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Corporate enforcement policy



NORWICH
City Council

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PART 1 – Introduction

Purpose of this policy

Norwich City Council performs a wide range of regulatory functions as part of its legal duty to protect the public, the environment and groups such as workers from harm. These functions can also include many non-statutory activities such as offering advice to duty holders on how to comply with the law.

In many cases, legislation places a duty on the council to act and gives us powers to enforce the law. At other times, we have discretion over our enforcement activities: such as choosing between informal and formal action, or whether to start criminal proceedings against an alleged offender.

This corporate enforcement policy outlines the approach the council will take when considering different types of discretionary enforcement action. It describes our enforcement aims, how we apply the principles of good enforcement to our enforcement decisions, and what duty holders and the wider community can expect from us as an enforcing authority.

Scope and reach

This enforcement policy covers all the council's services that have enforcement responsibilities. The council will ensure that all its authorised officers, regardless of the service area, will act in accordance with this policy when making enforcement decisions.

In those cases where a council service area must comply with specific regulations and guidance, more detailed, service-based procedures are included within the scope of this policy. Each set of procedures will include how that service area contributes to the council's overall statutory obligations and, in particular, how it applies the principles of good regulation to its own enforcement decisions.

This enforcement policy accords with the duties placed on the council by numerous statutory instruments including the Human Rights Act 1998, the European Convention on Human Rights and the Regulation of Investigatory Powers Act 2000, as well as many others.

A list of statutory instruments which the council must follow or to which we must have regard is included in Appendix 1.

This policy has been written with reference to the Regulators' Code which means that the council will be open, helpful, fair and careful to ensure that any action we require is proportionate to the risks.

Norwich City Council is also a signatory to the Enforcement Concordat.

This policy does not cover enforcement action undertaken by other service areas to recover debts. Enforcement action for non-payment of debts in respect of Council Tax, National Non-Domestic Rates, National Non-Domestic Rates-BID is undertaken by Enforcement Agents under a separate instruction to act.

In addition, the Enforcement Agents act in a debt collection capacity for any monies owed in respect of Sundry Debts, Overpaid Housing Benefit or Housing Rent.

Roles and Responsibilities

The role of the council

The council recognises that it is often a difficult task for authorised officers to balance many competing variables to arrive at enforcement decisions that are both fair to the duty holder, but which meet the council's legal obligations.

The council will do everything it can to help its officers make good enforcement decisions by providing this corporate enforcement policy and a clear mandate in which to take action when needed.

The council will ensure service areas with enforcement responsibilities have procedures in place detailing their enforcement functions and an appraisal/competency framework with which authorised officers can demonstrate their skills and knowledge.

The council will provide the resources necessary to meet the demands of the service with regard to its enforcement functions.

The role of service areas

Service areas will have procedures governing their conduct during regulatory activities and will clearly set out what duty holders can expect (see Annexes). This will include their officers' conduct during the course of their duties.

Service areas responsible for specific enforcement activities will determine and publish as part of their procedures the range of informal and formal enforcement measures at their disposal.

Service managers will ensure that their officers are properly authorised to carry out their duties, that officers have sufficient knowledge and experience to carry out the range of enforcement functions at their disposal, that they understand the principles of good enforcement and that they have read and understood this corporate enforcement policy.

Each service area will carry out an annual appraisal of their authorised officers in order to determine their continued competence to carry out the enforcement tasks assigned to them. The enforcement decisions authorised officers make will be subject to managerial and/or peer review.

What the council expects of its enforcement officers

Authorised officers are responsible for discharging the legal duties placed on the council and will therefore treat all contraventions seriously.

The council expects officers to exercise their duties in a calm, polite and courteous manner at all times.

In deciding between different enforcement approaches, all authorised officers shall have regard to the principles set out in this corporate enforcement policy.

Whenever appropriate, officers will take reasonable steps to assist duty holders to comply with the law such as providing guidance or signposting where such guidance can be found.

However, officers are not expected to act in a consultative capacity: unless through a formal arrangement such as the Primary Authority Scheme. Neither will they represent complainants in criminal or civil cases.

When required, authorised officers are expected to secure compliance by using the powers delegated to them in the council's Scheme of Delegation and, where appropriate, take formal action.

Those authorised officers that are members of a professional body will be expected to meet the competency requirements of that body including any obligation for continuing professional development (CPD).

Factors which may influence an officer's use of a particular enforcement action are discussed in more detail in Part 3.

PART 2 – Background

Enforcement aims of the council

All the council's enforcement services will carry out their duties in support of the [council's strategic aims and objectives](#). This approach is intended to keep duty holders and the wider community better informed and reinforce the council's vision of making Norwich 'A Fine City for All'.

