

# Borough of Poole Regulatory Services

## (Environmental Health, Trading Standards, Licensing)

### Regulators' Code

#### Introduction

This Regulators' Code sets out how Borough of Poole Regulatory Services deals with non-compliance with the legislation we have a duty to enforce. A separate document details our service standards and how we can support businesses.

This code applies from 1<sup>st</sup> April 2014, and complies with the requirements of the Regulators' Code introduced by Government in April 2014. All local authority regulators and many other public enforcement bodies must have regard to this.

#### The overall aim of Borough of Poole Regulatory Services is to:

- To support good practice and promote growth for business activities.
- To protect our community from unsafe, unfair or illegal trading practices.
- To intervene with individuals who cause nuisance or enviro-crime in our neighbourhoods.
- To help to deliver improved health and well being across the community.
- To support a safe and vibrant leisure and recreation economy.

Our services include:

#### Trading Standards

Rogue Traders  
Business Regulatory Advice  
Consumer Advice  
Buy With Confidence  
Product Safety  
Animal Health  
Petroleum  
Fireworks  
Weights & Measures  
Food Labelling  
Food Fraud  
Age-restricted Products  
Tobacco Control

#### Environmental Health

Food safety  
Workplace health/safety  
Prevention of nuisances, incl. noise, smoke, odours  
Air quality and land contamination issues  
Stray dogs  
Animal welfare  
Prevention of littering / dog fouling / fly-tipping  
Port health  
Infectious diseases  
Assisted burials

#### Licensing

Alcohol and regulated entertainment licenses  
Night-time economy policy  
Sexual entertainment / gambling venues  
Film classification  
Town and Village Greens  
Breeding / selling pet animals  
Charity collections  
Scrap metal dealers  
Pleasure Boat and Waterman Licences

**We recognise that the majority of businesses and residents want to meet their legal requirements without being faced with unnecessary burdens. We are keen to be supportive in getting it right through advice and guidance where we can.**

#### Commitment to good enforcement practice

Borough of Poole Regulatory Services is committed to avoiding the imposition of unnecessary regulatory burdens and will consider whether similar social, environmental and economic outcomes could be achieved by alternative less burdensome means. Our staff are committed to acting in accordance with this enforcement policy.

We are committed to good enforcement practice as set out in The Legislative and Regulatory Reform Act 2006, and aim to exercise our regulatory activities in a way which is:

- **Proportionate:** our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence,

- **Accountable:** our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures,
- **Consistent:** our advice to those we regulate will be robust and reliable and we will respect advice provided by others. Where circumstances are similar, we will endeavour to act in similar ways to other local authorities,
- **Transparent:** we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return, and
- **Targeted:** we will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities.

In drawing up and developing our enforcement policy we have had regard to:

**Regulators' Code 2014:** in certain circumstances decisions may be appropriate that deviate from the Code and any such cases will be reasoned and documented.

**Human Rights Act 1998:** in particular decisions need to have regard to the right to a fair trial and the right to respect for private and family life, home and correspondence.

**Data Protection Act 1998:** provisions to be followed where there is a need for the County Council to share enforcement information with other agencies.

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

*The Evidential Test:* there needs to be enough evidence that is reliable and can be used in court to provide a realistic prospect of conviction against each alleged offender.

*The Public Interest Test:* we will consider each case on its merits as to which enforcement options are appropriate and if taking a case to court is in the public interest, bearing in mind other businesses as well as members of the public in Dorset and more widely.

**Primary Authority Principle:** when considering taking enforcement action against any business or organisation that has a 'primary authority' agreement we will have regard to guidance issued by the Secretary of State in relation to the Primary Authority scheme pursuant to the Regulatory Enforcement and Sanctions Act 2008.

**Home Authority Principle:** we support this principle, developed by food and trading standards authorities to promote good enforcement practice and reduce burdens on business. Under this we will:

- provide businesses for whom we are the 'home authority' with appropriate guidance and advice
- maintain records of our contacts with 'home authority' businesses to reduce the amount of information they have to provide to us
- support efficient liaison between local authorities, and
- provide a system for the resolution of problems and disputes.

