



## **Barrow Borough Council**

# **Public Protection Services General Enforcement Policy**

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# 1. Introduction

## Public Protection Services approach to dealing with non-compliance

- 1.1. This document is the General Enforcement Policy ('the Policy') for Barrow Borough Council's Public Protection Services (PPS). It is based on the principles of transparency, consistency and proportionality and sets out the key principles under which officers will seek to achieve compliance with the legislation the Council is required to enforce. The Policy conforms to the Regulators' Code (Better Regulation Delivery Office [BRDO]) April 2014, and should be read in conjunction with any applicable service specific policies and procedures.
- 1.2. The Policy has been reviewed and ratified by Council on 21<sup>st</sup> January 2020.
- 1.3. The primary purpose of Public Protection Services' enforcement work is to ensure regulatory compliance and protection of the public. To do this we will deliver efficient, targeted and proportionate regulatory activities that are focused to reduce risk.
- 1.4. The Policy supports the Council's vision *for our Borough to be a great place to live, work and visit* and our corporate priorities:
  - Enabling residents to live happy, healthy productive lives.
  - Creating a great place to live.
  - Supporting our economy to thrive to ensure a long term economic future for all our community.
- 1.5. The Council and its officers will seek to protect and maintain high living, working and environmental standards for people in the Barrow Borough Councils area.
- 1.6. The Council is committed to good enforcement practice and adherence to the current legislation, relevant guidance and codes of practice, which influence the policy (see [Appendix A](#)).
- 1.7. This Policy has been developed in light of the Regulators' Code and Public Protection Services will exercise its regulatory activities in a way which is:

**Proportionate** – our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence.

**Accountable** – our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures.

**Consistent** – our advice to those regulated will be robust and reliable; similarly, advice provided by others will be considered. Where circumstances are similar, a consistent approach/action to other local authorities will be followed where it complies with best practice.

**Transparent** – those regulated will be advised appropriately so they understand what is expected of them and what they can anticipate in return.

**Targeted** – resources will be focused on higher risk enterprises and activities, reflecting local need and national priorities.

1.8. We will avoid imposing unnecessary regulatory burdens.<sup>1</sup> Policies, procedures and practices will give due consideration to economic impacts and cost, with a view to encouraging compliance and confidence in those regulated.<sup>2</sup>

1.9. The Council will ensure that regulatory officers have the necessary knowledge and skills to;

- understand the principles of protecting the public;
- support those that they regulate;
- understand those they regulate;
- understand the statutory principles of good regulation and how activities are delivered in accordance with the Regulators' Code.

1.10. The Policy will be published on the Council's website, with service standards. More specific enforcement policies / procedures may be drawn up by each individual service area. Paper copies will be made available on request.

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<sup>1</sup> Section 1.1, [Regulators' Code](#) regulators should avoid imposing unnecessary regulatory burdens through their regulatory activities.

<sup>2</sup> Section 2.1, [Regulators' Code](#) requires regulators, before changing policies, practices or service standards, to consider the impact on business and to engage with business representatives.

## **2. Purpose of the Policy**

- 2.1. This Policy details the Public Protection Services' approach to dealing with non-compliance by businesses and members of the public with their regulatory and statutory responsibilities.
- 2.2. This Policy sets out the framework for the Council against which it will seek to enable regulatory compliance by businesses and individuals. It also sets its standard of enforcement practice to ensure public protection.
- 2.3. All officers will have regard to this document when making enforcement decisions. Any departure from this Policy must be exceptional, capable of justification under scrutiny and be agreed by the Director of Service.
- 2.4. This provision shall not apply where a risk of injury or to health is likely to occur due to a delay in any decision being made. In cases of emergency or where any exceptional conditions prevail, the Chief Executive may suspend any part of this policy where necessary to achieve effective running of the service and/or where there is a risk of injury or to health of employees or any members of the public.

## **3. Application of the Policy**

### **Scope of the policy and service areas referred to**

- 3.1. This document sets out what businesses and others being regulated can expect from the Council's Public Protection Service functions.
- 3.2. This Policy relates to those enforcement and regulatory functions discharged by the Council's Public Protection Service, covering the Environmental Health (Food Hygiene, Health & Safety, Environmental Protection and Public Health) and Licensing work areas.
- 3.3. This Policy is the General Enforcement Policy for Public Protection Services. We also have function specific enforcement policies / procedures / protocols in place, namely the approved Barrow Borough Council's Health & Safety Enforcement Policy and Food Safety Enforcement Policy.
- 3.4. The Policy does not cover the regulatory and enforcement functions delivered by Planning and Building Control Services, Streetcare or the Property Services Department.
- 3.5. Our primary function is to achieve regulatory compliance in order to protect the public. The Council, however, reserves the right to take enforcement action in

some cases after compliance has been achieved, if it is in the public interest to do so.

