

**NEWARK AND SHERWOOD
DISTRICT COUNCIL**

**CORPORATE ENFORCEMENT
POLICY**

June 2015

CORPORATE ENFORCEMENT POLICY

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PART ONE - GENERAL PRINCIPLES

1.0 INTRODUCTION

- 1.1 The Council is responsible for ensuring that a wide range of legislation is being properly complied with, to protect the rights and safety of the District's residents, workers, visitors and the local environment.

2.0 AIMS OF THE POLICY

- 2.1 Compliance investigations and enforcement decisions will be carried out under the following legislation and in accordance with any associated guidance or codes of practice:

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

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

Our authorised officers will also comply with the requirements of the particular legislation under which they are acting, and with any associated guidance or codes of practice in particular those set out in Appendix 1.

2.2 Delivering Effective Enforcement

Many of the Council's activities are directed at ensuring that all sectors of society within the Newark & Sherwood District avoid contraventions of the law. The Council will consider the impact of its regulatory intervention by adopting a positive, proactive and balanced approach to ensure compliance. However, it is inevitable that offences will occur and the purpose of this policy is to ensure that they are resolved in a consistent, balanced and fair manner. This will be done through a combination of advice, information, help and support for businesses which will reflect the individual business type and needs. Interventions will be evidence led, targeted and proportionate to the risk identified.

2.3 Application of Policy

The application of this policy takes into account the need to support legitimate businesses and activities undertaken by individuals through a programme of effective advice and information in the first instance to help businesses and individuals get things right the first time, however there is an expectation that businesses and individuals will work with officers to prevent contraventions and to resolve breaches. This document contains the detailed statement of policy in respect of the enforcement of legislation by the officers of Newark and Sherwood District Council and the framework upon which enforcement action is based.

- 2.4 This is a generic policy covering the whole of the Council's enforcement activities and that individual service areas will have specific procedures and guidance appropriate to their individual functions. In certain circumstances services will be required to comply with specific legislative requirements and any such requirements would override any provisions contained in this corporate policy. The Business Units covered by this policy are:

Planning
Environmental Health and Licensing
Community Safety
Revenues and Benefits
Housing Options
Building Control
Waste Management

3.0 GENERAL STATEMENT

- 3.1 In seeking to secure the highest possible level of regulatory compliance whilst conforming to the spirit of the Human Rights Act 1998, the Cabinet Office Enforcement Concordat, the Regulator's Compliance Code and the Code for Crown Prosecutors, the principal enforcement activities of the Council are directed towards avoidance of infringements. It is nevertheless inevitable that offences will occur and the purpose of this policy is to ensure that they are resolved in a consistent, transparent, balanced and fair manner.
- 3.2 All enforcement action is primarily based upon assessment of risk to public health and safety, impact of the activities or behaviour on the general public, economic well-being or the environment.
- 3.3 The Council affirms the importance of achieving consistent, balanced and fair enforcement by setting out minimum standards within this policy to be applied by officers of the Council in relevant circumstances. To achieve this, regard will be had to guidance contained in Statutory Codes of Practice and other nationally recognised courses. Specific procedures and guidance will be prepared and reviewed as necessary by the appropriate Business Manager to enable the realisation and implementation of the Council's priorities having regard to national guidelines. The Council will endeavour to deliver a consistent approach in the use of enforcement powers, tools and action, however, practically this is not always simple. There are many variables including the degree of risk, co-operation of persons involved, any history of breaches, previous enforcement action, seriousness of breach and any potential or actual harm arising from the breach. Therefore this policy will not be over prescriptive as there needs to be an element of flexibility in individual officers' judgment.
- 3.4 To protect privacy and the rights of individuals all surveillance will be carried out overtly unless officers happen to come across a potential enforcement situation. Where covert surveillance is essential and where the Regulation of Investigatory Powers Act 2000 allows, the surveillance will be authorised prior to commencement in compliance with the Council's guidelines and procedures.

