

# NORTH DEVON COUNCIL – CORPORATE ENFORCEMENT POLICY

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## **1. Introduction and Scope of Policy**

1.1 Fair and effective enforcement is essential to protect the health, safety and economic interests of the public, businesses and the environment. Decisions about enforcement action carry serious implications for all involved. The purpose of this Policy is to provide guidance to ensure:

- Decisions about enforcement action are fair, proportionate and consistent
- Officers apply current Government guidance and relevant codes of practice
- Everyone understands the principles that are applied when enforcement action is considered.

This policy is a general statement of the approaches to be taken with regard to enforcement and works carried out in default, and will assist in making decisions. Individual service areas may have their own operational procedures and guidance which set out how the various enforcement tools available to the Council may be used.

1.2 This Enforcement Policy applies to the regulatory services provided by North Devon District Council and is intended to reflect the generic position. Regulatory departments may have adopted unique policy or strategy documents and this policy is designed to provide the overarching position on enforcement and compliance with the authority.

The North Devon District Council Constitution sets out the functions delegated contained within:

Annexe 1 – the Scheme of Delegation to Committees/Powers and Duties of Committees.

Annexe 2 – Officer Scheme of Delegation sets out those delegated to Officers. The Council ensures that any officer provided with authority in accordance with its Officer Delegation Schemes (and where relevant its documented procedure surrounding food law matters) is suitably qualified; experienced and competent to carry out the range of tasks and duties they are required to perform.

Annexe 3 – Powers and Duties delegated to Councillors; and

Annexe 4 – The schemes for joint Committee operation, that the Council operates and which describes the regulatory functions delegated within the North Devon District Council.

1.3 This Policy relates to the following regulatory functions as they are described in the Constitution. It is important to note that the majority of actions will be initiated by authorised officers without reference to the Council's Committee Process. The competence of our officers is monitored and recorded through a number of means such as evidence of qualification; the nationally recognised Regulators Development Needs Assessment tool [RDNA]; regulatory competency assessments for official food control enforcement as required by the Food Standards Agency's [FSA] Food Law Code of Practice; and the internal annual Council appraisal system and review. The Council will ensure that all authorised officers receive relevant structured on-going training. Training will cover such matters as new legislation and procedures, and technological developments relevant to businesses subject to their control. The requirements for minimum on-going training based upon the principles of Continuing Professional Development (CPD) will be met.

1.4 This policy implements the generic enforcement processes utilised within the service areas of the North Devon District Council. These service areas include Licensing, Environmental Protection, Environmental Enhancement, Environmental Health, Housing, Anti-Social Behaviour, Crime and Disorder, Waste and Recycling, Planning, Building Control, Debt recovery and Revenues and Benefits. Each service area covers distinct regulatory functions which are, in the main, governed by UK legislation and regulation. This Policy is designed to be generic in the provision of the enforcement procedures used and does not set out the provisions of each regulatory department in full. Service areas may make available codes of practice, policy or strategy on request, note however enforcement is mainly preserved in law.

1.5 The enforcement of contraventions of parking and vehicular offences and any associated breach of legislation or regulation are contained in the exercise of the Council's powers of the Road Traffic Regulation Act 1984 and the Parking Act 1989 and the Traffic Management Act 2004 and The Civil Enforcement of Parking Contraventions (Guidelines on level of Charges) (England) Order 2007 and the North Devon (Off-Street Parking Places) Order. For specific details of parking requirements please see the website of the Council and how to challenge and appeal enforcement procedures, for example Penalty Charge Notices. These processes are clearly set out or in the alternative make appropriate request to the Car Parks service area. The Service area

may make available parking regulations on request, note however enforcement is mainly preserved in law hence covered by this policy

1.6 This Policy supports all of the key strategic priorities in North Devon District Council's Corporate Plan 2020-24. Our corporate plan sets out our medium-term ambitions over the next four years and future potential for our district. As a council we have an ambitious range of priorities and actions that are necessary to deliver them.

- Achieving financial security
- Becoming focused on delivering the best for our citizens
- Cherish and protect our environment
- Plan for North Devon's future.

1.7 This Policy also provides the strategic framework to demonstrate that North Devon District Council is complying with its duties under the Legislative and Regulatory Reform Act 2006. This requires that the Council in the discharge of some of its regulatory functions is to maximise efficiencies in the way Councils regulate in order to reduce the burdens on business whilst maintaining standards. The Policy is central to the way the Council deploys its regulatory services and so it ensures "that proper arrangements are in place to enable resources to be used efficiently and effectively".

