



ENFORCEMENT POLICY

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1.0 INTRODUCTION

1.1 The Regulatory Enforcement and Sanctions Act 2008 established The Local Better Regulation Office (LBRO). Over time this evolved into the Better Regulation Delivery Office (BRDO) which then became Regulatory Delivery (RD). The Office for Product Safety and Standards (OPS&S) succeeds the former Regulatory Delivery and works with local authorities and others to take forward its responsibilities, including Primary Authority and Better Business for All. It is part of the Department for Business, Energy and Industrial Strategy (BEIS).

The Act also imposed upon Public Protection a duty to:

- a) have regard to any guidance given to a Local Authority by OPS&S,
- b) a duty to comply with guidance where we are directed to do so by OPS&S, and
- c) a duty to have regard to any list of enforcement priorities published by OPS&S.

We are committed to doing so.

- 1.2 The Regulators Code (RC) provides a set of principles for Regulators to consider,
- a) Regulators should carry out their activities in a way that supports those they regulate to comply and grow.
 - b) Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views.
 - c) Regulators should base their regulatory activities on risk.
 - d) Regulators should share information about compliance and risk.
 - e) Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply.
 - f) Regulators should ensure that their approach to their regulatory activities is transparent.
- 1.3 Section 6 of the Regulators' Code sets out an expectation that local authorities will ensure that their approach to their regulatory activities is transparent. This means we will publish our policy on how we intend to deliver regulation and what those affected can expect. We believe that our enforcement policy is clear, concise, transparent and fit for purpose. Included in our enforcement policy is the way we will deal with issues and what those regulated can expect.
- 1.4 The RC indicates that it is for each local authority to determine an approach to service standards that will work best for those it regulates and itself
- 1.5 This policy commits Bury Council's Public Protection Service to good enforcement practice with effective procedures and clear policies. The Service includes the Environmental Crime, Environmental Health, Environmental Protection, Licensing, Trading Standards and Private Sector Housing.

1.6 This document has been prepared with regard to the current principal legislation and statutory guidance including:

- The Regulatory Enforcement and Sanctions Act 2008 (The RES Act).

- Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009 SI665/2009 (The CRE Enforcement Order).
- Co-ordination of Regulatory Enforcement (Procedure for References to RD) Order 2009 SI670/2009 (The CRE BRDO Order).
- Legislative and Regulatory Reform Act 2006 (LRRRA).
- Legislative and Regulatory Reform (Regulatory Functions) Order 2007 Regulators' Code (RC).

1.7 The document has also been prepared having regard to:

- The Enforcement Concordat: Good Practice Guide for England and Wales and the Principles of Good Enforcement: Standards; Openness; Helpfulness; Complaints; Proportionality and Consistency; the Human Rights Act 1988 and the Code for Crown Prosecutors.
- The LRRRA Part 2 requires us also to have regard to the Principals of Good Regulation. We recognise that our regulatory activities should be carried out in a way which is proportionate, accountable, consistent, transparent, and targeted.

1.8 The primary function is to achieve regulatory compliance in order to protect the public, legitimate business, the environment, and groups such as consumers and workers. However, we reserve the right to take enforcement action in some cases after compliance has been achieved if it is in the public interest to do so. We will retain the discretion to depart from national guidelines where doing so will better meet local priorities and circumstances.

1.9 We recognise that prevention is better than cure, but where it becomes necessary to take formal enforcement action against a business, or member of the public, we will do so. There is a wide range of tools available to us as an enforcement agency. The actions we may take include:

- (a) No action;
- (b) Informal Action and Advice;
- (c) Fixed Penalty Notices;
- (d) Penalty Charge Notices;
- (e) Formal Notice;
- (f) Hygiene Prohibition Order & Hygiene Prohibition (Emergency) Order
- (g) Forfeiture Proceedings;
- (h) Seizure of goods/equipment;
- (i) Injunctive Actions and other Civil Sanctions including Civil Penalty;
- (j) Direct Action;
- (k) Works in Default;
- (l) Refusal/Suspension/Revocation of a licence;
- (m) Simple Caution;
- (n) Prosecution;
- (o) Enforced sale or compulsory purchase or Charging Order;
- (p) Proceeds of Crime Applications.
- (q) Banning Order

- 1.10 When considering formal enforcement action, Public Protection will, where appropriate and where reasonably practicable, discuss the circumstances with those suspected of a breach; and take these into account when deciding on the best approach. However, it must also be noted that legal processes dictated by statute will be applied in many instances where contraventions of legislation have been detected. This paragraph does not apply where immediate action is required to prevent or respond to a breach or where to do so is likely to defeat the purpose of the proposed enforcement action.
- 1.10 If you are a business operating in more than one Local Authority and you have chosen to have a registered Primary Authority Partnership under the RES Act we will, where required, comply with the agreement provisions for enforcement, and notify your Primary Authority of the enforcement action we propose to take. We may under that Act also refer the matter to RD if appropriate.