- 3.5 Any departure from the Council's enforcement policy and the procedures which sit beneath it must be exceptional, capable of justification and be fully considered by the appropriate officer before the decision is taken. The decision shall be fully recorded; unless it is considered there is significant risk to the public or the Council in delaying the decision.
- 3.6 The Council will ensure that all authorised officers are fully acquainted with requirements of this policy and appropriate training will be given.
- 3.7 The Council will provide advice and assistance as required to persons subject to enforcement action to keep them informed of what is expected and the procedures that may be followed to avoid misunderstandings and ensure transparency of all enforcement action. Distinctions between statutory requirements and advice or guidance regarding what is good practice will be made clear.
- 3.8 This policy will be consulted on to take into account the views of all partners, stakeholders and the local community as a whole.
- 3.9 This document and associated procedures derived from it will be subject to regular review.
- 3.10 This policy was approved by Newark & Sherwood District Council in June 2015 and can be accessed via the Council's website using the following link:
www.newark-sherwooddc.gov.uk
- 3.11 This policy document will be reviewed as appropriate in response to changes in the law and in guidance and, in any event, every 3 years. Where the policy can be improved by being amended it will be amended. Any changes which significantly affect the Council's approach to enforcement and prosecution will be taken to the Council's Policy and Finance Committee for approval.

PART TWO – ENFORCEMENT SANCTIONS

4.0 INVESTIGATION

- 4.1 Concerns over breaches of legislation can be made to the Council via the Customer Services Team on 01636 650000 or by registering a complaint on the Council's website using the following link:
<http://www.newark-sherwooddc.gov.uk/transactions/report/> or by e-mailing customerservices@nsdc.info
- 4.2 The Council will investigate complaints made and will use a range of methods for collecting evidence including but not limited to visits to sites or premises, historical data, information sharing with other agencies, taking photos or videos (if appropriate), use of social media sites and the internet (if appropriate), information provided within Requisitions for Information and reporting forms.
- 4.3 Failure to respond to statutory Requisitions for Information is a criminal offence and could result in prosecution.
- 4.4 The Council will consider inviting individuals for an interview under caution ("IUC"). An IUC is a formal interview, which is usually tape recorded to ensure that an accurate record is taken. It is conducted under The Police & Criminal Evidence Act 1984, which are the rules of how the Council must treat individuals during the interview. An interview under caution cannot be conducted by telephone or by letter. The interview under caution is to enable the Council to establish the facts and is also an opportunity for a different version of events to be given. Those being interviewed will be cautioned in the same way that the Police do, which is:
- "You do not have to say anything but it may harm your defence if you do not mention when questioned something which you later rely on in Court. Anything you do say may be given in evidence."
- 4.5 The caution means that a person does not have to answer any of the questions and can remain silent or say 'no comment'. However if the matter proceeded to Court and an answer is given at Court that could have been given at the interview then the Court will wonder why and will draw its own conclusions as to why an answer was not given. The final part of the caution means that anything you do said in the interview can be repeated. Individuals have a right to have legal representation at interview or someone supporting them and can leave at any point if they want to.
- 4.6 The Council will keep all parties involved in a complaint up to date with steps taken or when decisions are made particularly when formal notices are served and court hearings are listed. This may be done by way of email, text, telephone, meeting or letter or by way of a preferred method identified by an individual.

5.0 ENFORCEMENT OPTIONS

- 5.1 The Council's enforcement officers will take a staged approach to the enforcement of legislation. No enforcement action will be taken against any individual or business unless the investigating officer is satisfied that a breach is being or has been committed under a relevant piece of legislation.
- 5.2 Enforcement action may be taken as the result of the investigation of a complaint, following a routine inspection or some other activity. In cases where a witness is essential to support the enforcement process, the Council will not follow up complaints from an anonymous source, except in the case of anonymous calls to our Benefit Fraud telephone hotline or which supports complaints the Council has already received or where complainants are too frightened or intimidated to be a witness.
- 5.3 Where required, the Council will consult with statutory bodies as to the enforcement methods being considered.
- 5.4 Enforcement decisions must be balanced and fair. They must be consistent and taken in the context of ensuring that individuals, the community and the environment are adequately protected. The criteria which should be considered when deciding whether enforcement action is appropriate are:
- Whether an offence has been committed
 - Whether the offence has caused harm or is likely to cause harm
 - The seriousness of the offence
 - The history of the activity
 - Confidence in achieving compliance and previous compliance history
 - Consequences of non-compliance
 - The likely effectiveness of the various enforcement options
 - The existence of any guidance in the form of codes of practice, government circulars etc
 - Expediency
 - The irreversibility of the offence e.g. in planning breaches
 - The alleged offence causes public concern and it is desirable to reassure the public and to deter other offenders
 - Whether evidence of the offence/ breach is available.
 - Any obstruction on the part of the offender
 - Statutory guidance
 - Codes of practice
 - Any legal advice
 - A person's age in relation to young people
- 5.5 These criteria are not exhaustive and those that apply will depend on the particular circumstances in each case. This does not mean that all factors must be in favour of enforcement action rather that, on balance, the preponderance is in favour.
- 5.6 Once these criteria have been considered, a number of options for dealing with the situation present themselves. These are:

- To take no action
- To take informal action to provide advice and guidance
- To issue a fixed penalty notice
- To serve a formal notice
- To make a statutory Order
- Seizure of goods/equipment
- Works in default
- To suspend, revoke or refuse to renew a licence
- To prosecute or to apply for a Court Order (including joint prosecutions) and then follow the options allowed by the relevant legislation
- To offer an Administrative Penalty (including joint Administrative Penalties)
- To issue a simple caution (including joint cautions)
- Deductions from ongoing benefits or other state benefits
- Proceeds of Crime Applications
- Injunctive and other civil sanctions
- To instruct Enforcement Agents

5.7 The order in which the enforcement options are listed above is not necessarily in absolute order of escalating seriousness relative to each other. The Council reserves the right to escalate the level of enforcement action, having regard to the criteria in 5.4 of this policy. In the spirit of taking a staged approach to enforcement, in the first instance the individual or business should be given the opportunity to discuss and remedy problems unless immediate action is required.

5.8 In certain circumstances, a combination of the above options may be relevant as a means of dealing with the offence. Consideration of each of these options should be made in accordance with 5.1 to 5.5.

6.0 NO ACTION

6.1 There will be instances when no action is taken by the Authority following the investigation of a complaint or the carrying out of an inspection. The most likely reason for this will be that following the investigation of complaints it is found that no offence has been committed. However there are other instances where no action may be taken, these are:

- Where the offence is not causing harm or it is not expedient to take action;
- Where the cost of compliance to the offender outweighs the impact of the contravention on the community;
- Where the cost of taking action to the Council outweighs the impact of the offence on the community;
- Formal action would be inappropriate in circumstances such as where a trader has ceased to trade, or the offender is elderly or frail or where formal action could seriously damage their wellbeing.

- 6.2 Inevitably there will be occasions when an individual, group, business or organisation is aggrieved by a decision taken following consideration of this policy. Where this is the case they will be offered the opportunity to discuss the matter with the relevant Business Manager. If the allegation is that the decision is contrary to this policy, that allegation will be tested. Where a decision is in respect of compliance with the policy the rationale behind it will be explained to the aggrieved party. Where a decision is found not to be in compliance with the policy without good reason it should be reconsidered. This is without prejudice to any formal appeals mechanism or to the Council's formal complaints procedure.
- 6.3 Any decision not to take action will be communicated to all the parties involved in the complaint within 10 working days of that decision being made.

7.0 INFORMAL ACTION AND ADVICE

- 7.1 Informal action will be taken when the offence being committed is not serious enough to warrant formal action or where the investigating officer has good reason to believe that informal action will be successful. The factors that will be considered are:
- Previous history of compliance
 - Confidence in the individual or management
 - The risk of none compliance
- 7.2 When an informal approach is used to secure compliance with legislation, confirmation of what action is required will be confirmed in writing within 10 working days of the decision being taken to take informal action. All correspondence will clearly differentiate between legal requirements and recommendations of good practice and will indicate the laws that are being contravened and the measures that will achieve compliance. Failure to comply could result in an escalation of enforcement action. The local authority will follow up on any advice and guidance given to ensure that there is full compliance.
- 7.3 Where breach is as a result of a disability, the Council will consider alternative measures available. This does not preclude the Council from taking appropriate enforcement action but the Council will ensure any such action is taken in accordance with relevant legislation and particularly the Equality Act 2010.

8.0 ISSUE OF A FIXED PENALTY NOTICE

- 8.1 Certain offences and behaviours are subject to fixed penalty notices where prescribed by legislation. Fixed penalties provide the Council with an effective and visible way of responding to low level areas of none compliance or unacceptable behaviour. Central Government encourages their use by local authorities and other agencies including parish councils.
- 8.2 The use of fixed penalty notices should only be used for the more minor offences, breaches of statutory Orders or Notices. Payment will be required within the specified period as set out on the notice.