## **Our approach to dealing with non-compliance**

Where a breach of legislation is identified, by far the most common outcome is for advice to be given to the business or individual concerned. This may be at a very early stage or after some further investigation. However we are committed to dealing firmly with those that deliberately or persistently fail to comply with legislation.

Businesses and individuals are able to request advice from us on non-compliance without directly triggering enforcement action where they show a willingness to resolve the non-compliance and we encourage those we regulate to contact us for advice.

Our staff are committed to clearly explain the non-compliance and any advice being given, actions required or decisions taken, with reasons for these. There will be an opportunity for dialogue in relation to this. If formal action is likely to be considered as an option that dialogue may be needed to be by way of a formal recorded interview as the Police and Criminal Evidence Act requires. This process can appear harsh to those being interviewed about allegations but it is used to provide fairness and clarity to anyone who is at risk of prosecution.

The Council delegates the powers it has to enforce various pieces of legislation so that individual enforcement officers with the appropriate levels of competence, and where required qualification, have specific authority to act. Enforcement Officers carry identification and confirmation of their authorisation.

Investigations are overseen by team managers with overall responsibility for investigations being with the Regulatory Services Manager.

We will refer matters to other authorities or enforcement bodies where we believe they are the most appropriate to deal with a matter. We will also accept referrals from others where we are the most appropriate enforcement body to deal with something effectively.

Where any business has a 'Primary Authority' relationship established with a local authority regulatory service our officers will communicate with that service at the earliest opportunity.

In the event of a possible conflict of interest, for example where a key enforcement decision involves parts of the Council or its staff, we will if deemed appropriate involve another local authority in ensuring an impartial decision is made.

In the event of a business or individual being prosecuted and sentenced as a result of enforcement action the Council will usually issue a media release, which may also appear on the Council's website.

### **Processes for investigating alleged breaches**

Investigations are subject to controls on how evidence is gathered and used and give a range of protections to citizens and potential defendants. Our investigations will be carried out in accordance with the following legislation and in accordance with any associated guidance or codes of practice, including:

- the Police and Criminal Evidence Act 1984
- the Criminal Procedure and Investigations Act 1996
- the Regulation of Investigatory Powers Act 2000
- the Criminal Justice and Police Act 2001
- the Human Rights Act 1998
- Equalities Act 2010

The Borough of Poole is committed to equality of opportunity, promoting diversity and eliminating discrimination. We believe that people have a fundamental right to fair treatment regardless of their age, disability, ethnicity or race, gender identity, sex, sexual orientation, religion or belief. These principles are critical to our investigations.

Our authorised officers will also comply with the requirements of the particular legislation under which they are acting, and associated guidance or codes of practice.

Under some legislation we enforce officers are given particular powers to carry out certain activities including for example test purchasing; sampling; inspection of premises, goods equipment or documents. In certain circumstances where offences are suspected or

evidence required legislation gives our officers powers to seize goods and documents. Powers vary depending on the legislation being used.

Where any items are seized officers will supply written confirmation of anything taken at the time or if not practical as soon as possible afterwards.

Legislation enforced can include offences of obstructing officers involved in enforcement activities and this can include failure to give appropriate assistance in some circumstances.

Occasionally our officers work with the police and in some circumstances the police may use their powers of arrest. Our officers do not have the power of arrest.

Where a person, company or other legal entity is suspected of breaching legal requirements and formal action remain under consideration, wherever possible they will:

- be formally interviewed in accordance with the Police and Criminal Evidence Act 1984 usually but not exclusively audio recorded
- be given the opportunity to demonstrate if a statutory defence is available to them
- have the opportunity to give an explanation or make any additional comments about the alleged breach.

### **Decision to prosecute**

Before a decision to prosecute is taken, the alleged offence(s) will be fully investigated, evidence gathered and a confidential report compiled by the investigating officer that will include the evidence obtained. This will be reviewed by one of the Regulatory Management Team and approval by the Regulatory Services Service Manager. Any case where a prosecution is to be pursued will be reviewed by a solicitor in Legal and Democratic Services. Then prosecution will be managed through the court system by a member of the Regulatory Services Team, with other legal representation being appointed or advice sought if required. Prosecution costs increase significantly where external legal representations are used and the Council always seeks to recover these prosecution costs where possible.

