



## Environmental Health Enforcement Policy

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## **Executive Summary**

Ipswich Borough Council's, through its Environmental Health team, is the statutory enforcing authority for a number of legislative provisions. We have an important role in ensuring activities undertaken by individuals and businesses comply with a wide range of regulatory standards.

This policy describes the key aims, principles, priorities and options open to Environmental Health to secure regulatory compliance and both investigate and, where necessary, undertake enforcement action following breaches of regulations.

The services covered by this policy include Food Safety and Public Health, Licensing and Occupational Health & Safety, Private Sector Housing and Environmental Protection.

It seeks to provide clarity to both our commitment and approach to securing effective public and environmental protection for those who reside, work or visit our area and it supports businesses trading here and aligns and underpins the Councils' business plans, vision and priorities.

It takes as its default position a robust commitment to secure compliance with the most important regulatory requirements, which safeguard essential public protection and environmental protection standards across our entire locality.

The policy also has regard to Government's policy commitments to 'better regulation' and reducing regulatory burdens on business, and looks to support businesses with the most important regulatory requirements in particular the Regulators Code.

The services aim to be fair, open, transparent, proportionate and intelligence led, focusing resources effectively and efficiently to give value and be valued.

Environmental Health will work closely with other regulatory bodies to ensure effective coordination and collaboration to secure necessary regulatory compliance and outcomes. We will consult and work with business representative organisations to ensure our services continue to improve and remain fit for purpose.

We are committed to delivering excellent regulatory services and welcome constructive feedback and comments to further refine our service offer and will review how we are performing against the rigorous standards we have set ourselves.

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## 1.0 Introduction

1.1 This Enforcement Policy is the first to be produced for the revised Environmental Health Team following a major restructure in 2016. Environmental Health sits within the Housing & Community Services Directorate. The Policy applies to the regulatory service responsibilities within the following teams:

- Environmental Protection
- Food Safety and Public Health
- Private Sector Housing
- Licensing and Occupational Health & Safety

The Policy is intended to show Environmental Health Team's approach to securing regulatory compliance and the options available within legislation covered by the teams above.

The main focus will be on the activities that give rise to the most serious risks to the safety and health of the public and/or the environment or where a duty-holder seeks a commercial advantage by breaking the law.

1.2 Local Authorities are required to publish a policy setting out their approach to compliance and enforcement by the **Regulators' Code** which was published by the 'Better Regulation' Delivery Office (now Regulation Delivery, part of the Department for Business, Energy & Industrial Strategy) in April 2014.

The Regulators' Code establishes how Local Authorities and many other defined regulatory bodies should interact with those whom they are regulating. In particular regulators should:

- Carry out their activities in a way that supports those they regulate to comply and grow;
- Provide simple and straightforward ways to engage with those they regulate and hear their views;
- Base their regulatory activities on risk;
- Should share information about compliance and risk;
- Should ensure clear information, guidance and advice is available to help those they regulate to meet their responsibilities to comply;

- Should ensure that their approach to their regulatory activities is transparent.

1.3 In addition to its observance of the Regulators Code, Ipswich Borough Council's Environmental Health Team is committed to recognising the essential needs of businesses, particularly those classed as Small to Medium Enterprises (SMEs) and micro businesses, by providing support and advice to enable them to secure regulatory compliance by means of education. Examples of this would be in relation to trading fairly, safely, competitively and legally.

In the event that prevention is unsuccessful, the Council will deliver proportionate and balanced enforcement that underpins 'better regulation' objectives.

#### **1.4 Purpose of the Policy**

The purpose of this document is to provide a general policy that outlines the overarching principles applied to making enforcement decisions taken by the Environmental Health teams. Furthermore the Policy will be taken into account by officers when deciding what action to take when carrying out their statutory duties on behalf of the Council. This Policy replaces all other previous enforcement policies of the Service Areas that may have been issued in the past.

The Policy does not directly concern itself with operational matters and is not a definitive procedural guide, but aims to outline the policy issues associated with enforcement decision-making. It defines the approach to enforcement and instances when enforcement powers are initiated and under what circumstances each action is taken.

#### **1.5 Departure from the Enforcement Policy**

All authorised officers in the Environmental Health will take this Policy into account when making enforcement decisions. Any departure from the Policy will only occur in exceptional circumstances and then will be subject to justification after full consideration and authorisation by an officer with delegated power unless there is a demonstrable, significant and imminent risk to the public or environment in delaying enforcement.

Instances of non-compliance with this Policy will be recorded and reported directly to the relevant Head of Service as soon as is practicable.

## **2.0 Key Aims of the Environmental Health Enforcement Policy**

### **2.1 The Policy:**

- Aligns with the Council's vision, corporate objectives and priorities and its implementation will contribute to partnership working between the Council and our key stakeholders.
- At a strategic level, aims to improve regulatory compliance by being better targeted, have greater impact through our interventions and focus on securing compliance in high risk activities.
- Has at its heart an overriding commitment to the principles of 'better regulation' in that our regulatory services will be transparent, fair, consistent, proportionate, intelligence led and adapted to deal with the risks posed by the non-compliant duty holders.
- Takes as its default position a robust commitment to secure compliance with the most important regulatory requirements, which safeguard essential public protection and environmental protection standards across our entire locality.
- Reduce regulatory burdens on businesses from enforcement and inspection where appropriate and recognises the emerging alternative compliance measures that meet accredited International and European quality standards, trade body membership, codes and standards relating to regulatory compliance.
- Gives guidance to our officers, businesses and the general public on the range of options to achieve compliance with legislation across the key regulatory services provided and enforced by Environmental Health.
- Sets out our commitment as part of the Council's economic priorities to work with, advise and support businesses operating in the area

- Provides for robust, speedy and effective enforcement, against those that commit the most serious regulatory offences and serial offenders who deliberately and wilfully flout the law, including those who seek to take commercial advantage from such offences.
- Gives commitment to driving improvement, efficiency and value in our enforcement services and to publish our service standards and performance against those standards.

