

MUNICIPAL YEAR 2014/2015 REPORT NO. **222**

**MEETING TITLE AND DATE:**

Cabinet  
29 April 2015

**REPORT OF:**

Director – Regeneration &  
Environment

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<b>Agenda - Part: 1</b>	<b>Item: 13</b>
<b>Subject:</b> <b>Street Works Enforcement and Prosecution Policy</b>	
<b>Key Decision No: 4042</b>	
<b>Wards: All</b>	
<b>Cabinet Member consulted:</b> <b>Councillor Chris Bond</b>	

**1. EXECUTIVE SUMMARY**

This report presents the proposed Street Works Enforcement and Prosecution Policy, which sets out when and how enforcement powers are used and when prosecution will be considered, which is open and transparent to the utility companies which operate within the borough.

**2. RECOMMENDATIONS**

That this policy is approved.

### **3. BACKGROUND**

3.1 Enfield Council, as Highway Authority, has a statutory role to coordinate activities on the highway network and ensure compliance with statutory regulations and codes of practice by utility companies and their contractors undertaking works to their plant and supply networks within the public highway.

3.2 Enfield strives to foster a spirit of partnership with all statutory utility companies and work with them to achieve effective working on their supply network, but also ensure that the requirements of the Highway Authority are met in terms of –

Network coordination and minimising traffic disruption  
Public safety  
Satisfactory reinstatement of the highway

3.3 Enforcement and, ultimately, prosecution is seen as a final step, either when all other efforts to compel the statutory undertaker to comply with the legislation have failed or when prosecution is considered necessary due to particular circumstances. As part of Enfield's drive to encourage safe operations, minimum occupation of the highway and right first time reinstatements, Enfield uses its powers, under statute, to prosecute utility companies in a commitment to drive up performance standards.

3.4 The resources required, instigating and progressing court proceedings, is considered to be wasteful to both utility company and the council. However, where utility companies operating within the Borough fail to perform their duties in accordance with the required standards then, it has been found necessary to issue Fixed Penalty Notices and invoke prosecutions in order to ensure that all street works operations on the network are managed effectively, undertaken safely and reinstated correctly.

3.5 The proposed Enforcement and Prosecution Policy covers all statutory offences under the New Roads and Street Works Act 1991 as amended by the Traffic Management Act 2004. It covers those offences which the Council will seek to take directly before a magistrates' court and those offences for which Fixed Penalty Notices can be issued. It has been updated to meet the latest requirements of the Criminal Procedure & Investigations Act, Code of Practice for Crown Prosecutors and the Regulators Code.

3.6 Between 17<sup>th</sup> October and 14<sup>th</sup> November 2014, a consultation exercise was undertaken with the major utility companies, currently operating networks in the borough -

BT  
UK Power Networks  
Thames water Utilities  
Affinity water  
Nation Grid Gas  
Virgin Media

A workshop / discussion event was also held on 27<sup>th</sup> November 2014, at which local representatives of the Joint Authorities Group and Joint Utilities Group were present.

- 3.7 Representations were received from the utility companies and the Highway Authorities Utilities Committee. All responses and comments received were reviewed with a representative from the Joint Authorities Group and have been incorporated into the final document.
- 3.8 The final version of the policy is attached as Appendix A to this report.

#### **4. ALTERNATIVE OPTIONS CONSIDERED**

Although there is no statutory requirement under street works legislation for a Highway Authority to have an enforcement and prosecution policy and all actions undertaken by the Council are covered by statute and all officers involved in the process operate under approved delegated powers, the alternative option of not having an enforcement and prosecution policy is not considered appropriate.

#### **5. REASONS FOR RECOMMENDATIONS**

The setting out of a highway authority's policy in respect of when and how enforcement powers are used and when prosecution will be considered, which is open and transparent to the utility companies, is considered good practice and help repudiate any claims of unfair use of the Council's powers by a particular utility company.

#### **6. COMMENTS OF THE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES AND OTHER DEPARTMENTS**

##### **6.1 Financial Implications**

There are no financial implications to the Council regarding the implementation of the policy. The resources required to undertake the enforcement and prosecution where necessary as stated in the policy will continue to be met from within the services existing budget.

##### **6.2 Legal Implications**

**6.2.1** The council has the power to adopt the Street Works Enforcement and Prosecution Policy.

**6.2.2** Although if there were any doubt about the power to adopt this policy, the Localism Act 2011 (Commencement No. 3) Order 2012 (SI 2012/411) brought the general power of competence into force for principal local authorities. The introduction of the general power of competence means that the well-being power no longer applies to English Local Authorities and as such the general power of competence will provide the Council with the power to adopt the Street Works Enforcement and Prosecution Policy.

**6.2.3** The general power of competence is set out in s. 1.1 of the Localism Act 2011 and states that “a local authority has power to do anything that individuals generally may do. “ Ss (2) states that “Subsection (1) applies to things that an individual may do even though they are in nature, extent or otherwise— (a) unlike anything the authority may do apart from subsection (1), or (b)unlike anything that other public bodies may do.” Where the authority can do something under the power, the starting point is that there are to be no limits as to how the power can be exercised. For example, the power does not need to be exercised for the benefit of any particular place or group, and can be exercised anywhere and in any way. Section 2 sets out the boundaries of the general power, requiring local authorities to act in accordance with statutory limitations or restrictions.

## **7. KEY RISKS**

The setting out of the council’s policy in respect of when and how enforcement powers are used and when prosecution will be considered will assist in the prosecution process and help reduce risks associated with the process.

## **8. IMPACT ON COUNCIL PRIORITIES**

### **8.1 Fairness for All**

The application of a transparent policy ensures that enforcement is undertaken fairly against all utility companies across the whole of the borough.

### **8.2 Growth and Sustainability**

Enforcement of utility company obligations whilst working on Enfield’s highway network is a key element of ensuring that Enfield’s road transport links are operating effectively and supporting local commerce and businesses.

### **8.3 Strong Communities**

Efficient operations by utilities, maintaining their plant on Enfield’s highways, minimises disruption to their customers and the road network, improving the quality of travel and a better environment for residents, businesses and local communities.

