

# Environmental Health and Licensing Enforcement Policy

Adopted by the Social Committee on 26<sup>th</sup> June 2014 (minute 6)

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## Introduction

This policy has been drawn up using the Better Regulation Delivery Office example, has been the subject of consultation with local businesses and other stakeholders and covers the following service areas:

- Animal Control
- Contaminated Land
- Enforcement functions as Local Housing Authority
- Enforcement functions as Local Litter Authority
- Enforcement functions as Waste Collection Authority
- Food safety and hygiene
- Health & Safety at Work
- Licensing
- Pollution control including nuisance, air quality and noise
- Public Health including infectious disease control and health protection
- Smokefree

We will have regard to the Principles of Good Regulation and exercise our regulatory activities in a way which is:

- Proportionate – our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence.
- Accountable – our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures.
- Consistent – our advice to those we regulate will be robust and reliable and we will respect advice provided by others. Where circumstances are similar, we will endeavour to act in similar ways to other local authorities,
- Transparent – we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return.

- Targeted – we will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities.

Amongst others, we will have regard to principles contained within the Human Rights Act 1998, the Data Protection Act 1998, the Regulatory Enforcement and Sanctions Act 2008, the Code for Crown Prosecutors, and any successor legislation or codes. This Enforcement Policy has itself been drawn up having regard to the Regulators Code<sup>1</sup>. In certain instances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision consideration or series of considerations. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

We will avoid imposing unnecessary regulatory burdens by assessing whether similar social, environmental and economic outcomes could be achieved by a less burdensome means.

This policy can be found on the Borough Council's website under the "Business" and "Environment" sections. A paper copy can be supplied on request. The Council's service standards are published online at [www.epsom-ewell.gov.uk](http://www.epsom-ewell.gov.uk) as the "Customer Charter".

## **What is this policy for?**

This document communicates our policy in respect of our approach to dealing with non-compliance to businesses and individuals affected by our activities and officers of the local authority.

Authorised officers will act in accordance with this policy by being properly trained and qualified, by the use of peer review and through management oversight.

## **When does this policy apply?**

This policy applies during regulation activities listed on page 1. In certain circumstances other policies apply such as the Statement of Licensing Policy in respect of premises subject to the Licensing Act 2003.

## **Our approach to dealing with non-compliance**

In coming to a decision over how to deal with non-compliance, we will have regard to the following principles which were set out in the Macrory review<sup>2</sup>.

- 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 a criminal conviction.
- Be proportionate to the nature of the offence and the harm caused.
- Aim to restore the harm caused by regulatory non-compliance, where appropriate.
- Aim to deter future non-compliance.

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<sup>1</sup> Better Regulation Delivery Office, 2014 "Regulators Code" Department for Business Innovation and Skills

<sup>2</sup> Macrory, R 2006 "Regulatory Justice, Making Sanctions Effective" Department for Business Innovation and Skills

We will choose a proportionate response in all cases where non-compliance is detected based not just on the nature of the contravention but the overall capability and capacity of the business or regulated person to comply, including the level of technical advice available to them. In coming to a decision about proportionate response, we will weigh up the likely cost to the business, the expected benefit to public health or safety or the environment from compliance as well as the seriousness of the non-contravention. We are committed to applying the Primary Authority Principal for businesses which have a Primary Authority partnership.

We encourage businesses or regulated persons to approach us where they believe they are non-compliant and we will offer advice as to the best way they can comply. Where an approach of this nature is made, provided a willingness to comply is demonstrated, we will not take direct enforcement action but instead cooperate to ensure the problem is corrected.

However, we will not tolerate deliberate or serious persistent non-compliance and will take firm action against businesses or regulated persons found to be acting in this way.

Actions stemming from non-compliance can typically be separated into two categories – informal and formal.

### **Informal Action**

We use compliance advice, guidance and support as a first response in the case of many breaches of legislation that are identified. Advice is provided, sometimes in the form of a warning letter, to assist individuals and businesses in rectifying breaches as quickly and efficiently as possible, avoiding the need for further enforcement action. A warning letter will set out what should be done to rectify the breach and to prevent re-occurrence. If a similar breach is identified in the future, this letter will be persuasive in considering the most appropriate enforcement action to take on that occasion. Such a letter cannot be cited in court as a previous conviction but it may be presented in evidence.

