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CORPORATE STATEMENT OF ENFORCEMENT POLICY

9 July 2024

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1. Introduction

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

This overarching Policy does not seek to duplicate the specific ones detailed in the Appendices, but to provide a framework. In developing and updating these policies, regard has been given to the Regulators' Code 2014¹ issued under section 23 of the Legislative and Regulatory Reform Act 2006 ('the Act'), and good practice. This Policy explains the approach that will be adopted by officers when carrying out the Council's duties and how the Council will respond to noncompliance. Each service area has its own procedures and protocols that will have regard to this Policy, though there may be local variations within them; these are contained in the Appendices below. The Policy covers both criminal and civil enforcement practices and is based on the Council's enforcement mission statement.

2. Enforcement Mission Statement

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

3. General Principles

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

- **Transparency:** to ensure enforcement action to be taken by the Council is easily understood. Clear distinctions will be made between legal requirements and recommendations about good practice which are not compulsory. Where possible the Council shall be sharing information about compliance and risk.
- **Accountability:** to ensure that the Council is answerable for its enforcement practices and can be held to account for the actions it takes.
- **Proportionality:** to consider whether proposed action is proportionate considering all relevant factors, including the severity of the offence, likely outcome, risk and costs of proceedings.
- **Consistency:** to ensure that similar issues are dealt with in an equitable way, making full use of guidance produced by Government and other agencies.
- **Targeted:** only at cases where action is needed.

The Council will act in accordance with the relevant legislation, guidance, and case law as appropriate, when investigating breaches of regulatory compliance and when considering enforcement action. The Council's authorised officers will also comply with the requirements of the particular legislation under which they are acting, and with any associated guidance or codes of practice.

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf

4. Shared Enforcement and Corporate Approach

The range of enforcement matters dealt with by the Council may sometimes require officers to work with other departments or agencies to maximise effective enforcement.

Consideration should be given as to whether it is appropriate to share information with external agencies or colleagues in other departments. Where activity impacts across different Council departments, officers should adopt a corporate and collaborative approach, working together to seek the best results overall. All instances of data sharing must comply with relevant Data Protection Legislation².

5. Aims of Enforcement Action

If enforcement action is necessary, then the Council utilises the sanctions and penalties available to it in order to:

- change the behaviour of the offender;
- change attitudes in society to offences which may not be serious in themselves, but which are widespread;
- eliminate any financial gain or benefit from offending or non-compliance;
- be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
- be proportionate to the nature of the offence and the harm caused;
- address the harm caused by regulatory non-compliance, where appropriate; and
- deter future non-compliance.

6. Levels of Enforcement Action

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

- **LEVEL 1 – Compliance, Advice and Guidance:** to assist individuals, existing and prospective businesses and other organisations to comply with their legal obligations. This will be achieved by providing written and verbal advice, information leaflets and the opportunity for face-to-face contact to discuss and help resolve potential problems.
- **LEVEL 2 - Informal Warnings:** these will be used to reinforce advice and guidance where minor breaches of the law occur, and it is not appropriate to take formal action. Warnings are more likely to be appropriate for minor contraventions where it can be reasonably expected that informal warnings will achieve compliance. Warnings issued in respect of more significant breaches of the law should include timescales within which the breaches should be remedied. Monitoring should be undertaken as appropriate where there are ongoing breaches.
- **LEVEL 3 - Formal Action:** this includes the use of statutory (legal) notices and is generally taken if compliance advice or informal warnings are not considered to be the most appropriate route. Before formal action is taken, other than where immediate action is required, officers will provide an opportunity to discuss the

² Means: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended, or any successor legislation.

circumstances of the case and, where possible, attempt to resolve points of difference.

- **LEVEL 4 - Legal Proceedings:** this includes, amongst other things, the issue of fixed penalty notices, simple cautions, prosecutions, injunction proceedings, review and revocation of licences and execution of works in default.

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

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

7. No Action

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

8. Statutory notices

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

Generally, the notice will explain:

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

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

9. Works in Default

In general, it is Council policy to either caution or prosecute individuals, organisations or businesses that do not comply with a statutory notice. In addition, failure to carry out specified work may result in the Council carrying out the works in default and recovering all costs. In such cases the expenses associated with default works will usually be recovered by issuing an invoice to the relevant party. Where appropriate, these costs may be recovered by way of a charge against land/ property, and such a charge may be further enforced through sale of the land/ property.

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

- Contractor's costs or expenses;

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

10. Fixed Penalty Notice ('FPN')

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

Details of the Council's FPN scheme, including which offences are included, the level of fine and early payment discounts amongst other things, can be viewed on the council's website³

11. Cautions

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

A simple caution is a non-statutory, non-conviction disposal for adult offenders aged 18 or over. Under certain circumstances, a simple caution may be used as an alternative to prosecution and will usually be considered before making a decision to prosecute. A simple caution is a serious matter. It may be used to influence any decision whether or not to prosecute should the individual, organisation or business reoffend, and it may be referred to in any subsequent court proceedings. Regard will be given to government guidance by the Ministry of Justice – Simple Caution for Adult Offenders⁴.

Simple cautions are intended to:-

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

Before issuing a caution the following will be relevant:

- i. there must be evidence of guilt sufficient to give a realistic prospect of conviction and it must be in the public interest to offer a simple caution;
- ii. that it is a low-level first time offending situation;
- iii. not a repeat offence *and where relevant and appropriate* a victim's views will be taken into account;
- iv. the offender must understand and be capable of understanding the significance of the simple caution and admit the offence by signing a declaration;
- v. the person against whom a caution is issued must have legal responsibility for the offence(s), for example in the case of a company, and be 18 years or over.

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

³ [Home | North Herts Council \(north-herts.gov.uk\)](https://www.north-herts.gov.uk/)

⁴ <https://www.gov.uk/government/publications/simple-cautions-guidance-for-police-and-prosecutors> or any subsequent guidance

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

12. Prosecution

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

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

Most prosecution proceedings require the authorisation of the Service Director: - Legal and Community under the Council's Constitution, although some require specific officers to do so, such as Health and Safety, in consultation with the Service Director. Officers must ensure that Legal Services are consulted at the appropriate stage to consider the evidential and public interest tests and institute proceedings where appropriate.

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

13. Unauthorised Encampments

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

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

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

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

14. Licences

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

15. Proceeds of Crime Applications

The Council, either through its own officers or in cooperation with the Police, may make an application under the Proceeds of Crime Act 2002 to restrain and/or confiscate the assets of an offender. The purpose of any such proceedings is to recover the financial benefit that the offender has obtained from their criminal conduct. Proceedings are conducted according to the civil standard of proof. Officers should consider whether such an application is appropriate when initiating a prosecution.

16. Considering the views of those affected by offences

The Council undertakes enforcement on behalf of the public at large and not just in the interests of any particular individual or group. When considering the public interest test and whether enforcement action is appropriate, any views expressed by those affected by the offence(s) will be taken into account.

Those people affected by an offence will be kept informed of any decision that makes a significant difference to the case in which they are involved.

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

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

17. Publication of Enforcement Action

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

18. Waste Management

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

19. Victim rights

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

APPENDIX A: REVENUES RECOVERY

The Revenues Recovery team have a statutory duty to collect debts accrued in relation to Council Tax, Non-Domestic Rates, Business Improvement District Levy, Housing Benefit Overpayments (from Final Notice Stage), Sundry Debts and Penalty Charges Notices (from Warrant Stage)

The relevant legislation which governs the Revenues Recovery team's work are as follows:

Council Tax

- Primary - The Local Government Finance Act 1992
- Secondary - The Council Tax (Administration & Enforcement) Regulations 1992

NNDR

- Primary - The Local Government Finance Act 1988
- Secondary - The Non-Domestic Rates (Collection & Enforcement) (Local Lists) Regulations 1989

BIDS

- Primary – The Local Government and Housing Act 1989 and Local Government Act 2003
- Secondary - The Business Improvement Districts (England) Regulations 2004 & The Non-Domestic Rates (Collection & Enforcement) (Local Lists) Regulations 1989

Enforcement for Council Tax, NNDR & BID

- Primary – The Tribunals Courts and Enforcement Act 2007
- Secondary – The Taking Control of Goods Regulations 2013 & The Taking Control of Goods (Fees) Regulations 2014

Enforcement for Parking

- Primary – The Traffic Management Act
- Secondary - The Taking Control of Goods Regulations 2013 & the Taking Control of Goods (Fees) Regulations 2014

With regard to Council Tax, once a Liability Order has been granted, this secures the Council's debt and allows the Council to consider using one of the following methods to recover the amount:

Attachment of a Welfare Benefit

Attachment of Earnings

Attachment of Members Allowances

Refer the case to an Enforcement Agent; this will incur the fees laid out in the Taking Control of Goods (Fees) Regulations 2014

If the above fails, then consideration can be given to making an application for a Warrant of Commitment to prison

Make an application for a Charging Order to be placed over a property, where this is owned by the debtor. The Council can seek to force the sale of a property once a charging order is in place.

Consideration of personal bankruptcy if there are believed to be assets that could realise the debt.

With regard to NNDR and BID Levy, once a Liability Order has been granted, this secures the Council's debt and allows the Council to consider using one of the following methods to recovery the amount:

Refer the case to an Enforcement Agent; this will incur the fees laid out in the Taking Control of Goods (Fees) Regulations 2014

If the above fails, then consideration can be given to making an application for a Warrant of Commitment to prison if the business is a sole trader

Make an application for a Charging Order (Security of Rates) to be placed over a property, where this is owned by the debtor.

Consideration of personal bankruptcy if the business is a sole trader

Consideration of a Winding up order if the business is a partnership or Limited Company.

In all cases the Council can only consider Bankruptcy if the debt exceeds £5,000 or in the case of a Charging Order the debt must exceed £1,000.

With regard to Warrants of Execution for Parking Fines, the Council refers these to an External Enforcement Agent to pursue. The Agents work in line with the Taking Control of Goods Regulations 2013, but ultimately can clamp and remove a vehicle once a Taking Control of Goods Agreement has been sought.

APPENDIX B: ENVIRONMENTAL HEALTH

1.0 General statement of purpose and scope

The Environmental Health Enforcement Policy forms part of the Council's overarching Corporate Enforcement Policy (CEP). It follows the principles laid down in the core policy and does not seek to duplicate these except where necessary to aid clarity or context.

1.1 In framing this policy, regard has been made to the Regulators Code, corporate policies, specific legislation under which an investigation is conducted and associated national guidance. In addition to the primary legislation that applies to the work of the Environmental Health Service (the "Service"), the following statutory instruments have also been considered:

- Human Rights Act 1998
- Regulatory Enforcement and Sanctions Act 2008
- Legislative and Regulatory Reform Act 2006
- Police and Criminal Evidence Act 1984
- Regulation of Investigatory Powers Act 2000
- Criminal Justice Act 2003
- Criminal Proceedings and Investigation Act 1996
- Local Government Act 1972
- Equality Act 2010
- Regulation of Investigatory Powers Act 2000

1.2 This policy covers all the core functions of the Service. It outlines the approach to enforcement and lays down the principles which will be followed in deciding appropriate and proportionate action in relation to any given case.

In this policy, enforcement includes any criminal or civil action taken by the Service aimed at ensuring parties such as members of the public or businesses comply with the law.

Reasonable steps will be taken to assist businesses and individuals in complying with legal requirements, however the Service is prepared to ensure compliance by exercising formal powers where they exist, and when necessary.

Where appropriate we will seek to raise awareness and increase compliance levels by publicising unlawful practices, criminal activity and related enforcement action taken. This may include publicising the outcomes from specific court cases.

2.0 Environmental Health

The Service is responsible for the enforcement of a wide range of regulatory powers. The purpose of this policy is to detail the processes the Service will follow when determining enforcement actions in relation to carrying out its statutory duties on behalf of the Council.

The main activities delivered by the Service are:

- Food safety
- Occupational health and safety
- Environmental protection
- Public health
- Housing standards
- Stray dog control

This policy is not intended to be operational guidance but to provide a basis for framing operational interventions and procedures regarding enforcement activities. Each case will be dealt with on its own merits and due to the range of activities covered by the Service, this policy is not exhaustive. However, all formal enforcement action and performance carried out by the Service will be reviewed and considered under this policy.

3.0 Principles of good enforcement

The Service will take an open, fair, and balanced approach in dealing with breaches of legislation. Where possible, officers will raise awareness and promote good practice by signposting affected parties to relevant guidance and good practice.

Where a supportive and guidance related approach has not worked to resolve a potential breach of legislation, the Service will not hesitate to take proportionate formal action as appropriate.

Advice regarding non-compliance with legislation, the actions required to be taken to remedy poor or non-compliance, and decisions surrounding our actions will be provided as part of the intervention.

Where believed necessary, the Service will consider the decision on its chosen course of action with other external authorities and/or Council Services, to ensure actions are proportionate and consistent. Where immediate enforcement action is permitted and deemed to be required, and if the breach of legislation is sufficiently serious and/or if there is an imminent public health or safety risk the Service will intervene immediately and without any prior consultation, although such consultation may take place after the initial response if felt to be necessary.

Officers who are deemed to be competent and authorised under specific legislation will investigate potential breaches of that legislation and take responsibility for managing the investigations and making decisions regarding enforcement action. As part of this process, they regularly consult with colleagues and managers to determine the best and most appropriate course of action to take. In relation to prosecutions, cases will be case reviewed during the investigation with an equally competent fellow officer or a manager before submitting it to the Council's Legal Services for further escalation.

3.1 The Office for Product Safety and Standards

The Service will also adhere to the guidance issued by the Office for Product Safety and Standards in the 5 priority regulatory outcomes for England, although this will be balanced with the requirement to ensure full statutory compliance in all aspects of the Service's core work.

The five priorities are as follows:

- Support economic growth, especially small businesses, by ensuring a fair, responsible, and competitive trading environment. This can include restricting or taking action against those individuals, organisations or businesses seeking an unfair advantage through non-compliance.
- Protect the environment for future generations including tackling the threats and impacts of climate change. This may also include considering the health effects of those in our community and seeking to improve these either via direct intervention or working with others to benefit our environment.
- Improve quality of life and well-being by ensuring clean and safe neighbourhoods. It is recognised that by allowing people to live longer in their homes greatly improves the quality of their lives for longer; the Service will strive to work towards this objective.
- Help people to live healthier lives by preventing ill health and harm and promoting public health. Much of the work of the Service contributes towards this objective, both directly and in partnership, and officers will look to achieve this as part of their normal work.
- Ensure a safe, healthy, and sustainable food chain for the benefit of consumers and the rural economy. This is a core duty of the Service both to routinely inspect all local food providers and to intervene where standards need to improve.

3.2 The Regulators' Code

The over-arching Council Enforcement Policy states the intention to adhere to the requirements of the Regulators' Code, and the Service fully adheres and complies with these requirements. All officers within the Service fully understand and accept that where improvements are necessary, they can be achieved following a graduated approach ranging from offering advice and guidance, but may need to revert to enforcement, or direct prosecution in extreme cases if non-compliance is a regular aspect or the risks posed are sufficiently severe.

As the CEP over-arches this policy, the requirements of that referring to the Regulators' Code will take precedence.

3.3 PACE, the Human Rights Act, CPIA and the Code of Practice for Crown Prosecutors

Again, the CEP states how officers of the Council will adhere to the requirements of these statutes giving fundamental rights to all, and just as with the intention to adhere to the Regulators' Code, the Service will also adhere to the CEP for these requirements.

3.4 Regulation of Investigatory Powers Act 2000

As stated by the preceding sections, the CEP also states the Councils expectation to adhere to the requirements of the Regulation of Investigatory Powers Act, 2000 (RIPA) when carrying out its statutory duties. Whilst it is unlikely that the work of the Service will need to use any of the provisions of this statute, if it does need to do so, it will adhere to the requirements in full.

3.5 Primary Authority arrangements

The Primary Authority scheme was launched in 2009 by the Office for Product Safety and Standards under The Regulatory Enforcement Sanctions Act 2008. This is a means by which businesses can receive assured and tailored advice on how to comply with regulations through a single statutory and regulatory point of contact. Officers will comply with the requirements of this Act when considering interventions or enforcement action against any business or organisation that has a Primary Authority relationship.

3.6 Equality, diversity, and equal opportunities

The council is committed to treating all customers fairly and all enforcement decisions will be fair, independent, and objective, and the Service will fully adhere with this requirement.

3.7 Delegated powers and officer authorisation

All enforcement officers in the Service are provided with written records of delegation and authorisation. The delegations assign functions, powers, and duties of the Council to the officers, mainly within broad functional descriptions. It is consistent with the Council's Scheme of Delegation as incorporated within the Council's Constitution. Where necessary, the named officer will be authorised in accordance the specific statute.

The levels of delegated powers and officer authorisation is dependent on their experience, competency, qualifications, and designation held and determined by the managers of the Service.

3.8 Identification of officers

All enforcement officers in the Service are provided with written records of delegation and authorisation and are provided with a warrant card with photographic identification.

3.9 Officer safety

All enforcement officers are provided with a suitable means of communication to monitor their whereabouts and ensure their safety and welfare. All programmed visits are recorded on the officer's Outlook calendar to ensure that managers and colleagues are aware of their whereabouts and itinerary. Officers are instructed to regularly check the Council's incident register and liaise with Hertfordshire Constabulary or other external authorities and Council services to ensure that information on potential violent persons is appropriately shared.

Officers are instructed to conduct joint visits with colleagues or other external authorities where deemed to be necessary for the purposes of safety. In the event that training on how to deal with confrontational situations and conduct dynamic risk assessments to safeguard their health, safety, and welfare is considered necessary, officers will be provided with this.

3.10 Recording activity and potential evidence, taking samples, documents, etc.

The Service is required to collect and retain information and evidential records to:

- Observe, obtain, or witness any material that could be considered relevant to any criminal or civil investigation,
- To secure evidence after witnessing events.

- 3.10.1 Pocket notebooks or other contemporaneous notes in form of inspection proformas or on-site records will be used at all times for the collection and retention of information. Where evidence pertinent to the investigation is collected, this will be in accordance with PACE.
- 3.10.2 Photographic, video, and other digital evidence will be obtained, secured, and retained, and if this is potentially to be used as evidence, it will be obtained, and retained in accordance with PACE and the Council's General Data Protection Regulation Policy.
- 3.11 Shared enforcement, information sharing with partners and data protection.

The Service will work with, and consult, other external agencies and Council Service as necessary where there is a shared role in enforcement. There may also be occasions when there is a need to work with other agencies by carrying out joint inspections. Such circumstances may include working with Hertfordshire Fire and Rescue Service, Building Control, Trading Standards, as well as other services from within the Council. In such circumstances the Service may agree standards of cooperation such as Memoranda of Understanding, Joint Consultation Policies or similar.

In determining the most appropriate form of investigation and enforcement action, officers will have regard, so far as they are aware, to other potential or existing action other Council services or outside agencies are undertaking. This will be particularly important in the case of listed buildings and conservation areas which may restrict the use of the premises or the nature of works, and could be linked to interventions the Service are considering.

Where enforcement action is being taken by another Council service or outside agency, upon request, we will provide all reasonable assistance including the production of witness statements and the collection and sharing of evidence etc., subject to any legal constraints and the meeting of any reasonable expenses.

Where the Service has a shared enforcement role with either another Council service or external authority, officers will liaise with the relevant party to ensure effective co-ordination and avoidance of inconsistencies.

- 3.12 Powers of entry and associated powers, obstruction, and warrants

Officers will be duly authorised to carry out certain activities in line with competence, assessment and or qualification. This includes, but not limited to:

- 3.12.1 Powers of Entry

The Service, through a wide range of legislation is provided with specific powers of entry. This is a power given to an authorised officer from the Council to enable that officer to perform their duties, to allow them to assess the levels of compliance associated with the premises. In this capacity, and subject to the provisions of the delegated power, premises may include businesses, vehicles, or land for specific purposes. Each statute permitting powers of entry specifies the scope and limitation of the power, and the Service will satisfy these limitations in each case. This might, for instance, include conducting a search, seizing relevant items, or collecting samples.

