



ENFORCEMENT POLICY STATEMENT

North Tyneside Council

1. Introduction

- 1.1 The Council is responsible for the enforcement of a wide range of legislation and has drawn up this policy to explain how it carries out its enforcement activities. In doing this the Council will ensure that it complies with the Human Rights Act 1998, the Government's Enforcement Concordat and its equal opportunities policies.
- 1.2 We are committed to protecting the public as well as maintaining a fair and equitable trading environment for all businesses in the borough. There are a number of ENFORCEMENT POLICY DOCUMENTS produced by the Council to help maintain desired standards of conduct, goods, services and premises throughout the borough (for instance Breach of Planning Permission, Illegal Dumping, Dog Fouling, Littering, Failure to send Children to School). Failure to meet the set conditions could lead to a number of enforcement decisions being taken against individuals and businesses. This policy therefore affects everyone who lives in, works in or visits the borough.
- 1.3 This Policy Statement covers enforcement activities by the Council's Environment Service which includes planning, building control trading standards, environmental health, licensing and environmental protection.
- 1.4 All Enforcement Officers when taking enforcement decisions will abide by this Enforcement Policy Statement and, where appropriate, any specific policies or procedures for a particular service area, in force from time to time. Enforcement decisions will be taken by Enforcement Officers in accordance with the Council's Scheme of Delegation.
- 1.5 In order for enforcement to be fair and open it is important that the basis on which we take action is made known to all those concerned. The intention of stating our Enforcement Policies is to advise everyone what happens when conduct, goods, services or premises are found to be contravening to the law.

2. What you can expect of staff dealing with enforcement

Our staff will:-

- ◆ Give a courteous and efficient service
- ◆ Identify themselves by name and produce identification where required or if requested

- ◆ Give clear and simple advice where appropriate
- ◆ Provide a contact point for any further dealings
- ◆ Clearly distinguish between what you must do to comply with the law and what is recommended as best practice
- ◆ Minimise the cost of compliance by only requiring action proportionate to the risk involved
- ◆ Give you a reasonable time to comply (unless immediate action is necessary in the interest of Health and Safety, to prevent evidence being lost or for any other urgent reason)
- ◆ Where problems cannot be resolved advise you of the procedure for making a complaint or representations
- ◆ Notify you if the matter is to be referred to the Council's Legal Services for legal proceedings to be commenced.

3. Advice

- 3.1 The principal method we use to ensure compliance with legal requirements is to provide advice. This can involve visits to individuals and businesses as well as talks to trade groups and the issue of fact sheets and leaflets. We aim to provide information and advice on the law in plain language within a reasonable time.
- 3.2 We believe that prevention is better than cure. If you are experiencing difficulties in complying with a particular requirement then we are always willing to discuss them and assist you. We also support and encourage businesses and aim to improve compliance and raise standards for individuals and businesses struggling to comply with legislative requirements.

4. Action we take if the law is contravened

- 4.1 There are a number of enforcement options available to officers. These are:-
- No action
 - Informal action
 - Service of Statutory Notices
 - Works in Default
 - Suspension or Revocation of Licenses/Authorisation
 - Issue of Formal Cautions
 - Issue of Fixed Penalty Notices
 - Instigate prosecution proceedings`
- 4.2 In deciding what action to take a number of factors will be taken into consideration, including:-
- ◆ The seriousness of any alleged offence
 - ◆ The number of people likely to be affected
 - ◆ The danger caused or the value of property involved
 - ◆ Any previous history of similar occurrences
 - ◆ Any statutory defence available
 - ◆ Action taken to prevent any recurrence

- ◆ Any explanation offered and as far as the law allows, the circumstances and attitude of the responsible business or person
- ◆ What course of action will best serve the public interest.

4.3 **Informal Action**

Officers will normally seek to achieve compliance with legislation through the use of informal action. We will clearly distinguish between statutory requirements and advice/recommendations.

However where this approach is not appropriate or is not believed to be the most effective enforcement option, consideration will be given to the use of formal enforcement action.

4.4 **Statutory Notices**

The service of Statutory Notices will be considered in the following circumstances:-

- There are contraventions of legislation, which pose a significant risk to – public health/safety or the environment.
- There is a lack of confidence in the duty holder to respond to informal action.
- There is a history of non-compliance.
- A situation exists which places a mandatory duty on the council to serve a statutory notice e.g. statutory nuisance.
- Although it is intended to prosecute, effective action needs to be taken as quickly as possible to remedy conditions, which pose an immediate risk to public health/safety or the environment.

If we serve a statutory notice on a business or individual, we will inform them in writing, of any right of appeal. In certain cases, statutory notices are ‘public notices’ and details will be kept on a register available to the public.

4.5 **Works in Default**

The Council will normally carry out works in default of a statutory notice where:

- Works required by a statutory notice have not been carried out, and
- There is a risk to public health/safety or the environment, such that the consequences of not taking immediate action would be unacceptable or
- Statute does not permit prosecution for non-compliance with a statutory notice.