1.8 Any reference to an Act or Regulations or other legislation shall be deemed to include that Act or Regulations or other legislation as amended, extended or re-enacted from time to time and includes any subordinate legislation for the time being in force made under it.

## **2. Legal Status of this Policy**

2.1 This Policy was approved and adopted by North Devon District Council's Strategy and Resources Committee on [DATE]. Minor iterations of the Policy which have been subsequently approved are summarised in the Document Control Version table at the start of the document.

2.2 This Policy is intended to provide guidance for officers, businesses, consumers and the public. Officers operating in a regulatory capacity for the Council are expected to act in accordance with this Policy and any failures to do so will be investigated and addressed through the Council's Employee Code of Conduct. It does not affect the discretion of the Council to take legal proceedings where this is considered to be in the public interest.

2.3 The adoption and application of the Policy demonstrates the Council's compliance with the requirements of section 21 of the Legislative and Regulatory Reform Act 2006 and is a significant part of evidencing our compliance with the Regulators' Code.

2.4 The National Local Authority Enforcement Code provides direction to local authorities on how to enforce health and safety law. This Policy demonstrates the Council's compliance with this statutory Statement.

### 3. Scope and Meaning of Enforcement

3.1 'Enforcement' includes any action taken by officers aimed at ensuring that individuals or businesses that the law places duties upon, (including employers, the self-employed, employees and others) are returned to compliance or encouraged to comply with the law. This is not limited to formal enforcement action such as prosecution.

3.2 In certain circumstances, the Council will seek to raise awareness and increase compliance levels by publicising unlawful trade practices or criminal activity. Where appropriate the results of specific court cases may also be published.

3.3 The Council places great importance on the consistent use of enforcement action and does not measure itself by the quantities of enforcement action it takes and so does not set targets. The Council does not take enforcement for enforcement's sake. Enforcement is distinct from civil claims for compensation and is not undertaken in all circumstances where civil claims may be appropriate, or to assist such claims.

### 4. General Principles

4.1 Prevention is better than cure and the Council's role, therefore, involves actively working with businesses and residents to advise on and assist with compliance.

4.2 The principles of regulatory functions are stated in Section 2(3) of the Legislative and Regulatory Reform Act 2006. This states that regulatory activities should be carried out in a way that is **transparent, accountable, proportionate** and **consistent**. It also states that regulatory activities should be **targeted** only at cases in which action is needed.

4.3 Further details about how to meet these principles is contained in the Regulators' Code published in 2013 by the Department for Business, Innovation and Skills. Compliance by regulatory officers with this Policy is a significant factor in demonstrating that the Council is meeting the requirements of the Regulators' Code.

4.4 Where it is considered that formal action is necessary, each case will be considered on its own merits. Decisions will not be influenced by issues such as ethnicity or national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender. Such decisions will not be affected by improper or undue pressure from any source.

4.5 Where practicable the Council will take into account the views of any victim, injured party or relevant person to establish the nature and extent of any harm or loss, and its significance, in making the decision to take formal action.

4.6 North Devon District Council is a public authority for the purposes of the Human Rights Act 1998. It will, therefore, apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

4.7 This Enforcement Policy helps to promote efficient and effective approaches to regulatory inspection and enforcement such as targeting enforcement actions, which improve regulatory outcomes without imposing unnecessary burdens. The Policy is also intended to provide a framework which ensures that similar social, environmental and economic outcomes are achieved by less burdensome means than direct regulation. This is in accordance with the Regulators' Code.

4.8 In exceptional instances the Council may conclude that a provision in the Code is either not relevant or is outweighed by another provision. The Council will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and be documented.

## **5. Resourcing Effective Regulation**

Note: The Covid pandemic resulted in the cancellation of inspection plans for 2020/21 and 2021/22.

5.1 The Regulators' Code, section 3, requires that 'Regulators should base their regulatory activities on risk'. The services covered by the Regulators Code will adopt a plan which will identify:

- The frameworks used to identify the risks of relevant businesses which are subject to programmed inspections
- A quantification of the predicted numbers of inspections required based on the risk assessment framework and the resources necessary to deliver these
- A summary of service standards and performance targets for the respective services.

5.2 Currently the service areas which publish risk based annual inspection plans are for:

- Food hygiene inspections
- Inspections based on HSE LAC 67 The LAC provides LAs with guidance and tools for priority planning and targeting their interventions, enabling them to meet the requirements of the National Local Authority Enforcement Code (as detailed in para 8.1 below)
- Industrial pollution control.

