

Corporate Enforcement Policy

January 2014

EALING COUNCIL

CONTENTS	Page
1. Introduction.....	3
2. Aims and Objectives.....	4
3. Compliance Checks.....	4
4. Principles of Good Enforcement.....	6
5. Enforcement Options.....	7
6. Administration.....	11
Appendix A: Conflict of Interest and Undue Influence.....	12
Appendix B: Relevant Requirements and Legislation Considered in the Preparation of this Policy.....	13
Appendix C: Conduct of Investigations.....	16
Appendix D: Specialist Department Policies.....	17
A. Food Safety.....	18
B. Health and Safety	23
C. Trading Standards.....	28
D. Licensing.....	30
E. Pollution Technical.....	35
F. Noise and Nuisance.....	38
G. Property Regulation.....	42
H. Envirocrime.....	52
I. Safer Communities.....	58
J. Audit and Investigation.....	67
K. Planning Enforcement.....	71
L. Building Control.....	78

1. INTRODUCTION

This policy was approved at a meeting of the full Council on 10th December 2013. It will be published via our website. Copies will be available at our offices in Perceval House.

- 1.1 The Council is responsible for enforcing a wide range of legislation within the London Borough of Ealing. This document sets out our Enforcement Policy and outlines what residents, businesses, consumers and workers can expect from enforcement officers.
- 1.2 This policy also sets out the approach to be followed by authorised officers when making decisions in respect of the Council's compliance and enforcement activities. The Council is committed to ensuring that all authorised officers will abide by this policy.

Legislative Framework

- 1.3 The *Legislative and Regulatory Reform (Regulatory Functions) Order* specifies the regulatory functions that are exercisable by the Council and which must have regard to a regulatory code of practice and the five principles of good regulation when exercising those functions (see details in Appendix B). The specified regulatory functions are set out below. Not all of these functions will come under the remit of this policy and separate references to education and road transport will be found on the Council Services webpage under Education and Road Transport and Streets.
 - a) Agricultural
 - b) Animal Health and Welfare
 - c) Anti-social behaviour
 - d) Consumer and business protection
 - e) Education
 - f) Environment
 - g) Food Standards and Safety
 - h) Licensing
 - i) Public Health and Safety
 - j) Road Transport
 - k) Weights and Measures

Scope of Policy

- 1.4 The policy was developed jointly through the Council's Enforcement Forum which consists of the following Regulatory Services within the Council and additional supplementary policies have been provided by each specialist area (see details in Appendix D). Some of these regulatory functions are not within the scope of the legislation but it is considered best practice that all regulatory services are covered by the corporate enforcement policy.
 - a) Food Safety and Health and Safety
 - b) Trading Standards and Licensing
 - c) Noise and Nuisance/Response

- d) Pollution Technical
- e) Property Regulation
- f) Planning Enforcement
- g) Building Control
- h) Envirocrime
- i) Audit and Investigation
- j) Community Safety

1.5 This policy is available to interested parties on the Council's website.

2. AIMS AND OBJECTIVES

- 2.1 The policy reflects the Council's corporate aims and objectives, in particular to make Ealing 'a *borough of opportunity, where people enjoy living in clean, green and cohesive neighbourhoods, as part of a community where they are able to be safe, healthy and prosperous.*'
- 2.2 This is the vision for Ealing that the Council is working towards in partnership with key public sector organisations, residents, businesses, community and voluntary groups in the borough. It is being coordinated through the Local Strategic Partnership.
- 2.3 The Council will work with those that it regulates and will seek to promote compliance *e.g.* through advisory activities, intelligence-led checks on compliance and proportionate responses to regulatory breaches.
- 2.4 The Council will deal firmly with those that deliberately or persistently fail to comply
- 2.5 The Council is committed to the principles of Good Enforcement as set out in the *Enforcement Concordat* and other guidance issued by Government departments. See Principles of Good Enforcement in section 4.
- 2.6 The Council will apply the principles of the *Regulators' Compliance Code* to promote an efficient and effective approach to regulatory inspection and enforcement, improving the outcome of regulation without imposing unnecessary burdens on businesses.

3. COMPLIANCE CHECKS

Risk Assessment

- 3.1 The Council will ensure that the allocation of regulatory efforts and resources will be targeted on the basis of an assessment of risk to regulatory outcomes so resources are focused on those least likely to comply and where risk is highest.
- 3.2 Compliance inspections or other visits will occur in accordance with a risk assessment methodology except where visits are requested by the business or regulated body or to investigate a complaint or act on relevant intelligence.

- 3.3 An explanation of the risk assessment methods and approach to complaints of non-compliance are detailed in the specialist sections in the appendices.
- 3.4 Inspections may take place on targeted trade sectors or themes to tackle local or national priorities either working alone or with our partners.
- 3.5 The Council will focus our greatest inspection effort on regulated entities where risk assessment shows that both:-
- a) A compliance breach or breaches would pose a serious risk to a regulatory outcome;
 - b) There is high likelihood of non-compliance by regulated entities.
- 3.6 In evaluating the likelihood of non-compliance, the Council will give consideration to all relevant factors, including:
- a) Past compliance records and potential future risks;
 - b) The existence of good systems for managing risks, in particular within regulated entities or sites;
 - c) Evidence of recognised external accreditation and
 - d) Management competence and willingness to comply.
- 3.7 In accordance with the *Regulator's Compliance Code* the Council will seek to reward those regulated entities that have consistently achieved good levels of compliance through positive incentives, such as lighter inspections and reporting requirements where risk assessment justifies this.

Shared Enforcement

- 3.8 Where the Council shares or has a complementary role with other regulatory agencies we will seek to avoid duplication through joint or coordinated inspection or data sharing. The Council has entered into a number of agreements and protocols with other key regulators concerning the division of enforcement responsibility and data sharing. Details of these agreements and protocols are provided in the specialist sections in the appendices.

Advice and Guidance

- 3.9 General information, advice and guidance will be provided in a way that enables businesses and regulated bodies to clearly understand what is required by law. Advice will take the form of
- a) Proactive advice and education
 - b) Responding to requests for advice, and
 - a) Advice as a response to breaches
- 3.10 The following principles will be applied in respect of any advice given
- a) Advice given will distinguish between statutory requirements and advice or guidance aimed at improvement above minimum standards,
 - b) Response to requests for advice on non-compliance will be provided without directly

triggering enforcement action and will seek primarily to provide the advice and guidance necessary to help ensure compliance,

- c) Information and advice will be provided in plain language on the rules that we apply,
- d) Providing information and advice in a way that enables businesses to clearly understand what is required by law.

Conflicts of Interest and Undue Influence

- 3.11 The Council has a procedure to deal with conflicts of interest and allegations of undue influence being brought to bear on enforcement decisions. Complaints made in connection with these matters will be investigated in accordance with that procedure which is set out in Appendix A.

Fair Enforcement

- 3.12 The Council is committed to fair and objective enforcement ensuring that all its policies are applied in a non-discriminatory manner and to enhancing good community relations. This policy will be linked to the Council's corporate equality and diversity policy and applied in accordance with those principles.

4. PRINCIPLES OF GOOD ENFORCEMENT

- 4.1 The Council signed up to the *Enforcement Concordat* in March 1998. In doing so the Council agreed to abide by a number of principles of good enforcement as set out below.

Standards

- 4.2 Clear standards will be drawn up which set out the level of service and performance people can expect to receive. These standards are set out in our Service Plans which are available to the public. Performance against these standards will be reported and monitored by Councillors and senior officers.

Openness

- 4.3 Information and advice will be provided in plain language and this will be disseminated through a variety of means, including braille, translation into different languages and, where resources allow and it is appropriate to do so, through the Council's minicom service.
- 4.4 The Council will be open about how it works, including any charges set. General issues, specific compliance failures or problems will be discussed with anyone experiencing difficulties. A clear distinction between compulsory statutory requirements and advice or guidance about what is desirable will be applied. Where appropriate, advice will be put in writing. The reasons for any remedial work that may be necessary will be explained and a reasonable time scale for completion will be given.

Helpfulness

- 4.5 The Council will provide a courteous, helpful and efficient service and our staff will identify

themselves by name, where it is appropriate to do so.

- 4.6 A contact point and a range of contact options will be provided and people will be encouraged to seek advice and information. Applications for approval of establishments, licenses, registrations, *etc.* will be dealt with efficiently and promptly.
- 4.7 The Council will ensure that our enforcement services are coordinated both internally and with outside bodies to minimise unnecessary overlaps and time delays.

Proportionality

- 4.8 When making a decision on the type of enforcement action to take, officers will consider the circumstances of the case and the attitude and history of the parties involved. The Council will ensure that any remedial action required is proportionate to the risks and/or disadvantage created by the non-compliance and that it reflects any advice issued by central government or other coordinating bodies. Where a simple caution or prosecution is being considered, officers will consider Home Office guidance and *The Code for Crown Prosecutors*.

Consistency

- 4.9 Enforcement officers will be expected to exercise judgment in individual cases. In doing so the Council will ensure that their duties are carried out in a fair and equitable manner and will promote arrangements that ensure consistency.
- 4.10 The Council will liaise with other authorities and enforcement bodies to ensure consistency and to explore and develop best practice.
- 4.11 When regulating businesses, the Council will comply with the principles outlined in the *Regulators' Compliance Code* (Statutory Code of Practice for Regulators) to promote efficient and effective approaches to regulatory inspection and enforcement which improve regulatory outcomes without imposing unnecessary burdens on businesses. These principles are:
- a) Regulators should allow, or even encourage, economic progress and only intervene when there is a clear case for protection;
 - b) Regulators should use comprehensive risk assessment to concentrate resources on the areas that need them most;
 - c) Regulators should provide authoritative advice easily and cheaply. No inspection should take place without a reason;
 - d) Businesses should not have to give unnecessary information;
 - e) Businesses that persistently break regulations should face meaningful sanctions;
 - f) Regulators should be accountable for the effectiveness of their activities.

5. ENFORCEMENT OPTIONS

- 5.1 When considering formal enforcement action the officer will discuss the circumstances with those suspected of a breach and take these into account when deciding on the best approach. This will not apply where immediate action is required to prevent or to respond to a serious

breach or where to do so is likely to defeat the purpose of the proposed enforcement action.

