

## **Bath and North East Somerset Council**

### **Public Protection and Health Improvement Service**

#### **Enforcement Policy**

##### **Introduction**

This Enforcement Policy sets out how the Council's Public Protection and Health Improvement (PPHI) service deals with non-compliance with legislation we have a duty to enforce. A separate document details our service standards and how we can support business.

This policy will apply from **1<sup>st</sup> September 2017**. It has been updated in response to the Regulators' Code, introduced from April 2014 to which all local authority regulators and many other public enforcement bodies must have regard. This Enforcement Policy will continue to be developed to take account of feedback from businesses and others.

This document seeks to communicate and explain the service's policy to businesses, consumers, our officers and others affected by our enforcement activities, in respect to dealing with breaches of any legislation enforced by the PPHI Service.

The Service is responsible for enforcing laws relating to Food, Health and Safety, Licensing, Environmental Protection and Monitoring, Cleansing and Trading Standards which relate to aspects of health, wellbeing, public safety, consumer protection and enhancement of the local environment. We operate the Service based on the principles of transparent, accountable, proportionate and consistent enforcement. We aim to improve regulatory outcomes without creating unnecessary burdens on business.

We carry out our duties in various ways including: inspection, sampling, test purchasing, testing, investigation and prosecution, but also by informing, advising and educating businesses and consumers.

We recognise that prevention is better than cure and that most businesses want to comply with the law. We will endeavour to help these businesses meet their legal obligations without unnecessary expense. When a business does break the law, we will consider all the surrounding circumstances before deciding whether formal action is appropriate. A prosecution will only be brought if it is in the public interest to do so.

This Enforcement Policy is available on the Environment pages of the Council's website: <http://www.bathnes.gov.uk/services/environment/policies-and-strategies/public-protection-enforcement-policy>

If a hard copy is required please e-mail [public\\_protection@bathnes.gov.uk](mailto:public_protection@bathnes.gov.uk) or telephone Public Protection on 01225 477508.

Alternatively you can write to us at:

Public Protection and Health Improvement, 1<sup>st</sup> Floor, Lewis House, Manvers Street, Bath BA1 1JG.

## Our Principles of Good Enforcement Practice

The Public Protection and Health Improvement Service is committed to good enforcement practice as set out in The Legislative and Regulatory Reform Act 2006, and we aim to exercise our regulatory activities in a way which is:

- **Proportionate:**  
We will ensure that enforcement action is proportionate to the risks involved, and that the sanctions applied are meaningful. As far as the law allows the Council will take account of the individual circumstances of each case when considering what action is appropriate.
- **Accountable:**  
Our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures;
- **Consistent and Fair:**  
We will treat all consumers and businesses fairly. We aim to give positive feedback to businesses where it is due.

We will ensure that our enforcement practices are consistent within the authority and will endeavour to be consistent with other Local Authorities.  
We will have regard to national guidelines in our decision-making processes.

### Equal Opportunities

All officers undertaking enforcement duties will ensure that all recipients of the service whether they are suspects, victims or witnesses receive fair and equitable treatment irrespective of their race, ethnicity, gender, disability, religious beliefs, political views or sexual orientation. The Council's policy on Diversity/Equal Opportunities can be found [here](http://www.bathnes.gov.uk/services/your-council-and-democracy/equality-and-diversity/equality-policy-commitment) (http://www.bathnes.gov.uk/services/your-council-and-democracy/equality-and-diversity/equality-policy-commitment).

- **Transparent and Open**  
We are committed to the open provision of information and advice in a format that is accessible and easily understood.

We will ensure that there is always a clear distinction between those actions necessary to comply with the law, and those which we recommend as best practice but which are not compulsory.

We will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.

If we receive information that may lead to enforcement action against a business or individual, we will notify the business or individual as soon as practicable of any intended enforcement action, unless this could impede an investigation or pose a safety risk to those concerned or the general public.

As part of our commitment to advice and education we will offer businesses advice on non-compliance without directly triggering enforcement action where businesses show a willingness to resolve the non-compliance.

### Publicity

The Service is committed to transparent and consistent enforcement action, and may publicise aspects of its work from time to time in accordance with data protection principles. Publicity can be a valuable tool in raising awareness and educating both

businesses and the public. Press releases are regularly issued through the council's communications team, particularly following court action.

All press releases are approved by a senior manager.

We may also take part in radio or television interviews and programmes to promote the work of the service. Most press releases will also appear on the Council's web site: [WWW.Bathnes.Gov.UK](http://WWW.Bathnes.Gov.UK)

- **Targeted:**

We aim to prioritise and direct our regulatory effort effectively using intelligence and relevant risk assessment schemes.

Such risk assessments will have regard to all available, relevant and good-quality data. We will give due consideration to the combined effect of the potential impact and likelihood of non-compliance – this approach will enable us to focus our resources on the areas that need them most and to ensure that persistent offenders are identified quickly

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:** Bath and North East Somerset is a public Authority for the purposes of the Human Rights Act 1998. We therefore apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is given to the right to a fair trial and the right to respect for private and family life, home and correspondence

**Data Protection Act 1998:** Where there is a need for the Service to share enforcement information with other agencies, we will follow the provisions of the Data Protection Act 1988.