2.0 LEGAL STATUS OF THIS ENFORCEMENT POLICY

- 2.1 The Council approved this policy on XXXXXX .
- 2.2 This policy is intended to provide guidance for Enforcement Officers, businesses, consumers, and the public.

3.0 SCOPE AND MEANING OF 'ENFORCEMENT'

- 3.1 This Policy applies to all the legislation delegated to Public Protection Service and enforced by authorised officers with delegated enforcement powers employed by the Council. The delegated powers are listed and reproduced within the Council's constitution.
- 3.2 'Enforcement' includes any criminal or civil action taken by Enforcement Officers aimed at ensuring that individuals or businesses comply with the law.
- 3.3 For the purposes of The RES Act the term 'enforcement action' has been given a general statutory definition, which is:
- (a) action to secure compliance with a restriction, requirement, or condition in relation to a breach or supposed breach;
 - (b) action taken in connection with imposing a sanction for an act or omission; and
 - (c) action taken in connection with a statutory remedy for an act or omission.
- 3.4 A list of specific 'enforcement actions' is provided in section 7 of this Policy. This means that if: you are a business or organisation registered with the Primary Authority scheme; we are proposing to take action against you, and that action is one of those listed then, unless one of the permitted exceptions applies, we will be required to contact your Primary Authority and give notice of the enforcement action we propose to take against you.
- 3.5 This document will assist authorised officers in interpreting and applying relevant legal requirements and enforcement policies in a fair and consistent manner, having regard to the individual circumstances of the case and the most appropriate enforcement body.

- 3.6 In certain circumstances we will seek to raise awareness and increase compliance levels by publicising unlawful trade practices or criminal activity. Where appropriate the results of specific court cases may also be published.

4.0 HOW TO OBTAIN A COPY OF THE POLICY OR MAKE COMMENTS

- 4.1 This Policy is available on the Bury Council website at:

<http://www.bury.gov.uk>

If you would like a paper copy of the Policy and/or you would like to comment on the Policy, please contact us by:

- (a) e-mailing tradingstandards@bury.gov.uk
 - (b) writing to Bury Council at 3 Duke Street, Bury, BL90EJ
 - (c) telephoning 0161 253 5353
- 4.2 On request, this Policy will be made available on tape, in Braille or large type.

5.0 GENERAL PRINCIPLES

- 5.1 Our principles are informed by a number of codes of practice and statute as well as the Regulators' Code, the Enforcement Concordat, and the Guidance of OPS&S as to how to apply these documents.
- 5.2 Our role involves actively working with the public and businesses to advise on and assist with compliance. However, where it becomes necessary to take formal enforcement action against a business, or member of the public, we will do so.
- 5.3 Where we consider that formal enforcement action is necessary each case will be considered on its own merits.
- 5.4 There are general principles that apply to the way each case must be approached. These are set out in this Policy.
- 5.5 In accordance with the Regulators' Code, the approach of Public Protection Service to the sanctions and penalties available to it will aim to:
- (a) change the behaviour of the offender;
 - (b) change attitudes in society to offences which may not be serious in themselves, but which are widespread;
 - (c) eliminate any financial gain or benefit from non-compliance;
 - (d) be responsive and consider what is appropriate for the offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
 - (e) be proportionate to the nature of the offence and the harm caused;

