



HILLINGDON  
LONDON

# **London Borough of Hillingdon Enforcement Policy**

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## **1 Introduction**

- 1.1 This policy sets out the London Borough of Hillingdon's approach to any non-compliance with relevant legislation enforced by the Council.
- 1.2 The Councils regulatory and enforcement teams are responsible for ensuring compliance with a vast range of legislation which aims to protect the rights and quality of life for residents, businesses, and visitors across the borough.
- 1.3 This policy sets out the guiding principles which the Council will follow when considering and taking enforcement actions to ensure fairness, consistency, necessary and proportionate decisions are made.

## **2 Activities within scope**

- 2.1 This policy will be used by all Officers and teams engaged with enforcement action across the Council by providing clear and concise guidance to enforcement officers across the following functions and services:
  - Animal Welfare
  - Environmental & Public Health
  - Building Control
  - Planning
  - Trading Standards
  - Licensing
  - Imported/Exported Food and Feed
  - Port Health
  - Food Safety
  - Public Safety
  - Noise and Nuisance control
  - Highways and Street Scene
  - Housing
  - Anti-Social Behaviour
- 2.2 Whilst this policy contains the overarching principles of enforcement for these areas, individual service areas may have their own specific legislative policies which form part of the Council's Policy Framework. The Council will ensure consistency between all policy areas on enforcement principles.

### **3 Principles of Enforcement**

- 3.1 The Council is fully committed to the five core principles of good regulation as required by the Department of Business Innovation and Skills Regulators Code. However, in certain instances, it may conclude that a provision in the Code is either not relevant or is outweighed by another provision. Any decision to depart from the Code will be properly reasoned, based on material evidence, and documented.
- 3.2 Proportionality – The Council will ensure that enforcement action is proportionate to the seriousness of the alleged offence or breach. The Council will always take into account the individual circumstance of the case when considering action.
- 3.3 Accountability – All actions that the Council takes will be open to public scrutiny and the Council will ensure that there are clear and accessible policies and complaints procedures where concerns can be raised and investigated.
- 3.4 Consistency – The Council will carry out its enforcement functions in a fair and consistent manner. Previous cases and compliance actions will be considered when deciding how compliance should be achieved and sanctions imposed.
- 3.5 Transparency – Open sources of advice and guidance will be available from all relevant service areas to advise residents and businesses on compliance requirements. The information will be clear and, in a format where it can be easily understood.
- 3.6 Targeted – The Council will operate an intelligence led approach to enforcement activity reflecting local needs, national priorities, or repeated instances of complaint/non-compliance.
- 3.7 Public Interest Test – Once the evidential thresholds have been met, the Council will consider whether the pursuit of enforcement sanctions is in the public interest. Suspected criminal offences should not automatically be the subject of prosecution, but prosecution should follow wherever it appears that the offence or its circumstances is or are of such a character that a prosecution is required in the public interest. Each case will be considered on its own merits. In considering whether actions are in the public interest, the Council will have regard to the following factors:
  - The seriousness of the contravention or breach i.e. the detriment or potential detriment, risk of loss, actual loss, number of parties affected and risk of harm;
  - The likelihood of achieving compliance i.e. the person’s ability to comply and efforts made to comply;
  - The age of the offence or breach (staleness) – (unless the offence is serious; the delay was caused by the defendant; the offence or breach has only recently come to light; or the complexity of the offence breach required a lengthy investigation);

- If there is an element of fraud, intent, or gross negligence in commission of the offence or breach the risk of re-offending;
- The offence, though not serious in itself, is widespread in the area;
- The frailty or youth of any individual likely to be proceeded against (always bearing in mind the seriousness of the offence or breach);
- The previous history of the business or individual – including previous advice given;
- Whether the victim was vulnerable, put in considerable fear, suffered personal attack, damage or disturbance;
- Whether or not violence was used/threatened;
- Whether or not the offence or breach was committed against a person serving the public (e.g. obstruction/assault of Council staff);
- Important but uncertain legal points may have to be tested by way of prosecution;
- Any relevant case law.

3.8 Public Sector Equality Duty - All enforcement action will be undertaken without regard to race, colour, religion, gender, or sexual orientation. Enforcement action taken against an individual or organisation will be consistent with the Council's commitment to equality and diversity. If necessary, during formal enforcement action, correspondence will be translated and interpreters provided.