Powers of entry include enabling delegated and authorised officers to undertake inspections and investigations for a wide range of regulatory responsibilities including, but not limited to food safety, health and safety and environmental protection legislation, in addition to dealing with emergencies or searching for evidence during

those investigations. Legislation will determine what officers are allowed to do once they have entered the premises (associated powers).

3.12.2 Powers of Seizure

The Service is also provided with extensive and specific powers of seizure, allowing for the seizure of such things, including goods, documents, items or anything else related to an investigation, which, if left unseized may adversely affect the investigation. These powers relate to specific legislation, which also specifies the conditions and limitations when those powers may be used. The Service will adhere to these requirements when it is exercising the use of these provisions.

Where any seized items are subject to any form of testing, the results of that testing will be made available to the person who had ownership of the goods, and this information may be used in relation to any enforcement action arising from that investigation.

The Service has processes and procedures in place to ensure that officers are competent, capable, and suitably qualified, and only those deemed to be such by the managers of the respective parts of the Service will be authorised to use this power.

As part of the assessment to enable officers to be authorised with this power, the Service will ensure our enforcement officers are equipped with the appropriate level of skills, competencies, and experience commensurate with the role and responsibilities and the support necessary to undertake their job effectively and efficiently. Continuing Professional Development (CPD), qualifications, training, and development to meet statutory codes of practice, HSE's Section 18 Standard or any other limiting criteria will be ensured for each authorised officer.

3.12.3 Obstruction of an Officer

Much of the legislation under which officers are authorised, there is an offence of obstructing an officer in the conduct of their duties. This can include failing to give appropriate assistance, providing false information, and stopping an Officer from conducting an inspection. Obstruction is taken very seriously, as it is the prevention of a person from doing their lawful duty. In such cases, formal action will be considered, including prosecution, if the person(s) does not take heed to being advised to desist (either verbally or in writing).

3.12.4 Seeking of Warrants

Although much of the legislation falling to the Service to enforce allows powers to be delegated to authorised officers, in certain specified instances, the authorised officer will also need a warrant issued by the courts to execute those powers. Where this requirement exists, such warrants will be sought from the court, and used in the execution of that power provided for in accordance with the enabling statute.

3.13 Service deployment assessments

The enforcement and regulatory activities undertaken by the Service are as a result of either formal inspection programmes, complaints received by the Service, matters of concern identified by officers of the Service whilst undertaking their duties or concerns raised by other agencies. Where appropriate, assessments are undertaken to guide the deployment of resources to facilitate the investigation, and to allow the Service to meet its statutory obligations. The following table highlights the source of the guidance for this assessment with regard to the inspections and investigations carried out by the Service for each statutory area of responsibility.

Area	Activity	Assessment Methodology
Anti-social Behaviour	Complaints of anti-social behaviour, and/or conduct/behaviour having a detrimental impact on the quality of life of those in the locality	Home Office Anti-social behaviour powers: Statutory guidance for frontline professionals
Food safety	Food premises proactive inspection programme	Food Standards Agency (FSA) Food Law Code of Practice England) FSA Food Law Practice Guidance Local procedures
	Inspections resulting from food complaints and food premises complaints from the public and/or employees	
Occupational health and safety	Health and safety proactive inspection and intervention programme	HSE Guidance and National Local Authority Enforcement Code
	Inspections resulting from RIDDOR notifications and workplace complaints from the public and/or employees	
Environmental protection and public health	Environmental permitting	DEFRA risk assessment methodology
	Rubbish and accumulations, vermin and other public health pests, statutory nuisance, noise from construction sites	Various pieces of national guidance and local risk assessment system
Housing enforcement	Housing disrepair in the rented and/owner occupied sector	HHSRS Enforcement Guidance HHSRS Operating Guidance
	Non-licensable houses in multiple occupation	LACORS guidance HMO Amenities standards Local risk assessment system
	Empty homes	Empty homes Strategy Local risk assessment system
Private water supplies	Water sampling	DWI guidance Local risk assessment system

The recognised assessment principles are used where appropriate in deciding how to respond to and prioritise the work of the Service including responding to accident reports, infectious disease notifications, complaints, and notifications from other agencies.

4.0 The range of enforcement and regulatory sanctions

- 4.1 The core part of the Council's CEP sets out the general enforcement options, ranging from no action, up to prosecution or a similar level sanction, including the use of this higher response as the first action where the circumstance justifies it. The Service follows this approach, whilst taking a number of statute specific factors into consideration when deciding what enforcement response is appropriate in each case.

4.2 Whilst the statute-specific options available to the Service fall within the range covered by the CEP, those measures include:

- No action – due to no breaches being present,
- Informal action – offering either verbal and/or in written advice or recommendations to achieve compliance with best practice or industry standard, and that no public risk is identified,
- Formal action – this will be taken in accordance with the requirements of each enabling statute and aims to address matters posing a risk to the public or non-compliance. This may include the use of enforcement notices, statute-specific orders, works in default, penalty charges, forfeiture, seizure, injunctions, proceeds of crime applications, prosecution or other similar responses permissible under the appropriate statute. Where formal action is taken, the Service will seek to recover all and any costs associated with the action subject to the decision of the deciding judiciary.
- The Service will also have due regard to the development and legal changes to the scope of statutes whereupon legal decisions, e.g., caselaw, change the provisions or use of statute, and thus enabling the Service to use other non-core environmental health legislation to benefit our communities, e.g., The Crime and Policing Act, 2014, and the extensions of the use of Community Protection Warnings and Orders.

4.3 As stated, the Service follows the principles as set out in the Regulator's Code, including adhering to a graduated approach for enforcement. In general, the Service seeks to enforce with a lower sanction for less serious, one-off offences, ranging to higher sanctions for serious and/or repeat offences, potentially including prosecution or another higher-level sanctions as the Service's first course of action in extreme cases, i.e., those posing very serious risks, those perpetrated by repeat offenders or where there is a history of disregard and non-compliance such that public safety is put at a high risk. Within such cases, the Service will retain the provision to escalate sanctions and use those measures it deems most likely to be effective whilst remaining within the scope of the statute and the over-arching provisions of the Regulators' Code. However, each case will be considered on its own merits having regard to all relevant factors. In every case, the appropriate enforcement option is carefully considered and approved in line with the Council's scheme of delegation before such interventions are made.

4.4 The Service will have due consideration to the requirements of each statute it regulates and enforces in respect to the requirements imposed on its officers when they become aware of a breach of that statute. The respective Acts may impose either a power to act, or a duty to do so. The former allows a greater degree of discretion to enable a satisfactory resolution, whereas the latter states the nature of intervention which has to be followed, and tends to require the service of an enforcement notice as the first level of response.

5.0 Reviewing the policy

5.1 The Environmental Health Enforcement Policy, which acts as Appendix to the CEP, will be reviewed on a regular basis, and in any event, at least every five years, to ensure it reflects good practice, national guidance, codes of practice, and changes in legislation and caselaw.

5.2 In addition, should the Service receive any feedback regarding this policy from businesses in the district, consumer and residential groups or their representatives, this too will feed into the review.

- 5.3 Responses to formal complaints investigations will be considered to ensure good practice and compliance with this policy occur, and where changes in the way our communities interact with the Service are seen, these may also be considered as part of that review.
- 5.3 Officers are trained and familiar with the Council's Employee Personal Conflicts of Interest Policy to ensure that conflicts of interest that occur between an officer's official duties and their personal/private interests do not impact the Service or the implementation of this policy. Managers will monitor officer's adherence to the Employee Personal Conflicts of Interest Policy and act to ensure no such conflicts occur.
- 5.4 Environmental health legislation is continually being introduced, repealed, and amended, case law guidance and approved codes of practice are regularly updated. Amendments and further appendices/annexes may be added to this policy to reflect any such changes and ensure that officers receive appropriate delegated powers and authorisations and follow best practice.
- 5.5 Charges associated with civil penalty notices are detailed in a separate Fees and Charges Policy and will be updated as appropriate.

6.0 Anti-social Behaviour

The Anti-social Behaviour Crime and Policing Act 2014 can be used in addition to or in place of a number of core functions that fall unto the Service to regulate or enforce. The powers contained in the Act allow the Service to deal quickly with a number of issues as they arise to ensure the best results for victims and the wider public.

6.1 Relevant powers contained in the Act include:

- Civil Injunctions,
- Criminal Behaviour Orders,
- Community Protection Warnings/Notices
- Public Spaces Protection Orders,
- Closure Powers.

The Service will consider the use of these powers where expediated action is required and/or to replace or strengthen enforcement action taken under other specific environmental health legislation.

7.0 Food Safety

7.1 Scope

This policy covers food safety enforcement as one of the key intervention areas that fall under the remit of the Service and considers all aspects of food hygiene regulation including enforcement and prosecution. In addition to the policy being influenced by new statute and caselaw, the national regulator also directs food hygiene regulation, including by issuing guidance and objectives. These include the Food Standards Agency (FSA), which is the National Regulator, via the Framework Agreement on Local Authority Food Law Enforcement' and the Food Law Code of Practice (England) (FLCoP) issued under section 40 of the Food Safety Act 1990, the Department of Health & Social Care (DoH), Depart for Food, Environment and Rural Affairs (Defra) and subject to the nature of their expectations or guidance, this policy will reflect their objectives..

The response by officers authorised to regulate food safety mirrors those of the Regulators' Code and follows the accepted hierarchy of enforcement with responses

ranging from no action required up to and including immediate prosecution as each case requires, and allows the known previous history of those involved to be factored into any decision-making process, in accordance with the FLCoP.

7.1.1 Where appropriate this part of the Policy will be read in conjunction with the Occupational Health and Safety Enforcement Policy (see part 7.) of this policy below as this too is carried out by the same officers.

7.2 Officer Competency

The competency of officers specialising in food safety shall follow the guidance in the FLCoP and other guidance issued from time to time by the national regulator or other recognised bodies.

7.3.1 Only officers qualified and deemed to be competent and experienced under the Food Safety Act, 1990, and the associated Regulations and codes of practice specific to this provision made under this Act will be authorised. An authorised officer will be duly considered authorised to enforce all aspects of food safety law unless other specific requirements exceed this, and their authorisation is restricted.

7.2.2 In the event of enforcement being require, enforcement notices will only be signed by officers authorised to do so, and the officer must have witnessed the contravention first hand and be satisfied that it constitutes a breach of the food safety legislation before they sign the notice.

7.2.3 Hygiene Emergency Prohibition Notices shall be signed only by officers who, in addition to other requirements permitting them to be authorised, shall have at least two years post qualification experience in food safety matters, are currently involved in food law enforcement and who are properly trained, competent, and duly authorised. The officer will ensure a second opinion is obtained from a fellow duly authorised officer prior to the notice being issued.

7.2.4 The Council recognises and affirms the importance of achieving and maintaining consistency in their approach to making all decisions which concern food safety enforcement action, including prosecution. To achieve and maintain consistency, it is important that the guidance in statutory Codes of Practice, other recognised and relevant guidance and advice offered through any relevant Primary Authority is always considered and followed where appropriate.

7.2.5 In premises where the Council are the proprietor of a food business any breaches of the law must be brought, without undue delay, to the attention of the relevant Service Director. In all other aspects, such food premises will be dealt with no differently from any other in the district.

7.2.6 Where the Council is considering taking enforcement action which is not consistent with current guidance not subject of guidance, or where the guidance appears to be contradictory, the matter shall be brought to the attention of the Hertfordshire and Bedfordshire Food Liaison Group and where consensus cannot be reached to the FSA via the Food Focus Group.

7.3 The use of formal enforcement tools

FORMAL ACTION

7.3.1 Whilst the requirements of this section still mirror those of the CEP and the general provisions of the Environmental Health enforcement policy, for clarity, should any

food safety enforcement be undertaken, these are the consideration food enforcement officers will apply.

- 7.3.2 Before formal action is taken, it is acknowledged that officers will have made every reasonable step to advise and encourage the person responsible to comply with their requirements, but that such informal action has been shown to be ineffective. Equally, as part of the review of the case, prior to commencing formal action the officer will also be able to discuss the case with a fellow authorised officer or team manager to confirm the appropriateness of the action.

In circumstances of public safety or there is an imminent risk, the officer shall consider enforcement or even prosecution as being the most suitable first intervention, and this policy provides for this action.

STATUTORY FOOD ENFORCEMENT NOTICES AND RELATED PROCEDURES

- 7.3.3 In relation to the following formal actions:

- Hygiene Improvement Notice
- Hygiene Emergency Prohibition Notice
- Voluntary (closure) procedure
- Emergency prohibition procedures
- Seizure and detention of food
- Voluntary (surrender of food) procedures
- Remedial Actions Notices
- The use of other relevant legislation, for example Community Protection Warnings, Community Protection Notices and Criminal Behaviour Orders pursuant to the Anti-social Behaviour, Crime and Policing Act 2014

Consideration regarding these provisions will be given to the guidance in the FLCoP. Other relevant guidance will also be considered as well as the site specific and case specific factors.

PROSECUTION

- 7.3.4 The Service, and the Council recognises that the following are circumstances which are likely to warrant prosecution:

- i) The alleged offence involves an obvious breach of the law such that the public health, safety or well-being is or has been put at risk.
- ii) The alleged offence involves a failure by the suspected offender to correct an identified serious potential risk to food safety, having been given a reasonable opportunity to comply with the lawful requirements of an authorised officer.
- iii) The offence involves a failure to comply in full or in part with the requirements of a statutory notice.
- iv) There is a history of similar offences, related to risk to public health.
- v) Inspectors have been intentionally obstructed in the lawful course of their duties.

- 7.3.5 Prior to any prosecution, the authorised officer, must be satisfied that there is relevant, admissible and reliable evidence that an offence has been committed by an identifiable person / company; this forms the Evidential Test. In addition, the officer must also be assured that the prosecution is in the Public Interest, and without both these criteria being met, the prosecution shall not proceed. As part of confirming this threshold, the

officer may seek assistance and guidance from competent colleagues or officers in the Council's Legal Services team.

7.3.6 The following guidance criteria are some of the factors that it may be relevant to have regard to when considering the instigation of legal proceedings.

- i) The seriousness of the alleged offences.
- ii) The previous history of the party concerned.
- iii) The likelihood of the defendant being able to establish a due diligence defence.
- iv) The availability of any important witnesses and their willingness to cooperate.
- v) The willingness of the party to prevent a recurrence of the problem.
- vi) The probable public benefit of a prosecution and the importance of the case.
- vii) Whether other action (Simple Cautioning, improvement notices) will be more appropriate or effective.

CAUTIONS

7.3.7 In certain circumstances when legal proceedings are being considered, the Council may consider offering to discharge the matter by way of a Caution. The procedure adopted and the form and content of the caution will be in accordance with relevant legislation and Code/ guidance. Any internal guidance will also be considered.

8.0 Occupational Health and Safety

8.1 Scope

8.1.1 This section of this policy covers occupational health and safety (OHS) enforcement as one of the key intervention areas that fall under the remit of the Service and as such, will consider all aspects of the law that fall to this Local Authority to regulate and enforce. In addition to the policy being influenced by new statute and caselaw, the national regulator also directs OHS regulation, including by issuing guidance and objectives. The national regulator is the Health and Safety Executive (HSE), working with the Local Authority and Safety Unit (LASU) and the HSE and Local Authority Unit (HELA) to interpret and apply the Health and Safety at Work, etc., Act, 1974 (this Act) and the Regulations and guidance issued under this legislation. In addition, the other over-arching requirements of the CEP also apply, and these too will be considered in regulating this statute.

8.1.2 Where appropriate this part of the Policy will be read in conjunction with the Food Safety Policy (see part 6.) of this policy as this regulation is carried out by the same officers.

8.1.3 Unlike all other regulation and enforcement carried out where it is this Council who is the enforcing agency and officers are authorised to act on behalf of the Council, under this Act, it is the officer who has the direct delegation and authorisation. To comply with this, officers appointed to the role of enforcing this Act will first be deemed competent by the Service in accordance with the guidance and requirements provided for by the HSE.

8.1.4 The Council will ensure that officers deemed to be suitably qualified, competent and who have sufficient experience under are appointed under Section 19 of this Act are authorised to initiate enforcement action, in accordance with HSE guidance, currently set out in LAC 22/8.

8.1.5 To ensure the competency of authorised officers is maintained, the Service will identify and make provision to ensure its officers receive suitable training and guidance, and that targeted interventions are developed, implemented and carried out, in accordance with the enforcement allocations provided by the HSE and Local Authority Circular (LAC) 67/2 which identifies and targets those work sectors most at risk of poor OHS.

8.2 Other relevant considerations

8.2.1 The Council recognises and affirms the importance of achieving and maintaining consistency in delivering the enforcement of OHS regulation and enforcement. To achieve and maintain this consistency, authorised officers will have due consideration to this Act, the Regulations made thereunder and the Codes of Practice, guidance and Approved Industry Standards applicable to the business sectors that fall to Local Authorities to enforce.

8.2.2 Officers will also have due regard to the relevant Primary Authority and will consider the guidance and instruction issued in relation to this agreement as part of any intervention or enforcement.

8.2.3 Where the authorised officer is considering taking enforcement action which is not consistent with the allocation Regulations or LAC 67/2, the officer will raise the matter with the Hertfordshire and Bedfordshire Health and Safety Liaison Group or the HSE to clarify the necessity of the intervention, and on occasion, seek approval from the HSE to act. It is recognised that as OHS regulation is shared by the HSE and Local Councils the allocation is not always absolute, so this provision to clarify roles forms an essential part of regulating this Act.

8.3 The use of formal enforcement tools

8.3.1 As part of the requirement for authorised officers to take action under this Act, the officer shall have due consideration initially to ensure that there is or is likely to be a breach of this Act and the provisions made thereunder, that the business sector where the enforcement is required falls unto them to enforce, and that the requirements of the HSE Enforcement Management Model has been reviewed and followed. Once these considerations have been fulfilled, the choices for action are:

- To take no action.
- To give verbal or written advice.
- To take informal action.
- To use statutory notices.
- To use Simple Cautions where local policy dictates.
- To prosecute.
- To use other relevant provisions of legislation, for example to seize or destroy unsafe items, plant, or equipment.
- Or a combination thereof.

8.3.3 Compliance shall be sought following the accepted graduated response accepted by the Council in the CEP and expected under the Regulators' Code. Only in the more serious instances or where repeated poor or non-compliance is found should formal enforcement through improvement or prohibition notices be considered. Prosecutions should be reserved for the most serious offences which either result or could have resulted in serious injury or ill health or which represent a blatant disregard by employers, employees or others of their responsibilities under health, safety, or welfare legislation.

- 8.3.4 Investigations into serious workplace accidents, substantial near-misses or fatalities that occur in workplaces allocated to this authority will be given the utmost priority. Although a lead officer will be designated to carry out the investigation, a competent and equally authorised support officer will also be identified to act as support, but to also undertake interim case reviews during the investigation. Subject to the risks posed by the breach, or seriousness of the injury, the officer may seek to prosecute the business as the first level of response, although this will still be subject to the thresholds of the evidential and public interest tests applicable to the case.

In cases where a workplace fatality has occurred, whilst the authorised officer shall still investigate the matter under the requirements of this Act, the investigation is likely to intervene with the Coroner, and although the investigation should proceed as normal, the officer will have to consider this additional duty, and the impact of liaising with the family of the deceased. Where necessary, both the Service and the Council will support the officer throughout this duty. In addition to determining the appropriate level of enforcement in such cases, the officer will have to present their evidence and investigation report to the Coroner and due to the prioritisation of this legislation, this response may have to be the initial formal response required of the officer.

FORMAL ACTION

- 8.4 Any enforcement action will be directed against duty holders responsible for the breach. This may be employers in relation to employees or others; the self-employed; owners of premises; suppliers of equipment; designers of equipment or clients of projects; or employees themselves. Where there are several duty holders enforcement authorities may take action against more than one.

