

Brighton and Hove City Council

Corporate Enforcement Policy

1. Introduction

- 1.1 Fair and effective enforcement is essential to protect the economic interests and health and safety of the public, businesses, the environment and the public purse.
- 1.2 This Policy sets out what businesses and individuals that are either the subject of, or benefit from enforcement action can expect from Enforcement teams and their officers.
- 1.3 This policy commits the Council to good enforcement practice and procedures and is supplemented by service specific policies.

2. Status

- 2.1 This Policy was approved by Cabinet on 16 October 2008.

3. Scope

- 3.1 This Policy applies to any enforcement activity taken against members of the public who make fraudulent claims to the Council as well as person who is required to comply with the legislation applicable to the running of a business.
- 3.2 Enforcement includes any action taken by officers aimed at ensuring that both the public and/or businesses comply with the law. This is not limited to formal enforcement action such as prosecution but also includes the inspection of premises, investigations and other intervention activity designed to reduce crime and disorder and improve the quality of life in our communities.

4. Aims

- 4.1 The aim of this policy is to ensure that:
 - All those who live and work in the City have a clear understanding of the Corporate Policy and the enforcement functions.
 - All statutory notices issued by the Council are checked by an experienced officer for legal validity, content and technical information.

- Any information given, whether written or verbal, clearly identifies these requirements that are mandatory and those that are advisory.
- Any enforcement activity is proportionate to the seriousness of the breach and risks involved, and officers follow a consistent approach.

5. Legal Provisions

5.1 The following legislation and guidance will be taken into account in the enforcement activities of the council.

- The Compliance Code introduced by the Legislative & Regulatory Reform Act 2006
- Cabinet Office Enforcement Concordat
- Regulation of Investigatory Powers Act 2000
- Police & Criminal Evidence Act 1984
- Criminal Proceedings and Investigations Act 1996
- Freedom of information Act 2000
- Human Rights Act 1998
- Data Protection Act 1998
- Local Government Acts
- Race Relations Acts
- Crime & Disorder Act 1998
- Other relevant legislation such as the Public Health Acts, Anti Social Behaviour Act 2003, Criminal Justice & Public Order Act 1994, Clean Neighbourhoods & Environment act 2005
- The Code for Crown Prosecutors
- Home Office Guidance on the use of Simple Cautions
- Local Service Plans
- Other relevant guidance or professional advice

6. General Principles

6.1 Enforcement actions and the determination of sanctions and penalties should be carried out in an **open, transparent and timely manner**.

6.2 Regulators should be **accountable** for the efficiency and effectiveness of their activities whilst remaining independent in their decision-making.

6.3 Any enforcement action must be **proportionate** to the seriousness of any breach and to the risk to the public and businesses and should

- Aim to change the behaviour of the offender.
- Aim to eliminate any financial gain or benefit from offending.
- Be responsive and take account of what is appropriate for the particular offender.
- Deter further offending.

- 6.4 All duties must be carried out in a fair, equitable and **consistent** manner.
- 6.5 All activities are implemented through the use of comprehensive risk assessment and an intelligence led approach to ensure that resources are **targeted** at cases where protection is needed.

7. Service Standards

7.1 For people subject to enforcement action, we will aim to provide

- Targeted information and education programmes, where this is appropriate to achieve compliance.
- Information about the actions that can be taken on finding a breach of relevant legislation and the timescales involved.
- Clear advice on how to remedy the breach, distinguishing between legal advice and good practice.
- Advice on the planned level and frequency of any inspection regime, where premises are subject to regulatory controls.
- Arrangements for inspecting businesses at suitable times and an explanation why appointments may not be possible for all activities.
- Coordination of the activities of different Council Services and outside agencies to minimise the burden on businesses from multiple visits.
- Clear standards of response to complaints about the way in which enforcement activities are carried out.
- Arrangements for communicating with people in a manner most appropriate to their needs.
- Arrangements for ensuring that any commercially sensitive information obtained in the course of the enforcement action is protected.
- Consistency of enforcement for businesses that undertake similar activities, where appropriate.

7.2 For people who benefit from enforcement action, we will aim to provide

- Clear information about how we will respond their enquiry and the timescale involved.
- Arrangements for visiting complainants to investigate their problem where it is happening.
- Standards for keeping people informed of the status and progress of any subsequent investigation.
- Arrangements for communicating with complainants in a manner most appropriate to their needs.
- Standards for responding to complaints from people who are dissatisfied with the action taken on their behalf.
- Clear explanation of the limitations, or non availability of powers to deal with particular matters.