## 2.2 Extent and Coverage of the Environmental Health Enforcement Policy

All regulatory services within Environmental Health at IBC are covered by this Policy and this would include:

- **Environmental Protection Team** e.g. statutory nuisances, contaminated land, waste and fly tipping etc.
- **Food and Public Health Team** e.g. food safety, port health, pest control and infectious disease control etc.
- **Private Sector Housing Team** e.g. housing conditions and standards, filthy & verminous premises, licensing of houses in multiple occupation and caravan sites, illegal encampments etc.
- **Licensing and Occupational Health & Safety Team** e.g. Licensing of alcohol & 'public entertainment', gambling, hackney carriages and private hire vehicle, street trading and various other licensable activities; occupational health & safety in the workplace; smoke-free legislation etc.

## 2.3 National and Local Regulatory Enforcement Policy Requirements

In addition to general principles detailed in the Regulators' Code and this Policy, there will be specific guidance and policy objectives for each of these enforcement services. This may include national codes, guidance, national priorities, local enforcement priorities, aims, objectives and service standards.

Each team within Environmental Health will have regard to these additional requirements within their operational service planning processes.

Current national priority regulatory outcomes for England supported by the Department for Business, Energy & Industrial Strategy are:

- Support economic growth, especially in small businesses, by ensuring a fair, responsible and competitive trading environment
- Protect the environment for future generations including tackling the threats and impacts of climate change
- Improve quality of life and wellbeing by ensuring clean and safe neighbourhoods
- Help people to live healthier lives by preventing ill health and harm and promoting public health
- Ensure a safe, healthy and sustainable food chain for the benefits of consumers and the rural economy
- Ensure that private sector homes are safe for residents and neighbourhoods and of a reasonable standard

## **2.4 Voluntary Accreditation Schemes**

There are now many recognised independently determined and robustly assessed quality, management and environmental standards in a wide range of regulatory matters.

Where business are able to demonstrate they are members of an accredited organisation that is externally validated and where risk rating criteria allows, consideration will be given as part of the risk and impact assessment for future planned interventions and inspections.

We will encourage businesses to develop good and better practice and seek out innovative solutions to important regulatory requirements and encourage the sharing of this practice across their respective sectors to drive improvement in compliance and achieve positive public protection outcomes.

Working in conjunction with our Economic Development Team, we will seek out opportunities to work directly with business and recognised trade bodies and other key organisations at a local level. This will be with the aim of understanding the key regulatory compliance issues for them and to consider how we can support their members to effectively secure compliance.



## 2.5 Securing Effective Enforcement Through ‘Better Regulation’ and Service Excellence

In all of our regulatory interactions we will aim to demonstrate:

- **Fairness** - to those we regulate and those who we safeguard and protect. Our approach will be firm and fair, tackling those who commit the most serious risks to public and environmental safety and health and those who continue to deliberately and flagrantly breach important regulatory standards and requirements.
- **Integrity**– we will be impartial, trustworthy, and sound in the judgements we make.
- **Openness** – we will explain our actions and any steps to secure compliance with those we regulate and make available information to ensure those that we serve are better informed.
- **Helpfulness** – our focus is to help businesses secure compliance, help our customers be better informed and better able to understand the role and responsibilities of Environmental Health and their own rights for seeking redress.
- **Value** – to give value and be valued. We will ensure our services provide the high standards of service delivery and excellent value for money and be relevant and valued by those we regulate and serve. We will continue to drive down costs and use new technology to provide further efficiencies and effectiveness.
- **Responsiveness** - we will respond with speed where high risk high impact non-compliance exists, and when called upon be reactive, agile and in-touch to seek out and tackle current and emerging high risk activities.
- **Customer centric and a business focus** – we are committed to providing the highest quality of service within the resources available to us and will adopt and embed these in our plans and day to day work of our officers. We will look to further and continuously improve our service quality and aspire to delivering service excellence across all our regulatory services to customers and businesses.
- **Reducing regulation burden on businesses** – we are committed to reduce regulation burdens on businesses from enforcement and inspection and recognise the emerging alternative compliance measures by meeting accredited International and European quality standards, trade body membership, codes and standards relating to regulatory compliance.

## 2.6 Enforcement Principles

All our regulatory interventions will be:

- **Targeted** – to have greater impact by focusing on compliance in the highest risk activities; give greater recognition to alternate means of securing compliance particularly where independent and external accredited third party assessment has been used.
- **Transparent** – we will ensure that where regulatory non-compliance is found through our interventions and inspections, our officers make clear the form of action they propose to take. Where there is a right of appeal or other redress, officers will advise those affected persons or organisations of this at the time and in writing. They will also make it clear what are legal requirements and what are recommendations.
- **Consistent** – we aim to achieve consistency in our inspection and enforcement services, recognising that for all businesses, particularly larger national and international business organisations that we regulate, it is important to ensure there is a consistent approach and level playing field.

We will ensure that our officers keep apprised of the Primary Authority Partnership (PAP) arrangements. Where inspection plans have been agreed between the PA and business, we will ensure when an inspection is required these are followed and data records updated accordingly. Where businesses come to us requesting a Primary Authority Partnership, we will work with them to explore the development and implementation of a PAP, where this is both appropriate and practicable.

