

Decision Maker: PUBLIC PROTECTION AND ENFORCEMENT PORTFOLIO HOLDER

FOR PRE-DECISION SCRUTINY BY THE PUBLIC PROTECTION AND ENFORCEMENT PDS COMMITTEE

Date: Thursday 14 November 2019

Decision Type: Non-Urgent Executive Key

Title: DRAFT ENFORCEMENT POLICY FOR PUBLIC PROTECTION

Contact Officer: Joanne Stowell, Assistant Director of Public Protection
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Chief Officer: Colin Brand Director of Environment and Public Protection

Ward: (All Wards);

1. Reason for report

This report seeks agreement to undertake public consultation on the draft Enforcement Policy for Public Protection, which has been reviewed to take account of changes in legislation, including changes brought about by the Regulators Code.

2. **RECOMMENDATION(S)**

The Portfolio holder is asked to:

1. Agree that draft Public Protection Enforcement Policy, attached to this report, be subject to public consultation until 24th January 2020.
2. Receive feedback from the consultation at the next meeting on 4th February 2020
3. Agree that delegated authority be given to the Director of Environment and Public Protection, in consultation with the Portfolio Holder for Public Health and Enforcement to make minor amendments to the Policy.
4. Recommend the adoption of the finalised enforcement policy by the Executive on 1st April 2020.

Impact on Vulnerable Adults and Children

1. Summary of Impact: The Policy makes specific reference to a proportionate approach to enforcement activities and indicates objective criteria for decision making in line with statutory guidance, there is no anticipated adverse impact on vulnerable adults or children.
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Corporate Policy

1. Policy Status: Existing Policy:
 2. BBB Priority: Excellent Council Quality Environment Safe Bromley Vibrant, Thriving Town Centres Regeneration:
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Financial

1. Cost of proposal: Not Applicable:
 2. Ongoing costs: Not Applicable
 3. Budget head/performance centre: Public Protection and Enforcement Portfolio Budget
 4. Total current budget for this head: £2,586,740
 5. Source of funding: From the existing revenue budget 2019/20
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Personnel

1. Number of staff (current and additional): 50.1 FTE
 2. If from existing staff resources, number of staff hours: Not Applicable
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Legal

1. Legal Requirement: Statutory Requirement:
 2. Call-in: Applicable:
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Procurement

1. Summary of Procurement Implications: Not Applicable
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): Not Applicable
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
2. Summary of Ward Councillors comments: Not Applicable

3. COMMENTARY

3.1 The work of the services within Public Protection seek to ensure that Bromley continues to be a safe and healthy place for those who live, visit or work in the borough, now, and in the future. The scope of services is wide and cuts across many of the key areas of work within the authority. Essentially if an enforcement issue affects the health, wellbeing or safety of the public, or the stewardship of our natural or built environment, it is likely that services within the Portfolio will have an active role to play.

3.2 Much of the work is carried out within a regulatory framework and can be statutory, with standards being set by national regulators including: the Food Standards Agency, the Health & Safety Executive, Environment Agency and the Health Protection Agency. The services within Public Protection are responsible for the enforcement of a wide range of legislation, including laws designed to protect the environment, public health, safety, welfare, mitigate nuisance and anti-social behaviour and maintain fair and safe trading practices.

These laws are applied in the following areas:

- food safety and standards;
- workplace health & safety;
- private sector housing enforcement;
- environmental protection;
- public health & nuisance;
- community safety
- animal health & welfare;
- licensing; and
- trading standards;

3.3 There is a balance to be struck between actively providing support, advice and information as well as targeting enforcement activity against those that put public health, the local economy, the environment or community at risk; this is recognised within legislation and guidance which states that regulators should publish a policy that details their approach to enforcement.

3.4 The current Enforcement Policy for Public Protection was adopted by the Council on 2nd February 2012 (report ENV PDS 180112); and was written with regard to the Regulatory Reform Act 2006 and the Regulators' Compliance Code: Statutory Code of Practice for Regulators 2008. Since then, there have been changes in national guidance on the enforcement approach, namely the Regulators' Code (the 2014 Code), which came into statutory effect on 6 April 2014.

