

**Royal Borough of Greenwich**  
**Directorate of Housing & Safer Communities**  
**Community Safety and Environmental Health Division**  
**Enforcement Policy (October 2017)**

**I. Introduction**

The purpose of this Enforcement Policy is to ensure compliance with legislation through proportionate, effective and efficient approaches to regulatory inspection and enforcement which improve regulatory outcomes. This document cannot be entirely prescriptive about our approaches because the circumstances of each individual case, and the evidence available, will vary.

The Division's regulatory services aim to protect public health and safety, the economic well being of individuals and businesses, and provide a better environment for everyone in the Borough. It does this through the provision of advice, education, and regulating the activities of others. This includes ensuring compliance with legal regulatory requirements using enforcement powers.

This policy allows for any decision to be reviewed by a senior officer. Where any action is considered by the senior officer to be inappropriate or unjustified, an alternative level of action may result.

Specific procedures and approaches, in accordance with the principles of this policy, may be developed in relation to specific legal requirements.

This Policy should be considered in conjunction with the following:

- The Code for Crown Prosecutors
- Criminal Procedure and Investigations Act 1996 (CPIA)
- Police and Criminal Evidence Act 1984 (PACE)
- Regulatory Enforcement and Sanctions Act 2008
- Regulators' Code

This revised policy document supersedes any previous versions of our Enforcement Policy. (Date of Decision: 2/10/2017)

**2. Aims**

- To achieve our service objectives without imposing unnecessary burdens and minimising the cost to the Royal Borough, individuals, organisations and businesses.
- To explain, in general terms, the approach adopted when carrying out the Royal Borough's duty to enforce a wide range of legislation. Our approach is to use a range of enforcement powers, whether that be criminal prosecution at one end of the spectrum, or informal warnings and the provision of advice at the other.

- To ensure that any decision to depart from this Policy will be properly reasoned, based on material evidence, and documented.
- To outline to those to whom this policy will apply what they can expect by way of enforcement.
- To ensure that the method(s) of enforcement selected are chosen on the basis of producing the highest reasonable standards of compliance within the least time, where this is practicable.

### **3. Guiding Principles**

The policy is based on 7 guiding principles as set out below: -

- **Accountability:** to recognise that it is the responsibility of every business and individual to comply with the law and that most want to do so.
- **Proportionality:** to ensure that action taken relates directly to the actual or potential risk to health, safety, the environment, or economic disadvantage to either consumers or businesses.
- **Consistency:** to ensure a broadly similar approach is taken in similar circumstances to achieve consistent results with due regard to the specifics of each case.
- **Transparency & Openness:** to ensure that the enforcement action that will be taken by the Royal Borough is easily understood and that clear distinctions are made between legal requirements and advice/ guidance about what is not compulsory.
- **Objectivity:** to ensure that decisions are not influenced by reason of ethnicity, gender, disability, sexual orientation, age, class, income, employment status, or religious beliefs of the offender, victim or witnesses.
- **Equality:** to ensure that specific consideration is given to meet any special needs of business owners and the public where appropriate. Sensitive consideration will be given where persons involved are children, elderly, infirm or vulnerable because of mental ill-health. Interpreting and translation facilities may be available in some circumstances.
- **Targeting:** to ensure that regulatory action is directed primarily at those activities that present the greatest risk and those who fail to meet their accountability.

### **4. Levels of Regulatory Action**

The Royal Borough of Greenwich is committed to delivering a graduated approach to enforcement in adherence to the above guiding principles.

All person(s) and Companies will be encouraged to understand the nature and extent of their responsibilities and comply voluntarily. Enforcement will progress from the provision of advice, through to formal enforcement measures unless the circumstances are so serious that it would be appropriate to commence formal action immediately. Ensuring that legislation is complied with by any business, organisation, individual or other regulated entity will be achieved by one or more of the methods set out below.

