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## **ENVIRONMENTAL SERVICES ENFORCEMENT POLICY**

### **1. Introduction**

#### 1.1 Bury Council's Vision is:

'To shape and maintain a prosperous, sustainable Bury that is fit for the future'

1.2 The Council's Environmental Services contribute to this vision through education, advice, and regulating the activities of others. It ensures that people comply with regulations and legal requirements and where necessary, will use its powers of enforcement to ensure a fair, safe and healthy environment for local community and businesses.

1.3 This policy, which replaces all former policies, sets out the general principles with regard to any enforcement action taken by Environmental Services.

These reflect legislative requirements and good practice guidance including:

- The Enforcement Concordat
- The Regulators Compliance Code
- The Legislative and Regulatory Reform Act 2006
- The Human Rights Act 1998
- The Code for Crown Prosecutors.
- The Police and Criminal Evidence Act 1984
- The Regulatory Enforcement and Sanctions Act 2008
- Criminal Procedure and Investigations Act 1996
- Regulation of Investigatory Powers Act 2000

### **2. Environmental Services**

2.1 The Council's Environmental Services is made up of the following services;

- Trading Standards, which includes Commercial Practices, Animal Health and Commercial Standards
- Commercial and Licensing which includes Food Safety, Health and Safety, Licenses, Permits and Consents
- Environmental Protection which includes Pollution, Statutory Nuisance and Environmental Crime

- 2.2 As part of their work, Environmental Services work actively to:
- promote public health
  - ensure public protection
  - monitor commercial practices and standards
  - provide advice
  - protect the environment and promote a cleaner, safer, greener Borough
- 2.3 Environmental Services offer information and advice to those who are regulated and work co-operatively with others to avoid bureaucracy and excessive cost. It assumes that most of its customers are anxious to comply with the requirements of the law, and therefore works towards this through education and persuasion.

### **3. Enforcement Principles**

- 3.1 The purpose of enforcement is to ensure compliance with the law and with regulations. It can help prevent problems or put them right.
- 3.2 Environmental Services would normally expect people to comply voluntarily with relevant legislation and licensing arrangements. If it receives information that may lead to enforcement action, it will notify any alleged offender as soon as practicable of any intended or potential enforcement action, unless this may impede an investigation or pose a safety risk to those concerned or the general public. However, it will use its enforcement powers where intervention is necessary within the framework of the law.
- 3.3 The Service will also make decisions on enforcement and conduct enforcement action impartially and objectively, and this will not be affected by such things as race, politics, gender, sexual orientation, age, disability, religious belief and any other protected characteristic of an offender, victim or witness.
- 3.4 The use of enforcement powers are not to assist or support civil claims for redress or compensation by members of the public, although it can use civil powers to ensure compliance.
- 3.5 Officers from within Environmental Services, who are authorised to act on behalf of the Council, have powers to require that preventative or remedial action is taken. This may include:
- the provisions of advice on voluntary compliance measures
  - the service of enforcement notices and orders
  - the carrying out of remedial works in default of an enforcement notice
  - the suspension, variation or review of licences, permits or consents
  - the obtaining of informal and formal undertakings
  - the obtaining of a court injunction
  - the seizure of items/animals
  - civil sanctions where the law allows

If the Service needs to carry out remedial work, it will seek to recover the full cost of this from those responsible.

3.6 Officers authorised to carry out enforcement duties might include Environmental Services Officers and other Bury Council employees or employees from other agencies including other Local Authorities, Six Town Housing, approved contractors and Greater Manchester Police. Authorised officers will be competent, have evidence of their authorisation and will carry identification. They may or may not be wearing a uniform. They will be authorised in writing in accordance with the Officer Delegation Scheme. The Assistant Director (Localities) (formerly Assistant Director of Planning, Environment and Regulatory Services) and the Executive Director of Communities and Neighbourhoods (formerly Executive Director of Environment and Development Services) are delegated with the power to authorise Environmental Services Officers and those who are working in partnership or on contract with Bury Council.

