

Regulatory Services and Licensing Enforcement Policy

Date 1 December 2020

Communities

Author: Louise Jones
Version: V6
Review Date: December 2022



1. Purpose Statement

- 1.1 Regulatory Services and the Licensing Team are responsible for undertaking enforcement activity across a wide range of public services. Our aim is to protect the safety, wellbeing and the environment of all those who live, work and visit the area by ensuring the actions of businesses and individuals comply with the relevant legislation and Codes of Practice.
- 1.2 This policy provides guidance to officers, businesses and the general public on the range of options that are available to achieve compliance with all the legislation enforced by the Council's various regulatory services. It is designed to help officers; businesses and the general public understand our objectives and methods for achieving compliance and the criteria we consider when deciding the most appropriate response to a breach of legislation.
- 1.3 BCP Council is committed to avoiding unnecessary regulatory burdens on businesses or individuals and seeks to encourage and promote compliance. We recognise that decisions about enforcement action can have serious implications for all involved. The purpose of this policy is to ensure that:
 - Decisions about enforcement action are fair, proportionate and consistent
 - Officers apply current Government guidance and relevant codes of practice
 - Everyone understands the principles that are applied when enforcement is considered
- 1.4 This policy should be read in conjunction with the [Regulators Code](#) which provides a framework for how regulators should engage with those they regulate.
- 1.5 The Council is required by the Regulator's Code to publish their Enforcement Policy explaining how they respond to non-compliance. We recognise this as an important document when meeting our responsibility under the statutory principles of good regulation, set out in Section 21 of The Legislative and Regulatory Reform Act 2006.

2. Who the policy applies to

- 2.1 This policy primarily applies to officers, agents acting on behalf of Bournemouth, Christchurch and Poole Council, residents and businesses within Bournemouth, Christchurch and Poole, but will also affect visitors and in some circumstances may have effect outside of the authority's boundary.
- 2.2 This policy applies to all enforcement, regulation, linked advice and similar activity undertaken within Regulatory and Licensing Services.
- 2.3 Functions provided by Regulatory Services include Environmental Health, Port Health, Trading Standards, Health & Safety, Food Safety, Infectious Diseases, Noise and Nuisance, Pest Control, Animal Health, Stray Dogs, Dog Control, and Licensing

3. This policy replaces

- 3.1 This policy replaces:
 - Bournemouth Borough Council Regulatory Services Enforcement Policy May 2010
 - Borough of Poole Enforcement Policy June 2010
 - Christchurch Enforcement Policy whilst it is expected that Christchurch would have a policy, a copy is unavailable.

4. Approval process

- 4.1 The policy is approved by BCP Council's Cabinet Portfolio Holder

5. Links to Council Strategies

- 5.1 This policy supports the BCP Council Corporate Strategy.

5.2 During the preparation of this policy document due consideration has been given to the following Key Council Strategies:

- Corporate Strategy
- BCP Council Vision
- Health and Wellbeing Strategy 2020-2023
- Corporate Safeguarding Strategy
- Equality & Diversity Policy

6. The Regulators Code

6.1 This Code was laid before Parliament in accordance with section 23 of the Legislative and Regulatory Reform Act 2006 ("the Act"). It requires that we have regard to the Code when developing policies and operational procedures that guide our regulatory activities.

6.2 The Regulator's Code sets out a series of key principles under which enforcement action should be considered. The principles encompass consistency, transparency, proportionality and that actions are risk based. This methodology ensures a fair, effective and justifiable approach linked to best practice. In addition, the code seeks to ensure that economic development is not unnecessarily stifled and that businesses are supported in their growth.

