

# LONDON BOROUGH OF BRENT ENFORCEMENT POLICY



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## **1. Introduction**

This policy details the London Borough of Brent's (LBB) approach dealing with any non-compliance with applicable legislation enforced by council regulatory teams in compliance with Section 21 Legislative and Regulatory Reform Act 2006 (LRRA).

The regulatory teams enforce a wide range of legislation that aims to protect the rights and interests of the inhabitants and businesses within LBB.

This Enforcement Policy sets out the principles and procedures LBB's staff are to follow when considering and taking enforcement decisions/actions, in order to ensure that all decisions made are consistent, fair, proportionate and necessary.

This Policy is intended to be used and applied to all officers who engage in a regulatory function (except those in Private Housing see comment in Section 3) and is approved by Brent Council's Cabinet.

Copies of this policy are available on request from any of the Council's regulatory teams or it can be obtained from our website<sup>1</sup>. Our regulatory teams adhere to clearly published service standards<sup>2</sup> in accordance with the Regulators' Code which can also be obtained upon request or are available on our website.

We will wherever possible, avoid placing unnecessary regulatory burdens on those who we seek to regulate.

When creating this policy, we have referenced the following legislation or Codes that have influenced its contents and the LBB shall have regard to these accordingly:

## **Good Enforcement Practices**

In agreeing this policy, LBB demonstrates that it is fully committed to the five principles of good regulation (referenced below), as required by Part 2 of the Regulatory Reform Act 2006 and the Department of Business Innovation and Skills Regulators' Code (the Code) dated April 2014.

When possible, we will always seek to focus and prioritise our regulatory functions in line with the Council's Borough Plan (or equivalent), and take into consideration regional and national intelligence, risk assessments and/or trends.

When making decisions on our regulatory functions, we shall always have consideration to the impact and effect our intervention/s will have. This not only satisfies the need of the code, but also ensures that we utilise our resources in the best possible way and where effective outcomes can be achieved.

### **(i) Proportionality**

We will ensure that enforcement action is proportionate to the perceived risks and seriousness of the alleged offending. Any sanctions which may be applied, are done so in a method applicable to both the current level and potential future escalation of those

**Our regulatory activities are carried out in a way which is transparent, accountable, proportionate, consistent and targeted where needed as required by the Legislative and Regulatory Reform Act 2006.**

<sup>1</sup> Copies of the Policy can be found at [www.brent.gov.uk](http://www.brent.gov.uk)

<sup>2</sup> Our Regulatory Service Standards can be found at (*inset hyperlink when published*)

risks in the given circumstances. Whenever possible, we will take account of the individual

circumstances of each case when considering action.

(ii) Accountability

We will ensure that our activities will be open to public scrutiny with clear and accessible policies and operate a fair and efficient complaints procedure. All complaints made about service quality will be recorded and tracked against the Council's formal complaints procedure, details of which can be found in section 8 of this policy.

(iii) Consistency

We will carry out our duties in a fair and consistent manner. This means that where possible, we will adopt the same approach across LBB regulators. The previous history of those subject to regulation will be taken into account when deciding how compliance should be achieved and/or what form of sanction should be imposed. If circumstances permit, consideration will also be given in line with any national or statutory guidelines. If arrangements are in place to promote consistency, including liaison with other local authorities and agencies, particularly where we may share an enforcement role, these will be adhered to.

(iv) Transparency

We are committed in applicable circumstances and as far as practicably possible, to provide open and transparent sources of advice, guidance and information. In the first instance, this will be made available in an electronic format but where required, can be given in hard or via other accessible means.

We seek to provide all advice, guidance and information in a format that is easily understood using plain English.

Information such as our fees and charges will be published in advance of agreeing with any person to become liable for them.

We will take steps to ensure that those we regulate are always aware of what is a statutory requirement necessary to comply with the law, what is considered as best practice if applicable or what we consider as being optional not compulsory for a business or individual to follow.