- **Proportionate** – we will put in place and adopt systems and operating procedures to ensure the compliance requirements and any necessary enforcement action is proportionate to the risks and impact posed and seriousness of the breach of the law.
- **Intelligence led** - we will adopt an intelligence led approach to our interventions and enforcement actions, using systems, procedures and techniques that provide us with such intelligence. We will keep apprised of matters that are relevant to the sectors we regulate at a national, regional and local level and will closely work with our other IBC services, other LAs and national enforcement agencies to share information and intelligence on important regulatory issues and enforcement matters.

- **Joined-up approach to enforcement** – we will build on our existing approach to joined-up enforcement working with colleagues in other departments, other LAs and enforcement agencies across the county, region and nationally. We may share resources including staff for larger investigations and enforcement actions as part of our approach to sharing intelligence and undertaking joint training with other agencies where appropriate.
- **Risk based** - adapted to the risk posed by the non-compliant activities to provide robust, speedy and effective enforcement against those that commit the most serious regulatory offences and serial offenders who deliberately and wilfully flout the law, including those who seek to take commercial advantage from such offences.
- **Accountable** – We recognise the importance of the public services we provide and the impact they have on protecting the safety and health of the public, the quality of our local environment and the need for direct accountability for our actions or where we decide not to take action, to the public and stakeholders. We will ensure, where this does not compromise our legal responsibilities, that our enforcement actions will be placed in the public arena.

## **2.7 Power, Duties and Responsibilities of the Council including Officer Delegations**

IBC and the Environmental Health Department accept they have has an important role in discharging a wide range of statutory duties and does this by way of adopting and following a detailed Constitution and associated Scheme of Officer Delegation. This can be viewed on the IBC website.

## **3.0 Types of Intervention and Enforcement Carried Out by Environmental Health**

IBC has a range of interventions and enforcement actions available that enable effective monitoring of activities subject to regulatory control and appropriate actions to secure compliance.

Varied types of enforcement and options are open to staff dependant on the legislation enforced and which are chosen based on criteria shown in 4.6.

### **3.1 Planned Inspections, Interventions and Surveillance Programmes**

These form an important and fundamental part of the Council's monitoring regime to ensure we meet our statutory duties with respect to our Environmental Health and wider public protection responsibilities.

Planned inspections will be based on the requirements set out by Government and its relevant departments and agencies, and we will have close regard to any relevant codes of practice, statutory guidance and advice issued by them. For example the FSA's Food Law Code of Practice and the HSE's National Local Authority (LA) Enforcement Code.

When conducting enforcement visits, officers will make their identity known, carry and show their formal written authorisation when requested except in circumstances where this might compromise the investigation.

Surveillance may include, for example, surveying for potential breaches of statutory nuisance, checking compliance with licence conditions and monitoring for air quality emissions.

### **3.2 Service Requests & Complaints**

Service requests or complaints may be received from the public, including employers, residents, visitors, workers and consumers. The nature of the service request or complaint will determine the follow up actions necessary in terms of the priority, speed of those actions and resources deployed. They also provide a useful form of intelligence that can help to determine future planned inspections and intervention programmes.

### **3.3 Statutory Notifications and Other Wider Intelligence Sources**

This may be where information is provided by other Council services, other LAs or partners such as Trading Standards, Police, Fire and Rescue etc. Public Health England, HSE, FSA, the Director of Public Health, and Trades Unions may directly notify matters such as serious workplace accidents and incidents, food product safety alerts and recalls, and food poisoning incidents respectively. Follow up actions and

response time will be assessed using the criteria set out in 4.6 below for the determination of enforcement actions.

Local businesses and/or their representative organisations can also provide information and intelligence that may be helpful when considering ongoing and future enforcement programmes and again the above criteria will be used for any proposed follow actions.

### **3.4 Primary Authority Partnership Scheme (PAP)**

Primary Authority Partnerships (PAP) are statutorily based (Regulatory and Enforcement Sanctions Act 2008) and have as a key aim to secure regulatory compliance standards across a wide range of regulatory activities in a consistent and proportionate manner. Fundamental to the scheme are partnerships between businesses who trade across more than one local authority boundary and the local authority regulator, normally (but not exclusively), where the businesses head office is based or primary production takes place.

There is also provision as part of the partnership agreement for the Primary Authority to produce an inspection plan that includes where enforcement authorities should target any inspection or planned intervention. As an enforcement authority we are required to have regard to any agreed inspection plans and focus our inspection and subsequent actions towards those aspects specifically identified requiring attention in the agreed inspection plan.

### **3.5 Enforcement of Non – Compliant Activities**

Different enforcement powers are conferred by diverse legislation but a summary can be seen below and may be selected:

- No action
- Informal verbal or written advice / warning
- Fixed Penalty Notices (FPNs)
- Formal enforcement notices & orders
- Works in default
- Emergency remedial action

- Detention, seizure and/or destruction of foods, goods or equipment
- Refusal, revocation, suspension or review of a licence or approval
- Simple/formal caution
- Civil Penalties
- Prosecution (Summary or Indictment)
- Referral to Crown Prosecution Service for charges of manslaughter

### **3.6 Criteria for Determining Choice of Specific Enforcement Action(s)**

Each enforcement decision will be taken on its own merits but the following criteria can be applied:

- Seriousness in terms of impact or likely impact on public safety and health or the local environment
- Relevant Council policies and priorities
- Risk to animal health and welfare
- Deliberate or repeated non-compliance
- Non-compliance that gives a an economic advantage over compliant businesses
- Public interest and confidence
- Other relevant national or European priorities

### **3.7 No Action**

In some cases a contravention of the law may not justify more formal action. Factors may include the cost of enforcing compliance which may be far greater than the detrimental effect of the contravention. A decision to take no action may also be taken in circumstances such as where a trader has ceased business and the risk no longer exists. Such decisions will be taken with a view to what is in the 'public interest' and in such cases the offender and any 'victim' will be informed of the reasons for taking no action.

