

Report Title:	RBWM Enforcement & Prosecution Policy 2021
Contains Confidential or Exempt Information	No - Part I
Lead Member:	Councillor D Cannon, Lead Member for Public Protection and Parking
Meeting and Date:	
Responsible Officer(s):	Tracy Hendren – Head of Housing & Environmental Health Service
Wards affected:	All

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## REPORT SUMMARY

This report seeks the endorsement by Cabinet of an updated RBWM Enforcement and Prosecution Policy. This Policy sets out the general principles that the Council intends to follow in relation to enforcement action and prosecutions that can be taken by a wide range of Council services. It is for the benefit of those who are subject to regulatory and enforcement activity and for use by RBWM officers to demonstrate that the Council is taking a fair and consistent approach across all of its regulatory functions.

Once agreed by Cabinet the Policy can be implemented by all relevant Council services.

## 1. DETAILS OF RECOMMENDATION(S)

**RECOMMENDATION:** That Cabinet notes the report and:

- i) **Agrees that the RBWM Enforcement & Prosecution Policy 2021 be formally adopted as RBWM policy and be implemented by relevant Council services.**

## 2. REASON(S) FOR RECOMMENDATION(S) AND OPTIONS CONSIDERED

**Table 1: Options arising from this report**

<b>Option</b>	<b>Comments</b>
Cabinet agrees that the RBWM Enforcement & Prosecution Policy 2021 be formally adopted as RBWM policy and be implemented by relevant Council services  <b>This is the recommended option</b>	RBWM will comply with statutory requirements and provide a consistent approach for both officers and those subject to regulatory activities
Cabinet does not agree that the RBWM Enforcement & Prosecution Policy 2021 be formally adopted as RBWM policy and be implemented by relevant Council services	RBWM would not have a working enforcement and prosecution policy and would not be able to demonstrate compliance with a statutory requirement and code of practice

- 2.1 One of the main functions of a local authority is to act as a regulator and an enforcement agency across a wide range of legislation covering many different functions.
- 2.2 Since 1998 local authorities have been encouraged and then required to comply with a policy setting out their approach to their regulatory and enforcement activity. This is for the benefit of both officers within local authorities and those who are subject to regulatory and enforcement activity.
- 2.3 The purpose is to demonstrate that the local authority is acting fairly, consistently and transparently when carrying out regulatory and enforcement activity, including taking prosecutions in the criminal courts.
- 2.4 The approach to setting out local authority enforcement policy has evolved over the years. This report presents an up to date RBWM Enforcement and Prosecution Policy and seeks its endorsement and adoption by Full Council for use across all RBWM services.
- 2.5 Without such a policy RBWM would not have a working enforcement and prosecution policy and would not be able to demonstrate compliance with a statutory requirement and code of practice.
- 2.6 Further, there would be no consistent approach to enforcement and prosecution across RBWM regulatory services. Those subject to regulation and enforcement action would not be able to determine RBWM's approach to these activities and the Council would be open to criticism from defence lawyers and the courts during legal proceedings.

### 3. KEY IMPLICATIONS

- 3.1 By agreeing to the recommendation of this report, Cabinet will ensure that RBWM will comply with statutory requirements and provide a consistent approach to regulation and enforcement for both officers and those subject to regulatory activities.

**Table 2**

<b>Outcome</b>	<b>Unmet</b>	<b>Met</b>	<b>Exceeded</b>	<b>Significantly Exceeded</b>	<b>Date of delivery</b>
RBWM will comply with statutory requirements, provide a consistent approach to regulation and enforcement, avoid legal challenges, provide a	Prior to date of adoption of this Policy	From date of adoption of this Policy	n/a	n/a	Date of Cabinet

Outcome	Unmet	Met	Exceeded	Significantly Exceeded	Date of delivery
clear guide to service users					

#### 4. FINANCIAL DETAILS / VALUE FOR MONEY

- 4.1 There are no direct financial implications from approving the recommendations in this report. However, having a consistent approach to regulation and enforcement will ensure that resources are well managed and minimise the risk of abortive costs from legal proceedings and other related costs.

