
Executive Member for Economy and Strategic Planning

23 November 2021

Executive member for Housing and Safer Neighbourhoods

Report of the Director for Transport, Environment and Planning

Review of Formal Enforcement Action and Enforcement Policy

Summary

1. The purpose of this report is to enable the Executive Members to review the formal enforcement action undertaken in 2020-21 by:-
 - Public Protection (Environmental Health, Trading Standards and Licensing)
 - Housing Services
 - Community Safety
 - National Trading Standards Regional Investigation and National Trading Standards eCrime teams
2. The level of formal enforcement action by was severely restricted by the covid pandemic. Officers were deployed to deal with the pandemic and economic recovery, whilst the National Trading Standards teams' activities were limited by the closure of the courts and the subsequent backlog in the system. Crown Prosecution Service guidance issued during the coronavirus pandemic, also required the impact of the growing burden to the Criminal Justice System to be considered when assessing whether prosecution or an 'out of court disposal' was the most appropriate response.

Recommendations

3. That the Executive Members approve the report in line with option 1.

Reason: To provide ensure enforcement activity undertaken in 2020-21 has been reviewed in accordance with the council's enforcement policy and approve a review of the policy, with appropriate consultation with the public and businesses, in 2022.

Background

4. The City of York Council's Executive approved an updated enforcement policy for Public Protection, Housing Services and Community Safety on 28 September 2017. It also approved a separate, updated policy for the National Trading Standards Regional Investigation and National Trading Standards eCrime teams at the same time.
5. This report details the results of formal enforcement action taken in the period specified by the above teams. Each case is considered on its merits before legal proceedings or other types of formal enforcement action including a 'simple caution' or fixed penalty notices are initiated.
6. Annex A summarises the formal enforcement action, and other activities of note, undertaken by each team. The Public Protection review also includes a summary of the activity undertaken by the Covid Support Marshalls in the period.

Public Protection

7. Public Protection Officers undertake the majority of the council's environmental health, trading standards and licensing duties and as such are responsible for enforcing over a hundred Acts of Parliament and thousands of underpinning Regulations. Each year, officers carry out a detailed assessment of the issues most affecting residents, visitors and businesses within the city and identify a series of 'priorities' around which most activity will be focussed.
8. The priorities for 2020-21 were as follows:-
 - Ensuring businesses meet food safety requirements

There is a separate, statutory food plan which sets out the planned activity in this respect.
 - Ensuring local businesses are meeting their health and safety obligations

This primarily focussed on ensuring businesses were taking appropriate steps to prevent the spread of coronavirus.
 - Dealing with nuisance from noise, smoke, odour etc. emanating from commercial premises

The Community Safety team have responsibility for dealing with domestic noise including operating the night time noise nuisance service.

- Improving the local environment, particularly air quality and supporting new developments

Reviewing planning applications to ensure the environmental impacts of developments are appropriately considered.

- Protecting residents from unfair trading practices – particularly doorstep crime, mass marketing scams and second hand vehicles.
- Preventing the supply of dangerous products including illegal supplies of alcohol tobacco and potentially harmful foods.

This includes activity to prevent illegal sales of age restricted products such as alcohol, tobacco and knives (all minimum age 18) and involves advising businesses on their legal obligations and undertaking 'test purchases' with the help of young persons to ensure they are complying with their obligations. We respond to complaints and other sources of intelligence about problem premises and areas of anti-social behaviour, we also carry out some routine purchases to test wider compliance. In relation to any other age restricted products including spray paints (minimum age 16), fireworks (18) and solvents (18) we carry out activity in response to complaints and intelligence about particular problem businesses.

- Ensuring businesses are meeting their licensing obligations

This includes premises licensed to sell alcohol, taxis and various animal establishments such as kennels, catteries and pet shops amongst other things.

9. Please note, none of the above is of greater priority than any another. The activity shown in the Annex reflects that officers have been working in accordance with these priorities. Similar priorities remain for 2021-22, and our approach will largely remain unchanged. However, the 'health and safety' priority has been updated to 'Support the Coronavirus response including ensuring local businesses are covid secure and otherwise meeting health and safety obligations'. Whilst carrying out all of this work, officers will continue to share intelligence on serious organised crime and modern slavery with appropriate organisations.