8.3 If someone is found to be a repeat offender, and has been issued with a fixed penalty notice on more than one occasion, it can be argued that the sanction of a fixed penalty notice has clearly failed to change that person's behavior. In this instance, to continue to issue fixed penalty notices is futile and as a result consideration will be given to taking legal action in the courts.

8.4 Where there is a failure to accept a fixed penalty notice, the Council will consider escalating the enforcement action which would include the possibility of a prosecution for the original offence under the primary legislation. The Council may also consider civil action to recover the debt owed. Failure to pay a fixed penalty notice is a material consideration for the purposes of deciding whether a prosecution will be taken or civil debt recovery is commenced.

9.0 FORMAL NOTICES AND ORDERS

9.1 Formal Notices and Orders will be considered where one or more of the following criteria apply:

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

9.2 Formal Notices will be served within 10 working days of the decision to serve them being taken (subject to confirmation of ownership of land and/or following receipt of a completed Requisition for Information or as prescribed within legislation). All notices served will include details of any relevant Appeals Procedures or alternatively where such information can be found. The Council will where possible aim to hand deliver formal notices, however service will be satisfied if posted first class by Royal Mail.

9.3 Failure to comply with a formal notice will, in general, result in prosecution and/or works in default and/or further formal action where appropriate unless there is a good reason not to do so.

9.4 In the event of full compliance with a formal notice, a letter will be sent confirming the same within 10 working days of satisfactory evidence of compliance.

9.5 The Council will consult with relevant statutory bodies when considering making an Order, taking into consideration any relevant representations which may be made.

9.6 Failure to comply with the provisions as set out in the Order may result in the Council considering further Court action.

10.0 SEIZURE OF GOODS OR EQUIPMENT

10.1 Certain legislation enables authorised Officer's to seize goods, equipment or documents for example unsafe food, sound equipment which is being used to cause a statutory nuisance, unsafe products or any goods which might be required as evidence for possible future court proceedings. When goods are seized the Council will issue a receipt to the owner or person responsible. Information will be provided by the Council (where appropriate) as to how goods seized, can be recovered. The Council will in certain circumstances apply for an Order from the Court to permanently seize and dispose of the items recovered.

11.0 WORKS IN DEFAULT

11.1 Works in default are works which have been the subject of a legal notice served on an individual or company. If the notice expires and these works have not been carried out the Council may carry them out in default of the business or individual on which the notice was served. Where legislation allows, the Council will seek to recover the cost the Council has incurred in carrying out the work. In order to protect public funds a land charge will be placed on property where legislation allows or alternative recovery methods may be undertaken including those remedies through the County Court.

12.0 SUSPENSION, REVOCATION OR REFUSAL TO RENEW A LICENCE

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

13.0 PROSECUTION

13.1 The Council recognises that the decision to prosecute is serious and could have far reaching consequences for the offender and/or a business.

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

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

13.3 All relevant evidence and information will be considered before deciding to request legal proceedings in order to enable a consistent, fair and objective decision to be made. Regard shall be had to the guidance contained in the Code for Crown Prosecutors.

13.4 Once the decision has been made to request legal proceedings, the relevant paperwork will normally be forwarded to the Council's Legal Officers within 20 working days of that decision or, in the case of joint prosecutions for housing and council tax benefit offences, the relevant paperwork will be forwarded to the Solicitors Branch of the Department for Works and Pensions. Legal Officers will draft and issue the summons, normally within 20 working days of receiving full instructions. These timescales maybe subject to change depending on the complexity of each case and the requirement to collect sufficient evidence.

13.5 The Council's prosecutor will consider two tests as set out by the Code for Crown Prosecutors:

Is there enough evidence against the Defendant? When deciding whether there is enough evidence to prosecute, the prosecutor must consider what evidence can be used and is reliable. The prosecutor must be satisfied there is enough evidence to provide a "realistic prospect of conviction" against each defendant. This is an objective test. It means that a jury or magistrates' bench, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged.

Is it in the public interest for the Council to bring the prosecution? The public interest test involves a number of factors taken together which are for or against prosecution, for example, "for" can be whether a conviction is likely to result in a significant sentence, or whether it is a repeated offence and "against" could be whether the offender is elderly or vulnerable. Prosecution will usually happen unless the public interest factors against prosecution clearly outweigh those in favour of prosecution.