#### 5. LEGAL IMPLICATIONS

- 5.1 The Legislative and Regulatory Reform Act 2006 (“the Act”) requires the Council to have regard to the Principles of Good Regulation. These are that the Council carries out regulatory activities in a way which is proportionate, accountable, consistent, transparent, and targeted to situations which need action.
- 5.2 Section 24 of the Act makes provision for an Order specifying the regulatory functions to which the duties in sections 21 and 22 of the Act apply. This Order (The Legislative and Regulatory Reform (Regulatory Functions) Order 2007 as amended) includes most local authority regulatory functions.

#### 6. RISK MANAGEMENT

- 6.1 There are several risks identified

**Table 3: Impact of risk and mitigation**

Risk	Level of uncontrolled risk	Controls	Level of controlled risk
Legal challenge to civil and criminal proceedings taken by RBWM regulatory services	High	Clear policy in place	Medium to Low
Lack of consistency in approach by different Council regulatory services	Medium	Clear policy in place	Medium to Low
Lack of information for those subject to regulatory activity	Medium	Individual services could provide their own information to service users	Low

## 7. POTENTIAL IMPACTS

- 7.1 An EQIA screening assessment has been completed and a full assessment is not required. See <https://www.rbwm.gov.uk/sites/default/files/2021-03/2021-eqia-rbwm-enforcement-and-prosecution-policy.pdf>
- 7.2 There are no climate change/sustainability implications.
- 7.3 The RBWM Enforcement & Prosecution Policy 2021 has no direct data protection/GDPR implications in itself. Data collected and processed by individual services in the course of regulatory or enforcement activity will comply with all applicable data protection and GDPR policies and requirements.
- 7.4 The RBWM Enforcement & Prosecution Policy 2021 requires all Council officers carrying out enforcement activity to abide by the statutory requirements that apply to such activity. This includes, but is not limited to, the Human Rights Act 1998.

## 8. CONSULTATION

- 8.1 The RBWM Enforcement & Prosecution Policy 2021 has been written in consultation with managers from across RBWM's regulatory services and with advice from the Council's legal advisors. All are in agreement with the policy which has been drawn up.

## 9. TIMETABLE FOR IMPLEMENTATION

- 9.1 Implementation date if not called in: 28 April 2021. The full implementation stages are set out in table 4.

**Table 4: Implementation timetable**

Date	Details
28/04/2021	Cabinet agrees to adopt the RBWM Enforcement & Prosecution Policy 2021 with immediate effect

## 10. APPENDICES

- 10.1 This report is supported by one appendix:
- The RBWM Enforcement & Prosecution Policy 2021

## 11. BACKGROUND DOCUMENTS

- 11.1 None

## 12. CONSULTATION (MANDATORY)

Name of consultee	Post held	Date sent	Date returned
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Cllr D Cannon	Lead Member for Public Protection and Parking	09/03/2021	10/03/2021
Duncan Sharkey	Managing Director	09/03/2021	30/03/2021
Adele Taylor	Director of Resources/S151 Officer	09/03/2021	15/04/2021
Andrew Durrant	Director of Place	09/03/2021	n/a
Kevin McDaniel	Director of Children's Services		
Hilary Hall	Director of Adults, Health and Commissioning	09/03/2021	17/03/2021
Andrew Vallance	Head of Finance	09/03/2021	n/a
Elaine Browne	Head of Law	09/03/2021	19/03/2021
Emma Duncan	Deputy Director of Law and Strategy / Monitoring Officer	09/03/2021	15/04/2021
Nikki Craig	Head of HR Corporate Projects and IT	09/03/2021	15/03/2021
Louisa Dean	Communications	09/03/2021	n/a
Karen Shepherd	Head of Governance	09/03/2021	09/03/2021
Tracy Hendren	Head of Housing & Environmental Health Service	09/03/2021	11/03/2021

## REPORT HISTORY

<b>Decision type:</b>	<b>Urgency item?</b>	<b>To follow item?</b>
Cabinet report First entered into the Cabinet Forward Plan: 23/03/2021	No	No

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# ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD

## ENFORCEMENT AND PROSECUTION POLICY

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### 1.0 INTRODUCTION

1.1 One of the core functions of the Royal Borough of Windsor & Maidenhead (“the Council”) is to act as a regulator and enforcement agency across a wide range of legal duties set out in acts of parliament, regulations and orders (including byelaws).