7. Aim and scope of the policy

7.1 To ensure that all regulatory activity (this includes the whole range of regulatory options and interventions available to regulators) is undertaken in compliance with this policy and has regard to: -

- the statutory principles of good regulation: proportionality, accountability, consistency, transparency and targeted
- the enforcement principles contained in the Regulators Code and
- the Principles of Good Enforcement within the Enforcement Concordat

7.2 To ensure that all regulatory activity is undertaken in compliance with this policy

7.3 Although the Regulator's Code focusses on our dealings with businesses, this policy applies equally to the way in which we will engage with private individuals who might become subject to regulatory interventions and should be read as such.

8. Our approach to securing regulatory compliance

8.1 How we find out about non-compliance

Matters requiring regulatory compliance may come to our notice as a result of pro-active checks such as scheduled inspections (e.g. pre-planned risk rating visits to food premises) or as a result of reactive activity such as inspections or visits in response to complaints (e.g. a complaint of noise).

8.2 In order to reduce the burden of regulatory activity on businesses, visits will only take place for a reason e.g. in response to a risk-based program or in response to a complaint. The reason for the visit will be explained by the officer at the time of the visit and visits will, wherever possible, be carried out by prior arrangement unless this would compromise the regulatory objective of the visit. Visits will be carried out in accordance with relevant guidance such as the Investigatory Powers of Consumer Law Enforcers or the Food Law Code of Practice.

8.3 Wherever possible we will share data and intelligence with other enforcement agencies and work in partnership. We will also use existing local and national data sources for any analysis. We will consider asking businesses for additional information only if the data is vital to secure enforcement outcomes and cannot be obtained by other means.

8.4 Authorised officers will be appropriately qualified to determine regulatory compliance and will receive on-going training to maintain competency and promote consistency.

8.5 What we do when non-compliance is identified

When non-compliance is identified we will usually seek to secure compliance through negotiation and co-operation, taking a formal enforcement approach where compliance is deemed unlikely through other means. We will clearly explain what the non-compliant item or activity is, the advice we are giving about the matter, the remedial actions we are requiring and the reasons for these.

8.6 If necessary, we will provide further opportunity to discuss any advice, requirements or decisions with the appropriate person with a view to ensuring that all matters are fully understood and that we are acting in a way that is proportionate and consistent. Where we are not best placed to investigate any matter, we will consider whether it would be more appropriate to request another Council service or outside agency to investigate.

8.7 Why we consider enforcement action

We will consider taking enforcement action where efforts to achieve compliance through mediation have failed or where there is a serious breach, a history of previous non-compliance or where providing an opportunity for dialogue would be likely to defeat the purpose of the proposed enforcement.

8.8 Enforcement action will be taken in accordance with the following statutory principles;

Transparency We will make it clear to those being regulated what we consider their obligations to be and give them the time and support to comply unless there is an urgent need to secure compliance e.g. public safety. The consequences of non-compliance will be made clear.

Accountability Officers will be courteous, fair and efficient always and will identify themselves by name and where appropriate identity card. We will be able to justify decisions taken and be open to public scrutiny through the Councils publicised complaints procedure.

Proportionality We will only intervene when necessary and any action taken will be appropriate to the risk posed. An educational rather than a punitive approach will be followed wherever possible. In deciding upon the action to be taken the impact upon the business will be considered including the costs of compliance to ensure unnecessary expense is not incurred.

Consistency We will ensure that we apply regulations consistently between businesses by following the same rationale when considering the specific circumstances of each individual case in reaching a decision.

Targeted We will focus primarily on those whose activities give rise to the most serious risks or those who knowingly disregard the law.

