

PUBLIC PROTECTION ENFORCEMENT POLICY

Introduction

All local authorities have powers to enable them to enforce legislation intended to protect both the individual and the community as a whole. The public protection division is responsible for exercising these powers in Islington in relation to public health, consumer safety and welfare.

The public protection division encompasses the following service areas:

- pest control
- animal welfare
- trading standards
- street trading
- licensing
- food safety
- cemeteries
- anti-social behaviour
- workplace health and safety
- smoke free public places
- private sector housing
- noise
- pollution
- infectious disease control
- CCTV

It is the responsibility of every business and individual to comply with the law and it is recognised that most want to do so. The public protection division is responsible for providing help and assistance for this purpose and, for taking action against those who do not meet their responsibilities.

This enforcement policy helps to promote efficient and effective approaches to inspection and enforcement which will improve compliance with regulatory requirements without imposing unnecessary burdens.

The purpose of this policy is to explain fully how the public protection division will fulfil this role.



Council Aims and Objectives

Each year, Islington Council sets out its strategic aims and objectives in its performance plan.

The Environment & Regeneration department (of which the public protection division is part) has set part of its aim to:

“Deliver high quality services to those who live and come here – delivering a better environment for all - and to work with our partners towards the achievement of the Council’s overall aims and objectives”.

For the public protection division this means:

- ensuring a fair and safe trading environment for residents, businesses and visitors to the borough
- securing health and safety in the workplace
- improving the environment
- assisting in the provision of safe, secure, warm and affordable housing
- assisting in the delivery of the council’s Crime Reduction Strategy

Our plans are drawn up to reflect the needs of Islington as identified through consultation, customer feedback and the results of our actions.

Approach to Enforcement

A range of activities are used by the public protection division to ensure that there is compliance with the law that they enforce.

Officers carry out inspections of premises on a routine programmed basis, or as a response to complaints and enquiries from the public. In some instances, targets for inspections or actions are set by other Agencies and where this happens, the public protection division will aim to meet those targets fully. Where actions take place with other agencies having a complementary role, documented decisions will be made as to who is to managing the case and whose action will have primacy. Where a business has a Primary Authority, early communication and consultation will take place with that council.

Officers will generally be visiting premises with the consent of the owner or occupier. In certain situations where consent can’t be obtained or is refused, officers have powers that enable them to obtain entry by getting a warrant and/or in the company of the police. Unless entry is required as an emergency or where obtaining consent would defeat the object of the visit, the owner or occupier will always receive notification of our intention to gain access. If officers are obstructed when carrying out their duties, action will be taken against that person or persons.

The service has a scheme of delegation which can be accessed on the [Council’s Democracy](#) pages, in Part 3 of the Council Constitution. In situations where the council may have an interest in a case, any decision making will exclude officers or members of the council with any involvement in that service area.

Where non-compliance with the law is discovered, enforcement options that we will take to ensure compliance include:

- take no action
- informal action including giving advice, inviting owners to attend a meeting and writing warning letters allowing time to comply

- formal action by serving statutory notices and/or prohibiting activities
- seizing equipment, documents or goods
- issuing licences and approvals with conditions
- removing licences and approvals or varying conditions
- issuing a simple caution
- issuing a fixed penalty notice
- agreeing a voluntary undertaking
- prosecution
- seeking an Injunction, Enforcement Order or similar

Enforcement Actions

The decision to use enforcement action will depend on how serious the offence is. Factors that will be taken into consideration include:

- the risk that is posed to the safety, health or welfare of the public or to individuals
- if action was pre-meditated
- a formal notice, licence, approval or order hasn't been complied with
- if there is a history of previous warnings or a similar offence has been committed before.
- if there has been an attempt to stop an officer from doing their work
- if there has been a failure to disclose information or false statements have been made.
- there has been aggressive behaviour towards the public or staff

All enforcement decisions are documented and, other than when emergency enforcement action is taken, we will always inform people of the action we propose to take. If there are concerns that we have taken an unfair decision, then any person can request that an appropriate manager review the decision. When formal enforcement action is taken, we will always advise people of the appeals process available to them.

The decision we make in respect of enforcement action aims to

- change the behaviour of the person committing the offence
- remove hazards and eliminate any financial gain or benefit from non-compliance
- be responsive and appropriate to the offence and those who commit it
- be proportionate to the offence and the harm its caused
- restore the harm caused if that's appropriate
- deter further non-compliance

Enforcement actions have to be taken within the context of the legal and policy framework set for all enforcement agencies. Our approach to enforcement, which is consistent with the Regulators Compliance Code, incorporates the following principles of good enforcement:

- drawing up clear standards
- setting out the level of service and performance the public and business can expect to receive
- dealing with the public and the business in an open and honest way
- providing a courteous, efficient and helpful service
- responding promptly and positively to complaints about the service
- ensuring that enforcement action is proportionate to the risks to the public
- carrying out duties in a fair, equitable and consistent manner

Occasionally we may conclude that a provision of the Regulators Compliance Code or this enforcement policy is either not relevant or is outweighed by another provision. If this happens we will ensure that any decision to depart from the code or the enforcement policy is properly reasoned, based on material evidence and documented.

