



# **ENVIRONMENT AND PUBLIC PROTECTION DIVISION**

## **ENFORCEMENT POLICY 2015**

### **CONTENTS**

#### **Executive Summary**

- 1 Introduction**
- 2 Legal status of the Enforcement Policy**
- 3 Scope and meaning of 'Enforcement'**
- 4 General principles**
- 5 Notifying alleged offenders**
- 6 Deciding what level of enforcement action is appropriate**
- 7 Determining whether a PROSECUTION or SIMPLE CAUTION is viable and appropriate**
- 8 Who decides what enforcement action is taken**
- 9 Primary Authority Partnership Scheme and its enforcement provisions**
- 10 Liaison with other regulatory bodies and enforcement agencies**
- 11 Considering the views of those affected by the offences**
- 12 Protection of Human Rights**
- 13 Regulation and Investigatory Powers Act 2000**
- 14 Review of the Enforcement Policy**
- 15 Availability and Comments**

## **EXECUTIVE SUMMARY**

This Policy provides guidance to both those affected by enforcement action and officers of the Council in relation to the approach that is taken in respect to the application of the legislative provisions enforced by Bracknell Forest Council's Environment and Public Protection Division (EPPD).

The Council's primary objective is to achieve regulatory compliance based on the principles of 'good' regulation. We recognise that prevention is better than cure. However, where circumstances warrant, formal action will be taken. There are a wide range of options available. Officers have a wide range of delegated powers and will apply the provisions of the legislation in a way that is relevant and proportionate to the offence.

The Policy is linear and is built around a process of escalation. In cases where the contraventions are or are likely to be very significant in their consequences, the Policy allows discretion to depart from this linear process. Enforcement, leading to prosecutions, will normally be related to the level of risk created, failure to abate statutory nuisance or other similar serious situations affecting or likely to affect an individual or the environment. Prosecutions are not be used as a punitive response to minor breaches.

The Policy sets out the enforcement options ranging from no action to prosecution. The Policy is designed to give clarity as to the Council's objectives and the methods for achieving compliance. The Policy explains the approach adopted when carrying out the duty to enforce a wide range of legislation. It is written in general terms as it is intended to be applied so far as it is practical to do so to a wide range of responsibilities falling to the Division

The Council's Scheme of Delegation sets out the powers of the Director of Environment, Culture and Communities. Where appropriate these are sub delegated to the Chief Officer: Environment and Public Protection. Officers are authorised for the purposes of enforcing specific legislation conferred on the Council having due regard to their qualifications and experience.

## **1 INTRODUCTION**

1.1 Fair and effective enforcement is essential to protect the health, safety and economic interests of the public, businesses and the environment. Decisions about the form of enforcement action to take, and in particular the decision to prosecute, have serious implications for all involved.

Officers will undertake their regulatory activities in such a way which is:

- (i) Proportionate – activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence,
- (ii) Accountable – activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures,
- (iii) Consistent – will seek to ensure that advice will be robust and reliable and officers will also respect advice provided by others. Where circumstances are similar, officers will endeavour to act in similar ways to other local authorities,
- (iv) Transparent – officers will seek to ensure that those they regulate are able to understand what is expected of them and what they can anticipate in return, and
- (v) Targeted – the Council will focus its resources on higher risk enterprises and activities, reflecting local need and national priorities.

1.2 This document has been prepared with regard to the current principal legislation and statutory guidance including the:

- Regulatory Enforcement and Sanctions Act 2008 (The RES Act)
- Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009 SI665/2009 (The CRE Enforcement Order)
- Co-ordination of Regulatory Enforcement (Procedure for References to LBRO) Order 2009 SI670/2009 (The CRE LBRO Order)
- Legislative and Regulatory Reform Act 2006 (LRRRA)
- Legislative and Regulatory Reform (Regulatory Functions) Order 2007
- Regulators' Code (RC) (April 2014)
- Human Rights Act 1998
- Code for Crown Prosecutors
- Data Protection Act 1998

1.3 This Policy was also developed following comments received from local residents, businesses, officers of the Council and other stakeholders such as other agencies and voluntary organisations. Any further comments can be made as detailed in section 15, and will be taken into consideration during the next scheduled revision.

