



# Environmental Health and Regulatory Services

# ENFORCEMENT POLICY

# CONTENTS

<b>SUBJECT</b>	<b>Page No.</b>
<b>PREFACE</b>	<b>3</b>
<b>1.0 INTRODUCTION</b>	<b>4</b>
<b>2.0 GENERAL PRINCIPLES AND STATEMENT OF INTENT</b>	<b>4-5</b>
<b>3.0 COMPLIANCE WITH THE PRINCIPLES OF GOOD ENFORCEMENT</b>	<b>5-7</b>
3.1 Transparency	
3.2 Accountability	
3.3 Proportionality	
3.4 Consistency	
3.5 Targeting	
3.6 Helpfulness	
<b>4.0 ENFORCEMENT OPTIONS</b>	<b>7-9</b>
4.1 Factors to be considered	
4.2 Other possible enforcement options	
<b>Informal Action</b>	<b>9</b>
a) No action	
b) Advice, Education, Training and Warning Letters	
<b>Formal Action</b>	<b>9</b>
c) Information Notices	
d) Enforcement of Proper Standards of Housing	
e) Age Restricted Test Purchasing	
f) Statutory Notices	
g) Fixed Penalty Notices / Penalty Charge Notices	
h) Prohibition	
i) Injunctive Actions	
j) Seizure of Goods, Equipment, Food, Articles or Records	
k) Work in default	
l) Management Orders	
m) Compulsory Purchase Orders	
n) Forfeiture Proceedings	
o) Arrest of individuals	
p) Licence Review	
q) Simple Caution	
r) Prosecution	
<b>The decision to prosecute or issue a simple caution</b>	<b>14</b>
<b>The Evidential Test</b>	<b>15</b>
<b>The Public Interest Test</b>	<b>15</b>
<b>5.0 INVESTIGATIONS</b>	<b>15</b>
5.1 Access	
5.2 Notifying alleged offenders	
5.3 Liaison with and referrals to other regulatory bodies and enforcement agencies	
5.4 Enforcement Management Model	
5.5 Primary Authority Schemes	
5.6 Directed surveillance using the Regulation of Investigatory Powers Act (RIPA)	
5.7 Proceeds of Crime Act	
5.8 Enforcement on Council premises, or at events organised by the Council	
<b>6.0 IMPLEMENTATION OF THE ENFORCEMENT POLICY</b>	<b>18</b>
<b>7.0 REVIEW OF THE ENFORCEMENT POLICY</b>	<b>19</b>
<b>8.0 COMPLAINTS ABOUT THE SERVICE</b>	<b>19</b>
<b>9.0 PUBLICITY AND HOW TO CONTACT US</b>	<b>19</b>

## PREFACE

We are responsible for several different regulatory and enforcement functions namely; trading standards, food safety, food standards, public health, infectious diseases, health and safety at work, private sector housing, noise and nuisance, alcohol and other licensing, pest control, animal health and public safety at events and football stadia.

The principles applied within this policy may also be applied to the following services: waste and street enforcement, environmental quality, parks police, neighbourhood wardens, community safety and other licensing; who we work in partnership with.

Each area of work uses different laws to ensure compliance and each has its own extensive body of regulations, codes of practice and guidance.

This policy details our approach to the use of the Council's enforcement powers, within these teams, whether that is the use of civil penalties, licensing reviews or criminal prosecution at one end of the spectrum or informal warnings and advice at the other.

The Council is committed to on-going consultation with businesses, residents and landlords in setting its policy priorities and these will be reflected in our overall enforcement approach.

The policy cannot be prescriptive because the circumstances of each individual case and the evidence available must be taken into account. However, this policy should leave most readers in little doubt as to what they can expect by way of enforcement.

Particular regard has also been given to the provisions of the Regulators' Code and the provisions outlined in the Legislative and Regulatory Reform Act 2006 and the Regulatory and Enforcement Sanctions Act 2008.

This revised policy document supersedes any previous versions of our enforcement policy. In revising this policy we have considered how best we can:

- Encourage and promote compliance.
- Improve confidence in compliance for those we regulate;
- Focus on high risk issues;
- Provide encouragement for compliant businesses;
- Understand and minimise the negative economic impacts of our activities; and
- Minimise the costs of compliance for those we regulate;



**Councillor Wesley Harcourt**  
**Cabinet Member for the Environment**



**Councillor Lisa Homan**  
**Cabinet Member for Housing**

## 1.0 INTRODUCTION

1.1 This policy seeks to ensure that any enforcement is:

- transparent and accountable;
- proportionate;
- targeted;
- consistent in approach; and
- appropriate.

1.2 Experience shows that, in most cases, businesses and individuals comply with the law. Where the law is broken, it is often because of ignorance, carelessness, lack of training, ineffective management control or sometimes from wilfulness or malice.

