Appendix A

NORTH YORKSHIRE COUNCIL

GENERAL ENFORCEMENT POLICY

FOREWORD

As one of the largest Councils in the Country we deliver a vast range of services to over 600,000 residents and tens of thousands of businesses. We make decisions every day which affect people who live, work and visit our beautiful County. The way in which we take action is important, as it gives people confidence that the Council will stand behind them and deal with issues which have a significant impact on the community their quality of life and amenity.

This Policy sets out how we will fulfil our legal obligations, but most importantly the approach we will take and the culture that we have as an organisation. Residents and businesses should know what to expect from the Council. Individual regulatory services such as planning, housing and environmental health will have their own enforcement protocols and priorities, but this overarching document sets the culture in which all services should operate.

Whilst we will always look to take a balanced and fair approach, we will not shy away from taking action either individually or with our partners, where there is a clear reason to do so, even where a successful outcome is not assured. In essence, we will always seek to do the right thing.

I hope that you find this document a useful guide.

Richard Flinton

Chief Executive

North Yorkshire Council

TABLE OF CONTENTS

1. Introduction
2. Purpose of the policy
3. Our approach to dealing with enforcement matters
4. Conduct of investigations
5. Decisions on enforcement action
6. Service standards

Appendix A: Enforcement Actions available to the Council in Respect of Criminal and Civil breaches

Appendix A

GENERAL ENFORCEMENT POLICY

1. INTRODUCTION

1.1 A robust enforcement policy is very important for giving the public confidence that where people do not follow the rules, and cause problems for others, then they will be dealt with. Having an over-arching policy helps the Council have a consistent approach across a large range of regulatory services such as planning, housing, environmental health and trading standards. It allows our staff to know what is expected of them, and residents and businesses to know how and what to expect from us. Cases which relate to financial/debt recovery are not covered under this policy.

1.2 The Council will carry out good enforcement practice. We will adhere to the current legislation, guidance, and codes of practice, that influence this policy.

1.3 The Council will exercise its regulatory activities in a way which is:

- **Robust** – where a decision has not been complied with and/or regulations not followed, then we will take robust action to ensure compliance and resolve the issue where we can
- **Customer focussed-** We will be customer focussed and have the impact on the resident at the forefront of our mind when taking action
- **Fair** – we will deal with all our customers in a fair, open and transparent manner and will keep them informed of progress
- **Consistent** – our advice to those regulated will be robust, reliable and similarly advice provided by others will be respected
- **Targeted** – resources will be prioritised to deal with the most serious cases where the most harm is caused.

1.4 We will avoid imposing unnecessary regulatory burdens, and we will seek to join up our services wherever possible.

1.5 The Council will ensure that regulatory officers are appropriately trained and supported to:

- Take robust action in a timely manner
- understand the need to protect the public and environment
- support those that they regulate
- understand those they regulate
- understand the statutory principles of good regulation and how activities are delivered under the Code.

1.6 This Policy will be published on the internet, and relevant service standards and any function specific Enforcement Policies drawn up by individual service areas, will also be published on the internet.

2. PURPOSE OF THE POLICY

2.1 This policy will ensure public protection, legal compliance and set the framework which officers of the Council will operate.

2.2 All officers will have regard to this document when making enforcement decisions.

2.3 This policy can be overridden where a risk of injury or to health is likely to occur due to a delay in any decision being made. The Chief Executive may suspend any part of this policy, in cases of emergency. This would achieve effective running of the service and/or where there is a risk of injury or to health of employees or any members of the public.
The **Regulators' Code** requires regulators to have procedures in place to ensure that their officers follow their published service standards.

3. OUR APPROACH TO DEALING WITH ENFORCEMENT MATTERS

3.1 The Council recognises that most businesses and individuals are law abiding and act responsibly. However, robust action will be taken against those who flout the law or act negligently. Particular focus will be given to circumstances where the public's safety is compromised or there are significant impacts on quality of life/amenity.

3.2 Those that deliberately or persistently fail to comply will be dealt with by the Council in a robust way in a timely manner.

3.3 Those regulated by the Council are able to request advice on non-compliance without directly triggering enforcement action. where they show a willingness to resolve the non-compliance, we will deal with the matter informally, unless the matter is so serious that enforcement action is deemed necessary. This is in accordance with Section 5.4 of the **Regulators' Code**.

3.4 The Council will review all notifications/complaints and will investigate if necessary. Necessity to investigate and the promptness of the response will be dependent on the resources available as well as the identification of risk.

