

London Borough of Bromley
Environmental Services
Enforcement Policy

Adopted by the Council
(Date)

ENVIRONMENTAL SERVICES ENFORCEMENT POLICY

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SUMMARY

The enforcement policy provides guidance to Councilors, Officers, businesses and individuals on the range of options that are available to achieve compliance with legislation enforced by the London Borough of Bromley (The Council).

The primary objective is to achieve regulatory compliance recognising that prevention through education and advice is preferable; however there will be instances where it becomes necessary to take formal action against a business, or individual.

A wide range of enforcement mechanisms are available to Officers working in the Environmental Services Directorate, ranging from informal action such as verbal warnings to formal action such as formal notices and prosecution.

In all instances an enforcement method that is relevant and proportionate to the offence or contravention will be used and this will include taking into account an individual's or a business's past history. The policy is built around a process of escalation. Prosecutions will only take place in circumstances where a defendant has acted willfully and where their actions are likely to cause material loss or harm to others, or where they have ignored written warnings or formal notices, endangered, to a serious degree, the health, safety or well being of people, animals or the environment, or assaulted or obstructed an officer in the course of their duties.

Environmental Services covers a wide range of functions and this enforcement policy encompasses these, however a separate section has been prepared for Health & Safety enforcement to meet the expectations of the Health and Safety Executive. (See appendix ii for the Occupational Health, Safety & Welfare Enforcement Policy).

This policy is designed to help the reader understand the objectives of the council's Environmental Services, the methods for achieving compliance and the criteria that is considered when deciding what the most appropriate response is to a breach of legislation. The policy is supported by detailed procedures for enforcement officers

All decisions will have regard to current statutory guidance and codes of practice, particularly the Regulators' Compliance Code, the Code for Crown Prosecutors and the Human Rights Act 1998.

Introduction

Bromley's Environmental Services Directorate is responsible for the enforcement of a wide range of law (or statutory provisions) which is centered mostly on securing public health and safety, the regulation of the trading environment and the protection of the environment.

It is accepted that most businesses and individuals wish to comply with the law. This policy aims firstly, to help business and individuals avoid coming into conflict with the law and secondly, provides information on the application of any enforcement provisions if these are deemed necessary i.e. that it is:

- **proportionate** to the offence and risks, and mindful of any previous transgressions;
- **transparent** - in that any person affected understands what is expected of them, what they should expect from the local authority and the reasons for the action;
- **consistent** in approach, and appropriate.

Copies of this policy are available from
 Environmental Services
 Bromley Civic Centre,
 Stockwell Close BR1 3UH
 tel 0208 464 3333 during normal working hours or from the Council website
 (www.bromley.gov.uk)

Whenever possible, Environmental Services will work in partnership with other departments, agencies and authorities to achieve common goals on matters of mutual concern. These include

- Safer Bromley Partnership
- Metropolitan Police
- London Fire Brigade
- Health and Safety enforcing authorities
- Planning Dept.
- Trading Standards
- Public Health Nuisance Team
- Children's Safeguarding Board
- Veterinary Surgeons and Animal Health Inspectors
- DVLA

The following documents have been produced to ensure a high standard of compliance. These also make sure that compliance is assessed in a consistent and fair manner:

- Public Protection services inspection and complaint procedures
- The Enforcement Concordat (Summary in Appendix A)

- The Council's Statement of Licensing Policy – Licensing Act 2003
- The Councils Statement of Licensing Policy – Gambling Act 2005

General advice

The aim of this enforcement policy is to ensure compliance with legislation, in all areas covered by Environmental Services by:

1. Assisting and supporting individuals and businesses so that they do not breach legislative requirements;
2. Setting out a graduated approach to enforcement, trying wherever possible to resolve matters in an informal manner; and

The service will advise individuals and businesses directly on how to follow legislative requirements, and will promote and encourage good practice in all circumstances. Advice will be provided by:

- responding to enquiries;
- Attending informal meetings e.g. residents associations, business forums
- using media, leaflets and the internet;
- running events which could include training courses, seminars and forums

INVESTIGATIONS

Inspections and investigations will be carried out in a thorough professional and consistent manner as set out below.

