



London Borough of Hammersmith & Fulham

Cabinet

29 MARCH 2010

**CABINET MEMBER
FOR CRIME AND
STREET SCENE**

Councillor Greg Smith

UPDATED ENFORCEMENT POLICY

**Wards
All**

The Enforcement Policy (attached as Appendix 1), has been adapted to reflect the recent corporate restructure and the requirements of the Regulators Compliance Code. Specific references to Public Protection & Safety have been removed to allow a widened range of enforcement activities to be included to cover Private Housing Services and the Street Scene and Waste Management Teams in Resident's Services.

CONTRIBUTORS

ADPPS
ADLDS
DFCS

Recommendation:

That the adoption of the updated Enforcement Policy, attached as Appendix 1 to this report, be approved.

<p>HAS A PEIA BEEN COMPLETED? YES</p>
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1. BACKGROUND

- 1.1 The Council is responsible for enforcing a wide variety of legislation and consequently delegates powers to individual officers to take enforcement action where necessary. The decision to take (or not to take) enforcement action is a serious one that may have implications for all involved and it is important that we have a policy in place that ensures, amongst other things, fairness and consistency.
- 1.2 The table in Appendix 2 sets out a summary of the enforcement activity carried out by just one division of the Council (Public Protection and Safety) in 2008/09. Enforcement of legislation is a primary function of the division and the number of activities shown reflects the need to have a robust Enforcement Policy. The Public Protection and Safety division has had an Enforcement Policy in place since 2002.

2. PROPOSALS

- 2.1 The Public Protection and Safety Division's Enforcement Policy was last updated in October 2006 to ensure that it achieved compliance with Best Value Performance Indicator (BVPI) 166 (a) and (b). Compliance with the BVPI was discretionary but the scores were published and used both to compare performance between local authorities and to drive continuous improvement. In April 2008, all of the BVPIs were replaced by 198 new performance indicators as part of the National Performance Framework for Local Government. The new indicator set does not contain an equivalent to BVPI 166.
- 2.2 Enforcement Policy has, until now, also been guided by the six principles of good enforcement set out in the 1998 Enforcement Concordat. Those principles were:
 - Performance will be measured against published standards;
 - There will be openness in dealing with businesses and others;
 - Enforcement officers will be helpful, courteous and efficient;
 - Complaint procedures will be published;
 - Enforcement decisions will be proportionate to the circumstances;
 - Enforcement officers will strive for high standards of consistency.
- 2.3 The Regulators' Compliance Code came into effect on 1 April 2008, effectively replacing the Enforcement Concordat.
- 2.4 **The Regulators' Compliance Code**

The Code is a new statutory Code of Practice for Regulators, requiring that we have regard to the following specific factors.

Economic progress – Regulators should consider the impact that their regulatory intervention may have on economic progress, especially on small businesses.

Risk Assessment – The Code puts risk assessment at the forefront of decision making, requiring that it informs all aspects of regulatory activity including data collection, inspection, advice and enforcement.

Advice and Guidance – Regulators should ensure that all legal requirements are promptly communicated to regulated entities and provide general information, advice and guidance. This includes distinguishing between legal requirements and best practice.

Inspections and other visits – There should be no inspection without a reason and greatest effort should be focused where both failure to comply with the law would pose a serious risk and there is a high likelihood of non-compliance.

Enforcement actions and sanctions – Regulators should take a light touch approach to regulated entities that regularly achieve good compliance levels. Suspected breaches should be discussed with regulated entities prior to enforcement actions being taken and any sanctions should be consistent with the principles of proportionality and flexibility set out in the Macrory review. Namely they should:

- Aim to change the behaviour of the offender;
- Aim to eliminate any financial gain or benefit from non-compliance;
- Be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with criminal conviction;
- Be proportionate to the nature of the offence and the harm caused;
- Aim to restore the harm caused by regulatory non-compliance; and
- Aim to deter future non-compliance.

Clear reasons should be given to a person against whom enforcement action is being taken, at the time the action is taken. Those reasons should be confirmed in writing at the earliest opportunity. Any relevant complaint or appeals procedures should be explained at the same time. Inspectors and Enforcement staff should interpret and apply their legal requirements and enforcement policies consistently and fairly.

Accountability – Regulators should create effective consultation and feedback opportunities to enable continuing cooperative relationships with regulated entities. They should ensure that employees provide courteous and efficient services to regulated entities and others and take account of comments from regulated entities regarding the behaviour of enforcement staff.

2.5 Enforcement Policy (Appendix 1)

The Enforcement Policy has been re-written to reflect the above factors, the corporate restructure and to ensure that it can be adopted by other Divisions within the Council. Specific references to Public Protection & Safety have been removed to allow a widened range of enforcement activities to be included to cover Private Housing Services, Street Scene and Waste Management Teams in Residents' Services.

Its emphasis is on helping businesses and individuals understand the circumstances under which we may follow a particular course of action rather than how we actually do it. Sections explaining detailed internal procedures, which inevitably change over time and can therefore quickly become outdated and irrelevant, have been removed from the Policy.