### **3.8 Informal Verbal or Written Advice**

For minor breaches we may only give verbal or written warnings or advice. We will clearly identify any contraventions and advise how to correct them along with a

compliance deadline. This timescale will be reasonable and take into account the implications of non-compliance.

### **3.9 Fixed Penalty Notices (FPNs)**

Some legislation offers the use of FPNs as an alternative to taking an offender to court. They are available for lower level offences and can avoid the defendant having a criminal record. Where legislation permits an offence to be dealt with by way of an FPN, we may choose to offer an FPN on a first offence without prior warning or decide to issue a written warning. Some of the legislation that permits the use of FPNs includes:

- Environmental Protection Act 1990 for environmental offences such as littering and fly-tipping;
- Clean Neighbourhoods and Environment Act 2005 for graffiti, abandoned vehicles, dog fouling etc.;
- Health Act 2006 for smoke-free offences
- The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

### **3.10 Formal Enforcement Notices & Orders**

Some of the legislation we use allows formal notices to be served upon a duty-holder requiring them to provide information, remedy a defect or cease an activity.

In situations where risk is immediate the notice may require an activity to stop straight away e.g. Health and Safety Prohibition Notice or a Housing Act Prohibition Order. In other cases, a reasonable time for compliance will be given taking into account the seriousness of the contravention and the implications of an immediate risk to health or safety.

All notices issued will include details of any appeal provisions. Some notices allow works to be carried out in default if not complied with or by the Council if there is an imminent risk to health and the possibility of cost recovery. It is Environmental Health's policy to recover costs when works have to be carried out in default.

### **3.11 Works in Default**

Some legislation such as the Housing Act 2004, Environmental Protection Act 1990 etc. makes provision for the Council to carry out the works to a property where the person responsible has failed to comply with a notice.

Works in default can be carried out either instead of a prosecution or in addition to a prosecution. There is also the ability for the Council to re-charge for the works. The works in default procedure should be followed.

In deciding whether works in default is an option, the Council must consider the imminent risk to health and safety and whether undue delay would put the occupier, visitors or the public at increased risk. It must also consider whether there are finances in place to carry out the work and what the minimum works required would be to remove the risk.

### **3.12 Emergency Remedial Action**

The Housing Act 2004 allows the Council to take such action as it considers immediately necessary in order to remove the risk of serious harm to the occupiers of premises or to the occupiers of any other residential premises caused by a Category 1 hazard.

### **3.13 Compulsory Purchase / Clearance**

An Assessment would be required in accordance with guidance contained in Government Circulars. Detailed consideration of many factors would have to be undertaken in association with other Directorates to ensure that it was the most satisfactory method of dealing with a property or an area, with ultimately the decision being made by the Council's Executive. Either of these courses of action would be regarded as a last resort.

### **3.14 Seizure, Detention or Destruction**

Some legislation enables suitably authorised officers to seize, detain and/or destroy food, goods or equipment where there is a risk to health and safety or the



environment. Examples would include the seizure of contaminated food or dangerous equipment or sound equipment being used to cause a statutory nuisance.

In all cases when items are seized, detained or destroyed appropriate 'notices' are left explaining our actions to the owner/duty-holder.

### **3.15 Refusal, Suspension, Review or Revocation of Licence or Approval**

Environmental Health is responsible for the approval and monitoring of many activities that need approval by way of a licence, registration, permit etc. (these will be referred to as licences in this report).

Each type of licence has a defined process for making applications and how the Environmental Health Team will consider the applications and where appropriate representations and objections.

The Council's scheme of delegation determines the circumstances where an application can be determined by officers or when the application should be considered by an appropriate Committee or Sub-Committee.

Applications may be granted, granted with appropriate conditions or refused. Applicants will be advised of their rights of appeal.

Licence holders who breach licence conditions may be warned verbally or in writing but can also be required to attend before the relevant Sub-Committee or Magistrates' Court (dependent on the offence) which can result in the suspension or revocation of their licence or the addition of conditions. (In the case of breach of HMO licence conditions,) may be prosecuted or face a civil penalty

### **3.16 Simple/Formal Caution**

A Simple Caution is an admission of guilt, but is not a form of sentence, nor is it a criminal conviction. For a Simple/Formal Caution to be issued a number of criteria must be satisfied:

- Sufficient evidence must be available to prove the case.
- The offender must admit the offence.

- It must be in the public interest to use a Simple/Formal Caution.
- The offender must be 18 years or over.

Officers will not offer a Simple/Formal Caution where the offender has already received one for a similar offence within the last 2 years.

A record of any Simple/Formal Caution will be kept on file for 2 years for health and safety cautions and 3 years for housing cautions.

If the offender commits a further offence, it may influence our decision to take a prosecution. If during the time the Simple/Formal Caution is in force the offender pleads guilty to, or is found guilty of, committing another offence anywhere in England and Wales, it may be cited in court, and this may influence the severity of the sentence that the court imposes.

Details of all cautions issued are a matter of public record.

### **3.17 Civil Penalties**

Civil Penalties are an alternative to prosecution for certain specified offences, provided by s126 and Schedule 9 of the Housing and Planning Act 2016. There is a separate policy on their administration. The following

- Severity of the offence
- Culpability and track record of the offender
- The harm caused to the tenant
- Punishment of the offender
- Deter the offender from repeating the offence
- Deter other from committing similar offences
- Remove any financial benefit the offender may have obtained as a result of committing the offence

### **3.18 Prosecution**

A prosecution will normally ensue where the individual or organisation meets one or more of the following criteria:

- Deliberate, reckless, negligent or persistent breach of legal obligations, which were likely to cause material loss or harm to others.
- Deliberate or persistent ignoring of written warnings or formal notices.
- Endangered, to a serious degree, the health, safety or wellbeing of people, animals or the environment.
- There was an attempt to make financial gain at the expense of others.
- An authorised officer was assaulted and/or obstructed in the course of his/her duties.