1.3 This policy guides all officers who are involved in taking enforcement action, investigating cases, serving notices and recommending or deciding upon legal proceedings.

1.4 'Enforcement' includes any action taken by officers to help individuals or businesses, including Local Authority managed premises, comply with the law.

1.5 Whilst the general principles below will apply in all cases; each individual case will vary, and each must be considered on its own merits before a decision is reached. In certain instances, for example, we may decide that the Regulators' code is either not relevant or is outweighed by some other reason. We will ensure that any decision to depart from the Code or any other of the general principles will be for valid reasons based on material evidence and documented.

## 2.0 GENERAL PRINCIPLES OF ENFORCEMENT AND STATEMENT OF INTENT

**We will carry out our activities in a way that supports those that we regulate to comply and grow**

2.1 Officers will take enforcement action to minimise risk; against those suspected of negligence or a deliberate failure to act; who fail to comply with their legal obligations; and where that failure results in actual harm or constitutes a risk to the public, residents or employees.

2.2 Officers will seek to adopt efficient and effective approaches to enforcement, which improve regulatory outcomes without imposing unnecessary burdens.

2.3 The level of enforcement will be proportionate and/or appropriate to each particular case. Officers will seek to be transparent and consistent, when taking enforcement action, including consistency with other local authorities or enforcement agencies.

2.4 Depending on the seriousness of a situation, the preference will be to enforce through advice and mutual agreement, where possible and in the first instance, progressing through a graduated response to a tougher formal stance if offences are repeated. A tougher stance may be taken for *serious* first offences e.g. resulting in personal injury/harm/death or to protect the vulnerable e.g. sale of alcohol to an underage child.

## **We will provide simple and straightforward ways to engage with those we regulate and to hear their views**

- 2.5** Sometimes people break the law because of ignorance (*which is not a valid excuse*) rather than deliberately or negligently. Where enforcement action is justified, officers will also provide advice and information to assist with the training of those involved.
- 2.6** We believe that prevention is better than cure and therefore our role involves actively working with businesses and individuals to advise on and assist with compliance. We will make clear not only what they have to do but, where relevant, what they don't. In practice, this means distinguishing between legal requirements and advice or guidance about what is best practice but not compulsory, to minimise business costs.
- 2.7** We will target our resources where they will have the greatest effect. We will carry out inspections only where there is a reason for doing so, for example, when investigating a complaint, in response to intelligence about a particular premises or a particular issue/problem or as part of our risk assessment process. The greatest effort will be focussed where failure to comply would pose a serious risk of harm or injury and there is a high likelihood of non-compliance.
- 2.8** We will apply a light touch approach to those businesses who comply with regulatory requirements and those who work with us to achieve compliance. However, we will not hesitate to use the full range of enforcement tools at our disposal against those businesses or individuals whose activities are likely to cause material loss or harm to others, the environment, or endanger the health, safety and wellbeing of people or our community.
- 2.9** Enforcement decisions will be made in a fair, independent and objective way and will not be influenced by issues such as ethnicity or national origin, gender, religious beliefs, disability, sexual orientation or the political views of the suspect, victim, witness, offender or council officer. Officers will make decisions based on risk.

## **3.0 COMPLIANCE WITH THE PRINCIPLES OF GOOD ENFORCEMENT**

### **3.1 Transparency**

- We will make it clear, verbally and in writing, what is a legal requirement and must be done and what is best practice but not compulsory.
- We will write to confirm any verbal advice, if requested.
- Any written advice given shall be provided in plain, accessible language and in a range of formats and media, where possible.
- Where immediate action is necessary, we will explain why and confirm this in writing.
- Written information provided will let you know how it relates to the relevant law, statutory guidance or other associated documents.
- Any service standards such as the content of inspections or when you can expect a response, will be available on request and on our website.
- We will make it clear what sort of conduct can be expected when an officer visits and what rights of complaint are available.
- Any relevant complaints or appeals procedures will be explained.

## **3.2 Accountability**

3.2.1 Visits and inspections are often made unannounced but, if appropriate and where necessary, appointments will be made, or advance notice will be given. Where access cannot be obtained during the day, or in other appropriate circumstances, visits will be made during the evening. Unless carrying out authorised covert surveillance work, test purchasing or unless health and safety reasons at the time dictate otherwise, enforcement officers will identify themselves by name and their role within the Council and will produce their Authorisation Warrant, when required by law or when requested and the reason for their visit.

## **3.3 Proportionality**

3.3.1 The type of enforcement action taken by officers will, in part, depend on the risk of, or actual, negative impact on others arising from the activity in question. Action taken will be proportionate to the breach/offence which has occurred and the history of compliance.

3.3.2 Where the law requires that risks should be controlled “as far as reasonably practicable” officers will, consider costs where they are calculable or made known and the ease of any suggested action as well as the degree of risk. However, some irreducible risks may be so serious that they cannot be permitted irrespective of the economic consequences e.g. industry/safety standards and public safety.