Authorisations

Officers authorised by the Council under the various statutes will be responsible for undertaking investigations. They will only be authorised to deal with such investigations as they have qualifications or experience to undertake in accordance with documented procedures. Officers are issued with a personal warrant card, which will be carried with them at all times and will be shown upon request.

Targetting

Enforcement activities will be targeted towards situations which carry higher risks or where there is or could be a considerable impact as a result of the non-compliance with the law. Enforcement activities may also be targeted towards individuals who are primarily responsible, who have the greatest responsibility to ensure compliance with the law or who have been the subject of previous enforcement action. From time to time, the service may engage in enforcement initiatives which are directed towards issues where there is a need to draw attention to the existence of legislation and its enforcement.

Risk Assessments

Risk assessments are carried out according to the individual merits of a particular business regulatory area and always in conjunction with the view to protecting health and safety.

The approach of using risk assessments allows officers to carry out more frequent inspections for high risk activities and to provide advice on how to reduce any risk.

Levels of Enforcement

Business or individuals are expected to comply with legislation and ignorance of the law is no defence.

The term 'enforcement' covers a wide variety of activities, ranging from informal action such as verbal warnings to formal action such as notices and prosecution.

Minor breaches of requirements will normally be dealt with using an informal approach. More serious breaches or a continual pattern of minor breaches will normally involve a formal approach.

Where informal methods have been unsuccessful, or a serious breach of the law has occurred or is likely to occur which may endanger the health and safety of the public, formal enforcement mechanisms will be taken to ensure compliance.

General Principles

Prevention is better than cure and the role of the Service involves actively working with individuals and businesses to advise on, and assist with compliance.

Where it is considered that formal action is necessary each case will be considered on its own merits. However, there are general principles that apply to the way each case must be approached. These are set out in this Policy and in the Regulators' Compliance Code.

For more information about the Regulators' Compliance Code visit: http://bre.berr.gov.uk/regulation/reform/enforcement_concordat/index.asp

This enforcement policy helps to promote efficient and effective approaches to enforcement, which improve outcomes without imposing unnecessary burdens. This is in accordance with the Regulator's Compliance Code. In certain instances it may be concluded that a provision in the code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

Enforcement decisions will be fair, independent and objective and will not be influenced by issues such as ethnicity or national origin, gender, religious beliefs,

political views or sexual orientation. Such decisions will not be affected by improper or undue pressure from any source.

The service will take into account the views of any victim, injured party or relevant person to establish the nature and extent of any harm or loss, and its significance, when considering the appropriate level of enforcement.

Notifying Alleged Offenders

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

During the progression of enforcement investigations/actions, 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 1998.

Levels of enforcement action:

Under normal circumstances, a process of escalation will be used until compliance is reached starting at the lowest appropriate level.

Exceptions would be where there is a serious risk to public safety, animals or the environment or the offences have been committed deliberately or negligently or involve deception, or where there is significant economic detriment.

Examples of the main types of action that can be considered are shown below:

Informal

- No action;
- Information, advice and guidance
- Verbal Warnings
- Written Warnings

Formal

- Fixed Penalty Notices;
- Penalty Charge Notices;
- Formal Notice;
- Forfeiture Proceedings;
- Seizure of goods/equipment;
- Injunctive Actions;
- Review of a licence (Licensing Act 2003, Gambling Act 2005)
- Refusal/revocation of a licence;

- Simple Caution;
- Prosecution;
- Proceeds of Crime Applications.

In assessing what enforcement action is necessary and proportionate, consideration will be given to:

- The seriousness of compliance failure
- The individual or business's past performance and its current practice;
- The risks being controlled;
- Legal, official or professional guidance;
- Local priorities of the Council.

No Action

In certain circumstances, contraventions of the law may not warrant any action. This can be where the breach is of very minor nature with inconsequential risk, the cost of compliance to the offender outweighs the detrimental impact of the contravention, or the cost of the required enforcement action to the Council outweighs the detrimental impact of the contravention on the community. A decision of *no action* may also be taken where formal enforcement is inappropriate in the circumstances, such as where a trader has ceased to trade, or the offender is elderly, frail or seriously ill and formal action would seriously damage their wellbeing. In such cases we will advise the offender of the reasons for taking no action.