8. Officers Powers

- 8.1 Enforcement officers have a wide variety of duties and have to act as investigators. In order to act effectively certain legislation provides strong powers of entry, seizure and inspection. If individuals or companies obstruct officers or refuse to provide information the law also imposes punishments. Officers use these powers with discretion but to be effective the Council will uphold and support them.
- 8.2 Officers will use their powers of entry only when necessary to effect an inspection of premises or in the process of an investigation. The Council will always support officers who act in good faith, including prosecuting those individuals who obstruct or assault officers during investigations or inspections.
- 8.3 Where the legislation allows, officers may examine premises and articles, remove articles, label samples, require information, issue enforcement notices and may in some instances be accompanied by other persons. In some cases a Justice's warrant may be obtained to obtain entry to specified premises.
- 8.4 An officer must be able to explain the legal basis and justify any individual action taken in the performance of their duties.

9. Appointment of officers and identification

- 9.1 All enforcement will be authorised to act under relevant legislation enforced or administered by the service in which they are employed. Their authorisation will follow the scheme of delegations procedure adopted by the council and will be known as their Warrant. This must be produced if requested.
- 9.2 All officers are issued with an identification card bearing their photograph. This identification must also be produced on request.

10. Shared Enforcement Role

- 10.1 Enforcement officers investigating breaches of the law must consider whether there is a shared or wider enforcement role. In many instances effective action can only occur if officers actively work with other sections within the Council, the Police, Fire & Rescue Services and other similar enforcement agencies.
- 10.2 The Council also has a duty to inform certain government bodies of statutory notifications, e.g. reporting appropriate accidents, occupational diseases outbreaks to the Health & Safety Executive, Notices of Intended Proceedings to the Office of Fair Trading, or the

issue of Suspension Notices to the Department of Business & Regulatory Reform.

- 10.3 If another agency or authority is the enforcing authority for a particular activity, officers will inform them of any contraventions they observe during the performance of their duties, e.g. officers must consult the Fire Authority before serving a statutory notice to provide or improve means of escape in a house of multiple occupation. When appropriate, enforcement issues may be referred to other agencies including:
- East Sussex Fire & Rescue Service (Petroleum Licensing)
 - East Sussex County Council (Animal Health)
 - Health and Safety Executive
 - Environment Agency
 - Emergency Services
 - Adjoining local authorities
 - Government Departments

11. Formal Action

- 11.1 Compliance should normally be achieved through informal actions such as

- Educational Courses and training
- Advice provision
- Compliance check
- Warning letters
- Consideration Notices
- Undertakings

- 11.2 Where this does not result in compliance or in more serious cases, formal action may be considered, this includes

- Notice of intention
- Works notice
- Abatement Notices
- Demotion Orders
- Improvement Notices
- Works in default
- Prohibition Notices
- Suspension Notices
- Control Orders
- Closure Orders
- Seizure and detention, forfeiture
- Simple Cautions
- Enforcement notices and other notices under the Town & County Planning Acts
- Injunctions
- Enforcement Orders
- License Reviews
- Fixed Penalty Notices
- Anti Social Behaviour Orders

- Criminal Anti-Social Behaviour Orders
- Prosecution

11.3 The Proceeds of Crime Act 2002 was introduced to provide a mechanism to ensure that persons committing crime should not benefit from that activity. Financial Investigations should therefore be considered in appropriate cases.

12 Decision - making

12.1 The relevant enforcement officer can make the decision for less serious infringements. These decisions must be based on professional judgement, legal guidelines, statutory codes of practice and the priorities set by the Council and / or Central Government.

12.2 For more serious breaches, where the nature of the offence points towards prosecution, the offer of a simple caution, the issuing of an Enforcement Notice, or an application to the courts for injunctive action the decision will be made by the Team Manager, Head of Service or relevant Assistant Director. These decisions should be taken in conjunction Legal Services and reflect national guidance and best practice, in particular the criteria found within the Code for Crown Prosecutors.

13. Monitoring & Review

13.1 All officers must adhere to this policy. Senior managers are required to monitor its implementation and make any necessary suggestions or recommendations for improvement.

13.2 Any variance from the policy should be reported to the appropriate Head of Service who will ensure that the issue is addressed and necessary training given if applicable.

13.3 The policy will be reviewed when there is any significant change in legislation or other circumstances that affect its effectiveness and validity.

14 Equalities

14.1 The Council is committed to delivering all its operational activities in accordance with our Equalities and Diversity policies and will embed the principles in its approach to its enforcement and regulatory functions

15 Appeals, Complaints & Comments

15.1 The Council has published its Complaints Procedure which can be found on the Councils website www.brighton-hove.gov.uk. Copies of this Policy can also be found. In addition, most legislation has inbuilt

appeals procedures whenever formal enforcement action is taken. Complaints may also be made to the Local Government Ombudsman.

