



PUBLIC PROTECTION ENFORCEMENT POLICY

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Copies of this Enforcement Policy and Service Standards can be found on the [Council website](#).

1.0 Introduction

1.1 The purpose of this policy is to enable both businesses and members of the public to know what to expect when dealing with the Council in matters for which the Council exercises an enforcement function.

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

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

Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009

SI665/2009 (The CRE Enforcement Order).

Co-ordination of Regulatory Enforcement (Procedure for References to LBRO) Order 2009 SI670/2009 (The CRE LBRO Order).

Legislative and Regulatory Reform Act 2006 (LRRRA).

Legislative and Regulatory Reform (Regulatory Functions) Order 2007

Regulators' Compliance Code (RCC).

1.3 The RES Act established The Local Better Regulation Office (LBRO) now the Office of Products Safety and Standards (OPS&S). It also imposed upon Local Authorities a duty to:

(a) have regard to any guidance given to a Local Authority;

(b) a duty to comply with guidance where we are directed to do so, and;

(c) a duty to have regard to any list of enforcement priorities published.

The Council is fully committed in avoiding imposing unnecessary regulatory burdens, continuously assessing whether satisfactory outcomes could be achieved by less burdensome means taking into account social, environmental and economic outcomes. As such we are fully committed to following the guidance issued by the OPS&S.

2.0 When does this policy apply?

2.1 This policy applies to all service areas under the remit of Public Protection. These services are as follows:

- Trading Standards
- Pollution
- Health and Safety
- Food Safety
- Licensing
- Financial Investigations

- Financial Investigations

2.2 There are a number of other policies relevant to this Policy including:

- Health and Safety Executive (HSE) Enforcement Management Model

- Criminal Conviction Policy (for Hackney Carriage and Private Hire drivers)

3.0 Principles of Good Regulation

3.1 We seek to secure compliance with the law while minimising the burden on individuals and businesses, taking into account the RES Act which requires Central Bedfordshire Council to have regard to the Principles of Good Regulation when exercising a specified regulatory function (2.1 above).

3.2 We will exercise our regulatory activities in a way which is:

- (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

4.0 Explanation of the local authority's approach to dealing with non-compliance

4.1 Our primary objective is to achieve regulatory compliance. Where possible we will try to prevent non-compliance from occurring in the first place. We will do this by providing advice, guidance and information, when it is appropriate do to so. However, it will sometimes be necessary to take formal action against a business including sole traders and corporate bodies, directors, managers as well as other individuals.

4.2 The policy will normally pivot around a process of escalation. Generally, we will only take prosecutions under the following circumstances;

- A defendant has acted wilfully in their disregard for the law
- The defendant's actions have or are likely to cause a material loss or harm to others
- Where the defendant has previously ignored warnings or formal notices
- Where the defendant has endangered the health, safety or well being of people, animals or the environment
- Where the actions of a defendant are fraudulent in nature
- The defendant has assaulted or obstructed an Officer in the course of their duties

4.3 In (food) establishments where the Council is the operator of the business, any serious breaches of the law will be brought to the attention of the Chief Executive.

5.0 Notification of alleged offenders

5.1 Should this Service receive information which may result in enforcement action being taken, we will inform the business or individual under investigation, as soon as practicable, of any proposed enforcement action except where this could compromise an investigation, or put at risk any individual or members of the public.

5.2 If we believe there are reasonable grounds to believe an offence has been committed, any discussion concerning that offence will be conducted in accordance with

the Codes of Practice issued under the Police & Criminal Evidence Act 1984 as amended.

6.0 Levels of Enforcement Action

Public Protection has a number of enforcement options. The decision as to what is appropriate in particular circumstances may range from no action to the instigation of court proceedings.

6.1 Examples of enforcement actions are detailed below;

- No action
- Verbal or written advice
- Verbal or written warning
- Forfeiture proceedings
- Seizure
- Statutory notice
- Fixed penalty notice and actions relating to the sale of alcohol to under 18's
- Sanctions relating to persistent sale of tobacco products to under 18's
- Proceeds of crime actions
- Penalty charge notices
- Works in default
- Injunctive actions
- Refusals, suspension and revocation of licences
- Simple caution
- Prosecution

6.2 No Action

Under certain circumstances, the Service may decide to take no action. This may be where:

- The details of the case have not satisfied the Public Interest test laid down in the code for Crown prosecutors.
- The cost of compliance for the business outweighs the negative impact of the contravention
- Where formal enforcement action is inappropriate

6.3 Verbal or Written Advice/Verbal or written warning

This approach may be adopted for a very minor offence, where it is felt that more serious action is not warranted. A course of corrective action will be suggested and a timescale for remedy will be given.

