



# **BUILT ENVIRONMENT DEPARTMENT**

## **ENFORCEMENT POLICY**

**JANUARY 2014.**



## INTRODUCTION

One of the functions of the Built Environment Department is to act as a regulator and an enforcement agency for a large range of legal duties and powers applied by Acts of Parliament, and the Regulations and Orders made under them (including various bylaws).

The legislation which the Department is responsible for enforcing is extensive and has not been listed here, but the following areas exemplify the range and diversity:-

Health and Safety;  
Licensing;  
Planning;  
Housing;  
Public Health (including Food Safety);  
Trading Standards Enforcement;  
Advice and Education;  
Environmental Protection;  
Neighbourhoods.

This policy sets out the standards and guidance that will be applied by the Department when acting in its role as regulator and enforcement agency across a range of its relevant legal powers and duties.

The policy applies to enforcement and regulation affecting members of the public, (e.g. residents and visitors) and businesses, (e.g. proprietors, employers and employees).

However, whilst the policy is intended to be reasonably comprehensive, it cannot cover every situation, especially where there are specific national or local codes or standards which have to be met. The Department has adopted the Cabinet Office Enforcement Concordat and the principles of good enforcement, policies and procedures in seeking to secure the highest possible level of compliance with Trading Standards and Environmental Health and Planning laws whilst conforming to the spirit of the European Convention of Human Rights (as implemented by the Human Rights Act 1998), the Crime and Disorder Act 1998, the Cabinet Office Enforcement Concordat and various statutory and voluntary Codes of Practice. The principal activities of the Department are directed towards avoidance of infringements, it is nevertheless inevitable that offences, and unauthorised developments, will occur, and the purpose of this policy is to ensure that they are resolved in a consistent, balanced and fair manner.

*This enforcement policy helps to promote efficient and effective approaches to regulatory inspection, interventions and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulators Compliance Code (and the Regulators Code when it comes into operation)*

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

## OVERALL AIM

The Departments aim is to undertake its regulatory and enforcement role in a fair, open and consistent manner. In doing this it will act in accordance with the guidance and standards set out in this policy, and in any supplementary Departmental policies.

In particular the Department will:

- ❖ Consult with parties subject to regulation and enforcement by the Council about the standards it sets in undertaking this role, except insofar as such policies have been determined by national consultative processes

- ❖ Work with individuals and businesses to assist them in complying with their legal duties and obligations;
- ❖ Ensure its staff are appropriately trained and apply the policy and standards professionally and consistently;
- ❖ Make information about the policy and the local standards widely available to the public and businesses within the Borough;
- ❖ Monitor compliance with the policy and review it from time to time in consultation with elected members, and parties subject to its application.

## **GUIDING PRINCIPLES**

In undertaking its regulatory and enforcement role the Department will have regard to the following

Guiding Principles:

- ❖ Any decision regarding enforcement action will be impartial and objective, and will not be affected by race, politics, gender, sexual orientation or religious beliefs of any alleged offender, transgressor, complainant, victim or witness;
- ❖ The Department believes the vast majority of individuals and businesses wish to comply with the legal and statutory requirements placed upon them and should be assisted in doing so;
- ❖ Education is an intrinsic part of enforcement and in order to contribute to corporate objectives the Department will provide information leaflets, advice, talks and seminars to interested businesses and communities..
- ❖ In dealing with any enforcement situation, the actions will be proportionate to the scale, seriousness and intentionality of any non-compliance;
- ❖ There will be consistency of enforcement whilst recognising individual circumstances which may modify the appropriate action to be taken in each case;
- ❖ Except in the most serious cases or where advice/warnings have not been heeded, or where there is a matter of serious immediate public health, or in the case of problematic operators, or in addressing key Council priority issues, adequate opportunity will be given to rectify non-compliance before formal legal action is commenced;
- ❖ Robust enforcement is seen as a final means of securing compliance with the appropriate standards, and not as an end in itself;
- ❖ Prosecution will be considered where it is in the public interest to do so and in serious or blatant cases, or where other approaches have failed, or are likely to fail;
- ❖ Regard shall be had to the relevant legislation and codes of practice which protect the rights of the individual and guide enforcement action, (e.g. Human Rights Act 1998, Code for Crown Prosecutors);
- ❖ Regard shall be had to the Council's Equal Opportunities and the Departments Customer Care Policies.