- 3.6. Where offences or potential offences that impact on public safety are suspected and are outside the legislative remit of this Policy, officers will refer the matter to the relevant agency or Council service. Following referral, it shall be ensured that, through influence and / or escalation, the issues are thoroughly investigated and satisfactory feedback provided to the Council.

## 4. Our approach to dealing with non-compliance

- 4.1. Public Protection Services recognises that most businesses and individuals strive to comply with the law. Firm action, however, will be taken against those who flout the law or act irresponsibly. Particular focus will be given to circumstances where public safety is compromised.
- 4.2. We will investigate all notifications / complaints of non-compliance. Anonymous complaints will be acted upon and investigated.
- 4.3. We will generally carry out check visits or re-visits to assess compliance where prior advice or guidance has been given, before considering further action.
- 4.4. Council officers and decision makers will carry out all of their enforcement duties, including taking formal enforcement action, in a fair, equitable and consistent manner. Whilst officers exercise judgement in individual cases, the Council will have arrangements in place to promote consistency including liaison with other agencies and authorities.
- 4.5. Formal enforcement action will generally only be considered and taken in the first instance in cases where individuals have exposed the public or employees to unacceptable risk, compromised safety or welfare of the public / employees, environment or animal health and / or sought to obtain an unfair commercial advantage, or other such situations that are considered to be so serious as to warrant formal action.
- 4.6. We will be accountable for the efficiency and effectiveness of its enforcement activities, while remaining independent in the decisions made.

### Advice & Guidance

- 4.7. Where there is non-compliance we will clearly explain the non-compliance and provide opportunity for discussion, to ensure consistency and proportionality, unless there is a need for immediate enforcement action.<sup>3</sup>
- 4.8. Any individual or businesses believing themselves to be at risk of non-compliance may seek advice from the Council without triggering enforcement action, where willingness is shown to resolve the issues. The Council, however, reserves the right to take action where the matter is sufficiently serious and it is in the public interest to do so.

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<sup>3</sup> Section 2.2, [Regulators' Code](#) the requirement to provide an opportunity for dialogue does not apply where the regulator can demonstrate that immediate enforcement action is required to prevent or respond to a serious breach, or where providing an opportunity for dialogue would be likely to defeat the purpose of the proposed enforcement action.

4.9. It is understood that some members of the community may have specific requirements, which may need extra advice and assistance. Careful explanation will be given and if necessary the services of an interpreter may be used. Appropriate translated material will be arranged or practical help provided for people with impaired hearing, vision or other impairment.

4.10. The Council recognises that prevention is better than cure and will actively work with businesses and residents to provide advice on and assistance with compliance with the law. In doing this it will be ensured that;

- legal requirements are made available and communicated promptly upon request;
- the information provided will be in clear, concise and accessible language and will be confirmed in writing where necessary;
- legal requirements and good practice / guidance aimed at improvements above minimum standards will be clearly distinguished;
- reliable advice to support compliance will be provided;
- there is collaborative working with other regulators where required;
- where there is disagreement over advice given, regulators will reach agreement.

4.11. The Council's Scheme of Delegation, which includes details of who is responsible for managing investigations and making decisions on enforcement action, is available on the Councils website and can also be provided in paper copy, on request.

### **Feedback & Influencing**

4.12. The Council will ensure that mechanisms are in place to allow those regulated, and the public, to express views, provide feedback and contribute to the development of regulatory policies and service standards.

4.13. The Council will consider the impact on business, and engage with businesses, before changing policies and service standards.

### **Fairness**

4.14. Officers will be courteous, fair and efficient at all times, and will identify themselves by name.

4.15. We will give consideration to fairness, the human rights of individuals and generally natural justice in all aspects of enforcement work.

4.16. The Council believes in openness and equality in the way services are provided and that every individual is entitled to dignity and respect.

4.17. When making enforcement decisions the Council and its officers will aim to ensure there is no discrimination on the grounds of culture, ethnic or national origins, gender, disability, age, sexual orientation, political or religious beliefs, socio-economic status, or previous criminal conviction or caution which is not relevant to the current issue.

### **Confidentiality**

4.18. It is normal practice to maintain the confidentiality of a complainant unless they agree to act as a witness in formal action taken by the Council, or the Council is required by law to disclose. Anonymous complaints will be acted upon and investigated.