- 5.2 The officer will give clear reasons for any formal enforcement action to the person or business against which action is being taken at the time the action is taken. The reasons will be confirmed in writing at the earliest opportunity. The complaints and relevant appeals procedure for redress will also be explained at the same time.
- 5.3 If a business has a Primary Authority (also, if appropriate, a Lead or Home Authority scheme or informal Lead or Home Authority scheme), the officer will contact the Primary Authority before enforcement action is taken, unless immediate action is required because of imminent danger to health, safety or the environment. Officers will abide by LBRO guidance concerning the Primary Authority scheme.
- 5.4 The method of enforcement selected will be calculated to produce the highest reasonable standards of compliance within the least time. A variety of methods are set out in this policy, they are not necessarily sequential. In taking action to ensure compliance, officers will consider the following when deciding on the most appropriate enforcement method:
- a) The seriousness of the breach
 - b) The different options for remedying the breach
 - c) The degree of risk
 - d) The circumstances of each case and the likelihood of recurrence
 - e) Previous history of the offender
 - f) Age and circumstances of the offender
 - g) Date of the offence
 - h) Likelihood of achieving a satisfactory outcome
 - i) Precedent effect
 - j) General attitude of the offender
 - k) Legal imperatives, e.g. statutory requirement to serve a notice
 - l) Relevant guidance
 - m) Sufficiency of admissible evidence
 - n) Public Interest
 - o) Prevalence of the offence locally or nationally
- 5.5 A variety of enforcement options are set out below which could be used at any stage - they are not sequential.

Advice

- 5.6 In the first instance, consideration will be given to whether advice regarding a breach or potential breach of legislation is appropriate. When advice is given it will normally be put in writing unless the breach is very minor or the matter is rectified on the spot.

Referral to Ealing Mediation Service

- 5.7 In appropriate cases officers may consider a referral to the Ealing Mediation Service. An impartial, and confidential service that provides a process for those in dispute to reach

agreement on a range of issues such as noise, rubbish, pets, damage to property, harassment, boundaries, fences and shared areas.

Statutory Notices

5.8 Subject to the specific rules governing the use of different statutory notices, they would generally be used where there is a clear breach of the law, where the degree of risk or environmental impact or harm from the situation is significant and where a remedy needs to be secured within a set period of time. In some instances the service of a notice will be mandatory, for example, abatement notices under the *Environmental Protection Act 1990*.

Subject to consideration of the evidence it is likely that the negligent or wilful non-compliance with a statutory notice will result in prosecution.

Seizure of Property, Documents and Equipment

5.9 Officers will on occasion require evidence for their investigation and will use their statutory powers to seize property, documents or equipment. Where premises are searched this will be subject to the conditions in the Notice of Powers given in the "Premises Search Book" required by PACE. Occupier(s) will be given a notice summarising their rights together with the powers of the officer.

Warning Letter

5.10 In certain circumstances it may be appropriate to issue a warning letter bringing alleged offences to the attention of the person responsible for the alleged breach indicating ways to avoid commission of similar offences in the future. 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.

5.11 A warning letter should be given when the requirements for a simple caution are not met or the need to formally record the caution is not applicable. In either case it is essential that sufficient admissible evidence is available to substantiate the offence.

Simple Caution

5.12 The Council may issue a caution where there is sufficient evidence to prosecute but where the public interest is not served by issuing proceedings. A caution can only be administered where the offender consents to the caution and admits the offence. It will be formally recorded and may be cited in subsequent court proceedings.

Fixed Penalty Notice

5.13 Fixed Penalty Notices (FPNs) can now be issued for a variety of different offences. They are an effective enforcement tool as they allow officers time to focus on more detailed and complex cases. The FPN provides the offender with an opportunity to pay a financial penalty as an alternative to being prosecuted. If a fixed penalty is not paid, the Council may commence criminal proceedings or take other enforcement action in respect of the breach.

5.14 FPNs may be issued when an officer believes that an offence has been committed. The officer must therefore have adequate evidence to support a prosecution if the FPN is not paid. Normally FPNs would not be issued where the breach is more serious or recurrent e.g. the offender has already received a FPN for the same offence in the same year.

Voluntary Undertakings

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

Prosecution

5.16 The Council will exercise discretion when considering whether to initiate a prosecution. The decision to prosecute will take into account the criteria set down in the *Code for Crown Prosecutors*, issued by the Crown Prosecution Service. In particular, the Council will consider whether there is a reasonable prospect of a conviction, bearing in mind any statutory defence available to the defendant, and any other factors which may preclude a successful conviction. Where the circumstances warrant it, prosecution without prior warning may occur.

Forfeiture

5.17 In some circumstances the legislation permits officers to seize goods and apply to the court for them to be made subject to a forfeiture order. The Council will exercise this power in appropriate cases.

Injunction

5.18 An injunction may be sought where the circumstances of any case cause a significant problem or threat to health and the normal process of law (statutory notices, prosecution *etc.*) is likely to be ineffective.

Anti-Social Behaviour Orders (ASBOs)

5.19 The Council has the power to apply to the magistrates' court for an ASBO. ASBOs should be considered wherever it is thought that they will be a successful remedy for tackling anti-social behaviour and where other methods may be less effective. This does not necessarily mean that other methods have to be tried first.

Arrangements for Monitoring and Review of Decisions Taken on Enforcement Action

5.20 A review of how the Enforcement Policy is practically applied and the outcomes of the enforcement action undertaken will be carried out on an annual basis in order to monitor compliance with this policy. The results will be reported through relevant departmental management team meetings and to the Regulatory Committee as agreed by the Chair.

6. ADMINISTRATION

Confidentiality

- 6.1 The Council will ensure that the identity of persons contacting us, and any information supplied by them, is not revealed to a third party except:-
- a) where the law requires or
 - b) where the case goes to court or tribunal; or
 - c) with the prior written agreement of the person supplying the information.

Persons wishing to remain anonymous may do so and information supplied in connection with breaches of legislation will be investigated where possible and feasible to do so.

Complaints

- 6.2 The Council will respond to complaints about the service it provides in accordance with the Corporate Complaints Procedure which is available at:
http://inside.ealing.gov.uk/info/19999/about_us/96/corporate_complaints/4

Implementation

- 6.3 Responsibility for implementation of this policy rests with the enforcement officers in the relevant departments. When the officer takes the view that enforcement action is required this will be discussed with the relevant service head or line manager who will decide on the appropriate action to be taken. This discussion should be recorded on the case file. Implementation will then be monitored by the relevant service head.

The Council's Scheme of Delegation specifies the extent to which enforcement powers are delegated to officers. Whilst delegation may often be to officers, in certain circumstances the decision to take enforcement action lies with the relevant Council Committee. The list of officer delegated powers is available at http://www.ealing.gov.uk/downloads/download/924/Council_constitution_part_8-officer_delegated_powers

Review of Policy

- 6.4 This policy will be reviewed and updated as required by legislation, guidance or other circumstances which may impact on the principles set out in this document.

APPENDIX A

Conflicts of Interest and Undue Influence

The enforcement role of the Council is an impartial one. However, the possibility of a real or perceived conflict of interest or undue influence arising remains.

Conflict of Interest

There may be circumstances short of a criminal offence which could give rise to a conflict of interest between a Council officer and a member of the public, for example:-

- Where the member of the public is socially acquainted with or related to the officer. Under these circumstances it would be difficult for the officer to act in an impartial manner and unreasonable to expect this.
- Where an employee receives a request from a Councillor, Council employee or an Agency who they have close working contact with and the request for advice or assistance falls outside the normal remit for the service.

Undue Influence

Undue influence arises where a party exercises a dominant influence over the mind of another so that person is unable to exercise a free and independent will in the matter. For example, when an employee knows that a client is a Councillor or a more senior Council employee, they should ask him/her whether, if this were publicly known, it might be perceived as affecting the judgement or actions of the advisor.

Where an employee believes there is potential for a conflict of interest or undue influence to arise then the matter should be referred to their line manager for appropriate action/advice.

APPENDIX B

Relevant Requirements and Legislation Considered in the Preparation of this Policy

1. Principles of Good Regulation

The Legislative and Regulatory Reform Act 2006, Part 2

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

This requires the Council to have regard to the Principles of Good Regulation when exercising a specified regulatory function. We will exercise our regulatory activities in a way which is:

- A. Proportionate – our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence,
- B. Accountable – our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures,
- C. 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,
- D. 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
- E. Targeted – we will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities.

2. Regulators' Compliance Code, Statutory Code of Practice for Regulators, December 2007

<http://www.berr.gov.uk/files/file45019.pdf>

The Council has had regard to the *Regulators Compliance 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.

3. Enforcement Concordat (Cabinet Office 1998); Enforcement Concordat: Good Practice Guide for England and Wales; (Department of Trade and Industry, June 2003)

<http://webarchive.nationalarchives.gov.uk/+http://www.berr.gov.uk/files/file10150.pdf>

Ealing Council has adopted the *Enforcement Concordat* and the Principles of Good Enforcement, which are: Standards, Openness, Helpfulness, Complaints, Proportionality and Consistency.

4. Human Rights Act 1998

Ealing Council 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.

5. **Data Protection Act 1998**

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

6. **Crown Prosecution Service: The Code for Crown Prosecutors, January 2013**

Issued under section 10 of the *Prosecution of Offences Act 1985* and is available from CPS London EC4M 7EX. Find at www.cps.gov.uk (under Publications).

When deciding whether to prosecute, Ealing Council has regard to the provisions of *The Code for Crown Prosecutors* as issued by the Director of Public Prosecutions. The Code 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, Ealing Council 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?*

Ealing Council will balance factors for and against prosecution carefully and fairly, considering each case on its merits.

7. **Regulatory Enforcement and Sanctions Act 2008, Part 2**

<http://www.legislation.gov.uk/ukpga/2008/13/section/11>

This 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 registered Primary Authority partnership. The Act also provides for the publication of a list of enforcement priorities for local authorities. We will have regard to any list of enforcement priorities published by the Better Regulation Delivery Office.