## **4 Governing Legislation and Codes**

4.1 The Council will comply with and follow the requirements laid out in the following legislation and codes when considering the approach to investigations and enforcement:

- Regulators Code (Better Regulation Delivery Office) 2014
- Human Rights Act 1998
- Data Protection Act 2018
- Regulatory Enforcement and Sanctions Act 2008
- Code for Crown Prosecutors
- Regulation of Investigatory Powers Act 2000 (RIPA)
- Investigatory Powers Act 2016
- Police and Criminal Evidence Act 1984
- Public Interest Disclosure Act 1998
- Criminal Procedure and Investigations Act 1996
- Criminal Justice and Police Act 2001
- Attorney General's Guidelines on Disclosure 2020
- Pre-action protocol for Possession claims by Social Landlords

4.1 These Acts and associated guidance dictate how evidence is collected and used and give a range of protections to both investigators and defendants.

## **5 Delegation of Authority**

- 5.1 The Council's scheme of delegations specifies the extent to which enforcement powers are delegated to officers and elected members.
- 5.2 Officers are authorised to carry out enforcement in all cases to a level which is considered by the Council, to be appropriate given their training, qualifications and/or experience.

## **6 Shared Enforcement Role**

- 6.1 Where there is a shared enforcement role, officers will liaise fully with any relevant enforcement agencies at the earliest possible stage to agree a suitable approach to any enforcement action. Partners will be kept updated with the progress of any shared enforcement matter, as necessary. The Council may also carry out joint operations with partner enforcement agencies from time to time.
- 6.2 Where the Council shares or has a complementary role with other regulatory agencies we will seek to avoid duplication through joint/coordinated inspection or data sharing. The Council has entered into a number of agreements and protocols with other key regulators concerning the division of enforcement responsibility and data sharing.
- 6.3 Partner enforcement agencies include, but are not restricted to:
- Metropolitan Police Service
  - Home Office
  - UK Border Force
  - HMRC
  - Health & Safety Executive
  - Food Standards Agency
  - Environment Agency
  - Gambling Commission
  - London Fire Brigade
  - DEFRA
  - DHSE
  - Planning Inspectorate
  - Medicines and Healthcare products Regulatory Agency (MHRA)
  - Brand representatives (Trading Standards)
- 6.4 Officers will endeavour to co-ordinate visits and actions with other such agencies to achieve the most efficient and effective outcomes and to minimise inconvenience for those who are being visited, inspected or subject to enforcement action.
- 6.5 Information concerning allegations outside the remit of the services covered by this

policy may be referred to the appropriate enforcement authority with any contact details (by agreement) to enable that agency to investigate the allegation.

6.6 For complex cases which cross-cut a number of Council teams and services, the Council will share information internally which may be relevant in achieving compliance or enforcement outcomes.

6.7 Where Council teams share data and intelligence, it will take a collaborative approach to 'problem solving' and will include a wide range of partners e.g. Adult Social Care/Community Mental Health and numerous multi-agency groups e.g. CR MARAC who can play an effective role in securing sustainable outcomes. There are also added benefits from multi-agency / collaborative working including:

- Bringing together different skills, perspectives and resources
- Promoting collective responsibility
- Focussing on common objectives
- Facilitating effective and compliant information sharing
- Avoiding duplication of effort and service 'gaps'

6.8 Information of enforcement cases where the Council has decided to serve a notice or commence a prosecution may be passed to potential property purchasers via the Local Land Charges Register, and CON 29 enquiry.

## **7 Data Protection**

7.1 The Council may from time to time need to share information with other local and national agencies and law enforcement in order to deliver its services or fulfil its statutory duties. Where this occurs, the Council has robust data sharing protocols in place with these bodies and it will only share individuals' personal data in circumstances where it is necessary for its public duties, it is either required or allowed by law to do so and it is in the public interest.

7.2 The transparent use of data as reflected in individual published Privacy Notices is listed on the Council's website. The benefits and use of information sharing protocols between services and partner agencies is set out in the context of prevention, intervention, enforcement and rehabilitation and under the Crime & Disorder Act 1998.

## **8 Primary Authority / Home Authority**

8.1 Where relevant, enforcement activities will be carried out in accordance with the procedure laid down within the Primary Authority Scheme. Where the Primary Authority Scheme is not applicable, officers will have regard to the Home Authority Principle, to promote good enforcement practice and to reduce burdens on business.

