



Newport City Council

**PUBLIC PROTECTION
ENFORCEMENT POLICY**

November 2013

1 Introduction

- 1.1 The Public Protection Division has a wide remit, taking the many and diverse statutory functions of Trading Standards, Animal Health, Environmental Health, Licensing and Community Safety. We carry out a wide range of enforcement initiatives, including a number of high profile prosecutions, but balance this with advice and information as to legal obligations.
- 1.2 We work to protect the rights and the safety of the City's residents, workers, visitors and the local environment. Our services interact with everyone who comes into Newport and with people from much further afield who buy or use goods and services originating from the City.

2. Our Service Aim and Role

2.1 This is two-fold:

1. To create and maintain a fair and safe (trading) environment and community for Newport's residents, visitors and responsible businesses, supporting the Corporate Objectives of the Council.
2. Bring businesses into a state of being broadly compliant with Public Protection legislation and alleviate anti-social behaviour.

3. The Aims of this Enforcement Policy

3.1 Compliance with Regulators' Codes

Our enforcement decisions are made with regard to current statutory guidance and codes of practice particularly the Regulators' Compliance Code (see Appendix One),: "Statutory Code of Practice for Regulators", and the Code for Crown Prosecutors. The Council has also adopted the Enforcement Concordat, which established principles of good enforcement and set out what businesses and others being regulated are entitled to expect from enforcement officers. In certain instances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

3.2 Delivering Effective Enforcement -A Balanced approach

In accordance with the Code we will consider the impact of our regulatory intervention on businesses by adopting a positive, proactive and balanced approach to ensure compliance. This will be achieved through a combination of: advice, information, help and support for businesses which reflects individual business needs and expectations; and intelligence-led, targeted and proportionate interventions where regulatory breaches have been identified. We endeavour to deal proportionately with criminal activity which could have a damaging effect on legitimate businesses. However, there is also an expectation that legitimate businesses will work with officers to improve standards of trading. This policy is primarily focused on regulation of the business community, but a number of regulatory functions involve enforcement against individuals eg for anti-social behaviour, including dog fouling and littering and noise nuisance. Where enforcement action is contemplated against individuals we will take into account the relevant principles and standards outlined in this policy.

Effective enforcement is critical to supporting economic growth. Therefore, this enforcement policy and the way it is implemented fully takes into account the need to support legitimate businesses through a programme of effective advice and information in the first instance to

'help businesses get things right first time'. This approach delivers benefits for regulators and businesses.

We seek regulatory compliance whilst recognising that prevention is better than cure, assisting businesses and others in meeting their legal obligations through education and advice whilst not imposing unnecessary burdens.

3.3 **Compliance with Principles of good enforcement**

We believe in firm but fair enforcement of the law and this belief is informed by the following **principles of good regulation**: proportionality in applying the law and securing compliance; consistency of approach; targeting of our enforcement action; transparency about how we operate and what those we regulate may expect; and accountability for our actions. These principles apply both to how the Public Protection service enforces individual cases and to how we manage enforcement activities as a whole.

3.3.1 **Proportionate**

Those that the law protects and those on which the law places a duty expect that action we take to achieve compliance or bring businesses/individuals to account for non-compliance will be proportionate to any risks or to the seriousness of any breach. This will include any actual or potential harm arising from a breach of the law. In practice, applying the principle of proportionality means that enforcing officers will take particular account of how far the business etc has fallen short of what the law requires and the extent of the risks to people which arise from their not having complied with the law.

3.3.2 **Consistent but Flexible**

We will endeavour to deliver expect a consistent approach in our use of enforcement actions-Notices, approvals etc; decisions to prosecute; or in our response to incidents. In practice achieving consistency is not a simple matter. Enforcement officers are faced with many variables including the degree of risk, the attitude and competence of management, any history of incidents or breaches, previous enforcement action, and the seriousness of any breach, which includes any potential or actual harm arising from a breach of the law. Nevertheless, we will not be too over-prescriptive: there needs to be an element of flexibility in our officers' judgement.