3.7 Environmental Services believes in firm but fair regulation guided by the following principles:

- proportionality in applying the law and in making sure that people comply with it
- a consistent approach
- transparency including sharing clear information with our customers about how we operate and what they can expect from us
- effective, targeted enforcement
- accountability to the public for our actions

3.8 In certain areas of the Service's regulatory work the Service and/or Government agencies have issued specific guidance or procedures for enforcement which will be used to support this enforcement policy. In the unlikely event of there being a conflict between this policy document and the specific Service procedures and/or Government guidance, the Government guidance will normally be regarded as the guiding document.

#### **4. Proportionality**

4.1 Environmental Services customers include both those on whom the law places a duty, and those whom the law protects. They have a right to expect that when the Service takes enforcement action to make sure laws and regulations are complied with, this action will be proportionate taking account of:

- the seriousness of any risk involved;
- the circumstances of the case;
- the response of those subject to regulation; and
- the extent of the breach of regulations.

4.2 In general terms if there is a risk, the person responsible must take measures to put things right, unless the cost involved is clearly excessive compared with the benefit.

## **5. Consistency**

5.1 Consistency does not mean simple uniformity. Officers will receive appropriate Training and supervision in order to carry out their duties in a fair and equitable manner and will take account of many variables which may aggravate or mitigate action to be taken including:

- the seriousness of the offence;
- the willingness of those involved to cooperate;
- the attitude and actions of the person or organisation involved towards compliance;
- the previous history of the person or organisation responsible;
- national and local priorities.

5.2 Decisions on enforcement action are a matter of professional judgement and discretion. The Service aims, as far as possible, for a consistent, effective approach and we will develop good practice with others where appropriate.

## **6. Transparency**

6.1 In order to maintain public confidence in our ability to regulate, Environmental Services operates in a clear, open way. It will help people and organisations to clearly understand what is expected of them and what they should expect from the Service.

6.2 Environmental Services will make it clear why an officer is taking, or has taken, enforcement action and officers will ensure that whenever possible that they work to the following standards:

- if remedial action is needed, they will explain clearly (in writing if asked to do so) why the action is necessary and when it must be carried out
- if urgent action is needed, they will provide a written explanation of the reasons as soon as possible after the event
- when the Service takes formal enforcement action, officers will give a written explanation of any rights of appeal at the same time.

## **7. Targeting**

7.1 Environmental Services will direct regulatory efforts at:

- those whose activities cause the most serious risks
- those situations where the risks are least well controlled
- those situations which give rise to significant national or local concern
- those cases where deliberate contravention or organised crime is suspected
- those situations where there have been repeated incidents or breaches of legislation
- reinforcing the messages from education and awareness raising campaigns.

The focus for action will primarily be on those who break the law or those who are directly responsible for the risk and who are best placed to control it.

## **8. Accountability**

8.1 Although the Council has service standards and in some case national standards to adhere to, managers within Environmental Services will carry out checks on quality to ensure a satisfactory service is being delivered. In the event of a complaint being received, this will be dealt with under the Council's complaints procedure, details of which are given below.

## **9. Enforcement Action**

### **9.1 General**

9.1.1 If an offence and/or breach of a condition and/or other legislative requirement has been committed, there are various options available to officers. These include:

- No action
- Informal action by way of advice
- Issuing a warning
- Restorative Justice – such as attending smoking cessation classes or carrying out litter picks
- Issuing a fixed penalty notice
- Administering a simple caution
- Service of a notice
- Seizure/forfeiture proceedings
- Seeking a court order
- Refusal/variation/suspension or revocation of a licence, permit or consent
- Proceeds of crime application
- Prosecuting the offender
- Civil action

9.1.2 Not all enforcement options are available in every case and the choice open will depend on the relevant law, the nature of the breach/offence, seriousness and whether previous actions have failed.

