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# **CORPORATE STATEMENT OF ENFORCEMENT POLICY**

**Adopted July 2024**



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<sup>1</sup> Added 30.10.24 administrative.

## 1. Introduction

The purpose of this Policy is to set out North Hertfordshire District Council's (referred to as 'North Hertfordshire District Council', 'North Herts Council', or 'Council') enforcement principles, practice and provide guidance to Council officers, businesses and the public. Enforcement action is a wide term which includes informal and formal steps and covers a range of options detailed below. When undertaking such action, the Council will have regard to this Policy, and any service specific enforcement policy/ procedure. The Council undertakes enforcement for a number of services, and these specific ones are detailed in the Appendices listed. This is indicative of the areas of enforcement at the time of approval, is therefore indicative rather than exhaustive, as this is subject to change over time as regulatory duties and legislation, statutory guidance or case law emerges. If not specifically covered in this Policy or Appendices, then the legislation, and or statutory guidance, codes or case law will apply, together with the mission statement and General principles.

This overarching Policy does not seek to duplicate the specific ones detailed in the Appendices, but to provide a framework. In developing and updating these policies, regard has been given to the Regulators' Code 2014<sup>2</sup> issued under section 23 of the Legislative and Regulatory Reform Act 2006 ('the Act'), and good practice. This Policy explains the approach that will be adopted by officers when carrying out the Council's duties and how the Council will respond to noncompliance. Each service area has its own procedures and protocols that will have regard to this Policy, though there may be local variations within them; these are contained in the Appendices below. The Policy covers both criminal and civil enforcement practices and 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

In line with the requirements of the Act, the Council will have regard to the following principles when considering enforcement action:

- **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. Where possible the Council shall be sharing information about compliance and risk.
- **Accountability:** to ensure that the Council is answerable for its enforcement practices and can be held to account for the actions it takes.
- **Proportionality:** to consider whether proposed action is proportionate considering all relevant factors, including the severity of the offence, likely outcome, risk and costs of proceedings.
- **Consistency:** to ensure that similar issues are dealt with in an equitable way, making full use of guidance produced by Government and other agencies.
- **Targeted:** only at cases where action is needed.

The Council will act in accordance with the relevant legislation, guidance, and case law as appropriate, when investigating breaches of regulatory compliance and when considering enforcement action. The Council's 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.

<sup>2</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/300126/14-705-regulators-code.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf)

#### 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 is appropriate to share information with external agencies or colleagues in other departments. Where activity impacts across different Council departments, officers should adopt a corporate and collaborative approach, working together to seek the best results overall. All instances of data sharing must comply with relevant Data Protection Legislation<sup>3</sup>.

#### 5. Aims of Enforcement Action

If enforcement action is necessary, then 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 offending or 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

Where primary legislation or statutory guidance prescribes an enforcement approach that departs from the Regulators' Code (for example, elements of Part 1 of the Housing Act 2004 and the Renters' Rights Act 2025), this Corporate Policy yields to that regime. Officers must still act lawfully and proportionately but are not required to apply Levels 1–2 before formal action where statute imposes a duty or presumption to enforce.

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

- **LEVEL 1 – Compliance, 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.

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<sup>3</sup> Means: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended, or any successor legislation.

- **LEVEL 3 - Formal Action:** this includes the use of statutory (legal) notices and is generally taken if compliance advice or informal warnings are not considered to be the most appropriate route. Before formal action is taken, other than where immediate action is required, officers will provide an opportunity to discuss the circumstances of the case and, where possible, attempt to resolve points of difference.
- **LEVEL 4 - Legal Proceedings:** this includes, amongst other things, the issue of fixed penalty notices, simple cautions, prosecutions, injunction proceedings, review and revocation of licences and execution of works in default.