Housing Standards and Adaptations

10. Officers enforce a range of laws aimed at improving poor housing conditions in private sector housing with a focus on the private rented sector (PRS). The approach by the service is both proactive and reactive.

11. Examples of proactive activity includes work to ensure that the national mandatory scheme for Licensing of Houses in Multiple Occupation (HMOs) is administered and enforced through an inspection regime and through making successful applications to the Government for funding.
12. Our reactive work responds to a range of complaints from tenants who are living in homes which are rented in poor condition and/ or poorly managed. The Council has a duty to take appropriate action when they find the most serious 'category 1' hazards¹. Local authorities also have legal duties and powers under other legislation
13. Since the beginning of the pandemic we have continued, in line with Government guidance, to review our activities. As a result we have ensured that:-
 - Tenants are kept safe and landlords are supported.
 - Work is carried out in line with local authorities' own health and safety policies and procedures.
 - Decisions are based on an assessment of risk
14. Effective enforcement relies on officers visiting rented properties whether it is to determine that licence conditions are set/met or to investigate in response to complaints. We have focussed on minimising the risks to tenants, and staff, by inspecting properties where there is
 - A duty to inspect because, for example, there is an imminent risk to a tenant's health due to a serious hazard.
 - A serious hazard was previously identified and may still exist.
 - That there officers had been made aware that a tenant is vulnerable and it is not clear if they are aware of the presence of hazardous conditions.

A serious hazard included the following:

- If there was a problem with the fabric of the building, for example the roof is leaking
- If a boiler was broken, leaving the tenant without heating or hot water
- If there was a plumbing issue, meaning the tenant does not have washing or toilet facilities
- If there was a security-critical problem, such as a broken window or external door;

¹ [Housing health and safety rating system \(HHSRS\) operating guidance: housing inspections and assessment of hazards - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/housing-health-and-safety-rating-system-hhsrs-operating-guidance)

(This list is not exhaustive and should not be treated as conclusive.)

15. Where it has not been practical to inspect a property due to tenants self-isolating or refusing to allow access, officers have been carrying out an assessment which could be made using information gathered via telephone and supported by photographs/videos.
16. We have continued to take the enforcement action where we have determined it has been necessary but have in line with the government guidance and our own enforcement policy worked with Landlords and Tenants to ensure that standards are met. We have taken pragmatic steps such as extending timescales to complete work where the landlord and/or tenant have advised that there are difficulties having regard to the risk.

Successful funding bids

17. During 20/21 the council successful received two strands of government funding
 - a) £100k from Department of Business, Energy and Industrial Strategy (BEIS)
 - b) £162k from the Ministry of Housing and Local Government (MHCLG)
18. The BEIS funding enable the council to participate in a national project to commence the enforcement of Minimum Energy Efficiency standards (MEES) in the PRS and to contribute to the development of a national toolkit to aid other councils in England and Wales in enforcing the MEES Regulations in the future. The outcome of the project was considered by the Executive Member for Housing and Safer Communities in July 2021.
19. The MHCLG enabled the council on behalf of the 21 councils in the region to successful
 - Develop a regionally recognised landlord qualification to support good landlords and improve the provision of decent, well-maintained homes for tenants. A total of 300 funded places for landlords and letting agents are being delivered by 11 regional councils through an online platform.
 - To train 128 housing enforcement officers from across the region, providing the investigative skills to tackle criminal landlords who rent out unsafe and substandard accommodation. By empowering officers, working together and sharing best practice we aim to crack down on more criminal landlords, getting them to improve or leave the market completely.