### **3.19 Determining Whether a Simple Caution or Prosecution is Viable and Appropriate**

Two 'tests' will be applied to determine whether a Prosecution or Simple Caution is viable and appropriate. The officers will follow guidance set by the CPS when applying the tests.

A Simple Caution or Prosecution will only be progressed when the case has passed both the evidential test and the public interest test.

- **The Evidential Test**

We must be satisfied that there is sufficient evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. A realistic prospect of conviction is an objective test that means that a jury or bench of Magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a separate test from the one that the criminal courts themselves must apply.

- **The Public Interest Test**

The public interest will be considered in each case where there is sufficient evidence to provide a realistic prospect of conviction. A serious offence would also include the failure to comply with a Statutory Notice. We will balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the suspect.

### **3.20 Referral to Crown Prosecution Service**

In cases where the breach of duty lead to a death(s) IBC may refer the matter to the Crown Prosecution Service (CPS) to consider whether manslaughter or corporate manslaughter charges are investigated in addition to our own criminal investigations. In such cases Environmental Health will follow the Work Related Deaths Protocol

### **3.21 Sharing of Intelligence regarding Enforcement**

Environmental Health will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies including:

- Health & Safety Executive
- Food Standards Agency
- Environment Agency
- The Police or Fires & Rescue
- Other Local Authorities
- Other Regulators

### **3.22 Joint Enforcement Roles**

Where enforcement roles are shared or overlap with other agencies we will co-operate or consult, for example the Fire & Rescue Service for HMO's or the Police for fraudulent claims for Home Improvement Assistance (including sharing information and providing evidence) to protect the local community, environment and groups such as tenants.

- **Proceeds of Crime Applications**  
Applications may be made under the Proceeds of Crime Act 2002 for the confiscation of assets. The purpose is to recover the financial benefit that the offender has obtained from their criminal conduct. Proceedings are conducted to the civil standard of proof.
- **Statutory Orders**  
A range of Statutory Orders are available under the Housing Act 2004. In addition to Prohibition Orders the Council may make an Interim or Final

Management Order on a licensed HMO, which allows it to take over the running of a property. Powers to take over the management of empty premises are contained in the Empty Dwelling Management Orders. The Council can take emergency remedial action to remove a Category 1 hazard where there is an imminent risk of serious harm to the health or safety of the occupiers. If such works are undertaken action will be taken to recover the costs incurred.

Rights of Appeal exist in relation to these powers and compensation provisions also arise in some cases.

- **Compulsory Purchase Orders**

The Council may compulsorily purchase property under Section 17 of the Housing Act 1985. The use of such powers will be on a case by case basis. The consent of the Secretary of State is required and compensation provisions for the owner apply.

### **3.23 Other Factors Considered When Using Enforcement Powers**

- **Power of Entry**

Environmental Health staff are provided with specific powers of entry by a wide range of legislation. This gives them a right (usually in the form of delegated authority from IBC to named officers) to legally enter defined premises, such as businesses, vehicles or land for specific purposes. Powers of entry include enabling our officers to undertake inspections and investigations for a wide range of regulatory responsibilities including food safety, health and safety, environmental protection and housing legislation, in addition to dealing with emergencies or searching for evidence during those investigations.

Often, the power to enter is accompanied by what are known as 'associated powers', which set out what our officers are allowed to do once they have entered the premises. This might, for instance, include conducting a search, seizing relevant items or collecting samples.

In certain cases, for example under Housing Act legislation, where entry is required to a residential property, then a period of notice is usually required to be given to the owner or occupier of the property before entry can be gained.

Officers also have the option to obtain a warrant from a magistrate and enter, at any time by force if necessary to ascertain if an offence has been committed, to gather evidence or to undertake emergency remedial works or works in default.

- **Police and Criminal Evidence Act 1984 (Codes of Practice) Order 2004**

Our officers will have close regard to the requirements set out in the Police and Criminal Evidence Act and any amendments and current and codes relevant to our regulatory enforcement responsibilities. This includes investigation of relevant offences, powers of entry in the course of discharging statutory duties, taking samples to help in gaining necessary evidence and interviewing those suspected of committing offences.

- **Regulation and Investigatory Powers Act (RIPA) 2000**

The Act regulates the powers of public bodies to carry out surveillance and investigation, including the interception of communications, and we will ensure we use our powers in accordance with IBC's Corporate RIPA policy.

- **Local Government (Miscellaneous Provisions) Act 1976 section 16**

This is used to formally request information about a premises or a person.

- **Protection of Human Rights**

The provisions of the European Convention on Human Rights such as Article 1 of the First Protocol, Article 8 and Article 14 are relevant when considering any enforcement action. There is a clear public interest in enforcing relevant public and environmental protection regulations, in a proportionate way. In deciding whether enforcement action is taken, Environmental Health will, where relevant, have regard to the potential impact on the health and safety or welfare of those affected by the proposed action, and those who are affected by the breach of regulations. In particular, due regard will be given to the right to a fair trial and right to respect for private and family life, home and correspondence.

- Equalities, Vulnerable Persons and Minority Groups**

The enforcement services covered by this enforcement policy will align with and meet the equality policies and objectives adopted by IBC. We will aim to effectively support and promote access to our enforcement services recognising the diversity of the communities we serve and ensure that residents and businesses are treated equally and fairly through the delivery of our services.
- Enforcement in IBC Premises and Contracted Services**

In some cases this is prevented by law such as with health and safety at work legislation. Where this is not prevented environmental health staff will carry out enforcement within our IBC run premises in a manner consistent with any other business.

