



**BEDFORD**  
BOROUGH COUNCIL

## **Environment & Sustainable Communities Enforcement Policy**

**NOVEMBER 2011**

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*This Policy was formally adopted by the Borough Council's General Purposes Committee and the Executive at their meetings held in November 2011. The Policy covers both non-Executive and Executive functions of the Council and it was resolved for approval as follows:*

- *Minute 32 of the General Purposes Committee 8<sup>th</sup> November 2011*
- *Minute 52 of the Executive 9<sup>th</sup> November 2011*

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## 1. Introduction

Bedford Borough Council through its regulatory functions relating to the Environment & Sustainable Communities Directorate enforce a wide range of statutory provisions. In exercising its enforcement role the Council is not acting on behalf of any individual, but is acting in order to promote the wider public interest within the respective legislative frameworks for the purposes outlined in law.

The Council is committed to ensure delivery of its regulatory responsibilities for the purpose of promoting, protecting and enhancing the health, safety, welfare and overall wellbeing of all residents, workers and visitors to the Borough. The Council therefore has developed and implemented an enforcement policy to help promote a fair, efficient and effective approach to all regulatory inspection and enforcement functions.

The Council also recognises its legal obligations under the Legislative and Regulatory Reform Act 2006. In particular the Council acknowledges that as a Regulatory Authority regard must be given to the Regulators Compliance Code when determining its Enforcement Policy. However, in certain instances, the Council may conclude that a provision in the Code is either not relevant or is outweighed by another provision. When this occurs the relevant Head of Service will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and fully documented.

This Policy has also been prepared having regard to The Enforcement Concordat: Good Practice Guide for England and Wales and the Principles of Good Enforcement Standards – Openness; Helpfulness; Complaints; Proportionality and Consistency

Each Service area recognises that facilitating compliance through a positive and proactive approach can achieve higher compliance rates and reduce the need for reactive enforcement actions. Compliance achieved through education, support, advice and guidance will always be considered in order to adopt a balanced approach to decisions regarding enforcement to those it regulates.

The code requires that general principles apply in the way each case must be approached. These principles are laid out in this Enforcement Policy and reflect the provisions laid out in the Regulators' Compliance Code.

The Council seeks to secure co-operation avoiding bureaucracy, ensuring efficient compliance with legislation whilst, at the same time minimising the burden on businesses, individuals, organisations and the Council itself. The Council encourages individuals and businesses to put safety first and to integrate good working practices into normal working methods.

## **1.1 Purpose of the policy**

The purpose of this Policy is to provide a general policy that outlines the overarching principles applied to making enforcement decisions. Furthermore the Policy will be used by officers when deciding what action to take when carrying out their statutory duties on behalf of Council. This Policy replaces all other previous enforcement policies of the Service Areas that may have, from time to time, been issued in the past.

The Policy applies to enforcement activities carried out under legislation enforced under the Council's Environmental Health & Trading Standards service, Environmental Services and Bedford Parking Services. Enforcement in the context of this Policy includes any action carried out in the exercise of, or against the background of, statutory enforcement powers. It does not include Planning or Highways as enforcement in these areas are covered by service specific policies.

The Policy does not directly concern itself with operational matters and is not a definitive procedural guide, but aims to outline the policy issues associated with enforcement decision-making. It defines the approach to enforcement and instances when enforcement powers are initiated and under what circumstances each action is taken. Due to the individual nature of many cases considered by the Services covered by this Policy, the Policy cannot be considered to be exhaustive.

## **2. Departure from the Enforcement Policy**

All authorised officers in the separate Service Areas will abide by this Policy when making enforcement decisions.

Any departure from the Policy will only occur in exceptional circumstances. It will be capable of justification and only after full consideration and authorisation by an officer with delegated power unless there is a demonstrable, significant and imminent risk to the public or environment in delaying enforcement.

Instances of non-compliance with this Policy will be recorded and reported directly to the relevant Head of Service as soon as is practicable.

## **3. Responsibility and Authorisation**

The Council is responsible for approval of this Policy and any amendment to it.

Responsibility for implementation of the Policy rests with the relevant Executive Director.

Authorised officers of the respective Service Areas carry out the day-to-day enforcement activities. Officers are authorised in accordance with relevant statutory provisions appertaining to relevant legislation, Codes of Practice or

National Guidance to carry out inspections, sampling, complaint investigations, to deal with requests for service and, where necessary, offer advice and training.

The Policy should be read in conjunction with the Council's Constitution, which sets out the specific areas of delegated powers and responsibilities of officers.

Enforcement action will be initiated by suitably qualified, experienced and competent enforcement officers. Officers who are competent through training, qualification and/or experience will be authorised in writing to undertake enforcement duties.

Officers who undertake criminal investigations will be conversant with the provisions of the Police and Criminal Evidence Act 1984 (PACE), the Criminal Procedure and Investigations Act 1996 (CPIA), the Data Protection Act 1998, the Human Rights Act 1998, the Disability Discrimination Act 1995 and the Regulation of Investigatory Powers Act 2000.

