

# **Borough of Poole**

## **Enforcement Policy**



This Policy should be read in conjunction with any sub policy (if any applies) from the individual Service Unit that needs to take any action under the same. The individual Service Units are listed at the end of this Policy.

## INTRODUCTION

One of the main functions of the Council is to act as a regulator and enforcement agency for a large range of legal duties and powers applied by Acts of Parliament, and the Regulations and Orders made under them (including various bylaws).

The legislation which the Council is responsible for enforcing is extensive and cannot be listed here, but the following exemplify the range and diversity:-

- Leisure Services
- Environmental and Consumer Protection
- Customer Services and Communication
- Corporate Services
- Planning and Regeneration Services
- ICT and Business Support
- Building Consultancy
- Children and Young Peoples Services
- Human Resources
- Transportation Services
- Culture and Community Learning
- Adult Social Services
- Property Services
- Financial Services
- Housing and Community Services

This policy sets out the standards and guidance that will be applied by the Council when acting in its role as regulator and enforcement agency across a range of its relevant legal powers and duties.

The policy applies to enforcement and regulation affecting members of the public, (eg. residents and visitors) and businesses, (eg. proprietors, employers and employees).

However, whilst the policy is intended to be reasonably comprehensive, it cannot cover every situation, especially where there are specific national or local codes or standards which have to be met, for example when dealing with child protection, special educational needs, mental health provisions, Planning and benefit fraud. Neither will the policy apply to actions of the Council in dealing with matters of contract (including rents, tenancy agreements and leases) or the collection of debts.

## OVERALL AIM

The Council's aim is to undertake its regulatory and enforcement role in a fair, open and consistent manner. In doing this it will act in accordance with the guidance and standards set out in this document and other material policy

### General Principles

- Departments should provide appropriate advice and guidance widely through the regulatory regime to avoid and reduce the need for formal enforcement action;
- Ensure all such advice and guidance takes into account and reflects equality and diversity issues
- Any enforcement or regulatory action is proportionate to the offence, taking into account previous convictions or other relevant circumstances
- Any material obtained by officers in their regulatory or investigative role will be kept secure in full compliance with the eight data protection principles

## GUIDING PRINCIPLES

In undertaking its regulatory and enforcement role the Council will have regard to the following Guiding Principles:-

- Prosecution should be seen as a last resort and only applied where the case is serious or there is repeated failure to comply with a Council decision.
- Generally enforcement action should be progressive i.e. informal advice, formal warning, fixed penalty notices and prosecution, but there are circumstances where the public interest test is satisfied to move immediately to a formal prosecution
- Enforcement action will be proportionate to the particular offence and other relevant background material specific to the offence;
- Informal and formal enforcement action will always follow the relevant policy or procedure whilst also taking account of other relevant legislation, for example equality and human rights

The Council will always endeavour to meet the highest standards of service in undertaking its regulatory and enforcement function. The following specific level of service standards will be applied:-

- Matters relating to enforcement and regulation will be dealt with promptly and in accordance with agreed published charter standards
- Except in the case of necessary and approved covert investigations, (eg. The making of test purchases by Trading Standards Officers), officers will always at the start of a visit, introduce themselves and show their identification badge, explain the purpose of their visit and if required explain their powers of entry.
- Where practicable and reasonable make contemporaneous notes in a report form or pocket book
- Supply contact details for further customer contact with the officer or their supervisor
- Witness details will be kept confidential and will not generally be disclosed to maintain public confidence in the enforcement regime and to ensure full compliance with s41 Data Protection Act.
- The Council is unlikely to be able to investigate anonymous complaints, however information received anonymously will be considered and action taken where appropriate.
- During joint agency investigations the council will, if it is expedient to the investigation share relevant information through secure processes, the receiver being required to store and use the information safely and in full compliance with the data protection principals
- Where any charges or fees are to be levied for a service, individuals and businesses will be informed of the cost or rate of charge prior to the service being provided;
- Any dissatisfaction with the actions of an officer of the Council will be dealt with under the Council Complaints Procedure, copies of which are available from offices of the Council, by accessing the Council's Web site (borough of poole.com) or by telephoning the Council on 01202 633633 and asking for the appropriate Service Unit, (see back page for list of Service Units).

## **ASSESSING APPROPRIATE ACTION IN CASES OF INFRINGEMENT**

Each service unit will have a specific policy on the investigation and management of enforcement cases with the accompanying formal procedures laid down in either statute, government policy or local policy.

Formal enforcement action will normally be instigated where one or more of the following apply:-

- There is a recognised breach of the relevant law or policy
- Informal approaches have failed to mitigate the issue;
- The matter is of such seriousness or urgency that informal action is inappropriate;
- Enforcement is necessary to remedy an unsatisfactory condition relating to health, safety, amenity or the environment or other legislation;
- There is a community interest to ensure the law or policy is formally enforced

## **PROSECUTION.**

The decision to prosecute an individual is a serious step. Fair and effective prosecution is necessary to maintain public confidence in the Council's regulatory regime. Even what can appear to be trivial regulatory offences to the public can have a serious impact on the defendant, victim and witness.

The Public interest in bringing a prosecution must be demonstrated by considering the following:

### **Selection of appropriate action**

Decisions as to what action to take in cases of unauthorised action will be taken in the public interest, with each case being dealt with on its own merits.

In most cases, a prosecution will not be brought if consent would have been granted for the action undertaken had it been applied for. In considering whether to bring a prosecution, regard will be had to the likelihood of the offence being repeated and the degree to which a prosecution would act as an effective deterrent. Regard will also be had to any financial advantage perceived to have been gained by carrying out the unauthorised action and whether the perpetrator has been prosecuted, cautioned or warned for similar offences in the past.