20. The priorities for 21/22 will be focussed on

- Considering whether there is a case to extend Additional Licensing is extended to other smaller HMOs. Between 16th April and 27th June 2021, the Council carried out a preliminary statutory consultation on a proposed additional HMO licensing scheme with key stakeholders. It was open to all residents in the city. The outcome of that consultation was that there was broad support for the proposals, in principle, but the authority decided that a second, more detailed, consultation was necessary allowing respondents to consider the more detailed proposals that have now been formulated, and offering those people likely to be affected by the proposals a further opportunity to make comments. A report on the outcome of the consultation will be consider by Executive in the new calendar year.
- To commence the 4th cycle of renewing the 5 year HMO Licensing Programme (first programme was in 2006, licences have been subsequently renewed in 2011, 2016).
- Following a second successful application to BEIS to work with regional colleagues to enforce MEES in private rented sector and to enable us to continue working jointly with other regional councils to share experience and best practice and to develop a Northern MEES Forum to facilitate this work and add value to future energy efficiency work in the Region. The benefits of having staff available to pro-actively seek properties requiring action cannot be emphasised enough.
- To ensure The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 are implemented
- To ensure that the owner or manager of a residential mobile home site is a fit and proper person in line with the Mobile Homes (Requirement for Manager of site to be Fit and Proper Person) (England) Regulations 2020. The purpose of the fit and proper person test is to improve the standards of park (mobile) home site management.

Community Safety

21. The Neighbourhood Enforcement Team forms part of the Community Safety Hub. Officers work across three geographic 'patches', chosen to align with North Yorkshire Police's Neighbourhood Policing boundaries to assist with joint working.

22. The remit of the team is to tackle enviro crime and low level antisocial behaviour (ASB) including: domestic noise nuisance, fly tipping, commercial and domestic waste duty of care offences, waste presentation offences, flyposting, dog fouling, dog on dog attacks, litter, unlawful encampments, enforcement of Public Space Protection Orders, nuisance behaviour associated with the city centre such as nuisance begging selling or busking and street urination. The team also provides a weekend noise patrol service 9pm – 3am each Friday and Saturday.
23. Enforcement action can range from the issuing a Fixed Penalty Notice through to prosecution, depending on the seriousness of the offence. Since 2014 and the advent of the Anti-social Behaviour, Crime and Policing Act, the team have been able to issue Community Protection Notices (CPNs), following a written warning, to those committing any form of persistent anti-social behaviour impacting on the quality of life of those around them.

National Trading Standards teams

24. The purpose of the Regional Investigations teams and the National eCrime enforcement team is to tackle wide-scale scams and complex cases of fraud perpetrated on consumers and/or businesses on a regional and national basis. The national e-crime team, as the name suggests, focuses on trading standards crimes on the internet. These teams investigate individual cases and practices referred to them by local authority trading standards services and other organisations via the National Trading Standards Tasking Group, they do not take on cases directly from members of the public.

Consultation

25. A survey of Talkabout panellists was undertaken between 21/11/16 and 18/12/16 and they were asked to rank the importance of different aspects of the service carried out by Public Protection, Housing Services and Community Safety. Under the enforcement policy, formal enforcement action is an option in all the areas they identified as important.
26. In a 2019 business survey of local retailers, food businesses and other enterprises in the city centre funded by BEIS, some 81% of 127 respondents said that the Council 'should take formal enforcement action against those who flout the law or ignore advice'.
27. Public Protection also routinely surveys its customers and the results over the last three years are as follows:-

Measures	20-21	19-20	18-19
% customers satisfied with the overall level of service provided	86.2% (2020)	86.3% (2019)	80.6% (2018)
% of businesses reporting contact with officers was helpful	96.7%	96.8%	96.8%
% of businesses reporting that they were treated fairly	98.4%	97.5%	98.1%

Options

28. Option 1 – note the action taken and ask officers to undertake a full review of the council’s enforcement policy in the coming year.
29. Option 2 – note the action taken with comments as necessary.

Analysis

30. Option one will ensure that formal enforcement action taken in 2020-21 has been reviewed as required under the existing policy. It will also provide the opportunity for a full review of the council’s enforcement policy, after public consultation with residents and businesses. And it will ensure it is fit for purpose particularly as we recover from the coronavirus pandemic.
31. Option two will enable the review with comments from Members as necessary.

Council Priorities

32. The legal actions support the Council’s priorities in respect of the following:
 - Good health and wellbeing
 - Well paid jobs and an inclusive economy
 - A greener and cleaner city
 - Safe communities and culture for all

Implications

33. **Financial:** There are no financial implications associated with this report.
34. **Human Resources:** There are no Human Resources implications associated with this report.
35. **Equalities:** There are no equalities implications associated with this report
36. **Legal:** Under the City of York Council's delegation scheme, legal proceedings may only be approved if they are in accordance with an approved enforcement policy.
37. **Crime and Disorder:** Formal enforcement action contributes to reducing anti-social behaviour and dishonest trading.
38. **Information Technology (IT):** There are no IT implications associated with this report.
39. **Other:** There are no other implications associated with this report.