Where a decision to prosecute is made, this decision will be taken in accordance with the Code for Crown Prosecutors, which details the public interest and evidential considerations to be taken in when bringing proceedings. Advice will be provided by the council's legal services, who will initiate proceedings on our behalf. A full copy of the code is available at [hyperlink](#). Where appropriate, in the most serious cases, we will use the provisions of the Proceeds of Crime Act 2002 to take action to recover assets that have been accrued through criminal activity.

All enforcement decisions and actions will be made with due regard to the provisions of:

- The Human Rights Act 1998
- The Crime and Disorder Act 1998
- Police and Criminal Evidence Act 1984
- Criminal Procedure and Investigations Act 1996
- Regulation of Investigatory Powers Act 2000
- Equal rights and anti-discrimination legislation

If it is in the public interest and appropriate, information concerning non-compliance will be shared with other enforcement agencies. Where this takes place, we will ensure that the Data Protection Act 1998 and Human Rights Act 1998 are observed. In some cases we will not be the enforcement agency for a particular matter, and in these cases we will ensure that we refer them on to the right Agency.

Authorisation of Officers

Only officers who we can say are competent will be authorised to take enforcement action. They will hold appropriate qualifications or experience. Officers will also have sufficient training and understanding of this enforcement policy and their area of work to ensure a consistent approach to their duties. We will monitor to ensure that our actions are always in accordance with our policies.

All officers carry identification and an authorisation to show what legislation they are able to enforce. They are required to show these if asked.

All officers are required to carry out their duties in accordance with set procedures. These procedures vary depending on the service area involved.

Openness and Helpfulness

We aim to be open about the work we do and will be available to provide general advice, deal with specific cases and investigate complaints. We view formal enforcement as a last resort and prefer to work with our clients to achieve compliance. We will also provide you with a case officer and their contact details. If English is not your first spoken or written language, we will provide translation and interpretation for you.

If you are dissatisfied with the action that an officer has taken, then a manager will investigate your concerns. The council also has a formal complaints procedure and a form can be obtained from the public protection division if you prefer to take this route or are dissatisfied with the findings of your initial complaint.

This policy add hyperlink was endorsed and adopted by the Environment & Regeneration Management Team of Islington Council. It is reviewed periodically and we would be pleased to receive any comments you have on it.

This is a public document. Further copies of this and other documents listed above can be obtained from Jan Hart, Service Director - Public Protection, Islington Council, 222 Upper Street, London N1 1XR (telephone (020) 7527 2300). Many of the documents can also be found on our website - <http://www.islington.gov.uk>.

We invite your comments on this document by post at the above address or by e-mail to Env.Health@islington.gov.uk

Appendix A - Legislation, Guidance and Codes that influenced the preparation of the Enforcement Policy

A. Principles of Good Regulation

The Legislative and Regulatory Reform Act 2006, Part 2, requires us to have regard to the Principles of Good Regulation when exercising a specified regulatory function¹. For local authorities, the specified functions include those carried out by our regulatory services in Public Protection.

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.

¹ Specified by the Legislative and Regulatory Reform (Regulatory Functions) Order 2007, available at www.legislation.gov.uk

B. Regulators' Code (BRDO, 2013)

We have had regard to the [Department for Business Innovation & Skills](#) 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.

C. Human Rights Act 1998

As a public authority for the purposes of the Human Rights Act 1998, we 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.

D. Data Protection Act 1998

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

E. The Code for Crown Prosecutors

When deciding whether to prosecute we have 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':

- a. Evidential Test - is there enough evidence against the defendant?

When deciding whether there is enough evidence to prosecute, we 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.

- b. Public Interest Test - is it in the public interest for the case to be brought to court?

We 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 C](#).

F. 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

Appendix B - Conduct of Investigations

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 council business

- 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.

Appendix C - Enforcement Actions available in Respect of Criminal and Civil breaches

A. Compliance Advice, Guidance and Support

We use 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 used 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.

We recognise that where a business has entered into a partnership with a primary authority, the primary authority will provide compliance advice and support, and we will take this advice into account when considering the most appropriate enforcement action to take.

Where more formal enforcement action, such as a simple caution or prosecution is taken, there is likely to be an on-going need for compliance advice and support to prevent further breaches.

B. Voluntary Undertakings

We may accept voluntary undertakings that breaches will be rectified and/or recurrences prevented. We 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 we have powers to issue statutory notices. These include: 'Stop Notices', 'Prohibition Notices/Orders', 'Emergency Prohibition Notices/Orders 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 of the 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

We have powers to issue fixed penalty notices in respect of some breaches. A fixed penalty notice 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 fixed penalty is paid in respect of a breach then we 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.

We are only able to issue fixed penalty notices where there are specific powers to do so. If fixed penalty notices are available, their issue is at our 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 we 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.

We are 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, we will usually only seek a court order if it has serious concerns about compliance with voluntary undertakings or a notice.

F. Simple Caution

We have 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, we are 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 corporation) 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. [Add hyperlink](#)

G. Prosecution

We 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 we have regard to the provisions of [The Code for Crown Prosecutors](#) as issued by the Director of Public Prosecutions.

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

Before deciding that prosecution is appropriate, we will consider all relevant circumstances carefully and will have regard to whether it is in the public interest.

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.

H. Refusal/Suspension/Revocation of Licences

We issue a number of licences and permits and 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. Other enforcement action including prosecution could also be taken.

When considering future licence applications, we may take previous breaches and enforcement action into account