(v) Targeted

We will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities or where repeated occurrences of lower risk activities, create a higher risk area of concern. Enforcement activity will only be targeted in instances where action is needed.

**Regulators' Code (Better Regulation Delivery Office, 2014)**

LBB has had regard to the Regulators' Code in the preparation of this policy and when considering our operational procedures. The Code permits us in certain instances, if we conclude that a provision in the Code is either not relevant or is outweighed by another provision, to depart from it. If this situation arises, we will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

**Human Rights Act 1998**

LBB is a public authority for the purposes of the Human Rights Act 1998. We therefore apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is had to the right to a fair trial and the right to respect for private and family life, home and correspondence.

**Data Protection Act 2018**

Where there is a need for LBB to share enforcement information with other agencies or external partners, we will follow the provisions of the Data Protection Act 2018.

## **Regulatory Enforcement and Sanctions Act 2008**

The Regulatory Enforcement and Sanctions Act 2008, as amended, established the 'Primary Authority' scheme. We will comply with the requirements of this Act when we are considering enforcement action against any business or organisation that has a primary authority relationship and will have regard to guidance issued by the Secretary of State.

## **The Code for Crown Prosecutors**

When deciding whether to prosecute the LBB has regard to the provisions of The Code for Crown Prosecutors as issued by the Director of Public Prosecutions.

The Code for Crown Prosecutors is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases. This Code sets out two tests that must be satisfied, commonly referred to as the 'Evidential Test' and the 'Public Interest Test'.

### i. Evidential Test

There must be sufficient admissible evidence to provide a realistic prospect of conviction against each defendant on each charge. The defence case, including any available statutory defence, must be considered including how it is likely to affect the prosecution case. A case which does not pass the evidential test, must not proceed however serious or sensitive the case may be.

A realistic prospect of conviction is an objective test based solely upon the assessment of the evidence and any other information the defence might put forward. It

means that an objective, impartial and reasonable jury or bench of Magistrates, having heard the case and been properly directed, would be more likely than not, to convict the defendant of the charge[s] alleged. If and only if, the case passes this test must the prosecutor apply the 'public interest test'.

### ii. **Public Interest Test**

If the evidential test is satisfied, Managers and/or Prosecutors, must go onto consider whether the public interest test is satisfied in order to offer the offender a simple caution or to prosecute.

Each case must be considered on its own facts and merits and usually, the test would be applied after an investigation is complete or there is sufficient evidence to prove a *prima facie* offence. However, there will be some cases where a decision can be made at an early stage that an offender will not be cautioned or prosecuted in cases where the benefit amounts to a small amount or the mischief has taken place over a short period of time and any sentence awarded would be minimal.

There may be occasions where the public interest test points are against prosecution, such as low value or minor offending. The Council will still consider in particular circumstances, whether a prosecution should go ahead and if applicable, let a court consider those factors when any sentence is passed.

In order for the public interest test to be met, at least one criterion from each of the following three sections below must apply:

### **2. The seriousness of the contravention or breach. This takes account of:**

- The detriment caused to others including the environment. For example, the level of nuisance, distress, injury caused or financial loss incurred
- Impact resulting from the breach upon the LBBs resources

- 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
- Financial loss to others as a result of the breach

### **3. 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. For example. Their level of understanding may not be sufficient to enable them to comply
- The lack of willingness of the person to comply with any action proposed by the council

### **4. Other factors which takes account of:**

- Persistently disregarding warnings that involve a potentially serious breach
- Failure to comply with a statutory notice
- Seriously endangering the health, safety or well-being of others e.g. where it caused or could have caused a serious injury or illness
- Where applicable, the views of the victim regarding the impact the offence has had and the level of the victim's vulnerability
- A deliberate or willful failure to comply with a legal duty
- Deliberate or grossly careless breaches that caused or were likely to cause prejudice to health, economic advantage or environmental damage
- Purposeful obstruction of a Council officer from carrying out their duties