## **9. EQUALITIES IMPACT IMPLICATIONS**

Corporate advice has been sought in regard to equalities and an agreement has been reached that for this policy an equalities impact assessment/analysis is neither relevant nor proportionate. A retrospective EIA has been undertaken for the whole of Highway Services which includes street works supervision and management duties.

## **10. PERFORMANCE MANAGEMENT IMPLICATIONS**

Having a clear enforcement and prosecution policy assists in driving up performance standards of utilities operating on the highway and compliance with performance measures under the London Permit Scheme

## **11. HEALTH AND SAFETY IMPLICATIONS**

The adoption of this enforcement and prosecution policy will help to improve the safety of the highway network for all users.

## **12. PUBLIC HEALTH IMPLICATIONS**

Ensuring safe operations by utility companies working on the public highway is a key aspect of the council's enforcement and prosecution practices, having due regard for the health and wellbeing of road users and in particular vulnerable road users, during construction activities and temporary traffic management arrangements.

## **Background Papers**

None.

## Appendix A

# **Street Works Enforcement and Prosecution Policy**

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# Introduction

## Enforcement and Prosecution Overview

This document sets out the London Borough of Enfield's policy for the enforcement of obligations on street works operators and the prosecution of statutory utility companies (Activity Promoters) where infringement of a utility's legal requirements compromises the local authority's ability to coordinate and manage works, works are undertaken in an unsafe or unduly disruptive manner, reinstatement of the highway is defective or there is a failure to cooperate.

Under the New Roads and Street Works Act 1991, local highway authorities have a duty to coordinate the works of activity promoters and undertake inspections of their activities.

Under section 16 of the Traffic Management Act 2004, (the Network Management Duty), an authority must manage their road network with a view to achieving two objectives, so far as may be reasonably practicable, having regard for their other obligations, policies and objectives. These two objectives are:

- To secure the expeditious movement of traffic on that network, and
- To facilitate the expeditious movement of traffic on road networks for which another authority is the traffic authority.

In order to comply with these obligations it is essential that the London Borough of Enfield, as the highway authority, is fully aware of operations being undertaken on the road network, that information provided is timely and accurate, that those operations are undertaken having due regard to the safety and convenience of all road users and ensure that the structure of the highway is not compromised.

Enfield considers the resources required to instigate and progress court proceedings to be wasteful to both activity promoters and the Council. However, where activity promoters fail to perform their duties in accordance with the required standards, the London Borough of Enfield will invoke prosecutions or issue Fixed Penalty Notices in order to ensure that all street works operations on the network are managed effectively, undertaken safely and reinstated correctly.

## Status and Scope of Policy

This enforcement and prosecution policy covers all statutory activity promoters under the New Roads and Street Works Act 1991, as amended by the Traffic Management Act 2004. It includes those offences which the Council will seek to take directly before a Magistrates' Court, those offences for which Fixed Penalty Notices can be issued and the Issuing of Improvement Notices.

Enfield Council will use the Fixed Penalty Notice System for offences covered by them. However, in all cases where the penalty remains unpaid at the end of the decriminalised period, Enfield reserves the right to prosecute through the Magistrates' Court.

Prosecution is seen as a final step, either when all other efforts to compel the activity promoter to comply with the legislation have failed, or when prosecution is considered necessary due to particular circumstances.

Where prosecutions fail to bring about a change in performance, Enfield may consider alternative options to ensure compliance (e.g. injunctions against specific activity promoters or contractors for certain aspects of reinstating the highway)

It is intended that a consistent and accountable approach is taken to prosecutions. However, there can be no prescriptive process applied and whilst every effort will be made to ensure consistency, offences that are ostensibly of the same type can have significantly differing levels of impact and therefore an element of judgement must be used to ensure that those offences that have a detrimental impact on any of the Council's statutory duties under either the New Roads and Street Works Act 1991, Traffic Management Act 2004, or its efforts to improve highway condition or road safety targets are not penalised.

## **Enfield Council's Vision, Aims and Priorities**

Enfield's vision is to make Enfield a better place to live and work, delivering fairness for all, growth and sustainability and strong communities. Underpinning this commitment are a number of aims and priorities, the delivery of which will contribute to improving the quality of life for all residents in the borough.

Enforcement of utility company obligations whilst working on Enfield's highway network is a key element of Enfield's highway asset and network management, which supports these aims.

## **Regulators Code**

This policy has been produced in compliance with the statutory Regulators Code. Enfield has developed procedures that are open and transparent to companies under investigation for contraventions pertinent to this policy so they are fully aware of the Council's service standards.

## **Statutory Provisions**

Statutory provisions for which the London Borough of Enfield as Highway Authority may prosecute or issue Fixed Penalty Notices are contained within the New Roads and Street Works Act 1991 as amended by the Traffic Management Act 2004 together with supporting regulations and orders.

## **Offences**

Enfield Council undertakes enforcement action on activity promoters for the following types of offence:

- Overrunning street works activities
- Permit offences (breach of permit conditions and working without a permit)
- Street Works Notice offences
- Inadequate safety measures around work sites
- Defective reinstatements of the public highway
- Failure to cooperate with the highway authority
- Breach of a restriction of NRSWA s58/58(a)

## **Street Works Management**

The Network Coordination Team within Highway Services is responsible for coordinating and inspecting street works. It comprises the following: -

- Principal Street Works Officer
- Street Works Inspectors
- Street Works Coordinators

The position of Traffic Manager, under the Traffic Management Act, is held by the Assistant Director, Planning, Highways and Transport.

Enfield's Scheme of Delegation details the arrangements for the authorisation of council officers to discharge the enforcement powers on behalf of the London Borough of Enfield.

Enfield is a permitting authority and operates under a common London permit scheme (LoPS).

# Permitting and Noticing Procedures

## Introduction

In order for the highway authority to coordinate street works activities, information is required from work promoters outlining essential details about their proposed works.

Information is sent and received on a permit application via the electronic transfer of notices (EToN). The works promoter is required to provide accurate information on these notices such as:

- Location of works
- Works description (what works are actually going to be carried out)
- Start/end date
- Contact details of works promoter and contractors who are going to carry out the works
- Working method of the contractors (excavation, insertion, etc.)
- Phase of the works (i.e. is the work starting for the first time or is the works a continuation of a previous phase, for instance is the reinstatement being upgraded from temporary to a permanent standard)

## Activity Category

In accordance with NRSWA 1991, works are categorised into the following areas:

- Major works (works greater than 11 days or more, planned works known at least 6 months in advanced, works which require a temporary traffic order)
- Standard works (works duration of 4-10 days)
- Minor works (works duration up to 3 days)
- Immediate works (unplanned works of an urgent or emergency nature)

For the purpose of sending EToN notices only, the working day is defined as being from 8:00 until 16:30 Monday to Friday, excluding all English national holidays.

