

Enforcement and Prosecution Policy

London Borough of Barnet

2017

Document Control

POLICY NAME	Enforcement and Prosecution Policy – Barnet Council		
Document Description	This document summarises the Council's approach to ensure compliance with regulatory requirements and applies to all service areas. This policy will be supported by more detailed service specific enforcement policies and procedures which will be in line with the approach set out in this document.		
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1. Introduction

1.1 Barnet Council shares the Government's view that effective and well-targeted regulation is essential in promoting fairness and protection from harm and that as regulators we should adopt a positive and proactive approach towards ensuring compliance by:

- helping and encouraging those who are subject to regulatory and legal requirements to understand and meet those requirements more easily; and
- responding proportionately to regulatory and legal breaches

1.2 Barnet Council will take a more collaborative approach to those who comply with regulatory and legal requirements and those who work with us to achieve compliance. We will not hesitate to take all necessary enforcement action against those who commit serious and/or persistent breaches and offences, and refuse to work with us to achieve compliance

1.3 This enforcement and prosecution policy will apply to all service areas of the Council and will be supported by additional service-specific policies/or procedures. Information about these service specific policies and procedures can be obtained from the relevant service areas and are accessible on the council's website. Service specific policies include:

- planning
- building control
- environmental health
- food safety
- trading standards
- licensing health and safety
- highways and parking
- housing (private sector i.e. Houses in multiple occupation and council managed housing)
- Social Services
- Councils Anti-Fraud Team (CAFT).

1.4 The appropriate use of the full range of enforcement powers, including prosecution, is important, both to secure compliance with regulation and the law and to ensure that those who have duties under it may be held to account for failures to safeguard health, safety and welfare or breach of regulations enforced by the Council.

1.5 The key principles of the council's Corporate Enforcement and Prosecution Policy are in line with the Cabinet Office Enforcement Concordat:

We Will:

- have clear standards, setting the level of service the public and businesses can expect to receive
- deal with the public and businesses in an open and honest way
- provide a courteous, efficient and helpful service
- respond promptly and positively to complaints about the service
- take an evidence based approach to determine the risks and ensure enforcement action is proportionate
- carry out our duties in a fair, equitable and consistent manner

1.6 Barnet Council's Corporate Plan sets out the following objectives that are underpinned by the principles of Fairness, Responsibility and Opportunity:

'The council, working with local, regional and national partners, will strive to ensure that Barnet is a place:

- Of **opportunity**, where people can further their quality of life
- Where people are helped to help themselves, recognising that **prevention** is better than cure
- Where **responsibility** is shared **fairly**
- Where services are delivered **efficiently** to get **value for money** for the tax payer
- With improved Customer Services and increased transparency

1.7 However, we also recognise that our local businesses and individual residents have a role to play in helping us achieve the objective set out above.

1.8 Ultimately it is the responsibility of individuals and businesses to comply with regulations and the law to:

- Address the negative impact their behaviour may have on the wider community and Barnet's environment.
- Prevent the unnecessary demand on public services.
- Avoid escalating costs to the council and the tax payer as a result of addressing non-compliance.

1.9 This policy supports Barnet Council's objective of being a transparent and open council, in that it sets out publicly the Council's intended approach to bring about compliance with regulatory and legal requirements. This policy also supports Barnet's vision where responsibility is shared fairly. In doing so, the Council will adhere to fair and practical enforcement policy and practice across the full range of the Council's regulatory activity.

2. Purpose of the policy

2.1 One of the functions of the Council is to act as a regulator and an enforcement agency for a large range of legal duties and powers applied by Statutes and the Regulations and Orders made under them (including various byelaws). This policy sets out standards that will be applied across the Council when acting in its role as regulator and enforcement agency and what residents, businesses, consumers and workers can expect from Barnet Council.

2.2 This policy sets out the approach to be followed by authorised officers when making decisions in respect of the Council's compliance and enforcement activities. The Council is committed to ensuring that all authorised officers will act in accordance with this policy.

3. Policy Aims

3.1 The aims of this policy are to:

- Provide clear guidance to all enforcement officers;
- To set out clearly what is expected from the Community in terms of compliance
- Ensure enforcement that is proportionate
- Provide an element of flexibility to recognise officer judgment through not being over prescriptive but ensuring decisions remain consistent with council policy
- Provide equal treatment for all.
- Enforcing the law, protecting the community
- To reduce unnecessary demand on and costs to Council services resulting from Council services having to address repeat offending and breaches

4. Enforcing the Law and protecting the community

4.1 The primary function of Barnet Council's enforcement work is to ensure compliance with regulations and the law and to protect the public, the environment and groups such as consumers and workers.

