

# **ENVIRONMENTAL HEALTH ENFORCEMENT POLICY**

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002	19/05/2016	Updated to reflect Better Regulation Delivery Office – Regulators Code 2014 and the Enforcement Concordat

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# **ENVIRONMENTAL HEALTH SERVICES ENFORCEMENT POLICY**

## **1. Introduction**

1.1 This Policy covers the work of Environmental Health Services. It is a new policy covering the delivery of enforcement and making reference to the Better Regulation Delivery Office – Regulators Code 2014.

1.2 Environmental Health Services play a vital role in protecting and supporting the public, the environment and groups such as residents, workers and businesses in the Borough of Brentwood. It is important that these enforcement functions are carried out in an equitable, practical and consistent manner, and that both those subject to and beneficiaries of regulation and those on whose behalf enforcement is carried out can understand the approach we as a Council take.

1.3 The Council is under a duty to enforce a range of statutory instruments adopting a variety of formal and informal sanctions. This can include anything from advising food businesses about what they need to do to comply with the law, to prosecuting a householder for noise nuisance. This places the Council and its officers in a position of responsibility to ensure that its approach fits with national and local policy, codes and guidance. This is particularly important with regard to the economic challenges facing local government and business.

## **2. Executive Summary**

2.1 The purpose of this policy is to explain clearly the approach of the Council's Environmental Health Services towards enforcement when dealing with non-compliance. It provides guidance on the range of options available to achieve compliance with the legislation we enforce, and how discretionary powers may be used to regulate and raise standards in various sectors. The document is intended to communicate Brentwood Borough Council's policy in respect of its approach to those affected by its activities and officers of the local authority.

2.2 It also sets out the principles applied to encourage smarter, risk-based enforcement. The Council is committed to ensuring that its officers act in accordance with this policy. It is not in itself a statement of law and does not affect the discretion of the Council to take legal proceedings where this is considered to be in the public interest.

2.3 This policy was written having regard to the principles outlined in the Better Regulation Delivery Office – statutory Regulators Code. It was subject to a consultation process with Councillors and local stakeholders before being submitted to the Policy, Finance and Resources Committee for approval.

### **3. Enforcement Policy Statement**

3.1 The Council is committed to following good enforcement practice in accordance with current legislation listed at Appendix B. This includes carrying out our activities in a way that enables those we regulate to comply and grow, avoiding imposing unnecessary regulatory burdens, and assessing whether similar social, environmental and economic outcomes could be achieved by less burdensome means.

3.2 This policy has been produced in cognisance of Brentwood Borough Council's obligations under Section 17 of the Crime and Disorder Act 1998 to exercise its functions, and do all that it reasonably can to prevent and reduce crime and disorder in its area.

3.3 This policy is also in accordance with the government's 'Better Regulation Agenda'. Specifically, it implements good practice recommended by the Cabinet Office Enforcement Concordat; the Regulators' Code; and the regulatory principles required under the Legislative and Regulatory Reform Act 2006, including the duty to have regard to economic growth (the 'Growth Duty').

3.4 All authorised officers when making enforcement decisions shall abide by this policy, and the supporting documented procedures, both within the appendices and departmental processes.

3.5 This Policy lays out the generic principles for good enforcement. This is refined where relevant with service – specific enforcement standards, procedures and standards that are referenced within the attached appendices. These will be reviewed and updated in light of new legislation, guidance and service demands.

### **4. Context**

#### **4.1 Definition of 'Enforcement'**

4.1.1 "Enforcement" includes any action taken by officers aimed at ensuring that individuals or businesses comply with the law. The term "enforcement" therefore has a wide meaning and applies to all dealings between the Council and those upon whom the law places responsibilities. It is not limited to formal enforcement action such as prosecution, but can include a range of interventions that seek to achieve compliance with the law.

#### **4.2 The importance of enforcement**

4.2.1 Regulation is important for the protection of the vulnerable, or to achieve other social or environmental objectives. The appropriate use of enforcement powers, including prosecution is important, both to secure compliance with the law and to ensure that those who have duties under it may be held to account for failures to comply. The Council places great importance on the consistent use of

enforcement action and does not set itself numerical targets for prosecutions or statutory notices.

4.2.2 Good enforcement should help economic prosperity and encourage sustained growth without placing unreasonable burdens on businesses. Through their actions, the regulators incorporated within this policy, help to maintain a 'level playing field' to allow fair competition and good companies to thrive. It is acknowledged that this resource should also be encouraging compliant businesses to grow through proportionate regulatory activity and provision of reliable advice, without compromising the protection of the public. There is also ample evidence to show that appropriate compliance can reduce avoidable expenditure, for example by lowering labour costs as a result of fewer accidents.

### **4.3 The need for an Environmental Health Services Enforcement policy**

4.3.1 There is an expectation from national bodies such as the Better Regulation Delivery Office (Department for Business, Innovation and Skills), the Food Standards Agency and the Health and Safety Executive amongst others that local authorities will clearly set out their policy with respect to enforcement to ensure that there is clarity for all parties who may be affected. The policy must be subject to appropriate consultation at local level before being endorsed by Members. Fair and effective enforcement is essential to protect the health and safety and economic interests of the public, businesses and the environment. Decisions about enforcement action and, in particular the decision to prosecute, have serious implications for all involved. Environmental Health Services will apply this policy to ensure that:-

- Decisions about enforcement action are open, fair, proportionate and consistent
- Officers apply current Government guidance and relevant codes of practice
- Everyone understands the principles, which are applied when enforcement action is considered.

### **4.4 Scope of the enforcement policy**

4.4.1 The Regulators Code and Enforcement Concordat apply to: -

- Environmental Health
- Licensing

### **4.5 Brentwood's approach to enforcement**

4.5.1 In coming to a decision on how to deal with non-compliance, we will have regard to the following principles which are set out in the Macrory review<sup>1</sup> of Regulatory Penalties. In particular, our actions should:-

- Aim to change the behaviour of the offender
- Aim to eliminate any financial gain or benefit from non-compliance

1. [http://webarchive.nationalarchives.gov.uk/20070305103615/http://cabinetoffice.gov.uk/regulation/reviewing\\_regulation/penalties/index.asp](http://webarchive.nationalarchives.gov.uk/20070305103615/http://cabinetoffice.gov.uk/regulation/reviewing_regulation/penalties/index.asp)

- Be 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
- Be proportionate to the nature of the offence and the harm caused
- Aim to restore the harm caused by regulatory non-compliance, where appropriate
- Aim to deter future non-compliance.

4.5.2 In achieving compliance, we will also deliver against the principles of good enforcement which include openness, helpfulness, proportionality, consistency, targeting, transparency and accountability. On occasions this will involve working in partnership with other enforcement agencies.

#### **Openness:-**

- We will provide information and advice in plain language on the rules that we apply. This may be provided either verbally, by telephone, on the Councils' website, by personal visit where appropriate, electronically or in writing.
- We will be open about our work, including any charges that are set.
- We will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.
- We will make it clear what should be expected from the Council as an Enforcement Authority.
- We will respond to requests for information under the Freedom of Information Act or Environmental Information Regulations, within 20 working days. Our document retention policy will detail our commitment to records management.

#### **Helpfulness:-**

- As prevention is better than cure, we will actively work with individuals and businesses to advise and assist. We encourage compliance by providing guidance and liaising with stakeholders on how this can best be presented and disseminated – a request for advice will not directly trigger enforcement action where there is a willingness to resolve any noncompliance which may be identified.
- Our staff will identify themselves and provide a courteous and efficient service.
- We will provide a contact point and telephone number to encourage individuals and businesses to seek advice/information from us.
- Applications for approval of establishments, licensing, registration, or authorisation will be dealt with efficiently and promptly.

## **Proportionality:-**

- We aim to minimise the cost of compliance by ensuring that any action required is proportionate to the risk and that we take proper account of the economic consequences of our actions.
- As far as the law allows, we will take account of the circumstances of the case and the attitude of the offender when considering action.
- We will help to promote a thriving local economy by maintaining a fair and safe trading and working environment.
- We are committed to choosing proportionate approaches based on relevant factors such as business size and capacity.
- We are committed to dealing firmly with those who deliberately or persistently fail to comply.

## **Consistency:-**

- We will carry out our duties in a fair, equitable and consistent manner.
- Officers are expected to exercise judgment in individual cases but we will endeavor to ensure that a similar approach is taken in similar circumstances.
- We will take account of advice offered to us through bodies such as the Local Government Association (LGA), Food Standards Agency (FSA), Health and Safety Executive (HSE) and the Department for Business Enterprise and Regulatory Reform (BERR).
- Where a Primary Authority Partnership exists, officers will consider advice previously issued by the primary authority when considering the most appropriate course of action. Where, after further liaison with the primary authority, officers consider that formal action is still appropriate; the statutory notification process will be followed. This scheme does not preclude officers from taking immediate action in the event of serious or imminent risks to health or safety.
- Where there is a wider regulatory interest, we will liaise and co-operate with or pass information to the appropriate enforcement agency. This may include the sharing of intelligence with other Government Agencies, Police Forces, Fire Authorities, Statutory Undertakers or other Local Authorities.
- We will liaise with our colleagues in other Essex Authorities and Regulatory Services, to share information and intelligence, and develop a consistent approach to enforcement, e.g. through the use of common protocols.
- We will consult in developing clear standards, setting out the level of service and performance the public and businesses can expect to receive.
- We will publish our standards and how we have performed annually by way of service plans, statutory and key performance indicators.
- Advice from officers will be put clearly and an explanation given as to why remedial works are necessary.
- The timescales for compliance with notices will be reasonable.

### **Targeting:-**

- We will ensure resources are targeted primarily on those whose activities give rise to the most serious risks, where the hazards are least well controlled, or where there is most potential for irreversible harm to the built and natural environments.
- We will ensure that action is focused on the duty holders who are responsible for the risk and who are best placed to control it through the use of a graduated enforcement approach.
- We will identify and implement risk-rating schemes for all service areas where our work routinely brings us into contact with businesses.
- We will seek to ensure our resources are used with maximum effectiveness to avoid burdening businesses with the costs of unnecessary interventions.
- Where more serious non-compliances are identified, we will advise duty holders of the circumstances under which a revisit will be undertaken and the timescale for that revisit.