4.19. Where any officer of the Council becomes aware of any concern in enforcement practice or compliance requirements the matter shall, in the first instance, be escalated to their line manager. If this approach is not seen to be appropriate the issue should be raised with another manager. The Council operates an employee "whistleblowing policy", which provides for serious concerns to proceed confidentially.

### **Charging for Enforcement**

4.20. Where legislation allows, and the Council has adopted powers, the responsible person will be charged a fee which reflects the officer time and ancillary costs involved with the preparation of a formal notice or in the carrying out of 'Works in Default'

4.21. The responsible person will be advised of the potential of being charged for formal enforcement notices before any charge is incurred, unless the situation is an emergency. In emergency situations officers will make reasonable efforts to contact the responsible person. If the responsible person cannot be contacted or cannot respond quickly enough, formal action will be initiated and a subsequent charge made.

### **Necessary and Proportionate**

4.22. Public Protection Services will choose proportionate approaches based on relevant factors.<sup>4</sup>

4.23. In assessing what enforcement action is necessary and proportionate, consideration will be given to, amongst other things;

- public protection and "risk to the public";

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<sup>4</sup> Section 1.1, [Regulators' Code](#) Regulators should choose proportionate approaches to those they regulate.

- the seriousness of the compliance failure;
- the past and current compliance position/performance of any business and/or individual concerned;
- any obstruction on the part of the offender;
- the risks being controlled;
- statutory guidance;
- Codes of Practice;
- any legal advice;
- policies and priorities of Government and the Council;
- a person's age in relation to young people aged under 18;
- the existence of a Primary Authority partnership registration.

### **Council Interests**

4.24. Where the Council has enforcement and regulatory responsibility in relation to its own premises, the Council will enforce and legislate in accordance with legislation, procedures, and guidance. This will be consistent across all premises regardless of ownership. Where individuals are investigated who are also Council employees, or where they have known connections to the Council in any capacity, the investigation will be conducted in accordance with procedures developed to ensure that conflict of interest is minimised, and that the investigation is conducted in an open, honest and accountable manner. All individuals and businesses will be dealt with consistently, regardless of whether or not they have an interest in the Council.

### **Publicity of Enforcement**

4.25. Where we are successful in prosecution and a conviction of an individual or business, or have made an enforcement decision relating to licensed premises, vehicles, drivers and / or operators it may, upon legal advice, publish details of the offence, perpetrators and convictions in both electronic and paper publications.

4.26. This would be done to have a deterrent effect and to make the public aware that the Council is taking effective enforcement action where it is necessary.

### **Primary Authority & Other Agency Arrangements**

4.27. Where a Primary Authority exists, the Council will consult on responses to breaches.

4.28. Where the Council is aware of likely non-compliance where the enforcement powers are shared or with another agency, the Council will liaise with the relevant agency.

## 5. Conduct of investigations

- 5.1. The use and gathering of evidence in relation to breaches of legislation able to be enforced by the Council will adhere to legal controls (see [Appendix B](#)).
- 5.2. The powers used by authorised officers are determined and restricted to those set out in the appropriate statute and/or Council's Delegation of Powers scheme which is available on the Council's website and in paper format upon request.
- 5.3. Where any officer conducting regulatory or enforcement functions is obstructed in the course of their investigations, and legislation allows, formal action will be considered for obstruction offences.
- 5.4. Where legislation allows the seizure of equipment, articles, or items, the Council will adhere to legislation, guidance and specific policies in relation to those seizures.
- 5.5. Certain offences, which are indictable, carry provision for arrest in accordance with the Police and Criminal Evidence Act 1984. Where necessary, the Council and its officers may request Cumbria Police to exercise their powers of arrest.
- 5.6. Where it is believed that an offence has been committed, the Council will endeavour to interview where appropriate alleged perpetrators in accordance with the Police and Criminal Evidence Act 1984 and related guidance.
- 5.7. Legislation utilised by regulatory and enforcement officers, is often subject to statutory time limits for investigations from the point of discovery or commission of the offence. In all circumstances the Council will abide by these limitations when conducting investigations and when considering any subsequent enforcement actions.
- 5.8. Levels of authorisation are detailed within the Council's Scheme of Delegation, which is available upon request. Within the Scheme of Delegation there is provision for levels of authorisations for certain enforcement actions such as prohibitions, seizures and works in default, which will require case review prior to authorisation.
- 5.9. All prosecution work is subject to case review through the line management arrangements prior to authorisation at Services head level and in conjunction with the Director of Resources.
- 5.10. Alleged offenders and witnesses will be kept informed of the progress of investigations.

