



General Enforcement Policy

Cabinet Approval: TO INSERT DATE

General Enforcement Policy

Contents

	Page No.
1. Introduction	3
2. Approval of the Enforcement Policy	3
3. How to obtain a copy of the Policy or make comments	4
4. General Principles	4
5. Enforcing the Law	5
6. Regulators' Code	5
7. Notifying Alleged Offenders	8
8. Covert Surveillance	8
9. Deciding what level of enforcement action is appropriate	8
10. Determining whether a Prosecution or Formal Caution is viable and appropriate	12
11. Who decides what enforcement action is taken	14
12. Reconsidering a Prosecution Decision	14
13. Liaison with other regulatory bodies and enforcement agencies	14
14. Offences	15
15. Considering the views of those affected by the offences	16
16. Actions by the Courts	16
17. Protection of Human Rights	16
18. Publicity	16
19. Complaints, Appeals and Accountability	16
20. Review of the Enforcement Policy	17

1. Introduction

- 1.1 One of North West Leicestershire District Council's principal duties is to ensure that individuals, businesses and others are meeting their statutory obligations and complying with the law relating to a range of issues from the payment of council tax to the dropping of litter and producing safe food. To achieve this, officers from the council are authorised to take enforcement action.
- 1.2 A decision about enforcement action, and in particular the decision to prosecute, has serious implications for all involved. The council applies this policy to ensure that:-
- Decisions about enforcement action are fair, proportionate and consistent.
 - Officers apply current Government guidance and codes of practice.
 - Everyone understands the principles that are applied when enforcement action is considered.
- 1.3 The purpose of this general enforcement policy is to set out what those being regulated can expect from the council when enforcement activities are undertaken.

2. Approval and Application of the Enforcement Policy

- 2.1 This policy was approved by Cabinet on DATE TO BE INSERTED.
- 2.2 This policy applies to all law enforcement duties which the council undertakes, except those undertaken by the Revenues and Benefits service. Revenues related enforcement action is detailed within a service specific Recovery Policy.
- 2.3 In addition some service areas have specific enforcement policies. Service specific policies should be read in conjunction with this policy.
- 2.4 'Enforcement' includes any action taken by Officers aimed at ensuring that individuals or businesses comply with the law. This is not limited to formal enforcement actions such as prosecution, formal cautions and the issuing of enforcement notices; it also includes, for example, activities undertaken for the purpose of checking compliance with Acts of Parliament and Regulations, and the provision of advice to facilitate compliance. Some activities undertaken for the purposes of checking compliance is fee earning e.g. building control inspection.
- 2.5 This policy helps to promote efficient and effective approaches to inspection and enforcement which improve regulatory outcomes without imposing unnecessary burdens. This policy has been produced having had regard to the Regulators' Code (RC). Requirements of the Code are explained further at section 6.

3. How to obtain a copy of the Policy or make comments

- 3.1 This policy is available in printed format at the Council Offices. It is posted on the Council's website at: www.nwleics.gov.uk and is available in other formats or on disc on request.
- 3.2 If you need any help in understanding this policy, or you would like to comment on the contents, please contact us by:
- telephoning 01530 454545
 - e-mailing ehealth@nwleicestershire.gov.uk
 - writing to the Director of Services, North West Leicestershire District Council, Council Offices, Coalville, Leicestershire, LE67 3FJ