### **Transparency:-**

- We will help duty holders to understand what is expected of them and what they should expect from officers.
- We will clearly distinguish between legal requirements and good practice advice.
- We will have regard to this enforcement policy when making decisions about the appropriateness of enforcement actions. Where for any reason a decision needs to be taken outside of, or in contravention of this policy, a clear and reasoned argument will be recorded as to why that decision was taken.

### **Accountability:-**

- We will ensure that we have policies and procedures against which our work can be judged.
- We will ensure there is an effective and accessible mechanism for dealing with comments and complaints.
- Officers are responsible to Elected Members, the public and Government bodies for their actions.

## **4.6 Enforcement options and procedures**

4.6.1 Officers will take the most appropriate course of action and each case will be considered in accordance with this document. Enforcement decisions will be fair, independent and objective and will not be influenced by issues such as ethnicity or origin, gender, religious belief, political views or the sexual orientation of the suspect, victim, witness or offender. Decisions will not be affected by undue pressure from any source. Our decisions will have appropriate regard to the principles promoted through the Council's HR policies.

## **4.7 Working in partnership with others**

4.7.1 Where appropriate, enforcement activities within Environmental Health Services will be coordinated with other regulatory bodies and enforcement agencies, both within and outside the council. In this way, we will seek to maximise the appropriateness and effectiveness of any enforcement and have an integrated approach to problem solving.

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

## **4.8 Recovering our costs**

4.8.1 We will seek to recover all our legitimate costs from convicted offenders. The Council will also consider either through its own officers or in co-operation with the Police may make an application under the Proceeds of Crime Act 2002 to restrain or confiscate the assets of the offender. The purpose of any such actions would be to recover any financial benefit that the offender has obtained from their criminal conduct.

## **4.9 Publicity**

4.9.1 We will consider, in all cases, drawing media attention to factual information about charges that have been laid before the courts, but will take great care to avoid any publicity that could prejudice a fair trial. We will also consider publicising any conviction that could serve to draw attention to the need to comply with legal requirements or deter anyone tempted to disregard their duties.

## **4.10 Enforcement in respect of Brentwood Borough Council**

4.10.1 On rare occasions, there may be a perceived potential for conflict of interest where the Council has ownership or management interests in premises normally enforced by their own inspecting officers. For instance, where the Council is the clear duty-holder for health and safety purposes, the premises will be transferred to the Health and Safety Executive for enforcement purposes. Responsibility for day-to-day health and safety at work matters on such premises lies with the head of the relevant service. In other contexts, such as food hygiene, pollution or licensing issues, enforcement officers will offer advice as they would in other circumstances. If considered necessary, any disputed matters would be referred to the Head of Paid Service.

## **4.11 Comments, compliments, complaints**

4.11.1 Brentwood Council is committed to the delivery of responsive, good quality customer services to the people of the Borough and would welcome comments and feedback about the impact the enforcement policy may have on local residents and/or business through our Customer Contacts Team.

## **4.12 Policy review**

4.12.1 It is considered good practice to review Council policies. In future, a 3 yearly review of this Policy will provide a reasonable timetable in line with other Regulatory Service policies. A review may also be appropriate in the intervening period if there is a significant change in legislation, national codes, guidance or national or local policy.

## **5. Outcomes and Priorities**

5.1 This policy seeks to achieve the following Outcome and Priorities:-

### Outcomes

- A balanced and transparent enforcement approach which is understood by all relevant stakeholders.

### Priorities

- Ensuring that stakeholders, including local businesses have a clear understanding of how enforcement decisions are taken at Brentwood;
- Delivery of enforcement activity in a way which is consistent with national and local priorities.

## **6. Links to other Corporate Policies or Partner documents**

- This Policy links with the aims and objectives outlined within the Brentwood Borough Council Corporate Plan – ‘Vision for Brentwood 2016-19’.

## **7. Application of the Enforcement Concordat**

7.1 This Policy also adopts the Enforcement Concordat (of 1999) as produced by the Cabinet Office. This predates the Regulators Code. The Concordat is a voluntary, non-statutory code of practice. It sets out the following Principles of Good Enforcement: -

- Standards – setting clear standards
- Openness – clear and open provision of information
- Helpfulness – helping businesses by advising and assisting with compliance
- Complaints about service – having a clear complaints procedure
- Proportionality – ensuring that enforcement action is proportionate to the risks involved
- Consistency – ensuring consistent enforcement practice

7.2 In adopting the Enforcement Concordat the Authority agrees to the principles within it, which are as follows: -

- Determining Lead Officer responsibility (as necessary) for its implementation at the Council
- Reviewing existing policies (as necessary) across Environmental Health and Licensing Services
- Consulting with businesses
- Drawing up a strategy for implementation, and
- Monitoring of systems, involving continuous assessment and consultation

7.3 Formal adoption of the Enforcement Concordat was via the Department of Trade and Industry, however, there is no longer any mechanism for this given the documents' age. The document continues to apply.

The Enforcement Concordat is attached at Appendix J.

## **8. Appendices**

- A. Outline of functions within Environmental Health Services
- B. Legislation, guidance and codes that influenced the preparation of the enforcement policy
- C. Conduct of Investigations
- D. Enforcement options and procedures
- E. Food Safety Enforcement
- F. Health and Safety Enforcement
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## Appendix A

### OUTLINE OF FUNCTIONS WITHIN ENVIRONMENTAL HEALTH SERVICES

#### 1. ENVIRONMENTAL HEALTH AND LICENSING

Environmental Health Practitioners deliver a wide range of services aimed at safeguarding the environment and improving the health, safety and well-being of our community. They work to ensure that the air is clean; food is fit to eat; housing is suitable for habitation; and workplaces are safe.

The Service at Brentwood is divided into 3 sections supported by an administration team and reporting direct to the Head of Paid Service. There is an Environmental Protection Team, a Commercial Team, which covers food safety, health and safety, and a Licensing Team. The main areas of work are as follows:-

Animal Control	<ul style="list-style-type: none"> <li>▪ Pest Control – advice</li> <li>▪ Control of stray dogs</li> <li>▪ Promoting responsible animal and pet management</li> </ul>
Housing	<ul style="list-style-type: none"> <li>▪ Tackling unsatisfactory conditions in private rented accommodation</li> <li>▪ Inspection and licensing of houses in multiple occupation</li> <li>▪ Detection of overcrowding</li> <li>▪ Grants for making repairs, improvements or adaptations to homes to allow independent living</li> </ul>
Pollution Control	<ul style="list-style-type: none"> <li>▪ Air, land, water pollution monitoring and control.</li> <li>▪ Authorisation of industrial processes that discharge to the atmosphere.</li> <li>▪ Stopping statutory nuisances</li> <li>▪ Rectifying defective private drainage systems</li> </ul>
Public Health	<ul style="list-style-type: none"> <li>▪ Promoting public health initiatives</li> <li>▪ Enforcement of ‘Smokefree Regulations’</li> <li>▪ Dealing with filthy and verminous premises</li> </ul>
Food Safety	<ul style="list-style-type: none"> <li>▪ Investigating food poisoning outbreaks and control of communicable disease</li> <li>▪ Inspection of food businesses - enforcement and advice</li> <li>▪ Investigation of complaints about food and food sampling</li> <li>▪ sampling</li> <li>▪ Provision of food hygiene training courses.</li> <li>▪ Food hygiene controls.</li> </ul>
Health and Safety	<ul style="list-style-type: none"> <li>▪ Inspection of workplaces - enforcement and advice</li> <li>▪ Investigation of accidents at work.</li> <li>▪ Investigation of complaints about health and safety at work</li> <li>▪ Securing processes and workplaces</li> </ul>
Licensing	<ul style="list-style-type: none"> <li>▪ Various licensing and registration functions</li> <li>▪ Regulating alcohol and entertainments, gambling, trading</li> </ul>

	controls, taxis, skin piercing, animal establishments and charitable collections. <ul style="list-style-type: none"><li>▪ Certain road closures.</li></ul>
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## **Appendix B**

### **LEGISLATION, GUIDANCE AND CODES THAT INFLUENCED THE PREPARATION OF THE ENFORCEMENT POLICY**

#### **1. PRINCIPLES OF GOOD REGULATION**

The Legislative and Regulatory Reform Act 2006, Part 2, requires Brentwood Borough Council to have regard to the Principles of Good Regulation when exercising a specified regulatory functions. For local authorities, the specified functions include those carried out by our environmental health and licensing services.

We will exercise our regulatory activities in a way which are:-

- (i) Proportionate – our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence,
- (ii) Accountable – our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures,
- (iii) Consistent – our advice to those we regulate will be robust and reliable and we will respect advice provided by others. Where circumstances are similar, we will endeavour to act in similar ways to other local authorities,
- (iv) Transparent – we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return, and
- (v) Targeted – we will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities.

#### **2. REGULATORS' CODE**

Brentwood Borough Council has had regard to the Regulators' Code (made under section 23 of the Legislative and Regulatory Reform Act 2006) in the preparation of this policy. 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.

#### **3. HUMAN RIGHTS ACT 1998**

Brentwood Borough Council is a public authority for the purposes of the Human Rights Act 1998. We therefore apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms. 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.

#### **4. DATA PROTECTION ACT 1998**

Where there is a need for Brentwood Borough Council to share enforcement information with other agencies, we will follow the provisions of the Data Protection Act 1988.

#### **5. REGULATORY ENFORCEMENT AND SANCTIONS ACT 2008 ('the RES Act')**

The Regulatory Enforcement and Sanctions Act 2008, as amended, established the Primary Authority scheme. We will comply with the requirements of the Act when we are considering taking enforcement action against any business or organisation that has a primary authority, and will have regard to guidance issued by the Secretary of State in relation to Primary Authority.

#### **6. CRIME AND DISORDER ACT 1998**

Section 17 of the Crime and Disorder Act 1990 imposes a duty on local authorities to exercise its functions with due regard to the crime, disorder and environmental issues affecting the local area and do all they reasonably can to prevent them. The duty reflects the reality that there are potential crime or disorder implications in decisions made across the full range of statutory services.

#### **7. FOOD FRAMEWORK AGREEMENT**

The Framework Agreement on official feed and food law controls sets out what the Food Standards Agency expects from local authorities in their delivery of official controls on feed and food law. This takes account of the Government's better regulation agenda and of principles of good regulation.

#### **8. HEALTH AND SAFETY EXECUTIVE'S ENFORCEMENT POLICY STATEMENT**

This Policy Statement sets out the general principles and approach which the health and safety enforcing authorities are expected to follow. All local authority staff who take enforcement decisions are required to follow the above statement.

