



**Brighton & Hove  
City Council**

## **Brighton and Hove City Council** **Safer Communities Enforcement Policy**

### **1. Introduction**

#### **1.1 Policy Statement**

This document sets out what business and others can expect from Brighton and Hove City Council's Safer Communities and its officers. It commits the City Council to carrying out activities in a robust but fair way that supports those we regulate to comply and grow, avoiding imposing unnecessary regulatory burdens

It is supplemented where necessary by other documents, which set out in greater detail the specific policies, procedures and standards of service, which apply to particular regulatory services. The Enforcement Policy is not exhaustive in its application.

#### **1.2 Purpose**

The primary function of regulatory services is to protect the public, the environment and the local economy.

The enforcement policy sets out the enforcement options ranging from no action to prosecution. It provides guidance on the range of options that are available to achieve compliance with the legislation that we enforce.

The Regulators' Code sets out the Government's expectation that local authorities will ensure their approach to their regulatory activities is transparent.

This enforcement policy explains how the Council will implement the Regulators' Code and what individuals, households; businesses and other agencies can expect from our enforcement activities.

The purpose of this Enforcement Policy is to provide a framework for:

- Protecting residents, visitors, workers, consumers, businesses, the Council's financial position and the environment of the area
- Protecting against the spread of infectious diseases in the area
- Equitable and consistent enforcement actions
- Fostering an environment which encourages economic progress in our district
- Helping businesses and others to understand and meet their legal obligations
- Reducing unnecessary burdens on businesses and individuals
- Responding proportionately to the seriousness of regulatory breaches
- Taking firm action, including legal action where appropriate, against those who fail to change their behaviour, persistently flout the law or act negligently or deliberately seek to distort the market place

### 1.3 Scope

Brighton and Hove City Council Safer Communities has enforcement teams relating to the following areas of compliance:

- Trading Standards
- Licensing
- Food Safety
- Health and Safety
- Environmental Protection
- Animal Wardens
- Taxi Licensing
- Field Officers
- Community Safety

### 1.4 Policy Consistent with Best Practice and Statutory Requirement

This Policy has been developed with due regard to the **Principles of Good Enforcement** set out in the following guiding documents:

- **The Regulators' Code**, a code issued in respect of certain specified Council regulatory functions.
- **The Code for Crown Prosecutors**
- **The Enforcement Policy Statement of the Health and Safety Executive and the National Local Authority Enforcement Code Health and Safety at Work England, Scotland and Wales, April 2013**, which the Council's Health and Safety Enforcement Officers need to follow.
- **The Food Standard Agency's Regulators' Code**, which came into force in April 2014.

In certain circumstances we may conclude that a provision contained in one or more of these codes is either not relevant or is outweighed by another provision or relevant factor. We will ensure that any decision to depart from relevant policy guidelines will be properly reasoned and based on material evidence.

## **1.5 Legal Obligations**

All enforcement activities, including investigations and formal actions, will always be conducted in compliance with the Council's statutory obligations. Council enforcement officers should act within the scope of their delegated authority and with due regard to all relevant legislation, such as:

- Health and Safety at Work etc. Act 1974
- Police and Criminal Evidence Act 1984,
- Criminal Procedure and Investigations Act 1996,
- Human Rights Act 1998,
- section 17 of the Crime and Disorder Act 1998,
- Regulation of Investigatory Powers Act 2000,
- Investigatory Powers Act 2016
- Criminal Justice and Police Act 2001,
- Legislative and Regulatory Reform Act 2006,
- Regulatory Enforcement and Sanctions Act 2008
- Equality Act 2010, and
- Protection of Freedoms Act 2012

Officers will have due regard to any relevant, regulations, guidance formal procedures and codes of practice made under such legislation.

## **2. Our Enforcement Principles**

The principles are that Regulatory activities should be:

- carried out in a way, which is transparent,accountable, proportionate and consistent;
- targeted only at cases in which action is needed.

### **2.1 Helping Businesses and Others to Compliance – Supporting Economic Progress**

We will take care to help businesses and others meet their legal obligations without unnecessary expense.

We will strive to ensure that when information is needed from businesses that it is assessed to avoid duplication of requests and amended where necessary.

Whenever practicable we will promote positive incentives for businesses that comply, such as the National Food Hygiene Rating Scheme. We will, where practicable and appropriate, provide feedback to business when there are changes in business risk ratings as a result of their performance.