STATUTORY NOTICES

- 8.5.1 The enabling Act clearly sets out the full requirements for the authorised officer should they need to take enforcement action, including the types of notices that may be used and when, whether immediate prosecution may be used, the nature of the information that needs to be provided in relation to the breaches and to whom, the provision of information about lodging an appeal against such a notice, and the scope of the supplementary information that must also be provided or made available as a result. The Service will fulfil this obligation and adhere to these requirements when circumstances arise that warrant such an intervention. Within this section, only a summary of the key points of this requirement will be presented below.
- 8.5.2 Before formal enforcement action is taken, officers will adhere to the requirements of the CEP and offer a graduated response to hopefully achieve compliance by providing the duty holder an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference, unless immediate action is required (for example, in the interests of health and safety or environmental protection, or to prevent evidence being destroyed).
- 8.5.3 Where immediate action is considered necessary, an explanation of why such action was required will be given at the time and confirmed in writing in most cases within 5 working days and, in all cases, within 10 working days.
- 8.5.4 An Improvement Notice will be issued only when the officer is of the opinion that there is or has been a contravention of one or more of the relevant statutory provisions at the time of the visit in circumstances that make it likely that the contravention will continue, and that allowing a period of reasonable time to improve the situation will not endanger anyone.
- 8.5.5 Prohibition Notices can be issued to have an immediate or deferred effect, and will be used to render a dangerous occurrence, or risk of occurrence safe. Due to the urgency

of the risk required to be present to warrant this notice, it is unlikely that a deferred notice will be served although this Act does allow for such measures if they are considered appropriate. The Notice will only be served if the officer is of the opinion that there is, or will be a risk of serious personal injury.

- 8.5.6 Should notices be served, this Act requires supplementary information about the recipients' rights of appeal to an Employment Tribunal against formal action to be served in writing and clearly setting out the provisions as to how to lodge such an appeal. The authorised officer will adhere to this requirement.

The officer will also provide employees or their representatives with certain information about matters of serious concern affecting their health, safety, and welfare; such information may be given orally, or in writing.

When notices are served, a second copy must be provided for the attention of employees or their representatives so that they too are kept informed of risks that may affect their OHS.

- 8.5.7 Subject to the nature and severity of the risk posed, an authorised officer may consider both the service of notices and prosecution, albeit in the following circumstances:

- (i) Where a situation is so hazardous that even when a prohibition notice is served, the severity and scale of the risk also warrants immediate prosecution, and,
- (ii) if a prosecution is taken due to the circumstance of an accident, in which case notices may also be used to improve the safety.

In these situations, the information for the prosecution should allow for any appeal period to pass, or any associated appeal to be heard, except where the matter is to remedy matters of immediate risk.

- 8.5.8 Non-compliance with a served Notice will normally result in prosecution.

PROSECUTION

- 8.6 This Act makes provision for those responsible for breaches to be prosecuted, and where there is sufficient evidence and a public interest to do so, and at least one of the following conditions apply, prosecution is likely to be the outcome of the investigation. The conditions are:

- Where there is a death or serious injury as a result of a breach of the legislation,
- Where there is a blatant disregard for the law, particularly where the economic advantages of breaking the law are substantial and others are placed at a disadvantage or in danger as a result,
- When there appears to have been reckless disregard for the health and safety of work people or others,
- Where there have been repeated breaches in an establishment, or in various branches of a business, and it appears that management is neither willing nor structured to deal adequately with these,
- Where a particular type of breach of statute is prevalent in a business sector and it is commonly known that compliance is expected,
- Where non-compliance is substantial and poses a high level of risk,
- Where a particular breach has caused serious public alarm,
- Where there are persistent poor standards for control of health hazards.
- Where there has been failure to comply with an improvement or prohibition notice or a repetition of a breach that was subject to a Simple Caution.

- Where the authorised officer has been intentionally obstructed in the lawful course of their duties.
- Where officers are assaulted, enforcing authorities will seek police assistance with a view to seeking prosecution of offenders.

The decision to prosecute in the above cases does not preclude the issue of notices as well.

PROSECUTION WITHOUT PRIOR WARNING

8.7 As a general rule a person or a company should be given a reasonable opportunity to comply with the law, although in some circumstances the authorised officer does have the power to prosecute without giving prior warning. Examples of such circumstances include the more serious matters identified in the previous section.

PROSECUTION FOLLOWING AN ACCIDENT

8.8.1 Seriousness of the contravention is the prime consideration in deciding whether to take a prosecution following an accident rather than the seriousness of the injury or accident. The extent to which management was responsible for the circumstances which led to the accident, and whether the employer had been previously warned of a similar infringement, are also relevant. An important consideration is what those responsible could have done to avoid the breach in the absence of an accident, or whether the accident was the acceptance that safety was not previously considered. Whilst the nature or severity of an accident is not the prime concern to initiate prosecution, the evidence it provides will contribute to the prosecution case.

In cases where a fatality has occurred, and there is a possibility of a charge of manslaughter being made, such cases must be referred to the Crown Prosecution Service.

8.8.2 In all cases where a fatality has occurred, the authorised officer will have due regard to the 'Work Related Death Protocol' (WRDP), and will, where necessary, work in close cooperation with the HSE, and the blue light services involved in the case. Whilst the WRDP will identify which authority will have primacy for the investigation, the HSE, all Local Authorities and all blue light agencies have signed up to it, and should work cooperatively to reach a conclusion. Where officers are requested to assist or provide information under this agreement, in general it is expected that they will do this.

CAUTIONS

8.9 In certain circumstances when legal proceedings are being considered, the authorised officer may consider offering to discharge the matter by way of a Caution. The procedure adopted and the form and content of the caution will be in accordance with legislation and any relevant Code guidance. Any internal guidance will also be considered.

9.0 Environmental Protection and Public Health

9.1 Scope

9.1.1 The Service undertakes regulatory duties including the following environmental protection matters:

- Noise nuisance arising from both domestic and commercial premises (including noise/vibration from construction sites) and equipment or vehicles in the street.

- Air pollution control, including smoke, odour, and dust statutory nuisances.
- Other statutory nuisances e.g., excess artificial light, insects, premises in such a state as to be prejudicial to health or a nuisance.
- Permitting of industrial processes having the potential to release harmful pollutants to the air.
- Enforcement of controls over contaminated land, to ensure that contaminants do not interfere with human health, animal/plant health or the built environment, and to assess whether contaminants are likely to affect rivers, aquifers, or other controlled water courses.
- Local Air Quality Management (LAQM) duties as regards the Environment Act 1995.
- Smoke Control Areas as designated by the Clean Air Act 1993
- Control of dark and black smoke.
- Investigation and abatement of public health nuisances relating to housing, businesses, and land.
- Investigation and enforcement of defective drains, private sewers, cess pits, septic tanks, and sewage treatment plants.
- Investigation and elimination of pests and vermin infesting land, premises and persons as may be appropriate.
- Anti-social behaviour associated with core environmental health functions.
- Subject to statutory amendments, additional matters may also fall to the Service to regulate, or some of the above provisions may be removed.

9.1.2 This section of the Environmental Health Enforcement Policy provides specific guidance on regulatory activities associated with environmental protection and public health. However, the Council has separate policies relating to contaminated land enforcement including the provision of financial support for householders affected by contamination, and the scope and extent of formal enquiries.

9.2 Other relevant considerations

9.2.1 Regard will be had to statutory guidance, and any other relevant guidance or good practice documentation considered to be relevant to a particular enforcement situation.

9.3 The use of formal enforcement tools

9.3.1 The general principals relating to enforcement decision making in relation to pollution control activities are as outlined in the core section of the Council's CEP and in the introduction to the Environmental Health Enforcement Policy in Annex 2 of that document.

ENFORCEMENT ACTIVITY RELATING TO STATUTORY NUISANCES

9.3.2 Abatement notices can be an effective and quick method of securing compliance with the requirements of the Environmental Protection Act 1990 (EPA) in that they require problems to be rectified without the potential delays and uncertainty of going to Court.

9.3.3 The EPA requires local authorities to investigate complaints of statutory nuisance, it is for the authority to decide whether a statutory nuisance exists, is likely to occur or reoccur. Under Section 80 of the EPA, once satisfied that there is a statutory nuisance, a local authority must serve an abatement notice.

9.3.4 On the rare occasions when abatement notices are breached the legislation provides for a number of enforcement sanctions. Paragraphs 8.3.5 onwards indicate the likely response of the Service in such circumstances, although the Council reserves the

right to consider the use of all enforcement mechanisms in accordance with the principles outlined in this Policy and permitted in the EPA.

SEIZURE OF NOISE MAKING EQUIPMENT FROM DOMESTIC PREMISES

- 9.3.5 Where the requirements of the notice are not carried out, in many instances the Council is empowered to do whatever is necessary to abate the nuisance. This can include the seizure of noise making equipment.
- 9.3.6 In domestic settings the Council is likely to favour the seizure of noise-making equipment for the first evidenced breach of an abatement notice as this is likely to offer rapid relief to those adversely affected by the noise in question. Furthermore, this intervention is likely to be a more cost-effective approach than formal prosecution.
- 9.3.7 If appropriate, the Council will seek a warrant from a Magistrate authorising entry to premises, if necessary, by force, to facilitate seizure of noise making equipment. The Council will seek to recover the full costs associated with the seizure of noise making equipment.

FORFEITURE OF NOISE MAKING EQUIPMENT

- 9.3.8 If, after noise making equipment has been returned to the recipient of the abatement notice or a successful prosecution has taken place, further breaches are witnessed, the Council is likely to repeat the seizure of equipment and seek permission from a Magistrates' Court for its permanent forfeiture.

ENFORCEMENT ACTIVITY RELATING TO CONSTRUCTION SITE NOISE

- 9.3.9 A certain amount of noise (including vibration) is inherent in most types of construction and building operations, which can rarely be completely prevented. However, noise from construction and demolition sites can be very disturbing.
- 9.3.10 The Service will work with the Council's Planning Service, and where it is practicable to do so, will seek noise limits to be imposed on demolition or construction work, either by time, see 8.3.12, below, or via noise limits. These powers are available under the Control of Pollution Act 1974 (COPA) as well as the EPA. Contractors can apply for a 'prior consent' under COPA which sets out allowable working hours and noise limits – the Council encourages the use of prior consents since they represent a proactive method of pollution control.
- 9.3.11 Where circumstances prevail, the Service can serve a notice imposing requirements as to how construction works should be carried out so as to minimise noise and disturbance. The notice can cover controls such as working hours and noise limits; failure to comply with a notice may result in a prosecution being taken.
- 9.3.12 Whilst each construction site is different (and will be assessed as such) the generally acceptable hours for noisy work within populated areas of the District are:

Monday to Friday	08:00-18:00
Saturdays	08:00-13:00
Sundays and Bank Holidays	At no time

- 9.3.13 For particularly noisy work, e.g., piling, and de-watering, it may be necessary for authorised officers to further restrict these times.

9.3.14 However, the Service recognises that some operations, for safety or practical reasons, cannot always be undertaken within the above time restrictions. Operations outside of the above hours may, however, be agreed by the Council if it can be demonstrated that the works cannot be carried out at any other time and that items of plant and equipment are operated and maintained so that their use causes the minimum amount of noise.

9.3.15 Sometimes, emergency works have to be undertaken, e.g., the repair to a burst water main. In such circumstances the normal daytime hours of operation would not apply, and the work would be allowed to take place as soon as possible, which if undertaken at night, may cause some noise disturbance, although this is likely to be permitted under the legislation.

9.3.16 Also, works on main roads would normally be undertaken outside peak traffic times in order to minimise additional congestion. In such circumstances evening and nighttime working may be permitted. Noise would, however, still be required to be kept to as low a level as reasonably practicable.

ENFORCEMENT ACTIVITY RELATING TO PERMITTED PROCESSES

9.4.1 Regulation 23 of the Pollution Prevention and Control Regulations 2000 (PPC) places a duty on local authorities to take the necessary action to ensure that permit conditions (as defined) are complied with. The Council recognises that the appropriate regulation of organisations covered by the PPC pollution control regime is necessary in order to protect local communities, amenities and the wider environment. As such, the following type of offences will be considered for enforcement action under this provision:

- Operating without a permit,
- Failure to comply with a condition,
- Failure to notify a relevant change in operation,
- Failure to supply without reasonable excuse information requested under the regulations,
- Making false or misleading statements,
- Making false entries in any record,
- Forgery and deception in relation to documents,
- Failure to comply with a court order,
- Obstruction of Council officers in carrying out their duties.

9.4.2 If, in the opinion of authorised officers of the Council, the operation of the installation (or part of an installation) poses an imminent risk of serious pollution, the Service will serve a suspension notice, forcing the cessation of the activity, unless it intends to carry out the works in default to control the risk under regulation 26. If this is the preferred option, the Service will have the provision to recover all reasonable costs incurred, but does potentially become liable for future breaches if the intervention is inadequate or of a poor standard.

PROSECUTION

9.4.3 The Authority recognises that the following examples are circumstances which are likely to warrant prosecution, although this is not an exhaustive list:

- The alleged offence involves an obvious breach of the law such that the public health is at risk, there has been a serious adverse environment impact or serious nuisance caused,
- The offence involves a failure to comply in full or in part with the requirements of a statutory notice,
- There is a history of similar offences either at the site, or at other sites owned

and operated by the permit-holder.

9.4.4 The Officer, must be satisfied that there is relevant, admissible substantial and reliable evidence that an offence has been committed by an identifiable person / company, and that it is in the public interest that a prosecution should follow.

9.4.5 Legal proceedings may be taken in conjunction with other sanctions such as works in default accompanied by enforcement action for the recovery of costs.

10.0 Housing Standards

10.1 Scope

10.1.1 The Service has regulatory responsibilities with regard to housing including having due regard for the following:

- Regulating standards of repair, amenity and safety in the rented sector and dealing with housing hazards in owner/occupied premises,
- Restoring vacant properties and bringing them back into occupation in conjunction with the Service's Empty Homes Strategy,
- Regulating standards of management, repair, amenity and safety in non-licensable houses in multiple occupation,
- Inspection of bed and breakfast establishments and any private accommodation used for the temporary housing of homeless people and asylum seekers as appropriate,
- Investigating and enforcing against the illegal eviction and harassment of tenants.

10.1.2 The purpose of this part of the policy is to outline the Council's approach to securing compliance with the law in relation to housing disrepair while minimising the burden on landlords and owner/occupiers. In particular, the policy outlines the extent to which the Council will intervene to make use of the powers in Part 1 of the Housing Act 2004 relating to the Housing Health and Safety Rating System (HHSRS). It sets out what owners, landlords, their agents and tenants can expect from officers.

10.1.3 In considering the most appropriate course of action, the Service will have regard to the extent of control that an occupier has over works required to the dwelling. It is usually the owner's responsibility to carry out works to reduce or eliminate hazards. Action can be taken against an owner/occupier but as owner/occupiers have control over most hazards in their home, enforcement action will normally involve requiring a landlord to carry out works.

10.1.3.1 In most cases, owner/occupiers will not be required to carry out works to their own home, and a Hazard Awareness Notice is likely to be the most appropriate action. However, the Service may in certain circumstances serve a Housing Improvement Notice, issue an Emergency Prohibition Order or use Emergency Remedial Action in respect of an owner/occupied dwelling. This is likely to be where there is an imminent risk of serious harm to the occupier(s) or to others, or where the condition of the dwelling is such that it may adversely affect the health and safety of others outside the household. An Improvement Notice or Prohibition Order may be suspended until a time or event specified, and in some cases may be more appropriate than a Hazard Awareness Notice.

10.2 Other relevant considerations

- 10.2.1 Regard will be had to statutory guidance, and any other relevant guidance or good practice documentation considered to be relevant to a particular enforcement situation.
- 10.2.2 Regard will be had to the Council's Housing Strategy 2024-2029, and in particular its main areas of focus, namely:
- Maximising delivery of genuinely affordable homes,
 - Meeting the housing needs of vulnerable residents,
 - Ensuring high standards of housing,
 - Preventing and managing homelessness.
- 10.2.3 Regard will be had for the Service's Empty Homes Strategy, and in particular its three key objectives, namely:
- To gather relevant, accurate and current information about empty homes in the District,
 - To raise awareness of empty homes and return empty homes back into use through all available and appropriate means in the District,
 - To reduce the number of empty homes and return empty homes back into use through all available and appropriate means. Specific measures include:
 - Support and the provision of advice,
 - A transparent, graduated approach from assistance to enforcement,
 - Targeted appropriate action,
 - Consideration of funding initiatives,
 - Council Tax Premiums on empty homes,
 - Enforcement to tackle specific problems and where voluntary re-occupation is not achieved.
- 10.2.4 Signing of formal notices will be undertaken in line with the Council's scheme of delegation.
- 10.3 Identifying the need for action.
- 10.3.1 Where the Council considers it appropriate to inspect premises to determine whether a hazard exists, it must do so.
- 10.3.2 In accordance with section 239 of the Housing Act 2004 at least 24 hours' notice will normally be given to owners (if known) and occupiers (if any) if access to the property is required, although if either party invite the officer, due consideration will be had to this, and an acceptance is likely. As full an inspection as is reasonably possible will be carried out to establish the nature and extent of hazards in the dwelling, and an accurate record will be kept of the inspection.
- 10.3.3 The Service will respond to requests for assistance concerning unsatisfactory housing conditions and private tenancy issues. In the first instance for most cases, tenant(s) are expected to take their own action to resolve the problem. This should be in the form of a written complaint to their landlord, allowing them sufficient time to respond. Where tenant(s) approach the Service with a complaint, we will ask to see a copy of any such correspondence prior to initiating action. This will potentially afford the tenant with protection from retaliatory eviction should the Service subsequently serve a Housing Improvement Notice on the landlord and/or carry out Emergency Remedial Action to remove or mitigate an imminent risk. The Service cannot however require the tenant to take their own action or write to their landlord.
- 10.3.4 In cases where the tenant has been unable to resolve the matter themselves, the Service will normally liaise directly with the landlord or agent in an attempt to get the

remedial work completed before undertaking formal action, unless the health and safety of occupiers is at serious and imminent risk and where urgent statutory action is required.

10.3.5 Upon receipt of an enquiry or referral, the level of intervention by Council Officers will be decided having regard to:

- The vulnerability of any occupant,
- The effect that the problem has on the occupants, neighbourhoods, or the surrounding area,
- The relevant legislation, particularly whether there is a duty to investigate certain matters, and,
- Any relevant history of the owners, neighbours, tenancy, or landlord, particularly the landlords' history of carrying out repairs either informally or following the service of a notice.

10.3.6 The Council is generally not able to respond to complaints by long leaseholders requesting assistance in taking action against other long leaseholders or freeholders (this includes all tenure types). The Council will only offer assistance in cases where there are exceptional circumstances; this may include cases where there is imminent risk to health or in respect of statutory nuisance e.g., if a freeholder or leaseholder is allowing penetrating dampness from a leaking roof or communal drain.

10.3.7 In all other situations the leaseholder will be redirected to:

The Leasehold Advisory Service
Fleetbank House, 2-6 Salisbury Square,
London, EC4Y 8JX
Telephone: 020 7832 2500
<http://www.lease-advice.org>

10.3.8 The Service may carry out pro-active inspections of non-licensable HMOs, and take appropriate action to ensure compliance with the relevant legislation and the Council's standards.

10.3.9 Inspection programmes will be subject to available resources and for the following purposes:

- An assessment of risk to the occupants,
- Inspection of non-licensable HMOs to assess for hazards under the HHSRS,
- Inspection of non-licensable HMOs for compliance with the HMO Management Regulations,
- Surveys to identify licensable HMOs,
- Inspection of private sector homes and hostels that are funded, supported or procured for use by the Council, to ensure compliance with relevant standards,
- Inspection of property portfolios in the ownership or management of any landlord where serious concerns over management standards have been identified in any one of the properties in the portfolio, and,
- Inspection of multi-occupied properties owned or managed by Registered Providers or public sector organisations such as the NHS, Police, Probation Service, etc. Although such properties are exempt from the definition of an HMO, action may still be taken with respect to hazards identified under the

HHSRS. It is appropriate that such properties should meet equivalent standards to those in the private sector.

10.4 The use of formal enforcement tools

10.4.1 The general principles relating to enforcement decision making in relation to housing activities are as outlined in the core section of the Council's CEP and in the introduction to the Environmental Health Enforcement Policy.