- Failure to satisfy the relevant statutory defence/s

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

This document satisfies the LBBs requirements under paragraph 6 of the Regulator's Code which requires us to ensure transparency in our approach to regulatory activities. It is the LBBs policy in respect of our approach to dealing with businesses or regulated people who do not comply with legislation and is address to:

- a) those affected by its activities; and
- b) officers of the local authority

Officers who undertake enforcement activities covered by this policy are appropriately trained and authorised to discharge enforcement powers on behalf of the local authority and will act in accordance with this policy at all times.

This policy sets out the principles and procedures all LBB staff who are authorised to carry out regulatory functions are to follow when considering and taking enforcement decisions/actions, in order to ensure that these are made consistently, fairly, proportionately and necessarily.

Line Managers will have the responsibility to ensure their officers act in accordance with the Council's regulatory service standards and with the contents of this policy.

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

This policy covers all enforcement activities without exception, undertaken by LBB in the following service areas:

**This policy applies to:**

**Environmental Improvement   Environmental Enforcement   Food Safety**

**Health and Safety   Licensing   Public Safety**

**Noise and Nuisance Control   Trading Standards   Planning Enforcement**

The policy does not apply to the activities of Private Sector Housing who follow a separate document titled 'Private Housing Services Enforcement Policy, Guidance for Private Housing Services Enforcement Officers' dated July 2017<sup>3</sup>.

For the purposes of Planning Enforcement, this policy should be read as the 'Enforcement Plan' as set out in paragraph 58 of the National Planning Framework 2018 or any successor policy issued by Government.

For the purposes of Food Safety, this policy is intended to satisfy applicable criteria as set out in 'The Framework Agreement on Official Feed and Food Controls by Local Authorities' produced by the Food Standards Agency.

For the purposes of Health & Safety, this policy is intended to satisfy the applicable criteria as set out in the 'Health and Safety Executive/Local Authorities Enforcement Liaison Committee (HELA) guidance' in terms of any reference to a local authority's enforcement policy.

For the purposes of the Licensing, this policy should be taken into consideration as required by the current Licensing Guidance issued under section 182 of the Licensing Act 2003.

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

In deciding what action to take in regard to a non-compliance, we will try to achieve one or more of the following outcomes:

- Change the behaviour of the offender to achieve future compliance
- Eliminate any financial gain or benefit from non-compliance
- Deter future non-compliance
- Restore the harm caused by non-compliance
- Make safe any non-compliance involving a breach of safety legislation
- Restore any property or asset privately or publicly owned which had been damaged or removed, back to its original condition
- Refer in suitable cases, breaches to another enforcement body

Where a breach of minor legislation is identified, the most common outcome, although not exclusively, is for advice to be given to the business or individual concerned with the expectation that corrective action will be taken within a set period of time. This may be at a very early stage or after some further investigation. However we are committed to dealing firmly with those that deliberately or persistently fail to comply with legislation. In addition, we will take firm action where minor offending may contribute towards a more significant issue and instances when serious breaches have taken place.

The action that the LBB chooses to take will depend on the particular circumstances and the approach of the business or regulated person to dealing with the breach.

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<sup>3</sup> This policy can be found at <http://democracy.brent.gov.uk/ieDecisionDetails.aspx?Id=3879>

Businesses and individuals are able to request advice from us regarding compliance and how this can be best achieved. Those requesting regulatory advice regarding a non-compliance', can do so without triggering enforcement action, where they show a willingness to resolve the issue. The LBB encourages those we regulate to contact us for advice although in some instances, a cap on the amount free advice

**You are encouraged to seek advice from us to help you comply with applicable legislation. Our staff will clearly explain what is required and why.**

available from the Council is applied to effectively manage our resources.