3.5 Where appropriate The Council will carry out check visits or re-visit to assess compliance where prior advice or guidance has been given, before considering further action.

3.6 Council officers and decision makers will carry out all our enforcement duties, including taking formal enforcement action, in a fair, and consistent manner. Whilst officers exercise judgement in individual cases, the Council will have arrangements in place to promote consistency including liaison with other agencies and authorities.

3.7 The Council will take a multi-agency approach to dealing with issues, joining up powers to achieve the right outcome.

3.8 Council officers will take ownership of enforcement complaints where it straddles different areas of the Council and will aim to provide one response and point of contact to the customer.

ADVICE & GUIDANCE

3.9 We will actively work with business and residents to provide advice and help. In doing this it will be ensured that:

- any information provided will be in clear, concise and accessible language. It will be confirmed in writing where necessary
- legal requirements and good practice/guidance aimed at improvements above minimum standards will be clearly distinguished
- provide advice to support compliance that can be relied upon
- work collaboratively with other regulators where those regulated by more than one regulator are affected, and where there is disagreement over advice given, regulators will seek to reach agreement.

FAIRNESS

3.10 Officers will be courteous, fair and efficient at all times, and will identify themselves by name and provide identification where required or requested.

3.11 The Council will have regard to individual's human rights and natural justice. This is in all aspects of our enforcement work.

3.12 The Council will aim to ensure that there will be no discrimination against any individual when making enforcement decisions. This is regardless of culture, ethnic or national origins, gender, disability, age, sexual orientation, political or religious beliefs, socio-economic status.

CONFIDENTIALITY

3.13 It is normal practice to maintain the confidentiality of a complainant. Unless they agree to act as a witness in formal action taken by the Council, or the Council is required by law to disclose the identity of a complainant. Anonymous complaints will not normally be acted upon except in exceptional circumstances.

3.14 Legal notices will clearly set out how the notice can be appealed, including timescales and relevant bodies to which the appeal can be lodged.

3.15 If complaints of treatment or officer conduct cannot be informally resolved between stakeholders, officers and line managers, the customer will be directed to the Council's formal Complaints Process. Complaints, comments or compliments | North Yorkshire Council

CHARGING FOR ENFORCEMENT

3.16 The Council will seek to recover costs for taking enforcement action against the responsible persons, where legislation allows.

3.17 The responsible person will be advised of the potential of being charged for formal enforcement notices before any charge is incurred unless the situation is an emergency. In emergency situations officers will make reasonable efforts to contact the responsible person. If the responsible person cannot be contacted or cannot respond quickly enough, formal action will be initiated and a charge made.

NECESSARY AND PROPORTIONATE

3.18 In assessing what enforcement action is necessary and proportionate, consideration will be given to, amongst other things:

i. public protection and "risk to the public"
ii. the seriousness of the compliance failure
iii. the past and current performance of any business and/or individual concerned
iv. any obstruction on the part of the offender
v. the risks being controlled
vi. statutory guidance
vii. Codes of Practice
viii. any legal advice
ix. policies and priorities of Government and the Council
x. a person's circumstances
xi. the existence of a Primary Authority agreement

PUBLICITY OF ENFORCEMENT

3.19 Where the Council is successful in prosecution and a conviction of an individual or business or has made an enforcement decision relating to licensed premises, vehicles, drivers and/or operators, we will seek to publish details of the offence, perpetrators and convictions.

3.20 This name and shame approach will hopefully deter others and to show the public that the Council is taking effective enforcement action where it is necessary. It sends a clear message that the type of behaviour will not be tolerated in our County.

PRIMARY AUTHORITY & OTHER AGENCY ARRANGEMENTS

3.21 The Council will follow Primary Authority advice.

3.22 The Council will liaise with the relevant agency if the Council is aware of likely non-compliance where the enforcement powers are shared or with another agency.

4. CONDUCT OF INVESTIGATIONS

4.1 All investigations will be carried out under the following legislation. They will be in accordance with any associated law, guidance or codes of practice, in so far as they relate to the Council:

- the Police and Criminal Evidence Act 1984
- the Criminal Procedure and Investigations Act 1996
- the Regulation of Investigatory Powers Act 2000
- the Criminal Justice and Police Act 2001
- Criminal Justice Act 2003
- the Human Rights Act 1998
- Equality Act 2010

4.2 These Acts and associated guidance control how evidence is collected. It is used to give a range of protections to citizens and potential defendants. Our 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.