13.6 The following factors will also be taken into consideration when considering the public interest test:

- The likely sentence if convicted
- Previous convictions and conduct of the Defendant
- Whether there are grounds for believing the offence is likely to be repeated
- The prevalence of the offence in the area
- Whether the offence was committed as a genuine mistake or misunderstanding
- Any delay between the offence taking place and the date of trial
- The likely effect of the prosecution will have on the Defendant
- Whether the Defendant has put right the loss or harm accused

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

13.8 Deciding on the matter of public interest requires careful consideration of each of the factors involved. For each case these factors will have to be considered separately and given appropriate weight. A decision will then be taken in terms of the case as a whole.

A copy of the Code for Crown Prosecutors can be obtained from:

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

14.0 PROSECUTION WITHOUT WARNING

14.1 As a general rule, a person or business will be given a reasonable opportunity to comply with the law, although in some circumstances, prosecution may be undertaken without prior communication or contact, e.g.

- The contravention is a particularly serious one
- There has been a particularly blatant disregard of the law
- A statutory notice has previously been issued for a similar offence

15.0 ADMINISTRATIVE PENALTY

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

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

16.0 SIMPLE CAUTIONS

- 16.1 Where appropriate, a caution may be issued as an alternative to prosecution (the offender being over the age of 18 years). Cautions will be issued in order to deal quickly and simply with less serious offences, to divert less serious offences away from the courts; or to reduce the chance of repeat offences.
- 16.2 To safeguard the offender's interests the following conditions must be fulfilled before a caution is administered:
- Evidence of the suspected offender's guilt sufficient to offer a realistic prospect of conviction,
 - The suspected offender must admit the offence; and the suspected offender must understand the significance of a formal caution and give an informed consent to being cautioned.
- 16.3 No pressure should be applied to a person to accept a caution.
- 16.4 Government guidance will be taken into account when issuing a simple caution which can be found at:
<https://www.justice.gov.uk/.../adult-simple-caution-guidance>
- 16.5 As a general rule, a caution will not be considered in the case of a second or subsequent offence.
- 16.6 The offer of a caution will be made within 10 working days of the decision to issue one being taken. The caution will then be issued within 20 working days of the offer being accepted. Should a person offered a caution refuse to accept it then such failure will be a material consideration when deciding whether the offender should be prosecuted or not.

17.0 DEDUCTIONS FROM ONGOING BENEFITS OR OTHER STATE BENEFITS

- 17.1 The Council treats the recovery of overpayments as a serious matter and will pursue full repayment of any benefit deemed to have been overpaid and recoverable. However each case is considered individually and on its own merits.
- 17.2 If the claimant is still in receipt of benefit then the overpayment will normally be recovered from ongoing entitlement at a weekly rate set out within the Housing Benefit Regulations 2006. The Council will have regard to any special health or financial circumstances of the claimant (that it is aware of) before deciding the level of deduction, or when to commence the deductions, to avoid causing undue hardship to the claimant or their dependants.
- 17.3 Where the claimant is no longer in receipt of housing benefit, and /or has moved away from the area, and there is evidence to indicate that the claimant is in receipt of other state benefits, the Council will consider requesting the Department for Works and Pensions to make deductions from those benefits towards the overpayment.

18.0 PROCEEDS OF CRIME APPLICATIONS

- 18.1 The Council either through its own enforcement officers or in cooperation with the police may make an application under the Proceeds of Crime Act 2002 to restrain and/or confiscate the assets of an offender and/or seize cash. The purpose of any such proceedings is to recover the financial benefit that the offender has gained from the criminal conduct.

19.0 ENFORCEMENT AGENTS

- 19.1 The Council will instruct Enforcement Agents to recover monies and sums due to the Council and to enforce its common law powers. The Council will keep a record of such instructions and the reasons why such a service is required.