All staff will recognise and comply with the Council's Equality and Diversity Policy. The Policy provides a framework setting out how the Council will promote the wide-ranging equalities agenda to the community and to its employees.

All statutory notices will be authorised by either the relevant Head of Service, Service Level Manager or the relevant authorised investigating officer.

The issue of a simple caution and any decision to prosecute will only be administered or approved by the officer with delegated power.

Where a prosecution is determined in accordance with the Policy, the relevant Service Level Manager/officer, in consultation with an authorised officer, shall consider sanctioning expert assistance from external bodies where relevant. Assistance may include reports and certificates of analysis from the Public Analyst, the Health and Safety Executive, Police Forces, Fire Authorities, other Local Authorities or the Environment Agency as appropriate.

#### **4. Regulation of Investigatory Powers Act 2000**

The Services may, from time to time, undertake covert surveillance for the purpose of gathering evidence in connection with its operations in relation to planned inspections of premises, the initiation of investigations following a complaint or notification and in the use of surveys or enforcement initiatives. All covert surveillance will be strictly controlled in accordance with the Regulation of Investigatory Powers Act 2000 (RIPA) and the Council's Policy under RIPA.

## **5. Regulatory Data**

The Council recognises the importance of open government and the national statutory framework relating to the disclosure of information as provided by the Freedom of Information Act 2000 and the Environment Information Regulations 2004.

Individual requests for information will be provided with such assistance and such information as provided for in to the law and codes of best practice.

## **6. Race Relations, Discrimination and Protection of Human Rights**

In carrying out its functions under the relevant laws, the Council will be mindful of its duties under the Sex Discrimination Act 1975, the Race Relations Act 1976 and the Disability Discrimination Act 1995 to “have due regard to the need” to (among other things) eliminate discrimination and to promote equality of opportunity between the different respective groups.

From April 2011 the Equality Act 2010 will increase the above obligations and place a duty on the Council “to have due regard to” the need to eliminate discrimination, advance equality of opportunity and foster good relations in regards to age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

It should be considered that each case will vary and each must be considered on its own merits before a decision is reached even though the general principles will apply in all cases.

No one recommending or deciding upon legal proceedings or serving a statutory notice should be influenced by ethnic or national origin, gender and gender realignment, religious beliefs, political views, age, disability or sexual preference. They must also not be affected by improper or undue pressure from any source.

Regard shall be given to the Human Rights Act 1998 and the European Convention on Human Rights and Fundamental Freedoms. In particular, regard shall be had to the provisions of Article 6: the Right to a Fair Trial, Article 8: the Right to respect Private and Family Life, Article 14: the Prohibition on Discrimination and Article 1 to the First Protocol regarding Protection of Property.

If there is to be any interference with a convention right it must be justified as being in accordance with the law and be proportionate and necessary to further a legitimate aim.

## **7. Data Protection**

Authorised officers will be mindful of the requirements of the Data Protection Act 1998. The Council follows the requirements placed on it by the Act.

This Act affects all data controllers of computerised and manual filing systems and specifies how we can use personal information. As a controller of many computerised and manual systems, the Council will ensure that personal information is obtained and processed lawfully, used for specified purposes only and that it is relevant and accurate. The Council will also ensure that information is not kept longer than necessary and that security measures are in force to prevent unauthorised access and accidental loss.

## **8. Regulator's Compliance Code and Regulatory Reform Act**

The Regulator's Compliance Code sets out Principles of Good Regulation for consistent enforcement of rules in a way that is fair, practical and which emphasises prevention over cure. It sets out what businesses and others being regulated can expect from enforcement officers. It commits us to target resources to promote efficient and effective approaches to regulatory inspection and enforcement actions, which improve regulatory outcomes without imposing unnecessary burdens on business, the voluntary sector and the public.

The Policy is based around the specific obligations of the Regulator's Compliance Code, taking into account:

- Policy standards
- Transparency and openness
- Helpfulness to service users
- Proportionality of the service response
- Consistency of the service
- Targeting of enforcement action
- Accountability of the service
- Complaints about the service

Adherence to the principles of the Regulator's Compliance Code will be demonstrated by:

- Taking all enforcement decisions in a proportionate manner
- Remedies being appropriate to the risks posed and costs identified and minimised
- Striving for high standards of consistency and ensuring that Government rules and standards are joined up and implemented fairly
- Ensuring that all enforcement staff are helpful, courteous and efficient and open
- Ensuring that officers are focused on the problems and minimise side effects
- Measuring our performance against agreed standards, where appropriate
- Justifying decisions and being subject to public scrutiny.