Risk Management

40. Applying the Council's risk scoring criteria, operating with outdated enforcement policies poses a 'major risk' (potential action in a national court with the national media coverage) and a likelihood of 'possible' giving a score of **12** (yellow risk). Operating with up to date relevant policies, reduces the likelihood to 'unlikely' giving a score of **8** (green risk).

Contact Details

Author:

Matt Boxall
Head of Public Protection
Phone: 01904 551528

Chief Officer Responsible for the report:

James Gilchrist,
Director for Transport, Environment and Planning

**Report
Approved**

Date 15.11.2021

Specialist Officer Implications: None

Wards Affected:

All

Background Papers:

None

Annexes

Annex A: Summaries of Formal Enforcement Action 1st April 2020 to 31st March 2021 and other activity of interest

Annex B: Existing enforcement policy – Public Protection, Housing Services & Community Safety

Annex C: Enforcement policy - National Trading Standards Regional Investigation and National Trading Standards eCrime teams

Annex A: Formal Enforcement Action 1st April 2020 to 31st March 2021

Public Protection

(including Environmental Health, Trading Standards and Licensing)

Defendant	Legislation	Nature of Case	Penalty	Costs
North Yorkshire County Council	Food Safety Act 1990	Supply of food causing severe allergic reaction	£4,000 fine £2,000 compensation	£14,161.87

2 x licences to sell alcohol and other regulated activities under the Licensing Act 2003 revoked for failing to promote the 'public safety' objective (persistently breaching immigration legislation and licensing conditions).

3 x taxi/private hire drivers licences revoked – no longer considered 'fit and proper' persons to hold a licence

1 x private hire operator licence revoked – no longer considered a 'fit and proper person' to hold a licence (subject to appeal)

12 x fixed penalty tickets for breaches of coronavirus regulations, with a value of £10,500, including

- 1 x business opening past the 22:00 curfew in force at the time.
- 5 x business opening when regulations prohibited opening.
- 1 x business allowing customers to eat in premises when only takeaway service allowed.
- 1 x business failing to prevent customers joining other groups in the venue.
- 1 x business failing to keep customers seated whilst drinking and failing to serve a substantial meal with alcohol.
- 1 x business failing to provide table service to customers.
- 1 x business failing to provide adequate separation between tables.
- 1 x business allowing customers to eat and drink inside when external eating and drinking only allowed.

Other Public Protection activity of note

Activity	Target	2020-21	2019-20	2018-19	2017-18
% of all underage sales visits	Less than 10%	54.5% 11 visits 6 sales* (of which 5x alcohol, 1x fireworks)	42.9% 7 visits 3 sales (of which 2 x e-cigarette, 1 x knife)	0% 18 visits 0 sales	11.8% 17 visits 2 sales (of which 2 x knives)
Coronavirus activity	N/A	1,539 enquiries received	N/A	N/A	N/A

		<p>506 businesses given advice</p> <p>197 premises visited</p> <p>26 warning letters issues</p>			
Covid Support Marshall activity	None	<p>868 business interactions</p> <p>1,604 group interactions</p> <p>178 items of PPE (face coverings, sanitiser) given out</p> <p>1,476 face coverings picked up</p> <p>98.9% of people happy with interactions</p>	N/A	N/A	N/A

*Purchaser wearing a face covering.

Housing Services

Housing Standards and Adaptations – outcome of HMO inspection Programme

Inspections of HMOs licensed for the first time and inspected in 2020

Inspections	Category 1 Hazards	Category 2 Hazards
<p>170 inspections carried out</p> <p>84 properties found to be up standard no further action required</p>	<p>4 Category 1 hazards found relating to:</p> <p>1 Fall hazard resolved by Letter</p> <p>1 Fire Safety– resolved by serving a Hazard awareness Notice</p> <p>1 Crowding/Space resolved by serving a suspended Prohibition Order</p> <p>1 Lighting resolved by serving a Hazard Awareness Notices</p>	<p>103 Category 2 hazards found relating to:</p> <p>78 Fire Safety resolved 19 required Hazard Awareness Notices the others by letters/emails,</p> <p>8 Fall Hazards resolved by 3 Hazard Awareness Notices, the others by letter/emails</p> <p>12 Damp and Mould Hazards resolved by 2 Hazard Awareness Notices the others by letters/emails</p> <p>4 Scalds and hot surfaces Resolved by 3 Hazard Awareness Notices the remaining 1 by letter</p>
<p>Management Issues – 19 HMOs were found to be in breach of the management regulations</p>		