4. General Principles

- 4.1 Each set of circumstances is unique and must be considered on its own merits. However, there are general principles that apply to the way each case will be approached. The principles of good enforcement contained in the Enforcement Concordat produced by the Cabinet Office have been formally agreed and adopted by the council.
- 4.2 Authorised officers must be fair, independent and objective and must not let any personal views about issues such as ethnic or national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender influence their decisions. They must not be affected by improper or undue pressure from any source.
- 4.3 All authorised officers will have regard to the Policy and take action which is proportionate to the risk and to the seriousness of any breach of legislation where appropriate. In most circumstances officers have a range of actions available to facilitate compliance ranging from an educational and advisory approach to recommending legal proceedings. However, in certain circumstances legislation is prescriptive and this will limit the discretion of the Authorised Officer. In some circumstances persistent breaches will result in formal action being taken for what would normally be regarded as less serious contraventions.
- 4.4 Consideration will be given to the particular interests of customers including business owners, employees and the public. For example, where the hours of operation of a business do not coincide with normal office hours, we will endeavour to agree a mutually acceptable time or visit during the business's normal trading hours. Similarly, where English is not spoken as a first language, and there is particular difficulty in communication, the services of a suitable translator/interpreter and the provision of information in a relevant accessible form will be considered. Where formal action is proposed, the assistance of an interpreter may be obtained to ensure fairness. There may be occasions when a relative or friend of the individual may act as an interpreter. Officers will seek to confirm that their statements and questions are clearly understood.
- 4.5 Advice and information will be available and given, and businesses, employees and the public will be encouraged to contact the council regarding relevant matters. The council retains the right to charge for advice. See fees and charges for further information.

- 4.6 All officers undertaking enforcement activities will be duly authorised under the council's scheme of delegation and will be appropriately trained.
- 4.7 All authorised officers will be made fully aware of the requirements of this Policy. Any departure from this Policy will have to be justified to, and endorsed by, the relevant Head of Service.
- 4.8 This council is committed to the Equality of Opportunity in employment and the provision of services. Accordingly, this policy will take into account all equality and diversity issues.

5. Enforcing the Law

- 5.1 The Council believes in firm but fair regulation, and its enforcement activities follow these essential principles:-

- **Transparency**

Transparency means helping individuals and businesses to understand what we expect of them and what they should expect from us.

- **Consistency**

Our advice to those we regulate will be robust and reliable and we will respect advice provided by others. Where circumstances are similar, we will endeavour to act in similar ways to other local authorities.

- **Targeting**

Targeting means making sure that, whilst all requests for service are responded to, regulatory effort is directed primarily towards those whose activities actually or potentially give rise to the most serious risks to public safety and the environment.

- **Proportionality**

Proportionality means relating enforcement action to the risks posed. Any action taken by officers will be proportionate to the seriousness of any breach. Persistent minor breaches may also be viewed as serious.

- **Accountability**

Our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient feedback and complaints procedures.

6. Regulator's Code

Specific Obligations of the Regulators Code on the Authority

- 6.1 When developing policies and operational procedures relating to the regulatory functions and activities within the scope of the Regulators' Code the council will have regard to the requirements of the Code. This Code applies to the regulatory functions listed under Part 3 of the Legislative Reform (Regulatory Functions) Order 2007. They are:

Food Standards and Safety
Environmental Protection
Housing
Animal Health and Welfare
Licensing
Public Health and Safety
Anti Social Behaviour
Consumer and Business protection

6.2 However, in certain circumstances we may conclude that a provision in the Code is either not relevant or is outweighed by another relevant consideration. We will ensure that any decision to depart from the Code is properly reasoned, based on material evidence and documented.

The council will:

6.2.1 Carry out activities in a way that supports those they regulate to comply and grow.

- The council will avoid imposing unnecessary regulatory burdens through regulatory activities. The council will choose proportionate approaches based on relevant factors including, for example, business size and capacity.
- When designing and reviewing policies the council will consider how to support or enable economic growth for compliant businesses, for example minimising the costs of compliance, improving confidence in compliance and encouraging and promoting compliance.
- The council will ensure that Authorised Officers have the necessary knowledge and skills to support those we regulate.

6.2.2 Provide simple and straightforward ways to engage with those they regulate and hear their views

- The council will have mechanism in place to engage those we regulate, residents and others to offer views and contribute to the development of policies and service standards.
- In responding to identified non-compliance the council will clearly explain what the non-compliant item or activity is, the advice being given, actions required or decisions taken, and the reasons for these. The council will provide an opportunity for dialogue in relation to the advice or decision. This does not apply where the Authorised Officer can demonstrate that immediate action is required to prevent or respond to a serious breach or where providing such an opportunity would be likely to defeat the purpose of the proposed action.
- Where the councils enforcement actions allow for an appeal an impartial and clearly explained route to appeal against a regulatory decision will be provided. The council will explain in writing any right to representation or right of appeal.
- The council will make available a clearly explained complaints procedure. The council will have a range of mechanisms to receive customer feedback. These processes are specific to each service area.