All enforcement action will be carried out having regard to the 7 principles specified in the Statutory Code of Practice for Regulators made under section 23 of the Legislative and Regulatory Reform Act 2006. These are:

- 8.1 Economic Progress** – Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection.
- 8.2 Risk Assessment** – Regulators, and the Regulatory system as a whole, should use comprehensive risk assessment to concentrate resources in the areas that need them most.
- 8.3 Advice and Guidance** – Regulators should provide authoritative, accessible advice easily and cheaply.
- 8.4 Inspections and other visits** – No inspection should take place without a reason.
- 8.5 Information Requirements** – Businesses should not have to give unnecessary information or give the same piece of information twice.
- 8.6 Compliance and Enforcement Actions** – The few businesses that persistently break regulations should be identified quickly and face proportionate and meaningful sanctions.
- 8.7 Accountability** – Regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take.
- 8.8** The council will be guided by the conclusions of the Macrory Review (Regulatory Justice; Making Sanctions Effective) published in December 2005. In particular, in making an enforcement decision it will focus on the following Macrory principles, i.e. it will:
  - Aim to change the behaviour of the offender
  - Aim to eliminate any financial gain or benefit from non compliance through the use of the proceeds of Crime Act
  - Be responsive and consider what is appropriate for the particular offender and regulatory issues, 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 harm caused
  - Aim to restore the harm caused by regulatory non compliance, where appropriate
  - Aim to deter future non compliance.

## **9. Principles of Enforcement**

### **9.1 Policy Standards**

This policy is aligned to those standards which are set out by the Local Better Regulation Office (LBRO). These 'better regulation' principles are based on the following values:

- Standards
- Targeting
- Openness
- Helpfulness
- Proportionality
- Consistency
- Feedback

### **9.2 Transparency and Openness**

Transparency and openness is vitally important in maintaining public confidence in the ability to regulate. It means helping both those being regulated and others to understand what is expected of them and what they should expect from the Service. It also means making clear why an officer intends to, or has taken enforcement action.

Transparency is an integral part of the role of the Council's officers and the Service continues to train its staff and to develop its procedures to ensure that:

- Where remedial action is required, it is clearly explained (and confirmed in writing if requested) why the action is necessary and when it must be carried out. A clear distinction will always be made between legal requirements and best practice advice.
- Opportunity is provided to discuss the circumstances of the case, clarify what is required to comply with the law and if possible, resolve any points of difference, before formal enforcement action is taken, unless urgent action is required, for example, to prevent serious harm or to prevent evidence being destroyed.
- Where urgent action is required, a written explanation of the reasons for the action taken is provided as soon as practicable after the event.
- Written explanation will be given of any rights of appeal against formal enforcement action where applicable at the time the action is taken. This will explain the appeal procedure, where and when an appeal may be made, as well as confirming the grounds on which it may be brought. It will make clear where action will be suspended pending the outcome of the appeal.

Every effort will be made to ensure that information and advice is provided in plain language without abbreviations or jargon and is distributed as widely as possible. The Council has interpreting and translation services available for businesses and the public who do not have English as a first language.

The Service will be open about how it sets about its work including any charging that it sets for any of its services and arrangements for consulting with its stakeholders will be made freely available.

Copies of the Policy will be made available to businesses and individuals and will be published. The Policy will be made available in alternative formats on request.

### **9.3 Helpfulness to Service Users**

The provision of authoritative, accessible advice and assistance using a variety of formats and media is regarded as central to the implementation of the Policy and is used to inform both businesses and individuals of their rights and responsibilities. Help will be given to businesses, voluntary or community groups, workplace representatives and the public to assist them to comply with regulatory requirements.

By adopting this approach and by positively encouraging businesses and others to seek advice and information, many issues can be resolved via this intervention without having to resort to the more formal levels of enforcement action.

A courteous approach and efficient service will be provided with all staff identifying themselves by name and/or presenting of their authorisation card. The purpose of any visit/action will be properly explained and a contact point or telephone number for any further dealings will be given when required.

Applications for licences, registrations, approvals etc. will be dealt with efficiently and promptly and every effort will be made to ensure that, wherever practicable, the Council's enforcement functions are effectively coordinated to minimise unnecessary overlaps and time delays.

The Service operates a flexible approach to service delivery, which takes account of the diverse needs of the public and business community. Services will be made available by prior arrangement, out of hours and will be tailored to meet the specific needs of both individuals and businesses as far as practicable. In delivering services the Council will recognise its responsibilities in making them accessible to all.

Customer satisfaction surveys across all Services enforcement functions will be undertaken to check performance and to identify areas for improvement.

## **9.4 Proportionality of the Service Response**

We will recognise the cost of compliance for business by ensuring that any action we require is proportionate to the risks. As far as the law allows, we will take account of the circumstances of the case and the attitude of the operator when considering action. We will take particular care when working with small and medium-sized businesses, which are predominant within the Borough, and to voluntary and community organisations and the public to allow them to meet their legal obligations without unnecessary expense where practicable.

Some incidents or breaches of regulatory requirements cause or have the potential to cause serious damage to health or to the environment. Others may interfere with people's enjoyment or rights or the Services ability to carry out its enforcement activities. The first response will be to prevent harm from occurring or continuing. We will ensure that costs of compliance are kept to a minimum by ensuring that any enforcement action taken is strictly proportionate to the risks posed and to the seriousness of any breach of the law.