8. **Code of Practice on Guidance on Regulation (BIS, 2009)**

<http://www.bis.gov.uk/files/file53268.pdf>

This outlines the government's 'golden rules' for guidance on regulation. Guidance should be:

- a) Based on a good understanding of users
- b) Designed with input from users and their representatives

- c) Organised around the user's way of working
- d) Easy for the intended users to understand
- e) Designed to provide users with confidence in how to comply with the law (i.e. no use of legal disclaimers of liability)
- f) Issued in good time
- g) Easy to access
- h) Reviewed and improved

9. Food Law Code of Practice

<http://food.gov.uk/enforcement/enforcework/foodlawcop/>

10. Standard for Health and Safety Enforcing Authorities

<http://www.hse.gov.uk/section18/>

11. HELA's Guidance to Local Authorities on Priority Planning (HELA, 2010)

<http://www.hse.gov.uk/lau/lacs/67-2.htm>

This sets out the requirements for risk rating and frequency of interventions for enforcement of health and safety legislation.

12. HELA's Incident Selection Criteria Guidance (2009)

<http://www.hse.gov.uk/lau/lacs/22-13.htm>

This provides a common proportionate, transparent and targeted approach to accident and incident selection and investigation.

13. Primary Authority Guidance (LBRO, 2009)

<http://www.lbro.org.uk/docs/pa-guidance.pdf>

14. Home Office: A guide to anti-social behaviour orders

Produced by COI on behalf of the Home Office. August 2006. Ref: 275335

http://webarchive.nationalarchives.gov.uk/20100405140447/http://asb.homeoffice.gov.uk/uploadedFiles/Members_site/Documents_and_images/Enforcement_tools_and_powers/ASBOGuidance_HO_AUG2006_0043.pdf

APPENDIX C

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 the Council.

- a) *The Police and Criminal Evidence Act 1984*
- b) *The Criminal Procedure and Investigations Act 1996*
- c) *The Regulation of Investigatory Powers Act 2000*
- d) *The Criminal Justice and Police Act 2001*
- e) *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 D

Specialist Departmental Policies

- A. Food Safety
- B. Health and Safety
- C. Trading Standards
- D. Licensing
- E. Pollution Technical
- F. Noise and Nuisance
- G. Property Regulation
- H. Envirocrime
- I. Safer Communities
- J. Audit and Investigation
- K. Planning Enforcement
- L. Building Control

A. Food Safety Team – Enforcement Policy

1. Introduction

- 1.1. This team policy covers those aspects of enforcement that are specific to the legislation enforced by the Food Safety Team¹ and to the roles and functions fulfilled by the team within Regulatory Services. Unless otherwise stated in this document, the Council-wide Enforcement Policy will apply to the team's enforcement activity.
- 1.2. The Food Safety Team is responsible for registration, approval, inspection and regulation of food businesses within the Borough as well as food, water and environmental sampling at food businesses, investigation of complaints and referrals and investigation of cases and outbreaks of food related illness.
- 1.3. The team works closely with other agencies and partners, in particular the Food Standards Agency and Public Health England.
- 1.4. Regulatory decisions in relation to breaches of food law shall have regard to the relevant provisions of the most recent applicable version of Food Standards Agency *Food Law Code of Practice* and Associated Practice Guidance, the *Code for Crown Prosecutors* and the *Regulators Compliance Code*. Decisions will comply with the Primary Authority Principles set out in the *Regulatory and Enforcement Sanctions Act 2008* and the *Enterprise and Regulatory Reform Act 2013*.

2. Team regulatory and enforcement activities

The main statutory provisions (not an exhaustive list) enforced by the Team are:-

- *The Food Safety Act 1990, the Food Hygiene (England) Regulations 2006, the General Food Regulations 2004 and the Food Labelling Regulations 1996* (and all associated regulations and EU food law).
 - Registration and approval of Food Business Operator's Establishments.
 - Inspection and regulation of establishments.
 - Investigations of complaints and referrals.
- *The Health and Safety at Work etc. Act 1974* and associated regulations (see the Health and Safety Enforcement Policy).
- *Animal By-products (Enforcement) (England) Regulations 2011*
 - Regulation of storage and disposal of Animal By-Products.
- *The Health Act 2006*
 - Powers to enforce offences relating to smoking in smoke-free premises.

¹ Please see the 2013/2014 Service Plan for the Food Safety Team for more information on the activities of the team.

- *The Health Protection (Local Authority Powers) Regulations 2010, the Health Protection (Notification) Regulations 2010, the Health Protection (Part 2A Orders) Regulations 2010.*
 - Investigations of infectious diseases.
 - Disinfection and decontamination of premises and things.
 - Imposition of restrictions or requirements on people or premises to avert a health risk.

3. Service standards

- 3.1 Regulatory Services service standards for initial and full response to service requests apply.
- 3.2 The service standard for a first response is five working days (all service requests are reviewed and risk assessed within 2 working days).

4. Information and advice

- 4.1. The team provides general information and advice to food businesses in accordance with the team's Service Plan. For detailed or specialist advice businesses will be encouraged to engage a competent consultant owing to resource constraints.
- 4.2. The team makes information regarding the hygiene standards of retail and catering food businesses available to the general public as part of the Food Standards Agency's Food Hygiene Rating Scheme. This information can be accessed at www.food.gov.uk/ratings.
- 4.3. The team responds to request for information made under the *Freedom of Information Act 2000* and the *Environmental Information Regulations 2004*. Such requests are processed in conjunction with the Council's Freedom of Information officer.

5. Compliance and Enforcement

General

- 5.1. In exercising functions and ensuring compliance with legislation officers will have regard to the principles of good enforcement in part 4 of the Corporate Enforcement Policy and in particular to the principles that regulatory activities should be
 - a) Carried out in a way, which is transparent, accountable, proportionate and consistent;
 - b) Targeted only at cases in which action is needed.
- 5.2. The Protection of consumers and others from harm or fraudulent activity will underpin all regulatory decisions in relation to food safety.
- 5.3. Notwithstanding the above underpinning principle, the effects of regulatory decisions on economic progress will also be considered as part of the regulatory decision making process.
- 5.4. All inspection and enforcement activity shall be risk-based and/or intelligence-led.

5.5. Regulatory decisions following a breach should be designed to:

- Restore compliance with applicable legal requirements.
- Punish offenders (where applicable).
- Dissuade future offending (where applicable).

5.6. Regulatory Services staff have a range of enforcement powers. Officers must not be prevented from carrying out their duties and must be given reasonable assistance and correct information. Obstruction is a criminal offence. While undertaking their duties officers will carry appropriate identification and evidence of their status as an authorised officer. The initial enforcement expectation for obstruction of an officer will be prosecution (although the particular circumstances of each such offence will be thoroughly investigated).

5.7. Businesses and individuals shall be treated in a courteous, professional and respectful manner and the Council's expectation is that its officers will be able to carry out their duties free from verbal or physical abuse, any form of intimidation, discrimination or false accusations. Should Council officers be subject to verbal or physical abuse, intimidation or false accusations, such matters will be thoroughly investigated with a view to enforcement action either by the Council or its partners, including the Police.

5.8. Officers will not exceed their powers and will work within the legal framework governing their activity. They will comply with the requirements of the *Police and Criminal Evidence Act 1984*, the *Criminal Procedure and Investigations Act 1996* and the *Regulation of Investigatory Powers Act 2000*.

5.9. Regulatory decisions in relation to breaches of food law shall follow the principles of better regulation namely; proportionality, accountability, consistency, transparency, targeting. In practice this will be achieved as follows:

Accountability

5.10. To ensure accountability (as well as consistency) all formal enforcement action from the level of formal enforcement notice upwards is subject to some form of documented peer or Line Manager review (this may not always be possible in relation to emergency action which will be subject to retrospective review). Prior to any decision on the issuing of a simple caution or initiation of prosecution proceedings the matter under investigation shall be reviewed by an officer of at least Service Manager level.

5.11. Individuals and businesses subject to enforcement will be advised of appeal and complaint procedures as applicable.

5.12. To ensure accountability to victims and the public generally information regarding enforcement may be appropriately publicised through various channels such as the internet and printed media.

Consistency

- 5.13. In addition to the peer and manager review arrangements described above, where possible, standard operating procedures will suggest initial enforcement expectations for certain types of breaches and ensure enforcement tools such as Improvement Notices and Prohibition Notices are used appropriately. Regular supervision meetings involving case reviews between Managers and investigating officers as well as periodic consistency exercises will all contribute to ensuring that regulatory decisions are consistent.

Transparency

- 5.14. Officers shall clearly communicate with regulated entities and provide an explanation for their decisions and provide opportunities for discussion. The difference between legal requirements and recommendations will be made clear in all forms of communication.
- 5.15. Regulatory decisions in relation to breaches of food law shall have regard to the most recent applicable version of the *Regulators Compliance Code* as well as the *Code for Crown Prosecutors*.
- 5.16. Regulatory decisions in relation to breaches of food law shall have regard to the relevant provisions of the most recent applicable version of Food Standards Agency Food Law Code of Practice and Associated Practice Guidance.
- 5.17. All regulatory activity and decisions will have regard to Primary Authority and Home Authority principles and partnerships.

6. Recovery of Costs

- 6.1. Investigations and enforcement activity arising from non-compliance can be costly for the Local Authority. It shall be the policy of the Council to recover its costs during applicable civil and criminal proceedings including (but not necessarily limited to); prosecutions, applications for emergency prohibition orders and food condemnation orders.
- 6.2. In the case of food law, where non-compliance results in the Council performing additional official controls which exceed normal control activities, it shall be the policy of the Council to charge the Food Business Operator the costs of these additional official controls in accordance with Article 28 of Regulation (EC) 882/2004 on the performance of official controls to verify compliance with feed and food law, animal health and animal welfare rules.

7. Proceeds of Crime

Where possible the Council will work with Accredited Financial Investigators and make use of the provisions of the *Proceeds of Crime Act 2002*.

8. Data Sharing

To facilitate the prevention, detection and investigation of crime, intelligence and information

may be shared and exchanged with other Council departments, other Local Authorities or other agencies such as Police Forces, UK Border Agency, HM Revenue and Customs, London Fire Brigade, the Food Standards Agency, the Health and Safety Executive, Public Health England and others. Such sharing of data will comply with the provision of the *Data Protection Act 1998*.

9. Quality Assurance

The quality of inspection and enforcement activities will be reviewed by the Food Safety Team Leader in accordance with the Service Plan and applicable Standard Operating Procedures.

10. Contact details

Team e-mail address: foodsafety@ealing.gov.uk

Matthew Morris, Team Leader, tel: 020 8825 7791, e-mail: morrism@ealing.gov.uk

Version: September 2013

B. Health and Safety Team – Enforcement Policy

1. Introduction/Background

1.1. This team is responsible for undertaking health and safety, and infectious disease control work, and will be engaging closer in work related to the Council's wider public health agenda. The Team produces its own annual Service Plan which is approved by the Council's Regulatory Committee.

