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REPORT TO:	Cabinet
DATE:	8 December 2022
SUBJECT:	Corporate enforcement policy
PURPOSE:	To seek approval of a revised corporate enforcement policy
KEY DECISION:	No
PORTFOLIO HOLDER:	Cllr. Paul Skinner
REPORT OF:	Assistant Director, Regulatory
REPORT AUTHOR:	Tony Gray
WARD(S) AFFECTED:	All
EXEMPT REPORT?	No

SUMMARY

This report sets out the Council's approach to how it will carry out its regulatory enforcement activities, of individuals, groups and businesses. This policy has been developed in collaboration with the other District Councils that comprise the South East Lincolnshire Partnership, in order to ensure that the way in which the Councils regulate businesses and individuals is both lawful and consistent across the partnership.

It demonstrates how undertaking regulatory activity in accordance with the provisions of this policy will ensure that the Council meets its responsibility to regulate and enforce fairly, openly, consistently and proportionately.

RECOMMENDATIONS

- 1) That Cabinet consider and approve the revised corporate enforcement policy.
- 2) That the Environmental Health Manager and the Assistant Director, Regulatory be given delegated authority to make such amendments to this policy as may, from time to time, be required in order to (i) reference any links or amended links to other documents and (ii) reflect any issues over which the Council has no discretion, including, but not limited to, references to any legislative changes and amended guidance, Any material amendments to the policy will be subject to the usual approval in line with the Constitution
- 3) That all service managers responsible for enforcement action that falls within the scope of this policy be given delegated authority to take, in exceptional circumstances, such action in departure from any part of this policy as they consider appropriate. This will be subject to (i) the reasons for such departure being documented and (ii) following consultation with the relevant portfolio holder or Committee Chair.

REASONS FOR RECOMMENDATIONS

The reason for recommendation 1) is to ensure that the Council observes the principles of good regulation in terms ensuring that its regulatory and enforcement activities are proportionate, accountable, consistent and transparent. It is also to ensure that the Council has consideration to the Regulators' Code, the Human Rights Act 1998, the General Data Protection Regulation and Data Protection Act 2018, the Code for Crown Prosecutors and the Regulatory Enforcement and Sanctions Act 2008.

The reason for recommendation 2) is to ensure that Cabinet is not asked to consider minor amendments to or revisions of the policy.

The reason for recommendation 3) is to ensure that the portfolio holder or relevant Committee Chair is notified on any departure or proposed departure from this policy

OTHER OPTIONS CONSIDERED

No other options have been considered

1. BACKGROUND

- 1.1 The Council is responsible for enforcing a wide range of legislation, with powers of enforcement usually delegated to individual officers in the various service areas concerned. The decision to take (or not take) enforcement action is a serious one that may have implications for all involved. It is therefore important that there is a policy in place that ensures fairness, openness, proportionality and consistency.
- 1.2 Regulatory activities can take different forms including:

- Inspecting premises, processes, equipment, vehicles, products
- Investigating complaints about individuals and business
- Providing advice about how to comply with the law
- Taking action at Licensing Panels or undertaking Licensing Reviews
- Issuing fixed penalty notices, statutory notices or taking prosecutions

2 REPORT

- 2.1 The existing corporate enforcement policy was produced in 2014, before the introduction of the Regulators' Code. This refreshed policy takes account of the requirements of that code.
- 2.2 The Regulators' Code remains in place but has not been updated since it came into statutory effect in 2014. It provides a clear flexible and principles-based framework for how regulators should engage with those they regulate. The Code however does not apply to the Town and Country Planning Act nor building regulation enforcement. The principles of the Code however are adopted through this policy across all areas. The revised policy continues to reflect these principles, which we are required to have regard to when developing policies and procedures that guide our regulatory activities.
- 2.3 The policy has been reviewed and updated in consultation with the following departments:
- 2.4 The policy is attached at Appendix A to this report. In summary, there are no changes to the principles of the policy, but the following inclusions are being proposed:
- Footnotes and hyperlinks now included
 - Scope of the policy extended to include a deviation clause (section 3)
 - Updated legislation for investigations (section 5)
 - Reference to offence of obstruction (section 5.1)
 - New section on training and appointment of officers (section 5.3)
 - Further information on the refusal, suspension and revocation of licences (section 6.1 h)
 - New section on Proceeds of Crime Act (section 6.1 i)
 - New section on safeguarding (section 7.0)

3 EXPECTED BENEFITS TO THE PARTNERSHIP

- 3.1 Adoption of this policy will help to ensure that officers undertaking regulatory work in a consistent and transparent way that is legally compliant and conforms with best practice.
- 3.2 The revised policy sets out the standards that will be applied across the Council when acting in its role as a regulator. It also sets out what residents, businesses and workers can expect from Boston Borough Council.