4.3 The powers used by authorised officers are determined and restricted to those set out in the appropriate statute and/or Council's scheme of Delegation.

4.4 Where any officer conducting regulatory or enforcement functions is obstructed during their investigations, and legislation allows, formal action will be considered for obstruction offences.

4.5 Where legislation allows the seizure of equipment, articles, or items, the Council will adhere to legislation, guidance and specific policies in relation to those seizures.

4.6 Where necessary, the Council and its officers may request North Yorkshire Police exercise their powers of arrest in order to progress an investigation and/or apprehend an offender.

4.7 Where it is believed that an offence has been committed, the Council will interview where appropriate alleged perpetrators in accordance with the Police and Criminal Evidence Act 1984 and related guidance.

4.8 Legislation utilised by regulatory and enforcement officers, is often subject to statutory time limits for investigations from the point of discovery or commission of the offence. In all circumstances the Council will abide by these limitations when conducting investigations and when considering any subsequent enforcement actions.

4.9 Alleged offenders and witnesses will be informed of the progress of investigations.

5 DECISIONS ON ENFORCEMENT ACTION

5.1 These factors are **not** listed in order of significance. The rating of the various factors will vary with each situation under consideration.

5.2 There are a range of actions that are available to the Council which are set out in legislation.

5.3 For the purposes of this policy, formal enforcement action, includes (see **Appendix A**):

- Compliance Advice, Guidance and Support
- Voluntary Undertakings
- Statutory (Legal) Notices
- Financial penalties
- Injunctive Actions / Enforcement Orders etc
- Informal caution
- Simple Caution
- Prosecution and
- Refusal / Suspension / Revocation of Licences

5.4 Alleged offenders and witnesses will be informed of the progress of investigations.

HOW DECISIONS ARE MADE ON ENFORCEMENT ACTION

5.5 Where formal enforcement action is necessary, the most appropriate course of action (from the range of sanctions and penalties available) will be considered with the intention of:

- protecting public safety
- protecting the environment and animal welfare
- changing the behaviour of the offender
- eliminating any financial gain or benefit from non-compliance
- being responsive and considering what is appropriate for the offender and issue involved, including punishment and the public stigma that may be associated with a criminal conviction
- being proportionate to the nature of the offence and harm caused
- deterring future non-compliance.

5.6 Where the responsible person has failed to respond once a breach of legislation has been brought to their attention or the breach is so severe as to present an imminent risk formal action will be taken.

5.7 Before instigating legal proceedings, service will consider many factors, including:

- the seriousness of the alleged offence
- the history of the party concerned
- the willingness of the business or the individual to prevent a recurrence of the problem and to co-operate with officers
- whether it is in the public interest to prosecute
- whether there is a realistic prospect of conviction
- whether any other action (including other means of formal enforcement action) would be more appropriate or effective
- the views of any complainant and other persons with an interest in prosecution.

5.8 These factors are NOT listed in order of significance. The rating of the various factors will vary with each situation under consideration.

5.9 Where appropriate there will be cooperation and coordination with any relevant regulatory body and/or enforcement agency to maximise the effectiveness of any enforcement.

5.10 Where an enforcement matter affects a wide geographical area beyond the County boundaries or involves enforcement by one or more other local authorities or organisations; where appropriate all relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activity coordinated with them.

5.11 Where the law allows, regulation and enforcement will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies, including:

- Government Agencies
- Police Forces
- Fire Authorities
- Statutory undertakers
- Other Local Authorities.

5.12 When a decision is made to take enforcement action against you and:

- you are a business operating in more than one Local Authority area and you have chosen to have a registered Primary Authority Partnership under The Regulator Enforcement Sanctions Act 2008 (The RES Act); and

- the enforcement action proposed is covered by the definition of enforcement action for the purposes of Part 2 of the RES Act

5.13 The Council will comply with the agreement provisions for enforcement and notify your Primary Authority of the proposed action. Your Primary Authority has the right to object to the Council's proposed action in which circumstances either they or the Council may refer the matter to OPSS.

6. SERVICE STANDARDS

HOW SERVICES ARE DELIVERED

6.1 Each service will have robust Service Standards which underpin expectations of level of service to relevant stakeholders including the public.

