

BIRMINGHAM CITY COUNCIL

CABINET MEMBER AND CHIEF OFFICER

MONDAY, 15 JUNE 2020 AT 00:00 HOURS
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SQUARE, BIRMINGHAM, B1 1BB

A G E N D A

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1 REGULATION AND ENFORCEMENT, ENFORCEMENT POLICY REVIEW

Report to the Leader

Birmingham City Council

Report to the Leader

10 June 2020



Subject: Regulation and Enforcement, Enforcement Policy Review

Report of: Paul Lankester, Interim Assistant Director – Regulation and Enforcement

Relevant Cabinet Member: Councillor Ian Ward - Leader

Relevant O &S Chair(s): Sir Albert Bore – Resources Overview and Scrutiny Committee

Report author: Tony Quigley
Head of the England Illegal Money Lending Team
0121 303 9158
Email: tony.quigley@birmingham.gov.uk

Are specific wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s):		
Is this a key decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, add Forward Plan Reference:		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, provide exempt information paragraph number or reason if confidential :		

1 Executive Summary

- 1.1 On 6 April 2014 the Regulators Code came into force which had implications for all Local Authority Enforcement Policies. On 17 June 2015 a revised enforcement policy was agreed following consultation and an equality impact assessment. A further review, of the policy, was conducted in November 2017.

- 1.2 The Council is required to keep our Enforcement Policy under regular review. The attached report has been updated and revised to include the new names of relevant government departments responsible for policy and to identify when it is likely that enforcement action will be initiated by the Council.

2 Recommendations

- 2.1 That the Enforcement Policy which is attached at Appendix 1 be approved.

3 Background

- 3.1 The Regulation and Enforcement Division's Enforcement Policy is a document that provides officers with guidance in respect of enforcement decisions. It is as important for officers as it is for those against whom enforcement action might be taken as it helps to provide clarity and encourages consistency in the decision making process. As a Local Authority regulator, the Council is obligated to publish a policy by the Regulator's Code. It requires the Council to have regard to certain principles when constructing its policy, which are repeated for convenience below.
- 3.2 The Regulators' Code attempts to improve the way regulation is delivered at the front line. It sets out a framework for transparent and accountable regulatory delivery and establishes principles for how local authorities should interact with those they are regulating. The Code is underpinned by the statutory principles of good regulation, which provide that regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent and should be targeted only at cases in which action is needed.
- 3.3 At the meeting of the Licensing and Public Protection Committee on 15 November 2017 the Regulation and Enforcement Division's Enforcement Policy was presented as part of an ongoing commitment to keep the enforcement policy under review. The policy provides guidance to officers engaged within regulatory enforcement activities as well as guidance for the members of the Licensing and Public Protection Committee. This is a review of that policy to ensure the information remains up to date with the regulators code.

4 Options considered and Recommended Proposal

- 4.1 Adoption and publication of the Council's enforcement policy is a legal requirement.

5 Consultation

- 5.1 In view of the minor changes that are proposed to the policy, and the fact that since its adoption no formal complaints or concerns about the interpretation or application of the policy have been received, no external consultation has taken place on this review.

6 Risk Management

- 6.1 Failure to publish an Enforcement policy in conjunction with requirements under the Regulators Code could result in a legal challenge.
- 6.2 The policy provides a transparent and proportionate approach to enforcement. It will reduce the risk of any action relating to allegations of inappropriate or inconsistent enforcement action by the council. The policy also reiterates action will be taken where appropriate and provides a framework for this action.
- 6.3 The policy and criteria sets a framework for fair, consistent and transparent decision making when considering enforcement action and disposal.
- 6.4 The policy and criteria will demonstrate the Council's compliance with statutory guidance.
- 6.5 The policy will be reviewed on an ongoing basis by the Regulation and Enforcement division, to ensure the policy represents best practice.

7 Compliance Issues:

- 7.1 The issues addressed in this report underpin the City Council Vision, Birmingham is an entrepreneurial city to learn, work and invest in, Birmingham is an aspirational city to grow up in, Birmingham is a great city to live, Birmingham is a fulfilling city to age well in.
- 7.1.1 Further Regulation and Enforcement will be a key service in ensuring Birmingham residents gain the maximum benefit from hosting the Commonwealth Games by supporting legitimate business and tackling rogue traders looking to take advantage of opportunities that arise within the ghost market.
- 7.1.2 They also support the Regulation and Enforcement Mission Statement: Locally accountable and responsive fair regulation for all – achieving a safe, clean, green and fair trading city for residents, business and visitors.

7.2 Legal Implications

- 7.2.1 Under the Legislative and Regulatory Reform Act 2006, regulators (such as the Council's Regulation and Enforcement Division) are required to comply with any codes of practice produced by central government. The Regulators Code, published by the Department for Business Energy and Industrial Strategy (formerly BIS) in April 2014, states that regulators should ensure that their approach to

regulation is transparent. By publishing the policy the City Council is meeting its obligations.

7.3 Financial Implications

- 7.3.1 The revised policy will be administered by the Regulation and Enforcement Division within existing resources and budgets. There are no financial implications arising from this report.

7.4 Procurement Implications (if required)

None identified.

7.5 Human Resources Implications (if required)

N/A.

7.6 Public Sector Equality Duty

- 7.6.1 The proposed revised policy applies to all businesses residents and staff and will not have a significant impact on any with different protected characteristics.
- 7.6.2 An initial Equality Impact Analysis was completed in 2014 when the Policy was first drafted. It has not been changed since 2014 given that the Policy has not changed significantly.
- 7.6.3 One of the benefits of an enforcement policy is to ensure consistency and fairness of enforcement throughout all communities and the commercial sector in Birmingham. The purpose of this Policy is to ensure that decisions are made transparently and to eliminate unfair or inequitable decisions. By its nature it should not have an adverse impact on anyone with protected characteristics.

