

	<p align="center">London Borough of Hammersmith & Fulham</p> <p align="center">CABINET</p> <p align="center">2 MARCH 2015</p>
<p>REVISED ENFORCEMENT POLICY FOR THE ENVIRONMENTAL HEALTH SERVICE GROUP</p>	
<p>Report of the Cabinet Member for Environment, Transport and Residents Services : Councillor Wesley Harcourt</p>	
<p>Open Report</p>	
<p>Classification - For Decision</p> <p>Key Decision: Yes</p>	
<p>Wards Affected: All</p>	
<p>Accountable Executive Director: Nigel Pallace</p>	
<p>Report Author: Valerie Simpson, Bi-borough Head of Environmental Health (Licensing and Trading Standards)</p>	<p>Contact Details: Tel: 020 8753 3905 E-mail: valerie.simpson@lbhf.gov.uk</p>

1. EXECUTIVE SUMMARY

- 1.1. On 6 April 2014 the [Regulators' Code](#) (the 'Code') came into effect. Officers within the Environmental Health Service Group, as regulators, have a statutory duty to have regard to the Code.
- 1.2. The Code requires that Enforcement Policies are updated to reflect the new requirements of the Code.
- 1.3. The Revised Enforcement Policy for the Environmental Health Service Group, attached as Appendix 1, has been approved by the Cabinet Member and now needs to be adopted by the Council.

2. RECOMMENDATIONS

- 2.1. That the revised Enforcement Policy, attached as Appendix 1 to this report, be adopted by the Council.
- 2.2. That any future minor amendments and updates, following annual reviews, be approved by the Cabinet Member.

3. REASONS FOR DECISION

- 3.1. To ensure that the Council's enforcement policy complies with the requirements in the Regulators' Code.
- 3.2. The original Enforcement Policy was written and approved in February 2002 and updated in October 2006, for what was the Public Protection and Safety Division (now called the Environmental Health Service Group).
- 3.3. In March 2010 the current Enforcement Policy was approved, as a Key Decision.
- 3.4. The current Enforcement Policy needs to be amended to reflect organisational and legislative changes and to ensure compliance with the Regulators' Code.

4. INTRODUCTION AND BACKGROUND

- 4.1. Local Authorities are required, by section 24(2) of the Legislative and Regulatory Reform Act 2006, to have regard to The Regulators' Code, issued on 6 April 2014 by the Better Regulation Delivery Office (BRDO).
- 4.2. 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.
- 4.3. The Environmental Health Service Group deals with a wide range of enforcement activities covering in the region of 150 primary Acts of Parliament together with a number of Regulations and Orders.
- 4.4. The Environmental Health Service Group includes several different regulatory enforcement functions relating to Licensing, Food Safety, Food Standards, Health and Safety at Work, Trading Standards, Noise and Nuisance, Environmental Quality, Private Sector Housing, Pest Control, animal health, feeding stuffs and public safety at events and football stadia.

- 4.5. The legislation enforced by officers across these services, seeks to protect residents, businesses and consumers, as well as the environment. Investigations under these Acts can result in both informal and formal actions being taken to ensure compliance with the law.
- 4.6. Enforcement in the context of this policy includes the use of a range of activities to ensure compliance with legislation such as:
- The inspection of high risk business premises;
 - Investigating complaints and enquiries from members of the public about businesses and individuals;
 - Providing advice about how to comply with the law; or
 - Issuing fixed penalty or statutory notices and taking prosecution action.
- 4.7. The Policy recognises that most businesses and individuals want to comply with the law. Help and support will be provided to enable them to meet their legal obligations without unnecessary expenses, while firm action will be taken against those who flout the law or act irresponsibly.
- 4.8. The proposed policy seeks to assist officers in the decision making process, to ensure a consistent approach when using the range of enforcement tools available to them.
- 4.9. In revising this policy we have considered how best we can:
- Understand and minimise negative economic impacts of our activities;
 - Minimise the costs of compliance for those we regulate;
 - Improve confidence in compliance for those we regulate; and
 - Encourage and promote compliance.
- 4.10. The intention of the policy is to ensure that any enforcement action is compliant with the relevant legislation, code of practices and government guidance. Also it must be transparent and accountable; proportionate; targeted; consistent in approach; and appropriate.
- 4.11. In updating this Enforcement Policy, particular regard has 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.
- 4.12. This revised policy document, if adopted, will supersede any previous versions of our enforcement policy.