1.2. Key Legislation

- *Health and Safety at Work etc. Act 1974* and allied regulations
- *National Local Authority Enforcement Code (2013)* and supplementary guidance
- *Health and Safety (Enforcing Authority) Regulations 1998*
- *Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995*
- *Health Act 2006* and regulations
- *The Health Protection (Local Authority Powers) Regulations 2010* , *The Health Protection (Notification) Regulations 2010*, *The Health Protection (Part 2A orders) Regulations 2010*.
- *Public Health (Control of Disease) Act 1984*

2. Nature of the work

2.1. The team will respond to complaints and other requests for service from the public and from the business community, and will undertake a proportion of proactive visits targeted at high risk business activities - as laid down in the new *National Local Authority Enforcement Code (NLAEC)*. Enforcement activity will also be influenced by locally gathered intelligence that indicates that unsafe activities are being conducted and where further investigations will be needed.

2.2. The general ethos is not to conduct unnecessary inspections via programmed visits, but to target resources in taking a range of interventions against poorly performing and non-compliant businesses. By virtue of the Food Team addressing serious health and safety issues in the course of their work, the Council also helps avoid duplicitous visit.

2.3. The team assess incoming accident reports via the RIDDOR system and by applying selection criteria will select those accidents warranting further/full investigation.

2.4. Regulatory Services will also work with other departments and regulatory agencies in a spirit of partnership, including the HSE, when there are mutual benefits to be gained in service delivery and outcomes. Enforcement activity will also involve better provision of relevant information to businesses in helping them remain legally compliant.

2.5. The team also take the strategic lead for working with Public Health England, in work relating to controlling the spread of infectious disease. This entails using our resources and local knowledge in contact tracing, monitoring and surveillance, and in sampling/potting regimes. The Health Protection Regulations allow for additional powers to investigate infectious disease, to disinfect or decontaminate premises or objects, or to apply restrictions or requirements on

people. In cases of a food poisoning outbreak, the Food Safety team will take the lead in co-ordinating any programme of work.

- 2.6. Employers, employees and the public (who may be affected by those business activities) are key contacts for this team. The team are also the Health and Safety Authority for the purposes of the *Licensing Act 2003* and will interact with other Responsible Authorities when assessing the merits of an application.

3. Service standards

- 3.1. Regulatory Services service standards for initial and full response to service requests apply. The team will normally provide a first response to requests for service/complaints within 5 working days. In the event of a fatality or serious accident an immediate, or within 24 hour, response will be required.
- 3.2. Referrals from Public Health England or the Council's Emergency Planning Team may well require a similar rapid response.
- 3.3. The team will normally operate under standard service hours Monday to Friday over a 35 hour week, but officers will make out of hours visits as required.
- 3.4. Some officers who are members of professional bodies will be bound by their own association's behavioural and ethical code, as well as by the Council's Employee Code of Conduct. In general terms officers are expected to conduct themselves with integrity and professionalism in the course of their duties.
- 3.5. There are currently no charges applied to enforcement and intervention work, in contrast to the HSE.
- 3.6. Businesses also have recourse to an Independent Challenge Review Panel (ICRP) in the event that a health and safety inspection is deemed out of scope, or if enforcement action is seen as unreasonable or inappropriate.

4. Information and advice

- 4.1. The Council website does contain some health and safety advice but the key link is to the HSE website. They have developed a significant information database for lower risk businesses to access, to provide technical and legal information as a guide to legal compliance. Officers can also provide varying levels of direct guidance and advice dependent on the subject matter.
- 4.2. The team will develop written sector specific advice and guidance dependent on annual service plan needs, or if a specific campaign is being run.
- 4.3. In the event that businesses require very detailed and complex on-going advice, they may be advised to seek the services of a consultant. The HSE website now provides a register of approved consultants working within the health and safety field.
- 4.4. The team responds to *Freedom of Information Act 2000* requests and the *Environmental Information Regulations 2004* via the Freedom of Information Officer.

5. Compliance and Enforcement

- 5.1. The team aim to protect the interests of employers and employees, and of the general public, by rendering workplaces and activities safe. All inspection and enforcement activity shall be risk-based and/or intelligence led.
- 5.2. The purpose of enforcement is to ensure that duty-holders deal immediately with serious risks, promote sustained legal compliance, hold to account duty-holders, directors and managers who breach health and safety requirements.
- 5.3. Principles of good enforcement are laid down in Part 4 of the Council's Enforcement Policy document and will be observed.
- 5.4. The team has regard to the *Regulators Compliance Code* (DBERR) in its approach to enforcement as well as to the requirements of *Legislative and Regulatory Reform Act 2006*. The key elements of the RRA require that regulatory activities should be conducted in a transparent, accountable, proportionate and consistent manner, and should be targeted only at cases where action is needed.
- 5.5. Officers are authorised to undertake work to a level consistent with their qualifications, experience and abilities. In gathering evidence officers will have regard to the *Police and Criminal Evidence Act 1984*, the *Criminal Procedure and Investigations Act 1996* and the *Regulation of Investigatory Powers Act 2000*.
- 5.6. Enforcement responsibilities for health and safety in various categories of premises are laid down in the *Enforcing Authority Regulations 1998*. In instances where the responsibility is unclear, the matter will be discussed with the HSE. By agreement an individual premises can be transferred between the enforcing authorities where it is prudent and appropriate to do so. The service will also apply protocols laid down in the departmental Enforcement Code.
- 5.7. The work of the department will be guided by the NLAEC and inspectors will endeavour to utilise different intervention strategies other than proactive inspection. The team will also be mindful of any Primary Authority relationships, which could have a bearing on our enforcement approach and subsequent actions.
- 5.8. In considering any potential sanction relevant to serious breaches of regulations, the *Regulators Compliance Code* and *Code for Crown Prosecutors* will be applied.
- 5.9. All complaints will be carefully considered and actioned as appropriate, subject to standard response and other timeframes. Wherever possible specific requests for anonymity will be respected, and the general approach is not to reveal the source of complaint unless directed otherwise.

6. Risk assessment

- 6.1. Resources are directed at businesses who are non-compliant or where activities are believed to represent a risk to health.
- 6.2. Premises are rated by inspectors following full inspections against standards published by the HSE. The new NLAEC requires this standard to be revised. Under the new arrangements, the

authority is not required to rate an entire premises but can undertake relevant audits to identify high risk working practices as indicative of the main hazards being controlled, or not, on site.

7. Joint working arrangements with other agencies

- 7.1. The Council will as a statutory health and safety authority work alongside the national strategic authority i.e. HSE. Sector liaison meetings provide a forum for exchange of intra-Borough news and the co-ordination of activities.
- 7.2. Regulatory Services also promotes an integrated enforcement approach to work, and will harness support when necessary, from other departments and regulatory agencies. The HSE can provide specialist legal and technical support in some circumstances.
- 7.3. Another key agency partner is the London Fire and Emergency Planning Authority (LFEPA) whose fire service officers regularly offer advice and support via joint inspections.
- 7.4. The authority also works in close conjunction with the Health Protection Agency, and the new public health team located within the Borough, led by the Director of Public Health.

8. Conduct of investigations

- 8.1. The general conduct of investigations is governed by the processes detailed in Appendix C of the main policy document. Evidence will be gathered and used in accordance with the powers delegated to officers. Any attempt at obstructing an officer in the course of their duties will be considered for prosecution.
- 8.2. Where a business has a primary authority relationship, the PA will be informed at an early stage in the process. Any investigation will be governed by the statutory time limit involved and any report to be considered for prosecution, will be completed as soon as possible. The line manager will review the progress of investigations on a regular basis. Witnesses and others involved in an investigation will be kept informed of the progress of the investigation by the investigating officer.
- 8.3. The key powers available to investigating officers lie within Section 20 of the *Health and Safety at Work etc Act 1974*. This includes powers of entry, to examine and investigate, to take copies of documents and to take possession of articles and substances etc. The HSE also publish guidance on obtaining evidence using these powers.
- 8.4. In the event of a work related fatality any decision on subsequent investigation and prosecution is guided by "*Work-related deaths: A protocol for liaison*".

9. Breaches of legislation and enforcement actions

- 9.1. The general enforcement options available to the team are laid down in Part 5 of the Council's Enforcement Policy.
- 9.2. The range of sanctions open to the local authority in dealing with individual breaches of legislation will be carefully considered. These normally include advice, formal warning letters, issue of a simple caution or prosecution. In the latter case, a decision as to whether to

prosecute must take account of the evidence and the relevant public interest factors set down by the Director of Public Prosecutions in the *Code for Crown Prosecutors*.

- 9.3. Businesses or individuals will be given every opportunity to account for their actions or inactions, provide mitigation, offer alternative resolutions, and advance defences. An appropriate level of contact will be maintained either directly and/or in writing with the business or regulated person. Appropriate timescales will be observed.
- 9.4. Infringement Reports forwarded by investigating officers to the relevant manager will be subject to scrutiny in respect of the Council's enforcement policy and procedures.
- 9.5. The reasons for decisions and actions will be considered. Checks will be made to ensure that rights of appeal have been made known where relevant. If the proposed course of action is approved by the line manager, the matter will be referred to the Head of Regulatory Services for endorsement or otherwise.

10. Monitoring Compliance and Enforcement

- 10.1. Premises subject to current enforcement processes can be tracked on the database and via performance reports. Businesses or individuals subject to prosecution will be dealt with by the Legal Services Team working with case officers.
- 10.2. The Head of Service approves enforcement actions following significant breaches of legislation. The success or otherwise of legal outcomes is recorded for future reference and consideration.