IMPLICATIONS FOR THE SOUTH AND EAST LINCOLNSHIRE COUNCILS PARTNERSHIP

This policy has been revised in line with revisions that have been made or will be made to the corporate enforcement policies of South Holland and East Lindsey District Councils to ensure that regulatory end enforcement activities are undertaken consistently and legally across the partnership.

CORPORATE PRIORITIES

None

STAFFING

None

CONSTITUTIONAL AND LEGAL IMPLICATIONS

None

DATA PROTECTION

None

FINANCIAL

None

RISK MANAGEMENT

If the Council takes regulatory or enforcement action other than in accordance with the principles set out in this policy, it may lay itself open to challenge or appeal. If this challenge or appeal is successful, it could have financial and/or legal implications for the Council

STAKEHOLDER / CONSULTATION / TIMESCALES

The Deputy Chief Executive – Communities, Cllr. Paul Skinner, portfolio holder responsible for overseeing the Council's regulatory and enforcement activities

REPUTATION

There is a risk of damage to the reputation of the Council if it seen to be undertaking its regulatory and enforcement activities in ways that are unlawful, inconsistent, not transparent or disproportionate.

CONTRACTS

None

CRIME AND DISORDER

None

EQUALITY AND DIVERSITY/ HUMAN RIGHTS/ SAFEGUARDING

This policy will ensure that the Council carries out its regulatory and enforcement activities so that equality and diversity and human rights are respected.

HEALTH AND WELL BEING

None

CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS

None

LINKS TO 12 MISSIONS IN THE LEVELLING UP WHITE PAPER

None

ACRONYMS

None

APPENDICES	
Appendices are listed below and attached to the back of the report: -	
<i>APPENDIX A</i>	Boston Borough Council corporate Enforcement Policy

BACKGROUND PAPERS

No background papers as defined in Section 100D of the Local Government Act 1972 were used in the production of this report

CHRONOLOGICAL HISTORY OF THIS REPORT

'A report on this item has not been previously considered by a Council body

REPORT APPROVAL

Report author:	Tony Gray, Environmental Health Manager, Boston Borough Council. Tel 01205 314233, mobile 07917876477.
Signed off by:	Chris Allen, Assistant Director, Regulatory
Approved for publication:	Cllr. Paul Skinner

CHECKLIST - DELETE BEFORE SUBMISSION TO DEMOCRATIC SERVICES

S151 Officer consulted on financial implications:	No
Monitoring Officer consulted on legal and constitutional implications:	No
Portfolio Holder consulted:	Yes
Ward Member consulted:	NA

APPENDIX A – BOSTON BOROUGH COUNCIL CORPORATE ENFORCEMENT POLICY



Corporate Enforcement Policy

August 2022

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Policy Updates

Scrutiny		
Approval		

Enforcement Policy

1.0 Introduction

The Council carries out a wide range of regulatory roles in meeting its many statutory duties of protecting the public, individuals and the environment.

We meet these duties by undertaking a range of activities, including carrying out programmed inspections of premises, responding to complaints, issuing licences and offering advice. This Policy outlines the approach we take when considering enforcement action.

This policy is an overarching document that applies to all the Council's Services with enforcement duties, although we should note that some services also have more specific enforcement requirements, as defined by specific legislative guidance and regulations.

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

When deciding the most appropriate course of action, officers should have regard to the principles set out in this policy and the need to maintain a balance between enforcement and other activities, including inspection, advice and education.

