

<b>Report Title:</b> Review of the Council's Enforcement Policy	
<b>Report to:</b> Cabinet	
<b>Date:</b> 28th November 2022	<b>For:</b> Decision
<b>Key Decision:</b> Yes	<b>Decision Planner Ref No:</b> DP/2022/35
<b>Report Presented by:</b> Councillor Mrs Wendy Schmitt, Cabinet Member for Climate Change and The Environment	
<b>Enquiries to:</b> Josie Falco, Head of Environment <a href="mailto:josie.falco@braintree.gov.uk">josie.falco@braintree.gov.uk</a>	

## 1. Purpose of the Report

- 1.1 Environmental Health has had an existing approved Enforcement Policy in place since 2016. An Enforcement Policy must be reviewed on a regular basis to ensure that it has responded to any changes in the legislative or regulatory environment and to update the policy with the most recent enforcement guidance and industry best practice.
- 1.2 A review of the existing Policy was begun in 2019 but was postponed in early 2020 to allow the Council to focus on responding to the Covid 19 pandemic.
- 1.3 A full review has now been completed and this report seeks agreement on the drafted revised policy and approval to undertake a consultation with stakeholders prior to adoption.

## 2. Recommendations

- 2.1 That Cabinet agrees the revised Environmental Health, Building Control, Licensing and Operations Enforcement Policy 2022 attached as Appendix A and approves the policy for consultation.
- 2.2 That Cabinet delegates authority to the Cabinet Member for Climate Change and the Environment to consider any consultation responses received and is authorised to adopt the Policy.

## 3. Summary of Issues

- 3.1 The Council has a wide range of regulatory powers that can be used to resolve issues of non-compliance. Environmental Health has had an approved Departmental Enforcement Policy in place since it was approved in 2016.

- 3.2 Regulatory functions were historically located in the Environmental Health Department however as the Council departments have reorganised some regulatory functions are now located in the Operations department.
- 3.3 An Enforcement Policy must be reviewed on a regular basis to ensure that it has responded to any changes in the legislative or regulatory environment and to update the policy with the most recent enforcement guidance and industry best practice
- 3.4 In December 2019 the Food team were audited by the Food Standards Agency and one of the audit recommendations was that the enforcement policy should be reviewed. The Enforcement Policy was, at the time, under review to update it in line with centrally issued guidance. The review work ceased in early 2020 due to the Covid pandemic response and recommenced in March 2022
- 3.5 The policy review has taken this into account and all the Council's regulatory and enforcement teams have provided input into this review.
- 3.6 This policy now covers the enforcement activities undertaken by Braintree District Council in the following areas :-
- Environmental Health (Food Hygiene, Health & Safety, Private Sector Housing, Infectious diseases, nuisance, air quality, contaminated land, private water supplies, pest control, public health).
  - Licensing enforcement (all functions where a licence, permit, consent or registration is granted).
  - Building Control (dangerous structures and failure to comply with Building Regulations).
  - Operations (enviro crime including waste carriers, breaches of the smoke free legislation, nuisance, anti-social behaviour, and dog related matters).
- 3.7 Building Control enforcement is covered by this policy whereas Planning Enforcement is subject to its own enforcement policy. The two policies coexist but do not overlap due to the different nature of the enforcement undertaken by the two departments.
- 3.8 The revised policy will serve as a consistent framework to guide officers and decision makers on enforcement principles and standards.
- 3.9 The policy is also intended to help those affected by our activities to understand how and why decisions are made

### **Good Enforcement Practice**

- 3.10 As a Council we are committed to following good enforcement practice. The policy sets out the guiding principles which the Council will follow when considering enforcement actions.
- 3.11 The guiding principles of this policy are :-
- a) Provide a clear and concise enforcement framework to regulate Officers.
  - b) Ensure consistent enforcement that is proportionate to the risks involved.
  - c) Acknowledges the shared enforcement role between different Council Teams and external regulators.
  - d) Recognises the alternatives to enforcement by education and proactive engagement.
  - e) Commits to the five core principles of enforcement: Proportionality, accountability, consistency, transparency and targeted.

### **The Regulators Code 2014**

- 3.12 The Regulators' Code came into statutory effect on 6 April 2014 under the Legislative and Regulatory Reform Act 2006. The code provides a "principles-based framework for how regulators should engage with those they regulate".
- 3.13 The Regulators Code states that "regulators should engage with those they regulate, citizens and others to enable them to offer their views and contribute to the development of policies."

## **4. Consultation**

- 4.1 In order to ensure that the Council's engages with our residents, businesses and key partner organisations a period of public consultation (twelve weeks) will be undertaken on the revised Enforcement Policy
- 4.2 Stakeholders will be able to access the consultation via the Council's website and the consultation will be promoted via social media posts and all relevant digital newsletters.
- 4.3 The consultation will include both open and closed questions and will seek stakeholder's opinions on the revised policy.
- 4.4 Key partner organisations will be contacted and made aware that public consultation on our revised Enforcement is underway and that their views and opinions are sought.

## **5. Options**

- 5.1 That the Council does not review our Enforcement Policy or postpones the review.
- 5.2 The current policy is 6 years old and there is a risk that this could lead to challenges against enforcement proceedings being undertaken on the basis that the current policy has not been updated to include legislative changes and current best practice guidance.

## **6. Next Steps**

- 6.1 A twelve week period of public consultation will be undertaken to seek the views of those the Council regulates. Consideration will be given to any consultation responses received by the Cabinet Member for Climate Change and the Environment.

## **7. Financial Implications**

- 7.1 There is no immediate cost associated with the recommendations of this report.

## **8. Legal Implications**

- 8.1 The review of the policy ensures that it is now aligned with all current relevant legislation, legislative frameworks, guidance and protocols.

## **9. Other Implications**

- 9.1 None

## **10. Equality and Diversity Implications**

- 10.1 Section 149 of the Equality Act 2010 creates the public sector equality duty which requires that when the Council makes decisions it must have regard to the need to:
  - (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act
  - (b) Advance equality of opportunity between people who share a protected characteristic and those who do not
  - (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.
- 10.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).

- 10.3 The Equality Impact Assessment indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic.

## **11. List of Appendices**

- 11.1 Appendix A - Environmental Health, Building Control, Licensing and Operations Enforcement Policy 2022

## **12. Background Papers**

- 12.1 [Equality Impact Assessment](#)

# **Braintree District Council**

## **ENVIRONMENTAL HEALTH, BUILDING CONTROL, LICENSING & OPERATIONS**

### **ENFORCEMENT POLICY**

Draft 6

March 2022

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## 1. Introduction

The Regulator's Code requires Local Authorities to publish a clear set of service standards, including their enforcement policy explaining how they respond to non-compliance. It is to be used by Officers in making enforcement decisions, and by those individuals or businesses in contact with the Services covered by the Policy.