11. Contact details

General enquiry number: Tel: 020 8825 6666

Email: foodsafety@ealing.gov.uk

C. Trading Standards Enforcement Policy

1. Introduction/Background

- 1.1. Trading Standards Officers have a range of enforcement powers. Officers must not be prevented from carrying out their duties and must be given reasonable assistance and correct information. Obstruction is a criminal offence.
- 1.2. Officers will not exceed their powers and will keep within the legal framework governing their activity. They will comply with the requirements of the *Police and Criminal Evidence Act 1984*, the *Criminal Procedure and Investigations Act 1996* and the *Regulation of Investigatory Powers Act 2000*.
- 1.3. Trading Standards legislation enforced by officers is designed to protect consumers and regulate business activities. Officers will respond to complaints from consumers and traders involving dangerous goods and unfair trading practices.
- 1.4. Trading Standards Officers will work on special projects with officers from other agencies such as the Police, UK Border Agency, HMRC, VOSA, and the Home Office.
- 1.5. In exercising functions and ensuring compliance with legislation officers will have regard to the principles of good enforcement in part 4 of the Corporate Enforcement Policy and in particular to the principles that regulatory activities should be
 - a) Carried out in a way, which is transparent, accountable, proportionate and consistent;
 - b) Targeted only at cases in which action is needed.

2. Service Standards

- 2.1. The Council's enforcement resources are limited and where appropriate they should be focused on those persons, premises or companies whose activities give rise to the risks which are most serious or least well controlled. Officers therefore target their inspections on a risk rating basis; premises or activities with the highest hazards, greatest risks, poorest compliance and worst management being inspected more frequently than low risk premises.
- 2.2. Enforcement is informed through intelligence arising from investigation of complaints and planned projects, special surveys and enforcement initiatives.
- 2.3. Enquiries and complaints by business will be responded to within five working days. Complaints by members of the public will be responded to within five working days. No charge is made for responding to complaints and enquiries.

3. Information and Advice

- 3.1. Requests for information and advice involving consumers' civil rights will be passed to Citizens Advice in accordance with Central Government's guidance. Businesses will be provided with information and advice on compliance with Trading Standards legislation within five working days.

4. Compliance and Enforcement

- 4.1. Visits to business premises are intelligence based in response to consumer complaints or new business practices or products coming into the marketplace. Samples are taken or test purchases made when an officer suspects that goods do not comply with trading standards legislation.
- 4.2. Complaints of non-compliance will be assessed by the team leader and allocated to a named officer for further investigation if the complaint involves consumer safety or a serious breach of trading standards legislation.
- 4.3. Special projects may involve working with other agencies. Information will be shared with other trading standards services using a standardized intelligence report.
- 4.4. The conduct of investigations is governed by the processes detailed in appendix C of the main policy document. Evidence will be gathered and used in accordance with the powers conferred on trading standards staff by trading standards legislation. This may involve making test purchases or seizing goods, books or documents. Any attempt at obstructing an officer will be considered for prosecution.
- 4.5. Where the trader concerned has a primary authority partnership, the primary authority will be informed at an early stage in the process. Any investigation will be governed by the statutory time limit involved and any report to be considered for prosecution will be completed as soon as possible. The team leader will review the progress of an investigation on a regular basis. Witnesses and others involved in an investigation will be kept informed of the progress of the investigation by the investigating officer.
- 4.6. Trading standards officers have a range of options other than prosecution depending on the legislation involved. Under the *Consumer Protection Act* potentially dangerous goods may be suspended from sale, withdrawn from the market or recalled. Other forms of compliance notices are governed by specific trading standards legislation. In all cases the business concerned will be given the opportunity to discuss the circumstances. A compliance notice will be issued in the form specified by legislation or, where not specified, a general form of notice will be issued. Notices will only be given where there is a legal requirement to do so. Areas of best practice will not result in a notice being issued. The reason for any enforcement action will be given on request and in all cases the right of appeal will be communicated to all accused persons. The decision to prosecute will rest with the Head of Regulatory Services.

5. Contact details

Trading Standards
London Borough of Ealing
Regulatory Services
4th Floor, Percival House
14-16 Uxbridge Road
London W5 2HL

Telephone: 020 8825 6086
Email: tradingstandards@ealing.gov.uk

D. Licensing Compliance Enforcement Policy

1. Scope of Legislation and Regulatory Activities

The main functions and activities are as follows:-

- 1.1. *The Licensing Act 2003* - which regulates alcohol sales and supplies in members clubs, regulated entertainment (such as music, dancing, sport, films and theatre), and late night refreshment (the sale of hot food/ drink between 11pm – 5am). The licencing regime covers premises such as; pubs, nightclubs, off licenses, restaurants, late night take-a- ways, shisha bars, convenience stores and supermarkets. There are around 1000 premises licensed in LBE under this legislation.
- 1.2. *The Gambling Act 2005* – premises such as; betting shops, bingo halls and adult gaming centres have to be licenced. There are around 100 premises licensed under this legislation.
- 1.3. *London Local Authorities Act 1991* – premises that carry out massage and special treatments (MSTs) - such as beauty shops performing manicures/pedicures, massages, piercing and tattoo parlours. Around 200 premises become due for licensing each year.
- 1.4. Explosives/ fireworks – ensuring retailers/wholesalers correctly store fireworks, do not exceed their explosive weight limits and are only selling within the permitted periods.
- 1.5. Animal welfare – pet shops and the zoo are inspected and monitored in partnership with animal welfare officers from the City of London vets.
- 1.6. Other miscellaneous licensing and registrations under provisions such as the *Local Government (Miscellaneous Provisions) Act 1982* (Control of Sex establishments), *Scrap Metal Dealers Act 2013*, *Motor Salvage Operators Regulations 2002* and *Poisons Act 1972*.
- 1.7. The aim of the Licensing Compliance team is to protect consumers, residents and businesses in the Borough through enforcing licensing regimes and associated legislation. This is undertaken through the following, subject to resources, risk and team priorities:
 - a) To provide advice and participate in trade events, such as pub watch;
 - b) To undertake routine inspections of licensed premises to ensure they still comply with their conditions and the ownership has not transferred;
 - c) To follow up requests for service, investigate offences (including test purchases) and prosecute offenders.
- 1.8. The team will have regard to Statutory Guidance and code of practice, including
 - a) Home Office guidance issued under s182 of the *Licensing Act 2003*;
 - b) Gambling Commission Guidance under S25 of the *Gambling Ac 2005*;
 - c) Home Office *Sexual Entertainment Venues Guidance England and Wales*

2. Service standards

- 2.1. Requests for Service are received through a number of channels, such as a member of the public, business request (agents, solicitors), referrals from local authority employee e.g., other team within Regulatory Services, other departments, outside agencies (police, fire brigade) and voluntary groups (e.g. residents' associations).
- 2.2. The team will respond to requests from businesses or operators for advice, or investigate complaints about businesses within 5 working days. There is no charge made for responding to complaints and enquiries.
- 2.3. The team will focus on those persons, premises or companies whose activities give rise to the risks which are most serious or least well controlled. Officers therefore carry out a programme of inspections on a risk rating basis. Premises or activities with the greatest risks, poorest compliance and worst management will be inspected more frequently than low risk premises. Low risk premises may not form part of the inspection programme and will generally be given literature or guidance to help them run their business safely and with the least impact on their local environment.

3. Information and advice

- 3.1. Advice and guidance is available on the Council's website at http://www.ealing.gov.uk/info/200063/licences_and_street_trading
- 3.2. This gives information on the licenses we issue including how to apply and supporting documentation. Also available are the Council's licensing policies and guidance for business, residents and other community stakeholders within the borough on the application of and approach to, the licensing procedure as administered by the Council. The following are available to download:-
- 3.3. The Council's policy for licensing and regulating businesses where there is the sale of alcohol, provision of regulated entertainment and late night refreshments;
 - a) The Council's policy in respect of gambling;
 - b) The Council's sex establishment policy;
 - c) Guidance for applicants on how to complete an operating schedule.
- 3.4. The Council's public register and current applications are also available to view.

4. Compliance and Enforcement

In exercising functions and ensuring compliance with legislation and licence conditions Act the Authority will have regard to the principles of good enforcement in part 4 of the corporate enforcement policy and in particular to the principles that regulatory activities should be

- a) Carried out in a way which is transparent, accountable, proportionate and consistent;
- b) Targeted only at cases in which action is needed.

5. Risk assessment

- 5.1. Inspections will be carried out on a risk rated basis. The risk rating system is informed through the *LACORS Best Practice Guide for the Licensing Act 2003* and this has been further adapted so it could be used to inspect premises licensed under other regimes. Essentially high-risk premises are identified and visited more often and the low risk premises, which are well managed, are given less priority. Officer targets are set to ensure there is a good coverage of inspections across the borough.
- 5.2. The teams inspection programmes will also be informed through the police shared risk priority scheme (Traffic Light Scheme, RAG) for the monitoring (and targeted enforcement) of licensed premises. Premises which are the subject of regulatory control are awarded points for crime and associated disorder, Noise nuisance notices and licensing offences. These are monitored over a six month period, and lead to scaled intervention.
- 5.3. Inspections may result from specific trade targeted projects where there are shared priorities with other partner agencies and Council departments.
- 5.4. Test Purchases are carried out as a result of intelligence arising from investigation of complaints, intelligence from our partners and planned projects and enforcement initiatives with other enforcement agencies to deliver cross service objectives.

6. Complaints of non-compliance

- 6.1. The team will respond to allegations of non - compliance. Investigations will be initiated with a view to formal enforcement action (with outcomes of letters of warning, simple cautions and instituting legal proceedings).
- 6.2. Investigations will be prioritised in accordance with risk and the potential for harmful impact on local environment and residents and consumers. Greater priority will be given to allegations where there are shared concerns from our partners such as the police and HMRC and other teams within Regulatory services such as noise, health and safety, planning enforcement and other departments.

7. Joint working arrangements with other agencies

The Authority will establish protocols and develop partnership opportunities with all interested parties including the licensed trade, responsible authorities, local residents and businesses and other enforcing authorities as appropriate on enforcement issues. In particular working with;

- a) The trade, in initiatives such as pub, club and bet watch schemes;
- b) The police by setting up joint enforcement protocols, joint-working arrangements, multi-agency visits. Being part of the process where the police initiate reviews and expedited reviews.
- c) Community Safety team by attending local partnership days and taking part in high visibility inspections of premises.
- d) The Council's Health and Safety team and the fire brigade by carrying out joint inspections where there are public safety problems.

- e) The Noise & Nuisance Team by targeting late night inspections where there are noise and other public nuisance problems. We will rely on information provided by the noise team who deals with out of hours inspections in the night-time economy.
- f) Trading Standards to ensure that licenced premises do not sell age-restricted goods in breach of their licence.
- g) Residents either directly or through local representatives.

