



# Kirklees Guide to Enforcement

## Foreword

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We would like Kirklees to be a safe and cohesive place and for people to be protected from harm and to protect the rights of the public. We want everyone to be proud of the communities in which they live, feel happy, be safe and get on well. As a Council we have a responsibility to enforce a range of legislation. Our Kirklees Enforcement Policy explains how we achieve this.

The policy is intended to protect the public, the environment, consumers and workers through:

- providing clear advice and guidance to help businesses and residents meet their responsibilities
- enforcing the law in a fair, equitable and consistent manner
- assisting broadly compliant businesses to meet their legal obligations
- taking firm action where it is necessary and appropriate to do so
- trained and professional officers who monitor compliance

We will exercise our regulatory activities in a way which is:

- risk based
- proportionate
- accountable
- consistent
- transparent
- targeted

The policy applies to all services with enforcement duties although it should be noted that some services have specific legislative guidance and regulations, such as planning which set out the compliance and enforcement requirements in these services.

Promoting compliance and tackling non-compliant behaviour by individuals and businesses contributes to creating places where people want to live, work and socialise, and supports our efforts to deliver best value services. The policy will include restorative practice and justice (where available) and the aim is to encourage the development of the use of education and behaviour change where appropriate.

Working together with people and communities to find shared solutions and make the most of opportunities is central to the way we work. We will put people at the heart of the decisions affecting them and develop solutions together, rather than doing things to or for people, to engage people and build relationships based on trust to create positive change.

In certain circumstances the Council will seek to raise awareness and increase compliance levels by publicising unlawful trade practices or criminal activity. Where appropriate the results of specific court cases may also be published.

This document sets out Kirklees Council’s general approach to enforcement in the district which supports the Council’s priorities as set out in its Corporate Plan 2018/2020 <http://www.kirklees.gov.uk/beta/delivering-services/pdf/corporate-plan-201820.pdf>:

- Children have the best start in life
- Clean and Green
- Safe and Cohesive
- Sustainable economy
- Aspire and Achieve
- Better health and live well
- Efficient and effective

This policy will apply to the following service areas:

|                               |                          |                      |
|-------------------------------|--------------------------|----------------------|
| <b>Environmental Health</b>   | <b>Food Safety</b>       | <b>Licensing</b>     |
| <b>Private Sector Housing</b> | <b>Dog Control</b>       | <b>Highways</b>      |
| <b>Greenspace Action</b>      | <b>Street scene</b>      | <b>Animal Health</b> |
| <b>Waste Management</b>       | <b>Health and Safety</b> | <b>Pest Control</b>  |
| <b>Planning</b>               | <b>Building Control</b>  |                      |

## 1 Introduction

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- The Council is committed to services which are courteous and helpful and will work with individuals and businesses, where possible, to help them comply with the law prior to any enforcement action.
- The Council carries out a wide range of regulatory roles in meeting its many statutory duties of protecting the public, individuals and the environment. These duties are mainly met by carrying out programmed inspections of premises, responding to complaints, issuing licenses and offering advice. This policy outlines the approach we take when considering enforcement action and is an overarching policy that applies to all the Council's Services with enforcement duties, although it should be noted that some services have specific Legislative Guidance and Regulations which set out the enforcement requirements in these services.
- The appropriate use of the full range of enforcement powers, including criminal prosecution and civil injunctions, is important to Kirklees Council, both to secure compliance with the law and to ensure that those who have duties under it may be held to account for failures to safeguard health, safety and welfare or breach of regulations enforced by the Council. Enforcement includes any criminal or civil action taken by the Council aimed at ensuring that individuals or businesses comply with the law.
- In deciding on the most appropriate course of action officers should have regard to the principles set out in this policy and the need to maintain a balance between enforcement and other activities, including inspection, advice and education.
- The Council recognises that fair and effective enforcement is essential to protect the economic interests and health and safety of the public, businesses and the environment.
- The Council, nevertheless, acknowledges the need for firm action against those who flout the law and put consumers and others at risk. The Council expects all officers taking enforcement decisions to take this Policy as a guide when making their decision. Every case must be decided on its own individual facts. Officers must ensure that, if they depart from the Policy when they make their decision, they can provide reasons for doing so.
- It may be supplemented in some cases, by more specific and detailed service policies with their related procedures to ensure compliance for individual Services.