This enforcement policy sets out how the service will be accountable and transparent in the decisions taken in respect of breaches of legislative requirements.

This policy covers the enforcement activities undertaken by Braintree District Council in the following areas:-

- Environmental Health (Food Hygiene, Health & Safety, Private Sector Housing, Infectious diseases, nuisance, air quality, contaminated land, private water supplies, pest control, public health)
- Licensing enforcement (all functions where a licence, permit, consent or registration is granted)
- Building Control (dangerous structures and failure to comply with Building Regulations)
- Operations (enviro crime including waste carriers, breaches of the smoke free legislation, nuisance, anti-social behaviour and dog related matters).

The term "enforcement" has a wide meaning and applies to all dealings between the Council and those on whom the law places duties (employers, the self-employed, employees, food business operators, licence holders, homeowners, occupiers and others).

Officers will adhere to the principles contained within this Policy for the legislation they enforce. Officers are required to regulate activities across a wide range of businesses and in their professional dealings with every type of individual. Officers are committed to delivering services underpinned by education and helpfulness, seeking to work with individuals and businesses, wherever possible, to help them achieve compliance.

The aim behind much of the department's work is the protection of persons at work or at leisure, and the protection of the general public and the environment from harm caused by failure to comply with the safeguards provided for in law. This being the case, Braintree District Council will not hesitate to take all necessary enforcement action against those who commit serious offences, flout the law, fail to follow advice or warnings to achieve compliance, or breach legislation relating to matters that are a priority to the Council.

If there is a serious or imminent risk of harm, danger or nuisance, officers may take formal action immediately as required by the circumstances.

The types of breaches that typically require enforcement action that fall within the remit of these services are (NB this list is not exhaustive):

- Unsafe working practices (health & safety)
- Poor hygiene / unsafe working practices or procedures within a food business
- Serious breaches of licences or licence conditions
- Unlicensed activities
- Nuisance
- Poor house conditions in the private sector (disrepair, health & safety hazards, overcrowding etc)



- Unauthorised deposits of waste
- Smoking in a smoke free place of work.
- Straying dogs.
- Dog fouling
- Dangerous Structures
- Non-compliance to Building Regulations

Officers are expected to use this policy as a guide when making enforcement decisions. This Policy cannot be prescriptive because the circumstances of each case and the evidence available in each scenario will differ. As such Officers will refer to the Policy which will indicate what to expect by way of enforcement action. However, each case must be decided on its own individual facts. There may be a need to deviate from the Policy and if this is the case the reasons must be justifiable and the Officer making that decision must record their reasons for their deviation from the Policy.

Officers that undertake enforcement work covered by the scope of this Policy are trained, competent and authorised to discharge enforcement powers on behalf of Braintree District Council (See section 3).

## **2. Enforcement Concordat and Principles of Good Regulation.**

### **2.1 Good enforcement practice**

Braintree District Council is committed to following good enforcement practice. We recognise that robust enforcement is not only essential for public confidence in upholding the integrity of the regulatory regimes that we administer, but also that good, proportionate regulation is supportive to the economic vitality and growth of local businesses.

Officers will consider offering advice or a warning in the first instance if

- the breach is not so serious as to require immediate enforcement action to address high risk or very harmful situations,
- it is not a persistent or continuing breach,
- there has been a history of good compliance, or
- we are confident there will be compliance and this is the most appropriate use of resources.

However, there will be circumstances where enforcement action may be taken without giving a warning first eg for those deliberately flouting the law, where the offence is serious, if the breach is something which is a Council priority, or where previous advice or a warning to take action has not been followed.

### **2.2 Principals of good regulation**

Braintree District Council has adopted the Central and Local Government Concordat on Good Enforcement. The Legislative and Regulatory Reform Act 2006 and the Regulators' Compliance Code requires the Council to have regard to the 'Principles of Good Regulation'

and to develop transparent and effective dialogue and understanding when exercising specified regulatory functions.

The specified regulatory functions include those carried out by Environmental Health and licensing.

Regulatory activities will be carried out 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. All works required will give a reasonable timescale for compliance. The circumstances and attitudes of offenders will be taken into account (where the law allows), when considering enforcement action.

We will listen to the views of anyone who has been injured or suffered loss and must take into account any arrangements under the Primary Authority Scheme. Particular care will be given to work with small businesses and voluntary and community organisations so that they can meet their legal obligations without unnecessary expense (where practicable).

- (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. This also means distinguishing between statutory requirements and advice or guidance about what is desirable but not compulsory. We will publish details of any charges that we may set.

- (v) **Targeted** – we will focus our resources on higher risk enterprises and activities, reflecting both local need and national priorities. Targeted enforcement will also include activities based on intelligence lead work. It is neither possible nor necessary or in the public interest to investigate all issues of non-compliance with the law that are uncovered in the course of planned inspections, or reported events.

## 2.3 Service Standards

Those in contact with our services can expect a courteous and efficient service and will always be given the name and contact details of the officer with whom they are dealing. Our Officers all carry photographic proof of their identity with them. We will encourage businesses to seek advice / information from us. Where requested this will be in writing.

Information to assist those regulated will be available in a variety of ways including; through policies, procedures, advice via email / telephone calls / letters, advisory visits, inspections, mailshots, workshops, seminars, business forums and via the Council's website.

There are a number of policies that may be relevant to the Council's investigation or consideration in any given matter. Where policies exist these can be found on the Braintree District Council website.

Officers will provide clear advice and information on how to comply with relevant legislation, codes of practice or guidance. They will distinguish between statutory requirements and advice or guidance about what is desirable but not compulsory to ensure that unnecessary burdens are not put on businesses or those in contact with our services. However, Officers cannot be called upon to act as de facto consultants on behalf of a business or compromise their independence as enforcers.

We will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties. Before formal action is taken there will usually be an opportunity to discuss the circumstances of the case with an officer. A written explanation of contraventions will normally be provided together with details of the officer's intended enforcement action.

Correspondence will be sent as soon as practicable and will be written in plain English. Where requested, and where possible, guidance will be made available in other languages. Where officers take formal action, the reasons for action will be made clear and any appeal procedures will be explained.

Our communities are diverse with different communication needs. Any special needs of those involved will be met as far as possible.

Business and Service Plans are developed detailing our approach and priorities. There are standards for the level of service that we will provide. We will endeavour to comply with centrally issued guidance and will highlight areas where we do not follow this guidance. Service plans may include how we work with partner organisations to ensure service delivery. Business and Service plans are reviewed periodically and progress against them assessed.