## STANDARDS

The Department will always endeavour to meet the highest standards of service in undertaking its regulatory and enforcement function. The following specific level of service standards will be applied:

- ❖ Matters relating to enforcement and regulation will be dealt with promptly with enquiries and complaints generally receiving an initial response or acknowledgement within one working day;
- ❖ Except in the case of necessary and approved covert investigations, (e.g. the making of test purchases) officers will announce themselves on arrival at premises and will show credentials/identification when requested unless they are already well known to the person;
- ❖ Officers will provide their name and a contact telephone number to those persons or businesses with whom they are in contact concerning a regulatory or enforcement matter;
- ❖ Complaints relating to enforcement or regulatory matters will request that the name and address of the complainant is given. Any such identification will be treated in confidence, but may need to be disclosed (with prior consent) should formal legal proceedings be taken against the person or business to which the complaint relates. Anonymous complaints may be investigated but the authority reserves the right not to so investigate if there are any reasons to suspect the complaint to be malicious or where we would have to gather evidence from the complainant's premises.
- ❖ Officers will be professional, courteous and helpful in their conduct of regulatory or enforcement matters, and wherever possible will seek to work with individuals and businesses towards compliance;
- ❖ Officers will endeavour to provide advice in a clear and simple manner and where any corrective or remedial work is necessary, an explanation will be given as to why it is necessary, and over what time scale it is required or recommended. In cases where compliance is a simple matter to ensure, then it will be expected to occur immediately. Where non-compliance may result in further enforcement action the matter will normally be confirmed in writing and any legal requirements will be identified separately from best practice advice. Where non-compliance results in prosecution the matter will be confirmed in writing when the prosecution file has been considered within the statutory time limits.
- ❖ On rare occasions there may be a perceived potential for conflict of interest where the Council has ownership or management interests in premises. Clear internal boundaries exist between enforcement officers of the Council so that they are not explicitly or implicitly expected to act in a fashion that might cause a conflict of interest. Inspectors will ensure that they retain their independence of decision and objectivity. They will deal with the premises in exactly the same way as any other undertaking.
- ❖ Officers will generally seek an informal resolution to cases of non-compliance when this relates to minor or accidental technical breaches. This will not generally be the case where immediate formal enforcement action is required, (e.g. serious issues relating to Health and Safety, Food Safety, evidence gathering etc);

- ❖ Where there are rights of appeal against formal action, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken, (e.g. when the enforcement notice is served);
- ❖ Where there is known to be an involvement of any other enforcement agency, or any case involves joint enforcement arrangements, the Council will consult with that other agency prior to taking any formal enforcement action.
- ❖ Where any charges or fees, other than by way of annual review, are to be levied for a service, individuals and businesses will be informed of the cost or rate of charge prior to the service being provided;

Any dissatisfaction with the manner in which a case has been handled will be dealt with under the Council Complaints Procedure, copies of which are available from offices of the Council, by accessing the Council's Web site ([www.blackpool.gov.uk](http://www.blackpool.gov.uk)) or by telephoning the Department on 01253 478375.

## **CONSISTENT ENFORCEMENT**

Consistent enforcement action is desirable, but absolute uniformity would be unfair by failing to recognize individual circumstances which may modify action to be taken. Consistency of approach whilst allowing a degree of discretion will be encouraged by:

- ❖ Appropriate training and supervision of enforcement officers;
- ❖ Ensuring there is compliance with the standards set out in this policy by all enforcement officers of the Department ;
- ❖ Recognition of defences that would be available at law and exercising appropriate discretion where formal action is unwarranted;
- ❖ Recognition that we should not normally take formal enforcement action or prosecution in the case of minor infringements arising from innocent mistakes
- ❖ Recognition that in some situations we have no legal discretion but to serve a formal legal notice, take formal legal action, or pursue the collection of a fine.

## **ASSESSING APPROPRIATE ACTION IN CASES OF INFRINGEMENT**

Internal guidance provides consistent starting points for action to be taken in particular circumstances. Final action taken will depend on any modifying or mitigating factors present, and account will be taken of any national or local guidance available.

Formal action will normally be instigated where one or more of the following apply:

- ❖ It is prescribed by law as obligatory;
- ❖ Informal approaches have failed;
- ❖ The matter is of such seriousness or urgency that informal action is inappropriate;
- ❖ Enforcement is necessary to remedy an unsatisfactory condition relating to health, safety, amenity or the environment;

- ❖ There is a need to ensure a decision or policy of the Council or Council Committee is enforced, or where not to do so would militate against the success of a key Council priority.