## **9 Risk Assessment and Planned Inspections**

9.1 Risk assessment will underpin the approach to planned regulatory activity (comprising inspections, data collection, advice and support, enforcement, and sanctions). Resources will be allocated where they will be most effective and will rate risks against regulatory outcomes. Officers will base risk assessments on all available data and consider:

- The potential impact of non-compliance on regulatory outcomes;
- The likelihood of non-compliance (where we will take into account; past compliance and potential future risks and willingness to comply)
- The potential for fraud.

9.2 The Council accepts that its enforcement priorities should be focused on those persons, premises or businesses whose activities give rise to the risks which are most serious or least well controlled.

9.3 Inspections are planned using a risk based approach and in some instances determined by codes of practice and/or practice guidance. There may be instances where premises are considered to be low risk and as such are excluded from planned inspection programmes in order to free up resources to deal with other priorities. Low risk businesses may be given advice or guidance to help them run their business safely and with the least impact on their local environment. A planned inspection approach involves premises or activities with the most severe hazards, highest risks, poorest compliance and worst management being inspected more frequently than lower risk premises.

9.4 In some cases it may be necessary to restrict the level of investigation and/or resources deployed if it is not considered reasonably possible to obtain sufficient evidence to proceed, or, if it is decided that the Council cannot, on resource grounds deal formally with areas of low priority enforcement. Complainants will be given information and advice on alternative possible solutions, whenever possible, in these circumstances.

## **10 Sufficiency of Evidence**

10.1 In considering the instigation of legal proceedings, or the issuing of a caution, the immediate consideration is the sufficiency of available admissible evidence to substantiate the allegation that a criminal offence has been committed. The test to be applied is whether there is a realistic prospect of a conviction, bearing in mind any statutory defences available to the defendant and any other factors that would preclude a successful conviction.

- 10.2 In determining the sufficiency of evidence, consideration will be given to:
- Availability of essential evidence – is it likely that the Court will exclude evidence (e.g. due to breaches of procedure or because it is hearsay);
  - Reliability of the evidence;
  - Credibility of witnesses (including previous convictions, dubious motive);
  - The admissibility or reliability of any admission or confession. (e.g. defendant's age, intelligence, lack of understanding etc).
- 10.3 In determining the admissibility of evidence, regard will be given to the requirements of the Police and Criminal Evidence Act 1984 and the Criminal Procedure and Investigations Act 1996 and associated Codes of Practice.
- 10.4 Depending on the nature of the legal proceedings, the Council will always ensure that the minimum evidential threshold is met as follows;
- Civil – on the balance of probabilities
  - Criminal – beyond reasonable doubt

## **11 Enforcement Options**

- 11.1 Enforcement officers will exercise discretion in the use of their range of powers and any policy should not restrict the officers in the use of their judgement based on expertise, experience, and delegations.
- 11.2 Officers will normally consider a staged approach to enforcement. However, this policy recognises that formal action in the first instance can be appropriate, in certain circumstances.
- 11.3 There are a range of enforcement options available to the Council including, but not limited to:
- Compliance Advice, Guidance and Support
  - Voluntary Undertakings
  - Statutory Notices
  - Fixed Penalty Notices
  - Injunctive Actions, Enforcement Orders etc
  - Possession action
  - Simple Caution
  - Conditional Caution
  - Prosecution
  - Confiscation Proceedings under the Proceeds of Crime Act 2002
  - Refusal/Suspension/Revocation of Licences
  - Seizure of plant, food, equipment and goods

## **12 Compliance Advice, Guidance and Support**

- 12.1 The Council will provide advice, guidance and support on compliance matters as a first response in many cases where a positive regulatory or contractual outcome can be achieved. Formal advice may be made in the form of a warning or advisory letter to identify the remedial actions which need to be taken to secure compliance quickly and efficiently. The Council also recognises that many businesses and individuals will require a level of education and support to bring their activities in line with statutory and contractual requirements.
- 12.2 Officers will normally use this option where the potential impact of non-compliance is minor, there is reasonable confidence that the business or individual will take appropriate corrective action and where this is the first contact with them on the issue. As far as the law allows, officers will take account of the circumstances of the case and the conduct of the business or individual, when considering action.
- 12.3 Officers will provide advice clearly and simply. Officers will make it clear that they are either making a recommendation in relation to best practice or giving advice on meeting legal requirements. Significant advice on legal requirements and recommendations on best practice will be confirmed in writing. Where appropriate, legal requirements will be confirmed by service of a Statutory Notice.
- 12.4 Officers may issue written warnings to make clear that any further breaches of legislation will be viewed seriously and that these may be subject to enforcement action.
- 12.5 Wherever possible, officers will try to provide written advice on good practice, industry guidance or technical information where there is a need for help in meeting requirements. However, issuing advice or warnings does not remove the necessity for the Council to serve formal notices in certain circumstances, to ensure that compliance is achieved within a prescribed period.
- 12.6 Notwithstanding that in the most serious of circumstances, it will be appropriate to impose more formal enforcement actions and the Council will consider the principles outlined in Section 6 of this policy.

