

# London Borough of Enfield Enforcement Policy

## The status and scope of the policy:

Local authorities are required by the Regulators' Code for specified services to publish a clear set of service standards, including their enforcement policy<sup>1</sup>, explaining how they respond to non-compliance. This is an important document for regulators in meeting their responsibility under the statutory principles of good regulation<sup>2</sup> to be accountable and transparent about their activities.

This Policy was approved by Cabinet on 20 January 2016 and was issued and came into effect on 1 March 2016. This Policy supersedes the previous 2005 Enforcement Policy for the Environmental Health and Regulation Division for new investigations commenced from 1 March 2016.

The London Borough of Enfield will not hesitate to take all necessary enforcement action against those who commit serious offences, flout the law, fail to follow advice or warnings to achieve compliance, or breach matters that are of key priority to the Council. If there is a serious or imminent risk of harm, danger, nuisance or injury then we will take formal enforcement action immediately as required.

The London Borough of Enfield aims to have clear service standards in how we deal with our customers (which includes those that are affected by enforcement actions), and we have published these as a customer service standards.

This policy covers the enforcement activities undertaken by the London Borough of Enfield in the following service areas:

- Environmental Health (Food Safety, Health and Safety, Private Sector Housing, Infectious diseases, animal welfare and animal disease control, nuisance, air quality, contaminated land)
- Additional and Selective Licensing
- Licensing Enforcement
- Trading Standards
- Enviro-Crime enforcement (enforcement of street scene issues and waste enforcement)
- Blue Badge Enforcement
- Highways Enforcement

There are separate and more specific enforcement policies for: planning enforcement; the enforcement of vehicle crossovers; enforcement of streetworks and parking enforcement.

For the service areas covered by this Enforcement Policy we receive over 35,000 complaints/service requests per year. The typical types of breaches that require enforcement action are:

- Rogue trading, doorstep crime, scams and fraudulent business practices
- The sale and supply of counterfeit goods and unsafe goods and products
- Littering, dog fouling and spitting

---

<sup>1</sup> Section 6.2d, [Regulators' Code](#) (BRDO, 2013)

<sup>2</sup> Section 21, Legislative and Regulatory Reform Act 2006, available at [www.legislation.gov.uk](http://www.legislation.gov.uk)

- Flytipping and improper waste storage and disposal
- Untidy land and front gardens
- Poor hygiene and unsafe practices at food businesses
- Blue Badge Misuse
- Illicit tobacco and alcohol
- Breaches of licenses and conditions and unlicensed trading
- Illegal Street trading
- Car sales on the street
- Sales to minors of age restricted products (eg alcohol, knives, tobacco)
- Nuisance (noise, odours, drainage)
- Private rented sector housing conditions (eg disrepair, health and safety issues and overcrowding)

For some of these offences, the penalties are very serious and result in prison sentences and the use of the Proceeds of Crime Act to recover assets and money that has arisen from the criminality.

### **Content of this Enforcement Policy:**

1. [Introduction](#)
2. [What is this policy for?](#)
3. [When does this policy apply?](#)
4. [Our approach to dealing with non-compliance](#)
5. [Conduct of investigations](#)
6. [Decisions on enforcement action](#)
7. [Review of this policy](#)
8. [Comments and complaints](#)

### **Appendices**

[Appendix A](#) Consideration of factors for and against prosecution and enforcement actions

[Appendix B](#) Enforcement Actions available in Respect of Criminal and Civil breaches

## **1.0 Introduction:**

### **1.1 Explanation that the policy sets out the local authority's approach to dealing with non-compliance**

#### **1.1.1 Development of this Policy**

This policy was developed in consultation with stakeholders (Councillors, residents and general public and also with businesses and business organisations). The draft policy was placed on consultation on 9 March 2015 for a period of 16 weeks until 30 June 2015. The following activities were undertaken during the consultation period to invite feedback on the draft policy:

- It was published on the Council's website inviting comments from businesses, residents and the general public
- It was presented for comment to the Cabinet Member for Regeneration and Environment
- It was presented for discussion and feedback at the Enfield Racial Equality Council 30 June 2015 and sent to over 250 of their membership
- It was sent to the North London Chamber of Commerce and presented for discussion and feedback to the Enfield Business Retailers Association (EBRA) on 10 June 2015
- It was sent to the Over 50's Forum on 13 August 2015 to capture their feedback as part of the consultation

#### **1.1.2 Good Enforcement Practice**

The London Borough of Enfield is committed to following good enforcement practice. We recognise that robust enforcement is essential for public confidence in upholding the integrity of the regulatory regimes that we administer, but also that good, proportionate regulation is supportive to the economic vitality and growth of the economy and local businesses.