## **6. Conduct of Investigations**

6.1 All investigations will be carried out under the following legislation and in accordance with any associated guidance or codes of practice, in so far as they relate to North Devon District Council:

- Police and Criminal Evidence Act 1984
- Criminal Procedure and Investigations Act 1996
- Regulation of Investigatory Powers Act 2000
- Criminal Justice and Police Act 2001
- Local Government Act 1972
- Human Rights Act 1998.

6.2 These Acts and associated guidance control how evidence is collected and used and give a range of protections to citizens and potential defendants.

6.3 The Council's authorised officers will also comply with the requirements of the particular legislation under which they are acting, and with any associated national and local guidance or codes of practice.

6.4 Many pieces of legislation enforced by the Council enable officers to demand information which is essential in order to serve notices or summons correctly. When an officer is uncertain about the information it holds, or where certain details are unknown, they will serve requests for information on those that have an obvious connection to the case, requiring for instance ownership confirmation, or perhaps company or premises details. Failure to comply with an Information Notice may hinder the Council in discharging its duties and is regarded as a serious offence, which will be pursued.

6.5 During the course of an investigation/enforcement action an Officer may come across a person whose welfare may raise concerns. Whether or not the subject has a direct connection to the case under investigation, it remains the duty of Officers to ensure that these concerns are properly logged and the Council's Safeguarding Policy is adhered to.

6.6 Use of Section 222 of the Local Government Act 1972, where the Council has the ability to prosecute or defend legal proceedings where it is expedient for the promotion or protection of the interests of the inhabitants of our area.

6.7 Where there are shared enforcement roles e.g. Devon and Cornwall Police, the Health and Safety Executive (HSE), the Environment Agency, Devon and Somerset Fire and Rescue Service etc., officers will notify the relevant enforcement agency of contraventions for which that agency is responsible.

## **7. Notifying Alleged Offenders**

7.1 If the Council receives information (for example from a complainant) that may lead to enforcement action against a business or individual it will notify that business or individual as soon as practicable of any intended enforcement action, unless this could impede an investigation or pose a safety risk to those concerned or the general public.

7.2 During the progression of enforcement investigations (prior to any convictions), business proprietors or individuals and witnesses will be kept informed of progress. Confidentiality will be maintained and personal information about individuals will only be released to a Court when required and in accordance with the Data Protection Act 2018 and the UK General Data Protection Regulation (or subsequent amendments).

## **8. Dealing with Non-Compliance and Deciding What Level of Enforcement Action is Appropriate**

### **Consideration of risk in enforcement action**

8.1 The Regulators' Code requires that regulatory activities should be based on risk. The Council uses a number of different risk models to determine the speed and frequency of our regulatory intervention;

### **Proactive Inspections of Businesses**

- Proactive food inspections are based on the guidance in the Food Law Code of Practice
- Proactive health and safety inspections are based on guidance in the National Local Authority Enforcement Code
- Proactive environmental permit inspections are based on Environmental Permitting General Guidance.

Licensed Premises/activities are currently inspected as part of a sequential programme which is based upon factors such as risk, licence periods, complaints received etc. In some instances legislation governs inspections on grant/renewal and on a periodical basis for example zoos and animal activities.

### **Planned Inspections, Interventions and Surveillance**

These form an important and fundamental part of the Council's monitoring regime to ensure we meet our statutory duties with respect to our Environmental Health and wider public protection responsibilities.

Planned inspections will be based on the requirements set out by Government and its relevant departments and agencies, and we will have close regard to any relevant Codes of Practice, statutory guidance and advice issued by them. For example the Food Standards Agency's Food Law Code of Practice and the Health and Safety Executive's (HSE) National Local Authority Enforcement Code.

When conducting enforcement visits, officers will make their identity known, carry and show their formal written authorisation when requested except in circumstances where this might compromise the investigation.

Regulation of Investigatory Powers Act 2000 sets out the authorisation requirements for all covert surveillance done by public authorities where that surveillance is likely to result in the obtaining of private information about a person. Surveillance, for the purposes of RIPA, includes monitoring, observing or listening to persons, their movements, conversations or other activities and communications. It may be conducted with or without the assistance of a surveillance device and includes the recording of any information obtained.

## **Responding to Allegations of Non-Compliance**

The Council responds to many complaints a year. The details of the speed and nature of response are usually dependant on the relative risk of the allegation and are available on request for the separate service standards for each of the service areas.

8.2 There are a large number of potential enforcement options. The level of the action taken varies from no action through to proceedings in Court, depending on increasing seriousness

8.3 In assessing what form of enforcement action is the most necessary and proportionate, consideration will be given to the following potential intervention options:

### **Levels of enforcement action**

- No action
- Informal Action and Advice (to include verbal/written warnings);
- Voluntary undertakings
- Fixed Penalty Notices
- Penalty Charge Notices
- Formal Notices
- Forfeiture Proceedings
- Seizure of goods/equipment
- Works in default following failure to comply with a formal notice
- Emergency works in the event of imminent risk
- Injunctive Actions
- Refusal/suspension/revocation of a licence
- Simple Caution
- Civil penalties
- Prosecution.

