

London Borough of Southwark Regulatory Services Enforcement Policy

1. Introduction

The purpose of this Enforcement Policy is to promote greater consistency, balance and fairness across the regulatory services.

The rationale behind the Policy is common sense: consistent and effective enforcement designed to assist the majority of businesses who wish to comply with the law, whilst focusing remedial action on the minority who compromise the health, safety or welfare of others.

The adoption of the policy will ensure that enforcement action is focused on situations where the public is put at risk and on businesses that are negligent of their obligations or are intentionally infringing the law.

The principles of good enforcement set out in the Enforcement Concordat, which was formally signed on 5 March 1998 by central government and the Local Government Association, will be applied. The Council signed up to the Concordat in July 1998. The Concordat is based on the principles that businesses should:

- receive clear explanations from enforcers of what they need to do and by when;
- have opportunities to resolve differences before enforcement action is taken - unless immediate action is needed;
- receive an explanation of their rights of appeal.

The evidential and public interest tests contained within Code for Crown Prosecutors, issued by the Crown Prosecution Service, will also be applied in coming to a decision about appropriate action. The Code for Crown Prosecutors is issued by the Director of Public Prosecutions under section 10 of the Prosecution of Offences Act 1985.

Our officers will comply with any statutory and other guidance in conducting operations and investigations, including: the Police and Criminal Evidence Act 1984 and associated Codes, the Criminal Procedure and Investigations Act 1996, the Human Rights Act 1998 and the Regulation of Investigatory Powers Act 2000.

* This Enforcement Policy has been fully endorsed by Southwark Council's Ratification Committee. *

2. Enforcement Policy

It is the aim of Southwark Council Regulatory Services to enhance and protect the health, safety and economic welfare of the people of Southwark.

All authorised officers will abide by the policy when making enforcement decisions. Any departure from the policy must be exceptional, capable of justification and be fully considered by relevant local managers before the decision is taken, unless it is considered that there is significant risk to the public in delaying the decision.

3. Decision Making – Authorisation

Authorised officers may recommend formal action to their Unit Manager, who will consider and then may confirm that recommendation.

The Business Unit Manager is the officer responsible for issuing formal cautions and for approving recommendations for prosecution.

Council officers initiate the majority of all enforcement actions without any reference to a Committee, a designated elected Member or a first/second tier officer. Southwark Council will ensure that officers who are authorised to initiate enforcement action are competent to do so, are suitably qualified and have relevant and adequate experience in Local Authority enforcement.

4. Enforcement Options

Southwark Council will ensure that enforcement decisions are always consistent, balanced, fair and relate to common standards that ensure the public is adequately protected.

In coming to any decision Southwark Council will consider many criteria including seriousness of offence, the enterprise's past history, confidence in management, the consequences of non-compliance and the likely effectiveness of the various enforcement options.

Having considered all relevant information, the range of enforcement action to deal with infringements is:

- No action
- Informal action
- Formal action including, but not restricted to:
 - Statutory Notices
 - Other formal action
 - Formal Cautions
 - Prosecution

This document provides detailed guidance applicable to the various options for enforcement action.

When Southwark Council is considering taking enforcement action that it believes could be contrary to any advice issued by the relevant home

and/or originating authorities, it will discuss the matter with the relevant authorities before taking action.

5. No Action

When there is insufficient evidence, or where extenuating circumstances apply such as serious illness of the offender, or where we have no jurisdiction, we may decide not to take action.

6. Informal Action

Informal action to secure compliance with legislation includes offering advice, verbal warnings and requests for action, the use of letters and the issue of inspection reports.

The circumstances where it is appropriate to use informal action, may occur when:

- the act or omission is evident, but is not serious enough to warrant formal action.
- it may be reasonably expected that informal action will achieve compliance.
- confidence in the individual/enterprise's management involved is high.
- the offence is minor or of a technical nature.

7. Statutory Notices

Southwark Council will consider the issue of statutory notices when one or more of the criteria below apply.

- There is a significant contravention of legislation.
- There is a lack of confidence in the proprietor or enterprise to respond to an informal approach.
- There is a history of non-compliance with previous informal action.
- Standards are generally poor with management displaying little awareness of statutory requirements.
- The consequences of non-compliance could be potentially serious to public health.
- Although it is intended to prosecute, effective action also needs to be taken as quickly as possible to remedy conditions that are serious or deteriorating.

8. Other Formal Action

Other formal action includes, but is not limited to, licence repeal, works in default, obtaining warrants, seizure of goods or equipment, forfeiture of

goods, prohibition orders, injunction, fixed penalty notice, Stop Now Order, closure. The criteria for such action will be as for prosecution.