## **2 LEGAL STATUS OF THE ENFORCEMENT POLICY**

2.1 The Executive approved this Policy on 23 September 2014

2.2 This Policy is intended to provide general guidance for officers, businesses, consumers and the public as regards the approach that will normally be taken in relation to the enforcement of the relevant statutory provisions. It does not fetter the discretion of the Council to take legal proceedings where this is considered to be in

the public interest.

### **3 SCOPE AND MEANING OF 'ENFORCEMENT'**

3.1 This Policy applies to all the legislation enforced by Officers within the Regulatory Services Team of the Environment and Public Protection Division. The overriding principles will also be applied, so far as they are relevant, to work of other offices in the Environment and Public Protection Division.

3.2 'Enforcement' includes any action taken by officers aimed at ensuring that individuals or businesses comply with the law. This is not limited to formal enforcement action such as prosecution.

3.3 The term 'enforcement action' has been defined as action:

- (a) to secure compliance with a restriction, requirement or condition in relation to a breach or supposed breach;
- (b) taken in connection with imposing a sanction for an act or omission; and
- (c) taken in connection with a statutory remedy for an act or omission.

A list of specific 'enforcement actions' is provided in article 2 of the CRE Enforcement Order, which applies to Part 2 of The RES Act and the Primary Authority Scheme.

3.4 The Council requires its officers to interpret and apply relevant legal requirements and enforcement policies fairly and consistently between like-regulated entities in similar situations.

#### **Publicity**

3.5 Whilst not a direct form of enforcement, officers will seek to raise awareness and increase compliance levels by making public details of evidence of unlawful practice and any legal action taken where in their opinion it is appropriate to do so.

### **4 GENERAL PRINCIPLES**

4.1 The general principles to be applied are informed by The Regulators' Code and the Guidance of the BDRO.

4.2 The six principles of the Regulators Code are:

- 1. Regulators should carry out their activities in a way that supports those they regulate to comply and grow.
- 2. Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views.
- 3. Regulators should base regulatory activities on risk.
- 4. Regulators should share information about compliance and risk.
- 5. Regulators should ensure clear information, guidance and advice are available to help those they regulate meet their responsibilities to comply.
- 6. Regulators should ensure that their approach to their regulatory activities is transparent.

- 4.3 Prevention is better than cure and the approach to be taken includes for working with businesses to advise on and promote opportunities to effect compliance as appropriate.
- 4.4 Where formal action is considered necessary each case will be considered on its own merits. The approach to be taken will aim to:
- (a) change the behaviour of the offender;
  - (b) change attitudes in society to offences which may not be serious in themselves, but which are widespread;
  - (c) eliminate any financial gain or benefit from non-compliance;
  - (d) be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
  - (e) be proportionate to the nature of the offence and the harm caused;
  - (f) restore the harm caused by regulatory non-compliance, where appropriate; and
  - (g) deter future non-compliance.
- 4.5 Every effort will be made to ensure that enforcement decisions will be taken in a fair, independent and objective way. They will not be influenced by issues such as ethnicity, national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender. Such decisions will also not be affected by improper or undue pressure from any source.
- 4.6 In making decisions officers will take into account the views of any victim, injured party or relevant person to establish the nature and extent of any harm or loss. Those views may influence the decision as to the form of action to take.
- 4.7 Enforcement activities, including investigations and formal actions, will be conducted in compliance with the delegated powers of the officer and all other relevant legislation, formal procedures and Codes of Practice made under the legislation in so far as they relate to the Council's enforcement powers and responsibilities.

## **5 NOTIFYING ALLEGED OFFENDERS**

- 5.1 During the course of an investigation various people including alleged offender may be interviewed. Where interviews are conducted under specific powers, this will be made clear to the person being interviewed prior to the interview. Details of any relevant rights to representation or appeal will be provided.
- 5.2 Where information is received that may lead to enforcement action against a business or individual, officers will notify that business or individual as soon as is practicable of any intended enforcement action. An exception to this approach would be where it is considered that in so doing, the action could impede an investigation or pose a safety risk to those concerned or the general public.
- 5.3 Business proprietors or individuals and witnesses will be kept informed of progress of the investigations. Confidentiality of witnesses will be maintained and personal information about individuals will only be released to a Court when required and/or in accordance with the Data Protection Act 1998. *Where no specific time limit is given in law, officers will progress investigations in a timely manner.*

