

## **COUNCIL ENFORCEMENT POLICY**

### **Introduction**

This policy is an “umbrella” policy and is intended to apply to all service areas, though it should be noted that various additional service-specific requirements apply to specific enforcement activities in certain services, i.e. Health and Safety, Food Safety, Environmental Protection/Environmental Crime, Private Sector Housing, Licensing. Information on these may be obtained from the Head of Environmental Health & Housing Services.

The purpose of this policy is to publicly summarise the Council's intended approach to bring about compliance with regulatory requirements. However, it is ultimately the responsibility of individuals and businesses to comply with the law.

The Council shares the Government's view that effective and well targeted regulation is essential in promoting fairness and protection from harm and that as regulators we should adopt a positive and pro-active approach towards ensuring compliance by:-

- Helping and encouraging regulated entities to understand and meet regulatory requirements more easily; and
- Responding proportionately to regulatory breaches.

The Council will take a soft brush approach to those who comply with regulatory requirements and those who work with us to achieve compliance. However, we will not hesitate to take all necessary enforcement action against those who, for example, commit serious breaches, flout the law, refuse to work with us to seek compliance, commit offences which are prevalent in the district.

The Council has set out its strategic aims and objectives and our enforcement services will carry out their duties in support of these. These aims and objectives are set out in:-

- Council policy and strategic decisions;
- North Devon Council's Corporate Business Plan;
- The service-specific service plans and inspection policies, which reflect the above priorities and the core enforcement activities for each service.

The Council's aims and objectives have been drawn up after extensive consultation.

### **Compliance**

A range of activities will be undertaken to ensure compliance with legislation. Advice and guidance will be provided; proportionate, programmed and intelligence led inspections will be undertaken and, where necessary,

inspections will be undertaken in response to complaints from third parties. Some enforcement services will also have officers patrolling the streets.

Where non-compliance is discovered, options to promote/seek compliance will include:-

- Undertaking pro-active education programmes;
- Explaining legal requirements and, where appropriate, the means to achieve compliance;
- Providing an opportunity to discuss points in issue, where appropriate;
- Consideration of alternative means and reasonable timescales and to achieve compliance;
- Service of advisory letters, warnings, Statutory Notices or prohibitions detailing non-compliance;

Enforcement actions including, but not limited to, formal action, seizure of documents or goods, closure of premises, caution, prosecution, injunction, suspension of activity, referral to disciplinary hearings.

Immediate, without Notice, enforcement action may be taken, but only where deemed necessary, reasonable and proportionate.

### **Enforcement Actions**

The decision to use enforcement action will be taken on a case by case basis and to ensure consistency of approach, in accordance with this and any other more specific policies which may be applicable. The action taken, which may be immediate, will be proportionate to the gravity and nature of the non-compliance. Factors that will be taken into consideration include, but are not limited to:-

- The risk that the non-compliance poses to the safety, health or economic welfare of the public at large or to individuals;
- Evidence that suggests that there was pre-meditation in the commission of an offence;
- The alleged offence involved a failure to comply in full or in part with the requirements of a statutory Notice or Order;
- There is a history of previous warnings or the commission of similar offences;
- Aggravated circumstances such as obstruction of an officer or aggressive behaviour towards the public;
- The offence, although not serious itself, is widespread in the area where it is committed;
- Death was a result of a breach of legislation;
- The gravity of an alleged offence, taken together with the seriousness of any actual or potential harm;
- The general record and approach of the offender;
- There has been reckless disregard of health and safety requirements;
- There has been a repetition of a breach that was subject to a formal caution;

- False information has been supplied wilfully, or there has been intent to deceive.

## **Legal and Policy Context**

Enforcement actions are taken within the context of a legal and policy framework. Council enforcement services will carry out their enforcement-related work with due regard to the Enforcement Concordat. This concordat arises from a Central Government initiative and has been adopted by the Council. The Concordat lays out the principles of good enforcement. These are:-

- Publishing clear standards, setting out the level of service and performance that the public and businesses can expect to receive;
- Dealing with the public and the business in an open and honest way;
- Providing a courteous, efficient and helpful service;
- Responding promptly and positively to complaints about the service;
- Ensuring that enforcement action is proportionate to the risks to the public;
- Carrying out duties in a fair, equitable and consistent manner.

A full version of the Enforcement Concordat may be obtained by e-mail [dave.greenway@sbs.gsi.gov.uk](mailto:dave.greenway@sbs.gsi.gov.uk) or telephone on 020 7215 4350.

In approving this enforcement policy and when setting service-specific enforcement requirements, in respect of those local authorities' functions specified in Part 3 of the Schedule to the Legislative and Regulatory Reform (Regulated Functions) Order 2007, the Council had, and will continue to have, regard to the statutory Regulators' Compliance Code, issued by the Minister of State for the Department for Business, Enterprise and Regulatory Reform under Section 22 (1) of the Legislative and Regulatory Reform Act 2006. This will also apply to any further functions to which the said code might be applied.

Service-specific risk-rated inspection policies will be set, in respect of those functions which are considered deserving of co-ordinated monitoring.

Any decision to prosecute will be taken in accordance with the Code for Crown Prosecutors. A fully copy of the code is available from:-

The Crown Prosecution Service London  
50 Ludgate Hill  
London  
EC4M 7EX

Tel. No. 020 7796 8000

E-mail: [www.cps.gov.uk/Home/CodeForCrownProsecutors](http://www.cps.gov.uk/Home/CodeForCrownProsecutors)

Enforcement decisions and actions will be made with due regard to the provisions of:-

- The Human Rights Act;
- The Crime & Disorder Act;
- Equal rights and anti-discrimination legislation;
- Service-specific legislation;
- All other relevant legislation applicable from time to time.

Information concerning non-compliance may be shared with other enforcement agencies. Any such action will only be undertaken in the public interest and in compliance with the Data Protection Act 1998.

### **Authorisation of Officers**

Only officers who are competent by training, qualification and/or experience will be authorised to take enforcement action. Officers will also have sufficient training and understanding of this enforcement policy to ensure a consistent approach to their duties. Officers are required to show their written authorisation on demand.

### **Status and Review**

This policy was endorsed and adopted by the Council by minute 28 of Full Council on 25th June 2008.

This is a public document and further copies of this and associated documents can be obtained from:

J W Mann  
Head of Environmental Health & Housing Services  
North Devon Council  
Civic Centre  
Barnstaple  
North Devon  
EX31 1EA

E-mail: [customerservices@northdevon.gov.uk](mailto:customerservices@northdevon.gov.uk)

Complaints concerning the application of this enforcement policy are dealt with in accordance with the Council's customer complaints' procedure. Details of the procedure are available from the Customer Services Unit on tel. no. (01271) 388870.