20.0 INJUNCTIVE AND OTHER CIVIL SANCTIONS

- 20.1 Injunction applications will be made in accordance with relevant legislation. Where offenders are repeatedly found guilty of similar offences or where it is considered that injunctive action is the most appropriate course of enforcement and to limit a type of behaviour. In cases involving anti-social behaviour, where early and informal intervention has been used and failed or is not appropriate, a civil injunction will be sought to include prohibitive and positive requirements. Injunctions will also be considered where an individual is entering Council land without its consent particularly where violent or threatening behaviour has been used. Injunctions may also be used to exclude people from specified locations (including their normal residence) and a power of arrest if there is use or threatened use of violence or there is a significant risk of harm. Injunction applications may be made without notice to the individual depending on the circumstances of the case and taking into account the statutory criteria.
- 20.2 Where the Council has served the required statutory notices, to may look to repossess premises (commercial and non-secure accommodation) through the Court, where the individual who had a right to operate or reside within it no longer has that right. The Council will request a money judgment in respect of the cost it has incurred.
- 20.3 The Council will seek to recover money owed to it by businesses and individuals by using Enforcement Agents as set out in paragraph 15 above or through the County Court. A letter before action will be sent within 10 days of making the decision to take action through the County Court.
- 20.4 Where a money judgment has been ordered by the Court, the Council will seek to enforce such an order through the various enforcement options available and may include an application to force the sale of that individual's property if a charging order is obtained. The Council may also seek to transfer the judgment to the High Court and seek to recover monies owed by instructing a High Court Enforcement Officer.

21.0 WARRANT APPLICATIONS

- 21.1 If an officer needs to enter and search premises, an application for a warrant will be made at the Magistrates Court if voluntary entry is not provided. Such applications are usually made without notice to the person concerned but only after reasonable efforts have been taken to secure peaceful entry.

PART THREE – ENFORCEMENT PRINCIPLES

22.0 PRINCIPLES OF ENFORCEMENT

- 22.1 The Council believes in firm but fair regulation. This policy is underpinned by the principles of openness about how the Council operates consistency of approach and proportionality in the application of the law.
- 22.2 Transparency
Openness is important in maintaining public confidence in the Council's ability to regulate. It means helping all stakeholders to understand what is expected of them and what they should expect from the Council. It also means making it clear why an officer intends to take or has taken enforcement action.
- 22.3 The Council will set about its enforcement work in as open a way as possible. It will make clear to anyone who may be affected by its enforcement actions what the results of those actions may be. The Council will strive to ensure that all stakeholders have a say in the way in which work is done.
- 22.4 The District Council will discuss any issues, either general or in relation specific compliance failures or problems with anyone experiencing difficulties. Subject to the need to protect the safety of any officers concerned, the Council will ensure that people know who they are dealing with by quoting the name and contact number of the officer dealing with any enforcement matter on all correspondence or by giving those details at the beginning of a telephone conversation.
- 22.5 Consistent but Flexible
The Council aims to achieve consistency in advice tendered, the response to complaints and other incidents, the use of powers and decisions whether to prosecute. This policy document will inform that process.
- 22.6 The Council will not commit itself to following a certain course of action in any particular situation. The Council recognises that every situation will have its own particular circumstances and the correct course of action can only be arrived at following full and careful consideration of all these facts and circumstances. Officers will need to use professional judgement in order to determine the correct course of action. These circumstances include, but are not limited to the criteria set out in this policy. The points for consideration against each of the enforcement options and the principles of openness, consistency and proportionality will also inform the decision making process. Through a process of peer review and inter-authority auditing we will promote the development of these decision making skills.
- 22.7 Proportionality
Any action taken by the Council will be proportionate to the risks posed and to the seriousness of any breaches of the law.

23.0 LIAISON

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

23.2 The Council will liaise with other local authorities, agencies and organisations where it is appropriate and to maximise the effectiveness of any enforcement. This may be where an enforcement matter extends beyond the District's boundary or where the Council shares responsibility with another organisation.

23.3 External agencies the Council works with include but are not limited to the following:

- Nottinghamshire Police
- Environment Agency
- Health and Safety Executive
- Food Standards Agency
- Gambling Commission
- Nottinghamshire Fire and Rescue Service
- HM Revenue and Customs
- Department of Work and Pensions
- DEFRA
- Office of Fair Trading
- National Crime Agency
- Other Local Authorities

23.4 Primary Authority (PA)

Primary Authority allows businesses to be involved in their own regulation. It enables them to form a statutory partnership with one local authority or fire and rescue authority, which then provides robust and reliable advice for other local regulators to take into account when carrying out inspections or addressing non-compliance. The aim is to ensure that local regulation is consistent at a national level and sufficiently flexible to address local circumstances.

23.5 The Register of Primary Authorities will be used in all circumstances to ensure that effective liaison and communication takes place between us, the Business involved and the Primary Authority for that business. If an Inspection Plan produced as part of the PA agreement requires specific feedback to the primary authority after an inspection, it will be provided.