- The objective of this policy is for resilience to be built in across all services in relation to future enforcement. All enforcement officers that serve the Council will work within their own service and with across services where necessary to provide a clear, transparent but firm enforcement service to the communities of Kirklees.
- Officers will work across services to provide resource to areas of enforcement in line with the Corporate Objectives set out in the Corporate Plan (link above) and the co-ordinated enforcement framework.

## 2 Aims and Objectives

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- One of the functions of the Council is to act as a regulator and an enforcement agency for a large range of legal duties and powers applied by Acts of Parliament and the Regulations and Orders made under them (including various byelaws).
- The purpose of adopting a Corporate Enforcement Policy is to create one overarching policy encompassing the key factors and principles common to all aspects of enforcement undertaken by services of the Council set out on page 4.
- The policy is intended to create a framework to ensure that there is a fair and consistent approach to the way enforcement activity is carried out.
- A clear enforcement policy is required to ensure that all those who live in, work in and visit Kirklees are able to have a clear understanding of what they can expect from the Council when we deal with an enforcement matter.
- This policy sets out standards that will be applied across the Council in the relevant services when acting in its role as regulator and enforcement agency and what residents, businesses, consumers and workers can expect from Kirklees Council.

## 3 Non-Compliance

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### **Approach to dealing with non-compliance**

- An open, fair and proportionate approach will be taken in dealing with breaches of legislation which are regulated and enforced by the Council. Raising awareness and promoting good practice in regulated areas is the first step in preventing breaches, and officers of the Council will signpost to guidance on aspects of the law where requested to do so.
- Best efforts will be used to resolve any issues where the law may have been broken without taking formal action, or referring the matter to the courts when

the circumstances indicate that a minor offence may have been committed and the Council is confident that appropriate corrective action will be taken. However, there may be occasions when the breach is considered to be serious and/or where informal action is not appropriate. In such cases immediate enforcement action may be taken without prior notice and as noted above some services have specific Legislative Guidance and Regulations which set out the enforcement requirements in these services.

- Advice regarding the non-compliance, the actions required and decisions taken at the time of our intervention, along with the reasons for these will be clearly explained. An opportunity to discuss the Council's course of action will be provided to ensure actions are proportionate and consistent. As stated in the previous paragraph, where immediate enforcement action is required, the opportunity for discussion may not be given where there is a serious breach or public health or safety is or has been at risk.
- Officers investigate potential breaches of legislation and they are responsible for managing investigations and making decisions on enforcement action. As part of this process, they may consult with colleagues and managers in determining the best and most appropriate course of action. Officers have the power to use a variety of legislation in the course of their duties, and these have been delegated to them by Senior Officers.
- The Council's Scheme of Delegation can be found in the Council's Constitution document online via the following link:  
<http://democracy.kirklees.gov.uk/ecCatDisplay.aspx?sch=doc&cat=13275> In relation to prosecutions, where relevant, officers' cases are reviewed by a manager in line with this enforcement policy before submission to the Council's Legal Services department.
- In some instances, the Council may have shared responsibilities or a complementary role with another enforcement agency or a number of services may be relevant powers. In these circumstances, officers will liaise early (where possible) with that other agency and services to ensure effective co-ordination, to avoid inconsistencies and to ensure that any proceedings taken are proportionate and appropriate without delay. Decisions in those cases will be taken in accordance with the Co-ordinated Enforcement Framework.
- The Council will be fair, objective and consistent in its approach to enforcement by following the criteria and guidance set down in relevant legislation and codes of practice.
- The Council may publicise information about enforcement action that is taken in line with relevant Government guidance on publishing sentencing outcomes. This is usually once an investigation has been brought to a

conclusion via a successful prosecution in Court. Any news releases of this nature are normally sent electronically by our Press Office to newspapers and broadcast media to use in their news bulletins. Such information may also be publicised on the Council's website and via other social media.