## Advance Notice Periods

In accordance with NRSWA 1991, the minimum time the following notices must be received by the highway authority in order to start works is:

<b>Works Category</b>	<b>Longer advanced warning period required (minimum)</b>	<b>Advanced warning period required (minimum)</b>	<b>Latest period required (minimum)</b>
Major	3 months	10 days	n/a
Standard	n/a	10 days	n/a
Minor	n/a	3 days	n/a
Immediate	n/a	n/a	Within 2 hours of works starting or by 10am on the following day if activity starts outside of permitting hours.

## Response Times

Upon receipt of these notices Enfield will respond within the following timeframes. If this is not met the works promoter has a legal right to carry out the works on the days they requested:

<b>Works Category</b>	<b>Minimum period required</b>	<b>Response time</b>
Major	3 months	1 month
Major/Standard	10 days	5 days
Minor	3 days	2 days
Immediate	Within 2 hours of works starting or by 10am on the following day if activity starts outside of permitting hours.	2 days

## Permit Conditions

It is a requirement that conditions are attached to each permit application for a proposed street works activity. These are agreed between the permit authority and activity promoter prior to the commencement of the activity and, on occasion, during the period of activity. Conditions relate to the manner in which the activity is carried out and are designed to assist with minimising disruption to traffic, local residents and enhancing safety to all highway users. The model conditions for the London Permit Scheme are attached in Appendix 1.

# Overrunning Street Works Activities

## Introduction

Section 74 the New Roads and Street Works Act 1991 (NRSWA) allows highway authorities to charge activity promoters if street works are unreasonably prolonged (i.e. take longer than previously agreed).

Prior to permits being issued to an activity promoter, a reasonable period of time for the works must be agreed between the Council's Street Work Team and the activity promoter. For the purposes of s74 charges only, a two day prescribed period is applied regardless of any agreements to which charges cannot be levied.

This reasonable period of time is measured from the start of the works to the completion of the works whereby all the signing, lighting and guarding and spoil has been cleared with the highway being restored to full public use.

If an undertaker requires additional time to complete his works, he shall apply for a permit variation. Enfield will evaluate all requests and inform the activity promoter of its decision within the statutory response time. If, however, the works have been delayed as a result of bad planning, or there have been significant periods of inactivity which cannot reasonably be justified, then no extension is likely to be agreed.

The procedure for transferring Information between activity promoters and highway authorities is conducted through the electronic system "EToN (Electronic Transfer of Notices).

Where work activities have over run, daily charges can be levied on the responsible undertaker. The full regulatory procedure can be found in section 10 of the "Code of Practice for the Coordination of Street Works and Works for Road Purposes and Related Matters".

## Section 74 Charges

In accordance with NRSWA 1991, the daily charges are as follows: -

Charges in relation to works occupying the carriageway during the period of the overrun.

Description of Street	Amount(£) per day
Traffic Sensitive or protected street which is a street in road category 0 or 1	5,000 (10,000 forth and subsequent days)
Other street which is a street in road category 0 or 1	2,500
Traffic Sensitive or protected street in road category 2	3,000 (first three days) 8,000 (fourth and subsequent days)
Other street in road category 2	2,000
Traffic sensitive or protected street in road category 3 or 4	750
Other street in road category 3 or 4	250

Charges in relation to works outside the carriageway during the period of the overrun.

<b>Description of Street</b>	<b>Amount(£) per day</b>
Street not in road category 2, 3 or 4	2,500
Street in road category 2	2,000
Street in road category 3 or 4	250

Road categories are as published in the National Street Gazetteer.

### **Single Items Rule**

Where a maximum of five items (such as barriers, cones or signs) are found to have been left on site after completion of reinstatement, then Enfield will inform the responsible activity promoter to remove their equipment. If after 24 hours of informing the undertaker the items have been removed then a one off £100 fee will be charged. If the items have not been removed after 24 hours then the full charges will apply from the day the highway authority informed the activity promoter until the last day of occupation.

### **Negotiation of Section 74 Charges**

Although the charging regime outlines the allowable maximum fines, the regulations and codes of practice state that charges may be cancelled or waived at the discretion of the highway authority.

The Principal Street Works Officer is authorised to lead on negotiations with regard to section 74 of the New Roads and Street Works Act 1991 (overrunning works). The Head of Highways Services may authorise other officers to negotiate as and when necessary.

Enfield Council will not reduce any prescribed charges unless there is sufficient evidenced rationale for doing so. Such evidence must demonstrate absolute minimum impact to highway users.

In general negotiations are to be held in council offices; however, neutral venues are alternatively acceptable. Due to the practicalities of time availability to both the activity promoter representatives and council staff, negotiations may be conducted via email or telephone.

The lead officer will be accompanied at the meeting by another member of staff regardless of the value of the charge being negotiated. During a meeting if less than two officers are present then no financial negotiations / discussions will continue. Discussions around the circumstances of a case may continue to agree liability and take into account any mitigating circumstances.

Significant charges will be discussed with the lead officer's line manager. Any charge over the value of £10,000 must be discussed between the lead officer and his/her line manager. Liability and mitigation issues can be discussed with the utility company prior to the lead officer discussion with his/her line manager.

If agreement cannot be met between the lead officer and utility representative on a matter of either liability or financial settlement then the matter may be progressed by the Council invoicing the utility company based on the value of the lead officer's final assessment. The issue may finally be resolved in a civil court as a debt owed to the council.

# Permit Offences

## Introduction

The Traffic Management Permit Scheme (England) Regulations 2007, makes provisions for two types of permit offence,

- A street works activity was undertaken without a permit
- There was a breach of a condition of the permit for the street works activity

## Working without a Permit

Regulation 19 of the Permit Regulations provides that it is a criminal offence for an undertaker or someone acting on its behalf to undertake an activity without a permit. The offence carries a maximum fine of level 5 on the standard scale.