Inspections of HMOs licensed as part of the renewal Programme and inspected in 2020

Inspections	Category 1 Hazards	Category 2 Hazards
79 inspections carried out 48 properties found to be up standard no further action required	1 Category 1 hazard found relating to: Crowding/Space resolved by serving a suspended Prohibition Order	15 Category 2 hazards found relating to: 8 Fire Safety resolved 1 required Hazard Awareness Notices the others by letters/emails, 5 Fall Hazards all resolved others by letter/emails 2 Damp and Mould Hazards resolved by 1 Hazard Awareness Notices the other by letters/emails
Management Issues – 12 HMOs were found to be in breach of the management regulations		

Community Safety

Neighbourhood Enforcement Team

Defendant	Legislation	Nature of case	Penalty	Costs
Nguyen, Ebor Nails Ltd	Environmental Protection Act 1990 S34	Commercial waste	Fine £700 surcharge £70	£400
Ebor Nails Ltd	Environmental Protection Act 1990 S34	Commercial waste	Fine £350 Surcharge £35	£450
Luke Daniel Jamieson	Scrap Metal Dealers Act 2013	Trading without Waste Carriers Licence	Fine £400 Surcharge £40	£461.79
Abdul Jolil Zeera Spice	Environmental Protection Act 1990 S34	Commercial waste disposal	Fine £416 Surcharge £42	£835.34
Mr Hill	Local byelaw prohibiting	Street Urination	Fine £220 surcharge £34	£314

	defecation/urination in public places - made 6 th April 1998			
Kevin Pipes	Environmental Protection Act 1990 S34	Household duty of care	Conditional discharge for 6 months	£300

5 x simple cautions under the Environmental Protection Act 1990 for commercial waste offences

2 x simple cautions under the Environmental Protection Act for fly-tipping

1 x simple cautions under the Environmental Protection Act 1990 for breach of a noise abatement notice

9 x simple cautions under a local by-law for urinating in a public place

1 x simple cautions under the Anti-Social Behaviour Crime and Policing Act 2014 for failure to control dogs

2 x simple cautions under the Microchipping of Dogs England Regulations 2015 for failure to microchip dogs

Other Enforcement Activity

COMMUNITY PROTECTION WARNING/NOTICES (for various anti-social behaviour offences)

108 x warnings

3 x Notices

COMMERCIAL WASTE INAPPROPRIATELY PRESENTED

1 x Notices

DANGEROUS DOGS

8 x written undertakings

DOG FOULING

4 x Fixed penalty tickets (FPN) for failing to clean up

DOG NOT MICRO-CHIPPED

5 x dog micro chipping notices

DOMESTIC WASTE INAPPROPRIATELY PRESENTED

328 x Notices

DUTY OF CARE (householder)

6 x Fixed penalty ticket

COMMERCIAL WASTE DUTY OF CARE/UNLAWFUL WASTE CARRIAGE

12 x Notices requiring production of waste information/transfer notes

8 x Notices requiring production of waste carrier's licence

7 x FPN's for failure to produce waste information/transfer notes

2 x FPN's for failure to produce waste carrier's licence.

UNLAWFUL SCRAP METAL DEALERS

1 x Notices

FLY-GRAZING

0 x notices requiring horses to be removed.
0 x horses removed by bailiff

FLY-POSTING

1 x notices requiring removal of flyposting
1 x FPNs issued

FLY-TIPPING

17 x FPN's (small-scale fly-tipping)

LITTER

0 x Litter FPN's issued

NOISE

689 x Warning letters sent
23 x Noise abatement notices

STREET URINATION

All activity resulted in prosecutions/cautions

UNAUTHORISED ENCAMPMENTS

2 x notices (tents)
10 x Directions to leave land
2 x Court orders obtained
0 x Incidents requiring instruction of bailiffs