8. Appendices

Amended Enforcement Policy – Appendix 1
Risk Matrix – Appendix 2
Equality Analysis – Appendix 3

BIRMINGHAM CITY COUNCIL
REGULATION AND ENFORCEMENT
ENFORCEMENT POLICY

1. INTRODUCTION

- 1.1 The Regulatory Enforcement and Sanctions Act 2008 established The Local Better Regulation Office (LBRO). Over time this evolved into the Better Regulation Delivery Office (BRDO) which then became Regulatory Delivery (RD). The Office for Product Safety and Standards (OPS&S) succeeds the former Regulatory Delivery and works with local authorities and others to take forward its responsibilities, including Primary Authority and Better Business for All. It is part of the Department for Business, Energy and Industrial Strategy (BEIS). The Act also imposed upon Regulation and Enforcement a duty to:
- (a) have regard to any guidance given to a Local Authority by OPS&S,
 - (b) a duty to comply with guidance where we are directed to do so by OPS&S, and
 - (c) a duty to have regard to any list of enforcement priorities published by OPS&S. We are committed to doing so.
- 1.2 The Regulators Code (RC) provides a set of principles for Regulators to consider.
- (a) Regulators should carry out their activities in a way that supports those they regulate to comply and grow.
 - (b) Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views.
 - (c) Regulators should base their regulatory activities on risk.
 - (d) Regulators should share information about compliance and risk.
 - (e) Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply.
 - (f) Regulators should ensure that their approach to their regulatory activities is transparent.
- 1.3 Section 6 of the Regulators' Code sets out an expectation that local authorities will ensure that their approach to their regulatory activities is transparent. This means we will publish our policy on how we intend to deliver regulation and what those affected can expect. We believe that our enforcement policy is clear, concise, transparent and fit for purpose. Included in our enforcement policy is the way we will deal with issues and what those regulated can expect.
- 1.4 The RC indicates that it is for each local authority to determine an approach to service standards that will work best for those it regulates and itself.

- 1.5 This policy commits Birmingham City Council's Regulation and Enforcement Division to good enforcement practice with effective procedures and clear policies. Regulation and Enforcement Division includes the Licensing Service, Environmental Health, Trading Standards, the hosted England Illegal Money Lending Team, the Regional Investigation Team and incorporates the enforcement actions of the Waste Enforcement Unit.
- 1.6 This document has been prepared with regard to the current principal legislation and statutory guidance including:
- The Regulatory Enforcement and Sanctions Act 2008 (The RES Act).
 - Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009 SI665/2009 (The CRE Enforcement Order).
 - Co-ordination of Regulatory Enforcement (Procedure for References to RD) Order 2009 SI670/2009 (The CRE BRDO Order).
 - Legislative and Regulatory Reform Act 2006 (LRRRA).
 - Legislative and Regulatory Reform (Regulatory Functions) Order 2007 Regulators' Code (RC).
- 1.7 This Policy has also been prepared having regard to:
- The Enforcement Concordat: Good Practice Guide for England and Wales and the Principles of Good Enforcement: Standards; Openness; Helpfulness; Complaints; Proportionality and Consistency; the Human Rights Act 1988 and the Code for Crown Prosecutors.
 - The LRRRA Part 2 requires us also to have regard to the Principles of Good Regulation. We recognise that our regulatory activities should be carried out in a way which is:
 - (a) proportionate;
 - (b) accountable;
 - (c) consistent;
 - (d) transparent; and
 - (e) targeted (to situations which need action) when we exercise a regulatory function which for local authorities includes: environmental health, trading standards and licensing. We have had regard to the RC in the preparation of this policy.

2. WHAT THIS POLICY IS FOR

- 2.1 Regulation and Enforcement's primary function is to achieve regulatory compliance in order to protect the public, legitimate business, the environment and groups such as consumers and workers. However, we reserve the right to take enforcement action in some cases after compliance has been achieved if it is in the public interest to do so.

- 2.2 We recognise that prevention is better than cure, but where it becomes necessary to take formal enforcement action against a business, or member of the public, we will do so. There are a wide range of tools available to us as an enforcement agency. The actions we may take include:
- (a) No action.
 - (b) Informal Action and Advice.
 - (c) Fixed Penalty Notices.
 - (d) Penalty Charge Notices.
 - (e) Formal Notice.
 - (f) Forfeiture Proceedings.
 - (g) Seizure of goods/equipment.
 - (h) Injunctive Actions and other Civil Sanctions.
 - (i) Refusal/Suspension/Revocation of a licence.
 - (j) Simple Caution.
 - (k) Prosecution.
 - (l) Proceeds of Crime Applications.
- 2.3 When considering enforcement action, Regulation and Enforcement will, where appropriate and where reasonably practicable, discuss the circumstances with those suspected of a breach and take these into account when deciding on the best approach. However, it must also be noted that legal processes dictated by statute will be applied in many instances where contraventions of legislation have been detected. Further this paragraph does not apply where immediate action is required to prevent or respond to a potential breach/contravention or where to do so is likely to defeat the purpose of the proposed enforcement action.
- 2.4 If you are a business operating in more than one Local Authority and you have chosen to have a registered Primary Authority Partnership under the RES Act we will, where required, comply with the agreement provisions for enforcement and notify your Primary Authority of the enforcement action we propose to take. We may under that Act also refer the matter to RD if appropriate.
- 2.5 This policy is intended to provide guidance for enforcement officers, businesses, consumers and the public.