## Working in breach of a Permit Condition

Regulation 20 of the Permit Regulations provides that it is a criminal offence for an undertaker or someone acting on its behalf to undertake an activity in breach of a permit condition. The offence carries a maximum fine of level 4 on the standard scale.

The London Permit Scheme model conditions are shown in Appendix 1.

## Revocation of a Permit

There are circumstances that may lead to the revocation of a permit, such as a dangerous work site or undue delay to the activity. Where an instance arises that will lead to the potential revocation of a permit the Council will inform the promoter of the problem via the EToN system and provide a timescale in which the necessary improvement must be made. A warning will also be provided that if the improvements are not made during this specified period the permit may be revoked.

Enfield will consider revoking permits where it believes:

- it is identified that the information contained on the granted permit is not consistent with the details of the actual works,
- a works promoter working under a valid permit is taking longer to complete the works than is reasonable,
- that works under a valid permit are causing significant traffic disruption as a result of breaches of agreed methods of works,
- that works under a valid permit are causing significant traffic disruption as a consequence of unplanned works on another part of the network which impacts on the designated routes pertinent to the Council's Network Management Duty,
- that the work promoter or its contractor undertaking the work is working in contravention to any statutory code of practice issued by the Secretary of State.

An ongoing street works activity under a revoked permit will be liable for an FPN for working without a permit. If the FPN is not paid then the Council, as part of its considerations for prosecution, will include a breach of s60 of NRSWA (failure to co-operate with the highway authority) as an offence.

## **Fixed Penalty Notices**

A Fixed Penalty Notice can be issued for any of the permit offences. The process for investigating Fixed Penalty Notices and considering legal proceedings is outlined in Appendix 2.

# Notice Offences

## Introduction

Notices which are not submitted to the council or are not submitted in the correct format can cause the Council to use unnecessary resources to address the problem; this drain on resources could in turn lead to ineffective coordination work and poor network management. In these circumstances the issuing of a Fixed Penalty Notice will be considered.

## Start / Stop Notice

The works start and stop notices must be sent by the works promoter no later than 4.30pm on the following working day of the works either starting or stopping, or by 10am for works on traffic sensitive streets. These notices record the actual time of the working duration and are essential to the Section 74 charging regime. Notification of the dimensions of the reinstatements must be sent by the works promoter no later than 10 working days after the actual end date.

## Notice Offences

The table below shows the notice offences that can be committed by an undertaker.

<b>Offence (NRSWA 1991)</b>	<b>Brief description</b>
An offence under section 54(5)	Failure to comply with duties under s. 54 (advance notice of certain works, etc.)
An offence under section 55(5)	Beginning to execute works in contravention of s. 55 (notice of starting date)
An offence under section 55(9)(a)	Failure to give notice in accordance with s. 55(8) (notice to be given on s. 55 notice ceasing to have effect)
An offence under section 57(4)	Failure to give notice in accordance with s. 57 (notice of emergency works)
An offence under section 70(6) consisting of a failure to comply with subsection (3) or (4A)(b)	Failure to comply with requirements to give notice of completion of reinstatement
An offence created by regulations made under section 74(7B)	Failure to give a notice required by regulations under s. 74 (charge for occupation of the highway where works unreasonably delayed)
An offence created by regulations made under section 74A(11)	Failure to give a notice required by regulations under s. 74A (charge determined by reference to duration of works)

## Fixed Penalty Notices

A Fixed Penalty Notice can be issued for any of the above offences. The process for investigating Fixed Penalty Notices and considering legal proceedings is outlined in Appendix 2.

# Fixed Penalty Notices

## Introduction

Regulations 21-28 (and Schedules 1 and 2) authorise permit authorities to issue Fixed Penalty Notices (FPNs) in respect of criminal offences. FPNs offer an offender the chance to discharge liability for an offence by paying a penalty amount.

An FPN may not be given more than 91 calendar days after the commission of the offence, beginning with the day on which the offence is committed. This is the maximum period allowed but to improve coordination the permit authority will, once it is decided that an FPN is to be given, do so as soon as possible.

The penalty amount is £500 for working without a permit, but a discount amount of £300 is available if payment is made within 29 calendar days. For working in breach of a condition the penalty is £120 and the discount amount is £80.

An undertaker reserves the right to select the method in which an authority will serve an FPN as detailed in s15.4.8 of the London Permit Scheme.

Enfield will ensure that when issuing an electronic FPN the following 3 conditions are met [as set out in Regulation 5 (3) of the Street Works (Fixed Penalty) (England) Regulations 2007],

- The FPN will be capable of being accessed by the person to whom it is being sent;
- The FPN is legible in all materials respect; and
- in a form which permits the Notice to be retained for subsequent reference and for this purpose the information contained on an electronic FPN system will also be the same as it would be on a paper version of the same FPN.

Delegated authority to issue FPNs is given to Principal Street Works Officer, Senior Coordinator, all permit officers and all street works officers under Enfield's Scheme of Delegation.

## Process overview

Upon identification of a permit offence, Enfield's Street Works Officers or Permit Officer will make a decision on whether to issue an FPN based on the severity and the impact of the offence on disruption and safety to traffic and pedestrians, in particular to those with disabilities. The decision to issue an FPN may not necessarily be made on the date of the offence.

The issuing officer is responsible for providing the necessary evidence to support the serving of the FPN. This could include, but is not limited to, photographic evidence, notes of any relevant information and ensuring that the correct offence has been identified.

If an activity promoter wishes to either make an enquiry or appeal an FPN, they should formally set out their reasons in writing and send it to [nrswa@enfield.gov.uk](mailto:nrswa@enfield.gov.uk). Upon receipt of any such enquiry or appeal a delegated Enfield Officer, other than the issuing officer of that FPN, will undertake an assessment, which includes the following actions:

- Check that the correct offence has been attached to the FPN
- Check that the supporting evidence corresponds with the FPN
- Check the validity of the challenge to the FPN

The Principal Street Works Officer or Street Works Coordination Officer will review the assessment and make a decision on whether to proceed with the FPN or to withdraw it. The decision will be based on the strength of the evidence, mitigating circumstances and if it is in the public interest to do so.

