

General enforcement policy



Basingstoke
and Deane

Executive Summary

Basingstoke and Deane Borough Council is signed up to the Enforcement Concordat, which exemplified best practice, following on from the Hampton Report and Macrory Review. However, councils have been asked to review their enforcement policies, with a view to reducing the administrative burden on businesses.

This new enforcement policy has been drafted in line with these principles, and aims to ensure all enforcement:-

- is fair, accountable, consistent, proportionate and transparent
- is an effective use of resources through a risk-based methodology
- improves protection for the community and businesses
- reduces the regulatory burden on businesses
- actively involves both business and community in the creation and review of the enforcement policy and methods



Key Changes

This policy covers a range of services including environmental health, licensing, environmental care, parking and housing.

We have consulted with business and the wider community and incorporated their views into the policy. We will continue to review it, in the light of feedback from any part of the community.

We have considered the cost, effectiveness, and likely perception of fairness resulting from this policy. We have also considered the impact our enforcement actions may have on small regulated entities (businesses or voluntary organisations), and try to ensure that the burdens of our interventions are fair and proportionate.

We will carry out risk assessments to ensure that our regulatory efforts and resources are targeted where they would be most effective. Inspections and other visits will be in accordance with the risk assessment, except where visits are requested, or we are required to investigate.

We will co-ordinate our work and share data with other regulators, when there are planned inspections of the same business. This is to avoid duplication and to minimise burdens on the business where practical, beneficial and cost effective.

If you have any views on how this revised enforcement policy will affect you, or require this document in a different format (such as large text, or Braille), please contact the council on **01256 845545** or email **tom.payne@basingstoke.gov.uk**

We have a responsibility to protect the communities we serve, using the legislative tools delegated by national government. Councils implement, administer and enforce a raft of legislation designed to protect health, local economies and the environment. In doing this, we have flexibility to determine the most appropriate methods for enforcement, to suit local needs and ensure value for money.

As part of the Community Strategy, 'Pride in our Place', our vision for the borough is:

“Basingstoke and Deane will become famous for social justice, well-being, and prosperity for all: alert to its heritage and its responsibility to improve the built and natural environment...”

Consistent and fair application of our enforcement powers is critical in our delivery of this vision.



This policy and its appendices are based on the following reports and legislation:

- The Statutory Code of Practice for Regulators ('the Code')
- The Hampton Review and the Marcroly Review
- Advice from government departments and agencies,
- The Local Authorities Co-ordinators on Regulatory Services
- Existing legislation, such as the Human Rights Act 1998 and Regulation of Investigatory Powers Act 2000
- Existing corporate policies, such as the Complaints Policy and Regulation of Investigations Policy
- Best practice and 'The Code for Crown Prosecutors'.



General Enforcement

We aim to ensure our enforcement actions are:

- **fair and accountable**
Officers employed by the council must comply with the principles set out in this enforcement policy. They are accountable to the public for their actions and decisions.
- **consistent**
The same approach will be adopted to achieve similar ends under similar circumstances.
- **transparent**
The council will help individuals, organisations or businesses to understand what is expected of them and what they should expect from us. We will also ensure that everyone can distinguish advice from legal obligations. Requirements and recommendations will be put in writing if requested.



Methodology

Enforcement should be:

- **an effective use of resources through a risk based methodology**
Our resources will be targeted primarily on activities by the individuals, organisations or businesses giving rise to the most serious risks to health and safety, the environment or statutory nuisance to the public.
- **proportionate**
The enforcement action will relate to the risks to health and safety, the environment or the extent of nuisance to the public. Enforcement actions must be proportional to any risks, or to the seriousness of any breach. Care will be taken to ensure that no unnecessary costs are incurred.

Involving the community and improving protection

This will:

- **improve protection for the community and businesses**
We will target our resources to those who deliberately, or persistently, breach the law.
- **Reduce the regulatory burden on businesses**
Risk assessments and joint working will reduce the inspection burden on compliant businesses.
- **Reviews**
We will actively involve both businesses and the community in the creation and review of the policy.

Scope

This policy applies to the council's business units carrying out enforcement activities prescribed in the Regulators Code:

- Community Protection which includes environmental health, community safety, licensing and parking
- Planning and Transport which includes building control and planning enforcement
- Environmental care which includes dog warden and waste management
- Housing and Benefits which includes private sector housing management.