## **3.4 Consistency**

3.4.1 Decisions on enforcement always entail a degree of personal judgement by officers and the circumstances of each case will inevitably differ in detail. Furthermore, guidance upon which officers act does change over time and a decision made one day may differ from one made the next for that reason. Consequently, there may be instances when over time, enforcement may appear to be inconsistent. Officers will try to ensure that enforcement action is as consistent as possible by:

- following current internal procedural and guidance notes,
- taking account of appropriate guidance from other authoritative or professional bodies e.g. Food Standards Agency (FSA), Health and Safety Executive (HSE), Chartered Trading Standards Institute (CTSI) and the Institute of Licensing (IoL),
- taking due account of new case law relating to enforcement,
- taking account of any new laws or guidance which impacts on their duties,
- liaising with other enforcement agencies as necessary,
- actively participating in joint local authority schemes to achieve greater consistency,
- having due regard to the HSE’s Enforcement Management Model, (when enforcing under Health & Safety legislation)
- carrying out benchmarking exercises from time to time
- sharing enforcement data, intelligence and information between officers and across different teams in accordance with data protection principles and the General Data Protection Regulations.

3.4.2 The above measures will be supplemented by specific enforcement and other legal training for officers and managerial checks on performance.

### 3.5 Targeting

3.5.1 The decision to inspect specific premises may be taken due to complaints, or problems that have been reported, e.g. general complaint about shisha tobacco, which needs investigation, or the premises need to be inspected due to its risk rating (which determines the frequency of enforcement inspections for high risk premises).

3.5.2 Enforcement will be targeted to those persons, premises and/or businesses whose activities give rise to the risks that are the most serious or least well controlled. Officers therefore target their enforcement action in three ways:

- 1) Firstly, officers carry out programmes of inspections on a **risk** rating basis. Premises or activities with the highest hazards, greatest risks, poorest compliance and worst management will be inspected more frequently than those premises with low risk activities. Enforcement action will be targeted on the cases most requiring it.
- 2) The second targeting mechanism is the **investigation** itself, where evidence, history, intelligence, experience and this policy are used to determine enforcement action.
- 3) The third targeting mechanism is planned, special surveys/projects, multi-agency and other **enforcement initiatives** in response to national concerns raised by the government, its agencies or identified by council officers and local concerns raised by Members of the Council and residents/businesses.

### 3.6 Helpfulness

3.6.1 We will work with individuals and businesses to help them comply with the law, in the following ways:

- Actively advise businesses (especially small and medium sized businesses) and assist with compliance.
- Officers will identify themselves by name (always presenting an official identity card, or warrant card, which can be verified by a phone call if requested);
- Provide advice and information on our website;
- Look to provide advice in a specific language, if requested and provide a courteous and efficient service.

## 4.0 ENFORCEMENT OPTIONS

### 4.1 Factors to be considered

4.1.1 The type of enforcement action used should produce the highest reasonable standards of compliance within the least time where practicable. In assessing what enforcement action is necessary and proportionate, consideration will be given to:

- the seriousness of compliance failure;
- current business practices, including response to previous advice;
- the degree of risk from the situation and whether there are any public health considerations;

- the particular circumstances of the case and likelihood of its continuation or recurrence;
- whether any harm was caused;
- views of any victim/injured party, financial gain or benefit from a non-compliance;
- the general cooperativeness of the offender;
- the past history of the person(s), company or premises involved;
- the impact of the enforcement choice in encouraging others to comply with the law or change the behaviour of the offender;
- the likely effectiveness of the various enforcement options;
- any relevant legal provisions, policy or official, professional guidance or advice;
- whether the situation undermines the licensing objectives;
- whether it is a Category 1 or high-risk Category 2 hazard under the Housing Act 2004;
- whether there has been a blatant/reckless disregard for the law;
- whether there has been poor management;
- whether a conviction is likely to result in a significant penalty;
- whether the victim of the offence was vulnerable, has been put in considerable fear, or suffered personal attack, damage or disturbance (e.g. complainant in a noise nuisance case);
- whether the defendant has previous convictions or cautions which are relevant to the present offence;
- whether the offence, although not serious, is widespread in the area where it was committed;
- whether an officer has been obstructed;
- whether the cumulative effect of such breaches would be serious even if the breach was not;
- whether a prosecution or other formal action will have a significant deterrent effect;
- local priorities of the Service and the Council.
- Whether any party has been the victim of modern slavery exploitation or human trafficking.

4.1.2 Under normal circumstances, a process of escalation will be used until compliance is reached. Exceptions may occur where there is a serious risk to safety or the environment or the offences have been committed deliberately or negligently or involve deception, or where there is significant financial detriment.