PESTS

9 x notices (requiring steps to be taken to ensure pests are eradicated)

PUBLIC SPACE PROTECTION ORDER (PSPO)

0 x FPNs for breach of PSPO

VEHICLES FOR SALE ON PUBLIC HIGHWAY

1 x FPN

Safer Neighbourhoods team

1 x suspended possession order – 12 months
1 x suspended possession order – 18 months

National Trading Standards Regional Investigation and eCrime Team

Defendant	Legislation	Nature of Case	Penalty	Costs
Kewal BANGA	Proceeds of Crime Act 2002	Post-conviction confiscation proceedings.	Confiscation award of £150,000	
Paul PLUMMER	Consumer Protection from Unfair Trading Regulations 2008	Overcharging and misleading claims by 'Plumbing Group Limited online plumbing services	6 months imprisonment (suspended for 12 months) and 80 hours unpaid work. £5,976 compensation to victims	
Katie MARFLEET	Consumer Protection from Unfair Trading Regulations 2008	Overcharging and misleading claims by 'Plumbing Group Limited online plumbing services	6 months imprisonment (suspended for 12 months) and 80 hours unpaid work. Compensation included Paul Plummer total	
Beverley MIDGLEY- McDONALD	Consumer Protection from Unfair Trading Regulations 2008	Mis-selling of driving lessons whilst operating the 'Drive Dynamics' online driving school	46 weeks imprisonment (suspended for 24 months) and 200 hours unpaid work £24,974.09 compensation to victims	£50,000
Alistair MIDGLEY- McDONALD	Consumer Protection from Unfair Trading Regulations 2008	Mis-selling of driving lessons whilst operating the 'Drive Dynamics' online driving school	46 weeks imprisonment (suspended for 24 months) and 200 hours unpaid work Compensation and costs included in Beverley Midgley-McDonald totals	

Annex B: Existing enforcement policy – Public Protection, Housing Services & Community Safety



Public Protection (Environmental Health, Trading Standards, Licensing), Housing and Community Safety Services

Enforcement Policy

This document is the enforcement policy for City of York Council's Public Protection (Environmental Health, Trading Standards, Licensing), Housing and Community Safety services. It sets out the key principles under which officers will seek to achieve compliance with the legislation enforced by these services.

In carrying out their duties officers will adhere to the principles of good enforcement set out in the Regulators' Code (2014) and other relevant codes of practice including those concerned with the investigation of offences or the prosecution of offenders.

All enforcement activity undertaken under this policy will have regard to the Human Rights Act 1998 and the European Convention of the Protection of Human Rights and Fundamental Freedoms.

Please note, whilst this policy acknowledges that officers will adhere to principles of good practice in their enforcement activity, it does not prescribe the way investigations will be conducted or the authorisation of surveillance activity. Furthermore, it does not include enforcement action by Planning, and Transport (including Parking services) which operate under their own guidance.

1.0 Introduction

The main purpose of the Public Protection, Housing and Community Safety Services are to maintain a fair and safe trading environment for consumers and businesses, to help reduce the actual and perceived impact of violent, aggressive and nuisance behaviour on people in York and to improve and protect public health and improve the environment. We recognise that effective and well-targeted regulation is essential in achieving this.

We will ensure legal compliance by:

- Helping and encouraging businesses and individuals to understand and comply with the law.
- Responding proportionately to breaches of the law.

We want to achieve the following outcomes:

- Support economic growth, especially in small businesses, by ensuring a fair, responsible and competitive trading environment
- Protect the environment for future generations including tackling the threats and impacts of climate change
- Improve quality of life and wellbeing by ensuring clean and safe neighbourhoods
- Help people to live healthier lives by preventing ill health and harm, and promoting public health
- Ensure a safe, healthy and sustainable food chain for the benefits of consumers and the rural economy.

2.0 Economic Progress

We will carry out our activities in a way that supports those we regulate comply and grow, remembering that it is important to maintain a level playing field for all businesses to thrive.

We will consider the impact that our regulatory activities may have on businesses, including consideration of costs, effectiveness and perceptions of fairness. We will only adopt a particular approach if the benefits justify the costs and in doing so will endeavour to try to keep any perceived burdens to a minimum.