Our staff are committed to clearly explain any non-compliance and any advice given, actions required or decisions taken, with reasons for these. Where possible, written explanations will be provided such as during inspection visits. There will be an opportunity for dialogue and/or appeal in appropriate circumstances between the offender and the LBB in relation to this except where we need to take immediate enforcement action to respond to or prevent serious or imminent risk.

If formal action is likely to be considered as an option, that dialogue may need to be by way of a formal recorded interview in accordance with the Police and Criminal Evidence Act 1984.

The Council delegates the powers it has to enforce various pieces of legislation so that individual staff members with the appropriate levels of competence and where required qualification, have specific authority to act. Staff members carry identification and

confirmation of their authorisation. Full details of LBB's scheme of delegation can be found in our [Constitution](#)<sup>4</sup> document.

Investigations are overseen by relevant line managers. Any formal action must be sanctioned by a manager with appropriate authority to do so.

We will refer matters to other authorities or enforcement bodies where we believe they are the most appropriate to deal with a matter. We will also accept referrals from others where we are the most appropriate enforcement body to deal with something effectively.

Where we carry our enforcement activities on behalf of another authority, we shall also have regard to their policies. If the situation should arise where their policies contradict those contained within this policy, the officer shall notify their line manager for further guidance, where subject to the term in question, a decision will be made as to how to proceed. It would be expected in most situations, that this policy has supremacy.

The LBB will manage enforcement in relation to its own establishments and activities in the same manner as others we regulate and will declare any interest we hold accordingly.

Our enforcement will be fair and objective with everybody being treated equally and fairly regardless of their age, disability, gender identity and expression, marital status, nationality, race, religion or belief, sex, sexual orientation or health and income status. The LBB has an [Equalities](#)<sup>5</sup> policy promoting equality, diversity and cohesion in everything we do.

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<sup>4</sup>

<http://democracy.brent.gov.uk/iListMeetings.aspx?CommitteeId=584&info=1&MD=Constitution>

<sup>5</sup> <https://www.brent.gov.uk/your-council/about-brent-council/council-structure-and-how-we-work/equality-and-diversity/equality-in-brent/>

## **Publicising Enforcement Action**

In some instances, where a business or individual receives an enforcement action, the Council will seek to publicise this.

Consideration will be given to each case individually although this would normally be in the following circumstances:

- The offence is widespread in the area and coverage will assist in securing compliance by others
- To draw attention to particular serious hazards
- Coverage is otherwise in the public interest
- A press release will generally be issued following a conviction where it is considered that publicity will bring others into compliance or will help to maintain compliance with those statutory requirements

## **Sharing information with other regulators**

If there is a shared enforcement role with other agencies, e.g. the National Trading Standards Board, Food Standards Agency, Fire and Rescue Service or the Police, we will consider co-ordinating with these agencies, to minimise unnecessary overlaps or time delays and to maximise our overall effectiveness.

Where any business has a 'Primary Authority' relationship established with a local authority regulatory service, our officers will communicate with that service at the earliest opportunity.

## **Explanation of the action taken following non-compliances**

We will be proportionate, when considering what is the most appropriate sanction for any non-compliance and we will consider such factors as the harm caused or the risk of harm, the size, capacity and nature of the business or relevant factors of the regulated person.

We will provide the individual/business with an opportunity to discuss with us the advice given, actions required, or decisions taken in relation to non-compliance, except where we need to take immediate enforcement action to respond to or prevent serious or imminent risk.

When advice or guidance has been provided following the identification of non-compliance, further checks might be required by an officer to ensure the issue has been suitably rectified.

It is not possible for the Council to investigate every allegation of non-compliance it receives. Therefore, some regulatory teams may operate a risk assessment scheme to determine whether individual allegations require investigation. Copies of any such assessment criteria, are available upon request.

