

## **REGULATION AND ENFORCEMENT**

### **ENFORCEMENT POLICY**

#### **1. INTRODUCTION**

- 1.1 The Regulatory Enforcement and Sanctions Act 2008 established The Local Better Regulation Office (LBRO). BRDO has now evolved into the Better Regulation Delivery (RD) which 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 RD, (b) a duty to comply with guidance where we are directed to do so by RD, and (c) a duty to have regard to any list of enforcement priorities published by RD. We are committed to doing so.
- 1.2 The regulators compliance code has now been replaced by the Regulator's Code (RC) and provides a set of principles for Regulator's to consider.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 Regulator's 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 intent 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 to good enforcement practice with effective procedures and clear policies.
- 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).
- Legislation 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 (i) proportionate; (ii) accountable; (iii) consistent; (iv) transparent; and (v) 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.
- The former Licensing Committee approved the Enforcement Policy on 17 March 2010 with amendments approved on 16 March 2011 and 21 March 2012. The former Public Protection Committee approved the Enforcement Policy on 19 March 2010 with amendments approved on 18 March 2011 and 16 March 2012. On 12 December 2012, a new consultation process commenced and a report was presented and approved at the Licensing and Public Protection Committee on 20 March 2013.

## **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 is 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 formal 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 BRDO 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 all the legislation enforced by Officers with delegated enforcement powers employed by Regulation and Enforcement. These delegated powers are listed and reproduced within the Councils constitution. These can be found at [www.birmingham.gov.uk](http://www.birmingham.gov.uk).
- 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 source compliance with a restriction, requirement or condition in relation to a breach of 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 the Primary Authority Principal; 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: <http://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 by:

- (a) E-mailing [publichealth@birmingham.gov.uk](mailto:publichealth@birmingham.gov.uk)
- (b) E-mailing [tradingstandards@birmingham.gov.uk](mailto:tradingstandards@birmingham.gov.uk)
- (c) Emailing [licensing@birmingham.gov.uk](mailto:licensing@birmingham.gov.uk)
- (d) Writing to the Service Director Regulation and Enforcement, PO Box 15908, 1 Lancaster Circus, Birmingham, B2 2UD.
- (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, Enforcement Concordat and the Guidance of BRDO 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 of 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 particular 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.
- 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 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 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 Crime 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 1998.

## **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.
- (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.

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 standardise decision making and improve consistency of approach. This will improve transparency in decision making and remove potential for bias. For workplace health and safety the Enforcement Management Model (EMM) is used to ensure that enforcement decisions are consistent.

## **7.3 An explanation of the enforcement action options**

### **7.3.1 No Action**

7.3.2 In certain circumstances, contraventions of the law may not warrant any action. This can be where the cost of compliance to the offender outweighs the detrimental impact of the contravention, or the cost of the required enforcement action to Birmingham City Council outweighs the detrimental impact of the contravention on the community. A decision of no action may also be taken where formal enforcement is inappropriate 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. They are recognised as a low-level enforcement tool and enable a defendant to avoid a criminal record by “buying off” their liability to a prosecution for the original offence. 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 accept a FPN and/ or a PCN**

7.7.1 In circumstances where a person or body corporate fails to accept or pay a FPN, then in order to maintain the integrity of these legislative



regimes, 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.

7.7.2 In circumstances where a person or body corporate fails to accept to pay a PCN, then in order to maintain the integrity of this legislative regime, Regulation and Enforcement will consider an escalation of enforcement action. This will include consideration of civil action to recover the debt.

7.7.3 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.

## **7.8 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 at 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 charge the person/business served with the notice for any cost 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 whether 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.

## **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 injunctive 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 Anti-Social Behaviour Orders and Criminal Anti-Social Behaviour Orders:

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 then, following liaison with the Council's Anti-Social Behaviour Unit where appropriate, an ASBO or CRASBO will be sought to stop the activity. (ASBO's and CRASBO's are currently under review by the Government.)

