



# **Norwich City Council**

## **Public Protection Enforcement Policy**

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A summary of this policy is available in large print, on tape or in other languages on request

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## 1. Introduction

1. The principle aim of Norwich City Council's public protection service is to ensure that dutyholders comply with laws that protect people from harm.
2. A dutyholder can be anyone on whom the law confers a responsibility. It could be an employer who is responsible for the health, safety and welfare of their employees; it could be employees themselves; the proprietor of a restaurant who must comply with laws protecting consumers from harm; or the person in control of a premises.
3. The dutyholder may also be the owner/operator/lessee of a commercial or domestic premises who is responsible for undertaking work or for adhering to planning controls such as the use to which a premises is put.
4. The term 'harm' is wide ranging. For instance it includes the mental anguish caused by nuisances such as amplified music; illness caused by food poisoning or exposure to harmful chemicals or pollutants; and serious injury and death caused by a slip, trip or fall in the workplace.
5. This Enforcement Policy is in three parts. The first part describes the regulatory environment, the principles of good regulation and everybody's responsibilities within this framework. The second part describes the methods available to us for enforcing the law and how we make enforcement decisions. The third part explains how we apply the principles of good regulation in practice and other aspects of how enforcement is delivered.
6. This enforcement policy outlines the basic principles concerning the enforcement activity that Norwich City Council has a duty to undertake as an enforcing authority, and in particular the broad range of enforcement activity carried out by the authorised officers within its public protection service.
7. When making enforcement decisions authorised officers are required to follow this enforcement policy or else seek approval from their head of service. All decisions that depart from this policy will be properly reasoned, based on material evidence and be documented.
8. Norwich City Council is a signatory to the "Enforcement Concordat - The Principles of Good Enforcement: Policy and Procedures" which is intended to help promote consistency in the UK regulatory enforcement regime.
9. This enforcement policy accords with the following: the Regulators' Compliance Code; the regulatory principles required under the Legislative and Regulatory Reform Act 2006; the Human Rights Act 1998; the European Convention on Human Rights; the Freedom of Information Act 2000; the Children Act 2004; Regulation of Investigatory Powers Act 2000; and the Regulatory and Enforcement Sanctions Act 2008.
10. This enforcement policy takes into account the findings of the Hampton Review "Reducing administrative burdens: effective inspection and

enforcement” by seeking to deliver improved regulatory outcomes whilst reducing unnecessary burdens on compliant businesses.

# PART I

## The Regulatory Landscape

## 2. The Meaning of Enforcement

1. Enforcement includes action carried out in the exercise of, or against the background of, statutory enforcement powers. Enforcement is wide ranging. It is not limited to formal action, such as prosecuting offenders or serving Notices, but includes, amongst other things, providing advice through all types of media, interventions at businesses to check or promote and support legal compliance and safe practice and the investigation of alleged breaches of the legislation.
2. Enforcement activity can help to create a level playing field so that those that meet their legal responsibilities are not placed at a competitive disadvantage by those that don't. It can ensure that dutyholders take action to deal immediately with serious risks and hold to account those that don't.

## 3. The Principles of Good Regulation

1. The public protection service will strive to deliver firm but fair enforcement of the law. This will be informed by the principles of *proportionality* in applying the law and securing compliance; *consistency* of approach; *targeting* of our enforcement action; *transparency* about how we operate and what those we regulate may expect; and *accountability* for our actions. These principles apply both to how the public protection service enforces individual cases and to how we manage enforcement activities as a whole.
2. How public protection service applies the principles of good regulations in practice is described in Part 3, The Delivery of Enforcement Functions.

### Proportionality

3. Proportionality means ensuring enforcement action corresponds appropriately to the risks arising.
4. Those that the law protects and those on which the law places a duty expect that action taken by the public protection service to achieve compliance or bring dutyholders to account for non-compliance will be proportionate to any risks or to the seriousness of any breach. This will include any actual or potential harm arising from a breach of the law.
5. In practice, applying the principle of proportionality means that enforcing officers will take particular account of how far the dutyholder has fallen short of what the law requires and the extent of the risks to people which arise from their not having complied with the law.

### Consistency

6. Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends.

7. Dutyholders that manage similar risks expect a consistent approach from the public protection service and other agencies whether it is in the advice tendered; the use of enforcement Notices, approvals etc; decisions to prosecute; or in its response to incidents.

8. In practice achieving consistency is not a simple matter. Enforcement officers of the public protection service are faced with many variables including the degree of risk, the attitude and competence of management, any history of incidents or breaches involving the dutyholder, previous enforcement action, and the seriousness of any breach; which includes any potential or actual harm arising from a breach of the law.

### Targeting

9. Targeting means making sure that action is targeted primarily on those whose activities give rise to the most serious risks or where the hazards are least well controlled. It also means that any enforcement action is directed against the dutyholder responsible for the breach. This may include employers in relation to workers or others exposed to risks; the self-employed; food business operators; owners of premises; employees themselves; and individual members of the public.
10. A dutyholder's ability to manage risks is important in making targeting decisions since a relatively low hazard undertaking which is poorly managed can entail a greater risk than a higher hazard environment where proper and adequate risk control measures are in place.
11. Certain very high hazard sites will receive regular inspections so that the Public protection service can provide assurance to the public that such risks are properly controlled.