## **5. Conduct of Investigations**

### **Explanation of the processes for investigating alleged breaches**

All investigations will be carried out having regard to the following legislation and in accordance with any associated guidance or codes of practice, in so far as they relate to LBB:

- Police and Criminal Evidence Act 1984
- Criminal Procedure and Investigations Act 1996
- Regulation of Investigatory Powers Act 2000
- Criminal Justice and Police Act 2001
- Human Rights Act 1998

These Acts and associated guidance, control how evidence is collected and used and give a range of protections to citizens and potential defendants.

Our authorised officers will also comply with the requirements of the particular legislation under which they are acting and with any associated guidance or codes of practice.

### **Officer's Powers**

For the vast majority of legislation, we enforce, officers are given particular powers to carry out certain activities including for example test purchasing; sampling; inspection of premises; goods equipment or documents and powers of entry to gain access to land and premises, by force, with a warrant if required.

In certain circumstances where offences are suspected, or evidence is required, legislation gives our officers powers to seize goods and documents and/or to suspend goods for onward supply.

Powers extend to the seizure of cash, obtaining production or monitoring orders or restraining assets. Powers vary depending on the legislation being used and those listed in this section, do not create an exhaustive list.

Where any items are seized other than waste, officers will supply written confirmation or a photograph, of anything taken at the time or if not practical as soon as possible afterwards if requested by the owner of the items.

Where any seized items are subject to any form of testing, the results of that testing will be made available to the person who had ownership of the goods.

Our officers do not hold any powers to arrest individuals. However, there is a possibility of arrest where our officers are working with partners who do hold such powers.

**Our staff hold a wide range of powers such as entering premises or land for specific purposes. This might be needed so we can undertake an inspection, deal with an emergency or search for evidence as part of an investigation.**

**We can seize relevant items, collect samples, require production of documents or request a particular task is conducted within a set period of time. If an officer is using their powers, please cooperate and do not obstruct them as this could be a criminal offence.**

### **Obstructing an Officer**

For many pieces of legislation that we enforce, there are usually provisions where a person commits an offence of obstructing officers involved in enforcement activities and this can include failure to give appropriate assistance. If individuals or businesses obstruct authorised officers in the course of their duties, the LBB will view this very seriously. It is possible anybody obstructing an authorised officer will be prosecuted for obstruction offences if these persist once the person has been advised (orally or in writing) that they are committing the offence.

### **Formal Interviews**

Where a person, company or other legal entity is suspected of breaching legal requirements and formal action remains under consideration, wherever appropriate, they will be formally interviewed in accordance with the Police and Criminal Evidence Act 1984 (PACE). In the unlikely event that it is appropriate for an interview to take place which cannot be facilitated for any reason, we reserve the right not to offer this facility.

An interview will usually, but not exclusively, be audio recorded and the regulated person or business will be given the opportunity to demonstrate if a statutory defence is available to them; have the opportunity to give an explanation or make any additional comments about the alleged breach/es.

The regulated person or business can have a legal representative with them although in most cases, this will have to be arranged by the interviewee. The record of interview is admissible as evidence in any subsequent prosecution. We will use the information provided by suspects in the PACE interview to help us consider if we will pursue prosecution.

### **Statutory Time Limits for Investigations**

For the majority of the legislation that we enforce, there are time limits specified in the legislation within which we must commence prosecution proceedings by the laying of information before the court. For summary only cases, there is usually a 6-month time limit, although this can be varied by statute.

For either way or on indictment only offences (e.g. Fraud Act 2006, Health and Safety at Work etc. Act 1974 and Trade Marks Act 1994) there is usually no time limit imposed for bringing prosecution proceedings, but again this can be varied by statute. However, where there is no time limit we will endeavour not to delay bringing such proceedings. Unless the investigation is particularly large or complex in its nature, where possible, we will seek to determine the outcome of these cases within 12 months of the LBB being made aware of the offence although this is always subject to the priorities and resources available to the team concerned.