## 6. Decisions on Enforcement Action

- 6.1. A range of actions are available to the Council which are set out in legislation.
- 6.2. For the purposes of this policy, formal enforcement action includes (see [Appendix C](#)).
- Compliance Advice, Guidance and Support;
  - Voluntary Undertakings;
  - Statutory (Legal) Notices;
  - Financial Penalties;
  - Injunctive Actions / Enforcement Orders etc;
  - Simple Caution;
  - Prosecution; and
  - Refusal / Suspension / Revocation of Licences.
- 6.3. Where appropriate, additional guidance and codes of practice, including service specific policies and procedures will be taken into consideration.

### How decisions are made on enforcement action

- 6.4. Decisions will take into account matters recognised in Section 4 of this policy, and also consider, and may take formal enforcement action, where advice has been ignored.
- 6.5. Where formal enforcement action is necessary, the most appropriate course of action (from the range of sanctions and penalties available) will be considered with the intention of:
- protecting public safety;
  - protecting the environment and animal welfare;
  - changing the behaviour of the offender;
  - eliminating any financial gain or benefit from non-compliance;
  - being responsive and considering what is appropriate for the particular offender and issue involved, including punishment and the public stigma that may be associated with a criminal conviction;
  - being proportionate to the nature of the offence and harm caused;
  - restoring the harm caused by non-compliance;
  - deterring future non-compliance.
- 6.6. Before formal enforcement action is taken:
- Where appropriate, unless immediate action is required e.g. to prevent the destruction of evidence or there is an imminent risk to public safety,

the environment or health and safety, there will be an opportunity to discuss the circumstances of the case. This discussion will usually follow an interview under caution if a prosecution is being considered.

- Where immediate formal enforcement action is taken, which will usually be the service of a written notice, reasons for such action will be given at the time (if possible) and confirmed in writing within 5 working days.
- Where there are rights of appeal against formal enforcement action, notification of the appeal mechanism will be clearly set out in writing at the time the action is taken.
- Clear reasons will be given for any formal enforcement action taken, and confirmed in writing.
- Risk presented from the non-compliance.<sup>5</sup>

6.7. Where the responsible person has failed to respond once a breach of legislation has been brought to their attention or the breach is so severe as to present an imminent risk, it is very likely that formal action will be initiated.

6.8. The decision to instigate legal proceedings will be determined by a number of factors, including:

- the seriousness of the alleged offence;
- the history of the party concerned;
- the willingness of the business or the individual to prevent a recurrence of the problem and to co-operate with officers;
- whether it is in the public interest to prosecute;
- whether there is a realistic prospect of conviction;
- whether any other action (including other means of formal enforcement action) would be more appropriate or effective;
- the views of any complainant and other persons with an interest in prosecution.

6.9. These factors are NOT listed in order of significance. The rating of the various factors will vary with each situation under consideration.

6.10. Where appropriate there will be co-operation and co-ordination with any relevant regulatory body and/or enforcement agency to maximise the effectiveness of any enforcement.

6.11. Where an enforcement matter affects a wide geographical area beyond the Borough boundaries, or involves enforcement by one or more other local authorities or organisations; where appropriate all relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activity co-ordinated with them.

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<sup>5</sup> Section 3.2, [Regulators' Code](#). Regulators should consider risk at every stage of their decision-making processes

6.12. Where the law allows Public Protection Services will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies, including:

- Government agencies
- Police forces
- Fire authorities
- Statutory undertakers
- Other local authorities

6.13. When a decision has been made to take enforcement action and;

- the business is operating in more than one local authority area and has a registered Primary Authority Partnership under The Regulator Enforcement Sanctions Act 2008 (The RES Act); and
- the enforcement action proposed is covered by the definition of enforcement action for the purposes of Part 2 of the RES Act,

the Council will comply with the agreement provisions for enforcement and notify the Primary Authority of the proposed action.

6.14. The Primary Authority has the right to object to the Council's proposed action, in which circumstances either they or the Council may refer the matter to the Secretary of State for determination.

6.15. All regulatory and enforcement actions are subject to review and monitoring at varying line management levels dependent upon the action being considered. The degree of scrutiny will depend upon the action being taken and will vary accordingly, through to scrutiny by the Head of Service.

6.16. Investigating officers are required to escalate to their line manager all (suspected or actual) serious or complex incidents of non-compliance. This includes, and not exclusively, all non-compliance directly impacting on the safety of young and vulnerable persons.

### **How decisions are communicated to those affected**

6.17. Decisions on enforcement actions will be provided in a timely explanation in writing, which will include any rights to representation or rights to appeal, and practical information on the process involved.