6.2 Services will be delivered in accordance with the requirements of the **Regulators' Code**.

6.3 Our officers will:

- be courteous and polite
- always identify themselves by name, and provide contact details (the exception to this is Civil Enforcement Officers undertaking parking enforcement, who under provisions in the Traffic Management Act Guidance for Local Authorities, should only be identified by their individual officer number)
- provide details of how to discuss any concerns there may be
- agree timescales, expectations and preferred methods of communication
- ensure that information and progress on any outstanding issues is provided.

6.4 The Council will allocate resources to where they will be most effective by assessing the priority risks:

- risk will be considered at every stage when making a decision, including the most appropriate intervention, the way of working, checks on compliance, and when taking enforcement action
- assessment of risk will recognise previous compliance history and all available relevant data including relevant external verification
- Use national risk assessment frameworks
- the effectiveness of regulatory activities and outcomes will be reviewed regularly and adjusted accordingly.

COVERT SURVEILLANCE, INCLUDING THE USE OF SURVEILLANCE OF SOCIAL MEDIA

6.5 The Council's use of surveillance powers is covered by the covert activity policy. The Council will only do this when it is necessary and proportionate to do so.

6.6 Investigating officers will seek legal advice where necessary and always act in accordance with the Council's RIPA Policy and appropriate guidance issued by the Home Office and Regulator. If investigators believe they need to look at someone's social media accounts closely for a case, they must get approval under RIPA or equivalent first. This is in accordance with written departmental procedures. Such authorisation will ensure as far as possible that authorised officers act lawfully and in a fair and transparent manner.

REQUESTS FOR OUR SERVICES

6.7 In responding to service requests, including requests for advice and complaints about breaches of the law, there will be:

- a response to the request within a maximum of 10 working days (or the relevant statutory timescale in law)
- advise when a substantive response can be expected
- seek to fully understand the nature of the request
- explain what may or may not be possible, so that it is clear what the customer can expect
- keep the person or business informed of progress throughout the Council's involvement
- keep the person or business informed of the outcome as appropriate.

6.8 Notice that officers intend to visit will be provided. This is unless there is a specific reason to believe that an unannounced visit is more appropriate.

INFORMATION SHARING

6.9 The Council has information sharing protocols with various partners including the Police. This is to detect and deter crime and anti-social behaviour. The Council is committed to the objectives of this partnership. They will balance data protection considerations in line with the information sharing protocol.

POLICY REVIEW

6.10 The implications and effectiveness of this policy will be regularly monitored.

6.11 This policy will be reviewed where appropriate (and, in any case at least once every five years) to assess whether any amendments are required taking into account changing circumstances affecting the area, or any relevant changes in national policy.

6.12 Minor and inconsequential amendments may be made to the policy from time-to-time by a senior officer to reflect legislative changes or to correct any inaccuracies.

ENFORCEMENT ACTIONS AVAILABLE TO THE COUNCIL IN RESPECT OF CRIMINAL AND CIVIL BREACH

Compliance Advice, Guidance and Support

The Council uses compliance advice, guidance and support as a first response in the case of many breaches of legislation that are identified. Advice is provided, sometimes in the form of a warning letter, to assist individuals and businesses in rectifying breaches as quickly and efficiently as possible, avoiding the need for further enforcement action. A warning letter will set out what should be done to rectify the breach and to prevent re-occurrence. If a similar breach is identified in the future, this letter will be persuasive in considering the most appropriate enforcement action to take on that occasion. Such a letter cannot be cited in court as a previous conviction, but it may be presented in evidence. The Council recognises that where a business has entered a partnership with a primary authority, the primary authority will provide compliance advice and support. The Council will take such advice into account when considering the most appropriate enforcement action for it to take. It may discuss any need for compliance advice and support with the primary authority. Where more formal enforcement action, such as a simple caution or prosecution, is taken, the Council recognises that there is likely to be an ongoing need for compliance advice and support, to prevent further breaches.

Voluntary Undertakings

The Council may accept voluntary undertakings that breaches will be rectified and/or recurrences prevented. The Council will take any failure to honour voluntary undertakings very seriously and enforcement action is likely to result.

Statutory (Legal) Notices

In respect of many breaches the Council has powers to issue statutory notices. These include: 'Abatement Notices', 'Prohibition Notices', 'Emergency Prohibition Notices', and 'Improvement Notices'. Such notices are legally binding. Failure to comply with a statutory notice can be a criminal offence and may lead to prosecution and/ or, where appropriate, the carrying out of work in default. A statutory notice will clearly set out actions which must be taken and the timescale within which they must be taken. It is likely to require that any breach is rectified and/or prevented from recurring. It may also prohibit specified activities until the breach has been rectified and/or safeguards have been put in place to prevent future breaches. Where a statutory notice is issued, an explanation of the appeals process will be provided to the recipient. Some notices issued in respect of premises may be affixed to the premises and/or registered as local land charges.