The London Borough of Enfield will not hesitate to take all necessary enforcement action against those who commit serious offences, flout the law, fail to follow advice or warnings to achieve compliance, or breach matters that are of key priority to the Council. If there is a serious or imminent risk of harm, danger, nuisance or injury then we will take immediate formal enforcement action as required.

We are more likely to offer advice or a warning in the first instance if the breach is not so serious as to require immediate enforcement action to address high risk or very harmful situations, if it is not a persistent or continuing breach, if there has been a history of good compliance or we are confident there will be compliance and is the most appropriate use of resources. There are however, breaches which the Council considers necessary to adopt a zero tolerance approach towards for the protection of the quality of life of its residents, and these will be enforced without giving a warning.

## **Principles of Good Regulation**

The Legislative and Regulatory Reform Act 2006, Part 2, requires local authorities such as the London Borough of Enfield to have regard to the Principles of Good Regulation when exercising a specified regulatory function<sup>3</sup>. For local authorities, the specified functions include those carried out by our environmental health, trading standards and licensing services, but we have also extended these principles to other areas of enforcement as listed under the scope of the Policy.

We will exercise our regulatory activities in a way which is:

- (i) Proportionate – our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence,
- (ii) Accountable – our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures,
- (iii) Consistent – our advice to those we regulate will be robust and reliable and we will respect advice provided by others. Where circumstances are similar, we will endeavour to act in similar ways to other local authorities,
- (iv) Transparent – we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return, and
- (v) Targeted – we will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities. Targeted would also include activities based on intelligence lead work.

## **Regulators' Code (BRDO, 2014)**

The London Borough of Enfield has had regard to the [Regulators' Code](#) in the preparation of this policy. In certain instances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. 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**

London Borough of Enfield 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.

---

<sup>3</sup> Specified by the Legislative and Regulatory Reform (Regulatory Functions) Order 2007, available at [www.legislation.gov.uk](http://www.legislation.gov.uk)

## **Data Protection Act 1998**

Where there is a need for the London Borough of Enfield to share enforcement information with other agencies, we will follow the provisions of the Data Protection Act 1988.

## **The Code for Crown Prosecutors**

When deciding whether to prosecute the London Borough of Enfield 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. The Code sets out two tests that must be satisfied, commonly referred to as the 'Evidential Test' and the 'Public Interest Test'.

1) Evidential Test - is there enough evidence against the defendant?

When deciding whether there is enough evidence to prosecute, the London Borough of Enfield will consider what evidence can be used in court and is reliable. We must be satisfied there is enough evidence to provide a "realistic prospect of conviction" against each alleged offender.

2) Public Interest Test – is it in the public interest for the case to be brought to the court?

The London Borough of Enfield will balance factors for and against prosecution carefully and fairly, considering each case on its merits. The public interest factors and other relevant consideration that we take into account are listed in [Appendix A](#)

The enforcement options available to us and the public interest and other factors that we will take into account are detailed under the enforcement options available to us in [Appendix B](#)

## **Regulatory Enforcement and Sanctions Act 2008 ('the RES Act')**

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

### **1.1.3 Regulatory Burdens**

The London Borough of Enfield is committed to avoiding unnecessary regulatory burdens and will seek to improve compliance:

- Legal requirements will be promptly communicated or otherwise made available upon request

- General information, advice and guidance will be provided in clear, concise and accessible language using a range of formats and media ensuring efficient use of resources.
- In responding to non-compliance the primary approach can be the offering of advice and guidance to help ensure compliance, without triggering further enforcement action.
- Advice will distinguish statutory requirements from guidance aimed at improvements above minimum statutory standards.

