

London Borough of Barking & Dagenham

Regulatory Services

Enforcement Policy Statement

2023

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Introduction

The vision for the London Borough of Barking and Dagenham is: One borough; One community; No one left behind. The Council aims to deliver this vision by working across four themes: a new kind of Council; empowering people; inclusive growth; and citizenship and participation.

A firm but fair enforcement policy will support the Council's delivery of its priorities.

The Council's Regulatory Services are responsible for the enforcement of a wide variety of legislation, encompassing:

- anti-social behaviour
- environmental crime
- environmental protection
- food safety and standards
- health and safety at work
- noise and nuisance
- licensing
- planning enforcement
- private sector housing
- trading standards

1.1 This policy statement sets out our approach to enforcement, that is, where our officers take action to enforce the law when issues of non-compliance, hazard or serious risk have been identified.

1.2 Our primary objectives in undertaking regulatory and enforcement action are the protection of the public and of the natural and built environment. We are equally committed to promoting a thriving local economy and support this by carrying out our regulatory and enforcement functions in an equitable and consistent way.

1.3 This enforcement policy adopts an approach to regulatory inspection and enforcement which seeks to improve regulatory outcomes without imposing unnecessary burdens.

1.4 The policy has been developed in accordance with the general principles of the Regulators' Code¹, the provisions of the Legislative and Regulatory Reforms Act 2006² and the Regulatory Enforcement and Sanctions Act 2008³. All relevant stakeholders have been consulted.

1.5 The Regulatory Enforcement and Sanctions Act 2008 established the Primary Authority Scheme. Our officers will comply with the requirements of the Act whenever considering enforcement action against a business or organisation that has a Primary Authority.

1.6 The Council continues to move towards a more integrated enforcement and regulatory service, with the aim of maximising the impact of our available resources. The emphasis is placed on encouraging businesses and individuals to act responsibly, so that Barking and Dagenham may be a borough in which people take pride and in which they enjoy living and working.

¹ <https://www.gov.uk/government/publications/regulators-code>

² <http://www.legislation.gov.uk/ukpga/2006/51/contents>

³ <http://www.legislation.gov.uk/ukpga/2008/13/contents>

2. General Principles of Enforcement

2.1 This Council is committed to ensuring that our enforcement actions are targeted, proportionate, consistent and transparent.

Targeted - means making sure that action is focused primarily on those whose activities give rise to the most serious risks, where the hazards are least well controlled or where there is clear evidence of failure to comply with a regulatory regime. We adopt an intelligence led approach, using a range of information sources including council services, partner agencies and the local community.

Proportionate - means ensuring that enforcement action is commensurate to the level of risk, harm caused or the extent of regime infringement.

Consistent - means taking a similar approach in similar circumstances.

Transparent - means being clear about our approach to enforcement. This also involves helping individuals, organisations and businesses to understand what is expected of them in order to comply with the legislation we enforce and providing a clear distinction between mandatory requirements and best practice.

2.2 The Council is accountable for its actions. This means that we undertake enforcement on behalf of the public and businesses as a whole and not in the interest of any particular individual or group. Where appropriate, we will always consider views expressed by those affected by an offence or regulatory infringement as well as the wider consequences of any enforcement decision.

2.3 Whilst the general principles above will always be applied, each individual case will be considered on its own circumstances before an enforcement decision is taken.

2.4 Where offending or enforcement incurs a cost to the Council, we will seek to recover the costs from those responsible.

3. Engagement Processes

3.1 The Council will engage with those it regulates in a variety of ways, including:

- providing information and advice on legislative requirements and compliance
- operating statutory licensing, permission and registration regimes
- undertaking programmes of planned inspections based on assessments of risk
- conducting visits to investigate incidents, accidents, complaints, and allegations of non-compliance.

3.2 However, we consider that appropriate use of our enforcement powers is important, both to secure compliance with the law and regulatory regimes we enforce, and to ensure that those who have a legal duty are held to account for significant failures.

4. Decisions on Enforcement Actions

4.1 in addition to applying the general principles, enforcement decisions will be taken with the aims of:

- protecting persons, businesses and the environment from harm

- changing poor behaviours, deterring future non-compliance and inspiring public confidence
- eliminating any financial gain or benefit associated with non-compliance
- seeking to ensure that the most serious offending is subject to the highest sanction

4.2 No enforcement decision will be influenced by the race, disability, gender, sexual orientation, age, religion or employment status of any person involved.

