation will be tested. Where a decision is in compliance with the policy the rationale behind it will be explained to the aggrieved party. Where a decision is found not to be in compliance with the policy it should be reconsidered, having had due regard to 4.3.2 below. This is without prejudice to any formal appeals mechanism or to the Council's formal complaints procedure.

4.0 PRINCIPLES OF ENFORCEMENT

4.1 The Council believes in firm but fair regulation. This policy is underpinned by the principles of openness about how the Council operates, consistency of approach and proportionality in the application of the law.

4.2 Openness

4.2.1 Openness is important in maintaining public confidence in the Council's ability to regulate. It means helping all stakeholders to understand what is expected of them and what they should expect from the District Council. It also means making it clear why an officer intends to take or has taken enforcement action.

4.2.2 The District Council will set about its enforcement work in as open a way as possible. It will make clear to anyone who may be affected by its enforcement actions what the results of those actions may be.

4.2.3 The District Council will strive to ensure that all stakeholders have a say in the way in which work is done. The Council's approach to information and consultation is set out in Part 6 of this policy.

4.2.4 The District Council will discuss any issues, either general or in relation to specific compliance failures or problems with anyone experiencing difficulties. Subject to the need to protect the safety of any officers concerned, we will ensure that people know who they are dealing with by quoting the name and contact number of the officer dealing with any enforcement matter on all correspondence or giving those details at the beginning of a telephone

conversation.

4.3 Consistency

4.3.1 The District Council aims to achieve consistency in advice tendered, the response to complaints and other incidents, the use of powers and decisions whether to prosecute. This policy document will inform that process.

4.3.2 This does not mean that the Council will commit itself to following a certain course of action in any particular situation. The Council recognises that every situation will have its own circumstances and the correct course of action can only be arrived at following full and careful consideration of all these circumstances. Officers will need to use professional judgement in order to determine the correct course of action. These circumstances include, but not exclusively the criteria set out in paragraph 3.3, the points for consideration against each of the enforcement options and the principles of openness, consistency and proportionality which inform the decision making process. Through a process of peer review and inter-authority auditing we hope to promote the development of these decision making skills.

4.4 Proportionality

4.4.1 Any action taken by the District Council will be proportionate to the risks posed and to the seriousness of any breaches of the law.

4.4.2 Some incidents or breaches of regulatory requirements have the potential to cause serious risks to public health or the environment. There may be occasions when the breach of legislation will justify statutory action. The circumstances in which the various enforcement options available will be appropriate are discussed in detail in part 3 of this policy. Any such action will only be taken in accordance with the law and after due consideration has been given to an Convention Rights under the Human Rights Act 1998 that may be affected by such action.

5.0 LIAISON

5.1 The District Council will ensure that liaison between Council services is co-ordinated and effective enforcement is carried out where the matter is related to more than one of the Council's services.

5.2 The District Council will liaise with other local authorities, agencies and organisations where it is appropriate. This may be where an enforcement matter extends beyond the District's boundary or where the Council shares responsibility with another organisation, eg in respect of dogs, and certain types of nuisance complaint where the Council and the Police may be involved.

6.0 INFORMATION AND CONSULTATION

- 6.1 We will strive to help individuals and organisations to comply with the law wherever possible, especially individuals and small and medium sized businesses. We will seek to do this by offering advice and information translated into foreign languages as and when appropriate. Any letter relating to enforcement will include an offer to discuss the matter further if the recipient so wishes. Where information and advice leaflets or a digest of the law or the Council's enforcement procedures are available, we will make these accessible to people or businesses which may be affected by the Council's enforcement activities. We will seek to increase the range of this sort of literature so that advice and information is available to everyone having dealings with the District Council in its role as an enforcer.
- 6.2 The District Council will publicise this enforcement policy in order to ensure that as many stakeholders as possible are aware of it. This publicity will take the form of abstracts of the policy being printed and distributed, the policy being posted on the Council's web site and groups representing interested parties being made aware of it.

7.0 SPECIAL INTERESTS OF STAKEHOLDERS

- 7.1 The District Council will attempt to take account of any special needs that stakeholders in its services may have. This includes, but not exclusively:
- Making inspection visits outside of normal office hours to businesses which do not trade within those hours eg restaurants, takeaways, nightclubs, etc;
 - Providing an out of hours emergency telephone number on which complaints can be registered at any time of the day or night;
 - Offering a limited out of hours noise nuisance investigation service;
 - Providing advice and information on enforcement related matters in languages other than English.

8.0 TRAINING AND APPOINTMENT OF OFFICERS

- 8.1 All officers undertaking enforcement duties will be suitably trained and qualified in order to ensure that they are fully competent to carry out their enforcement activities.
- 8.2 All such officers will be or will have been authorised by the Council to exercise powers under specific statutes and subordinate legislation. The level of authorisation for each officer will be determined by their qualifications, experience and competence having regard to any relevant national guidelines. It is considered appropriate that the level of authorisation is reviewed annually during the corporate appraisal process. Authorisations will be in writing and in a form which can be shown on request. A copy of an officer's authorisation will be held

in their personal file.

- 8.3 The District Council supports the principle of continuing professional development and will ensure that officers are given additional in-post training to maintain up-to-date knowledge and skills.

9.0 MANAGEMENT SYSTEMS

- 9.1 In order to ensure consistency of practice and compliance with legal requirements and, where appropriate, Statutory Codes of Practice, management control measures are operated. This is based on an appropriate level of delegation to relevant officers. These are as follows:

- a) All correspondence is signed by an appropriately qualified and authorised officer and checked by his/her line manager before despatch.
- b) All prosecutions and formal cautions are agreed in line with the Council's Scheme of Delegation.
- c) Practical issues are regularly and openly discussed at team meetings.
- d) Shadowing of officers where necessary.
- e) Training requirements are identified during the Employee Appraisal Process.

- 9.2 The District Council will maintain management systems to monitor the quality and nature of enforcement actions undertaken so as to ensure, as far as is reasonably practicable, a uniform and consistent approach, which follows local or national guidance if mandatory.

10.0 EQUALITIES

- 10.1 The application of this Enforcement Policy will be in accordance with the Council's Race, Disability and Gender Equality Schemes and the Equality and Diversity Action Plan. The use of an impact needs assessments process will inform service delivery under this Policy and will be subject to ongoing monitoring during the life of this Policy within the framework of the applicable legislation to each enforcement issue.

11.0 REVIEW OF THE POLICY

- 11.1 This policy document will be reviewed as appropriate in response to changes in the law and in guidance and, in any event, every 3 years. Where the policy can be improved by being amended it will be amended. Any changes which significantly affect the Council's approach to enforcement and prosecution will be taken to the Council's Cabinet for approval.

LIST OF CURRENT SERVICE ENFORCEMENT POLICIES

Environmental Health:

- **Environmental Health Statement of Enforcement Policy.**

Finance and Information Service:

- Council Tax Recovery Policy
- Non Domestic Rates Recovery Policy
- Overpaid Benefit Recovery Policy
- Housing and Council Tax Benefits Prosecution/Sanctions Policy
- Housing and Council Tax Benefit Code of Conduct and Procedures for Investigation and Visiting Officers

Planning:

- Implementation of enforcement in line with other statutory and regulatory requirements.