3. SCOPE OF THE POLICY

- 3.1 This Policy, where appropriate, applies to the legislation delegated to Regulation and Enforcement and enforced by authorised officers with delegated enforcement powers. These delegated powers are listed and reproduced within the Council's constitution. These can be found at:

https://www.birmingham.gov.uk/info/50068/how_the_council_works/283/the_councils_constitution

- 3.2 'Enforcement' includes any criminal or civil action taken by enforcement officers aimed at ensuring that individuals or businesses comply with the law.
- 3.3 For the purposes of the RES Act the term 'enforcement action' has been given a general statutory definition, which is:
- (a) Action to secure compliance with a restriction, requirement or condition in relation to a breach or supposed breach
 - (b) Action taken in connection with imposing a sanction for an act or omission; and
 - (c) Action taken in connection with a statutory remedy for an act or omission.
- 3.4 A list of specific 'enforcement actions' is provided in Section 2 of this Policy. This means that if you are a business or organisation registered with a Primary Authority and we are proposing to take action against you and that action is one of those listed then, unless one of the permitted exceptions applies, we will be required to contact your Primary Authority and give notice of the enforcement action we propose to take against you.
- 3.5 By this document Regulation and Enforcement intends to enable enforcement officers to interpret and apply relevant legal requirements and enforcement policies fairly and consistently between like-regulated entities in similar situations. Regulation and enforcement also aims to ensure that its own enforcement officers interpret and apply their legal requirements and enforcement policies consistently and fairly.
- 3.6 In certain circumstances we 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. Court results are placed on our website on the Traders Prosecuted page, which can be found at: <https://www.birmingham.gov.uk/traders>

4. HOW TO OBTAIN A COPY OF THE POLICY OR MAKE COMMENTS

- 4.1 This Policy is available on the Birmingham City Council website at:

<http://www.birmingham.gov.uk/regulatoryenforcementpolicy>

If you would like a paper copy of the Policy and/or you would like to comment on the Policy, please contact us through one of the following means :

- (a) E-mailing EH@birmingham.gov.uk
- (b) Emailing tradingstandards@birmingham.gov.uk
- (c) Emailing licensing@birmingham.gov.uk
- (d) Writing to the Assistant Director Regulation and Enforcement, Manor House, 40 Moat Lane, Birmingham, B5 5BD.
- (e) Telephoning 0121 303 6121.

- 4.2 On request, this Policy will be made available on tape, in Braille or large type.

5. OUR APPROACH

- 5.1 Our principles are informed by a number of codes of practice and statute as well as the Regulators' Code (the Code), Enforcement Concordat and the Guidance of OPS&S as to how to apply these documents.
- 5.2 We recognise that prevention is better than cure and our role, therefore, involves actively working with businesses to advise on and assist with compliance. However, where it becomes necessary to take formal enforcement action against a business, or member of the public, we will do so.
- 5.3 Where we consider that formal enforcement action is necessary, each case will be considered on its own merits.
- 5.4 However, there are general principles that apply to the way each case must be approached. These are set out in this Policy.
- 5.5 The approach of Regulation and Enforcement to the sanctions and penalties available to it will aim to:
- (a) Change the behaviour of the offender;
 - (b) Change attitudes in society to offences which may not be serious in themselves, but which are widespread;
 - (c) Eliminate any financial gain or benefit from non-compliance;
 - (d) Be responsive and consider what is appropriate for the offender and regulatory issue which can include punishment and the public stigma that should be associated with a criminal conviction;
 - (e) Be proportionate to the nature of the offence and the harm caused;
 - (f) Restore the harm caused by regulatory non-compliance, where appropriate; and
 - (g) Deter future non-compliance;
 - (h) Comply with Statutory requirements.
- 5.6 All enforcement decisions will be fair, independent and objective. They will not be influenced by issues such as ethnicity or national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender. Such decisions will not be affected by improper or undue pressure from any source.

- 5.7 Where possible, we will take into account the views of any victim, injured party or relevant person to establish the nature and extent of any harm or loss and its significance in making the decision to take formal action. This may include actual or potential harm or loss or the impact on the well-being of individuals or potential or actual harm to communities or the environment.
- 5.8 Where possible, we will endeavour to ensure that those regulated can seek advice from the service about potential non-compliance without automatically triggering enforcement action. Each matter will be considered on its own merits and will determine the action by the service.
- 5.9 Birmingham City Council is a public authority for the purposes of the Human Rights Act 1998. We will, therefore, apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
- 5.10 All enforcement activities, including investigations and formal actions, will always be conducted in compliance with the statutory powers of the officer and all other relevant legislation, including but not limited to the Police and Criminal Evidence Act 1984, the Criminal Procedure and Investigations Act 1996, the Human Rights Act 1998, the Regulation of Investigatory Powers Act 2000 and the Criminal Justice and Police Act 2001, and in accordance with any formal procedures and codes of practice made under this legislation in so far as they relate to enforcement powers and responsibilities.
- 5.11 This Policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Code. In certain instances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

6. NOTIFYING ALLEGED OFFENDERS

- 6.1 If we receive information (for example from a complainant) that may lead to formal enforcement action against a business or individual we will notify that business or individual as soon as is practicable of any intended enforcement action, unless this could impede an investigation or pose a safety risk to those concerned or the general public.
- 6.2 During the progression of enforcement investigations/actions, business proprietors or individuals and witnesses will be kept informed of progress. Confidentiality will be maintained and personal information about individuals will only be released to a Court when required and/or in accordance with the Data Protection Act 2018.