- (f) Aim to achieve restitution in respect of harm caused by regulatory non-compliance, where appropriate;
 - (g) deter future non-compliance, and
 - (h) comply with statutory requirements.
- 5.6 All enforcement decisions will be fair, independent, and objective. They will not be influenced by issues such as ethnicity or national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender. Such decisions will not be affected by improper or undue pressure from any source.
- 5.7 Where possible, we will take into account the views of any victim, injured party or relevant person to establish the nature and extent of any harm or loss, and its significance in making the decision to take formal action. This may include actual or potential harm or loss or the impact on the wellbeing of the individual or potential or actual harm to communities or the environment.
- 5.8 Where possible, we will endeavour to ensure that those regulated can seek advice from the service about potential non-compliance without automatically triggering enforcement action. Each matter will be considered on its own merits and will determine the action by the service.
- 5.9 Bury Council is a public authority for the purposes of the Human Rights Act 1998. We will, therefore, apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
- 5.10 All enforcement activities, including investigations and formal actions, will always be conducted in compliance with the statutory powers of the officer and all other relevant legislation, including but not limited to the Police and Criminal Evidence Act 1984, the Criminal Procedure and Investigations Act 1996, the Human Rights Act 1998, the Regulation of Investigatory Powers Act 2000 and the Criminal Justice and Police Act 2001, and in accordance with any formal procedures and codes of practice made under this legislation in so far as they relate to Council enforcement powers and responsibilities.
- 5.11 This Policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulator's Code. In certain instances, we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence, and documented.

6.0 NOTIFYING ALLEGED OFFENDERS

- 6.1 If we receive information [for example from a complainant] that may lead to formal enforcement action against a business or individual we will notify that business or individual as soon as is practicable of any intended enforcement action, unless this could impede an investigation or pose a safety risk to those concerned or the general public.

6.2 In the course of the progression of enforcement investigations/actions, business proprietors or individuals and witnesses will be kept informed of progress. Confidentiality will be maintained and personal information about individuals will only be released to a Court when legally required and/or in accordance with the General Data Protection Regulations (GDPR).

7.0 ENFORCEMENT ACTION

7.1 An overview of the enforcement actions available

7.1.1 There are a large number of potential enforcement options. The level of the action taken varies from no action through to proceedings in Court. Examples of the main types of action that may be considered are shown below:

- (a) No action.
- (b) Informal Action and Advice.
- (c) Fixed Penalty Notices.
- (d) Penalty Charge Notices.
- (e) Formal Notice.
- (f) Hygiene Prohibition Order & Hygiene Prohibition (Emergency) Order
- (g) Forfeiture Proceedings.
- (h) Seizure of goods/equipment.
- (i) Injunctive Actions and other Civil Sanctions including Civil Penalty.
- (j) Direct Action
- (k) Works in default.
- (l) Refusal/revocation of a licence.
- (m) Simple Caution.
- (n) Enforced sale or compulsory purchase or Charging Order
- (o) Prosecution.
- (p) Proceeds of Crime Applications.
- (q) Banning order on a private landlord / letting agent

7.1.2 The order in which the enforcement actions are listed above is not necessarily in absolute order of escalating seriousness relative to each other. The Council reserves the right to escalate its level of enforcement action, having regard to the criteria in paragraph 7.2 of this policy.

7.2 Deciding what level of action is appropriate

7.2.1 In assessing what enforcement action is necessary and proportionate, consideration will be given to, amongst other things:

- (a) The seriousness of the compliance failure.
- (b) The past and current performance or actions of any business and/or individual concerned.

- (c) Any obstruction on the part of the offender.
- (d) The risks being controlled.
- (e) Statutory guidance.
- (f) Codes of Practice.
- (g) Any legal advice.
- (h) Policies and priorities of Government, Bury Council and Bury Council's Licensing Committee.
- (i) A person's age in relation to young people (termed 'juveniles') aged under 18.
- (j) The existence of a Primary Authority agreement.
- (k) Any duty of a local authority or statutory provisions.

7.2.2 Certain enforcement action, such as the decision to Caution and/or the decision to prosecute, is further and specifically informed by those matters set out below at paragraphs 7.14 and 7.15.

7.2.3 Action is more likely to be taken if the following are of relevance;

- a) Situations where it is evidence that a vulnerable individual or group has been exploited.
- b) Obstruction of authorised officers of the service in the lawful execution of their duties
- c) Offences involving deceptions, fraud or negligence.
- d) Wilful disregard for the law
- e) Risk to public health and or safety
- f) Public nuisance
- g) Categories of offences which create significant financial burden to the taxpayer or impact at a community wide level or that undermine public/business confidence.

