

Enforcement Policy – Regulatory Functions

Reference:

Corporate Priority:

In constitution:

Policy Details

<p>What is this policy for?</p>	<p>This policy sets out Buckinghamshire Council’s approach to enforcement activities. The purpose is to ensure an approach to enforcement which is transparent, accountable, proportionate, consistent and appropriately targeted. It does take into account national codes and guidance.</p> <p>It is an overarching policy and is supported by additional subject specific policy or procedure documents which provide additional guidance and, where appropriate, specific criteria which may need to be considered when making decisions regarding regulatory activities. So far as is reasonably practicable all supporting documents will be implemented by April 2021.</p>
<p>Who does this policy affect?</p>	<p>This policy primarily affects residents and businesses within Buckinghamshire, but will also affect visitors and in some circumstances may have effect outside of the authority’s boundary.</p>
<p>Keywords</p>	<p>Enforcement, prosecution, notice, caution, advice, business, penalty, consistency, transparency, efficiency, proportionate, accountability.</p>
<p>Author</p>	<p>Jacqui Bromilow, Environmental Health Sub workstream.</p>
<p>Buckinghamshire Council policy adopted from</p>	<p>This is a new policy for Buckinghamshire Council.</p>
<p>Does this policy relate to any laws?</p>	<p>This policy relates to all relevant service legislation where there is a power to take enforcement action and includes the action of prosecution.</p>

<p>Is this policy linked to any other Buckinghamshire Council policies?</p>	<p>There will be other relevant policies/procedures to consider when undertaking investigations and determining and implementing the appropriate enforcement action, for example the Regulation of Investigatory Powers Act 2000 for which the Council has policies in place. Some service areas will have specific enforcement considerations and separate procedure documents are in place to support this policy.</p>
<p>Equality Impact Assessment (EqIA)</p>	<p><i>Full assessment not required.</i></p>
<p>Other Impact Assessments</p>	<p>N/A</p>

Status and Approvals

Status	<i>Live</i>	Version	<i>1.0</i>
Last review date	<i>This is a new policy</i>	Next review date	1 April 2022
Approved by (Director)		Date approved	
Member/ Partnership Board Approval	Community Board	Date approved	18 November 2019

Enforcement Policy – Regulatory Functions

Purpose	<p>Buckinghamshire Council functions as a regulator and enforcement agency with a wide range of legal powers and duties. The authority has an essential role in the protection of the interests of residents, businesses, visitors and on occasions there will be an impact outside of the authority’s area.</p> <p>The purpose of this policy is to ensure a clear and consistent approach to enforcement.</p>
Scope	<p>This enforcement policy is an overarching policy and is intended only to apply to the regulatory activities of council service areas where criminal prosecutions are one of a range of remedies.</p> <p>The functions this Policy covers may include:</p> <ul style="list-style-type: none">i. Environmental Healthii. Licensingiii. Planningiv. Housingv. Environmental Crimevi. Unauthorised Encampmentsvii. Building Controlviii. Fraudix. Blue Badge enforcement <p>The above list may not be exhaustive and the policy may apply in other areas of enforcement activity within the authority.</p> <p>For the avoidance of doubt, the Trading Standards function is provided jointly with another Local Government Authority and has a separate agreed enforcement policy.</p> <p>Where appropriate there are additional subject specific procedure documents which support this policy and provide the criteria to be met before enforcement action is taken and any special circumstances which relate to that service, for example, details of appeal processes which must be directed outside of the authority.</p>

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1. Introduction

This document is the enforcement policy which is to be applied to Buckinghamshire Council's enforcement activities. It sets out the key principles under which officers will seek to achieve compliance with the legislation enforced by the services.

This policy has been prepared having regard to section 21 of the Legislative and Regulatory Reform Act 2006 and the Regulators' Code produced by the Better Regulation Delivery Office (now known as Office for Product Safety and Standards).

The policy is supplemented by specific procedures that relate to specific work areas within the services. Officers will ensure that they follow any detailed matters outlined in such procedures or in nationally published enforcement guidance, as well as the general approach to enforcement given in this policy. Due consideration will also be given to any other enforcement policy or scheme such as the Primary Authority Principle, where appropriate.

2. Principles of Enforcement

The Council's aim is to undertake its regulatory and enforcement role in an impartial, open, and consistent manner. This is achieved through education, mediation, advice, inspections, monitoring, and by regulating the activities of individuals and business as necessary.

Compliance is secured through informal and formal routes and, if necessary, through the courts via a prosecution.

We will work to ensure compliance with the law by:

- Helping and encouraging businesses and individuals to understand their responsibilities by providing the necessary advice and guidance to allow them to comply with the law,
- Responding proportionately and fairly to breaches of the law, and
- Using the service planning process to ensure that resources and regulatory activities are appropriately targeted to where they will have the greatest impact taking into account the associated risks.

The Legislative and Regulatory Reform Act 2006 requires that any person exercising a regulatory function has regards to the following:

Transparent – those whom enforcement action is considered will receive sufficient explanation in plain English to enable them to understand what is expected of them, and what they may expect from us including clear indication of any charges we set.

The Council will give clear explanations of things which are legal requirements, and matters which are recommendations. Our correspondence and advice, where appropriate will set out clear deadlines as to when and what appropriate action is required. Verbal advice can be confirmed in writing if requested. If appropriate, the Council will signpost persons to organisations where they are able to get additional support and advice.