1.2 The Council’s regulatory and enforcement activities are extensive. They cannot all be listed here in full but they include: trading standards, environmental health (health and safety, food safety, residential services) environmental protection (pollution and noise control), planning and development control (including the protection of trees), highways, housing, licensing (for example taxi and premises licensing), dog fouling, litter, waste management, council tax, business rates and electoral registration.

1.3 The Council has two main aims in relation to its regulatory and enforcement functions.

1.4 Firstly it aims to protect residents, visitors, businesses and the environment from harm and nuisance and to promote health, safety and welfare, and in doing so to generally improve the quality of life for its residents and visitors to the Borough.

1.5 Secondly, it aims to undertake its regulatory and enforcement functions in a transparent, accountable, proportionate, consistent and targeted manner.

1.6 This Policy sets out the general principles that the Council intends to follow in relation to enforcement action and prosecutions. It will be used together with any detailed service plans and procedures that have been put in place by individual Council services.

1.7 The Council believes that this Policy reflects the principles of good regulation. It is therefore important that all authorised officers abide by this Policy, and any revisions made to it, when making enforcement decisions. Departures from this Policy will be permitted but only in exceptional cases where the departure can be

fully justified after a detailed consideration of all the circumstances of the particular case, and a record will be made of the decision making process in any such cases.

## **2.0 WHAT IS “ENFORCEMENT”?**

2.1 A definition of “enforcement action” from the Regulatory Enforcement and Sanctions Act 2008 is;

- (a) any action which relates to securing compliance with any restriction, requirement or condition in the event of breach (or putative breach) of a restriction, requirement or condition, for example an enforcement notice;
- (b) any action taken with a view to or in connection with the imposition of any sanction (criminal or otherwise) in respect of an act or omission, for example a fixed penalty or prosecution;
- (c) any action taken with a view to or in connection with the pursuit of any remedy conferred by an enactment in respect of an act or omission, for example an injunction.

2.2 In effect this means that enforcement action is action taken by a Council service to effect compliance with the law or to take action following a breach of the law.

2.3 There is a wide range of enforcement methods that the Council's officers can use depending on the facts of each individual case and the enforcement powers set out in legislation.

2.4 A list of enforcement actions that can be taken is set out below. This is not an exhaustive list and not all of these options are available for all types of breach or offence which a Council service may be investigating:

- (a) No action
- (b) Informal action and advice
- (c) Written warning / advice
- (d) Fixed Penalty Notice
- (e) Penalty Charge Notice
- (f) Formal Notice
- (g) Compliance support
- (h) Seizure of goods, books, documents and equipment
- (i) Forfeiture proceedings
- (j) Tobacco Restriction Orders
- (k) Taking animals into possession
- (l) Undertakings and injunctive actions under the Enterprise Act 2002
- (m) Other civil actions
- (n) Refusal/suspension/revocation/review/ of a licence
- (o) Imposition of licence conditions and/or variation in licence terms (HMO's)
- (p) Banning Orders
- (q) Rent repayment orders
- (r) Simple Caution
- (s) Prosecution
- (t) Proceeds of Crime applications, such as cash seizures.

- (u) Statutory Orders
- (v) Community Protection Notices
- (w) Press releases in relation to product recalls and in connection with undertakings and injunctive actions under the Enterprise Act 2002

2.5 Officers carrying out enforcement action will be properly authorised to do so using delegated powers as currently set out in Part 5 – Scheme of Delegation to Officers of the Royal Borough of Windsor & Maidenhead Constitution.

### **3.0 ENFORCEMENT PRINCIPLES**

3.1 Under section 21 of the Legislative and Regulatory Reform Act 2006 local authorities must have regard to the following principles;

- (a) regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent;
- (b) regulatory activities should be targeted only at cases in which action is needed.

3.2 Under section 22 of the Legislative and Regulatory Reform Act 2006 local authorities must have regard to a government issued code of practice in relation to the exercise of regulatory functions. The Regulators' Code 2014 is such a code of practice - see 3.14, below.