7.3 An explanation of the enforcement action options.

7.4 No Action

In certain circumstances, contraventions of the law may not warrant any action. This can be where the cost of compliance to the offender outweighs the detrimental impact of the contravention, or the cost of the required enforcement action to Bury Council outweighs the detrimental impact of the contravention on the community. A decision of no action may also be taken where formal enforcement is inappropriate in the circumstances, such as where the offender is elderly and frail or is suffering from mental health issues or serious ill health, and formal action would seriously damage their wellbeing. In such cases we will advise the offender of the reasons for taking no action.

7.5 Informal Action and Advice

For minor breaches of the law, we may give verbal or written advice. We will clearly identify any contraventions of the law and give advice on how to put them right, including a deadline by which this must be done. The time allowed will be reasonable and take into account the seriousness of the contravention and the implications of the non-compliance.

Sometimes we will advise offenders about 'good practice', but we will clearly distinguish between what they must do to comply with the law and what is advice only. Failure to comply could result in an escalation of enforcement action.

7.6 Fixed Penalty Notices

Certain offences are subject to fixed penalty notices were prescribed by legislation. They are recognised as a low-level enforcement tool and enable a defendant to avoid a criminal record by discharging their liability to a prosecution for the original offence. Where legislation permits an offence to be dealt with by way of a Fixed Penalty Notice (FPN), we may choose to administer a FPN on a first occasion, without issuing a warning. Failure to pay the FPN may lead to a prosecution.

7.7 Penalty Charge Notices

Penalty Charge Notices (PCN) are prescribed by certain legislation as a method of enforcement by which the offender pays an amount of money to the enforcer in recognition of the breach. Failure to pay the PCN will result in the offender being pursued in the County Court for non-payment of the debt. A PCN does not create a criminal record and we may choose to issue a PCN without first issuing a warning.

7.8 Failure to accept a FPN and/or a PCN

A failure to pay a FPN or PCN is a material consideration for the purpose of deciding whether a prosecution will be taken, or civil debt recovery commenced.

In order to maintain the integrity of this legislative regime and adherence to relevant statutory Codes of Practice, Public Protection & Prevention will consider an escalation of enforcement action. This will include consideration of a prosecution for the original offence under the primary legislation or civil action to recover the debt.

7.9 Formal Notice

Certain legislation allows notices to be served requiring offenders to take specific actions or cease certain activities. Notices may require activities to cease immediately where the circumstances relate to health, safety, environmental damage, or nuisance demand. In other circumstances, the time allowed will be reasonable, take into account the seriousness of the contravention, the implications of the non-compliance and the appeal period for that notice. Certain notices incur a financial charge.

All notices issued will include details of any applicable Appeals Procedures and any applicable fees.

Certain types of notice allow works to be carried out in default. This means that if a notice is not complied with [a breach of the notice] we may carry out any necessary works to satisfy the requirements of the notice ourselves. Where the law allows, we may then charge the person/business served with the notice for any cost we incur in carrying out the work. In some cases, these will be recorded on the Local Land Charges Register and

will incur a daily interest penalty charge until the debt is discharged. We may commence recovery actions through the courts against the person/business served with the notice. Notwithstanding the default power, non-compliance with notices may lead to a prosecution.

7.10 Hygiene Prohibition Order or Hygiene Emergency Prohibition Order

The order(s) prohibit a person from controlling a food business where there are serious hygiene offences or there is a history of previous hygiene offences. Consideration for applying for an Order is on a case-by-case basis where there is evidence that the Food Business Operator is not currently capable of running a food business safely. An Order may prohibit the use of all or part of the premises or prohibit the use of processes. The Order can also be requested following a conviction for a hygiene offence. A Hygiene Emergency Prohibition Order can be obtained where there is a risk of injury to health (including any impairment, whether permanent or temporary).

7.11 Forfeiture Proceedings

This procedure may be used in conjunction with seizure and/or prosecution where there is a need to dispose of goods in order to prevent them re-entering the marketplace or being used to cause a further problem. In appropriate circumstances, we will make an application for forfeiture to the Magistrates Courts.

7.12 Seizure

Certain legislation enables authorised officers to seize goods, equipment or documents for example unsafe food, sound equipment that is being used to cause a statutory noise nuisance, unsafe products or any goods that may be required as evidence for possible future court proceedings. When we seize goods, we will give the person from whom the goods are taken an appropriate receipt and details of any applicable appeals and/or property return procedures.