If the FPN is upheld the payment will be required. If the challenge is successful the FPN will be withdrawn. In both circumstances the activity promoter will be informed by the end of the next working day after the decision has been made. The council will aim to respond to all appeals within 10 working days starting on the day following receipt of the appeal. In the case of unsuccessful appeals where the council does not meet this target additional days will be added to the payment deadline to match the extra days over the 10 day response period.

The process for investigating Fixed Penalty Notices and considering legal proceedings is outlined in Appendix 2.

FPNs are issued at the London Borough of Enfield's discretion. In some circumstances, in particular where breaches are seen as serious or recurrent, it may be that prosecution is more appropriate than the issuing of a FPN.

# **Inadequate Safety Measures at Street Works Sites**

## **Introduction**

Section 65 of the New Roads and Street Works Act 1991 (NRSWA), sets out the required standards to which all highway and street works activities must adhere. The legislation requires an undertaker or those working on its behalf, carrying out works under the Act to do so in a safe manner as regards to the signing, lighting and guarding of works. The Secretary of State has issued a code of practice for these purposes. Failure to comply with the requirements within the code is a criminal offence. Compliance with the code will be taken as compliance with the legal requirements to which it relates.

## **Inspection of Street and Road Work Activities**

Enfield officers carry out inspections of work sites across the borough on a daily basis. These inspections arise from the following sources; the sample inspection quota, reports from third parties (e.g. residents, businesses, etc.) and ad-hoc routine inspections.

Where breaches of the code have been identified a failed inspection notice is sent to the appropriate activity promoter. In cases where urgent attention is required to rectify the works site a supporting phone call is made. These notices outline the reason for the failure and inform the activity promoter of the severity of the failure as well as the expected response time to remedy the problem.

In extreme cases and when deemed necessary the council will undertake remedial action in the interest of public safety. This option is available to highway authorities under NRSWA.

Under the Act a works promoter has a 2 or 4 hour period in which to attend site and rectify any identified inadequacies. Where it can be demonstrated that these response times have not been met by an activity promoter, Enfield will seek to enter into dialogue with that promoter for the purpose of improvement in safety standards. Following this dialogue, and where it is apparent that the necessary improvement has not been made, Enfield will follow the process under the Code of Practice for Inspections that has been set out for this purpose. This will include issuing a formal improvement notice under NRSWA.

Where there is a clear danger to public safety Enfield will consider undertaking legal proceedings against the offending activity promoter.

# **Defective Reinstatement of the Public Highway**

## **Introduction**

Under s71 of NRSWA an undertaker executing street works shall, when reinstating the street, comply with the Specification for the Reinstatement of the Highway (SROH) in relation to prescribed materials to be used and standards of workmanship to be observed. The undertaker must also ensure that the reinstatement conforms to prescribed performance standards - in the case of an interim reinstatement, until a permanent reinstatement is effected, and in the case of a permanent reinstatement, for the prescribed defect period after completion of the reinstatement.

## **Inspection of Street and Road Work Reinstatements**

Enfield officers carry out inspections of reinstatements across the borough on a daily basis. These inspections arise from the following sources; the sample inspection quota, reports from third parties (e.g. residents, businesses, etc.), investigatory inspection (e.g. core sample testing) and ad-hoc routine inspections.

Where breaches of the code have been identified a failed inspection notice will be sent to the appropriate works promoter. In cases where it is considered urgent attention is required, the works promoter will also be contacted by phone. Failed Inspection Notices will outline the reason for the failure and inform the works promoter of the severity of the failure as well as the expected response time to remedy the problem.

## **High Risk Defective Reinstatements**

Higher risk defective reinstatements, defined as causing immediate danger or having the potential to cause danger to public highway users, are expected to be made safe within 2 hours of notification of the failed inspection. In extreme cases and when deemed necessary the council will undertake remedial action in the interest of public safety. This option is available to highway authorities under NRSWA.

## **Low Risk Defective Reinstatements**

Lower risk defective reinstatements, defined as not causing danger to public highway users, are expected to be rectified by the works promoter within a period of 20 working days. Where this is not achieved Enfield will consider either extending the repair period or undertaking remedial works itself and seeking reimbursement from the promoter. In cases where the remedial action has not been undertaken and/or there is a clear demonstration of non-cooperation, the highway authority will consider legal proceedings.

Upon identification of a failed reinstatement the process in Appendix 3 will be followed. This is a departure from the national guidance, but is a more streamlined approach of benefit to both parties.

## **Sanctions**

Where there is a failure rate of at least 10% of sample inspections of reinstatements in any one quarter of the year, Enfield will endeavour to discuss with the undertaker the reasons for the high failure rate and may issue an informal warning or serve a formal Improvement Notice.

In the case of an informal warning Enfield will inform the works promoter in writing of the failure rate over the period concerned and arrange a meeting to agree measures for improvement. This may include additional inspections being undertaken by Enfield at the cost of the works promoter. The records of this warning will be retained by Enfield.

In the case of formal improvement, Enfield will issue the works promoter in writing with an Improvement Notice as set out under the Code of Practice for Inspections. This notice will inform the undertaker of the number of inspections undertaken and the results of those inspections. A subsequent meeting will be held between Enfield and the works promoter and the promoter will be expected to produce an action plan for improvement. This will include additional inspections being undertaken by Enfield at the cost of the works promoter.

## **Investigatory Inspections**

In order for Enfield to ensure that the integrity of the carriageway is being protected a coring programme will be undertaken. Core tests will be taken on reinstatements that show no signs of surface deformity in order to verify that the structural layers have been reinstated correctly. For the purpose of this Policy, any reinstatement that has been undertaken in accordance with the SROH is deemed to be reinstated correctly.

The council will endeavour to make sure the selected sites will be proportional to the works promoter's carriageway reinstatements undertaken over the previous two years. These figures can be provided to each promoter concerned before the commencement of the testing period if requested.

The Council's coring contractor will inform all works promoters of the programme relating to their company's reinstatements at least two weeks prior to undertaking a batch of cores in order to give each works promoter the opportunity to be in attendance at the selected sites.

Works promoters who undertake their own coring programme and share their results with Enfield will be entitled to free permits to carry out the core tests. Provision of core test information will not be a substitute for the Council's own coring programme.