## **Appendix C**

### **CONDUCT OF INVESTIGATIONS**

All investigations will be carried out under the following legislation and in accordance with any associated guidance or codes of practice, in so far as they relate to Brentwood Borough Council:-

- the Police and Criminal Evidence Act 1984
- the Criminal Procedure and Investigations Act 1996
- the Regulation of Investigatory Powers Act 2000
- the Criminal Justice and Police Act 2001
- the Human Rights Act 1998

These Acts and associated guidance control how evidence is collected and used and give a range of protections to citizens and potential defendants. Officers of Environmental Health Services are authorised to make use of these powers, but they do not have the power to arrest.

Our authorised officers will also comply with the requirements of the particular legislation under which they are acting, and with any associated guidance or codes of practice.

#### **1. INTERVIEWS UNDER CAUTION**

The individual/company under investigation will be offered the opportunity of an interview under the Police and Criminal Evidence Act where the option of formal action (simple caution or prosecution) is under consideration.

#### **2. STATUTORY TIME LIMITS**

Any investigation will be governed by the statutory time limit involved and any report to be considered for prosecution will be completed as soon as possible. Witnesses and others involved in an investigation will be kept informed of the progress of the investigation by the investigating officer.

#### **3. CASE REVIEWS**

The line manager will review the progress of investigations with the case officer on a regular basis. Proceedings will only be instigated once the case file has been signed off by a senior manager.

#### **4. MANAGEMENT SYSTEMS**

The Council will maintain a management system to monitor and review the quality and nature of the enforcement activities undertaken in these services in order to demonstrate the effectiveness of the policy with respect to its aims and objectives and

to recommend changes and improvements. This will be periodically reviewed by service managers.

Service managers will ensure all staff are trained to ensure they are fully conversant with this policy and arrange retraining and updating when necessary.

## **5. COMPLAINTS AGAINST THE SERVICE**

If any person is aggrieved with the action taken or information or advice given by officers of Brentwood Borough Council or believe they have not received fair or consistent treatment as outlined in this policy, they will be given the opportunity to discuss the matter with the relevant line manager.

If not satisfied by those discussions the matter can be taken up with the service manager, who will consider the complaints, decide whether the enforcement policy has been breached in this instance and give a reply in writing. This is without prejudice to any formal appeal mechanism. If the problem cannot be resolved, the person will be informed of the Council's complaints procedure.

## **Appendix D**

### **ENFORCEMENT OPTIONS AND PROCEDURES**

#### **1. NOTIFYING ALLEGED OFFENDERS:**

If we receive information (for example from a complainant) that may lead to 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.

During the progression of enforcement investigations or actions, all relevant interested parties, such as business proprietors 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 required and/or in accordance with the Data Protection Act 1998.

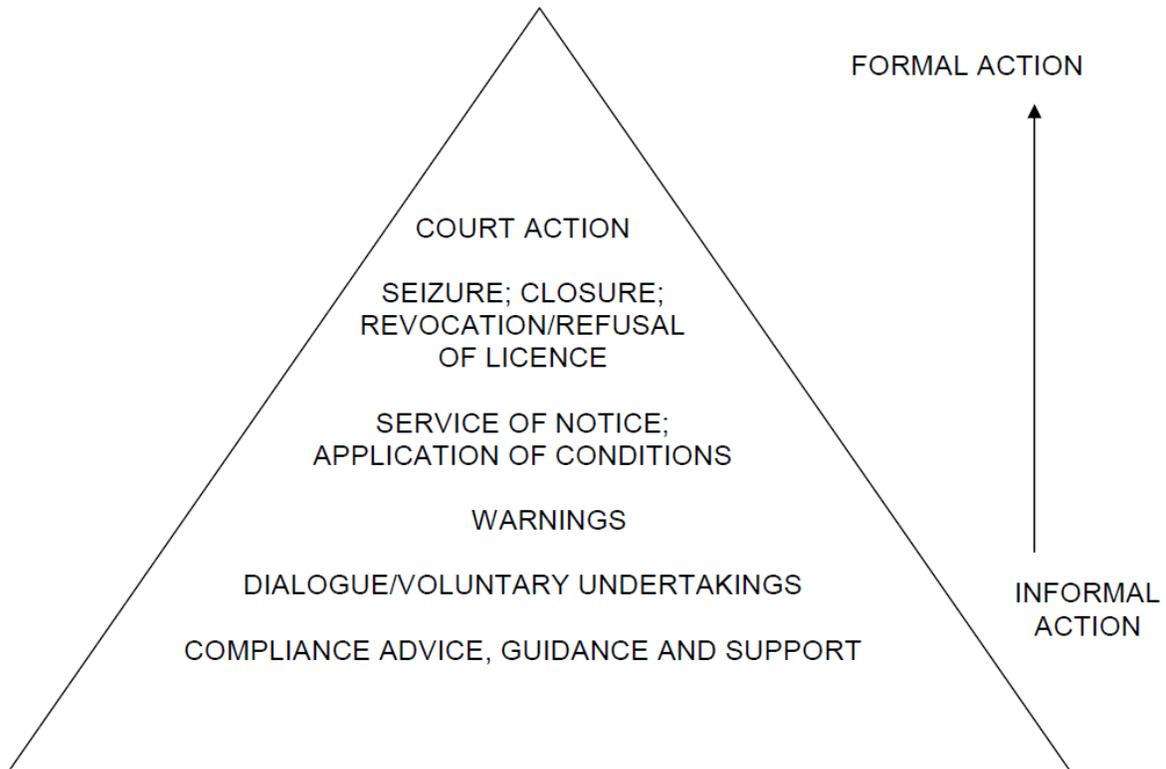
#### **2. GRADUATED ENFORCEMENT APPROACH:**

Decisions about the most appropriate enforcement action to be taken are based upon professional judgment, legal guidelines, statutory codes of practice and priorities set by the Council and/or Central Government. Decisions will take account of the following: –

- the seriousness of the offence;
- the past history of the offender(s);
- confidence in the duty holder's willingness and ability to prevent a recurrence;
- the consequences of non-compliance;
- the likely effectiveness of various enforcement options;
- what is in the public interest/benefit;
- the views of any victim, injured party or relevant person to establish the nature and extent of any harm or loss, and its significance;
- sufficiency of evidence to support the action.

The individual service areas will have certain powers which are specific to their role and the legislation that they enforce. This is covered in more detail in the appendices.

Having considered the above, the evidence and any other relevant information, we have a range of compliance options available to us with the enforcement options indicated below.



### 3. TO TAKE INFORMAL ACTION – SUCH AS: -

- giving verbal advice and/or information
- advice or warning letter
- verbal warning
- acceptance of a voluntary undertaking to rectify or prevent recurrence of breaches

Informal action may be appropriate if: –

- the act or omission is not serious enough to warrant formal action;
- previous experience indicates that informal action will achieve compliance;
- non-compliance will not pose a significant risk to public health or safety or breaches are minor in nature, or are not causing demonstrable harm to visual or residential amenities ;
- informal action is appropriate and likely to be effective in assisting individuals and businesses in rectifying breaches as quickly and efficiently as possible.

When such an approach is used to secure compliance with legislation, any written documentation issued will:

- specify the legislation that has been contravened;
- specify what remedial action is required, together with the reasons;

- ensure that any recommended areas of good practice which are above the minimum levels required by statute are clearly differentiated within the document;
- where examples are given of how compliance may be achieved, make clear that alternative means of compliance may also be acceptable;
- highlight the right to question works required by raising the matter with the relevant named manager.

In the case of health and safety matters, a copy will be sent to staff representatives.

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 offer advice about “good practice”, but we will clearly distinguish between what must be done to comply with the law and what is advice only.

Failure to follow informal advice or honour voluntary undertaking (s) relating to contraventions of the law could result in an escalation of enforcement action. Advice and verbal warnings will be noted on the relevant case file. If a similar breach is identified in the future, details of advice given previously will be persuasive in considering the most appropriate enforcement action to take on that occasion. Such information may be presented in evidence.

#### **4. TO TAKE FORMAL ACTION – SUCH AS: -**

- serving Statutory Notices e.g. abatement notices, Improvement and Prohibition Notices;
- serving Fixed Penalty Notices or Penalty Charge Notices;
- offering a simple caution;
- prosecution;
- seizure of equipment, goods or materials;
- closure of premises
- revocation of a license
- injunctive restraint
- execution of work required by statutory notice where the recipient has not complied and recovery of all reasonable costs incurred
- compulsory purchase /management/control of property
- fine and statutory charges

In some cases a combination of these options may be appropriate. Officers will comply with Codes B, C and E of the Police and Criminal Evidence Act 1984 (PACE) as it relates to local authority enforcement.

Code B deals with police powers to search premises and to seize and retain property found on premises and persons. Code C sets out the requirements for the detention, treatment and questioning of suspects not related to terrorism in police custody by

police officers. Code E deals with the tape recording of interviews with suspects in the police station.

Formal action and prosecution will be taken in respect of the most serious cases. This is usually where an offence has occurred, the person responsible has been identified and one or more of the following applies: -

- action is required by statute;
- urgent action is required;
- the protection of a vulnerable individual needs to be secured or there is benefit to the public;
- action has been or needs to be taken by default;
- there is reason to believe that the duty holder responsible will not take the required steps within a reasonable period of time;
- an Authorised Officer has been obstructed in the course of their duties;
- any other reason where the Authorised Officer can justify the need to the Service Manager

#### **4.1 Service of Notices:**

Certain legislation allows notices to be served requiring offenders to take specific actions ('Improvement Notices'). Notices may require activities to cease immediately ('Stop Notices', 'Prohibition Notices', 'Emergency Prohibition Notices') where the circumstances relating to health, safety, environmental damage or nuisance. In other circumstances, the time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of noncompliance.

Such notices are legally binding. Failure to comply with a statutory notice can be a criminal offence and may lead to prosecution and/or where appropriate, the carrying out of work in default. Some notices issued in respect of premises may be affixed to the premises and/or registered as local land charges.

In deciding whether to serve either a Statutory Notice, the following conditions will also apply: –

- standards are generally poor with little management awareness of statutory requirements;
- non-compliance could be potentially serious to public health, or there is a threat to the amenity of the area.

