

# London Borough of Brent Joint Regulatory Services

## ENFORCEMENT POLICY

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### INTRODUCTION

1. This document sets out the enforcement policy of Brent Council's regulatory services comprising Environmental Health, Health, Safety & Licensing, Building Control, Trading Standards, Streetcare, Private Housing, and Planning. These services enforce a wide range of legislation that aims to protect the interests and rights of people in relation to the environment that they use. In general, this legislation provides protection of the following;
  - People
    - safety, quality and authenticity of goods and services
    - safety and welfare standards in the workplace
    - the right to a peaceful, healthy and safe domestic environment
    - prevention of anti-social behaviour
    - control of sources of infectious diseases
  - Businesses
    - robust enforcement to prevent any economic advantage to law-breakers
  - Spatial development
    - regulation of land use planning and structural safety
  - The living environment
    - protection against pollution of air and land
    - removal of environmental blight (e.g. graffiti, dumped rubbish, etc)
2. The enforcement policy defines the principles that the regulatory services will follow when taking enforcement decisions in order to ensure that all those decisions are consistent, fair and appropriate.
3. The term "enforcement" is used in this policy to mean "*actions taken by Council officers to prevent or rectify infringements of legislation*". These actions include: preventative work (including advice), informal warnings; and more formal actions such as the service of statutory notices, prosecutions and injunctions.
4. This policy is an overarching policy for the Council's regulatory services and is approved by Council Members. Additional guidance may be required to give more specific direction to Council officers in the enforcement of specific legislation and standards. Such guidance will always comply with and complement this overarching enforcement policy.

## **PRINCIPLES OF ENFORCEMENT**

5. In 2000, Brent Council signed up to the principles of the *Enforcement Concordat*. The management and implementation of our enforcement functions will be based on those principles, as follows:

### **Standards**

6. Clear standards setting out the level of service and performance we expect to provide in compliance with centrally issued guidance and in consultation with partners. These standards and our performance against them will be published and made available to the people and businesses who are regulated.

### **Openness**

7. We will be open about how we set about our work, including any charges that we set. We will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties. Oral and written information and advice about the rules that the Council's regulatory services apply will be provided free of charge. Guidance will be made available in a variety of non-English languages as appropriate to Brent's multi-cultural community. This will include guidance on how to make a complaint about a Council service. Where officers take formal action, they will ensure that the reasons are clear and that any appeal procedures are explained.

### **Helpfulness**

8. Service users and receivers can expect a courteous and efficient service and will always be given name and contact details of the officer with whom they are dealing. We will encourage business to seek advice/information from us. Wherever practicable, enforcement services will be effectively co-ordinated to minimise unnecessary overlaps and time delays. Where an enquiry would be better dealt with by an alternative Council or external regulatory service, it will be referred directly to that agency and the enquirer/complainant informed of the referral. Cases requiring expertise from more than one agency or Council department will, where practicable, be dealt with on a coordinated multi-agency or multi-departmental basis.

### **Feedback about our Service**

9. The regulatory services will obtain the views of those who receive their services about what improvements in service could be made. Complaints about the quality of service received will be handled in accordance with the Council's complaints procedure. This procedure will guarantee that where disputes cannot be resolved, a senior officer will investigate the complaint and respond with a written detailed response within a clear time-scale. Copies of the complaints procedure are readily available to service users.

### **Proportionality**

10. The cost of compliance for business will be minimised by ensuring that any remedy we require is proportionate to the risks posed by the breach. The circumstances and attitude of offenders will be taken into account, where the law allows, when considering enforcement action. We will listen to the views of anyone who has been injured or suffered loss and to the views of other enforcement authorities with special responsibilities for particular businesses under the Home Authority or Lead Authority principles. Particular care will be taken to work with small businesses and voluntary and community organisations so that they can meet their legal obligations without unnecessary expense, where practicable.

### **Consistency**

11. Duties will be carried out in a fair, equitable, non-discriminatory and consistent manner. Consistency will be promoted by following clear standards of enforcement and through liaison with other authorities and enforcement bodies. Enforcement officers will be properly trained and competent to take decisions about formal action in the field.

## **AUTHORISED ENFORCEMENT OFFICERS**

12. Before an officer of the Council can carry out any enforcement duties they must be authorised to do so in accordance with the Council's Constitution.