## **Failure to Cooperate with the Highway Authority**

Under s60 of NRSWA, work promoters have a duty to cooperate with highway authorities with regards to:

- the interest of safety,
- minimising the inconvenience to public users of the street, and
- Maintaining the integrity of the public highway and apparatus within it.

Codes of practice have been issued by the Department for Transport to set out practical ways in which to exercise the above. Failure to comply with the requirements of any of the codes of practice shall be taken as evidence of a failure to comply with this duty under s60 of NRSWA.

Where circumstances of this nature are identified the Council will inform the undertaker of the breach in writing.

## Breach of Section 58/58(a) of NRSWA

S58 of NRSWA enables the highway authority to protect newly resurfaced or reconstruction sections of the public highway. The table below sets out the restriction periods.

Works Type	Category of carriageway in street	
	Traffic sensitive or reinstatement category 0, 1 or 2	Reinstatement category 3 or 4
1. Reconstructed	5 years	5 years
2. Resurfaced with or without level change	3 years	3 years
3. Other substantial road or street works	1 year	1 year
Combination of 1 or 2 plus 3	Higher of the figures	
Customer connections	20 days	

There are some exemptions to these restrictions, which are detailed in Chapter 6 of The NRSWA Code of Practice for Coordination of Street Works and Works for Road Purposed and Related Matters.

Where there is no agreement between Enfield Council and the promoter to waive the s58 restriction the works promoter will be expected not to undertake the works. If the works promoter breaches the restriction the Council may instigate prosecution proceedings. The Council will also seek any costs associated with any remedial activities that are a consequence of this breach.

# Prosecution Process

## Introduction

Once an offence has been committed and the initial enforcement action has been taken or deemed insufficient the authority will take the following steps in evaluating whether or not the offender should be prosecuted taking into account the offence itself, whether taking action is in the public interest and the strength of the offence that will be relied upon.

## Offences

The table below shows the types of offences and the circumstances that will give rise to the authority initially considering undertaking legal proceedings, but this is not limited to those stated below.

Offence type	Prosecution trigger
Permit offences	<ol style="list-style-type: none"> <li>1. Failure to pay FPN within regulated period, or</li> <li>2. Failure to rectify the breach of permit condition within reasonable period, or</li> <li>3. Failure to submit application for valid permit within reasonable period.</li> </ol>
Notice offences	Failure to pay FPN within regulated period
Site safety	<ol style="list-style-type: none"> <li>1. Incident that causes danger to the public (in particular those with disabilities) and to the workforce, or</li> <li>2. Failure to rectify an inadequacy in signing, lighting and guarding within a reasonable period.</li> </ol>
Visible defective reinstatements	<ol style="list-style-type: none"> <li>1. Reinstatement that causes danger to the public (in particular those with disabilities), or</li> <li>2. Reinstatement that has caused, or has potential to cause, long term detriment to the structure of the public highway, or</li> <li>3. Failure to repair an identified defective reinstatement within a reasonable period.</li> </ol>
Failed core/compaction tests	Failure rate in excess of 10%. Sample size: <ul style="list-style-type: none"> <li>- at least 5 core tests for promoters who carried out up to 100 activities within the previous 12 months,</li> <li>- at least 10 core tests for promoters who carried out over 100 activities within the previous 12 months.</li> </ul>
Failure to cooperate with highway authority	<ol style="list-style-type: none"> <li>1. Failure to submit works programmes in a timely manner following two written warnings,</li> <li>2. Failure to attend, or inform council of non-attendance, of quarterly coordination meetings following two written warnings,</li> <li>3. Persistent non-cooperative attitude of site operatives following review meeting between utility and highway authority senior managers,</li> <li>4. Failure to comply with any code of practice related to NRSWA and TMA.</li> <li>5. Failure to comply with any agreed publication such as the Mayors 'Code of Conduct' which has causes a detrimental impact on the council's Network</li> </ol>

	Management Duty.
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**Delegated Authority to Officers**

Any council officer investigating or instigating legal proceedings have the necessary delegated authority from the Head of Highway Services.

**Authority to Prosecute**

The council's Legal Services representative will review all information and give authority to prosecute

**Evidential and Public Interest Tests**

In considering whether a prosecution meets the evidential and public interest tests the authority will apply the tests as set out in the current Code for Crown Prosecutors – see appendix 4.

# Appendices

## Appendix 1

### London Permit Scheme Model Conditions

#### **MC1 Display of Permit Number**

##### **EDG 11 – Consultation and publicity**

It is a condition of this permit that the activities hereby permitted shall not be carried out unless a site information board(s) is displayed on the site at all times for the duration of the works. This must be displayed in a prominent place at all times so that it may be read easily by the public, clearly displaying the correct Permit reference number. For Immediate Works the display of the correct Permit reference number is required by 10.00am on the next working day after the works have started on site.

#### **MC2 Display of Linked Permit Number**

##### **EDG 11 – Consultation and publicity**

It is a condition of this permit that the activities hereby permitted shall not be carried out unless a site information board(s) is displayed on the site at all times for the duration of the works. This must be displayed in a prominent place at all times so that it may be read easily by the public, clearly displaying the correct Permit reference number and the following linked Permit references..... For Immediate Works the display of the correct Permit reference number is required by 10.00am on the next working day after the works have started on site.

#### **MC3 Display of Remedial Permit Number**

##### **EDG 11 – Consultation and publicity**

It is a condition of this permit that the activities hereby permitted which are remedial works following the activities permitted under Permit reference... shall not be carried out unless a site information board(s) is displayed on the site at all times for the duration of the works. This must be displayed in a prominent place at all times so that it may be read easily by the public, clearly displaying the correct Permit reference number. For Immediate Works the display of the correct Permit reference number is required by 10.00am on the next working day after the works have started on site.

#### **MC4 Duration - Category 0,1 and 2 and TS Street**

##### **EDG 1 – Date Constraints**

The activities hereby permitted shall not commence before the Proposed Start Date or in the case of Immediate Works the Actual Start Date contained in the application for immediate works and must end by the Estimated End Date provided on this permit. The Proposed Start Date, Actual Start Date and Estimated End Date are as defined in the current EToN specification.