### Transparency

12. Transparency means helping dutyholders understand what is expected of them and what they should expect from the public protection service. It also means making clear to dutyholders not only what they have to do but, where this is relevant, what they don't. This means being clear about what are statutory requirements, i.e. compulsory, and what is advice or guidance about what is desirable.
13. The council holds various public registers, copies of which are available to view on request. These include the integrated pollution prevention and control (IPPC) register; a register of health and safety notices where the breach is in a public area; a register containing details of food businesses in Norwich, a register of cooling towers and evaporative condensers within the Norwich city boundary, licensed premises and taxi licenses.

### Accountability

14. All public bodies are accountable to the public for their actions. Complaints about the service and the conduct of officers are taken seriously and investigated. Policies and standards are in place against which the organisation can be judged.

15. Accountability also means ensuring that all services are tailored to meet the needs of everyone, taking into account age, gender, ethnicity, lifestyle or disability.

#### **4. Freedom of information**

1. As public bodies local authorities are subject to the requirements of the Freedom of Information Act (FOI) and must be open, accessible and honest in their dealings with the public.
2. The public protection service supports the aims of (FOI) and similar legislation in promoting openness and transparency and by giving the public greater access to the recorded information that it holds. We hold ourselves accountable to the public and various government auditors, assessors as well as the media.
3. Details of this scheme and how to make a FOI enquiry are available on the Norwich City Council website [www.norwich.gov.uk](http://www.norwich.gov.uk) and through reception desks in council offices.

#### **5. Data Protection**

1. Data protection is covered by the Data Protection Act 2018 (DPA) and the General Data Protection Regulation 2018 (GDPR). Together these statutes require that we look after any personal information we hold, keep only what we need to, maintain its accuracy, and dispose of it in a timely way when it is no longer required.
2. The public protection service needs to hold and process personal information about dutyholders so that it may properly perform its statutory functions. This includes, but is not limited to, keeping the names and contact details of people to whom the law confers particular duties such as food businesses operators and employers or people who wish to make a complaint to the council.
3. We may share the personal information we hold with other enforcement agencies and have an information sharing protocol. Before sharing information we consider such things as the use to which the information will be put, how the information will be transferred securely and the measures that are in place to keep that information secure once it has left our control.
4. The public protection service will occasionally use electronic devices which are not part of the council's protected systems in order to generate advisory reports and audits for individuals and businesses that request them. No personal information will ever be collected on these machines.
5. The public protection service will not depart from the general data protection policy of Norwich City Council which may be viewed [here](#).
6. More details about information we hold can be obtained by writing to the Head of law and governance, City Hall, Norwich City Council, NR2 1NH

#### **6. Working with external agencies and enforcement bodies**

1. Where appropriate the public protection service will liaise with other partner regulators to ensure that a proposed action is the most appropriate for a particular offence.
2. Enforcement agencies will share intelligence and information so that effective strategies can be formed to aid compliance and co-ordinate solutions to particular problems. Information sharing allows enforcement agencies to identify current and emerging issues, analyse trends and target activities accordingly.
3. The public protection service will have regard to the Independent Regulatory Challenge Panel that looks into complaints about health and safety advice given by enforcement officers (see below). We will consider the advice given and if appropriate act upon it.

4. If a business has developed links with a particular local authority (say through a primary authority partnership, a lead / home authority scheme or an informal equivalent scheme) the public protection service will contact that authority before enforcement action is taken, unless immediate action is required because of imminent danger to health, safety or the environment.

## **7. Primary Authority Partnerships**

1. The Regulatory Enforcement and Sanctions Act 2008 (as amended) established Primary Authority as a statutory scheme for businesses. Primary Authority is delivered by the Better Regulation Delivery Office (BRDO) which provides a web-based Primary Authority Register that supports the scheme and guidance for local authorities to follow.
2. A primary authority partnership is available to a single business that is regulated by multiple local authorities, or to a business that is part of a group of businesses that are collectively regulated by multiple local authorities, where these businesses share an approach to compliance.
3. Primary authority provides the opportunity for businesses to form a statutory partnership with a single local authority (known as the primary authority) which then provides robust and reliable advice which other councils must take into account when visiting. The aim is for businesses to benefit from more coordinated, consistent and targeted enforcement activity.
4. In respect of the relevant functions of the public protection service (namely environmental protection, food hygiene, and health and safety) we undertake to abide by the requirements of any inspection plan produced through a primary authority partnership and provide feedback to the primary authority if it is required.
5. We will only depart from any recommendation in an inspection plan if we consider it appropriate because of local circumstances. If we do depart from the inspection plan we will notify the primary authority using the primary authority register, if possible in advance of the departure, but in any event at the earliest practicable opportunity thereafter.
6. When responding to a specific complaint or intelligence, enforcing officers will have regard to the information provided in any inspection plan and will contact the primary authority at an early stage to ensure intelligence is shared, there is no duplication of effort and there is a consistent and proportionate approach to enforcement.
7. The public protection service will not proceed with proposed enforcement action within a period of five working days beginning on, and including, the day after notification to the primary authority is made.
8. If considering enforcement action the public protection service will notify the primary authority who will review any proposed measure to establish whether it is consistent with their previous advice to the business. Before proceeding

with any enforcement action we will have regard to the information the primary authority provides.