Other significant alterations include an update in relation to Proceeds of Crime Applications and the addition of the new sanctions of Fixed Penalty Notices and Penalty Charge Notices.

The Enforcement Policy recognises that it is necessary to protect the consumer and the environment and that where businesses persistently and deliberately flout the law or put the safety of others at risk, there must be effective sanctions.

3. ALTERNATIVE OPTIONS

3.1 None; the enforcement policy requires updating.

4. CONSULTATION UNDERTAKEN OR PROPOSED

4.1 The draft Enforcement Policy has been displayed on the LBHF website since August 2009 and some 1,700 businesses throughout the borough were invited to comment. No comments have been received.

4.2 Officers within the Environment Services Department have been consulted and any comments or suggestions have been incorporated into the policy where appropriate.

4.3 Officers within the Residents' Services Department have been consulted and any comments or suggestions have been incorporated into the policy where appropriate.

4.4 When adopted, the policy will be published on the internet and distributed on request.

5. RISK MANAGEMENT

- 5.1 Failure to meet new and existing statutory requirements is specifically addressed in the Environment Services Department's risk register. Controls in place to mitigate this risk include training, internal auditing, periodic updates of the scheme of delegation and the business planning process.

6. COMMENTS OF THE DIRECTOR OF FINANCE AND CORPORATE SERVICES

- 6.1 There are no financial implications associated with this report.

7. COMMENTS OF THE ASSISTANT DIRECTOR (LEGAL AND DEMOCRATIC SERVICES)

- 7.1 Compliance with the Enforcement Policy would support enforcement actions and the instigation of prosecutions in appropriate cases. Failure to comply could compromise and prejudice such action.

LOCAL GOVERNMENT ACT 2000 LIST OF BACKGROUND PAPERS

No.	Description of Background Papers	Name/Ext of holder of file/copy	Department/ Location
1.	Regulators Compliance Code	Iain McCord ext 4920	Environment Services
2.	The existing Public Protection & Safety Enforcement Policy.	Iain McCord ext 4920	Environment Services
CONTACT OFFICER:		NAME: Iain McCord EXT: 4920	

Appendix 1 ENFORCEMENT POLICY

1. Introduction

1.1 In 1998 the London Borough of Hammersmith & Fulham (LBHF) signed up to the Enforcement Concordat as commended by the Cabinet Office and the Local Government Association. The Concordat lays down the principles of good practice to ensure fair, practical and consistent enforcement and those principles are reflected in this policy.

1.2 The enforcement of legislation is an important function within the Council and the effective discharge of this requires the prosecution/cautioning of offenders in appropriate cases. Additionally, the potential for legal offences is created by the service of notices under a number of statutes. The decision to take (or not to take) enforcement action is a serious one and any such action may have implications for all involved. The Council applies this policy to ensure that:

- Decisions about enforcement action are fair, proportionate and consistent;
- Officers apply current Government guidance and relevant codes of practice;
- Everyone understands the principles that are applied when enforcement action is considered.

1.3 This policy must therefore guide all officers who are involved in investigating cases, serving notices and recommending or deciding upon the commencement of legal proceedings. When any officer is in any doubt as to how to apply the policy, he/she should seek the guidance of senior officers and ensure that adequate information is available so that decisions may be reached correctly. Any individuals or businesses who may potentially be affected by the policy can access it in the following ways:

- From the council web site at www.lbhf.gov.uk
- Via e-mail (environmentalprotection@lbhf.gov.uk),
- By phone on 020 8753 1081
- In person from the Environment Services Department reception on the 3rd Floor, Town Hall Extension, King Street, London W6 9JU.
- In writing addressed to The Public Protection & Safety Division at the 5th Floor, Town Hall Extension, King Street, London W6 9JU.

1.4 'Enforcement' includes any action taken by officers aimed at ensuring that individuals or businesses, including Local Authority managed premises, comply with the law. This is not limited to formal enforcement action such as prosecution.

1.5 This document promotes efficient and effective approaches to regulatory inspection and enforcement which improve regulatory

outcomes without imposing unnecessary burdens. This is in accordance with the Regulators' Compliance Code, a copy of which can be found at: <http://www.berr.gov.uk/files/file45019.pdf>

- 1.6** Whilst the general principles outlined below will apply in all cases it must be recognised that 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 conclude that a provision in the Regulators' Compliance code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code or any other of the general principles will be properly reasoned, based on material evidence and documented.

2. General Principles

- 2.1** Prevention is better than cure and our role therefore 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 statutory requirements and advice or guidance about what is desirable but not compulsory, thereby minimising the cost of compliance by requiring proportionate action.
- 2.2** We aim to risk assess our regulatory activities through the annual business planning process, targeting 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, as a response to intelligence or as part of our risk assessment process. Greatest effort will be focussed where failure to comply would pose a serious risk and there is a high likelihood of non-compliance.
- 2.3** 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, or endanger the health, safety and wellbeing of people or our neighbourhood.
- 2.4** 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, political views or the sexual orientation of the suspect, victim, witness or offender. Such decisions will not be affected by improper or undue pressure from any source.
- 2.5** We 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, in making the decision to take formal action.

