



**Brentwood**  
Borough Council

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## **ENVIRONMENTAL HEALTH AND LICENSING ENFORCEMENT POLICY**

### **INTRODUCTION**

Local Councils enforce legislation to protect individuals and the community as a whole. Environmental Health and Licensing Services carry out a range of activities with the aim of achieving this and to achieve compliance with legislation by individuals and businesses. To help achieve this, the Service will:

- work within the legal framework and apply the law fairly
- deal with customers with honesty and integrity
- remain responsive to customer needs
- work in partnership with groups which represent our customers
- make the service accessible
- use the resources available to the maximum benefit of our customers
- train and develop our staff to ensure their effectiveness
- treat our staff and customers equally, regardless of race, colour, ethnic or national origin, sex, marital status, disability, age, sexual orientation or political beliefs.

The purpose of this document is to publicly summarise how the Council's adopted enforcement policies for Environmental Health and Licensing seek to achieve compliance. It should be noted that there are some additional service-specific enforcement requirements i.e. health & safety and food safety. Detailed service-specific policies and procedures, where needed, are separately held, updated, audited and reviewed by the Service. Information on these may be obtained from Environmental Health and Licensing Services.

### **COUNCIL AIMS AND OBJECTIVES**

Brentwood Borough Council has set out its strategic aims and objectives and Environmental Health and Licensing Services of the Council carry out their duties in support of these aims. The specific aims and objectives relating to enforcement services can be found in the Service Plans. These along with the Council's corporate aims and objectives can be obtained from the Town Hall or by visiting [www.brentwood.gov.uk](http://www.brentwood.gov.uk).

These objectives will be achieved through education, guidance, advice and warning letters and, where necessary, by appropriate legal action, including the service of statutory notices, compliance notices, suspension notices, prohibitions, formal cautions and prosecution.

The Human Rights Act 1998, which came into force in October 2000, places general obligations on enforcement bodies to ensure fair treatment for all, to prevent any form of prejudice and to provide a right to privacy. This policy reflects the provisions of this Act in general terms as officers are required to follow agreed policies and procedures and work within their legal powers. Individual team procedures and guidance notes will cover specific areas of the Services' work where particular care must be taken to ensure the Act is followed.

Enforcement decisions and actions will be made with due regard to the provisions of:

- The Human Rights Act
- Equal rights and anti-discrimination legislation
- Service specific legislation
- All other relevant legislation applicable from time to time
- Crown Prosecution Service guidelines

If it is in the public interest, matters concerning non-compliance may be shared, where appropriate, with other enforcement agencies. This could include situations where there is a shared or complementary enforcement role with other agencies, such as the Police, Health & Safety Executive (HSE), Office of Fair Trading (OFT) or Trading Standards. Any such action will be undertaken in compliance with the Data Protection Act 1998. Other requests for information will be considered having regard to the Freedom of Information Act 2001 and the Data Protection Act 1998.

The Services have incorporated within the enforcement policy all aspects of good enforcement practice in accordance with the elements of the Enforcement Concordat, which the Council has signed (a full version of the Enforcement Concordat is available by visiting [www.cabinetoffice.gov.uk](http://www.cabinetoffice.gov.uk) the Cabinet Office web site).

The use of enforcement action will be proportional to any offence committed, consistent in application (including, where relevant, consistency with other local authorities or enforcement agencies), transparent in its use and appropriate to the circumstances of the particular case in question. In particular:

- The policy is readily available at The Town Hall or by visiting [www.brentwood.gov.uk](http://www.brentwood.gov.uk) on the Council's web site or can be sent on request.
- A copy of any relevant service-specific enforcement procedures will be available on request.
- We will consult with our customers to obtain continuous improvements to our policy and procedures.
- We will ensure that businesses are not required to carry out works at unnecessary expense.

Environmental Health and Licensing Services will carry out their enforcement functions in an equitable, practical and consistent manner and to this end the Services are committed to:

- drawing up clear standards, setting out the level of service and performance the public and business people can expect to receive;
- dealing with the public and business community in an open and honest way;
- providing a courteous, efficient and helpful service;
- responding promptly and positively to complaints about the service;
- ensuring that enforcement action is proportionate to the risks in each case.