As part of its enforcement function, Norwich City Council acknowledges its role as an enforcing authority and recognises the importance of enforcement:

- to ensure duty holders take immediate action to deal with serious risks
- to promote and achieve sustained compliance with the law
- to ensure that duty holders are held to account for their failures including bringing alleged offenders before the courts
- to create a 'level playing field' so those that meet their legal obligations are not placed at a competitive disadvantage by those that don't
- to maintain public confidence in the UK's regulatory framework and system of local governance.

In respect of the enforcement action we take, and in line with the Macrory Review, the council will aim to ensure any resulting burden, sanction or penalty will:

- change the behaviour of the offender
- eliminate 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 stigma associated with a criminal conviction)
- be proportionate to the nature of the offence and the harm caused
- wherever possible put right the harm caused by the offence
- deter future non-compliance.

Applying the principles of good regulation

The council will apply the principles of good regulation to all our enforcement activities. We will be *proportional* in our response, *transparent* in what we do, *accountable* for our actions, *consistent* in our methods and, using an evidence-based approach to determine our risk priorities, will be *targeted* in our allocation of resources to more serious matters (see Annex 1).

The council will apply these principles both to individual cases and when we manage enforcement activities across whole service areas. Service areas with enforcement responsibilities will determine how they apply the principles of good regulation to their own enforcement activities.

Types of Action

The council has a range of formal and informal enforcement approaches, sanctions and penalties at its disposal to help it secure legal compliance and which ensure a proportionate response to the offences it encounters.

Informal measures may include: verbal and written advice; warning letters; or accepting a written voluntary undertaking.

In addition to informal approaches, the council has many formal actions, sanctions and penalties that it can apply through its authorised officers. These may include: revocation/review/suspension of a license or approval; Improvement and Abatement notices and; Fixed Penalty Notices (FPNs).

The enforcement options available will vary depending on the service area responsible for taking the enforcement action, the legislation which is being applied and the limits of an officer's individual authorisation. Each service area with enforcement responsibilities will publish its own list of the enforcement measures it uses.

Further details of these and other types of enforcement action are included in Appendix 3.

PART 3 – Enforcement decisions

How the council will address non-compliance

Promote compliance as our first priority

The council recognises that most duty holders will wish to comply with the law and where minor transgressions do occur the timely provision of information and advice is often all that is needed.

Measures that secure voluntary compliance are the council's primary enforcement strategy. Raising awareness and promoting good practice are the first steps in preventing offences.

All council officers are asked to use the four Es approach when conveying important compliance information to duty holders: engage, explain, encourage and, only then, enforce.

The council will encourage the principle of businesses self-regulation. Authorised officers will consider third party audits and 'earned recognition' schemes when designing suitable intervention strategies or, if dealing with non-compliance, deciding on an appropriate enforcement response.

Each service area responsible for enforcement is expected to plan a range of initiatives designed to promote compliance as part of its priorities for the coming year and assess the effectiveness of these initiatives in any annual review.

Communicate our intentions clearly

The council will always be clear as to the standards we apply and what the duty holder must do to meet their obligations.

Although all legal documents must be in English to be lawful, we will use our best efforts to explain legal text clearly and concisely using plain English wherever possible.

When communicating with a duty holder whose first language is not English, we will use an interpreter and/or translation service whenever there is any doubt a legal requirement will not be properly understood.

The council will state the law which it believes has been broken in any written communication.

We will always be clear as to what is required of the duty holder in law and what is instead considered best practice and therefore not obligatory.

If the duty holder has a right to representation or is able to appeal, this will be clearly stated in any written communication along with information on the procedures involved.

Whenever possible, the council will pro-actively seek the opinion of those we regulate with regard to our enforcement decisions. How we do this will vary depending on the service area and might take the form of weekly surgeries, questionnaires, and working with individual duty holders on personal compliance plans. Service areas will list the ways in which they will listen to and engage with duty holders as part of their respective enforcement strategies.

Where possible reduce the costs of compliance to the duty holder

As far as the law allows, the council will take account of the individual circumstances of each case. We will seek to minimise the cost of compliance for the duty holder, ensuring that any action we require, and the time given to remedy a contravention, is proportionate to the risks.

The council will strive to reduce any negative economic impacts on businesses. With some exceptions outlined below, we will limit the impact on duty holders by choosing the least burdensome of the enforcement options available necessary to secure compliance.

As far as the law allows, we will take into account the size of a business and the resources at its disposal and have particular regard to small businesses, voluntary organisations and community groups so they may meet their legal obligations without incurring unnecessary expense.

Improve duty holder confidence in our enforcement decisions

The council will endeavour to create an environment in which duty holders can be confident of being treated fairly. Duty holders should be able to proactively seek advice from the council without fear of triggering enforcement action.

In the case of minor offences, if the duty holder clearly wishes to follow the advice of the council and resolve any non-compliance quickly, an informal approach is much more likely to be taken.

In the case of serious offences and/or an immediate risk of harm, formal enforcement action may be necessary, but the council will try to work with the duty holder to resolve the problem as quickly as possible.

