

Decision Maker: PORTFOLIO HOLDER FOR PUBLIC PROTECTION AND ENFORCEMENT

Date: Tuesday 4 February 2020

Decision Type: Non-Urgent Non-Executive Key

Title: ENFORCEMENT POLICY FOR PUBLIC PROTECTION

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Chief Officer: Colin Brand Director of Environment and Public Protection

Ward: All Wards

1. Reason for report

The Enforcement Policy for Public Protection was reviewed and revised to take account of changes in legislation, including changes brought about by the Regulators Code. This report sets out the results of the consultation of the draft Enforcement Policy, responds to the issues raised, and presents the final Policy for approval

2. **RECOMMENDATION(S)**

Recommend that the Portfolio Holder for Public Protection and Enforcement adopt the 2020 Public Protection Enforcement Policy.

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 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: Assistant Director of Public Protection
 4. Total current budget for this head: £2.6M
 5. Source of funding: Existing revenue budgeted 19/20
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Personnel

1. Number of staff (current and additional): Not Applicable
 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 the Public Protection and Enforcement Portfolio 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 Public Protection and Enforcement Portfolio will have an active role to play.
- 3.2 This updated Policy applies to enforcement activities undertaken by the following services within the Public Protection and Enforcement Portfolio which includes:
- Environmental Health;
 - Trading Standards;
 - Community Safety;
 - Antisocial Behaviour;
 - Health & Safety;
 - Parking (specifically blue badge misuse) and
 - Neighbourhood Management.
- 3.3 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 covered 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, tackle fraud 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;
 - Environmental enforcement
 - Licensing;
 - Trading standards and;
 - Blue badge misuse.
- 3.4 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.
- 3.5 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.
- 3.6 As previously mentioned, each area of work within Public Protection and Enforcement Portfolio 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 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.

3.7 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.

3.8 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.

3.9 These additional requirements were already applied by the Officers within Public Protection and Neighbourhood Management whilst carrying out their enforcement functions; however, the updated Policy formally reflects the requirements of the 2014 Code, which includes the 2 new principles.

3.10 Results of Consultation

3.11 As required by the Regulators' Code, Regulators should have mechanisms in place to consult those they regulate in relation to the guidance they produce; on the 14th November 2019 the Public Protection and Enforcement PDS approved the draft Policy to go out for public consultation on the Council's website for a 6 week period.

3.12 3 responses were received with 4 issues raised; the comments and actions taken are set out in the table below.

Issue	Section of Draft Policy	Comment	Response	Action Taken
1	All	Include the enforcement of fly-tipping undertaken by Neighbourhood Management Enforcement within the Policy	Agreed and Included.	Consultee Responded to, reference included and document updated
2	All	Include the enforcement of Blue Badge Misuse by Parking within the Policy	Agreed and Included.	Consultee Responded to, reference included and document updated
3	All	The principle of effectively maintaining the	Regulatory compliance and enforcement are common operational activities carried out by	Consultee responded to-

		<p>environment and the health and safety of individuals is not listed as a principle of the policy! This is the fundamental objective of the Policy and therefore should be formally listed as a principle. Its absence does rather reinforce the general tone of the Policy that the Council isn't going to be that robust in maintaining public protection.</p>	<p>the services within Public Protection, as part of the broader regulatory process, and it involves actions that encourage and compel compliance with a regulatory framework that covers numerous pieces of legislation. These pieces of legislation will deal with protecting the health and safety of individuals as well as protecting the environment. With that in mind, the Policy is not designed to comment on individual laws (and the aims associated with them), instead its purpose is to ensure that the principles of the Code are applied when we (as regulators) enforce the legislation.</p> <p>Notwithstanding the above, the relevance of Health and Safety was mentioned 8 times within the Policy, and these references were provided to the consultee.</p> <p>Taking this into account, as the principles of enforcement are determined by the Code, and as the importance of Health and safety is clearly referenced within the Policy, therefore the principles as stated will not be changed.</p>	No further action taken
4	All	<p>There are a few places where the environment is mentioned, but protection of the environment (climate change) must surely be a key aspect of this Policy.</p>	<p>As above, the Policy is not designed to comment on individual laws (and the aims associated with them), instead its purpose is to ensure that the principles of the Code are applied when we (as regulators) enforce the legislation.</p> <p>These pieces of legislation will deal with protecting the health and safety of individuals as well as protecting the environment.</p> <p>Taking this into account, the key aspect of the Policy will not be changed; this was explained to the consultee.</p>	Consultee responded to- No further action taken

3.13 The responses did not materially affect the substance of the draft Policy consulted on, and the final Enforcement policy is attached as Appendix A.

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 updated 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 updated 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 updated 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.

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