## **4.2 Use of Social Media for Enforcement Purposes**

4.2.1 Some employees use social media in the course of their work for the purpose of gathering evidence to assist in the council's enforcement activities (e.g. to detect benefit fraud). These employees must adhere to the Regulation of Investigatory Powers Act (RIPA) (2000), if applicable, as set out in the council's Corporate Policies and Procedures, when undertaking such activities. Officers should consider whether the provisions of RIPA are applicable.

## **4.3 Other possible enforcement options**

4.3.1 The level of enforcement action that may be taken varies from no action through to formal proceedings in court, licensing reviews or civil penalties. The main types of action that can be considered are shown below.

## **Informal Action**

### **a) No action**

This is appropriate when it is a minor/technical non-compliance that is rectified immediately. Any details recorded about non-compliance may be used as a basis for judgement on future enforcement action.

### **b) Advice, Education, Training and Warning Letters**

This sort of action will be appropriate where the degree of risk (or in some cases environmental impact) from any given situation is minor, but cannot be rectified immediately. The breach of legislation, is often technical but significant enough to warrant a written letter of warning. Formal action may be taken if similar infringements are found in the future. The person responsible would have no recent history of non-compliance and the officer would have good reason to expect them to put right the matters in question without the need for further intervention.

Informal action will be recorded on file and will be used as a basis for judgements on future enforcement action if there are recurrent problems with an offender or premises.

## **Formal Action**

### **c) Information Notices**

Many laws that we enforce allow officers to demand information which is essential to serve legal notices or summons correctly. When the officer is uncertain about the information we hold, or where certain details are unknown, the officer will serve an information notice on those that have an obvious connection to the case, requiring for instance ownership confirmation, or perhaps company or premises details. Failure to comply with an information notice may hinder the Council in discharging its duties and is regarded as a serious offence, which will be pursued.

### **d) Enforcement of Proper Standards of Housing**

Formal action will normally be pursued in the enforcement of proper standards of housing, because it would be wrong to leave tenants in unhealthy or unsafe housing conditions, which may be prolonged if informal action is taken. Only in specified or exceptional circumstances will informal action be considered, such as:

- when a tenant will not consent to works being carried out by their landlord, or if their complaint is vexatious,
- where a deficiency or hazard is not the landlord's responsibility,
- where a registered social landlord has a planned programme of works (including the works required by the Council) and the programme will be implemented within a short time and achieve a better overall result.

## e) Age Restricted Test Purchasing

The borough carries out two types of age restricted test purchasing: Challenge 25 Test purchasing (C25 TPs) and underage test purchasing (UTPs).

- C25 TPs are used to identify businesses that may have a weakness in the precautions taken to prevent underage sales. No offence is committed by businesses that sell, as the volunteers used are slightly older than the minimum age, but the possible weakness is discussed. Businesses are given written advice to use Challenge 25 – requiring proof of age for any age-restricted goods purchased where the seller believes the purchaser to be under 25 – and encouraged to attend training offered by Trading Standards which is suitable for both employees and managers.
- An UTP will be made at any business failing a C25 TP, as well as at businesses about which complaints are received, or which have recently made a previous underage sale. Selling to an underage person is evidence of an offence by the seller, the business and, if applicable, the premises licence holder. This offence will be investigated and, although many outcomes are possible, the offenders may be prosecuted or a premises licence may be reviewed. It is unlikely that employees will be prosecuted for a first offence unless they are believed to be particularly culpable.

The training offered by the Trading Standards team is open to all sellers of age-restricted goods.

## f) Statutory Notices

In certain circumstances, the law allows an officer to serve a notice requiring action to be taken or, that certain operations/activities be stopped immediately. In some instances, the service of a statutory (*legal*) notice may be compulsory or may be followed by an investigation into the cause of the breach. Further enforcement action, including prosecution, may result, particularly where there is a deliberate failure to comply with the notice. Failure to comply with a legal notice will usually be taken as a disregard for the law and appropriate action will be taken. Legal notices are normally used where:

- A serious threat to public health, safety, the environment or to amenity will arise or a situation deteriorate, if a breach is not remedied quickly; or
- An informal approach has failed, or in the opinion of the officer, is likely to fail to achieve the necessary improvements; or
- The breach is one of a number of matters required by law.

The response of the offender will be monitored to ensure a satisfactory outcome. Examples include a Section 61 or a Community Protection Notice.

In most cases there is a right of appeal against a notice either to a Court, Residential Property Tribunal, or Employment Tribunal. Where there is a right of appeal, advice on the appeal mechanism will be set out in writing.

## **g) Fixed Penalty Notices / Penalty Charge Notices**

Certain offences are subject to Fixed Penalty Notices (FPNs) where prescribed by law. They can be used for offences at the minor end of the scale to avoid the defendant gaining a criminal record.