9. The public protection service does not have to notify the primary authority of proposed enforcement where immediate action is required in order to prevent harm, or in other specific circumstances, is urgent; for example, emergency prohibition notices and abatement notices for noise. In these circumstances public protection service will notify the primary authority at the earliest practicable opportunity thereafter.

## **8. The Independent Regulatory Challenge Panel**

1. The Independent Regulatory Challenge Panel provides an independent means for companies and individuals to complain about the actions of local authority health and safety regulators. Complaints may only be referred to the Panel if they have first been raised locally and if it has not been possible to resolve the matter.
2. The Panel will consider complaints from companies or individuals who have been visited by a LA health and safety inspector and who believe that the visit was not justified as being in accordance with a risk based approach to targeting proactive inspections; or where the advice given by the LA health and safety regulator is incorrect or not proportionate to the risks.
3. The Panel will not consider complaints from companies or individuals subject to statutory notices or prosecution by the LA health and safety regulator as they have recourse to proper mechanism of appeal. Equally it will not deal with determinations on enforcement action subject to Primary Authority arrangements as there is an existing process to follow.
4. The Public protection service references the Independent Regulatory Challenge Panel within our complaints procedure.

## **9. Programmed Inspections and Initiatives**

1. Much of the work of the public protection service centres on the routine, risk-based inspection of premises to ensure continued compliance with the law. Often businesses will also be approached by way of a targeted initiative designed to highlight one or more aspects of the law or focus on the hazards associated with a particular industry. The public protection service will use its discretion to determine which approach is the more appropriate within the restraints imposed by statute and the availability of resources.
2. As a general rule an inspection program will target those businesses that present the greatest risk with higher risk premises being visited more

frequently than lower risk ones. Some lower risk premises may not receive a visit but be subject to other types of intervention such as through the use of self-assessment questionnaires.

3. We may carry out evening visits and inspections when businesses are open during these times.

## **10. Publishing Reports of Programmed Inspections**

1. In order to encourage compliance the public protection service may publish inspection reports and food hygiene ratings on the Norwich City Council website. Currently published reports are limited to food premises and may include both food and health and safety matters.
2. No individual will be named in an inspection report published on line.
3. Information which may be considered of a commercially sensitive nature will be withheld from publication.
4. Published reports will not make reference to any individual or company being subject to a criminal investigation whilst such investigations are ongoing and before any hearing has taken place.
5. Inspection reports will give a fair account of both the good points (if any) and the bad points (if any) observed during the inspection.
6. Inspection reports published on line are intended to compliment other initiatives such as the national food hygiene rating scheme (FHRS).
7. Businesses that participate in local initiatives intended to improve legal compliance and increase awareness of other health and environmental concerns, may also be published on line e.g. Norwich City Council's business merit scheme.

## PART 2

### Enforcement Measures and Enforcement Decisions

## 11. The Purpose of Enforcement

1. The purpose of enforcement activity is to:
  - a. Ensure that dutyholders take action to deal immediately with serious risks.
  - b. Promote and achieve sustained compliance with the law.
  - c. Ensure that dutyholders who breach legal requirements, and directors or managers who fail in their responsibilities, will be held to account. This may include bringing alleged offenders before the courts.
2. When determining the nature of enforcement action to be taken the enforcing authority will aim to ensure that any resulting sanction or penalty will:
  - a. Change the behaviour of the offender
  - b. Eliminate financial gain or benefit from non-compliance
  - c. 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
  - d. Be proportionate to the nature of the offence and the harm caused
  - e. Put right the harm caused by the regulatory non-compliance where appropriate
  - f. Deter future non-compliance

## 12. Informal Action

1. The public protection service recognises that most dutyholders wish to comply with the law and where minor transgressions do occur the timely provision of information and advice is most often all that is required.
2. Measures that secure voluntary compliance are the public protection service's primary enforcement strategy.
3. Authorised officers have at their disposal a hierarchy of informal enforcement approaches to help them secure legal compliance and which ensure a proportionate response to the offences they encounter. Informal measures are usually reserved for less serious and 'first time' offences. These include amongst others:
  - a. Verbal advice
  - b. Written advice
  - c. Warning letters listing alleged offences
  - d. Accepting a written undertaking to do work within a given time which, were it not for the undertaking, would merit formal action
  - e. Structured interviews conducted in the office leading to the agreement of a personal compliance plan with the offender
  - f. Accepting the voluntary closure of a premises or a process
  - g. Accepting the voluntary surrender of suspect food or equipment etc.