9.1.3 Where it is necessary to carry out a full investigation, the case will be progressed without undue delay. All investigations into alleged breaches of legislation will be conducted in compliance with statutory powers and all other relevant legislation and relevant Codes of Practice.

9.1.4 The Service will take into account the views of any victim, injured party or any other relevant person to establish the nature and extent of any harm or loss, including potential harm and loss and its significance in making the decision.

## **9.2 Informal Action**

- 9.2.1 For minor breaches of the law, verbal or written advice may be given, with instructions on how to remedy the contravention and a reasonable time period to rectify it. This may be accompanied by a warning against future breaches and the implications of non-compliance.

## **9.3 Warning**

- 9.3.1 A warning is a written notification that in the Services opinion an offence has been committed. It will be recorded and may be referred to in subsequent proceedings. This may include recovering any expense caused to the Council where the actions of the offender have caused it to take action in default or as a consequence of the offenders actions.

## **9.4 Restorative Justice**

- 9.4.1 In some cases it may be more effective to promote behavioural change by allowing offenders to carry out relevant restorative work where this is available. This could include taking part in an organised litter pick rather than having to pay a littering fixed penalty notice or attending a smoking cessation course when a smoking fixed penalty could have been imposed

## **9.5 Fixed Penalty and Penalty Charge Notices**

- 9.5.1 Where legislation permits the use of Fixed Penalty Notices (FPN) we may use them as an alternative to prosecution. They are recognised as a low-level crime enforcement tool and enable an offender to discharge their liability without going to court and getting a criminal record. In relation to certain offences the Council considers this to be a proportionate measure in the first instance and no other informal actions will be considered prior to the issuing of the FPN.

- 9.5.2 Examples of where they may be appropriate are:

- To deal quickly and simply with less serious offences
- To divert less serious cases away from the court process
- To deter repeat offences.

- 9.5.3 Where an FPN is not paid within the specified time limit (usually 14 days) the offender will be prosecuted unless there are exceptional circumstances.

## **9.6 Simple Caution**

- 9.6.1 In cases where a prosecution is not the most appropriate form of action, the use of a simple caution will be considered and administered, in accordance with Home Office guidelines.

- 9.6.2 A simple caution is when an offender accepts, in writing, that they have committed an offence and is an admission of guilt, but not a conviction or sentence. This may only be used where a prosecution could properly have been brought and the offender is 18 years old or over. It will be

brought to the Court's attention if the offender is convicted of a subsequent offence within two years.

9.6.3 If a simple caution is offered, but the offender refuses it, a prosecution will be pursued.

9.6.4 As with a prosecution, we may take additional enforcement action in conjunction with a simple caution or warning.

## **9.7 Service of a Notice**

9.7.1 Certain legislation allows notices to be served requiring offenders to take specific actions or cease certain activities. The legislation may also allow works to be carried out in default, if the notice is not complied with.

Where the law allows, the cost of any such work will be recovered from the offender.

9.7.2 All notices served will include details of any appeals process

## **9.8 Seizure/Forfeiture**

9.8.1 Certain legislation enables the seizure of items and goods associated with the commissions of offences or the breach of notices. Such items and goods can then be forfeited.

## **9.9 Civil Action - Court Order, Enforcement Order, Injunction**

9.9.1 In certain cases the eventual course of action may be purely civil in nature and may not lead to a criminal sanction. This may be an informal or formal undertaking or the application for an Enforcement Order.

9.9.2 This type of action is likely to be pursued when:

- It can be established that a trader's or individual's action is causing harm to the collective interest of a consumer as a result of consistent and persistent breaches of criminal or civil legislation and;
- The trader or individual has not responded to the reasonable efforts of Bury Council by ceasing the activity that is resulting in that harm.

