



ISLINGTON

Enforcement and Prosecution Policy

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1. Introduction

- 1.1 This policy sets out the general principles that Islington Council will follow in relation to regulation, enforcement and prosecution. In particular, it sets out what businesses, individuals and the community as a whole can expect from the Council in the discharge of its various regulatory and enforcement functions.
- 1.2 The policy is complemented by specific policies or procedures for particular functions of the Council.
- 1.3 The primary function of the Council's regulatory and enforcement work is to protect the public, public funds, the environment and groups such as consumers, residents and tenants, workers and businesses. At the same time, carrying out such activity in an equitable, practical and consistent manner helps to maintain a level playing field for local businesses, individuals and our other service users. Good regulation and enforcement will help to promote a thriving local economy and a safer and more enjoyable environment.
- 1.4 This policy has been developed with due regard to the 'Principles of Good Enforcement' set out in the following guidance documents:
 - The Regulators' Compliance Code issued under the Legislative and Regulatory Reform Act 2006.
 - The Code for Crown Prosecutors issued by the Director of Public Prosecutions under the Prosecution of Offenders Act 1985.
 - The Enforcement Concordat issued by the Cabinet Office in 1998.

This policy has also had regard to Islington Council's constitution, scheme of delegation and all its policies, including those concerning officer code of conduct.

- 1.5 In certain circumstances we may conclude that a provision contained in one or more of the above-mentioned documents is either not relevant or is outweighed by another provision or relevant factor. We will ensure that any decision to depart from policy guidelines is properly reasoned and based on material evidence.
- 1.6 For the purposes of this policy the following definitions are given to the terms 'regulatory' and 'enforcement':
 - 'Regulatory' encompasses the Council's numerous powers and duties enabling the behaviour of individuals and/or organisations to be controlled in the public interest.
 - 'Enforcement' includes any action carried out in the exercise of, or against the background of, statutory powers and duties of regulation. This is not limited to formal enforcement action such as prosecution in the criminal courts or the giving of statutory notices. It also includes, among other things, the inspection of

premises for the purpose of checking compliance with regulations and conditions, the imposition of conditions on any licence, consent or similar formal permission, the issue of fixed penalty notices, the giving of cautions and the making of applications to the courts for orders to control the conduct of individuals and/or organisations.

- 1.7 All enforcement activities, including investigation and formal actions, will always be conducted in compliance with the council's statutory obligations. Council enforcement officers should act within the scope of their delegated authority and with due regard to the provisions of the Police and Criminal Evidence Act 1984, the Criminal Procedures and Investigation Act 1996, the Human Rights Act 1998, the Data Protection Act 2018, the Regulation of Investigatory Powers Act 2000, the Equality Act 2000, the Legislative and Regulatory Reform Act 2006, the Consumer Rights Act 2015, the Protection of Freedoms Act 2012 and any other legislation relevant to specific service areas and legislation designed to tackle discrimination and promote equality.

2. Principles of Enforcement – Policy

2.1 Supporting Economic Progress through Compliance

The effectiveness of legislation in protecting consumers, businesses, the Council and the community depends crucially on the compliance of those regulated. We recognise that most people and most businesses want to comply with the law. We will, wherever practicable, take care to help all meet their legal obligations without unnecessary expense.

We will strive to ensure that when information is needed that it is assessed to avoid duplication of requests and amended where necessary. We aim to seek feedback on how we use and collect information from businesses.

Whenever practicable we will promote positive incentives for all to comply.

2.2 Openness through Clear Accessible Advice and Guidance

- 2.2.1 We will provide information and advice in plain language on the legislation that we enforce and disseminate this as widely as possible, through various media and the Council website at www.islington.gov.uk.

- 2.2.2 We will be open about any charges that we make for our services. We will discuss general issues, specific compliance failures or problems with those experiencing difficulties.

2.3 Helpfulness through Clear Accessible Guidance

- 2.3.1 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 role should involve actively working with all those subject to regulation 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. We will provide a

contact point for further dealings with us and we will encourage all to seek guidance or information from us. All requests for service, will be dealt with efficiently and promptly within the resources available. We will ensure that, wherever practicable, our enforcement activities are effectively co-ordinated to minimise unnecessary overlaps and time delays. This reflects our approach to delivering services in an efficient way.

2.4 Intelligence Led and Risk Based Enforcement

2.4.1 We will minimise the costs of compliance by ensuring that any action we take is either intelligence led or proportionate to the risks presented to the Council and Islington communities. We will adopt an intelligence led or risk-assessment approach to target resources where most needed. In line with the codes referred to above, we will take account of the circumstances of the case and the response of those subject to regulation when considering action. At the same time we will use intelligence and direct resources to identify those who flout the law or act irresponsibly and take firm action against them, including prosecution where appropriate.