Where a duty holder asks for advice and an offence is subsequently discovered, the duty holder's evident wish to comply with the law will be taken into consideration when choosing an appropriate enforcement response (see general approach to minor and more serious offences below).

Provided no serious harm has occurred, criminal proceedings are unlikely to be instigated where a duty holder has made a genuine and timely attempt to seek help and guidance.

Unless there is other supporting evidence (circumstantial or otherwise), the council will not instigate criminal proceedings solely on the basis of a duty holder's admission of guilt.

Where the council has provided advice or guidance to a duty holder regarding an offence, officers will make the necessary checks to ensure that any non-compliance has been rectified within a reasonable time.

Work with others to better target resources and improve consistency

Council services will work with and consult other departments and service areas within the council whenever there is a shared or complementary enforcement role. The aim is to share information, make our enforcement decisions more consistent and improve our evidence-based assessment of risks in order to better target our enforcement response to where it matters most.

We may occasionally receive information or intelligence from another enforcement agency that requires investigation. Similarly, the council may share information and intelligence it believes is relevant to another enforcing authority.

The council recognises the Primary Authority Scheme and where appropriate will communicate with any primary authority we identify as part of our enforcement response (see Appendix 1).

Choosing between enforcement options

The council recognises that most duty holders wish to meet their legal obligations, but that others will operate outside the law (both intentionally and unintentionally).

When making enforcement decisions authorised officers will first have regard to the enforcement aims of the council described above and then, from the informal and formal options available to them, will consider taking the least burdensome approach (or combination of approaches) necessary to secure compliance.

By the same method, punitive enforcement actions which are generally reserved for more serious offences, may give way to less punitive responses where there is justification for doing so. For example, where appropriate a simple caution may be offered instead of instigating criminal action through the courts.

Enforcement decisions will be based on an officer's knowledge, experience and judgement and will depend on many factors including:

- nature and seriousness of the offence(s)
- degree to which the duty holder has broken the law
- actual harm (or risk of harm) caused by the offence
- whether the officer has confidence in the duty holder becoming and remaining legally compliant (having regard to the history of compliance, the attitude of the duty holder and the presence or otherwise of any external compliance audit or earned recognition scheme)
- whether previous advice has been ignored
- whether a voluntary undertaking has been broken.

Serious offences will usually indicate a more formal enforcement approach.

Very serious offences, defined in more detail below, will usually require a formal response and may also result in punitive action being taken against the duty holder such as instigating criminal proceedings.

Formal and informal approaches may be applied separately or in any combination as the authorised officer considers appropriate.

When deciding between enforcement options, authorised officers will have regard to any relevant guidance document, approved code of practice or recognised enforcement management model.

Minor offences

Where a minor offence is committed and the council is confident that appropriate corrective action will be taken, our best efforts will be used to resolve any issues without the need to take formal action.

Authorised officers will consider taking informal action where:

- the contravention is not serious enough to warrant a formal approach in the first instance
- the duty holder's past history is good and suggests an informal approach will achieve compliance
- confidence in the duty holder's ability to remedy the contravention(s) is high
- standards are generally good suggesting a high level of awareness of statutory responsibilities
- the non-compliance has not given rise to a significant risk or resulted in actual harm.

More serious offences

Where an offence is considered more serious or the authorised officer is not confident that appropriate corrective action will be taken, it may be necessary to resort to using the authorised officer's formal powers. This might, for example, mean serving a notice compelling the duty holder to complete remedial work by a certain date.

Occasionally formal action may involve a punitive approach, for example, revoking a licence, seizing property or paying a fixed penalty.

Authorised officers will consider taking a more formal approach where one or more of the following may apply:

- the contravention is more serious
- the duty holder's past history suggests an informal approach has not worked
- the duty holder's attitude suggests they will not remedy the contravention unless a formal approach is taken
- standards are generally poor suggesting a lack of awareness of statutory responsibilities
- the non-compliance has given rise to a significant risk or resulted in actual harm
- where the officer has been obstructed in the execution of his or her duties or suffered verbal abuse.

When formal action is taken, the council will use its best efforts to work with the duty holder to secure their co-operation. Wherever possible authorised officers will discuss the enforcement decision with the duty holder. They will give advice regarding the non-compliance and what needs to be done, explain why formal action is needed and make clear why such action is proportionate and consistent.

The opportunity for dialogue may not be available in every case, for instance, where providing such an opportunity would likely defeat the purpose of the enforcement action or where there is a serious offence that requires immediate action.

Very serious offences

In the case of very serious offences, informal action is often not appropriate: leaving formal and/or punitive approaches the only enforcement options available to the authority.

Very serious offences are far more likely to result in criminal proceedings being taken against an individual or business.

Sometimes the council may have to escalate its response and act quickly to prohibit a person or an activity, or undertake emergency remedial work to remove an imminent danger.