8. Conduct of investigations

- 8.1. The conduct of investigations is governed by the processes detailed in appendix C of the main policy document. Evidence will be gathered and used in accordance with the powers conferred on the Council's licensing compliance officers by the licensing legislation. Any attempt at obstructing an officer will be considered for prosecution.
- 8.2. Where the trader concerned has a primary authority partnership, the primary authority will be informed at an early stage in the process. Any investigation will be governed by the statutory time limit involved and any report to be considered for prosecution will be completed as soon as possible. The team leader will review the progress of an investigation on a regular basis. Witnesses and others involved in an investigation will be kept informed of the progress of the investigation by the investigating officer.

9. Breaches of legislation and enforcement actions

- 9.1. The method of enforcement selected will be calculated to produce the highest reasonable standards of compliance within the least time. A variety of methods are set out in this policy, they are not necessarily sequential. In taking action to ensure compliance, officers will consider the following when deciding on the most appropriate enforcement method:
- 9.2. A variety of enforcement options are set out below which could be used at any stage, they are not sequential.
 - a) **Advice** - In the first instance, consideration will be given to whether advice regarding a breach or potential breach of legislation is appropriate. When advice is given it will normally be put in writing unless the breach is very minor or the matter is rectified on the spot.
 - b) **Warning Letter** - In certain circumstances, it may be appropriate to issue a warning letter bringing alleged offences to the attention of the person responsible for the alleged breach indicating ways to avoid commission of similar offences in the future.

A Warning Letter should be given when the requirements for a simple caution are not met or the need to formally record the caution is not applicable. In either case it is essential that sufficient admissible evidence is available to substantiate the offence.
 - c) **Licensing Review** - The 2003 Licensing Act provides a range of powers for a licensing authority to determine a review. Enforcement officers can request the licensing authority to review the licence because of a matter arising in connection with any of the four licensing objectives.

- d) **Simple Caution** - The Council may issue a caution where there is sufficient evidence to prosecute but where the public interest is not served by issuing proceedings. A caution can only be administered where the offender consents to the caution and admits the offence. It will be formally recorded and may be cited in subsequent court proceedings.

- e) **Prosecution** - If the Officer believes that prosecution is the correct course of action then an Infringement Report must be completed. The Infringement Report must be signed off by the Team Leader and Head of Service before being passed to Legal. The decision to prosecute will rest with the Head of Regulatory Services.

10. Contact details

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London W5 2HL

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Email licensing@ealing.gov.uk

E. Pollution Technical Team – Enforcement Policy

1. Introduction

This team policy covers those aspects of enforcement that are specific to the legislation enforced by the Pollution Technical Team and to the roles and functions fulfilled by the team within Regulatory Services. Unless otherwise stated in this document, the Council-wide Enforcement Policy will apply to the team's enforcement activity.

2. Team regulatory and enforcement activities²

2.1. In exercising functions and ensuring compliance with legislation officers will have regard to the principles of good enforcement in part 4 of the corporate enforcement policy and in particular to the principles that regulatory activities should be

- a) Carried out in a way, which is transparent, accountable, proportionate and consistent;
- b) Targeted only at cases in which action is needed.

2.2. The main statutory provisions enforced by the Team are:-

- ***Control of Pollution Act, 1974, section 61***
 - Processing applications for prior consent for construction works, including Crossrail and London Underground.
 - In the event of complaint the team will liaise with the operator and, where appropriate, arrange for monitoring and evidence gathering. In the case of Crossrail and London Underground, these both have complaints teams to whom complaints are referred for investigation in the first instance.
 - Enforcement actions are available in the event of contravention and will be taken in accordance with departmental policy. Regulatory Services Response Officers will normally be requested to visit.
- ***Regulation of contaminated land under the Environmental Protection Act, 1990, Part IIA***
 - The Council is required to maintain a register of land that it has declared as contaminated; the criteria for this involve assessing whether there is a '*significant possibility of significant harm*'.
 - At present no sites have been designated as contaminated land under this provision, however this remains part of the team's on-going regulatory role.
- ***Regulation of polluting activities under the Environmental Permitting (England and Wales) Regulations, 2010 (as amended) ("the permitting regulations")***

² Please see the 2013/14 Pollution Technical Team Service Plan for full details of the regulatory activities of the team and the legislation enforced.

- Fixed installations and mobile plant permitted under these regulations are inspected according to the Defra risk-based frequency.
- Routine inspections of fixed installations and mobile plant are conducted at a frequency determined annually by the risk rating according to the procedures published by Defra.
- Permitting services are currently outsourced to a specialist contractor. Inspections are conducted by the consultant's staff (and additionally by team officers when required). Inspectors are duly authorised by the Head of Service under the permitting regulations and under the powers of entry and inspection provided in section 108 of the *Environment Act 1995*.
- The team is responsible for the initial response to complaints about permitted activities in the borough. Thereafter these are followed-up by the permitting contractor in consultation with designated officers within the team.
- A range of enforcement options is available, including verbal and written warnings, enforcement and suspension notices and prosecution. The team retains responsibility for taking legal proceedings under these regulations, but will make use of evidence provided by the contractor.
- Enforcement under the permitting regulations is undertaken in a step-wise and proportionate manner, in accordance with the *Enforcement Concordat and Regulators Compliance Code*.
- Where prosecution is considered, an infringement report will be prepared by the investigating officer, supported by witness statements and exhibits as required. The decisions to initiate a prosecution will be taken by the Head of Service on the recommendation of the Service Manager.
- The team liaises with the Environment Agency (EA) on the air quality impacts of waste facilities regulated under environmental permits issued by the EA. Responsibility for the enforcement of permit conditions rests with the EA as regulator, but the team works with the EA on joint inspections and maintains contact on air quality and enforcement issues at site and regional level. We notify the EA of complaints made to the Council about EA-regulated sites and supply officer's reports and witness statements to support their enforcement activity.
- The team fulfils the Council's role as statutory consultee in relation to applications to the EA for environmental permits.
- The team maintains the public register of documents relating to Council and EA-regulated premises.
- **Regulation of boiler and Combined Heat and Power plant emissions under the *Clean Air Act, 1993***
 - Furnaces, boilers, incinerators and combined heat and power plant and the chimneys/flues serving them require prior approval under sections 4, 15 and 16 of the Act, subject to certain thresholds and limitations.
 - The team processes applications for approval and advises applicants and planners of the air quality implications and requirements connected with the plant concerned.

- ***Environmental Protection Act, 1990, Part III***
 - The team supports Regulatory Services' Response/Noise and Nuisance officers in the enforcement of the statutory nuisance provisions of this Act through the provision of technical advice and pollution measurements, where required.
 - Currently a consultant provides specialist acoustic support where commercial or other complex noise investigations are involved.
- ***Town and Country Planning Act, 1990***
 - The team will support Planning Enforcement with technical advice and pollution measurements, where appropriate, where an alleged planning contravention involves a pollution-related issue.
 - When requested we will provide professional witness and advice services to support the Council's case at planning inquiries.
 - Where planning applications are to be considered that involve significant pollution-related issues officers with appropriate expertise will attend Planning Committee meetings to answer queries from Members as required.

3. Service standards

Regulatory Services service standards for initial and full response to service requests apply. The service standard for final response to Planning consultations is 14 days. Applications for consent under s.61 of the *Control of Pollution Act, 1974* are subject to a statutory 28 determination period. The applicant can appeal to the magistrates' court against conditions attached to a consent or against a failure to determine with 28 days. Applications made under the Environmental Permitting regulations are subject to timescales for determination set within the regulations and to an official charging scheme issued annually by Defra.

4. Information and advice

- 4.1. The team provides information on the contamination of land in the borough, for which a charge is made in some cases. Please refer to the Team Service Plan for details of current charges for contaminated land enquiries.
- 4.2. The team provides air quality information and advice free of charge to consultants and other enquirers. Air quality information is available on the Council's air quality website at www.ealingair.org.uk.
- 4.3. The team responds to requests for information made under the *Environmental Information Regulations 2004*. These may be received directly from enquirers or via the Council's Freedom of Information officer.

5. Contact details

Team e-mail address: pollution-technical@ealing.gov.uk

John Freeman, Team Leader, tel: 020 8825 7226, e-mail: freemanj@ealing.gov.uk

F. Noise and Nuisance Enforcement Policy

1. Introduction and background

1.1. The Noise & Nuisance Team is responsible for enforcing the provisions of the following pieces of legislation:

- *The Environmental Protection Act 1990*
- *The Control of Pollution Act 1974*
- *Noise Act 1996*
- *Cleaner Neighbourhoods & Environment Act 2006*

In addition to the above, the Noise & Nuisance Team is a 'responsible authority' under the provisions of the *Licensing Act 2006* and as such will be consulted on new license applications, Temporary Event Notices and may bring forth reviews of licensed premises in upholding the licensing objection 'protection of public nuisance'.

1.2. The Noise and Nuisance Team is responsible for the investigation of complaints of 'statutory nuisance' under sections 79 and 80 of the *Environmental Protection Act 1990*.

The following matters may be considered to give rise to a 'statutory nuisance':

- smoke emitted from premises so as to be prejudicial to health or a nuisance;
- fumes or gases emitted from premises so as to be prejudicial to health or a nuisance;
- any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;
- any accumulation or deposit which is prejudicial to health or a nuisance;
- any animal kept in such a place or manner as to be prejudicial to health or a nuisance;
- any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance;
- artificial light emitted from premises so as to be prejudicial to health or a nuisance;
- noise emitted from premises so as to be prejudicial to health or a nuisance;
- noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street.

2. Service Standards

2.1. Complaints from members of the public can be received via email, letter, telephone, third party or via an online web-portal.

- Upon receipt of complaint, it will be recorded and logged.

- The category of complaint will determine the priority it will be given.
- All complaints will be responded to within five working days.
- Complaints concerning asbestos or other nuisances that may pose an immediate risk to public health will be responded to within 1 working day.
- Complaints regarding on-going premises or vehicle alarms will be responded to within 1 working day.
- We aim to respond to 80% of complaints of on-going nuisance (happening at the time the complaint is logged, and during the extended hours of service operated by the Council's Response Team) within a period of 1 hour.