### **2.2 Openness through Clear, Accessible Guidance**

Any information and advice about the legislation that we enforce shall be provided in plain language where practicable including on the Council website at [www.brighton-hove.gov.uk](http://www.brighton-hove.gov.uk).

## **2.3 Helpfulness through Clear, Accessible Guidance**

We aim to help businesses get it right first time through the provision of a courteous and efficient service. Our staff will identify themselves by name and carry proof of their identity. We will provide a contact point and telephone number for further dealings with us and we will encourage businesses and others to seek guidance or information from us.

All requests for service, including applications for approval of establishments, licences, registrations, etc, will be dealt with efficiently and promptly within the resources available. We will ensure that, wherever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

## **2.4 Meeting the Needs of All Our Service Users**

As far as it is reasonable to do, we will make provision for the particular interests of our service users, including businesses, their employees and the public in line with the Council's own policies and procedures.

## **2.5 Targeted, Proportionate and Risk-based Enforcement**

We will adopt a risk-based approach to target resources where most needed. In line with the codes referred to above, we will take account of the circumstances of the case and the response of those subject to regulation when considering action. At the same time we will use intelligence and direct resources to identify those who flout the law or act irresponsibly and take appropriate action against them, including prosecution where appropriate.

## **2.6 Consistent Enforcement**

We will carry out our duties in a fair, equitable and consistent manner. While officers are expected to exercise judgement in individual cases and to treat each case on its own merits, we will have arrangements in place to promote consistency. Any actions taken should therefore:

- aim to change the behaviour of the offender;
- aim to 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 could be associated with a criminal conviction;
- be proportionate to the nature of the offence and the harm caused;
- aim to restore the harm caused by non-compliance, where appropriate; and,
- aim to deter future non-compliance.

We support and will promote arrangements for effective liaison with other authorities and enforcement bodies through schemes such as the Home Authority principle, the Lead Authority principle and the Primary Authority principle.

## **2.7 Working with Other Enforcement Agencies**

Sometimes there is more than one agency that can act in response to a problem. If there is a shared enforcement role with other agencies, whenever possible our enforcement activities will be co-ordinated with these agencies to prevent duplication or delays.

## **2.8 Best Practice**

Guidance from an officer will be put clearly and simply, explaining why any remedial work or action is considered to be necessary and over what time-scale. Such guidance will make sure that legal requirements are clearly distinguished from best practice advice and will be usually confirmed in writing.

## **3. How We Take Enforcement Action**

**3.1** Wherever possible officers will attempt to reach a solution by agreement unless immediate action is necessary and proportionate.

**3.2** Where there are statutory rights of appeal against formal action, information about those appeal rights will be given, either with the Notice governing the action taken or, where this is not appropriate or practicable, in a letter following the action to be sent as soon as reasonably practicable.

### **3.3 Enforcement Actions**

Whenever enforcement officers deal with matters that could constitute a criminal offence, and for which legal proceedings can be taken against an individual and / or a company, such allegations will be properly investigated.

**3.4** At the conclusion of an officer's enquiries, a decision will be made as to the most appropriate course of action.. The enforcement action that the local authority chooses to take will depend upon the particular circumstances and the approach of the business or regulated person to dealing with the breach. The Council will be robust in dealing with those that deliberately or persistently fail to comply or target vulnerable persons, or compromise public safety.

**3.5** Guidance for issuing Fixed Penalty Notices:

Officers and their representatives will follow relevant guidance to determine if it is appropriate to issue a FPN

### **3.6 Informal Action – Advice or Warning**

Minor infringements are generally dealt with informally by means of advice and guidance. Where appropriate a report will be left at the time of the visit or contained within a written letter of advice or warning. If advice is ignored, or if there is another factor that warrants a formal response, the Council may choose to treat the incident in a formal way.

### **3.7 Formal Action – Statutory Notice**

If officers have the relevant authority, they may issue a statutory notice requiring certain actions to be carried out within a given timescale. It is the responsibility of the recipient to comply with the notice. Failure to do so may result criminal action being taken.

### **3.8 Formal Action – Investigation**

In more serious cases an investigation will be conducted to determine the most appropriate course of action.

**3.9** Suspected offenders will be given the opportunity to provide their version of the events including, where provided for by the legislation, of any statutory defences. Officers may decide to do this by inviting the suspect to attend a formal interview.