4.6 **Fixed Penalty Notices**

Fixed penalty notices can only be used where allowed by law, for instance in relation to litter and dog fouling.

The service of a fixed penalty notice will be carried out when the circumstances of the offence satisfy the following criteria.

- The offence warrants prosecution.
- There is sufficient evidence of the offender's guilt to give a realistic prospect of conviction in case of non-compliance with a fixed penalty notice.
- The officer believes that a fixed penalty notice will prevent repeat offences.

If an offender either refuses to accept a fixed penalty notice or, having accepted such a notice, does not pay before the end of suspended enforcement period, the matter will result in prosecution.

A fixed penalty notice may be cited in prosecution proceedings in relation to a similar offence committed within three years of the issue of the Fixed Penalty Notice.

All the issuing of fixed penalty notices will follow the North Tyneside Council's Code of Practice.

4.7 Suspension or Revocation of Licences/Authorisations

In some circumstances, such as taxi licensing and authorisations under the Environmental Protection Act 1990, the suspension or revocation of a licence/authorisation may be used as a method of enforcement. The Council recognises that whilst this is a legitimate enforcement action, it may result in depriving a person of their livelihood or result in the closure of a business.

Therefore the suspension or revocation of a licence/authorisation will normally only be used if one or more of the following factors apply:

- There are contraventions of legislation, which pose a significant risk to public health/safety or the environment.
- There is a lack of confidence in the duty holder to respond to informal action.
- Other enforcement options are either inappropriate, or have been tried without success.

In circumstances where there has been serious contraventions of legislation, the Council may consider using its powers to suspend/revoke licences as well as taking other enforcement action.

When a licence/authorisation is suspended or revoked, those concerned will be informed in writing of any rights of appeal.

4.8 Formal Cautions

- 4.8.1 When a breach of the law is found a verbal or written warning may be given and this is usually followed up by further checks. No formal action will be taken without us seeking to discuss the case with the individual concerned or with a relevant representative of the business wherever possible. If we believe an offence has been committed then the law requires us to conduct any discussion under caution. As an alternative to prosecution we may give you the option of signing a formal notice accepting that you have committed

an offence. This is known as a “formal caution” and can be read out in court if you later commit another offence and are convicted.

4.8.2 In appropriate cases, the use of Formal Cautions will be considered where criteria for prosecution are satisfied but an offence is of a less serious nature, having regard to Home Office Circular 18/1994 and other relevant guidance. They may be used to:

- a) deal quickly and simply with less serious offences;
- b) reduce the chances of repeat offences;
- c) divert ‘non-serious’ offences away from the Courts

4.9 **Prosecutions**

In certain cases the authority will prosecute. These cases will normally involve offences relating to the public health or safety, deception, continued negligence or wilful non-compliance.

Prosecution will be effected where there has been blatant disregard of the law, or a refusal to achieve even the basic legal minimum requirements, and will be considered where:-

- a) the alleged offence involves a breach of the law such that Public health, safety or well being is or has been put at risk, or where unacceptable business advantage is gained.
- b) the alleged offender has failed to correct identified potential risk after being given ample opportunity to comply with legal requirements of an authorised Officer;
- c) the offence involves the failure to comply in full or part with the requirements of a Statutory Notice;
- d) there is a history of similar offences;
- e) where an officer has been intentionally obstructed in the course of his/her duties;

In all cases the evidential and public interest test contained within the Code for Crown Prosecutors must be satisfied before a prosecution is initiated.

4.9.1 **The Evidential Test**

There must be sufficient reliable and admissible evidence to provide a realistic prospect of conviction. The likelihood of the defendant being able to establish a defence and its potential affect on the prosecution case must also be considered. If the prosecution case does not pass the evidential test it must not go ahead, no matter how important or serious the case may be.

4.9.2 **The Public Interest Test**

A prosecution is less likely to be appropriate if:-

- (a) A very small or nominal penalty is likely to be imposed.
- (b) The offence was committed as a result of a genuine mistake or misunderstanding. (This consideration must be balanced against the seriousness of the offence).
- (c) 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
 - The complexity of the offence has meant that there has been a long investigation.

4.10 **The authority only prosecutes when it is appropriate and always:**

- ◆ In accordance with the Code for Crown Prosecutors
- ◆ In accordance with statutory requirements and all other relevant codes of practice.

5. Shared Enforcement

In some circumstances, risks to the public, workers and the environment are also dealt with by other authorities. Where appropriate we will liaise with all other authorities before taking enforcement action such as police or other enforcement authorities.