3.3.3 **Targeted**

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

3.3.4 **Transparent**

Enforcement activities will be conducted in an open and transparent manner. Officers will explain clearly in plain language what is expected of those to whom legislation applies and what can be expected of the enforcement service. Clear distinctions will be drawn between statutory requirements and advice or guidance regarding what is good practice but not compulsory.

Where possible solve problems jointly with other regulatory or enforcement agencies.

If it becomes necessary to take formal action against business or members of the public, we will do so: taking firm action against those who knowingly breach the law or act irresponsibly.

3.3.5 **Courteous and efficient.**

We aim to provide a courteous and efficient service, and all enforcement activities will be carried out in as helpful manner as possible.

3.4 **Following Best Practice Standards and legal investigative requirements**

All investigations into possible/alleged breaches of legislation will follow best professional practice and the requirements of:

The Police and Criminal Evidence Act 1984

The Criminal Procedures and Investigations Act 1996

The Regulatory and Investigatory Powers Act 2000.

This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is made to the right to a fair trial and right to respect for private and family life, home and correspondence.

4. **Scope**

- 4.1 This Policy encompasses all enforcement activities undertaken by the Public Protection. It is intended to provide guidance for officers, businesses, consumers and the public to help all parties understand the principles that are applied when enforcement decisions are taken. It does not affect the discretion of the Council to take legal proceedings where this is considered to be in the public interest.

5. **The Purpose of Enforcement**

- 5.1 The purpose of enforcement activity is to:

- ensure that businesses/individuals take action to deal immediately with serious risks
- promote and achieve sustained compliance with the law
- ensure that those who breach legal requirements, and directors or managers, who fail in their responsibilities, will be held to account. This may include bringing alleged offenders before the courts.

- 5.2 When determining the nature of enforcement action to be taken the enforcing authority will aim to ensure that any resulting sanction or penalty will:

- Change the behaviour of the offender
- Eliminate financial gain or benefit from non-compliance
- Be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction
- Be proportionate to the nature of the offence and the harm caused
- Put right the harm caused by the regulatory non-compliance where appropriate
- Deter future non-compliance

6. Our approach really is one of ‘prevention is better than cure’: which involves:

- 6.1 Working to develop constructive and trusting relationships with local businesses, particularly new businesses, so that they are confident about seeking help if things go wrong rather than trying to hide things and make matters worse.

Understanding and taking into account the size, complexity and scope of business operations to provide an appropriate and proportionate level of advice and support, where our resources allow, particularly having regard to the impact of regulation on small to medium sized businesses.

Using intelligence-led and targeted interventions (including inspection) based on an objective assessment of risks so that resources are appropriately directed to areas of the highest risk. This aims for a balance between preventative and compliance activity using a variety of enforcement techniques and appropriate sanctions.

6.2 Focusing on Prevention

A key focus of our approach to prevention will involve developing positive and constructive working relationships with businesses. Our approach is to provide easy access to advice, provide simple, clear and concise information and to provide follow-up advice where it is needed. Where national guidance exists, we will promote and sign post this to ensure consistency in its application.

We will always try to ensure that, in all our dealings with businesses, we differentiate between specific legal requirements and guidance/best practice aimed at delivering improvements above minimum standards. However, we will actively encourage businesses to strive to achieve higher standards.

7. Using Intelligence-led and Targeted Enforcement

7.1 No inspection without a valid reason

We will try not to undertake any inspection visits to business premises unless there is a specific and justifiable reason for so doing. Any programmed inspection visits will be informed by the use of a robust and transparent risk assessment framework. The sharing of information and intelligence and the development of effective communication channels to provide evidence of risk will be a key element of our approach to targeted inspection. Intelligence analysis and the application of the risk assessment framework will be used to deploy resources and direct inspection effort where both a compliance failure would pose a serious risk to the community and the business is likely to continue to operate illegally.

7.2 Timely and effective feedback

At the conclusion of any inspection visit, our officers will give a verbal update of his/her findings in order to seek agreement on the proposed corrective actions. This will include an outline of good practice as well as areas of improvement. Any advice, guidance or specific instructions will normally be confirmed in writing.

7.3 Stepped up Enforcement

We recognise that the majority of businesses we come into contact are legitimate and want to engage constructively with regulators. We have described our approach to prevention through advice, information and guidance to this group of businesses. However, we also recognise, as do the vast majority of the business community, that there is no place for those who wish to operate outside the regulatory framework.