### **13. Formal Action**

1. In addition to informal approaches the public protection service has many formal sanctions that it can apply through its authorised officers. These include amongst others:
  - a. Revocation/review/suspension of a license or approval
  - b. Improvement and Abatement notices
  - c. Fixed penalty notices
  - d. Seizure/detention/forfeiture
  - e. Simple cautions
  - f. Conditional cautions
  - g. Prohibition
  - h. Prosecution

### **14. Choosing between Enforcement Options**

1. Informal advice will be considered by enforcing officers where:
  - a. The contravention is not serious enough to warrant an Improvement or Abatement notice; revocation/review/suspension; emergency prohibition notice, simple caution, conditional caution or prosecution
  - b. The individual or company's past history is good and suggests such action will achieve compliance
  - c. Confidence in individual's/management's ability to remedy contravention(s) is high
  - d. Standards are generally good suggesting a high level of awareness of statutory responsibilities
  - e. The consequences of non-compliance will not pose a significant risk to public health
2. In exceptional circumstances, significant contraventions may not warrant any action. This is likely to be when the cost of compliance to the offender outweighs the impact of the offence. A decision of no action may also be taken when a trader has ceased to trade. The decision to take no action will be recorded detailing the decision making process.
3. Whilst recognising that most businesses want to comply with the law the public protection service also recognises that some elements of business and individuals will operate outside the law (both intentionally and unintentionally). Serious offences for which the public protection service will consider taking formal action may include, amongst others, any of the following:
  - a. For matters where there has been recklessness, negligence or flagrant disregard for the requirements of the law.
  - b. A deliberate or persistent failure to comply with advice, warnings or legal requirements.
  - c. Any act or omission which has or is likely to adversely affect: the health and safety of the public or employees; the welfare of employees; the health and welfare of animals; the prevention of disease; the safety of food and water or; the quality of the environment.

- d. Obstruction or assault (including verbal assault) of an officer in the execution of his or her duties.
4. Enforcement officers will consider taking the least punitive approach or combination of approaches provided this takes account of the nature and seriousness of the offence(s) and:
  - a. Accords with public safety and;
  - b. Reflects the confidence the officer has in the dutyholder putting right any contravention having regard to the history of compliance and the attitude of the dutyholder and;
  - c. Where the absence of serious injury affords the opportunity to do so.
5. Serious offences or a failure to meet one or more of the above conditions will usually indicate a formal enforcement approach.
6. Formal and informal approaches may be applied separately or in any combination as the enforcing officer considers appropriate.
7. When deciding between enforcement options enforcing officers will have regard to any relevant guidance document, approved codes of practice or enforcement management model (EMM).

## **15. Prosecutions**

1. Enforcing officers will consider whether or not a prosecution is appropriate by taking into account the factors contained in this policy.
2. When considering formal enforcement action, enforcing officers will, where appropriate, discuss the circumstances with those suspected of a breach and take these into account when deciding the best approach.
3. The public protection service has an internal procedure for the authorisation of any investigations that may result in prosecution. All such cases will be regularly reviewed.
4. If formal action is taken, the public protection service is likely to seek to recover the costs of the investigation. The Court determines the level of fine imposed and costs awarded.
5. Officers of the enforcing authority will follow the guidance contained in the code for crown prosecutors which requires two main tests to be considered in relation to taking a prosecution:
6. The Evidential Sufficiency Test
  - a. Is there admissible, substantial and reliable evidence that an offence has been committed? Can the evidence be used in court? Is there enough evidence? Is the evidence sound and factual? Is the opinion of an expert needed?
  - b. Has the Police and Criminal Evidence Act 1984 been complied with to ensure fair and open gathering of the evidence?

7. The Public Interest Test
  - a. Is it in the public interest to prosecute?
8. The guidance gives a number of factors that may lead to a decision not to prosecute, including:
  - a. The court is likely to impose a nominal penalty.
  - b. The offence was committed as a result of a genuine mistake or misunderstanding.
  - c. If the loss or harm caused can be described as minor and was the result of a single incident.
  - d. 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 whole or in part by the defendant
    - The offence has only recently come to light or
    - The complexity of the offence has meant that there has been a long investigation
  - e. A prosecution is likely to have a bad effect on the victim's physical or mental health.
  - f. The defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health.
  - g. The defendant has put right any loss or harm or
  - h. Details may be made public that could harm sources of information, international relations or national security.

## **16. Simple and Conditional Cautions**

1. In certain cases a Simple caution may be offered as an alternative to a prosecution. The purpose of a simple caution is to deal quickly with less serious offences, to divert less serious offences away from the Courts, and to reduce the chances of repeat offences.
2. The Conditional caution is a statutory disposal introduced by the Criminal Justice Act 2003 and is a caution which is given in respect of an offence committed by an offender which has conditions attached to it. This type of caution allows the enforcing authority to prosecute for the original offence in the event of the condition or conditions not being met.
3. A Conditional caution may be offered where rehabilitative or reparative conditions (or both) are considered preferable to a simple caution or to prosecution.

4. In determining whether a Conditional caution should be given consideration will be given to whether the imposition of specified conditions are an appropriate and effective means of addressing an offender's behaviour or making reparation for the effects of the offence on the victim or the community.
5. The Simple caution will remain available as a means of disposal and may be appropriate in cases where no suitable condition readily suggests itself, or where prosecution would not be in the public interest, or where the offender has acted pro-actively to pre-empt what would otherwise have been a suitable condition.
6. The public protection service will comply with the provisions of the Home Office Circular 30/2005 and the Conditional Cautioning Code of Practice & associated annexes issued by the Crown Prosecution Service. The following conditions will be fulfilled before any form of caution is administered:
  - a. The offender must be 18 or older;
  - b. There must be evidence of the offender's guilt sufficient to give a realistic prospect of conviction;
  - c. The offender must admit the offence and;
  - d. The offender must understand the significance of the caution and agree to being cautioned.
7. The offer of a Simple or Conditional caution is made only after careful consideration of the facts and as an alternative to pursuing the matter through the courts. It follows that were an offender to decline the caution, the public protection service will pursue the prosecution unless other matters that may influence the prosecution decision come to light in the meantime.

