



## **Regulatory Services**

### **Enforcement Policy**

#### **1) Introduction**

- 1.1 Bournemouth Borough Council's Regulatory Services is a service unit within the Development Services Directorate of the Council. It is responsible for enforcing laws relating to Environmental Health, Trading Standards, Planning Enforcement and Licensing. These relate to certain aspects of health, public safety, consumer protection, environmental and planning rules. We operate the service based on the principles of transparent, accountable, proportionate and consistent enforcement. We aim to improve regulatory outcomes without creating unnecessary business burdens.
- 1.2 Where possible we seek to assist business in legal compliance, reserving the full force of our legal powers only for situations where this is clearly justified. In this way we balance the interests of economic vibrancy with the need for a suitable, safe and healthy 'level playing field' in which legitimate and honest trade can flourish.
- 1.3 We comply with the Regulators' Code, a Statutory Code of Practice for Regulators published by the Government in July 2013 and in force from April 2014. This policy should be read together with our document "Statutory Regulators' Code - Local Implementation in Bournemouth Borough Council", also available at the same place as this document on our website. Both documents are approved by the relevant Portfolio Holder. The requirements of the national code, and a brief explanation of how we comply locally, are set out in that document.

#### **2) Scope and interpretation**

- 2.1 This policy applies to all enforcement, regulation, linked advice and similar within Bournemouth Borough Council Regulatory Services.
- 2.2 In many instances, enforcement activity relates to businesses, and accordingly this policy generally makes reference to 'business' and 'business premises' throughout. But sometimes - for example within planning enforcement work, issues of public nuisance, or public carriage driver licensing - the enforcement activity relates not to a business but to a private individual.
- 2.3 Clearly not all aspects of this policy - such as business risk assessment - are appropriate to circumstances involving a private individual. But wherever they are appropriate - for example in the approaches used to determine whether serious enforcement action should be taken - this policy should be read as applying to such private individuals in the same way as it applies to businesses.

### 3) Economic Progress

3.1 Regulatory Services recognise that interventions such as inspections can be costly and time consuming for businesses. Our proportionate approach requires that inspections and other visits to businesses are justified and do not hinder economic progress. Reasons for enforcement officer visits to businesses may include the following (non-exhaustive):

- A visit due to the need to resolve a complaint or other allegation of non-compliance by a third party. (We do not generally take action in relation to anonymous complaints unless there is some independent corroboration of the matters alleged, due to the possibility that they might be malicious.)
- A visit indicated by risk assessment (see section 4)
- A visit made at the request of the business e.g. to provide advice and education
- A visit due to the need for a certain type of licence or registration, or an enforcement/compliance issue connected with formal licensing or planning processes.

3.2 Certain additional visits may be required from time to time, for example:

- In order to assess whether current risk data on a business is still valid
- In the case of a new business, to establish what risks there are and to provide helpful start-up advice
- In the course of targeted project research and/or sampling - such matters often arise from centrally or regionally co-ordinated initiatives to look in depth at a specific subject of regulatory concern

3.3 In all cases where a visit is necessary, officers will endeavour to keep the visit as focused as possible. A visited business has the opportunity to provide feedback which we will take into consideration, making adjustments to our practices where necessary.

3.4 We are pleased to help and guide small businesses that may not have the back up of significant legal and personnel resources in their compliance with the law we enforce.

### 4) Risk Assessment

4.1 Regulatory Services utilises national risk assessment schemes such as the risk assessment included in the statutory code of practice for food law enforcement. Consultation on such schemes, and their review, takes place at a national level.

4.2 Typically, the national risk rating systems used by us produce indications of risks that may be broadly described as “High, Medium or Low”, or similar. At every appropriate visit (or other opportunity) each business risk rating is reassessed.

4.3 In most cases, business premises that are rated **High Risk** or similar are visited on a regular basis as determined by the risk rating system.

4.4 **Medium Risk** or similar premises may be visited on a regular basis as determined by the risk rating system. In some cases this is expected of us by national regulators - as is the case with inspection of premises preparing food. But we don't routinely visit every business considered as medium risk for all areas of regulation. Other indicators may be used to ensure that time is not wasted on unnecessary visits. These may include consideration of the following:

- Frequency of complaints for that type of business
  - Public profile and media concern about that business type or its activities
  - The technical nature of that type of business -visits to businesses within a highly technical sector may be unlikely to add value without officers first receiving specialist training
  - How well managed the business sector generally is for that type of business
  - A need to combine resources with national or regional coordination rather than conducting isolated local visits to that particular type of business
  - The usefulness of visits to primary business premises which are merely offices, where the regulated activity takes place at a different location e.g. builders
- 4.5 All businesses that are rated **Low Risk** or similar are typically not visited proactively, unless it is necessary briefly to check whether they have changed ownership and/or changed business-type, which might affect the future risk assessment. Such businesses may still be visited in response to a complaint or other reactive investigation, and occasionally as part of a project or sampling programme for a very specific and targeted regulatory purpose only.
- 4.6 The reason for a visit is always explained by the officer at the time of the visit.
- 4.7 When possible visits are carried out by prior arrangement, except where this would compromise the regulatory objective of the visit.