Therefore, our approach will be different for individuals and businesses who: operate fraudulently or unfairly; and/or persistently use unfair trading practices and fail to follow advice; and/or put at risk the health, safety and well-being of staff, customers and consumers; and/or fail persistently to follow advice about legal requirement despite significant attempts from the regulator to ensure compliance; and/or attempt to gain a competitive advantage over legitimate businesses through fraudulent or unfair trading practices.

8. What Happens when preventative /advisory approach fails to achieve compliance?

8.1 Decision to undertake enforcement and what level of action is appropriate

Each case will be considered on its own merits and enforcement decisions will be fair and objective. However, there are general principles that apply to the way each case must be approached. In assessing what enforcement action is necessary and proportionate consideration will be given to:

- The seriousness of compliance failure;
- The views of any victim, injured party or relevant person to establish the nature and extent of any harm or loss, and its significance,
- The business's past performance and its current practice;
- The risks being controlled;
- Legal, official or professional guidance;
- Local priorities of the Council.

There is a range of enforcement options available to us to seek compliance with the law. Under normal circumstances, a process of escalation will be used until compliance is reached. Exceptions would be where there is a serious risk to public safety or the environment or the offences have been committed.

9. Choosing between Enforcement Options

9.1 Informal advice will be considered by enforcing officers where:

- The contravention is not serious enough to warrant an Improvement or Abatement Notice, Revocation/review/suspension, Emergency Prohibition Notice, simple caution, conditional caution or prosecution
- The individual or company's past history is good and suggests such action will achieve compliance
- Confidence in individual's/management's ability to remedy contravention(s) is high
- Standards are generally good suggesting a high level of awareness of statutory responsibilities
- The consequences of non-compliance will not pose a significant risk to public health

9.2 In exceptional circumstances, significant contraventions may not warrant any action. This is likely to be when the cost of compliance to the offender outweighs the impact of the offence. A decision of no action may also be taken when a trader has ceased to trade. The decision to take no action will be recorded detailing the decision making process.

9.3 Whilst recognising that most businesses want to comply with the law, the Public Protection service also recognises that some businesses and individuals will operate outside the law (both intentionally and unintentionally). Serious offences for which we will consider taking formal action may include, amongst others, any of the following:

- For matters where there has been recklessness, negligence or flagrant disregard for the requirements of the law.
- A deliberate or persistent failure to comply with advice, warnings or legal requirements.
- Any act or omission which has or is likely to adversely affect: the health and safety of the public or employees; the welfare of employees; the health and welfare of animals; the prevention of disease; the safety of food and water or; the quality of the environment.
- Obstruction or assault (including verbal assault) of officers in the execution of their duties.

9.4 Enforcement officers will consider taking the least punitive approach or combination of approaches provided this takes account of the nature and seriousness of the offence; accords with public safety; reflects the confidence the officer has in the contravention being put right and has regard to the compliance history and the attitude of the business/ individual.

9.5 Serious offences or a failure to meet one or more of the above conditions will usually indicate a formal enforcement approach. Formal and informal approaches may be applied separately or in any combination as the enforcing officer considers appropriate. When deciding between enforcement options enforcing officers will have regard to any relevant guidance document, approved Codes of Practice etc.

10. Appeals

10.1 Many of the enforcement actions described below have rights of appeal. Where these exist, details of how to appeal and the time limit will be given in writing.

11. The Levels of Enforcement Action in more detail

11.1 No action

In certain circumstances, contraventions of the law may not warrant any action. This can be where the cost of compliance to the offender outweighs the detrimental impact of the contravention, or the cost of the required enforcement action to the Council outweighs the detrimental impact of the contravention on the community. A decision to take no action may also be taken where formal enforcement is inappropriate in the circumstances, such as where a trader has ceased to trade, or the offender is elderly and frail and formal action would seriously damage their wellbeing.

11.2 Informal Action and Advice

During inspections and following investigations about specific complaints, minor technical breaches will be dealt with informally by the officer giving information, advice or guidance. This could be by way of letters and/or the issue of inspection reports, including those generated on site following an inspection.