## **6 DECIDING WHAT LEVEL OF ENFORCEMENT ACTION IS APPROPRIATE**

A number of factors are considered when determining what enforcement action to take:

### **6.1 Overview of Levels of Enforcement Action:**

6.1.1 There are a number of potential enforcement options. The level of the action taken can vary from no action through to proceedings in Court. Examples of main types of action that can be considered are shown below:

- No action
- Informal Action and Advice
- Fixed Penalty Notices
- Penalty Charge Notices
- Formal Notice
- Forfeiture Proceedings
- Seizure of Goods/Equipment
- Injunctive Actions or other civil sanctions
- Refusal, revocation, suspension or review of a licence
- Simple Caution
- Prosecution
- Statutory Orders
- Restorative Approach
- Emergency Remedial Action
- Proceeds of Crime Applications.

6.1.2 Under normal circumstances, a process of escalation will be used applying the general principles as above, with a view to achieving compliance. Exceptions would include where there is a serious risk to public safety or the environment; the offences have been committed deliberately, persistently, and negligently, involve deception; or where there is significant economic detriment. The Council reserves the right to escalate its level of enforcement action, having regard to the criteria in paragraph 6.1.3 below.

6.1.3 In assessing what enforcement action is necessary and proportionate, consideration will be given to relevant information collected during the course of the investigation. Consideration will be given to, amongst other things:

- (a) The seriousness of the compliance failure
- (b) The past and current performance of any business and/or individual concerned.
- (c) Any obstruction of officers
- (d) The risks being controlled
- (e) Statutory guidance
- (f) Codes of Practice
- (g) Any legal advice
- (h) Policies and priorities of the Government, the Council and any related committee
- (i) A person's age in relation to young people (termed 'juveniles') aged under 18
- (k) The impact of a Primary Authority Agreement on response to breaches
- (l) The size or capacity of the business
- (m) The attitude of the business to the non-compliance and their willingness to resolve non-compliance
- (n) Any specific relevant decision making tools, e.g. the HSE's Enforcement

## Management Model.

6.1.4 Where non-compliances are identified officers will provide information and advice regarding the non-compliance in a clear form, detailing any related actions required or decisions taken with reasons. Where appropriate, officers additionally welcome productive dialogue with those affected by our decisions regarding identified non-compliances.

### 6.2 **No Action**

6.2.1 In some circumstances, contraventions of the law may not justify any action other than to note the facts potentially to be used to inform future decisions. Examples include where the cost of compliance to the offender outweighs the detrimental impact of the contravention, or the cost of the required enforcement action to the Council outweighs the detrimental impact of the contravention on the community. A decision of *no action* may also be taken where formal enforcement is inappropriate in the circumstances, such as where a trader has ceased to trade, or the offender is elderly and frail and formal action would seriously damage their wellbeing. Such decisions will take into account the public interest principle and in such cases officers will advise the offender and any 'victim' of the reasons for taking no action.

### 6.3 **Informal Advice, Guidance and Support**

6.3.1 For minor breaches officers may only give verbal or written advice. They will clearly identify any contraventions and give advice on how to put them right along with a deadline by which this must be done. The time allowed will be reasonable and take into account the seriousness of the contravention and the implications of the non-compliance. Subsequent follow up actions to confirm compliance may be undertaken and any continuing or repeated breaches will be reconsidered in accordance with this Policy.

6.3.2 Where appropriate officers will advise about 'good practice'. In doing so they will clearly distinguish between what they must do to comply with the law and what is advice only.

6.3.3 Where an officer is asked in advance for advice officers will seek to provide that advice without automatically triggering formal action. Informal action and advice is our preferred option, but this will be balanced by the other considerations detailed within this Policy.

### 6.4 **Fixed Penalty Notices**

6.4.1 Certain offences are subject to Fixed Penalty Notices (FPNs) and can be offered as an alternative to going to Court. They are available for some low level offences and avoid a criminal record for the defendant. Where legislation permits an offence to be dealt with by way of an FPN, officers may decide to administer an FPN on a first occasion without issuing a warning as doing otherwise could be counter-productive for example. If a FPN is not paid, officers will normally instigate legal proceedings or take other enforcement action in order to try to remedy the situation. Payment of a FPN does not provide immunity from prosecution in respect of similar or recurrent breaches.