1.1 Principles of Good Regulation

The Council will exercise the regulatory activities that it undertakes in ways that are:

- i. **Proportionate** – activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence;
- ii. **Accountable** – activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures;
- iii. **Consistent** – advice given to those regulated will be robust and reliable and officers will respect advice provided by other regulators. The Council shall seek to ensure consistency of enforcement; however, the Council realises that consistency is not a simple matter of uniformity. Officers will need to exercise their professional judgement and discretion according to the circumstances of each individual case and the relevant responsibilities and intervention systems maintained by the Council;
- iv. **Transparent** – Officers will ensure that those they regulate are able to understand what is expected of them and what they can expect in return, and
- v. **Targeted** – The Council will focus resources on higher risk enterprises and activities, reflecting local need and national priorities and where the Council believes its efforts are able to have an impact.

1.2 Statute and Guidance

The Council will have consideration to the following as appropriate:

a) **Regulators' Code¹**

The Council has had regard to the Regulators' Code made under section 23 of the Legislative and Regulatory Reform Act 2006 in the preparation of this policy. In certain instances it may conclude that a provision in the Code is either not relevant or is outweighed by another provision. Where statutory guidance and legislation specifies what action we should take, this legislation takes precedence.

b) **Human Rights Act 1998**

The Council is a public authority for the purposes of the Human Rights Act 1998. It therefore applies the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is had to the right to a fair trial and the right to respect for private and family life, home and correspondence.

c) **General Data Protection Regulation and Data Protection Act 2018**

Officers will comply with all relevant data protection laws and any associated statutes, regulations and guidance.

d) **The Code for Crown Prosecutors²**

When deciding whether to institute criminal proceedings the Council has regard to the provisions of The Code for Crown Prosecutors as issued by the Director of Public Prosecutions.

The Code for Crown Prosecutors is a public document that sets out the general principles to follow when we make decisions in respect of prosecuting cases. The Code sets out two tests that must be satisfied commonly referred to as the 'Evidential Test' and the 'Public Interest Test':

(i) Evidential Test - is there enough evidence against the defendant? When deciding whether there is enough evidence to prosecute, the Council will consider what evidence it can use in court and if it is reliable. It must be satisfied there is enough evidence to provide a "realistic prospect of conviction" against each alleged offender.

(ii) Public Interest Test - is it in the public interest to bring the case to court? The Council will balance factors for and against prosecution carefully and fairly, considering each case on its merits. The public interest factors that we will take into account are detailed under the enforcement options available to us in Section 6.

¹ The [Regulators' Code](#), which came into statutory effect in 2014 provides a clear, flexible and principles-based framework for how regulators should engage with those they regulate.

² The [Code for Crown Prosecutors](#) as issued by the Director of Public Prosecutions sets out the general principles to follow when investigating and making decisions in prosecution cases.

e) **Regulatory Enforcement and Sanctions Act 2008**

The Regulatory Enforcement and Sanctions Act 2008, as amended, established Primary Authority Partnerships³. The Council will comply with the requirements of the Act when it is considering taking enforcement action against a business or organisation that has a Primary Authority Partnership, and will have regard to guidance issued by the Secretary of State in relation to Primary Authority.

1.3 Policy Status

The former Enforcement Policy was approved by cabinet in December 2013 and updated in January 2015.

2.0 Purpose of this Policy

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 Acts of Parliament and the Regulations and Orders made under them (including various byelaws).

This policy sets out standards that will apply across the Council when it is acting in its role as regulator and enforcement agency and what residents, businesses, consumers, and workers can expect from the Council.

More specific and detailed service-based procedures supplement this policy. These procedures also set out the approach that authorised officers will follow 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.

3.0 Scope of the Policy

This policy is the overarching enforcement policy for the Council. It outlines the approach to enforcement and lays down the principles that the Council will follow in deciding upon and taking action.

Enforcement includes any criminal or civil action taken by the Council aimed at ensuring that individuals or businesses comply with the law.

This policy has been set in accordance with the Regulators' Code. This means that the Council will be open, helpful, fair and careful to ensure that any action required by the Council is proportionate to the risks.

Council services will work with and consult other agencies, and other service areas within the Council, as necessary, where there is a shared or complementary enforcement role.