Financial Penalties

The Council has powers to issue fixed penalty notices, penalty charge notices and monetary penalties in respect of some breaches of legislation. A fixed penalty notice, penalty charge notice or monetary penalty is not a criminal fine and does not appear on an individual's criminal record. If a fixed penalty, penalty charge notice or monetary penalty is not paid, the Council may, however, commence criminal proceedings or take other enforcement action in respect of the breach or take civil enforcement action to recover the value of the fixed penalty, penalty charge or monetary penalty subject to the provisions of the relevant legislation. If a fixed penalty, penalty charge notice or monetary penalty is paid in respect of a breach, the Council will not take any further enforcement action in respect of that breach. Payment of the penalty does not provide immunity from prosecution in respect of similar, continuing or recurrent breaches. The Council is only able to issue a fixed penalty notices, penalty charge notices and monetary penalties where it has specific powers to do so. If fixed penalty notices are available, their issue is at the Council's discretion. In some circumstances, in particular where breaches are serious or recurrent, it may be that prosecution is more appropriate than the issue of a fixed penalty notice. In specific instances dictated by regulation, the Council has powers to issue monetary penalties. In some cases the Council has discretion in the level of monetary penalty to impose. Where regulation makes

provision for the Council to receive representations in respect of a charge, the Council will inform recipients how to make representation and provide guidance on what might be relevant issues. Any representation received will be reviewed in a timely manner within the terms of the regulation, the requirements of this policy and based on the reasonableness of the charge on a case-by-case basis. If the Council deems fit it may confirm, vary or quash a monetary penalty.

Injunctive Actions, Enforcement Orders etc

In some circumstances the Council may seek a direction from the court (in the form of an order or an injunction) that a breach is rectified and/or prevented from recurring. The court may also direct that specified activities be suspended until the breach has been rectified and/or safeguards have been put in place to prevent future breaches. Failure to comply with a court order constitutes contempt of court, a serious offence which may lead to imprisonment. The Council is required to seek enforcement orders after issuing some enforcement notices, providing the court with an opportunity to confirm the restrictions imposed by the notice. Otherwise, the Council will usually only seek a court order if it has serious concerns about compliance with voluntary undertakings or a notice. The Council may seek Banning Orders where relevant convictions exist and it is appropriate and proportionate to do so.

Prosecution

When deciding whether to prosecute, the Council has regard to the provisions **of The Code for Crown Prosecutors** as issued by the Director of Public Prosecutions. Prosecution will only be considered where the Council is satisfied that it has sufficient evidence to provide a realistic prospect of conviction against the defendant(s). Before deciding that prosecution is appropriate, the Council will consider all relevant circumstances carefully and will have regard to the following public interest criteria:

- seriousness of the offence committed
- the level of culpability of the suspect
- the circumstances of, and the harm caused to the victim?
- was the suspect under the age of 18 at the time of the offence?
- what is the impact on the community?
- is prosecution a proportionate response?
- do sources of information require protecting?

A successful prosecution will result in a criminal record. The court may impose a fine and in respect of particularly serious breaches a prison sentence. The court may order the forfeiture and disposal of non-compliant goods and/or the confiscation of any profits which have resulted from the breach. Prosecution may also lead, in some circumstances, to the disqualification of individuals from acting as company directors.

Refusal/Suspension/Revocation of Licences

The Council issues a number of licences and permits. The Council also has a role to play in ensuring that appropriate standards are met in relation to licences issued by other agencies. Most licences include conditions which require the licence holder to take steps to ensure that, for example, a business is properly run and public safety is assured. Breach of these conditions may lead to a review of the licence which may result in its revocation or amendment. When considering future licence applications, the Council may take previous breaches and enforcement action into account and also other matters which, on the balance of probability, may influence the assessment of a person to be a fit and proper person.

Prohibitions

The Council has a range of powers that allow for the prohibition of activities, structures, or use of facilities such as sports grounds. The Council has a role to ensure the safety of the public and will exercise prohibition powers only where it is essential to protect health and there is sufficient evidence available to demonstrate that a risk to health exists.