6.4.2 Officers are only able to issue FPNs where there are specific powers to do so. In some circumstances, in particular where breaches are serious or recurrent, it may be that prosecution for example is more appropriate than the issue of a FPN.

## **6.5 Penalty Charge Notices**

- 6.5.1 Penalty Charge Notices (PCNs) are prescribed by certain legislation as a method of enforcement by which the offender pays an amount of money to the enforcer in recognition of the breach. Failure to pay the PCN will result in the offender being pursued in the County Court for non-payment of the debt. A PCN does not create a criminal record and officers will usually issue a PCN without first issuing a warning.

## **6.6 Failure to accept a FPN and/or a PCN**

- 6.6.1 In circumstances where a person or body corporate fails to accept or pay a FPN, then in order to maintain the integrity of these legislative regimes, officers will consider an escalation of enforcement action. This will include consideration of a prosecution for the original offence under the primary legislation. It may also include consideration of civil action to recover the debt incurred by the EPPD.

## **6.7 Statutory (Legal) Notice**

- 6.7.1 Certain legislation allows for a Notice to be served requiring a person or business to take specific actions, provide information or cease certain activities. Such Notices will clearly set out actions which must be taken and the timescale within which they must be taken. It is likely to require that any breach is rectified and/or prevented from re-occurring. 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, and take into account the seriousness of the contravention and the implications of the non-compliance. Such Notices are legally binding.
- 6.7.2 Failure to comply with a statutory notice can be a criminal offence and may lead to prosecution and/or where appropriate may allow works to be carried out in default. This means that if a Notice is not complied there is a power to carry out any necessary works to satisfy the requirements of the Notice ourselves and often also to recover all costs the Council have reasonably incurred in carrying out the work. The Council will normally seek to recover all of its costs.

## **6.8 Seizure**

- 6.8.1 Certain legislation enables authorised officers to seize goods, equipment or documents, for example unsafe food, sound equipment that is being used to cause a statutory noise nuisance, unsafe products or any goods that may be required as evidence for possible future court proceedings. When officers seize goods they will give the person from whom the goods are taken an appropriate receipt itemising the goods/equipment that have been seized and advise them of their statutory rights.

## **6.9 Forfeiture Proceedings**

- 6.9.1 This procedure may be used in conjunction with seizure and/or prosecution where there is a need to dispose of goods in order to prevent them re-entering the market place or being used to cause a further problem. In appropriate circumstances, officers will make an application for forfeiture to the magistrates' courts or seek from the defendant a voluntary forfeiture.

## **6.10 Injunctive Actions and other Civil Sanctions**

- 6.10.1 Injunctive action may be used to deal with repeat offenders, dangerous

circumstances or serious consumer /environmental/public health detriment.

6.10.2 Proceedings under the Enterprise Act 2002 may be instigated where an individual or organisation has acted in breach of community or domestic legislation with the effect of harming the collective interests of consumers. In most circumstances action will be considered where there have been persistent breaches or where there is significant consumer detriment. Action can range from:

- (a) Informal undertakings
- (b) Formal undertakings
- (c) Interim Orders
- (d) Court Orders
- (e) Contempt Proceedings.

6.10.3 Where the non-compliance under investigation amounts to anti-social behaviour such as persistent targeting of an individual or a group of individuals in a particular area then, where appropriate, an Antisocial Behaviour Order (ASBO) or Criminal Antisocial Behaviour Order (CRASBO), made on the back of a criminal conviction, will be sought to stop the activity.

#### 6.11 **Refusal, Suspension, Revocation and Review of Licence/Permits**

6.11.1 Where there is a requirement for a business or person to be licensed by the local authority, the licence will be determined in accordance with Council procedures including receipt of representations or objections to that application. Where representations or objections are received and in accordance with the relevant legislation or Council procedure members of the Licensing Committee, may hear the case and decide to grant, grant with conditions, or refuse the licence application.