Informal Action and Advice

For minor breaches of the law, verbal or written advice may be given. Any contraventions of the law will be clearly identified and advice given on how to put them right, including a deadline by which this must be done. The time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of the non-compliance.

Sometimes offenders will be advised about 'good practice', but there will be a clear distinction between what they *must do* to comply with the law and what is advice only. Failure to comply could result in an escalation of enforcement action.

Warning

If there has been a minor incident where the law has been broken, it may be decided that the most appropriate course of action is to issue the offender with a verbal and or written warning. Previous warnings will be taken in to account when considering taking formal action.

A written warning will:

- clearly state the nature of the problem and suggest either specific remedies or a standard to achieve
- state the actions which may follow if matters do not improve

- designate a named officer as a point of contact
- clearly distinguish between legal requirement and desirable standard
- indicate any follow up action e.g. a re-visit in 14 days
- offer to work with the person(s) responsible in finding a solution
- point the way to specialist advice or additional information
- be firm, businesslike, unambiguous, polite and helpful

Fixed Penalty Notices and Penalty Charge Notices

Certain offences are subject to Fixed Penalty Notices or Penalty Charge Notices e.g. noise nuisance from licensed premises or litter. They are recognized as a low-level enforcement tool and avoid a criminal record for the defendant.

Where legislation permits an offence to be dealt with by way of a Fixed Penalty Notice or a Penalty Charge Notice this may be administered on a first occasion, without issuing a warning first.

Failure to pay the Fixed Penalty Notice will result in the offender being prosecuted for the original offence.

Failure to pay the PCN will result in the offender being pursued in the County Court for non-payment of the debt.

Formal Notice

Certain legislation allows notices to be served requiring offenders to take specific actions or cease certain activities. Notices may require activities to cease immediately where the circumstances relating to health, safety, environmental damage or nuisance demand. In other circumstances, the time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of the non-compliance.

All notices issued will include details of any applicable Appeals Procedures.

Non compliance with a Formal Notice will always be considered for prosecution.

Certain types of notice allow works to be carried out in default. This means that if a notice is not complied with (a breach of the notice) any necessary works to satisfy the requirements of the notice may be carried out by the council. Where the law allows, a charge may be levied against the person/business served with the notice for any cost incurred in carrying out the work.

Seizure

Certain legislation enables authorised officers to seize goods, equipment or documents for example unsafe food, sound equipment that is being used to cause a statutory noise nuisance, unsafe products or any goods that may be required as evidence for possible future court proceedings. When goods are

seized the person from whom the goods are taken will be given an appropriate receipt.

Forfeiture Proceedings

This procedure may be used in conjunction with seizure and/or prosecution where there is a need to dispose of goods in order to prevent them re-entering the market place or being used to cause a further problem. In appropriate circumstances an application for forfeiture will be made to the Magistrates' Court.

Closure

Certain legislation enables authorised officers to close business activities with immediate effect in some instances or after a period of notice. For example food businesses presenting an immediate risk to health or some unlicensed activities such as selling alcohol. Action to close a business activity will only be taken where the officer is satisfied that the circumstances are such that the risk to health or breach is sufficiently serious.

Injunctive Actions

In certain circumstances, for example, where offenders are repeatedly found guilty of similar offences or where it is considered that injunctive action is the most appropriate course of enforcement, then injunctive actions may be used to deal with repeat offenders, dangerous circumstances or significant consumer detriment.

Under the Enterprise Act 2002; proceedings may be brought where an individual or organisation has acted in breach of community or domestic legislation with the effect of harming the collective interests of consumers. In most circumstances action will be considered where there have been persistent breaches or where there is significant consumer detriment. Action can range from:

- Informal undertakings;
- Formal undertakings;
- Interim Orders;
- Court Orders;
- Contempt Proceedings.

Anti Social Behavior Orders: Where non-compliance law amounts to anti-social behavior such as persistent targeting of an individual or a group of individuals in a particular area then, following liaison with the Council's Anti-Social Behavior Unit where appropriate, an ASBO will be sought to stop the activity.