7. ENFORCEMENT ACTION

7.1 An Overview of the enforcement actions available

7.1.1 There are a large number of potential enforcement options. The level of the action taken varies from no action through to proceedings in Court. Examples of the main types of action that may be considered are shown below:

- (a) No action.
- (b) Informal Action and Advice.
- (c) Fixed Penalty Notices.
- (d) Penalty Charge Notices.
- (e) Formal Notice.
- (f) Forfeiture Proceedings.
- (g) Seizure of goods/equipment.
- (h) Injunctive Actions and other Civil Sanctions.
- (i) Refusal/Suspension/Revocation of a licence (including with immediate effect).
- (j) Simple Caution.
- (k) Prosecution.
- (l) Proceeds of Crime Applications.

7.1.2 The order in which the enforcement actions are listed above is not necessarily in absolute order of escalating seriousness relative to each other. Regulation and Enforcement reserves the right to escalate its level of enforcement action, having regard to the criteria in paragraph 7.2 of this policy.

7.2 Deciding what level of action is appropriate

7.2.1 In assessing what enforcement action is necessary and proportionate, consideration will be given to, amongst other things:

- (a) The seriousness of the compliance failure.
- (b) The past and current performance of any business and/or individual concerned.
- (c) Any obstruction on the part of the offender.
- (d) The risks being controlled.
- (e) Statutory guidance.
- (f) Codes of Practice.
- (g) Any legal advice.
- (h) Policies and priorities of Government, Birmingham City Council and Birmingham City Council's Licensing and Public Protection Committee.
- (i) A person's age in relation to young people (termed 'juveniles') aged under 18.
- (j) The existence of a Primary Authority agreement.
- (k) Any duty of a local authority or Statutory provisions

7.2.2 Certain enforcement action, such as the decision to Caution and/or the decision to prosecute, is further and specifically informed by those matters set out below at paragraphs 7.13 and 7.14.

7.2.3 The Risk Matrix in Appendix 1 to this policy will be used as a framework to support transparency and consistency of approach and decision making. For workplace health and safety the Enforcement Management Model (EMM) is used to ensure that enforcement decisions are consistent.

7.2.4 Action is more likely to be taken if the following are of relevance

- a. Situations where it is evident that a vulnerable individual or vulnerable group has been exploited
- b. Obstruction of authorised officers of the service in the lawful execution of their duties.
- c. Offences involving deceptions, fraud or negligence.
- d. Wilful disregard for the law.
- e. Risk to public health /safety
- f. Public nuisance
- g. Categories of offences which create significant financial burden to the taxpayer or impact at a community-wide level or that undermine public/business confidence in the City.

7.3 An explanation of the enforcement action options

7.3.1 No Action

7.3.2 In certain circumstances, we may consider that no action is appropriate in the circumstances, such as where the offender is elderly and frail or is suffering from mental health issues or serious ill health, and formal action would seriously damage their wellbeing. In such cases we will advise the offender of the reasons for taking no action.

7.4 Informal Action and Advice

7.4.1 For minor breaches of the law we may give verbal or written advice. We will clearly identify any contraventions of the law and give advice on how to put them right, including a deadline by which this must be done. The time allowed will be reasonable and take into account the seriousness of the contravention and the implications of the non-compliance.

7.4.2 Sometimes we will advise offenders about 'good practice' but we will clearly distinguish between what they must do to comply with the law and what is advice only.

7.4.3 Failure to comply could result in an escalation of enforcement action.

7.5 Fixed Penalty Notices

- 7.5.1 Certain offences are subject to fixed penalty notices where prescribed by legislation. Where legislation permits an offence to be dealt with by way of a Fixed Penalty Notice (FPN), we may choose to administer a FPN on a first occasion, without issuing a warning. Failure to pay the FPN may lead to a prosecution.

7.6 Penalty Charge Notices

- 7.6.1 Penalty Charge Notices (PCN) are prescribed by certain legislation as a method of enforcement by which the offender pays an amount of money to the enforcer in recognition of the breach. Failure to pay the PCN will result in the offender being pursued in the County Court for non-payment of the debt. A PCN does not create a criminal record and we may choose to issue a PCN without first issuing a warning.

7.7 Failure to discharge a FPN and/ or a PCN

- 7.7.1 A failure to pay a FPN or PCN is a material consideration for the purposes of deciding whether a prosecution will be taken or civil debt recovery commenced.
- 7.7.2 In order to maintain the integrity of this legislative regime and adherence to relevant statutory Codes of Practice, Regulation and Enforcement will consider an escalation of enforcement action. This will include consideration of a prosecution for the original offence under the primary legislation or consideration of civil action to recover the debt.

7.8 Formal Notice

- 7.8.1 Certain legislation allows notices to be served requiring offenders to take specific actions or cease certain activities. Notices may require activities to cease immediately where the circumstances relating to health, safety, environmental damage or nuisance demand. In other circumstances, the time allowed will be reasonable, take into account the seriousness of the contravention, the implications of the non-compliance and the appeal period for that notice.
- 7.8.2 All notices issued will include details of any applicable appeals procedures.
- 7.8.3 Certain types of notice allow works to be carried out in default. This means that if a notice is not complied with [a breach of the notice] we may carry out any necessary works to satisfy the requirements of the notice ourselves. Where the law allows, we may then commence recovery action, through the courts, if necessary, against the person/business served with the notice, for any costs we incur in carrying out the work. Notwithstanding the default power, non-compliance with notices may lead to a prosecution.

7.9 Forfeiture Proceedings

- 7.9.1 This procedure may be used in conjunction with seizure and/or prosecution where there is a need to dispose of goods in order to prevent them re-entering

the market place or being used to cause a further problem. In appropriate circumstances, we will make an application for forfeiture to the Magistrates Courts.