Our graduated enforcement approach entails actions which occur outside of a Court environment and those which occur inside a Court environment. This may arise when previous actions have not secured a suitable outcome, or for an offence (or offences) arising from either a serious risk, or where a duty-holder has fallen well below the required legal standard(s).

a) Initial Stages of Graduated Enforcement

Progression will generally follow as below:

- **Promotion and advice:** to raise awareness about legal standards and promote good practice. This will include the issuing of press releases, making leaflets and other forms of written guidance available to the public and businesses, and by personal contact. Failure to follow informal advice or honour voluntary undertaking (s) relating to contraventions of the law could result in an escalation of enforcement action.
- **Informal warnings:** these will be used to reinforce promotional activities where, whilst the law may have been broken or where a minor offence had been committed, it was not thought appropriate to take any other action. An informal warning can be oral or written but will always explain what is wrong and what is required to put things right.
- **Formal enforcement:** this includes the use of statutory notices (sometimes called legal notices), the revocation or refusal to grant a licence or registration, works in default, Simple Cautions, Civil Penalties/Fixed Penalty Notices, the seizure of goods or equipment, and either informal or formal undertakings. These courses of action will be taken in accordance with procedures laid down in legislation, codes of practice and professional guidance notes.

There are a number of different stages as follows:

**Statutory (or Legal) Notices**

Some legislation enforced by the Royal Borough provides for the service of statutory notices, which require a person, business or organisation to comply with specific legal requirements. Where a statutory notice is served, the method of appealing against the notice (if the recipient feels the notice is unjustified or excessive in its requirements) will be provided in writing at the same time. The notice will explain what is wrong, what is required to put things right and what will happen if the notice is not complied with.

In general, failure to comply with a statutory notice makes the recipient liable to prosecution. The Royal Borough may also carry out works to comply with the notice and recover the cost of doing so from the recipient of the notice. In certain circumstances it is possible to prosecute as well as serve a notice (and failure to comply with the notice is an additional offence).

## Civil/Financial Penalties

We have powers to issue civil/monetary penalties or Fixed Penalty Notices (FPNs) with respect to some legal breaches. A civil penalty is not a criminal fine, and does not appear on an individual's criminal record. If a civil penalty is not paid however, we may commence proceedings or take other enforcement action in respect of the breach. If a civil penalty is paid in respect of a breach then we will not take any further enforcement action for that particular breach. Payment of a civil penalty does not provide immunity from prosecution in respect of similar or recurrent breaches however.

We are only able to issue civil penalties where there are specific powers to do so. If the option of such is available, their issue is at our discretion. Where legal infringements are serious or recurrent, it may be that prosecution is more appropriate.

## Refusal, Suspension, or Revocation of Licences

We issue a range of different licences and permits and have a role to play in ensuring that appropriate standards are met in relation to licences issued by other agencies. Many licences include conditions which require the holder to take steps to ensure that an activity or business is managed or run in a particular way. Breach of these conditions may lead to a review of the licence, which in turn may result in its revocation or amendment. Other enforcement action (including prosecution) might also be taken. When considering future licence applications, we may take previous breaches and enforcement action into account.

## Simple Cautions

If the Royal Borough believes that an offence has been committed it may decide, in appropriate circumstances, to offer a Simple Caution to an offender as an alternative to prosecution. A Simple Caution still relates to a serious matter and will be considered in the future when deciding whether or not to institute proceedings against that person should they offend again. It may be referred to in any subsequent court proceedings within the following 3 years.

The purposes of a Simple Caution are:-

- (a) to deal more quickly and cost effectively with offenders;
- (b) to avoid unnecessary appearance in criminal courts;
- (c) to reduce the chance of offenders re-offending.

The Royal Borough will issue a Simple Caution, in writing, if it is satisfied that the following conditions are met:

- (i) there is sufficient, admissible, and reliable evidence that the offence has been committed and that there is a realistic prospect of conviction;
- (ii) the alleged offender admits the offence, usually by signing an appropriate declaration;
- (iii) the alleged offender understands the significance of a simple caution and gives an informed acceptance of it.

Where a Simple Caution is offered by the Royal Borough and not accepted, the normal course of action is that the alleged offender will be prosecuted.

#### b) Court-Centred Stages of Graduated Enforcement

These are later stages of a graduated enforcement approach and are Court-based because previous actions, where they have been taken, may not or have not lead to a desired outcome being sustained. They include the seizure of goods, contempt proceedings and prosecution. In certain circumstances, we may initiate a prosecution due to the significance of risk involved.