**3.10** Formal interviews will be carried out in accordance with the relevant PACE codes issued under the Police and Criminal Evidence Act 1984 (PACE).

Some matters may not proceed to a full criminal investigation but may instead be dealt with by way of a committee hearing.

### **3.11 Formal Action - Criteria for Assessing Action on Suspected Offences**

The Council takes care to ensure an independent and consistent approach is taken to prosecution decisions. Where the investigating officer recommends prosecution the ultimate decision will rest with the Head of Safer Communities.

In all cases the appropriate course of action to take is decided having regard to relevant policies and the current **Code for Crown Prosecutors**, which involves a two-stage decision making process:

- Firstly, an **evidential test** to ensure that there is enough evidence to provide a 'realistic prospect of conviction'. If this is lacking, then no prosecution or alternative means of disposal of criminal offences will be taken.
- Secondly, a **public interest test**, which will determine whether it is in the public interest for a prosecution to be taken.

### **3.12 Public interest criteria**

The Council will consider all relevant circumstances carefully and will have regard to the following public interest criteria:

- the gravity of an alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender;
- there has been a reckless disregard of regulatory requirements;
- there have been repeated breaches giving rise to significant risk, or persistent and significant poor compliance;
- there has been a failure to honour voluntary undertakings or comply with statutory notices; or there has been a repetition of a breach that was subject to a simple caution;
- false information has been supplied wilfully, or there has been an intent to deceive, in relation to a matter which gives rise to significant risk;
- authorised officers have been intentionally obstructed in the lawful course of their duties.

This is not an exhaustive list. Where we consider that formal enforcement action is necessary each case will be considered on its own merits.

**3.13** The Code for Crown Prosecutors test insofar as it relates to the council requires the consideration of the following questions:

a) How serious is the offence committed?

- The more serious the offence, the more likely it is that a prosecution is required.
- When assessing the seriousness of an offence, prosecutors should include in their consideration the suspect's culpability and the harm caused, by asking themselves the questions at b) and c).

b) What is the level of culpability of the suspect?

- The greater the suspect's level of culpability, the more likely it is that a prosecution is required.
- Culpability is likely to be determined by:
  - i. the suspect's level of involvement;
  - ii. the extent to which the offending was premeditated and/or planned;
  - iii. the extent to which the suspect has benefitted from criminal conduct;
  - iv. Whether the suspect has previous criminal convictions and/or out-of-court disposals and any offending whilst on bail or whilst subject to a court order;
  - v. whether the offending was or is likely to be continued, repeated or escalated;
  - vi. The suspect's age and maturity (see paragraph d below).

- A suspect is likely to have a much lower level of culpability if the suspect has been compelled, coerced or exploited, particularly if they are the victim of a crime that is linked to their offending.

- Prosecutors should also have regard to whether the suspect is, or was at the time of the offence, affected by any significant mental or physical ill health or disability, as in some circumstances this may mean that it is less likely that a prosecution is required. However, prosecutors will also need to consider how serious the offence was, whether the suspect is likely to re-offend and the need to safeguard the public or those providing care to such persons.

c) What are the circumstances of and the harm caused to the victim?

- The circumstances of the victim are highly relevant. The more vulnerable the victim's situation, or the greater the perceived vulnerability of the victim, and the

more harm and impact caused to the victim, the more likely it is that a prosecution is required.

- This includes where a position of trust or authority exists between the suspect and victim.
- A prosecution is also more likely if the offence has been committed against a victim who was at the time a person serving the public.
- It is more likely that prosecution is required if the offence was motivated by any form of prejudice against the victim's actual or presumed ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity; or if the suspect targeted or exploited the victim, or demonstrated hostility towards the victim, based on any of those characteristics.
- Prosecutors also need to consider if a prosecution is likely to have an adverse effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence, the availability of special measures and the possibility of a prosecution without the participation of the victim.
- Prosecutors should take into account the views expressed by the victim about the impact that the offence has had. In appropriate cases, this may also include the views of the victim's family.
- However, the Council does not act for victims or their families in the same way as solicitors act for their clients, and prosecutors must form an overall view of the public interest.

d) What was the suspect's age and maturity at the time of the offence?