Enforcement will normally move from Level 1 through to Level 4, although depending on the facts of a given matter, it may be appropriate to adopt a fluid approach to how a matter proceeds through the above Levels. For example, in certain circumstances a matter may begin at Level 1 but then, if required, go straight to Level 3 or 4. Likewise it may be suitable to commence proceedings at Level 3 or 4 if the criteria for formal action or prosecution are met. Where there are duties under specific legislation proceedings may also commence at Level 3 or 4 bypassing Level 1 and 2.

Different service areas may have their own service specific sanctions available to them; including such things as civil penalties that can be utilised as an alternative to prosecution. Where these specific sanctions are available to a given service area, these will be set out in the relevant procedure document in the appendices below.

## 7. No Action

In certain circumstances, contraventions may not warrant any action. This can be where the cost of compliance significantly outweighs the detrimental impact of the contravention, or where the cost of the required enforcement action to the Council significantly outweighs the detrimental impact of the contravention on the community. A decision of no action may also be taken where action is inappropriate in the circumstances, such as where an organisation has ceased to trade, or the offender has mental capacity considerations or is elderly and frail and formal action would seriously damage their well-being.

## 8. 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.

## 9. Works in Default

In general, it is Council policy to either 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 in default and recovering all costs. In such cases the expenses associated with default works will usually be recovered by issuing an invoice to the relevant party. Where appropriate, these costs may be recovered by way of a charge against land/ property, and such a charge may be further enforced through sale of the land/ property.

In calculating the recovery of costs incurred when undertaking works in default the Council will have regard to the following:

- Contractor's costs or expenses;

- Costs associated with officer time (including overhead costs); and
- Legal costs or expenses.

## 10. Fixed Penalty Notice ('FPN')

For certain offences, e.g. fly-tipping, household waste duty of care offences, breaches of community protection notices (CPN's), depositing of litter, abandoned vehicles, there is provision for fixed penalty notices to be issued. Where there is evidence that an offence has been committed, authorised officers from the Council may issue the appropriate penalty ticket. The issue of an FPN gives an offender the opportunity to discharge their liability to prosecution by the payment of set fine within a specified period. FPNs will only be issued when there is adequate evidence to support a prosecution. If the fine is not paid in full within the stated period then the Council is likely to mount such a prosecution.

Details of the Council's FPN scheme, including which offences are included, the level of fine and early payment discounts amongst other things, can be viewed on the council's website<sup>4</sup>

## 11. Cautions

The Police, Crime, Sentencing and Courts Act 2022, introduced a concept of two different cautions known as diversionary or community cautions, which are to replace simple cautions. At the point of reviewing this Policy these provisions have not been brought into force and once they are, their use will follow the legislative provision and the Code of Practice for Diversionary and Community Cautions. Until that time, the provisions relating to simple cautions will be applied by the Council.

A simple caution is a non-statutory, non-conviction disposal for adult offenders aged 18 or over. Under certain circumstances, a simple 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 reoffend, and it may be referred to in any subsequent court proceedings. Regard will be given to government guidance by the Ministry of Justice – Simple Caution for Adult Offenders<sup>5</sup>.

Simple cautions are intended to:-

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

Before issuing a caution the following will be relevant:

- 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. that it is a low-level first time offending situation;
- iii. not a repeat offence *and where relevant and appropriate* a victim's views will be taken into account;
- iv. the offender must understand and be capable of understanding the significance of the simple caution and admit the offence by signing a declaration;
- v. 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.

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<sup>4</sup> [Home | North Herts Council \(north-herts.gov.uk\)](http://www.north-herts.gov.uk)

<sup>5</sup> <https://www.gov.uk/government/publications/simple-cautions-guidance-for-police-and-prosecutors> or any subsequent guidance

The decision to offer a caution will normally be taken in consultation between the relevant service manager and the Director – Governance, or those officers delegated to make that decision under a scheme of delegation.

## **12. 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, including cases of dishonesty or fraud, or other serious health and safety cases, prosecution may be taken without prior warning.