Refusal, Suspension and Revocation of Licence

Where there is a requirement for a business to be licensed by the local authority, the licence may be granted unless representations or objections are received

against the application. In such cases the Licensing Committee will hear the case and decide to grant, grant with conditions, or refuse the licence application.

The Councils scheme of delegation requires that all licensing applications where refusal, suspension or revocation are possible are decided a licensing sub committee

Under the Licensing Act 2003, where a Review of a Premises Licence is sought under Section 51 of the Act, the options available to the Licensing Committee are:-

- To modify the conditions of Licence
- To exclude a Licensable activity from the scope of the Licence
- To removed the Designated Premises Supervisor
- Suspend the Licence for a period not exceeding three months
- Revoke the Licence
- Issue a warning letter
- No action

Where a review is based on criminal activity the licensing authority's duty is to take steps with a view to the promotion of the licensing objectives in the interests of the wider community and not those of the individual holder of the premises licence. Where this is the case deterrence is an appropriate consideration.

Under the Gambling Act 2005, where a Review of a Premises Licence is sought under Section 202 of the Act, the options available to the Licensing Committee are:-

- Revocation of the Licence
- Suspend the Licence for a specified period not exceeding three months
- Exclude a condition attached to the Licence, under Section 168 or remove or amend an exclusion
- Add, remove or amend a condition under Section 169

Simple 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 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 Caution;
- The offender must be 18 years or over.

For details on the Home Office guidance (Circular 30/2005) visit:
<http://www.homeoffice.gov.uk>

We will also take into account the following when making our decision:

- The offender should not have received a simple caution for a similar offence within the last 2 years.

A record of the Caution will be kept on file for 2 years and in appropriate circumstances will be submitted to the Consumer Regulation Website.

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

Determining whether a Prosecution or Simple Caution is viable and appropriate

Two 'tests' will be applied to determine whether a Prosecution or Caution is viable and appropriate. Guidance set by the Crown Prosecution Service will be followed when applying the tests:

For more information about the 'Code for Crown Prosecutors' visit:

http://www.cps.gov.uk/victims_witnesses/code.html

A Caution or Prosecution proceedings will only be progressed if the case has passed both the evidential test and the public interest test. The principles outlined apply equally to the other types of formal enforcement action that are available.

The Evidential Test

The service must be satisfied that there is enough 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. A jury or Magistrates' Court should only convict if it is sure of a defendant's guilt.

The Public Interest Test

The public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. Factors for and against prosecution will be balanced 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. Some factors may increase the need to prosecute but others may suggest that another course of action would be better.

Prosecution

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

- Deliberately, negligently or persistently breached legal obligations, which were likely to cause material loss or harm to others;
- Deliberately or persistently ignored written warnings or formal notices;
- Endangered, to a serious degree, the health, safety or well being of people, animals or the environment;
- Assaulted or obstructed an Officer in the course of their duties.

Proceeds of Crime Applications

Applications may be made under the Proceeds of Crime Act for confiscation of assets in serious 'criminal lifestyle' cases. Their purpose is to recover the financial benefit that the offender has obtained from his criminal conduct. Proceedings are conducted according to the civil standard of proof. Applications are made after a conviction has been secured.

Who decides what enforcement action is taken

Decisions about the most appropriate enforcement action to be taken are based upon professional judgment, legal guidelines, statutory codes of practice and priorities set by the Council and/or Central Government.

Where appropriate, decisions about enforcement will involve consultation between or approval from:

- Investigating Officer(s);
- Senior managers from Environmental Services ;
- Council Solicitors;

All enforcement related decisions will only be taken by Officers authorised under the Councils Scheme of Delegation.

Covert Surveillance

On rare occasions in the interests of public safety or to detect crime, certain officers may be authorised to carry out surveillance of individuals as part of their investigations. This may include using remote sound or video monitoring equipment as well as personal observation.

Where covert surveillance is necessary the requirements of the Regulation of Investigatory Powers Act 2000 will be complied with.