- 4.2 We recognise that most businesses and members of our community want to comply with the law. We will therefore take care to help businesses and others to meet their legal obligations. We will take firm action, including prosecution where appropriate, against those who flout the law.
- 4.3 We have therefore adopted the Cabinet Office Enforcement Concordat¹ which commits the council to good enforcement policies and procedures and will show due regard to the Statutory Regulators Code (2014). In carrying out enforcement and when sharing information with other law enforcement agencies, the Council will have due regard to the Data Protection Act 1998, the Human Rights Act 1998, the Equality Act 2010 and Section 115 of the Crime and Disorder Act 1998.
- 4.4 Included in the term 'enforcement' are advisory visits and assisting with compliance as well as licensing and formal enforcement action.
- 4.5 If a regulator concludes, on the basis of material evidence, that the specific provision of the Code is not applicable or it is outweighed by another relevant consideration, the regulator is not bound to follow that provision, but should record the decisions and reasons for it.
- 4.6 Where a decision to prosecute is made, this decision will be taken in accordance with the Code for Crown Prosecutors², which details the considerations to be taken into account when bringing proceedings.
- 4.7 All cases that are being considered for enforcement should be compliant with the Counter Fraud Framework. All Enforcement Officers must refer to the Council's Corporate Anti-Fraud Team (CAFT) at the earliest opportunity where fraud, bribery, corruption and/or money laundering offences against the council are suspected or come to light within an enforcement investigation as they are the only authorised council service to conduct these types of investigations

5. Principles of Barnet's Enforcement and Prosecution Policy

5.1 Principle One: Standards

We will draw up clear standards setting out the level of service and performance the public and business people can expect to receive. Where appropriate we will consult with businesses and other relevant parties, including technical experts.

5.2 Principle Two: Openness

5.2.2 We will provide information and advice in plain language on the rules that we apply and will disseminate this widely. We will be open about how we set about our work, including any charges that we set. We will consult as appropriate, business, voluntary organisations, charities, consumers and workforce representatives.

5.2.2 We will provide an annual performance report on the implementation of this policy to the appropriate committee.

¹ Web link provided at the end of this document

² A link to the document is provided at the end of this policy

5.3 Principle Three: Helpfulness

- 5.3.1 We believe that prevention is better than cure and that our role therefore includes actively working with business, especially small and medium sized businesses, to advise on and assist with compliance in relevant areas.
- 5.3.2 We will provide a courteous and efficient service and our staff will identify themselves.. We will provide a point of contact and we will encourage businesses to seek advice and information from us. We will ensure that, wherever practicable, our enforcement services are effectively coordinated to minimise unnecessary overlaps and time delays

5.4 Principle Four: Complaints about the services provided

- 5.4.1 We will provide well publicised, effective and timely complaints procedures easily accessible to business, 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 the likely time-scales involved.

5.5 Principle Five: Proportionality

- 5.5.1 We will take an evidence based approach to determine the risks and ensure enforcement action is proportionate
- 5.5.2 We will take particular care to work with small businesses and voluntary and community organisations so that they can meet their legal obligations.

5.6 Principle Six: Consistency

- 5.6.1 All council regulatory and enforcement services will carry out their duties in a fair, equitable and consistent manner across each service.

6. Compliance and Non-compliance

- 6.1 A range of activities will be undertaken to ensure compliance with legislation. Advice and guidance will be provided; proportionate, programmed and intelligence led inspections will be undertaken and where necessary, inspections will be undertaken in response to complaints from third parties. Some enforcement services will also have officers patrolling the streets whose role is to detect non-compliance and enforce in accordance with this policy.
- 6.2 Where non-compliance is discovered, options to promote/seek compliance will include:
- undertaking pro-active education programmes
 - explaining legal requirements and, where appropriate, the means to

achieve compliance

- service of advisory letters, warnings, statutory notices, prohibitions detailing non-compliance
- enforcement actions including, but not limited to, formal caution, seizure of documents or goods, issue of penalty notices, closure of premises,
- prosecution and/or injunction

6.3 Immediate, without notice, enforcement action may be taken where appropriate.

6.4 In some instances, the Council may have shared responsibilities or a complementary role with another enforcement agency. In these circumstances, officers will liaise with that other agency to ensure effective co-ordination to avoid inconsistencies and to ensure that any proceedings taken are proportionate and appropriate.

6.5 The Council may publicise information about enforcement action that is taken in line with the relevant Government guidance on publishing sentencing outcomes.
(<http://www.justice.gov.uk/information-access-rights/sentencing-outcomes>).