### **Relevant Considerations**

- The seriousness of compliance failure
- Past performance and current practice
- The risks being controlled
- Legal, official or professional guidance
- Local priorities of the Council
- Business size and capacity

- Views of a Primary Authority (where one exists)
- Achieving the appropriate regulatory outcome(s) (para 8.9)
- Nature and quality of evidence gathered during associated investigation
- Public Interest test.

8.4 In most circumstances a process of escalation will be used until compliance is achieved. The intervention options available to regulatory officers and their relative positions in the scale of intervention are described in more detail in Appendix B of this Policy.

8.5 When dealing with incidents of non-compliance officers are expected to clearly explain the cause of non-compliance; the actions required to rectify the non-compliance; the decision taken by the Council as a result of the non-compliance and the reasons for each of these.

8.6 Effective communication requires a two-way flow of information. Regulatory officers are expected to behave in a way which enables the most effective possible dialogue with all relevant parties in relation to advice given, actions required, and decisions taken in relation to non-compliance. The only exception to this is where immediate enforcement action is required to prevent or respond to a serious breach, or where the dialogue would be likely to defeat the purpose of the enforcement action.

8.7 The Council recognises from its consultation with the business community that that one of the biggest barriers to compliance is a fear of business operators to openly discuss matters of compliance with regulatory officers. This Policy commits that the Council will not automatically trigger enforcement action where those who are regulated show a clear willingness to resolve non-compliance.

8.8. Ultimately, it is the outcome of any enforcement action that is the measure of whether the activity of the regulator has been positive or not. In considering the most appropriate enforcement action the regulator should be seeking to apply the principles of the Legislative and Regulatory Reform Act 2006.

8.9. The Council will pay particular attention to the management chain and the role played by individual directors and managers. Where necessary the Council will take action where it finds that an offence was committed with the consent or connivance of directors or managers or was attributable to neglect on their part. Where appropriate, the Council will seek disqualification of directors under the Company Directors Disqualification Act 1986.

## **9. Tests for Prosecution, Simple Caution or Civil Penalties**

### **The Evidential Test**

9.1 Where the Investigating Officer concludes that prosecution, simple caution or civil penalty is the most necessary and proportionate enforcement action the Council applies

two 'tests' to determine whether this is viable and appropriate. It follows guidance set by the Crown Prosecution Service when applying the tests. This is contained in the Code for Crown Prosecutors.

9.2 A prosecution, caution or civil penalty will only be progressed when the case has passed both the evidential test and the public interest test. The principles outlined apply equally to the other types of formal enforcement action that are available.

9.3 The Council must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. A realistic prospect of conviction is an objective test that means that a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a separate test from the one that the criminal courts themselves must apply. A jury or Magistrates' Court should only convict if it is sure of a defendant's guilt.

### **Outcomes of Enforcement Action**

- Aim to change the behaviour of the offender
- Aim to eliminate financial gain or benefit from non-compliance
- Consider what is appropriate for any particular offender and regulatory issue, such as the risk of punishment and public stigma associated with a criminal conviction
- Be proportionate to the nature of offence and harm caused
- Aim to restore the harm caused by the non-compliance
- Deter future non-compliance.

### **The Public Interest Test**

9.4 The public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. The Council will balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the suspect. Some factors may increase the need to prosecute but others may suggest that another course of action would be better. The message sent to the community by a decision to prosecute or not and its potential to affect future levels of compliance will be given consideration.

### **Civil Penalties**

9.5 A specific process has been established to determine if it is appropriate in cases involving housing law whether to utilise civil penalties and, if so, to calculate the civil penalty to be applied. The last version of the civil penalty sanction calculation was agreed by the Full Council on 20<sup>th</sup> November 2019 and will be updated appropriately on review.

## **10. Who Decides What Enforcement Action Is Taken**

10.1 Decisions about the most appropriate enforcement action to be taken are based upon professional judgment, legal guidelines, statutory codes of practice and priorities set by North Devon District Council and/or Central Government.

10.2 In order to ensure that specific decisions to either prosecute, issue a simple caution or issue a civil penalty are robust and consistent the Council has developed an enforcement decision process. This process requires the investigating officer(s) to take due consideration of the evidential and public interest tests before submitting the case to their Head of Service with a recommendation to approve prosecution.

