

BASINGSTOKE AND DEANE BOROUGH COUNCIL

LICENSING ENFORCEMENT POLICY

1. INTRODUCTION

- 1.1 Local authorities enforce numerous pieces of legislation that govern the licensing and registration of people, premises and activities, including sale or supply of alcohol, entertainment, Hackney Carriage and Private Hire drivers, vehicles, operators or proprietors, animal establishments, street trading, lotteries and collections.
- 1.2 The aim of Basingstoke & Deane Borough Council is to protect the safety and welfare of people, including members of the public, who may be exposed to risks from the way that licensable activities are carried out, and to protect the interests of those that could be adversely affected by such activities when carried out by unlicensed individuals/companies/organisations.
- 1.3 This Enforcement & Prosecution Policy Statement sets out the general principles and approach that Basingstoke & Deane Borough Council, as a licensing authority, will follow. It does not cover licensing of Caravan Sites or HMOs which are encompassed in the Housing Improvement Enforcement Policy.
- 1.4 All Enforcement Officers who take enforcement decisions and institute prosecutions are required to follow the principles, which are embodied in this document.
- 1.5 The appropriate use of enforcement powers, including prosecution, is important, both to secure compliance with the law and to ensure that those who have duties under it may be held to account for any failures, particularly in relation to public safety, the prevention of crime and disorder, prevention of public nuisance, protection of children from harm and animal welfare.
- 1.6 In allocating resources, the Council will have regard to the principles set out below, the need to maintain a balance between enforcement and other activities, including inspection.
- 1.7 Due regard, where appropriate, will be given to guidance issued by the DCMS under the Licensing Act 2003.
- 1.8 In addition, the Council fully adopts the principles of the Central and Local Government Concordat on Good Enforcement. By adopting the Concordat the Council is committed to following policies and procedures

that contribute to efficiency and will provide information to show that they are being delivered.

1.9 The Council must seek to ensure compliance with the law. The Council will carry out this duty in an appropriate manner according to the following principles:

- **Proportionality**

Any action that is taken will relate to the seriousness of any breach of the law.

- **Consistency**

The Council will ensure that its Officers act in a similar way when faced with similar circumstances. The Council will also work with other Councils and relevant agencies to ensure that this principle is applied at a local and national level as far as possible.

- **Transparency**

The Council will try to help people to understand what the law requires of them and make clear what needs to be done, and not done, to achieve compliance. The Council will also make clear what people should do if they are not happy about any action taken or proposed to be taken.

- **Targeting**

Our enforcement efforts will be directed against those whose activities pose the most serious risks or those who have a history of non-compliance.

1.10 The Council will, where possible, use its enforcement powers as a method of ensuring compliance rather than pursuing enforcement for its own sake. Clear guidance, information and advice will be given to businesses, employees, persons or organisations so as to encourage compliance with the legislation.

1.11 The Council is fully committed to providing information and training for businesses in an effort to bring about improved standards.

1.12 Where informal or formal action is being taken against an individual or a director or manager of a business whose first language is not English a note will be provided to that person in his or her own language explaining the significance of the action. The Council will also offer a full translation

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of any correspondence or Notice including the appeals procedure if requested.

- 1.13 All Authorised Officers when making enforcement decisions shall have regard to the Council's policy. Any departure from the policy must be exceptional, capable of justification and be fully considered by the Head of Environmental Health, Licensing & Parking before the decision is taken, unless it is considered that there is a significant risk to employees or the public in delaying the decision.
- 1.14 All Authorised Officers must be fully acquainted with the requirements of the policy. Initial and ongoing training will be undertaken as necessary to ensure that this is and remains the case.
- 1.15 The Council will undertake appropriate quality checks to ensure that its officers are following these principles. Authorised Officers will take due regard of all relevant quality system documents in taking any formal action.
- 1.16 A copy of this policy will be made available to any party who requests one and will be made available via the Council's web site www.basingstoke.gov.uk. Every effort will be made to make the document available in alternative formats where customers have special needs. Our customers will be made aware of this policy by inclusion of an appropriate paragraph in correspondence to them.

2. AUTHORISATION

- 2.1 Authorisation of officers is of paramount importance in the effective delivery of the licensing functions of Council. The Head of Environmental Health, Licensing & Parking has the delegated authority under the Council's constitution to authorise officers to act under the various statutory provisions. The scheme of delegation is contained within the Environmental Health, Licensing and Parking Business Unit's Quality Management System and such officers are designated as Authorised Officers.

3. DECISION MAKING

- 3.1 Members will not be involved in detailed consideration of individual cases other than in exceptional circumstances.
- 3.2 The decision whether to prosecute or to issue a formal caution is delegated to the Head of Legal Services following a recommendation from the Head of Environmental Health, Licensing and Parking. That decision

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will be based on the legislation, Approved Codes of practice, including the Code for Crown Prosecutors.