## **OUR GENERAL ENFORCEMENT PRACTICE**

13. In general, when taking enforcement action, the Council's regulatory services will:

- Seek to adopt the most effective approach to enforcement by co-ordinating action between other regulatory services, both internal and external to the Council.
- Clearly explain what needs to be done to comply with the law, why that need exists and by what date it needs to be rectified and confirm in writing on request.
- Distinguish between requirements that are stated in law and recommendations that are intended to achieve higher standards.
- Provide an opportunity to discuss issues before formal action is taken, and if possible resolve any points of difference, unless immediate action is required (for example, in the interests of health and safety or environmental protection or to prevent evidence being destroyed).
- Where immediate action is considered necessary, provide an explanation of why such action is required and confirm in writing on request in most cases within 5 working days and, in all cases, within 10 working days..
- Explain the rights of appeal where formal enforcement action is taken (e.g. service of a legal notice, prosecution, work in default, etc).

## **OUR POWER TO ENTER PREMISES, LAND AND VEHICLES**

14. The power to enter private premises, land or a vehicle will vary depending upon the legislation that is relevant to the situation. What follows is a general guide to the principles that usually apply in such situations.

15. In general, enforcement officers are legally empowered to enter commercial premises and vehicles during normal operating hours in order to determine whether the law is being complied with. In the case of domestic premises, the law usually requires reasonable notice to be given to the occupier before an officer has a right to enter.

16. A person refusing an officer entry risks committing the serious offence of obstruction and is liable to prosecution by the Council.

17. An officer who wishes to gain entry to private areas of a property will, where circumstances permit, explain who they are and the purpose of their visit. The officer will also show their official identification and will seek permission to enter. Persons in charge of premises are encouraged to refuse access to officers who are unable to show any official identification until their identity and authority has been confirmed, in order to prevent access by people imitating Council officers.

18. Enforcement officers may take other persons into premises in order to assist, for example, a police officer or an expert in the field of the investigation.

19. Persons in charge of premises will be invited to accompany enforcement officers whilst on the premises and officers will carry out their duties in a way that minimises detrimental effects on the legal activities at the premises. Nevertheless, it may be necessary to enter businesses during busy periods if it is suspected that contraventions will take place then.

## **OUR POWER TO INVESTIGATE SUSPECTED CONTRAVENTIONS**

20. What follows is a general guide to the principles that usually apply to the investigation of suspected contraventions.
21. The need for enforcement only arises when the law is being breached or suspected of or likely to being breached. The Council will determine this through investigation following the receipt of allegations or other intelligence or through planned monitoring e.g. inspection, sampling, etc.
22. Enforcement officers are legally empowered to ask questions and collect evidence in relation to the offences they are investigating.
23. Where enforcement officers need to carry out covert surveillance of persons or use informants during the course of an investigation, the Council will comply with the Regulation of Investigatory Powers Act 2000 (or any succeeding legislation) which seeks to balance the individual's rights to privacy with the need to undertake a criminal investigation.
24. Where contraventions of legislation are identified, the enforcement officer will where appropriate, provide the person responsible with an opportunity to discuss the issues before deciding the most appropriate course of action. A written explanation of the contraventions will always be provided and details of the officer's intended enforcement action.

## **THE RANGE OF ENFORCEMENT OPTIONS AVAILABLE TO US**

### **No Formal Action**

25. Where there is evidence of non-compliance with a legal requirement, the Council may decide not to take formal action. Examples of where this might be appropriate are, where there has been a contravention which is considered trivial in nature or where a contravention is less serious than others which will be the subject of formal action, so that the most serious contraventions are addressed first.

### **Warnings**

26. In most cases, an opportunity will be given to make improvements in order to comply with the law within a reasonable period of time. Warnings can take the form of a report, a verbal or written warning or a statutory notice. Warnings will always be confirmed in writing and will explain the law that applies, how the law is being contravened, the action the person needs to take, the time period in which the contravention must be remedied and the consequences of not taking this action. Legal requirements will be clearly distinguished from recommendations which are not required by law.