## **9.5 Consistency of the Service**

Consistency means taking a similar approach in similar circumstances to achieve similar ends. All those involved need to know that they are being treated fairly and businesses are competing with one another on level terms. The Service will endeavour to ensure that all enforcement decisions are consistent, balanced, and fair and relate to common standards. In coming to any decision, account will be taken of the seriousness of the offence, past history, confidence in management, the consequences of non-compliance, and any evidence of genuine remorse and the likely effectiveness of the various enforcement options.

It is recognised that consistency does not simply mean uniformity. Officers need to take account of many variables, such as the scale of impact on health or the environment, the attitude and actions of those responsible and the history of previous incidents or breaches. Officers will need to exercise their professional judgment and discretion according to the circumstances of each individual case.

Arrangements are in place to promote consistency in the interpretation and enforcement of legislation through liaison with other local authorities throughout Bedfordshire and Hertfordshire. We subscribe to the Local Government Regulation (LGR) body on Regulatory Services (previously LACORS) and the Health and Safety Executive/Local Authority Enforcement Liaison Committee (HELA). We also have regard to statutory Codes of Practice, the Health and Safety Executive's Enforcement Management Model (EMM) and to guidance and advice provided by LGR, HELA, other Central Government departments, East of England Trading Standards Association (EETSA).

## **9.6 Targeting**

Targeting means making sure that regulatory effort and resources are directed primarily towards those whose activities give rise to the most serious risks or where the hazards are poorly controlled or against deliberate or organised crime. Action will be primarily focused on those that break the law or those directly responsible for the risk and who are best placed to control it.

Managers within each Service Area will ensure systems are in place for prioritising regulatory effort. The systems will also ensure that resources are targeted at risks posed and the gathering and acting on intelligence about illegal activities.

Where appropriate multi discipline inspections/interventions will be carried out by a single officer/visit. Therefore reducing the burden of unnecessary visits being made upon individuals or businesses within the Borough.

## **9.7 Accountability of the Service**

It is accepted that despite best efforts users may occasionally be unhappy with the service provided. We recognise the role service complaints can play in identifying areas for improvement. To this end we will provide well-publicised, effective and timely complaints procedures easily accessible to businesses, the public, employees and consumer groups. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and likely timescales involved.

## **10. Levels of Enforcement Action**

A wide range of legal duties and powers underpins the objectives of each Service Area. Whilst the core aim is to safeguard public health through the provision of education and professional advice, there will be instances where enforcement action is warranted in order to protect the environment, health or the quality of life for the businesses, consumers and the general public.

Due to the variety, complexity and diverse aspects of the statutory provisions enforced by Environmental Health & Trading Standards, Environmental Services and Bedford Parking Services it is not possible to detail all enforcement action within this policy. Detailed guidance relating to the carrying out of specific enforcement action will be provided by each service area in appropriate forms.

There are a number of enforcement options open to officers when they encounter non-compliance with regulation and these are summarised below.

### **10.1 Promotion and Prevention**

We consider that promotion is an essential part of this Policy. It raises awareness of regulatory services, informs people of their legal responsibilities and encourages co-operation between officers, businesses and the general

public. A strong element of self-regulation is considered essential and support for this will be provided by methods including training courses, workshops, seminars, campaigns, the issuing of press releases, the Council's website, the production of leaflets, other forms of written guidance and the opportunities presented by day-to-day contact with businesses and customers as appropriate.

Proactive inspections and other interventions at various types of premises are carried out at a frequency determined by risk and where resources permit. This proactive approach is seen as a means of building positive relationships between the regulator and the regulated and is particularly applied when officers are not aware of any specific contravention of the law.

## **10.2 Informal action**

Informal action to secure compliance with legislation includes offering advice, issuing of warnings and requests for action, the use of letters and the issue of inspection reports and schedules of work, including those generated on premises following an inspection, investigation or visit.

Where necessary, such information will be provided in an appropriate language or format.

Such enforcement action may be appropriate in any of the following circumstances:

- The act or omission is not serious enough to warrant formal action; and/or
- The individual or company's past history, suggests informal action will achieve compliance; and/or
- Confidence in the individual or company's management is high; and/or
- The consequences of non-compliance will not pose a significant risk to public health and safety or demonstrable harm to the amenity of the area; and/or
- The action is being taken on behalf of a customer, who prefers the matter to be handled informally; and/or
- Even where some of the above criteria are not met, there may be circumstances in which informal action will be more effective than a formal approach. This may, for example, apply to enterprises associated with voluntary and community organisations using volunteers.

Persons receiving an Informal action (verbal or written) will be given the opportunity to discuss the requirements with an officer and agree an appropriate work plan and timetable for completion. Regular contact with the investigating officer will be encouraged as the works progress for further clarification or query.

### **10.3 Formal Action**

The Council's policy on the use of enforcement action will at all times be consistent with the principles set out in the Regulator's Compliance Code. In considering formal enforcement action, officers will have regard to:

- The seriousness of the offence; and/or
- The individual's or company's past history in terms of compliance; and/or
- Confidence in management; and/or
- The consequences of non-compliance

The respective Service Areas will ensure that an opportunity will be provided to discuss the circumstances of the breach with the intention of resolving points of difference and to determine the best approach. The extent of this will depend on the seriousness of the contravention, and may not be possible where immediate action is necessary, such as where there is an imminent risk to health, safety or the environment.