6.2.3 Base regulatory activities on risk

- The council will take an evidence based approach to determining the priority risks and will allocate resources where they would be most effective in addressing those priority risks.
- The council, when making an assessment of risk, will recognise the compliance record/history of those they regulate.
- The council will review the effectiveness of its chosen regulatory activities in delivering the desired outcomes.

6.2.4 Share information about compliance and risk

- The council will collectively follow the principle of “collect once, use many times” when requesting information from those it regulates.
- Where the law allows the council will agree secure mechanisms to share information with other regulators about businesses to help target resources and activities.

6.2.5 Ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply.

- The council will provide advice and guidance that is focussed on assisting those it regulates to understand and meet their responsibilities. Legal requirements will be distinguished from good practice.
- The council will publish guidance, and information in a clear, accessible, concise format, using media appropriate to the target audience and written in plain language.
- The council will seek to create an environment in which those it regulates have confidence in the advice received and feel able to seek advice without fear of triggering enforcement action.
- In responding to requests for advice, the council will provide the advice necessary to support compliance, and will ensure that its advice can be relied on.
- The council will have a mechanism in place to work collaboratively to assist those regulated by more than one regulator. The council will consider advice provided by other regulators and, where there is disagreement, this will be discussed with the other regulator to reach agreement.

6.2.6 Ensure their approach to the regulatory activities is transparent.

- The council will publish a set of clear service standards, setting out what those it regulates can expect from them.
- Any information published to meet the requirements of the Code will be easily accessible, including being available on the Council’s website.
- The council will have a mechanism in place to ensure that Authorised Officers act in accordance with published service standards, including the Council’s enforcement policy.

- The council will publish details of performance against service standards, including feedback from customer satisfaction surveys and data relating to complaints and appeals.

7. Notifying Alleged Offenders

- 7.1 If we receive information that may lead to enforcement action against an individual or business we will notify that individual or business as soon as is practicable of any intended enforcement action, except in the circumstances described in 7.3 below.
- 7.2 During the progression of enforcement investigations/actions, individuals, business proprietors and witnesses will be kept informed of the progress of the matter under investigation. Confidentiality will be maintained and personal information about individuals will only be released during legal proceedings when required and/or in accordance with the Data Protection Act 1998.
- 7.3 In certain circumstances, we may choose not to keep individuals, business proprietors or witnesses informed of progress if this could impede enforcement action.

8. Covert Surveillance

- 8.1 During an investigation into suspected non-compliance with legislation the council may need to undertake directed covert surveillance from time to time. This may include remote sound or video monitoring equipment as well as personal observation. When this is necessary the requirements of the Regulation of Investigatory Powers Act 2000 will be complied with.

9. Deciding what level of enforcement action is appropriate

- 9.1 A decision on enforcement action will be taken on its own merits and after full consideration of the implications and consequences of the action. While fair and effective enforcement is essential to the maintenance of law and order, a breach of criminal law may not necessarily result in enforcement action.
- 9.2 A number of factors are considered when determining what action to take. These factors are detailed in **Appendix 1 [Factors we consider when taking enforcement action]**.

Levels of enforcement action:

We will take steps to help individuals and organisations comply with their legal obligations without unnecessary expense, while at the same time taking firm enforcement action where appropriate against those who flout the law or act irresponsibly. Officers have a range of actions at their disposal in seeking to secure compliance with the law and to ensure a proportionate response to apparent offences. **The range of enforcement actions available differs between Regulatory functions.**

The level of the action taken varies from no action through to proceedings in Court. Examples of the main types of action that can be considered are shown below:-

- No Action
- Verbal Warning and/or Advice

- Written Warning and/or Advice
- Acceptable Behaviour Contracts (ABC)
- Fixed Penalty Notices (FPN)
- Formal Notices
- Anti-Social Behaviour Order (ASBO)
- Seizure
- Court Injunction
- Refusal, Revocation or suspension of a Licence
- Formal Caution
- Prosecution

i) **No Action**

In some 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 on the community, or the cost of the required enforcement action to the District 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, frail or a juvenile and formal action would seriously damage their well being. A decision to take no action must take into account the health, safety, environmental damage or nuisance implications of the contravention.

ii) **Verbal Warning and/or Advice**

For minor breaches of the law verbal advice will generally be given to the offender. We will clearly identify the contraventions of the law and give advice on how to put them right and include a deadline by which this must be done. Sometimes we will advise offenders about 'good practice', but we will clearly distinguish between what they must do to comply with the law and what is advice only.