4.3 All cases where prosecution is considered will be assessed in accordance with the Code for Crown Prosecutors⁴. No prosecution will go ahead unless we find there is sufficient evidence to provide a realistic prospect of conviction and that prosecution is in the public interest.

5. Enforcement Actions and Sanctions

5.1 We may seek to achieve compliance through early engagement and the provision of information and advice rather than taking enforcement action.

5.2 Depending on the applicable legislation, there are a range of potential enforcement options available to regulatory officers. Where any enforcement intervention is subject to a right of appeal, officers will provide information on how to appeal at the time that the action is taken.

- **Informal Action** – verbal or written advice may be given where minor breaches of law or regime requirements are identified. If this approach is deemed inappropriate, we will clearly identify the relevant contraventions to allow the breach to be rectified in a timely manner.
- **Fixed Penalty Notice (FPN) / Penalty Charge Notice (PCN)** – some of the legislation we enforce allows us to issue Fixed Penalty Notices or Penalty Charge Notices, requiring the payment of a fine. FPNs or PCNs may be issued the first time an offence is identified, without the need for previous advice or warning. In the event that fines are not paid, the Council will seek to pursue the recipients of unpaid PCNs for payment in the County Court and to prosecute the recipients of unpaid FPNs.
- **Statutory Notices** – some of the legislation we enforce allows us to serve Notices requiring recipients to take specific actions, provide certain information, or cease certain activities. Notices may require identified activities to cease immediately where the circumstances relate to serious threats to health, safety or the environment. In other circumstances the time allowed for compliance with the Notice will be reasonable, subject to statutory minimum periods. Failure to comply with a notice is a criminal offence and may result in prosecution. In some circumstances we will charge for notices served.
- **Civil Penalty Notice** – the Housing and Planning Act 2016 allows us to use Civil Penalty Notices as an alternative to prosecution in respect of certain offences under the Housing Act 2004 and the Housing and Planning Act 2016 of up to £30,000 for each offence. In the event that charges are not paid, the Council will seek to enforce payment in the County Court.
- **Refusal, Revocation or Suspension of a Licence or Permit** – where there is a requirement for an activity to be carried out only under a licence issued by the local authority, the Council may grant a licence subject to standard and/or special conditions. The Council may refuse to grant a licence if the applicant or application do not meet the required standard or, where a licence has been granted, may revoke

⁴ <https://www.cps.gov.uk/sites/default/files/documents/publications/Code-for-Crown-Prosecutors-October-2018.pdf>

or suspend the licence where the licensee fails to comply with the conditions under which the licence is held.

- **Licence Review** – for licences issued under the Licensing Act 2003, we and/or other persons may apply to have a premises licence reviewed by the Council’s Licensing Committee where activities at the premises appear to be undermining one or more of the four licensing objectives under the Act (the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm). Such review may result in modification, suspension or revocation of the licence.
- **Enforcement Orders** – for some of the legislation we enforce, we may apply to the County Court or High Court for an enforcement order requiring an individual or business to comply with the law. Failure to comply with the order is a contempt of court, punishable by a fine and/or imprisonment.
- **Undertakings** – in some very limited circumstances, we may accept an undertaking, or formal promise, to comply with the law from an individual or business if they appear genuinely penitent for their offending and committed to making amends.
- **Injunctions** – in some circumstances we may apply to the County Court or High Court for an injunction to prevent an anticipated breach of the law, stop an ongoing breach or require that something done in breach of the law be undone. Failure to comply with an injunction is a contempt of court, punishable by a fine and/or imprisonment.
- **Seizure** – in some circumstances, officers may seize or take into possession goods, equipment and/or documents. Seizure may be used to prevent the occurrence of an offence, to ensure that an illegal activity ceases, or to ensure that it does not reoccur. The seized goods may be subject to testing or analysis and may be used as evidence in court proceedings. When an officer seizes any items, they will explain which statutory powers are being exercised and the reason why they are being exercised. An appropriate receipt will be provided to the person from whom the items are seized.
- **Confiscation/Forfeiture Proceedings** – we may make an application to the Courts for forfeiture of goods, in conjunction with seizure and/or prosecution where we deem it necessary to dispose of goods and equipment in order to prevent them re-entering the market or being used in the commission of any further offence.
- **Simple Cautions** – formal warnings may be issued where there is clear evidence of the commission of a relatively minor offence and the offender acknowledges their guilt. A caution does not result in a criminal conviction, but a record of the caution is kept on file and may be cited in criminal proceedings in the event of prosecution for further offending. Anyone who accepts a caution will be required to pay the reasonable costs of the investigation of their offence.
- **Prosecution** – prosecution will normally be considered where one or more of the following criteria are met:

- a deliberate, negligent or persistent breach of legal obligations, which was likely to or did in fact to cause material loss or harm to others;
- deliberate or persistent disregard of written warnings or formal notices;
- endangerment to a serious degree of the health, safety or wellbeing of persons, animals or the environment;
- assault on or obstruction of an officer in the course of their duties; and
- prosecution would be in the public interest

The maximum sentence available to the courts on conviction for breaches of the legislation we enforce varies but extends in the most serious cases to an unlimited fine and/or imprisonment.

5.3 Proceeds of Crime Applications

In appropriate cases where it appears a defendant has benefitted from their criminal conduct, applications will be made under the Proceeds of Crime Act 2002⁵ for confiscation of assets, with the aim of recovering the financial benefits obtained by the offender from their criminal conduct.

5.4 Works in Default

Under some of the legislation we enforce, where a notice has been served requiring works to be carried out to remedy a non-compliance and that notice is not complied with, the Council may exercise its power to undertake the works itself or to arrange for the works to be carried out, then recover the costs of the works and other reasonable expenses from the person on whom the notice was served.

6. Authorisation

6.1 The Council will ensure that its officers who carry out enforcement duties are appropriately trained, qualified and authorised. Our officers carry identification and authorisation in the form of a card and will always show their authorisation on request.

7. Investigations

7.1 We use discretion when deciding whether to investigate incidents or complaints. It is not possible or necessary to investigate all incidences of non-compliance with the law, but we will consider investigation in any of the following circumstances:

- where there is a risk to public safety or the environment, or where harm has occurred
- where the potential breach of law or licensing regime is serious
- where there appear to have been fraudulent or misleading practices
- where there is a history of non-compliance
- where there has been a failure to heed warnings or make required changes in response to formal or informal enforcement action

7.2 Our officers will always undertake investigations using overt methods, which may include making test purchases, unless the only effective means of investigation is by way of covert directed surveillance. Any such surveillance will be carried out in accordance with the

⁵ <http://www.legislation.gov.uk/ukpga/2002/29/contents>

requirements of the Regulation of Investigatory Powers Act 2000⁶ and the Protection of Freedoms Act 2012⁷.

8. Work-related Deaths

8.1 We will investigate all incidences of work-related deaths and deaths potentially resulting from a breach of legislation we enforce. To ensure decisions on investigation and prosecution are closely co-ordinated following a work-related death, we abide by the *Work-related deaths. A protocol for liaison*⁸. More detailed guidance on which can be found in the associated publication *Work-related Deaths Protocol: Practical Guide*⁹.

8.2 Consideration will be given as to whether the circumstances of the case might justify a charge of manslaughter or corporate manslaughter. The police are responsible for deciding whether or not to pursue a manslaughter or corporate manslaughter investigation and whether or not to refer a case to the Crown Prosecution Service to consider possible manslaughter charges. We investigate possible offences under the legislation we enforce. If, during the course of our investigation, we find evidence suggesting manslaughter or corporate manslaughter, we will refer it to the police. If the police or CPS decide not to pursue a manslaughter or corporate manslaughter case, we will consider whether to bring a prosecution for other offences in accordance with this policy.

9. Working with Partners

9.1 Where appropriate, investigation and enforcement activities will be coordinated with other regulatory bodies and enforcement agencies in order to maximise effectiveness. We will share intelligence relating to wider regulatory matters with other regulatory and/or enforcement agencies, including government agencies, government departments, other local authorities, police forces and fire authorities.

10. Review of Policy

10.1 We will review this policy every two years and, where necessary, update it. We will also review its effectiveness in supporting the Council's and the community's priorities.

10.2 We will consult with stakeholders before making any material changes to this policy.

⁶ <http://www.legislation.gov.uk/ukpga/2000/23/contents>

⁷ <http://www.legislation.gov.uk/ukpga/2012/9/contents>

⁸ <http://www.hse.gov.uk/enforce/wrdp/>

⁹ <http://www.hse.gov.uk/scotland/workreldeaths.pdf>