We must adhere to these principles to be compliant with the aims of this policy. This applies not only when carrying out the enforcement, but also when setting policies, principles, and standards, and providing guidance relating to enforcement activities. We must, therefore, combine this methodology into both the processes and culture of our enforcement. This will be achieved through:

- the Compliance Forum which allows the liaison of internal and external enforcing authorities to support joint working, and consistency. It also allows the sharing of information, where this is practicable, and will reduce the burden on businesses.
- the induction and ongoing training and coaching of staff,
- ensuring staff are appropriately qualified, possess suitable experience, and are authorised to take the relevant action.
- monitoring and reviewing performance
- accounting and reporting on enforcement
- the regular involvement of the community and business sector in the review and improvement of our enforcement.

This policy is robust, due to the consultation, monitoring, management and review processes. However, in some cases, we may decide that a provision of this policy is irrelevant, or outweighed by another provision. We will ensure any decision to depart from this policy will be properly reasoned, based on material evidence, and documented. In these situations, the head of service must approve the enforcement action.

Methodology

We always strive to use advice and persuasion as the main methods to ensure businesses and the wider community comply with legal requirements. We give talks to community and business groups, and provide a variety of leaflets. We also offer free advice on a wide range of subjects via telephone, personal visit or on our website.

We aim to respond within three working days to phone messages and five working days to letters or e-mails. Complex matters may take longer, and we will give a full reply or a progress report within 15 days.

You can expect our staff to:

- be courteous and helpful
- identify themselves by name and provide a contact point for further dealings
- give clear and simple advice
- confirm in writing, if requested, explaining what you must do to comply with the law, and the recommended best practice
- minimise the cost of compliance wherever possible
- give you a reasonable time to comply (unless immediate action is necessary in the interest of health, safety, the environment or to prevent evidence being lost)
- maintain confidentiality, except where we have a legal obligation to disclose information.

Our aim is to ensure that any necessary enforcement action is in line with the recent findings of the Macrory Review of Regulatory Penalties. These actions should:

- change the behaviour of the offender
- eliminate any financial gain or benefit from a non-compliance (where possible)
- be responsive, and consider what is appropriate for the particular offender and regulatory issue.
- be proportionate to the nature of the offence and the harm caused
- restore the harm caused by regulatory non-compliance, where appropriate
- deter future non-compliance

In doing so, we will measure improvements, restoration of harm, and the number of enforcement actions taken. Following the initial publication of the enforcement policy, we will provide stakeholders with an annual report outlining the enforcement outcomes.

To ensure we take proportionate action and targeted at cases requiring action, the following factors will be taken into consideration:

- the seriousness of any alleged offence
- the previous history of the individual, group or business and confidence in management (if relevant)
- any action taken by the responsible person/organisation, to resolve the situation
- the course of action that will best serve the community, and protect them or the environment.

Business and community involvement

This policy aims to improve protection for the community and businesses. It is, therefore, important to actively involve them.

We will do this by consulting:

- the Local Business Partnership (LBP), which represents both businesses and enforcing authorities in the borough
- via the internet
- current users via postal survey
- potential users/the voluntary sector and the wider community.

Review

To ensure this policy continues to be suitable for business and community of the borough, it will be necessary to review this and its effectiveness, periodically.

It is essential to gain feedback from those who have been subject to enforcement action and where appropriate, the business or community affected by an infringement. Ongoing feedback shall be used and complaints data will be collated.

Feedback will be sought from the wider community, and from businesses through the LBP. Awareness of the policy, within the business community, will be assessed as part of this feedback process.

As a corporate policy, the Overview Committee will periodically review the policy, feedback, complaints and awareness data, to ensure it continues to meet the needs of all stakeholders.

You can appeal against our action, for certain forms of enforcement, such as statutory notice and prosecution. We will advise you, if you can appeal and the timescale in which you must make it.

Complaints

If you are concerned that any enforcement action taken by us is not in accordance with this policy, you can complain. It will be dealt with in line with the council's [Complaints Policy](#). Your complaint will be passed to the manager responsible for the service to which it relates, to investigate the matter.

If you are unhappy with our final response, you can contact The Local Government Ombudsman by completing the complaint form at www.lgo.org.uk or by phoning **0300 061 0614**.

Appendix 1

Types of enforcement available

It is outside the scope of this enforcement policy to discuss in detail, specific legislation relating to the various regulatory sanctions available to the council. (See appendix 2 for a list of these policies). All these policies will be written in line with this General Enforcement Policy. For guidance, the following is a brief explanation of the regulatory sanctions.