4. ENFORCEMENT APPROACH

4.1 Whenever an enforcement decision needs to be made regard shall be had to the normal hours of trading of any business under investigation.

4.2 Prior notification of an impending enforcement inspection will not be made where such notification would defeat the purpose for which the inspection is being undertaken.

4.3 Whenever enforcement investigations require the attendance of a translator, interpreter, signer or other person to assist with written or verbal communications with the person(s) under investigation, such reasonable provision will be made.

4.4 The Licensing Team will base all licensing enforcement decisions on:-

- the effect of the legislative breach upon the potential persons affected;
- the risk to health and safety of persons that may be affected;
- the future consequences of failing to address the breach at the present time.
- any concurrent or potential action by other services and agencies and the suitability and effect of the Council's action as opposed to or combined with those of others in addressing the issues.
- the effect on animal welfare of the breach

4.5 In making an enforcement decision, the Council will consider a number of factors. These include seriousness of offence, the perpetrator's past history, confidence in management, the consequences of non-compliance; effect of the defect on the person(s) affected and the likely effectiveness and consequences of the various enforcement options.

4.6 Where there are failures to comply with the law, this Council has a number of informal and formal approaches to secure compliance:-

- to take no action
- refer the matter to another service or agency
- to issue informal notices eg letters
- to use formal cautions
- to prosecute

Any of the above options can also be undertaken alongside appropriate action, be enforcement or otherwise, by other Council Services or outside agencies (see shared enforcement Section 10)

5. INFORMAL APPROACH

5.1 Informal action to secure compliance with legislation can be by a variety of means including giving advice, verbal warnings, sending informal letters, issuing inspection reports etc. This advice will be put clearly and simply.

5.2 These methods of informal action will continue to be used by authorised officers as long as they believe that these methods will result in compliance within reasonable timescales. These methods can be used alongside other Council services or outside Agency's action where appropriate.

5.3 Informal action may be used in the following circumstances:-

- the breach is not serious enough to warrant formal action
- the owner's/manager's/responsible person's past history shows that it can be reasonably expected that informal action will achieve compliance
- confidence in the owner's/manager's/responsible person's management is high
- the consequences of non-compliance will not pose a significant risk to those affected.

5.4 When an informal approach is adopted to secure compliance with licensing legislation, any letter issued will explain:-

- the remedial action needed to achieve compliance, why it is necessary and the timescale for compliance.
- offers the opportunity for discussion or for the owner to make representations, including contact point(s) and name(s).
- provides the details of any other Council services or outside Agencies that may be able to provide assistance or related services to the owner/ occupier / manager / responsible person.

6. FORMAL APPROACH

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- 6.1 Formal action is not suitable for minor technical contraventions.
- 6.2 A written formal warning must be issued and signed by the authorised officer who is satisfied that the situation constitutes a breach of legislation or licence conditions.
- 6.3 Any formal warning that is issued will contain:-
- the legislation, including regulation, section, subsection or paragraph that has been contravened;
 - in the opinion of the officer, the reason there has been a contravention and what the person responsible needs to do.

7. FOLLOW UP VISITS

- 7.1 The Council will undertake follow up visits to premises to ensure that progress has been made to rectify contraventions. The criteria to decide whether a follow up visit is necessary, will be the seriousness of the breach and the likelihood that further formal action will be taken as a direct result of the visit. Where practicable, the officer who undertook the original visit or inspection should carry out the revisit if there are significant breaches of legislation or licence conditions.

8. SUSPENSION

- 8.1 In the case of Hackney Carriages and Private Hire Vehicle Drivers suspension of a licence will be considered for offences that don't warrant formal action. The suspension of a licence will not preclude the Council from considering prosecution at the same time.

9. FORMAL CAUTIONS

- 9.1 Formal cautions may be considered as an alternative to prosecution. The purpose of the formal caution is:-
- to deal quickly and simply with less serious offences;
 - to divert less serious offences away from the Courts;
 - to reduce the chances of repeat offences.
- 9.2 The following conditions will need to be fulfilled before a formal caution is administered:-
- there must be evidence of the suspected offender's guilt sufficient to give a realistic prospect of conviction

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- the suspected offender must admit the offence
- the suspected offender must understand the significance of a formal caution and give consent to being cautioned.

9.3 If there is insufficient evidence to consider taking a prosecution then, by implication, the conditions are not satisfied for the use of a formal caution. It will also be inappropriate to use a formal caution where the suspected offender does not make a clear and reliable admission of the offence. It should be noted that there is no legal obligation for any person to accept the offer of a formal caution and no pressure should be applied to the person to accept a caution.