2.6 The London Borough of Hammersmith & Fulham is a public authority for the purposes of the Human Rights Act 1998. We will therefore apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms. In particular, and where relevant, we will comply with the Regulation of Investigatory Powers Act 2000 (RIPA) when conducting investigations into alleged non-compliances.

3. Notifying Alleged Offenders

3.1 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.

3.2 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. Information gathered during such investigations will be subject to the restrictions on disclosure laid out in the Enterprise Act 2002

4. The Appropriate Level of Enforcement Action

4.1 The level of enforcement action that may be taken varies from no action through to formal proceedings in court. Examples of the main types of action that can be considered are shown below.

- No action;
- Informal action and advice;
- Formal Notice;
- Fixed Penalty Notices;
- Penalty Charge Notices;
- Forfeiture Proceedings;
- Seizure of goods/equipment;
- Works in Default;
- Injunctive Actions;
- Refusal/Revocation of a Licence;
- Simple Caution;
- Prosecution.

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

- The seriousness of compliance failure;
- The business's past performance and its current practices, including response to previous advice;
- The risks being controlled;
- Legal, official or professional guidance;

- Local priorities of the Council.
- 4.3** Under normal circumstances, a process of escalation will be used until compliance is reached. Exceptions may occur where there is a serious risk to public safety or the environment or the offences have been committed deliberately or negligently or involve deception, or where there is significant economic detriment.
- 4.4** In certain circumstances, legislation allows an officer to serve a notice requiring action to be taken or, that certain operations/activities be stopped immediately. The service of a legal notice may be followed by an investigation into the cause of the breach and further enforcement action, including prosecution may ensue. 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 prescribed under legislation.
- 4.5** Certain offences are subject to Fixed Penalty Notices where prescribed by legislation. They are normally appropriate for offences at the minor end of the scale and avoid the defendant gaining a criminal record. Where legislation permits an offence to be dealt with by way of a Fixed Penalty Notice, we may (subject to evidential and public interest tests – paragraphs 5.3 & 5.4 below) chose to administer one on a first occasion, without issuing a warning. A Fixed Penalty Notice would not normally be appropriate for a repeat offence.
- 4.6** 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.
- 4.7** Decisions about the most appropriate enforcement action will be based upon professional judgement, legal guidelines, statutory codes of practice and priorities set by the Council and Central Government. Any sanctions or penalties will be applied according to the principles which emerged from the Macrory review regarding the elimination of financial gain or benefit from non-compliance, proportionality and deterrence of future non-compliance.
- 4.8** Clear reasons for any formal enforcement action will be given at the time the action is taken. These reasons will be confirmed in writing at

the earliest opportunity and any relevant complaints or appeals procedures will be explained.

- 4.9 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 any criminal conduct. Applications are made after a conviction has been secured.

5. The Decision to Prosecute/Issue a Simple Caution

- 5.1 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: [Code for Crown Prosecutors](#).

- 5.2 A Simple Caution or Prosecution proceedings will only be progressed when 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 actions that are available.

5.3 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.

5.4 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 suspect. Some factors may increase the need to prosecute whilst others may suggest that another course of action would be more appropriate.

6. Liaison with other regulatory bodies and enforcement agencies

- 6.1 Where appropriate, enforcement activities will be coordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement.
- 6.2 We will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies. These may include (but

are not limited to) Government Agencies and Departments, other Local Authorities, Police Forces and Fire Authorities.

7. Implementation of the Enforcement Policy

7.1 The relevant Assistant Directors, Heads of Operations and individual Service Managers will be responsible for ensuring that all enforcement officers are familiar with the requirements of and carry out their duties in accordance with this Enforcement Policy.

8. Review of the Enforcement Policy

8.1 This Policy will be reviewed annually.

APPENDIX 2**Enforcement Activity 2008/09
Public Protection & Safety Division**

Private Housing	Notices served	106
	Notices complied in default	1
Pollution Control	Complaints investigated	1853
	Notices served	109
Noise Control	Complaints investigated	7841
	Notices served	341
	Notices complied in default	16
	Summonses and Simple Cautions	14
	Equipment seized	9
Food Safety	Complaints investigated	210
	Food Hygiene inspections	1121
	Informal advice/written warnings	1121
	Improvement Notices served	16
	Summonses and Simple Cautions	4
Public Health	Complaints investigated	1424
	Notices served	22
	Notices complied in default	8
Health & Safety	Complaints investigated	180
	Inspections carried out	294
	Informal advice/written warnings	294
	Improvement Notices served	2
	Prohibition Notices served	5
Trading Standards	Complaints investigated	798
	Informal advice/written warnings	371
	Prosecutions commenced	7
	Under-age test purchase attempts	66