Accountable – officers will be courteous, fair and efficient at all times and will identify themselves by name and, where appropriate, identity card. Officers shall record details of enforcement actions and decisions. If it is required to undertake an enforcement action, it shall be carried out without unnecessary delay.

Where appropriate, the Council will ensure that customers are informed of any standards in place which detail the level of service and performance that can be expected by service users and will be given opportunities to provide feedback on the service received. Where enforcement activities are undertaken as a result of a service request/enquiry/complaint from a customer, we will keep the customer updated with the progress of the investigation and inform them of the outcome or resulting actions as appropriate.

Where formal enforcement action is taken, we will provide details of any appeals process which is applicable.

Should a business or individual have concerns or wish to complain about the service they have received they are able to do so via the Council's complaint procedure, although in most cases this must not be used to appeal a decision where formal action has occurred.

Consistent - broadly similar approaches will be used in similar circumstances in order to achieve consistent outcomes. The Council recognises that businesses and people expect consistency from different enforcement officers with whom they come into contact e.g. in the investigation of complaints, service of notices and fines.

The Council will continue to take steps to promote consistency of enforcement. Steps will include training, effective liaison with other local authorities, enforcement bodies and professional organisations, attending local regional and national meetings as well as ensuring we are aware of current national priorities and guidance.

Proportionate – it is recognised that most businesses and individuals wish to comply with the law, however firm action will be taken against those who flout the law or act irresponsibly.

Enforcement action will be related to the risk and the public interest. Any action taken by enforcement officers to achieve compliance with the law will depend on the seriousness of any breach. The Council's approach will aim to secure compliance through advice and guidance however there will be occasions where a formal approach is required. The Council will actively work with people and businesses to advise on and assist with compliance.

Any decision regarding enforcement action will be taken on the merits of each case, be impartial and objective. It will not be affected by race, disability, socioeconomic factors, age, politics, gender, sexual orientation or religious beliefs of any Council employee, offender, victim or witness. However, where a victim has been targeted by an offender by virtue of their status (eg ethnicity) or where the perpetrator is young or vulnerable, consideration will be given to this when deciding on any course of action.

3. Planning Regulatory Activity and Targeting Resources

The Council is committed to helping businesses grow. We will consider the impact that our regulatory activities may have on businesses and members of the public. In doing so will endeavour to help businesses achieve compliance without unnecessary expense.

We will allocate our resources where they will be most effective by assessing the risks associated with non-compliance with the law. In determining risk, we will consider a range of factors that include:

- The potential impact on residents, employees, consumers and business in failing to meet legal requirements.
- The likelihood of non-compliance taking into account matters such as past history, the systems the business has in place, management competence and willingness to comply.

Planned inspections and other visits will be undertaken after consideration of the risk the business poses if it fails to comply. Reactive visits will be carried out upon request by a business, or where there is a service request (complaint), intelligence or information received suggests that an inspection or visit is appropriate.

Where practicable we will co-ordinate inspections or visits with other regulators to minimise the burden on recipients of our services.

4. Enforcement Options

There are a wide range of tools available to us as an enforcement agency that we may use to secure compliance with legislation.

The range of actions we may take are as follows:

- No action
- Informal advice and action

- Written warning
- Fixed Penalty Notices
- Penalty Charge Notices
- Formal Notice
- Forfeiture Proceedings
- Seizure of goods/equipment/documents
- Injunctive Actions and other Civil Sanctions (including Order applications)
- Refusal/Suspension/Revocation of a licence or permit
- Simple Caution
- Prosecution
- Proceeds of Crime Applications

This is not an exhaustive list of actions that we may use to secure compliance and not all the above options detailed apply to all service areas.

Where formal enforcement action is necessary, we will consider the most appropriate course of action from the range of sanctions and penalties available 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 particular offender and issue involved, including punishment and the public stigma that may be associated with a criminal conviction.
- Being proportionate to the nature of the offence, and the potential to cause harm or harm caused
- Ensuring that matters leading to non-compliance are rectified
- Aiming to deter future non-compliance

5. Consideration of Prosecution

If the formal enforcement action being considered is prosecution, we will also consider a number of additional factors in line with the Code for Crown Prosecutors and any other nationally recognised guidance. These factors may include 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
- Whether any other action (including other means of formal enforcement action) would be more appropriate or effective

These factors are not exhaustive and are not listed in order of significance. The rating of the various factors will vary with each situation under consideration.

6. Information Sharing

Personal and business information held by the authority will only be shared in accordance with the relevant information sharing protocol or legislation. Confidentiality will be maintained unless with the express agreement of the individual concerned.

The authorities will take a proactive approach to data matching and the sharing of information via agreed secure mechanisms with other regulatory agencies and local authorities about businesses and individuals to help target resources and activities and to minimise duplication of enforcement activity. Any sharing of information will be in compliance with the previous paragraph and the authority's data sharing procedures.

7. Application of the Enforcement Policy

All officers will have regard to this policy, and any relevant policy or procedure made under it, when making enforcement decisions.

In situations where exceptional conditions prevail, the head of service (or equivalent) may authorise departure from any part of this policy. An example maybe where there is a risk of injury to employees or members of the public.