## **2.4 Customer Feedback and complaints**

We welcome feedback from those who receive our services and we will review all feedback to improve the effectiveness of all areas of our service.

If a person wishes to make a complaint against the Council they are asked to discuss this with the relevant Service in the first instance. If this does not resolve the matter, then they may make a complaint via the Council's Corporate complaints procedure.

Officers who took the decision or action against which an appeal or complaint is being made will not normally be involved in considering the appeal or complaint. Complaints about the quality of service received will be handled in accordance with the [Council's complaints procedure](#) which also contains guidance on how to make a complaint about our service.

Following investigation of a complaint, if the person is still dissatisfied, we will advise what can be done next. This may include escalating their complaint to the Local Government and Social Care Ombudsman.

Braintree District Council, as the responsible authority, may also participate in formal review processes such as the FSA Independent Business Appeals Panel, adjudication by the Business Regulation Development Office and Licensing Committee reviews.

## **2.5 Internal appeal procedures**

Where a decision is disputed and where relevant, the aggrieved party will be directed to the relevant appeals process. This includes appeals against a Food Hygiene or Animal Activity licence risk rating score or an appeal against a decision to change the terms of a licence not in accordance as to what was applied for. Appeals are to be determined in accordance with relevant scheme of delegation.

Where a licence application is to be refused in accordance with policy, any subsequent appeal will be considered in accordance with the statutory provisions.

## **3 Officers**

### **3.1 Authorisation of Officers**

The Council's scheme of delegation specifies the extent to which enforcement powers are delegated to officers. Each Officer is authorised according to their qualification, experience and competency.

The Council reviews the training needs for each member of staff and will ensure the delivery of this Policy is consistent with individual officer's authorisation and duties. Training needs will usually be identified through the performance review system, as part of the induction process for new members of staff and through competency frameworks where appropriate. Continuing professional development (CPD) is funded for all Officers and records are kept to ensure that Officers complete the required number of hours CPD for their role per year.

Officers complete accompanied inspections and complete consistency exercises where applicable to ensure that they are working in a consistent manner and adhering to guidance, and Braintree District Council procedures (where applicable).

### **3.2 Officer Supervision**

Officers undertake investigations under the supervision of their Manager. Where formal notices are required these will usually be discussed with and agreed by their manager before they are served. If immediate action is required this may not happen. In this scenario it is common for the action taken to be reviewed after the Notice has been served.

Officers recommending instigation of a prosecution or offering of a simple caution will complete an investigation file and pass to their line manager who will review the file against the policy and makes their recommendation. The file is then passed to the Head of Service to decide on whether to instigate a prosecution or offer a simple caution, or whether to take other action. If the Head of Service agrees with the decision to prosecute/ offer a Simple Caution they will complete a decision sheet with their reasoning, having had regard to this Enforcement Policy and the file will be passed to the Council's Legal Department.

## **4. Investigation of suspected contraventions**

The need for enforcement only arises when the law is being breached or it is suspected that it is likely to be breached. The Council will determine this through investigation following the receipt of allegations or other intelligence or through planned monitoring eg inspection, sampling etc.

All investigations will be carried out in accordance with the following legislation and in accordance with any associated guidance or codes of practice, in so far as they relate to the Council, including but not limited to:-

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

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

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

## **5. Prevention**

Although responsibility for compliance with the law rests with individuals and businesses, the Council will endeavour to provide information and advice to help duty holders understand their responsibilities and legal obligations. This is done by:

- Ensuring our webpages provide clear information and links to appropriate guidance
- Providing training courses and seminars
- Issuing press releases and using social media to get appropriate messages out
- Provision of leaflets and guidance
- Free advice regarding legal obligations and compliance to those requesting it
- Undertaking education campaigns eg for the transferring and disposing of waste, depositing of litter and dog fouling.

Businesses are encouraged to contact our services for advice. We wish to support businesses and individuals to achieve compliance, especially those that show willingness to do so. Usually a request for advice would not trigger enforcement action from us. A caveat to this would be if the non-compliance was so serious or presented an imminent risk of harm, danger or injury and we were not confident that the risk would be addressed. In these circumstances the Officer would take immediate enforcement action.

The Council has adopted the Food Hygiene Rating Scheme and will consider adopting any similar schemes whose aims are to promote consistency, effect improvements and inform the public.

## **6. Licences, Planning Applications and consents**

The Services covered by this Enforcement Policy are involved either in issuing licences, consents, or as a consultee in the licensing or planning approval process.

Engaging in the consultation stage of these processes is crucial to eliminate potential areas of concern at the earliest opportunity.

Officers will work with applicants to help them understand what is required prior to submission. Officers also assist in discussions once application have been submitted.

Applicants, or their agents will always be contacted by Officers where there are concerns over proposals. Where possible agreement will be reached. This may be by way of a variation to proposals, agreement to imposition of conditions etc. If agreement is not possible the applicant will be advised of the reasons for our objections and how these may be overcome (if applicable).

Officers will provide advice as to how to make an application for a licence however they cannot act in the capacity of an agent or consultant. Where pre application advice provided extends beyond what is considered to be more than accepted procedural guidance, the Council reserves the right to make a charge for this advice. Where such a charge is made, the terms will be advertised in advance.

## **7. Officer Powers**

Officers are authorised under the different pieces of legislation that they enforce and are authorised to exercise powers contained within each piece of relevant legislation. The general powers that officers have are dependent on the legislation being enforced and include powers to (this is not an exhaustive list):

- Enter (to gain access to land and premises). By force, with a warrant if required.
- Require (eg documents)
- Inspect (a premise, piece of equipment etc)
- Sample
- Copy information / records
- Photograph
- Seize (eg a piece of equipment)
- Detain
- Call for review
- Refuse
- Prohibit
- Close (eg a food business)
- Make safe (Building Control)

In general Officers are legally empowered to enter commercial premises and vehicles during normal operating hours in order to determine whether the law is being complied with. In the case of domestic premises, the law usually requires reasonable notice to be given to the occupier before an officer has a right of entry.

An officer who wishes to gain entry to private areas of a property will, where circumstances permit, explain who they are and the purpose of their visit. The officer will also show their

official identification and will seek permission to enter, and officers will produce their full authorisation on request or where required.

Where rights of access are restricted, authorised officers will obtain a warrant in accordance with the requirements of the relevant piece of legislation.

In order to prevent access by people imitating Council officers, persons in charge of premises are encouraged to refuse access to officers who are unable to show any official identification until their identity and authority has been confirmed.

A person refusing an officer entry or refusing to provide information or documents etc when requested may be guilty of obstruction. Obstruction of Officers in the course of their duties is a serious matter and the Council is likely to instigate prosecution for obstruction if this persists once a person has been advised that they are committing the offence.