6.11.2 The grounds for Refusal, Suspension or Revocation of a Hackney Carriage or Private Hire Licence ( Local Government (Miscellaneous Provisions Act 1976) are set out in the Council's Guidance Notes and Conditions for Hackney Carriage and Private Hire Vehicle Owners, Operators and Drivers:  
<http://www.bracknell-forest.gov.uk/guidance-notes-and-conditions-taxis.pdf>

6.11.3 Under the Licensing Act 2003, where a Review of a Premises Licence is sought under Section 51 of the Act, the options available to members of the Licensing Committee are:

- To modify the conditions of the Licence
- To exclude a licensable activity from the scope of the Licence
- To remove the Designated Premises Supervisor
- Suspend the Licence for a period not exceeding three months
- Revoke the Licence
- Issue a warning letter
- No action

6.11.4 Under the Gambling Act 2005, where a Review of a Premises Licence is sought under Section 202 of the Act, the options available to members of the Licensing Committee are:

- Revocation of the Licence.
- Suspend the Licence for a specified period not exceeding three months.
- Exclude a mandatory condition attached to the Licence, remove or amend

- exclusion.
    - Add, remove or amend a condition.
- 6.11.5 Under the Housing Act 2004 there is no provision for the Council to receive objections relating to HMO applications. Where an HMO licence is refused or revoked the applicant or licence holder has the right of appeal to a Residential Property Tribunal.
- 6.11.6 Under the Environmental Protection Act 1990 the Council has powers to revoke, suspend and prosecute for non-compliance with Environment Permits. These powers can be used for incidences of serious pollution and none payment of fees.
- 6.12 Simple Caution**
- 6.12.1 Officers have authority to issue Simple Cautions as an alternative to prosecution. A Simple Caution is an admission of guilt, but is not a form of sentence, nor is it a criminal conviction.
- 6.12.2 For a Simple Caution to be issued a number of criteria must be satisfied:
- Sufficient evidence must be available to prove the case.
  - The offender must admit the offence.
  - It must be in the public interest to use a Simple Caution.
  - The offender must be 18 years or over.
- 6.12.3 Officers will not offer a Caution where the offender has received a Simple Caution for a similar offence within the last 2 years.
- 6.12.4 If during the time the Simple Caution is in force the offender pleads guilty to, or is found guilty of, committing another offence anywhere in England and Wales, the Caution may be cited in court, and this may influence the severity of the sentence that the court imposes.
- 6.12.5 The refusal of an offender to be Cautioned does not preclude the matter being passed for prosecution. Any such failure will be a material consideration when deciding whether the offender should then be prosecuted for that offence.
- 6.12.6 Details of all Cautions issued are a matter of public record.
- 6.13 Prosecution**
- 6.13.1 A prosecution will normally be considered where none of the other forms of enforcement action are considered appropriate and the individual or organisation meets one or more of the following criteria:
- Deliberately, recklessly, negligently or persistently breached legal obligations, which were likely to cause material loss or harm to others.
  - Deliberately or persistently ignored written warnings or formal notices.
  - Endangered, to a serious degree, the health, safety or wellbeing of people, animals or the environment.
  - An attempt to make financial gain at the expense of others.
  - Assaulted or obstructed an Officer in the course of his/her duties.
- 6.13.2 When deciding whether to prosecute officers will have regard to the provision of the

Code for Crown Prosecutors as issued by the Director of Public Prosecutions. Prosecution will only be considered where there is sufficient evidence to provide a realistic prospect of conviction. Before deciding that prosecution is appropriate officers will consider all relevant circumstances carefully and have regard to the factors detailed in Section 7.

- 6.13.3 A successful prosecution will result in a criminal record. The court may impose a fine and, in respect of particularly serious breaches, a prison sentence. Prosecution may lead in some circumstances to the disqualification of individuals from acting as company directors.

#### 6.14 **Proceeds of Crime Applications**

- 6.14.1 Applications may be made under the Proceeds of Crime Act for confiscation of assets in appropriate cases. Their purpose is to recover the financial benefit that the offender has obtained from his criminal conduct. Proceedings are conducted according to the civil standard of proof. The Council will seek to recover proceeds of crime in appropriate circumstances.

