

Environmental Health Enforcement Policy



Brighton & Hove
City Council

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1.0 Statement of objectives

1.1 The Environmental Health & Licensing service is committed to the Council's core priorities. This policy gives detail on the Council's priorities:

Protect the environment while growing the economy;
better use of public money;
reduce inequality by increasing opportunity;
fair enforcement of the law;
open and effective leadership.

will inform the enforcement actions taken.
Amendments to prioritise will be embedded automatically.

1.2 This service policy promotes efficient and effective approaches to regulatory inspection and enforcement that improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulator's Compliance Code.

1.3 In certain instances the service may conclude that a provision in the Code is either not relevant or is outweighed by another provision. It will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

1.4 The service pursues a positive and proactive approach towards ensuring compliance by:

- Supporting the better regulation agenda;
- Helping make prosperity and protection a reality for the city's community;
- Helping and encouraging regulated entities to understand and meet regulatory requirements more easily;
- Responding proportionately to regulatory breaches; and
- Protecting and improving public health and the environment.

1.5 This policy is based on the seven 'Hampton Principles' of:

Economic Progress: Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection;

Risk Assessment: Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources in the areas that need them most;

Advice and Guidance: Regulators should provide authoritative, accessible advice easily and cheaply;

Inspections and other visits: No inspection should take place without a reason;

Information requirements: Businesses should not have to give unnecessary information or give the same information twice;

Compliance and enforcement actions: The few businesses that persistently break regulations should be identified quickly and face proportionate and meaningful sanctions; and

Accountability: Regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take.

1. 6 The rights and freedoms given under the Human Rights Act, particularly Articles 6 and 8, will be observed, as will the provisions of the Regulation of Investigatory Powers Act.

2.0 Scope of the policy

- 2.1 This policy supports and supplements specific guidance on enforcement action contained in the Statutory Code of Practice for Regulators, Brighton & Hove City Council's Corporate Enforcement Policy, Statutory Codes of Practice and relevant guidance documents and guidelines issued by Government Departments and co-ordinating bodies.
- 2.2 This policy relates to actions taken to educate and enforce legislation where non-compliances have been identified or have a realistic potential to occur. It does not determine actions in respect of granting licences or permissions that fall under any other Brighton & Hove City Council policy.

2.3 The policy is limited to those local enforcement activities led by the Head of Environmental Health & Licensing. Due regard will be had to any national enforcement policy or scheme such as the Primary Authority Principle.

3.0 Training

3.1 Officers undertaking enforcement duties will be suitably trained and qualified so as to ensure they are fully competent to undertake their enforcement activities. Officers will be appropriately authorised in accordance with the council's scheme of delegation.

4.0 Management systems

4.1 The service will maintain management systems to monitor the quality and nature of enforcement activities undertaken, so as to ensure, as far as is reasonably practicable, uniformity and consistency.

5.0 Enforcement options

5.1 The service recognises the importance of achieving and maintaining consistency in its approach to enforcement. Statutory Codes of Practice and guidance issued by Government Departments, other relevant enforcement agencies or professional bodies will therefore be considered and followed where appropriate.

5.2 Sanctions and penalties will be consistent, balanced, fairly implemented and relate to common standards that ensure individual, public safety or the environment is adequately protected. The aim of sanctions and penalties are to:

- Change the behaviour of the offender;
- Eliminate any financial gain or benefit from non-compliance;
- 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;
- Proportionate to the nature of the offence and the harm caused; and
- Aim to deter future non-compliance.

5.3 Criteria to be taken into account when considering the most appropriate enforcement option include:

- the potential of the offence to cause harm;
- confidence in the offender;
- consequences of non-compliance;
- likely effectiveness of the various enforcement options.