## **13 Voluntary Undertakings**

- 13.1 The Council has the discretion to accept voluntary undertakings to rectify and prevent breaches. Voluntary undertakings may include a commitment from the person/business to make changes to their operation or behaviour to bring them in line with regulatory requirements. A voluntary undertaking is likely to include a timescale to comply with any failures to comply likely to result in formal enforcement action.

## **14 Statutory Notices**

- 14.1 The Council has powers to issue a range of improvement, Abatement, Suspension, Prohibition, Closure etc. notices which require certain actions by those who have been served with a notice.
- 14.2 Any statutory notice will clearly set out the legal powers, exact actions that are required and a timescale to comply with the notice. Notices will also include rights of appeal and the likely consequences of non-compliance with the notice.
- 14.3 Failure to comply with notices are likely to result in more formal enforcement action being escalated.
- 14.4 The Council also has powers to apply to the Court for Orders following the service of certain notices. Owners/occupiers/businesses/tenants will be advised of all stages of these formal proceedings.

## **15 Fixed Penalty Notices**

- 15.1 The Council has powers to issue fixed penalty notices for some offences. A FPN does not appear on an individual's criminal record but any non-payment or unsuccessful appeal of a notice is likely to result in a Criminal Prosecution or Civil Enforcement action.
- 15.2 Where a FPN is paid, the Council will not pursue the matter any further and will consider the matter closed.
- 15.3 Where repeat FPN's are issued for the same offence, the Council does have discretion to pursue a prosecution.

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

- 16.1 In some circumstances, the Council may seek formal orders or injunctions from the Court to ensure that a breach is rectified or to prevent a breach from occurring.
- 16.2 Non-compliance with Court orders usually carries severe penalties i.e. imprisonment.

## **17 Simple Cautions**

- 17.1 Where the evidential thresholds are met and the enforcement principles have been satisfied, the Council may decide to issue a Simple Caution as an alternative to prosecution for some less serious offences, where the person has admitted to the offence and is willing to accept a caution. The Council will also consider whether it is in the public interest to offer a simple caution in the circumstances.

17.2 Home Office Circular 016/2008 states that the purpose of a caution is:

- To deal quickly and simply with less serious offenders;
- To deal with first time offenders;
- To divert them from unnecessary appearances in the criminal courts; and
- To reduce the chances of them re-offending.

17.3 The following conditions must be fulfilled before a simple caution is administered:

- There must be evidence of the suspected offender's guilt, sufficient to give a realistic prospect of conviction;
- The suspected offender must admit the offence;
- The suspected offender must understand the significance of the caution and give an informed consent to being cautioned.

## **18 Conditional Cautions**

18.1 Where the evidential thresholds are met and the enforcement principles have been satisfied, the Council may decide to issue a Conditional Caution as an alternative to prosecution for some less serious offences. A conditional caution allows the relevant prosecutor to decide to give a caution with one or more conditions attached. When considering whether to administer a conditional caution, regard will be given to Criminal Justice Act 2003 and the Code of Practice for Adult Conditional Cautions. The Council will also consider whether it is in the public interest to offer a simple caution in the circumstances.

18.2 The following five requirements must be fulfilled before a conditional caution can be administered:

- I. There must be evidence that the offender has committed an offence;
- II. The relevant prosecutor must determine that there is sufficient evidence to give a realistic prospect of conviction and that a conditional caution should be given to the offender for that offence;
- III. The offender must admit to the relevant prosecutor that they have committed the offence;
- IV. The relevant prosecutor must explain the effect of the conditional caution and warn the offender that failure to comply with any of the conditions may result in a prosecution for that offence and;
- V. The offender must sign a document containing the details of the offence, an admission and consent to be given a conditional caution – the details of the conditions must also be attached to the conditional caution.