8.9 What is enforcement action

Enforcement action can take different forms and for the purposes of this policy includes but is not limited to the following;

- serving a legal notice (includes but is not limited to; improvement, suspension, prohibition, formal warning, fixed penalty notice, community protection or abatement notices) and the subsequent follow up in instances of non-compliance
- the seizure of goods/items including food, machinery, equipment etc.
- the revocation, suspension or refusal of a licence/permit
- the issue of a simple caution
- the seeking of an injunction
- issue of a penalty charge notice
- prosecution

8.10 If we decide that enforcement action is appropriate, and that prosecution is an option we will base our decision and actions upon guidance available to help inform that decision. Such guidance includes the Code for Crown Prosecutors and any other nationally recognised guidance such as the Enforcement Management Model published by the Health and Safety Executive and includes the following;

- The seriousness of the alleged offence
- The history of the party concerned
- The willingness of the business or the individual to prevent a recurrence of the problem and co-operate with officers
- Whether it is in the public interest to prosecute
- The realistic prospect of conviction based on the evidence
- Whether any other action (including other means of formal enforcement action) would be more appropriate or effective
- The views of any complainant and other persons with an interest in prosecution.

8.11 A decision to prosecute or issue a formal caution will be subject to the investigatory officer drafting a summary report for consideration by the line manager, and then the Head of Service.

9. How we decide what enforcement action to take

9.1 How we decide what enforcement action to take

In considering the most appropriate enforcement action we will have regard to the enforcement principles with the intention of;

- Aiming to change the behaviour of the offender
- Aiming to eliminate any financial gain or benefit from non-compliance
- Being responsive and considering what is appropriate for the offender and regulatory issue, which can include punishment and the public stigma that could be associated with a criminal conviction
- Being proportionate to the nature of the offence and the harm caused
- Aiming to restore the harm caused by regulatory non-compliance (where appropriate)
- Aiming to deter future non-compliance.

10. Representations and appeals

10.1 When we decide to serve an enforcement or similar notice, we will generally already have engaged with those concerned and the breach that caused it. When we decide against enforcement action, we will notify the person of their right to appeal. This will include the right to request that we review our decision, where appropriate

10.2 Where it is believed we have failed to comply with the standards within this policy, a complaint can be submitted to the relevant Team Manager overseeing the service area within which the investigatory officer is located. Should this course of action fail to resolve any differences, then a further complaint can be submitted to the Head of Regulatory Services. Contact: environmental.health@bcpcouncil.gov.uk As an alternative, the Council's formal complaints procedure can be followed <https://www.bcpccouncil.gov.uk/Contact-Us/comments-and-complaints.aspx>.

11 Costs and cost recovery

11.1 Should the Council take enforcement proceedings it will ordinarily seek the full costs of doing so from the person against whom the action is taken.

11.2 Works in Default Works in Default will be considered if all other methods to try to remedy the necessary works have been unsuccessful. In determining if work in default is appropriate,

Officers will report to the Team Manager who will consider approval based on the following information; -

- The effects of not carrying out the work on public health and safety
- The reason for the work not being carried out in the first place .
- Any other factors that are specific to the case. .

The Council will normally seek to recover all of the costs associated with undertaking work in default (including time spent by its Officers, administrative costs, contractors' costs, the cost of any specialist reports, supervisory costs etc.)

In the case of Officer time, the Council will calculate costs as follows: -

- The actual time spent by Council Officers on the chargeable activities and recorded using file notes and database .
- Time spent will be converted into a monetary figure using the appropriate hourly rate set for the Officer(s) concerned.
- The expenses incurred are to be recovered from the person(s) on whom the Notice or Order is/are served ("the relevant person").

11.3 The expenses will carry interest from the date of service until payment of all sums due under the demand at a rate of 1% over the Bank of England Base Rate. The recoverable expenses, together with interest accrued on them, are a charge on the premises.

12 How to use this policy

12.1 This policy should be used in conjunction with legislation detailed in statute and guidance issued in relation to legislation.

13 Roles and responsibilities

13.1 Officers and managers within Regulatory Services and Licensing are responsible for considering the matters in this policy and shall have regard to the Regulators Code when pursuing enforcement action.

13.2 This Policy will made available on the website for businesses and members of the public.

14 Enforcement and sanctions

14.1 Failure to have regard to this policy can result in appeals in the court process, reputational risks and financial risks through cases not following due process and costs being awarded against the Council.

15 Further information and evidence

15.1 Equality Impact Needs Assessment