## 4 Standards

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- The Council will always endeavour to meet the highest standards of service in undertaking its regulatory and enforcement function, The following specific level of service standards will be applied:-
- Matters will be dealt with promptly and complaints will receiving a response or acknowledgement;
- Officers will announce themselves on arrival at premises and show ID except where it would impede the purpose of the visit or where they are already well known to the person;
- Officers will provide their name and contact details;
- Complaints will normally only be dealt with if the name and address of the complainant is provided. Any such identification will be treated with confidence, but may need to be disclosed (with prior consent) should formal legal proceedings be taken;
- Anonymous complaints may be dealt with if they relate to protection of children and/or vulnerable groups or matters relating to serious health, safety or environmental issues etc, or where there is no need in the legislation for there to be a complainant. Depending on the circumstances, less priority may be given to the complaint.
- Officers will work with businesses and individuals to discuss general issues or matters of specific enforcement with the aim of assisting or guiding compliance;
- Officers will be professional, courteous and helpful and wherever possible, will seek to work with individuals and businesses towards compliance;
- Officers will endeavour to provide information, advice, guidance in a clear, accessible and concise range of formats, including guidance in writing, online, digital, face to face and telephone advice. Individual advice will be documented for confirmation if requested;

- Where non-compliance may result in further enforcement action or prosecution, we will where appropriate discuss the matter further with the individual or business concerned, unless to do so would impede the investigation, or where immediate action is required.

## 5 Conduct of investigations

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- Enforcement action may result in issuing of warnings or giving of advice, service of legal notices, issuing of fixed penalty notices and either civil or criminal proceedings being instituted by the Council. The process that will be followed by officers in the investigation of alleged breaches of the law will depend on which branch of law the investigation is being conducted under. As the enforcing authority in any proceedings it instigates, the burden of proof falls to the Council. Investigations will be carried out in compliance with the following legislation and in accordance with any associated guidance or codes of practice, in so far as they relate to Kirklees Council:
  - the Criminal Procedure and Investigations Act 1996;
  - the Regulation of Investigatory Powers Act 2000;
  - the Criminal Justice and Police Act 2001;
  - the Human Rights Act 1998.
- These Acts and associated guidance control how evidence is collected and used and give a range of protections to citizens and potential defendants.
- The authorised officers of the Council will also comply with the requirements of the particular legislation under which they are acting, and with any associated guidance or codes of practice.

## 6 Powers of Authorised Officers

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- There are numerous pieces of legislation which the Council as a local authority either has a duty to enforce or adopts or chooses to enforce. The powers available to officers under these different pieces of legislation vary considerably and it is not the purpose of this document to provide an exhaustive list of those powers.
- If officers come across situations where they believe they are being obstructed in carrying out their duties they will always explain the provisions of the relevant legislation in order to resolve the issue.
- In some cases powers of seizure are used for safety and evidence gathering purposes. Where articles are removed for any of these purposes a receipt or notice will be given at the time of the inspection or as soon as is practicably possible afterwards.

- Officers do not have the power of arrest; however joint working is undertaken with the Police and other agencies. Instances may arise where the Police or other agencies consider that an arrest should be made in connection with an authorised officer's investigation.
- Officers will carry out formal interviews in line with this policy and the Police and Criminal Evidence Act 1984.
- In respect of legislation in England that contains criminal offences, there are strict time limits beyond which the law prevents proceedings being instituted. These time limits vary and are stated in the relevant legislation.
- In relevant cases where either criminal or civil proceedings are intended to be brought by the Council a file will be prepared containing all relevant evidence that has been gathered during an investigation. This report will be reviewed by a manager before submission to Legal Services.
- Officers carrying out investigations will keep alleged offenders and witnesses informed about the progress of any investigation as far as their involvement in the process is concerned.

## 7 Decisions on Enforcement Action

### Actions available as set out in legislation

There are a range of actions that are available to the Council as set out in the different legislation the Council enforces. Examples of the main types of actions which may be considered are set out below.

| ACTION AVAILABLE                                      | EXPLANATION   |
|---|---|
| <p><b>Compliance Advice, Guidance and Support</b></p> | <p>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.</p> <p>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.</p> <p>Where more formal enforcement action, such as a simple caution or prosecution, is taken, the Council</p> |



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|                                  | recognises that there is likely to be an ongoing need for compliance advice and support, to prevent further breaches.  |
| <b>Voluntary Undertakings</b>    | 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.  |
| <b>Restorative Justice</b>       | Where appropriate and available, the Council will consider the use of Restorative Justice. Restorative Justice is a process through which parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future.   |
| <b>Statutory (Legal) Notices</b> | <p>The Council has powers and duties to issue statutory notices in respect of many breaches. These include: 'Abatement Notices', 'Stop Notices', 'Prohibition Notices/Orders', 'Emergency Prohibition Notices/Orders', 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.</p> <p>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.</p> <p>Some notices issued in respect of premises may be affixed to the premises and/or registered as local land charges.</p> |
| <b>Financial penalties</b>       | <p>The Council has powers to issue fixed penalty notices or penalty charge notices in respect of some breaches. A fixed penalty notice or penalty charge notice is not a criminal fine, and does not appear on an individual's criminal record. If a fixed penalty/penalty charge notice is not paid, the Council may commence criminal proceedings in respect of the breach or take civil enforcement action to recover the penalty charge subject to the provisions of the relevant legislation.</p> <p>If a fixed penalty/ penalty charge notice is paid in respect of a breach the Council will not take any further enforcement action in respect of that breach. Payment of a fixed penalty does not provide</p>   |

