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London Borough of Barking and Dagenham Housing and Health Department

Enforcement Policy

This document states the principles and practices that the Council will apply when deciding what enforcement action to take

Enforcement Policy Statement

Our primary enforcement duty is to protect the public and the environment. At the same time we are committed to promoting a thriving national and local economy by carrying out our enforcement functions in an equitable, practical, transparent and consistent way

Scope of Enforcement Policy

The Council enforces a wide range of legislation and prosecutes offenders. This policy includes legislation in the following areas

- Food Safety
- Health and Safety at Work
- Fair Trading
- Consumer Safety
- Environmental Protection
- Licensing and Registration
- Public Health
- Housing

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Enforcement Principles

- **Standards**

We will consult widely with relevant partners to draw up clear standards setting out the level of service and performance we expect to provide. We will publish these standards and our performance against them in our annual service plan report.

- **Openness**

We will publish information and advice about the rules that we apply. Where formal action is taken we will ensure that our reasons are clear and that any appeals procedures available are explained.

- **Helpfulness**

We will provide a courteous and efficient service. Our staff will identify themselves by name and provide a contact point and telephone number for further dealings with us. We will ensure that, wherever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

We believe that prevention is better than cure. We will advise on and assist with compliance and will work particularly actively with small and medium sized businesses.

- **Feedback about our services**

We will actively seek the views of those who receive our services about how we can improve.

We will provide well publicised, effective and timely complaints procedures that are easily accessible to business, the public, employees and consumer groups.

In cases where disputes cannot be resolved, we will explain any right of complaint or appeal, with details of the process and the likely time-scales involved.

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- **Fairness and Risk**

We will minimise the cost of compliance by ensuring that any action we require is proportionate to the risks and seriousness of the breach.

As far as the law allows, we will take account of the circumstances and attitude of offenders when considering action. We will listen to the views of anyone who has been injured or suffered loss.

We will consult with enforcement authorities with special responsibility for the decision making base of a company (Home Authority) or the source of an offending product or service (Originating Authority).

We will take particular care to work with small businesses, voluntary and community organisations.

- **Consistency**

We will carry out our duties in a fair, equitable and consistent manner. We will promote consistency, and make effective arrangements for liaison with other authorities and enforcement bodies.

We will ensure our staff are properly trained and competent to take decisions about formal action in the field. We will monitor the outcomes of enforcement, audit the competence of our staff and run regular training. We will take formal action only where we are sure that it is consistent with this policy.

- **Targeting**

We will use risk assessment to target our resources and to prioritise our activities. Our response times and inspection intervals will be traceable to an assessment of risk and seriousness of offence.

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Enforcement Processes

Our enforcement will be based on four principles:

- **Education** - we will promote good practice, support training initiatives and provide advice at every opportunity.
- **Planned Inspection** - we will routinely inspect premises where we are the enforcement authority. Intervals between inspections and inspection priorities will be based on risk.
- **Responding to complaints and information** - we will prioritise our response to complaints and other notifications by an assessment of risk.
- **Projects** - We will monitor trends in enforcement and non-compliance and target initiatives at issues of significance.

Enforcement Decisions

We have a number of enforcement options ranging from verbal advice on compliance through to prosecution. The following will be used to help us determine the correct level of action in any particular case:

- **How serious is the matter?**
 - ◇ Was there disregard for the law?
 - ◇ Was there significant economic advantage?
 - ◇ Has there been reckless disregard for safety?
 - ◇ Has there been serious injury, loss or public alarm?
 - ◇ Are there multiple offences?
 - ◇ Is the case connected with a major area of local concern?
- **What is the previous history?**
 - ◇ Is it a repeat offence?
 - ◇ Has previous advice on how to comply with the law been ignored?

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- In the case of businesses new to the area, what steps have they taken to get information about compliance?
- Is the action proposed likely to be effective in preventing recurrence of the offence?
- Are there serious consequences resulting from a failure to comply with a legal requirement?

Those who ignore advice on compliance will be subject to a higher level of action where it is available.

Enforcement Options

We will use the full range of enforcement options to achieve compliance. These options include

- **Informal action** - will be taken in the first instance where the matter is not serious, the past history shows no similar problems, there is no risk to health or of significant fraud and we have confidence that compliance will be achieved. Voluntary organisations will normally be dealt with at this level.

Advice from Officers will be put clearly and simply. It will be confirmed in writing, explaining why any remedial work is necessary and over what time-scale. We will make sure that legal requirements are clearly distinguished from best practice advice.