### **Intervention, Penalty Notices and Prosecution**

27. In certain circumstances more direct action, without warning, is warranted by the Council. Examples include more serious contraventions, a continual failure to comply with the law or where the issue of a penalty notice is appropriate. Before any action is taken and where circumstances permit, the Council will explain to those who will be directly affected by it, the action it intends to take. Examples of the enforcement options available to enforcement officers include prosecution, direct intervention (work in default), refusal or suspension of a licence, a formal caution, seizure, service of a penalty notice, etc.

### **Publicising Our Successful Prosecutions**

28. We will routinely publish details of successful prosecution cases to inform people about the consequences of failing to comply with legal requirements and give reassurance to victims and the wider law abiding community that the Council is prepared to fully utilise available enforcement powers.

## HOW WE TAKE ENFORCEMENT DECISIONS

### Decision criteria

29. The decision about which enforcement option to use is limited by the legislation to which each breach relates. Where there is discretion, in order to ensure that decisions about the choice of enforcement options are always consistent, balanced, fair and relate to common standards that ensure the public is adequately protected, the following criteria will be used to assess what action should be taken:

**a) The seriousness of the contravention or breach.** To determine this we will take into account the following factors which are not exhaustive and will depend on the facts of each case:

- The detriment caused to others. For example, the level of nuisance, distress or injury caused or financial loss incurred.
- The detriment caused to the environment and current or potential use.
- The impact the breach will have upon the success on local services or initiatives aimed at improving standards in the local community and environment.
- The risk of injury to the health of others. For example where conditions are so unsafe an accident is likely to happen at any time.
- The number of people that were or could have been affected by the breach
- The degree of culpability, such as negligence or wilful intent that appears to be involved in committing the breach.
- The accumulation or repetition of less serious offences
- Failure to comply with a statutory notice within the timescale given

**b) The likelihood of achieving compliance.** This will take into account the following factors which are not exhaustive and will depend on the facts of each case:

- The level of compliance received from the person in the past
- The person's ability to comply.
- The willingness of the person to comply with the action proposed by the Council.

30. As a general rule, the Council will apply more formal enforcement action the more serious the offence and the less likely that compliance will be achieved through inaction or through informal means.

31. All enforcement decisions will be documented along with the justification for making the decision.

### Circumstances Warranting Prosecution

32. Before a prosecution proceeds, the Council must be satisfied that there is enough evidence to provide a realistic prospect of conviction and that it is in the public interest to prosecute. The Code for Crown Prosecutors, issued by the Crown Prosecution Service, provides guidance on how these two requirements should be met.

33. Formal cautions are applicable as a means to deal quickly and simply with less serious offences committed by adults. Criteria laid down by the Home Office will be followed in this respect.

## APPEALING AGAINST OUR ENFORCEMENT DECISIONS

34. We will inform people against whom we take formal enforcement action, about their rights to appeal against our decisions.

## **CONFLICTS OF INTEREST AND UNDUE INFLUENCE**

35. Any potential conflicts of interest on behalf of an officer or any instances of undue influence being brought to bear on enforcement decisions will be dealt with to ensure that decisions are taken in an impartial way.

## **THE KEEPING AND DISCLOSURE OF INFORMATION**

36. Information collected or recorded as part of the Council's enforcement activities will be securely retained in a paper and/or electronic format for a period defined by legislation or required for future reference by the service. This information will include decisions taken about the choice of enforcement options.
37. The identity of a person providing the Council with information about other people committing crime, will remain confidential unless prior agreement by the person is obtained, or its disclosure is authorised by law or by a court of law..
38. Personal data held manually or as computer records will be handled in accordance with the with the Data Protection Act 1998 (DPA). This information will be used in accordance with the Council's DPA registration. Exemptions to this include where information is disclosed to other agencies or used for another reason for the purposes of detecting or preventing crime. This will include sharing of information between Council services and with the police and other enforcement agencies. Sharing of information relating to the Crime and Disorder Act, will be undertaken in accordance with the *Joint Protocol on the Sharing of Information*, through the Council's designated officer.
39. Right of access to information held by the Council will be given on request, in accordance with the Freedom of Information Act 2000 and Environmental Information Regulations 2004 unless the information is already publically available (as described in the Council's *Publication Scheme*). Some exemptions to the Council providing information can be found in the Act, Regulations and the Council's publication scheme.