## **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.

**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 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 in appropriate circumstances. The acceptance of a training course will not be cited as a formal sanction by the Authority in the event of future legal proceedings against the individual.

## **7.13 Simple Caution**

**7.13.1** In appropriate circumstances, where a prosecution would otherwise be justified, a Simple Caution may be administered with the consent of the offender. In 2005, Home Office Circular 30/2005 replaced the term Formal Caution with the term Simple Caution, to distinguish it from a Conditional Caution. Although the description changed, the significance of the sanction remained the same.

**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.

For details on the Home Office guidance (Circular 30/2005) visit:  
<http://www.homeoffice.gov.uk/>

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 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 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.

7.14.4 The Code for Crown Prosecutors has two tests:

- Is there enough evidence against the defendant? When deciding whether there is enough evidence to prosecute, Regulation and Enforcement must consider what evidence can be used in Court and is reliable. Regulation and Enforcement must be satisfied there is enough evidence to provide a “realistic prospect of conviction” against each defendant.
- Is it in the public interest for Regulation and Enforcement to bring the case to Court?
- Has the defendant failed to comply with a statutory notice or failed to pay a fixed penalty notice issued to them.

7.14.5 A prosecution will usually take place unless the public interest factors against prosecution clearly outweigh those in favour of prosecution.

7.14.6 For a copy of the Code for Crown Prosecutors visit:

[http://www.cps.gov.uk/publications/code\\_for\\_crown\\_prosecutors/index.html](http://www.cps.gov.uk/publications/code_for_crown_prosecutors/index.html)

7.14.7 The results of prosecution cases are published on our website for a period of six months visit:

<http://www.birmingham.gov.uk/traders-prosecuted>

## **7.15 Proceeds of Crime 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.
- (d) Chair of the City Council’s Licensing and Public Protection Committee.

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.**  
A complaint about the service provided by an officer may be made through the Council's Corporate Complaints Procedure.

8.4.2 **What is a complaint?** A complaint is an expression of dissatisfaction. It can be about the standard of service we have provided, or actions we have, or have not taken, which affect someone using our service.

8.4.3 **Are there any exceptions?** There are a number including:

- The Corporate Complaints Procedure cannot be used to determine whether or not an offence has been committed and legal proceedings will not normally be suspended whilst a complaint is investigated. There are appeal procedures within the criminal justice system and a statutory right to be tried for an offence. Following the outcome of legal proceedings the relevant options for lodging an appeal can be explained by your Solicitor or legal counsel.
- A complaint that has already been settled in another way, for example, by the Courts, a tribunal, the Ombudsman, or the Data Protection Commissioner, or if there is a more appropriate procedure for settling the problem.
- For information on other examples which fall outside the scope of this document please see the Birmingham City Council website – Your Views section.

#### 8.4.4 **Who will investigate?**

- If you make a complaint about a specific officer then this will be investigated by a manager within Regulation and Enforcement who was not involved in the original decision making process. If the complaint is about a manager then an equivalent grade officer or more senior manager within the service will investigate.
- If you make a complaint about action that has been taken against you during the course of an investigation then this will be investigated by a manager within Regulation and Enforcement (Place Directorate).
- Where a criminal investigation is underway, the investigation will not be put on hold whilst your complaint is considered. Further, your complaint may be staid whilst the outcome of any criminal proceedings is concluded.

8.4.5 **What if I am still not satisfied?** Upon receiving the outcome of your complaint if you are still not satisfied then you can ask that the decision can be reviewed. This will be carried out by a manager from another department within Regulation and Enforcement. A response to this

complaint will be given 20 days following receipt of a request for a review.

**8.4.6 Can I appeal that decision?** Following the review of your complaint if you are still not satisfied we will tell you what you can do next. This may include an appeal to the Government Ombudsman.