Any serious breaches of law that may be detected in such establishments will be brought to the attention of the Chief Executive without delay. Contract caterers that operate within IBC establishments will be assessed in accordance with the Food Law Code of Practice and be inspected accordingly.
- Working with External Agencies and other Regulators**

Where there is a wider regulatory interest, enforcement activities covering 'Environment Health activities' will be co-ordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement. Where an enforcement matter affects a wider geographical area beyond the IBC's' boundaries, or involves enforcement by one or more other LAs or organisations, where appropriate all relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activity coordinated with them. In some cases a Memorandum of Understanding exists.

Where a business operating in more than one local authority has chosen to have a registered PAP under the Regulatory Reform Act 2006 (see Section 4.4), we will, where required, comply with the agreement provisions for enforcement and notify the relevant Primary Authority of the enforcement action we propose to take.

Environmental Health will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies.

- **Local Land Charge Register**

Notices will be placed on the local land charges register.

### **3.24 Charging for Notices**

Some legislation such as The Housing Act 2004 allows charges to be made for notices. Local authorities have the power to make a charge as a means of recovering certain reasonable expenses incurred in serving formal notices.

A charge will normally be made where it has been necessary to take one of the enforcement actions listed below.

- Serving an improvement notice under section 11 or 12
- Making a prohibition order under section 20 or 21
- Taking emergency remedial action under section 40
- Making an emergency prohibition order under section 43
- Making a demolition order under section 46 (265 of the Housing Act 1985 (c.68))
- Declaring a slum clearance area under section 47
- Reviewing a suspended improvement notice under section 17
- Reviewing a suspended prohibition order under section 26
- Serving a compliance notice under the Mobile Homes Act 2013

The expenses are in connection with the inspection of the premises, the subsequent consideration of any action to be taken, and the service of notices or orders. When considering the most appropriate course of action, if it is considered necessary to have to take formal action a standard charge will be made.

The Council's powers to recover such charges should be included – as provided for by Section 50 of the Housing Act 2004. For example, the following may be included:

- A demand for the payment of the charge must be served – subs (5)
- Once the demand becomes operative the sum recoverable is, until recovered, a legal charge on the premises and takes effect as a local land charge – subs (9), (10)



- Power to appoint a receiver, if the charge is not paid within one month after the demand becomes operative

The Mobile Homes Act 2013 give local authorities the power to make a charge as a means of recovering certain expenses incurred in recovering reasonable expenses incurred in serving compliance notices fee under section 4.

### **3.25 Review of Notices**

Where a statutory notice has been served with no specified end date or on receipt of a representation seeking variation or discharge (outside of the appeal window), a review of the notice will occur, to ensure the notice remains up to date and fit for purpose. The review should be undertaken as often as is appropriate and at least once every 6 months. The review can lead to the notice being retained, revoked or varied.

Annex A – Specific Regulatory Powers for IBC’s Environmental Health Teams

Team: **Food Safety and Public Health**      Function: **Food Safety**

Main Legislation: **Food Safety Act 1990 and associated Regulations**

Enforcement Sanctions Available

	No Action	Informal Written or Verbal Warning	Fixed Penalty Notice (FPN)	Formal Enforcement Notice	Seizure, Detention or Destruction	Simple Caution	Prosecution	Referral to CPS for Manslaughter
Power Available?	✓	✓	✗	✓	✓	✓	✓	✓
Specific Details		Legal requirements are clearly distinguished from recommendations of good practice		Hygiene Improvement, Hygiene Emergency Prohibition and Remedial Action Notices (Food Safety and Hygiene (England) Regulations 2013) – where premises or processes fail to comply with Hygiene Regulations	Detention and Seizure Notices (Food Safety Act 1990 and associated Regulations) where Food fails to comply with food safety requirements. Official Feed and Food Control Notices (Official Feed and Food Control Regulations (England) 2009) for illegal imports		Failure to comply with the terms of the statutory notice.	
Appeals				Magistrate’s Court	Right to be heard by a JP at the time of the decision to destroy food (different procedures for OFFC).	Offender does not have to accept Caution		
Other Factors to Consider	EP IBC Complaint FLCoP	EP IBC Complaint FLCoP		EP IBC Complaint FLCoP	EP IBC Complaint FLCoP	EP IBC Complaint FLCoP	EP IBC Complaint FLCoP	EP IBC Complaint FLCoP
Other Relevant Guides or Procedures						Regulators’ Code CPS Guidelines	Regulators’ Code CPS Guidelines	WRDP

Team: **Occupational Health and Safety**

Function: **Health & Safety at Work**

Main Legislation: **Health and Safety at Work Etc. Act 1974 and associated Regulations**

Enforcement Powers Available

	No Action	Informal Written or Verbal Warning	Fixed Penalty Notice (FPN)	Formal Enforcement Notice	Seizure, Detention or Destruction	Simple Caution	Prosecution	Referral to CPS for Manslaughter
Power Available?	✓	✓	✗	✓	✓	✓	✓	✓
Specific Details	-	-	-	Improvement Notice (S.21) Prohibition Notice (S.22) Seek Review of Premises Licence where 'public safety' at risk (LA2003)	Imminent Danger Notice (S.25)	-	Failure to comply with the terms of the statutory notice.	-
Appeals				Employment Tribunal		Offender does not have to accept Caution		
Other Factors to Consider	EP IBC Complaint EMM	EP IBC Complaint EMM HSE Panel	Offender does not have to accept Caution	EP IBC Complaint EMM	EP IBC Complaint EMM	EP IBC Complaint EMM	EP IBC Complaint EMM	EP IBC Complaint EMM
Other Relevant Guides or Procedures	-	-	-	Notice & Formal action Procedure	Notice & Formal action Procedure	Regulators' Code CPS Guidelines	Regulators' Code CPS Guidelines	WRDP