We will clearly identify any contraventions of the law and give advice on how to put them right, including a deadline by which this must be done. The time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of the non-compliance. Failure to comply could result in an escalation of enforcement action.

Authorised officers have at their disposal a hierarchy of informal enforcement approaches to help them secure legal compliance and which ensure a proportionate response to the offences they encounter. Informal measures are usually reserved for less serious and 'first time' offences. These include:

- Verbal advice
- Written advice
- Warning letters listing alleged offences
- Structured interviews conducted in the office
- Personal Intervention Plans
- Accepting the voluntary closure of a premises or a process
- Accepting the voluntary surrender of suspect food or equipment etc.

11.3 **Formal Enforcement Action**

In addition to informal approaches, Public Protection has many formal sanctions at its disposal. These include:

- Revocation/review/ refusal to grant/suspension of a licence
- Improvement and Abatement Notices
- Fixed Penalty Notices
- penalty notices for disorder
- Seizure/detention/forfeiture
- Written undertakings and enforcement orders
- Cautions
- Prohibition
- Prosecution

This course of action will be taken in accordance with statutory legal procedures, relevant codes of practice and any national professional guidance e.g. the Code of Practice for Crown Prosecutors. Additionally, where members of the public need protection from behaviour that is likely to cause, harassment, alarm or distress, the Council may seek an Anti-Social Behaviour Order, either as an independent action or following conviction (para 11.15)

11.4 **Fixed Penalty Notices**

Where legislation permits an offence to be dealt with by way of a Fixed Penalty Notice (FPN), we may choose to administer a FPN on a first occasion, without issuing a warning. Such offences include dog fouling, littering, smoking in an enclosed public space etc. They are recognised as a low-level enforcement tool and avoid a criminal record for the defendant. Should a recipient not pay the penalty offered, we will usually proceed to prosecution for the actual offence. We will comply with any relevant guidance on the use of fixed penalty notices. In particular, the following conditions will be satisfied:

- (a) there must be evidence sufficient to give a realistic prospect of conviction;
- (b) The offence is not too serious and is of a nature suitable for being dealt with by a penalty notice.

11.5 **Penalty Notices for Disorder (PND)**

A penalty notice for disorder is the fixed penalty option for anti-social behaviour such as the sale of alcohol to a minor by shop staff. We may choose to issue a PND without first issuing a warning.

11.6 **Seizure**

Certain legislation enables authorised officers to seize goods, equipment or documents for example unsafe food, sound equipment that is being used to cause a statutory noise nuisance, unsafe products or any goods that may be required as evidence for possible future court proceedings. When we seize goods etc. we will give the person from whom they are taken an appropriate receipt and advise them of their statutory rights, which may include the right to be present when the goods etc are examined.

11.7 **Forfeiture Proceedings**

This procedure may be used in conjunction with seizure and/or prosecution where there is a need to dispose of goods in order to prevent them re-entering the market place or being used to cause a further problem e.g. unfit food, unsafe goods, counterfeit goods. In appropriate circumstances, we will make an application for forfeiture to the Magistrates' Courts.

11.8 **Refusal, Suspension and Revocation or Imposition of conditions on a Licence**

Where there is a requirement for a business to be licensed by the local authority, the licence may be granted unless representations or objections are received against the application. In such cases the Licensing sub Committee/ panel or senior officer (depending upon the delegation) will hear the case and decide to grant, grant with conditions, or refuse the licence application. Where there is non-compliance or conviction for relevant criminal offences that are also a breach of a condition of a licence that a business or individual may hold then representations will be made to the relevant body that grants the licence. Representations will be made, to bring relevant matters to the attention of the body that grants the licence for them to review if the individual is still fit and proper to hold the licence or whether specific conditions need to be attached to the licence to stop further non-compliance occurring. For example: where the driver of a private hire vehicle is convicted of relevant criminal offences that affects his/her suitability to hold such a licence; or where alcohol is being sold to individuals under 18 years of age from licensed premises and despite the issue of PNDs etc and advice, the practice persists.