3.3 Each of the elements from 3.1, above, are as follows.

#### **Transparency**

3.4 Transparency is important to maintain public confidence in the Council's ability to enforce and regulate. It means helping those who are being regulated understand what is expected of them and what they should expect from the Council. The Council will ensure that:

- When action is required, it is clearly explained (in writing if requested) what action is required, why it is required, and when it is required to be done by. A distinction will be made between guidance or good practice, and legal requirements.
- An opportunity will be provided to discuss what is required to comply with the law before formal enforcement action is taken unless urgent action is required. Urgent action may be required to prevent serious harm or to safeguard evidence, or where non-compliance with the law has resulted in serious loss or injury to people and/or the environment.
- Where urgent action is required, a written explanation of the action taken will be given as soon as practicable after the event.
- Where a right of appeal exists against formal enforcement action, a written explanation of the appeal procedure will be given at the time the enforcement



action is taken. This will include details of when the appeal must be made by, to whom, and how information on the grounds of appeal can be accessed.

### **Accountability**

3.5 The Council recognises that it is accountable for its actions and decisions. There are many standards in place against which the Council can be judged and the Council will strive to meet these standards. Any dissatisfaction with the actions of a Council officer will be dealt with under the Council's complaints procedure. Details of our complaints policy and procedure are available on the Council's web site or by contacting the Council by telephoning 01628 683800.

### **Proportionality**

3.6 Proportionality means that any proposed action must be proportionate to the risks involved and the severity of the breach. The concept of proportionality allows for some discretion by officers when considering whether to take enforcement action. However, some legal requirements are mandatory or prescriptive leaving no room for discretion or individual interpretation.

3.7 Some incidents or breaches of regulatory requirements cause or have the potential to cause serious injury to health, financial loss or environmental damage. Others may interfere with people's enjoyment or rights, or the Council's ability to carry out its enforcement functions. Any enforcement action taken by the Council will be proportionate to the seriousness of the breach and the risks posed to people and/or the environment, and serious breaches of the law are likely to be dealt with by firm action.

### **Consistency**

3.8 Consistency of approach means taking similar action or adopting a similar approach in similar circumstances. The Council aims to achieve consistency in relation to advice given, the response to incidents or breaches of legislation, the use of enforcement powers and decisions on whether to prosecute or issue civil penalties/proceedings.

3.9 Officers will be expected to exercise professional judgement and discretion when making enforcement decisions. They will also be expected to be impartial and objective and not to be influenced by the age, disability, gender reassignment, marriage and civil partnership status, pregnancy and maternity, race, religion or belief, or sex of any person that they are dealing with, including any alleged offender, victim or witness.

### **Targeting**

3.10 Targeting means ensuring that regulatory resources are targeted at those areas or activities that are perceived to be causing the greatest harm. It could also mean targeting hazards that are less well controlled or are deliberate or organised criminal activities. Action will be targeted against those who break the law and those who are best placed to secure compliance with the law.

3.11 Individual Council services have systems, plans and procedures in place to prioritise their regulatory and enforcement activities. These systems will continue to be developed and reviewed in order to maintain effective targeting.

### **The Regulators' Code 2014**

3.12 This code has six principles which are;

1. Regulators should carry out their activities in a way that supports those they regulate to comply and grow.
2. Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views.
3. Regulators should base regulatory activities on risk.
4. Regulators should share information about compliance and risk.
5. Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply.
6. Regulators should ensure their approach to their regulatory activities is transparent.

3.13 These principles do not apply to all Council services. However, where they do apply, individual Council services will set out in their own plans and procedures how these six principles are delivered.

## **4.0 STATUTORY REQUIREMENTS**

4.1 All Council officers carrying out enforcement activity will abide by the statutory requirements that apply to such activity. This will include, but is not limited to, the Police and Criminal Evidence Act 1984, the Criminal Procedures and Investigations Act 1996, the Human Rights Act 1998, the Regulation of Investigatory Powers Act 2000, the Investigatory Powers Act 2016.

4.2 Compliance with these requirements will be reflected in the policies and procedures of individual Council services.

## **5.0 THE PROSECUTION PROCESS**

5.1 The purpose of a prosecution is to punish the offender for wrongdoing, prevent a recurrence and act as a deterrent to others. The Council recognises that the institution of a prosecution is a serious matter and should not be undertaken lightly, but it remains an important part of enforcement and should be used where appropriate.

5.2 When deciding whether to commence or continue with a prosecution, Council officers will have regard to this Policy, the Code for Crown Prosecutors and any other guidance that is specific to the service which is investigating the alleged offence(s).