6.6 This is usually once an investigation has been brought to a conclusion via a successful prosecution at Court. Any news releases of this nature will be sent to the Council's Corporate Communications Team electronically who will review and authorise issue for broadcast. This information can also be publicised on the Council's website and via other social media.

7. How action taken is determined

7.1 Where evidence is found that a business or other regulated person is showing disregard for the law by deliberately or persistently failing to comply despite advice or requests made by the Council, it may be deemed that providing advice alone is not sufficient. Under these circumstances enforcement action may be escalated directly to prosecution.

7.2 Where there is specific Legislative Guidance and Regulations which set out the enforcement requirements these will be followed.

8. Conduct of investigations

8.1 Enforcement action may result in either civil or criminal proceedings being instituted by the Council. The process that will be followed by officers in the investigation of alleged breaches of the law will depend on whether civil or criminal proceedings are considered. As the enforcing authority in any proceedings it instigates, the burden of proof falls to the Council.

8.2 Investigations will be carried out in compliance with the following legislation and in accordance with any associated guidance or codes of practice, in so far as they relate to Barnet Council:

- 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
- the Police and Criminal Evidence Act 1984

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

8.4 Authorised officers of the Council will also comply with the requirements of the particular legislation under which they are acting, and with any associated guidance or codes of practice. Officers are authorised through the Council's scheme of delegation.

9. Decision on Enforcement Action

9.1 The Range of Actions Available as set out in Legislation

There are a range of actions that are available to the Council as set out in the different legislation the Council enforces. Examples of the main types of actions which may be considered are set out below.

(a) Compliance Advice, Guidance and Support

The Council uses compliance advice, guidance and support as a first response in the case of many breaches of legislation that are identified. Advice is provided, sometimes in the form of a warning letter to assist individuals and businesses in rectifying breaches as quickly and efficiently as possible, avoiding the need for further enforcement action. A warning letter (sometimes called an 'informal caution') will set out what should be done to rectify the breach and to prevent re-occurrence. If a similar breach is identified in the future, this letter will be persuasive in considering the most appropriate enforcement action to take on that occasion. The warning letter, though not a caution or conviction may be presented at Court in evidence.

Where more formal enforcement action, such as a simple caution or prosecution, is taken, the Council recognises that there is likely to be an ongoing need for compliance advice and support, to prevent further breaches.

(b) Voluntary Undertakings

The Council may accept voluntary undertakings that breaches will be rectified and/or recurrences prevented. The Council will take any failure to honor voluntary undertakings very seriously and enforcement action is likely to result.

(c) Statutory (Legal) Notices

The Council has powers to issue statutory notices in respect of many breaches.

These include: 'Stop Notices', 'Prohibition Notices', 'Emergency Prohibition Notices', and 'Improvement Notices'. 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.

A statutory notice will clearly set out actions which must be taken and the timescale within which they must be taken. It is likely to require that any breach is rectified and/or prevented from recurring. It may also prohibit specified activities until the breach has been rectified and/or safeguards have been put in place to prevent future breaches. Where a statutory notice is issued, an explanation of the appeals process will be provided to the recipient.

Some notices issued in respect of premises may be affixed to the premises and/or registered as local land charges.

(d) Financial penalties

The Council has powers to issue fixed penalty notices or penalty charge notices in respect of some breaches. A fixed penalty notice or penalty charge notice is not a criminal fine, and does not appear on an individual's criminal record. If a fixed penalty/penalty charge notice is not paid, the Council may commence criminal proceedings in respect of the breach or take civil enforcement action to recover the penalty charge subject to the provisions of the relevant legislation.

If a fixed penalty/ penalty charge notice is paid in respect of a breach the 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.

The Council is only able to issue fixed penalty notices where it has specific powers to do so. If fixed penalty notices are available, their issue is at the Council's discretion. In some circumstances, in particular where breaches are serious or recurrent, it maybe that prosecution is more appropriate than the issue of a fixed penalty notice.

(e) Injunctive Relief, Enforcement Orders etc.

In some circumstances the 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.

(f) Simple Caution

The Council has the power to issue simple cautions (previously known as 'formal cautions') as an alternative to prosecution for some less serious offences, where a person admits an offence and consents to the simple caution. Where a simple caution is offered and declined, the Council is likely to consider prosecution.

A simple caution will appear on the offender's criminal record. It is likely to influence how the Council and others deal with any similar breaches in the future, and may be cited in court if the offender is subsequently prosecuted for 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.

(g) Prosecution

The Council may prosecute in respect of serious or recurrent breaches, or where other enforcement actions, such as voluntary undertakings or statutory notices have failed to secure compliance. When deciding whether to prosecute the Council must give due regard to the provisions of The Code for Crown Prosecutors as issued by the Director of Public Prosecutions and the Council's Counter Fraud Framework.