Officers may take other persons into premises in order to assist, for example a Police Officer, an electrician or an expert in the field of the investigation.

Those being visited / inspected will be invited to accompany Officers whilst on the premises and where possible officers will carry out their duties in a way that minimises detrimental effects on the activities at the premises. Nevertheless, it may be necessary to enter businesses during busy periods.

If it is necessary to seize items during an investigation, Officers will ensure that the individual / business is provided with written notification of what items have been seized and under what legislation. They will also advise on arrangements for return of the items (if applicable). All notifications will contain the officer's contact details.

Officers do not have a power of arrest. However, Officers do work in partnership with other agencies who do have this power. Where individuals refuse to give their name and address details or are suspected of committing fraud offences, Officers may call on the Police to use their power of arrest to assist in these investigations.

## **8. Influencing factors on what action to take**

All enforcement action whether informal or formal, will be carried out in accordance with the principles set out in this policy.

A staged approach to enforcement is taken where this is appropriate (see section 2). However, we will not hesitate to take all necessary enforcement action against those who commit serious offences, flout the law; fail to follow advice or warnings to achieve compliance, or breach matters that are of key priority to the Council. Also, if the breach presents a serious or imminent risk of harm, nuisance, danger or injury then we will respond by taking immediate formal enforcement action as required.

In deciding what action is necessary and proportionate, consideration will be given to, amongst other things:-

- (a) The seriousness of the compliance failure.
- (b) The past and current performance of any business and/or individual concerned.
- (c) The approach of the business or individual dealing with the breach.

- (d) Any obstruction on the part of the offender.
- (e) The risks being controlled.
- (f) Statutory guidance.
- (g) Codes of Practice.
- (h) Any legal advice.
- (i) Policies and priorities of Government and Regulating Authorities and Braintree District Council.
- (j) Age of the individual, are they aged under 18.
- (k) The existence of a Primary Authority agreement.
- (l) The financial advantage gained by non-compliance with the legislation.

All enforcement decisions will be fair, independent and objective. They will not be influenced by issues such as ethnicity or national origin, gender, age, religion or beliefs, political views or the sexual orientation or gender identity of the suspect, victim, witness or offender. Such decisions will not be affected by improper or undue pressure from any source.

Where we consider that formal enforcement action is necessary each case will be considered on its own merits. However, there are general principles set out in this Policy that apply to the way a decision about each case must be reached.

For health and safety breaches the Enforcement Management Model (EMM) will be used to determine what the anticipated enforcement action will be.

Officers will take into account the impact on those effected, injured party or relevant person to establish the nature and extent of any harm or loss and its significance in making the decision to take formal action. This may include actual or potential harm or loss, or the impact on the well-being of individuals, or potential or actual harm to communities or the environment.

Braintree District Council is a public authority for the purposes of the Human Rights Act 1998. We will, therefore, apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms and any other relevant legislative provision.

## **9. Notifying alleged offenders**

If we receive information (for example from a complainant) that may lead to formal enforcement action against a business or individual we will notify that business or individual as soon as is practicable of any intended enforcement action, unless this could impede an investigation or pose a safety risk to those concerned or the general public.

During the progression of enforcement investigations/actions, business proprietors or individuals and witnesses will be kept informed of progress. Confidentiality will be maintained and personal information about individuals will only be released to a Court when required and/or in accordance with the Data Protection Act 2018.



## **10. Enforcement Options**

### **10.1 No action**

In certain circumstances, contraventions of the law may not warrant any action. This can be where the cost of compliance to the offender outweighs the detrimental impact of the contravention, or the cost of the required enforcement action to Braintree District Council outweighs the detrimental impact of the contravention on the community. A decision of no action may also be taken where formal enforcement is inappropriate in the circumstances, such as where the offender is elderly and frail or is suffering from mental health issues or serious ill health, and formal action would seriously damage their wellbeing (However, any of these groups may still be subject to enforcement action should the offence deem it necessary or appropriate). In such cases we will advise the offender of the reasons for taking no action.

### **10.2 Informal enforcement action – advice, guidance and warning letters**

Where breaches of the law exist, informal action will normally be taken in the first instance providing the breach is not a serious offence and does not result in a serious risk to public health, safety, amenity or the environment.

Informal action may include one or more of the following:-

- Verbal advice;
- Mediation (if appropriate);
- Verbal request for action;
- Written request for action;
- Written warning of formal action if contraventions are not corrected

All informal action details will be recorded for future reference, however advice may not always be confirmed in writing.

Works required for anything other than the most minor of contraventions will usually be given in writing. There will be a differentiation between what is legally required and what is a recommendation. The recipient will also be advised on timescales for completion.

This informal approach may be applied provided that the consequences of non-compliance are considered acceptable. This includes (but is not restricted to) occasions where the time period allowed to seek compliance does not present a significant risk to or impact on health, safety, welfare or the environment, and either:

- The contravention is not serious enough to warrant immediate formal action
- There is no demonstrable harm to the amenity of the area
- The past history (of the individual or business) suggests that informal action will achieve legal compliance in a reasonable timescale
- Standards are generally good, suggesting a high level of awareness of, and compliance with, statutory responsibilities
- The action is being taken on behalf of a customer, who prefers the matter to be handled informally

Regular contact with the investigating officer, as the works progress will be encouraged.

Where a business has entered into a Primary Authority partnership, the Primary Authority will provide compliance advice and support. The Council will take such advice into account when considering the most appropriate enforcement action to take. Officers may discuss any concerns with the Primary Authority.

Failure to comply with informal action may result in an escalation of enforcement action.

### **10.3 Formal enforcement action**

Formal action will be considered in the following circumstances (list is not exhaustive):-

- There is a contravention of legislation
- The wording of legislation requires the Council to take a specified action
- An informal approach has failed
- There is a history of non-compliance with informal action
- There is a lack of confidence in the successful outcome of an informal approach
- Standards are generally poor, suggesting a low level of awareness of, and compliance with, statutory responsibilities
- The consequences of non-compliance, for health, safety, the environment, or other Council priorities, are unacceptable and/or immediate
- There is demonstrable harm to the amenity of the area
- Effective action needs to be taken quickly in order to remedy conditions which are deteriorating
- Formal action is expected to achieve the desired outcome without incurring expense or inconvenience that is disproportionate to the risks
- Legal requirements, relevant formal guidance, or other Council policies or strategies require formal action to be taken
- The breach concerns a matter which has been identified as a priority for formal action either nationally or locally
- A charge applied by a Fixed or Civil Penalty Notice has not been paid

Before formal action is taken Officer's will usually discuss matters and, hopefully, resolve any points of difference. The extent of this will depend on the seriousness of the contravention, and this may not be possible where immediate action is considered necessary, e.g. where there is an immediate risk to health, safety or the environment, or where the formal action takes the form of a fixed penalty notice.