**Code for Crown Prosecutors:** The Code is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases. It 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 this authority and more widely.

**Regulatory Enforcement and Sanctions Act 2008:** The Regulatory Enforcement and Sanctions Act 2008, as amended, established the Primary Authority scheme. Where we are considering taking enforcement action against any business or organisation that has a primary authority arrangement, we will have regard to guidance issued by the Secretary of State in relation to Primary Authority

**Prime or Home Authority Principle:** we support this principle, developed by food and trading standards authorities to promote good enforcement practice and reduce burdens on business. The objective is to create a partnership which will provide positive benefits to both parties. We will therefore:

- provide businesses for whom we are the 'prime or home authority' with appropriate guidance and advice

- maintain records of our contacts with 'prime or 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 has been identified we will invariably, in the first instance, offer advice and support to the business or individual. However some circumstances may give rise to immediate enforcement action and each case will be dealt with according to its individual circumstances; however we will always have regard to the following aims:

- to change the behaviour of the offender
- to eliminate any financial gain or benefit from non-compliance
- to be responsive and consider what is the most appropriate sanction for the particular offender and the regulatory issue concerned
- for the action to be proportionate to the nature of the offence and the harm/potential harm caused
- to restore the harm caused by regulatory non compliance, where appropriate
- to deter future non-compliance

Wherever reasonable and practical we will take account of the other demands on businesses or individuals such that we deal with any non-compliance at a convenient time and way. We will also, in seeking compliance, take account of the size and capacity of a business to help ensure compliance is proportionate.

Officers 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. Officers carry identification and confirmation of their authorisation.

Investigations are overseen by team leaders or team managers with overall responsibility for investigations being with the Group Manager.

Occasionally complex or demanding trading standards investigations affecting two or more local authorities will be investigated and enforcement dealt with by, or with the assistance of, the South West Scambusters Team. This is a team of officers working across the region for the Trading Standards Partnership South West (also known as SWERCOTS). In relation to illegal money lending, Bath and North East Somerset Council has delegated its powers under the Consumer Credit Act 1974 to deal with 'loan sharks' to the Illegal Money Lending Team (England) operated by Birmingham City Council.

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

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 involve another agency or local authority in ensuring an impartial decision is made.

### **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, in so far as they relate to this Service.

- 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

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.

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.

Under some legislation 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, equipment or 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.

Under some circumstances a discussion may take place with partner agencies where investigatory action is considered. For example, the Licensing Enforcement Group (LEG). This group involves all the responsible authorities listed in the Licensing Act (Police, Fire, Planning, Environmental Protection, and Safeguarding) meeting on a regular basis to discuss problem premises and share information.

Regular joint visits are arranged and inspections carried out. Any enforcement action is decided jointly. This does not preclude any individual body carrying out its own action in its own right.

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 remains 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.

Before a decision on whether 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 Team Leaders or managers, and any formal action requires approval by the Team Manager.

Legal advice will be sought before a final decision is made to prosecute. This legal advice may be provided by BANES' legal services or by external legal advisers. The service will always seek to recover prosecution costs where possible.

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

We recognise that most businesses and individuals want to comply with the law and we will endeavour to help them and others to meet their legal obligations without unnecessary expense. When a law is broken 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 pursued 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:

- acted fraudulently
- put the safety or health of consumers, others or animals at risk
- acted irresponsibly and negligently
- failed to heed advice or warning, or
- failed to take reasonable steps to avoid offences

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 progress**

Alleged offenders or their legal representatives are encouraged to contact the investigating officer or a member of the Management Team if they wish to know the progress of their investigation. Our officers give their individual contact details or use the contact details at the end of this policy document.

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, where possible, be kept informed of progress. In doing so it must be understood that the service may be restricted as to the information it is legally allowed to divulge.

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

There are a range of enforcement options available to the Service 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**

This service 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.

Under some circumstances a business support meeting may be arranged. This is a discussion with a business, where the council has concerns about its trading practices, offering an opportunity for the business to improve and become compliant. It is often a last resort to prevent formal action being taken where it can possibly be avoided, and businesses should be aware of the seriousness of this meeting. 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.

## ***Civil Sanctions under the Regulatory Enforcement and Sanctions Act 2008***

Where the Council has been issued an order allowing use of the following civil sanctions, they may be used as an alternative to Criminal Action to secure compliance.

### *Variable Monetary Penalty (VMP)*

The amount of the penalty to be determined by the Council to ensure the penalty reflects the nature of the non compliance.

### *Compliance Notice*

This is a requirement to take specified steps within a stated period to secure that an offence does not continue or happen again.

### *Restoration Notice*

This is a requirement to take specified steps within a stated period to secure that the position is restored to what it would have been, so far as possible, to what it would have been if no offence had been committed.

## ***Penalty Charge Notices***

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.