#### **1.1.4 Copies of this Policy**

This document is available electronically from the London Borough of Enfield website at [www.enfield.gov.uk](http://www.enfield.gov.uk).

Hard copies are available if required. Please send an email to [environmental.health@enfield.gov.uk](mailto:environmental.health@enfield.gov.uk) or by writing to:

London Borough of Enfield  
Regeneration & Environment Department  
Regulatory Services  
Civic Centre  
Silver Street  
Enfield  
Middx  
EN1 3XH

#### **1.1.5 Clear Accessible Advice and Guidance**

We will provide information and advice on the legislation that we enforce. It will be disseminated as widely as possible, through external web sites if appropriate, training courses and on the Council website at [www.enfield.gov.uk](http://www.enfield.gov.uk)

We will be open about the way we carry out our work, including any charges which we make within the services. We will discuss general issues, specific compliance failures or problems with those experiencing difficulties. We will provide an explanation unless any legal restrictions prevent us from discussing specific issues with you.

We believe that it is in the interests both of regulated businesses and the wider public to get things 'right first time', and that therefore our enforcement should involve actively working with all those subject to regulation, especially small and medium sized businesses, to guide and assist with compliance. We will provide a courteous and efficient service and our staff will identify themselves by name and carry proof of their identity.

## 2.0 What is this policy for?

2.1 This document communicates the local authority's policy in respect of its approach to dealing with non-compliance to:

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

Officers that undertake enforcement covered by this policy are trained and authorised to discharge enforcement powers on behalf of the local authority under our Scheme of Delegation, and authorised officers will act in accordance with this policy<sup>4</sup>.

## 3.0 When does this policy apply?

### 3.1 Scope of the Policy

3.1.1 This policy covers the enforcement activities undertaken by the London Borough of Enfield in the following service areas:

- Environmental Health (Food Safety, Health and Safety, Private Sector Housing, Infectious diseases, animal welfare and animal disease control, nuisance, air quality, contaminated land)
- Additional and Selective Licensing
- Licensing Enforcement
- Trading Standards
- Enviro-Crime enforcement (enforcement of street scene issues and waste enforcement)
- Blue Badge Enforcement
- Highways Enforcement

3.1.2 There are separate enforcement policies for:

- Planning Enforcement
- Management of vehicles crossing footways and verges without a properly constructed footway crossover and the enforcement of vehicles projecting onto the public footway from a forecourt
- Street-works Enforcement and Prosecution Policy
- Parking Enforcement [Parking and Traffic Policy - Draft - Enfield Council](#)  
[Parking and Traffic Policy - Downloads - Enfield Council](#)

### 3.2 Deviation from the Policy

The Enforcement Policy will be followed for all the above listed areas of enforcement. The policy cannot be absolutely prescriptive because the circumstances of each individual case and the evidence available are likely to

---

<sup>4</sup> Section 6.4, [Regulators' Code](#) (BRDO, 2013) requires regulators to have mechanisms in place to ensure that their officers act in accordance with their published service standards, including their enforcement policy.

vary substantially. This policy indicates what to expect by way of enforcement. If there is a need to deviate from the policy this will only be done where it is justifiable and the reasons are recorded.

#### **4.0 Our approach to dealing with non-compliance**

##### **4.1 Explanation of our approach to dealing with non-compliance**

- 4.1.1 We are more likely to offer advice or a warning in the first instance if the breach is not so serious as to require immediate enforcement action to address high risk or very harmful situations, if it is not a persistent or continuing breach, if there has been a history of good compliance or we are confident there will be compliance and is the most appropriate use of resources. There are however, breaches which the Council considers necessary to adopt a zero tolerance approach towards (see 4.1.4) for the protection of the quality of life of its residents, and these will be enforced without giving a warning.
- 4.1.2 Further to the above paragraph, when we give advice or warnings it will usually be verbally and/or written and give a reasonable period of time for the breaches to be rectified. If the breach has not been rectified after that time and the breach warrants further action we will usually serve a formal enforcement notice. This details what the breach is, what needs to be done to remedy it, gives a reasonable period of time for compliance and will provide details of appeal provisions (if applicable) if the recipient disagrees with the notice. If the notice has not been complied with once the period for compliance in the notice has expired, we will usually prosecute for the offence.
- 4.1.3 However, Enfield Council will not hesitate to take all necessary enforcement action against those who commit serious offences, flout the law, fail to follow advice or warnings to achieve compliance, or breach matters that are of key priority to the Council. Also, if the breach presents a serious or imminent risk of harm, nuisance, danger or injury then we will respond by taking immediate formal enforcement action as needed (by the service of an immediate notice such as Stop, Seizure, Prohibition, Suspension or Abatement Notices).
- 4.1.4 There are some areas of work where the Council has a zero-tolerance approach and will enforce the breach when it first comes to our attention. This is for matters such as, for example, littering, flytipping and other waste offences, dog fouling, spitting and Blue Badge misuse.