It should only be necessary to consider the use of a Prohibition Notice in one or more of the following circumstances: –

- the consequences of not taking immediate and decisive action to protect public health or amenity would be unacceptable;
- in the case of health and safety at work, an imminent risk of injury or health can be demonstrated; the guidance criteria, specified in relevant Codes of Practices are fulfilled;

- there is no confidence in the integrity of an offer made by a duty holder to voluntarily close premises, cease work or cease the use of any equipment, process or treatment which is the subject of the noncompliance.

In serious cases, it may be necessary to adopt a variety of enforcement options to achieve the appropriate outcomes. In serious cases, this may include prosecution as well as serving notice(s).

#### **4.2 Right of Appeal against Notices and Works in Default**

Where there are rights of appeal against formal action, advice on appeal procedures will be clearly set out in writing at the time the action is taken together with an explanation of the implications of non-compliance. Specifically, whenever possible, this advice will be issued with the Enforcement Notice.

Certain types of notice allow works to be carried out in default. This means that if a notice is not complied with, then the local authority can decide to carry out the works to satisfy the requirements of the notice. Furthermore, where the law allows it, the person or business served with the notice can then be charged for the costs incurred by the Council.

#### **4.3 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 nuisance, or any goods that may be required as evidence for possible future court proceedings. When goods are seized, the person from whom the goods are taken will be given an appropriate receipt, and an explanation explaining the reason for the seizure and the implications of that process for the item(s) seized. In some cases, forfeiture can follow court action.

#### **4.4 Fixed Penalty Notices (FPN) & Penalty Charge Notices PCN)**

Certain laws enable the service of fixed penalty notices to secure an immediate sanction to be imposed where a breach of legislation has been witnessed. These are recognised as a low-level enforcement tool (they are not a criminal fine), which avoids the offender acquiring a criminal record. The officer could choose to issue such a notice without issuing a warning. Failure to pay the fine is likely to result in the offender being prosecuted in the case of a Fixed Penalty Notice, or pursued in the County Court in the case of an unpaid Penalty Charge Notice.

If a fixed penalty is paid in respect of a breach, Brentwood Borough Council will not take any further enforcement action in respect of that breach. Payment of a fixed penalty does not provide immunity from prosecution in respect of similar or recurrent breaches.

Brentwood Borough Council is only able to issue fixed penalty notices where it has specific powers to do so (e.g. smoking in an enclosed public place or fly tipping offences). Where fixed penalty notices are available, their issue will be at the discretion

of Brentwood Council. In some cases, in particular where breaches are serious or recurrent, it may be that prosecution is more appropriate than the issue of a fixed penalty notice.

#### **4.5 Refusal, Suspension and Revocation of Licences**

A business or individual may require prior approval such as a licence, registration, permission or permit before carrying out a certain activity. The Council administers numerous licensing and permissioning regimes, each having different rules for making applications and their determination. It is impossible to fully explain these procedures in this document and applicants and licence-holders should contact the relevant service area if they are in any doubt.

In the case of licensing, usually the local authority grants a licence upon receipt of a valid application if the requirements for licensing are met. These standards may be specified in legislation, local byelaws, or other suitability criteria adopted by the local authority. In some cases, an application must be advertised and the determination of the licence will depend upon the receipt of representations. In certain instances, the council will arrange a hearing to determine the application, commonly resulting in a decision to grant the licence, with or without conditions, or to refuse the licence.

Where a licence or other form of prior approval is refused, the business/individual will be advised on the reason for refusal, and where appropriate the action which must be taken in order to enable the authority to issue the appropriate licence/approval. Advice will be given on the appeal processes open to the business or individual concerned.

Various sanctions are available to local authorities where breaches of statute or licence conditions come to light. Informal actions may result (as described above). Alternatively many licence regimes allow the licensing authority to suspend or revoke the licence, where this is justified. Aggrieved parties can usually appeal against these decisions to a Magistrates Court. When considering future licence applications, Brentwood Council may take previous breaches and enforcement action into account.

#### **4.6 License Reviews**

A premises licence may be reviewed by the licensing authority of its own volition or following the receipt of an application for a review, which is essentially a request by a third party to the licensing authority to review a particular licence.

#### **4.7 Injunctive Actions, Enforcement Orders, etc.**

In some circumstances, Brentwood Council may seek a direction from the court (in the form of an order or an injunction) that a breach is rectified and/or prevented from recurring. The court may also direct that specified activities be suspended until the breach has been rectified and/or safeguards have been put in place to prevent future breaches.

Failure to comply with a court order constitutes contempt of court - a serious offence which may lead to imprisonment.

Brentwood Council is required to seek enforcement orders after issuing some enforcement notices, providing the court with an opportunity to confirm the restrictions imposed by the notice. Otherwise, we will usually only seek a court order if it has serious concerns about compliance with voluntary undertakings or a notice.

#### **4.8 Prosecutions and Simple Cautions**

We follow guidance Code for Crown Prosecutors set by the Crown Prosecution Service in applying two tests that determine whether a prosecution or simple caution is viable and appropriate. A simple caution or prosecution proceedings will only be progressed when the case has passed both the evidential test and the public interest test.

##### **4.9 The Evidential Test:**      *Is there enough evidence against the defendant?*

When deciding whether there is enough evidence to charge, the local authority must consider whether the evidence can be used in court and is reliable. The Council must be satisfied there is enough evidence to provide a "realistic prospect of conviction" against each defendant on each charge, assuming that a jury or bench of magistrates are properly directed in accordance with the law.

##### **4.10 The Public Interest Test:**      *Is it in the public interest 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. The Council must balance factors for and against prosecution carefully and fairly. A decision to prosecute usually depends on the seriousness of the offence or the circumstances of the suspect. Some factors may increase the need to prosecute but others may suggest that another course of action would be better.

##### **4.11 Simple Cautions**

A simple caution may be offered where there is an admission and acceptance of guilt. Normally this will only be offered for first (or less serious) offences; the offender should not have received a simple caution for a similar offence within the last 2 years. Sufficient evidence will have been obtained to prove the case, and it has been determined that this course of action is in the public interest. The offender must be 18 years of age or over.

This course of action is normally considered when the criteria for prosecution are met but extenuating circumstances suggest a more lenient approach would achieve the same objectives. A simple caution will appear on the offender's criminal record. Should the offer of a simple caution be refused, then a prosecution should automatically follow.

Simple cautioning will not be used as an alternative to a weak prosecution case.

A simple caution may be issued as an alternative to prosecution. Simple cautions will be issued to:

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

In considering whether to administer a simple caution the following criteria must be met:

- there must be evidence of the offender's guilt sufficient to give a realistic prospect of conviction. In other words a conviction should be more likely than an acquittal before a court of law;
- the offender must admit the offence; and
- the offender must be an adult and must understand the significance of a caution and give informed consent to being cautioned. This agreement will not be sought until it is decided that cautioning is the correct course of action.

In deciding whether to caution or prosecute the following factors must be taken into consideration:

- the nature and seriousness of the offence;
- the likely penalty if the offender was convicted by a court;
- the offender's age and state of health;
- the offender's previous criminal history;
- the offender's attitude towards the offence;
- the views of the victim or any aggrieved party;
- whether compensation has been paid;
- public interest;
- the likelihood of re-offending.

If the offender commits a further offence, the caution is likely to influence the Council's decision to take a prosecution. It is likely to influence how Brentwood Council and others deal with any similar breaches in the future, and may be cited in court if the offender is subsequently prosecuted or a similar offence. If a simple caution is issued to an individual (rather than a corporation) it may have consequences if that individual seeks certain types of employment.

Simple cautions will be used in accordance with Home Office Circular 016/2008 and other relevant guidance.

#### **4.12 Prosecution**

Prosecutions will only be undertaken when the offence and the person or body corporate responsible for it has been identified, and the duty holder has shown disregard for one or more of the following: -

- (a) The legal process;

- (b) The meeting of legal responsibilities, including for example, deliberate, negligent or persistent breach of legal obligations which were likely to cause material loss or harm to others, particularly where written warnings or formal notices have previously been issued;
- (c) The likelihood of the alleged offence to seriously prejudice the health, safety or other entitlement of people, animals or the environment, or
- (d) Brentwood Council officer(s), who in the course of their duties have been assaulted or obstructed.

A successful prosecution will result in a criminal record. The Court may impose a fine and in respect of particularly serious breaches a prison sentence. The court may order the forfeiture and disposal of non-compliant goods and/or the confiscation of any profits which have resulted from the breach. Prosecution may also lead, in some circumstances, to the disqualification of individuals from acting as company directors.

#### **4.13 Other Factors**

Other important legislation and government guidance exists which influences the local authority's enforcement activities and may have to be taken into account before enforcement action is commenced. Further explanation of such legislation is given at Appendix B.

Most legislation applies a statutory time limit in which offences must be investigated and resolved or prosecuted or they will be considered to be "out of time". We will seek to complete our investigations in a timely manner thus ensuring that we adhere to these time constraints.

#### **4.14 To Take no Action:**

There will be times when it is appropriate to take no action, particularly where there is no statutory contravention, or risk to public health, safety or amenity. This could also include where the cost of compliance to the offender outweighs the detrimental impact of the contravention; or the cost of the required enforcement action to the Council outweighs the detrimental impact of the contravention on the community. In such cases, we will advise the offender and/or the complainant of the reason for the decision taken. Where the law provides the complainant with other options to resolve the issues which affect them, such as civil remedies (e.g. Anti-Social Behaviour Orders), we will make sure that they are directed to the most appropriate source of information to assist them. This may involve referral to other council departments, external organisations or to seek independent legal advice.

#### **4.15 Civil Action:**

The enforcement action we take is distinct from any civil claims for compensation. We will not necessarily pursue enforcement actions in all cases where civil claims are anticipated, nor will the Council actively assist in such cases.

This is without prejudice to disclosure of information on investigations where this is permitted under statute, or required of the Council under the Freedom of Information Act.

#### **4.16 Anonymous Complaints:**

Such complaints are commonly received and the reasons for wishing to remain anonymous vary. Anonymity often hinders an investigation, preventing an officer from making a comprehensive assessment of all relevant facts to enable a just or informed decision on a matter. Furthermore, certain environmental health laws require the identification of someone who is aggrieved by the situation as a precursor to taking effective legal action.

Each anonymous complaint received will be assessed to determine the most appropriate follow-up action depending on the circumstances and seriousness of the allegation.