10.4.2 The Council may undertake works in default as well as or in place of taking other enforcement action. Where works in default are undertaken, the Council will seek to recover the cost of undertaking such works, as outlined in the core section of the Council's Enforcement Policy.

STATUTORY NOTICES

10.4.3.1 The Council has a range of options for service of statutory notices under different legislation. In some cases, the Council is under a duty to serve a particular notice, although it is acceptable for the Council to take an informal approach first, but should take necessary action within a reasonable period, subject to the particular guidance and depending on the circumstances.

10.4.3.2 In other cases, there is a power to serve a notice with the aim of resolving a particular situation. This power will be exercised in accordance with the general principles set out in the Council's core policy and the Environmental Health Enforcement Policy.

10.4.3.3 In the case of Category 1 hazards which pose a serious and imminent risk of harm to the occupier(s) or members of the public, then an informal approach is not appropriate. However, if contact can be made with the person responsible, and a written assurance is given that remedial action will be taken within an acceptable period, then, subject to the agreement of a senior officer, it may be acceptable to withhold action for that period.

10.4.3.4 Certain notices, orders and charges are required to be registered as a local land charge and whilst the matter is outstanding, these will be disclosed to any prospective purchaser making a local land search. A Hazard Awareness Notice (HAN) is not declared on Local Land Charges so a new purchaser may be unaware of the hazard.

10.4.3.5 Section 49 of the Housing Act 2004 gives local authorities the power to make a reasonable charge as a means of recovering certain expenses incurred in:

- Serving an improvement notice,
- Making a prohibition order,
- Serving a hazard awareness notice,
- Taking emergency remedial action,
- Making an emergency prohibition order,
- Making a demolition order,
- Reviewing a suspended improvement notice,
- Reviewing a suspended prohibition order.

10.4.3.6 It is the Council's policy to levy an appropriate charge in all situations where the above notices are served, with the exception of HAN served on owner-occupiers, unless there are extenuating circumstances. However, particularly for HAN, matters such as the gravity of the hazard, response to informal requests for action,

and previous non-compliance will be taken into account when deciding whether to charge. The charge will reflect the costs incurred by the Authority in undertaking the inspection and preparing and serving the relevant notice.

- 10.4.3.7 The Council publishes its standard charge for serving Housing Act notices in its annual fees and charges summary. In addition to the standard charge, reasonable expenses may include specialist support, such as testing of electrical installations. The Environmental Health Manager has discretion to waive or reduce the charge if there are exceptional or extenuating circumstances.

HOUSING ACT 2004 CATEGORY 1 AND CATEGORY 2 HAZARDS

- 10.4.4.1 The Housing Act 2004 puts local authorities under a duty to take appropriate action in relation to a Category 1 hazard found under the Housing Health and Safety Rating System (HHSRS). A 'Category 1' hazard arises when a hazard reaches a score of 1000, or more, under the HHSRS. In such cases the authority must take the most appropriate of the following courses of action:

- To serve an Improvement Notice,
- To make a Prohibition Order,
- To serve a Hazard Awareness Notice,
- To make a Demolition Order in accordance with s265 of the Housing Act 1985,
- To declare a clearance area in accordance with s289 of the 1985 Act,
- To serve an Emergency Remedial Action notice,
- To make an Emergency Prohibition Order.

- 10.4.4.2 Only one of the above courses of action can be taken at any one time (except for emergency measures). It is for the local authority to decide which course of action is the best in the circumstances, and the basis of this decision must be provided with each notice served in the format of a "Statement of Reasons". The views of the manager and occupier of the property should, if possible, be considered in the decision-making process.

- 10.4.4.3 Where there are concerns about a vulnerable person, the appropriate agencies should be consulted to help make a decision regarding the appropriate enforcement action.

- 10.4.4.4 The Fire Authority must be consulted where a fire hazard exists in a House in Multiple Occupation (HMO) or in any common parts of a building containing one or more flats.

- 10.4.4.5 Local authorities have similar powers to deal with Category 2 hazards as those listed in 9.9.4.1 above, except that they cannot use the emergency measures but can make a Demolition Order, and declare a clearance area, but only in circumstances prescribed in the Regulations. In deciding whether to take action to address Category 2 hazards (where action is discretionary) the following factors should be considered:

- Where the owner is being asked to deal with 'Category 1' hazards the 'Category 2' hazards should be dealt with at the same time where they materially affect the comfort of the occupying tenant, or they cause the property to be in serious disrepair,
- Multiple hazards may be found which on their own are not too serious but in combination present a more serious situation than one single 'Category 1' hazard,
- If the hazard relates to fire safety the Fire Authority should be consulted and

- the appropriate action taken based on their recommendations,
- If the hazard or combination of hazards materially affects the comfort of the occupying tenant or causes property to be in serious disrepair the appropriate enforcement action should be taken.

10.4.4.6 Generally, Category 2 hazards will only be dealt with:

- Where the hazard score exceeds the national average by more than 2 bands,
- Where the hazard band is D or E (i.e., the higher Category 2 bands),
- Where a number of hazards at Band D or below appear, when looked at together, to create a more serious situation,
- To protect health and wellbeing, particularly of the vulnerable. In particular, hazards relating to physiological requirements and protection against infection are more likely to be dealt with in this way,
- Where damp and mould present hazards to vulnerable occupants.

10.4.4.7 Each case will be considered on its merits. Where appropriate, action outside these guidelines may be authorised by the Environmental Protection & Housing Manager or Environmental Health Manager.

10.4.4.8 The hazard score is based on the risk posed to the potential occupant who is in the age group most vulnerable to that hazard. However, in determining what action to take, the Council will also consider the risk to the current and likely future occupants and regular visitors, and the risk of social exclusion of vulnerable groups of people from the private rented sector.

10.4.4.9 Where formal action is required, an Improvement Notice will provide the most appropriate action for most Category 1 hazards; repair or renewal is generally cost effective because of the high value of property in North Herts. However, Prohibition Orders may be required on part or all of a dwelling where there is imminent risk of serious harm, e.g., to reduce overcrowding, or where there is inadequate natural lighting or there is no protected means of escape in case of fire from the top floor.

10.4.4.10 Where an Emergency Prohibition Order is served, the Council will, if necessary, take all reasonable steps to help the occupants find other accommodation when the tenants are not able to make their own arrangements.

10.4.4.11 Emergency Remedial Action will be considered where there is a Category 1 hazard under the Housing Act 2004 and there is imminent risk of serious harm.

10.4.5 Tenure

10.4.5.1 In considering the most appropriate course of action, the Council will have regard to the extent of control that an occupier has over works required to the dwelling. It is usually the owner's responsibility to carry out works to reduce or eliminate hazards. Action can be taken against an owner-occupier but as owner-occupiers have control over any hazards in the home and tenants in the main do not, most enforcement action will involve requiring a private landlord or Registered Provider of Social Housing (Housing Association) to carry out works.

10.4.5.2 Where the Service has identified hazards and the Housing Association has a programme of works to make their stock decent, the officer will liaise with the landlord over any works necessary to deal with Category 1 and 2 hazards in advance of the planned improvements. In particular, with the Space and Crowding hazard, account will be taken of the availability of suitable alternative accommodation and the priority given for alternative accommodation for tenants

living in overcrowded conditions which are the subject of a Category 1 or high Category 2 hazard.

10.4.5.3 With owner/occupied premises, in most cases they will not be required to carry out works to their own home, and a Hazard Awareness Notice is more likely to be the most appropriate action. If the premises is in such a state as to be prejudicial to health or a nuisance as defined by the EPA, enforcement action in the form of an abatement notice may be required.

10.4.5.4 However, the Council may in certain circumstances require works to be carried out, or to use Emergency Remedial Action, or serve an Emergency Prohibition Order, in respect of an owner-occupied dwelling. This is likely to be where there is an imminent risk of serious harm to the occupiers themselves or to others, or where the condition of the dwelling is such that it may adversely affect the health and safety of others outside the household. This may be because of a serious, dangerous deficiency at the property, or for example to carry out fire precaution works to a flat on a long leasehold in a block in multiple occupation.

10.4.5.5 An Improvement Notice or Prohibition Order may be suspended until a time or event specified, and in some cases, of any tenure, may be more appropriate than a Hazard Awareness Notice. Typically, the event will be a change of occupancy. For example, an Improvement Notice may be suspended at the wishes of an elderly occupier who does not want the disturbance of extensive works, or where a member of the vulnerable age group is not present. The notice might require an owner to notify the Council of a change of occupancy to ensure that the notice can be reviewed.

10.4.6 Level to which Hazards are to be Improved

10.4.6.1 Where an improvement notice is served, the Council will generally require works to prevent a recurrence of the hazard within five years.

10.4.6.2 Section 11 of the Housing Act 2004 requires only that where there is a Category 1 hazard, the works specified must reduce the hazard to a Category 2. However, the Council will generally seek to specify works which, whilst not necessarily achieving the ideal, will achieve a significant reduction in the hazard level, if possible, to the national average or below if the national average is D or above.

10.4.6.3 The Council will try to ensure that any works required to mitigate a hazard are carried out to a standard that prevents building elements deteriorating.

10.4.7 Vacation of a Property following Statutory Action

10.4.7.1 In general, the following action will be taken, according to the circumstances:

- When a property becomes vacant following the service of an Improvement Notice relating to Category 1 hazards and the Notice has not been complied with;
 - If the landlord confirms in writing that they intend to use the house for their own or their own family's use, then the Improvement Notice may be suspended until so occupied, when it will be revoked and replaced by a Hazard Awareness Notice,
 - If the landlord fails to give any indication regarding their future proposals for the property, or if it appears that the property is likely to remain vacant, then the Improvement Notice will continue to be

enforced, since the operation of an Improvement Notice is not dependent upon tenure,

- Where a landlord gives an undertaking, in writing, that the required remedial work will be completed prior to any new tenant moving in, then the Improvement Notice may be suspended until the house is reoccupied, or some other stated date. The situation will be reviewed every six months. However, this decision will be reached on a case-by-case basis, and particularly if retaliatory eviction is suspected, the Notice may continue to be enforced,
- Where the property becomes vacant following the service of an Improvement Notice relating to Category 2 hazards, the notice will be revoked and replaced by a Hazard Awareness Notice. Suspension of the Notice, as in the case for Category 1 hazards, may be appropriate where it appears that there is a likelihood that the property will be re-let.

PROSECUTION

10.6.1 The Authority recognises that the following are circumstances which are likely to warrant prosecution under this provision. The following are examples of such circumstances but this is not an exhaustive list.

- The alleged offence involves an obvious breach of the law such that the public health, safety or well-being is or has been put at risk.
- The offence involves a failure to comply in full or in part with the requirements of a statutory notice.
- There is a history of similar offences relating to housing conditions.

10.6.2 Prosecution will be considered as the most appropriate course of action in the most severe cases.

10.6.3 The greater the harm caused to, and the vulnerability of the occupants, the more likely it is that a prosecution is required. Consideration will also be given to whether an Officer has been threatened, assaulted, or obstructed in the course of their duties. Where such an offence has occurred, the Council will also seek police assistance with a view to prosecution of offenders.

10.6.4 Consideration will also be given to whether the suspect is, or was at the time of the offence, suffering from any significant mental or physical ill health, as in some circumstances this may mean that it is less likely that a prosecution is required. When having regard to the offender's health, the Council will also consider how serious the offence was, whether it is likely to be repeated, and the need to safeguard the public.

10.6.5 The Officer, must be satisfied that there is relevant, admissible substantial and reliable evidence that an offence has been committed by an identifiable person / company.

10.6.6 Where notices are not complied with, the Council will normally use its powers to prosecute or to carry out works in default, reclaiming any costs duly accrued; administration costs to cover officer time and council costs will be added to the works cost. Prosecution will generally be the preferred initial option, unless the Environmental Protection & Housing Manager or Environmental Health Manager considers that there is an urgent need for the works to be carried out to protect the health and safety of the tenant.

10.7 Other Legislation

10.7.1 Whilst the Housing Act 2004 is the predominant legislation governing housing regulation and the enforcement of conditions in England there is significant other

legislation both in force, and in use and available for officers in the Service according to the particular circumstances and their professional judgement.

10.7.2 Where other legislation carries regulatory and enforcement powers, the general prosecution and default policy detailed in the CEP and this policy will be applicable. The legislation currently still available includes:

- Public Health Act 1936, Section 45
A Notice requiring the repair of closet accommodation deemed to be in such a state as to be prejudicial to health, or a nuisance. This Notice carries powers of default and prosecution for failure to comply.
- Prevention from Damage by Pests Act 1949, Section 4
This is a Notice requiring the owner of land to take appropriate steps to rid the land of rats or mice. This can be by:
 - Carrying out an appropriate treatment for the destruction of vermin,
 - Undertaking work to prevent ingress/egress of vermin, or,
 - Removing accumulations of refuse providing potential harbourage and/or food sources to vermin.

This Notice is likely to be used where there are structural evidence in the fabric of a dwelling allowing access to pests, or drainage defects allowing rats to escape from drains or sewers into a dwelling.

There are also parallel powers under the HHSRS (Domestic Hygiene, Pests and Refuse) which can be used.

- Public Health Act 1961, Section 17
This is a Notice requiring work to unstop a blocked water closet (WC), drain, private sewer, or soil pipe. Failure to comply with the Notice can result in work being carried out in default, but there is no power to prosecute.
- Building Act 1984, Section 59
This is a Notice requiring the provision of satisfactory drainage to a building. This also applies to the cleansing or repairing of cesspools, sewers, drains, pipes, etc.
This Notice carries powers of default and prosecution for failure to comply.
- Building Act 1984, Section 64
This is a Notice requiring the provision of adequate WC accommodation in any dwelling, or the reconstruction of such WC accommodation where it is in such a state as to be prejudicial to health or a nuisance, where it cannot be made satisfactory without reconstruction.
This Notice carries powers of default and prosecution for failure to comply.
- Building Act 1984, Section 70
This is a Notice requiring the provision of suitable accommodation for the storage of food in a dwelling house.
This Notice carries powers of default and prosecution for failure to comply.
- Building Act 1984, Section 76
This type of Notice is similar to an Abatement Notice under the EPA section 80 of the, in that it relates to any premises in such a state as to be prejudicial to health, or a nuisance.

The Local Authority can carry out works in default, but there are no powers of prosecution for failure to comply.

- Environmental Protection Act 1990 (EPA) Section 80 Abatement Notice
This is an Abatement Notice must be served where any premises is deemed to be prejudicial to health or a nuisance. Although this is a statutory duty, it may still be considered more appropriate to take action under Part 1 of the Housing Act 2004 where the defect also relates to a hazard under the HHSRS.

Non-compliance with an Abatement Notice is an offence, and can also result in the work being undertaken in default.

- The Smoke and Carbon Monoxide Alarm (England) Regulations 2015
These Regulations apply to privately rented accommodation (i.e., not from a Housing Association) other than licensed Houses in Multiple Occupation, student halls of residence, live-in landlords, hostels, and refuges.

Each storey used wholly or partly as living accommodation must have a working smoke alarm. A carbon monoxide alarm is required in any room which is used wholly or partly as living accommodation and contains a fixed combustion appliance other than a gas cooker.

The landlord (or someone acting on their behalf) must ensure all alarms are in working order at the start of each new tenancy.

Where the Council has reasonable grounds to believe that a landlord is in breach of one or more of the above duties, it must serve a remedial notice on the landlord.

The Council will impose a penalty charge where it is satisfied, on the balance of probabilities, that the landlord has not complied with the action specified in the remedial notice within the required timescale.

The Council is required under these Regulations to prepare and publish a statement of principles and it must follow this guide when deciding on the amount of a penalty charge. The current statement of principles contains more information about the Regulations and is attached as an Appendix to this Enforcement Policy.

The Officer may carry out a property inspection but is not always required to do so as other evidence, such as information or dated photographs from the landlord or tenant, may be considered sufficient to determine any breach.

If the landlord fails to carry out works required by a notice, the Council will, with the occupier's consent, arrange for remedial works to be undertaken in default of the landlord. In these circumstances, battery operated alarms will be installed as a quick response, and an HHSRS assessment will subsequently be undertaken.

Any further works required to address serious fire safety hazards in residential property, that are not undertaken through informal agreement, will be enforced using the Housing Act 2004, in accordance with the Council's Enforcement Policy.

A statement of principles for determining the appropriate level of penalty under the Minimum Energy Efficiency Standards (MEES) Regulations is attached as Appendix.

- The Energy Efficiency (Private Rented Property) (England and Wales) Regs 2015 (also known as MEES)

Subject to prescribed exceptions, a domestic private rented property must not be let where the energy performance of the property is below the prescribed minimum level.

Landlords seeking to rely on a prescribed exemption when letting a private rented property which falls below the minimum level of energy efficiency must register that exemption on a register maintained by the Secretary of State. Where an enforcement authority considers that a landlord may be in breach of a requirement of Part 3, it may serve a compliance notice requiring the landlord to provide evidence to the enforcement authority. Where an enforcement authority is satisfied that a landlord is in breach, it may issue a penalty notice imposing a financial penalty, and a publication penalty (which consists of publishing the details of the breach on the register). The landlord may request a review of the penalty notice by the enforcement authority and, where a penalty notice is confirmed on review, may appeal against the imposition of the penalty notice to the First-tier Tribunal.

In all cases we will seek to apply the 'publication penalty' (entering details of the breach on the public Energy Performance Certificate [EPC] register), together with a financial penalty. The penalty applied will be the maximum available for the breach(es), that is:

- Where the landlord (L) has breached regulation 23 and, at the time the penalty notice is served has, or had, been in breach for less than three months, the penalty is a financial penalty of £2,000.
- Where L has breached regulation 23 and, at the time the penalty notice is served has, or had, been in breach for three months or more, the penalty is a financial penalty of £4,000.
- Where L has registered false or misleading information under regulation 36(2), the penalty is a financial penalty of £1,000.
- Where L has failed to comply with a compliance notice in breach of regulation 37(4)(a), the penalty is a financial penalty of £2,000.
- Where financial penalties are imposed for breaches of regulation 23 together with breaches of regulation 36(2) or regulation 37(4)(a) in relation to a property the aggregate financial penalty is capped at £5,000.

BANNING ORDERS

10.8.1 The Council will in all instances consider applying for a Banning Order where a landlord or property agent has been convicted of one or more Banning Order offences as defined by regulations made under the Housing and Planning Act 2016. If the First-tier Tribunal make such an Order, it will exclude them from being involved in letting or managing housing. When considering applying for a Banning Order, the Council will have regard to Government Guidance and evidence (if any) of housing offence(s) committed by the landlord in other Local Authority areas.

10.8.2 Links with the National Database of 'Rogue Landlords and Letting agents'

10.8.2 The Council *may* make an entry in the National Database of 'Rogue Landlords and Letting agents' if a person has been convicted of a Banning Order offence, or if they have received a financial penalty in respect of a Banning Order offence at least twice within a period of 12 months. When considering if this is an appropriate course of action the Council will have regard to any guidance issued by the Government. The Council *must* make an entry to record a Banning Order made following an application by the Council.

10.8.4 Prior to making an entry on the database, the Council will issue the person with a decision notice, specifying the period for which the entry will be maintained.

RENT REPAYMENT ORDERS

10.9.1 Rent Repayment Orders were introduced by the Housing Act 2004. Local authorities were given the power to apply for a rent repayment order in circumstances where a landlord has failed to license a house in multiple occupation. The Housing and Planning Act 2016 extended their use.

10.9.2 The Council will exercise its power to consider applying for a rent repayment order in respect of the following, and must do so if it becomes aware that a landlord has been convicted of such an offence in relation to housing in its area:

- Failure to comply with an Improvement Notice under section 30 of the Housing Act 2004,
- Failure to comply with a Prohibition Order under section 32 of the Housing Act 2004,
- Breach of a banning order made under section 21 of the Housing and Planning Act 2016,
- Control or management of an unlicensed HMO under sections 72 and 95 of the Housing Act 2004,
- Using violence to secure entry to a property under section 6 of the Criminal Law Act 1977,
- Illegal eviction or harassment of the occupiers of a property under section 1 of the Protection from Eviction Act 1977.