##### **4.2 Clear Explanations of non-compliance and dialogue**

- 4.2.1 In taking informal and formal enforcement action, we seek to provide individuals and businesses with clear explanations of what the breach is, what action is needed and the reasons for this. We will also offer advice but differentiate between those matters that are legal requirements and those matters that are advice and good practice.
- 4.2.2 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<sup>5</sup>, except where we need to take immediate enforcement action to respond to or prevent serious or imminent risk.

- 4.2.3 [Customer Service Standards](#) outline our approach and commitment to communicating with businesses and regulated persons.

### **4.3 Investigations and making enforcement decisions**

- 4.3.1 Our Scheme of Delegation details the arrangements for the authorisation of Council Officers to discharge the enforcement powers on behalf of the London Borough of Enfield.

- 4.3.2 Enforcement Officers will be authorised to undertake enforcement action once their line manager and the delegated authorising officer (usually a Director, Assistant Director or Head of Service) is satisfied that they are competent to do so. Assessment of their competency is based on a number of factors and can include a period of assessment, qualifications, experience and specific training.

- 4.3.3 Enforcement officers undertake investigations which are supervised by their line manager. Where formal notices are required this will usually be discussed with and agreed by a line manager; unless immediate action is needed, in which case it is reviewed after service of the notice.

- 4.3.4 Also, for those offences for which the Council has a zero-tolerance approach and are enforced by Fixed Penalty Notice (FPN) and Penalty Charge Notice (PCN), the Enforcement Officer will usually issue the FPN or PCN.

- 4.3.5 Enforcement Officers recommending instigation of a prosecution or offering of a simple caution will complete an investigation file and pass to their line manager who reviews the file against the policy and makes their recommendation. The file is then passed to the Head of Service to decide on whether to instigate a prosecution or offer a simple caution. If the Head of Service agrees with the decision to prosecute/ offer a caution s/he completes a decision sheet with their reasoning, having had regard to this Enforcement Policy and pass the file to the Council's Legal Services.

### **4.4 Liaison with other Regulators**

- 4.4.1 Where we have a shared or complementary role with other agencies (such as the Environment Agency, Health & Safety Executive, Transport for London, the Police and other boroughs in enforcing breaches, we will usually liaise with the other agencies to discuss the non-compliance and before we take any enforcement action. This may not be possible in cases where immediate enforcement action is required, in which case we will take the immediate enforcement action and inform the other agency afterwards.

---

<sup>5</sup> Section 2.2, [Regulators' Code](#) (BRDO, 2013). The requirement to provide an opportunity for dialogue does not apply where the regulator can demonstrate that immediate enforcement action is required to prevent or respond to a serious breach, or where providing an opportunity for dialogue would be likely to defeat the purpose of the proposed enforcement action.

## **4.5 Enforcement in relation to Council establishments and activities**

- 4.5.1 As explained previously, our approach to enforcement is a staged approach and will usually initially commence with informal action (oral and/or written advice) where appropriate. This is the same approach that we take in relation to premises, establishments and activities undertaken by the Council.
- 4.5.2 If informal action is not successful we would normally then progress to formal action. We have an agreed protocol to raise the non-compliance to be addressed with the relevant Council department. This is because legislation does not permit Enforcement Officers to take enforcement action against its own council (we cannot enforce against ourselves). However, this does not preclude other enforcement authorities from taking action and imposing penalties against the council. Such authorities include the Health and Safety Executive and the Environment Agency.