Prosecution will normally be considered where one or more of the following Public Interest criteria are satisfied:

- There is a significant risk to health or safety of persons, or to amenity or the environment;
- The offence involves the threat of violence against any person, or obstruction of an Officer of the Council;
- False information either in written or verbal form is deliberately provided to the Council or to an investigating officer;
- Fraudulent or reckless practice or the threat of significant economic disadvantage to consumers or businesses is involved;
- The offender has relevant previous convictions, or simple cautions;
- The offender has ignored advice;
- There is a widespread disregard of the law and appropriate notice has been given to the public or the business community that legal proceedings will be considered for future breaches, (e.g. sale of tobacco products to those under 18 years of age);
- The offender has failed to comply with a formal enforcement notice within the compliance period. It should be noted that as a general rule of thumb, non-compliance with Notices will normally lead to prosecution, however a time extension may be granted where there are extenuating circumstances by the relevant team manager, but each such extension must be reported to the Service Manager (Public Protection), or (Neighbourhoods) , as appropriate;
- The offender, by action or inaction, risks causing suffering to animals or has increased the risk of the spread of animal disease;
- Some other significant public purpose would be served;

There will be occasions when a decision will be made to adopt a stricter approach to enforcement in order to expedite compliance on the grounds of public interest. In those circumstances prosecution may be the first and final course of action.

Mitigating factors could include the examples below, but these should always be balanced against the seriousness of the offence and the likelihood of it being repeated:

- The problem was revealed by an approach for advice from the person or business;
- Compliance with previous advice by Blackpool Council or guidance from government departments (we can get things wrong!);
- Co-operative attitude to prevent recurrence;
- Legitimate conflict of interpretation (not just disagreement) where it may be more appropriate to seek adjudication through another body, (e.g. Food Standards Agency);

- Previous good history or absence of complaints;
- Low general awareness of legislation when prosecution would "single-out" an individual or trader unfairly;
- Reluctance of witnesses to testify;
- The offence resulted from a genuine mistake and the offender is prepared to rectify the problem;
- The loss or harm caused was minor;
- There has been undue delay in bringing the matter to court (unless the delay was the fault of the offender);
- A prosecution is likely to have a significantly detrimental effect on the victim's physical or mental health;
- The views of the Council's legal advisor, or a relevant expert witness(s).

## MONITORING

Producing policies is all very well, but they are not likely to be effective unless they are continually and consistently applied. To ensure this happens and to provide feedback on the effectiveness of its application, it is intended that various monitoring regimes are undertaken and fed back to businesses and the public on an annual basis. The following monitoring and feedback mechanisms will therefore be undertaken:

- ❖ Opportunities for businesses and members of the public to fill in and return questionnaires contained in copies of the full policy and advice leaflet;
- ❖ Sample surveys undertaken on the perception of service users of particular aspects of the policy, following contact with one of the Council's enforcement services;
- ❖ Production and making public the results of monitoring, together with any improvements or changes to the policy or its implementation.

## ENFORCEMENT ACTIONS AVAILABLE

We take a wide view of this term which includes provision of advice and guidance. Examples of the actions we can take are:-

| <b><u>ACTION AVAILABLE</u></b> | <b><u>EXPLANATION</u></b>   |
|--------------------------------|---|
| Advice                         | Advice on how to comply with the law, statutory requirements and / or Council policy, typically following a request for advice, a programmed inspection or complaint.   |
| Warning letter                 | Warning that recurrence or continuation of an infringement will result in legal action.   |
| Enforcement notice             | A wide range of legal powers to require persons to perform some act or desist from a course of conduct. In some extreme cases we have the power to close businesses or execute work in default. There are often appeals procedures or a requirement to have emergency action confirmed by a Magistrates' Court.<br>(We provide details of those appeals procedures at the |



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|  | same time as the notice.) Failure to comply with the notice will generally result in prosecution.  |
| Simple Caution (often called 'Home Office Cautions') | A special form of recordable warning which can only be given if:-<br>An offence has been committed. <ul style="list-style-type: none"> <li>• The person liable admits the offence.</li> <li>• A prosecution could be taken.</li> <li>• There are mitigating factors suggesting a Simple Caution is the more appropriate course of action.</li> </ul> |
| Prosecution  | Prosecution in Magistrates or Crown Court. There are very strict controls to ensure this only happens in appropriate cases or when other approaches have failed.<br><b>Depending on the circumstances, we do not always warn or issue a statutory notice before taking prosecutions.</b>   |
| License Review                                       | Where any licensed premises breaches 1 or more of the 4 themes of the Licensing Act 2003, then a responsible authority 'may apply' to review the license.  |
| Anti-social Behaviour Order                          | Orders prohibiting certain behaviour which is anti-social that has caused or is likely to cause harassment, alarm or distress to one or more persons not of the same household as themselves.  |
| Closure Notice                                       | These are Notices to tackle premises where there is persistent disorder or nuisance and are covered by Section 1 of the Antisocial Behaviour Act 2003 and the Criminal Justice and Immigration Act 2008.   |

It should be noted that the latter 2 Actions will be amended to reflect the draft Antisocial Behaviour Bill when it is enacted.