7.10 Seizure

7.10.1 Certain legislation enables authorised enforcement officers to seize goods, equipment or documents, for example, unsafe food, sound equipment that is being used to cause a statutory noise nuisance, unsafe products or any goods that may be required as evidence for possible future court proceedings. When we seize goods we will give the person from whom the goods are taken an appropriate receipt and details of any applicable appeals and/or property return procedures.

7.11 Injunctive Actions and Other Civil Sanctions

7.11.1 In certain circumstances, for example, where offenders are repeatedly found guilty of similar offences or where it is considered that injunctive action is the most appropriate course of enforcement, then such actions may be used to deal with repeat offenders, dangerous circumstances, or consumer/environmental/public health detriment.

7.11.2 Action under the Enterprise Act 2002- proceedings may be brought where an individual or organisation has acted in breach of community or domestic legislation with the effect of harming the collective interests of consumers. In most circumstances action will be considered where there have been persistent breaches or where there is significant consumer detriment. Action can range from:

- (a) Informal undertakings.
- (b) Formal undertakings.
- (c) Interim Orders.
- (d) Court Orders.
- (e) Contempt Proceedings.

7.11.3 In certain circumstances Community Protection Notices (CPN's) or Criminal Behaviour Orders (CBO's) can be issued and obtained in respect of anti-social behaviour.

Where the non-compliance under investigation amounts to anti-social behaviour such as persistent targeting of an individual or a group of individuals in a particular area, or activity that is deemed detrimental to quality of life, a CPN or CBO may be sought or issued to stop the activity.

7.12 Suspension and Revocation of a Licence

7.12.1 **Hackney Carriage and Private Hire Drivers** – the grounds for refusing to renew a licence, or for suspending or revoking a licence, are based on whether the driver has:

- (i) Been convicted of an offence involving dishonesty, indecency, drugs or violence;
- (ii) Been convicted of an offence under the Local Government (Miscellaneous Provisions) Act 1976;
- (iii) Failed to comply with a requirement of the Local Government (Miscellaneous Provisions) Act 1976; or
- (iv) Any other reasonable cause.

7.12.2 A Hackney Carriage or Private Hire Drivers' licence may also be suspended or revoked with immediate effect if such a decision is deemed necessary in the interests of public Safety. No conviction is required for this action to be taken. Matters will be considered on the Civil Standard of proof – on the balance of probability.

7.12.3 **Premises Licences (Licensing Act 2003)** – where a review of a Premises Licence is sought under Section 51 of the Act the options available to the Licensing and Public Protection Committee are:

- (i) Modification of the conditions of the Licence.
- (ii) Exclusion of licensable activity from the scope of the Licence.
- (iii) Removal of the Designated Premises Supervisor.
- (iv) Suspension of the Licence for a period not exceeding three months.
- (v) Revocation of the Licence.
- (vi) Issue of a Warning Letter.
- (vii) No action.

7.12.4 **Premises Licences (Gambling Act 2005)** – where a review of a Premises Licence is sought under Section 202 of the Act, the options available to the Licensing and Public Protection Committee are:

- (i) Revocation of the Licence.
- (ii) Suspension of the Licence for a specified period not exceeding three months.
- (iii) Exclusion of a condition attached to the Licence, under Section 168, or removal or amendment of an exclusion.
- (iv) Additions, removal or amendment of a condition under Section 169.

7.12.5 **General Licensing** – where there is a breach of condition of Licence or Permit, upon hearing evidence, the Licensing Committee has the power to

suspend, revoke or refuse to renew the Licence/Permit subject to the provisions of the legislation.

7.12.6 Correctional Training Courses – where a driver of a hackney carriage or a private hire vehicle has committed an offence that would be considered suitable for disposal by way of administering a Simple Caution or a FPN, we may in appropriate circumstances offer the driver the opportunity of attending a correctional training course at the driver's expense as an alternative to receiving the Simple Caution or FPN. The acceptance of a training course will not be cited as a formal sanction by the Council in the event of future legal proceedings against the individual, but the circumstances of the offence would remain relevant in terms of the individual's fitness to hold a licence.

7.13 Simple Caution

7.13.1 In appropriate circumstances, where a prosecution would otherwise be justified, a Simple Caution may be administered. Simple Cautions will be used in accordance with current Guidelines, including the Director's Guidance on Charging issued by the Director of Public Prosecutions under section 37A of the Police and Criminal Evidence Act 1984.

7.13.2 A Simple Caution is an admission of guilt, but is not a form of sentence, nor is it a criminal conviction.

7.13.3 For a Simple Caution to be issued a number of criteria must be satisfied:

- (a) Sufficient evidence must be available to prove the case.
- (b) The offender must admit the offence.
- (c) It must be in the public interest to use a Simple Caution.
- (d) The offender must be 18 years or over.

7.13.4 We will also take into account whether the offender has received a simple caution within the last 2 years when determining whether a simple caution is appropriate for any subsequent offending.

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

7.13.6 The refusal of an offender to be cautioned does not preclude the matter being passed for prosecution. In fact, any such failure will be a material consideration when deciding whether the offender should then be prosecuted for that offence.

7.13.7 We take the view that offences of selling age restricted products to minors and other vulnerable persons have such a serious and adverse impact on the safety and wellbeing of the community that our presumption will always be to deal with them by way of formal action, meaning simple caution or prosecution and/or licence reviews. Where a sale of alcohol is made by someone who is

not a personal licence holder, consideration will be given to administering a simple caution for a first offence.

Where a sale of alcohol is made by someone who is a personal licence holder, consideration will be given to dealing with the case by way of prosecution for a first offence. In every case we will consider the individual circumstances before making our decision.

7.14 Prosecution

7.14.1 In circumstances where none of the other forms of enforcement action are considered appropriate or a defendant failed to comply with a notice issued or failed to pay a fixed penalty notice issued to them, a prosecution will be considered and may ensue.