Officers who have reached a sufficient level of competence will be given the delegated authority to take formal action. Officers will interpret and apply relevant legal requirements and the Policy fairly and consistently. Formal action can take any form that the Council is empowered to take.

### **10.4 Statutory Notices**

Notices are served to require offenders to cease contravening activities, or to give offenders reasonable time to rectify a contravention. Notices may require contravening activities to cease immediately where the circumstances relating to health, safety, environmental damage or nuisance demand this. In other circumstances, the time allowed must be reasonable, but must take into account the risk implications of the contravention. Information regarding any relevant appeal procedure will be made available at the time when the notice is served, as will the potential penalties for non-compliance.

All correspondence will clearly state legal requirements and recommendations and also indicate the regulations contravened.

Where there is a statutory provision that provides for the Council to levy a charge for the costs associated with the service of a formal notice, then such a charge will normally be made and may be pursued as a civil debt.

### **10.5 Works in default**

Where provided for under specific legislation, the Council is empowered to execute works instead of, or as well as, taking enforcement action. In such cases, the expenses associated with default works will usually be recovered from the relevant party. Where appropriate these costs may be recovered by way of a land charge.

The Council will consider exercising work in default powers in all cases where it is legally possible and reasonable to do so. For example, in the interests of public health and safety the Council may consider an immediate remedy to a defect using its default powers rather than seeking compliance through prosecution, which could result in significant delays. Alternatively, it may be appropriate to exercise default powers where a prosecution has failed to secure compliance or is unlikely to be an effective remedy.

Notification of the intention to do work in default will be given to all interested parties in accordance with the law wherever practicable. In certain circumstances, such as where the Council is seeking to abate a noise nuisance, it may be necessary to carry out the works and notify the person(s) responsible retrospectively.

Immediate action without any prior notice will only be considered in situations where there is a risk of danger, danger to public health or an imminent risk to the environment or to the welfare of animals.

Where the law allows the Council to act immediately, an explanation will be given at the time (if appropriate) and a written confirmation will be given.

## **10.6 Revisits of premises**

Following a statutory notice or any written or verbal warning given, a revisit of the premises involved will generally be carried out to check compliance has been achieved. A revisit may not always be necessary for very minor contraventions and is a matter of judgment on a case to case basis.

Officers will decide whether to revisit depending upon the health, safety, environmental damage, or nuisance implications of the contravention and the perceived likely response of the offender to any advice or request.

## **10.7 Revocation or Suspension of Licence, Authorisation, or Permit**

In order to warrant revocation of a licence, authorisations or permit, the individual or organisation must normally meet one or more of the following criteria:

- Deliberately or persistently breached legal obligations, which are likely to cause material loss or harm to others; and/or
- Deliberately or persistently ignored written warnings or formal notices or failure to comply with licensing requirements; and/or
- Endanger to a serious degree, the health, safety or well being of people, animals or the environment; and/or
- Obstructed an officer while undertaking their duties; and/or
- Convicted of a breach of an absolute legal obligation; and/or
- Where there are other reasonable causes to withdraw the licence; permit or authorisation

If revocation action is taken, the relevant parties will be made aware of any rights of appeal at the time.

Such decision can and will only be taken in accordance with the Council's constitution including any delegations to officers.

### **10.8 Review of Licence, Permit or Authorisation**

Reviews of appropriate Licences, Permits or Authorisations provide a valuable opportunity to consider the appropriateness of the same, and the adequacy of conditions to control the actions of the licensee and activities under the control of the licensee. As such, where the law provides for reviews or for licences to be revoked, suspended or not renewed this process will be actively considered as an alternative to other action or in parallel with such other action as appropriate.

### **10.9 Seizure & Detention**

The Service will only use powers to seize or detain under various pieces of legislation where the powers to do so are clearly defined in the relevant statute. Some examples being the:

- Seizure/detention of unwholesome or contaminated food;
- Seizure of equipment responsible for causing a noise nuisance;
- Seizure/detention of goods or equipment likely to cause danger to health and safety in order to prevent them causing nuisance or harm to consumers, or other residents;
- Seizure and detention of counterfeit goods and / or equipment use in their manufacture;
- Seizure and detention of goods offered for supply in contravention of a prohibition on their supply;
- Seizure/detention of items to be used as evidence in prosecution proceedings.

When officers seize goods or equipment a receipt will be supplied to the person from whom the goods are taken. The goods may subsequently be liable to forfeiture by the courts. If officers seize unfit food, it will be produced before a Magistrate as soon as possible for them to confirm the seizure and consider the fitness of the food. In certain circumstances, documents (hard copy or electronic) may be removed to ascertain if they are required by evidence. Officers will give full details of their actions to the offender when they exercise this power.

### **10.10 Injunctions**

In exceptional cases, it may be considered that an injunction is then more appropriate course of action to remedy contraventions or dangerous circumstances.