10.9.3 The Council's policy is that it will normally apply for a rent repayment order in all circumstances where there is sufficient evidence to do so, unless there are extenuating circumstances. Any applications for a RRO will be at the discretion of a senior Manager, because, for example, it may not be cost-effective to reclaim housing benefit amounts below £500.

10.9.4 Application for a rent repayment order may be made in addition to any other sanction route that it chooses to pursue such as prosecution or levying a civil penalty.

10.9.5 Rent repayment orders can be used by the Council to claim back up to 12 months' Local Housing Allowance paid whilst the contravention occurred.

10.9.6 The Council may apply for a rent repayment order without first seeking a conviction, but the Tribunal must then consider other factors which may reduce the amount of the repayment (if any).

10.7 The Council may also help tenants to apply to the First Tier Tribunal Service to claim back any rent paid during the 12 months preceding their application.

10.8 The Council does not have a statutory obligation to support an application by a tenant for an RRO. Where a tenant requests support, we will consider providing this support on a case-by-case basis, taking into account the likelihood of success, the financial implications to the Council and the financial implications to the tenant. Support and assistance with a RRO will be subject to a fee, in order to recover the costs to the Council. The fees will be published in the Council's Fees and Charges schedule and will be reviewed annually.

POWERS TO REQUIRE DOCUMENTS

10.10.1 Authorised officers have the power to require:

- Documents to be provided to enable them to carry out their powers under the Housing Act 2004,
- Electrical and gas safety certificates to be provided for Houses in Multiple Occupation,
- Any person with an interest in a property to provide details about its ownership and occupation.

10.10.2 It is an offence not to produce the required information. Where information is not provided formal action will be considered, e.g., simple caution if appropriate or prosecution where there is sufficient evidence, and it is in the public interest to do so.

PROTECTION FROM EVICTION

10.11.1 This provision of the policy is largely addressed by the Protection from Eviction Act, 1977, and the provisions made under that statute.

10.11.2 This Act contains measures to protect residential occupiers who rent their home from illegal eviction and harassment. The Act makes it a criminal offence for a landlord to evict a residential occupier without having followed the legal procedure to bring the tenancy or licence to an end.

10.11.3 The Act also makes it a criminal offence for a landlord or a person acting on the landlord's behalf to carry out acts of harassment to force a tenant to give up or leave their tenancy.

10.11.4 Upon conviction there is a maximum penalty of two years in prison and/or an unlimited fine.

10.11.5 The Service has a power to investigate and institute proceedings under this Act, and as part of its approach to dealing with criminal landlords,

RESTORATION OF SUPPLIES

10.12.1 Section 33 of the Local Government (Miscellaneous Provisions) Act 1976, as amended by the Local Government and Housing Act 1989, gives Local Authorities the discretionary power to reconnect gas, electricity or water supplies upon the written request of a tenant, where they are satisfied that they are likely to be or have been disconnected as a result of the landlord's failure to pay their account.

10.12.2 The local authority may recover the cost (normally the reconnection fee and first invoice to the statutory undertaker) by collecting rent after having served Notice on the occupiers as a civil debt or as a charge against the property.

10.12.3 This is viewed as an emergency approach to deal with an immediate problem, and will only be considered where the households affected contain a person or persons deemed to be at risk, e.g., elderly, person(s) with disabilities, or those who would otherwise be considered as being vulnerable.

10.12.4 If none of the households fall within the 'at risk' groups, they will normally be advised to become the registered consumer. In the case of an HMO, the Management Regulations may be used to require the provision of individual supplies.

CIVIL PENALTIES

Housing Act 2004

11.1 The Housing and Planning Act 2016 enables Local authorities to impose civil penalties as an alternative to prosecution for certain offences under the Housing Act 2004.

11.2 In particular the relevant offences are:

- Section 30 – Failing to comply with an Improvement Notice,
- Section 72 – Offences in relation to the licensing of Houses in Multiple Occupation,
- Section 139 – Offences in relation to the contravention of an overcrowding notice,
- Section 234 – Failure to comply with Management Regulations in respect of Houses in Multiple Occupation.

11.3 Other Housing offences for which a Civil Penalty may be issued include:

- breach of a banning order (section 21 of the Housing and Planning Act 2016),
- failure to comply with the requirements of a Remedial Notice (Smoke and Carbon Monoxide Alarm Regulations 2015),
- failure to comply with the Electrical Safety Standards Regulations 2020
- failure to comply with Minimum Energy Efficiency Standards Regulations 2022.

The Council may also choose to impose a financial penalty on a letting agent or property management business for the following offences:

- failure to be a member of a government approved redress scheme (Redress Schemes Order 2014),
- failure to publicise details of their relevant fees and other required information (section 83-88 Consumer Rights Act 2015),
- Letting Agents (or Landlords) requiring a person to make a 'prohibited payment' in relation to a tenancy agreement (Tenant Fees Act 2019),
- failure to be a member of a Government approved or designated Client Money Protection Scheme. (The Client Money Protection Schemes for Property Agents Regulations 2019),
- failure to comply with transparency requirements of Client Money Protection Scheme (The Client Money Protection Schemes for Property Agents Regulations 2019).

11.4 In deciding how to proceed, the Council has to be satisfied that they have sufficient evidence to prove that an offence has been committed and this needs to be to the criminal burden i.e. beyond reasonable doubt. In determining that the issuing of a civil penalty as opposed to prosecution is the appropriate course of action the Council will consider each case individually and will take into consideration factors including the seriousness of the offence; the culpability of the offender; the harm, or potential harm to tenants; and the impact on the wider community.

11.5 In making a decision as to what, if any, enforcement action is appropriate the Council will refer to its own Enforcement Policy, and must also have regard to the Code for Crown Prosecutors. Due regard must also be given to any potential defences and it may be appropriate to undertake an interview under caution in accordance with the Police and Criminal Evidence Act 1984 (PACE) to explore this.

11.6 When the Council is satisfied that a relevant offence has been committed and that it is in the public interest to proceed formally it must decide whether to prosecute or issue a civil penalty.

11.7 The following, whilst not exhaustive, are situations where prosecution may be appropriate:

- The offence was serious, for example breach of a prohibition order or where there was imminent risk of injury or loss of life,
- The offender has been prosecuted for similar Housing Act offences.

11.8 The following factors, whilst not exhaustive, are situations where the issuing of a civil penalty may be appropriate:

- No history of previous non-compliance with relevant legislation,
- No previous convictions of relevant offences,
- The offence was committed as a result of a genuine mistake or misunderstanding, but this must be balanced against the seriousness of the offence,
- Prosecution is likely to have a serious adverse effect upon the offender's physical or mental wellbeing, but this must be balanced against the seriousness of the offence.

11.9 We will decide on a case-by-case basis whether to prosecute or issue a civil penalty notice as appropriate. Our policy is to use the civil penalty route as the principal way to apply a sanction and to deter re-offending, depending on the circumstances of the case.

11.10 The Housing and Planning Act 2016 also specifies that the amount of penalty that can be imposed is to be determined by the Council but must not be more than £30,000. The Government's desire is that the penalty should be a punishment which has a real economic impact to the offender.

11.11 In determining the amount of penalty the Council will use a Penalty Matrix (see table below) which takes into account relevant matters including, but not limited to:

- The penalty should act as a deterrent to repeating the offence, and to others from committing similar offences,
- The penalty should remove any financial benefit obtained as a result of the commission of the offence,
- The severity and seriousness of the offence,
- The culpability and past history of the offender,
- The harm, or potential harm, caused to the tenant.

11.12 The use of the matrix generates a score which corresponds to a representative penalty as detailed in the Fees and Charges Policy.

Factors when considering the harm, or potential harm, caused

11.13 In determining the level of harm the Council will have regard to:

- The persons affected in terms of physical injury, negative impacts on their health, and any psychological distress,
- Any vulnerability of the persons affected,
- The number of persons affected,
- The community in terms of economic loss and the effects on public health, public complaints and the effects of poor housing condition on the neighbourhood.

11.14 The degree of harm will depend on the personal characteristics and circumstances of the person affected, normally the tenant. Where no actual harm has resulted from the

commission of the offence the Council will consider the relative danger and the potential of harm that could have resulted as a result of the offences.

Factors when considering culpability

11.15 In determining the level of culpability the Council will have regard to the following:

- Whether there was the intention to commit the offence,
- Whether the offence has resulted from reckless behaviour for example where the offender had some appreciation of the effects their actions would have but proceeded regardless,
- Whether the offender had knowledge of the risks of harm that their actions could cause,
- Whether the offender's actions are considered to be negligent.

Aggravating Factors

11.16 The amount of penalty can be increased if there are any relevant aggravating factors. Furthermore, the amount of penalty can be reduced if any relevant mitigating factors are disclosed by the offender.

Multiple Offences

11.17 Where the Council are satisfied that more than one offence has been committed a multiple Civil Penalty Notice can be issued, for example multiple breaches of the Management Regulations in a House in Multiple Occupation. However, the Council will consider whether the issuing of multiple penalties would result in an excessive cumulative amount and this policy gives discretion in this situation. For instance, the Council could decide that it is appropriate to issue a civil penalty for the most significant offences and warn the offender that continuation or repeating of the other offences may result in further formal enforcement action being taken.

The Process for Imposing Penalty Charges

11.18 Where it has been determined that a Civil Penalty Charge as opposed to prosecution is the appropriate course of action the Council will follow the following process:

- 1) Within six months of the Council obtaining sufficient evidence, a 'Notice of Intent' will be served on the person(s) responsible for the commission of the offence(s). The Notice will specify:
 - The amount of the proposed penalty,
 - The reasons for the proposed penalty,
 - Information relating to the right of the recipient to make representation to the Council.
- 2) The recipient of the Notice is given 28 days to make representation to the Council regarding the proposal to impose a Civil Penalty. Representations can be made against any element of the proposed action. If the landlord challenges the level of the Civil Penalty, it will be for them to provide appropriate and satisfactory documentary evidence to support their submission. Failure to provide such evidence will mean that the Council will not be able to consider any representation against the level of penalty imposed. The representations will be considered by a Manager who is independent from the original investigation.
- 3) Following the 28 day period the Council will decide whether to impose the

proposed financial penalty and the appropriate value. This could be varied taking into account any comments received from the recipients.

- 4) If the Council decides that a Civil Penalty is still appropriate, it will issue a Final Notice which will specify:
- The amount of the financial penalty,
 - The reasons for imposing the penalty,
 - Information on how and when to pay the penalty,
 - Information regarding the right of appeal against the imposition of a Civil Penalty to the First Tier Property Tribunal,
 - The consequences of failure to comply with the Notice.

Consequences of non-payment and miscellaneous provisions

11.19 If the penalty charge is not fully paid within the prescribed time, including after an appeal has been finally determined and the charge upheld, the Council will seek to recover the penalty by order from a County Court including the costs incurred in taking such action where deemed appropriate.

11.20 The Council may at any time withdraw any Notices it has served or amend the amount of penalty specified.

Penalty Matrix						
Factors	Score = 1	Score = 5	Score = 10	Score = 15	Score = 20	
1 Culpability	Low; Offence committed with little or no fault on the part of the responsible person	Low/Medium; An awareness of the legal framework and systems in place to ensure compliance but these were not implemented	Medium/High; Despite an awareness of the legal responsibilities the responsible person failed to put in place suitable systems in place to ensure compliance	High; There was some awareness of the law but the responsible person still allowed/committed the offence.	Very High; Intentional breach by responsible person. For example, non-compliance with a Formal Notice	
2 Removal of Financial Incentive	No Significant assets. No or very low financial profit made by offender.	Little asset value. Little profit made by offender.	Small portfolio Landlord (between 2-3 properties). Low profit made by offender.	Medium portfolio Landlord (between 4-5 properties) or a small Managing Agent. Medium asset value. Medium profit made by offender.	Large portfolio Landlord (over 5 properties) or a medium to large Managing Agent. Large asset value. Large profit made by offender.	

3	Offence & History	No previous enforcement history. Single low-level offence.	Minor previous enforcement. Single offence.	Recent second time offender. Offence has moderate severity or small but frequent impact(s).	Multiple offender. Ongoing offences of moderate to large severity or a single instance of a very severe offence or multiple breaches.	Serial offender. Multiple enforcement over recent times. Continuing serious offence.
4	Harm, or potential harm, to tenant(s) [Score is doubled for this section]	Very little or no harm caused. No vulnerable occupants. Tenant provides no information on impact.	Likely some low-level health/harm risk(s) to occupant. No vulnerable occupants. Tenant provides poor quality information on impact.	Likely moderate level health/harm risk(s) to occupant. Vulnerable occupants potentially exposed. Tenant provides some information on impact but with no primary or secondary	High level of health/harm risk(s) to occupant. Tenant(s) will be affected frequently or by occasional high impact occurrences. Vulnerable occupants more than likely exposed;(High HHSRS score) Small HMO (3-4 occupants), multiple occupants exposed. Tenant provides good information on impact with primary evidence (e.g., prescription drugs present, clear signs of poor health witnessed) but no secondary evidence.	Obvious high-level health/harm risk(s) and evidence that tenant(s) are badly and/or continually affected. Multiple vulnerable occupants exposed; (high HHSRS Score) Large HMO (5+occupants), multiple occupants exposed. Tenant provides excellent information on impact with primary and Secondary evidence provided (e.g., medical, social services reports)

Anti-social Behaviour, Crime and Policing Act 2014

Community Protection Notices

11.21 The Community Protection Notice can be used to deal with, ongoing problems or nuisances which are having a detrimental effect on a community's quality of life by targeting those responsible. These can be issued to an individual or body (business, organisation etc) if their conduct is having a detrimental effect on the quality of life of those in the locality, that the conduct is persistent and continuing and that the conduct is unreasonable.

There are a number of processes that need to have been undertaken before a Community Protection Notice is issued. The Service may choose to write to the individual/body to inform that the Community Protection Notice process may be followed if the behaviour does not improve. Should this not have the desired impact then the team must:

- Inspect/monitor reports they have received, or the relevant team has received in relation to the behaviour,
- Issue an official Community Protection Warning which is a requirement of the Act before a Community Protection Notice is issued,
- If the behaviour continues, issue a Community Protection Notice specifying the conduct to be stopped or action to be taken
- Monitor the behaviour of the offender after the Community Protection Notice is served

Legislation and formal enforcement if deemed appropriate

11.22 The Community Protection Notice is covered in sections 43 to 58 of the Anti-social Behaviour, Crime and Policing Act 2014. The legal test to allow the use of this power is that the behaviour has to:

- Have a detrimental effect on the quality of life of those in the locality
- Be of a persistent or continuing nature; and
- be unreasonable.

Breach of legislation is a Criminal Offence

A fixed penalty notice can be issued of up to £100 if appropriate.

12 Drinking Water Quality

12.1 Scope

12.1.1 Local authorities have a general duty under the Water Industry Act 1991 to keep themselves informed about the wholesomeness and sufficiency of water supplies provided to premises in their area, including every private supply to any such premises. Local authorities have specific remedial powers in relation to private water supplies. The Service is responsible for fulfilling the Council's duties and powers in respect of drinking water quality matters.

12.2 Other relevant considerations

12.2.1 Regard will be had to guidance from the Drinking Water Inspectorate and the UK Health Security Agency in fulfilling the Council's roles.

12.2.2 Signing of formal notices will be undertaken in line with the Council's scheme of delegation.

12.3 The use of formal enforcement tools

12.3.1 The general principles relating to enforcement decision making in relation to water quality activities are as outlined in the core section of the Council's enforcement policy, the Private Water Supplies (England) Regulations 2016 and in the introduction to the Environmental Health Enforcement Policy. However, the criticality of safe drinking water is paramount to public health and this will be the significant factor in deciding the appropriate course of action in any particular situation.

12.3.2 Many of private water supplies in North Hertfordshire are domestic supplies, often serving single properties. In such instances, the Council's preferred approach is to address issues informally except where there is a specific requirement to take a formal approach.

12.3.3 In relation to domestic private water systems supplying more than one household and those defined as commercial supplies, the Council is more likely to take a formal approach, but every case will be judged on its merits, having regard to the public health circumstances and the requirements of the legislation.

12.3.4 If any private water supply is not deemed to be wholesome or any domestic supply is not deemed to have a supply that is wholesome and sufficient, the Council may serve a notice stating its reasons and the remedial steps that it believes are required, giving a suitable time period for compliance. If the notice is breached, the Council

may undertake works in default. Whether the Council chooses to do so will depend on the circumstances of the case. Where the Council decides to undertake works in default, it will seek to recover its full costs, unless there are exceptional reasons not to do so.

12.3.5 If any private supply of water intended for human consumption constitutes a potential danger to human health, the Council must serve a notice stating the grounds for serving the notice and the remedial action required. Failure to comply with the notice is an offence and the Council may consider prosecution proceedings in accordance its normal procedure for such matters.

12.3.6 The Council will normally seek to recover its full costs in fulfilling its duties under this section where it is empowered to do so, unless there are exceptional circumstances.

13 Stray Dogs

13.1 Scope

13.1.1 The Council has a duty under the Environmental Protection Act 1990 to deal with stray dogs in the district. Any stray dogs on public land must, if practicable, be seized and detained. Attempts must be made to advise the owner of the dog that the dog has been seized. Where any dog has been detained for seven clear days without the dog being claimed and the Council's expenses having been paid in full, the Council may dispose of the dog.

13.2 Regulations made in 2014 under the Animal Welfare Act 2006 made it mandatory from 6th April 2016 for dog owners to microchip any dog over 8 weeks old.

13.3 The use of formal enforcement tools

The Council may:

- Serve on the keeper of a dog which is not microchipped a notice requiring the keeper to have the dog microchipped within 21 days,
- Where the keeper of a dog has failed to comply with a notice under paragraph (a), without the consent of the keeper (i) arrange for the dog to be microchipped; and (ii) recover from the keeper the cost of doing so,
- Take possession of a dog without the consent of the keeper for the purpose of checking whether it is microchipped or for the purpose of microchipping it in accordance with the above.

13.4 The Council's policy in relation to microchipping is to encourage voluntary compliance. Formal action will normally only be considered in the case of repeat offences. The Council will incentivise dog owners to have their dogs microchipped in setting fees for handling stray dogs.

13.5 The Council will normally seek to recover its full costs in fulfilling its duties under this section where it is empowered to do so unless there are exceptional circumstances.

APPENDIX C: LICENSING

1. SCOPE

The purpose of licensing is, in the majority of cases, the protection of the general public. In order to achieve this, legislation requires licences, permits or registrations to be obtained for a wide range of activities. These administrative documents are normally subject to certain conditions, imposed either by legislation or the Council. The Licensing Service undertakes the Council's licensing functions, as outlined in 1.1. to 1.6., below.