While it is understood that it is primarily the responsibility of individuals and businesses to ensure compliance with relevant legislation, the Council will help them, where possible, to understand their legal responsibilities. The aim of the Council is to secure compliance with the legislation, which it will do by making the most efficient use of the Council's resources and having regard to minimising burdens on businesses.

This policy supports and supplements specific guidance on enforcement action contained in statutory Codes of Practice, government guidelines, approved industry guides, co-ordinating bodies such as the Local Authorities Coordinators of Regulatory Services (LACORS), the Health and Safety Executive/Local Authority Enforcement Liaison Committee (HELA) and other approved sources.

## **ENFORCEMENT OPTIONS**

Enforcement decisions shall be consistent, balanced, fair and relate to common standards that ensure the public, businesses, employees and the environment are adequately protected.

In order to achieve and maintain consistency of enforcement, officers will have regard to official guidance and codes of practice.

In the areas of food safety the Home Authority Principle set up by LACORS shall be adhered to and in the area of health and safety the Lead Authority Principle shall be adhered to. Where applicable, the comments of the home, lead or originating authorities shall be considered.

The factors to be considered in coming to an enforcement decision include:

- the seriousness of the offence;
- the past history of the offender;
- the confidence in management and the degree of wilfulness involved;
- the consequence of non-compliance;

- mandatory/discretionary duties;
- the likely effectiveness of the various enforcement options;
- the different technical means of remedying the situation;
- the impact of the enforcement choice in encouraging others to comply with the law;
- public interest/benefit.

In the event of a contravention being detected, the following enforcement options are available:

- Advice or warning letter
- Statutory powers, for example service of notice or seizure provisions
- Formal caution
- Fixed penalty notices
- Prosecution
- Revocation of licence
- Injunctive restraint
- Execution of work required by statutory notice where the recipient has not complied and recovery of all reasonable costs incurred
- Compulsory purchase /management/control of property
- Fine and statutory charges.

In some cases a combination of these options may be appropriate. Officers will comply with Codes B, C and E of the Police and Criminal Evidence Act 1984 (PACE) as it relates to local authority enforcement.

Code B deals with police powers to search premises and to seize and retain property found on premises and persons. Code C sets out the requirements for the detention, treatment and questioning of suspects not related to terrorism in police custody by police officers. Code E deals with the tape recording of interviews with suspects in the police station.

### **ADVICE, ISSUE OF INSPECTION REPORTS, WARNING LETTERS**

If no breaches of legislation are discovered, or if the officer believes that a complaint or contravention does not warrant investigation or action, then it may be appropriate to take no action.

When a contravention is detected which, in the opinion of the officer should be dealt with by advice or warning letter, where appropriate the officer will issue a report of inspection specifying the details of the alleged infringements. Where the report or letter specifies a period of time in which corrective action should be taken, the officer will make a professional decision having regard to its priority and available resources as to whether a re-visit is appropriate to the premises to check compliance.

It will be appropriate to give advice or a warning when:

- the act or omission is not serious enough to warrant a formal caution or prosecution;
- from past history it can be reasonably expected that such action will achieve compliance;
- confidence in the individual and/or organisation is reasonably high;
- the consequences of non-compliance will not pose a significant risk to public health.

When such an approach is used to secure compliance with legislation, any written documentation issued will:

- specify the legislation that has been contravened;
- specify what remedial action is required, together with the reasons;
- ensure that any recommended areas of good practice which are above the minimum levels required by statute are clearly differentiated within the document;
- where examples are given of how compliance may be achieved, make clear that alternative means of compliance may also be acceptable;
- highlight the right to question works required by raising the matter with the relevant named manager.

In the case of health and safety matters, a copy will be sent to staff representatives.

## **STATUTORY NOTICES**

The statutory notice procedures will, in general, be used to enforce legislation which relates to risks to health or quality of life.