- Prosecutors should consider the suspect's maturity, as well as their chronological age, as young adults will continue to mature into their mid- twenties.
- As a starting point, the younger the suspect, the less likely it is that a prosecution is required.
- If the offender is under 18 then officers may liaise with the Youth Offending Service or Children's Services as appropriate

e) What is the impact on the community?

- The greater the impact of the offending on the community, the more likely it is that a prosecution is required.
- The prevalence of an offence in a community may cause particular harm to that community, increasing the seriousness of the offending.
- Community is not restricted to communities defined by location and may relate to a group of people who share certain characteristics, experiences or backgrounds, including an occupational group.
- Evidence of impact on a community may be obtained by way of a Community Impact Statement.



f) Is prosecution a proportionate response?

• In considering whether prosecution is proportionate to the likely outcome, the following may be relevant:

i. The cost to the Council and the wider criminal justice system, especially where it could be regarded as excessive when weighed against any likely penalty. Prosecutors should not decide the public interest on the basis of this factor alone. It is essential that regard is also given to the public interest factors identified when considering the other questions, but cost can be a relevant factor when making an overall assessment of the public interest.

ii. Cases should be prosecuted in accordance with principles of effective case management. For example, in a case involving multiple suspects, prosecution might be reserved for the main participants in order to avoid excessively long and complex proceedings.

### **3.14 Prosecutions related to Health and Safety**

The Council will normally prosecute where one or more of the following circumstances are found to apply:

- Death was a result of a breach of the legislation.
- The gravity of the alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender warrants it.
- There has been reckless disregard of health and safety requirements.
- There have been repeated breaches giving rise to significant risk, or persistent and significant poor compliance.
- Work has been carried out without or in serious non-compliance with an appropriate licence.
- The standard of management of health and safety is found to be far below legal requirements and to give rise to significant risk.
- Failure to comply with an improvement or prohibition notice.
- False information has been supplied wilfully in relation to a matter which gives rise to significant risk.
- Inspectors have been obstructed in the course of their duties.

Where there has been a work-related death, enforcement officers will follow the National Work-related Death Protocol in liaising with the police to consider whether the circumstances of the case might justify a charge of manslaughter.

### **3.15 Formal Actions following conclusion of the criminal investigation**

The eventual course of action taken may be one of the following: -

- No action
- Verbal or Written Advice or Warning
- Undertakings & Injunctive action
- Formal Notice
- Work in Default
- Simple Caution in accordance with current Home Office guidance
- Fixed Penalty Notice

- Seizure
- Prosecution
- Possession action
- Refusal/Suspension/Revocation of a licence , permit or certificate
- Review of Premises Licence
- Closure notice- persistently sell to minors
- Criminal Behaviour Order
- Forfeiture
- Tobacco Restriction Orders
- Post-conviction court orders
- Reduction in capacity at a sports ground
- Confiscation of Proceeds of Crime
- Restitution
- Referral to committee
- Administrative Penalty
- Financial or other Civil Penalty Notices.
- Unlawful profit orders.
- Community Protection Notice
- Closure Order

There are other options for formal action that are available to certain regulatory officers under the legislation that they enforce on behalf of the council or other sanctions that may be provided for in subsequent legislation.

### **3.16 An explanation of the formal action options**

#### **a. No action**

In certain circumstances, contraventions of the law may not warrant any action. A decision of no action may also be taken where formal enforcement is inappropriate in the circumstances.

#### **b. Verbal or written advice or warning**

For minor breaches of the law we may give verbal or written advice. This 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. Failure to comply could result in an escalation of enforcement action.

#### **c. Undertakings & Injunctive action**

The range of actions under various legislation (for example the Enterprise Act 2002 and the Anti-Social Behaviour, Crime and Policing Act 2014) include: informal assurances, formal undertakings, interim orders, court orders and contempt proceedings.

#### **d. Formal Notice**

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, taking into account the seriousness of the contravention, the implications of the non-compliance and the appeal period for that notice. All

notices issued will include details of any applicable Appeals Procedures.

#### **e. Work in Default**

The Council is given powers under legislation to carry out works in default where a person has been required to do works but has failed to do so. In most circumstances a person will be given notice of the Council's intention to carry out works in their default. Once the Council has started works it is an offence for that person to obstruct the Council or any of the contractors that have been employed to carry out the works. The cost of the works will be recovered in accordance with the relevant statutory provisions. The Council is not obliged to carry out works and reserves the right not to do so where the cost of the works is likely to be very high or there are likely to be difficulties in recovering the costs.