Failure to comply with a verbal or written warning may result in an escalation of enforcement action

6.4 Forfeiture Proceedings

This procedure may be used in conjunction with seizure and /or prosecution where

there is a need to dispose of goods in order to prevent them from re entering the market place, or causing some other problem. If appropriate we will make an application for forfeiture to the Courts.

6.5 *Seizure*

Relevant legislation enables authorised Officers to seize goods, equipment, documents, or other articles. For example this may relate to counterfeit products or unsafe food, or any items that may be required as evidence in court. When we seize goods, we will give the person from whom the goods have been taken, a receipt for those goods and advise them of their statutory rights. In appropriate cases, seized items may also be made the subject of a forfeiture application to the Courts as described at 6.4 above.

6.6 *Statutory Notice*

Such notices may be issued in accordance with relevant legislation and could require offenders to take specific action or to cease activities immediately, where the circumstances relate 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 non-compliance. All notices issued will contain details of any applicable appeals process in full compliance with the minimum statutory time periods allowed for the appeal.

6.7 *Fixed penalty Notices and actions Relating to the Sale of Alcohol to persons under 18*

Where alcohol is sold to someone under that age of 18, the offence can now be dealt with by a fixed penalty notice being issued by Bedfordshire Police. A FPN may be issued as an alternative to prosecution.

The seller can still be prosecuted when an FPN is not appropriate, such as when repeat sales have been made by the same person.

If a sale of alcohol to under 18's take place the licensees of the premise may have their licence reviewed. One of the options open to the review committee is the revocation of the licence. Where there are persistent sales of alcohol to under 18's, we may issue a closure notice as specified under the licensing Act 2003. It is up to the licence holder to accept the closure notice or elect to be tried for the offence.

6.8 *Sanction for persistent sale of tobacco products to someone under 18*

If a person is convicted of selling tobacco products to a person under 18 and has committed similar offences within the last two years in connection with the same premise, we can apply for a;

- A restricted Premises Order – prohibits the sale of tobacco at the named premise
- A Restricted Sale order – prohibits any named person from selling tobacco or cigarette papers to anyone. Further conditions may be applicable

6.9 *Proceeds of Crime Actions*

The purpose of proceeds of crime actions is to recover any financial benefit that an offender has gained from their criminality. Applications may be made under the Proceeds of Crime Act for a confiscation order in appropriate cases. Proceedings are conducted according to the civil standard of proof. Applications are made after a conviction has been secured.

6.10 *Penalty Charge Notices*

Penalty Charge Notices (PCN) are underpinned by legislation as a means of enforcement by which the offender pays an amount of money to the enforcer in recognition of the breach. Failure to pay a PCN will result in action in the County Court for recovery of the debt.

6.11 *Works in default*

Failure to comply with a statutory notice or other formal requirement may result in us arranging to have the necessary works undertaken. The cost of those works, including administration and office time costs will be charged to the person who was required to carry out those works. Failure to pay any outstanding costs will result in either a charge on property (with interest) or civil action to reclaim costs.

6.12 *Injunctive Actions*

Under certain circumstances, such as when offenders repeatedly commit similar offences or where it is considered that injunctive action is the most appropriate form of enforcement action, such action may be used especially where there is significant consumer detriment.

Proceedings under the Enterprise Act may be brought where an individual or organisation has acted in breach of legislation with the effect of harming the collective interests of consumers

6.13 *Refusal, Suspension and Revocation of Licences/Registrations/Permits/Consents*

We are responsible for licensing, approving or registering a number of business activities including;

- Petroleum
- Explosives
- Animal feedstuffs
- Skin Piercing (tattooing, acupuncture, body piercing, semi-permanent make-up)
- Pet Shops
- Animal Boarding Establishments
- Zoo's
- Dog Breeding
- Dangerous Wild Animals
- Horse Riding Establishments
- Taxi Licensing
- Local Authority Pollution Prevention Control
- Licensing Act 2003
- Street trading
- Scrap Metal Act
- Gambling
- Charity collections and lotteries