Formal action can take any form that the Council is empowered by legislation to take. The following are some of the enforcement tools available

- Statutory Notices
- Fixed Penalty Notices
- Civil Penalty Notices
- Works In Default
- Revocation or suspension of licences, approvals or registrations;
- Variation or addition of conditions;

- Seizure / detention
- Closure Orders and Notices
- Prohibition of process, premises or equipment;
- Simple Cautions
- Prosecution
- Restorative Justice
- Recovery of the Proceeds of Crime

\*\* Further information about each of the formal enforcement options is contained in Appendix A.

We will use discretion in deciding whether to initiate a prosecution. Our primary purpose is to prevent harm, and while prosecution can draw attention to the need for compliance with the law, other approaches to enforcement can often promote this more effectively.

Prosecution is usually the outcome in respect of serious or recurrent breaches, or where other enforcement options have failed to secure compliance.

When deciding whether to prosecute the Officer will have regard to the provisions of the Code for Crown Prosecutors as issued by the Director of Public Prosecutions.

No prosecution will go ahead unless the Council is satisfied it has sufficient evidence to provide a realistic prospect of conviction, and that prosecution would be in the public interest. All other criteria detailed in Appendix B will also be considered.

As part of enforcement activity information may be communicated to other authorities.

## **11. Who decides what enforcement action is taken?**

Decisions about the most appropriate enforcement action to be taken are based upon professional judgement, legal guidelines, statutory codes of practice, and priorities set by Braintree District Council and / or Central Government and Regulating Authorities.

Decisions about enforcement may involve consultation between, or approval from:

- The investigation officer(s); and
- Senior manager from Environmental Health
- Senior manager from Operations
- Legal Services
- Licensing committee or Chairman of the Licensing Committee

During the progression of enforcement investigations or actions, business owners or individuals, and witnesses will be kept informed.

## **12. Formal (PACE) Interviews**

In most cases that we investigate where prosecution may be considered (and where there is a statutory defence) we will invite those suspected of causing offences to a formal interview conducted in accordance with the Code of Practice under the Police and Criminal Evidence Act 1984 (known as 'PACE Interviews'). This provides an opportunity for the suspect to offer explanations as to what happened and why and detail any statutory defence they believe they may have.

PACE interviews are conducted under caution and are usually recorded (but may be handwritten), and suspects have the opportunity to have legal representation present. The record of interview is admissible as evidence in any subsequent prosecution. Copies of the recorded interview are provided to the suspect at the end of the interview or as soon as practicable afterwards. We will use the information provided by suspects in the PACE interview to help us consider whether to pursue prosecution.

Officers investigating offences under the Health and Safety at Work Act 1974 can also formally interview individuals and companies who can assist with providing information under Section 20 of the Act. Such persons are required to answer questions posed. The record of such interviews is admissible in evidence unless legal exceptions apply.

### **13. Statutory Time Limits for instigating prosecutions**

Most of the legislation that we enforce has time limits specified in the legislation within which we must commence prosecution proceedings by the laying of information before the court (details of the offence[s]).

For summary only cases, there is usually a 6 month time limit, although this can be varied by statute.

For either way or on indictment only offences (e.g. Health and Safety at Work etc. Act 1974, Environmental Protection Act 1990 Part II) there is usually no time limit imposed for bringing prosecution proceedings, but again this can be varied by statute. However, where there is no time limit we will endeavour to bring any proceedings within a reasonable period.

### **14. Primary Authority Partnership Scheme**

To help reduce the burden on business we will support the Primary Authority Partnership Scheme. Prior to taking any enforcement action against an individual or business with a Primary Authority we will consult with that Primary Authority.

This will not include urgently required enforcement action to:

- Avoid significant risk of serious harm to human health; or
- The environment; or
- Where notification would be disproportionate to the action to be taken.

Where the Primary Authority objects to the proposed action and Environmental Health disagrees with the direction of the Primary Authority either the Primary Authority or Braintree District Council may refer the matter for independent adjudication.

## **15. Braintree District Community Safety Partnership**

Braintree District Council, together with partner agencies has a statutory duty to work together in a Community Safety Partnership to reduce crime and disorder in the Braintree District. Regular multi-agency meetings are held for this purpose.

The Braintree District Council Anti-social behaviour protocol sets out the Council's approach to ASB and the principals on which it is founded.

<https://www.braintree.gov.uk/community/antisocial-behaviour/2>

## **16. Enforcement in relation to Council premises and/or activities**

There may be occasions where concerns over Council run events or Council owned property are brought to the attention of our Officers. Officers will liaise with the appropriate Council employees over any issues. These dealings will be undertaken in the same way, with the same expectations as with any other individual or duty holder.

Our approach to enforcement will follow the same staged approach as for anyone else, usually starting with informal action (if appropriate).

If this is unsuccessful, we would progress to formal action whereby the non-compliance will be raised with the senior manager for the relevant department. Where the concerns arise from a third party using the Council's property, this will be treated in accordance with this policy.

Depending on the nature of the non-compliance other enforcing authorities such as the Health and Safety Executive or Environment Agency may take action against the Council.

## **17. The Keeping and Disclosure of Information**

Information collected or recorded as part of the Council's enforcement activities will be securely retained in a paper and / or electronic format for a period defined by legislation or required for future reference by the service. This information will include decisions taken about the choice of enforcement options.

The identity of a person providing the Council with information about other people committing offences may be treated in confidence in specific circumstances. Individuals will be required to specify if there is a need for anonymity at the time of reporting.

Personal data held manually or as computer records will be handled in accordance with the Data Protection Act 2018. This information will be used in accordance with the Council's DPA policy. Exemptions to this include where information is disclosed to other agencies or used for another reason for the purposes of preventing crime. This will include sharing of information between Council services and with the police and other enforcement agencies. Sharing of information relating to crime and disorder will be undertaken in accordance with the protocol of sharing of information through the Council's designated officer.

## **18. Public Information**

The Council may publicise convictions. The publicity generated by prosecutions and other enforcement action acts as a deterrent to others. It also reassures the general public that Environmental Health, Licensing and Operations take a serious view of such behaviour.

This may include releasing details of each person convicted or subject to other enforcement action, together with details of the issues involved. In reaching a decision as to whether to publish such information we will consider the following factors:-

- The specific details of the offence committed or detrimental activity.
- The public interest in disclosing personal information eg. the deterrent effect of the publication.
- Whether the publication would be proportionate
- The personal circumstances of the offender.