5. PROPOSAL AND ISSUES

- 5.1. The proposed policy will take into account the following factors to achieve compliance:
- The business' or person's ability to comply with the law.

- The willingness of the person/business to comply with the law.
- The level of complaints received relating to the person or business in the past.

This list is not exhaustive and will depend on the facts of each case.

5.2. The decision to use enforcement action will be taken in the context of this policy and any other relevant policies of the Council, but also in the context of the particular case under consideration. Factors taken into consideration will include but will not be limited to:

- The risk that the breach poses to the health and safety or economic welfare;
- Whether the offence involves a failure to carry out the requirements of a statutory notice or order;
- The degree of pre-meditation of the offender;
- Where there is a previous history of warning or cautions for similar offences;
- Incidents such as the obstruction of an officer.

This list is not exhaustive and will depend on the facts of each case.

6. OPTIONS AND ANALYSIS OF OPTIONS

6.1. The best option is to adopt this policy based on the reasons set out in this report, particularly in sections one and three above.

6.2. The risk of not adopting the policy is that the council will be vulnerable to legal challenges which could possibly result in financial penalties.

6.3. The adoption of this policy will improve the transparency of any enforcement actions taken by the service, and it will be compliant with the Code.

6.4. The alternative option is to do nothing and keep the current out date policies, which would be open to challenge from the Better Regulation Delivery Office (BRDO) and potential defendants.

6.5. This latter approach is not recommended as the current policy is not fully compliant with the legal requirements and recommendations set out in the Regulators' Code.

7. CONSULTATION

7.1. All teams within the Environmental Health Service Group have been consulted about the policy, any comments or suggestions have been incorporated into the policy, where appropriate.

- 7.2. Business engagement, consultation and feedback is actively encouraged by the Regulators' Code. Work is ongoing to set up or work with an existing business focus group to hear the views from local businesses about our approach to enforcement.
- 7.3. The Council is committed to ongoing consultation with residents in setting its policy priorities and these will be reflected in its overall enforcement approach.
- 7.4. Any adopted Policy will be published on the internet and distributed on request.

8. EQUALITY IMPLICATIONS

- 8.1. The Council, when taking decisions in relation to any of its functions, must comply with its public sector equality duty as set out in s149 of the Equality Act 2010 (the Act). A screening for the equalities impact assessment has been carried out on the effect of the policy. The policy has low relevance in relation to its impact on the areas under the statutory duties contained in the equalities impact assessment, but contributes towards the corporate priorities of the council, open and transparent decision making.

9. LEGAL IMPLICATIONS

- 9.1. By virtue of the Regulatory Enforcement and Sanctions Act 2008, Legislative and Regulatory Reform Act 2006, and the Legislative and Regulatory Reform (Regulatory Functions) Order 2007 (as amended), the Regulators Code was issued under parliamentary approval. As specified, regulators must have regard to the code when determining policies, setting standards or giving guidance in relation to their duties.
- 9.2. Implications verified by: Tasnim Shawkat, Bi-borough Director of Law, 020 8753 2700.

10. FINANCIAL AND RESOURCES IMPLICATIONS

- 10.1. There are no direct financial implications associated with this report. However any financial impact arising as a result of this policy will be managed as part of the budget monitoring process.
- 10.2. Implications verified by: Mark Jones, Director for Finance and Resources – TTS/ELRS, 020 8753 6700.

11. RISK MANAGEMENT

- 11.1. The Failure to meet new and existing statutory requirements is specifically addressed in the Environmental Health Service Group'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.

12. PROCUREMENT AND IT STRATEGY IMPLICATIONS

- 12.1. Not applicable in this case.

LOCAL GOVERNMENT ACT 2000 **LIST OF BACKGROUND PAPERS USED IN PREPARING THIS REPORT**

No.	Description of Background Papers	Name/Ext of holder of file/copy	Department/ Location
1.	None		

LIST OF APPENDICES:

Appendix 1: Enforcement Policy for the Environmental Health Service Group