Where the law allows an offence to be dealt with by way of a FPN, we may (subject to evidential and public interest tests) chose to administer one on a first occasion, without issuing a warning. A FPN would not normally be appropriate for a repeat offence.

FPNs may be issued to offer the person the opportunity of discharging any liability to conviction for the offence to which the notice relates by paying a penalty. There is provision for the person to be tried for the offence should he/she elect this process, or the matter may proceed to trial should the penalty not be paid. If it is considered that the penalty notice ought not to have been given, it may be withdrawn. A Penalty Charge Notice (PCN) is a form of FPN issued by officers who have council backing to chase non-payment using civil action. The difference between PCNs and FPNs is that FPNs are often followed up with criminal prosecution if the penalty is not paid.

We are only able to issue penalty notices when we have specific powers to do so. In some circumstances, e.g. where breaches are recurrent, a prosecution may be more appropriate than a penalty notice. If a FPN is not paid, we will enforce the penalty.

We have the power to impose a civil financial penalty of up to £30,000 for certain offences prescribed under the Housing and Planning Act 2016. We are also able to issue a financial penalty charge of up to £5,000 where a landlord has breached the Smoke and Carbon Monoxide Alarm Regulations 2015, Energy Efficiency Regulations 2015 or the Electrical Safety Regulations 2020. Trading Standards also have powers to impose penalties of up to £5,000. Details of the full range of enforcement options and current levels of penalties, *which relate to duties and powers vested in the Council to deal with substandard conditions in and management of private housing, and public health hazards or nuisance arising from private housing;* are detailed in the supplementary Private Sector Housing Enforcement Policy, which is to be approved as part of this main Policy.

## **h) Prohibition**

This power will be used where there are legal grounds and where the situation cannot be allowed to continue because of the risks involved. The Council may prohibit the use of a particular piece of equipment, or a specific activity, or it may close part or all of a premises, where the risk is more widespread.

## **i) Injunctive Actions**

An injunction may be sought from the Courts where the circumstances of any case cause a significant problem or threat to health of an individual or group of individuals, and the normal process of law (statutory notices, prosecution or work in default) is likely to be ineffective because the perpetrator has shown a careless disregard for earlier similar requirements, or where the process of law would take an unacceptable period of time, having regard to the particular circumstances.

Injunctions may be sought as an alternative, or in addition to other enforcement mechanisms such as prosecutions.

#### **j) Seizure of Goods, Equipment, Food, Articles or Records**

All authorised officers can seize goods, equipment, food, articles or records, where specified in law, especially if required as evidence to prove an offence.

Powers of seizure may be used for food, which fails to meet food safety requirements, including illegally imported food. This power will be used where there is a serious health risk from food available for human consumption, in order to rapidly remove it from the food chain and protect the public.

Articles or substances, which are a cause of immediate danger, may be seized under consumer protection laws. Officers may also seize records or goods which are deemed dangerous or required as evidence.

Equipment may be seized to abate (stop) nuisance where there are repeat offences, or the nuisance is such that its removal is the most effective remedy. Additionally, other articles, records and notices may be seized by officers, if required as evidence to prove an alleged offence.

#### **k) Work in Default**

Some laws allow the local authority to carry out the work required by a notice (usually by hiring contractors) if the recipient of the notice does not comply with it.

Where a notice has been served and, the work has not been done within the time limit, without good reasons, then 'work in default' may follow subject to the level of risk, practical constraints of the case and the financial circumstances. Before actually doing the work specified in the original notice, the Council will consider carefully the prospect of recovery of any costs incurred.

The Council will make every effort to recover the full cost of any work carried out 'in default'. This does not preclude parallel enforcement action where the level of harm warrants it.

#### **l) Management Orders**

The Council may make an Interim and Final Management Order on a house in multiple occupation, which allows it to take control and manage the property. An Interim and Final Empty Dwelling Management Order can be made on empty properties and also allows the Council to take control and rent the property out. Rights of appeal exist in relation to these powers and compensation provisions also arise in some cases. The Council may charge for serving certain Notices and issuing Orders under the Housing Act 2004.

### **m) Compulsory Purchase Orders**

The Council may compulsorily purchase property under Section 17 of the Housing Act 1985. This power may be used as a last resort to acquire empty properties in order to bring them back into use. The consent of the Secretary of State is required and compensation provisions for the owner apply.

### **n) Forfeiture Proceedings**

A forfeiture order may be requested, where there are grounds to do so. This is the loss of property (e.g. seized goods) without compensation, because of a breach, non-performance of some legal obligation or for committing a crime.