#### **4.17 Enforcement in respect of Brentwood Borough Council**

On rare occasions, there may be a perceived potential for conflict of interest where the Council has ownership or management interests in premises normally enforced by their own inspecting officers.

For instance, where the council are the clear duty-holder for health and safety purposes, the premises will be transferred to the Health and Safety Executive for enforcement. Responsibility for day-to-day health and safety at work matters on such premises lies with the head of the relevant service. In other contexts, such as food hygiene, pollution or licensing issues, enforcement officers will offer advice as they would in other circumstances. If considered necessary, any disputed matters would be referred to the Head of Paid Service.

### **5. ANCILLARY MATTERS CONCERNING THE ENFORCEMENT POLICY**

#### **5.1 Authorisations:**

All appointed officers will be properly authorised and act in accordance with our policy and the Scheme of Delegation maintained in accordance with the Council's Constitution. We will ensure that enforcement officers are trained and competent for the purposes of enforcing the relevant functions for which they are authorised. Authority for making decisions on instituting legal proceedings and other formal measures are similarly drawn from the Scheme of Delegation within the Council's Constitution.

## **5.2 Monitoring the Policy**

It is essential that officers adhere to the enforcement policy. To ensure that officers comply with this enforcement policy, line Managers will monitor selected cases. Deviations from the policy will be reported to the Head of Service. Head of Service will only accept any departure from policy in exceptional circumstances capable of justification, and only after full consideration and authorisation.

## **5.3 Appeals**

If any business or individual is unhappy with the action taken, or the information or advice given by the Council's Environmental Health Services staff, they will be given the opportunity of discussing the matter with the officer's line manager. This is without prejudice to any formal appeals mechanism. Further independent challenge panels are also available in respect of health and safety at work advice and food safety advice.

## **5.4 Health and Safety at Work advice**

If a business believes that action taken or advice given by one of our inspectors about health and safety at work is incorrect or exceeds what is required to control the risk adequately, they can initially contact the inspector who gave the advice or their line manager to raise their concerns in the first instance. If after this, they are still unhappy with the advice received, they can raise their concerns with the Independent Regulatory Challenge Panel at the Health and Safety Executive (HSE). The Panel will consider their concerns and make appropriate recommendations which our inspectors then have to have regard to.

Referral to the Independent Regulatory Challenge Panel is not appropriate if the concerns relate to service of legal notice(s) or prosecution action. In such cases, there are established appeal processes through the Employment tribunals or the courts.

## **5.5 Food Safety Advice to Businesses**

If a business is unhappy with written advice they have received on food safety issues because they think it is incorrect or goes beyond legal requirements, they can initially contact the officer concerned or their line manager to raise their concerns. If after this they are still unhappy with the outcome, we would ask the business to follow our complaints procedure. If it is felt that this has not provided a satisfactory outcome, there is then the option to raise the concerns with the Food Standards Agency's Independent Business Appeal Panel<sup>2</sup>. Referral to the Independent Business Appeal Panel is not appropriate if the concerns relate to service of legal notice(s) or prosecution action. In such cases, there are established appeal processes through the courts.

2. <https://www.food.gov.uk/business-industry/how-to-make-an-appeal/how-to-make-an-appeal/panel>

## **Appendix E**

### **FOOD SAFETY ENFORCEMENT**

#### **1. ENFORCEMENT OPTIONS**

The following section relates to the specific enforcement issues relating to the food safety work carried out by Brentwood Borough Council and is included to ensure compliance with the Framework Agreement. The authority has responsibility for enforcement of food legislation and carries out its food enforcement activities having regard to the provisions of the Food Law Code of Practice (England).

There is a range of enforcement options which are similar in principle to the main body of this policy – further explanation is provided as appropriate. Action could include one, or any combination of the following:-

- A. No action
- B. Revisit
- C. Advice
- D. Informal Action
- E. Formal Notice – Hygiene Improvement or Remedial Action
- F. Detention and Seizure
- G. Emergency Prohibition
- H. Revocation or suspension of approval
- I. Simple Caution
- J. Prosecution
- K. Warrant to Enter Premises
- L. Alternative enforcement strategy premises

##### **A) No action**

In exceptional circumstances, contraventions may not warrant any action. This could arise, for example where the cost of compliance to the business outweighs the detrimental impact of the contravention on the community. The Regulators Code is clear in expecting the service to recognise that; “a key element of their activity will be to allow, or even encourage economic progress and only to intervene where there is a clear case for protection”. Any decision to take no action will be recorded, including the reasons for this decision.

##### **B) Revisit**

We will advise a business if it is our intention to revisit. Revisits will be carried out in all instances where there is a formal notice. Where contraventions of food hygiene or processing regulations are found or evidence of poor hygiene practices, a revisit will be carried out but only where the premises is rated less than; ‘broadly compliant’ with food hygiene standards. For very minor contraventions, we may advise that a check will be carried out at the next routine inspection.

### **C) Advice**

We recognise that very often we are approached by businesses for advice on compliance issues and good hygiene practice. We will always offer appropriate advice, distinguishing between legal requirements and recommendations. We recognise that this is a very important part of our working relationship with businesses and demonstrates the willingness of the business to pro-actively manage situations. If significant contraventions are highlighted as a result of this contact, it may still be necessary to adopt an additional enforcement approach if public health needs protecting.

### **D) Informal Action**

Informal action to secure compliance with legislation will include offering advice and the use of written or verbal warnings, including those generated following inspection. Informal action will be considered in one or more of the following circumstances:-

- the act or omission is not serious enough to warrant formal action;
- the previous history of the individual/enterprise indicates that it can reasonably be expected to achieve compliance through the use of informal action;
- confidence in the management is high;
- the consequences of non-compliance will not pose a significant risk to public health.

Where an informal approach is used to secure compliance the written documentation issued will:-

- explain the scope of the inspection;
- contain all clear, unambiguous information necessary as required by the Food Law Code of Practice in order that the business may understand what work is necessary and why;
- indicate the measures which will enable compliance with legal requirements and clearly state that other means of achieving the same effect may be used;
- clearly indicate any recommendations of good practice under an appropriate heading, to distinguish them from legal requirements.

### **E) Formal Notices – Hygiene Improvement/Remedial Action**

The use of Hygiene Improvement or Remedial Action Notices would generally be followed in the following circumstances:

- there are significant contraventions of the legislation;
- there is a lack of confidence in the food business operator or enterprise to respond to an informal approach;
- there is a history of non-compliance with informal action;
- standards are generally poor with little management awareness of statutory requirements;

- the consequences of non-compliance could be potentially serious to public health;
- where it is intended to prosecute, and effective action also needs to be taken as quickly as possible to remedy conditions that are serious or deteriorating;
- additionally in terms of Remedial Action Notices, where the inspection process is being obstructed.

At the time of the visit, or at least prior to the service of a notice, the authorised officer will discuss with persons having the necessary authority to take action within the business, realistic time limits for compliance with the Notice – this will consider not only the practicality of carrying out works, but the food safety implications of the contravention.

A revisit will be made to assess compliance with the notice on the date of expiry. Failure to comply with a Hygiene Improvement Notice will normally lead to a prosecution.

### **F) Detention and Seizure**

Where officers have grounds for suspecting that food does not comply with the food safety requirements in Hygiene Regulations, they may use powers to inspect, detain, seize and arrange for condemnation of food. When food is seized, we will give the person from whom the food is taken an appropriate receipt. The food will then be taken before a Magistrate as soon as possible for them to confirm the seizure and condemn the food as unfit. If the Magistrate does not condemn the food, we will release it back to the owner who will be entitled to claim compensation for any loss suffered. We will always give full details of our actions to the owner of the food when we exercise this power, and explain the procedures and implications of any actions taken by both sides.

### **G) Emergency Prohibition**

The use of a Hygiene Emergency Prohibition Notice will be considered appropriate only if there is an imminent risk of injury to health and one or more of the following circumstances are present:-

- the consequences of not taking immediate and decisive action to protect public health would be unacceptable;
- an imminent risk of injury to health can be demonstrated. This might include evidence from relevant experts, including a food analyst or food examiner;
- the guidance criteria, specified in the Food Law Code of Practice concerning the conditions when prohibition may be appropriate are fulfilled;
- there is no confidence in the integrity of any offer made by the food business operator to voluntarily close the premises or cease the use of equipment, process, or treatment associated with the imminent risk.
- the food business operator is unwilling to confirm in writing his/her offer of a voluntary prohibition;

Wherever possible, a second opinion from another suitably authorised officer will be obtained prior to the notice being issued.

## **H) Revocation or Suspension of Approval/Licence**

This action would only be taken once other enforcement options have been considered since to take such action would affect the ability of the business to continue to trade. Revocation would be considered where:-

- serious deficiencies are identified;
- the officer has had to repeatedly stop production at the establishment and the food business operator is not able to provide an adequate guarantee that acceptable standards will be maintained in the future. In such cases, temporary suspension would be considered as a possible enforcement option in the first instance. A second opinion will be sought from another suitably authorised officer prior to any formal action being commenced.

## **I) Simple Caution**

The same principles apply as in Appendix D.

## **J) Prosecution**

The following are circumstances where prosecution may be initiated:

- the alleged offence(s) involve a significant/blatant breach of the law such that public health has been put at risk;
- the alleged offence(s) involve a failure by the suspected offender to correct an identified risk to food safety having been given reasonable opportunity to comply with the lawful requirements of an authorised officer;
- the offence(s) involves a failure to comply in full or in part with the requirements of a statutory notice;
- obstruction of an officer whilst undertaking his or her duties;
- there is a history of similar offences

The officer must be satisfied that there is sufficient relevant, admissible, substantial and reliable evidence that an offence has been committed.

In deciding whether or not to prosecute for an alleged infringement, regard will be had to 'The Code for Crown Prosecutors'. In particular a prosecution should not be commenced unless the 'Evidential Test' and the 'Public Interest Test' criteria specified in the Code have been met.

