

Appendix 1: Environmental health & licensing enforcement

1. Introduction

- 1.1 This appendix sets out the Council's approach to environmental health & licensing enforcement and needs to be read alongside the Council's overarching Local Enforcement Plan.
- 1.2 The plan outlines the key principles that the Council will follow when regulating, enforcing, and litigating. The plan sets out the standards that everyone can expect from the Council's regulatory services and its officers.
- 1.3 This document outlines how Council officers consider enforcement action, how work is prioritised, how cases are investigated, and what tools are available. The Council is committed to ensuring that all officers abide by this plan.

2. What we can deal with

- 2.1 The Council's Environmental Health & Licensing Enforcement Plan applies to various functions including:
 - animal welfare,
 - dog fouling,
 - Environmental health including statutory nuisance, food safety, health and safety, public health, infectious diseases, and contaminated land,
 - Environmental permitting,
 - Fly-tipping,
 - Hackney Carriage and Private Hire Vehicle Licensing (Shared Service with Basingstoke & Deane BC),
 - pest control,
 - Premises licensing (Shared Service with Basingstoke & Deane BC),
 - Scrap Metal Dealer Licensing,
 - Street trading, and
 - registration of Special Treatments.
- 2.2 A list of some of the relevant legislation and guidance is included in the Annex to this Plan.

3. How we prioritise our investigations

- 3.1 Although we appreciate that all cases are important to those they affect, to make the most effective use of the resources available, cases will be prioritised, taking into account the significance of the incident and the level of likely harm caused.
- 3.2 All submitted enquiries go through an initial vetting process (undertaken by officers). This allows for the redirection of matters to ensure they are directed to the correct team and allows officers to seek additional information if

required before prioritisation and allocation. Prioritisation enables the team to respond to the most harmful cases as a priority.

3.3 Any enforcement taken will aim to produce the highest reasonable standards of compliance within the shortest time. Officers will consider the following factors when determining the most appropriate enforcement action:

- a) seriousness of the breach,
- b) options for remedying the breach,
- c) degree of risk,
- d) circumstances of each case and the likelihood of recurrence,
- e) age and circumstances of the offender,
- f) date of offence,
- g) likelihood of achieving a satisfactory outcome,
- h) precedent effect,
- i) legal imperatives, e.g. statutory requirement to serve a notice,
- j) relevant guidance and codes of practice,
- k) weight and admissibility of evidence,
- l) public interest, and
- m) prevalence of the offence locally or nationally.

3.4 Our first response times are listed below: These timescales are the longest period in which we intend to respond to a case and in all instances the service will seek to visit as soon as possible.

Priority 1 – High priority

Investigation commenced (site visit where appropriate) in up to 2 working days.

- major accident,
- notification of infectious disease,
- public health emergency,
- service of notice from date of witness of serious / urgent breach,
- stray dog, and
- notification of premises with imminent risk of health.

Priority 2 – Medium Priority

Investigation commenced (site visit where appropriate) in up to 5 working days.

- All other cases.

3.5 The Council seeks to manage its finite resources to ensure that the highest priority cases can be addressed without delay. As a result, the response, processing, and ability to take on lower priority cases will need to be adjusted accordingly the demand for enforcement investigations is usually very high and when significant number of higher priority cases are on hand this may lead to significant delays in investigating cases where harm is more limited.

4. Enforcement options

4.1 A variety of enforcement options are available to the Council and are set out below:

a. Advice

In the first instance, consideration will be given to whether advice regarding a breach or potential breach of legislation is appropriate. When advice is given, it will normally be put in writing unless the breach is very minor, or the matter is rectified on the spot.

b. Warning letters

In certain circumstances it may be appropriate to issue a warning letter highlighting alleged offences to the person responsible for the alleged breach on how to avoid committing similar offences in the future. A warning letter will set out what should be done to rectify the breach and the timescale required for compliance. There must be sufficient admissible evidence available to substantiate the offence before a warning letter is issued.

c. Voluntary undertakings

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

d. Statutory notices

Subject to the specific rules governing the use of different statutory notices, they would generally be used where: there is a clear breach of the law, the degree of risk or environmental impact or harm from the situation is significant, and a remedy needs to be secured within a set period of time. In some instances, the service of a notice will be mandatory, for example, abatement notices under the Environmental Protection Act 1990. Subject to consideration of the evidence, it is likely that the negligent or wilful non-compliance with a statutory notice will result in prosecution.