7.14.2 When deciding whether to prosecute, Regulation and Enforcement applies the Code for Crown Prosecutors as issued by the Crown Prosecution Service and Director of Public Prosecutions.

7.14.3 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. For a copy of the Code for Crown Prosecutors visit:

http://www.cps.gov.uk/publications/code_for_crown_prosecutors/index.html

7.14.4 The Code for Crown Prosecutors has two stages: (i) the evidential stage; followed by (ii) the public interest stage. Regulation and Enforcement will only consider whether a prosecution is in the public interest after considering whether there is sufficient evidence to prosecute and being satisfied that there is a realistic prospect of conviction. However, there will be cases where it is clear, prior to reviewing all the evidence, that the public interest does not require a prosecution. In these instances, we may decide that the case should not proceed further.

7.14.5 The results of prosecution cases are a matter of public court record. Summaries of court case outcomes will be published on our website for a limited period of time. (visit <http://www.birmingham.gov.uk/traders-prosecuted>

7.15 Proceeds of Crime Act Applications

7.15.1 Regulation and Enforcement either through its own Officers or in co-operation with the Police may make application under the Proceeds of Crime Act 2002 to restrain and/or confiscate the assets of an offender. The purpose of any such proceedings is to recover the financial benefit that the offender has obtained from his criminal conduct. Proceedings are conducted according to the civil standard of proof.

8. DECISIONS ON ENFORCEMENT ACTION

8.1 Decisions about the most appropriate enforcement action to be taken are based upon those matters set out in Section 7 above.

8.2 Where appropriate, decisions about what enforcement action to take may involve consultation between:

- (a) Investigating Officer(s).
- (b) Senior managers from Regulation and Enforcement.
- (c) Birmingham City Council Solicitors.

8.3 The decision to prosecute a case will be taken by those with authority to do so in accordance with the Birmingham City Council Scheme of Delegations.

8.4 **Enforcement Policy – Appeals and Complaints**

8.4.1 **Appeals through the Council’s Corporate Complaints Procedure.** The Council has a Corporate comments, compliments and complaints Procedure. (https://www.birmingham.gov.uk/info/50172/comments_compliments_and_complaints).

The Council encourages any person who has a problem with a service they receive, due to a failure in the service, to report it. However, where a report is received from a person who is the subject of a law enforcement investigation or current/pending statutory action then the Corporate Policy will not normally be used. The reasons for this and examples of relevant circumstances include:

- Ongoing law enforcement investigation or legal process has commenced. In most situations law enforcement investigations fall under the requirements of the Police and Criminal Evidence Act 1984 (PACE). This imposes requirements on the circumstances in which the council can engage with a person who is suspected of committing an offence or who is the subject of current/pending law enforcement action. The Corporate Procedure cannot be used to attempt to override or circumvent PACE, for example to challenge elements of an investigation; the necessity for enforcement action; or an enforcement decision. If this is attempted, then the council’s Corporate Procedure will normally be staid. The suspension would apply until law enforcement / legal proceedings stages are completed. The outcome of an investigation, including legal proceedings may render the basis of a complaint/report nullified, but a person’s rights are not affected as the criminal justice system has processes to ensure fairness and equity, including appeals procedures. [The Council cannot provide advice on these and the aggrieved person would be required to explore these independently].
- A complaint that has already been settled in another way. This includes a determination by a Court or Tribunal service or other statutory regulator/arbitration/ombudsman service.

8.4.2 **Who will investigate if a complaint or challenge is made?**

- If a complaint is made through a criminal justice system route, such as an appeal or contested trial this will be dealt with by the relevant statutory process at court.

- If a complaint is attempted through the Council's Corporate Procedure, in the first instance the relevant Investigating Officer from Regulation and Enforcement, potentially with their line manager will consider and make a determination. (The exception to this is where a complaint is made about a specific Investigating Officer. If this applies the Investigating Officers line manager or other manager within Regulation and Enforcement will make a determination. (This process will be applied for complaints about alleged officer misconduct or where a request is made for an officer to be removed from an investigation). Following investigation the complainant/requestor will be advised on any proposed course of action. Complaints/challenges will not ordinarily lead to cessation of a criminal investigation or legal proceedings. If a complaint is made about the manager who is overseeing an investigation this will be considered by a manager within Regulation and Enforcement of equivalent or more senior grade who has not had direct involvement in the relevant investigation or enforcement decision.

8.5 Enforcement of Waste Crime

- 8.5.1 The mission statement for Regulation and Enforcement Services is "Fair Regulation for All – achieving a safe, healthy, clean, green and fair trading city for residents, businesses and visitors". This reflects the Council's priority of "Birmingham is a great city to live in".
- 8.5.2 Amongst many steps to achieve a cleaner city a task force specifically set up to tackle aspects of waste crime was established. In order for the task force to be as effective as possible, the legislation around illegally dumped waste must be strictly enforced. Not all waste crime offending will directly trigger the usual threshold guide for legal proceedings to be commenced, as set out in the Matrix (Appendix 1). However, given the community-wide impact of the problem (outlined at Paragraph 7.2.4) waste offences may be prosecuted, in appropriate circumstances where the threshold is not met, in order to secure deterrent or punitive action which is, considered to be, in the public interest. Any matters which are dealt with in this manner will still have the usual legal protections afforded and will still be subject to the code for crown prosecutors.

9. PRIMARY AUTHORITY PARTNERSHIP SCHEME AND ITS ENFORCEMENT PROVISIONS

- 9.1 When we have come to the decision to take enforcement action against you and:
1. You are a business operating in more than one Local Authority and you have chosen to have a registered Primary Authority Partnership under the RES Act; and
 2. The enforcement action we propose to take is covered by the definition of enforcement action for the purposes of Part 2 of the RES Act.