The council may also take punitive action over a serious offence even after compliance has been achieved if it is in the public interest to do, or where the public would clearly expect the Council to take such action.

Authorised officers will consider taking criminal action where one or more of the following may apply:

- where a duty holder has set out to deliberately break the law
- where there has been recklessness, negligence or flagrant disregard for the requirements of the law
- a persistent failure to comply with advice, warnings, the requirements of a notice, or other legal requirement
- any act or omission which has or is likely to cause serious harm
- where the officer has been obstructed in the execution of his or her duties or suffered a physical assault (including verbal assault).

PART 4 – Miscellaneous

Resolving disputes

Occasionally a duty holder may disagree with an officer's approach or assert an offence is not serious enough to justify the level of enforcement action taken. Such cases can sometimes arise when a 'momentary lapse' leads to a serious offence or where a serious offence can be remedied easily, but the officer nevertheless deals with the matter formally because of extenuating circumstances.

When dealing with disagreements of this kind, the officer will first attempt to resolve the matter informally and explain why in their opinion the action is both proportionate and consistent. If a resolution still cannot be found the officer will provide the duty holder with information on how to make a complaint to the council and alert their line manager to the dispute.

If a duty holder believes an officer has not acted in accordance with this policy and does not wish to raise the matter personally with the officer concerned they can make a complaint using the council's online complaint system available [here](#).

Although the ease with which an offence can be remedied is very often a measure of the seriousness of the offence, this is not always the case. For instance, the guard to a machine may be easy to put back but the consequences of having left the machine unguarded could be severe. For this reason, authorised officers will instead use their knowledge and experience of the nature of the offence, their judgement as to the degree the law has been broken and the harm caused (or the risk of harm) to decide on an appropriate enforcement response (see above).

Much of the legislation the council administers contains legal protections for the duty holder or potential defendant. For instance, they may be able to make a formal appeal (e.g. in the case of being served a notice) or may have a right of hearing in a court (e.g. where the council is seeking a Court Order).

Whenever a legal notice is served, an explanation of how to appeal the notice will accompany any document. Similarly, if the council is seeking a Court Order, the time and location of any court hearing will be made known. The court will need to be satisfied the duty holder has been given the opportunity to attend the court hearing if they want to.

Publishing the results of court proceedings

In certain circumstances, the council will seek to raise awareness and increase compliance levels by publicising unlawful trade practices or criminal activity. Where appropriate the results of specific court cases may also be published.

Information about enforcement action will be publicised in line with the Criminal Justice System document [Publicising Sentencing Outcomes](#) and will usually only occur once a defendant has been successfully prosecuted in a court.

Any news releases are handled by the council's communications team and passed to newspapers and broadcast media to use in their news bulletins. Such information may also be publicised on the council's website, council publications and newsletters and via other social media.

Proceeds of crime

Where appropriate, working in partnership as necessary, Norwich City Council will seek to recover the assets obtained through the criminal activity of convicted offenders under the Proceeds of Crime Act 2002 .

Sentencing guidelines

Officers will consider the [sentencing guidelines](#) issued by the Sentencing Council and be prepared to assist the prosecuting solicitor to determine an offender's culpability and the harm caused.

Civil Claims

Enforcement action may result in the council pursuing either civil or criminal action against a duty holder.

Any enforcement action the council pursues is separate and distinct from any civil claims made by individuals for compensation or other remedy.

Enforcement is not undertaken in all circumstances where civil claims may be pursued by individuals, nor is it undertaken to assist such claims. However, it may be the case that the outcome of a criminal investigation can assist an individual to make a successful civil claim. Such situations arise commonly after accident investigations at work.

The council may, upon request, provide a factual report to individuals, or their legal representative, that details our investigation and involvement in the case. We may also supply copies of documents, photographs and any witness statements made in connection with the investigation (provided the person making the statement has consented to its release). There may be a charge for the report and for providing copies of documents.

Directors

In serious cases where offences 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.

On the conviction of a director connected with the management of a company, Norwich City Council will, in appropriate cases, draw to the court's attention their powers to make a Disqualification Order under the Company Directors Disqualification Act 1986.

Powers of authorised officers

When taking formal action, authorised officers will use the powers granted to the council and delegated to the officer under the council's Scheme of Delegations. Officers may also use these powers to investigate offences and gather evidence in support of criminal proceedings.

Different pieces of legislation convey different powers and what powers an officer has at their disposal will depend on the particular offence under consideration. Officers may for instance: enter premises; order that evidence is preserved; detain goods; and seize documents etc.

Where articles are removed a receipt or notice will be given at the time or as soon as possible afterwards.

Officers do not have the power of arrest. However, joint working is undertaken with the Police and other agencies. Instances may arise where the Police or other agencies consider that an arrest should be made in connection with an authorised officer's investigation.

Offence of obstructing an authorised officer

Some legislation makes it an offence to obstruct an officer of the council during the course of their duties. Generally, if obstruction is encountered it will lend weight towards taking a more formal approach which may include criminal proceedings.