References to costs and benefits include economic, social and environmental costs and benefits.

3.0 Risk Assessment

We will allocate our resources where they will be most effective by assessing the risks due to non-compliance with the law. The risk factors include:

- the potential impact on residents, consumers, business and the environment in failing to meet legal requirements.

- the likelihood of non-compliance taking into account matters such as:
 - the past history,
 - the systems a business has in place,
 - management competence of the business
 - and willingness to comply.

4.0 Advice and Guidance

We recognise that prevention is better than cure and will actively work with business and residents to advise on and assist with, compliance with the law. In doing this we will ensure that:

Legal requirements are made available and communicated promptly upon request.

The information we provide will be in clear, concise and accessible language. Advice will be confirmed in writing where necessary.

We will clearly distinguish between legal requirements and guidance aimed at improvements above minimum standards.

We will signpost towards additional business support services where appropriate.

Please note: there may be a fee payable for our advice. Where this is the case you will be informed and provided with details of the charge or an estimate if the exact fee is not known.

5.0 Inspections and Other Visits

All inspections and other visits to businesses will be undertaken after consideration of the risk the business poses if it fails to comply with the law (see paragraph 3.0 above), where the business has requested advice or where intelligence/information suggests that an inspection or visit is appropriate.

- Where we carry out inspections we will give feedback to the business on what the officer has found; this will include positive feedback to encourage and reinforce good practice.
- Where practicable we will co-ordinate inspections with other regulators to minimise the burden on businesses.
- Random inspection will be undertaken where government guidelines/policies or a condition of a licence requires us to do so. A small amount

of random inspections may also be undertaken to test our risk assessments or the effectiveness of any action we have taken.

6.0 Information Requirements

We will only ask businesses for information that is necessary after considering the cost and benefit to obtaining the information. Where possible we will share this information with our partners (taking account of data protection) to prevent the need for providing the information more than once.

7.0 Compliance and Enforcement Actions

We recognise that most businesses and individuals wish to comply with the law, however firm action will be taken against those who break or flout the law or act irresponsibly.

We will carry out all of our enforcement duties, including taking formal enforcement action (described below), in a fair, equitable and consistent manner. Whilst officers exercise judgement in individual cases, we will have arrangements in place to promote consistency including liaison with other agencies and authorities.

Formal enforcement action will only be considered and taken in the first instance in cases involving unfair practices against individuals or businesses, illegal sales of age restricted products, supply of counterfeit goods and other intellectual property crime, occupational health and safety, public safety, risk to public health (including food safety), health and safety in the home, statutory nuisances, animal health and welfare, damage to the environment, dog fouling, trading standards offences committed by doorstep sellers, breaches of licence conditions or operating without a licence when one is required and any other case in which a head of service considers formal enforcement action is necessary.

Formal enforcement action will also be considered and may be taken where advice has been ignored.

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

- Aiming to change the behaviour of the offender
- Aiming to eliminate any financial gain or benefit for non-compliance

- Being responsive and considering what is appropriate for the particular offender and issue involved, including punishment and the public stigma that may be associated with criminal convictions
- Being proportionate to the nature of the offence and harm caused
- Aiming to restore the harm caused by non-compliance
- Aiming to deter future non-compliance.

When formal enforcement action is taken:

- We will take all reasonable steps to discuss the circumstances of the case, unless immediate action is required e.g. to prevent the destruction loss of evidence or there is an imminent risk to the environment, public health or health and safety. This discussion may be in the form of an interview under caution if a prosecution is being considered. We will provide the opportunity for further dialogue about the proportionality or consistency of our action upon request.
- Where immediate formal enforcement action is taken, which will usually be the service of a written notice, reasons for such action will be given at the time (if possible) and confirmed in writing within 10 working days.
- Where there are rights of appeal against formal enforcement action, notification of the appeal mechanism will be clearly set out in writing at the time the action is taken.
- Clear reasons will be given for any formal enforcement action taken, and confirmed in writing.

For the purpose of this policy 'formal enforcement action' includes serving a legal notice e.g. an improvement, suspension, prohibition, fixed penalty or abatement notice and civil penalty notices to letting agents and landlords, the seizure of goods, suspension or revocation of a licence, a formal 'simple' caution, prosecution or other court action.