7.13 Injunctive Actions and other Civil Sanctions

In certain circumstances, for example, where offenders are repeatedly found guilty of similar offences or where it is considered that injunctive action is the most appropriate course of enforcement, then injunctive actions may be used to deal with repeat offenders; dangerous circumstances; harm to designated heritage and environmental assets or protected wildlife or consumer/ environmental/public health detriment.

7.14 Action under the Enterprise Act 2002;

Proceedings may be brought where an individual or organization has acted in breach of community or domestic legislation with the effect of harming the collective interests of consumers. In most circumstances action will be considered where there have been persistent breaches or where there is significant consumer detriment. Action can range from:

- (a) Informal undertakings.
- (b) Formal undertakings.
- (c) Interim Orders.

- (d) Court Orders.
- (e) Contempt Proceedings.

7.15 Community Protection Notices (CPN's) or Criminal Behaviour Orders (CBO's)

In certain circumstances Community Protection Notices (CPN's) or Criminal Behaviour Orders (CBO's) can be issued and obtained in respect of anti-social behaviour. Where the non-compliance under investigation amounts to anti-social behaviour such as persistent targeting of an individual or a group of individuals in a particular area, or activity that is deemed detrimental to quality of life a CPN or CBO may be sought or issued to stop the activity.

7.16 Civil Penalty

Civil Penalty of up to £30,000 can be issued as an alternative to prosecution under the Housing and Planning Act 2016 for breaches of the legislation. In determining the Civil Penalty amount, the Local Authority Housing Authority will have regard to the statutory guidance issued under schedule 9 of the Housing and Planning Act 2016, the DCLG developed Civil Penalty Matrix and Councils policy on Civil Penalties.

7.17.1 Suspension and Revocation of a Licence

7.17.2 Hackney Carriage and Private Hire Drivers

The grounds for refusing to renew a licence, or for suspending or revoking a licence, are based on whether the driver has:

- (a) been convicted of an offence involving dishonesty, indecency, or violence: or
- (b) been convicted of an offence under, or has failed to comply with, the provisions of the Town Police Clauses Act or Local Government (Miscellaneous Provisions) Act 1976; or
- (c) any other cause deemed to be reasonable.

A Hackney Carriage or Private Hire Drivers' licence may also be suspended or revoked with immediate effect if such a decision is deemed necessary in the interests of public safety. No conviction is required for this action to be taken. Matters will be considered on a case-by-case basis on the civil standard of proof.

7.17.3 Hackney Carriage and Private Hire Operators

The grounds for refusing to renew a licence, or for suspending or revoking a licence are based on:

- (a) any offence under, or non-compliance with the provisions of the Town Policy Clauses Act or the Local Government (Miscellaneous Provisions) Act 1976
- (b) Any conduct on the part of the operator, which the Council considers makes them unfit to hold the licence;

- (c) Any material change since the licence was granted in any of the circumstances of the operator on the basis of which the licence was granted; or (d) Any other cause deemed reasonable.

7.17.4 Hackney Carriage Vehicle or Private Hire Vehicle – the grounds for refusing to renew a licence, or for suspending or revoking a licence are based on:

- (a) the vehicle is unfit for use as a hackney carriage or private hire vehicle.
- (b) where a vehicle does not meet the Bury Council Taxi Policy requirements
- (c) any offence under or non-compliance with the requirements of the Town Police Clauses Act or the Local Government (Miscellaneous Provisions) Act 1976
- (d) Any other reasonable cause

7.17.5 Premises Licences (Licensing Act 2003) – where a review of a Premises Licence is sought under Section 51 of the Act the options available to the Licensing Hearings Sub-Committee are:

- (a) Modification of the conditions of the Licence.
- (b) Exclusion of Licensable activity from the scope of the Licence.
- (c) Removal of the Designated Premises Supervisor.
- (d) Suspension of the Licence for a period not exceeding three months.
- (e) Revocation of the Licence.
- (f) Issue of a Warning Letter.
- (g) No Action.

7.17.6 Premises Licences (Gambling Act 2005) – where a review of a Premises Licence is sought under Section 202 of the Act, the options available to the Licensing and Safety Committee are:

- (a) Revocation of the Licence.
- (b) Suspension of the Licence for a specified period not exceeding three months.
- (c) Exclusion of a condition attached to the Licence, under Section 168, or removal or amendment of an exclusion.
- (d) Additions, removal, or amendment of a condition under Section 169.