Failure to comply could result in more severe enforcement action being taken. The time allowed must be reasonable, but must also take into account the health, safety and nuisance implications of the contravention.

iii) **Written Warning and/or Advice**

For some contraventions we will send the offender a firm but polite letter clearly identifying the contraventions, giving advice on how to put them right and including a deadline by which this must be done. Failure to comply could result in a notice being served or more severe enforcement action being taken. The time allowed must be reasonable, but must also take into account the health, safety and nuisance implications of the contravention.

iv) **Acceptable Behaviour Contracts (ABC)**

For repeat or serious cases of anti-social behaviour, it may in some circumstances be appropriate for an individual to be asked to sign an acceptable behaviour contract. The ABC is a written agreement between the person who has committed repeated incidents of Anti-Social Behaviour and the council and/or the police. The contract is entered into voluntarily and clearly details the actions which the perpetrator is no longer allowed to

engage. In addition, a personalised support package is offered to help the individual keep to the conditions of their contract.

v) **Fixed Penalty Notices (FPN)**

For some contraventions Fixed Penalty Notices are issued once an offence has been committed, requiring the offender to discharge their liability to prosecution by payment of a fixed sum. Failure to pay the fixed sum will result in a prosecution being instigated unless there are exceptional circumstances.

vi) **Formal Notice**

Notices are served to require offenders to cease activities contravening the relevant legislation, to give offenders reasonable time to rectify a contravention or to require further information. Notices may require such activities to cease immediately where the circumstances relating to health, safety, environmental damage or nuisance demand. In other circumstances, the time allowed to comply with the notice must be reasonable, but must also take into account the health, safety, environmental damage or nuisance implications of the contravention.

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

Certain types of notice allow the council to 'carry out work in default'. This means that if a notice is not complied with [i.e. 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 the costs incurred in carrying out the work.

Failure to comply with a notice is an offence which will result in a prosecution being instigated unless there are exceptional circumstances.

vii) **Anti-Social Behaviour Order (ASBO)**

Anti-Social Behaviour Order (ASBO, to be replaced in late 2014 by Criminal Anti-Social Behaviour Order): ASBOs are civil orders which are intended to protect the public from Anti-Social Behaviour. An order contains certain conditions prohibiting the offender from carrying out anti-social acts or from entering specific areas in which they have previously committed Anti-Social Behaviour. Usually an order will last for a two year period and if the order is breached by the individual they could face a heavy fine or even imprisonment.

viii) **Seizure**

Certain legislation enables authorised officers to seize goods, vehicles or equipment. For example food that is unsafe or sound equipment that is being used to cause a statutory noise nuisance. When the council seizes goods an appropriate receipt will be given. Where the law requires, the council will produce seized goods before the Magistrate Court.

ix) **Court Injunction**

In certain circumstances, for example where offenders are repeatedly found guilty of similar offences or where an injunction is a more appropriate course of enforcement action than any other, injunctions may be used as an enforcement measure to deal with repeat offenders or dangerous circumstances.

x) **Refusal, Revocation or Suspension of a Licence, Registration or Authorisation**

Certain types of premises/businesses require a licence, registration or authorisation to operate legally. In order to warrant refusal/revocation one of the following criteria must apply to the licensed individual or organisation:-

- No longer a fit and proper person.
- Deliberately 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.
- Obstructed an officer undertaking their duties.
- Deliberate or persistent breach of licence conditions.
- Any other reasonable cause.

xi) **Simple Caution**

This procedure is used as an alternative to prosecution to deal quickly and simply with less serious offenders to divert them from the criminal courts. For a simple caution to be issued a number of criteria must be satisfied:-

- Sufficient evidence must be available to prove the offence, and;
- The offender must admit the offence, and;
- The offender must understand the significance of the caution and give informed consent to being cautioned.