## **17. Fixed penalty notices**

1. The aim of a fixed penalty notice (FPN) is to simplify the enforcement process and penalise a contravention of legislation without the need for costly and lengthy court proceedings.
2. A FPN will be issued as a proportionate response to an offence and where appropriate to avoid criminalising a person(s) for first offences, or offences which have a relatively small impact on the environment or community.
3. FPNs are routinely used for littering, dog fouling, fly-posting as well as business duty of care offences.
4. FPN's may also be issued by authorised officers for failing to comply with the requirements of Community Protection Notices (CPN's) or Public Space Protection Orders (PSPO's).
5. The Clean Neighbourhoods and Environment Act 2005 increased the range of 'environmental' offences for which fixed penalty notices could be issued. This was supplemented by guidance from the Department for Environment,

Food and Rural Affairs (DEFRA) on the issuing of these notices to juveniles (see below).

## **18. Issuing fixed penalty notices to juveniles**

1. In law, a fixed penalty notice can be issued to anyone over the age of 10. However, authorities issuing fixed penalty notices are recommended to adopt special procedures for issuing notices to young offenders. This ensures that they are acting in accordance with their duty under the Children Act 2004; which requires that authorities have regard to the need to safeguard and uphold the welfare of children.
2. Different procedures are recommended for 16 and 17 year olds and for children between 10 and 15. This policy reflects the need to have age specific procedures in place to ensure that the welfare needs, legal issues and other concerns relevant to children and young people are highlighted and observed.
3. On witnessing an offence and challenging an offender who is likely to be a youth, the authorised officer must first obtain the name, address, age and date of birth of the young offender, together with the name and address of his or her parents or legal guardian.
4. The young offender must also be informed that this information will be shared with their local Youth Offending Team for the administration of justice in accordance with the Data Protection Act 2018.

### 16 and 17 year olds

5. Once the age of the offender has been ascertained, a fixed penalty notice can be issued to this age group using the same procedure as for adults. If there are any doubts as to whether the offender is 16 or 17, the procedures for 10 to 15 years olds should be followed.
6. A fixed penalty notice should not be issued to any person in this age group where the young person appears to be mentally distressed or confused, or suffering from any other vulnerability that impairs his or her understanding of what is going on (including substance abuse).
7. The local youth offending team should be notified of any fixed penalty issued to 16 and 17 year olds.
8. Local arrangements may be made to discharge the liability for the payment of the fixed penalty notice in the form of community service.
9. Consideration should be given for the prosecution of repeat offenders rather than issuing further fixed penalty notices, in accordance with the enforcement principles given at 18.2.
10. Nothing within this policy precludes an authorised officer, on witnessing an offence, from taking a lower level of enforcement (e.g. a verbal warning), taking account of all circumstances in accordance with the enforcement principles given at 18.2

## 10 to 15 year olds

11. Due to the complexity of the youth justice system, and the inherent difficulties in securing a prosecution for an offence should the fixed penalty notice not be paid, no fixed penalty notice should be issued for an isolated incident.
12. However, on obtaining the offender's details as per paragraph 18.3 written notification of the offence should be sent to the parent or legal guardian of the offender.
13. If a repeat offence is committed, or if there is agreement in any defined locations (e.g. outside of school grounds), and a fixed penalty notice is considered to be the appropriate course of action, the notice may not be served directly on the youth. Instead, the offender's details should be obtained and the notice served, along with a covering letter, by post to the parents or legal guardian.
14. In more complex cases consideration should be given to having discussions with the youth offending team and/or other children's service authorities for the area where the child lives to determine what steps should be taken.
15. In deciding whether a fixed penalty notice is appropriate, the local authority should consider whether the offender suffers from any of the vulnerabilities given at 18.6 and whether his or her family circumstances, including whether the child is accommodated by Social Services, should preclude the notice being served.

# PART 3

## The Delivery of Enforcement Functions

## 19. The principles of good regulation in practice

### Being proportionate in our response

1. The public protection service will regard it as incumbent on the dutyholder to have taken appropriate measures to have complied with the law unless it can be shown the risk is insignificant in relation to the cost. We will expect the dutyholder to have followed any relevant good practice where it exists or, where it doesn't, to have established the significance of the risk to determine what action needs to be taken.
2. Some duties in law are specific and absolute; such as guarding a dangerous machine. Other duties may require action 'so far as is reasonably practicable'. The public protection service will apply the principle of proportionality in relation to both kinds of duty. Where a dutyholder's responsibilities may somehow be qualified, enforcing officers will consider how far their preventative actions have gone towards complying with the law and seek to balance the degree of risk on the one hand with the effort (measured in money, time or difficulty) involved in complying with the law on the other.
3. Any enforcement action required will be proportionate to the seriousness of the breach. Where possible enforcing officers will have regard to the hierarchy of control measures at their disposal (see Part 2, Informal Action). Some risks cannot be reduced to an acceptable level and so cannot be permitted irrespective of the cost to the dutyholder.
4. The most serious formal action, including prosecution, will be reserved for serious breaches of the law where there is, or has been, a significant risk to: the health and safety of the public or employees; the welfare of employees; the health and welfare of animals; the prevention of disease; the safety of food and water; the quality of the environment; or where there has been a flagrant disregard for the requirements of the law.