### **Formal Action**

#### **Statutory Notices**

In respect of many breaches we have powers to issue statutory notices. These fall into three broad categories: 'Prohibition Notices', 'Emergency Prohibition Notices', and 'Improvement Notices'. Such notices are legally binding. Failure to comply with a statutory notice can be a criminal offence and may lead to prosecution and/or, where appropriate, the carrying out of work in default or the seizure of equipment and articles.

A statutory notice will clearly set out actions which must be taken and the timescale within which they must be taken. It is likely to require that any breach is rectified and/or prevented from recurring. It may also prohibit specified activities until the breach has been rectified and/or safeguards have been put in place to prevent future breaches. Where a statutory notice is issued, an explanation of the appeals process will be provided to the recipient.

Some notices issued in respect of premises may be affixed to the premises and/or registered as local land charges. Where we are permitted to do by law, we will normally seek to make a charge for enforcement activities. This applies particularly to enforcement made under the Housing Act 2004.

## **Financial penalties**

We have powers to issue fixed penalty notices in respect of some breaches. A fixed penalty notice is not a criminal fine, and does not appear on an individual's criminal record. If a fixed penalty is not paid, we may commence criminal proceedings or take other enforcement action in respect of the breach.

If a fixed penalty is paid in respect of a breach we will not take any further enforcement action in respect of that breach. Payment of a fixed penalty does not provide immunity from prosecution in respect of similar or recurrent breaches. We are only able to issue fixed penalty notices where it has specific powers to do so. If fixed penalty notices are available, their issue is at our discretion. In some circumstances, in particular where breaches are serious or recurrent, it may be that prosecution is more appropriate than the issue of a fixed penalty notice.

## **Injunctive Actions, Enforcement Orders etc.**

In some circumstances we may seek a direction from the court (in the form of an order or an injunction) that a breach is rectified and/or prevented from recurring. The court may also direct that specified activities be suspended until the breach has been rectified and/or safeguards have been put in place to prevent future breaches.

Failure to comply with a court order constitutes contempt of court, a serious offence which may lead to imprisonment.

We are required to seek enforcement orders after issuing some enforcement notices, providing the court with an opportunity to confirm the restrictions imposed by the notice. Otherwise, we will usually only seek a court order if there are serious concerns about compliance with voluntary undertakings or a notice.

## **Simple Caution**

We have the power to issue simple cautions as an alternative to prosecution for some less serious offences, where a person admits an offence and consents to the simple caution. Where a simple caution is offered and declined, we are likely to consider prosecution. Simple cautions will be used in accordance with the most recent relevant Home Office Circular and other applicable guidance.

## **Prosecution**

We may prosecute in respect of serious or recurrent breaches, or where other enforcement actions, such as voluntary undertakings or statutory notices have failed to secure compliance. When deciding whether to prosecute we will have regard to the provisions of The Code for Crown Prosecutors as issued by the Director of Public Prosecutions.

A successful prosecution will result in a criminal record. The court may impose a fine and in respect of particularly serious breaches a prison sentence. The court may order the forfeiture and disposal of non-compliant goods and/or the confiscation of any profits which have resulted from the breach. Prosecution may also lead, in some circumstances, to the disqualification of individuals from acting as company directors.

In deciding whether or prosecute or not, we will consider the following matters.

### **The gravity of the offence(s) such as**

- Whether there has been a blatant disregard for the law, negligence or deliberate intent
- Whether there has been persistent poor standards or poor practice

- Whether there has been, or currently exists a significant risk of ill health or injury as a result of the legal contravention
- Whether the contravention(s) have caused serious public alarm
- Whether those affected are particularly vulnerable

### **The general record and approach of the offender, for example**

- Repeated breaches of legal requirements or licence conditions or various breaches of multiple concern where it appears the individual or business is unwilling or unable to deal with these.
- Failure to comply with a statutory notice where the contravention is of significant concern and/or persistent.
- Any previous convictions or cautions relevant to the offence.
- Any previous enforcement such as statutory notices and advice which is relevant to the offence.

### **Refusal/Suspension/Revocation of Licences**

We issue a number of licences and permits and we also have a role to play in ensuring that appropriate standards are met in relation to licences or registrations issued by other agencies. Most licences include conditions which require the licence holder to take steps to ensure that, for example, a business is properly run. Breach of these conditions may lead to a review of the licence which may result in its revocation or amendment.

