



STATEMENT OF ENFORCEMENT POLICY

**Version 2
June 2013**

1. Introduction

The purpose of this policy is to commit the Council to good enforcement practice and provide guidance to Council officers, businesses and the public. North Hertfordshire District Council has adopted the central and local government Concordat on Good Enforcement Practice and this policy explains the approach that will be adopted by officers when carrying out the Council's duties. Each service area has its own procedures and protocols that will have regard to this policy, though there may be local variations within them. The policy is based on the Council's enforcement mission statement.

2. Enforcement Mission Statement

A consistent and proportionate approach to enforcement that is targeted and contributes to achieving the Council's priorities, policy aims and meets the needs of the community.

3. General Principles

The following 5 principles should be taken into account when considering enforcement action:

- **Consistency:** to ensure that similar issues are dealt with in an equitable way, making full use of guidance produced by Government and other agencies.
- **Fairness:** to ensure a fair and even-handed approach.
- **Proportionality:** to consider whether proposed action is proportionate considering all relevant factors, including the severity of the offence, likely outcome and costs of proceedings.
- **Transparency:** to ensure enforcement action to be taken by the Council is easily understood. Clear distinctions will be made between legal requirements and recommendations about good practice which are not compulsory.
- **Objectivity:** to ensure that decisions are not influenced by the ethnic origin, gender, religious or political beliefs, or sexual preferences or mental or physical ability of the offender, complainant or witness.

Where any rights contained within the Human Rights Act 1998 may be affected officers should consider whether the action is both necessary and proportionate, and ensure that the provisions of the Act are taken into consideration where applicable.

4. Shared Enforcement and Corporate Approach

The range of enforcement matters dealt with by the Council may sometimes require officers to work with other departments or agencies to maximise effective enforcement. Consideration should be given as to whether it's appropriate to share information with external agencies or colleagues in other departments. Where activity impacts across different Council departments, officers should adopt a corporate approach, working together to seek the best result overall.

5. Aims of Enforcement Action

In accordance with the Regulators' Compliance Code, the Council utilises the sanctions and penalties available to it in order to:

- change the behaviour of the offender;
- change attitudes in society to offences which may not be serious in themselves, but which are widespread;
- eliminate any financial gain or benefit from non-compliance;

- be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
- be proportionate to the nature of the offence and the harm caused;
- address the harm caused by regulatory non-compliance, where appropriate; and
- deter future non-compliance.

6. Levels of Enforcement Action

Prior to taking enforcement action, Council officers must ensure that they are authorised to do so under the Council's Constitution/Scheme of Delegation. Officers will generally consider the following enforcement options when taking action:

LEVEL 1 - Advice and Guidance: to assist individuals, existing and prospective businesses and other organisations to comply with their legal obligations. This will be achieved by providing written and verbal advice, information leaflets and the opportunity for face-to-face contact to discuss and help resolve potential problems.

LEVEL 2 - Informal Warnings: these will be used to reinforce advice and guidance where minor breaches of the law occur and it is not appropriate to take formal action. Warnings are more likely to be appropriate for minor contraventions where it can be reasonably expected that informal warnings will achieve compliance. Warnings issued in respect of more significant breaches of the law should include timescales within which the breaches should be remedied. Monitoring should be undertaken as appropriate where there are ongoing breaches.

LEVEL 3 - Formal Action: this includes the use of statutory (legal) notices and is generally taken if informal advice or warnings are ignored. Before formal 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.

LEVEL 4 - Legal Proceedings: this includes the issue of fixed penalty tickets, simple cautions, prosecutions, injunction proceedings, and execution of works in default. Enforcement will normally move from level 1 through to level 4 although it may be appropriate to commence proceedings at level 3 or 4 if the criteria for formal action or prosecution are met.

7. Statutory notices

Some legislation provides for the service of statutory notices, which require a person, business or organisation to comply with specific requirements.

Generally, the notice will explain:

- what is wrong
- what is required to put things right
- the timescale in which to put things right
- what will happen if the notice is not complied with.

In some circumstances where a formal notice has been served there might be a right of appeal against the Council's decision. In such cases an explanation of the method of appeal will be provided at the time the notice is issued.

8. Works in Default

In general, it is Council policy to either formally caution or prosecute individuals, organisations or businesses that do not comply with a statutory notice. In addition,

failure to carry out specified work may result in the Council carrying out the works and recovering all costs.

9. Fixed Penalty Tickets

For certain offences, e.g. dog fouling and depositing of litter, there is provision for fixed penalty tickets to be issued. Where there is evidence that an offence has been committed, authorised officers from the Council will issue the appropriate penalty ticket.

10. Simple Cautions

Under certain circumstances, a simple caution (previously known as a formal caution) may be used as an alternative to prosecution and will usually be considered before making a decision to prosecute. A simple caution is a serious matter. It may be used to influence any decision whether or not to prosecute should the individual, organisation or business offend again and it may be referred to in any subsequent court proceedings. Regard should be had to government guidance by the Ministry of Justice – Simple Caution for Adult Offender (April 2013) or any subsequent guidance.

Simple cautions are intended to:-

- a) deal quickly and simply with certain offences;
- b) avoid unnecessary appearance in criminal courts;
- c) reduce the chance of offenders re-offending.

Before issuing a caution the following conditions must be satisfied:

- i) there must be evidence of guilt sufficient to give a realistic prospect of conviction and it must be in the public interest to offer a simple caution;
- ii) the offender must understand the significance of the simple caution and admit the offence by signing a declaration;
- iii) The person against whom a caution is issued must have legal responsibility for the offence(s), for example in the case of a company, and be 18 years or over.

Where an individual chooses not to accept a simple caution the Council will normally consider prosecution.

11. Prosecution

The Council will take individual circumstances into account when deciding whether to initiate a prosecution and will only bring proceedings when it is considered to be in the public interest. Before deciding to prosecute there must be sufficient evidence for a realistic prospect of conviction, taking account of any defence that may be available. In certain circumstances, for example in the case of dishonesty or fraud, prosecution may be taken without prior warning.

In addition the decision to prosecute will always take into account the Home Office Code for Crown Prosecutors. The Code includes the requirement that both the evidential test and public interest test referred to above are met before issuing proceedings. Typical factors that should be considered when taking the decision to offer a formal caution or prosecute, and whether the public interest test is met, are included in Appendix B: Public Interest Matrix.

Prosecution proceedings require the authorisation of the Corporate Legal Manager under the Council's Constitution. Officers must ensure that Legal Services are consulted at the appropriate stage to consider the evidential and public interest tests and institute proceedings where appropriate.

12. Proceeds of Crime Applications

The Council, either through its own 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. The purpose of any such proceedings is to recover the financial benefit that the offender has obtained from his criminal conduct. Proceedings are conducted according to the civil standard of proof. Officers should consider whether such an application is appropriate when initiating a prosecution.

13. Considering the views of those affected by offences

- The Council undertakes enforcement on behalf of the public at large and not just in the interests of any particular individual or group. When considering the public interest test and whether enforcement action is appropriate, any views expressed by those affected by the offence(s) will be taken into account.
- Those people affected by an offence will be kept informed of any decision that makes a significant difference to the case in which they are involved.

14. Publication of Enforcement Action

Where enforcement action is successful, officers may want to publicise the outcome to inform the public and deter potential offenders. In doing so officers should have regard to the relevant Council procedures.