If an officer believes a person is preventing them from carrying out their work, for example by barring them from entering a workplace, the officer will explain the provisions of the relevant legislation to the person and be clear as to why the action is proportionate and consistent.

If the person continues to obstruct the officer, the officer will make a contemporaneous record of the obstruction and may then ask for Police assistance.

Where an officer is obstructed during the course of gathering evidence as part of a criminal investigation, or in cases where evidence is removed or destroyed, the Police will be asked to intervene in order to preserve that evidence and to bring charges under the common law offence of perverting the course of justice.

The council takes any form of verbal harassment or physical abuse directed at an officer during the course of his or her duties very seriously. Where an officer is subjected to such harassment or abuse, the Police will be asked to consider bringing a Public Order offence against the perpetrator(s).

Conflict of Interest in Enforcement Matters

If a contravention is identified where the council itself is the duty holder, 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:

- The Chief Executive of Norwich City Council will be informed of any serious offence without delay
- Where the offence 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
- A record of the additional officer's involvement will be kept so that actions are auditable.

The additional officer's role is to assist and challenge the decision-making process to ensure that appropriate, proportionate and consistent action is taken to remedy the offence, prevent re-occurrence and to minimise the risk of a conflict of interest for the enforcing authority.

Review of this policy

This policy will be reviewed periodically or in line with changes in relevant legislation, or the Regulators' Code.

Comments and Complaints

All appeals in relation to enforcement action taken should be via the statutory appeals process outlined in the relevant legislation.

Complaints about the conduct of officers should be made via the council's corporate complaints procedure [here](#)

PART 4

Annex 1

The UK Principles of Better Regulation

In 1997, the Better Regulation Task Force identified five principles with which to test whether any regulation is fit for purpose. The Legislative and Regulatory Reform Act 2006 established these principles in statute and required enforcement agencies (as well as law makers) to have regard to them.

Norwich City Council has applied these principles when drawing up this overarching enforcement policy. However, different service areas with particular legal responsibilities will also determine how these principles apply to their own specific enforcement activities (see the service area Annex for further information).

Proportionality

1. Proportionality means ensuring enforcement action corresponds appropriately to the risks arising.
2. Those that the law protects and those on which the law places a duty, expect that action taken by the council to achieve compliance, or bring duty holders to account, will be proportionate to the risks and the seriousness of the offence and take account of any actual or potential harm that arises.
3. In practice, applying the principle of proportionality means that enforcing officers will take particular account of how far the duty holder has fallen short of what the law requires and the extent of the risks which arise from their not having complied with the law.

Accountability

4. 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 this council can be judged.
5. Accountability also means ensuring that all services are tailored to meet the needs of everyone, taking into account age, gender, ethnicity, lifestyle or disability.

Consistency

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

7. Duty holders that manage similar risks expect a consistent approach from the council and other agencies whether it is in the advice offered; 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. Officers are faced with many variables including the degree of risk, the attitude and competence of management, any history of incidents or non-compliance involving the duty holder, previous enforcement action, and the seriousness of any offence; which includes any potential or actual harm that results
9. Different service areas with enforcement responsibilities are expected to show how they ensure consistency of approach (see the service area Annex for further information).

Transparency

10. Transparency means helping duty holders understand what is expected of them and what they should expect from the council. It also means making clear to duty holders what they have to do and, where 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.
11. The council holds various public registers which are available to view of request; details of which are included in the specific service centre annex.

Targeting

12. 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 duty holder responsible for the offence.
13. A duty holder's ability to manage risks is important in making targeting decisions since a relatively low hazard activity which is poorly managed can pose a greater risk than a very hazardous activity where proper and adequate risk control measures are in place.
14. Certain very high hazard sites will receive regular inspections so that the council can provide assurance to the public that such risks are properly controlled.

Annex 2

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 paragraph 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 paragraph 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 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 paragraph 6 and whether his or her family circumstances, including whether the child is accommodated by Social Services, should preclude the notice being served.

Annex 3

Glossary of terms

Burden: Depending on the offence, the council's response may impose a 'burden' on the duty holder (to a greater or lesser degree) for example, requiring them to put matters right by a certain date or to temporarily close a business while offences are dealt with.

Duty holder: In this policy, the term 'duty holder' is used to describe any individual, business or group on whom the law places an obligation. It could be an employer who is responsible for the health, safety and welfare of their employees; or employees themselves. It could be the proprietor of a restaurant who must comply with laws protecting consumers from harm or the person in control of a commercial or domestic premises responsible for undertaking work or for adhering to planning controls.

Enforcement: The term 'enforcement' means all the actions the council may take to ensure duty holders comply with their legal obligations. This can include informal approaches such as advisory visits and warning letters, and formal enforcement action such as serving notice.