## **7. Public Protection Services (Service Standards)**

7.1. Whether a business, employee or a member of the public, the Council is committed to providing an efficient, courteous and helpful service. This section explains what standards can be expected of Public Protection Services. We aim to live the Council's Values.

### **Areas regulated**

7.2. The regulatory and enforcement services are delivered in a number of service areas:

- Environmental Protection
- Public Health
- Health and Safety
- Animal Welfare
- Food Hygiene
- Licensing
- Port Health

### **How services are delivered**

7.3. Public Protection Services make a fundamental contribution to public safety and the improvement of public health, quality of life and wellbeing. Our aims are to:

- Protect the public, businesses and the environment from harm
- Support the local economy to grow and prosper
- Reduce the gap on health inequalities.

7.4. Activities are determined by assessing the needs of local people, the business community, and considering the risks that require addressing. This is advised through customer satisfaction surveys, feedback from specific customers, interaction with business and public and through using data and other information available to the Council and its partners. Resources are targeted appropriately, in the light of these local needs and of national priorities.

7.5. Enforcement and compliance activities are carried out in a way that supports those regulated by the Council to comply, protect the public and grow. This is done by;

- providing information, guidance and advice to help legal requirements;

- carrying out inspections and other activities to check compliance with legal requirements, and checks are targeted where it is believed they are most needed;
- dealing proportionately with breaches of the law as set out in this Enforcement Policy, including taking firm enforcement action when necessary; and
- providing a range of 'Better Business' services including Food Business Start Up Health Checks, Gain or Retain 5, Licensing Direct, and Re-scores for Food Hygiene Ratings.

Services will be delivered in accordance with the requirements of the [Regulators' Code](#)

## **Working with Businesses and Individuals**

7.6. In all dealings with Public Protection Services, customers can expect to receive an efficient and professional service. Officers will;

- be courteous and polite;
- always identify themselves by name, and provide contact details;
- seek to gain an understanding of how a business operates;
- provide details of how to discuss any concerns there may be;
- agree timescales, expectations and preferred methods of communication; and
- ensure that information and progress on any outstanding issues is provided.

7.7. Whilst recognising that businesses and individuals will receive advice and inspections from other organisations, wherever necessary, co-ordination and linkages will be made with those agencies to ensure that the best service is provided.

## **Helping businesses and individuals get it right**

7.8. The Council wants to work with businesses and individuals to enable them to be compliant and successful and it is important that everyone feels able to contact us for advice when it is needed. It does not necessarily mean that enforcement action will be taken just because the Council has been made aware of something.

7.9. Information and guidance are available on request either electronically or by paper copy to customers to help them meet their legal requirements.

7.10. Where advice is given it will be tailored to particular needs and circumstances. Steps will be taken to;

- discuss what is required to achieve compliance;
- provide advice that supports compliance and that can be relied on;
- provide clear advice that can be easily understood and implemented;
- distinguish legal requirements from suggested good practice;
- ensure that any verbal advice given is confirmed, if requested, in writing;
- acknowledge good practice and compliance;
- publicise annually agreed charges for services, where applicable.

### **Inspections and other compliance visits**

7.11. Compliance is monitored and supported in a number of different ways including audits, inspections, sampling visits, test purchases, advisory visits and complaint investigations. These visits will always be based on an assessment of risk; visits will not be made without a reason.

7.12. Notice that officers intend to visit will be provided, unless there is a specific reason to believe that an unannounced visit is more appropriate. However, some statutory codes of practice require visits to be unannounced.

7.13. When Council officers visit they will;

- explain the reason and purpose of the visit;
- carry their identification at all times, and present it on request when visiting;
- exercise discretion in front of neighbours, business customers and staff;
- have regard to the business's or person's approach to compliance, and use this information to inform future actions;
- provide information, guidance and advice, if required, to support statutory obligations;
- provide a written record of the visit.

7.14. The Council will allocate resources to where they will be most effective by assessing the priority risks;

- risk will be considered at every stage when making a decision, including the most appropriate intervention, the way of working, checks on compliance, and when taking enforcement action;
- assessment of risk will recognise previous compliance history and all available relevant data including appropriate external verification;
- where risk assessment frameworks are designed or reviewed consultation will be carried out with those affected, where appropriate. This approach
- will cover a range of regulatory activity;
- the effectiveness of regulatory activities and outcomes will be reviewed regularly and adjusted accordingly.

## **Responding to non-compliance**

7.15. Where failure to meet legal obligations is identified, there will be a proportionate response, taking account of the circumstances, in line with this Enforcement Policy. This Policy is available on request either electronically or in paper copy.