## **4.6 Commitment to Equality and Diversity**

- 4.6.1 The London Borough of Enfield fully recognises the need and value in ensuring that we provide services that support, protect and do not disadvantage any community groups. The Council's [Equality and Diversity Policy](#) details our commitment.
- 4.6.2 In addition, all services and teams undertaking enforcement have completed retrospective Equalities Impact Assessments of their enforcement activities on the community and in particular on the protected characteristics, and we undertake predictive Equalities Impact Assessments for new enforcement activities.

## **4.7 Publicising Enforcement Action**

- 4.7.1 We recognise that publicising our activities, including prosecution cases, will help to inform others and improve awareness and compliance. Research<sup>6</sup> has shown that publicising enforcement action increases public confidence and also acts as a deterrent to other criminals if they think that the consequence of committing crime is likely to result in publicity. We will issue press releases on our successful prosecutions, other issues of public interest and will 'name and praise' and 'name and shame' when it is legally possible and appropriate to do so. Issued press releases can be found on our website.

## **4.8 Targeting of Enforcement**

- 4.8.1 The action that we choose to take depends upon the level of risk, seriousness of the breach, the particular circumstances and the approach of the business or person to dealing with the breach.

---

<sup>6</sup> Publicising Criminal Convictions (Criminal Justice System publication – December 2009)  
[http://www.openeyecommunications.com/wp-content/uploads/2010/03/Publicising\\_Criminal\\_Convictions.pdf](http://www.openeyecommunications.com/wp-content/uploads/2010/03/Publicising_Criminal_Convictions.pdf)

- 4.8.2 Subject to the caveats in 4.1 above, we take a staged approach to enforcement where appropriate. However, will not hesitate to take all necessary enforcement action against those who commit serious offences, flout the law, fail to follow advice or warnings to achieve compliance, or breach matters that are of key priority to the Council. Also, if the breach presents a serious or imminent risk of harm, nuisance, danger or injury then we will respond by taking immediate formal enforcement action as required.
- 4.8.3 We recognise the importance of regulated individuals and businesses being able to seek advice from us to help them ensure that they are compliant. We wish to support businesses and individuals to achieve compliance, especially those that show willingness to do so. So in usual circumstances this request for advice would not trigger enforcement action from us. The only caveat to this would be if the non-compliance was so serious or presented an imminent risk of harm, danger or injury and we were not confident that the risk would be addressed, then we would take immediate enforcement action.

#### **4.9 Factors that influence our response to breaches**

- 4.9.1 We are committed to choosing the most proportionate approaches to breaches based on relevant factors such as business size and capacity<sup>7</sup>. We will take account of the size if appropriate, expertise and resources available to the business or individual in deciding the most appropriate advice to achieving compliance.
- 4.9.2 If the business is regulated by the Primary Authority Scheme we will follow any advice given to the business by the Primary Authority. If we need any clarification, have any concerns about the advice given or are proposing enforcement action we will discuss our concerns with the Primary Authority before taking any action unless there is an imminent risk of harm, danger or injury.
- 4.9.3 If we have provided businesses or regulated individuals with advice or guidance (informal action) and the breach is not serious we may either contact the business/individual to confirm that the breach has been rectified and make a record of this declaration or we may not visit again until the next programmed inspection/intervention/visit (if that is applicable). If the breach is more serious it is more likely that we will revisit to check that it has been rectified.
- 4.9.4 If another enforcement agency or body refers an issue to us, we will usually discuss this matter with the regulated individual or business to determine if any action is needed. Similarly, if we identified any issues that need to be referred to another enforcement agency we will usually discuss this with the business or individual and refer the enforcement matter to that agency.

#### **4.10 Assessment of incoming complaints of non-compliance**

- 4.10.1 In some teams we make an assessment of all incoming complaints about alleged non-compliance to determine whether they will be investigated. In deciding whether to investigate, we take into account factors such as:

---

<sup>7</sup> Section 1.1, [Regulators' Code](#) (BRDO, 2014)

- the seriousness of the allegations,
- whether the complainant has provided their contact details (i.e. not anonymous),
- the previous history of the individual or business being complained about,
- whether a programmed inspection is due (if applicable)
- the impact on the community

## **5. Conduct of investigations**

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

5.1.1 All investigations will be carried out under the following legislation and in accordance with any associated guidance or codes of practice, in so far as they relate to the London Borough of Enfield:

- the Police and Criminal Evidence Act 1984
- the Criminal Procedure and Investigations Act 1996
- the Regulation of Investigatory Powers Act 2000
- the Criminal Justice and Police Act 2001
- the 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.