3. Enforcement Powers

- 3.1. In exercising functions and ensuring compliance with legislation and licence conditions Act the Authority will have regard to the principles of good enforcement in part 4 of the corporate enforcement policy and in particular to the principles that regulatory activities should be
- a) Carried out in a way, which is transparent, accountable, proportionate and consistent;
 - b) Targeted only at cases in which action is needed.
- 3.2. The Council is required by law to carry out reasonable investigations into allegations of nuisance. The Council will follow relevant Codes of Practice, Policies and Statutory Guidance when deciding what investigations are necessary and when determining what enforcement action is required.
- 3.3. The Council has a range of interventions at its disposal in seeking to secure compliance with the law and to ensure a proportionate response to offences. To fulfil this function a variety of methods may be used including informal approaches, for example verbal and written advice and warnings.

- **No Action**

Generally for unsubstantiated or vexatious allegations and anonymous complaints where insufficient information has been provided.

- **Verbal Advice**

May be provided before or after an allegation has been fully investigated. Verbal advice may be given where no previous contact has been made by the Council with the party responsible for the nuisance (or alleged nuisance).

- **Warning/Advice Letters**

Warning letters may be sent prior to a full investigation and as a result of an allegation. In such circumstances the Council will make clear that the matter is only 'an allegation' but may outline what action may follow if the allegation is substantiated.

Some legislative contraventions for which the Council is not under a legal duty to take more formal enforcement action may be addressed through a written warning dependent on circumstance.

▪ ***Service of Statutory Notices***

Statutory Notices may be served against 'a person responsible, or the owner or occupier of a premises or vehicle' under the provisions of the *Environmental Protection Act 1990* or *Control of Pollution Act 1974*.

Failure to comply with either form of notice is a criminal offence for which the offender may be subject to criminal proceedings brought forward by the Council (see below):-

▪ ***Formal (Simple) Caution***

A formal caution may be considered by the Council in the following circumstances:

- There is sufficient evidence to prove the case;
- The offender has admitted the offence;
- The offender has agreed to be cautioned;
- The offence has not been committed by the offender before.

▪ ***Prosecution in Magistrates Court***

The Council will use discretion in deciding whether to bring a prosecution. Any decision made to prosecute will take in account the guidance set down by 'The Code for Crown Prosecutors'. No prosecution may go ahead unless there is sufficient evidence to provide a realistic prospect of conviction and that prosecution would be in the public interest.

Where the circumstances warrant it and the evidence to support a case is available the will prosecute without warning or recourse to alternative sanctions.

▪ ***Works in default***

Where a statutory notice has been breached and the offender has demonstrated that they are unable or unwilling to abate a nuisance or prevent its recurrence, the Council may take necessary and proportional steps to abate or prevent the recurrence of nuisance. Such steps include the power to seize noise making equipment and deactivate intruder alarms.

▪ ***High Court Injunctions***

Where a statutory abatement notice has been served and serious and persistent breaches of the notice continue, the Head of Service may authorise an application to the High Court to seek an injunction.

4. Liaison with external agencies and joint enforcement

The Noise and Nuisance Team will liaise and share information with internal and external agencies such as the Licensing Department, Planning Department, Social Housing Landlords, the Environment Agency, Metropolitan Police, Community Safety Team, Council Tax and Business Rates. Working with them to assist in the investigation of complaints and where appropriate taking joint enforcement action. Whilst working with partner agencies, at all times the Council will ensure compliance with the *Data Protection Act 1998*.

5. Contact details

Noise & Nuisance Team
London Borough of Ealing
Regulatory Services
4th Floor Perceval House
14-16 Uxbridge Road
London W5 2HL

Telephone 020 8825 8111

Email pollutioncontrol@ealing.gov.uk

G. PROPERTY REGULATION ENFORCEMENT POLICY

1. Introduction/Background

1.1. The Property Regulation Teams are responsible for enforcing a wide range of statutory provisions relating to housing and environmental conditions affecting health and safety. These include:

- Regulating Housing standards of repair, management, amenity and safety in the private rented sector (including illegal outhouse developments) and dealing with housing hazards.
- Administration and enforcement of the Council's Houses in Multiple Occupation Licensing Scheme.
- Restoring empty properties and bringing them back into occupation.
- Investigation and abatement of public health nuisances relating to housing.
- Investigation and elimination of pests and vermin infesting land, premises and persons as may be appropriate.

1.2. The principal Acts that we enforce are:

- *Housing Act 2004* and associated orders and regulations
- *Housing Act 1985*
- *Environmental Protection Act 1990*
- *Public Health Act 1936* (as amended)
- *Building Act 1984*
- *Prevention of Damage by Pests Act 1949*
- *Local Government (Miscellaneous Provisions) Acts 1976 and 1982*

1.3. Consideration is also given to the ODPM Housing Health and Safety Rating System Operating guidance and Enforcement guidance.

2. Service standards

2.1. No inspection will take place without a reason. Inspections and other visits will take place in response to a reasonable complaint or request for service, or where poor conditions have been brought to our attention; in accordance with risk-based and targeted programmes; in accordance with statutory inspection requirements (such as for licensing of houses in multiple occupation [HMOs]); or on receipt of relevant intelligence.

2.2. Enquiries and complaints from landlords, tenants, members of the public or referral from other departments and agencies will be responded to within 5 working days. No charge is made for responding to complaints and enquiries.

- 2.3. Before considering taking any action in respect of a tenanted property the tenant(s) will normally be required to contact their landlord about the problems first. Legislation covering landlord and tenant issues require that tenants notify their landlords of any problems with the property. This is because landlords can only carry out their obligations under the legislation once they have been made aware of the problem. Copies of correspondence between the landlord and tenant should be provided for officers.
- 2.4. Section 49 of the *Housing Act 2004* gives local authorities the power to make a reasonable charge to recover certain expenses incurred by them when taking enforcement action under the Act. The enforcement action referred to includes service of statutory notices to remove hazards in residential accommodation that have been found by means of an assessment under the Housing Health and Safety Rating System (HHSRS). The current fee is £350.00 for the service of a notice.
- 2.5. Works-in-Default: Should the Council need to carry out work on a dwelling in default of the responsible person, then a fee at the rate of 10% of the work executed will be charged to cover the administrative costs in arranging the works. If charges are not paid in full within the allowed time period, interest on the amount outstanding will be charged at the appropriate rate and charges will be registered against the property.

3. Information and advice

- 3.1. The Service welcomes enquiries from home owners and landlords about complying with minimum standards and ensuring homes are safe and warm and this will not directly trigger any enforcement action.
- 3.2. Accredited Landlords: We will encourage private landlords to attend training sessions in order that they may become accredited under the London Landlord Accreditation Scheme or equivalent. Accredited landlords will be recognised as responsible landlords who should employ good management techniques. We will work with these landlords to promote best practice and raise standards in the private rented sector.

4. Compliance and Enforcement

- 4.1. The Service will seek to identify the minority of landlords, agents, property owners or businesses that persistently break regulations and ensure that they face proportionate and meaningful sanctions. By facilitating compliance through a positive and proactive approach, the Service aims to achieve higher compliance rates and reduce the need for reactive enforcement actions. However, those that deliberately or persistently break the law will be targeted.
- 4.2. Landlords who have achieved good levels of compliance, for example through accreditation schemes, will receive lighter inspections, where risk assessment justifies this.
- 4.3. When considering formal enforcement action the Service will, where appropriate, discuss the circumstances with those suspected of a breach and take these into account when deciding on the best approach. This will not apply where immediate action is required to prevent or respond to a serious breach or to deal with an imminent risk to health or safety, or where to do so is likely to defeat the purpose of the proposed enforcement action.

- 4.4. The Service will ensure that clear reasons for any enforcement action are given and complaints and appeals procedures are explained at the same time.
- 4.5. In exercising functions and ensuring compliance with legislation officers will have regard to the principles of good enforcement in part 4 of the corporate enforcement policy and in particular to the principles that regulatory activities should be
 - a) Carried out in a way, which is transparent, accountable, proportionate and consistent;
 - b) Targeted only at cases in which action is needed.

5. Risk assessment

- 5.1. The service will focus its greatest inspection effort on the highest risk properties, those in worst condition and properties owned by landlords who regularly fail to comply with regulations or frequently have properties with poor conditions.
- 5.2. Where a dwelling inspection is carried out it will be done so by suitably trained officers who are required to be conversant with the Housing Health and Safety Rating System (HHSRS). The HHSRS is a statutory, evidence-based, risk assessment method prescribed by the *Housing Act 2004* for assessing and dealing with poor housing conditions.

6. Complaints of non-compliance

- 6.1. In the majority of cases our initial action will be to write to the landlord to inform them that we have received a complaint about housing conditions and asking that they deal with the matter. The action that we will go on to take should they not respond to this request will be fully explained (refer to formal action). The tenant will be asked to contact us again if the landlord does not respond and we will then take formal action as appropriate.
- 6.2. Further formal action may not be considered where the matter is of a very minor nature. In such situations the tenant will either be given advice or a one-off letter may be sent to the landlord and the case will then be closed.
- 6.3. Following the receipt of a service request or complaint about poor housing conditions, an initial risk assessment will normally be carried out and any follow up advice or action will depend on the outcome of the initial assessment, which may not always involve a visit to the property.

7. Joint working arrangements with other agencies

- 7.1. We regularly consult and work with other agencies, for example:
 - The London Fire Brigade before serving a statutory notice requiring the provision of fire precautions in a HMO and in cases of serious imminent fire risk in HMOs;
 - Statutory undertakers, e.g. Thames Water;
 - Metropolitan Police;

- Other divisions within the Housing Department, e.g. Housing Solutions, Temporary Accommodation Team
- Other Council departments e.g. Planning, Building Control, Safer Communities, Envirocrime.

8. Conduct of investigations

- 8.1. Inspections of properties will be arranged by seeking access through tenants and landlords. Where required by legislation, formal notification of inspections will be given to relevant persons such as owners and occupiers. If entry cannot be gained, the Council can obtain a warrant and enter using force if necessary.
- 8.2. Persons obstructing the Council from carrying out its investigations could be liable to a penalty for obstruction.