3.5 As previously mentioned, each area of work within Public Protection uses different legislation to secure its aims and each has its own extensive body of guidance, which has been developed from experience and case law. The draft Public Protection Enforcement Policy does not try to capture all of this detailed, complex and often changing background, but reiterates the basic principles of enforcement activity, and formally recognises the 2014 Code.

3.6 The 2014 Code sets out Government expectations that regulators will design their compliance and enforcement policies in a manner that best suits the needs of businesses and others that they regulate. The previous Regulators' Compliance Code 2008 sought to promote appropriate enforcement activity through the development of effective dialogue and understanding between regulators and those they regulate, and through the application of the following enforcement principles:

- Proportionality
- Transparency
- Consistency

- Targeted, and
- Accountability.

3.6 The 2014 Code continues to seek to promote these enforcement principles, and introduces 2 additional enforcement principles, these being:

- Raising awareness of the law and its requirements, and
- Basing regulatory activity on risk.

3.7 These additional requirements were already applied by the Officers within Public Protection whilst carrying out their enforcement functions; however, the draft policy attached at Appendix A of this report formally reflects the requirements of the 2014 Code which includes the 2 new principles.

3.5 Consultation

3.6 As required by the Regulators' Code, Regulators should have mechanisms in place to consult those they regulate in relation to the guidance they produce, as such; it is proposed that a public consultation exercise be undertaken through publishing draft Public Protection Enforcement Policy (Appendix A) on the Council's website and inviting comments.

3.7 Details of any representations and the result of the consultation will be reported to PP&E PDS on 4th February 2020.

3.8 The timetable for consultation is below:

Draft Policy to PP&E PDS	14 th November 2019
Public Consultation	16 th December 2019 to 24 th January 2020
Consideration of Policy in response to consultation	4 th February 2020
Adoption of Policy by Executive	1 st April 2020

4. IMPACT ON VULNERABLE ADULTS AND CHILDREN

The Policy makes specific reference to a proportionate approach to enforcement activities and indicates objective criteria for decision making in line with statutory guidance, there is no anticipated adverse impact on vulnerable adults or children.

5. POLICY IMPLICATIONS

One of the requirements of the 2014 Code is that Regulators should provide a clear Enforcement Policy that sets out our approach to enforcement and outline that the council will take a consistent, fair, transparent and proportionate approach so as not to place too onerous a burden on local businesses, organisations, customers and the public. The Policy should be available to businesses & members of the public, kept under review, and revised when appropriate. This draft policy is a revision of the previous London Borough of Bromley Environmental services Enforcement Policy adopted in 2012, and it is considered best practice to consult affected stakeholders on policy revisions. It also reflects the overarching aims of the Public Protection and Enforcement Portfolio Plan, these being to provide a protective role in keeping people safe, protecting consumers, supporting and regulating businesses, and protecting the environment.

6. LEGAL IMPLICATIONS

- 6.1 The Draft Policy seeks to update the 2012 Policy adopted by the Council, to comply with and reflect the changes made by the Regulators Code 2014 (the Code). The Code is in accordance with the provisions of the Legislative and Regulatory Reform Act 2006, as amended, and came into effect on 6th April 2014.
- 6.2 The Draft Policy affirms the principles of the existing policy and proposes to extend it in regard to the raising awareness of legal requirements and the adoption of a risk based approach to regulatory activity. Regulatory activity is governed by statute and must at all times be in compliance with it.
- 6.3 Particular attention should be paid to the requirement to raise awareness of the legal requirements to ensure that the necessity for enforcement action is minimalised and targeted appropriately. For this reason, Paragraph 2.2 of the Code prescribes the entering into of dialogue and the giving of advice and recommendations, except where the regulator can demonstrate that immediate action is required. To this end, it recommends consultation with those who may be affected, which in such cases would include not only public and private sector landlords and property owners, but also tenants.
- 6.4 Accordingly, in order to satisfy the requirements of the 2014 Code, publication of the draft policy is recommended along with a period of public consultation prior to the finalisation of the Policy.

Non-Applicable Sections:	FINANCIAL IMPLICATIONS, PERSONNEL IMPLICATIONS, PROCUREMENT IMPLICATIONS
Background Documents: (Access via Contact Officer)	London Borough of Bromley Environmental services Enforcement Policy 2012