### **How decisions are made on enforcement action**

We recognise that most businesses and residents want to comply with the law. We will endeavour to help people to meet their legal obligations without unnecessary expense. When a business or resident does break the law, we will consider all the surrounding circumstances before deciding whether formal action is appropriate.

Decisions on enforcement action will take into account a range of factors in addition to the evidence. Prosecution will only be used if we assess that it is in the public interest to do so.

Formal action is more likely to be pursued in instances where the offender has:

1. acted fraudulently
2. put the safety or health of consumers, neighbours, others or animals at risk
3. acted irresponsibly and negligently
4. failed to heed advice or warning, or
5. failed to take reasonable steps to avoid offences

Our approach to enforcement action will aims to:

- I. change the behaviour of the offender;
- II. eliminate any damage, risk or harm caused as a result of any offences
- III. eliminate any financial gain or benefit from non-compliance;
- IV. be responsive and appropriate for the particular offender and regulatory issue, including the punishment and public stigma associated with a criminal conviction;

- V. be proportionate to the nature of the offence and the harm caused;
- VI. restore the harm caused by non-compliance, where appropriate; and,
- VII. aim to deter future non-compliance.

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, including potential harm and loss and its significance in making the decision to take formal action.

Enforcement decisions will be fair and objective and obviously must not be influenced by ethnicity or national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender. Decisions will not be influenced by improper or undue pressure from any source.

### **Keeping alleged offenders and witnesses informed of the progress**

Alleged offenders or their legal representatives are encouraged to contact the investigating officer or a member of the Regulatory Services Team if they wish to know the progress on their investigation. Any person interviewed under caution will be informed in writing of decisions on enforcement action and the matter should not be considered as concluded until confirmed in writing, or a court case has taken place.

Witnesses will be kept informed of the progress in accordance with our service standards.

### **Enforcement Action: Our Options**

There is a range of enforcement options available to the Service (DCC TSS) through the legislation it enforces. These vary and one or more may be relevant to apply in each case. These are set out below.

#### **Compliance Advice, Guidance and Support**

Borough of Poole Regulatory Services uses compliance advice, guidance and support as a first response in the case of most breaches of legislation that are identified. Advice is provided, sometimes in the form of a warning letter, to assist individuals and businesses in rectifying breaches as quickly and efficiently as possible, avoiding the need for further enforcement action. Any warning letter will set out what should be done to rectify the breach and to prevent re-occurrence. If a similar breach is identified in the future, any warning letter will be persuasive in considering the most appropriate enforcement action to take on that occasion. Such a letter cannot be cited in court like a previous conviction but it may be presented in evidence.

We recognise that where a business has entered into a 'primary authority' or a 'home authority' arrangement with a particular regulatory service then that primary or home authority will provide compliance advice and support. We will take such advice into account when considering the most appropriate enforcement action. We may discuss any need for compliance advice and support with the primary or home authority.

Where more formal enforcement action, such as a simple caution or prosecution, is taken, we recognise that there is likely to be an ongoing need for compliance advice and support, to prevent further breaches.

#### **Voluntary Undertakings**

We may accept voluntary undertakings that breaches will be rectified and/or recurrences prevented. Any failure to honour voluntary undertakings will be viewed seriously and enforcement action is likely to result.

#### **Statutory (Legal) Notices**

In many instances we have powers to issue statutory enforcement notices to suspend or prevent ongoing breaches, or to secure improvements where breaches are causing harm or detriment to people, animals, and in some cases property and land. Failure to comply with a statutory notice can be a criminal offence and may lead to prosecution and/ or, where appropriate, the carrying out of work in default.

A statutory notice would clearly set out actions which must be taken and the timescale within which they must be taken. It is likely to require that any breach is rectified and/or prevented

from recurring. It may also prohibit specified activities until the breach has been rectified and/or safeguards have been put in place to prevent future breaches. Where a statutory notice is issued, an explanation of the appeals process will be provided to the recipient.

Some notices issued in respect of premises may be affixed to the premises and/or registered as local land charges.