There is no legal obligation for any person to accept a simple caution.

A record of the simple caution will be kept on the appropriate local and/or national database, and will be kept on file for 3 years. If the offender commits a further offence, the simple caution may influence any decision to prosecute the further offence.. 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.

If the offender refuses to accept a caution then legal proceedings will normally be instigated.

The caution will also be recorded in the council's Register of Convictions.

xii) **Prosecution**

A prosecution will normally ensue where one of the following criteria are met by the individual or organisation:-

- Deliberately or persistently breaching legal obligations, which were likely to cause material loss or harm to others.
- Significant or serious breach of legal obligations.
- Deliberately or persistently ignoring written warnings.
- Failure to comply with an enforcement notice, including the non-payment of a FPN
- Endangering, to a serious degree, the health, safety or well being of people, animals or the environment.
- Assaulting or obstructing an officer in the course of their duties.

10. Determining whether a Prosecution or Simple Caution is viable and appropriate

10.1 The council applies two ‘tests’ to determine whether a Prosecution or Simple Caution is viable and appropriate and follows guidance set by the Crown Prosecution Service when applying the tests:

- **The Evidential Test**

There must be sufficient evidence to provide a ‘realistic prospect of conviction’ against any defendant charged.

- **The Public Interest Test**

There may be public interest factors which are in favour of, or are against prosecution. These have to be considered before a decision regarding the final enforcement action (caution or prosecution) is taken.

For more information about the ‘Code For Crown Prosecutors’ visit:

http://www.cps.gov.uk/publications/code_for_crown_prosecutors/

10.2 If the case meets the evidential test, the Director will recommend appropriate formal action to the Head of Legal and Support Services. The Head of Legal and Support Services may then authorise a formal caution or prosecution.

10.3 Simple Caution or Prosecution proceedings will only be progressed when the case has passed both tests. Paragraphs 10.4 to 10.8 below, detail how this Policy applies to the consideration of taking a prosecution.

10.4 The Head of Legal and Support Services 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.

10.5 When deciding whether there is enough evidence to prosecute, the Head of Legal and Support Services must consider whether the evidence can be used and is reliable.

10.6 The public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. A prosecution will usually take place

unless there are public interest factors tending against prosecution, which clearly outweigh those tending in favour. Although there may be public interest factors against prosecution in a particular case, often the prosecution should go ahead and those factors should be put to the court for consideration when sentencing the defendant.

- 10.7 The Investigating Officer(s), along with senior managers and the council solicitors must 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 following lists include some common public interest factors, both for and against prosecution. These are not exhaustive and the factors that apply will depend on the facts in each case.

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

- A conviction is likely to result in a significant sentence.
- The evidence shows that the defendant was a ringleader or an organiser of the offence.
- There is evidence that the offence was premeditated.
- The victim of the offence was vulnerable, has been put in considerable fear, or suffered personal, damage or disturbance.
- The victim of the offence has suffered harassment, alarm or distress.
- The offence was motivated by any form of discrimination against the victim's ethnic or national origin, gender, religious beliefs, political views or sexual orientation, or the suspect demonstrated hostility towards the victim based on any of those characteristics.
- There is a marked difference between the actual or mental ages of the defendant and the victim, or if there is any element of corruption.
- The defendant's previous convictions or cautions are relevant to the present offence.
- There are grounds for believing that the offence is likely to be continued or repeated, for example, by a history of recurring conduct.
- A prosecution would have a significant positive impact on maintaining community confidence or safety.

A prosecution is less likely to be needed if:-

- The court is likely to impose a nominal penalty.
- The defendant has already been made the subject of a sentence and any further conviction would be unlikely to result in the imposition of an additional sentence or order, unless the nature of the particular offence requires a prosecution.
- The offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence).
- The loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement.
- There has been a long delay between the offence taking place and the date of the trial, unless:-
 - the offence is serious;
 - the delay has been caused in part by the defendant;
 - the offence has only recently come to light; or
 - the complexity of the offence has meant that there has been a long investigation.