This list is not exhaustive and other factors may be relevant in the circumstances of an individual case.

Prosecutions and Simple Cautions will be notified where possible to the relevant regulatory authority.

The outcome of food hygiene inspections will also be published in accordance with the Brand Standard for the Food Hygiene Rating Scheme.

The Council may also publish good news stories where it is felt this may be regarding a matter of public interest.

The Council will comply fully with the Freedom of Information Act 2006, Data Protection Act 2018 and the Environmental Information Regulations 2004 regarding the release of information on enforcement activities within Regulatory Services.

## **19. Civil Claims**

Where an individual is considering civil proceedings, linked to the Council's enforcement action and a successful prosecution. The Council will have regard to the Data Protection Act 2018 before disclosing any information. Officers will not become involved in any negotiations on awarding reparation or compensation to victims.

Any enforcement action taken by the Council is separate and distinct from any civil claims likely to be made by individuals. Enforcement action is not necessarily undertaken in all circumstances where civil claims may be pursued, nor is it undertaken to assist such claims. The Council may, on request, provide solicitors acting for an individual pursuing a civil claim with a factual report of the investigation. There will be a charge for this report.

## **20. Publication and Revision of Enforcement Policy**

The Policy was approved by following a period of consultation and came into effect on the **XXXX**.

This policy represents the enforcement policy for Environmental Health, Building Control, Licensing and Operations and supersedes any previous enforcement policies for any teams within these services and will be the policy used when considering enforcement action for any investigation commenced since XXXX

It is available through the Council's website and has been updated in line with centrally issued guidance and consultation with regulated businesses and other interested parties. This Enforcement Policy will be reviewed and updated whenever there are changes to relevant legislation or centrally issued guidance or in any case at least every 5 years. The review will take account of changes in the law, operational experience and feedback from businesses and individuals.

## **21. How to get a copy of this Policy**

This Policy is available on the Braintree District Council website:  
[www.braintree.gov.uk](http://www.braintree.gov.uk)

Paper copies can be made available on request by:-

- Telephoning 01376 557790
- Emailing [EnvironmentalHealth@braintree.gov.uk](mailto:EnvironmentalHealth@braintree.gov.uk)
- Writing to the Head of Environment, Braintree District Council, Causeway House, Bocking End, Braintree, Essex CM7 9HB.

## **Appendix A. Enforcement Actions available in Respect of Criminal and Civil breaches**

### **A. Advice and guidance (informal enforcement action)**

Braintree District Council provides advice and guidance 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 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. Such a letter cannot be cited in court as a previous conviction but it may be presented in evidence.

The Council recognises that where a business has entered into a partnership with a Primary Authority, the Primary Authority will provide compliance advice and support, and the Council will take such advice into account when considering the most appropriate enforcement action for it to take. Officers may discuss any issues with the Primary Authority.

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 advice and support, to prevent further breaches. Officers will continue to provide this support where possible.

### **B. Voluntary Undertakings**

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

### **C. Fixed Penalty Notices (FPN) and Penalty Charge Notices (PCN)**

Braintree District Council has powers to issue fixed penalty notices (FPN) and penalty charge notices (PCN) in respect of some breaches. A FPN or PCN is not a criminal fine and does not appear on an individual's criminal record. If a fixed penalty is not paid, we may commence criminal proceedings or take other enforcement action in respect of the breach. If a PCN is not paid we may take other enforcement action in respect of the breach.

If a fixed penalty or penalty charge notice is paid in respect of a breach, Braintree District 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.

Braintree District Council is only able to issue fixed penalty notices and penalty charge notices where it has specific powers to do so. If fixed penalty notices or penalty charge notices are available, their issue is at Braintree District 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.

### **D. Civil Penalties**

Certain offences under the Housing Act 2004 may be dealt with by way of civil penalty notices as an alternative to prosecution, and this approach has been adopted by Braintree District Council.



The legislation sets out a process for issuing a civil penalty notices and the Council has adopted a policy for determining the circumstances under which a penalty notice would be imposed rather than a prosecution. The policy also includes a matrix for determining the amount of the civil penalty notice to be applied and the procedure for dealing with appeals, non- payment and non-compliance with a principal that it should not be cheaper to offend than it is to comply.

## **E. Statutory (Legal) Notices**

In respect of many breaches, Braintree District Council has powers to issue statutory notices requiring offenders to take specific actions or cease certain activities. These include: 'Suspension Notices', 'Seizure Notices', 'Improvement Notices', 'Prohibition Notices', 'Emergency Prohibition Notices', 'Abatement Notices', 'Dog Micro-chipping Notices', 'Waste Duty of Care Notices', 'Waste Clearing Notices' 'Community Protection Notices' and 'Closure 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. This means that if a notice is not complied with the Council may carry out the necessary works to satisfy the requirements of the notice ourselves. Where the law allows, we may then charge the person/business served with the notice for any costs we incur in carrying out the works. Costs will also include an interest rate chargeable at 6% above the base rate and will be annually compounded.

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, details of any relevant 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.

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

In some circumstances (for example persistent offenders who have already been found guilty of similar offences or there is an immediate need for the concerning behaviour/action to cease) Braintree District 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, or requiring an individual from continuing with a particular course of action. This may be used to deal with repeat offenders; dangerous circumstances; or cases where there is environmental or public health detriment being caused.

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

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

## **G. Anti-Social Behaviour Orders and Criminal Behaviour Orders:**

Where the non-compliance under investigation amounts to anti-social behaviour such as persistent targeting of an individual or a group of individuals in a particular area then, following liaison with the

Council's Anti-Social Behaviour team, where appropriate, the relevant order will be sought to restrict the activity.

## **H. Seizure**

Certain legislation enables authorised Officers to seize evidence, goods, equipment or documents, for example, unsafe food, sound equipment that is being used to cause a statutory noise nuisance, unsafe products or any goods that may be required as evidence for possible future court proceedings. When we seize goods we will give the person from whom the goods are taken an appropriate receipt.

## **I. Forfeiture / destruction Proceedings**

This procedure may be used in conjunction with seizure and/or prosecution whether there is a need to dispose of goods in order to prevent them re-entering the market place or being used to cause a further problem. In appropriate circumstances, we will make an application for forfeiture and/or destruction to the Magistrates Courts

## **J. Refusal, Suspension and Revocation of a Licence**

Braintree District Council issues a number of licences and permits. We also have a role to play in ensuring that appropriate standards are met in relation to licences issued by other agencies. Most licences include conditions which require the licence holder to take steps to ensure that, for example, a business is properly run. Breach of these conditions may lead to a review of the licence which may result in its revocation or amendment.