An injunction (including “stop now” orders) may be sought from the courts where the circumstances of any case cause a significant problem or threat to an individual’s health, and the normal process of law (statutory notices, prosecution or work in default) is likely to be ineffective due to the person responsible showing blatant disregard for earlier similar requests for action, or where the process of law would take an unacceptable period of time having regard to the particular circumstances.

### **10.11 Fixed Penalty Notices**

Where legislation permits the use of fixed penalty notices, the relevant Service Areas will consider use of them as an alternative to prosecution where liability for the offence is to be discharged. Examples of where they may be appropriate are:

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

Before a fixed penalty is administered the authorised officer will ensure that there is evidence of the offender’s guilt sufficient to sustain a prosecution.

Service of a Fixed Penalty Notice will be in line with guidelines set out by guidance documents issued by the relevant coordinating bodies e.g. Department for Environment, Food & Rural Affairs (DEFRA) for when to issue a Fixed Penalty Notice. When it is not appropriate to issue a Fixed Penalty Notice other enforcement action will be considered.

Where legislation gives the Council flexibility to set the level of a fixed penalty charge, there will be regard to:

- Any Government guidance on the level at which the fixed penalty is to be set;
- The need to deter offenders from opting for prosecution because they believe that the court would impose a lower level of penalty; The likely level of fine which a court would impose for a similar offence;
- The cost of bringing a prosecution where fixed penalties were not paid.

Where a fixed penalty notice is not paid within the specified time limit (usually 14 days) then the offender will always be prosecuted unless there are exceptional circumstances. Where it is decided that an unpaid fixed penalty notice should not be pursued by way of prosecution the reason for not pursuing the notice must be reported in the first instance to the Head of Service.

### **10.12 Penalty Charge Notices – Bedford Parking Services**

Bedford Borough Council enforces parking regulations under the Civil Parking Enforcement scheme. The Traffic Management Act 2004 sets out the statutory network management duty for all local highway authorities and

determines the enforcement mechanisms that can be used by local authorities in order to effectively achieve this.

Bedford Borough Council as a Civil Enforcement Authority sets out its parking regulations in their Traffic Regulation Orders. A Traffic Regulation Order (TRO) is a legal document made under the Road Traffic Regulation Act 1984 and all other enabling powers, by the local authority under its powers as a highway authority to support any enforceable parking, traffic or highways restrictions.

Parking regulations are enforced by issuing Penalty Charge Notices (PCNs). Failure to comply with the requirements of a TRO is a contravention that may result in the issue of a PCN by a Civil Enforcement Officer.

A motorist wishing to contest liability for a penalty charge may make initial representation to the Council and if rejected, may have grounds to appeal to an independent adjudicator at the Traffic Penalty Tribunal. The adjudicator's decision is final but there is a right of further appeal on a point of law through the High Court.

Guidance on the statutory grounds of appeal and the type of evidence required to support a case is available to the public on the Council's website. It is not prescriptive guidance as it is recognised that each case must be assessed on its own merits. All grounds for cancellation submitted will be considered fairly and objectively.

Currently the PCN rate in the Borough is set at £70 for higher level contraventions and £50 for lower level contraventions both on and off-street. In accordance with National Guidance, a discount amount of 50% of the penalty charge is available within 14 days of PCN issue.

The penalty charge is usually payable by the owner of the vehicle except if the vehicle was hired at the time of the contravention. The charge is not payable if criminal proceedings have been taken or a Fixed Penalty Notice issued with respect to the contravention.

PCNs remaining unpaid after the relevant time and processes become civil debts due to Bedford Borough Council and enforceable through a streamlined version of the normal civil debt recovery process in the county court.

### Summary of Process

- (i) If no payment or challenge is received, A Notice to Owner (NtO) will be issued 28 calendar days after the PCN was issued. Details of vehicle ownership will be supplied by the DVLA.
- (ii) If the PCN has not been paid within 28 days of the NtO being issued and no representation or appeal is being considered then a Charge Certificate (CC) will be issued. The charge increases by 50%.
- (iii) If the penalty charge is not paid 14 days after the CC has been issued, the authority will apply to the Traffic Enforcement Centre at

- Northamptonshire County Court to register the debt. The current registration fee of £7 is added to the debt.
- (iv) If payment continues to be withheld, the debtor is sent an Order for Recovery and Witness Statement advising of a further 21 day period to either pay the debt or swear a Witness Statement.
  - (v) Failure to either pay or complete a Witness Statement will result in the authority applying for a Warrant of Execution from the Traffic Enforcement Centre.
  - (vi) On issue of the Warrant of Execution, the authority will instruct approved bailiffs to collect the debt on their behalf.

#### Access to further Civil Parking Enforcement Information

A guide to the grounds for consideration of appeals is available on the Council's website and is available to download [http://www.bedford.gov.uk/transport\\_and\\_streets/parking/street\\_parking/fines.aspx](http://www.bedford.gov.uk/transport_and_streets/parking/street_parking/fines.aspx)

PATROL is The Joint Committee of England and Wales for the civil enforcement of Parking and Traffic Regulations Outside London. Further information is accessible on the PATROL website <http://www.patrol-uk.info/site/index.php>

The PATROL website provides information about the enforcement of PCNs as well as parking and bus lane regulations for councils in England (outside London) and Wales that are in the Civil Enforcement Scheme. Direct links to local information via council websites as well as other relevant links are also included.