11.9 **Statutory (Legal) Notices**

Certain legislation we enforce allows formal, legal notices to be served requiring individuals, businesses or other organisations to meet specific legal requirements. Where a formal notice is served which has a designated appeal procedure, the method of appealing against the notice and the time-scale for doing so will be provided in writing at the same time. The notice will explain what is wrong; require the person on whom the notice is served to put things right and state what the likely consequences are if the notice is not complied with. Also the compliance period will be stipulated in the notice.

Some notices may require activities to cease immediately where the circumstances relating to food safety, health and safety, environmental damage, properties containing imminent hazards dangerous to the health and safety of its occupants or nuisance demand. Compliance with notices will be checked as soon as possible after the expiry date of the notice. Requests for time extensions to notices will be judged on their merits and the information provided with the request. Confirmation of an extension or reason(s) for rejection will be put in writing to the applicant. In general, failure to comply with a properly written and served statutory notice will render the recipient liable to prosecution.

11.10 **Works in Default**

Where work required by that statutory notice has not been carried out and there is imminent risk to public health/safety or the environment, such that the consequences of not taking action would be unacceptable, we will most likely carry out that work in default. The Council will be vigorous in pursuing payment for any works carried out in default of a statutory notice. In order to protect public funds a land charge will be placed on property if the legislation allows us to do so.

11.11 **Emergency Closures/ Emergency Prohibition Notices**

An emergency prohibition notice has the effect of immediately closing a food business or prohibiting the use of equipment or a process where there is an imminent risk of injury to health and they will be served only where the authorised officer has identified an imminent risk of injury to health. An application for an emergency prohibition order will be made to the Magistrates' Court within three days of issuing an emergency prohibition notice.

11.12 **Voluntary Closure**

There may be occasions where an authorised officer is satisfied that grounds for an emergency prohibition exist, but where the proprietor of the food business offers to close voluntarily until the health risk is removed. Such an offer will only be accepted if:

- The authorised officer is satisfied that there is no likelihood of the premises being used as a food business, or the use of equipment, or of a process without the express agreement of the Council.
- The offer to close and its acceptance are fully documented and signed by the proprietor of the food business and signed and approved by an officer authorised to sign an emergency prohibition notice.
- The food business proprietor is fully aware that in making the offer to close voluntarily, he/she is relinquishing any rights to compensation which could arise for unjustified action and which may otherwise be available under the formal emergency prohibition notice procedure.

11.13 **Written Undertakings**

Where an individual or organisation persistently fails to comply with the law, the Council may seek a written undertaking that they will cease that conduct. In such circumstances, we may decide that no further formal action will be taken. However, in cases where an individual or organisation has breached or has refused to provide a written undertaking to cease the action complained of, an application to a court may be made for an enforcement order, or for other formal action in accordance with the relevant legal provisions (see para 11.14 below).

11.14 **Injunctive Actions/ Enforcement Orders**

In certain circumstances, for example, where offenders are repeatedly found guilty of similar offences or where it is considered that injunctive action is the most appropriate course of enforcement, then injunctive actions may be used to deal with repeat offenders, dangerous circumstances or significant consumer detriment. Action can be taken under the Enterprise Act 2002 etc. through the civil courts where an individual or organisation has acted in breach of EU or domestic legislation which has the effect of harming the collective interests of consumers. In most circumstances, action will be considered where there have been persistent breaches, although in some circumstances action may be considered for a small number of breaches where there is significant consumer detriment. Action can range from: Undertakings (informal or formal- para 11.13), Interim Orders, Court Orders and Contempt Proceedings.

11.15 **Anti-Social Behaviour Orders (ASBOs) and Criminal Anti-Social Behaviour Orders (CRASBOs)**

Where the non-compliance under investigation amounts to anti-social behaviour such as persistent targeting of an individual or a group of individuals in a particular area, sufficient to cause them alarm, harassment or distress, then we will consider applying to the Magistrates' court for an ASBO or CRASBO (post-conviction for a relevant offence) to stop the activity.

11.16 **Proceeds of Crime**

Following the introduction of the Proceeds of Crime Act 2002, law enforcement agencies have a responsibility to ensure that the defendants do not profit from their crimes. As a result, when officers commence investigations into relevant criminal offences that meet the criteria of 'lifestyle criminal offences' or "particular criminal conduct", they will make an assessment as to whether an investigation is required into the defendant's financial affairs. Where appropriate a referral will be made to our Accredited Financial Investigator.