10.3 Where appropriate, decisions about enforcement will involve consultation between or approval from:

- Investigating Officer(s)
- Senior Managers
- Legal Services.

10.4 The decision to prosecute or issue a civil penalty must be ratified by the relevant Head of Service.

10.5 Any enforcement decisions about activities directly operated by North Devon District Council must be entirely free from any conflicts of interest. All decisions will be clearly evidenced and any of the actions under section 8 above will be signed off at Chief Executive or Deputy Chief Executive level. The power to institute, prosecute, defend, and appear in any legal proceedings (including tribunals, hearings and inquiries) on behalf of the Council and to take such decisions affecting such matters as are necessary rests with the Senior Solicitor and Monitoring Officer.

## **11. Liaison with Other Regulatory Bodies and Enforcement Agencies**

11.1 Where appropriate, enforcement activities will be coordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement.

11.2 It is a statutory requirement that before any legal action is initiated against a business that has signed up to a Primary Authority partnership, that the Primary Authority is consulted about the proposed legal action. A Primary Authority partnership is a legally binding agreement between a business and a local authority that is endorsed by the Office for Product Safety and Standards (OPSS) of the Department for Business Energy & Industrial Strategy (BEIS). The Primary Authority provides assured advice, giving businesses consistency of regulation and reducing duplication of inspections and paperwork. Compliance with published inspection plans are observed as required.

11.3 Details of all Primary Authority partnerships are available on the Primary Authority Register website. Details of the statutory notification procedures when specified

enforcement action is proposed against a business in a registered primary authority partnership are contained in section 9 of the Primary Authority Handbook. North Devon Council fully endorses the PAP principle. It is fortunate to have built a number of these partnerships with businesses and actively promotes the opportunity for further partnerships of this nature. There are charges for the work completed for its Primary Authority partners, for which further detail can be provided on request.

11.4 Where an enforcement matter affects a wide geographical area beyond the boundaries of North Devon District Council or involves enforcement by one or more other local authorities or organisations, where appropriate, all relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activity coordinated with them.

11.5 The Council will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies. Data sharing will be in accordance with the principles of the Data Protection Act 2018 and the General Data Protection Regulations. Examples include:

- Government Agencies
- Police Forces
- Fire Authorities
- Statutory undertakers
- Other Local Authorities.

## **12. Considering the Views of Those Affected by Offences**

The Council exercises its regulatory powers on behalf of the public at large and not just in the interests of any particular individual or group. However, when considering the public interest test, the consequences for those affected by the offence, and any views expressed by those affected will, where appropriate, be taken into account when making enforcement decisions.

## **13. Protection of Human Rights**

This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is had to the following:

- Right to a fair trial
- Right of respect for private and family life, home and correspondence.

## **14. Monitoring of the Enforcement Policy**

14.1 The Council uses a number of processes to monitor compliance with this policy and will continue to develop these.

14.2 The Council monitors performance indicators that provide a reflection of the quality of the services covered by this policy. These indicators are reviewed annually and where appropriate published in the service plans produced by each relevant Head of Service.

## **15. Review of the Enforcement Policy**

15.1 This policy will be reviewed every three years, but minor amendments or changes in the law will be amended at the discretion of the Chief Executive or Deputy Chief Executive, and brought to the attention of the Chairman of the Strategy and Resources Committee.

15.2 The enforcement policy covers a diverse spectrum of our services. A copy of this policy will be published on a core page of the Council's website and linked to service-specific webpages to which it relates. The core page on which the Policy will be displayed is our Business Compliance and Regulation page.

## **16. Comments and Complaints**

16.1 Where you are affected by a regulatory action with which you disagree, the Council would always encourage dialogue between all parties to ensure that the general principles of enforcement stated in section 4 and the appropriate level of enforcement action described in section 8 can be achieved.

16.2 Any appeals against a regulatory decision, failure to act in accordance with the Regulators' Code (where appropriate) or conduct of staff carrying out regulatory activity on behalf of the Council should be made in the first instance to the Strategic Director of the relevant service. Appeals can be made to the relevant Head of the relevant service via the corporate complaint process.

16.3 Any appeals against formal legal notices issued by the Council will need to be made through the process described on the notice. There are usually deadlines by which any appeal against a formal legal notice must be submitted and so close attention should be given to the instructions in the appeal notes.