Officers would most likely request this at the conclusion of a criminal prosecution case where the defendant's guilt has been established beyond all reasonable doubt. If acquitted, the defendant is entitled to retrieve the seized property. Officers need only show reasonable grounds to believe that the property was used in, or derived from, certain prohibited/illegal activities. In some cases, officers may agree that a business can (forfeit) sign goods over to the Council for disposal, where there are small quantities, e.g. under 20 counterfeit items, where a letter of warning or simple caution may be offered, in lieu of prosecution. It is important to note that signing over goods is *not* a forfeiture order.

### **o) Arrest of individuals**

In limited circumstances, officers may seek the arrest of individuals suspected of offences under the Trade Marks Act 1994, or other offences, if the officer suspects that the information supplied is not reliable, or where evidence may be lost, or subject to interference. This power is not exercised lightly and officers must first satisfy the Metropolitan Police Service that the action is necessary.

### **p) Licence Review**

Responsible Authorities and 'Other Persons' have the power under the Licensing Act 2003 (LA03) and the Gambling Act 2005 (GA05) to apply to have a Premises Licence or Club Premises Certificate reviewed by the Licensing Committee where activities at the premises appear to be undermining one or more of the Licensing Objectives: *LA03 - the prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm; and GA05 - preventing gambling from being a source of crime or disorder; being associated with crime or disorder or being used to support crime; ensuring that gambling is conducted in a fair and open way; and protecting children and other vulnerable persons from being harmed or exploited by gambling.*

This option is also open to Officers of the Licensing Authority but generally officers will only take such action if they feel that there are good reasons for a licence to be the subject of a review and no Responsible Authority or other person has made the relevant application. Each application for a review will be considered on its own merits. The instigation of a review may lead to the instigation of other enforcement action by the appropriate parties.

Possible review outcomes include; the modification of licence conditions, licence suspension or revocation, or removal of the Designated Premises Supervisor (DPS). For more information on Reviews, please see:

<https://www.lbhf.gov.uk/business/licensing/licensing-reviews>

### **q) Simple Caution**

There are three preconditions, which must all be satisfied if a matter is to be dealt with by simple caution, as follows:

- There is sufficient evidence to give a realistic prospect of conviction,
- The offender admits their guilt,
- The person being cautioned agrees to it, having been made aware that the caution may be cited in Court if the person is found guilty of other offences in the future.

The reasons for issuing a simple caution instead of prosecution in the courts would commonly be that the offender has no previous history in relation to the offence and has done everything in their power to make amends. Depending on the circumstances, this would usually entail remedial work to premises and/or taking proper steps to ensure that the offence cannot recur. If a simple caution were to be offered and refused by the offender, then the case would proceed to court.

Following the acceptance of a caution, the offender may be invited to contribute towards the Council's costs in investigating and preparing the case, if these are significant. However a caution cannot be granted on condition that the Council's costs are paid.

### **r) Prosecution**

The Council has the power to prosecute offenders for a range of criminal offences and a successful criminal prosecution can be a severe punishment.

Where appropriate, disqualification of directors will be sought under the Company Directors Disqualification Act 1986. We will consider prosecuting directors if they are culpable as individuals. For example, if the offence was committed with their consent, connivance or neglect; or they ignored warnings from employees.

Where there has been 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 corporate manslaughter. If the police decide not to pursue the case the Service would normally pursue a health and safety prosecution. In order to ensure decisions on investigation and prosecution are closely coordinated, the Work-Related Deaths Protocol for the police, the Crown Prosecution Service, Local Authorities and the Health and Safety Executive will be followed.

### **The Decision to Prosecute or Issue a Simple Caution**

Two tests are applied in determining whether a Prosecution or a Simple Caution is viable and appropriate. We follow guidance issued by the Crown Prosecution Service when applying the tests. More information can be found at

<https://www.cps.gov.uk/publication/code-crown-prosecutors>

A Simple Caution or Prosecution proceedings will only be progressed when the case has passed both the evidential test and the public interest test. Similar principles will also be applied to the other types of formal enforcement actions that are available.

### **The Evidential Test**

We must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. In considering the evidence, officers should have regard to any lines of defence which are open to or have been indicated by the accused, as well as any other factors likely to affect the prospects of conviction including admissibility of the evidence and reliability of witnesses. This must be an objective test since a conviction will only be obtained if the Court or the jury is sure of a defendant's guilt.

### **The Public Interest Test**

The public interest test must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. 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 defendant. Some factors may increase the need to prosecute whilst others may suggest that another course of action would be more appropriate. Please refer to section 4.1.

## **5.0 INVESTIGATIONS**

### **5.1 Access**

At times officers may have to access premises or land to investigate or inspect goods, as required by law. The majority of officers within the Food Safety, Health and Safety, Trading Standards and Licensing Teams do not give advance notice about inspections. E.g. The Food Safety, Code of Practice requires officers to carry out inspections without prior notice. Officers will give adequate notice of intended entry where practicable and where they are required to do so legally, but at times, dependent on the risk or to avoid alerting perpetrators, may do so without prior warning. On occasion, officers may have to force entry and will apply to the courts for a warrant.