- **Notices Requiring Improvement** - These will be used where there are significant contraventions or risks to health.

Before formal enforcement action is taken, officers will provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference and agree time scales for compliance.

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- **Notices Prohibiting Activities** - These will be used where the activity poses a significant risk to health or safety. Where the risk exists at the time of the action or is imminent we will immediately use powers available to seize or detain articles, equipment or food so as to effectively remove the risk.

Where Officers consider immediate notice action is necessary, they will give an explanation of why such action is needed at the time and confirm in writing in the notice served at that time. If requested, officers will provide further written explanation of their decision within 5 working days.

Where Officers serve an Emergency Prohibition Notice under the Food Safety Act 1990, they will also give immediate notice of an intention to apply to Barking Magistrates for an Emergency Prohibition Order. Copies of such orders and notices will be displayed at the premises to inform the public what action has been taken.

- **Formal Cautions** - these will be issued where there is clear evidence and acceptance of an offence by the offender. The purpose will be :
 - ◇ to deal quickly and simply with less serious offences;
 - ◇ to avoid unnecessary appearances in criminal courts; and
 - ◇ To reduce chances of re-offending.
- **Prosecution** - will be taken where there is possibility of securing a conviction and prosecution serves the public interest.

Factors to be considered in assessing the public interest are:

- ◇ The seriousness of the offence.
- ◇ The cost and time involved in bringing the matter before the courts.
- ◇ The age, circumstances or mental state of the offender.
- ◇ The likelihood of them re-offending.
- ◇ Whether there has been negligence and the possibility of avoiding offences.
- ◇ The views of anyone aggrieved by the offence.
- ◇ The length of time since the offence took place.

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- We will always seek to recover the full economic costs of prosecuting offenders.

Where other factors affect our decision to prosecute we will publish them. These gravity factors will be used to reflect changing trends in offences and priorities for the Council.

Gravity Factors

The following offences will normally warrant the highest level of formal action

- Obstruction of an Officer.
- Organised, premeditated and deliberate offences.
- Targeting of vulnerable groups.
- Failure to comply with formal notices served by the Council.
- Where Government or other public body guidance requires strict enforcement, for example:
 - ◊ Non-compliance with the Food Safety (General Food Hygiene) Regulations 1995, Regulation 4(3), where a proprietor has failed to implement control of a serious food safety hazard.
- Where there has been a serious risk of danger to life or limb,
- Where there has been a fatality or serious injury.
- Where a particular contravention has caused serious public alarm.
- Where there has been substantial financial gain.

Publicity

We recognise that publicising our successful prosecution cases will help to inform others about the consequences of failing to comply with legal requirements. We will issue press releases on all of our successful prosecution cases.

Enforcement Procedures

We will publish procedures prescribing procedures that support this policy. Officers will be trained in the use of these procedures and will have authority to take enforcement actions traceable to them. Where enforcement results in

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a formal caution or prosecution, Officers will provide a copy of this policy and a justification for their action.

These procedures include, but are not restricted to, the following areas

- Prosecution
- Formal Caution
- Service of Notices
- Planned Inspections
- Complaint Handling
- Offence Investigation
- Disclosure and the Criminal Procedure and Investigation Act
- Interviewing of Witnesses and the Police and Criminal Evidence Act
- Public Relations and Customer Care
- The Council's Corporate Complaints Procedure

Review

This policy will be reviewed to reflect changes in its source documents and controlling bodies.

We will review the success of this policy in supporting the Core Values and Objectives of the Council and make changes where and when required and consult with our partners about any changes that we make.

Sources

This Policy is based on the following sources:

- Enforcement Concordat - Better Regulation Unit , March 98
- Good Enforcement Policy – Barking and Dagenham Health and Consumer Services Committee, 23.3.98
- Guidance on Food Safety Enforcement Policies - Local Authority Coordinating Body on Trading Standards and Food, February 1994
- Food Safety Hazard Analysis – Guidance on securing compliance with hazard analysis requirement. - Local Authority Coordinating Body on Trading Standards and Food, July 1997
- The Code for Crown Prosecutors - Crown Prosecution Service, June 1994
- Choice of Appropriate Enforcement Action - HELA, LAC L563, February 1994

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- Enforcement Policy Statement - Health and Safety Commission, 1995
- Working with Business - A Code for Enforcement Agencies - Department of Trade and Industry
- Food Safety Act Codes of Practice
- Home Office Circular 18/1994 - Guidelines to all Chief Officers of Police on the Cautioning of Offenders

Availability

Free copies of this policy and our published standards of service and performance are available from -

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