If the formal enforcement action being considered is a prosecution we will also consider a number of additional factors in line with the Code for Crown Prosecutors and any other nationally recognised guidance such as the Enforcement Management Model published by the Health and Safety Executive. These factors, not an exhaustive list, may include the following:

- 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 co-operate with officers
- Whether it is in the public interest to prosecute
- The 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.

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

When formal enforcement action is being considered for an acquisitive crime i.e. the acquiring of assets (including money) from offences such as fraud or intellectual property crime, we will undertake a financial investigation into the circumstances of the case. In serious cases this may result in the seizure of a suspect's cash and legal proceedings for money laundering and confiscation of assets under the provisions of the Proceeds of Crime Act 2002.

8.0 Accountability

We will be accountable for the efficiency and effectiveness of our activities:

- We shall provide businesses and individuals with effective consultation and opportunities for feedback on our service.
- Officers will be courteous, fair and efficient at all times, and will identify themselves by name and, where appropriate, identity card.
- Any complaints about the way you have been treated will follow the City of York Council's complaints procedure 'Have Your Say'. A copy of the complaints procedure can be obtained from our website at www.york.gov.uk

9.0 Application of our enforcement policy

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

Any departure from this policy must be exceptional, capable of justification and be fully considered by the head of service before a final decision is taken. This proviso shall not apply where a risk of injury or to health is likely to occur due to a delay in any decision being made. In cases of emergency or where exceptional circumstances prevail, the chief executive may suspend any part of this policy where it is necessary to achieve the 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.

10.0 Review

There will be an annual review of the action taken under this policy. This document will also be subject to review as and when required. Improvements will be made if there are any changes in legislation or in local needs.

If you have any comments please contact the Head of Public Protection, Head of Housing or Head of Community Safety by calling 01904 551550 or by writing to City of York Council, West Offices, Station Rise, York, YO1 6GA or email to ycc@york.gov.uk

This information can be provided in your own language.

我們也用您們的語言提供這個信息 (Cantonese)

এই তথ্য আপনার নিজের ভাষায় দেয়া যেতে পারে। (Bengali)

Ta informacja może być dostarczona w twoim własnym języku. (Polish)

Bu bilgiyi kendi dilinizde almanız mümkündür. (Turkish)

یہ معلومات آپ کی اپنی زبان (بولی) میں بھی مہیا کی جاسکتی ہیں۔ (Urdu)

 **(01904) 551550**

Annex C: Enforcement policy - National Trading Standards Regional Investigation and National Trading Standards eCrime teams



National Trading Standards Yorkshire and the Humber Regional Investigations Team and National Trading Standards eCrime Team Enforcement Policy

This document is the enforcement policy for the National Trading Standards Yorkshire and the Humber Regional Investigations Team and National Trading Standards eCrime Team (NTS RIT and eCrime) hosted by City of York Council on behalf of the National Trading Standards Board (NTSB)

The purpose of NTS RIT and eCrime is to tackle the scams and complex cases of fraud perpetrated on a regional and national basis in an effective way that is not readily achievable by individual local authorities. NTS RIT and eCrime investigate individual cases and practices referred to them by local authority trading standards services and through the tasking arrangements of NTSB.

The purpose of NTS RIT and eCrime is not to provide advice, information or carry out inspections of regulated businesses. NTS RIT and eCrime are charged with taking on major investigations, and in appropriate cases, bringing them to a just conclusion through the courts using both criminal and civil sanctions.

NTS RIT and eCrime will have regard to The Code for Crown Prosecutors issued by the Director of Public Prosecutions, the Regulators' Code and other relevant codes including those concerned with the investigation of offences.

NTS RIT and eCrime will take appropriate formal enforcement action in cases concerning fraud, significant unlawful consumer detriment, unlawful exploitation of vulnerable consumers groups, intellectual property crime and any other matter that the head of regional investigations considers necessary within the scope of the purpose of NTS RIT and eCrime. For the purposes of this policy formal enforcement action includes prosecution, civil action, confiscation proceedings or the issue of a simple caution.

Formal enforcement action under this policy will be in the public interest and will:

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

All enforcement activity undertaken under this policy will have regard to the Human Rights Act 1998 and Equalities Act 2010.