We will, where required to do so by that Act, comply with the agreement provisions for enforcement and notify your Primary Authority of the action we propose to take.

- 9.2 Your Primary Authority has the right to object to our proposed action in which circumstances either they or we may refer the matter to BRDO.

10. LIAISON WITH OTHER REGULATORY BODIES AND ENFORCEMENT AGENCIES

- 10.1 In addition to the duties imposed upon us by the RES Act in respect of co-operating and working with Primary Authorities and RD, we will, where appropriate, co-operate and co-ordinate with any relevant regulatory body and/or enforcement agency to maximise the effectiveness of any enforcement.
- 10.2 Where an enforcement matter affects a wide geographical area beyond the City boundaries or involves enforcement by one or more other local authorities or organisations, where appropriate all relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activity co-ordinated with them.
- 10.3 Regulation and enforcement will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies, including:
- (a) Government Agencies.
 - (b) Police Forces.
 - (c) Fire Authorities.
 - (d) Statutory Undertakers.
 - (e) Other Local Authorities.
 - (f) Other internal Council Departments

11. CONSIDERING THE VIEWS OF THOSE AFFECTED BY OFFENCES

- 11.1 Regulation and Enforcement undertakes enforcement on behalf of the public at large and not just in the interests of any particular individual or group. However, when considering the public interest test, the consequences for those affected by the offence, and any views expressed by those affected will, where appropriate, be taken into account when making enforcement decisions.

12. PROTECTION OF HUMAN RIGHTS

- 12.1 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.

13. REVIEW OF THE ENFORCEMENT POLICY

13.1 This Policy will be reviewed annually. A copy of this Policy is available at:

<http://birmingham.gov.uk/regulatoryenforcementpolicy>

END OF DOCUMENT

RISK MATRIX FOR REGULATION AND ENFORCEMENT - ENFORCEMENT POLICY

<u>REGULATION AND ENFORCEMENT ACTIVITY</u>	<u>ACTIVITY</u>	<u>SCORE</u>
Does the activity involve breaches of criminal legislation?	YES – continue to matrix.	
	NO – then this matrix is not an appropriate method for decision making in relation to the matter.	

People are safe and their wellbeing and safety are assured	No safety or health and wellbeing implications.	0
	Limited possibility of risk to safety and wellbeing.	1
	A high probability that illness or injury will occur or has occurred. Any injuries or illness should be restricted in nature (i.e. not require hospital treatment).	2
	Death, illness, injury (requiring hospital treatment for more than three days sickness absence from work) or has occurred or is likely to occur.	3
Direct or indirect economic implications to legitimate businesses	No implications for legitimate businesses.	0
	Limited consequences to a very small number of legitimate businesses.	1
	A large part of the legitimate business sector will be affected, for example all of those in a particular geographic area or businesses supplying a particular market.	2
	All of the legitimate business sector will be affected.	3
Direct or indirect economic implications to consumers or the wider public	No economic loss to consumers or the wider public.	0
	The economic loss was very small (or was likely to be very small) or to a small group of individuals and the amount of economic loss was very small (or was likely to be very small).	1
	The economic loss was restricted (or was likely to be restricted) to a group of individuals and the amount of economic loss was limited (or was likely to be limited).	2

	Higher level of economic loss to an individual or the economic loss or the probability of such or the amount of economic loss could have potentially affected a higher number of consumers or the wider public.	3
Reputation (risk to the local authorities' reputation) in taking no action	No reputational risk.	0
	Low reputational risk.	1
	Medium reputational risk.	2
	High reputational risk.	3
Likelihood that the infringing activity could have been easily ascertained (for example: the size of the business may be a factor when making this assessment or using a reasonable test; the persons should have known it was wrong or information could be readily discovered online.	Very difficult to ascertain.	0
	Difficult to ascertain.	1
	Could be ascertained with a limited amount of activity on behalf of the business.	2
	Easy to ascertain even with limited knowledge of the subject area.	3
Has the defendant taken reasonable precautions and due diligence in the circumstances to prevent the activity from occurring?	Not applicable.	0
	High level of precautions, training and systems in place and followed the systems.	1
	Some precautions and systems in place and followed but not comprehensive.	2
	No training and systems in place or followed.	3
What is the history of the defendant in relation to regulatory compliance? (The local or national position of a defendant can be taken if appropriate. Considerations of 'culpability' and 'harm'	Not applicable.	0

may be necessary where there has been or would not likely be any local authority history of compliance assessment)		
	The defendant has a good history of proactive work with the Local Authority to achieve compliance in its sector. Previous engagement has found no issues. (Considerations where culpability and/or harm are 'low').	1
	Previous engagement has found issues, however, these have been rectified within a reasonable time frame. (Considerations where culpability and/or harm are 'medium').	2
	The defendant has a poor history of Local Authority engagement and/or previous instructions have been disregarded and/or a high level of non-compliance has been found on previous engagement. (Considerations where culpability and/or harm are 'high').	3
Aggravating features (i.e. length of time activity has been happening for; was the activity purposely covert etc.; was the victim vulnerable; was an attempt made to obstruct an investigation)	Not applicable.	0
	Low level of aggravating features.	1
	Some level of aggravating features, however, limited by time or amount of aggravation.	2
	Higher level of aggravation.	3

<u>KEY</u>	<u>ASSESSMENT</u>	<u>SCORE RATING</u>
3 – high risk	If an activity results in three or more level HIGH RISK scores then formal action should be considered.	Score 12 and above.
2 – medium risk	Consider informal / lower tier action.	Score 2 to 11.
1 – low risk	No action.	Score 1.