18.3 The conditions of a conditional caution may be reparative, rehabilitative or punitive (financial penalties are limited to a maximum of £250.00). The appropriate conditions will be decided on a case by case basis. Regard will be given to the core principles of good regulation and will take into account the interests of any victims, the community and the suitability of the offender to comply with the conditions.

18.4 Where an offender fails to comply with any of the conditions, the matter will proceed to prosecution.

## **19 Prosecutions**

19.1 A prosecution will be undertaken when the evidence passes the “Evidential Test” and it is in the public interest to do so. Prosecutions will only be considered where the Council has sufficient evidence to provide a realistic prospect of conviction against the defendants.

19.2 In general, the Council will bring prosecutions:

- I. When the offence is a serious one in the context of the legislation being enforced; and / or
- II. When the offence is committed or has continued contrary to advice, warnings, notices, or Statutory Notices given by the Council; and / or
- III. When the opportunity to discharge liability to prosecution by way of Fixed Penalty Notice has not been taken.

19.3 It must be recognised that each individual case is unique and will be considered on its own circumstances and merits. However, there are general principles that will apply in all cases.

19.4 The decision to prosecute will have regard to the criteria set down in the Code for Crown Prosecutors, issued by the Crown Prosecution Service.

19.5 Where officers consider a prosecution, the following criteria will be taken into account as appropriate:

- Sufficiency of evidence and;
- Public Interest Criteria.

19.6 The following considerations will apply where appropriate:

- I. Prosecution of Directors of Companies - Where allowed by the legislation being enforced, the prosecution of Directors, Managers or similar officers of

companies will be considered where any offence by the company was committed due to their consent, connivance or neglect.

- II. Prosecution of Employees – this will be considered only in exceptional cases (e.g. where an employee has failed to follow employer’s instructions or has been deliberately obstructive). In all such cases, it must be borne in mind that an employee may be at risk of losing their employment.
- III. Obstruction – prosecution will be considered in all cases of obstruction but in particular where it has resulted in additional work and costs to the Authority.

## **20 Confiscation Proceedings**

- 20.1 The Council 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 any financial benefit that the offender has obtained through criminal conduct.

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

- 21.1 Where the Council has licensed a person, premises or activity under a licensing regime, the Council may seek to remove or suspend that licence where there is a breach or poor level of compliance with conditions or other requirement.
- 21.2 The Council may also consider refusing a licence where matters of non-compliance come to light before or during any application period.
- 21.3 Where any decision is taken to refuse/suspend or revoke a licence, it will be in line with the statutory requirements of the licensing regime and any separate policy made under it.

## **22 Seizure of Food, Goods, Plant and Equipment**

- 22.1 The Council has a range of powers to seize goods where offences are suspected.
- 22.2 Portable equipment, such as music systems and other machinery, may be seized if nuisance continues following the service of a statutory abatement notice and it is considered necessary to stop the nuisance at the time, or to prevent likely repeat occurrences, prior to any Court hearing. Where equipment is seized, the Council will always seek to prosecute and may use legal provisions to retain the equipment permanently.
- 22.3 Where seizures are made, the Council will provide a seizure notice outlining the legal powers, reason for the seizure, appeal process and what happens next.

## **23 Integration with other Council Policies and Strategies**

- 23.1 The Council has a range of Policies and Strategies which form the framework of our statutory functions and powers. Where enforcement action is taken under this policy, the Council will ensure that those actions are aligned with the statements and intentions contained within other Council policy documents.
- 23.2 Enforcement decisions made under this policy will also be made in line with the Councils Prosecutions & Sanctions Policy as agreed by Cabinet, October 2020.
- 23.3 Relevant Council policies include, but not limited to: The Local Plan, Statement of Licensing Policy, Anti-bribery Policy, Anti-Money Laundering Policy, Surveillance Policy etc.

## **24 How Enforcement Decisions are Made**

- 24.1 The Council will make a range of considerations when considering enforcement actions including the risk and seriousness posed by the offending.
- 24.2 All formal enforcement decisions will be documented along with clear justification for making the decision.

## **25 Complaints about the Council's Enforcement Activity**

- 25.1 The Council has a Corporate Complaints Procedure, easily accessible to businesses, the public and consumer groups and details can be found on the Council website [www.hillingdon.gov.uk](http://www.hillingdon.gov.uk).
- 25.2 Certain enforcement processes also include clear appeal pathways which should be exhausted before the formal complaints handling procedure is accessed.