In addition, the decision to prosecute will always take into account the CPS Code for Crown Prosecutors. This Code includes the requirement that both the evidential test and public interest test referred to above are met before issuing proceedings.

Most prosecution proceedings require the authorisation of the Director: - Governance under the Council's Constitution, although some require specific officers to do so, such as Health and Safety, in consultation with the Director. 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.

In certain circumstances, the Council will also consider associated application to court if someone is convicted of an offence (or pleads guilty) such as a criminal behaviour order.

## **13. Unauthorised Encampments**

For the purposes of this Policy an "Unauthorised encampments" (UE) occurs when one or more persons occupy land without consent, in or with a vehicle (which includes, although is not limited to, any vehicle, whether or not it is in a fit state for use on roads, and includes any chassis or body, with or without wheels, and or caravans). This also covers situations where there is no planning approval and/ or caravan sites licences.

"Trespassing" is the presence and or occupation of Council land or buildings by one or more persons without consent; this may be with or without a moveable habitat, such a tent or other similar equipment.

The Council will consider all options in relation to UE's on Council land or buildings, however, can and is likely to use common law powers in the first instance. It has been established that a landowner has the common law right where someone has trespassed on their land to obtain possession of their lands without obtaining a specific court order, by use of Certified Bailiffs now known as Certified Enforcement Agents. This may also entail removing and or seizing vehicles associated with the UE.

Each case must be treated on its merits with the safety of all concerned, including those who are involved in the UE and the potential for disorder or disruption as major guiding factors.

## **14. Licences**

The Council is responsible for licensing a wide range of activities from taxis and the sale of alcohol to scrap metal dealers and dog breeders. These administrative documents are normally subject to certain conditions that are imposed either by legislation or the Council. The specific approach towards such matters, is set out in the appropriate Appendix.

## **15. 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 their 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.

## **16. 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.

The Council understands that people making complaints may not wish their identity to be made known to the party about whom the complaint is being made. Accordingly, it will take care to respect the confidentiality of complainants wherever possible. However, most types of formal enforcement action, such as a prosecution, cannot take place unless the complainant is prepared for their identity to be revealed and they may be required to attend court. The Council will endeavour to make it clear whether or not complainant confidentiality can be maintained in these circumstances, although it should be made clear that this is a matter for the Court and it is unlikely in the majority of cases.

Most complaints require an investigation to be mounted and this may, on occasion, require a regular dialogue with the complainant in order to establish evidence. Accordingly, it is not possible for the Council to initiate such an investigation where the complainant does not wish to provide their name and contact details. Therefore, anonymous complaints will only be investigated wherever it is appropriate, practicable and in the public interest to do so.

## **17. Publication of Enforcement Action**

Where enforcement action is successful, officers may want to publicise the outcome to inform the public and deter potential offenders, this may be done through press releases as well as other means. In doing so, officers should have regard to the relevant Council procedures.

The Council may publicise enforcement outcomes where lawful and in the public interest. In deciding whether and how to publish, officers will record consideration of: (a) deterrence value; (b) seriousness and harm; (c) risk of prejudicing live proceedings; (d) privacy/data-protection impacts and necessity; and (e) accuracy and balance. Publication will comply with data-protection law and Article 10 ECHR.

## **18. Waste Management**

Waste management is a shared service with East Hertfordshire Council and the council do not have dedicated waste enforcement team. Currently enforcement work is undertaken on an ad hoc basis by the Council's legal department. Should the Council require the shared service to undertake enforcement then this will have to be arranged and agreed with East Hertfordshire Council.

## **19. Victim rights**

Where appropriate, services will take into account the views of any victim, injured party or relevant person to establish the nature and extent of any harm of loss - including potential harm and loss - and its significance when making the decision. However, if you are unhappy with the Council's approach you may raise this with the enforcement officer concerned or via the Comments, Compliments and Complaints policy process, details of which can be found on the Council's website or via the Councils Offices in Letchworth Garden City.