### **Case Review**

In accordance with our legal duty, we will continue to keep prosecution cases under review. As prosecutors we will take account of any change in circumstances that occurs as

the case develops, including what becomes known of the defence case. If circumstances change during the course of the prosecution, we will review our decision as to whether to continue with the prosecution. The decision and the reasons for continuing or not will be recorded.

### **Case Progression**

We will keep witnesses informed of the progress of investigations and prosecutions. The same applies where appropriate, to keeping alleged offenders informed particularly on occasions when they have not appointed legal representation. We commit to adhering to all timescales set by a Court as part of a case management processes whenever possible.

## **6. Decisions on Enforcement Action**

### **Enforcement Actions available to LBB in Respect of Criminal and Civil Breaches**

#### **A. Compliance Advice, Guidance and Support**

LBB uses 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.

We recognise that where a business has entered into a partnership with a primary authority, the primary authority will provide compliance advice and support. We will take

such advice into account when considering the most appropriate enforcement action for us to take. We may discuss any need for compliance advice and support with the primary authority.

Where more formal enforcement action, such as a simple caution or prosecution, is taken, we recognise that there is likely to be an ongoing need for compliance advice and support, to prevent further breaches.

## B. Voluntary Undertakings

We may accept voluntary undertakings that breaches will be rectified and/or recurrences prevented. We will take any failure to honour voluntary undertakings very seriously and enforcement action is likely to result.

Voluntary undertakings may take various forms which may include a commitment from the regulated person or business to change the way things are done in the future or to correct things that have taken place in the past. Voluntary undertakings may include an agreed timescale for actions to take place. Failure to observe and undertake within the agreed timescale, may mean that a sanction is escalated to an alternative more formal option.

## C. Statutory (Legal) Notices

In respect of many breaches, the LBB has powers to issue statutory notices. These include: 'Notice of Intent', 'Final Notices', 'Stop Notices', 'Suspension Notices', '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.

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

**We have a range of sanctions available to us in respect of breaches of criminal and civil law. These may include providing advice, seeking undertakings, serving notices, imposing financial penalties, applying for injunctions, issuing cautions, instituting prosecutions, confiscating financial assets or imposing license restrictions.**

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.

There are instances where breaches of laws are so severe that a premise, usually commercial but in some circumstances residential, require immediate closure in order to protect the health and safety of occupiers, customers, or neighbours. Depending on the laws concerned, an Order is usually required from a Court prior to a closure notice becoming effective. There are however instances where a closure notice will have immediate effect, pending the decision of an application to a Court. Owners and/or occupiers of premises will be advised at all stages of any procedure and we will ensure that such closure notices are a final resort, having explored all other avenues to remove the immediate danger.

## D. Financial Penalties

The LBB has 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 and/or take

other enforcement action in respect of the breach or to enforce payment.

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 the LBB's 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.

#### **E. 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.

LBB is 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 it has serious concerns about compliance with voluntary undertakings or a notice.

#### **F. Simple Caution**

LBB has the power to issue simple cautions (previously known as 'formal 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.

A simple caution could appear on the offender's criminal record. It is likely to influence how LBB and others will deal with any similar breaches in the future and may be cited in court if the offender is subsequently prosecuted for a similar offence. If a simple caution is issued to an individual (rather than a corporation) it may have consequences if that individual seeks certain types of employment, and these can be taken account of by immigration agencies and border controls for some countries.

Simple Cautions will be used in accordance with Home Office Circular 016/208 and other relevant guidance.

#### **G. Prosecution**

The LBB may prosecute in respect of serious or recurrent breaches, or where other enforcement actions, such as advice, voluntary undertakings or statutory notices have failed to secure compliance. When deciding whether to prosecute we have regard to the provisions of [The Code for Crown Prosecutors](#)<sup>6</sup> as issued by the Director of Public Prosecutions.

Prosecution will only be considered where we are satisfied that it has sufficient evidence to provide a realistic prospect of conviction against the defendant(s).

Before deciding that prosecution is appropriate, the LBB will consider all relevant circumstances and will have regard to the public interest criteria set out earlier in this document.