7.17.7 General Licensing - where there is a breach of condition of Licence or Permit, upon hearing evidence, the Licensing and Safety Committee has the power to suspend, revoke or refuse to renew a Licence/Permit subject to the provisions of the legislation.

7.17.8 Correctional Training Courses - Where a driver of a hackney carriage or a private hire vehicle has committed a motoring offence the Taxi Licensing and Safety Committee have the option of requesting the driver to attend a nationally approved driving course as an alternative to revocation of a licence. The completion of a training course will be cited in the event of future legal proceedings against the individual.

7.18 Works in Default

In some circumstances it may be necessary for officers to carry out works to remedy the effects of an offence; such cases would include failure to comply with a notice or where

there are emergency repairs required to a dwelling, defective drainage to a property, activated intruder alarms, or inadequately secured properties. All reasonably incurred costs of carrying out the works will be recouped from the responsible person or placed as a charge on the property where this is an available option.

7.19 Simple Caution

In appropriate circumstances, where a prosecution would otherwise be justified, a Simple Caution may be administered with the consent of the offender. In 2005, Home Office Circular 30/2005 replaced the term Formal Caution with the term Simple Caution, to distinguish it from a Conditional Caution. Although the description changed, the significance of the sanction remained the same.

A Simple Caution is an admission of guilt, but is not a form of sentence, nor is it a criminal conviction.

For a Simple Caution to be issued, a number of criteria must be satisfied:

- (a) Sufficient evidence must be available to prove the case.
- (b) The offender must admit the offence.
- (c) It must be in the public interest to use a Simple Caution.
- (d) The offender must be 18 years or over.

For details on the Home Office guidance (Circular 30/2005) visit:

<http://webarchive.nationalarchives.gov.uk/20130125102358/http://www.homeoffice.gov.uk/about-us/corporate-publications-strategy/home-office-circulars/circulars2005/030-2005/>

We will also take into account whether the offender has received a simple caution within the last 2 years when determining whether a simple caution is appropriate for any subsequent offending.

If during the time the Simple Caution is in force the offender pleads guilty to, or is found guilty of, committing another offence anywhere in England and Wales, the Caution may be cited in court, and this may influence the severity of the sentence that the court imposes.

The refusal of an offender to be cautioned does not preclude the matter being passed for prosecution. In fact, any such failure will be a material consideration when deciding whether the offender should then be prosecuted for that offence.

7.20 Prosecution

In circumstances where none of the other forms of enforcement action are considered appropriate a prosecution will be considered and may ensue. When deciding whether to prosecute the Council has due regard to The Code for Crown Prosecutors as issued by the Director of Public Prosecutions. It sets out the general principles to follow when decisions are made in respect of prosecuting cases and has two tests:

Is there enough evidence against the defendant?

When deciding whether there is enough evidence to prosecute, the Council must consider what evidence can be used in court and is it reliable. The Council must be satisfied there is enough evidence to provide a "realistic prospect of conviction" against each defendant.

Is it in the public interest for the Council to bring the case to court?

A prosecution will usually take place unless the public interest factors against prosecution clearly outweigh those in favour of prosecution. For a copy of the Code for Crown Prosecutors visit:

http://www.cps.gov.uk/publications/code_for_crown_prosecutors/index.html

7.21 Proceeds of Crime Applications

The Council either through its own authorised officers or in cooperation with the Police may make application under the Proceeds of Crime Act 2002 to restrain and/or confiscate the assets of an offender. The purpose of any such proceedings is to recover the financial benefit that the offender has obtained from his criminal conduct.

7.22 Banning Order Applications

The use of these order is intended for the most serious offences and will be considered on a case-by-case basis. The criteria set out below will form the basis of the decision to seek a Banning Order:

- (a) One very serious offence (e.g., grievous bodily harm or blatant breach of a Prohibition Order under the Housing Act 2004 which potentially seriously affects the health and safety of the tenants) or
- (b) A number of offences of a less serious nature which shows lack of property management ability or concern for the safety and welfare of tenants. This might include several convictions for failure to comply with Improvement Notices under the Housing Act 2004 or a number of breaches of the Houses in Multiple Occupation Management Regulations.
- (c) A proposal will be submitted by the case officer, agreed by the Principal Private Sector Housing Officer or Head of Service, and then agreed with Legal Services before the Notice of Intention is served on the Landlord / agent.
- (d) All representations will be properly considered in discussion with the case officer, manager, and the legal team before making a final decision on whether to apply for a Banning Order.