### **5.2 Enforcement Powers**

5.2.1 For the vast majority of legislation that we enforce, we authorise Enforcement officers with powers set out in that legislation that assists them in their inspections and investigations. Such powers include powers of entry to gain access to land and premises, by force, with a warrant if required, powers to inspect premises, equipment and documents and seize equipment and documents if needed, powers to take samples, and powers to seek assistance and information from individuals. This is not an exhaustive list.

5.2.2 For the vast majority of legislation that we enforce, there are usually provisions where a person commits an offence of obstruction if they do not allow Enforcement officers to exercise their powers. If individuals or businesses obstruct Enforcement Officers in the course of their duties, the London Borough of Enfield views this very seriously. We are likely to instigate prosecution for obstruction offences if these persist once the person has been advised (orally or in writing) that they are committing the offence.

5.2.3 If Enforcement Officers need to seize items during the course of an investigation, they will ensure that the business/ individual is provided with a notice/letter detailing what items they have seized, under what legislation,

what the arrangements are for return of the items (if applicable) and the Officer's contact details. This will usually be provided at the time of seizing items, but in exceptional circumstances will be provided the next working day or as soon as practicable thereafter.

- 5.2.4 Our Enforcement Powers do not extend to the power of arrest. However, we work closely with the Police, UK Border Agency and other agencies that do have powers of arrest. If in the course of joint working with these agencies, if they discover offences that have a power of arrest, they make exercise those powers. Also, in circumstances where individuals refuse to give their name and address details or are suspected of causing fraud offences, we may call upon the Police to exercise their powers of arrest to assist us in these investigations.

### **5.3 Formal Interviews**

- 5.3.1 In the vast majority of cases that we investigate with a view to prosecution, where there is a statutory defence we will invite those suspected of causing offences to a formal interview conducted in accordance with the Code of Practice under the Police and Criminal Evidence Act 1984 (known as 'PACE Interviews'). This presents an opportunity for the suspect to detail any statutory defence they believe they have and offer explanations. PACE interviews are conducted under caution and are usually recorded (but may be handwritten), and suspects have the opportunity to have legal representation present. The record of interview is admissible as evidence in any subsequent prosecution. Copies of the recorded interview are provided to the suspect at the end of the interview or as soon as practicable afterwards. We will use the information provided by suspects in the PACE interview to help us consider if we pursue prosecution.
- 5.3.2 There are also provisions available to Enforcement Officers investigating offences under the Health and Safety at Work Act to formally interview individuals and companies under Section 20 of the Act who can assist with providing information. Such persons are required to answer such questions. The record of such interviews is admissible in evidence unless legal exceptions apply.

### **5.4 Statutory Time Limits for instigating prosecutions**

- 5.4.1 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 (details of the offence[s]).
- 5.4.2 For summary only cases, there is usually a 6 month time limit, although this can be varied by statute.
- 5.4.3 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.

## **5.5 Case Review**

- 5.5.1 In accordance with our legal duty we will continue to keep prosecution cases under review. Review is a continuing process and as prosecutors we will take account of any change in circumstances that occur 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.

## **5.6 Case Progress**

- 5.6.1 We will endeavour to ensure that alleged offenders and witnesses are kept informed of the progress of investigations and prosecutions.

## **6. Decisions on enforcement action**

### **6.1 Range of Enforcement Actions available**

- 6.1.1 [Appendix B](#) details the enforcement actions available to us and when they will be used:
- a) Compliance Advice, Guidance and Support;
  - b) Voluntary Undertakings;
  - c) Statutory (Legal) Notices;
  - d) Financial penalties (e.g. Fixed Penalty Notice and Penalty Charge Notices);
  - e) Injunctive Actions/ Enforcement Orders;
  - f) Simple Caution;
  - g) Prosecution; and
  - h) Refusal/ Suspension/ Revocation of Licences

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

- 6.2.1 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.