7.16. Where action is needed to remedy any failings, officers will;

- explain the nature of the non-compliance;
- discuss what is required to achieve compliance, taking into account any relevant circumstances;
- clearly explain any advice, actions required or decisions that have been taken;
- agree timescales that are acceptable to both parties, in relation to any actions required;
- provide in writing details of how to appeal against any advice provided, actions required or decisions taken, including any statutory rights of appeal;
- explain what will happen next;
- keep in touch, where required, until the matter is resolved.

## **Requests for our services**

7.17. The services that Public Protection Services offer, including details of any fees and charges that apply, are available on request either electronically or in paper copy.

7.18. In responding to service requests, including requests for advice and complaints about breaches of the law, the Council will;

- respond to the request within a maximum of 3 working days (this varies within services and compliance activity);
- advise when a substantive response can be expected;
- seek to fully understand the nature of the request;
- explain what may or may not be possible, so that it is clear what the customer can expect;
- keep the person or business informed of progress throughout the Council's involvement;
- inform the person or business of the outcome, as appropriate.

7.19. A detailed breakdown of the response and expected resolution time is available on request either electronically or in paper copy. However, judgment will be made by officers to determine whether a more prompt response is required.

7.20. You can contact us by:

**Telephone:** 01229 876543  
**Email:** envhealth@barrowbc.gov.uk  
**Web:** [www.barrowbc.gov.uk](http://www.barrowbc.gov.uk)

**By post or in person:** Public Protection Services, Town Hall, Duke Street, Barrow-in-Furness, Cumbria. LA14 2LD

### Opening times

7.21. Normal working hours are Monday to Friday 8.30 am to 5.00pm; however, in response to the working hours of businesses and from information relating to activity and any concerns, officers will also work at times outside the above core hours to aid compliance and enforcement of standards.

7.22. Council Offices are open Monday to Friday 9.00 am to 4.00 pm

7.23. Officers will endeavour to work with any person or business in the most appropriate way to meet the individual need. Information is available in different formats, and officers have access to translation and interpretation services.

7.24. The Council will request name and contact details to enable officers to keep in touch as the matter progresses. All contacts with the service will be treated in confidence unless there has been permission to share details with others as part of the matter being dealt with or there is an operational or legal reason to do so.

7.25. Personal data will be managed in accordance with the Council's Data Protection Policy, available here: <https://www.barrowbc.gov.uk/about-the-council/data-protection-and-privacy-statement/>

### Our teams

7.26. There is a dedicated team of officers who have the appropriate qualifications, skills and experience to deliver the services provided. Arrangements are in place to ensure the ongoing professional competency of all officers.

7.27. Where specialist knowledge is required in an area outside of the Council's expertise arrangements can be made, with both neighbouring authorities and other regulatory organisations, to call on additional resources as necessary.

### Working with others

7.28. The Council's aim is for all Council services to work together so a streamlined service is provided.

- 7.29. Public Protection Services are part of a much wider regulatory system. We have working relationships with other regulators such as Cumbria Police, Cumbria Fire & Rescue Service, Health and Safety Executive, and the Environment Agency. This enables officers to deliver a more joined up and consistent service and includes sharing information and data on compliance and risk, where the law allows, targeting regulatory resources.
- 7.30. We are familiar with the work of our partners and can direct customers to the advice and guidance needed and the Council is a member of the South Cumbria Community Safety Partnership. Any comments or concerns regarding the way in which the local regulatory system is operating should be addressed to the Council.

## **8. Review of this policy**

- 8.1. Before the Council changes policies that affect regulatory and enforcement functions, the Council will consider as part of its process any potential impacts on businesses. Where there is a perceived significant change of impact then businesses will be consulted in relation to the changes of policy.<sup>6</sup>
- 8.2. Policies will be reviewed where feedback indicates that improvements or changes may be necessary, or where legislative changes require consideration of policy change, including those policies which are statutorily required.

## **9. Comments and Complaints**

- 9.1. Feedback helps ensure our services meet the needs of the Council's customers. All views are welcomed whether they are good or suggest improvement is needed. Some services use Customer satisfaction surveys, but feedback can be given at any time. Views and opinions can be given in a range of ways detailed in section 7.
- 9.2. The Council provides a clearly explained complaints procedure allowing those that are regulated to easily make complaints about the conduct of the regulator, including appeal against a regulatory decision or failure to act in accordance with the Regulators' Code. All complaints about the services offered by the Council will be dealt with in accordance with the Council's formal complaints procedure. An information leaflet, which explains the process, is available at all Council offices, and is available in electronic or paper format upon request.<sup>7</sup>
- 9.3. Methods of appeal against regulatory decisions or failure to abide by the Regulators' Code will be clear, impartial, timely, written and publicised with those regulated against. Officers who took the decision or action against which an appeal is made will not be involved in considering the appeal.
- 9.4. The Council is willing to discuss with the complainant the reasons why a particular course of action was taken or why the complainant was asked to act in a particular way. The named officer dealing with the case may be contacted, or the officer's line manager.
- 9.5. Contact details for comments or complaints about the policy, or the conduct of local authority staff can be made by using any of the contact methods shown in section 7.