9.9.3 Informal action shall be considered in the first instance but formal action by way of obtaining an enforcement order,(which is similar to an injunction and stops the activity in question,) will be considered where informal action has previously been taken but has not been effective in eliminating harm to consumers. Interim orders will be sought when it is considered that the infringing conduct needs to be prohibited or prevented immediately.

9.9.4 In cases where enforcement orders are not available, injunctions may also be considered as alternatives or in addition to other action both civil and criminal.

## **9.10 Refusal/Modification/Suspension or Revocation of a Licence, Permit or Consent**

9.10.1 Where there is a requirement for an individual or business to have a license, permit or consent issued by the local authority for any activity it carries out; that licence, permit or consent will be granted or refused in accordance with the relevant legislation.

9.10.2 Breaches of the governing legislation or conditions attached to the licence, permit or consent may result in it being reviewed, modified, suspended or revoked.

## **9.11 Prosecution**

9.11.1 The use of criminal proceedings in the courts is an important part of enforcement. The purpose is to:

- challenge wrongdoing and encourage compliance
- avoid a repetition of further offences
- ensure a fair, safe & healthy environment.

9.11.2 It is recognised that instituting a prosecution is a serious matter and will only be taken after full consideration of the implications and consequences. When circumstances warrant it a prosecution will be taken without warning or pursuing other sanctions.

9.11.3 When deciding whether to prosecute, Environmental Services will have regard to the principles set out in The Code of Practice for Crown Prosecutors. This requires two tests to be applied and overcome. Prosecution proceedings will only be progressed when the case has passed both the evidential test and the public interest test.

The 'evidential test' – the Service must consider if there is sufficient evidence to provide a realistic prospect of conviction against each defendant. This means that a jury or bench of magistrates is more likely than not to convict the defendant of the charge alleged. This is a separate test to the one the jury or bench itself must apply as they should only convict if they are sure of the defendant's guilt.

The 'public interest test' – if there is sufficient evidence to provide a realistic prospect of conviction, the Service must then decide if it is in the public interest to do so. This will involve balancing the factors for and against prosecution, then going on to make an overall assessment.

9.11.4 Where there is sufficient evidence, the Service will normally prosecute in any of the following circumstances:

- significant incidents or breaches which could cause serious harm or which put the public at risk
- significant incidents or breaches which interfere with anyone's rights or enjoyment
- a conviction is likely to result in a significant sentence
- incidents or breaches that visually or materially damage the environment



- activities conducted without a licence, permit, consent or legally required registration
- excessive or persistent breaches of regulations relating to the same company or premises or licence
- failure to comply adequately with an enforcement notice
- serious disregard for the law
- where there is a history of non-compliance
- failure to supply information without a reasonable cause
- supplying false or misleading information knowingly or recklessly
- obstruction or impersonation of authorised officers
- failure to pay a fixed penalty or penalty charge notice
- deliberate, negligent or persistent breaches of the relevant legislation
- deliberately or persistently ignoring advice, warning or notices
- the victim was/is vulnerable
- a conviction is likely to result in an order of the court in excess of that which a prosecutor is able to secure through a simple caution;
- the offence involved the use of a weapon or the threat of violence;
- the offence was committed against a person serving the public (for example, a member of the emergency services; a police or prison officer; a health or social welfare professional; or a provider of public transport);
- the offence was premeditated;
- the offence was carried out by a group;
- the offence was committed in the presence of, or in close proximity to, a child;
- the offence was motivated by any form of discrimination against the victim's ethnic or national origin, gender, disability, age, religion or belief, political views, sexual orientation or gender identity; or the suspect demonstrated hostility towards the victim based on any of those characteristics;
- the offence was committed in order to facilitate more serious offending;
- the victim of the offence was in a vulnerable situation and the suspect took advantage of this;
- there was an element of corruption of the victim in the way the offence was committed;
- there was a marked difference in the ages of the suspect and the victim and the suspect took advantage of this;
- there was a marked difference in the levels of understanding of the suspect and the victim and the suspect took advantage of this;
- the suspect was in a position of authority or trust and he or she took advantage of this;
- the suspect was a ringleader or an organiser of the offence;
- the suspect's previous convictions or the previous out-of-court disposals which he or she has received are relevant to the present offence;
- the suspect is alleged to have committed the offence in breach of an order of the court;
- a prosecution would have a significant positive impact on maintaining community confidence;
- there are grounds for believing that the offence is likely to be continued or repeated.