### Being consistent in our actions

5. Decisions on enforcement action are discretionary, involving judgment by the enforcing officer. The public protection service has arrangements in place to promote consistency in the exercise of discretion, including effective arrangements for liaison with other enforcing authorities.
6. All officers who undertake enforcement duties are suitably trained, qualified and authorised to ensure that they are fully competent to undertake those duties.
7. Only in serious circumstances will an enforcement officer act entirely of their own volition. Instead officers are encouraged to discuss and compare their enforcement decisions with other officers so as to promote a more consistent approach.

8. Arrangements are in place that help ensure a consistent approach such as the peer review of inspection reports and the evaluation of improvement notices and prosecution decisions by more senior colleagues.
9. Although the public protection service strives to be more consistent, officers will be expected to review each case on its own merits and not be bound by past decisions. Making the right decision takes precedence over considerations of consistency.
10. Where several dutyholders have responsibilities, we may take action against more than one when it is appropriate to do so.

#### Targeting what we do

11. The public protection service has systems for deciding which inspections, investigations or other regulatory contacts should take priority according to the nature and extent of risks posed by a dutyholder's operations.
12. When enforcing officers undertake formal action they will ensure a senior officer within the dutyholder's organisation is notified at the earliest opportunity. This is done by writing to the company secretary if the company is limited or if not, to partners, directors or others at board level.
13. All enforcement action will be primarily targeted towards those situations that give rise to the most serious risks, where the risks are least well controlled and against deliberate or organised crime. Other factors also determine priorities for enforcement activity, including Government targets and priorities, new legislation, national campaigns, public concerns and local information that officers have about unsafe systems or workplaces.
14. We may target under-performing or non-broadly compliant businesses to give individual assistance and to help prevent more serious breaches in the future.
15. The public protection service will also have arrangements for keeping individuals such as employees, their representatives, and victims or their families informed. These arrangements will have regard to legal constraints and requirements.

#### Being transparent in our undertaking

16. Dutyholders, employees, their representatives and others have a right to know what to expect when an authorised officer calls and information about this is available on request from the public protection service. The enforcement officer will always explain who they are, where they are from and usually the reason for their visit. All enforcement officers carry a photo ID card and when carrying out enforcement functions an authorisation signed by the Head of citywide services.
17. All complaints are taken seriously and must be recorded and investigated according to our corporate procedure.

18. Wherever possible the public protection service will try to resolve complaints informally. Officers will provide contact details for their line manager if requested to do so.
19. Dutyholders who nevertheless still feel aggrieved by a decision of an enforcing officer or think procedures have not been followed may use the Norwich City Council complaint procedure details of which can be obtained by telephone from any council office reception desk or through the council's website.

#### Being accountable for what we do

20. Officers of the enforcing authority are accountable for their actions. They will show their identification (and authority if requested) at the outset of every visit. They will explain the reason for the visit unless the nature of the investigation requires otherwise.
21. Being accountable means that the public protection service has policies and standards (such as these five enforcement principles) against which we can be judged, and an effective and easily accessible mechanism for dealing with comments and handling complaints.
22. The whole range of our enforcement activities will be dealt with as promptly and efficiently as possible so as to minimise time delays.
23. A dutyholder who is the recipient of a health and safety improvement notice or hygiene improvement notice has the right to challenge the action required of them by making an appeal to an Employment Tribunal or a magistrates' court. Details of how to do this are explained in the notes on the back of every notice.
24. An appeal may also be made if a prohibition notice is served under health and safety legislation preventing an activity. The activity may not continue unless the Employment Tribunal hearing the appeal directs otherwise. Details of how to appeal are explained in the notes on the back of the prohibition notice. If an appeal against a prohibition notice is successful the person on whom it was served can seek compensation from Norwich City Council.
25. A dutyholder has the right to a hearing before a magistrates' court if disadvantaged by, in the case of a food business, the service of an emergency prohibition notice closing their business or a process down, or where food has been seized and brought before a magistrate to be condemned. The Court may require the public protection service to compensate the dutyholder for their loss if it feels the emergency prohibition notice was wrongly served or food seized inappropriately.
26. There are some enforcement notices where, should the dutyholder not carry out the work, work can be done in default and the cost recovered. This will be explained when any such notice is served.

27. Very occasionally the public protection service may conclude that a provision in this policy is either not relevant or is outweighed by other

factors. We will ensure that any decision to depart from this policy is properly reasoned, based on material evidence and is documented.