**8.4.7 Is there anything the Government Ombudsman will not look at?**  
There are a number of matters including:

1. Court proceedings including:
  - Evidence given to the Court.
  - Actions and decisions by the Council and court staff in those proceedings.
2. Something you could appeal about to a tribunal, or go to Court about, unless the Ombudsman feels there is a good reason why you should not be expected to do so.
3. Something about which you have already appealed to a tribunal, government minister, or have taken Court action against the Council.

**8.4.8** For more information about the role of Government Ombudsman please see the Ombudsman's own website.

## **8.5 Enforcement of Illegally Dumped Waste**

**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". A clean and green Birmingham is therefore one of the City Council's main priorities.

**8.5.2** Amongst many steps to achieve a cleaner city have been the roll out of a wheel bin services and a task force specifically set up to tackle the illegal dumping of waste. In order for the task force to be as effective as possible the legislation around the illegally dump waste need to be strictly enforced. This may be anything from a visit from a team member advising the person who dumped the waste, or the person whose land it is on, of their duties and the consequences if this is not removed to criminal prosecution in more severe cases.

**8.5.3** The usual threshold for prosecution is set out in the matrix above. However, due to the nature of the crime of illegal waste dumping and the impact it has on our community as a whole then there are instances when the described threshold may not be met, but it is still felt advisable to take punitive action. However any matters which are dealt with in this manner will still have the usual legal protections afforded.

## **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.

9.2 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.

9.3 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 the BRDO; 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.

## **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** -

## APPENDIX 1

### RISK MATRIX FOR REGULATION AND ENFORCEMENT'S ENFORCEMENT POLICY

<b><u>REGULATION AND ENFORCEMENT ACTIVITY</u></b>	<b><u>ACTIVITY</u></b>	<b><u>SCORE</u></b>
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.	
<b>People are safe and their wellbeing and safety are assured</b>	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
<b>Economic implications to legitimate businesses</b>	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
<b>Economic loss to the consumer</b>	No economic loss to consumers.	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
	High 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 high number of consumers.	3

<b>Reputation (risk to the local authorities reputation in taking no action)</b>	No reputational risk.	0
	Low reputational risk.	1
	Medium reputational risk.	2
	High reputational risk.	3
<b>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.</b>	Not applicable.	0
	Very 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
<b>Has the business or person taken reasonable precautions and due diligence to prevent the activity from occurring?</b>	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
<b>What is the history of the business in relation to regulatory compliance (if the business is national then a national picture can be taken if appropriate)</b>	Not applicable.	0
	The business has a good history of proactive work with the Local Authority to achieve compliance in its sector. Previous inspections have found no issues.	1
	Previous inspections have found issues, however, these have been rectified within a reasonable time frame.	2
	The business 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 inspections.	3

<b>Aggravating features (i.e. length of time activity has been happening for; was the activity purposely covert etc.; was the victim vulnerable)</b>	Not applicable.	0
	Low level of aggravating features.	1
	Some level of aggravating features, however, limited by time or amount of aggravation.	2
	High level of aggravation.	3

<b><u>KEY</u></b>	<b><u>ASSESSMENT</u></b>	<b><u>SCORE RATING</u></b>
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 action.	Score 2 to 11.
1 – low risk	No action.	Score 1.

This matrix is new and to avoid perverse decisions to take or not take enforcement action based on the outcome of this assessment the following is to be applied.

Where the score falls between 2 and 11 and the investigating officer and/or the operations manager believe the matter should be referred for formal proceedings the case must be reviewed by two Heads of Service. Where they conclude the matter should go forward they will keep a paper record of their review and the decision to proceed.

Similarly where the score is 12 and above and the recommendation is not to refer for formal proceedings, the case must be reviewed by two Heads of Service. Where they conclude the matter should not go forward they will keep a paper record of their review and the decision not to proceed.

Any reviews and conclusions by the two heads of service will be acted upon.

The records of the reviews should be used to review the matrix in 12 months' time and to ensure it is fit for purpose.