#### **MC4a Duration - Category 3 and 4 Street**

##### **EDG 1 – Date Constraints**

The activities hereby permitted shall not commence before the Proposed Start Date and must commence within the valid starting window period or in the case of Immediate Works by the Actual Start Date contained in the application for immediate works and once the activities have commenced the activities must take no more than [x number of] days in total to be completed. The Proposed Start Date, Actual Start Date and Estimated End Date are as defined in the current EToN specification

**MC5 Limit the days and times of day****EDG 2 – Time Constraint**

The activities hereby permitted shall only take place between [start time] and [end time] on weekdays and [start time] and [end time] on Saturdays and [start time] and [end time] on Sundays or Bank Holidays.

**MC5a Increased working hours****EDG 3 – Out of hours works**

For the activities hereby permitted, as agreed, the following [extended] working hours will apply at this site from [start time] until [end time] on weekdays and [start time] and [end time] on (Saturday/Sunday/Bank Holiday).

**MC5b Limit timing of certain activities****EDG 12 – Environment**

For the activities hereby permitted, the following working methodology [insert methodology] shall only take place between [start time] and [end time] on weekdays and/or [start time] and [end time] on Saturdays and/or [start time] and [end time] on Sundays or Bank Holidays and must not continue beyond these times.

**MC6 Swift removal of surplus materials****EDG 4 – Materials and Plant Storage**

It is a condition of this Permit that surplus material excavated as a consequence of the activities must be removed from the public highway within [x hours] (e.g. 24) of being excavated.

**MC7 Materials and plant being stored on site****EDG 4 – Materials and Plant Storage**

For the activities hereby permitted all material and plant not required for [insert period] shall not be stored on site.

**MC8 Width and/or length of road space that can be occupied****EDG 5 – Road Occupation Dimension**

“The activities hereby permitted shall occur only within the area [insert description of area or provide traffic management plan reference] including the relevant and required signing, lighting and guarding”.

**MC9 Road space is to be available to traffic at certain times of day****EDG 9 – Traffic Space Dimensions**

For the activities hereby permitted [and during the working hours stated in MC5/5A/5B] [X]m must be maintained for pedestrians and/or [Y]m must be maintained for vehicles. (At all other times f/w and/or c/w must be cleared or [A]m must be maintained for pedestrians and/or [B]m must be maintained for vehicles)

**MC9a Pedestrian ramps and temporary walkways****EDG 4 – Materials and Plant Storage**

It is a condition of this Permit that all pedestrian ramps/temporary walkways necessary as a consequence of the activities hereby permitted must be edged in yellow at all times

**MC9b Minimum road space available to pedestrians****EDG 9 – Traffic Space Dimensions**

It is a condition of this permit that the activities hereby permitted may only occur when a minimum road space of 1.2 metres is available to all pedestrian traffic at all times.

**MC10 Road closed to traffic****EDG 10 – Road Closure**

The activities hereby permitted shall only take place when [insert road name] or [insert description of the relevant section of the road] is closed to traffic

**MC11 Approval for Portable Light Signals****EDG 8 – Light Signals and Shuttle Working**

The activities hereby permitted shall only take place when portable light signals are in place

**MC12 TROs and other separate approvals****EDG 9 – Traffic Management Changes**

“The activities hereby permitted shall not commence until approval for [temporary traffic restrictions] has been given and the correct reference title and number for such approval is displayed on the site information board at all times, for the duration of the work”.

**MC13 Changes to traffic management arrangements****EDG 9 – Traffic Management Changes**

The works comprised in [specified part B] of the activities hereby permitted shall not be commenced before the works comprised in [specified part A] are completed.

**MC14 Traffic management arrangements to be in place****EDG 9 – Traffic Management Changes**

The works comprised in [specified part A/B] of the activities hereby permitted shall be subject to and shall occur only when the following traffic management measures are in place [or as attached in schedule..]

**MC15 Employment of appropriate methodology****EDG 10 – Works Methodology**

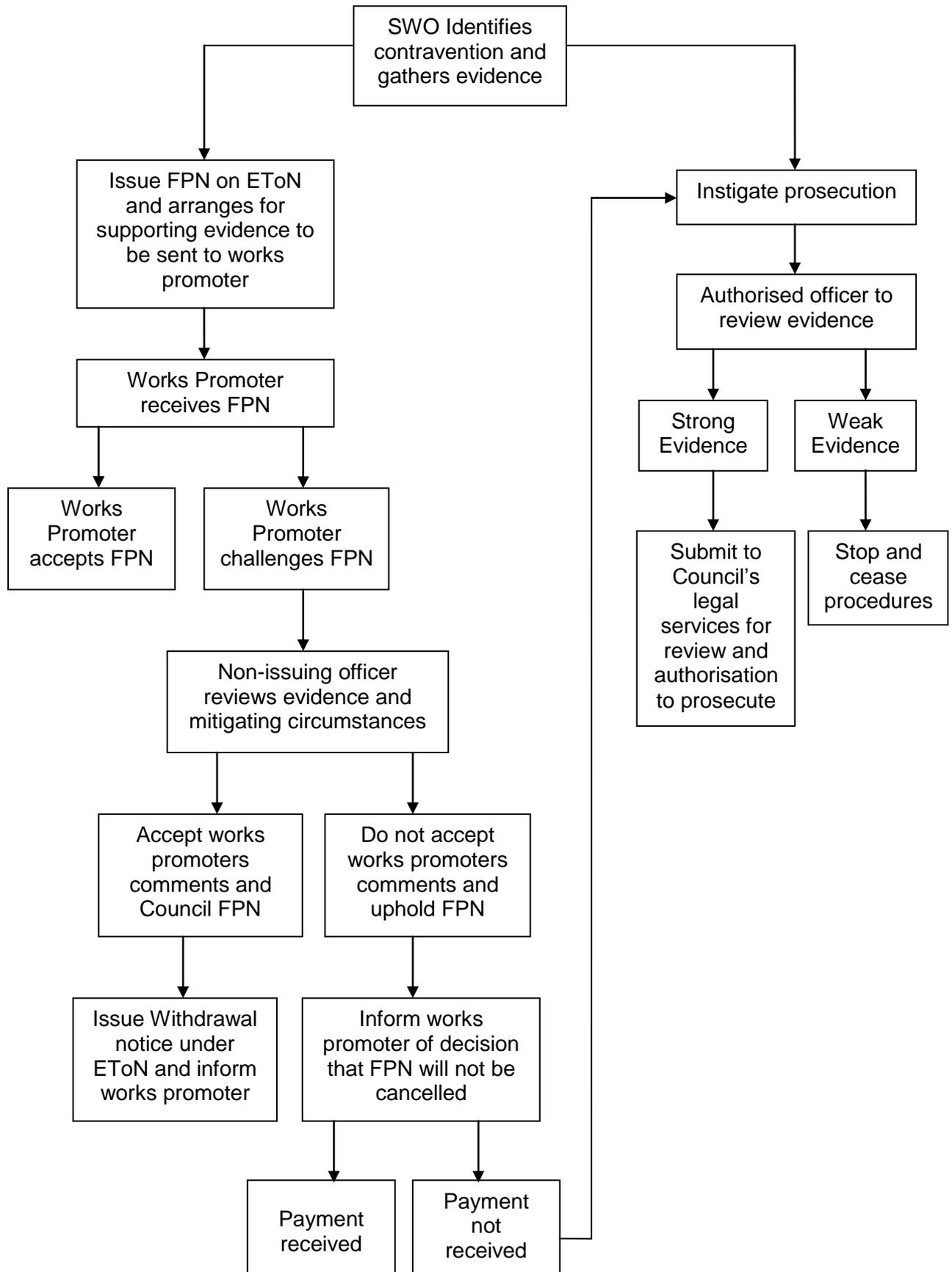
For the activities hereby permitted on this site, as agreed, the works methodology employed will be [insert agreed methodology e.g. Hand Dig/Directional Drilling etc] throughout the duration of the works activity.