Requests for the authorisation of surveillance will be made in writing by the investigating Officer. All such requests will be accompanied by a statement which details the reason why covert surveillance is appropriate and proportionate, how it is to be undertaken, who is likely to be involved and any impact that might result from the surveillance.

Covert surveillance will only be undertaken with the express permission of an authorised manager who is not directly involved with the investigation.

A register of authorised covert surveillance operations under Regulation of Investigatory Powers Act will be held by the Council. Authorisations will not be made public whilst there is an on-going investigation.

Liaison with other regulatory bodies and enforcement agencies

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

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

Intelligence relating to wider regulatory matters will be shared with other regulatory bodies and enforcement agencies, examples including:

- Government Agencies;
- Police Forces;
- Fire Authorities;
- Statutory undertakers;
- Other Local Authorities.

Considering the views of those affected by offences

Enforcement will be undertaken on behalf of the public at large and not just in the interests of any particular individual or group. However, when considering the public interest test, the consequences for those affected by the offence, and any views expressed by those affected will, where appropriate, be taken into account when making enforcement decision.

Protection of Human Rights

The Council recognises the rights of individuals, especially those outlined under the Human Rights Act 1998. At all times, the Human Rights of the individual will be considered. Of particular importance to the Council's enforcement policy are Article 6 (the right to a fair trial) Article 8 (the right to respect for private and family life) and Protocol 1, Article 1 (Protection of property).

Review of the Enforcement Policy

This Policy will be reviewed as necessary but at least once every three years.

Complaints about the Service

If anyone wishes to complain about enforcement action they may do so initially by contacting the

Environmental Services Directorate
London Borough of Bromley
Civic Centre
Stockwell Close
Bromley BR 1 3UH

tel: 0208 464 3333
or by email to corporate.complaints@bromley.gov.uk

It is also possible to complete a complaint form online at: www.bromley.gov.uk

What will happen next?

The complaint will usually be investigated by the manager responsible for providing the service. They will try to sort out any problem as quickly as possible - mistakes and misunderstandings can often be sorted out on the spot. If not, the complaint will normally be responded to within five working days. If the issue is very complicated, a longer period might be necessary but nevertheless will aim to reply within 20 working days, letting the complainant know if that is the case.

If the complainant is unhappy with this response, the Chief Officer of the department can be contacted who will either investigate the complaint personally or will nominate a senior officer to carry out the investigation.

If still unhappy with this reply, the complainant can appeal to the Chief Executive, who will review the complaint

Appeals against Enforcement Action

Where we take enforcement action and there is a legal right of Appeal we will inform the individual or business about this and the timescale in which they must act. Making a complaint, as outlined above, is not the same as lodging an appeal. An individual or business may wish to do both and are advised to take independent legal advice.

Appendix i: Principles of the Enforcement Concordat

The Enforcement Concordat specifies the principles of good enforcement. The Council has decided accordingly that enforcement action will reflect the following principles;

Proportionality – Action that we may decide to take must reflect the actual risk to public health or safety.

Transparency – We will endeavour to ensure that those subjected to any form of enforcement clearly understand the reasons for action being taken and can easily recognise the difference between legal requirements and advice or guidance.

Consistency – The service will strive to achieve consistency of enforcement such that actions taken and decisions reached will be similar in similar circumstances.

Targeting – The service will prioritise scheduled inspections in order to focus on activities that represent the most serious risks or premises where hazards are least well controlled.

Equality and Fairness – We aim to demonstrate a fair and even handed approach to our enforcement activities. The Council will act in a manner that is responsive to the needs of any party that is involved in enforcement issues and will act in a manner that is especially sensitive to the needs of those that may be particularly vulnerable during the enforcement process (for example minors). Decisions will not be influenced by gender, ethnic origin, religious or political beliefs, whether or not any party has a disability or the sexual orientation of the alleged offender or those of any victims, witnesses or any other party involved in the enforcement process.

Accountability – The Council and its Officers are accountable for its enforcement actions. We will follow our published procedures and policies and ensure we follow them when making enforcement decisions. We will explain why enforcement action has been or has not been taken when requested. We will give details of how to appeal against or challenge enforcement actions.

Appendix ii: Occupational Health, Safety & Welfare Enforcement Policy