### **Closure Notices**

There are instances where breaches of laws are so severe that a premises, usually commercial but in some circumstances residential, require immediate closure in order to protect the health and safety of occupiers, customers, or neighbours. Depending on the laws concerned, an Order is usually required from a Court prior to a closure notice becoming effective. There are however instances where a closure notice will have immediate effect, pending the decision of an application to a Court. Owners and/or occupiers of premises will be advised at all stages of any procedure, and we will ensure that such closure notices are a final resort, having explored all other avenues to remove the immediate danger.

### **Financial penalties**

In some very specific circumstances there are powers available to Borough of Poole Regulatory Services to issue Fixed Penalty Notices. Also when working with the police, on under aged sales of alcohol for example, there may be circumstances where breaches are dealt with by the police issuing a Fixed Penalty Notice. Such a notice is not a criminal fine, and does not appear on an individual's criminal record. If a fixed penalty is not paid other criminal proceedings or other enforcement action may follow in respect of the breach.

If a fixed penalty is paid in respect of a breach we will not take any further enforcement action in respect of that breach. Payment of a fixed penalty does not provide immunity from prosecution in respect of similar or recurrent breaches.

### **Injunctive Actions, Enforcement Orders etc.**

In some circumstances we may seek a direction from the court (in the form of an order or an injunction) that a breach is rectified and/or prevented from recurring. The court may also direct that specified activities be suspended until the breach has been rectified and/or safeguards have been put in place to prevent future breaches.

Failure to comply with a court order constitutes contempt of court, a serious offence which may lead to imprisonment.

Borough of Poole Regulatory Services is required to seek enforcement orders after issuing some enforcement notices, providing the court with an opportunity to confirm the restrictions imposed by the notice. Otherwise, we will usually only seek a court order if it has serious concerns about compliance with voluntary undertakings or a notice.

### **Simple Caution**

Borough of Poole Regulatory Services has the power to issue 'Simple Cautions' (previously known as 'Formal Cautions') as an alternative to prosecution for less serious offences and where a person admits an offence and accepts the Simple Caution. If a Simple Caution is offered and declined prosecution will be considered.

A Simple Caution will appear on an offender's criminal record. It is likely to influence how Borough of Poole Regulatory Services and others deal with any similar breaches in the future, and may be cited in court if the offender is subsequently prosecuted for a similar offence. If a Simple Caution is issued to an individual (rather than a corporation) it may have consequences if that individual seeks certain types of employment and these can be taken account of by immigration agencies and border controls for some countries.

### **Prosecution**

Prosecution will be used in respect of the more serious or recurrent breaches, or where other enforcement actions, such as voluntary undertakings or statutory notices have failed to secure compliance. The circumstances where this option will be used are expanded on elsewhere in this policy.

If an offender is prosecuted and pleads guilty or is found guilty after a trial the court may impose a fine, a prison sentence for more serious matters or select from a range of other

sentencing options. Offenders will then have a criminal record. The court may order the forfeiture and disposal of non-compliant goods and/or the confiscation of any profits which have resulted from the breach. Prosecution may also lead, in some circumstances, to the disqualification of individuals from acting as company directors.

If successful we will also apply to the court for an offender to pay for the costs of investigation and bringing the prosecution to court. This is usually granted by courts in full or part.

### **Refusal/Suspension/Revocation of Licences**

Borough of Poole Regulatory Services issues a range of licences to carry out certain activities. It also has a role to play in ensuring that appropriate standards are met in relation to licences issued by other agencies. Most licences include conditions which require the licence holder to take steps to ensure that, for example, a business is properly run. Breach of these conditions may lead to a review of the licence which may result in its revocation or amendment. When considering future licence applications or similar applications we may take previous breaches and enforcement action into account.

### **Review of this Code**

This Code will be refreshed should any changes in legislation or relevant codes of practice require it to be updated, and we welcome any comments on the Policy at any time.

### **Comments, Compliments, Complaints and Appeals**

Details of our general service standards and what you can expect from our officers is detailed in a separate document.

If an alleged offender is being prosecuted or subject to formal legal action in court then the court process has its own channels for legally challenging the action or the outcome through a court appeal.

If a matter has not yet reached court or in any other case where a person affected by an enforcement decision is dissatisfied, as with other complaints about our service or staff a member of the Regulatory Services Management Team will be able to discuss with you the cause of your dissatisfaction, and will try to find a solution.

Contact us at:

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