In appropriate cases, an application will be made for a Proceeds of Crime Order to obtain the confiscation of assets removing the financial benefit that the offender has obtained from criminal conduct. Proceedings are carried out in accordance with the civil standard of proof

and applications are made after a conviction has been secured, but before the offender has been sentenced.

11.17 Simple Cautions

Under certain circumstances, a caution may be an appropriate alternative to prosecution. This option will be considered before prosecution. It may be referred to in any subsequent court proceedings but ceases to be of relevance after three years.

Cautions serve the following purposes:

- a) To deal quickly and simply with less serious offenders;
- b) To avoid unnecessary appearance in criminal courts;
- c) To reduce the chance of offenders re-offending.

We will comply with Home Office Guidance on the cautioning of adult offenders and in particular before issuing a caution, the following conditions must be satisfied:

- (a) there must be evidence of guilt sufficient to give a realistic prospect of conviction
- (b) It is a first offence; and/or the offence occurred through ignorance and the offender has expressed remorse and a willingness to comply with the law in the future;
- (c) The suspected offender must admit the offence, usually by signing a declaration;
- (d) The suspected offender must understand the significance of a caution: if he/she commits a further offence, the Caution may influence our decision to take a prosecution.

If during the time the Caution is in force the offender pleads guilty to, or is found guilty of, committing another offence, the Caution may be cited in court, and this may influence the severity of the sentence that the court imposes.

11.18 Prosecutions

The Council will use discretion in deciding whether to initiate a prosecution. Where the circumstances justify it, prosecution without prior warning may take place. The Council will consider prosecution when: it is appropriate in the circumstances, as a way to draw attention to the need for compliance with the law, especially where there would be a normal expectation of a prosecution, or where, through the conviction of offenders, others may be deterred from offending; or there is the potential for considerable harm arising from the breach; or the gravity of the offence, taken together with the general record and approach of the offender justifies it.

12. Determining whether a Prosecution or Simple Caution is viable and appropriate

- 12.1 To ensure that fair and consistent decisions are made regarding prosecutions any decision to prosecute takes account of the Code for Crown Prosecutors. We apply the two 'tests' in the Code to determine whether a Prosecution or Caution is viable and appropriate.

1. The Evidential Test

We must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. A realistic prospect of conviction is an objective test that means that a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a separate test from the one that the criminal courts themselves must apply. A jury or Magistrates' Court should only convict if it is sure of a defendant's guilt.

2. The Public Interest Test

The following public interest criteria will normally be taken into account when deciding on the relevance of legal proceedings, although this list is not exhaustive:

- The prevalence of the type of offence
- The need for a suitable deterrent
- The risk of danger or injury to the public
- The failure to comply with a statutory notice or respond to advice about legal requirements
- The disregard of legal requirements for financial reward Significant financial loss, potential or actual, to a third party history of similar offences
- Persistent breaches of legislation
- Where fraud, gross negligence or guilty knowledge is a factor
- Where there are vulnerable victims involved.
- Minor breaches of a number of statutes some factors may increase the need to prosecute but others may suggest that another course of action would be better.

12.2 We will during the investigation, give the offender the opportunity to be Interviewed/make representations, with legal representation if they so wish, and give due regard to any statutory defences, explanations or mitigation offered by the offender.

12.3 A prosecution will normally ensue where the individual or organization meets one or more of the following criteria:

- Deliberately, negligently or persistently breached legal obligations, which were likely to cause material loss or harm to others;
- Deliberately or persistently ignored written warnings or formal notices;
- Endangered, to a serious degree, the health, safety or well-being of people, animals or the environment;
- Assaulted or obstructed an Officer in the course of their duties.

12.4 Post-conviction options will always be brought to the attention of the Court where appropriate, for example, post-conviction ASBO or exclusion from managing a food premises, particularly where the defendant has continued to carry out the offence after it was formally brought to their attention.

12.5 Where appropriate, decisions in respect of enforcement will involve consultation between or approval from Investigating Officer, Senior Managers within Public Protection, the Head of Service, the Head of Law and Standards and Council Solicitors. The final decision regarding whether to institute any legal proceedings rests with the Head of Law and Standards.