## **20. Communication**

1. Officers of the enforcing authority actively work with businesses and the public to advise and to assist with compliance and complaints.
2. An out of hours contact for services is provided for serious requests which require an immediate response such as an *E.coli* food poisoning outbreak or a fatality at work.
3. Contact points and telephone numbers are provided for business and public use.
4. We strive to improve our service and encourage businesses to comment on our performance. From time to time we will use feedback questionnaires to gather information about the service we provide and will act upon the information received.
5. The public protection service will ensure that the information it passes on to dutyholders is current. Information is included in the letters and reports we write but we will also use other ways to keep businesses informed such as the internet and direct mailing.
6. As part of our commitment to equality we will use the following:
  - a. Where businesses or the public do not have English as a first language we will offer translations of correspondence
  - b. We also use INTRAN, the Interpretation and Translation Agency for the public services of Norfolk, for telephone interpreting, face to face interpreting, sign language and lip speaking services
  - c. We will arrange for an interpreter to be present during interviews
  - d. We can provide large print documents and Braille
  - e. We can provide taped information
  - f. Documents can be emailed

## **21. Professional Competency**

1. Competence is the ability to perform any required activity to the expected level. Competency also requires experience and application.
2. The public protection service assesses the professional competency of its authorised officers against a competency framework and as part of continuous professional development (CPD). Recently, relevant professional bodies and/or government agencies have issued self-assessment tools which officers and managers use to determine gaps in their own knowledge and experience.
3. Competence and skills gaps are appraised on an annual basis by the officer's line manager and training targeted to those areas where it is needed.

4. The overall approach to competency is closely linked with the relevant qualifications frameworks provided by the professional bodies. Enforcing officers are required to possess a relevant qualification(s) in order to be able to perform many of the duties required of an authorised officer. Those without such qualifications are supervised until such time as they are trained and can demonstrate their competence.

## **22. Investigations**

1. Investigations are undertaken in order to determine:
  - a. The facts and causes of a case
  - b. Whether action has been taken or needs to be taken to prevent a recurrence and to secure compliance with the law
  - c. To examine any defences in law which may influence a later enforcement decision
  - d. Whether lessons can be learnt which may influence the law and guidance
  - e. What response is appropriate to a breach of the law
2. In selecting which incidents or complaints to investigate and in deciding the level of resources to be used, the public protection service will take account of the following factors:
  - a. The severity and scale of potential or actual harm
  - b. The seriousness of any potential breach of the law
  - c. Knowledge of the duty holder's past performance
  - d. Our enforcement priorities and those of government agencies
  - e. The practicality of achieving results
  - f. The wider relevance of the event, including whether there is a serious public concern
3. The public protection service recognises that it is neither possible nor necessary to investigate all non-compliance that we encounter. Depending on the circumstances an investigation may be preceded by exploratory enquiries in order to determine whether a full investigation is justified. This enables the public protection service to better target investigations toward the more serious cases.
4. The public protection service will be guided by the advice of other enforcement agencies such as the Health and Safety Executive when deciding whether incidents or complaints should be investigated. On other occasions enforcing officers will use their discretion when deciding which cases to prioritise for investigation but will be guided by this enforcement policy.
5. Targets which are specified in the public protection service delivery plan give an indication of the levels of investigation to be achieved. These are approved by the cabinet of Norwich City Council.
6. The public protection service will always carry out a site investigation of a reportable work-related death.

7. In cases involving work related deaths, investigating officers will adhere to the requirements of the document 'Work-related Deaths: A protocol for liaison' and will work jointly with officers of the Norfolk Constabulary.

## **23. Conduct during inspections**

1. The public is entitled to expect the highest standards of conduct from all local government employees. Enforcing officers of the public protection service will adhere to the Norwich City Council Code of Conduct and may also be bound by the requirements of their professional body which sets standards for how they carry out their enforcement duties.
2. Authorised officers will show their identification when entering premises. Depending on the power the authorised officer is acting under they may enter businesses at all reasonable times or at any time if, for example, there is a dangerous situation. Generally officers will give 24 hours notice to effect entry to businesses run from a person's home unless entry is by invitation.
3. When enforcing officers give a warning or provide information or advice, whether face to face or in writing, they will tell the dutyholder what they must do to comply with the law, and explain the reasons why. Enforcing officers will usually confirm any required action in writing. Any letter will make clear the difference between what is advice about best practice and what are legal requirements.
4. The enforcing officer will always give the dutyholder feedback on an inspection or visit. This means they will tell the dutyholder about any problems they have identified and give advice about how these can be avoided. They will also give the dutyholder a named officer's contact details.
5. Before serving Notices the enforcing officer will discuss the Notice and, if possible, resolve any points of difference before serving it. The Notice will say what work needs to be done, why the work needs to be done, when the work must be completed, and that in the opinion of the officer or the local authority a breach of the law has been committed. In the case of a Prohibition Notice the Notice will explain why the prohibition is necessary.
6. The inspectors will give the dutyholder a reasonable amount of time to make changes detailed in the Notice except where there is an immediate risk. If the officer serves a Notice they must also say how the dutyholder can lodge an appeal. Officers will respond positively to requests for additional time where there is justification for doing so and the risk allows it.

## **24. Covert Surveillance**

1. The Regulation of Investigatory Powers Act (RIPA) governs the use of covert (hidden) techniques by public authorities. It requires that when public authorities, such as the police or local authorities, need to use covert techniques, either in private premises or vehicles (intrusive surveillance) or in public places (directed surveillance), to obtain private information about someone, they do it in a way that is necessary, proportionate, and compatible with human rights.

2. RIPA is wide ranging in its application but in the context of those investigations carried out by the public protection service, compliance with RIPA is required when using covert surveillance in the detection of crime, for ensuring public safety and in the interests of protecting public health.
3. An enforcing officer of the public protection service must make an application under RIPA before undertaking any covert surveillance and will be subject to the Code of Practice on Covert Surveillance and Property Interference issued by the Home Office.