Harm: In this policy the term 'harm' is used in its broadest sense and can include illness caused through food poisoning, death or injury due to an accident at work, or anything which gives rise to the risk of harm. Harm can include the mental anguish caused by a noisy neighbour, harm to the environment, a failure to ensure the welfare of an animal to which licence conditions apply, or harm to a religious observance.

Officers: Any reference made to 'officer' in this policy is to an officer properly authorised to fulfil the enforcement duties placed on the council through its Scheme of Delegations.

Punitive action: In some cases, enforcement can also include the council taking criminal proceedings with the intention that the courts issue a punishment (generally a fine or imprisonment). Often referred to here as 'punitive action', this is an enforcement response generally reserved for the most serious or persistent offenders.

PART 5

Appendix 1

Statutory instruments to which this policy has regard

The Regulators' Code

The council has had regard to the Regulators' Code in the preparation of this policy. This requires the council is open, helpful, fair and careful to ensure that any measure we take to secure compliance is proportionate to the risks.

The Regulators' Code came into statutory effect on 6 April 2014 under the Legislative and Regulatory Reform Act 2006 and provides a clear, flexible and principles-based framework for how regulators should engage with those they regulate. Nearly all regulators, including local authorities and fire and rescue authorities, must have regard to it when developing policies and procedures that guide their regulatory activities.

The Office for Product Safety and Standards works to support the effective implementation of the Regulators' Code.

Legislative and Regulatory Reform Act 2006

The council will comply with the regulatory principles required under the Legislative and Regulatory Reform Act 2006 namely: regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent; and targeted only at cases where action is needed. The Act also provides for ministers to introduce a mandatory Code of Practice for regulators (see the Regulators' Code).

The Hampton Review 2005 – Reducing Administrative Burdens: Effective Inspection and Enforcement

The Hampton Review set out a vision for a risk-based approach to regulation and included principles for regulatory inspection and enforcement, based around risk and proportionality, as well as a major streamlining of regulatory structures.

The Macrory Review 2006 – Regulatory Justice: Making Sanctions Effective

The Macrory Review made recommendations aimed at ensuring that regulators have access to a flexible set of sanctioning tools that are consistent with the risk-based approach to enforcement outlined in the Hampton Review.

The Independent Regulatory Challenge Panel

The Independent Regulatory Challenge Panel looks specifically into complaints regarding *health and safety advice* given by local authority inspectors and the Health and Safety Executive and consists of independent members with the competence and experience to assess any advice given on regulatory matters.

The Panel considers complaints from companies or individuals who have been visited by a local authority health and safety inspector and who believe that either the visit was not justified using a risk-based approach to targeting inspections; or that the advice given was incorrect or not proportionate to the risks.

Attempts at resolving any disagreement must first have been made using the Council's complaints procedure.

Although the panel's role is advisory, Norwich City Council will consider the advice given and will act on it appropriately. The Regulatory Challenge Panel can be contacted [here](#).

Human Rights Act 1998 and the European Convention on Human Rights

The Council is a public authority for the purposes of the Human Rights Act 1998. It therefore applies 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.

UK General Data Protection Regulation and Data Protection Act 2018

Data protection is covered by the Data Protection Act 2018 (DPA) and, since 1st January 2021, the UK's version of the EU General Data Protection Regulation 2018 (UK 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. Officers will comply with all relevant data protection laws and any associated statutes, regulations and guidance.

The council needs to hold and process personal information about duty holders 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.

We may share the personal information we hold with other enforcement agencies and have information sharing protocols. 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.

The council's General Data Protection Policy can be viewed [here](#). More details about the information we hold can be obtained by writing to the Information Governance Manager, City Hall, Norwich City Council, NR2 1NH

Children Act 2004 and related safeguarding legislation

The Children Act 2004 provides boundaries and help for [local authorities](#) and other organisations to better regulate and coordinate their official interventions in the interests of children. The council has regard to any children's and young person's plan when devising policy to ensure that our interventions work towards safeguarding children, young people and vulnerable adults.

Regulation of Investigatory Powers Act 2000 (RIPA)

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), in order to obtain private information about someone, they do it in a way that is necessary, proportionate, and compatible with human rights.

RIPA is wide ranging in its application but in the context of those investigations carried out by the council, 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.

An authorised officer 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.

Norwich City Council has in place an RIPA Policy and Procedure for the authorisation and conduct of covert surveillance activities.

Freedom of information Act 2000

The Freedom of Information Act 2000 (FOI) and Environmental Information Regulations 2004 (EIR) create a public right of access to information held by public authorities. As a public body, Norwich City Council is subject to the requirements of the FOI and EIR and must be open, accessible and honest in their dealings with the public.

Norwich City Council supports the aims of FOI, EIR and similar legislation in promoting openness and transparency and by giving the public greater access to the information we have recorded. We hold ourselves accountable to the public and various government auditors, assessors as well as the media.