#### **f. Simple Caution**

Where a prosecution would otherwise be justified, a Simple Caution may be offered to the defendant. The purpose of these cautions is to avoid unnecessary court action, but can only be used where the defendant fully admits the offence and agrees to it being dealt with this way.

A Simple Caution will be issued in accordance with the current **Home Office Circular**. If a caution is declined, a prosecution should normally follow.

#### **g. Fixed Penalty Notice**

The Council has powers to issue fixed penalty notices in respect of some breaches. A fixed penalty notice is not a criminal fine and does not appear on an individual's criminal record. If a fixed penalty is not paid, the Council may commence criminal proceedings or take other enforcement action in respect of the breach.

#### **h. Civil or Financial Penalty notices**

The Council has in certain circumstances the power to issue Civil or Financial Penalties in relation to particular offences in question. The powers are set out in law and the Council will follow the relevant policy and procedures.

#### **i. Prosecution**

In circumstances where none of the other forms of enforcement action are considered appropriate a prosecution will be considered and may ensue

#### **j. Refusal/ Suspension/ Revocation of a licence, permit or certificate**

Brighton and Hove City Council 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. 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

suspension, revocation or amendment. When considering future licence applications or similar applications this service may take previous breaches and enforcement action into account.

#### **k. Forfeiture**

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

#### **l. Tobacco Restriction Orders**

Where an offender continually breaks the law by selling tobacco products to young people, we may make a complaint to the court and apply for a restricted premises order or a restricted sale order. The effect of such an order is to prohibit a premise or a person from selling tobacco for a period of time up to one year.

#### **m. Post-Conviction Court Orders**

A person that is convicted of a relevant offence in the Criminal Courts, can under the Anti-Social Behaviour Crime and Policing Act 2014, be given an order that is equivalent to an Anti-Social Behaviour Order, known as a Criminal Behaviour Order, which prohibits and/or requires the offender from doing anything described in the order. A Remedial Order can be made for breach of a Community Protection Notice under section 49 of the Anti-social Behaviour, Crime and Policing Act 2014. Dog Destruction and Control Orders can be made under The Dangerous Dogs Act 1990 and the Dogs Act 1872.

#### **n. Confiscation of Proceeds of Crime**

Where a prosecution concerns offending conduct falling within the relevant tests under the Proceeds of Crime Act 2002, we will consider seeking a confiscation order to remove the benefit obtained from such criminal conduct. The making of such orders sends a clear message that 'crime does not pay'. The purpose is to recover the financial benefit the offender has obtained from their criminal conduct.

#### **o. Reduction in capacity at a sports ground**

Formal action may also be taken in relation to all or part of sports grounds such as imposing a reduction in capacity or issuing a Prohibition or Closure Notice.

## **4. How We Implement this Enforcement Policy**

### **4.1 Publication and Publicity**

Following adoption, this policy will be published on the city council's website and in printed form on request.

In order to deter others the council will aim to publish any prosecution or other enforcement action within 24 hours of the conviction or sentence unless there is good reason not to do so.

### **4.2 Responsibilities**

Each manager of a regulatory service that is covered by this policy will be responsible for its effective implementation throughout the enforcement activities of their team. Every officer within these teams will be responsible for applying it in relation to any enforcement activity covered by this policy.

### **4.3 Liaison with Other Regulatory Bodies and Enforcement Agencies**

Where there is a wider regulatory interest, enforcement activities will be co-ordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement.

Where an enforcement matter affects a wider geographical area beyond the local authority's 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 coordinated with them.

The officers will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies including:

- Government Agencies incl HMRC, Border Force
- Police Forces
- Fire Authorities
- Statutory Undertakers
- Other Local Authorities

The sharing of any specific information with other regulatory bodies and enforcement agencies will take place having due regard to the published data protection policies for the Council in line with the General Data Protection Regulation and the Data Protection Act 2018 .

#### **4.4 Monitoring and Review of the Policy**

The operation of this policy in practice will be reviewed at least every three years. The content of the policy will also be reviewed in the light of any relevant changes in legislation or updated codes of practice. Any significant changes will be subject to prior approval by relevant elected Members of the authority following consultation with the council's senior officer group.