## **ANNEX A – Bibliography**

### **Abbreviations**

PACE – Police and Criminal Evidence Act

NDR – Non-Domestic Rates

RIPA – Regulation of Investigatory Powers Act

The Code – The Code for Crown Prosecutors

LA – Local Authority

LGO – Local Government Ombudsman

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Proceeds of Crime Act 2002  
Code for Crown Prosecutors', October 2018  
Primary Authority Guidance, LBRO, 2009  
Work Related Deaths, a Protocol for Liaison, 09/11  
The Civil Enforcement or Parking Contraventions (England) General Regulations 2007  
Road Traffic Regulation Act 1984  
Parking Act 1989  
Traffic Management Act 2004  
North Devon (Off-Street Parking Places) Order [as amended]

## **ANNEX B Overview of Potential Regulatory Interventions**

### **1. Introduction**

Where the law has been contravened, there is a range of enforcement options available. Under normal circumstances, a process of escalation will be used until compliance is reached. Exceptions would be where there is a serious risk to public safety or the environment or the offences have been committed deliberately, repeatedly or negligently; or involve deception; or where there is significant economic detriment.

## **2. No Action**

In certain circumstances, contraventions of the law may not warrant any action. This can be where the cost of compliance to the offender outweighs the detrimental impact of the contravention, or the cost of the required enforcement action to the Council outweighs the detrimental impact of the contravention on the community. A decision of no action may also be taken where formal enforcement is inappropriate in the circumstances, such as where a trader has ceased to trade, or the offender is elderly and frail and formal action would seriously damage their wellbeing. In such cases, the Council will advise the offender of the reasons for taking no action. The decision to take no action rests exclusively with the Council and for example, the cost benefit equation described above will not rule out formal action if it is judged in the Public Interest.

## **3. Informal Action and Advice**

3.1 For minor breaches of the law, the Council may give verbal or written advice. It will clearly identify any contraventions of the law and give advice on how to put them right, including a deadline by which this must be done. The time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of the non-compliance.

3.2 Sometimes the Council will advise offenders about 'good practice', but it will clearly distinguish between what they must do to comply with the law and what is advice only.

3.3 Failure to comply could result in an escalation of enforcement action.

## **4. Voluntary Undertakings**

The Council may accept voluntary undertakings that breaches will be rectified and/or recurrences prevented. It will take any failure to honour voluntary undertakings very seriously and enforcement action is likely to result.

## **5. Fixed Penalty Notices**

5.1 Certain offences are subject to fixed penalty notices where prescribed by legislation. They are recognised as a low-level enforcement tool and avoid a criminal record for the defendant. Where legislation permits an offence to be dealt with by way of a Fixed Penalty Notice (FPN), the Council will normally administer a FPN on a first occasion, without issuing a warning. The decision about whether to issue an FPN having witnessed an offence will have regard to the appropriate level of enforcement action and the desired outcomes of the enforcement action described above.

5.2 A Fixed Penalty Notice (FPN) is essentially a fine which can be issued for certain low level offences - as prescribed by specific pieces of legislation.

5.3 The issue of a FPN provides the recipient the opportunity of discharging any liability to conviction for the alleged offence by paying the fine – and can be escalated to a court hearing in the event of non- payment.

## **6. Penalty Charge Notices**

Penalty Charge Notices (PCN) are prescribed by certain legislation as a method of enforcement by which the offender pays an amount of money to the regulator in recognition of the breach. Failure to pay the PCN will result in the offender being pursued in the County Court for non-payment of the debt. A PCN does not create a criminal record and the Council will normally issue a PCN without first issuing a warning.

## **7. Formal Notice**

7.1 Certain legislation allows notices to be served requiring the recipient to take specific actions or cease certain activities. Notices may require activities to cease immediately where the circumstances relating to health, safety, environmental damage or nuisance demand. In other circumstances, the time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of the non-compliance.

7.2 All notices issued will include details of any applicable Appeals Procedures.

7.3 Certain types of notice allow works to be carried out in default. This means that if a notice is not complied with (a breach of the notice) the Council may carry out any necessary works to satisfy the requirements of the notice. Where the law allows, the Council may then charge the person / business served with the notice for any cost incurred in carrying out the work. Whenever the urgency of the notice allows, the Council will ensure any works required in default are achieved, economically, e.g. by obtaining multiple competitive quotes for the work, unless it is a matter of urgency.

## **8. Action Taken by Agreement**

Schedule 3 of the Housing Act 2004 contains a specific provision which enables the local authority to agree to undertake the work required under a Housing Improvement Notice, with the recipient of the Notice. All expenses for the work must be met by the recipient of the Notice.

## **9. Forfeiture Proceedings**

This procedure may be used in conjunction with seizure and/or prosecution where there is a need to dispose of goods in order to prevent them re-entering the market place or being used to cause a further problem. In appropriate circumstances, the Council will make an application for forfeiture to the Magistrates Courts.