1.1 ANIMAL LICENSING

- Animal boarding establishments
- Home boarding of dogs
- Dog day crèche
- Dog breeding
- Pet shops
- Riding establishments
- Keeping or training animals for exhibition
- Dangerous wild animals
- Zoos

1.2. CHARITABLE COLLECTIONS

- Street collections
- House to house collections

1.3. PREMISES AND EVENT LICENSING (LICENSING ACT 2003)

- Sale or supply of alcohol
- Provision of regulated entertainment
(plays, films, boxing/wrestling, indoor sporting events, live/recorded music, dancing)
- Late night refreshment

1.4. GAMBLING (GAMBLING ACT 2005)

- Premises licences
(bingo, betting, amusement arcades, casinos, track betting)
- Gaming machine permits
- Small society lottery registration

1.5. HACKNEY CARRIAGE AND PRIVATE HIRE

- Hackney carriage drivers
- Hackney carriage vehicles
- Private hire drivers
- Private hire vehicles
- Private hire operators

1.6. MISCELLANEOUS LICENSING

- Street trading
- Sex shops/cinemas

- Sexual entertainment venues
- Scrap metal dealers (sites and collectors)
- Skin piercing
- Caravan and camping sites
- Licensable houses of multiple occupation
- Pavement licences

2. OTHER RELEVANT CONSIDERATIONS

In addition to the Regulators' Code this Policy is designed to reflect sources of primary legislation and any secondary legislation, and guidance issued thereunder, including but not limited to:

- Licensing Act 2003
- Gambling Act 2005
- Hypnotism Act 1952
- Local Government (Miscellaneous Provisions) Act 1976
- Local Government (Miscellaneous Provisions) Act 1982
- Town Police Clauses Act 1847
- Animal Welfare Act 2006
- Dangerous Wild Animals Act 1976
- Zoo Licensing Act 1981
- Scrap Metal Dealers Act 2013
- House to House Collections Act 1939
- Police, Factories & c (Miscellaneous Provisions) Act 1916
- Business and Planning Act 2020
- Private Security Industry Act 2001
- North Herts Council Byelaws relating to acupuncture, tattooing, semi-permanent skin colouring, cosmetic piercing and electrolysis
- The Caravan Sites and Control of Development Act 1960
- Caravan Sites Act 1968
- Model Standard Conditions Holiday Parks 1989
- Model Standard Conditions Residential Parks' 2008
- Mobile Homes Act 2013
- The Housing Act 2004 Parts 1, 2 and 7
- The Management of Houses in Multiple Occupation (England) Regulations 2006
- The Licensing & Management of Houses in Multiple Occupation and Other Houses Regulations 2006
- The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007
- The Housing and Planning Act 2016 (Civil Penalties sections only)
- The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018
- The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018
- Anti-social Behaviour, Policing and Crime Act 2014
- Health Act 2006
- Equalities Act 2010
- Criminal Justice and Police Act 2001
- Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018.

3. THE USE OF FORMAL ENFORCEMENT TOOLS

The general principles relating to enforcement decision making are explained within the main body of this Policy.

3.1 GENERAL ENFORCEMENT PRINCIPLES FOR LICENSING

The main purpose of licensing enforcement activity is to secure compliance with legislative requirements ensuring the safety of the public. Ordinarily, a staged approach to enforcement will be undertaken to achieve this objective although this will not preclude formal enforcement action being the first intervention when appropriate e.g. serious risk to the public or deliberate/repeated non-compliance.

3.2. SPECIFIC ENFORCEMENT ACTIVITY RELATING TO EACH ACTIVITY

Each licensing activity has its own specific policy which includes activity-specific enforcement options e.g. licence reviews under the Licensing Act 2003, penalty points for licensed hackney carriage/private hire drivers, improvement notices for animal licensing, improvement notices / civil penalties for houses of multiple occupation, cautions, etc.. These policies are to be read in conjunction with the corporate enforcement policy.

In terms of HMOs falling within the mandatory licensing scheme, consideration will be given to the general principles of sections 10 and 11 of Appendix B⁵.

⁵ Minor administrative amendment made page approval, per resolution Cabinet 9.7.24 35 (2)

APPENDIX D: COMMUNITY SAFETY

1. SCOPE

'Community Safety' is a term that is used to define keeping communities a safe place free from the fear of crime (perceived or actual) encompassing education, awareness (crime prevention) and reassurance as well as enforcement (anti-social behaviour and crime reduction). It is a multi-faceted concept used to encompass a diverse and broad range of topics that relate to anti-social behaviour, crime, and disorder issues.

The Council undertakes a range of duties in connection with community safety. It has a statutory duty to work with other Responsible Authorities; including the police, fire and rescue service, county council, NHS and the probation service to address wider community safety and crime and disorder issues. The Council is a committed member of the North Herts Community Safety Partnership (NHCSP), and interventions aimed at improving community safety and reducing crime and disorder (and equally its perception) in North Herts is coordinated via the Partnership's Responsible Authorities Group (RAG – a strategic partnership group) and operationally by the Joint Action Group (JAG).

The Council deals with community safety matters in two principal ways: firstly, by means of the provision of advice, diversionary activities, community reassurance events, and the encouragement of responsible behaviour; secondly, it may make use of its enforcement powers, in a proportionate and appropriate way, to manage antisocial behaviour, crime and disorder.

Aside from the strategic planning and coordination of services to tackle local crime and disorder, the Council also undertakes a range of duties in connection with antisocial behaviour. This includes, but is not limited to the following;

- Abandoning a vehicle
- Anti-social behaviour
- Commercial and domestic bin waste bin offences
- Dog fouling
- Fly-tipping
- Graffiti
- Misuse of street litter bin offences
- Nuisance Vehicles
- Repairing of vehicles on the public highway
- Waste Duty of Care (domestic and commercial)
- Unauthorised Encampments
- Littering

These duties and responsibilities are dealt with by a number of different council departments including those listed above as well as other areas included within this Enforcement Policy (e.g. environmental health, licensing and planning services).

In addition to the Council undertaking its statutory duties in this regard, the law provides for a wide range of powers that can be considered in relation to different types of anti-social behaviour. The Council will also work with, and support, a wide range of organisations to deal with anti-social behaviour including the police, fire service and housing providers.

The Council's Community Safety team is responsible for the operational management of the community crime and environmental crime function. These terms are used to classify anti-social actions and behaviour that degrade local amenities and the environment and impact on the enjoyment and safety of the wider community.

2. OVERVIEW OF CORE COMMUNITY SAFETY TEAM FUNCTIONS

The Community Safety team are involved in dealing with a wide range of community crime and enviro-crime issues which negatively affect the wider community's quality of life, including but not limited to, the following core functions.

Abandoned Vehicles: Section 2 of the Refuse Disposal (Amenity) Act 1978, makes it an offence to abandon a motor vehicle, or any part of a motor vehicle, on a highway or any land in the open air. This includes any trailer intended or adapted for use as an attachment to a motor vehicle. Enviro-Crime Officers in the Community Safety team will assess the vehicle to decide whether it is abandoned. There is no statutory definition of an abandoned vehicle and factors to take into consideration include but are not limited to; length of time at location, condition and damage to vehicle (e.g. unroadworthy, burnt out, contains waste), lacking one or more of its number plates, no registered keeper and is untaxed. The Council is under a duty to remove what is determined to be an abandoned vehicle. Section 3(2) and 3(2)(A) of the Refuse Disposal (Amenity) Act 1978 provides the notice periods before removal. A fixed penalty notice can be issued to anyone who abandons a vehicle and offenders can also be prosecuted.

Dog Fouling: The Anti-social Behaviour, Crime and Policing Act, 2014 provides powers to take enforcement action. Anyone reported for allowing their dog to foul may be served with a Community Protection Notice for the persistent, un-reasonable behaviour, detrimental to quality of life in a locality. Any person found guilty of an offence could be liable to a level 4 fine (currently up to £2,500). Officers can offer the opportunity of discharging any liability to conviction for the offence, by payment of a Fixed Penalty Notice of £100. A Fixed Penalty Notice may be issued by any authorised Council Officer if it is witnessed by the officer or there is sufficient evidence by a third party (e.g. a witness statement). Subject to sufficient evidence the Community Safety team will investigate complaints about dog fouling and carry out patrols in problem areas.

Fly tipping and other waste related offences: Section 33 of the Environmental Protection Act 1990 states that a person shall not deposit controlled waste or knowingly cause or permit controlled waste to be deposited in or on any land, without an environmental permit authorising the deposit. Section 34 of the Environmental Protection Act 1990 covers domestic and business duty of care offences relating to individuals and businesses ensuring that their waste is not illegally deposited. Officers will investigate all reports of significant illegal deposits of waste (fly tipping) where it is believed that there is evidence that can lead to enforcement action being taken against offenders. The Community Safety team will also consider taking enforcement action against other waste related offences, such as littering and misuse of a street litter bin, subject to sufficient evidence being obtained. However, the Team recognises that other departments of the Council that act in the capacity of Waste Collection Authority or Principle Litter Authority will take primacy in these types of offences and may take their own enforcement action directly.

Nuisance Vehicles: Section 3 Clean Neighbourhoods and Environment Act 2005 makes it an offence to expose vehicles for sale on a road and a person is guilty of an offence if at any time a person leaves two or more motor vehicles parked within 500 metres of each other on a road or roads where they are exposed or advertised for sale. Section 4 Clean Neighbourhoods and Environment Act 2005 makes it an offence for a person to carry out repairs to vehicles on a road unless they have been in an accident within the last 72 hours or have broken down and repairs are necessary. Officers will investigate nuisance vehicle reports and assess in accordance with the Act. A fixed penalty notice can be issued to anyone who is found guilty of these offences and offenders can also be prosecuted.

Community Crime (e.g. anti-social behaviour in parks and open spaces and car parks): The Community Safety team will work with all relevant partners to take appropriate action against 'community crime' issues which can significantly impact on resident's enjoyment and

use of their local amenities. This can include but is not limited to anti-social behaviour and crime in parks and open spaces, car parks and town centres. The Community Safety team will consider all options available and will either take appropriate enforcement action directly or assist other partners in undertaking appropriate enforcement action. Due to community crime encapsulating a multitude of anti-social or criminal behaviours and circumstances that are detrimental to the local community's quality of life enforcement action will be considered on a case-by-case basis.

3. THE LEGAL FRAMEWORK AND USE OF ENFORCEMENT TOOLS

In considering community crime and environmental crime enforcement action the Council will take into account all legislation and statutory guidance including: -

Anti-social Behaviour Act, 2003
Anti-social Behaviour, Crime and Policing Act, 2014
Clean Neighbourhoods and Environment Act 2005
Control of Pollution (Amendment) Act 1989/Control of Waste (Dealing with Seized Property) (England and Wales) Regulations 2015
Counter Terrorism and Security Act 2015
Crime and Disorder Act 1998
Criminal Justice and Public Order Act 1994
Domestic Violence, Crime and Victim Act 2004
Drugs Act 2005
Environment Act, 1995
Environmental Protection Act 1990
Highway Act 1980 (subject to agreement with the Highways Authority)
Modern Slavery Act 2015
Police and Criminal Evidence Act 1984
Police and Justice Act 2006
Police Reform Act 2002
Police Reform and Social Responsibility Act 2011
Policing and Crime Act 2009
Refuse Disposal Act 1978
Scrap Metal Dealers Act 2013

In relation to community and environmental crime the Council has a number of enforcement 'tools' and powers available, in addition to informal enforcement action⁶, examples include:

- Civil Injunction
- Closure Order
- Community Protection Notice
- Criminal Behaviour Order
- Fixed Penalty Notice
- Notice to require the provision of information
- Powers to take remedial action/works in default
- Powers of forfeiture and seizure
- Prosecution
- Public Space Protection Order
- Cautions

The general principles relating to enforcement decision making are explained within the main body of this Policy. However, it is important to note that whilst community and enviro-crime rarely constitutes a significant threat to public safety or health it can, nevertheless, cause a significant blight to local communities and can lead to neighbourhood decline. In recognition

⁶ Advice, no action, verbal warning, written warning

of the above, this Council takes these issues very seriously and will use its formal enforcement powers to deal with offenders. Certain community and enviro-crime offences, such as fly tipping, will be dealt with more rigorously as they are a) unlikely to be inadvertent breaches of the law, and b) are often associated with the pursuit of unfair competitive trading advantage by for example, the illegal and inappropriate disposal of waste.

Where there is sufficient evidence, the Authority will commence proceedings at level 3 and 4 if the criteria for formal action (such as issuing of fixed penalty notices or a simple caution) or prosecution are met. For certain enviro-crime offences, e.g. dog fouling, depositing of litter and fly tipping offences, there is provision for fixed penalty notices to be issued. These notices can, in appropriate cases, provide a quick, visible, and effective way of dealing with these types of environmental problems and offer a more cost-effective alternative to a prosecution. FPN's will generally be served for first time offenders of lower-level offences. For more serious offences and/or repeat offenders the Council will normally seek to prosecute. The Council, however, reserves the right to consider alternative enforcement mechanisms on a case-by-case basis.

FPNs will only be issued when there is adequate evidence to support a prosecution. If the fine is not paid within the stated period, then the Council is likely to mount such a prosecution.

The income to the Council arising from the payment of FPNs will be used to fund environmental related expenditure in accordance with the relevant provisions of the primary legislation and any relevant regulations.

4. LEVEL OF DELEGATION

All decisions relating to formal enforcement matters are delegated by the Council to the Service Director – Legal and Community, who sub delegates as appropriate.

Any decision to take formal enforcement action is taken by the following officers.

Authorisation and Issue of Notices (e.g. Community Protection Notices) – Community Safety Officer in consultation with the Community Safety Team Leader, or Community Safety Team Leader in consultation with the Licensing and Community Safety Manager

Authorisation and Issue of Fixed Penalty Notices - Community Safety Officer in consultation with the Community Safety Team Leader, or Community Safety Team Leader in consultation with the Licensing and Community Safety Manager

Authorisation and Issue of Cautions – Community Safety Team Leader in consultation with the Licensing and Community Safety Manager (or in their absence in consultation with Legal Service), or Licensing and Community Safety Manager in consultation with Legal Services

Commencement of legal proceedings such as Criminal Prosecutions - Service Director – Legal and Community (or Legal Team Manager, or Manager as per any delegation or in the Service Director's absence).

APPENDIX E: PLANNING ENFORCEMENT

1.0 What is Planning Compliance (Enforcement)

1.1 Planning Compliance is concerned with works which have taken place in breach of planning control as set out in the Town and Country Planning Act 1990 (as amended).

1.2 A breach of planning control is defined in the Town and Country Planning legislation as "the carrying out of a development without the required planning permission or failing to comply with any condition or limitation subject to which planning permission has been granted".

1.3 Paragraph 59 of the National Planning Policy Framework 2023 states that:

"Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate."

At North Herts Council we recognise that effective enforcement is important to:

- tackle breaches of planning control which would otherwise have unacceptable impact on the amenity of the area;
- maintain the integrity of the decision-making process;
- help ensure that public acceptance of the decision-making process is maintained.

In recognising that the planning regulations are not straightforward, this sets out what you can expect the Council as Local Planning Authority to do when a breach of planning control takes place in North Hertfordshire.

1.4 Breaches of planning control occur in many ways, for example where:

- Building work, engineering operations, and material changes of use are carried out without planning permission having been granted.
- Development has planning permission but is not carried out in accordance with the approved plans.
- Failure to comply with conditions or the terms of a legal agreement (Section 106 obligations) attached to a permission or consent.
- Demolition takes place in conservation areas, without planning permission, when it is required.
- Works carried out to a "listed" building which affect the historic character or setting, without listed building consent being granted.
- Removal of, or works carried out, to protected trees and hedgerows without consent being granted or proper notification given.
- Advertisements, which require consent under the Advertisement Regulations, which are displayed without express consent.
- Failure to comply with the requirements of a planning legal notice, e.g. enforcement, discontinuance, stop notice, breach of condition notice, etc.

- 1.5 It is not a criminal offence to carry out development without planning permission. However, where this takes place, it is at the owner's risk. An offence only occurs if the development involves unauthorised advertisements, works to protected trees or listed buildings, or if a formal notice is not complied with.
- 1.6 Government Guidance makes it clear that enforcement action should not be taken simply to remedy the absence of a planning permission where development is otherwise considered acceptable on its planning merits.
- 1.7 Local planning authorities have discretion to take proportionate enforcement action, when they regard it as expedient to do so having regard to the development plan and any other material considerations.
- 1.8 Local Planning Authorities are required to ensure that any enforcement action is considered to be necessary and in the public interest. Affected or interested parties cannot initiate planning enforcement action nor require the Council to act when it considers there is no case to do so.

2.0 How the Planning Compliance service is delivered by the Council

- 2.1 Local Planning Authorities have a duty to investigate alleged breaches, and have the discretion whether or not to take enforcement action against identified breaches. Alleged breaches are investigated, and can mean that information is shared between Council departments to determine whether a breach has occurred, and to enable enforcement action to be taken to resolve the matter.
- 2.2 Complaints about issues that do not fall within the responsibility of planning enforcement are not investigated by the Planning Compliance Team; in such cases, we will direct the reporter to the relevant department or agency that might assist.
- 2.3 The Council considers that planning compliance is an important aspect of the services that it provides as it maintains control of development that is undertaken within the district. The primary aim of planning compliance is to ensure that harmful development is controlled and not allowed to affect the amenity and character of the district. Formal enforcement action is undertaken following review and approval by specific Officers with delegated authority to make these decisions on behalf of Councillors.
- 2.4 –Internal review and consideration aims to ensure that enforcement action taken is considered to be proportionate to the harm that is being caused by the breach of planning control. That means in some cases, the Council may decide to take no further action against technical breaches or those considered to have minor impact on the environment, and focus on progressing cases with the degree of harm that warrant further action. Therefore decisions to take action are made on a case-by-case basis according to the extent of breach, context, and impact in planning terms.
- 2.5 Breaches of the planning regulations can be reported to the Council in person, by phone, in writing, by e-mail or by using our online reporting form. You may also contact your local Councillor to report a breach of planning control, details of you Councillor can be found on the Council website:

<https://www.north-herts.gov.uk/home/council-and-democracy/councillors/your-councillors>

- 2.6 Contact details to report a breach of planning control are set out at the end of this document. We understand that planning compliance investigations can feel invasive, so we take care to investigate matters that allege planning breaches, rather than

enquiries that appear to be based on curiosity. We therefore expect reporters to provide their name, address, and contact details, and to let us know how they are affected by the alleged breach. Without this information a case may not be investigated. We will not routinely investigate retaliatory complaints.

2.7 We know that feedback is important to those who report alleged breaches, therefore it is also important that we you provide this information so we can update you on the progress of the investigation. However, if the party still wishes to remain anonymous, they are requested to approach their local Ward Councillor or Parish/Town Council, to submit the matter on their behalf.

28 Officers in the Planning Enforcement Team do not disclose the reporter's identity to those who are under investigation, even if asked or correctly guessed. However, in exceptional cases, such as court action, , we would secure prior written agreement for a reporter to waive their anonymity and provide evidence such a witness statement or evidence to the court in-person as part of the proceedings.

2.9 **Investigation Process.**

Once a new case is set up, an acknowledgement is sent with the following details:

- Case reference number
- Investigating Compliance Officer's name, email and direct telephone number
- Alleged breaches under investigated
- Investigation process

2.10 The Compliance Officer will carry out background checks to identify whether the development may benefit from planning permission or considered to be in breach of the regulations.

2.11 Officers may carry out a site visit to establish the nature and extent of the works or the use. The Compliance Officer will then appraise the evidence and determine the appropriate next steps.

2.12 Where the development is found to be within the scope of a planning permission or permitted development, or found to be a technical breach with low impact on the environment, no further action will be taken.

Examples include:

- Minor breaches of planning conditions.
- Fences, gates, boundary walls, or outbuildings being erected which exceed the heights allowed under a planning permission of PD rights by a modest amount.
- Very minor changes to the works that have been granted planning permission which are likely to have very little impact beyond the application site.
- Minor works that require planning permission but have no discernible impact on its surroundings or people.

2.13 Where works appears to in compliance or minor conflict with local and national planning policies, we would invite a retrospective planning application to regularise the breach. The application process allows the works and/or use to be considered fully against relevant planning policies by the Council or its Planning Committee. Therefore

the opportunity to submit a retrospective application should not be interpreted as a step for automatic approval without due scrutiny.

- 2.14 The Council will allow a limited period for a valid application to be submitted; once the application is received, the reporter will be contacted in order that they can make representations on that application if they wish. Reporters will also be informed of the decision when the application has been determined.
- 2.15 If planning permission is refused, the landowner has a right of appeal against this decision. Where an appeal is submitted, the planning enforcement case may be placed on hold until the outcome of the planning appeal. At all stages, the Council will decide which enforcement action would be appropriate and taking formal enforcement action, when possible.
- 2.16 Where the Council considers that the unauthorised works result in unacceptable harm and it is not appropriate to seek a planning application, Compliance Officers will endeavour to secure resolution through informal negotiation. In cases where informal negotiations would be inappropriate, appear to be ineffective or unduly protracted, escalated action will be considered. The range of formal steps available to the Council, the processes relevant to each, outcomes and timescales are set out in the Appendix to this document.