## 5) Advice and Guidance

- 5.1 The origin of most Regulation is UK Central Government, who also issue comprehensive national guidance on many aspects of legal compliance. We will avoid any waste that arises from duplication of such guidance at local level. Officers should be aware of the existence of a range of resources external to Regulatory Services that are available to businesses. Whenever providing advice and guidance, we will signpost and reference those external sources as appropriate.
- 5.2 Where it is necessary to provide local guidance, we will ensure that it complies with national requirements and does not give rise to an unreasonably disproportionate emphasis on a particular topic locally, unless by common consent that topic is of significant local concern.
- 5.3 In the case of local or locally specific regulation such as bylaws, we will consult as appropriate and provide clear and concise guidance to business on how to comply.
- 5.4 In giving specific advice to business, we will provide a variety of access points including telephone, visit, letter, email etc. We will be pleased to visit businesses on request to provide advice and guidance in person on regulatory requirements to assist the business. Where businesses need external professional help, wherever possible we will signpost them to a range of appropriate suppliers so that the business can choose which one to use.
- 5.5 In giving advice, we will always make clear the difference between what a business needs to do to comply with the law, and what is recommended as 'good practice'. Generally, we aim to be as concise as possible. We will avoid giving information above and beyond legal requirements, unless such guidance on good practice is specifically requested. Where there are potential alternative means to comply we will discuss them

with the business and make it clear that the choice is theirs. We will confirm advice in writing where appropriate/ requested.

- 5.6 A request for advice will not in itself trigger enforcement action. Wherever possible, we will try to work with business to help them comply with the law. However, there are rare situations where a business repeatedly fails to heed both our advice and our subsequent warnings. So occasionally, legal action has to be taken where non-compliance is not addressed. Our aim is to minimise those occasions by working with business.
- 5.7 A reasonable level of advice provision to business is free of charge to the end user. However we are not a substitute for professional services that businesses would reasonably expect to pay for, such as a solicitor, or research and development facilities. We provide guidance on the law, but the advice that we give does not absolve a business from their legal responsibility. If we suggest the need for external professional help, such as the need to have a prototype product tested, we will not pay for that test, although we will be able to help the business understand the legal implications of the test results.
- 5.8 We will provide local advice in a variety of formats as is required and/or suitable, including leaflets and on-line via the Council's web pages on the Internet.

## **6) Inspections and other visits**

- 6.1 As specified in section 4 above, all proactive visits are carried out on a risk assessed basis. Our risk rating systems, when combined with an assessment of the trends in a trade sector, provide a sound basis to secure relevant regulatory outcomes and general legal compliance without creating a business burden.
- 6.2 We encourage good practice, and recognise it both at the time of a visit (by telling the business) and in the revision of our risk rating system. This may result in 'reward' via a reduced inspection frequency. We are committed to working in partnership with other agencies including regional and local trading standards, environmental health, planning and licensing partnership groups where good practice is disseminated. In some enforcement areas we may also recognise good practice by publicising business performance against our regulatory requirements.
- 6.3 Where it is likely that more than one regulator has rated the same premises as a target for inspection, then we coordinate our work in partnership with the other regulators. In Bournemouth, this most commonly arises in connection with the businesses involved with the night time economy. In this area we have a strong working partnership with all of the agencies including Police, Fire Service, Planning, and Child Protection. We join with several partner agencies in regularly conducting joint visits to relevant premises considered as higher risk. This obviates the burdens arising from several regulators calling at the same business on separate occasions.

## **7) Information Requirements**

- 7.1 Regulatory Services does not routinely require businesses to supply data. Normally, information about the business is obtained either from an officer's observations in the course of a visit, or as part of an application form for a registration, permission or licence that the business must complete. Detailed data may occasionally be required where a business is under investigation. This is usually because there is reasonable

cause to believe that a criminal offence has been committed, and it is in the public interest to investigate.

- 7.2 There is limited scope for Regulatory Services to vary the form of many permissive, registration or licence documents, as these are prescribed by law. However, in relation to any forms that may be locally designed, we will limit the data requested to that which is strictly justified for the task required. We will trial and consult on any new locally-designed form before it is brought into mainstream use.
- 7.3 Wherever possible we will share data and intelligence with other enforcement agencies and work in partnership. We will also use existing local and national data sources for any analysis. We will consider asking businesses for additional information only if the data is vital to secure enforcement outcomes and can not be obtained by other means.