## **10. Seizure**

Certain legislation enables authorised Officers to seize goods, equipment or documents for example unsafe food, sound equipment that is being used to cause a statutory noise nuisance, unsafe products or any goods that may be required as evidence for possible future court proceedings. When the Council seizes goods, it will give the person from whom the goods are taken an appropriate receipt.

## **11. Works in Default / Direct Action**

11.1 The Council will normally only directly carry out works where the recipient of a legal notice has defaulted on the work required and when;

- There is an imminent risk to health or safety/immediate danger to the public such that the consequences of not taking immediate and decisive action would be unacceptable, or
- Statute does not permit prosecution for non-compliance with a statutory notice, or;
- There are other circumstances such that carrying out the work in default is the best course of action (for example the recipient of the Notice is a vulnerable person and considered incapable of organising the work necessary to comply with the statutory Notice).

11.2 This course of action will be considered irrespective of any prosecution action that might also be undertaken for the same offence. The action must be approved by the relevant manager with budget responsibilities. The costs of the works required, plus the Council's reasonable administrative charges will be charged to the responsible party and recovered through the civil court.

11.3 The administrative charges levied will be in accordance with the fees approved by the relevant Committee and which are reviewed annually and published as part of the Council's annual list of fees and charges.

11.4 Charges will be made for abortive costs in preparing to carry out any work in default where an order has been placed and the owner then carries out the work required.

11.5 Where there is no prospect of the revenue or capital costs of the work in default being reclaimed, the debt should, if practicable, be placed on the relevant property as a land charge. In some cases, the charge will need to include annual interest – the relevant interest rates are also included in the annual list of fees and charges.

## **12. Emergency Works**

12.1 Emergency enforcement or stop powers will only be used where there is an imminent risk of serious harm or where there is explicit provision for the use of the powers within primary legislation.

12.2 In such circumstances the Council will take whatever remedial action it considers necessary to remove the imminent risk. As a matter of principle, the action taken will be the minimum necessary to achieve the satisfactory mitigation of the risk, based on the best information available at the time of making the decision.

### **13. Injunctive Actions**

13.1 In certain circumstances, for example, where offenders are repeatedly found guilty of similar offences or where it is considered that injunctive action is the most appropriate course of enforcement, then injunctive actions may be used to deal with repeat offenders, dangerous circumstances or significant consumer detriment.

13.2 Criminal Behaviour Orders (CBO) and Community Protection Notices (CPN). Where the non-compliance under investigation amounts to anti-social behaviour such as persistent targeting of an individual or a group of individuals in a particular area then, following liaison with all relevant agencies, where appropriate, a CPN or CRIMBO may be sought to stop the activity.

### **14. Refusal, Suspension and Revocation of Licence**

14.1 The Council issues a number of licences and permits and has a role to play in ensuring that appropriate standards are met in relation to licences issued by other agencies. Most licences include conditions that require the licence holder to take steps to ensure that, for example, a business is properly run. Breach of these conditions may lead to a review of the licence that may result in its suspension revocation or amendment.

14.2 When considering future licence applications, the Council may take previous breaches and enforcement action into account.

14.3 The Licensing Team issues a number of licence and permits under a wide range of legislation. Specific powers are contained within each piece of legislation that permits the Licensing Authority to refuse to grant a licence application or to take action to suspend or revoke once a licence is in place.

14.4 Under the Licensing Act 2003, an application for a premises licence must be granted unless representations are received from any of the responsible authorities or any other persons. If representations are received, the application will be determined by the Licensing and Community Safety Sub-Committee which has the power to grant the application, grant with conditions or refuse whole or part of the application.

14.5 Under the Gambling Act 2005, applications for a premises licence will be granted unless relevant representations are received from the responsible authorities or interested parties. The Licensing and Community Safety Sub-Committee will determine any application with a relevant representation. The Licensing and Community Safety

Sub-Committee has the power to either grant or refuse the application. If the application is granted, the Licensing and Community Safety Sub-Committee may attach conditions to the licence and/or exclude a default condition.

14.6 Under the Licensing Act 2003, where a review of a premises licence application is received from a responsible authority or any other persons, the application must be determined by the Licensing and Community Safety Sub-Committee. The powers available to this Sub-Committee are:

- To modify the conditions of the licence
- To exclude a licensable activity from the scope of the licence
- To remove the designated premises supervisor
- Suspend the licence for a period not exceeding 3 months
- Revoke the licence
- Issue a warning letter
- Take no action.