Investigation process for investigation site owners / developers

- 2.17 This section outlines the outcomes you can expect if you are the owner/developer of a site under investigation. Compliance Officers may carry out a site visit and are duly authorised to do so under legislation. Officers may visit without a pre-arrangement, however, they will make themselves known on arrival at a site and will have their Council identification clearly displayed. If the time of the visit is not convenient to you, they will seek to arrange a mutually acceptable time to visit.
- 2.18 The Council is committed to the highest standards of customer care, as seeks to ensure that Officers are always professional, polite, and efficient.
- 2.19 The purpose of the Officer's visit is to gather information about the development that has been reported to us, and they will be able to advise on the purpose of the visit. Officers will usually need to take photos, measurements, and notes during the visit; they may also ask for your contact details and a few questions about the development. This information will help the Compliance Officer to understand what has taken place and to determine the options available to you. Officers can provide basic guidance on the planning and enforcement process, but if you require specific planning advice, this should be sought independently.
- 2.20 Conditions may be attached to permitted development or planning permission in order to make the development acceptable. The onus is on the householder or developer to comply with the conditions, as they are a fundamental aspect of the planning consent and breaches of conditions are strictly enforced by the Planning Enforcement Team.
- 2.21 The Planning Enforcement Team aim to deal with your case quickly, ensuring that uncertainty is removed. The Compliance Officer will explain their findings to you in writing and set out the options that are available to you. It is important that you meet any deadlines that are given in the Officer's letter because each case is regularly reviewed and may therefore escalate to further actions aimed to resolve the breach.

Formal Enforcement Action

We prioritise steps to resolve planning breaches through informal compliance, unfortunately it is sometimes necessary for the Planning Enforcement Team to serve formal notices to remedy a breach of planning control.

Officers can use a wide range of planning enforcement tools to secure compliance with the planning regulations; however, we only use them when considered to be proportionate, and usually as a last resort. Officers will inform those responsible in advance of intended formal action, so that it does not come as a surprise.

Detailed information on specific action can be found via this link:

[Enforcement and post-permission matters - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/topics/enforcement)

Recipients have a right to appeal to the Planning Inspectorate against including Enforcement Notices; however other notices, such as Breach of Condition Notices may only be challenged through the High Court.

This link to the Planning Inspectorate website provides more details about the appeals process: [Planning Inspectorate - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/topics/enforcement)

We strongly urge all recipients of formal notices to take them seriously and to act on the requirements, as failure to comply with a valid notice is a criminal offence and may be prosecuted through the courts. In some cases, North Herts Council may also take direct action to resolve the breach.

Failure to comply with Formal Notices

After the relevant compliance period has elapsed, Officers will conduct a compliance visit to determine whether the breach has been resolved.

It is an offence not to comply with an enforcement notice, once the period for compliance has elapsed, and there is no outstanding appeal. A person guilty of an offence is liable on conviction to an unlimited fine. We therefore advise you to act promptly and not leave compliance with a notice to the last minute.

The priority for enforcement action is to resolve planning breaches as swiftly as it is feasible and practical to do so. Unfortunately, sometimes that means we will launch repeat prosecutions and escalate our actions until the matter is resolved.

Prosecution/Direct Action

In cases where the requirements of a formal notice are not complied with, it is open to the authority to pursue a prosecution in the courts for the non-compliance of the notice.

If it is considered that prosecution would not satisfactorily resolve the breach of planning control, it is open to the authority to take direct action by way of employing contractors to carry out the works required by the notice and seek payment for those works from the owner of the land/property or by placing a legal charge on the land/property.

Injunctions

The Council can apply for an injunction to resolve a breach of planning control. This option is available even if we have not exercised other powers available within the planning enforcement regime. Injunction proceedings are the most serious enforcement action because a breach of an injunction can result in imprisonment for contempt of court. Therefore, the council would only apply for an injunction as a last resort and to restrain persistent breaches of planning control over long period and when other enforcement options have been, or would be, ineffective.

3.0 Priorities and timescales

3.1 The Council adopts a prioritised approach to the consideration of potential enforcement matters. The identified priorities are:

Urgent Cases (Priority A)

- Unauthorised developments having a severe and possibly irreversible impact on surroundings e.g., Unauthorised alterations to listed buildings or the felling of protected trees.
- Unauthorised alteration to or demolition of buildings in Conservation Areas.

All Other Cases (Priority B)

- Changes in use of land and buildings.
- All other unauthorised development

3.3 Performance Indicators

North Herts Council has no control over the number of complaints for investigation that we receive each year. Similarly, timescales for resolving cases are affected by a number of factors that are beyond the control of the council. Therefore, we measure our performance by the setting targets for the stages of the investigation that we may take to progress each case, which starts from the time when a complaint is submitted to us with full details of the alleged breach. The following table sets out the target timescales for the actions.

Action	Outcome	Target Timescale
Date of full details of breach and reporter	Case set &/or acknowledgement letter	Within 5 working days Urgent within 3 working day
Case set up	Background research	Within 10 working days Urgent within 2 working days
Background research	Site visit	Within 10 working days Urgent within 2 working days
Site visit	Review info and advise of info/action	Within 5 working days Urgent within 2 working days
Letter to person/s responsible	Application or breach removed	4-6 weeks Urgent within 3 working days

One of our primary aims is to achieve informal compliance therefore formal action by way of formal notices as a last resort. Therefore, we set targets for the cases that we aim to resolve each year through informal negotiation at 85%.

4.0 Maintaining contact with the Council

4.1 The Council seeks to update reporters, Elected Members of the Council, Parish Councils, and other identified interested parties at key stages of the investigation. However, it should be noted that investigations are undertaken to bring unauthorised development in line with planning requirements rather than on behalf of reporters,

therefore information shared will outline the progress in general terms. However, where enforcement action is taken and the documentation placed in the public domain, we will advise reporters of details including the action we have taken, requirements, timescales, and appeal options.

- 4.2 There is no set timescale for taking enforcement action or resolving breaches, as each case is considered individually and the investigation process, resolution and required actions can therefore vary. The content of all open and live enforcement files is confidential and not released under FOI/EIR requests until the matter is resolved and the file is closed.

5.0 Section 106 and Condition Monitoring

- 5.1 A planning obligation (S.106) is a formal document which identifies the relevant land, the person entering the obligation and their interest and the relevant local authority that would enforce the obligation. The obligation can be a legal agreement between one person and the council or a multi-party agreement.

- 5.2 Planning obligations are legally binding and are attached to a planning permission. They are designed to make a development acceptable in planning terms, where it would not otherwise be acceptable. The most usual use of a Section 106 agreement is to provide affordable housing or a financial contribution for infrastructure or affordable housing.

- 5.3 A planning obligation (S.106) can be subject to conditions. It may specify that a sum(s) of money be paid on a specified date(s) or over a set timescale. It may specify restrictions to the development, operations, or use of land.

- 5.4 We monitor planning obligations (S.106) to make sure that any required operations are carried out and any payments made within the timescales set out in the legal agreement. If it is not complied with, we can take enforcement action against the person who entered into the legal agreement and any subsequent owner(s):

- We can apply to the Court for an injunction. Failure to comply with an injunction can lead to an unlimited fine and/or imprisonment
- We can enter the land to complete works. We must give 21 days' notice of our intention. We will seek to recover our costs
- We may place a local land charge on the land or property which is binding on successive owners

- 5.5 The Council recognises the importance of condition monitoring for its planning approvals. We therefore aim to proactively monitor strategic and other major development sites once planning permission has been granted and work has commenced, this is to ensure that the development is being undertaken in accordance with planning approvals and conditions that have been imposed on them.

- 5.6 Officers also carry out proactive monitoring of other developments where we consider it necessary in the public interest. This aims to ensure such developments are undertaken in accordance with planning approvals and conditions that have been imposed on them.

6.0 Conservation Areas and Heritage Assets

- 6.1 Conservation is an active process of maintenance and managing change that requires a flexible and thoughtful approach to get the best out of our heritage assets within the district. In the case of buildings, risks of neglect and decay of heritage assets are best

addressed through ensuring that they remain in active use that is consistent with their conservation. Ensuring such heritage assets remain used and valued is likely to require sympathetic changes to be made from time to time.

6.2 Part of the public value of heritage assets is the contribution that they can make to understanding and interpreting our past. So where the complete or partial loss of a heritage asset is justified, the aim is to:

- capture and record the evidence of the asset's significance which is to be lost
- interpret its contribution to the understanding of our past; and
- make that publicly available

6.3 Heritage assets may be affected by direct physical change or by change in their setting. The Council attaches particular importance to ensuring that any alterations to listed buildings are properly authorised. The statutory provisions for the preservation of buildings of special architectural or historic interest are contained in the Listed Buildings and Conservation Areas legislation.

6.4 It is an outright offence under the Listed Buildings and Conservation Areas Act 1990 to carry out unauthorised works to demolish, alter or extend a carry out unauthorised works to a listed building which could affect its character in any manner which would affect its character as a building of special architectural or historic interest.

6.5 Making unauthorised alterations to a listed building without prior Listed Building Consent is a criminal offence. This applies to the owner of a listed property, or anyone working on that property, and can result in prosecution. A person found guilty of an offence may be liable to a substantial fine, and/or a term of imprisonment.

6.6 A Listed Building Enforcement Notice may also be served requiring remedial works to the building within a certain time scale. There is a right of appeal to The Planning Inspectorate but failure to comply with the Notice is an offence, which is liable to a substantial fine on summary conviction.

6.7 Failing to comply with a Listed Building Enforcement Notice is a separate criminal offence. There is no time limit upon the Council to pursue Listed Building Enforcement Action.

6.8 **Can I apply for retrospective listed building consent?**

When seeking consent for unauthorised works on a Listed Building, the works are only considered to be lawful listed building consent cannot be attained retrospectively, as the works only become lawful from the date that consent is granted.

It is therefore important to note that the council may take listed building enforcement action in respect of

6.9 **What if the unauthorised works were carried out before I purchased the listed building?**

Responsibility for unauthorised works to a Listed Building is connected to ownership. It is therefore important that you establish whether works to-date are authorised prior to exchanging contracts.

If you suspect works have been carried out without Listed Building Consent, you should contact our Conservation Officers for advice on how to proceed. You may be invited to apply for Listed Building Consent to regularise the unauthorised works, however, where possible, you may be required to reverse the unauthorised works.

6.10 How can I report unauthorised works to a listed building?

If you suspect unauthorised works have been carried out to a Listed Building you should report it to our Planning Enforcement Team so they can carry out an investigation.

6.11 Proactive Monitoring and Projects

Planning enforcement is primarily a reactive service, however we aim to carry out proactive monitoring of sites and focussed projects to restrain the intensification of cluster breaches, such as unauthorised advertising, unauthorised works to listed buildings, or material change of use of green belt land. Resources determine officers can undertake proactive enforcement, and we aim to capitalise on opportunities that arise.

7.0 Complaints

7.1 The Planning Enforcement Team at North Herts Council are committed to deliver a high quality service to our customers. If you have a complaint about the service, please contact the Case Officer first and explain:

1. What you are unhappy about,
2. Why you are unhappy,
3. What you expected,
4. How you feel the matter can be resolved.

In response, the Officer will explain how and why your proposed resolution can or cannot be met.

7.2 If you remain dissatisfied, you can ask for your complaint to be reviewed by a more senior officer in the team or the Team Manager.

7.3 If the concern cannot be resolved in this informal way and dissatisfaction remains, or if the party wishes not to discuss the matter informally the Council has a formal complaints procedure. The details of this are set out on the Council's website:

www.north-herts.gov.uk/home/customer-services/complaints

Contact Details

To inform us about a potential breach of planning control that you want us to investigate, please contact us by:

Via the reporting page on our website:

<https://www.north-herts.gov.uk/home/planning/planning-enforcement>

e-mail: planning.enforcement@north-herts.gov.uk

Phone: 01462 474000 (ask for the duty planning officer)

Post: Planning Enforcement, North Hertfordshire District Council, Council Offices, Gernon Road Letchworth SG6 3JF.

Addendum

This addendum sets out further background to the planning enforcement service, the actions that can be undertaken and the procedures that the Council will follow, where appropriate.

Legal Framework

The ability of the Council to undertake planning enforcement action is set out in primary legislation. The government has also produced a wide range of secondary legislation, policy, guidance, and good practice notes that support that primary legislation, and the Council are also guided by case law. We will adopt new legislation, reforms, and guidance that become effective to ensure that our approach to planning compliance and enforcement remain up-to-date. Where changes are significant, we will consider delivering and publicising additional guidance to help Elected Members, members of the public, householders and developers understand what the changes mean and how they may affect them.

In considering planning enforcement action the Council will take into account all primary and secondary legislation as well as national planning policy and guidance including: -

Town and Country Planning Act 1990 (as amended); Planning (Listed Buildings & Conservation Areas) Act 1991; Planning & Compensation Act 1991;

Planning & Compulsory Purchase Act 2004.

Police and Criminal Evidence Act 1984 ('P.A.C.E.');

Criminal Procedure and Investigations Act 1996 ('C.P.I.A.');

Protection of Freedoms Act 2012

Human Rights Act 1998; Localism Act 2011.

Caravan Sites and Control of Development Act, 1960.

Town and Country Planning (General Permitted Development) Orders; Town and Country Planning (Control of Advertisements) Regulations; The Town and Country Planning (Use Classes) Orders.

The National Planning Policy Framework.

Department of the Environment, Transport and the Regions Circular 10/97 (Enforcing Planning Control).

Department of the Environment, Transport, and the Regions Enforcement Good Practice Guide.

Officer Identification

All officers always wear a picture identification card. Upon request, or where statute demands, officers will produce appropriate and necessary identification.

The Town and Country Planning Act 1990 (as amended) gives authority for named officers to enter land specifically for enforcement purposes to:

(a) ascertain whether there is, or has been, any breach of planning control on the land, or on any other land;

(b) determine whether any of the LPA's enforcement powers should be exercised in relation to the land, or any other land;

(c) determine how any such power should be exercised; and

(d) ascertain whether there has been compliance with any requirement arising from earlier enforcement action in relation to the land, or any other land.

Photography

As part of any investigation, it may be necessary to take digital photographs to assist with the case, procedures are in place to ensure the evidential continuity of any images made.

RIPA/PACE

All work of the Council including investigations will be subject to prioritisation. Once started, investigations will be conducted in a timely manner, in accordance with the requirements of relevant legislation, including the Police and Criminal Evidence Act 1984 (PACE), Regulation of Investigatory Powers Act 2000 (RIPA), Criminal Procedure and Investigation Act 1996, Human Rights Act 1998 and Protection of Freedoms Act 2012. Regard will also be had to the requirements of associated Codes of Practice and Guidance and conducted in accordance with the Council's overarching Policy and procedures.

It is sometimes necessary to conduct an interview with a person (or duly authorised representative of a corporate body) suspected of committing an offence. These interviews will be conducted in accordance with the PACE Codes of Practice. Wherever possible, recorded interviews with persons will generally take place at the Council Offices.

Freedom of Information

The personal details of any party who has requested an investigation and the files relating to each case are confidential. This situation has not been altered by publication of the Freedom of Information Act 2000 or the Environmental Information Regulations 2004. However, depending upon individual circumstances, the Council or the Information Commissioner may decide access to a file is appropriate. Does this need changing following Brexit?

APPENDIX F: PARKING ENFORCEMENT

1 Background

North Hertfordshire District Council adopted Decriminalised Parking Enforcement (DPE) powers in January 2005. This followed an application submitted by Hertfordshire County Council in September 2004 for the designation of the District Council of North Hertfordshire as a Special Parking Area (SPA) and a Permitted Parking Area (PPA) under Section 43 of the Road Traffic Act (RTA) 1991. The SPA and the PPA share the same boundary and covers the whole of District Council area, including the off street car parks where Parking Places Orders apply. This excludes enforcement on the A1(M) and its on and off slip roads for its entire length within the District.

In respect of on-street parking (public roads and streets) enforcement, the Council acts on behalf of Hertfordshire County Council (the highway authority) under the terms of an agency agreement between the two authorities⁷. As the parking authority North Herts Council is responsible for the management and enforcement of its own off-street car parks.

Local authorities have had powers to manage and enforce their own off-street car parks for many years; however until 2005 when North Herts Council adopted DPE powers most on-street parking enforcement was undertaken by police officers or police-employed traffic wardens.

In the mid-1990s central government gave local authorities the right to apply for powers to enforce on-street parking restrictions. The adoption of what was then called Decriminalised Parking Enforcement (DPE) but is now termed Civil Parking Enforcement, or CPE under the Traffic Management Act 2004.

2. Parking Legislation

North Herts Council parking enforcement operates under The Traffic Management Act 2004 (TMA 2004). This act supersedes the RTA 1991 and allows Civil Parking Enforcement to be carried out by local authorities who have permission from the Secretary of State for Transport to introduce a Civil Enforcement Area (CEA), (previously referred to as an SPA). This is a geographical area in which North Herts Council may carry out Civil Parking Enforcement.

North Hertfordshire is also a SEA (Special Enforcement Area) that allows for the enforcement of Double Parking, Dropped Footways and Raised Footways.

3. The Purpose of Civil Parking Enforcement (CPE)

The primary purpose of CPE, as identified in statutory guidance⁸, is to support local authorities in their delivery of their overall transport objectives in areas such as those detailed below:

- Managing the traffic network to ensure expeditious movement of traffic, (including pedestrians and cyclists), as required under the TMA Network Management Duty;
- Improving road safety;
- Improving the local environment;
- Improving the quality and accessibility of public transport;
- Meeting the needs of people with disabilities, some of whom will be unable to use public transport and depend entirely on the use of a car;

⁷ Highway Agency Agreement dated 24 January 2002 and Parking and Traffic Order Agency Agreement dated 17 January 2005.

⁸ Relevant guidance is Statutory guidance for local authorities in England on civil enforcement of parking contraventions (updated 2022)

- Managing and reconciling the competing demands for kerb space.

To achieve these aims we enforce:

On-street

- Permitted parking places on-street where waiting restrictions apply;
- Restricted parking where parking is allowed at particular times (single Yellow Lines);
- Restricted parking where parking is not allowed at any time (double yellow lines);
- Resident Permit Parking
- Restricted Parking Zones (RPZ)
- Keep clear entrance markings
- Dropped Kerb parking.

Off-street

- Parking without payment or valid permit;
- Parking for longer than permitted or after expiry of paid for time;
- Parked in a restricted area;
- Not parking correctly within the marking of a bay.
- Parking in a demarcated Electric Vehicle charging place during restricted hours without charging.

Central government is also clear in explaining what CPE is not about. In particular, government emphasises that CPE is not to be regarded as a revenue raising exercise. Whilst Government accepts that local authorities will seek to make their CPE operations as close as possible to self-financing as soon as possible, it advises that any shortfall must be met from within existing budgets rather than falling on the local or national taxpayer.

The traffic management objectives of CPE are achieved primarily through encouraging compliance with parking restrictions – and it is with this objective in mind that the Council enforces parking both on and off-street throughout the District.

4. Enforcement

Civil Parking Enforcement in North Hertfordshire is undertaken by a team of Civil Enforcement Officers (CEOs) and a Parking Team Leader. The team is managed by a Parking Enforcement Manager, whose duties are carried out in accordance with North Hertfordshire District Council’s Parking Strategy⁹.

North Herts Council does not clamp or remove vehicles. Clamping is no longer favoured as an enforcement tool, as it often results in a “problem” vehicle being made to remain at an inappropriate location for longer than is necessary. The cost of setting up and running a removal operation, including a vehicle pound for the purpose of storing vehicles would be disproportionate to the benefit it might create for a smaller, rural district council such as North Herts.

When exercising prescribed functions, a CEO must wear a uniform that is readily distinguishable from the Police and clearly show:

- That the wearer is engaged in Parking Enforcement
- The name of the local authority on whose behalf they are acting

⁹ The current Parking Strategy is the NHDC Parking Strategy 2019 -2031 [Parking strategy | North Herts Council \(north-herts.gov.uk\)](https://www.north-herts.gov.uk/parking-strategy)

- A personal identity number

5. Penalty Charge Notices (PCN) and Legal Requirements

A regulation 9 PCN - is the name given to a PCN that is issued by a CEO either on-street or off-street, in accordance with The Civil Enforcement of Road Traffic Contraventions (Approved Devices, Charging Guidelines and General Provisions) (England) Regulations 2022 under the TMA 2004. The way in which a Regulation 9 PCN can be served is by two methods:

- Affixed to vehicle in a special envelope; or
- Handed to the person appearing to be in charge of the vehicle.