Prosecution will only be considered where the Council is satisfied that it has sufficient evidence to provide a realistic prospect of conviction against the defendant(s).

If the evidential test is satisfied a prosecution will usually take place unless there are public interest factors tending against prosecution which outweigh those tending in favour. The more serious the offence or the offender's record of breaches/criminal behaviour, the more likely it is that prosecution will be required in the public interest.

Assessing the public interest is not merely a matter of adding up the number of factors on each side and seeing which has the greater number. The public interest must be decided on the merits of each individual case and making an overall assessment. It is quite possible that one factor alone may outweigh a number of other factors which tend in the opposite direction.

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.

(h) Proceeds of Crime (POCA)

POCA sets out the asset recovery scheme which aims to deny criminals the use of their assets, recover the proceeds of crime and disrupt and deter criminality. The most commonly used power is criminal confiscation where confiscation occurs after a conviction has taken place. Other means of recovering proceeds of crime which do not require a criminal conviction are provided for in the Act, namely civil recovery.

The Act also provides for a number of investigative powers which are also used by the Local Authority (Corporate Anti-Fraud Team - CAFT Team). For example search and seizure powers, and powers to apply for production orders and disclosure orders and allows for the 'restraint' or 'freezing' of assets to prevent dissipation of assets prior to a confiscation order being made.

The CAFT has an established Financial Investigation Team within, consisting of qualified Financial Investigation Officers and an approved Senior Authorising Officer, accredited and authorised by the National Crime Agency NCA. In accordance with the Council's Financial Regulations they are the only authorised Council service to conduct Financial Investigations under the Proceeds of Crime Act 2002 on behalf of all Council Services (and subsidiary holdings and contractual partners) and to further investigate individuals who are prosecuted by the Council.

Referrals must be made to the CAFT by the service conducting an enforcement investigation / prosecution for consideration of suitability for a POCA investigation. The decision whether or not to instigate a POCA investigation lies with CAFT Financial Investigators on assessment of each case and legal advice where required.

The Proceeds of Crime Act 2002 provides for the confiscation or civil recovery of the financial benefit that a convicted person has obtained through their criminal conduct. A confiscation order assesses the amount of financial benefit a person has derived from their criminal behavior.

This financial benefit is then redistributed as follows:

- 50% goes to HM Treasury
- 12.5% goes to HM courts – for administration of the POCA (Crown

Court not Magistrates Courts)

- 18.75% goes to cost of POCA investigation
- 18.75% goes to cost of legal action by prosecutor

Although not “ring-fenced” councils receiving incentivisation payments are expected to use them to promote work under POCA, or for the prevention and detection of crime. Unless agreed CAFT retain any confiscation (after costs/compensation) for use in the prevention / detection of crime.

(i) Refusal/Suspension/Revocation of Licenses

The Council issues a number of different Licenses, Consents, Registrations and Permits. They are applied for by submission of an application, the form and content of which is sometimes specified in law. Applications are generally granted for a limited defined period and will be required to be renewed annually unless otherwise specified.

The Council may be permitted to ask supplementary questions on an application form in order to assist it in reaching a decision on whether the applicant is a fit and proper person to hold such a License.

In some cases applications are subject to either a public or interested party consultation process and any application that attracts adverse comment or objection or does not meet Council policy requirements will be referred to an internal civil hearing forum to determine the application.

Most Licenses and other permissions have conditions attached which can be standard conditions or specific conditions or a combination of both. These conditions form part of the License and lay down requirements that a business or individual must have regard to when trading. Breach of a condition may be a civil or criminal matter.

When considering applications information supplied with the application together with any previous enforcement action and compliance record can be taken into account when reaching a decision.

10. Explanation of how decisions are communicated to those affected

The Council will provide a timely explanation in writing of any rights to representation or appeal and information on the process involved.

11. Review of this policy

This policy will be reviewed periodically or in line with changes in relevant legislation, or Regulators Code.

12. Comments and Complaints

Details of processes for complaints and appeals

- All appeals in relation to enforcement action taken should be via the statutory appeals process outlined in the relevant legislation.
- Complaints about the conduct of officers should be made via the Council corporate complaints procedure.

13. Policy Status and Review

13.1 This policy was confirmed by the Policy and Resources Committee on:
TBC

Links to be inserted for the following:

- Cabinet Office Enforcement Concordat
- Statutory Regulators Code (2014)
- Barnet Counter Fraud Framework
- Barnet Council – Scheme of Delegation
- Government guidance on publishing sentencing outcome