6.2.2 When deciding on the enforcement action to be taken, we will consider the risk and seriousness posed by the offending, failure to take advice or warnings, deliberate non-compliance and flouting of the law.

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

### **6.3.0 Explanation of how enforcement decisions are communicated to those affected**

6.3.1 We will provide a timely explanation in writing of any rights to representation or rights to appeal, and practical information on the process involved.

## **7. Review of this policy**

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

7.1.1 This Policy will be reviewed 3 years after issue, or sooner if required. We will review the Policy by consulting with stakeholders such as outlined in paragraph 1.1.1 above.

## **8. Comments and Complaints**

### **8.1 Details of processes for complaints and appeals**

8.1.1 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, in the first instance they are asked to discuss this with the Enforcement Officer or the Enforcement Officer's line manager. If they remain dissatisfied, then they can make a Corporate Complaint to our Complaints Manager:

Correspondence & Complaints Manager  
Environment Department  
PO Box 52  
Civic Centre  
Silver Street  
Enfield EN1 3XE  
020 8379 3540  
Email: [esgcomplaints@enfield.gov.uk](mailto:esgcomplaints@enfield.gov.uk)

8.1.2 If persons wish to complain about the conduct of an Enforcement Officer in the first instance they are asked to discuss this with the Enforcement Officer or the Enforcement Officer's line manager. If they remain dissatisfied, then they can make a Corporate Complaint to our Complaints Manager (whose details are above).

8.1.3 Feedback on this Enforcement Policy is welcomed, and if you wish to make any comments please email: [environmental.health@enfield.gov.uk](mailto:environmental.health@enfield.gov.uk).

## **Appendix A. Consideration of factors for and against prosecution and enforcement actions**

The Code for Crown Prosecutors lists relevant considerations in the Public Interest Test such as:-

### **a) How serious is the offence committed?**

- The more serious the offence, the more likely it is that a prosecution is required
- Consideration should also be given to the culpability of the suspect and the harm posed

### **b) What is the level of culpability of the suspect?**

- The greater the suspect's level of culpability, the more likely it is that a prosecution is required
- The extent of involvement of the suspect
- Whether the offending was planned or pre-meditated
- The likelihood of continued offending, repeated or escalation of offending
- Whether other offences were committed during the investigation or prosecution process
- Previous criminal record or out of court disposals
- Suspects age (maturity or under 18 years old)
- The suspects mental or physical ill health now or at the time of offending making prosecution less likely – considered against the seriousness of the offence, whether it is likely to be repeated and the need to safeguard the public

### **c) What are the circumstances of and the harm caused to the victim?**

- The circumstances of the victim are highly relevant. The greater the vulnerability of the victim, the more likely it is that a prosecution is required
- This includes where a position of trust or authority exists between the suspect and victim
- A prosecution is also more likely if the offence has been committed against a victim who was at the time a person serving the public
- Prosecutors must also have regard to whether the offence was motivated by any form of discrimination
- Take account of the view of (any) victims and their family

- Take account of any adverse effect a prosecution would have on the victim's physical or mental health against the seriousness of the offence

**d) Was the suspect under the age of 18 at the time of the offence?**

- The criminal justice system treats children and young people differently from adults and significant weight must be attached to the age of the suspect if they are a child or young person under 18.
- We will consider the best interests and welfare of the child or young person including whether a prosecution is likely to have an adverse impact on his or her future prospects that is disproportionate to the seriousness of the offending.
- We will have regard to the principal aim of the youth justice system which is to prevent offending by children and young people. Prosecutors must also have regard to the obligations arising under the United Nations 1989 Convention on the Rights of the Child.
- As a starting point, the younger the suspect, the less likely it is that a prosecution is required. However, there may be circumstances which mean that notwithstanding the fact that the suspect is under 18, a prosecution is in the public interest. These include where the offence committed is serious, where the suspect's past record suggests that there are no suitable alternatives to prosecution, or where the absence of an admission means that out-of-court disposals which might have addressed the offending behaviour are not available.