5.4 Having considered all the relevant options the choices for action are:

- **Informal Warning:** All advice issued will be given in writing and specify the nature of the breach or offence, and the actions required to remedy the issue. An informal warning may be included with the advice, and may accompany higher-level actions, such as Enforcement Notices or Voluntary Surrender:
- **Statutory Notices:** Will be used in appropriate cases and may be used in conjunction with other action, such as prosecution, as appropriate.
- **Cessation Notices:** There may be circumstances where due to the significant risk of harm to the public, individuals or the environment that employment of a specific operation, premises or piece of equipment is either permanently or temporarily prohibited.
- **Simple Caution:** The issue of a Simple Caution by an authorised officer may be undertaken as an alternative to prosecution where it is considered unnecessary to involve the courts, and the offender's response to the problem makes repeat offending unlikely, or the offender's age or health make it appropriate. Cautions may only be issued where the offender makes a clear and reliable admission of guilt and understands the significance of acceptance.
- **Prosecution:** A prosecution is appropriate where there is a breach of a legal requirement, such that public safety, health, economic or physical well-being or the environment or environmental amenity is adversely affected.

The Crown Prosecutor's Code of Evidential and Public Interests tests must be met in all cases. However, certain circumstances will normally justify prosecution to prevent the undermining of the service's enforcement responsibilities.

- Failure to comply with an Enforcement Notice
- Declining a Simple Caution
- Continued, reckless, negligent or pre-meditated non-compliance.
- Failure to pay a fixed penalty.
- Non co-operation, acts of obstruction or threats of physical harm or abuse.
- **Injunctions:** Injunctive action as a means of preventing an activity or course of action likely to result in significant risk to public or community safety or economic wellbeing of consumers and businesses.

5.5 If the Department is considering taking enforcement action which it believes may be inconsistent with that adopted by other authorities, the matter will be referred to the appropriate local co-ordinating body.

6.0 Informal warning

6.1 Informal action may be taken when:-

- the act or omission is not serious enough to warrant formal action or
- from the individual's/enterprise's past history it can be reasonably expected that informal action will achieve compliance or
- confidence in the individual/enterprise's management or ability to resolve the matter is high or
- the consequences of non-compliance will not pose a significant risk to public health, public safety, animal welfare or the environment.

6.2 When an informal approach is used to secure compliance with regulations, written documentation issued will:-

- contain all the information necessary in an appropriate format to understand what is required and why;
- indicate the regulations contravened, measures which will enable compliance with legal requirements and that other means of achieving the same effect may be chosen;
- clearly differentiate between legal requirements and recommendations of good practice. Such a differentiation will also be made when verbal advice is given.

7.0 Statutory notices

7.1 Statutory notices will in general be related to risk, maintenance of the environment, quality of life, public or residential amenity or animal welfare and may be issued where one or more of the following criteria apply:-

- where this is a statutory duty;
- there are significant contraventions of legislation or substantial evidence of nuisance that requires remedy;
- there is a lack of confidence in the proprietor, enterprise or individual to respond to an informal approach;
- there is a history of non-compliance with informal action;
- standards are generally poor with little management awareness of statutory requirements or willingness to comply;
- the consequences of non-compliance could be potentially serious to public health or cause public nuisance or be irreversible;
- although the intention is to prosecute, effective action also needs to be taken as quickly as possible to remedy conditions that are serious, deteriorating or irreversible or needed to support prosecution.

7.2 Failure to comply with statutory notices may, in general and where relevant, result in prosecution. Where other control measures such as works in default or detention of articles are being undertaken prosecution may still be considered.

7.3 Statutory notices include enforcement notices, monetary penalty notices and forfeiture notices.

8.0 Cessation notices

8.1 It will be necessary to consider the service of a statutory notice that takes immediate effect such as prohibition notice or injunctions in one or more of the following circumstances.

- an imminent risk of injury to health or safety can be demonstrated;
- an imminent risk of serious pollution to the environment can be demonstrated;
- the consequences of not taking immediate and decisive action to protect the public would be unacceptable;

- the guidance criteria concerning the conditions when prohibition may be appropriate, are fulfilled;
- there is no confidence in the integrity of an offer made by a proprietor to voluntarily close premises or cease the use of any equipment, process or treatment associated with the imminent risk or
- A proprietor is unwilling to confirm in writing their offer of a voluntary prohibition.