13 Notifying Alleged Offenders

- 13.1 During the progression of enforcement investigations/actions, business proprietors or individuals and witnesses will be kept informed of progress, unless this could impede an investigation or pose a safety risk to those concerned or the general public. Offenders will be notified if we are proposing to submit a case to the Council's lawyers for high level formal action, such as a prosecution.

14 Gathering Evidence

- 14.1 We, in common with many Regulatory bodies, are empowered to gather evidence by numerous means, such as powers of entry, examination of documents, computer records, equipment, goods etc. and also of their seizure. It also includes, where necessary to apply to a Magistrate for entry warrants and also for authorisation to carry covert surveillance or utilise covert intelligence sources (without the targeted individual/s being aware). In such cases, appropriate authorisation will be obtained in accordance with the Regulation of Investigatory Powers Act 2000 (RIPA).

15 Home /Primary Authority Notification and Liaison

- 15.1 If a business has developed links with a particular local authority (say through a Primary Authority partnership, a Lead/Home Authority scheme or an informal equivalent scheme) the Public Protection service will contact that authority before enforcement action is taken, unless immediate action is required because of imminent danger to health, safety or the environment.

- We will take into account any Primary Authority guidance/ inspection plans
- When responding to a specific complaint or intelligence, we will contact the Primary Authority at an early stage to ensure intelligence is shared, there is no duplication of effort and there is a consistent and proportionate approach to enforcement.
- We will have regard to the information the Primary Authority provides before taking formal enforcement action, i.e. issuing notices or considering prosecution against a participating organisation, except in the case of immediate danger.
- We will notify them of any formal action we then take and the outcome, and of any significant shortcomings identified in a participating business' agreed policies or procedures, which we believe ought to be challenged at a national level.

16 Liaison and working with other regulatory bodies and enforcement agencies

- 16.1 Where appropriate, enforcement activities within Public Protection will be coordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement. We will share intelligence where it is lawful to do so and mount joint operations where that would bring benefits. Outside agencies we work with include:

Gwent Police,
Environment Agency/ Natural Resources Wales
Health and Safety Executive
Food Standards Agency
Gambling Commission
Vehicle and Operator Services Agency
South Wales Fire and Rescue Service

HM Revenue and Customs
Dept of Work and Pensions
DEFRA
Office of Fair Trading
National Crime Agency
Welsh Water
Other Local Authorities

- 16.2 Where an enforcement matter affects a wide geographical area beyond Newport, or involves enforcement by one or more other local authorities or organisations, then where appropriate, all relevant authorities and organisations will be informed as soon as possible and all enforcement activity co-ordinated with them.

17 Data Protection

- 17.1 The Public Protection service needs to hold and process personal information so that it may properly perform its statutory functions. The Data Protection Act 1998 requires that we look after any personal information we hold, keep only what we need and dispose of it in a timely way when it is no longer required. We may share the personal information we hold with other enforcement agencies and have an Information Sharing Protocol. Before sharing information we consider such things as the use to which the information will be put, how the information will be transferred securely and the measures that are in place to keep that information secure once it has left our control.

18 Publicity

- 18.1 In certain circumstances it may be necessary to raise awareness and increase compliance levels by publicising unlawful trade practices or criminal activity. Where appropriate the results of individual court cases may also be publicised. The publicity that results from, say, a prosecution or the successful application to close a premises or condemn food, serves to deter others from committing similar offences. It also reassures the general public that Newport City Council takes a serious view of such detrimental behaviour.

19 Equality

- 19.1 Equality issues have been considered when drawing up this policy. It reflects the Council's values, and is in line with anti-discrimination legislation. It will be applied in accordance with the legal obligations of the Council irrespective of disability, gender, race, religion, age, sexual orientation and marital status or any other grounds which would constitute unfair or unreasonable discrimination.

20 Civil Claims

- 20.1 Any enforcement action is completely separate and distinct from civil claims made by individuals for compensation or other remedy. Enforcement is not undertaken in all circumstances where civil claims may be pursued, nor is it undertaken to assist such claims.