**MC16 Publicity for proposed works****EDG 11 – Consultation and publicity**

The activities hereby permitted shall not commence unless the Promoter has: a) provided written notice to all individual properties and businesses [on X roads] setting out where the works will take place; the nature of the works; the duration of the works; [etc] and contact details of a representative of the promoter ; and b) provided written notice to all individual properties and businesses [on X roads] containing a copy of the Permit or setting out the means by which a copy of the Permit may be obtained electronically.

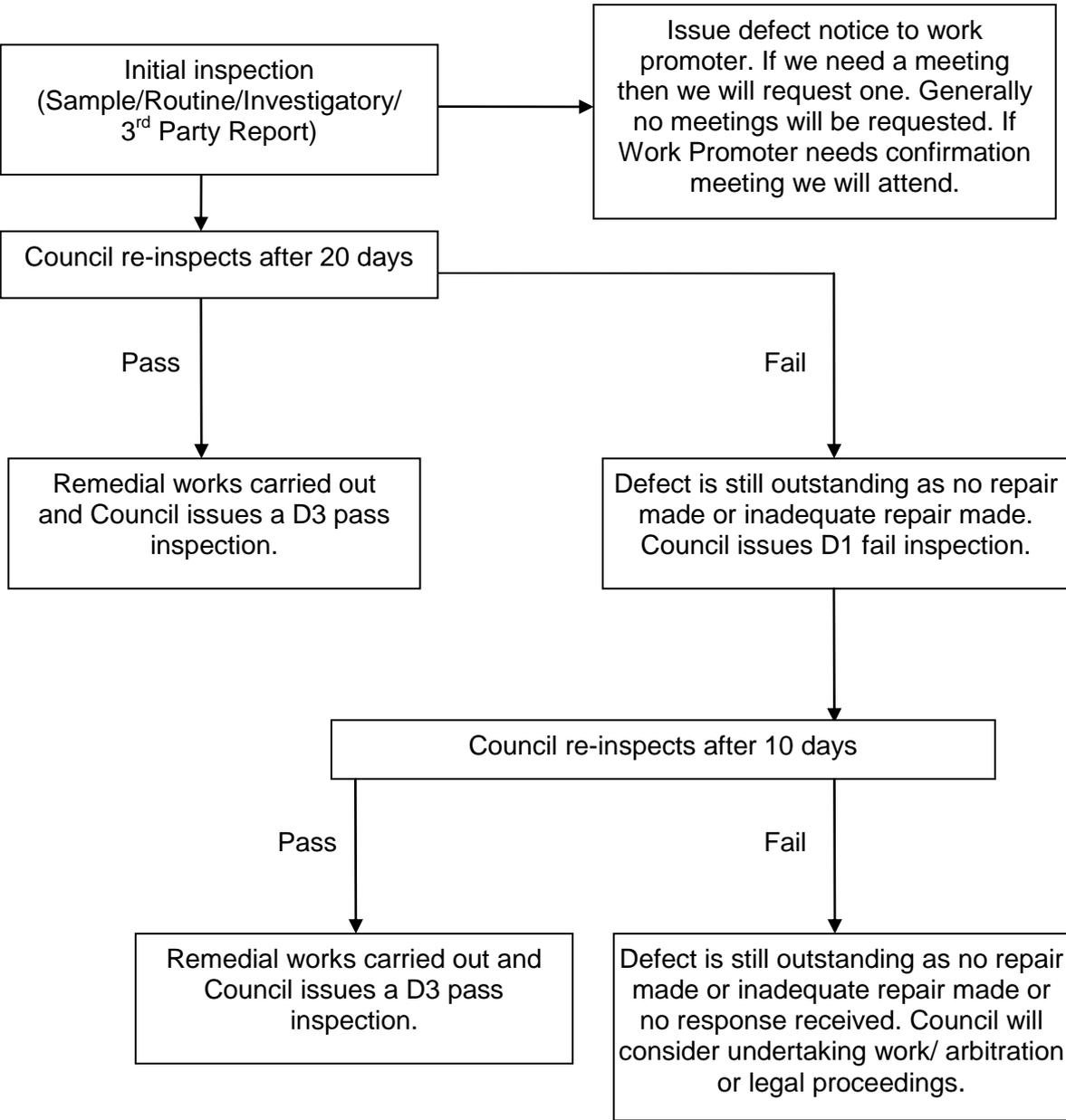
## Appendix 2

### Fixed Penalty Notice and Prosecution Procedure



**Appendix 3**

**Lower risk failed reinstatement procedure**



## **Appendix 4**

### **Code for Crown Prosecutors**

Please refer to the latest edition of The Code for Crown Prosecutors, issued by the Director of Public Prosecutions, Crown Prosecution Service.