Details of this scheme and how to make a FOI enquiry are available [here](#).

Primary Authority Partnerships

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.

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.

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.

More details about how each service area applies the principles of primary can be found in the Annexes to this policy.

Appendix 2

The Code for Crown Prosecutors

When deciding whether to institute criminal proceedings enforcing agencies, including local authorities, must have regard to the [Code for Crown Prosecutors](#). The Code is a public document that describes the general principles to follow when making decisions on prosecuting cases. Intended primarily for prosecutors in the Crown Prosecution Service, other prosecutors follow the Code either through convention or because they are required to do so by law.

The Code has two tests that must be satisfied: commonly referred to as the Evidential and the Public interest tests.

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, whether it is factual, reliable and has been gathered fairly under the rules of the Police and Criminal Evidence Act 1984 (PACE). The Council must be satisfied there is sufficient evidence to provide a 'realistic prospect of conviction' against each alleged offender and whether there is any material that may affect the assessment of the sufficiency of evidence, including examined and unexamined material in the possession of the council and material that may be obtained through further reasonable lines of inquiry.

Public interest test

Is it in the public interest for the case to be brought to court? The council will balance factors for and against prosecution carefully and fairly, considering each case on its own merits. 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.

APPENDIX 3

The range of actions available to the council

A range of formal and informal measures, sanctions and penalties are available to the council when dealing with non-compliance. Examples of the main measures that may be taken are referenced below, however, each service area will have their own particular set of enforcement actions described in the Annexes to this policy.

Compliance advice, guidance and support

The council uses compliance advice, guidance and support as its first response in the case of many offences its officers identify. Very often this is all that is needed to rectify non-compliance quickly and can avoid the need for further, formal enforcement action.

Any verbal advice given will usually be followed up by an informal written warning citing the legislation the officer believes has been contravened. An informal warning will set out what should be done to put matters right and prevent future similar offences.

Although informal, warning letters are important and should not be ignored. What the authorised officer considers an appropriate enforcement measure will be influenced by any informal warnings issued in the past. Warning letters may also be presented in Court as evidence of previous and continuing non-compliance.

Compliance advice and support will still be offered even when formal enforcement action is taken to help ensure continued future compliance.

Voluntary undertakings

An authorised officer may accept a duty holder's voluntary undertaking that an offence will be put right. Any request from a duty holder for the council to consider a voluntary undertaking must be made in writing. To expedite matters, the duty holder may be asked to sign a voluntary undertaking in the officer's notebook.

Depending on the legislation being applied, some codes of practice may require authorised officers *not* to invite a duty holder to give a voluntary undertaking (as an alternative to formal action). However, where the duty holder is unprompted and asks the officer to accept an undertaking, any such request will be duly and properly considered alongside the other enforcement measures at the officer's disposal.

In some cases, an authorised officer may decline a duty holder's offer of a voluntary undertaking and instead take formal action so that:

- the duty holder may benefit from the protections available to them in law (such as the right to appeal or have their say in court)
- the officer can gain the backing of the courts for the enforcement action taken (such as in the case of serving an Emergency prohibition notice) and thereby hold themselves accountable to the court for their actions
- the officer can exercise control over events (such as when a premises can reopen).

Examples of voluntary undertakings might include: deep cleaning the restaurant kitchen over the weekend or; voluntarily closing a food retail store to treat a serious rodent infestation.

Statutory (formal) Notices

The council has powers to issue statutory notices in respect of many offences. These include: stop notices, prohibition notices, emergency prohibition notices, and improvement notices.

Receiving a notice is not a criminal procedure and, although more burdensome on the duty holder, should not be regarded as a punishment. However, statutory notices are legally binding and failure to comply can be a criminal offence in itself.

A statutory notice will clearly set out actions that must be taken and the timescale within which work must be completed. It is likely to require that any offence is rectified and/or prevented from recurring. It may also prohibit specified activities until such time as prescribed work or safeguards can be carried out to the satisfaction of the council. Where a statutory notice is issued, an explanation of the appeals process is always provided.

Wherever possible, the authorised officer will discuss the notice in detail with the duty holder, explaining why this course of action has been chosen and why serving a notice is a proportionate and consistent response. Wherever possible, the work to be done and the date by which the work will be completed will be discussed and agreed upon before the notice is served.

The officer will endeavour to give the duty holder a reasonable amount of time in which to complete the work detailed in the notice except where there is an immediate risk. Officers will generally respond favourably to requests for additional time if justified and the absence of risk allows it. All such requests must be in writing.

Some notices issued in respect of premises may be affixed to the premises and/or registered as a local land charge.

Financial penalties

The council has powers to issue a Fixed Penalty Notice (FPN) or a Penalty Charge Notice (PCN) in respect of some offences. A FPN or PCN is not a criminal fine and does not appear on an individual's criminal record. However, if an FPN or PCN is not paid, the council may begin criminal proceedings in respect of the offence or take civil enforcement action to recover the penalty charge subject to the provisions of the relevant legislation.