21 General Principles of Officer Conduct

- 21.1 In addition to the principles set out in this Policy, officers will always present themselves professionally and courteously. Officers will, as the circumstances allow, announce who they are and in what capacity they are acting to someone in authority in the business. However, there may be occasions when officers legitimately delay identifying themselves until a later stage of an investigation, particularly where they are engaged in authorised

covert operations. Officers will carry, and show their identity card or authorisation as appropriate.

22. Complaints Procedure

22.1 The Council has a formal complaints procedure in the event that businesses or residents wish to complain about the quality of service they have received. Where the complaint cannot be satisfactorily resolved, through the Council's Complaints Procedure, the complainant can usually complain further to the Local Government Ombudsman.

22 Review

23.1 This policy will be reviewed every five year. We welcome feedback on its operation. Further copies of this policy are available on the Council's website at www.newport.gov.uk.

Appendix one

The Regulators' Compliance Code

The Council has been required, by section 22 of the Legislative and Regulatory Reform Act 2006, to have regard to The Regulator's Code of Compliance.

In so far as it relates to the enforcement sanctions, this enforcement policy is compliant with the Code in that it aims to promote efficient and effective approaches to regulatory inspection and enforcement, thereby improving regulatory outcomes without imposing unnecessary burdens upon property owners and occupiers. The seven specific aspects of the code that the Council has had regard to in the development of this Enforcement policy and in the actions taken under the policy are as follows:

1. Economic Progress

The Council recognises the need to allow and encourage economic progress. Any enforcement action taken will take in to account the cost of compliance in relation to the benefits achieved. Particular regard will be given to the burden any intervention may place upon small businesses in this context.

2. Risk Assessments

The Authority will ensure that risk assessment precedes and informs all aspects of its approach to regulatory activity. Consideration will be given to the combined effect of the potential impact of non-compliance on regulatory outcomes and the likelihood of non-compliance. In evaluating the likelihood of non-compliance, consideration will be given to, amongst other things, the past history of the business, competence of the management and its willingness to comply.

3. Advice and Guidance

The Authority will provide general information, advice and guidance to make it easier for businesses to understand and meet their responsibilities. Any advice will distinguish between what is a statutory requirement and advice at improving minimum standards.

4. Inspections and other visits

Wherever possible, inspections will only take place in accordance with a risk assessment except where the business has requested a visit or where the Authority is acting upon relevant intelligence. Positive feedback will be given where appropriate to encourage good practice.

In order to minimise the burden on businesses, duplication of visits by the Authority and other agencies with enforcement responsibilities in relation to private sector housing will be kept to a minimum through joint or coordinated inspections wherever possible and data sharing arrangements.

5. Information Requirements

The Authority will endeavour to minimise the amount of data that they require businesses to produce. Where possible, data will be shared amongst other departments of the City Council and other enforcement agencies to avoid different regulators seeking the same information from the same businesses (Subject to Data Protection Act requirements).

6. Compliance and Enforcement Actions

Recognition will be given to businesses who comply with legal obligations and in return their properties will be subject to less frequent inspection and reporting requirements where risk assessment justifies this. Any enforcement action taken by the Authority will aim to achieve the following outcomes:

- Aim to change the behaviour of the offender;
- Aim to eliminate any financial gain or benefit from non-compliance;
- Aim to restore the harm caused by regulatory non-compliance, where appropriate and aim to deter future non-compliance.

Where enforcement action is taken, it will:

- 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 criminal conviction;
- Be proportionate to the nature of the offence and the harm caused;
- Be enforced in a transparent manner;
- Avoid perverse incentives that might influence the choice of sanctioning response.

Clear reasons will wherever possible be given to a person against whom enforcement action is being taken at the time the action is taken. These reasons will be confirmed in writing at the earliest opportunity and will include information about any relevant complaint or appeals procedures. Officers will apply these enforcement principles consistently and fairly in accordance with the appropriate legal requirements.

7. Accountability

The Authority will engage in effective consultation wherever possible.

Officers will provide an effective and courteous service to landlords and others against whom enforcement action may be taken. Any complaints regarding the behaviour of staff will be taken account of and advice will be given on how to make a complaint where requested. Comments and complaints as well as compliments about the service may also be made through the City Council's website.