Whilst ignorance of the law is not an excuse, the attitude and circumstances of the perpetrator will be taken into account, including any expression of regret, helpfulness and co-operation with the investigation and any indication that the perpetrator was acting in good faith. Individual personal circumstances and any other mitigating factors will be taken into consideration where appropriate.

Producing policies is all very well, but they are not likely to be effective unless they are continually and consistently applied. To ensure this happens and to provide feedback on the effectiveness of its application, it is intended that various monitoring regimes are undertaken and fed back to businesses and the public. The following monitoring and feedback mechanisms may therefore be undertaken:-

- Opportunities for businesses and members of the public comment on the policy;
- Sample surveys undertaken on the perception of service users of particular aspects of the policy, following contact with one of the Council's enforcement services;
- Periodic consultation with Business representatives such as members of the Chamber of Commerce;
- Production and making public the results of monitoring, together with any improvements or changes to the policy or its implementation.

## **ENFORCEMENT ACTIONS AVAILABLE**

We take a wide view of this term which includes provision of advice and guidance. Examples of the actions we can take are:-

<b>ACTION AVAILABLE</b>	<b>EXPLANATION</b>
Advice	Advice on how to comply with the law, typically following a request for advice, a programmed inspection or complaint.
Warning letter	Warning that recurrence or continuation of an infringement will result in legal action.
Enforcement notice	A wide range of legal powers to require persons to perform some act or desist from a course of conduct. In some cases we have the power to close businesses or execute work in default. There are

	often appeals, procedures or a requirement to have emergency action confirmed by a Magistrates' Court. (We provide details of those appeals procedures at the same time as the notice.) Failure to comply with the notice will often result in prosecution.
Caution	A special form of recordable warning which can only be given if:- <ul style="list-style-type: none"> <li>• An offence has been committed.</li> <li>• The person liable admits the offence.</li> <li>• A prosecution could be taken.</li> <li>• There are mitigating factors suggesting an official caution is the more appropriate course of action.</li> </ul>
Penalty notices	Legislation enables the Council to issue penalty notices for various offences such as littering, dog fouling, Unlawful parking etc.
Prosecution	Prosecution in Magistrates or Crown Court.
Civil Enforcement	Pursuing claims for debt such as Council Tax Arrears in the Magistrates' Court and any other civil claim made by the Council through the High Court or County Court (eg trespass or possession proceedings)
Licensing Reviews	Reviewing Licenses granted under the Licensing Act 2003 Gambling Act 2005 or Policing and Crime Act 2009, by way of the Licensing Sub Committee after receiving a request for review from a responsible authority or interested party.

## **SERVICE UNITS AND SENIOR OFFICERS:-**

Strategy Directorate, Civic Centre, Poole, Dorset BH15 2RU  
**Chief Executive: John McBride**

Adult Social Services- Commissioning & Improvement, Crown Buildings Civic Centre, Poole  
**Service Unit Head: David Vitty**

Adult Social Care- Services, Crown Buildings, Civic Centre, Poole  
**Service Unit Head: David Vitty**

Children & Young People's Social Care, 14a Commercial Road, Poole BH14 0JW  
**Service Unit Head: Gerry Moore**

Children & Young People's Integrated Services, Dolphin Centre, Poole, BH15 1SA  
**Service Unit Head: Vicky Wales**

Children & Young People's Strategy, Quality and Improvement, Crown Offices, Park Road, Poole BH15 2RP  
**Service Unit Head: Stuart Twiss**

Culture Community & Learning, Poole Central Library, Dolphin Centre, Poole, BH15 1SA

**Service Unit Head: Kevin McErlane**

Customer Services and Communications, Civic Centre, Poole, Dorset BH15 2RU  
**Service Unit Head: Chris Owens**

Environmental & Consumer Protection, Unit 1, Newfields Business Park, 2 Stinsford Road, Poole, BH17 0NF

**Service Unit Head: Shaun Robson**

Financial Services, Civic Centre, Poole, Dorset, BH15 2RU  
**Acting Service Unit Head: Adam Richens**

Housing & Community, Civic Centre, Poole, Dorset, BH15 2RU

**Service Unit Head: Cally Antill**

ICT & Business Support, Civic Centre, Poole, Dorset BH15 2RU

**Service Unit Head: Katie Lacey**

Leisure Services, 30-32 Northmead Drive, Creekmoor, Poole Dorset, BH17 7RP

**Service Unit Head: Clive Smith**

Poole Housing Partnership Ltd, Beech House, 28-30 Wimborne Road, Dorset, BH15 2BU

**Chief Executive: Joe Logan**

Planning & Regeneration, Civic Centre, Poole, Dorset BH15 2RU

**Service Unit Head: Stephen Thorne**

Transportation Services, St John's House, 1 Serpentine Road, Poole, BH15 2DX

**Service Unit Head: Julian McLaughlin**

Strategy Team, Civic Centre, Poole, Dorset BH15 2RU

**Emma Leatherbarrow**

Legal and Democratic Services, Civic Centre, Poole, Dorset BH15 2RU  
**Service Unit Head: Tim Martin**

**Contact:**

General switchboard: 01202 633633 (ask for appropriate Service Unit)

Web site: [www.boroughofpoole.com](http://www.boroughofpoole.com)

[In any communication relating to this Policy, please indicate your contact is regarding the 'Enforcement Policy']