### **10.13 Simple Caution**

This procedure is used as an alternative to a prosecution. It derives from advice issued in Home Office Circular 30/2005 'Cautioning of Adult Offenders' and LACORS (Local Authority Coordinators of Regulatory Services) guidance.

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

- Sufficient evidence to prove the case;
- The offender must admit the offence;
- The offender must agree to be cautioned;
- Where the offence is not a serious one and could be dealt with swiftly to divert a less serious offence away from court.

If the offender pleads guilty to, or is guilty of, committing another offence anywhere in England and Wales, the caution may be sited in court and this may influence the severity of the sentence that the court imposes for any subsequent offence.

In each Service Area there will be appropriate procedures in place to authorise the use of simple caution or prosecution.

## 10.14 Written Warnings

Written warnings may result from a service request investigation or a routine inspection visit. They will be used in respect of minor offences or where there is a good record of compliance previously known and there is certainty of a written warning achieving the outcome required.

## 10.15 Prosecution

The decision to prosecute is a serious and important part of enforcement that should be taken after full consideration of the implications and consequences. Decisions about prosecution will take account of Council policies and procedures, legal advice and opinion, specific guidance on enforcement action contained in Codes of Practice, guidance documents issued by the relevant coordinating bodies and the Code for Crown Prosecutors. Where appropriate, decisions to prosecute should be taken at the earliest opportunity.

The Council will only start or continue with a prosecution when the case has passed both stages of the full code test as detailed in the Code for Crown Prosecutors. These factors are not exhaustive and those, which apply, will depend on the particular circumstances of each case. The importance of each factor will be determined in the circumstances of each case and will be used to make an overall assessment.

As a general rule, a prosecution will not be undertaken without the offender being given a reasonable opportunity to comply with the law and every identified breach of legislation will not automatically result in the institution of legal proceedings. However, there are circumstances where a contravention is particularly serious or there is a blatant or reckless disregard for the law and it is right to prosecute without a prior warning. Failure to comply with a Statutory Notice will normally result in a prosecution, except in cases where works in default may be more appropriate.

When considering the particular circumstances of a case, it may be appropriate to take more than one course of action. For example, statutory notices may be used to secure compliance in addition to the prosecution of the recipient of a notice for the non-compliance with the requirement addressed by the notice.

Where there has been a breach of the law leading to a work-related death, the Council will liaise with the police, coroner and Crown Prosecution Service (CPS) and, if there is evidence of manslaughter, will pass the case to the Police.

The following circumstances are likely to characterise initiation and referral to the Head of Legal Services:

- The alleged offence involves a flagrant breach of the law such that employees, the public or the environment are put at risk of harm (or

where significant commercial advantage is being gained as a result of the breach): and/or

- There appears to be reckless disregard for the health and safety of or nuisance to employees, the public, animal health and welfare or the environment; and/or
- There have been repeated breaches of legal requirements in an establishment (or in various branches of a multiple concern) and it appears that any person responsible is either unwilling or incapable of dealing with them; and/or
- The particular type of offence is prevalent in an area or activity; and/or
- There has been a serious accident, nuisance or case of ill health resulting from a substantial legal contravention; and/or
- Where a particular contravention or situation has caused serious public alarm or concern; and/or
- Where the offence has had an adverse effect on the economic wellbeing of consumers or legitimate businesses; and/or
- Where there are persistent poor standards for control of health and safety hazards, nuisance or harm to the environment; and/or
- The alleged offence or situation involves a failure by the alleged offender to correct identified serious potential risks to health and safety, nuisance or harm to the environment, after having been given a reasonable opportunity to comply with statutory requirements; and/or
- The offence involves a failure to comply in full or in part with the requirements of a statutory notice or the simple caution procedure; and/or
- Where an enforcement officer has received verbal or physical threats or has otherwise been obstructed in the performance of their duties. In this instance, the prosecution would be considered in relation to the offence of obstruction of an officer, notwithstanding the nature or extent of the remaining breaches, (if any) ; and/or
- Any other relevant matters that are contained within guidance issued by Government or Official Bodies

Criminal proceedings will be taken against those persons who are responsible for the offence where necessary. Where a company is involved, it will be usual practice to prosecute the company where the offence resulted from the company's activities. Where the legislation permits it, action may also be taken against such officers (as well as the company) where it can be shown

that the offence was committed with their consent or connivance, was due to their neglect or they chose to ignore the offence or the circumstances leading to it. In appropriate cases, consideration will be given to seeking the prohibition of the business proprietor under the appropriate specific statutes.

### **10.16 Emergency Measures**

Emergency measure will only ever be taken where there is an imminent risk to health, the environment, the safety of members of the public or the welfare of animals or to secure or preserve evidence.

### **10.17 Power to Charge for Enforcement Action**

Where legislation allows reasonable charges can be made as a means of recovering expenses incurred in serving an improvement notice or making a prohibition or demolition order.