### **5.2 Notifying Alleged Offenders**

If we receive information (for example from a complainant) that may lead to enforcement action we will notify those concerned as soon as is practicable of any intended enforcement action, unless this could impede an investigation or pose a safety risk to anyone concerned or undermine the investigation.

Throughout the course of an investigation business proprietors or individuals and witnesses will be kept informed of progress.

Confidentiality will be maintained and personal information about individuals will only be released to a court when required and/or in accordance with the Data Protection Act 2018 (as amended) and the General Data Protection Regulations 2018.

Information gathered during such investigations will be subject to the restrictions on disclosure (e.g. as laid out in the Enterprise Act 2002).

### **5.3 Liaison with and referrals to other regulatory bodies and enforcement agencies**

Where there is wider regulatory interest, officers will refer information received to other relevant regulators.

Where appropriate, enforcement activities will be planned and coordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness and consistency of any enforcement.

We will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies. These may include (but is not limited to) other Council Services and Local Authorities, Government Agencies, Police Services and Fire Authorities.

### **5.4 Enforcement Management Model**

The Enforcement Management Model (EMM) and associated procedures, provide the Council with a framework for making enforcement decisions that meet the principles of the HSE Executive Board Enforcement Policy Statement. It captures the issues officers consider when exercising their professional judgement and reflects the process by which enforcement decisions are reached.

### **5.5 Primary Authority schemes**

The Primary Authority scheme has been developed to assist businesses. Primary Authority is a legally recognised partnership where a business can set up a formal relationship with a local authority - the 'Primary Authority' to receive tailored support, advice, guidance and assistance in relation to one or more specific areas of law. There will be a cost agreed between the parties based upon the time and assistance required. The areas of law can include health and safety, food safety, trading standards and licensing laws. It is also possible for a group of businesses in a commercial field to create a coordinated partnership, which has similar benefits.

The Primary Authority can give advice on any matter relating to the category of law covered by the agreement. This could include:

- the legal obligations of the business;
- helping to interpret the law; or
- checking that business processes and procedures comply with the law.

Primary Authority advice to the business is 'assured advice'. This means that once the advice has been implemented the business can have confidence that it is compliant and that another regulator cannot require it to comply in a different way.

There may also be inspection plans, which can be rolled out across a business to improve its effectiveness and efficiency, prevent any breaches of the law and avoid repeated checks by local regulators. Local authorities must follow these inspection plans, unless the Primary Authority has been notified and an alternative course of action has been agreed.

Primary Authority agreements will not prevent any legal action where advice and guidance has not been followed, or actually ignored. However, if any problems do occur then the enforcing authority must liaise with the Primary Authority before any legal action can be taken. If the business has followed the advice of the Primary Authority it is extremely unlikely to result in legal action. Our officers will liaise with Primary Authorities when applicable e.g. before carrying out an inspection or when taking enforcement action.

We encourage businesses to contact us if they are interested in setting up a Primary Authority partnership with us. Please see how to contact us under section 9.0.

## **5.6 Directed surveillance using the Regulation of Investigatory Powers Act (RIPA)**

The Council is a public authority for the purposes of the Human Rights Act 1998.

Where an investigation into the prevention or detection of crime and/or prevention of disorder is necessary, for example, following a serious incident or repeat complaints, officers will endeavour to carry out the investigation using overt methods, unless the only means of effective investigation is by way of covert directed surveillance.

Any directed surveillance shall be carried out in accordance with Council procedures, RIPA (Regulation of Investigatory Powers Act 2000) and The Protection of Freedoms Act 2012. Authorisation for this type of pre-planned investigation may only be given in writing by formally appointed officers within the Council before surveillance begins and formal authorisation by a Justice of the Peace is required.

## **5.7 Proceeds of Crime Act**

Applications may be made under the Proceeds of Crime Act for confiscation of assets in serious cases. Their purpose is to recover the financial benefit that the offender has obtained from specified criminal conduct. Applications are made after a conviction has been secured.

## **5.8 Enforcement on Council premises, or at events organised by the Council**

In principle the Council cannot legally enforce against itself. Where infringements on Council premises, or at events organised by the Council are identified, the matter will be formally notified to the appropriate Strategic Director and the Chief Executive will be advised. If the problem relates to health and safety matters then the HSE will be notified. If the issue relates to a police criminal matter, then officers will seek to support the Police with their investigations.

Where infringements are identified the matter will be investigated by the relevant authority. Where no formal action is taken, officers will give serious consideration to any recommendations made or advice provided, to help prevent a re-occurrence and ensure compliance.

If the potential breaches of the law are the responsibility of contractors employed by the Council, enforcement action will be taken against the contractor in the same way as in other cases not involving the Council.