## **Fixed Penalty Notice (FPN)**

These may be issued without first providing a warning. They may be issued in the following circumstances:

- Officer has witnessed the offence
- There is a witness or witnesses to the offence and the offender can be clearly identified.
- The alleged offender has not received an FPN before or has previously received no more than two FPN's in the previous 12 months

### **Penalty Notice for Disorder**

A Penalty Notice for Disorder (PND) is the fixed penalty option for anti-social behaviour such as the sale of alcohol to a minor

### **Voluntary Undertakings**

Under certain legislation voluntary undertakings may be possible. This service may accept 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 respect of some breaches this service has powers to issue statutory notices to stop or prevent ongoing breaches. 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.

### **Seizure**

Some legislation permits our officers to seize goods and documents that may be required as evidence

When we seize goods, we will give an appropriate receipt to the person from who they are taken

On some occasions, we may ask the person to voluntarily surrender the goods.

### **Forfeiture**

Some legislation allows us to apply to the court to seek forfeiture of goods, either in conjunction with a prosecution, or separately.

### **Taking animals into possession**

Under the Animal Welfare Act 2006, if a veterinary surgeon certifies that 'protected animals' are suffering or are likely to suffer if their circumstances do not change, we will consider taking them into possession and applying for Orders for re-imburement of expenses incurred and subsequent disposal

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

In some circumstances this service 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.

The service 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 we have serious concerns about compliance with voluntary undertakings or a notice.

## **Anti-Social Behaviour, Crime and Policing Act 2014**

Criminal Behaviour Orders (CBO) replaced Anti-Social Behaviour Orders (ASBO). A CBO can prohibit an offender from doing certain things and/or require them to do certain things.

The Council will consider making an application to the court for a CBO on conviction where the offender's behaviour has caused, or was likely to cause, harassment, alarm or distress to any person. The court can make an order where satisfied beyond reasonable doubt that the offender has engaged in such behaviour and, making the order will help prevent the offender from engaging in such behaviour.

## **Simple Caution**

The Council 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 likely.

A Simple Caution will appear on an offender's criminal record. It is likely to influence how the Council 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 this service 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**

This service issues 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 this service may take previous breaches and enforcement action into account.

### **Proceeds of Crime Actions (POCA)**

The purpose of Proceeds of Crime action is to recover the financial benefit that the offender has obtained from his criminal conduct.

Applications may be made under the Proceeds of Crime Act for confiscation of assets in relevant cases. Proceedings are conducted according to the civil standard of proof. Applications are made after a conviction has been secured.

We will apply for POCA if, given the circumstances and relevant guidance, we believe it is appropriate and effective to do so.

We will continually review our position regarding the use of enforcement options and additional sanctions under the Regulatory Enforcement and Sanctions Act 2008

### **Review of this policy**

This Policy will be refreshed should any changes in legislation or relevant codes of practice require it to be updated. Should these or other appropriate urgent changes be made these will be made. This document forms part of the PPHI Service Delivery Plan and in any event will be reviewed annually as part of that business planning process by a member of the Management Team.

The current version of this Policy will be published [here](#) on the Public Protection pages of the Council's website.

We welcome any comments on the Policy at any point and these will be reviewed by the Management Team (contact details below). We may also consult with representative groups of business on the Policy and how it could be improved.

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

Details of our general service standards and what you can expect from our officers are 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 officers a member of the Management Team will be able to discuss the cause of your dissatisfaction, and will try to find a solution. This will usually be the line manager for the investigating officer involved.

Should we add a link to the corporate complaints procedure??

Any written challenge to enforcement decisions will be considered if it is sent to the Group Manager at the address or by email in the contact details section at the end of this document.

## Our Commitment to You

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 following

- Right to a fair trial
- Right to respect for private and family life, home and correspondence

We are committed to providing open, equal and timely access to our services.

If you are unhappy with the service you have received, or we have failed to live up to our promises, managers are always willing to discuss with you the cause of your dissatisfaction, and will try to find a solution.

If you wish to make a complaint or send us a compliment or comment about our service:

- Please contact the Group Manager - Public Protection and Health Improvement at the address below, or
- You can use Bath and North East Somerset Council's online complaints procedure by going to <http://www.bathnes.gov.uk/feedback>
- Or you can talk directly to your councillor

If you are still not satisfied, and you feel you have been caused injustice, we will tell you how to complain to the Local Government Ombudsman.

As we are continually seeking to improve our standards, this policy is subject to regular review.

### Our contact details are:

Public Protection and Health Improvement Service  
1<sup>st</sup> Floor, Lewis House  
Manvers Street  
Bath  
BA1 1JG

Telephone: 01225 396759  
Fax: 01225 396142  
E-mail: [public\\_protection@bathnes.gov.uk](mailto:public_protection@bathnes.gov.uk)  
Website: [www.bathnes.gov.uk](http://www.bathnes.gov.uk)

**Consumers requiring consumer advice or wanting to report a matter to the Trading Standards Service should call our partner organisation: Citizens Advice consumer service on 03454 04 05 06.**

We will produce copies of this policy in Braille, in large print, on audio tape, and in other languages as required.

Date 14th August 2017