Depending on the law relating to a particular licence there may be conditions which must be complied with. Failure to comply with the conditions of a licence, registration, permit, consent, approval may result in;

- Refusal to issue a licence/permit/consent

- Power to suspend licence/permit/consent (sometimes via the court)
- Power to revoke a licence/permit/consent (sometimes via the court)
- Power to modify the conditions of licence/permit/consent
- Power to exclude a licensable activity from the scope of the licence

6.14 *Simple Caution*

Where there is a realistic prospect of successful prosecution and the offender admits guilt, but the material facts of the case suggest there is scope for a more lenient approach, consideration will be given to dealing with the offence by way of simple caution.

A simple caution is an admission of guilt, but it is not a criminal conviction. However it may be cited in court and may form part of a criminal record and is kept on record for 3 years.

In appropriate cases the Council may also seek a contribution from the defendant towards the cost of an investigation.

6.15 *Prosecution*

A prosecution will normally be considered where the offender meets one or more of the following criteria

- Deliberate, negligently or persistently breached legal obligations, which were likely to cause material harm or loss to others
- Deliberately or persistently ignored written warnings or formal notices
- Endangered, to a material degree, the health, safety or well being of people, animals, or the environment
- Where the actions of a defendant are fraudulent in nature
- Assaulted or obstructed an Officer in the course of their duties

All prosecutions are subject to a process of vetting by senior officers as well as Legal Services. This is to ensure that applicable procedures were followed; that the alleged offender was given an opportunity to respond to any allegations and that the rules of evidence and public interest are complied with.

7.0 General Principles of Enforcement

7.1 Through our enforcement activity, we seek to ensure that minimum standards prescribed by law are achieved by individuals and businesses that have legal responsibilities to preserve health, safety, to protect the consumer and the environment.

7.2 Prevention is better than cure and in our role we will actively work with businesses to advise on, and assist with compliance in line with *Better Regulation*.

7.3 It is the belief of Public Protection that the majority of companies and individuals wish to comply with the law and wherever possible we will adopt an educative approach to offer support and guidance to residents and businesses before any formal legal action is considered. We will not treat requests for information as a need for direct intervention or visit by us.

8.0 Decisions on Enforcement Action

8.1 Decisions about the most appropriate enforcement action to be taken will be based on professional judgement, legal guidelines, statutory codes of practice and priorities set by Central Bedfordshire Council and / or Central Government

8.2 Where appropriate, decisions about enforcement will involve consultation between;

- Officers In Charge
- Investigating Officers
- Senior Managers from Public Protection
- Legal Services

9.0 Deciding what level of action is appropriate

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

- (a) The seriousness of the non-compliance
- (b) The past and current performance of any business and/or individual concerned and their intent
- (c) The attitude of the offender e.g. whether they co-operated or obstructed the officer.
- (d) Whether the breach was intended for gain or to cause loss to another
- (e) The existence of a Primary Authority agreement
- (f) Any legal advice offered by another regulator
- (g) Whether enforcement action will act as a deterrent and encourage compliance in the future
- (h) The effect of the breach on the victim, in particular if the victim is vulnerable
- (i) The breach has caused significant risk or harm to persons or to the environment
- (j) Statutory guidance / Codes of practice / Decision making models e.g. HSE's Enforcement Management Model
- (k) Legal advice obtained
- (l) The views of any victim injured party or relevant person to establish the nature and extent of any or potential harm or loss, and its significance.
- (m) Whether restitution has been offered or made to the injured party.

9.2 Certain enforcement action, such as the decision to Caution and/or the decision to prosecute, is also informed by Home Office guidance and The Code for Crown Prosecutors as issued by the Director of Public Prosecutions.

9.3 Regular feedback will be provided to the parties affected and those subject to enforcement action will be informed in writing of their legal rights.

10 Liaison with other regulatory bodies and enforcement Agencies

10.1 Where appropriate Public Protection enforcement activities will be co-ordinated with other regulatory bodies and enforcement agencies.