## **8) Compliance and Enforcement Actions**

- 8.1 Wherever possible we reward good compliant businesses by lighter touch, fewer or no visits, alternative interventions, and/or other incentives (see 6.2 above). Many trade sectors are not routinely visited and such businesses will only receive a visit as a result of a complaint or other intelligence received.
- 8.2 We recognise that small business may have particular difficulties in securing compliance and will do all we can to provide sound common sense advice and guidance which is easy to understand and effectively communicated.
- 8.3 Our main aim is to secure a satisfactory enforcement outcome, which typically involves rectifying non-compliance and addressing its root cause so as to prevent a repetition. Where it is appropriate, we will endeavour to achieve this without recourse to any formal legal action such as prosecution, working with the business concerned.
- 8.4 Where unfortunately, formal enforcement action is considered unavoidable, then in deciding what enforcement action to take against an offender, we adopt the following principles. Our actions:
- aim to change the behaviour of the offender;
  - aim to eliminate any financial gain or benefit from non-compliance;
  - are 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;
  - are proportionate to the nature of the offence and the harm caused;
  - aim to restore the harm caused by regulatory non-compliance, where appropriate; and
  - aim to deter future non-compliance.
- 8.5 If, unfortunately, formal action ultimately leads to consideration of prosecution, such action may only be sanctioned by the Service Director (Development Services) or Head of Planning and Regulation, after taking legal advice if required. We have the following non-inclusive factors in mind when weighing a decision on whether to prosecute or not:
- Whether there is a serious threat to the Health, Economic Welfare, Environment or Safety of the public due to negligence of the offender, or actual harm has occurred
  - Whether the offender appears to have deliberately set out to deceive and serious harm as above is likely or has occurred

- Whether, although the matter is not as serious as either of the above, the offender has ignored repeated written warnings or formal notices from officers and continued to follow a pattern of offending, to the detriment of others (for example, the perpetrator may gain an unfair trade advantage over competitors by persisting in the illegal actions)
- Whether the offender has already been formally cautioned for similar matters
- Whether the offender has deliberately obstructed an officer lawfully exercising his/her powers
- Whether it is in the public interest to take action

We will consider taking action under the Proceeds of Crime Act 2002 where appropriate but will not take cases solely on this basis.

- 8.6 Where it is necessary to take formal action, we inform the business at the earliest opportunity of the likelihood of this and the reasons behind it. We invite the business to put its view either by interview or in correspondence, and these views are fully taken into account in making the final decision on formal action, which is authorised by a senior manager.
- 8.7 We endeavour to apply this enforcement policy fairly and consistently, and to that end all officers are made aware of this policy and are expected to be aware of the Statutory Code of Practice, this policy, and how it is applied in Bournemouth.

## 9) Accountability

- 9.1 We continuously monitor customer satisfaction, including satisfaction of businesses. We encourage post-visit feedback, we analyse complaints about the service and we share success/praise from our customers. We believe in continual improvement, learning from our customer feedback and making changes to the service is a vital part of that.
- 9.2 Bournemouth Borough Council has a published corporate complaints policy at <http://www.bournemouth.gov.uk/AdviceBenefits/CustomerServices/ComplaintsPolicy.aspx> All complaints are taken seriously, and if they cannot be resolved within the immediate service provision they are escalated through the organisation's management. At each stage the complainant will receive a response and an indication of how to proceed to the next level if they remain dissatisfied. There are strict timescales within the procedure to ensure timely response. Ultimately if the complainant remains dissatisfied they may complain to the Local Government Ombudsman who will investigate their complaint.

## 10) Service Standards

We will:

- Respond to all new requests for business advice within three working days. Where the matter is complex we will give you an early indication at first contact if we need a little more time to consider/research the matter in order to best help you
- Respond to all written correspondence within ten working days, or provide an update in relation to more complex or ongoing matters

- Respond to all telephone calls and verbal messages within three working days
- Never use an approach for advice, made in good faith by a bona fide business, as the reason to initiate formal enforcement action
- Protect trade information that you provide in confidence as part of your request for help and advice - we will never for example divulge your information to your competitors, or vice-versa.
- Assure you that the source of information causing a visit or other action to take place is not anonymous - although we may not be able to identify the source unless authorised by them to disclosure their identity.
- Fully comply with freedom of information and data protection requirements, which may mean, for example, that individual business inspection outcomes have to be disclosed as public information, but that personal information must be kept confidential
- Ensure there is a reason for any visit, inspection or other business intervention, which is either risk based or as a result of an enquiry/complaint.
- Treat you with courteousness, fairness, and in an efficient manner at all times. (But we will not tolerate rudeness, obstruction or verbal abuse to our officers)
- Fully comply with the Council's complaints policy and take any complaints or concerns seriously

#### Further information

Charges: Advice, assistance and enforcement is not charged to the end user. There are statutory fees for certain types of licence, permits, permissions or registrations. The most up to date fees are published on our website:

[www.bournemouth.gov.uk](http://www.bournemouth.gov.uk)

Contacting us: Refer to the relevant page on our website which provides all current contact details for all Council service units, or search for the specific service you require.

Our website is also a means to communicate generally with businesses and citizens of Bournemouth. It is used to post details of any current consultations or other relevant information.