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|   | <p>immunity from prosecution in respect of similar or recurrent breaches.</p> <p>The Council is only able to issue fixed penalty notices 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.</p>   |
| <p><b>Injunctive Actions, Enforcement Orders etc.</b></p> | <p>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.</p> <p>Failure to comply with a court order constitutes contempt of court, a serious offence which may lead to imprisonment.</p> <p>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.</p>   |
| <p><b>Simple Caution</b></p>                              | <p>The Council has the power to issue simple cautions (previously known as 'formal cautions') as an alternative to prosecution for some less serious offences, where a person admits an offence and consents to the simple caution. Where a simple caution is offered and declined, the Council is likely to consider prosecution.</p> <p>A simple caution will appear on the offender's criminal record. It is likely to influence how the Council and others deal with any similar breaches in the future, and may be cited in court if the offender is subsequently prosecuted for a similar offence. If a simple caution is issued to an individual (rather than a corporation) it may have consequences if that individual seeks certain types of employment.</p> <p>Simple cautions will be used in accordance with the Simple Caution for Adult Offender guidance (MOJ Guidance) and other relevant guidance.</p> |
| <p><b>Prosecution</b></p>                                 | <p>The Council may prosecute in respect of serious or recurrent breaches, or where other enforcement actions, such as voluntary undertakings or statutory notices have failed to secure compliance. When deciding whether to prosecute the Council has regard</p>  |

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|   | <p>to the provisions of The Code for Crown Prosecutors as issued by the Director of Public Prosecutions.</p> <p>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).</p> <p>If the evidential test is satisfied a prosecution will usually take place unless there are public interest factors tending against prosecution which outweigh those tending in favour. The more serious the offence or the offender's record of breaches/ criminal behaviour, the more likely it is that prosecution will be required in the public interest.</p> <p>Assessing the public interest is not merely a matter of adding up the number of factors on each side and seeing which has the greater number. The public interest must be decided on the merits of each individual case and making an overall assessment. It is quite possible that one factor alone may outweigh a number of other factors which tend in the opposite direction.</p> <p>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.</p> |
| <p><b>Proceeds of Crime</b></p>                         | <p>Where appropriate the Council will consider the use of the Proceeds of Crime Act 2002. The Proceeds of Crime Act allows Local Authorities to recover assets that have been accrued through criminal activity.</p>  |
| <p><b>Refusal/Suspension/Revocation of Licences</b></p> | <p>The Council issues a number of different Licences, Consents, Registrations and permits. They are applied for by submission of an application, the form and content of which is sometimes specified in law. Applications are generally granted for a limited defined period and will be required to be renewed annually unless otherwise specified.</p> <p>The Council may be permitted to ask supplementary questions on an application form in order to assist it in reaching a decision on whether the applicant is a fit and proper person to hold such a Licence.</p> <p>In some cases applications are subject to either a public or interested party consultation process and any application that attracts adverse comment or objection or does not meet Council policy</p>   |

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|                              | <p>requirements will be referred to an internal committee to determine the application.</p> <p>Most Licences and other permissions have conditions attached which can be standard conditions or specific conditions or a combination of both. These conditions form part of the Licence and lay down requirements that a business or individual must have regard to when trading. Breach of a condition may be a civil or criminal matter.</p> <p>When considering applications information supplied with the application together with any previous enforcement action and compliance record can be taken into account when reaching a decision.</p> |
| <b>Works in Default</b>      | <p>A number of statutory provisions provide the Council with the power to undertake works in default, these powers should be used in line with the proportionality principals of other types of enforcement action above. However, works in default can be a powerful tool to remedy situations where the public is put at risk, to protect public rights or the environment, where the person responsible either refuses or is unable to do so in a time frame which is reasonable. Any expenses the Council incurs doing works in default should be recovered from the person(s) responsible where appropriate.</p>                                 |
| <b>Seizure and detention</b> | <p>The seizure and detention powers of the Council vary depending on the statute which confers the power. Seizure and detention should only be used where there is a need to do so, such as removing a public health risk or where other alternative remedial action has been tried and failed. It is often the case that any seizure of property would need to be ratified by a supervising Court depending on the statute concerned.</p>  |