In relation to the council's housing stock, our approach is to refer all council housing complaints back to the housing department for further investigation.

In relation to the Council's leisure centres, where only the running of the centres are managed by contractors, a protocol will be used to outline the approach that will be followed to investigate health and safety complaints.

## 6.0 IMPLEMENTATION OF THE ENFORCEMENT POLICY

The Strategic Director of the Environment Department, Chief Officers, Strategic Leads, Heads of Service and Team Managers, will be responsible for ensuring that all officers are familiar with the policy requirements and carry out their duties in accordance with, this Enforcement Policy.

In recognition of H&F's diverse community and to support the principles in this enforcement policy of transparency, consistency, proportionality, targeting and helpfulness, we want to:

- a) follow the [good practice that the Health and Safety Executive has shown](#) and commit to **working with diverse businesses to ensure equality for all**. The HSE has recognised that to be successful they need to be an organisation which *"understands the diverse society in which it operates, which is clear about the impact of its policies and operations on that diverse society, and which conducts its business with sensitivity and respect for people's different needs, vulnerabilities and perspectives on life"*;
- b) ensure that we minimise the impact of our enforcement actions on diverse businesses, which could unintentionally lead to race and other inequalities;
- c) improve any perceived negative perception that diverse businesses may have of local government regulators;
- d) raise awareness about how our services can support individuals and families in diverse communities with easy access to advice and protection, to minimise any inadvertent race or other inequalities;
- e) increase the reporting of rogue and/or non-compliant business operations and landlords within diverse communities; so that reputable businesses can thrive and grow and to improve the safety, health and wellbeing of our residents.

We will achieve this goal by:

- improving the equalities monitoring of our enforcement actions and outcomes to enable us to have good data to use with equality impact assessment tools;
- using our monitoring and other data to make improvements to the way in which we communicate, help, engage with and support diverse businesses;
- making better use of business intelligence and other monitoring data to improve our targeted communications when reaching out to a diverse range of people and organisations to understand and address any potential barriers to communication.
- responding positively to requests for information in alternative formats or by specific officers, where capacity and availability of resources, will allow;
- making better use of available training, information and research to provide information about race and other diversity issues, so that we can engage in a more helpful way;
- providing unconscious bias and other equalities training for all our officers; and
- improving the diversity of advisory/consultee bodies and stakeholder networking.

## 7.0 REVIEW OF THE ENFORCEMENT POLICY

Other Council services and interested parties, like Legal Services, businesses and the Police, will be consulted in respect of future revisions of this Policy. It will be reviewed annually.

## 8.0 COMPLAINTS ABOUT THE SERVICE

If anyone wishes to complain about enforcement action they may do so initially by contacting the relevant Team Manager by telephone on 020 8753 1081.

Team Managers can also be contacted by e-mail at [regulatoryservices@lbhf.gov.uk](mailto:regulatoryservices@lbhf.gov.uk) or by writing to them at: Hammersmith Town Hall, King Street, London, W6 9JU.

Where possible, a complaint will be investigated within 15 working days. A complainant will be advised at the outset about how the complaint will be dealt with and when to expect information on the progress of the investigation.

Complaints from tenants of Registered Social Landlords (RSL) relating to housing matters will be dealt with in the manner laid out in the RSL Protocol. We will mediate where there are continuing disputes or difficulties, encouraging tenants to follow the RSL's complaint procedures, and will intervene where we foresee an immediate risk to health or safety.

If a complainant is dissatisfied with the result of their complaint to the Team Manager, the complaint will be reviewed at a higher level, and may ultimately be dealt with by the Strategic Director. The formal complaints procedure is on the Council's website: [www.lbhf.gov.uk](http://www.lbhf.gov.uk).

## 9.0 PUBLICITY AND HOW TO CONTACT US

We will normally publicise details of any convictions to draw attention to the need to comply with the law and to deter others. Where appropriate, the media will also be provided with factual information about charges that have been laid before the Courts, any pending formal action and any enforcement action already taken.

A register of health and safety notices, which affect the public, is also available to view on request, at the Council Offices.

The names of companies and individuals convicted of breaking health and safety law in the previous 12 months will be published annually by the HSE.

In keeping with the spirit of the Freedom of Information Act and the Environmental Information Regulations, the Council publishes an increasing amount of information on its website: [www.lbhf.gov.uk](http://www.lbhf.gov.uk). Anyone wishing to make an official request for information should contact our h&f InTouch Team on 020 8753 2456 for advice.

### Contacting us

This policy document is freely available to the public on the Council's website, or as a paper copy on request to the Chief Officer of Safer Neighbourhoods and Regulatory Services, Hammersmith Town Hall, King Street, London, W6 9JU, Telephone: 020 8753 1081, or via email at [regulatoryservices@lbhf.gov.uk](mailto:regulatoryservices@lbhf.gov.uk).