#### 6.15 ***Deferred Prosecution Agreements (DPAs)***

- 6.15.1 DPAs have been introduced under the Crime and Courts Act 2013, adding an important new enforcement tool for certain prosecutors in tackling serious economic crime. Under a DPA a prosecutor charges a company with a criminal offence but proceedings are automatically suspended. The DPA may impose a number of requirements, including paying a financial penalty or agreeing to a compliance programme. At present only the Director of Public Prosecutions and the Director of the Serious Fraud Office can use DPAs, not local authorities. However when proceedings are suspended under a DPA no other person may prosecute the defendant for the alleged offence.

#### 6.16 **Prohibition**

- 6.16.1 This power will be used where there are valid grounds (e.g. there is an imminent risk of injury to health or a risk of serious personal injury) and where the situation cannot be allowed to continue because of the risks involved. Such action is usually associated with food and health and safety enforcement, but there will be other occasions, for example prohibiting the sale of unsafe goods, or part of a dwelling under housing legislation. Where appropriate, and in accordance with relevant guidance and legislation, these may be voluntary.

#### 6.17 **Statutory Orders**

- 6.17.1 A range of Statutory Orders are available, for example under the Housing Act 2004 and Food Safety Act 1990 (and associated Regulations). In addition to Prohibition Orders the Council may make an Interim or Final Management Order on a licensed house in multiple occupation, which allows it to take over the running of a property. Powers to take over the management of empty premises are contained in the Empty Dwelling Management Orders. Officers can take emergency remedial action to remove a Category 1 hazard where there is an imminent risk of serious harm to the health or safety of the occupiers.

#### 6.18 **Compulsory Purchase Orders**

- 6.18.1 The Council may compulsorily purchase property under Section 17 of the Housing

Act 1985. The use of such powers will be on a case by case basis. The consent of the Secretary of State is required and compensation provisions apply.

#### **6.19 Restorative Approach**

6.19.1 This approach can be used where the 'victim' and the 'offender' agree to meet. The purpose of this meeting is to provide the opportunity for the offender to acknowledge and accept responsibility for the harm caused and for the victim to have their say on the harm caused. If appropriate and required, suitable restorative actions and/or compensation may be agreed and the process may influence future behaviour and compliance.

6.19.2 Officers will consider if a Restorative Approach is appropriate and will listen to requests from both victims and offenders for such an approach to be adopted. Where a victim and offender are in agreement the Council, sometimes together with other enforcement partners, will consider facilitating a Restorative Approach to assist in the reduction of harm and/or the resolution of conflict. A Restorative Approach may be utilised separately or in conjunction with other enforcement approaches.

### **7 DETERMINING WHETHER A PROSECUTION OR SIMPLE CAUTION IS VIABLE AND APPROPRIATE**

7.1 Two 'tests' will be applied to determine whether a Prosecution or Caution is viable and appropriate. The officers will follow guidance set by the Crown Prosecution Service when applying the tests.

7.2 A Simple Caution or Prosecution will only be progressed when the case has passed both the evidential test and the public interest test. The principles outlined apply equally to the other types of formal enforcement action that are available.

#### **7.3 The Evidential Test**

7.3.1 Officers must be satisfied that there is sufficient evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. A realistic prospect of conviction is an objective test that means that a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a separate test from the one that the criminal courts themselves must apply.

#### **7.4 The Public Interest Test**

7.4.1 The 'public interest' will be considered in each case where there is sufficient evidence to provide a realistic prospect of conviction. Officers will seek to balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the suspect. Some factors may increase the propensity to prosecute but others may suggest that another course of action is more appropriate to the circumstances of the case.

### **8 WHO DECIDES WHAT ENFORCEMENT ACTION IS TAKEN**

8.1 The Council's Constitution sets out the Council's Scheme of Delegation. Delegated authority has been given to authorised officers to act in varying capacity according to their professional background and seniority. Delegated authority is exercised

within a decision making process that is managed to ensure that the most appropriate enforcement action is taken, based upon professional judgment, legal guidelines, statutory codes of practice and priorities set by the Council and/or Central Government.

8.2 Where appropriate, decisions about enforcement will involve consultation between or approval from:

- Investigating officer(s)
- Line manager(s)
- Heads of Service
- Chief Officer: Environment and Public Protection
- Council solicitor(s)

8.3 The Council is committed to ensuring all authorised officers act in accordance with this Policy. In addition to the consultative measures detailed above, informal actions will be monitored via internal monitoring systems such as regular one-to-one meetings with officers in which cases are reviewed.