Licences issued under the Licensing Act 2003, the Gambling Act 2005 and Permits issued under Environmental Protection legislation require annual payment of fees which, if not paid, may result in suspension of the licence or permit and the subsequent inability of the business to continue those licensable or permitted activities.

**Hackney Carriage and Private Hire drivers** – Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 provides the licensing authority with the ability to suspend or revoke a driver's licence on the following grounds:-

- (a) That he has since the grant of the licence
  - (i) been convicted of an offence involving dishonesty, indecency or violence; or
  - (ii) been convicted of an offence under or has failed to comply with the provisions of the Act of 1847 or of this Act;
- (aa) that he has since the grant of the licence been convicted of an immigration offence or required to pay an immigration penalty, or
- (b) any other reasonable cause

A Hackney Carriage or Private Hire Drivers' licence may also be suspended or revoked with immediate effect if such a decision is deemed necessary in the interests of public safety.

Licensing enforcement is the responsibility of the Councils Licensing Committee, who is responsible for the relevant enforcement policies. This policy will support those policies and decisions taken by the Licensing Committee.

## **K Braintree District Council's Penalty Point Scheme (Hackney Carriage and Private Hire Drivers)**

Braintree District Council operates a penalty point scheme for Hackney Carriage and Private Hire Drivers. The scheme is operated, approved and enforced by the Licensing Committee.

## **L Licence Review**

Responsible Authorities and 'Other Persons' have the power under the Licensing Act 2003 and the Gambling Act 2005 to apply to have a Premises Licence or Club Premises Certificate reviewed by the Sub Committee of the Licensing Committee where activities at the premises appear to be undermining one or more of the Licensing Objectives:

- Licensing – the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm
- Gambling – preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime, ensuring that gambling is conducted in a fair and open way, and protecting children and other vulnerable persons from being harmed or exploited by gambling

This option is also open to Officers of the Licensing Authority but generally officers will only take such action if they feel that there are good reasons for a licence to be the subject of a review and no Responsible Authority or other person has made the relevant application. Each application for a review will be considered on its own merits. The instigation of a review may lead to the instigation of other enforcement action by the appropriate parties.

**Premises Licences (Licensing Act 2003)** – where a review of a Premises Licence is sought under Section 51 of the Act the options available to the Licensing Committee are:

- (i) Modification of the conditions of the Licence.
- (ii) Exclusion of licensable activity from the scope of the Licence.
- (iii) Removal of the Designated Premises Supervisor.
- (iv) Suspension of the Licence for a period not exceeding three months.
- (v) Revocation of the Licence.
- (vi) Issue of a Warning Letter.
- (vii) No Action.

A decision to modify conditions or exclude a licensable activity can be made on a permanent or temporary basis (for up to three months) depending on the particular issues raised in the 'representations' and the evidence given at the review hearing.

Every decision the Licensing Committee and Sub-Committee make must relate directly to the four licensing objectives, having regard to the application itself, the representation received, the relevant sections of the Secretary of State's Guidance and the Authority's own Statement of licensing Policy.

**Premises Licences (Gambling Act 2005)** – where a review of a Premises Licence is sought under Section 202 of the Act, the options available to the Licensing Committee are:

- (i) Revocation of the Licence.
- (ii) Suspension of the Licence for a specified period not exceeding three months.
- (iii) Exclusion of a condition attached to the Licence, under Section 168, or removal or amendment of an exclusion.

- (iv) Additions, removal or amendment of a condition under Section 169.

**General Licensing** – where there is a breach of condition of Licence or Permit, upon hearing evidence, the Licensing Committee has the power to suspend, revoke or refuse to renew the Licence/Permit subject to the provisions of the legislation.

## **M Simple Caution**

Braintree District Council has the power to issue simple cautions (previously known as ‘formal cautions’) as an alternative to prosecution for some offences.

For a simple caution to be issued a number of criteria must be met:

- (a) Sufficient evidence must be available to prove the case.
- (b) The offender must admit the offence.
- (c) It must be in the public interest to use a Simple Caution.
- (d) The offender must be 18 years or over.

A Simple Caution cannot be given where the offence is indictable only (ie a serious criminal offence that is triable only by jury in the crown court).

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 we 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 company) it may have consequences if that individual seeks certain types of employment.

The aim of a Simple Caution is to deal quickly and simply with offences, to save court time and to be used where there is a likelihood that it will reduce re-offending.

There are no definitive rules as to the circumstances in which a Simple Caution is appropriate and in reaching a decision the following must be taken into account:

- Whether a Simple Caution is appropriate to the offence and the offender
- Whether a Simple Caution is likely to be effective
- The sufficiency of the evidence
- Public interest considerations
- The views of the victim and the nature of any harm or loss
- Whether the offender has made any form of reparation or paid any compensation
- Any known records of previous convictions or Simple Cautions relating to the Offender.

The person administering the caution will be the relevant Senior Officer. The consequence of accepting the caution must be fully explained in writing and the evidence disclosed.

Simple cautions will be used in accordance with the Ministry of Justice Guidance on Simple Cautions for Adult Offenders

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/416068/cautions-guidance-2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/416068/cautions-guidance-2015.pdf) and other relevant guidance.

## **N Prosecution**

Braintree District Council may prosecute in respect of any breaches of legislation, or where other enforcement actions, such as voluntary undertakings or statutory notices, have failed to secure

compliance. When deciding whether to prosecute Braintree District Council has regard to the provisions of [The Code for Crown Prosecutors](#) as issued by the Director of Public Prosecutions.

There are two tests to be satisfied in the Code for Crown Prosecutors:

**(i) Evidential Test**

Is there enough evidence against the defendant? When deciding whether there is enough evidence to prosecute, officers must consider what evidence can be used and how reliable is it. Officers must be satisfied that there is enough evidence to provide a “realistic prospect of conviction” against each defendant.

**(ii) Public interest test**

Is it in the public interest to bring a case to Court?

Before deciding that prosecution is appropriate, the Council will consider all relevant circumstances carefully and will have regard to the public interest test above and other criteria as set out in Appendix B. A prosecution will usually take place unless the public interest factors against prosecution clearly outweigh those in favour of prosecution.

Additionally, where the offense relates to a company, officers will actively consider the management chain and the role played by individual directors and managers. We will take action against them where it can be shown that the offence was committed with their knowledge and authorisation or can be attributable to neglect on their part.

A successful prosecution will result in a criminal conviction. The court may impose a fine and in some cases a prison sentence. The court may order the forfeiture and disposal of items (eg unfit food, noise making equipment) 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 or the Prohibition of persons running a Food Business.