These principles apply equally to the other types of formal enforcement action that are available.

## **9.12 Proceeds of Crime Application;**

- 9.12.1 Applications under the Proceeds of Crime Act 2002 may be made by the Service, to confiscate the assets of an offender in certain cases. The purpose is to recover the financial benefit the offender has received from their criminal conduct. Proceedings in such cases are usually made after a successful prosecution, but are conducted according to the civil standard of proof namely 'on the balance of probabilities'.

## **9.13 Companies and Individuals**

- 9.13.1 When criminal proceedings are initiated it will be against those who are responsible for the offence. Where a company is involved, the Service will usually prosecute the Company. However, it will also take into account any part played in the offence by the officers of the Company (including Directors, Managers or the Company Secretary) and other individuals and take appropriate action against them, if it can be shown that the offence was committed for example with their consent, connivance or neglect, or they turned a 'blind eye' to the offence or the circumstances leading to it.

## **9.14 Choice of Court and Penalties**

- 9.14.1 Cases that lead to prosecution will usually be pursued through the Magistrates Court. However, in certain cases, Environmental Services will consider asking the Magistrates to refer the case to the Crown Court. It will apply the current guidelines for Magistrates who have to decide whether cases should be tried in the Crown Court or in the Magistrates Court, where the Defendant does not indicate a guilty plea. The Service will recommend a Crown Court trial when it is satisfied that the guidelines so require. In many cases the Crown Court has greater powers of punishment than those available in the Magistrates Court.
- 9.14.2 Environmental Services will always seek to recover the full costs of investigation and Court proceedings, together with compensation in appropriate cases.

## **10. Working with Other Regulators and Agencies**

- 10.1 Where Environmental Services and another enforcement body both have a shared or complementary enforcement role, or where the enforcement matter affects a wide geographical area, the Service will liaise with that body to make sure its activities are coordinated in order to maximize the effectiveness and efficiency of any enforcement.

This will necessarily involve sharing intelligence with those other bodies.

- 10.2 The Service supports the Primary and Home Authority Principles, which have been developed to promote good enforcement practice and reduce

burdens on business. The main objective is to create a partnership, which will provide positive benefits to both parties.

10.3 Environmental Services will therefore:

- provide businesses it is in partnership with, with appropriate guidance and advice
- maintain records of its contacts with partner businesses to reduce the amount of information they have to provide to the Service
- support efficient liaison between local authorities
- provide a system for the resolution of problems and disputes.

## **11. Complaints about the Service**

11.1 If you are dissatisfied with the service you have received, Bury Council has a formal complaints procedure. Copies of this procedure 'Your Voice Counts' are available from the reception desk at the Bury Town Hall or from our website using the following link:

<http://www.bury.gov.uk/index.aspx?articleid=4263>

11.2 Complaints can also be put in writing to:

The Customer Care Officer,  
Bury Town Hall,  
Knowsley Street,  
Bury, BL9 0SW,  
Tel: 0161 253 7871.

## **12. Review**

12.1 This policy will be reviewed every 2 years unless circumstances such as departmental restructures, changes in legislation or Government guidance require it to be carried out at an earlier date. Review may also take place through audit of those service areas accredited to ISO 9001 : 2008.

12.2 Minor amendments to the policy can be made in consultation with the relevant Portfolio Holder, Director of Environment and Development Services and Assistant Director – Legal Services.

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