9. Formal Caution

A formal caution may be considered:

- to deal quickly and simply with less serious offences;
- to divert less serious offences away from the Courts;
- to reduce the chances of repeat offences

To safeguard the suspected offender's interests, the following conditions will be fulfilled before a caution is administered:

- there must be sufficient evidence of the suspected offender's guilt to give a realistic prospect of conviction in a Court.
- the suspected offender must admit the offence.
- the suspected offender must understand the significance of a formal caution and give an informed consent to being cautioned.

Should a possible defendant refuse an offer of a Formal Caution, the case will generally be recommended for prosecution.

Where formal action is taken, other bodies such as Home or Originating authorities may need to be advised. LACORS' advice on such matters, particularly on the Home Authority principle, should be referred to.

10. Prosecution

The decision to prosecute is a significant one and is not considered lightly. Prosecution will, in general, be confined to those persons who deliberately and blatantly disregard the law, refuse to achieve even the basic minimum legal requirements, often following previous contact with the authority, or who put the public at serious risk. Such persons are, fortunately, in the minority.

The infringement must be shown to demonstrate behaviour which:

- is fraudulent, or
- involves deliberate or persistent breach of legal obligation (e.g. ignoring warnings), or
- causes or is likely to cause substantial loss or prejudice to others through negligence or gross carelessness, or
- seriously endangers the health, safety or well-being of people, animals or the environment, or
- involves obstruction of an authorised officer carrying out his/her duties.

When circumstances have been identified that warrant a prosecution, all relevant evidence and information will be considered, to enable a consistent, fair, proportionate and objective decision to be made.

In addition to being satisfied that there is sufficient evidence to provide a realistic prospect of conviction, there must be a positive decision, based on relevant criteria that it is in the public's interest to prosecute.

When decisions are being taken on whether to prosecute, the guidance contained in any relevant Code of Practice will be followed. Those factors to be considered may include:

(a) the seriousness of the alleged offence:

- The risk or harm to public health
- Identifiable victims
- Failure to comply with statutory notice served for a significant breach of legislation
- Disregard of the health, safety or economic welfare of the public;

(b) the previous history of the party concerned:

- Offences following a history of similar offences
- Failure to respond positively to past warnings
- Failure to comply with statutory notices;

(c) the likelihood of the defendant being able to establish a due diligence defence;

- the ability of any important witnesses and their willingness to co-operate;

(e) the willingness of the party to prevent a recurrence of the problem;

(f) the probable public benefit of a prosecution and the importance of the case – e.g. whether it might establish a legal precedent. Advice on the public interest is contained in the Code for Crown Prosecutors. The general advice is: the graver the offence, the less likelihood there will be that the public interest will allow anything other than a prosecution;

(g) whether other action, such as issuing a formal caution in accordance with Home Office Circular 59 / 1990 or an improvement notice or imposing a prohibition, would be more appropriate or effective. (It is desirable in exceptional circumstances to prosecute as well as issue a notice; failure to comply with a notice would be an additional offence);

(h) any explanation offered by the company or the suspected offender;

Once a decision to instigate prosecution has been taken, the matter will be referred, without undue delay, to the local authority's Solicitor or such other officer authorised to conduct legal proceedings.

11. Shared Enforcement Roles

We also have working relationships with the following organisations:

- Building Control
- Corporation of London
- Environment Agency
- Food Standards Agency
- Health and Safety Executive
- London Fire and Emergency Planning Authority
- Office of Fair Trading
- Other Council Departments
- Police
- Tenancy Relations Service
- Thames Water Utilities Ltd
- Vehicle Inspectorate

12. Particular Interests

We publish our Service Standards, which are available in the major ethnic languages

Wherever possible we arrange our activities at dates and times to suit our customers – including those businesses that we inspect

We can have interpreters/translators available when needed

We have information available on tape for the visually impaired

We have the facility to have our information provided in different languages on tape or in Braille

We have developed a 24-hour 7 day a week noise and nuisance service

We monitor areas that have late night activities

13. Further Information

There is a further policy available which, whilst working alongside this general one, is specific to the enforcement of Food legislation. This is available from us.

The Code for Crown Prosecutors is available online at:

<http://www.cps.gov.uk/Home/CodeForCrownProsecutors/>

Or from

Crown Prosecution Service
2nd Floor, The Flagship
142 Holborn
London EC1N 2NQ

Tel: 020 7796 8653

Fax: 020 7796 8540

The Enforcement Concordat is available online at:

<http://www.cabinet-office.gov.uk/regulation/publicsector/enforcement/concordat.htm>

or from the Cabinet Office on 020 7276 2194.

This policy will be reviewed periodically. All of our service users' views are welcome and are always seriously considered.

If you wish to make any observations on the content of this Enforcement Policy or if you are dissatisfied with the way that this policy has been applied, please contact

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