Officers will take reasonable steps to assist businesses and individuals to comply with the law. However, officers will be prepared to ensure compliance by exercising the formal powers

³ [Primary Authority Partnership](#) is a scheme, which enables businesses to form a legal partnership with a local authority regulator, and receive advice, which other local regulators must respect.

delegated to them in the Council's Scheme of Delegation including, where appropriate, prosecution.

In certain circumstances, the Council will seek to raise awareness and increase compliance levels by publicising unlawful trade practices or criminal activity. Where appropriate, we may publish the results of specific hearings or court cases and we will consider the Publicising Sentencing Outcomes Guidance⁴ for public authorities on publicising information (including via the internet) about individual sentencing outcomes within the current legal framework.

In exceptional circumstances, it may be necessary for Officers to deviate from this policy. Where this is justifiable, a Senior Manager will take the decision and fully document the reasons for doing so.

4.0 Non-Compliance

4.1 Approach to Dealing with Non-Compliance

We will take an open, fair and proportionate approach in dealing with breaches of legislation that the Council regulates and enforces. Raising awareness and promoting good practice in regulated areas is the first step in preventing breaches, and officers of the Council will signpost to guidance on aspects of the law where requested to do so.

We will use our best efforts to resolve any issues where the law may have been broken without taking formal action, or referring the matter to the courts when the circumstances indicate that the offence is minor and the Council is confident that appropriate corrective action will be taken to remedy the offence.

However, there may be occasions when the breach is serious, and/or where informal action is not appropriate. In such cases, we may take immediate enforcement action without prior notice and, as noted above, some services have specific legislative guidance and regulations that set out the enforcement duties in these service areas.

We will provide advice regarding the non-compliance, the actions required and decisions taken at the time of the intervention and will clearly explain the reasons for these. We will provide an opportunity to discuss the Council's course of action, to ensure actions are proportionate and consistent. As stated in the previous paragraph, where immediate enforcement action is required, we may not provide this opportunity for discussion where there is a serious breach or public health or safety is at risk.

Officers investigate potential breaches of legislation and they are responsible for managing investigations and making decisions on enforcement action. As part of this process, they may consult with colleagues and managers in determining the best and most appropriate course of action. Officers have the power to use a variety of legislation in the course of their duties, and these powers have been delegated to them in accordance with the Council's Scheme of Delegation. In relation to prosecutions, where relevant, a service manager will

⁴ The [Publicising Sentencing Outcomes](#) guidance sets Government policy that all criminal justice services be open, transparent and accountable. It states that there should be a presumption in favour of the police, local authorities and other relevant criminal justice agencies publicising outcomes of criminal cases and basic personal information about convicted offenders.

review officers' cases and give approval following a case conference involving key officers, as defined in the Scheme of Delegation.

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.

The Council will be fair, objective and consistent in its approach to enforcement by following the criteria and guidance set down in relevant legislation and codes of practice.

The Council may publicise information about enforcement action in line with the Criminal Justice System document entitled 'Publicising Sentencing Outcomes'. This will usually occur once the Council has concluded its investigation and obtained a successful outcome in court. The Council's Communications Team will normally send out news releases electronically to newspapers and broadcast media to use in their news bulletins. We may also publish such information on the Council's website and via other social media.

4.2 How Action is Determined

Where we find evidence that a business or other regulated person is showing flagrant disregard for the law by deliberately or persistently failing to comply with advice or requests made by the Council, we may deem that informal action is not appropriate. Under these circumstances, we may escalate enforcement action directly to prosecution or other sanctions, where available.

Where there is specific legislative guidance and regulations that set out the enforcement requirements, we will follow them.

Where a business or other regulated person contacts the Council to ask for advice and it transpires that a breach of legislation is present at the premises, the most appropriate course of action will be determined based on the factors outlined in section 6 below.

If it is clear that the business or regulated person is keen to resolve the non-compliance quickly, taking on board and completing the steps recommended by the Council, it is likely that we will take an informal approach, as opposed to triggering enforcement action. However, if there is a serious breach and/or there is an imminent risk to public health or safety, we may still have to take enforcement action but the Council will seek to work with the business or regulated person to resolve the problem as quickly as possible.

4.3 Factors that Influence our Response to Breaches

When we investigate a breach of legislation the approach we take will be proportionate and will take into account factors such as business size and capacity.