## 8 Explanation of how Decisions are made on Enforcement Action

In assessing what enforcement action is necessary and proportionate consideration will be given to, the following principles for enforcement:

- 1) aim to educate and change the behaviour of the offender;
- 2) aim to eliminate any financial gain or benefit from non-compliance;
- 3) 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;

- 4) be proportionate to the nature of the offence and the harm caused;
- 5) aim to restore the harm caused by regulatory non-compliance, where appropriate; and,
- 6) aim to deter future non-compliance.

Where appropriate decisions about what enforcement action is to be taken may involve consultation between:

- (a) Investigating Officer(s)
- (b) Senior Managers
- (c) Kirklees Council Solicitors and/or external consultants

The decision to take enforcement action will be taken by those with authority to do so in accordance with the Council's Scheme of Delegations.

The Council will provide a timely explanation in writing of any rights to representation or appeal and information on the process involved.

## 9 Review of this policy

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The policy will be reviewed periodically, or in line with changes to legislation and/or the Regulators Code.

## 10 Monitoring and Performance

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To ensure the effectiveness of our enforcement and regulatory functions, we will undertake the following:-

- Provide opportunities for businesses and individuals to comment on this policy;
- Sample surveys on the perception of service users and other interested parties
- Measure our success rates at enforcement appeals and prosecutions across the service.

## 11 Compliments, Comments and Complaints

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All appeals in relation to enforcement action taken should be via the statutory appeals process outlined in the relevant legislation.

Complaints about the conduct of officers should be made via the Council's corporate complaints procedure <http://www.kirklees.gov.uk/beta/contact-the-council.aspx#complaints-comment>

## APPENDIX A

### Principles of Good Regulation

We will exercise our regulatory activities in a way which is:

- (i) **Proportionate** – our activities will reflect the level of risk to the public, public rights and enforcement action taken will relate to the seriousness of the offence;
- (ii) **Accountable** – our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures;
- (iii) **Consistent** – our advice to those we regulate will be robust and reliable and we will respect advice provided by other regulators. The Council shall seek to ensure consistency and a joined up approach to enforcement; however the Council realises that consistency is not a simple matter of uniformity. Officers will need to exercise their professional judgement and discretion according to the circumstances of each individual case and the relevant responsibilities and intervention systems maintained by the Council;
- (iv) **Transparent** – we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return, and
- (v) **Targeted** – we will on occasion focus our resources on higher risk enterprises and activities, reflecting local need and national priorities and where the Council believes its efforts are able to have an impact.

#### Regulators' Code

The Council has had regard to the Regulators' Code in the preparation of this policy. In certain instances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. Where Statutory Guidance and legislation specifies the action to be taken this legislation takes precedence.

#### Human Rights Act 1998

The Council is a public authority for the purposes of the Human Rights Act 1998. We therefore apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is had to the right to a fair trial and the right to respect for private and family life, home and correspondence.

#### Data Protection Act 2018 and the General Data Protection Regulations

Where there is a need for the Council to share enforcement information with other agencies, we will follow the provisions of the Data Protection Act 2018 and the regulations.

## **The Code for Crown Prosecutors**

When deciding whether to institute criminal proceedings the Council has regard to the provisions of The Code for Crown Prosecutors as issued by the Director of Public Prosecutions.

The Code for Crown Prosecutors is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases. The Code sets out two tests that must be satisfied commonly referred to as the 'Evidential Test' and the 'Public Interest Test':

(i) **Evidential Test** - is there enough evidence against the defendant? When deciding whether there is enough evidence to prosecute, the Council will consider what evidence can be used in court and is reliable. We must be satisfied there is enough evidence to provide a "realistic prospect of conviction" against each alleged offender.

(ii) **Public Interest Test** - is it in the public interest for the case to be brought to court? The Council will balance factors for and against prosecution carefully and fairly, considering each case on its merits. The public interest factors that we will take into account are detailed under the enforcement options available to us in Section 8.