## **O Proceeds of crime applications**

Applications may be made to confiscate assets related to proceeds of crime in serious cases. The purpose is to recover the financial benefit that the offender has obtained from their criminal behaviour. Proceedings are conducted according to the civil standard of proof. Where applications are made this will be after a conviction has been secured.

## Appendix B

### Consideration of factors for and against prosecution or other enforcement actions

#### Public Interest Test

The Code for Crown Prosecutors lists relevant considerations in the *Public Interest Test* such as:-

##### a) How serious is the offence committed?

- The more serious the offence, the more likely it is that a prosecution is required
- Consideration should also be given to the culpability of the suspect and the harm posed

##### b) What is the level of culpability of the suspect?

- The greater the suspect's level of culpability, the more likely it is that a prosecution is required
- The extent of involvement of the suspect
- Whether the offending was planned or pre-meditated
- The likelihood of continued offending, repeated or escalation of offending
- Whether other offences were committed during the investigation or prosecution process
- Previous criminal record / out of court disposals / offending whilst on bail or whilst subject to a court order
- Suspects age (maturity or under 18 years old)
- The suspects mental or physical ill health now or at the time of offending (making prosecution less likely) – considered against the seriousness of the offence, whether it is likely to be repeated and the need to safeguard the public

##### c) What are the circumstances of and the harm caused to the victim?

- The circumstances of the victim are relevant. The greater the vulnerability of the victim, the more likely it is that a prosecution is required. This includes where a position of trust or authority exists between the suspect and victim
- A prosecution is also more likely if the offence has been committed against a victim who was at the time a person serving the public
- Officers must also have regard to whether the offence was motivated by any form of discrimination (ethnicity, national origin, gender, disability, age, religion or belief, sexual orientation or gender identity; or the suspect demonstrated hostility towards the victim based on any of those characteristics. Presence of such motivation means prosecution more likely.
- Take account of the view of (any) victim(s) about the impact that the offence has had. In some cases this may also include the views of the victim's family.
- Take account of any adverse effect a prosecution would have on the victim's physical or mental health, always bearing in mind the seriousness of the offence. If prosecution is

likely to have an adverse effect on the victim's health it may make prosecution less likely.

**d) Was the suspect under the age of 18 at the time of the offence?**

- The criminal justice system treats children and young people differently from adults and significant weight must be attached to the age of the suspect if they are a child or young person under 18. The best interests and welfare of the child or young person must be considered including whether a prosecution is likely to have an adverse impact on his or her future prospects that is disproportionate to the seriousness of the offending.
- Officers will have regard to the principal aim of the youth justice system which is to prevent offending by children and young people. Officers must also have regard to the obligations arising under the United Nations 1989 Convention on the Rights of the Child.
- The younger the suspect, the less likely it is that a prosecution is required. However, there may be circumstances which mean that despite the suspect being under 18, a prosecution is considered to be in the public interest. These include where the offence committed is serious, where the suspect's past record suggests that there are no suitable alternatives to prosecution, or where the absence of an admission means that out-of-court disposals which might have addressed the offending behaviour are not available.

**e) What is the impact on the community?**

- The greater the impact of the offending on the community, the more likely it is that a prosecution is required. In considering this question, officers should have regard to how 'community' is an inclusive term and is not restricted to communities defined by location.

**f) Is prosecution a proportionate response?**

- Officers should consider whether prosecution is proportionate to the likely outcome, and in so doing the following may be relevant to the case under consideration:
- The cost to the local authority and wider criminal justice system (especially where it could be considered excessive) compared to the likely penalty (Officers should not decide the public interest factors on the basis of this factor alone, however cost is a relevant factor when making an overall assessment of the public interest test)
- Cases should be capable of being prosecuted in a way that is consistent with principles of effective case management. For example in a case involving multiple suspect offenders, prosecution might be reserved for the key main participants in order to avoid excessively long and complex proceedings.

**g) Do sources of information require protecting?**

- In cases where public interest immunity does not apply, special care should be taken when proceeding with a prosecution where details may need to be made public that could harm sources of information.

Braintree District Council will balance factors for and against prosecution carefully and fairly, considering each case on its merits. Deciding on the public interest is not simply a matter of adding up the number of factors on each side. The Council will decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

**Other factors**

In addition, there are other factors we will consider in deciding on enforcement action. These are:-

- The consequences of non-compliance
- The effectiveness of various enforcement options, and the availability of other options (i.e. product recall)
- Whether there has been gross negligence and the ease with which the offence may have been avoided
- Obstruction of an Officer
- Targeting of vulnerable groups
- Where there is evidence that the offender was informed about the offence, advised in writing how to comply with the law and has failed to do so. These previous occasions may include any level of enforcement action.
- Failure to comply with formal notices served by the Council.
- Where Government or other public body guidance requires strict enforcement. Where there has been a serious risk of danger to life or limb.
- Where there has been a damage or risk of damage to the environment or to public health
- Where there has been a fatality or serious injury
- Where a particular contravention has caused serious public concern or is in contravention of the Council's key enforcement priorities (e.g. dog fouling)
- Where there has been substantial or significant financial gain

## **Companies and Individuals**

Criminal proceedings will be taken against those persons responsible for the offence. Where a Company is involved, it will be usual practice to prosecute the Company where the offence resulted from the Company's activities. However, the Council will also consider any part played in the offence by the officers of the Company, including Directors, Managers and the Company Secretary. Action may also be taken against such officers (as well as the Company) where it can be shown that the offence was committed with their consent, was due to their neglect or that they 'turned a blind eye' to the offence or the circumstances leading to it. In appropriate cases, the Council will consider seeking disqualification of Directors under the Companies Act.

## **Presumption of Prosecution**

Where there is sufficient evidence, the Council will normally prosecute in any of the following circumstances: -

- **Incidents or breaches which have significant consequences for public health, safety or the environment or which have the potential for such consequences.** The Council takes very seriously such incidents or breaches.
- **Excessive or persistent breaches of regulatory requirements** in relation to the same licence or premises.
- **Failure to comply or to comply adequately with formal remedial requirements.** It is unacceptable to ignore remedial requirements and unfair to those who do take action to comply.



- **Reckless disregard for management or quality standards.** It is in the interests of all that irresponsible operators are brought into compliance or cease operations.
- **Failure to supply information without reasonable excuse or knowingly or recklessly supplying false or misleading information.** It is essential that lawful requests for information by the Council are complied with and that accurate information is always supplied to enable informed regulation to be exercised.
- **Obstruction of Council staff** in carrying out their powers. The Council regards the obstruction of, or assaults on, its staff while lawfully carrying out their duties as an extremely serious matter.
- **Impersonating Council officers.** The Council regards impersonation of staff, for example, in order to gain access to premises wrongfully, as a very serious matter.