In considering whether the relevant criteria are met, the following factors will be considered:

- The seriousness of the alleged offence; where there is a risk of harm to public health or a disregard of legal standards for financial reward;
- The previous history, in particular whether there is a history of similar offences, or a failure to respond positively to past warnings or statutory notices;

- Any likelihood of being able to establish a defense;
- The reliability of the evidence available;
- The ability of witnesses and their willingness to co-operate;
- Any willingness by the defendant to prevent a recurrence of the problem;
- The probable public benefit of a prosecution and the importance of the case especially with respect to legal precedent;
- Any explanation offered by the company or suspected offender;
- Whether the offence was premeditated;
- The need to influence the offender's future behavior;
- Whether the evidence shows the defendant is an organiser of the offence;
- Whether the defendant was in a position of authority or trust;
- The effect on the offender's, or a witness's physical or mental health, balanced against the seriousness of the offence;
- The views of any victims;
- Whether the offence, although not serious in itself, is widespread in the area where it was committed;
- Whether the offender has put right the harm caused;
- Whether there is a realistic prospect of conviction.

Factors against prosecution would be that a small penalty is likely to be imposed, or the offence is due to a genuine mistake or misunderstanding, but this must be balanced with the seriousness of the offence.

Consideration will be given to prosecuting directors of bodies corporate where:

- it appears that the offence was committed with his/her consent, connivance or neglect; or
- it is likely that the body corporate may be wound up to avoid criminal proceedings.

Prosecution of employees will only be considered in exceptional cases e.g. where the employee has clearly contradicted the employers' instructions; has been deliberately obstructive or has acted in a grossly negligent or wilful manner.

In cases of obstruction, prosecution will always be considered where this has resulted either in undue delay or in additional work/costs to the local authority, or where false information has been given deliberately.

On completion of prosecution cases, officers must inform other interested bodies of the outcome of the case as necessary. In particular, any complainants or victims will be informed. The outcome of the case will be reviewed with the relevant service manager to discuss any necessary future action.

Further considerations in this connection are listed within the main body of this enforcement policy.

## **K) Warrant to Enter Premises**

Officers may apply to the Magistrates Court for a warrant to enter premises in the following circumstances:

- necessary entry is required at an unreasonable time; and/or
- entry to a premises is refused; and/or
- entry is expected to be refused; and/or
- the premises are vacant and entry is required.

In all cases, officers will exercise their powers courteously and with respect for persons and property, and only use reasonable force when this is considered necessary and proportionate to the circumstances.

## **L) ALTERNATIVE ENFORCEMENT STRATEGY**

Some low risk categories of food premises (category D and E) may be inspected under an AES strategy. In such circumstances the interventions conducted by Environmental Health will be by alternating inspections and questionnaires. This is in line with FSA codes of practice.

### **2. PRE-NOTIFICATION OF INSPECTION**

The general principle for official control inspections is that they shall be carried out without prior warning. Each case will be considered on its merits and having regard to the nature of the business being inspected.

### **3. TRAINING, COMPETENCY AND AUTHORISATION**

Only duly authorised officers may undertake enforcement duties in accordance with the Council's scheme of delegation. Officers will only be authorised where their level of qualification, training and experience are considered acceptable. Newly appointed or transferred officers will also be assessed by their manager for competency and referred for training where necessary, in accordance with the training policy and the Council's 'Investors in People' appraisal scheme. Only officers with two or more year's experience will be authorised to sign Hygiene Emergency Prohibition Notices served under regulation 8 of the Food Hygiene (England) Regulations 2006 or Emergency Prohibition Notices served under section 12 of the Food Safety Act 1990.

Officers undertaking enforcement duties will be suitably trained and qualified to ensure they are fully competent to undertake their enforcement activities. Qualifications will be based on current government guidance. Appropriate training programmes for officers will be set up to achieve the necessary competence. The training requirements to achieve the necessary level of competence will be regularly reviewed by the service managers. Training will be prioritised within available resources.

Officers are responsible for ensuring they have regard to relevant guidance documents laid out in service procedures.

## Appendix F

### HEALTH AND SAFETY ENFORCEMENT

#### 1. AIM

The aim of Brentwood Council's Health and Safety Enforcement Policy is to ensure that duty holders manage and control risks effectively thus preventing harm. In particular our policy is to:

- Ensure that duty holders take action to deal immediately with serious risks
- Promote and achieve sustained compliance with the law
- Ensure that duty holders who breach health and safety requirements, and directors or managers who fail in their responsibilities, are held to account, which may include bringing alleged offenders before the courts in the circumstances set out later in this policy.

In this context “enforcement” applies to all dealings between the Council as a health and safety enforcing authority and those on whom the law places duties (employers, the self employed, employees and others).

The Council believes in firm but fair enforcement of health and safety law in line with Health and Safety Commission’s Enforcement Policy Statement (EPS). This is informed by the principles of proportionality in applying the law and securing compliance; consistency of approach, targeting of enforcement action, transparency about how we operate and what those regulated may expect, and accountability for our actions. These principles will apply both to enforcement in particular cases and to our management of enforcement activities as a whole and are explained more fully in the Policy section of this document.

Enforcement is distinct from civil claims for compensation and is not undertaken in all circumstances where civil claims may be appropriate, or to assist such claims. We have a range of tools at our disposal in seeking to secure compliance with the law and to ensure a proportionate response to criminal offences. Many of our dealings are informal e.g. offering duty holders’ information and advice. Where appropriate our Inspectors may also serve Improvement and Prohibition Notices and prosecute.

Subject to the evidential tests in the Code for Crown Prosecutors, circumstances where we will normally prosecute, or recommend prosecution, following an investigation or other regulatory contact are where:

- death was a result of a breach of the legislation;
- the gravity of an alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender warrants it;
- there has been reckless disregard of health and safety requirements;

- there have been repeated breaches which give rise to significant risk, or persistent and significant poor compliance;
- work has been carried out without or in serious breach of an appropriate licence;
- a duty holder's standard of managing health and safety is found to be far below what is required by health and safety law and to be giving rise to significant risk;
- there has been a failure to comply with a written warning or an improvement or prohibition notice; or there has been a repetition of a breach that was subject to a simple caution;
- inspectors have been intentionally obstructed in the lawful course of their duties;
- false information has been willfully supplied, or there has been intent to deceive.

We will also consider prosecution, or consider recommending prosecution where following an investigation or other regulatory contact, the following circumstances apply:

- it is appropriate in the circumstances as a way to draw general attention to the need for compliance with the law and the maintenance of standards required by law, and conviction may deter others from similar failures to comply with the law.
- a breach that gives rise to significant risk has continued, despite relevant warnings from employees, or their representatives, or others affected by a work activity.

Where inspectors are assaulted we will also seek police assistance with a view to seeking the prosecution of offenders. Subject to the above we will identify and prosecute individuals if we consider that a conviction is warranted and can be secured. Additionally we will actively consider the management chain and the role played by individual directors and managers. Where appropriate we will seek disqualification of directors under the Company Directors Disqualification Act 1986.

As with prosecution, we will use discretion in deciding whether incidents, complaints or cases of ill health should be investigated. We will use discretion in deciding when to investigate or what enforcement action may be appropriate. Such judgments will be made in accordance with the following principles that are in accordance with the *Enforcement Concordat*<sup>3</sup> and Section 18 Guidance (including the EPS).

The Health and Safety Commission's priorities are used to target our activities and resources via our Service Plan, including the provisions of the National Local Authority Enforcement Code<sup>4</sup>. To maintain a proportionate response most resources available for investigation will be devoted to the more serious circumstances. We will carry out a site investigation of a reportable work-related death, unless there are specific reasons for not doing so. Our health and safety team will aim to:

- Inspect/carry out interventions at those premises for which it has enforcement responsibility and investigate accidents and complaints in accordance with the Council's selection criteria policy;

3. <http://webarchive.nationalarchives.gov.uk/+http://www.berr.gov.uk/files/file10150.pdf>

4. <http://www.hse.gov.uk/lau/national-la-code.pdf>

- Rate premises according to risk, (which includes management organisation, and the type of activities etc.) in order to determine the frequency of future inspections;
- Seek to promote health and safety through advice and guidance, and by the provision of training; and
- Take formal enforcement action, in accordance with the EPS, when it is the most appropriate way of dealing with the matter.

Where we can we will endeavor to make provision for the particular interests of stakeholders. For example we may make visits out of normal office hours but at times when the business is open; or we may arrange for interpreters/translators to be available if particular groups of duty holders do not have English as a first language.

Where there has been a death at work resulting from a failure to comply with health and safety law, the matter will be referred to the police if the circumstances of the case might justify a charge of manslaughter. The police are responsible for deciding whether or not to pursue a manslaughter case and this may occur alongside a prosecution for health and safety breaches. In all cases, the work related deaths protocol for liaison signed by the Police, British Transport Police, the Crown Prosecution Service, the Health and Safety Executive and the Local Government Association will be followed.

## **2. PRINCIPLES OF ENFORCEMENT**

### **2.1 The Process of Enforcement**

Inspectors use various enforcement techniques to deal with risks and secure compliance with the law, ranging from the provision of advice to enforcement notices. Enforcement decisions must be impartial, justified and procedurally correct. The Health and Safety Executive's EPS sets out the approach we follow. The Enforcement Management Model (EMM) – together with the procedure for its application – provides the Council with a framework for making enforcement decisions that meet the principles in the EPS. It captures the issues inspectors consider when exercising their professional judgment and reflects the process by which enforcement decisions are reached.

### **2.2 Purpose of the EMM**

The EMM is not a procedure in its own right. It is not intended to fetter inspectors' discretion when making enforcement decisions, and it does not direct enforcement in any particular case. It is intended to:

- promote enforcement consistency by confirming the parameters, and the relationships between the many variables, in the enforcement decision making process;
- promote proportionality and targeting by confirming the risk based criteria against which decisions are made;
- be a framework for making enforcement decisions transparent, and for ensuring that those who make decisions are accountable for them; and

- help experienced inspectors assess their decisions in complex cases, allow peer review of enforcement action, and be used to guide less experienced and trainee inspectors in making enforcement decisions.

The EMM and the associated procedures enable managers to review the decision making process and their inspectors' enforcement actions to ensure the purpose and expectations of the EPS have been met.

The EMM does not exist in isolation. It is supported by quality procedures which address, amongst other things, the selection and investigation of accidents.

### **2.3 Enforcement Tools**

Enforcing Authority (EA) Inspectors have a range of tools at their disposal to seek compliance with the law and to ensure a proportionate response to criminal offences.

Where appropriate they may:

- Serve Improvement and Prohibition Notices
- Prosecute
- In very exceptional circumstances issue Simple Cautions.

Simple Cautions will not be used –

- As a 'let off'
- Where there are some mitigating circumstances
- Where there is doubt about the public interest
- Where either the prosecutor's office or the court are too busy.