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<sup>6</sup> Section 2.1, [Regulators' Code](#) requires regulators, before changing policies, practices or service standards, to consider the impact on business and to engage with business representatives.

<sup>7</sup> Section 2.3, [Regulators' Code](#) Regulators should provide an impartial and clearly explained route to appeal against a regulatory decision or a failure to act in accordance with this Code.

## APPENDIX A - Legislation, Guidance and Codes used in the preparation of the Enforcement Policy.

### A1. Principles of Good Regulation

The Legislative and Regulatory Reform Act 2006, Part 2, requires the Council to have regard to the Principles of Good Regulation when exercising a specified regulatory function.<sup>8</sup> For local authorities, the specified functions include those carried out by our environmental health, trading standards and licensing services.

The Council will exercise our regulatory activities in a way which is:

- **Proportionate** – our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence.
- **Accountable** – our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures.
- **Consistent** – our advice to those regulated will be robust, reliable and similarly advice provided by others will be respected. Where circumstances are similar, a consistent approach/action to other local authorities will be followed, if possible.
- **Transparent** – those regulated will be advised appropriately so they understand what is expected of them and what they can anticipate in return.
- **Targeted** – resources will be focused on higher risk enterprises and activities, reflecting local need and national priorities.

### A2. Regulators' Code

The Council has had regard to the [Regulators' Code](#) in the preparation of this policy. In certain instances it may be concluded that a provision in the Code is either not relevant or is outweighed by another provision. The Council will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

### A3. Human Rights Act 1998

The Council is a public authority for the purposes of the Human Rights Act 1998. The principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms will be applied. This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular,

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<sup>8</sup> Specified by the Legislative and Regulatory Reform (Regulatory Functions) Order 2007, available at [www.legislation.gov.uk](http://www.legislation.gov.uk)

due regard is had to the right to a fair trial and the right to respect for private and family life, home and correspondence.

#### **A4. Data Protection Act 2018**

Where there is a need for the Council to share enforcement information with other agencies, the provisions of the Data Protection Act 2018 will be followed.

#### **A5. The Code for Crown Prosecutors**

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

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

**Evidential Test** - is there enough evidence against the defendant?

When deciding whether there is enough evidence to prosecute, the Council will consider what evidence can be used in court and is reliable. There must be enough evidence to provide a 'realistic prospect of conviction' against each alleged offender.

**Public Interest Test** - is it in the public interest for the case to be brought to court?

The Council will balance factors for and against prosecution carefully and fairly, considering each case on its merits. The public interest factors that will be taken into account are detailed under the enforcement options available to us in [Appendix C](#).

#### **A6. Regulatory Enforcement and Sanctions Act 2008 ('the RES Act')**

The [Regulatory Enforcement and Sanctions Act 2008](#), as amended, established the Primary Authority scheme. The requirements of the Act will be complied with when enforcement action against any business or organisation that has a primary authority is being considered, and will have regard to guidance issued by the Secretary of State in relation to Primary Authority.

## **A7. Standard of Proof**

Where enforcement action taken by the Council involves prosecution proceedings, then the Council will be required to prove its case to the criminal standard of proof of beyond reasonable doubt. This means that the Court will have to be satisfied so that it is sure that the alleged offence was committed by the defendant.

In addition, however, enforcement action taken by the Council can also involve civil proceedings, e.g. an application for an injunction, or dealing with appeals against the Council's decision to revoke or refuse to grant a private hire/hackney carriage driver's licence. In such civil cases, the Council is required to prove its case to the lower standard of proof i.e. "on the balance of probabilities". This means that the Council will have to establish on the available evidence that it was more probable than not that the alleged behaviour occurred.

## **APPENDIX B - Conduct of Investigations**

**B1** All investigations will be carried out under the following legislation and in accordance with any associated guidance or codes of practice, in so far as they relate to the Council:

[Police and Criminal Evidence Act 1984](#)

[Criminal Procedure and Investigations Act 1996](#)

[Regulation of Investigatory Powers Act 2000](#)

[Criminal Justice and Police Act 2001](#)

[Criminal Justice Act 2003](#)

[Human Rights Act 1998](#)

**B2** These Acts and associated guidance control how evidence is collected and used and give a range of protections to citizens and potential defendants.