## **DEFINITIONS**

40. By its very nature, an enforcement policy must contain some terms that are accepted by the enforcement and legal professions. Some of these terms are explained below:

### **Contravention / breach**

To breach or contravene the law means to 'break the law' in the opinion of the Council. The Council has the option to prosecute the person responsible for each contravention or warn the person that they must comply with the law within a certain time period.

### **Covert surveillance**

Where a Council officer observes a person without them being aware that they are being watched. This is occasionally necessary to obtain evidence of a contravention but the activity is strictly controlled.

### **Direct intervention / work in default**

Direct intervention is where the Council will carry out work itself to comply with the law, to avoid any unnecessary delay. The Council can charge the person responsible for the cost of carrying out the work.

### **Formal caution**

A formal caution (as per Home Office guidance) is a written admission of guilt by an offender. It is only used for minor offences as an alternative to prosecution and avoids costly court appearances. Once issued the formal caution is held on a public register and may be used in future prosecutions if the person re-offends.

### **Informants**

An informant is a person who is not employed by the Council but who assists the Council by collecting information about a person or their activities which they otherwise would be unable to obtain.

## **Legal requirement**

A requirement under statutory (i.e. An Act of Parliament or Statutory Instrument) or Common law.

## **Legislation**

Is another term for “Statutory Law”

## **Penalty notice**

A penalty notice is a term used here to include notices that apply an immediate penalty, sometimes referred to as fixed-penalty notices e.g. dog fouling penalty notices, parking offence penalty notices, etc)

## **Remedy**

A remedy is the action that is necessary to comply with a law that is currently being broken. The remedy may be to stop doing something or to undertake some work. The Council can give guidance on what remedies are likely to be effective, however it cannot guarantee that a particular remedy will achieve compliance with the law. For this reason it is sometimes necessary to try a number of remedies to eventually succeed in complying with the law.

## **Seizure**

Seizure is a form of direct intervention whereby the Council is empowered by a piece of legislation to remove property and deal with it in some way.

## **Statutory notice**

The term ‘statutory notice’ is used in this document to refer to official notices issued under Statutory law, that warn the person responsible to comply with the law within a certain period of time otherwise direct intervention or prosecution will be undertaken by the Council. In effect it is a ‘formal warning’. Failure to comply with a statutory notice is often an offence in itself and so an offender can be prosecuted for the original offence and for non-compliance with a statutory notice. If someone served with a statutory notice believes they are not responsible or that the notice is unreasonable in some way, they can appeal and details of the appeal procedure is attached to the notice when it is served.

## **Warrant to Enter**

A warrant is a Court order giving the Council the power to force entry to a property and with the support of the police if necessary.

## **REFERENCE SOURCES**

- *The Cautioning of Adult Offenders*. Home Office. Circular 30/2005, 15<sup>th</sup> June 2005. ([www.homeoffice.gov.uk](http://www.homeoffice.gov.uk))
- *Code for Crown Prosecutors*. November 2004 ([www.cps.gov.uk](http://www.cps.gov.uk))
- *Regulation of Investigatory Powers Act 2000* and *code of practice* on the Act ([www.homeoffice.gov.uk/ripa](http://www.homeoffice.gov.uk/ripa))
- *Code of practice B to the Police and Criminal Evidence Act 1984* (s.60(1)(a) and s.66) (<http://www.homeoffice.gov.uk/pcrg>)
- *Data Protection Act 1998* and the *Freedom of Information Act 2000*. (Department of Constitutional Affairs, [www.dca.gov.uk](http://www.dca.gov.uk)).

## **POLICY IMPLEMENTATION & REVIEW**

The implementation and operation of this policy will be monitored by each service and corrective action taken where necessary. Departures from the policy will be exceptional and where they do occur, the reasons for the departure will be recorded. The policy will also be periodically reviewed and the views of those people whom may be affected by it, will be sought.

## **FURTHER COPIES, CONTACT DETAILS & INFORMATION**

This policy and further information about the Council Regulatory Services can be obtained from:

- London Borough of Brent, Business Home Page ([www.brent.gov.uk](http://www.brent.gov.uk) – Go to 'Business')
- Director of Environment, Brent House, 349 – 357 High Road, Wembley HA9 6BZ.  
Telephone: 020 8937 1234. E-mail: [environmental.services@brent.gov.uk](mailto:environmental.services@brent.gov.uk)