- A prosecution is likely to impact adversely on the victim's physical or mental health, always bearing in mind the seriousness of the offence.
- The defendant is elderly, frail or a juvenile or is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is a real possibility that it may be repeated.
- The defendant has already discharged their liability through payment of a fixed penalty notice.

10.8 Deciding on the public interest is not simply a matter of adding up the number of factors on each side. The Investigating Officer(s), along with senior managers and the council's Solicitors must decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

11. Who decides what enforcement action is taken

11.1 For less serious infringements of the law, decisions about the most appropriate course of action are usually determined by the Investigating Officer(s). Decisions are based upon professional judgment, legal guidelines, statutory codes of practice and priorities set by the council and/or Central Government.

11.2 For more serious offences, where the nature of the offence points towards prosecution or simple caution, decisions about enforcement will be recommended by the relevant Director or Chief Executive and authorised and instigated by the Head of Legal and Support Services.

Details of 'Who decides what enforcement action is taken' is shown in **Appendix 2**.

12. Reconsidering a Prosecution Decision

Normally if the defendant is told that there will not be a prosecution, or that the prosecution has stopped, the case will not start again. However, there may be an occasion when the decision not to prosecute, offer a simple caution or stop a prosecution, may be overturned.

The reasons for this include:-

- Rare cases where a new look at the original decision shows that it was wrong.
- Cases which were stopped so that further evidence could be collected.
- Cases which were stopped due to lack of evidence but more significant evidence is discovered later.
- Cases involving a death in which a review following an inquest concludes that a prosecution should be brought.

13. Liaison with other regulatory bodies and enforcement agencies

13.1 Where appropriate, enforcement activities carried out by the council will be co-ordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement.

- 13.2 In some cases, for example where there has been a work related death we will inform and liaise directly with Leicestershire Police. Joint investigations may also be undertaken with the Police and or the Health and Safety Executive. These provisions along with other matters relating to workplace health, safety and welfare are detailed within our Health & Safety Enforcement Policy available at www.nwleics.gov.uk.
- 13.3 Where an enforcement matter affects a wide geographical area beyond the district boundaries, or involves enforcement by one or more other local authorities or organisations; all relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activity co-ordinated.
- 13.4 The council shares intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies, including:
- Government Agencies, such as the Food Standards Agency, Health and Safety Executive, Environment Agency, Civil Aviation Authority and Public Health England.
 - Police Forces, such as Leicestershire Police
 - Fire Authorities, such as Leicestershire Fire and Rescue Service
 - Public Health Laboratory Service
 - Statutory undertakers, such as Severn Trent Water
 - Other Local Authorities
 - The Safer North West Partnership
- 13.5 Where wider regulatory matters can be more effectively addressed through joint working we will, where appropriate, enter into formal 'Enforcement Liaison Protocols'.
- 13.6 Where enforcement action is being considered against a business, reference will be made to the Primary Authority Scheme.
- 13.7 Where action is being considered in cases of persistent or serious anti-social behaviour a collective decision may be made by the local Community Safety Partnership (The Safer North West Partnership)

14. Offences

- 14.1 It is the duty of enforcement officers to make sure that enforcement action is taken against the right person. In doing so they must act in the interests of justice and not solely for the purpose of obtaining a conviction.
- 14.2 The Investigating Officer(s), along with the Council's Solicitors should select the most appropriate legislation and ensure that cases are dealt with in the appropriate court which so that the prosecution
- Reflects the seriousness of the offence.
 - Gives the court adequate sentencing powers.
 - Enables the case to be presented in a clear and logical way.
- 14.3 Juveniles (persons aged 17 or under) can be served with warning letters, a Fixed penalty Notice or issued with an acceptable behaviour contract or anti-social behaviour order. Prosecutions can be brought in the Youth Court.

15. Considering the views of those affected by offences

- 15.1 The Council undertakes enforcement on behalf of the public at large and not just in the interests of any particular individual or group. However, when considering the public interest test (see section 10.1 above), the consequences for those affected by the offence, and any views they may have expressed, will, where appropriate, be taken into account.
- 15.2 Those people affected by the offence will be told about any decision that makes a significant difference to the case.