The aim of a FPN is to simplify the enforcement process and penalise a contravention of legislation without the need for costly and lengthy court proceedings.

A FPN will be issued as a proportionate response to a contravention which may have a relatively small impact on the environment or the community and, where appropriate, to avoid criminalising a person(s) for their first, and in some cases subsequent, offences.

Once a Fixed Penalty/ Penalty Charge Notice is paid, the council will not take any further enforcement action in respect of the offence. However, payment of a Fixed Penalty does not provide legal immunity from prosecution in respect of similar or recurrent offences.

The council is only able to issue Fixed Penalty Notices where it has specific powers to do so. Where Fixed Penalty Notices are available, they can be issued at the council's discretion. For instance, it may be that instigating criminal proceedings is more appropriate than issuing a Fixed Penalty Notice where offences are serious or recurrent.

The Clean Neighbourhoods and Environment Act 2005 increased the range of 'environmental' offences for which fixed penalty notices can 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 Annex 2).

[Injunctive actions, enforcement orders etc.](#)

In some circumstances, the council may seek a direction from the court (in the form of an order or an injunction) that an offence is rectified and/or prevented from recurring. The court may also direct that specified activities be suspended until the offence has been rectified and/or that safeguards are put in place to prevent future occurrences.

Failure to comply with a court order constitutes Contempt of Court, a serious offence that may lead to imprisonment.

The council is required to seek enforcement orders from the court after issuing some enforcement notice and thereby providing the court with an opportunity to confirm the restrictions imposed by the notice. Otherwise, the council will usually only seek a court order if it has serious concerns about compliance with a voluntary undertaking or a notice.

[Simple and Conditional Cautions](#)

In some 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 chance of repeat offences.

Simple Cautions will be used in accordance with Ministry of Justice document: [Simple Cautions for Adult Offenders](#).

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 council will usually pursue the prosecution unless other matters that may influence the prosecution decision come to light in the meantime.

A Simple Caution will appear on the offender's criminal record. It is likely to influence how the council and others deal with any similar offences in the future and may be cited in court if the offender is subsequently prosecuted for a similar offence. A Simple Caution may have consequences for an individual if they seek certain types of employment.

The Conditional Caution is a statutory disposal introduced by [Part 3 of 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.

A Conditional Caution may be offered where rehabilitative or reparative conditions (or both) are considered preferable to a Simple caution or to prosecution. The council will comply with the provisions of 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.

Prosecution

The council may prosecute in respect of serious or recurrent offences, or where other enforcement actions, such as voluntary undertakings or statutory notices have failed to secure compliance.

When deciding whether to prosecute, the council has regard to the provisions of The Code for Crown Prosecutors issued by the Director of Public Prosecutions (see Appendix 3)

Prosecution will only be considered where the council is satisfied that it has sufficient evidence to provide a realistic prospect of conviction against the defendant(s).

The Code for Crown Prosecutors provides for two tests: the evidential test and the public interest test. If the evidential test is satisfied a prosecution will usually take place unless there are public interest factors tending against prosecution that outweigh those tending in favour. The more serious the offence or the offender's record of offences/ criminal behaviour, the more likely it is that prosecution will be required in the public interest.

Assessing the public interest is not simply a matter of adding up the number of factors for and against prosecution and seeing which has the greater number. The public interest must be decided on the merits of each individual case and making an overall assessment. It is quite possible that one factor alone may outweigh a number of other factors that tend in the opposite direction.

A successful prosecution will result in a criminal record. The court may impose a fine and in respect of particularly serious offences, a prison sentence. The council may seek to recover the costs of any investigation. The court may order the forfeiture and disposal of non-compliant goods and/or the confiscation of any profits that have resulted from the offence. Prosecution may also lead, in some circumstances, to the disqualification of individuals from acting as company directors. Courts may issue an order prohibiting individuals from working with, for example, animals or with food.

Refusal/Suspension/Revocation of Licences

The council issues a number of different licences, consents, registrations and permits. These may be applied for by submitting an application, the form and content of which is sometimes specified in law. Applications are generally granted for a limited defined period and must be renewed annually unless specified otherwise.

The council may be permitted to ask supplementary questions on an application form in order to assist it in reaching a decision on whether the applicant is a fit and proper person to hold such a licence.

In some cases, applications are subject to either a public or interested party consultation process and any application that attracts adverse comment or objection or does not meet council policy requirements will be referred to an internal civil hearing forum to determine the application.

Most licences and other permissions have conditions attached, which can be standard conditions or specific conditions or a combination of both. These conditions form part of the licence and lay down requirements that a business or individual must have regard to when trading. Breaching a condition of a licence may be a civil or criminal matter.

When considering applications information supplied with the application together with any previous enforcement action and compliance record can be taken into account when reaching a decision.



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