2.5 Consistent Enforcement

2.5.1 We will carry out our duties in a fair, equitable and consistent manner. While officers are expected to exercise judgement in individual cases and to treat each case on its own merits, we will have arrangements in place to promote consistency. We will support and promote arrangements for effective liaison with other authorities and enforcement bodies.

2.6 Working with Other Enforcement Agencies

2.6.1 Some regulatory activity involves consultation with other agencies before deciding on the most appropriate course of action. Sometimes there is more than one agency that can act in response to a problem. If there is a shared enforcement role with other agencies, whenever possible our enforcement activities will be co-ordinated with these agencies in order to minimise unnecessary duplication or delays and to increase our overall effectiveness. For example, joint working may be carried out with the Police, Fire & Rescue Service, the Health and Safety Executive, the Environment Agency, Revenue and Customs, the Gambling Commission, Border Agency, Food Standards Agency, Department for Work and Pensions and other local authorities, government departments or agencies. Persistent offenders may also be reported to other agencies for further action. Equally, there are instances when more than one part of the Council may have enforcement options in respect of the same issue. In such a case we will ensure that appropriate liaison occurs and that the best option for enforcement is taken in the following circumstance:

- Wherever we have a statutory duty to report regulatory matters to another body or agency, we will have procedures in place to ensure that this happens;

- If we become aware of an enforcement issue that would be of legitimate interest to, or more properly be dealt with by, another enforcement agency, we will ensure that the information is passed to that agency in good time;
- Occasionally an offence can be dealt with under more than one statute. In these cases a decision will be made between officers as to which is the most effective course of action.

2.7 Adopting Good Enforcement Procedures

- 2.7.1 Guidance from an officer will be put clearly and simply, explaining why any remedial work or action is considered to be necessary and over what time-scale, and making sure that legal requirements are clearly distinguished from best practice advice. Such guidance will be confirmed in writing.

2.8 Complaints about the Service

- 2.8.1 We are committed to providing excellent services to all residents and we believe the best way to do this is to listen to your views. Complaints about the Council can be made via our website at <https://www.islington.gov.uk/contact-us/comments-and-complaints-info>

3. Principles of Enforcement - Procedures

- 3.1 Wherever possible officers will provide an opportunity to discuss the relevant circumstances before any decision to take formal enforcement action is made. Examples of where it may not be appropriate to discuss the matter may include cases where immediate action is required in the interests of health and safety or environmental protection, or cases where it is necessary to prevent evidence being destroyed.
- 3.2 Where immediate action is considered necessary, an explanation of why such action is required will be given at the time and where reasonable confirmed in writing within 5 working days.
- 3.3 Where there are rights of appeal against formal action, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken. Whenever possible, this advice will be issued with any enforcement notice or order.

4. Investigation

- 4.1 The Council will carry out risk assessments or intelligence tasking to ensure that our regulatory efforts are targeted where they would be most effective. Inspections and other visits will be in accordance with the appropriate risk assessment, except where visits are requested, or we are required to investigate.

4.2 All officers will have regard to the principles contained in this policy when making enforcement decisions. Regard will also be had to any approved statutory, governmental or other national guidance, and to any internal quality procedures.

5. Enforcement options

5.1 There are a variety of enforcement actions available to the Council:

- compliance advice and support;
- review of any licence and/or licence conditions;
- written warning;
- legal enforcement notice;
- fixed penalty notice;
- work in default/cost recovery action/direct works for planning enforcement;
- seizure/application for forfeiture;
- the issue of a caution;
- administrative penalty;
- prosecution or other legal proceedings including injunctive action;
- Proceeds of Crime Act confiscation proceedings;
- Community resolution.

This is not an exhaustive list and other options may be available under legislation relevant to specific areas.

5.2 In choosing which enforcement option(s) to take the Council will aim to change the inappropriate behaviour causing the problem and to deter future non-compliance. The enforcement option(s) chosen will be proportionate to the nature of the non-compliance/alleged offence and the harm caused by it, and appropriate to the individual or business which the action is taken against. Enforcement action will be followed up as appropriate and will result in further enforcement options being pursued if the initial action has not achieved the appropriate result.

5.3 In some circumstances matters may be referred to another agency for enforcement action, or officers may liaise and take joint action with other Council departments and/or external organisations in order to achieve enforcement aims.

6. Prosecution

6.0.1 The Attorney General's guidelines on criteria for prosecution endorsed the principle that suspected criminal offences should not automatically be the subject of prosecution.