24.0 INFORMATION AND CONSULTATION

24.1 The Council will strive to help individuals and organisations to comply with the law wherever possible, especially individuals and small and medium sized businesses. We will seek to do this by offering advice and information translated into foreign languages as and when appropriate. Any letter relating to enforcement will include an offer to discuss the matter further if the recipient so wishes. Where information and advice leaflets or a digest of the law or the Council's enforcement procedures are available, we will make these accessible to people or businesses which may be affected by the Council's enforcement activities. We will seek to increase the range

of this sort of literature so that advice and information is available to everyone having dealings with the Council in its role as an enforcer. Much of this information is available of the Council's web site. <http://www.newark-sherwooddc.gov.uk/>

- 24.2 The District Council will publicise this enforcement policy in order to ensure that as many stakeholders as possible are aware of it. This publicity will take the form of abstracts of the policy being printed and distributed, the policy being posted on the Council's web site and groups representing interested parties being made aware of it.

25.0 SPECIAL INTERESTS OF STAKEHOLDERS

- 25.1 The District Council will attempt to take account of any special needs that stakeholders in its services may have. This includes, but not exclusively:

- Making inspection visits outside of normal office hours to businesses which do not trade within those hours e.g. restaurants, takeaways, nightclubs, etc;
- Providing an out of hours emergency telephone number on which complaints can be registered at any time of the day or night;
- Investigating complaints outside of normal office hours
- Providing advice and information on enforcement related matters in languages other than English.

PART FOUR – MANAGING THE ENFORCEMENT ROLE

26.0 TRAINING AND APPOINTMENT OF OFFICERS

- 26.1 All officers undertaking enforcement duties will be suitably trained and qualified in order to ensure that they are fully competent to carry out their enforcement activities.
- 26.2 All officers will be authorised by the Council to exercise powers under specific statutes and subordinate legislation. The level of authorisation for each officer will be determined by their qualifications, experience and competence having regard to any relevant national guidelines. It is considered appropriate that the level of authorisation is reviewed annually during the corporate appraisal process. Authorisations will be in writing and in a form which can be shown on request.
- 26.3 The District Council supports the principle of continuing professional development and will ensure that officers are given additional in-post training to maintain up-to-date knowledge and skills.

27.0 MANAGEMENT SYSTEMS

- 27.1 In order to ensure consistency of practice and compliance with legal requirements and, where appropriate, Statutory Codes of Practice, management control measures are operated. This is based on an appropriate level of delegation to relevant officers. These are as follows:
- All correspondence is signed by an appropriately qualified and authorised officer and checked by his/her line manager before despatch.
 - All prosecutions and formal cautions are agreed in line with the Council's Scheme of Delegation.
<http://www.newark-sherwooddc.gov.uk/constitution/>
 - Practical issues are regularly and openly discussed at team meetings.
 - Shadowing of officers where necessary.
 - Training requirements are identified during the Employee Appraisal Process.
 - Consistency exercises are a routine part of training
- 27.2 The Council will maintain management systems to monitor the quality and nature of enforcement actions undertaken so as to ensure, as far as is reasonably practicable, a uniform and consistent approach, which follows local or national guidance if mandatory.

28.0 EQUALITIES

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

29.0 DATA PROTECTION

- 29.1 The Council needs to hold and process personal information so that it may properly perform its statutory functions. The Data Protection Act 1998 requires that the Council looks after personal information it holds, keep only what is needed and dispose of it in accordance with the Council's Data Retention Schedule. The Council may share personal information held where legislation allows and will have information sharing protocols in place where required. Prior to sharing information, the Council will consider the proposed use of the information, the secure transfer of information and measures that are in place to keep the information secure once it has left the Council's control.
- 29.2 In accordance with the Data Protection Act 1998 any individual has the right to see any personal data that the Council may hold about that person, subject to any relevant exemptions that may apply. Any personal data held in relation to Enforcement is covered by this requirement and therefore any individual seeking this information should make a Subject Access Request in accordance with the guidance given on the council's website at the link below:
<http://www.newark-sherwooddc.gov.uk/yourcouncil/makingarequestforinformation/>

30.0 OFFICER CONDUCT

- 30.1 In addition to the principles set out in this Policy, officers will always present themselves professionally and courteously. Officers will introduce themselves and in what capacity they are acting, however there may be occasions when officers legitimately delay identifying themselves until a later stage of an investigation, particularly where they are engaged in authorised covert operations. Officers will carry and show their identify card or authorisation as appropriate.