10.2 Where enforcement activity may need to extend outside of the Council's administrative area, relevant authorities and organisations will be informed of the matter as soon as possible

10.3 Public Protection may share intelligence with other regulatory bodies and

enforcement agencies such as;

- Government Agencies (i.e. HSE, Food Standards Agency)
- Police Forces
- Fire Authorities
- Other Local Authorities

11.0 Approach to complaints of non-compliance

11.1 We will target our enforcement activities including prioritising our inspections and visits to those individuals and businesses whose actions give rise to the most serious risk or where hazards are least well controlled. We will use a risk based, intelligence led prioritising system to determine our regulatory practice, the frequency of our visits, the scope of our intervention and actions.

11.2 Complaints will be investigated and prioritised depending on the significance of risk it presents to persons or the environment. Anonymous complaints will not generally be investigated unless there is a serious allegation being made.

12.0 Conduct of Criminal Investigations

12.1 All Officers carrying out investigations will be authorised through the Council's Constitution and Scheme of Delegation. Officers will receive their authority in writing and will produce this when requested/required to do so.

12.2 Investigations are undertaken in order to determine:

To establish the facts of allegations from members of the public, employees, businesses and others so as to decide what action we should take, if any

The facts and causes of a case, i.e. an accident at work

Whether action has been taken or needs to be taken to prevent a recurrence and

to

- Secure compliance with the law
- Whether lessons can be learnt which may be passed onto relevant bodies or persons, or to use the information ourselves to provide an improved service
- What response is appropriate to a breach of the law

12.3 In selecting which incidents or complaints to investigate and in deciding the level of resources to be used, Public Protection will take account of the following factors:

- The severity and scale of potential or actual harm
- The seriousness of any potential breach of the law
- Knowledge of the duty holder's past performance
- Our enforcement priorities
- The practicality of achieving results
- The wider relevance of the event, including whether there is a serious public concern

12.4 Public Protection recognises that it is neither possible nor necessary to investigate all non-compliance that we encounter. Most of the resource available for investigations will be therefore be devoted to more serious cases.

12.5 Public Protection will be guided by the advice of other enforcement agencies such as the Health and Safety Executive when deciding whether incidents or complaints should be investigated. On other occasions enforcing officers will use their discretion when deciding which cases to prioritise for investigation but will be guided by this Enforcement Policy.

12.6 Public Protection will always carry out a site investigation of a reportable work-related death. In cases involving work related deaths, investigating officers will adhere to the requirements of the document 'Work-related Deaths: A protocol for liaison' and will work jointly with officers of the Bedfordshire Constabulary.

12.7 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 Public Protection:

- 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

These Acts and associated guidance control how evidence is collected and used and give a range of protections to potential defendants.

13.0 Gathering and use of evidence

13.1 Evidence is gathered, controlled and used in compliance with the legislation listed in so as to ensure that the rules of investigation and evidence collection are adhered to thus protecting the rights of businesses and individuals.

13.2 Where items and/or documents are seized, receipts are issued and the item(s) are placed in a secure place tagged with a unique reference number. Perishable items are placed in appropriate conditions to preserve them.

14.0 Powers of Authorised Officers

In line with Better Regulation, Officers will normally make contact with the business in the first instance with the aim to provide help and assistance in an informal manner. However there will be circumstances where this is inappropriate due to the nature of the matter.

14.1 Officers have a right to enter and inspect premises at all reasonable hours. They do not have to make an appointment and in most cases officers will visit without advance notice. Powers include:

- Taking samples, taking copies of documentation, photographs, and inspecting business records;
- Serving Statutory Notices if the business operator is breaking the law,; that notice stating what the problem /offence is, what must be done to put it right and the time period for compliance;
- Serving a Prohibition Notices which forbids the use of premises, equipment or an activity;
- Detain or seize suspect goods including food;
- Interviewing suspects in accordance with the Police And Criminal Evidence Act 1984 and associated codes of practice, including in certain circumstances, compelling

persons to answer questions under Health and Safety legislation;

14.1 Where the officer is required to investigate a matter where the business in question has a registered Primary Authority partnership, and matters of concern are not of a local nature, we will contact the Primary Authority and inform them of our investigation as soon as possible.

14.2 It is an offence to obstruct an officer during the course of his/her duties. Obstruction includes:

- Refusing entry;
- Refusing to allow records or goods to be inspected and/or taken away;
- Refusing to cooperate where legislation requires such cooperation necessary to assist in the investigation;
- Wilfully providing false or misleading information.

Please note under specific legislation i.e. health and safety, and trading standards law, serious obstruction may lead to arrest.