In terms of legal requirements, under the TMA 2004, a Regulation 9 PCN must contain the following:

- Date of service;
- Issuing Authority;
- Vehicle Registration Mark;
- Date and time of alleged contravention;
- Location of contravention;
- Grounds of issue (Legislation);
- PCN amount and payable period;
- Discount amount and discount period;
- How and where to pay;
- What will happen if payment not made;
- How to make representations.
- Information about adjudication

Under section 80 of the TMA 2004, a person who is liable to pay a penalty charge may make representations to the enforcement authority to challenge the charge (i.e. North Herts Council) and then appeal to an adjudicator if their representations are not accepted.

The processing of PCNs and consideration of representations made are carried out by a separate team within the Council under the Management Support Unit. A Flowchart outlining the Regulation 9 PCN Process is attached at [Appendix 1](#).

Regulation 10 PCNs are not used by North Herts Council as they are served on the owner of the vehicle by first class post.

6. Contravention Codes

Below is a list of the most common contravention codes used to issue PCNs

Code	DESCRIPTION ON-STREET	Differential Charging level	Observation Period
01	Parked in a restricted street during prescribed hours	HIGHER	2 MINUTES
02	Parked or loading/unloading in a restricted street where waiting and loading/unloading restrictions are in force	HIGHER	INSTANT
05	Parked after the expiry of paid for time.	LOWER	10 MINUTES

06	Parked without clearly displaying a valid pay and display ticket or voucher	LOWER	5 MINUTES
12	Parked in a residents' or shared use parking place/zone without clearly displaying either a permit or voucher or pay and display ticket issued for that place	HIGHER	5 MINUTES
18	Using a vehicle in a parking place in connection with the sale or offering or exposing for sale of goods when prohibited	HIGHER	5 MINUTES
19	Parked in a residents' or shared use parking place/zone displaying an invalid permit or voucher or pay and display ticket	LOWER	5 MINUTES
21	Parked in a suspended bay or space or part of bay or space	HIGHER	INSTANT
22	Re-parked in the same parking place or zone within one hour* of leaving	LOWER	INSTANT
23	Parked in a parking place or area not designated for that class of vehicle	HIGHER	5 MINUTES
24	Not parked correctly within the markings of the bay or space	LOWER	INSTANT
25	Parked in a loading place during restricted hours without loading	HIGHER	5 MINUTES
26	Parked in a special enforcement area more than 50 cm from the edge of the carriageway and not within a designated parking place	HIGHER	5 MINUTES
27	Parked in a special enforcement area adjacent to a dropped footway	HIGHER	2 MINUTES
30	Parked for longer than permitted	LOWER	10 MINUTES
40	Parked in a designated disabled person's parking place without displaying a valid disabled person's badge in the prescribed manner	HIGHER	INSTANT
45	Parked on a taxi rank	HIGHER	INSTANT
47	Stopped on a restricted bus stop or stand	HIGHER	INSTANT
48	Stopped in a restricted area outside a school when prohibited	HIGHER	INSTANT
49	Parked wholly or partly on a cycle track or lane	HIGHER	5 MINUTES
55	A commercial vehicle parked in a restricted street in contravention of the Overnight Waiting Ban	HIGHER	5 MINUTES
61	A heavy commercial vehicle wholly or partly parked on a footway, verge or land between two carriageways	HIGHER	5 MINUTES
62	Parked with one or more wheels on or over a footpath or any part of a road other than carriageway	HIGHER	INSTANT

99	Stopped on a pedestrian crossing and/or crossing area marked by zig-zags	HIGHER	INSTANT
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Code	DESCRIPTION OFF-STREET	Differential Charging level	Observation Period
71	Parked in an Electric Vehicle' charging place during restricted hours without charging	HIGHER	INSTANT
74	Using a vehicle in a parking place in connection with the sale or offering or exposing for sale of goods when prohibited	HIGHER	5 MINUTES
80	Parked for longer than the maximum period permitted	LOWER	10 MINUTES
81	Parked in a restricted area in a car park	HIGHER	INSTANT
82	Parked after the expiry of paid for time	LOWER	10 MINUTES
83	Parked in a car park without clearly displaying a valid pay & display ticket or voucher or parking clock	LOWER	5 MINUTES
84	Parked with additional payment made to extend the stay beyond time first purchased	LOWER	INSTANT
86	Parked beyond the bay markings	LOWER	INSTANT
87	Parked in a designated disabled person's parking place without displaying a valid disabled person's badge in the prescribed manner	HIGHER	INSTANT
91	Parked in a car park or area not designated for that class of vehicle	HIGHER	INSTANT
92	Parked causing an obstruction	HIGHER	INSTANT
93	Parked in car park when closed	LOWER	INSTANT

Differential Charging Level

Differential parking charging was introduced in 2008 under the TMA 2004 to address the perception of fairness to the motorist.

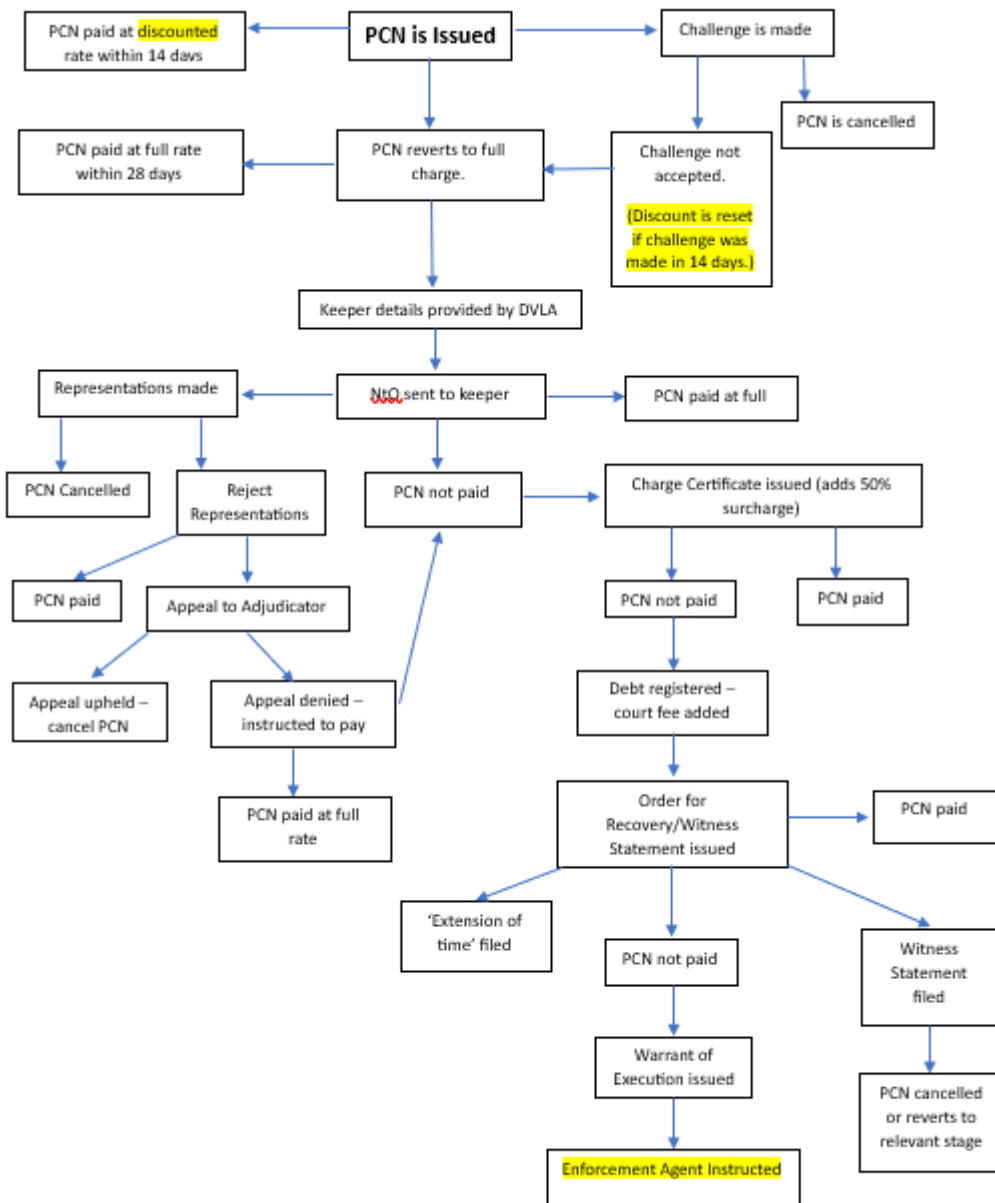
There is now a two-tier approach to the cost of a PCN to recognise that there are contraventions which are more serious and should receive a higher charge, and that there are less serious contraventions which should receive a lower charge.

Differential parking charging is prescribed by the type of contravention and not at the discretion of the CEO. The type of contravention is set nationally and not locally.

Observation Period

The CEO will observe the vehicle parked in contravention before issuing a PCN. Depending on the type of contravention, the observation time will range from zero to five minutes. The observation times listed in the above table are those most commonly used for Parking Enforcement.

The CEOs will under normal circumstances seek to give a 10-minute grace period to vehicles parked in designated parking places, when the period of permitted parking ends. If a vehicle is parked legally in a designated parking place when it is initially parked and stays beyond the permitted parking period, then the 10-minute grace period will in normal circumstances be given before a Penalty Charge Notice is issued. The PCN flowchart sets out the potential steps below:



APPENDIX G: ACCESS TO HOUSING

1. SCOPE

The Council undertakes a range of duties in connection with helping the public to access housing.

The Council is an enforcing authority for the Protection from Eviction Act 1977 and will exercise the discretion under this legislation to protect residential tenants from illegal eviction or harassment.

It is an offence under Sections 171 and 214 of the Housing Act 1996 for a person to make a statement which is false, or to knowingly withhold information from the Council which would be relevant to their application for housing assistance. Where fraud or deception is suspected, the Council will consider all enforcement options, including prosecution.

The Council's Housing Team is responsible for the operational management of these functions (for illegal eviction/harassment cases, any action would be carried out in conjunction with the Environmental Health team).

2. THE USE OF ENFORCEMENT TOOLS

The general principles relating to enforcement decision making are explained within the main body of this Policy.

APPENDIX H: FRAUD SANCTIONS AND PROSECUTIONS

INTRODUCTION

The Council takes its responsibility to protect public funds seriously and expects its business to be conducted to the highest ethical and legal standards. The Council has a zero tolerance to fraud, theft, and corruption. Where there is evidence of fraud, theft, or corruption against the Council, those responsible, whether internal or external to the Council, will be held accountable for their actions using the full range of sanctions available. The use of sanctions is governed by this policy that sets out appropriate action to take.

This Policy forms part of the Council's Overarching fraud policy (it includes matters of fraud, bribery, corruption, misconduct) and its objectives are:

1. To ensure sanctions are applied fairly and consistently;
2. To ensure sanctions are applied in an efficient and cost-effective way;
3. To set out the range of sanctions available;
4. To ensure the sanction decision making process is robust, transparent and fair
5. To make it clear that the Council will not tolerate fraud.

The Council will investigate allegations of fraud, theft, corruption or irregularity in line with the Council's anti-fraud plan. Following an investigation, a range of factors will require consideration before deciding on appropriate sanction, including the individual circumstances of each case, the impact on the individual and the wider community, and the seriousness of the offence.

OPTIONS

Where there is evidence of fraud, theft or corruption, the following options will be considered:

- 1) No further action;
- 2) Referral to professional bodies;
- 3) Disciplinary action;
- 4) Civil proceedings;
- 5) Criminal prosecution;
- 6) Sanctions as alternatives to prosecution.

The Council will consider any of the above options and parallel sanctions as noted below may be pursued.

No further action

The Council may consider, following an investigation, closing a case without taking any further action. This may occur where it is not in the public interest to take action.

Referral to professional bodies.

Where there is adequate evidence that a person or entity has breached professional duties or responsibilities, the Council will refer the matter to the relevant professional body.

Disciplinary Action

In the event that an allegation is made against a Council employee, The Shared Anti-Fraud Service (SAFS) will consult with the Council's Human Resources Service and appropriate action will be taken following the Managing Misconduct Policy.

The investigating officer will be appointed in accordance with the Managing Misconduct Policy, and may be an Officer from Shared Anti-Fraud Service or the Shared Internal Audit Service. .

Sanctions will be in line with the Managing Misconduct policy and may include warnings (formal or final) or dismissal and alongside this, additional sanction options will be considered including referral to professional bodies, civil proceedings, and criminal prosecutions.

If during the course of an investigation or disciplinary action, the employee suspected of fraud, theft or corruption chooses to resign, the Council will continue to pursue referral to professional bodies, civil proceedings or criminal prosecution where appropriate.

In the event of an allegation against a Councillor in relation to fraud, theft or corruption against the Council, this will be reported to the Monitoring Officer, who will agree the action to be taken with the Managing Director. Depending on the circumstances of the case, criminal proceedings may also be considered.

Civil Proceedings

The Council may take civil proceedings where appropriate.

Financial Recovery

The Council will seek, where appropriate, to recover any overpaid, misused or unfairly gained monies, either via the criminal prosecution or civil route,.

The following measures may be considered in the pursuit of financial recovery:

- Recovery of money through appropriate legal proceedings;
- Legal action such as freezing orders / restraint orders to preserve evidence and assets.
- If it relates to a Council employee, consultation with the Council's Human Resources Team to seek redress financial loss caused by the employee. This could be through withholding any unpaid salary or (in exceptional circumstances) seeking payment through accrued pension entitlement.

There will be overpayments which are not due to fraud, and the Council will determine appropriate recovery in these cases.

Criminal Prosecution

Where the Council considers it 'expedient for the promotion or protection of the interests of the inhabitants of their area', Section 222 of the Local Government Act 1972 empowers the Council to prosecute or appear in legal proceedings and, in the case of civil proceedings, institute them in their own name.

Furthermore, Section 223 of the Local Government Act 1972 allows a 'Local Authority to authorise any member if its staff to prosecute or defend designated matters in magistrates' court'.

In the most serious of cases, the Council will consider the prosecution of those offenders suspected to have committed fraud or theft. Where the Council considers there is sufficient evidence (based on the Code for Crown Prosecutors) to indicate a criminal act has taken place, a decision will be made whether to undertake a criminal prosecution utilising the Council's Legal Services (or contracted legal representatives) the police or another law enforcement partner (such as DWP or HMRC). This decision will be made by the Head of SAFS, the Director: Legal and Community, and the relevant Director/Head of Service (or delegated appropriately).

Before a decision is taken whether or not to prosecute, the Council will be guided by the Code for Crown Prosecutors and will only initiate legal action if, following legal advice, it has satisfied the following two tests:

- 1) Evidential Test – the evidence must be:

- Clear, reliable, and admissible in court; and
- Strong enough for a realistic chance of prosecution. i.e. to prove a case 'beyond reasonable doubt'.

2) Public Interest Test – the prosecution is in the public interest, taking into account:

- Seriousness and / or monetary value of the offence;
- Cost and proportionality of the prosecution;
- Age and health of the suspect;
- Culpability of the suspect;
- Circumstances of and harm caused to the victim; and
- Impact on the community.

Where a case has been referred to the Police to investigate, the final decision as to whether or not to pursue the case will be taken by the Police and the Crown Prosecution Service. The Council will conduct the investigations in accordance with the Criminal Procedure and Investigations Act 1996 and the Police and Criminal Evidence Act 1984 (PACE). Criminal proceedings may be brought for a suspected offence under the following legislation:

- The Theft Act 1968 (as amended);
- The Fraud Act 2006;
- Local Government Finance Act 1992;
- Housing Act 1996;
- Prevention of Social Housing Fraud Act 2013;
- Forgery and Counterfeiting Act 1981;
- Computer Misuse Act 1990;
- Identity Documents Act 2010;
- The Bribery Act 2010;
- Road Traffic Regulation Act 1984;
- Economic Crime and Corporate Transparency Act 2023 (Failure to Prevent Fraud)
- Any other relevant provision in law.

Any criminal proceedings can include an attempt to recover money under the Proceeds of Crime Act 2002 (POCA) or Prevention of Social Housing Fraud Act 2013.

Sanction as Alternatives to Prosecution

The Local Government Finance Act 1992 allows the Council to consider financial penalties as alternatives to prosecution and these should always be considered. However, in serious cases of fraud or where repeat offending occurs, the option to prosecute offenders will be kept under review.

Civil Penalties

Regulation 13. Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013 and Schedule 3 Local Government Finance Act 1992 permit 'billing authorities' to impose financial penalties where a person fails to report a material fact affecting their council tax liability or where a person fails, without good reason, to correct an error.

The Revenues Manager will make the decision about the imposition of any Civil Penalties.

All penalties will be recovered by adding the debt to a person's Council Tax liability for the current year and recovered only once that annual liability has been settled in full.

Administrative Penalties.

Regulation 11(4) Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013, provide for Administrative Penalties to be offered to persons as alternatives to prosecution. The legislation allows for Administrative Penalties amounting to 50% of the gross reduction can be offered. In all such cases of fraud the Council will seek to recover the excess award as well any penalty.

The Council's Revenues Manager will make the decision about the offer of any Administrative Penalties on advice from the SAFS. The Head of SAFS will arrange for the administrative penalty to be offered to the person liable for it and any cooling off period required by legislation.

Out of Court Disposal - Cautions.

The Police, Crime, Sentencing and Courts Act 2022 introduced Diversionary and Community Cautions for offenders aged 18 and over. Enacted in 2023 we may consider the use of both cautions in appropriate cases where fraud has been established and admitted by the offender.

Cease and Desist Notices.

Although there is no legislative framework for cease and desist notices in relation to allegations for fraud the Council may issue a cease and desist letter to inform another party that their actions are unlawful and that those persons may be committing offences under the Fraud Act or other legislation. The letter lets the other party know that unless they stop the conduct in question, the Council is prepared to take further action. This may include initiating formal court proceedings.

Parallel Sanctions

It is preferable for the appropriate sanctions to proceed simultaneously, but it is not necessary for anyone to await the result of another before concluding. However, due consideration must be given to all proceedings to ensure that one does not impact improperly upon another. The decision to run parallel sanctions will be determined on a case-by-case basis.

PARTNERSHIPS

Where appropriate, the Council will work in partnership with other organisations such as the Police, other Local Authorities, Social Housing Providers, Department for Work and Pensions, Her Majesty's Revenue and Customs, UK Borders Agency, and the Home Office, to bring joint proceedings or assist the other organisation to bring its own proceedings.

RECORDING DECISIONS

For an effective regime of sanctions to be successful accurate records of all convictions, penalties and cautions must be maintained. This will enable the correct decisions to be made taking full account of the defendant's background.

All sanctions will be recorded by both SAFS and the Council, and copies of all documents used to consider and issue the sanction should be retained, in accordance with the relevant retention policies.

In the case of prosecution, all cases that result in successful convictions will be reported to the police for recording on the Police National Computer (PNC) central databases. This is usually dealt with via court administration following a hearing.

Where Cautions or Cease and Desist Notices are issued these will be recorded either on the PNC or with Action Fraud.

PUBLICITY

It is the Council's intention to positively promote this Policy, as well as the outcome of any prosecutions, to deter others from fraudulent activity and reassure the public that the Council acts against those committing fraudulent and or corrupt acts.

Consideration will be given to whether the outcome of any case should be reported to the community via various media channels. Publicity, where appropriate, will ensure the profile of counter fraud activity remains at a level which will contribute to ensuring the key objective of preventing fraud is met.

REVIEW

This Policy will be kept under regular review by the, s151 and Monitoring Officers to ensure compliance with current legislation and best practice.