## **25. Conflict of Interest in Enforcement Matters**

1. Where a breach is detected where the enforcing authority is itself is the dutyholder, then except where the health and safety of an individual or the community is at risk and immediate action is required, the following protocol will be followed:
  - a. Where the breach is sufficiently serious to warrant more than the provision of advice, information, assistance or a written warning, an officer from another authority within Norfolk will assist in the decision making process as to the action required to be taken. The Chief Executive will be informed of serious breaches without delay.
  - b. The additional officer's role is to assist and challenge the decision making process to ensure that appropriate, proportionate and consistent action is to be taken to remedy the breach, prevent re-occurrence and to minimise the risk of 'conflict of interest' for the enforcing authority. A record of the additional Officer's involvement will be kept such that it is auditable.

## **26. Interviewing Suspects**

1. A person who it is believed may have committed an offence may be formally interviewed during an investigation. These interviews will be conducted under the rules of the Police and Criminal Evidence Act 1984 (PACE) and associated guidance. All PACE interviews are recorded.
2. PACE interviews will usually be done in an interview room on Council premises. Before attending a PACE interview those invited will be told what contraventions are alleged and warned that enquiries may result in formal action being taken against them.
3. Any decision on the appropriateness of a particular course of action will only be made after the facts of the case have been determined and in accordance with this enforcement policy.
4. Those invited to a PACE interview will be told how to make an alternative appointment, the approximate length of the interview and the areas they will be questioned about so that they may prepare. Interviewees are welcome to bring a solicitor or legal advisor to the interview.

5. Any suspect will be asked to confirm their identity, their date of birth and whether they are a dutyholder.

6. A person for whom there are reasonable grounds for suspecting they have committed an offence will be cautioned before being questioned on matters which may incriminate them.
7. The interviewing officer must be satisfied the suspect understands the caution before putting questions to them.
8. The interview is an opportunity for the dutyholder to present matters which they feel are pertinent to any investigation and which may influence a later decision as to whether or not to take any formal action.
9. Occasionally enforcing officers will interview suspects away from office, for example at the site of an accident or food poisoning outbreak. In such cases the investigating officer will read the caution and ask the person being interviewed to sign the officer's notebook to indicate they understand. The officer's questions and the suspect's answers to those questions will be recorded in the officer's notebook and the suspect asked to initial the notebook against each response.
10. In exceptional circumstances and where requested by an interviewee a PACE interview can be done by correspondence. Care will be taken to ensure that the person or company being interviewed is cautioned in the letter and that they are made aware that any written answers they provide may be used as evidence against them.

## **27. Interviewing others during investigations**

1. Enforcing officers have wide ranging investigatory powers. As well as interviewing suspects, officers have the power to require others to divulge information which is pertinent to an inquiry.
2. Enforcing officers are entitled to rely on the information they obtain during the course of an investigation and may require those with information to provide a statement and to sign a declaration as to the truthfulness of what they say.

## **28. Conduct during interviews**

1. Investigating officers will ensure that anyone being interviewed understands the reasons why they are being questioned.
2. If during questioning the interviewee gives the investigating officer reason to believe they may be guilty of an offence they will be immediately cautioned or the interview terminated.
3. The investigating officer will ensure that those who make a statement (voluntarily or otherwise) understand they are not under suspicion.

## **29. Proceeds of Crime**

1. Where appropriate, working in partnership as necessary, the public protection service will seek to recover the assets of convicted offenders under the Proceeds of Crime Act 2002.

### **30. Directors**

1. In serious cases where breaches are committed with the consent or connivance of, or to have been attributable to any neglect of, any director, manager, secretary or other similar officer of the body corporate then formal action will be considered against that person.
2. On the conviction of a Director connected with the management of a company the prosecutor will, in appropriate cases, draw to the Court's attention their powers to make a Disqualification Order under the Company Directors Disqualification Act 1986.

### **31. Civil Claims**

1. Any enforcement action is completely separate and distinct from civil claims made by individuals for compensation or other remedy. Enforcement is not undertaken in all circumstances where civil claims may be pursued, nor is it undertaken to assist such claims.
2. The enforcing authority may, upon request, provide a factual report which details its investigation and involvement in the case to individuals, or their solicitors, pursuing a civil claim. They may also supply documents, photographs and statements with the consent of the person making it. There may be a charge for the report and for providing copies of documents.

### **32. Publicity**

1. The public protection service has a responsibility to ensure that dutyholders comply with laws that protect people from harm. The publicity that results from, say, a prosecution or the successful application to close a premises or condemn food, serves to deter others from committing similar offences. It also reassures the general public that Norwich City Council takes a serious view of such detrimental behavior.
2. Having successfully prosecuted an offender an enforcing officer may choose to assist the local media by providing a quote summarising circumstances of the case and the lessons to be learnt. Officers may also pass on copies of photographic evidence presented to the court during the course of a prosecution.

### **33. Contacting the public protection service**

1. Copies of this document and other advisory leaflets are available from:

**Norwich City Council**

Citywide services

Public protection

City Hall, St. Peter's Street

Norwich

NR2 1NH

t: 01603 212747

e: [info@norwich.gov.uk](mailto:info@norwich.gov.uk)

w: [www.norwich.gov.uk](http://www.norwich.gov.uk)