9.4 Formal cautions will only be used in accordance with the relevant Home Office Circular.

9.5 The Head of Environmental Health, Licensing & Parking is the Officer duly authorised to issue formal cautions in respect to licensing legislation.

9.6 Where a person declines the offer of a formal caution, it will be necessary to prosecute.

10. PROSECUTION

10.1 The decision to prosecute is a very significant one. Prosecution would be more likely in cases where there has been a wilful disregard of the law or refusal to achieve the basic minimum legal requirements, often following previous contact with the Council. A decision to prosecute would therefore be made in any of the following circumstances:-

- where the alleged offence involves a flagrant breach of licensing requirements;
- where the gravity of the offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender warrants it;
- where there have been repeated breaches or persistent poor compliance;
- where work has been carried out without, or in serious breach, of an appropriate licence;
- where Authorised Officers have been intentionally obstructed in the lawful course of their duties;

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- 9.2 The Council will also consider prosecution where the following circumstances apply:-
- where false information has been wilfully supplied or there has been intent to deceive
 - where it is appropriate in the circumstances as a way to draw general attention to the need for compliance with the law and the maintenance of standards required by law and conviction may deter others from similar failures to comply with the law.
- 9.3 Where circumstances have been identified which may warrant a prosecution, all evidence and information will be considered, to enable a consistent, proportionate and objective decision to be made.
- 9.4 Before a prosecution proceeds, the Officers responsible for deciding enforcement action will ensure that they are satisfied that there is relevant, admissible, substantial and reliable evidence that an offence has been committed by an identifiable person or company. There must be a realistic prospect of conviction; a bare prima facie case will not be enough. Where there is insufficient evidence to prosecute, other types of formal action, such as formal cautioning are not alternatives.
- 9.5 In addition to being satisfied that there is sufficient evidence to provide a realistic prospect of conviction, the Officers concerned must be satisfied that it is in the public interest to prosecute. Reference will be made to the Code for Crown Prosecutors, issued by the Crown Prosecution Service.
- 9.6 When considering the decision to prosecute, Officers will also have regard to any relevant Approved Codes of Practice and consider the following factors:-
- a) The seriousness of the alleged offence:-
 - the risk of serious harm
 - identifiable victims or potential victims
 - disregard of licensing legislation for financial reward
 - b) The previous history of the party concerned;
 - offences following a history of similar offences
 - failure to respond positively to past warnings
 - failure to comply with statutory notices
 - c) The competence of any important witnesses

- d) The willingness of the party to prevent a recurrence of the problem
- e) The probable public benefit of a prosecution and the importance of the case eg whether it might establish legal precedent

As indicated above, advice on the public interest is contained in the Code for Crown Prosecutors. The general advice is, the graver the offence, the less likelihood there will be that the public interest will allow anything other than prosecution.

- f) Whether any action, such as issuing a formal caution in accordance with the current Home Office Circular would be more appropriate or effective.
- g) Any such explanation offered by the company or the suspected offender. Suspected offenders will always be offered the opportunity to offer an explanation before prosecution decisions are taken.

10. STATUTORY NOTIFICATIONS AND REFERRAL TO OTHER REGULATORS

- 10.1 From time to time matters under investigation are found to fall more appropriately under the enforcement regime of another regulatory body or agency eg Police authority. In all cases of referred enforcement the person(s) under investigation will be notified of the reasons for referral by letter.

11. ENFORCEMENT AT PREMISES IN WHICH THE COUNCIL HAS AN INTEREST

- 11.1 Where the Council is the Licensing Authority and either owns or operates premises where a licence is required it will apply its licensing enforcement policy and procedures in exactly the same way as it does in all other premises.

12. PACE INTERVIEWS – POLICE AND CRIMINAL EVIDENCE ACT 1984

- 12.1 Questioning of persons will be carried out as a formal interview where there is suspected involvement in criminal offences. All such formal interviews shall be conducted with regard to the Act and associated Codes of Practice.

13. HUMAN RIGHTS ACT 1998

- 13.1 Regard shall be had to the Human Rights Act 1998.

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14 REGULATION OF INVESTIGATORY POWERS ACT 2000

14.1 Covert surveillance ie surveillance which is carried out in a manner calculated to ensure that the persons subject to it are unaware that it is or may be taking place is regulated by the Regulation Of Investigatory Powers Act 2000. Surveillance may be "Directed" or "Intrusive". It is highly unlikely that a situation will arise within the Councils operations that would require intrusive surveillance to be considered. Authorised officers may be required to carry out directed surveillance as part of their duties. Authorisation for such surveillance must be obtained in accordance with the Council's Corporate RIPA Procedure.

15. REVIEW

15.1 This policy will be reviewed on an annual basis and in light of any changes in legislation, Codes of Practice or centrally issued guidance.