15.0 Covert Surveillance

15.1 The Regulation of Investigatory Powers Act (RIPA) governs the use of covert (hidden) techniques by public authorities. It requires that when public authorities, such as a local authority, need to use covert techniques, in public places (directed surveillance), to obtain private information about someone, they do it in a way that is necessary, proportionate, and compatible with human rights.

15.2 RIPA is wide ranging in its application but in the context of those investigations carried out by the Public Protection service, compliance with RIPA is required when using covert surveillance in the detection of crime, for ensuring public safety and in the interests of protecting public health.

15.3 An enforcing officer of the Public Protection Division must make seek the authority of the Courts before undertaking any covert surveillance and will be subject to the Code of Practice on Covert Surveillance and Property Interference issued by the Home Office.

16.0 Communication with alleged offenders and witnesses

16.1 If we receive information that may result in formal enforcement action against a business or individual, we will notify them as soon as is practicable and keep all parties informed of progress, unless this is detrimental to the investigation.

16.2 We will comply with the General Data Protection Regulation 2016 and only share or release information where we are permitted to do so by the provisions of the Act.

17.0 Questioning of Suspects

17.1 A person who it is believed may have committed an offence may be formally interviewed during an investigation. These interviews will be conducted under the rules of the Police and Criminal Evidence Act 1984 (PACE) and associated codes of practice.

Any decision on the appropriateness of a particular course of action will only be made after the facts of the case have been established and considered in accordance with this Enforcement Policy.

17.2 Formal Audio recorded Interviews conducted in accordance with PACE and will usually be done in an appropriate room on Council premises. Before attending such an interview those invited will be told what contraventions are alleged and warned that enquiries may result in formal action being taken against them.

17.3 Those invited to a formal interview will be told how to make an alternative appointment, and the areas they will be questioned about so that they may prepare. Interviewees have the right to be accompanied by a solicitor or legal representative of their choice to the interview.

Furthermore, if a defendant is under the age of 18, then they have the right to also be accompanied by a parent or another appropriate adult.

17.4 Occasionally enforcing officers will interview suspects away from the office environment, for example at the site of an accident or food poisoning outbreak. In such cases the investigating officer will read the caution and ask the person being interviewed to sign the officer's notebook to indicate they understand. The officer's questions and the suspect's answers to those questions will be recorded in the officer's notebook and the suspect asked to sign the notebook.

If a person suspected of committing an offence is invited to attend a formal audio recorded interview but declines any statement they subsequently submit giving an explanation or excuse for their actions or involvement in the alleged offence will be considered.

18.0 Interviewing others during investigations

18.1 Enforcing officers have wide ranging investigatory powers. As well as interviewing suspects, officers have the power to require others to divulge information which they believe maybe pertinent to an inquiry.

18.2 Enforcing officers are entitled to rely on the information they obtain during the course of an investigation and may require those with information to provide a statement and to sign a declaration as to the truthfulness of what they say.

19.0 Time limits for investigations

19.1 Procedures are in place to ensure investigations are completed within any statutory time limits relevant to the matter under investigation.

19.2 In all cases investigations will be completed without undue delay, with regular case reviews carried out so as to ensure due process is being followed including compliance with this Policy, PACE, CPIA and any statutory time limits.

20.0 Equalities

20.1 The Public Protection Service is committed to fulfilling its role with regard to the enforcement of legislation and will not be influenced by race, gender, nationality, disability, religion or belief, age, sexual orientation, geographical location or any other status of the offender, victim or witness.

21.0 Protection of Human Rights

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

22.0 Review of this policy

22.1 This policy will be reviewed annually or where there is some other factor requiring such a review i.e. revised Central Government advice.

23.0 Comments and Complaints

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

- e-mailing servicemanager@centralbedfordshire.gov.uk
- writing to the Head of Service, Public Protection, Priory House, Monks Walk, Chicksands, Shefford, Bedfordshire. SG17 5TQ
- telephoning 0300 300 8000 and ask to speak to Public Protection.

23.2: If you are unhappy about the conduct of the Council or an officer, wish to appeal against a decision by the Council of an officer, or believe the Council or the officer has failed to act in accordance with the Regulators Code, please contact the Assistant Director for Public Protection & Transport who will deal with your complaint. Failing this the Council will provide details on how you can take the matter further.

23.3 On request, this Policy will be available in alternative formats including Braille.

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