BARNSLEY
Metropolitan Borough Council

REGULATORY SERVICES ENFORCEMENT PROCESS

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1. Enforcement Process Statement

The purpose of this process is to set out the general principles of enforcement to be followed by officers in Regulatory Services. This is to ensure that enforcement decisions are consistent, appropriate, balanced, fair, targeted, accountable, transparent and proportionate.

2. Introduction

Regulatory Services is a public authority for the purposes of the Human Rights Act 1988. Officers in Regulatory Services will apply the principles of the European Convention on Human Rights in accordance with the Act. The Service will follow the provisions of the Regulators' Code in its regulatory activities, taking a supportive, risk-based approach to businesses. It will provide clear information and guidance on compliance and will act with fairness and transparency. Formal enforcement action will normally be a last resort, but where it is deemed appropriate, this process will be applied.

This process sets out the general regulatory options available to Regulatory Services Officers to ensure compliance with relevant legislation. Officers will be suitably trained, qualified and experienced, as set out in their job profiles, and they will be familiar with, and follow, the provisions of this process.

Each case is unique and must be judged on its own merits. However, there are general principles that apply in the way each situation must be approached. This document sets out the factors to be taken into account when considering appropriate enforcement action to be taken. Officers will follow this process, except in exceptional circumstances.

Where the Service becomes aware of a situation for which it is not the enforcing authority, it will contact the relevant enforcement agency. Where there is a shared role with another enforcement agency, officers shall liaise accordingly with that agency.

Regulatory Services enforce a wide variety of legislation, and use powers that enable officers to issue verbal advice, send letters, serve formal notices, issue simple cautions, and prosecute in the courts. This list is not exhaustive and other enforcement options are available, as detailed later in this document. The officer will choose the most appropriate method of achieving compliance from the range of actions available.

The aims of the Service in taking action are:

- To protect the public and businesses from offenders.
- To change the behaviour of the offender
- To eliminate any financial gain or benefit from non-compliance
- To restore the harm caused by regulatory non-compliance in appropriate cases

3. Enforcement Options

There are a number of options available when legal contraventions are found:

a) No Action

In exceptional circumstances contraventions may not warrant any action. This could be where the cost of compliance to the offender outweighs the detrimental impact of the contravention on the community, 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 action is inappropriate, e.g., the offender is elderly and frail. A decision to take no action must be recorded in writing and must take account of health, safety, environmental and nuisance implications of the contravention. A decision to take no action does not preclude further investigation or review of the case at a later date, or when there is material change in the circumstances.

b) Informal Action

Informal action to secure compliance with the legislation includes offering advice, issuing warnings and requests for action. It may be appropriate to use informal action in the following circumstances:

- The act or omission is not serious enough to warrant formal action.
- From the individual's/organisation's past history it can be reasonably expected that informal action will achieve compliance.
- Where the original approach is from person(s) seeking advice or assistance – although if serious breaches are found, formal action may be appropriate.

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When an informal approach is used to secure compliance, this may be verbal or written. Any written documentation sent to individuals or businesses must include:

- All the information necessary to understand what action is required and why.
- The legislation being contravened and measures which will achieve compliance.
- Clear distinction between legal requirements and recommendations.

c) Statutory notices, Seizing Equipment, Closing Premises

Notice can be served to require persons to cease contravening activities, give offenders reasonable time to rectify a contravention or require people to provide information. Notices may require contravening activities to cease immediately where circumstances relating to health, safety, environmental damage, or nuisance demands. In other circumstances, the time allowed must be reasonable, but must also take account of the implications of the contravention.

Specific guidance is available on circumstances under which notices shall be served, equipment seized or premises closed, and this varies according to the legislation and type of notice.

The use of statutory notices may take place in conjunction with other enforcement options set out in this process.

d) Refusal/ Revocation of License/Approval/Permit

Licences, Approvals and Permits are issued under specific legislation and the circumstances that allow refusal or revocation of a licence etc. shall be taken into account in accordance with the specific legislation and relevant Codes of Practice. In order to justify such an action, the applicant/licence/approval/permit holder must meet one or more of the following criteria:

- Engage in fraudulent activity
- Deliberately or persistently breach legal obligations
- Deliberately or persistently fail to meet a condition applied by the licence
- Deliberately or persistently ignore warnings or formal notices
- Endanger, to a serious degree, the health, safety or well-being of people, animals or the environment
- Fail to pay renewal fees

In relation to licensing matters, cases may also be referred to the General Licensing Sub- Committee.

e) Works in Default

Where provided for under the legislation, work may be carried out in default. Such action will be dependent upon public risk and strategic considerations.

f) Injunctions

In exceptional cases, it may be considered that an injunction is the best course of action to remedy contraventions or dangerous circumstances. For example, where there is an immediate risk to public health, or where there is an extraordinary statutory nuisance.

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g) Enterprise Act Actions

The Enterprise Act 2002 gives some officers in the Service the authority to seek civil remedies for certain breaches of legislation. Officers will consider these remedies, such as undertakings and injunctions, where they are the most appropriate course of action.

h) Fixed Penalty Notices

Fixed Penalty notices will be issued under certain legislation. If a fixed penalty is not paid within the prescribed period, legal proceedings shall be instituted.

i) Simple Cautions

In some cases, Simple Cautions may be used as an alternative to prosecution. In order to offer a Simple Caution, there must be enough evidence for the matter to proceed to Court by way of prosecution, and the offender must admit guilt.

j) Prosecution

Without prejudicing the right of the Council to prosecute for any offence within its jurisdiction, prosecution will be considered in the case of serious offences, matters of significant public concern, failure to comply with a statutory notice, and repeated infringements.

Particular circumstances in which prosecution will also be considered include:

- The contravention involved fraud.
- The contravention involved deliberate or persistent breach of legal responsibility.
- The contravention was through gross negligence or carelessness and caused, or was likely to cause, significant loss or prejudice to another individual.
- The contravention led to, or contributed to, the health safety or well-being of people, animals or the environment being seriously compromised, or contributed to damage to the reputation or economic well-being of the Borough.
- The contravention involved the obstruction of an authorised officer in carrying out his or her duties, or violence or aggressive behaviour towards them.
- The contravention was an absolute offence under the legislation.
- The matter relating to the offence is widespread throughout the borough.

Cases will only be submitted for prosecution when it is considered that the sufficiency of evidence and the public interest requirement fall within the guidelines as laid down by the Attorney General and Crown Prosecution Service Code of Crown Prosecutors. Before deciding whether or not to prosecute, consideration will also be given to the following:

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- The calibre and reliability of witnesses.
- The probable public benefit of a prosecution and the importance of the case – eg, the possibility of establishing legal precedent.
- The contravention is trivial
- Whether a Simple Caution would be more appropriate or effective.
- Cost effectiveness – a need to balance likely overall cost against the ‘value’ of the likely outcome.

k) Primary Authority

The Regulatory Enforcement and Sanctions Act 2008, as amended, established the Primary Authority scheme. We will comply with the requirements of the Act when we are considering taking enforcement action against any business or organisation that has a Primary Authority, and will have regard to guidance issued by the Secretary of State in relation to Primary Authority.

4. References

The Code for Crown Prosecutors The Code for Crown Prosecutors | The Crown Prosecution Service

Regulators Code https://www.gov.uk/government/publications/regulators-code

Simple Cautions https://www.gov.uk/government/publications/simple-cautions-guidance-for-police-and-prosecutors

Primary Authority Statutory Guidance https://www.gov.uk/government/publications/primary-authority-statutory-guidance