Failure to comply with statutory notices will, other than in exceptional circumstances, result in prosecution and/or works in default.

All statutory notices will be signed by an appropriately trained, experienced and authorised officer. The officer will be satisfied that the contravention is significant and that all appropriate criteria are met.

Sufficient evidence will be available to justify the notice, and details of all evidence will be properly recorded to satisfy PACE and Criminal Procedure and Investigation Act (CPIA) requirements.

Time limits given will be reasonable.

Other relevant bodies will be informed of the action as necessary, for example home or lead authorities, originating authorities, and copies will be forwarded on request.

Recipients of notices will always be informed in writing of their rights to appeal and these will normally be on the rear of the notice. They will also normally be informed in writing of the consequences of non-compliance.

In the case of breaches of Health and Safety legislation, copies of notices will be made available to staff representatives. Notices having public safety or environmental implications will be placed on a register accessible to members of the public on request where this is a statutory requirement to do so.

Compliance with the notice will be checked as soon as practicable after the expiry date of the notice. Reasonable requests in writing for time extensions to notices will be considered having regard to the seriousness/threat to public safety and the environment.

Confirmation of an extension of time or reason for a rejection of an extension of time will be put in writing to the applicant.

Works in default: Where the powers of works in default are available, officers will consider the options and take the most appropriate form of action in each case, having regard to the benefit of carrying out the works, likely resultant harm if the works are not carried out and the practicalities of undertaking the works.

## **FORMAL CAUTIONS**

National standards for “The Cautioning of Offenders” are laid down in a Home Office Circular.

The option of cautioning is considered on the basis that there is no rule of law that suspected offenders **MUST** be prosecuted and that cautioning represents a possible alternative course of action. Formal cautions will therefore be issued in accordance with the current Home Office circular, and will be considered against the criteria listed below.

A properly administered formal caution (which should not be confused with a letter of warning) may be cited at a future court hearing provided that the caution was administered for an offence committed within three years of the offence for which the prosecution is brought.

A prosecution will only take place where it is in the public interest and where there is sufficient evidence (see prosecution section below) to support that course of action. In cases where there is sufficient evidence to warrant a prosecution but the public interest would not benefit from such a course of action, then a formal caution may well be appropriate.

Where a formal caution has been accepted other relevant bodies will be informed of the action as necessary, for example home or lead authorities, originating authorities, and copies will be forwarded on request.

Formal cautioning will not be used as an alternative to a weak prosecution case.

A formal caution may be issued as an alternative to prosecution. Formal cautions will be issued to:

- deal quickly and simply with less serious offences;
- divert less serious offences away from the courts;
- reduce the chances of repeat offences.

In considering whether to administer a formal caution the following criteria must be met:

- there must be evidence of the offender's guilt sufficient to give a realistic prospect of conviction. In other words a conviction should be more likely than an acquittal before a court of law;
- the offender must admit the offence; and
- the offender must be an adult and must understand the significance of a caution and give informed consent to being cautioned. This agreement will not be sought until it is decided that cautioning is the correct course of action.

In deciding whether to caution or prosecute the following factors must be taken into consideration:

- the nature and seriousness of the offence;
- the likely penalty if the offender was convicted by a court;
- the offender's age and state of health;
- the offender's previous criminal history;
- the offender's attitude towards the offence;
- the views of the victim or any aggrieved party;
- whether compensation has been paid;
- public interest;
- the likelihood of re-offending.

If a prosecution is deemed not to be required in the public interest it will often be appropriate to take no further action (other than to give advice) and this course will always be considered. However, the nature of the offence and other factors may make it more desirable to issue a caution.

If an offender refuses to accept a formal caution, the service manager will reconsider the evidence and decide whether or not a prosecution should be instituted.

## PROSECUTION

The Council recognises that the decision to prosecute is significant and could have far reaching consequences for the offender.

Prosecution will in general be restricted to a minority of circumstances where there is a blatant disregard for the law. Prosecutions will be related to risk, serious nuisance or other similar situations affecting any individual or the environment and will not be used as a punitive response to minor breaches.