## **9. PRIMARY AUTHORITY PARTNERSHIP SCHEME AND ITS ENFORCEMENT PROVISIONS**

9.1 When a decision has been made to take enforcement action against a business and:

- (1) the business is operating in more than one Local Authority and has a registered Primary Authority Partnership under The RES Act; and
- (2) the enforcement action officers propose to take is covered by the definition of enforcement action for the purposes of Part 2 of The RES Act

officers will, where required to do so by that Act, comply with the agreement provisions for enforcement and notify the relevant Primary Authority of the action they propose to take.

A Primary Authority has the right to object to any proposed action and in such circumstances either they or the officers may refer the matter to BRDO.

## **10 LIAISON WITH OTHER REGULATORY BODIES AND ENFORCEMENT AGENCIES**

10.1 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.

10.2 Where an enforcement matter affects a wider geographical area beyond the Borough 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.

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

- Government Agencies

- Police Forces
- Fire Authorities
- Statutory Undertakers
- Other Local Authorities

10.4 The sharing of any specific information with other regulatory bodies and enforcement agencies will take place having due regard for the requirements of the Data Protection Act 1988.

## **11 CONSIDERING THE VIEWS OF THOSE AFFECTED BY OFFENCES**

11.1 The officers undertake enforcement on behalf of the public at large and not just in the interests of any particular individual or group. However, when considering the public interest test, the consequences for those affected by the offence, and any views expressed by those affected will, where appropriate, be taken into account when making an enforcement decision.

11.2 If anyone wishes to complain about enforcement action, the conduct of individual staff or non-compliance with the Regulators Code, they may do so initially by contacting the relevant Team Manager through the Council's Customer Service Centre on 01344 352000 between 8.30am to 5.00pm Monday to Friday, or by writing to them at Bracknell Forest Council, Time Square, Market Street, Bracknell, Berkshire, RG12 1JD. If a complainant is dissatisfied with the result of their complaint to the Team Manager, the formal complaints procedure is on the Council's website: <http://www.bracknell-forest.gov.uk/complaintsprocedure>

## **12 PROTECTION OF HUMAN RIGHTS**

12.1 This Policy and all associated enforcement decisions take account the provisions of the Human Rights Act 1998. In particular, due regard is had to the following:

- Right to a fair trial
- Right to respect for private and family life, home and correspondence.

## **13 REGULATION AND INVESTIGATORY POWERS ACT 2000**

13.1 This Act provides a statutory framework for use of investigatory techniques including surveillance and gathering information on the use of covert operatives. For the purposes of this Policy the Chief Officer: Environment and Public Protection and the Head of Regulatory Services are Authorisation Officers.

## **14 REVIEW OF THE ENFORCEMENT POLICY**

14.1 This Policy will be reviewed in the light of experience and in light of any relevant legislative changes by the Chief Officer: Environment and Public Protection. Where changes are required these will be referred through the appropriate management process. Such review will additionally consider any comments or suggestions received from others, including from local residents, businesses, officers of the Council and other stakeholders such as other agencies and voluntary organisations.

## **15 AVAILABILITY AND COMMENTS**

This Policy will be made freely available on Bracknell Forest Council's website at <http://www.bracknell-forest.gov.uk/enforcement-policy.pdf>

Comments are welcomed at any time in writing to:

Chief Officer: Environment and Public Protection  
Bracknell Forest Council  
Time Square  
Market Street  
Bracknell  
RG12 1JD

## **SOURCES OF RELEVANT ADVICE AND INFORMATION**

For more information about the Regulators' Code visit:

<https://www.gov.uk/government/publications/regulators-code>

For more information about a Simple Caution visit:

[http://www.cps.gov.uk/legal/a\\_to\\_c/cautioning\\_and\\_diversion/](http://www.cps.gov.uk/legal/a_to_c/cautioning_and_diversion/)

For more information about the 'Code for Crown Prosecutors' visit:

[http://www.cps.gov.uk/publications/code\\_for\\_crown\\_prosecutors/index.html](http://www.cps.gov.uk/publications/code_for_crown_prosecutors/index.html)