### **10.18 Revocation of Permit**

Revocation of permits will only be used where other remedies would be considered inadequate or not appropriate to the circumstances.

## **11. Court Proceedings**

An authorised officer involved in a case will normally attend a court hearing, even if a guilty plea is entered and will be prepared to assist the court where necessary.

An authorised officer will inform any Lead Authority or relevant agency of all formal action taken and the results of the prosecution and will notify where appropriate, any complainant or witness of the results of legal proceedings.

In cases of sufficient gravity, for example serious breaches of food safety, trading standards or health and safety legislation, where circumstances allow, consideration will be given to requesting the Magistrates to refer the case to the Crown Court.

The existing law gives the courts considerable scope to punish offenders and to deter others. Unlimited fines and, in some cases, imprisonment may be imposed by the higher courts. The Council will continue to raise the awareness of the courts to the gravity of specific offences brought before them and will encourage the courts to make full use of their powers.

The Service will always seek to recover the costs of investigation and court proceedings.

## **12. Accepting Guilty Pleas**

Defendants may wish to plead guilty to some, but not all of the charges put forward. Alternatively, they may want to plead guilty to a different, possibly

less serious charge because they are admitting only part of the offence. The enforcement officer responsible for the case, in liaison with the officer with delegated power and the Council's Head of Legal Services, should only accept the defendant's plea if they think the court is able to pass a sentence that reflects the seriousness of the offence. A guilty plea will never be accepted because it is convenient to do so.

### **13. Powers of Enforcement Officers**

Enforcement officers have a variety of delegated powers to assist them in carrying out investigations. This can include the power to require answers to questions and the power to enter premises, usually during reasonable hours. Access to properties is normally achieved by informal means by appointment with the occupier or, when the business is open. If, however, there is a need to enter a non-retail premises and prior notice would be counterproductive or impracticable, a visit will be made without giving prior notice in accordance with legal powers.

In appropriate circumstances, a Notice of Entry will be served or an application made to the Magistrates Court for a warrant to enter i.e. where access is refused, or the premises are vacant, or where giving notice would defeat the object of the entry.

### **14. Liaison and Working with Regulatory and Other Bodies**

Where the Council has a shared or complementary regulatory role with other agencies they will liaise with that agency and inform them of an appropriate incident or occurrence.

External regulatory agencies include (but are not restricted to) the Police Authority, Health and Safety Executive, Other District, County and Unitary Council services, Utility Providers, Fire Authority, Environment Agency, Local Better Regulation Office, EETSA and the Food Standards Agency.

The Service will not generally investigate or enforce where more specific legislation is enforced by another regulatory body or service. However, prompt liaison will be carried out with that other regulatory body to ensure the most efficient and effective outcome through coordination so as to avoid inconsistencies or duplication and to ensure that any action is taken by the most appropriate body and for the most appropriate legislative breach.

### **15. Home Authority Principal / Lead Authority Partnership / Primary Authority**

Bedford Borough Council is committed to the Home Authority Principal, Lead Authority and Primary Authority Partnership and will seek to promote such partnerships in accordance with the guidance issued by LACORS, the Health and Safety Executive and the Local Better Regulation Office where required.

Officers from the Council will offer advice at source, and encourage any other enforcement authority to work in liaison with the Council on enforcement issues concerning that business.

## **16. Customer Requests for Service**

In accordance with the Council's Corporate Priority 1 – 'Customer Excellence', the Service will seek to deliver exemplary standards of customer care when dealing with customers in respect of enforcement matters.

This will be achieved in a number of ways depending on the circumstances of the service request and the Council will seek to investigate all requests for service promptly and in accordance with operational procedures. Where matters are not to be investigated there will be clear reasons for this course of action.

Anonymous complaints are commonly received and reasons for wishing to remain anonymous vary. Anonymity does hinder investigation and comprehensive assessment of all relevant facts that are needed to come to a just and informed decision on the matter in many cases. However, all matters will be brought to the attention of the relevant investigating officer for any further action deemed appropriate.

Frivolous, repetitive or vexatious requests for Service will not normally be investigated. In this section, repetitive means requests that have been fully investigated and a determination reached that no formal action is appropriate and the customer persists with identical or substantially similar requests.

## **17. Complaints about the Service**

The Service undertakes regular customer satisfaction surveys and reviews all comments and complaints it receives regarding the nature and quality of its service and enforcement.

Complaints and expressions of dissatisfaction are seen as opportunities to identify possible weaknesses in service delivery and as a step towards making improvements. Information obtained from the investigation of complaints will be used to examine possible action to improve the service.

The Council has a corporate system for dealing with complaints. Complaints can be registered using the Complaints Procedure by contacting any officer within the Council, in writing, by telephone, via e-mail or face-to-face.

## **18. Access to the Enforcement Policy**

This Policy will be made available on the Council's web site. Hardcopy versions will also be available on request and can be made available in an alternative language or format.

Each officer in the respective Service Areas will be provided access to this Policy.

## **19. Review of Policy**

It is intended that this policy will be subject to a regular review and, if and when required, amended to accommodate changes in legislation and local needs.