The circumstances where prosecution is appropriate will include one or more of the following:

- Where there is a blatant disregard for the law such that there is a risk to public health, safety, well being or the environment;
- Where there is a failure to correct an identified serious problem after having been given a reasonable opportunity to do so by an authorised officer;
- Where the offence involves a failure to comply in full or in part with the requirements of a statutory notice;
- Where there is a history of similar offences.

In all cases the prosecution must be in the public interest and there must be a realistic prospect of conviction and sufficient evidence to support proceedings.

There may be circumstances where, as well as prosecution, it will also be appropriate to serve a statutory notice to enforce the remedy.

The final decision on whether to prosecute shall be made after:

- the suspected offender has been given the opportunity to offer an explanation;
- wherever possible a full and complete prosecution report file has been prepared and presented to the service manager; and
- the initiating officer has fully discussed the case with the service manager.

In deciding whether or not to prosecute for an alleged infringement, regard will be had to “The Code for Crown Prosecutors”. In particular a prosecution should not be commenced unless the ‘Evidential Test’ and the ‘Public Interest Test’ criteria specified in the Code have been met.

In considering whether the relevant criteria are met, the following factors will be considered:

- The seriousness of the alleged offence; where there is a risk of harm to public health or a disregard of legal standards for financial reward;
- The previous history, in particular whether there is a history of similar offences, or a failure to respond positively to past warnings or statutory notices;
- Any likelihood of being able to establish a defence;
- The reliability of the evidence available;
- The ability of witnesses and their willingness to co-operate;
- Any willingness by the defendant to prevent a recurrence of the problem;
- The probable public benefit of a prosecution and the importance of the case especially with respect to legal precedent;
- Any explanation offered by the company or suspected offender;
- Whether the offence was premeditated;
- The need to influence the offender's future behaviour;
- Whether the evidence shows the defendant is an organiser of the offence;
- Whether the defendant was in a position of authority or trust;
- The effect on the offender's, or a witness's physical or mental health, balanced against the seriousness of the offence;
- The views of any victims;
- Whether the offence, although not serious in itself, is widespread in the area where it was committed;
- Whether the offender has put right the harm caused;
- Whether there is a realistic prospect of conviction.

Factors against prosecution would be that a small penalty is likely to be imposed, or the offence is due to a genuine mistake or misunderstanding, but this must be balanced with the seriousness of the offence.

Consideration will be given to prosecuting directors of bodies corporate where:

- it appears that the offence was committed with his/her consent, connivance or neglect; or
- it is likely that the body corporate may be wound up to avoid criminal proceedings.

Prosecution of employees will only be considered in exceptional cases e.g. where the employee has clearly contradicted the employers' instructions; has been deliberately obstructive or has acted in a grossly negligent or wilful manner.

In cases of obstruction, prosecution will always be considered where this has resulted either in undue delay or in additional work/costs to the local authority, or where false information has been given deliberately.

Where there has been a death at work resulting from a failure to comply with health and safety law, the matter will be referred to the police if the circumstances of the case might justify a charge of manslaughter. The police are responsible for deciding whether or not to pursue a manslaughter case and this may occur alongside a prosecution for health and safety breaches. In all cases, the work related deaths protocol for liaison signed by the Police, British Transport Police, the Crown Prosecution Service, the Health and Safety Executive and the Local Government Association will be followed.

On completion of prosecution cases, officers must inform other interested bodies of the outcome of the case as necessary. In particular, any complainants or victims will be informed. The outcome of the case will be reviewed with the relevant service manager to discuss any necessary future action.

## **TRAINING, COMPETENCY AND AUTHORISATION**

Only duly authorised officers may undertake enforcement duties in accordance with the Council's scheme of delegation. Officers will only be authorised where their level of qualification, training and experience are considered acceptable. Newly appointed or transferred officers will also be assessed by their manager for competency and referred for training where necessary, in accordance with the training policy and the Council's 'Investors in People' appraisal scheme.