### **2.4 Investigation**

As with prosecution (see below), the Health and Safety Executive expects us to use discretion in deciding whether incidents, complaints or cases of ill health should be investigated. The Commissions priorities are reflected in the HELA Strategy that we use to target our activities and resources via our Health and Safety Service Plan.

To maintain a proportionate response most resources available for investigation will be devoted to the more serious circumstances. The Health and Safety Executive's Strategic Plan recognises that it is neither possible nor necessary for the purposes of the Act to investigate all issues of non compliance with the law that are uncovered in the course of planned inspection, or reported events.

A more detailed policy on investigating reportable workplace accidents and ill health is detailed below.

### **2.5 Action by the Courts**

Where appropriate we will draw the court's attention to all the factors that are relevant to the court's decision as to what sentence is appropriate on conviction. The Court of Appeal has given some guidance on some of the factors that should inform the courts in

health and safety cases (R v F. Howe and Son (Engineers) Ltd [1992] 2 All ER, and subsequent judgments).

## **2.6 Representation to the Courts**

In cases of sufficient seriousness, and when given the opportunity, we will consider indicating to the magistrates that the offence is so serious that they may send it to be heard or sentenced in the higher court where higher penalties can be imposed. In considering what representations to make we will have regard to Court of Appeal guidance: the Court of Appeal has said "In our judgment magistrates should always think carefully before accepting jurisdiction in health and safety at work cases, where it is arguable that the fine may exceed the limit of their jurisdiction or where death or serious injury has resulted from the offence".

## **2.7 Death at Work**

Where there has been a breach of the law leading to a work-related death, we will consider whether the circumstances of the case might justify a charge of manslaughter. We will liaise with the Police, Coroners and the Crown Prosecution Service (CPS) and if they find evidence suggesting manslaughter pass it on to the Police or where appropriate the CPS. If the Police or the CPS decides not to pursue a manslaughter case, we will bring a health and safety prosecution if that is appropriate. (To ensure decisions on investigation and prosecution are coordinated the HSE, the Association of Chief Police Officers and the CPS have jointly agreed and published "Work Related Deaths: A Protocol for Liaison).

Brentwood Council has agreed that it should take account of the Protocol when responding to work-related deaths).

## **2.8 Incident Investigations**

It is the policy of the Council to investigate reportable accidents under the Reporting of Injuries, Disease, and Dangerous Occurrences Regulations 2013 according to the HSE's Incident Selection Criteria.

An initial assessment of the incident will be made and a decision taken on investigation within 3 working days (except in the case of work related deaths where a decision will be taken upon receipt by an inspector).

They will be investigated in accordance with the principles of proportionality, consistency, targeting, transparency and accountability.

The purpose of investigation is to:-

- Identify immediate and underlying causes
- Ensure the duty holder takes appropriate remedial action to prevent reoccurrence
- Evaluate compliance with the relevant statutory provisions
- Apply the principles of the Enforcement Management Model and take enforcement action if appropriate.

Investigations will be:

- Continued only so far as they are proportionate to the achievement of the objectives set for them [see below]
- Conducted and/or supervised by staff who are competent
- Provided with adequate resources and support, including information, equipment and staffing
- Conducted so that efficient and effective use is made of the resources committed to them
- Timely, so far as this is within the control of the investigating inspector
- Subject to suitable management procedures for monitoring the conduct and outcome of investigations

The following factors will determine whether an investigation continues to be proportionate:

- Public expectation, for example, where there has been a fatality or fatalities, serious ill health, or an accident involving multiple serious injuries
- The potential (taking into account reasonable foreseeability) for a repetition of the circumstances to result a fatality or fatalities, serious ill health, or an accident involving multiple serious injuries either in the activities of a specific duty holder or within industry generally
- The extent to which the available evidence allows conclusions as to causation to be drawn and supported with sufficient certainty, including conclusions as to responsibility for alleged breaches of relevant legislation
- The extent to which the resources needed for the investigation are disproportionate to the hazard(s) or risk(s)
- The prevalence of the event, either in the activities under the control of a specific duty holder, or in an industry sector generally.

## **2.9 Complaints**

A complaint is a concern originating from outside the council in relation to a work activity for which Brentwood Council is the enforcing authority, that is sufficiently specific to enable identification of the issue and the dutyholder and/or location and that either:

- Has caused or has potential to cause significant harm, or alleges the denial of basic employee welfare facilities, or
- Appears to constitute a significant breach of law for which Brentwood Council is the enforcing authority.

The level of investigation will depend upon:

- The severity and scale of actual or potential harm, or the high potential for harm arising from an event;
- The seriousness of any potential breach of the law;
- The track record of the duty holder;
- The enforcement priorities of the Council;

- The practicality of achieving results;
- The wider relevance of the event including serious public concern.

Officers will not always visit the premises which are the subject of a complaint – a judgment will be made following initial contact with the complainant, when it may be determined that a phone call to the premises concerned will be the most appropriate.  
Environmental Health Services

## Appendix G

### GLOSSARY OF TERMS

<b>Abatement Notices</b>	This action may be taken where there is an on-going or recurring nuisance/defect and where the legislation allows. The notice will require certain steps to be taken to resolve the problem.
<b>Better Regulation Agenda</b>	The Government's better regulation agenda aims to use targeted measures to simplify and improve existing regulation; communicate more clearly with businesses, to help them understand what they must do to comply with the law.
<b>Code for Crown Prosecutors</b>	The Code devised by the Crown Prosecution Service which sets out the principles to be followed when a decision is being taken about whether a prosecution case should be taken.
<b>Company Directors Discrimination Act</b>	This Act allows a court to make a disqualification order against a company director that prevents them from acting as if they were a director within a company.
<b>Data Protection Act</b>	The Data Protection Act requires anyone who handles personal information to comply with a number of important principles. It also gives individuals rights over their personal information.
<b>Department for Business Innovation and Skills (BIS)</b>	The aim of the Department for Business Innovation and Skills is to improve the quality of working life for individuals, and create the conditions for business success. They support better regulation and are working to promote best practice and effective employment relations.
<b>Duty holders</b>	Health and safety legislation specifies who has responsibilities under the law. Those bodies/persons are referred to as duty holders
<b>Employment Tribunal</b>	The Employment Tribunals are independent judicial bodies that determine disputes between employers and employees over employment rights, and consider appeals against health and safety enforcement notices.
<b>Enforcement/enforcing Authority</b>	All local authorities take on the role of enforcement authority in respect of relevant functions and legislation within their geographical area. Some enforcement agencies may also be involved – roles and responsibilities are specified in legislation and guidance.
<b>Enforcement Concordat</b>	The Government introduced the Enforcement Concordat in 1998 in collaboration with business and local and national regulators. The Enforcement Concordat encourages partnership working between enforcers and businesses, and sets out the Principles of Good Enforcement which enforcers should apply in order to achieve higher levels of voluntary compliance
<b>Enforcement Management Model</b>	The Enforcement Management Model (EMM) is a framework which helps inspectors make health and safety enforcement decisions in line with the Health and Safety Executive's Enforcement Policy Statement. Its purpose is to ensure fair and consistent enforcement decisions are taken.
<b>Environmental Information Regulations (EIR)</b>	The Environmental Information Regulations give certain rights of access to environmental information to the general public.
<b>Fixed Penalty Notices</b>	Fixed penalty notices generally deal with environmental offences such as litter, graffiti and dog fouling, and can be issued by local authority officers and police community support officers. These notices can be issued to anyone over 10 years old where the law allows it. Penalty notices are not the same as criminal convictions. However, failure to pay the fine may result in higher fines or imprisonment.
<b>Food Standards Agency</b>	The Food Standards Agency is an independent Government department set up by an Act of Parliament in 2000 to protect the public's health and consumer interests in relation to food.
<b>Freedom of Information Act (FOI)</b>	The Freedom of Information Act gives you the right to obtain information held by public authorities unless there are good reasons to keep it confidential.
<b>Health and Safety Executive (HSE)</b>	The HSE is a public body responsible for enforcement of health and safety in certain workplaces. Regulations define which workplaces are the responsibility of the HSE and which are the responsibility of local authorities.
<b>Improvement Notices</b>	This action may be taken under certain legislation where there is a legal contravention. The notice will require works to be carried out within a specified time period. Failure to comply is an offence.
<b>Better Regulation Delivery Office (BRDO)</b>	BRDO is a non-departmental public body, accountable to the Department of Business, Innovation and Skills through the Better Regulation Executive. Its focus is on ensuring that inspection and enforcement are based on an assessment of risk, so that businesses

	are supported and regulatory resources are focused on those who flout it.
<b>Local Government Association (LGA)</b>	Local Government Association is a voluntary lobbying organisation, acting on behalf of the local government sector
<b>Penalty Charge Notice</b>	Penalty charge notices may be issued for contraventions of specific regulations/orders where no criminal offence has been committed. Failure to pay a penalty charge notice will result in recovery of the debt through the civil courts.
<b>Primary Authority</b>	The primary authority is the local authority that has formed a partnership with a business and is registered on LBRO's website. The authority provides advice and guidance to that business, and other enforcement authorities must consider this advice when undertaking enforcement activity.
<b>Prohibition Notices</b>	This action may be taken where there is a serious risk to health or safety and where the legislation allows. The notice may require closure of a business; prevent use of a machine or process, until such time as the risk has been controlled. Failure to comply is an offence.
<b>Regulators Code</b>	The Regulators' Code asks regulators to perform their duties in a business-friendly way, through regulation and inspections in a way that causes least disruption to the economy.
<b>Section 18 guidance</b>	Section 18 of the Health and Safety at Work etc Act 1974 places a duty on the Health and Safety Executive and local authorities to make adequate arrangements for enforcement.
<b>Simple Caution</b>	A 'simple caution' is used to deal quickly and simply with those who commit less serious crimes. It aims to divert offenders away from court, and to reduce the likelihood that they will offend again.
<b>Statutory enforcement notice</b>	The powers of officers are set down in legislation. Many laws allow enforcement officers to issue statutory notices. These require action to be undertaken within a certain time to ensure legal compliance, e.g. improvement and prohibition notices.
<b>Statutory undertakers</b>	These are the various companies and agencies with legal rights to carry out certain development and highways works, e.g. gas, telephone and electricity companies.