8.0 DECISIONS ON ENFORCEMENT ACTION

Decisions about the most appropriate enforcement action to be taken are based upon those matters set out in the Sections above. Where appropriate, decisions about what enforcement action to take may involve consultation between:

- (a) Investigating Officer(s).
- (b) Senior managers
- (c) Bury Council Solicitors.
- (d) Licensing Regulatory Committee, any sub- committee thereof, Chair and Deputy Chair, where it is appropriate to do so.

(e) Planning Applications Sub-committee or Development Management Committee.
The decision to prosecute will be taken by those with authority to do so in accordance with the Bury Council Scheme of Delegations.

9.0 PRIMARY AUTHORITY PARTNERSHIP SCHEME AND ITS ENFORCEMENT PROVISIONS

When we have come to the decision to take enforcement action against you and:

- (1) You are a business operating in more than one Local Authority and you have chosen to have a registered Primary Authority Partnership under The RES Act; and
- (2) The enforcement action we propose to take is covered by the definition of enforcement action for the purposes of Part 2 of The RES Act.

We will, where required to do so by that Act, comply with the agreement provisions for enforcement and notify your Primary Authority of the action we propose to take. Your Primary Authority has the right to object to our proposed action in which circumstances either they or we may refer the matter to RD.

10.0 LIAISON WITH OTHER REGULATORY BODIES AND ENFORCEMENT AGENCIES

In addition to the duties imposed upon us by the RES Act in respect of cooperating and working with Primary Authorities and the RD; we will, where appropriate, cooperate and coordinate with any relevant regulatory body and/or enforcement agency to maximise the effectiveness of any enforcement.

Where an enforcement matter affects a wide geographical area beyond the Council's boundaries or involves enforcement by one or more other local authorities or organisations; where appropriate all relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activity coordinated with them.

Public Protection will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies, including:

- (a) Government Agencies.
- (b) Police Forces.
- (c) Fire Authorities.
- (d) Statutory undertakers.
- (e) Other Local Authorities.
- (f) Other internal Council Services

11.0 CONSIDERING THE VIEWS OF THOSE AFFECTED BY OFFENCES

11.1 The Council undertakes enforcement on behalf of the public at large and not just in the interests of any particular individual or group. However, when considering the public interest test, the consequences for those affected by the offence, and any views expressed by those affected will, where appropriate, be taken into account when making enforcement decisions. Those affected by the offence may be asked to provide written Victim Impact Statement for use in court proceedings.

12.0 PROTECTION OF HUMAN RIGHTS

12.1 This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is had to the right to a fair trial and the right to respect for private and family life, home and correspondence.

13.0 ENFORCEMENT POLICY – APPEALS AND COMPLAINTS

The Council has a Corporate Complaints Procedure, which can be found at:

<https://www.bury.gov.uk/council-and-democracy/complain-about-a-council-service>

Where a report is received from a person who is the subject of a law enforcement investigation or current/pending statutory action then the Corporate Complaints Procedure will not normally be used. The reasons for this and examples of relevant circumstances include:

- (a) Ongoing law enforcement investigation or legal process has commenced. In most situations law enforcement investigations fall under the requirements of the Police and Criminal Evidence Act 1984 (PACE). This imposes requirements on the circumstances in which the council can engage with a person who is suspected of committing an offence or who is the subject of current/pending law enforcement action. The Corporate Complaints Procedure cannot be used to attempt to override or circumvent PACE, for example to challenge elements of an investigation; the necessity for enforcement action; or an enforcement decision. If this is attempted, then the council's Corporate Complaints Procedure will normally be staid. The suspension would apply until law enforcement / legal proceedings stages are completed. The outcome of an investigation, including legal proceedings may render the basis of a complaint/report nullified, but a person's rights are not affected as the criminal justice system has processes to ensure fairness and equity, including appeals procedures.
- (b) A complaint that has already been settled in another way. This includes a determination by a Court or Tribunal service or other statutory regulator/arbitration/ombudsman service.

14.0 REVIEW OF THE ENFORCEMENT POLICY

This Policy will be reviewed bi-annually.