Officers undertaking enforcement duties will be suitably trained and qualified to ensure they are fully competent to undertake their enforcement activities. Qualifications will be based on current government guidance. Appropriate training programmes for officers will be set up to achieve the necessary competence. The training requirements to achieve the necessary level of competence will be regularly reviewed by the service managers. Training will be prioritised within available resources.

Officers are responsible for ensuring they have regard to relevant guidance documents laid out in service procedures.

## **MANAGEMENT SYSTEMS**

The Council will maintain a management system to monitor and review the quality and nature of the enforcement activities undertaken in these services in order to demonstrate the effectiveness of the policy with respect to its aims and objectives and to recommend changes and improvements. This will be periodically reviewed by service managers.

Service managers will ensure all staff are trained to ensure they are fully conversant with this policy and arrange retraining and updating when necessary.

## COMPLAINTS AGAINST THE SERVICE

If any person is aggrieved with the action taken or information or advice given by officers of Brentwood Borough Council or believe they have not received fair or consistent treatment as outlined in this policy, they will be given the opportunity to discuss the matter with the relevant line manager.

If not satisfied by those discussions the matter can be taken up with the service manager, who will consider the complaints, decide whether the enforcement policy has been breached in this instance and give a reply in writing. This is without prejudice to any formal appeal mechanism. If the problem cannot be resolved, the person will be informed of the Council's complaints procedure.

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Licensing Service  
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Fax: 01277 312526  
email: [licensing@brentwood.gov.uk](mailto:licensing@brentwood.gov.uk)

**If English is not your first language and you need help,  
we may be able to help you. Please contact us.**

إذا لم تكن الانجليزية لغتك الام واحتجت الى بعض المساعدة في ملء النموذج فقد يكون بمقدورنا  
مساعدتك. يرجى الاتصال بـ ....

যদি ইংরেজী আপনার প্রথম ভাষা না হয় এবং ফর্ম ভরতে আপনার সাহায্যের প্রয়োজন হয়,  
আমরা আপনাকে সাহায্য করতে পারি। অনুগ্রহ করে যোগাযোগ করুন...

如果您的母語不是英語並且在填表時遇到任何困難，或許我  
們會對您有所幫助。請和我們聯系....

જો અંગ્રેજી તમારી પહેલી (માતૃ) ભાષા નહીં હોય અને આ ફોર્મ ભરવામાં તમને સહાય જોઈતી  
હોય તો, અમે તમારી મદદ કરી શકીએ છીએ. કૃપા કરી સંપર્ક કરો ....

ਜੇਕਰ ਇੰਗਲਿਸ਼ ਤੁਹਾਡੀ ਪਹਿਲੀ ਭਾਸ਼ਾ ਨਹੀਂ ਹੈ ਅਤੇ ਤੁਹਾਨੂੰ ਫਾਰਮ ਭਰਨ ਲਈ ਸਹਾਇਤਾ ਚਾਹੀਦੀ ਹੈ, ਤਾਂ  
ਮੁਮਕਿਨ ਹੈ ਕਿ ਅਸੀਂ ਤੁਹਾਡੀ ਸਹਾਇਤਾ ਕਰ ਸਕੀਏ। ਕ੍ਰਿਪਾ ਕਰਕੇ ਸੰਪਰਕ ਕਰੋ ....

Haddii Ingiriisigu aanu ahayn afkaaga koobaad una baahan tahay in lagaa gargaaro  
buuxinta warqada, waxa dhici karta inanu ku caawino. Fadlan la xidhiidh...

اگر انگلش آپ کی مادری زبان نہیں ہے اور آپ کو اس فارم کو پُر کرنے میں مدد کی ضرورت ہے تو ہم آپ کی مدد کر سکتے ہیں۔  
براہ مہربانی رابطہ قائم کریں:.....

Nêu Anh ngữ không phải là ngôn ngữ chính của quý vị và quý vị cần được trợ  
giúp để điền mẫu đơn này, chúng tôi có thể giúp đỡ. Vui lòng liên lạc với ...