Statutory notices may also be used to escalate enforcement action where a warning letter has been issued in relation to a breach but has not been complied with.

e. Seizure and detention of property, document and equipment

Officers will, on occasion, require evidence for their investigation and will use their statutory powers to seize property, documents, samples and/or equipment. A receipt will always be given to the relevant person detailing what has been taken and why.

f. Fixed penalty notices

Fixed Penalty Notices (FPNs) can be issued for a variety of different offences. Prior to service, the officer must have sufficient evidence to support a prosecution should the FPN not be paid. The FPN provides the offender with an opportunity to pay a financial penalty as an alternative to being prosecuted and receiving a criminal conviction. If a fixed penalty is not paid, the Council will commence criminal proceedings or take other suitable enforcement action in respect of the breach. FPNs will not normally be considered where the breach is more serious or recurrent, for example, the offender has already received a FPN for the same offence in the same year.

g. Simple caution

The Council may issue a Simple Caution where there is sufficient evidence to prosecute but where the public interest is not served by prosecution. A caution can only be administered where the offender consents to the caution and admits the offence. It will be formally recorded and may be cited in subsequent court proceedings.

h. Prosecution

The Council will consider the criteria set down in the Code for Crown Prosecutors, when deciding when to prosecute. The Council will also consider whether there is a reasonable prospect of conviction based on the strength of the evidence against any statutory defence, mitigation and any other factors which may preclude a successful conviction.

i. Criminal Behaviour Orders

The Council has the power to apply to the court for a Criminal Behaviour Order (CBO) where there has been successful conviction of a breach under the Anti-social Behaviour, Crime and Policing Act 2014. A CBO is an order designed to tackle the most serious and persistent anti-social individuals where their behaviour has brought them before a criminal court. The court can issue a CBO where it is satisfied that the offender has engaged in behaviour that caused or was likely to cause harassment, alarm, or distress to any person, and it considers that making the order will help in preventing the offender from engaging in such behaviour in future.

5. Implementation

- 5.1 When considering formal enforcement action, the officer will discuss the circumstances with those suspected of a breach and take these into account when determining the best approach. This will not apply where immediate action is required to prevent or to respond to a serious breach or where to do so is likely to defeat the purpose of the proposed enforcement action.

- 5.2 The officer will give clear reasons for any formal enforcement action to the relevant person or business at the time of the action. The reasons will be confirmed in writing at the earliest opportunity. The issue and relevant appeals procedure for redress will also be explained.
- 5.3 If a business has a Primary Authority, the officer will contact the Primary Authority before enforcement action is taken, unless immediate action is required because of imminent danger to health, safety, or the environment. officers will abide by OPSS guidance to Local Authorities in relation to the Primary Authority scheme.
- 5.4 When the officer takes the view that enforcement action is required this will be discussed with their line manager who will decide on the appropriate action to be taken. This discussion should be recorded on the case file. Implementation will then be monitored by the Executive Director - Place.

Annex

All enforcement activities, including investigations and formal actions, will be conducted in compliance with delegated statutory powers and in accordance with formal procedures and codes of practice made under this legislation in so far as they relate to the Council's enforcement powers and responsibilities.

Legislation and guidance include, but is not limited to:

- Anti-Social Behaviour, Crime and Policing Act 2014
- Code for Crown Prosecutors
- Co-ordination of Regulatory Enforcement (Procedure for References to LBRO) Order 2009 SI670/2009 (The CRE LBRO Order)
- Crime and Disorder Act 1998 – Community Safety
- Criminal Justice and Police Act 2001 – Community Safety
- Criminal Procedure and Investigations Act 1996
- Data Protection Act 2018
- Human Rights Act 1998
- Legislative and Regulatory Reform Act 2006 (LRRRA)
- Legislative and Regulatory Reform (Regulatory Functions) Order 2007
- Police and Criminal Evidence Act 1984
- Primary Authority: A guide for Local Authorities
- Protection of Freedoms Act 2012 (Code of Practice – Powers of Entry December 2014)
- Regulation of Investigatory Powers Act 2000
- Regulators' Code, April 2014
- The Regulatory Enforcement and Sanctions Act 2008 (The RES Act)
- Regulatory Reform Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009SI665/2009 (The CRE Enforcement Order)