**e) What is the impact on the community?**

- The greater the impact of the offending on the community, the more likely it is that a prosecution is required

**f) Is prosecution a proportionate response?**

- The cost to the local authority and wider criminal justice system compared to the likely penalty
- Consideration given to effective case management by just prosecuting the main suspects

**g) Do sources of information require protecting?**

- Special care should be taken when proceeding with a prosecution where details may need to be made public that could harm sources of information

The London Borough of Enfield will balance factors for and against prosecution carefully and fairly, considering each case on its merits. The public interest

factors that we will take into account are detailed under the enforcement options available to us in [Appendix B](#).

In addition, there are other factors we will consider in deciding on enforcement action. These are:-

- The consequences of non-compliance
- The effectiveness of various enforcement options, and the availability of other options (i.e. product recall)
- Whether there has been gross negligence and the ease with which the offence may have been avoided
- Obstruction of an Officer
- Targeting of vulnerable groups
- Where there is evidence that the offender was informed about the offence, advised in writing how to comply with the law and has failed to do so. These previous occasions may include any level of enforcement action.
- Failure to comply with formal notices served by the Council.
- Where Government or other public body guidance requires strict enforcement. Where there has been a serious risk of danger to life or limb.
- Where there has been a damage or risk of damage to the environment or to public health
- Where there has been a fatality or serious injury
- Where a particular contravention has caused serious public concern or is in contravention of the Council's key enforcement priorities (e.g. age restricted products, Littering, Blue Badge misuse and Fraud, spitting, dog fouling)
- Where there has been substantial financial gain

## **Appendix B. Enforcement Actions available in Respect of Criminal and Civil breaches**

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

The London Borough of Enfield 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.

The London Borough of Enfield recognises that where a business has entered into a partnership with a primary authority, the primary authority will provide compliance advice and support, and the London Borough of Enfield will take such advice into account when considering the most appropriate enforcement action for it to take. It 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, the London Borough of Enfield recognises that there is likely to be an ongoing need for compliance advice and support, to prevent further breaches.

### **B. Voluntary Undertakings**

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

### **C. Statutory (Legal) Notices**

In respect of many breaches, the London Borough of Enfield has powers to issue statutory notices. These include: 'Suspension Notices', Seizure Notices 'Prohibition Notices', 'Emergency Prohibition Notices', 'Abatement 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 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 any relevant 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.

## **D. Financial penalties**

The London Borough of Enfield has powers to issue fixed penalty notices (FPN) and penalty charge notices (PCN) in respect of some breaches. A FPN or PCN 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 or take other enforcement action in respect of the breach. If a PCN is not paid we may take other enforcement action in respect of the breach.

If a fixed penalty or penalty charge notice is paid in respect of a breach, the London Borough of Enfield 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.

The London Borough of Enfield is only able to issue fixed penalty notices and penalty charge notices where it has specific powers to do so. If fixed penalty notices or penalty charge notices are available, their issue is at the London Borough of Enfield'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 the London Borough of Enfield 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.

The London Borough of Enfield 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, the London Borough of Enfield will usually only seek a court order if it has serious concerns about compliance with voluntary undertakings or a notice.

## **F. Simple Caution**

The London Borough of Enfield 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, the London Borough of Enfield is likely to consider prosecution.

A simple caution will appear on the offender's criminal record. It is likely to influence how we and others 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 company) it may have consequences if that individual seeks certain types of employment.

Simple cautions will be used in accordance with the Ministry of Justice Guidance on Simple Cautions for Adult Offenders

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/416068/cautions-guidance-2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/416068/cautions-guidance-2015.pdf) and other relevant guidance.

## **G. Prosecution**

The London Borough of Enfield may prosecute in respect of serious or recurrent breaches, or where other enforcement actions, such as voluntary undertakings or statutory notices have failed to secure compliance. When deciding whether to prosecute the London Borough of Enfield has regard to the provisions of [The Code for Crown Prosecutors](#) as issued by the Director of Public Prosecutions.

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

Before deciding that prosecution is appropriate, the London Borough of Enfield will consider all relevant circumstances carefully and will have regard to the public interest and other criteria as set out in [Appendix A](#).

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 which have resulted from the breach. Prosecution may also lead, in some circumstances, to the disqualification of individuals from acting as company directors or the Prohibition of persons running a Food Business.

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

The London Borough of Enfield 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, the London Borough of Enfield may take previous breaches and enforcement action into account.