When considering future licence applications, we may take previous breaches and enforcement action into account and we have a specific Private Hire and Hackney Carriage Policy and Penalty Points scheme.

Where non-compliance exists, we will offer advice as to the best way to comply and distinguish between good practice advice and what is required to meet a statutory minimum.

Where non-compliance exists we will provide an opportunity for dialogue by publishing direct dial telephone numbers, email addresses to communicate our reasons for the advice, actions or decisions. This commitment does not extend to situations that require an immediate enforcement action to prevent or respond to a serious breach or where providing such an opportunity would be likely to defeat the purpose of the proposed enforcement action.

### **Conduct of Investigations**

Our Constitution (available at [www.epsom-ewell.gov.uk](http://www.epsom-ewell.gov.uk)) mandates the Director of Operations to authorise individual Officers to act on behalf of the Council for regulatory activities. Each officer is responsible for day to day management of investigations and for making decisions on enforcement action in line with this policy. The relevant line manager has responsibility for oversight of his or her team's enforcement.

Where a shared enforcement regime exists such as certain fire safety, public safety and health and safety legislation, liaison occurs at an officer level with relevant members of the counterpart enforcement body. This is also the means by which intelligence is shared into potential offences or non-compliance in businesses regulated by more than one enforcement body.

From time to time it is necessary to regulate ourselves in premises which the Council have an interest. For example in Food Safety and Pollution Control we are the sole regulator. In

these circumstances this policy will still apply up until the formal stage of enforcement which will instead be replaced with a report being sent to the relevant Director and the expectation that corrective action will be put in to effect in the same way as a statutory notice. If the relevant Director is implicated, the matter will instead be referred to an alternative member of the Corporate Management Board.

It is understood that English may not be the first language for some businesses and that consequently there may be some difficulty in understanding legal requirements. This is why we will offer a verbal explanation of what is required in addition to documentation relating to any enforcement action. Compliance will be assessed on a factual basis taking into account the effort the business or individual has put into becoming compliant and any mitigation which may exist.

We will make revisits shortly after expiry of improvement notices to assess compliance with the notice. Where non-compliance was dealt with by an informal means we will check these at the next routine inspection unless the matter is deemed by us to be significant. Where we detect breaches of law which is best dealt with by a counterpart enforcer (either internally to the Council or externally), we will refer the matter to them. Where we receive intelligence of non-compliance from other enforcement agencies we will normally carry out an independent investigation to confirm the facts of the case.

Where available, we use national risk assessment criteria to determine inspection frequency. Where we are made aware of possible non-compliance (typically by complaint from a member of the public) we will evaluate the facts to hand and either make a separate additional visit, bring forward the inspection or make a note on the file to assess the situation at the next contact opportunity with the business.

Where we are required to investigate alleged breaches we will comply with the relevant sections of the Police and Criminal Evidence Act 1984, the Criminal Procedure and Investigations Act 1996, the Regulation of Investigatory Powers Act 2000 the Criminal Justice and Police Act 2001, the Human Rights Act 1998 and codes of practice of guidance published under these.

These Acts and associated guidance control how evidence is collected and used and give a range of protections to the public and potential defendants. Additional legislation provides for a range of powers of entry for the efficient execution of our duties. Many of these statutory instruments contain an offence of obstruction. Where a criminal investigation is underway, we will periodically review whether it remains in the public interest to continue with the investigation.

We undertake to notify both potential defendants and witnesses of the outcomes of our decisions of enforcement action and any rights of appeal or representation which exist.

## **Review of this policy**

This policy will be reviewed in light of any revisions to the Regulator's Code, relevant legislation or guidance. Any administrative changes will be carried out under delegated authority. Any changes in policy will be formally adopted by the necessary decision making body of the Council.

This policy has been the subject of consultation with the local business community. We will consult once again if we propose to change the policy in any way (other than purely administrative changes).

## **Comments and Complaints**

We operate a comments and complaints policy which can be accessed by telephoning the Council's Contact Centre on 01372 732000 or on the website at [www.epsom-ewell.gov.uk](http://www.epsom-ewell.gov.uk). In addition, most modern legislation has a right of appeal available to those being regulated. In the first instance however we encourage a dialogue to resolve points of difference before it becomes necessary to formally complain.