8.2 Any notice covered by section 7 and 8 above will be served after proper consultation in accordance with the Scheme of Delegation for the council's functions.

9.0 Simple cautions

9.1 A Simple Caution may be issued as an alternative to a prosecution. Cautions may be issued to:-

- deal quickly and simply with less serious offences;
- divert less serious offences away from the courts;
- reduce the chances of repeat offences.

9.2 The following factors will be considered when deciding whether a Caution is appropriate:-

- evidence of the suspect's guilt
- a clear and reliable admission of the offence has been made either verbally or in writing
- Is it in the public interest to use a Caution as the appropriate means of disposal when taking into account the public interest principles set out in the Code for Crown Prosecutors?
- the suspected offender must understand the significance of a Simple Caution and give an informed consent to being cautioned.

9.3 No pressure will be applied to a person to accept a Simple Caution.

9.4 The 'cautioning officer' will be the most appropriate officer from Service Director, Service Assistant Director, Head of Service or Environmental Health Manager. The Cautioning Officer must not have taken an active part in investigating the case.

9.5 Should a person decline the offer of a Simple Caution a prosecution will be recommended.

10.0 Prosecution

10.1 The Department recognises that the decision to prosecute is significant and could have far reaching consequences on the offender.

10.2 The decision to undertake a prosecution will be taken after proper consultation in accordance with the Scheme of Delegation for the council's functions. The decision to proceed with a prosecution will normally be taken following legal advice. The matters to be taken into account when deciding if the issue of proceedings is proportionate include:-

- the seriousness and nature of the alleged offence;
- the role of the suspect in the commission of the offence;
- any explanation by the suspect or any agent or third party acting on their behalf;
- was the suspect in a position of trust, responsibility or authority in relation to the commission of the offence;
- is there evidence of premeditation or disregard of a legal requirement for financial reward;
- risk of harm to the public, an individual or the environment;
- relevant previous history of compliance;
- reliability of evidence and witnesses
- any mitigating or aggravating circumstances or the likelihood that the suspect will be able to establish a defence;
- suspect's willingness and ability to prevent a recurrence of the offence;
- the need to influence the future behaviour of the suspect;
- the likely penalty to be imposed; and
- a prosecution is in the public interest, there is realistic prospect of conviction and sufficient evidence to support proceedings.

10.3 All relevant evidence and information will be considered before deciding whether to instigate proceedings in order to enable a consistent, fair and objective decision to be made.

10.4 Where an act or omission is capable of constituting both a summary and either way offence, when deciding which offence to charge the following will be considered:-

- the gravity of the offence;
- the adequacy or otherwise of the powers of the summary court to punish the offence;
- the record of the suspect;
- the suspect's previous response to advice or other enforcement action;
- the magnitude of the hazard;
- any circumstances causing particularly great public alarm;
- comments from the council's Solicitor's Office.

10.5 As a general rule, an individual or business will be given a reasonable opportunity to comply with the law, although in some circumstances prosecution may be undertaken without giving prior warning e.g.

- the contravention is a particularly serious one;
- a statutory notice has previously been issued for a similar offence;
- the integrity of the licensing framework is threatened.

11.0 Appeals

11.1 If any person is unhappy with the action taken, or information or advice given, they will be given the opportunity of discussing the matter with the relevant team manager, Head of Service or Assistant Director. This does not affect the right of any aggrieved person to exercise their rights under formal or informal appeal processes.

11.2 Any such appeal does not preclude any aggrieved person from making a formal complaint about the service or any officers. Any such complaint will be dealt with in accordance with Corporate procedures and guidance.

Agreed by Brighton & Hove City Council's Environment Cabinet Member's Meeting on 26th March 2009

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