The Risk Matrix will be used as a framework to support transparency and consistency of approach and decision making. (For workplace health and safety the Enforcement Management Model (EMM) is used to ensure that enforcement decisions are consistent).

Where the score falls between 2 and 11 and the investigating officer believes the matter should be referred for formal proceedings the case must be reviewed by the operations manager and/or Heads of Service and a record of the decision will be retained.

Where the score is 12 and above and the investigating officer believes the matter should not be referred for formal proceedings the case must be reviewed by the operations manager and/or Heads of Service and a record of the decision will be retained.

Institution of criminal proceedings will only be formally recommended to the relevant Council Director where the Council's Legal Services or Head of Service within Regulation and Enforcement have authorised progression.

Title of proposed EIA	Regulation and Enforcement, Enforcement Policy review
Reference No	EQUA486
EA is in support of	Amended Policy
Review Frequency	Two Years
Date of first review	27/02/2020
Directorate	Neighbourhoods
Division	Regulation and Enforcement
Service Area	
Responsible Officer(s)	<input type="checkbox"/> Tony Quigley
Quality Control Officer(s)	<input type="checkbox"/> Leroy Pearce
Accountable Officer(s)	<input type="checkbox"/> Paul Lankester
Purpose of proposal	To review the Regulation and Enforcement policy
Data sources	
Please include any other sources of data	
ASSESS THE POTENTIAL IMPACT AGAINST THE PROTECTED CHARACTERISTICS	
Protected characteristic: Age	Wider Community
Age details:	The policy is used to identify the priorities of the Regulation and Enforcement service and to identify how the service will apply a proportionate approach to its enforcement activities. The policy applies to all ages and ensures fairness in its approach.
Protected characteristic: Disability	Wider Community
Disability details:	The policy is used to identify the priorities of the Regulation and Enforcement service and to identify how the service will apply a proportionate approach to its enforcement activities. The policy ensures fairness in its approach.
Protected characteristic: Gender	Wider Community
Gender details:	The policy is used to identify the priorities of the Regulation and Enforcement service and to identify how the service will apply a proportionate approach to its

enforcement activities. The policy applies to all ages and ensures fairness in its approach.

Protected characteristics: Gender Reassignment

Gender reassignment details:

Wider Community

The policy is used to identify the priorities of the Regulation and Enforcement service and to identify how the service will apply a proportionate approach to its enforcement activities. The policy applies to all ages and ensures fairness in its approach.

Protected characteristics: Marriage and Civil Partnership

Marriage and civil partnership details:

Wider Community

The policy is used to identify the priorities of the Regulation and Enforcement service and to identify how the service will apply a proportionate approach to its enforcement activities. The policy applies to all ages and ensures fairness in its approach.

Protected characteristics: Pregnancy and Maternity

Pregnancy and maternity details:

Wider Community

The policy is used to identify the priorities of the Regulation and Enforcement service and to identify how the service will apply a proportionate approach to its enforcement activities. The policy applies to all ages and ensures fairness in its approach.

Protected characteristics: Race

Race details:

Wider Community

The policy is used to identify the priorities of the Regulation and Enforcement service and to identify how the service will apply a proportionate approach to its enforcement activities. The policy applies to all ages and ensures fairness in its approach.

Protected characteristics: Religion or Beliefs

Religion or beliefs details:

Service Users / Stakeholders

The policy is used to identify the priorities of the Regulation and Enforcement service and to identify how the service will apply a proportionate approach to its

enforcement activities. The policy applies to all ages and ensures fairness in its approach.

Protected characteristics: Sexual Orientation

Wider Community

Sexual orientation details:

The policy is used to identify the priorities of the Regulation and Enforcement service and to identify how the service will apply a proportionate approach to its enforcement activities. The policy applies to all ages and ensures fairness in its approach.

Please indicate any actions arising from completing this screening exercise.

none

Please indicate whether a full impact assessment is recommended

NO

What data has been collected to facilitate the assessment of this policy/proposal?

the enforcement policy is a legal requirement that is influenced by legislation and codes of practice.

Consultation analysis

n/a

Adverse impact on any people with protected characteristics.

none

Could the policy/proposal be modified to reduce or eliminate any adverse impact? n/a

How will the effect(s) of this policy/proposal on equality be monitored?

The policy provides an insight in to how the Service will undertake its statutory duties and powers. It provides a proportionate approach to enforcement and provides for consistency and fairness in its approach.

What data is required in the future?

Are there any adverse impacts on any particular group(s)

No

If yes, please explain your reasons for going ahead.

Initial equality impact assessment of your proposal

Consulted People or Groups

Informed People or Groups

Summary and evidence of findings from your EIA

The review of the policy is to ensure the document is updated with any changes applied to the legislation and is timely and complies with legal requirements.

16/03/2020

Assessments - Regulation and Enforcement, Enforcement Policy...

QUALITY CONTROL SECTION

Submit to the Quality Control Officer for reviewing?

No

Quality Control Officer comments

I have submitted this to the Accountable Officer for a final quality review.

Decision by Quality Control Officer

Proceed for final approval

Submit draft to Accountable Officer?

No

Decision by Accountable Officer

Approve

Date approved / rejected by the Accountable Officer

03/03/2020

Reasons for approval or rejection

This assessment is appropriate for the enforcement policy being put forward and identifies the issues that need to be borne in mind to comply with the Equalities duty.

Please print and save a PDF copy for your records

Yes

Julie Bach

Person or Group

Content Type: Item

Version: 35.0

Created at 27/02/2020 10:35 PM by ☐ Tony Quigley

Last modified at 03/03/2020 05:06 PM by Workflow on behalf of ☐ Paul Lankester

Close