5.3 The Crown Code for Prosecutors is found at <https://www.cps.gov.uk/publication/code-crown-prosecutors>

5.5 The Code for Crown Prosecutors sets out two general principles that prosecutors should follow when they make decisions on cases;

1. The evidential test - is there enough evidence against the defendant?  
When deciding whether there is enough evidence to charge, prosecutors must consider whether evidence can be used in court and is reliable and credible, and there is no other material that might affect the sufficiency of evidence. Prosecutors must be satisfied there is enough evidence to provide a "realistic prospect of conviction" against each defendant.
2. The public interest test - is it in the public interest for the case to be brought to court?  
A prosecution will usually take place unless the prosecutor is satisfied that the public interest factors are tending against prosecution

5.6 Under the evidential test the Code for Crown Prosecutors asks the following questions;

- a) Can the evidence be used in court?
- b) Is the evidence reliable?
- c) Is the evidence credible?
- d) Is there any other material that might affect the sufficiency of evidence?

5.7 Each of these questions is supported by notes in the Code which Council officers will consider when assessing whether a case passes the evidential test.

5.8 If a case does not pass the evidential test it will not go ahead, no matter how important or serious it may be, and in these circumstances a simple caution shall not be used as an alternative.

5.9 It may, however, be appropriate to pursue other methods of enforcement such as a formal notice, financial penalty or warning. Cases should not be abandoned simply because they are difficult.

5.10 Where a case passes the evidential test Council officers will then have to satisfy themselves that the case passes the public interest test. The Code for Crown Prosecutors includes a non-exhaustive list of questions that prosecutors should ask when considering whether a prosecution is in the public interest. These are;

- a) How serious is the offence committed?
- b) What is the level of culpability of the suspect?
- c) What are the circumstances of and the harm caused to the victim?
- d) What was the suspect's age and maturity at the time of the offence?
- e) What is the impact on the community?
- f) Is prosecution a proportionate response?
- g) Do sources of information require protecting?

5.11 Each of these questions is supported by detailed notes in the Crown Code which Council officers will consider when assessing whether a case passes the public interest test.

5.12 Council officers may also take into account the attitude of the alleged offender when deciding whether to bring a prosecution. That is, has the offender been honest, have they willingly engaged and are they remorseful. Alternatively are they reluctant to engage, dismissive or even aggressive.

5.13 Prosecutions will be taken against those responsible for the breach or against relevant individuals. Where the offence is committed as a result of a company's activities, action would normally be taken against the company. However, the investigation will look into part played in any alleged offences by directors, officers and managers of the company. If it determines that the commission of the offence was committed with their consent, was due to their neglect, or that they turned a blind eye to commission of the offence or the events leading up to it, then action will be taken against those individuals as well as against the company unless there are exceptional circumstances. The Code for Crown Prosecutors will be followed in respect of prosecutions against corporate bodies.

5.14 The initial decision to prosecute will be taken by the relevant Council officer who is empowered to make that decision. That officer will make a record of their decision and complete a Legal Instruction Form instructing the Council's Shared Legal Solutions team to take on the case.

5.15 In all cases, the legal officer who is allocated the case must be satisfied that the prosecution passes both the evidential test and the public interest test. If it does, the legal officer will complete the prosecution decision making record prior to instituting proceedings on behalf of the Council.

5.16 In cases of urgency or other appropriate circumstances, the Council will also consider seeking an injunction in the County Court or High Court or consider seeking a Community Protection Notice/Order (CPN). An injunction or CPN is a judicial remedy by which a person is ordered to refrain from doing something or ordered to do a particular act or thing. In appropriate cases an injunction/CPN may be sought prior to, or simultaneously with, the commencement of an investigation/prosecution.

5.17 In all cases the Council will seek to recover the costs of investigating the offence and instituting proceedings from the offender as it does not consider that such costs should be borne by the Borough's general taxpayers.

5.18 There may be occasions where officers of the Council and other enforcing authorities, such as the Health and Safety Executive, the Environment Agency and the police, both have the power to prosecute. In such cases, the Council will liaise with the other enforcing authorities to ensure effective co-ordination and co-operation

in gathering and sharing information. Every effort will be made to avoid duplication of work or inconsistencies and to ensure that where proceedings are to be instituted, this is undertaken by the most appropriate enforcing authority and for the most appropriate offence(s).

## **6. REVIEW**

6.1 This Policy will be reviewed every three years, or sooner if required.