## Appendix H

### BETTER REGULATION DELIVERY OFFICE – REGULATORS CODE (April 2014)



Department  
for Business  
Innovation & Skills

Better  
Regulation  
Delivery Office

**Regulators' Code**

April 2014

## Foreword



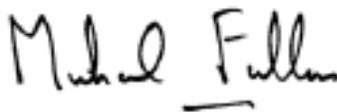
In the Autumn Statement 2012 Government announced that it would introduce a package of measures to improve the way regulation is delivered at the frontline such as the Focus on Enforcement review of appeals, the proposed Growth Duty for non-economic regulators and the Accountability for Regulator Impact measure.

This Government is committed to reducing regulatory burdens and supporting compliant business growth through the development of an open and constructive relationship between regulators and those they regulate. The Regulators' Code provides a flexible, principles based framework for regulatory delivery that supports and enables regulators to design their service and enforcement policies in a manner that best suits the needs of businesses and other regulated entities.

Our expectation is that by clarifying the provisions contained in the previous Regulators' Compliance Code, in a shorter and accessible format, regulators and those they regulate will have a clear understanding of the services that can be expected and will feel able to challenge if these are not being fulfilled.

Regulators within scope of the Regulators' Code are diverse but they share a common primary purpose – to regulate for the protection of the vulnerable, the environment, social or other objective. This Code does not detract from these core purposes but seeks to promote proportionate, consistent and targeted regulatory activity through the development of transparent and effective dialogue and understanding between regulators and those they regulate.

I believe the Regulators' Code will support a positive shift in how regulation is delivered by setting clear expectations and promising open dialogue. Ultimately this will give businesses greater confidence to invest and grow.

A handwritten signature in black ink that reads "Michael Fallon". The signature is written in a cursive style with a horizontal line underneath the name.

Michael Fallon  
Minister of State for Business and Enterprise  
Department for Business, Innovation and Skills

## Regulators' Code

This Code was laid before Parliament in accordance with section 23 of the Legislative and Regulatory Reform Act 2006 ("the Act"). Regulators whose functions are specified by order under section 24(2) of the Act must have regard to the Code when developing policies and operational procedures that guide their regulatory activities. Regulators must equally have regard to the Code when setting standards or giving guidance which will guide the regulatory activities of other regulators. If a regulator concludes, on the basis of material evidence, that a specific provision of the Code is either not applicable or is outweighed by another relevant consideration, the regulator is not bound to follow that provision, but should record that decision and the reasons for it.

### **1. Regulators should carry out their activities in a way that supports those they regulate to comply and grow**

- 1.1 Regulators should avoid imposing unnecessary regulatory burdens through their regulatory activities<sup>1</sup> and should assess whether similar social, environmental and economic outcomes could be achieved by less burdensome means. Regulators should choose proportionate approaches to those they regulate, based on relevant factors including, for example, business size and capacity.
- 1.2 When designing and reviewing policies, operational procedures and practices, regulators should consider how they might support or enable economic growth for compliant businesses and other regulated entities<sup>2</sup>, for example, by considering how they can best:
  - understand and minimise negative economic impacts of their regulatory activities;
  - minimising the costs of compliance for those they regulate;
  - improve confidence in compliance for those they regulate, by providing greater certainty; and
  - encourage and promote compliance.
- 1.3 Regulators should ensure that their officers have the necessary knowledge and skills to support those they regulate, including having an understanding of those they regulate that enables them to choose proportionate and effective approaches.
- 1.4 Regulators should ensure that their officers understand the statutory principles of good regulation<sup>3</sup> and of this Code, and how the regulator delivers its activities in accordance with them.

### **2. Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views**

- 2.1 Regulators should have mechanisms in place to engage those they regulate, citizens and others to offer views and contribute to the development of their policies and service standards. Before changing policies, practices or service standards, regulators should consider the impact on business and engage with business representatives.

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<sup>1</sup> The term 'regulatory activities' refers to the whole range of regulatory options and interventions available to regulators.

<sup>2</sup> The terms 'business or businesses' is used throughout this document to refer to businesses and other regulated entities.

<sup>3</sup> The statutory principles of good regulation can be viewed in Part 2 (21) on page 12: [http://www.legislation.gov.uk/ukpga/2006/51/pdfs/ukpga\\_20060051\\_en.pdf](http://www.legislation.gov.uk/ukpga/2006/51/pdfs/ukpga_20060051_en.pdf).

## Regulators' Code

- 2.2 In responding to non-compliance that they identify, regulators should clearly explain what the non-compliant item or activity is, the advice being given, actions required or decisions taken, and the reasons for these. Regulators should provide an opportunity for dialogue in relation to the advice, requirements or decisions, with a view to ensuring that they are acting in a way that is proportionate and consistent.

This paragraph does not apply where the regulator can demonstrate that immediate enforcement action is required to prevent or respond to a serious breach or where providing such an opportunity would be likely to defeat the purpose of the proposed enforcement action.

- 2.3 Regulators should provide an impartial and clearly explained route to appeal against a regulatory decision or a failure to act in accordance with this Code. Individual officers of the regulator who took the decision or action against which the appeal is being made should not be involved in considering the appeal. This route to appeal should be publicised to those who are regulated.
- 2.4 Regulators should provide a timely explanation in writing of any right to representation or right to appeal. This explanation should be in plain language and include practical information on the process involved.
- 2.5 Regulators should make available to those they regulate, clearly explained complaints procedures, allowing them to easily make a complaint about the conduct of the regulator.
- 2.6 Regulators should have a range of mechanisms to enable and regularly invite, receive and take on board customer feedback, including, for example, through customer satisfaction surveys of those they regulate<sup>4</sup>.

### 3. Regulators should base their regulatory activities on risk

- 3.1 Regulators should take an evidence based approach to determining the priority risks in their area of responsibility, and should allocate resources where they would be most effective in addressing those priority risks.
- 3.2 Regulators should consider risk at every stage of their decision-making processes, including choosing the most appropriate type of intervention or way of working with those regulated; targeting checks on compliance; and when taking enforcement action.
- 3.3 Regulators designing a risk assessment framework<sup>5</sup>, for their own use or for use by others, should have mechanisms in place to consult on the design with those affected, and to review it regularly.
- 3.4 Regulators, in making their assessment of risk, should recognise the compliance record of those they regulate, including using earned recognition approaches and should consider all available and relevant data on compliance, including evidence of relevant external verification.
- 3.5 Regulators should review the effectiveness of their chosen regulatory activities in delivering the desired outcomes and make any necessary adjustments accordingly.

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<sup>4</sup> The Government will discuss with national regulators a common approach to surveys to support benchmarking of their performance.

<sup>5</sup> The term 'risk assessment framework' encompasses any model, scheme, methodology or risk rating approach that is used to inform risk-based targeting of regulatory activities in relation to individual businesses or other regulated entities.

## Regulators' Code

- 4. Regulators should share information about compliance and risk**
  - 4.1 Regulators should collectively follow the principle of "collect once, use many times" when requesting information from those they regulate.
  - 4.2 When the law allows, regulators should agree secure mechanisms to share information with each other about businesses and other bodies they regulate, to help target resources and activities and minimise duplication.
- 5. Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply**
  - 5.1 Regulators should provide advice and guidance that is focused on assisting those they regulate to understand and meet their responsibilities. When providing advice and guidance, legal requirements should be distinguished from suggested good practice and the impact of the advice or guidance should be considered so that it does not impose unnecessary burdens in itself.
  - 5.2 Regulators should publish guidance, and information in a clear, accessible, concise format, using media appropriate to the target audience and written in plain language for the audience.
  - 5.3 Regulators should have mechanisms in place to consult those they regulate in relation to the guidance they produce to ensure that it meets their needs.
  - 5.4 Regulators should seek to create an environment in which those they regulate have confidence in the advice they receive and feel able to seek advice without fear of triggering enforcement action.
  - 5.5 In responding to requests for advice, a regulator's primary concerns should be to provide the advice necessary to support compliance, and to ensure that the advice can be relied on.
  - 5.6 Regulators should have mechanisms to work collaboratively to assist those regulated by more than one regulator. Regulators should consider advice provided by other regulators and, where there is disagreement about the advice provided, this should be discussed with the other regulator to reach agreement.
- 6. Regulators should ensure that their approach to their regulatory activities is transparent**
  - 6.1 Regulators should publish a set of clear service standards, setting out what those they regulate should expect from them.
  - 6.2 Regulators' published service standards should include clear information on:
    - a) how they communicate with those they regulate and how they can be contacted;
    - b) their approach to providing information, guidance and advice;
    - c) their approach to checks on compliance<sup>6</sup>, including details of the risk assessment framework used to target those checks as well as protocols for their conduct, clearly setting out what those they regulate should expect;

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<sup>6</sup> Including inspections, audit, monitoring and sampling visits, and test purchases.

#### Regulators' Code

- d) their enforcement policy, explaining how they respond to non-compliance;
  - e) their fees and charges, if any. This information should clearly explain the basis on which these are calculated, and should include an explanation of whether compliance will affect fees and charges; and
  - f) how to comment or complain about the service provided and routes to appeal.
- 6.3 Information published to meet the provisions of this Code should be easily accessible, including being available at a single point<sup>7</sup> on the regulator's website that is clearly signposted, and it should be kept up to date.
- 6.4 Regulators should have mechanisms in place to ensure that their officers act in accordance with their published service standards, including their enforcement policy.
- 6.5 Regulators should publish, on a regular basis, details of their performance against their service standards, including feedback received from those they regulate, such as customer satisfaction surveys, and data relating to complaints about them and appeals against their decisions.

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<sup>7</sup> This requirement may be satisfied by providing a single web page that includes links to information published elsewhere.

## **Monitoring the effectiveness of the Regulators' Code**

The Government is committed to making sure the Regulators' Code is effective. To make sure that the Code is being used effectively, we want businesses, regulated bodies and citizens to challenge regulators who they believe are not acting in accordance with their published policies and standards. It is in the wider public interest that regulators are transparent and proportionate in their approaches to regulation.

The Government will monitor published policies and standards of regulators subject to the Regulators' Code, and will challenge regulators where there is evidence that policies and standards are not in line with the Code or are not followed.

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This publication is also available on our website at:  
<https://www.gov.uk/government/publications/regulators-code>

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## **Appendix I**

### **ENFORCEMENT CONCORDAT: GOOD PRACTICE GUIDE FOR ENGLAND AND WALES**