14.7 Under the Gambling Act 2005, where a review application is received from a responsible authority or an interested party, the application must be determined by the Licensing and Community Safety Sub-Committee. The powers available to the Licensing Sub-Committee are:

- Revoke the licence
- Suspend the licence for a period not exceeding 3 months
- Exclude a default condition or remove or amend an exclusion
- Add, remove or amend any conditions
- Take no action.

14.8 In relation to hackney carriage or private hire legislation, all decisions to refuse or revoke any hackney carriage or private hire licence will be made by the Licensing and Community Safety Sub-Committee. The power to suspend a hackney carriage or private hire licence has been delegated to Officers. Each case will be decided on its own merits.

14.9 If it is in the interests of public safety, any decision to revoke or suspend a hackney carriage or private hire driver's licence may take immediate effect.

14.10 In relation to other areas of licensing legislation, any decision to refuse or revoke any application or licence will be made by the Licensing and Community Safety Sub-Committee or utilising the delegate powers of Officers where the circumstances are straightforward, for example an applicant simply has not met set criteria.

## **15. Simple Caution**

15.1 A Simple Caution includes a formally documented admission of guilt, but is not a form of sentence, nor is it a criminal conviction.

15.2 For a Simple Caution to be issued a number of criteria must be satisfied:

- Sufficient evidence must be available to prove the case
- The offender must admit the offence
- It must be in the public interest to use a Simple Caution
- The offender must be 18 years or over.

15.3 Details on the Simple Caution process are contained in the Ministry of Justice - Simple Caution for Adult Offender guidance (MoJ Guidance).

15.5 Furthermore, North Devon District Council Policy is that the offender should not have received a simple caution for a similar offence within the last two years.

15.5 A record of the Caution will be kept on file for five years. If the offender commits a further offence, the Caution may influence our decision to take a prosecution. If during the time the Caution is in force the offender pleads guilty to, or is found guilty of, committing another offence anywhere in England and Wales, the Caution may be cited in court, and this may influence the severity of the sentence that the court imposes.

## **16. Civil Penalty**

16.1 Civil penalties were introduced for housing related offences in the Housing & Planning Act 2016. This enables local housing authorities to impose a civil penalty as an alternative to prosecution for the certain offences under the Housing Act 2004.

16.2 The maximum civil penalty is £30,000. However, the amount of penalty must be determined by the local housing authority based on the specific circumstances in each case. In determining an appropriate level of penalty, the local housing authority must have regard to statutory guidance which sets out the factors to take into account when deciding on the appropriate level of penalty.

16.3 A civil penalty can only be imposed as an alternative to prosecution. The legislation does not permit local housing authorities to impose a civil penalty and then prosecute for the same offence.

16.4 The same criminal standard of proof is required for a civil penalty as for prosecution. This means that before seeking to apply a civil penalty the authority must satisfy itself that if the case were to be prosecuted in the magistrates' court, there would be a realistic prospect of conviction i.e. that the case can be proved 'beyond all reasonable doubt'.

16.5 The Council approved a civil sanction policy at its meeting on 20<sup>th</sup> November 2019.

## **17. Prosecution**

A prosecution will normally ensue where the individual or organisation meets one or more of the following criteria:

- Deliberately, negligently or persistently breached legal obligations, which were likely to cause material loss or harm to others
- Deliberately or persistently ignored written warnings or formal notices
- Endangered, to a serious degree, the health, safety or well-being of people, animals or the environment
- Assaulted or obstructed an Officer in the course of their duties.
- In the case of Food or Health and Safety where death was a result of a breach of legislation
- Where circumstances warrant it and evidence to support a case is available the Council will prosecute without prior warning or recourse to alternative sanctions.

## **18. Immunity from Enforcement Action**

Where a breach of some planning control statute has occurred undetected, and therefore without any intervention, it can become lawful by the passage of time provided that it has not been deliberately concealed. The immunity timeframes are stated in the respective statutes and case law, but in brief are four years for unauthorised building, mining or engineering or change of use of a building to a single dwelling; ten years in any other case.

## **19. Powers of Entry**

Officers have various powers to enter private land. In some cases (most usually private dwellings) this requires giving prior notice. In many cases relating to entry into trade or business premises the officers have immediate power of entry provided that they can show that they are authorised to do so by the Council. The specifics of the powers of entry are contained within the specific statute.

## **20. Charging for Regulatory Actions**

In a limited number of statutes (currently only housing law) having served a legal notice the Council has the ability to make a reasonable charge to recover certain administrative and other expenses incurred in determining whether to serve the notice. The policy for determining when any such charges are applied will be agreed with the relevant Committee.

## **21. Proceeds of Crime**

Applications may be made under the Proceeds of Crime Act for confiscation of assets in serious cases. Their purpose 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. Applications are made after a conviction has been secured.