16. Actions by the Courts

- 16.1 In cases of sufficient gravity, for example where serious injury or ill health has resulted, consideration will be given to requesting that the Magistrates Court refers the case to the Crown Court where the legislation allows.
- 16.2 The existing law gives the courts considerable scope to punish offenders and to deter others. Unlimited fines and, in some cases, imprisonment may be imposed by the higher courts. The Council will continue to raise the awareness of the courts to the gravity of offences and will encourage them to make full use of their powers.
- 16.3 The Council will always seek to recover the costs of investigations which result in court proceedings.

17. Protection of Human Rights

- 17.1 This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998.
- 17.2 Authorised Officers of the Council operate to a range of internal guidance documents that support the principles of primary human rights legislation, for example guidance relating to the Data Protection Act 1998 and Regulation of Investigatory Powers Act 2000. These guidance documents will be monitored by scheduled internal quality audits.

18. Publicity

- 18.1 Where appropriate, publicity will be actively sought for any enforcement action taken which could draw attention to the need to comply with the law or deter anyone else from non-compliance.
- 18.2 Information about enforcement actions will be made available on request subject to the restrictions placed on the authority by the Data Protection Act 1998 and the Freedom of information Act 2000.

19. Complaints, Appeals and Accountability

- 19.1 The Council operates a complaints procedure details of which are available on the website www.nwleics.gov.uk and in the leaflet entitled 'Have Your Say – Complaints, Comments and Compliments'

- 19.2 The mechanism for appeals against enforcement action taken will be referenced in all cases.
- 19.3 The actual service standards provided by the Council are contained in other service specific information.

20. Review of the Enforcement Policy

- 20.1 The implementation of this Policy will be monitored on an ongoing basis.
- 20.2 Every 5 years the Policy will be fully reviewed to ensure it is relevant.

Factors we consider when taking enforcement action?

Officer(s) carry out **investigations/inspections**. This can be done in response to a complaint or request for assistance, as part of routine planned inspections of business premises or survey work.

Investigating Officer discovers evidence and is satisfied that a **criminal offence** may have been committed or is about to be committed. This is called *Prima facie* evidence.

Investigating Officer considers a range of factors including:

- Previous History - whether any similar situation has been found before.
- Seriousness of the alleged offence(s), including:
 - Risks to the public or the environment
 - Any intent or recklessness of the person(s) committing the offence
 - Any obstruction of the Investigating Officer
 - Whether the alleged offence(s) are considered a special area of priority by Central Government and/or North West Leicestershire District Council
- Is their enough evidence to provide a realistic prospect of conviction
- Would any further action be in the public interest

For **LESS SERIOUS** infringements of the law and/or where there is no previous history of offences/non-compliance with legislation the following options are considered:

- **Informal Action** – verbal or written advice/warning
- **Statutory Notice** – service of a legal notice that will require certain specified action to be taken by the recipient

In all cases we will advise the alleged offender what he/she needs to do in order to comply with the law.

For **MORE SERIOUS** offences the following options will also be considered:

- **Seizure of goods or equipment** – In certain cases, goods or equipment may be seized to protect the public and/or employees, for example unsafe food or sound equipment being used to cause a nuisance.
- **Formal Caution** – a Formal Caution is an alternative to prosecution and can only be issued if strict criteria are met. The Home Office of Central Government sets these criteria. A Caution stays on public record for three years.
 - If a Formal Caution is offered to an offender, but he/she refuses to accept it then we may prosecute instead.
- **Prosecution** – legal proceedings are taken against the offender that results in the offender being summonsed to appear in Court. Any decision to prosecute is based upon guidelines set by the Crown Prosecution Service

In all cases the alleged offender will be informed of the matters under investigation and invited to attend a formal interview in accordance with the Police and Criminal Evidence Act 1984.

See – Who Decides What Action is taken [Appendix 2]

Appendix 2 – Council Enforcement Policy

Who decides what enforcement action is taken?