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

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<sup>6</sup> <https://www.cps.gov.uk/publication/code-crown-prosecutors>

which have resulted from the breach. Prosecution may also lead, in some circumstances, to the disqualification of individuals from acting as company directors.

If successful we will also apply to the court for an offender to pay for the costs of investigation and bringing the prosecution to court. This is usually granted by courts in full or part.

#### **H. Confiscation Proceedings and/or Other Financial Investigation**

We will make applications under the Proceeds of Crime Act 2002 to restrain and/or confiscate the assets of an offender where applicable. The purpose of any such proceedings 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.

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

The LBB issues a number of licences and permits. We also have a role to play in ensuring that appropriate standards are met in relation to licences 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.

#### **Explanation of how decisions are made on enforcement action**

In making decisions about the most appropriate enforcement action to take, we are mindful of the principles set out in the Macrory Review of Regulatory Penalties 2006 concerning sanctions and penalties. These principles are:

- a) aim to change the behaviour of the offender;

- b) aim to eliminate any financial gain or benefit from non-compliance;
- c) 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;
- d) be proportionate to the nature of the offence and the harm caused;
- e) aim to restore the harm caused by regulatory non-compliance, where appropriate; and,
- f) aim to deter future non-compliance.

When deciding on the enforcement action to be taken, we will consider the risk and seriousness posed by the offending.

In making enforcement decisions about offences under health and safety legislation, we will have regard to the HSE's Enforcement Management Model.

Where the LBB is required to consult with another organisation before taking action, we shall ensure that this is undertaken. Examples include the statutory requirements under Primary Authority scheme or notifying the Competitions and Markets Authority of intended proceedings in accordance with the Enterprise Act 2002 and/or the Consumer Rights Act 2015.

All enforcement decisions, except a decision relating to the provision of advice, will be documented along with the justification for making the decision.

#### **Explanation of How Enforcement Decisions are Communicated to Those Affected**

We will provide a timely explanation in writing where appropriate, details of an enforcement decision including of any rights to representation or rights to appeal and practical information on the process involved.

Any alleged offending will be clearly set out so the recipient can understand what it is they are being accused of. When court summonses

are issued, they will be supported by appropriate admissible evidence.

## 7. Review of this policy

### Details of when and how the policy will be reviewed

This policy will be refreshed should any changes in legislation or relevant codes of practice require it to be updated. In addition, it will be reviewed as necessary should its contents be the source of problem or a justified complaint. We welcome any comments on the policy at any time which can be made via the details provided in the section below.

## 8. Comments and Complaints

### Details of processes for complaints and

**We understand that not everybody is going to welcome contact from an officer and hope that there is no need for you to have to complain about our regulatory activities. If however, you feel we do need to improve our services, we welcome your feedback.**

### appeals

If persons wish to complain about a regulatory decision or feel that there has been a failure to act in accordance with the [Regulators Code](#)<sup>7</sup>, in the first instance they are asked to discuss this with the member of staff involved with the action, or if applicable, their line manager.

If they remain dissatisfied, then they can make a Corporate Complaint by following using the

Council's formal complaints procedure, details of which can be found by clicking [here](#)<sup>8</sup>.

If an alleged offender is being prosecuted or subject to formal legal action, then the judicial process has its own channels for legally challenging the action or the outcome through a court appeal.

If you wish to complain about this policy, you can do so via the link above.

If you prefer not to use the online form, you can write to us at Complaints Service, The London Borough of Brent, Brent Civic Centre, Engineers Way, Wembley HA9 0FJ or email [complaints.service@brent.gov.uk](mailto:complaints.service@brent.gov.uk)

**Dated** January 2019

<sup>7</sup>

<https://www.gov.uk/government/publications/regulators-code>

<sup>8</sup> <https://www.brent.gov.uk/your-council/complaints/making-a-general-complaint/>