Team: **Licensing / Occupational Health & Safety**

Function: **Smoke Free Enforcement**

Main Legislation: **Health Act 2006 and associated Regulations**

Enforcement Powers Available

	No Action	Informal Written or Verbal Warning	Fixed Penalty Notice (FPN)	Formal Enforcement Notice	Seizure, Detention or Destruction	Simple Caution	Prosecution	Referral to CPS for Manslaughter
Power Available?	✓	✓	✓	✗	✗	✗	✓	✗
Specific Details	-	-	Smoking in 'smoke-free' premises/vehicle S.7(2) No signage S.6(5)	-	Imminent Danger Notice (S.25)	-	Failure to comply with the terms of the statutory notice. Failure to pay or accept a fixed penalty notice. -	-
Appeals			Offender does not have to accept FPN			Offender does not have to accept Caution		
Other Factors to Consider	EP IBC Complaint	EP IBC Complaint	EP IBC Complaint	n/a	n/a	EP IBC Complaint	EP IBC Complaint	n/a
Other Relevant Guides or Procedures	-	-	IBC FPN Procedure LACORS	n/a	n/a	Regulators' Code CPS Guidelines	Regulators' Code CPS Guidelines	n/a

Team:

**Licensing / Occupational Health & Safety**

Function:

Licensing

Main Legislation:

Local Government (Miscellaneous Provisions) Act 1982, Licensing Act 2003, Gambling Act 2005

Enforcement Powers Available

	No Action	Informal Written or Verbal Warning	Fixed Penalty Notice (FPN)	Formal Enforcement Notice	Seizure, Detention or Destruction	Other Enforcement Options Available	Simple Caution	Prosecution
Power Available?	✓	✓	✗	✗	✗	✓	✓	✓
Specific Details	-	-	-	-	-	Refusal to grant or renew. Conditions on licence, consent, etc. Potential to suspend or revoke Licensing Authority can seek Review of Premises Licence.	-	Failure to have licence, consent etc. Offences within specific Act. Non-compliance with conditions. -
Appeals						Magistrates	Offender does not have to accept Caution	Higher Court
Other Factors to Consider	EP IBC Complaint	EP IBC Complaint	n/a	n/a	n/a	EP	EP IBC Complaint	EP IBC Complaint
Other Relevant Guides or Procedures	-	-	n/a	n/a	n/a	Section 182 Licensing Act Guidance. Committee rules & policies. Delegated powers	Regulators' Code CPS Guidelines. Section 182 Licensing Act Guidance	Regulators' Code CPS Guidelines. Section 182 Licensing Act Guidance

Team: **Licensing / Occupational Health & Safety** Function: **Licensing (Taxis)**

Main Legislation: **Local Government (Miscellaneous Provisions) Act 1976, & the Town and Police Clauses Act 1847**

Enforcement Powers Available

	No Action	Informal Written or Verbal Warning	Fixed Penalty Notice (FPN)	Formal Enforcement Notice	Seizure, Detention or Destruction	Other Enforcement Options Available	Simple Caution	Prosecution
Power Available?	✓	✓	✗	✓	✗	✓	✓	✓
Specific Details	-	-	-	Driver Suspension Notice  Vehicle Suspension Notice	Require extra vehicle test  Require extra driver medical	Refusal to grant or renew. Conditions on licence, consent etc. Potential to suspend or revoke	-	Failure to comply with the terms of the statutory notice. Failure to pay or accept a fixed penalty notice.  -
Appeals				Magistrates	Magistrates	Magistrates	Offender does not have to accept Caution	Higher court
Other Factors to Consider	EP IBC Complaint	EP IBC Complaint	n/a	EP IBC Complaint D of T Guidance	EP D of T Guidance	EP	EP IBC Complaint	EP IBC Complaint
Other Relevant Guides or Procedures	-	-	n/a	-	Committee rules & policies. Delegated powers	Committee rules & policies. Delegated powers	Regulators' Code CPS Guidelines	Regulators' Code CPS Guidelines

Team: **Food Safety and Public Health** Function: **Public Health**

Main Legislation: **Public Health (Control of Diseases) Act 1984 and associated Regulations**

Enforcement Sanctions Available

	No Action	Informal Written or Verbal Warning	Fixed Penalty Notice (FPN)	Formal Enforcement Notice	Seizure, Detention or Destruction	Simple Caution	Prosecution	Referral to CPS for Manslaughter
Power Available?	✓	✓	✗	✓	✗	✗	✓	✗
Specific Details				Health Protection (Local Authority Powers) Regulations 2010 & Health Protection (Part 2A Orders) Regulations 2010: Various powers to a Local Authority to serve an Order on any person or group of persons, to request that the person or group of persons do, or refrain from doing, anything for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination which presents or could present significant harm to human health..			Failure to comply with the terms of the statutory notice.	
Appeals				Right to be heard by a JP at the time of the decision to grant an order.				
Other Factors to Consider	EP IBC Complaint	EP IBC Complaint	EP IBC Complaint	n/a	n/a	EP IBC Complaint	EP IBC Complaint	n/a
Other Relevant Guides or Procedures				CIEH Health Protection Regulations 2010 – Toolkit DOH Health Protection Legislation (England) Guidance 2010			CPS Guidelines	

Team:

**Private Sector Housing**

Function:

Private Sector Housing

Main Legislation:

**Housing Act 1985/2004, Housing and Planning Act 2016 and associated regulations**

Enforcement Powers Available

	No Action	Informal Written or Verbal Warning	Fixed Penalty Notice (FPN)	Formal Enforcement Notice	Other Enforcement Options Available	Simple Caution	Civil Penalties	Prosecution
Power Available?	✓	✓	✓	✓	✓	✓	✓	✓
Specific Details for <b>Category One Hazards (Immediate action/High Priority)</b>	-	-	Improvement Notices Licensing of HMO Licensing under Part 3 of the Act Overcrowding Management regulations HMOs	Improvement Notice Prohibition Order Emergency Prohibition Order Emergency Remedial Action Hazard Awareness Notice Suspension of Improvement Notices Suspension of Prohibition Orders Rent Repayment Orders	Clearance Area Action Demolition Order Revocation & Variation of Improvement Notices Revocation & Variation of Prohibition Orders Emergency Remedial Action Management Orders Revocation of License	-	Failure to comply with the terms of the statutory notice or HMO management regulations or failure to licence	Failure to comply with the terms of the statutory notice. Failure to pay or accept a fixed penalty notice. -
Specific Details for <b>Category Two Hazards (Medium to low Priority)</b>	-	-	-	Improvement Notice Hazard Awareness Notice Suspension of Improvement Notices Suspension of Prohibition Orders	Prohibition Order Revocation & Variation of Improvement Notices Revocation & Variation of Prohibition Orders	-	Failure to comply with the terms of the statutory notice	-
Appeals			Residential Property Tribunal	Residential Property Tribunal	Residential Property Tribunal	Offender does not have to accept Caution	Residential Property Tribunal	n/a
Other Factors to Consider	EP IBC Complaint	EP IBC Complaint	EP IBC Complaint	EP IBC Complaint	EP IBC Complaint	EP IBC Complaint	EP IBC Complaint	EP IBC Complaint
Other Relevant Guides or Procedures	-	-	Civil Penalties Guidance	Notice & Formal action Procedure, National Guidance	Notice & Formal action Procedure, National Guidance	Regulators' Code	Civil Penalties Guidance	Regulators' Code



Team: **Private Sector Housing**

Function: Private Sector Housing

Main Legislation: **Public Health Act 1936 and 1961, Criminal Justice and Public Order Act 1994, Building Act 1984**

Enforcement Powers Available

	No Action	Informal Written or Verbal Warning	Fixed Penalty Notice (FPN)	Formal Enforcement Notice	Other Enforcement Options Available	Simple Caution	Prosecution
Power Available?	✓	✓	✗	✓	✓	✗	✓
Specific Details	-	-		Statutory Notice Licensing of Caravan sites	Works in default Attach conditions to licence Destruction of items	-	Failure to comply with the terms of the statutory notice. -
Appeals				Magistrates Court	Magistrates Court		
Other Factors to Consider	EP IBC Complaint	EP IBC Complaint		EP IBC Complaint	EP IBC Complaint		EP IBC Complaint
Other Relevant Guides or Procedures	-	-		Notice & Formal action Procedure, National Guidance	Notice & Formal action Procedure, National Guidance		Regulators' Code

Team:

**Environmental Protection**

Function:

Environmental Protection

Main Legislation:

**Environmental Protection Act 1990, Clean Neighbourhoods and Environment Act 2005, Anti-social Behaviour, Crime and Policing Act 2014 and associated legislation**

Enforcement Powers Available

	No Action	Informal Written or Verbal Warning	Fixed Penalty Notice (FPN)	Community Protection Notices (CPN)	Formal Enforcement Notice	Other Enforcement Options Available	Simple Caution	Prosecution
Power Available?	✓	✓	✓	✓	✓	✓	✓	✓
Specific Details	-	-	Offences for which the use of FPNs are authorised, e.g.: - littering - fly-tipping - abandoned vehicles - failure of duty of care	Written warning followed by notice. Offences for which the use of CPNs are authorised eg. Detrimental, a persistent or continuing nature on quality of life	Statutory notice, e.g. Service of an abatement notice when a statutory nuisance has been substantiated and the offender or premises causing the nuisance has been identified.	Works in default. Seizure of noise making equipment. Seizure and disposal of vehicles. High Court injunction. Review of premises licence (in accordance with Licensing Act 2003).	To deal with first time, low level offences.	Failure to comply with the terms of the statutory notice. Failure to pay or accept a fixed penalty notice.
Appeals			Magistrates Court	Magistrates Court	Magistrates Court	Dependent on action	Offender does not have to accept Caution	
Other Factors to Consider	EP IBC Complaint	EP IBC Complaint	EP IBC Complaint		EP IBC Complaint	EP IBC Complaint	EP IBC Complaint	EP IBC Complaint
Other Relevant Guides or Procedures	-	-	Notice & Formal action Procedure, National Guidance	Notice & Formal action Procedure, National Guidance	Notice & Formal action Procedure, National Guidance	Notice & Formal action Procedure, National Guidance	Regulators' Code CPS Guidelines	Regulators' Code CPS Guidelines

Notes:

EP = IBC's Environmental Health Enforcement Policy

<https://www.ipswich.gov.uk/>

IBC Complaints Procedure

<https://www.ipswich.gov.uk/complaints>

EMM = HSE's Enforcement Management Model

<http://www.hse.gov.uk/enforce/emm.pdf>

WRDP = Work Related Deaths Protocol

<http://www.hse.gov.uk/enforce/wrdp/>

HSE Panel = Independent Regulatory Review Panel

<http://www.hse.gov.uk/contact/contactchallengepanel.htm>

**Local Government Regulation (formerly LACORS)**

<http://www.ihsti.com/lacors/upload/21012.pdf>

FLCoP = Food Law Code of Practice

<https://www.food.gov.uk/enforcement/codes-of-practice/food-law-code-of-practice-2015>

Civil penalties under the Housing and Planning Act 2016

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/606653/Civil\\_Penalties\\_guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/606653/Civil_Penalties_guidance.pdf)

DOH = Department of Health