- 6.0.2 Islington Council acknowledges that the decision to prosecute a business or an individual is serious. The policy is designed to ensure that the Council makes fair and consistent decisions about prosecutions. In doing so it will pay full regard to the criteria set out in The Code for Crown Prosecutors issued by the Director of Public Prosecutions.
- 6.0.3 A decision to prosecute will only be made by an officer not involved with the investigation, and authorised in such a capacity in line with the Council's scheme of delegation.
- 6.0.4 Council officers charged with investigating alleged offences must give due regard to the provisions of this policy when making recommendations to authorised officers.

6.1 General Principles

- 6.1.1 Whilst each case is unique and will be considered on its own facts and merits, there are certain general principles that authorised officers will follow in their approach to every case.
- 6.1.2 Officers will be fair, independent and objective. Decisions will be taken impartially and with integrity to secure justice for victims, witnesses, defendants and the public.
- 6.1.3 Authorised officers have a responsibility to ensure that the right person is prosecuted for the right offence. They will always act in the interests of justice and not solely for the purpose of obtaining a conviction.

6.2 The Decision to Prosecute

- 6.2.1 In making a decision to prosecute the authorised officer will apply two tests. Application of these tests will ensure that all relevant factors are considered and that fair consistent decisions are made about each potential prosecution.
- 6.2.2 The first test is consideration of the evidence. If the case does not pass the evidential test a prosecution must not go ahead no matter how serious the case is. If the evidential test is satisfied the authorised officer will consider the second test of whether it is in the public interest to prosecute. A prosecution will only be taken if both tests are satisfied.

6.3 The Evidential Test

- 6.3.1 Authorised officers must be satisfied that there is sufficient, admissible and reliable evidence to provide a realistic prospect of conviction.

Sufficient

- 6.3.2 There is only sufficient evidence to provide a realistic prospect of conviction if, when presented with that evidence, a jury or bench of magistrates properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is an objective test and when applying it to the case the authorised officer will aim to be completely impartial. They will also have regard to any statutory defence that is available.

Admissible

- 6.3.3 There are legal rules which might not allow evidence that appears relevant to be given at a trial. If the authorised officer believes that some of the evidence falls within this category, he/she will satisfy him/herself that there is enough other evidence for a realistic prospect of conviction.

Reliable

- 6.3.4 Evidence may be regarded as unreliable for a number of reasons. It may be affected by factors such as age, intelligence or level of understanding, by the background of the witness, for example, a motive that may affect his or her attitude to the case, or a relevant previous conviction, or a general concern over the accuracy or credibility of the evidence.
- 6.3.5 Where there are such concerns, authorised officers will not ignore the evidence, but will look at it closely in conjunction with the other evidence to decide whether there is a realistic prospect of conviction.

6.4 The Public Interest Test

- 6.4.1 A prosecution will not take place where the public interest factors against prosecution clearly outweigh those in favour of prosecution, or it appears more appropriate in the circumstances to divert the defendant from prosecution.
- 6.4.2 The public interest factors will vary from case to case. Not all factors will apply to each case and the weight to be attached to the factors identified, will also vary according to the facts and merits of each case.

Public Interest Factors in Favour of Prosecution

- 6.4.3 The more serious the offence, the more likely it is that a prosecution will be needed in the public interest. The Code for Crown Prosecutors provides guidance on public interest factors for, or against prosecution. The following public interest factors (which are not exhaustive) will be considered when deciding if prosecution is the appropriate course of action:-
- The seriousness of the breach/offence and the harm that has resulted from the breach/offence.
 - The compliance history of the offender.
 - The personal circumstances of the offender (e.g. the offender is elderly or is suffering from significant ill health).
 - Whether a conviction is likely to result in a significant sentence.
 - Whether the offending is likely to continue.
 - The offence, although not serious in itself, is widespread in the area where it was committed.

- Whether the offender acted fraudulently, wilfully or as a result of a genuine mistake or misunderstanding of the circumstances or of the law.
- The victim of the offence was vulnerable, has been put in considerable fear, or suffered personal attack, damage or disturbance.
- Whether a prosecution have a significant positive impact on maintaining community confidence.

6.4.4 Deciding on the public interest is not simply a matter of adding up the number of factors on each side as some factors will be more important than others. As such authorised officers will 'weight' factors in making an overall assessment.

6.5 Diversion from Prosecution

6.5.1 When deciding whether a case should be prosecuted authorised officers will consider the alternatives to prosecution in pursuit of the aim to change inappropriate behaviour and to deter future non-compliance.

6.5.2 A conviction can have wide ranging and long lasting effects, and particular care will be taken when deciding whether it is in the public interest to prosecute in cases involving a young person. For the purposes of this policy a young person is someone under the age of 18 years.

7. Publicity

7.1 In order to deter others the Council will aim to publish any prosecution or other enforcement action.

8. Review

8.1 This policy will be reviewed as is required to reflect statutory changes or national guidance.

9. References

Regulators Code

Code for Crown Prosecutors

Enforcement Concordat

APPENDIX ENDS