**B3** Our 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.

**B4** All investigations shall be carried out fully to ensure that an appropriate decision as to whether non-compliance or breach of legislation has occurred or is occurring. At all times during an investigation the investigating officer shall notify their line manager of any issues they consider may compromise the investigation.

**B5** Investigating Officers are required to inform their line manager of all (suspected or actual) serious or complex incidents of non-compliance or risk to public safety. This includes, and not exclusively, all non-compliance directly impacting on the safety of young and vulnerable persons.

**B6** All investigations will be carried out to ensure full compliance with appropriate discharge in accordance with [Appendix C](#). The person making, or affected by a complaint against the activity of a business or person that has been investigated will be notified of the outcome of the investigation, including the intervention undertaken.

## **APPENDIX C - Enforcement Actions available to the Council in Respect of Criminal and Civil breaches**

### **C1 Compliance Advice, Guidance and Support**

The Council uses compliance advice, guidance and support as a first response in the case of many breaches of legislation that are identified.

Advice is provided, sometimes in the form of a warning letter, to assist individuals and businesses in rectifying breaches as quickly and efficiently as possible, avoiding the need for further enforcement action. A warning letter 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. It may discuss any need for compliance advice and support 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 compliance advice and support, to prevent further breaches.

### **C2 Voluntary Undertakings**

The 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.

### **C3 Statutory (Legal) Notices**

In respect of many breaches the Council has powers to issue statutory notices. These include: 'Abatement Notices', 'Prohibition Notices', 'Emergency Prohibition Notices', and 'Improvement Notices'. Such notices are legally binding. Failure to comply with a statutory notice can be a criminal offence and may lead to prosecution and/or, where appropriate, the carrying out of work in default.

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

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

#### **C4 Financial Penalties**

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

If a fixed penalty is paid in respect of a breach the Council will not take any further enforcement action in respect of that breach. Payment of a fixed penalty does not provide immunity from prosecution in respect of similar or recurrent breaches.

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

#### **C5 Injunctive Actions, Enforcement Orders, etc**

In some circumstances the Council may seek a direction from the court (in the form of an order or an injunction) that a breach is rectified and / or prevented from recurring. The court may also direct that specified activities be suspended until the breach has been rectified and/or safeguards have been put in place to prevent future breaches.

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

The 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.

## C6 Simple Caution

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

A simple caution for a criminal offence will appear on the offender’s criminal record. It is likely to influence how the Council and others deal with any similar breaches in the future, and may be cited in court if the offender is subsequently prosecuted for a similar offence. If a simple caution is issued to an individual (rather than a corporation) it may have consequences if that individual seeks certain types of employment.

Simple cautions will be used in accordance with Ministry of Justice “[Simple Cautions for Adult Offenders](#)” 13<sup>th</sup> November 2013 (replacing earlier version dated 8<sup>th</sup> April 2013, which replaced Home Office Circular 016/2008) and other relevant guidance.

## C7 Prosecution

The Council may prosecute in respect of serious or recurrent breaches, or where other enforcement actions, such as voluntary undertakings or statutory notices have failed to secure compliance. When deciding whether to prosecute, the Council will have regard to the provisions of [The Code for Crown Prosecutors](#) as issued by the Director of Public Prosecutions.

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

Before deciding that prosecution is appropriate, the Council will consider all relevant circumstances carefully including the following public interest criteria:

- Seriousness of the offence committed
- The level of culpability of the suspect
- The circumstances of, and the harm caused to the victim?
- Was the suspect under the age of 18 at the time of the offence?
- What is the impact on the community?
- Is prosecution a proportionate response?
- Do sources of information require protecting?

A successful prosecution will result in a criminal record. The court may impose a fine and in respect of particularly serious breaches a prison sentence. The court may order the forfeiture and disposal of non-compliant goods and/or the confiscation of any profits

which have resulted from the breach. Prosecution may also lead, in some circumstances, to the disqualification of individuals from acting as company directors.

## **C8 Refusal / Suspension / Revocation of Licences**

The Council issues a number of licences and permits. The Council also has 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 and public safety is assured. Breach of these conditions may lead to a review of the licence which may result in its revocation or amendment.

When considering future licence applications, the Council may take previous breaches and enforcement action into account and also other matters which, on the balance of probability, may influence the assessment of a person to be a fit and proper person.