In some situations, risks to the public, workers and the environment, are also addressed by more specific legislation enforced by other authorities. In order to avoid duplication, we will in such circumstances, seek to agree who should ensure that any such risks are adequately controlled. In determining who is the most appropriate enforcing authority, regard will be had to the following principles:-

- Relative effectiveness of the available legislation
- Degree of expertise held by each Authority
- Efficient use of resources
- General suitability of the respective authorities to deal with the risks in question
- Relevant enforcing authority legislation

Relevant information will be shared with other enforcement bodies, where appropriate.

6. Conclusion

- 6.1 Officers will consider all criteria contained within this policy statement when taking an enforcement decision.

Our overall intention is to serve the people of North Tyneside by working with the business community to ensure a thriving economic future for the Borough. In particular we take care to work with small businesses, voluntary and community organisations to help them meet legal obligations with minimal

expense. We are members of a number of partnerships working for everyone who lives in, works in or visits the borough.

- 6.2 This Statement of Policy will be reviewed annually with additional reviews if required to reflect changes in legislation and guidance.

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Council Enforcement Policy - Proposed list of consultees

Local Strategic Partnership

Residents Panel

NECC

Whitley Bay Chamber

North Tyneside Hackney Carriage Association

North Tyneside Taxi Organisation

North Tyneside Business Centre

Police

Federation of Small Businesses

Business Link

North Tyneside Citizens Advice Bureau

ENFORCEMENT CONCORDAT

The Principles of Good Enforcement: Policy and Procedures

This document sets out what business and others being regulated can expect from enforcement officers. It commits us to good enforcement policies and procedures. It may be supplemented by additional statements of enforcement policy.

The primary function of central and local government enforcement work is to protect the public, the environment and groups such as consumers and workers. At the same time, carrying out enforcement functions in an equitable, practical and consistent manner helps to promote a thriving national and local economy. We are committed to these aims and to maintaining a fair and safe trading environment.

The effectiveness of legislation in protecting consumers or sectors in society depends crucially on the compliance of those regulated. We recognise that most businesses want to comply with the law. We will, therefore, take care to help business and others meet their legal obligations without unnecessary expense, while taking firm action, including prosecution where appropriate, against those who flout the law or act irresponsibly. All citizens will reap the benefits of this policy through better information, choice, and safety.

We have therefore adopted the central and local government Concordat on Good Enforcement. Included in the term “enforcement” are advisory visits and assisting with compliance as well as licensing and formal enforcement action. By adopting the concordat we commit ourselves to the following policies and procedures, which contribute to best value, and will provide information to show that we are observing them.

Principles of Good Enforcement: Policy

- **Standards**

In consultation with business and other relevant interested parties, including technical experts where appropriate, we will draw up clear standards setting out the level of service and performance the public and business people can expect to receive. We will publish these standards and our annual performance against them. The standards will be made available to businesses and others who are regulated.

- **Openness**

We will provide information and advice in plain language on the rules that we apply and will disseminate this as widely as possible. We will be open about how we set about our work, including any charges that we set, consulting business, voluntary organisations, charities, consumers and workforce representatives. We will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.

- **Helpfulness**

We believe that prevention is better than cure and that our role therefore involves actively working with business, especially small and medium sized businesses, to advise on and assist with compliance. We will provide a courteous and efficient service and our staff will identify themselves by name. We will provide a contact point and telephone number for further dealings with us and we will encourage business to seek advice/ information from us. Applications for approval of establishments, licenses, registrations, etc, will be dealt with efficiently and promptly. We will ensure that, wherever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

- **Complaints about service**

We will provide well publicised, effective and timely complaints procedures easily accessible to business, the public, employees and consumer groups. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely time-scales involved.

- **Proportionality**

We will minimise the costs of compliance for business by ensuring that any action we require is proportionate to the risks. As far as the law allows, we will take account of the circumstances of the case and the attitude of the operator when considering action.

We will take particular care to work with small businesses and voluntary and community organisations so that they can meet their legal obligations without unnecessary expense, where practicable.

- **Consistency**

We will carry out our duties in a fair, equitable and consistent manner. While inspectors are expected to exercise judgement in individual cases, we will have arrangements in place to promote consistency, including effective arrangements for liaison with other authorities and enforcement bodies through schemes such as those operated by the Local Authorities Co-ordinating Body on Food and Trading Standards (LACOTS) and the Local Authority National Type Approval Confederation (LANTAC).

Principles of Good Enforcement: Procedures

Advice from an officer will be put clearly and simply and will be confirmed in writing, on request, explaining why any remedial work is necessary and over what time-scale, and making sure that legal requirements are clearly distinguished from best practice advice.

Before formal enforcement action is taken, officers will provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference,

unless immediate action is required (for example, in the interests of health and safety or environmental protection or to prevent evidence being destroyed).

Where immediate action is considered necessary, an explanation of why such action was required will be given at the time and confirmed in writing in most cases within 5 working days and, in all cases, within 10 working days.

Where there are rights of appeal against formal action, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken (whenever possible this advice will be issued with the enforcement notice).