31.0 THE REGULATORS COMPLIANCE CODE

- 31.1 The Council has been required by the Legislative and Regulatory Reform Act 2006 ("the Act") to have regard to the Regulators Code when developing this policy and the operational procedures sitting beneath it, taking into consideration the six core objectives. In so far as it relates to the enforcement sanctions, this enforcement policy is compliant with the Code in that it aims to promote efficient and effective approaches to regulatory inspection and enforcement. The Council has considered in detail the core objectives as follows:
- 31.2 Supporting those Regulated to Comply and Grow
The Council recognises the need to allow and encourage economic progress and therefore any enforcement action will take into account the cost of compliance in relation to the benefits achieved.
- 31.3 Simple and Straightforward Engagement
The Council will provide clear and simple guidance and advice, providing a range of methods in which businesses and individuals can engage with officers. Contact details of officers will be provided in most circumstances. The Policy provides details of how complaints can be made in respect of decisions made under this policy and the Council has a formal complaints procedure and also welcomes feedback through the Council's customer services team.

31.4 Risk Based Regulation

The Council will ensure that consideration will be given to the likelihood of non-compliance taking into account the history of the business, competence of the management and willingness to comply. The Council will review the effectiveness of the approach to enforcement against defined outcomes.

31.5 Information Sharing Re Compliance and Risk

The Council will endeavour to minimise the amount of data that they require business and individuals to provide and where possible such data will be shared with other departments of the Council and other enforcement agencies to promote “collect once use many times”.

31.6 Provision of Clear Information, Guidance and Advice to Assist in Achieving Compliance

The Council will provide general information, advice and guidance to businesses and individuals so statutory obligations are easier to understand. Any advice given will distinguish between best practice and statutory requirements to improve minimum stands.

31.7 Transparency

The clear aim of this policy is to provide information as to how the Council seeks to achieve efficient enforcement. It sets standards that can be expected by businesses and individuals as well as clarifying what is expected in return. Details of feedback, including complaints and appeals against decision are made available on the Council’s website.

Guidance and Codes that Influenced the Preparation of the Enforcement Policy

A. Principles of Good Regulation

The Legislative and Regulatory Reform Act 2006, Part 2, requires Newark and Sherwood DC to have regard to the Principles of Good Regulation when exercising a specified regulatory function. For local authorities, the specified functions include those carried out by our environmental health, trading standards and licensing services.

We will exercise our regulatory activities in a way which is:

- (i) Proportionate – our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence,
- (ii) Accountable – our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures,
- (iii) Consistent – 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,
- (iv) Transparent – we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return, and
- (v) Targeted – we will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities.

B. Regulators' Code

Newark & Sherwood DC has had regard to the [Regulators' Code](#) in the preparation of this policy. In certain instances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

C. Human Rights Act 1998

Newark & Sherwood DC is a public authority for the purposes of the Human Rights Act 1998. We therefore apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms. 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 right to a fair trial and the right to respect for private and family life, home and correspondence.

D. Data Protection Act 1998

#Where there is a need for the Council to share enforcement information with other agencies, we will follow the provisions of the Data Protection Act 1998.

E. The Code for Crown Prosecutors

When deciding whether to prosecute Newark and Sherwood DC has regard to the provisions of [The Code for Crown Prosecutors](#) as issued by the Director of Public Prosecutions.

The Code for Crown Prosecutors is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases. The Code sets out two tests that must be satisfied, commonly referred to as the 'Evidential Test' and the 'Public Interest Test':

- a. Evidential Test - is there enough evidence against the defendant?
When deciding whether there is enough evidence to prosecute, the council will consider what evidence can be used in court and is reliable. We must be satisfied there is enough evidence to provide a "realistic prospect of conviction" against each alleged offender.
- b. Public Interest Test - is it in the public interest for the case to be brought to court?
The local authority will balance factors for and against prosecution carefully and fairly, considering each case on its merits. The public interest factors that we will take into account are detailed under the enforcement options available to us in [Appendix C](#).

F. Regulatory Enforcement and Sanctions Act 2008 ('the RES Act')

The Regulatory Enforcement and Sanctions Act 2008, as amended, established the Primary Authority scheme. We will comply with the requirements of the Act when we are considering taking enforcement action against any business or organisation that has a primary authority, and will have regard to guidance issued by the Secretary of State in relation to Primary Authority.