##### Forfeiture Proceedings

This course of action may be used together with seizure and/or prosecution where there is a need to dispose of goods in order to prevent them re-entering the market place or being used to cause a further problem. Any application for forfeiture will be made to the Magistrates' Court.

##### Injunctive Actions

Sometimes, where offenders are repeatedly found guilty of similar offences, or where it is thought that this is the most appropriate course of action, injunctive actions may be used. Such action may be used to deal with repeat offenders, dangerous circumstances, situations where risks to a number of individuals will arise, or significant consumer detriment.

##### Proceeds of Crime Applications

Applications may be made under the Proceeds of Crime Act 2002 for confiscation of assets in serious cases. The purpose is to recover the financial benefit that the offender has obtained from their criminal conduct. Proceedings are conducted according to the civil standard of proof. Applications are made after a conviction has been secured.

##### Criminal Behaviour Orders (CBO's)

Where the non-compliance under investigation amounts to anti-social behaviour and, where considered appropriate, a CBO will be sought to stop the activity. We will always liaise with the Royal Borough's Anti-Social Behaviour Specialist Team before seeking an Order. This type of action may be used in incidents such as persistent targeting of an individual or a group of individuals in a particular area.

##### Prosecution

The Royal Borough will use discretion in deciding whether or not to initiate a prosecution and will follow the Code for Crown Prosecutors and other official guidance. As a course of action, a prosecution aims to punish criminal behaviour, prevent recurrence and to act as a deterrent to others. Where the circumstances warrant it, prosecution without prior warning and in addition to other sanctions, may take place.

Before starting any prosecution the Royal Borough will be satisfied that:

- (i) there is sufficient, admissible, and reliable evidence that the offence has been committed and that there is a realistic prospect of conviction; and
- (ii) it is in the public interest to do so.

In considering whether a prosecution is in the public interest the Royal Borough will consider all known relevant factors. These will include the following:

- the seriousness and prevalence of the offence;
- the implications of the breach;
- the knowledge and intent of the alleged offender;
- the foreseeability of the offence and the circumstances leading to it;
- the history of offending;
- the deterrent effect of a prosecution on the alleged offender and others;
- the personal circumstances and attitude of the alleged offender.

Other factors may apply depending on the circumstances of an individual case.

There is a presumption that the Royal Borough will prosecute in any of the following circumstances:

- it is appropriate in the circumstances to deter others from similar failures to comply with the law;
- breaches which have significant or potentially significant consequences affecting the health or safety of the public;
- failure to comply with a statutory notice or respond to advice and warnings about legal requirements;
- disregard of legal requirements for financial reward ;
- significant financial loss, potential or actual, to a third party involved in Trading Standards cases;
- a history of similar offences;
- persistent or blatant breaches of legislation or multiple breaches of a number of statutes;
- where fraud, gross negligence or guilty knowledge is a factor;
- failure to supply information without reasonable excuse or knowingly or recklessly supplying false or misleading information;
- obstruction or assault of authorised staff in the course of their duties;
- impersonation of Royal Borough staff.

Criminal proceedings will be taken against those persons responsible for the offence(s). This may involve a company where the offence arises in the course of the company activities. The Royal Borough will also identify and prosecute individuals, including company directors, managers, and other staff if they consider that such a conviction is warranted.

In appropriate circumstances the Royal Borough will seek the disqualification of persons from running businesses. The Royal Borough will always seek to recover the costs of investigation and Court proceedings from the offenders.

Where appropriate the Royal Borough will work in partnership with other enforcement agencies and where information comes to light that offences outside the remit of the Royal Borough may have been committed, information may be referred to the appropriate enforcement agency.

### **How to get a copy of the Policy or make comments**

This Policy is available on the Royal Borough of Greenwich website:

[www.royalgreenwich.gov.uk/environmentalhealth](http://www.royalgreenwich.gov.uk/environmentalhealth)

If you would like a paper copy of the Policy and/or you would like to comment on the Policy, please contact us by:

- E-mailing: [Health@royalgreenwich.gov.uk](mailto:Health@royalgreenwich.gov.uk)
- Writing to: Directorate of Housing & Safer Communities, 4th Floor, The Woolwich Centre, 35 Wellington Street, Woolwich, London SE18 6HQ.