If the Council has provided advice or guidance to a business or regulated person, officers will make the necessary checks to ensure that, where this relates to a legal requirement rather than best practice, that business or person has rectified the non-compliance.

The Council may receive referrals from other enforcement bodies that require investigation. They will typically make these referrals because of the other bodies' inspections or

investigations, or intelligence that they have received. The Council will also refer to other enforcement bodies where breaches of legislation that these other enforcement bodies deal with are found.

4.4 Approach to Complaints Regarding Non-Compliance

Where we receive a complaint of non-compliance relating to a business, or other regulated person, the officers investigating this breach will assess the information received and may make further enquiries to determine whether a complaint requires investigation. In assessing a complaint, officers may consult colleagues and managers to help assess what risk may be involved, and this will determine what action to take.

5.0 Conduct of Investigations

Enforcement action may result in the Council taking either civil or criminal proceedings. The process that officers follow in the investigation of alleged breaches of the law will depend on which branch of law the investigation falls under. As the enforcing authority in any proceedings it instigates, the burden of proof falls to the Council.

We will carry out investigations in compliance with the following legislation and their guidance, and any other legislation, as may be applicable at the time and insofar as they relate to the Council.

Police and Criminal Evidence Act 1984 (and Codes of Practice)

Criminal Procedure and Investigations Act 1996

Human Rights Act 1998

Regulation of Investigatory Powers Act 2000

Criminal Justice and Police Act 2001

Legislative and Regulatory Reform Act 2006

Regulatory Enforcement and Sanctions Act 2008

These Acts and associated guidance control how we collect and use evidence and give a range of protections to citizens and potential defendants.

The 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.

5.1 Powers of Authorised Officers

There are numerous pieces of legislation which the Council as a local authority either has a duty to enforce or adopt or choose to enforce. The powers available to officers under these different pieces of legislation vary considerably and it is not the purpose of this policy to provide an exhaustive list of those powers.

If officers come across situations where they believe they are being obstructed in carrying out their duties they will always explain the provisions of the relevant legislation in order to resolve the issue. In some circumstances, it is an offence to obstruct an authorised officer and this could lead to prosecution.

The Council recognises the Primary Authority scheme and, where appropriate, we will communicate with any identified primary authority as part of the enforcement/compliance process.

In some cases, we use our powers of seizure for safety and evidence gathering purposes. Where we remove articles, for any of these purposes, we will issue a receipt at the time of the inspection or as soon as is practicably possible afterwards

Officers do not have the power of arrest; however, we occasionally undertake joint work with the Police and other agencies. Instances may arise where the Police or other agencies consider that they should make an arrest in connection with an authorised officer's investigation.

Officers will carry out formal interviews in line with this policy and with the provisions of the Police and Criminal Evidence Act 1984.

In respect of legislation in England that contains criminal offences, there are strict time limits beyond which the law prevents the commencement of proceedings. These time limits vary and each piece of relevant legislation sets out what they are.

In relevant cases, where the Council decides that it should bring either criminal or civil proceedings, we will prepare a report, containing all relevant evidence that has been gathered during an investigation. A senior manager will review this report and may call a case conference to consider the matter, following which a decision will be made in accordance with the Council's Scheme of Delegation. The evidence will usually also be reviewed by a solicitor before any proceedings are instigated.

5.2 Progress of Investigations

Officers carrying out investigations will keep alleged offenders and witnesses informed about the progress of any investigation as far as their involvement in the process is concerned.

5.3 Training and Appointment of Officers

We will assess all officers undertaking enforcement duties to ensure they are competent to undertake those enforcement activities and will provide any necessary additional training required.

The Council supports the principle of continuing professional development and provides officers with the necessary support to achieve this, in particular, where there is a statutory requirement to do so.

Officers may have a variety of delegated powers to assist them in carrying out investigations. In the event of any doubt as to an Officer's powers, the senior manager at the Council will make a decision. Officers will carry identification and proof of authorisation with them when they are carrying out regulatory work.

6.0 Decisions on Enforcement Action

6.1 Range of Actions Available

There is 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 that 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. We provide advice, 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 action is necessary to rectify the breach and to prevent re-occurrence. If we identify a similar breach in the future, this letter will be persuasive when considering the most appropriate enforcement action to take on that occasion. We cannot cite such a letter in court as a previous conviction but it may be presented in evidence.