Verbal and written warnings

These include offering advice verbally or in writing, or requests for action, and the findings of any inspection or investigation. These informal actions, would be used if it is considered they will achieve compliance. This would be based on past history/ confidence in management, or where the consequences of non-compliance will not pose a significant risk to public health or, are of a minor technical nature.

Minded to notices

These are only available under certain legislation. They are normally used when verbal or written warnings have not led to improvements, but there is no imminent risk to public health.

Statutory notices

Various statutory notices are available which can be used when:

- there is, or may be, a significant risk to public health
- a statutory nuisance is occurring, or is likely to occur or recur
- the consequences of not taking immediate and decisive action to abate, or prohibit, the activity giving rise to the significant risk to public health, or statutory nuisance, would be unacceptable.

Fixed penalty notices

This sanction is only available under certain legislation for example dog fouling. The decision to issue a fixed penalty notice, rather than adopt other forms of enforcement action may be chosen as a more efficient and effective way of dealing with the offence.

Suspension/revocation of a licence or the refusal to grant or vary a licence or the imposition of conditions to a licence

These actions will be proportionate to the risk to public health or safety, and will be applied when:

- there is a record of non-compliance with breaches of licence conditions
- confidence in the person responsible is low

Work in default

This is a generic term for work carried out, usually as a result of failure to comply with a statutory notice. The following circumstances may apply:

- There has been no appeal against the notice, or an appeal has been quashed.
- It is considered more appropriate/effective than prosecution or a successful prosecution has been taken and the problem remains.
- The problem may be so serious that it requires quick remediation through work in default at the same time as prosecution.
- The recipient of the notice has requested this and given an undertaking in writing to pay.

When deciding whether to carry out works in default, the following will be considered:

- The seriousness of the defect, and the urgency of the need to remedy the situation.
- The ability of the council to reclaim the cost of remediating the works, including an administration charge, if the recipient's appeal against the costs.
- The recipient's comments on the notice.

In commissioning any works to enable work in default, the council's standing orders governing financial matters will apply. This includes the provisions requiring works in emergency situations.

Seizure of vehicles/equipment and other items

The above considerations also apply to this form of work in default, which is specific to a limited amount of legislation.

Simple caution

A simple caution can be offered as an alternative to prosecution, but only in cases where the evidential criteria for prosecution are satisfied. Its purpose is to:

- deal quickly and simply with less serious offences
- divert less serious offences away from the courts
- reduce the chances of repeat offences

It is appropriate when:

- the interests of justice will not be served by court action
- offences of a minor nature are not actioned following service of a statutory notice and there is no risk to health/safety.
- a 'technical' offence has been committed that must be formally recorded.

The investigating officer must compile a prosecution file before the simple caution is offered to the alleged guilty party. They must be given sufficient information to understand the significance of a simple caution.

If the simple caution is refused, the council will pursue the offence through a prosecution, except in exceptional circumstances, as authorised by the appropriate head of service.

Prosecution

The following circumstances may warrant prosecution:

- Failure to comply, in part or full, with a statutory notice.
- The consequences of not taking immediate and decisive action would give rise to the significant risk to public health, or continuing statutory nuisance, that would be unacceptable, particularly for financial or other reward.
- A blatant disregard for the law, where previous warnings or notices have been issued.
- The perceived public benefit of a prosecution may be considered when its outcome impacts on
 - a section of the community whose protection, health, safety, wellbeing, legal rights or
 - the environment as a whole,was placed at risk of being affected or was adversely affected. The importance of a prosecution may be considered to establish an important precedent or to draw public attention to national or local campaigns or issues, may be considered, (see also the CPS : The Code for Crown Prosecutors).

Injunction

We may apply to take injunctive action in exceptional circumstances, where there is an immediate risk to public health or extraordinary statutory nuisance.

Anti-social Behaviour Orders (ASBO's)

These orders should usually be considered when other methods of dealing with the behaviour are inappropriate or have failed. However, Home Office guidance makes it clear that 'whilst ASBOs should be seen in this wider context there is no requirement to demonstrate that every other remedy has been exhausted before applying for an ASBO'. An ASBO should only be used where it is the most appropriate remedy.

Appendix 2

List of Service Specific Enforcement Policies

- Air Pollution Control Enforcement Policy
- Food Safety Enforcement Policy
- Health and Safety Enforcement Policy
- Licensing Enforcement Policy
- Noise Enforcement Policy
- Private Sector Housing Enforcement Policy

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