Where we take more formal enforcement action, such as a simple caution or prosecution, 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 to rectify breaches and/or prevent their recurrence in the future. The Council will take any failure to honour 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/Orders', 'Emergency Prohibition Notices/Orders', and 'Improvement Notices'. Such notices are, subject to any appeal, 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 to be taken and the timescale within which they must be taken. It is likely to require that any breach be rectified and/or prevented from recurring. It may also prohibit specified activities until prescribed works/safeguards have been carried out to the satisfaction of the authority. Where we issue a statutory notice, we will provide an explanation of the appeals process to the person on whom the notice is served.

We may serve notices in respect of premises by affixing them to the premises.

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 cannot 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 may be that prosecution is more appropriate than the issue of a fixed penalty notice.

e) Injunctive Actions, Enforcement Orders etc.

In some circumstances, the Council may seek a direction from the court (in the form of an order or an injunction) to rectify a breach and/or prevent it from recurring. The court may also suspend certain specified activities 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 that may lead to imprisonment.

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

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 accept 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.

We will only use simple cautions accordance with Ministry of Justice document 'Simple Cautions for Adult Offenders'.

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 has regard to the provisions of The Code for Crown Prosecutors as issued by the Director of Public Prosecutions.

The Council will only consider prosecution where it 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 that 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. We decide the public interest on the merits of each individual case and make an overall assessment. One factor alone may outweigh a number of other factors that 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 that have resulted from the breach. Prosecution may also lead, in some circumstances, to the disqualification of individuals from acting as company directors or as food business operators.

h) Refusal/Suspension/Revocation of Licences

The Committee of the Licensing Authority meets to discharge the duties of the Licensing Authority under the Licensing Act 2003 and Gambling Act 2005. All other Licensing Matters fall within the scope of the Licensing Committee or Regulatory Appeals Sub-Committee to determine licenses or registrations where the matter could not or should not be determined by Officers under delegated authority.

The Council issues a number of different licences, 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 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 licence.

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

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

When considering applications, we will take into account information supplied with the application together with any previous enforcement action and compliance record before reaching a decision.

i) Proceeds of Crime

Where appropriate the Council will consider the use of the Proceeds of Crime Act 2002, which allows local authorities to recover assets that have been accrued through criminal activity. Applications are made after a conviction has been secured.

6.2 How Decisions are Made on Enforcement Action

In assessing what enforcement action is necessary and proportionate consideration will be given to the following principles for enforcement set out in the 'Macrory Review':

- Aim to change the behaviour of the offender;
- Aim to eliminate any financial gain or benefit from non-compliance;
- Be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that would be associated with a criminal conviction;
- Be proportionate to the nature of the offence and the harm caused;
- Aim to rectify the harm caused by regulatory non-compliance, where appropriate; and,
- Aim to deter future non-compliance.

Where appropriate, decisions about what enforcement action to take may involve consultation between:

- Investigating Officer (s)
- Senior Managers
- Solicitors appointed to act for the Council
- Portfolio Holder

Those with the authority decide whether to prosecute a case will do so in accordance with the Council's Scheme of Delegations.

6.3 How Decisions are Communicated

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

7.0 Safeguarding

We will consider the Council's Safeguarding Policy when carrying out investigations. This is available on the intranet to all staff, who will also receive updates and training where relevant to their role.

Where an investigation highlights safeguarding concerns for a child or vulnerable adult, we will share these with the relevant agency in line with the Safeguarding Policy and Procedures. The Council's Designated Safeguarding Officer oversees this.

8.0 Information Sharing

On occasion, it will be necessary for this Council to share information with other Agencies. Section 5 of the Crime and Disorder Act 1998 places a duty on us to do all we can to reasonably prevent crime and disorder. The Council will meet this obligation by sharing information with other Council services and partner agencies as required. All disclosures will be in accordance with the provisions of the General Data Protection Regulations (GDPR) 2018.

9.0 Review of this Policy

We will review this policy periodically or in line with changes in relevant legislation, or the Regulators' Code.

10.0 Comments and Complaints

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's corporate complaints procedure, which is available on the website.