9. Breaches of legislation and enforcement actions

- 9.1. In securing the repair and improvement of properties all relevant Government guidance will be followed. The main statutory notices/orders used are as follows:-

Housing Act 2004

- 9.2. Part 1 of the Act refers to the application and enforcement of the *Housing Health and Safety Rating System* (HHSRS), which can be applied to all private sector housing in the Borough. The purpose of the HHSRS is to establish whether conditions in a property are such that they pose a hazard to the occupier(s). There are 29 hazards in total that can be assessed as necessary, and depending on the outcome of any assessment, the hazard will be classified as either Category 1 or Category 2. Category 1 hazards are considered to be the most serious.
- 9.3. We will use the following range of enforcement options as appropriate to remove or reduce any hazards identified during an inspection:
- Improvement Notice (HA 2004, s11);
 - Prohibition Order (HA 2004, s20);
 - Hazard Awareness Notice (HA 2004, s28);
 - Emergency Remedial Action (HA 2004, s40);
 - Emergency Prohibition Order (HA 2004, s43);
 - Demolition Order (HA 1985, s265);
 - Declaration of Clearance Area (HA 1985, s289(2)).

Failing to comply with the requirements of a notice served under the *Housing Act 2004* is a criminal offence, with a maximum penalty of £5000.

Appeals Procedure

- 9.4. A person who is in receipt of a notice under the Housing Act 2004 by the Council can appeal against the notice, normally within 28 days, although the time period for an appeal to an improvement notice is 21 days. The Residential Property Tribunal (RPT) hears appeals.

Houses in Multiple Occupation (HMOs)

- 9.5. HMO Declarations - Where there may be a dispute or confusion over whether a building is an HMO, if the Council are satisfied that the building is an HMO, it will issue a declaration which puts beyond doubt that such a building is to be regarded as an HMO (Section 255 Housing Act 2004; Part 7). Recipients of the notice can appeal to the Residential Property Tribunal.

Management of HMOs

- 9.6. *The Management of Houses in Multiple Occupation (England) Regulations 2006* apply to all HMOs except those which are buildings that have been converted entirely into self-contained flats. The Regulations impose duties on managers of HMOs in connection to their obligations to maintain the amenities and utilities within the property in good working order. Failure to comply with any of the regulations is an offence, punishable by a maximum fine of £5000 per offence.
- 9.7. Certain buildings converted into self-contained flats are classed as HMOs as defined by section 257 of the *Housing Act 2004*. *The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007* impose duties on managers of this type of HMO in connection to their obligations to maintain the amenities and utilities within the property in good working order. Failure to comply with any of the regulations is an offence, punishable by a maximum fine of £5000 per offence.

Licensing of HMOs Part 2 Housing Act 2004

- 9.8. The Housing Act 2004 places a statutory duty on local authorities to licence privately rented Houses in Multiple Occupation (HMOs) of 3 storeys or more, with five or more occupiers.
- 9.9. The Housing Act 2004 also gives Local Authorities power to designate areas for additional HMO licensing (thus increasing the range of HMOs that are required to be licensed over and above the mandatory 3 stories, 5 people or more rule).
- 9.10. The Act also gives Local Authorities power to designate areas for Selective Licensing, whereby all privately rented properties within a given area are required to have a licence to operate. The licence can last up to 5 years and imposes conditions in relation to occupation, health and safety standards, amenity provision, maintenance and management of the property. It is a criminal offence to operate a licensable property without a licence or duly made application for a licence, with a maximum penalty of £20,000.
- 9.11. The Council can also refuse to grant a licence if the applicant is not considered a fit and proper person to hold the licence. Persons refused an HMO licence have a right to appeal to the Residential Property Tribunal against the Council's decision to refuse to grant a licence.

Temporary Exemption Notice

- 9.12. The Council may serve a temporary exemption notice (section 62 Housing Act 2004) in relation to a licensable property where the person having control or managing is proposing to take steps to ensure the property is no longer required to be licensed. The notice exempts that property from being licensed for a period of three months. In exceptional circumstances the Council may serve a second temporary exemption notice that lasts a further three months. No further notice can be served after the expiry of the second Notice.
- 9.13. The Council can refuse to serve a temporary exemption notice which allows a right of appeal to the Residential Property Tribunal. Such circumstances where the Council may refuse to serve a temporary exemption notice is where the person has failed to supply clear evidence showing that they are taking steps to exempt the HMO from the criteria for licensing.

Interim and Final Management Orders Part 4 Housing Act 2004

- 9.14. The Council can make a management order in respect of properties which are subject to licensing under Parts 2 and 3 of the Housing Act 2004. This is to secure proper management of the property. Once made the Council has a right to possession of the property, and has the right to do anything a person having an estate or interest in the property would be entitled to do apart from sell the property. Once an order is confirmed, it is a local land charge.
- 9.15. Initially, the Council will make an Interim Management Order (IMO) that can then be replaced by a Final Management Order (FMO), where appropriate, to secure proper management of the property on a long-term basis.
- 9.16. The Council has a duty to make an IMO on properties licensable under the aforementioned schemes where:
- The property is not licensed and there is no reasonable prospect of it being licensed; or
 - It is necessary to protect the health, safety or welfare of persons occupying the property, or persons occupying or having an estate or interest in any premises in the vicinity.
- 9.17. The Council also may make an IMO in respect of any HMO which is not licensable, but where it is necessary to protect the health, safety or welfare of persons occupying the property, or persons occupying or having an estate or interest in any premises in the vicinity. The Council must first apply to the Residential Property Tribunal for authorisation to make the IMO.
- 9.18. The Council has a duty to replace an IMO with an FMO where:
- On the date of the expiry of the IMO, the property would be required to be licensed under one of the aforementioned schemes, and
 - The Council consider that they would not be able to grant a licence in respect of the property that would replace the IMO.
- 9.19. The Council may make an FMO to replace the IMO if:

- On the date of the expiry of the IMO, the property would not be required to be licensed under the one of the aforementioned schemes, and
- The Council consider it necessary to protect, on a long-term basis, the health, safety or welfare of persons occupying the property, or persons occupying or having an estate or interest in any premises in the vicinity.

No authority is required from the Residential Property Tribunal to make such an FMO.

9.20. Persons can appeal to the Residential Property Tribunal against the Council's decision to make a management order, within 28 days of the date the order is made.

Empty Properties

Boarding up of empty dwellings

9.21. See *Local Government (Miscellaneous Provisions) Acts* below.

Enforced sale

9.22. Where the Council have carried out works on an empty property, the owner of the property will normally be billed for the costs of the works. If the owner cannot or will not pay the Council for the work it has done, the Law of Property Act 1925 states that a local authority with a debt on a property can, under certain circumstances, register the debt as a first charge with the Land Registry. The Council can then sell the property at a public auction and deduct its costs and charges from the sale price. This is called the 'enforced sales' procedure. It is a Council power; we do not need to get permission from a court.

Empty Dwelling Management Orders Part 4 Housing Act 2004

9.23. If a property has been empty for at least six months, and the owner has not responded to requests from the Council to repair and re-occupy the property, the Council can apply to the RPT for an Empty Dwelling Management Order. This Order allows the Council to take over the property, carry out any repair work that may be necessary, and then and rent it out to tenants. The owner of the property will only get any income that remains once the Council has recovered its costs in bringing the property up to a decent standard, and as well as its costs in managing the property.

Compulsory Purchase Orders

9.24. An essential element of the Council's Empty Property Strategy is the making of Compulsory Purchase Orders (CPO). This option is only taken up in exceptional circumstances, for example:-

- where the property has been derelict for some time and is having a detrimental effect on the local environment or neighbouring properties;
- where the property appears to be abandoned and the owner cannot be traced;

- where all other avenues for bringing the property back to a useful life have been exhausted;
- where the property is suitable for immediate residential use, but is not likely to be occupied for residential purposes unless bought by the Council.

9.25. The making of a CPO has to be agreed by Cabinet. It must then be approved by the Secretary of State in the Office of the Deputy Prime Minister before it can be made. In order to safeguard against the liability for 'loss payments', we will only consider the making of a CPO after the service of a Notice under the following legislation:

Housing Act 1985 Section 189

Housing Act 1985 Section 264 or 265 (Demolition Order)

Housing Act 2004 Section 11 or 12 (Improvement Notice)

Housing Act 2004 Section 20 or 21 (Prohibition Order)

Housing Act 2004 Section 43 (Emergency Prohibition Order)

Illegal Outhouse Developments

9.26. If an outhouse is being used as residential accommodation and Category 1 hazards identified the Council will issue a Prohibition Order under the *Housing Act 2004* preventing its use as residential accommodation. Where the outhouse is in a very poor condition and largely detached the Council will also consider making a Demolition Order. Where no Category 1 hazards are identified, planning enforcement action will be considered and procedures specified in Appendix D, section K will apply.

Requirement for documentation to be produced

9.27. The Council is able to use its powers under section 235 *Housing Act 2004* to require documentation from any relevant person, to assist the Council with any investigation or function under Parts 1 to 4 *Housing Act 2004*.

9.28. Failure to comply with a Notice under section 235 *Housing Act 2004* is a criminal offence, with a maximum fine of £5000.

Environmental Protection Act 1990

9.29. If a statutory nuisance exists, or is likely to exist or recur, an abatement notice will be served on the occupier or owner of the premises, or the persons responsible for the nuisance. Failure to comply with such as Notice is a criminal offence, with a maximum penalty of £5000. The Council also has the power to carry out the necessary works ourselves, and recover the costs incurred in doing so.

Public Health Acts 1936 and 1961

9.30. Section 83 *Public Health Act 1936*, amended by section 35 *Public Health Act 1961* require the Council to serve a Notice on the owner or occupier of any premises that are in such a filthy or unwholesome condition as to be prejudicial to health; or are verminous.

- 9.31. Failure to comply with such as Notice is a criminal offence, with a maximum penalty of £200. The Council also has the power to carry out the necessary works ourselves, and recover the costs incurred in doing so.

Building Act 1984

- 9.32. If appears to the Council that in the case of any building there is unsatisfactory provision for drainage/defective drainage/drainage prejudicial to health and/or a nuisance a *Building Act 1984* Section 59 notice will be served requiring the owner of the drain to carry out any necessary works.
- 9.33. Failure to comply with such as Notice is a criminal offence, with a maximum penalty of £2500. The Council also has the power to carry out the necessary works ourselves, and recover the costs incurred in doing so.

Prevention of damage by Pests Act 1949

- 9.34. In cases where owners or occupiers of buildings or land encourage infestations of rats or mice, due to poor repair or lack of hygiene, enforcement action will be taken under the *Prevention of Damage by Pests Act 1949*.
- 9.35. Failure to comply with such as Notice is a criminal offence, with a maximum penalty of £1000. The Council also has the power to carry out the necessary works ourselves, and recover the costs incurred in doing so.

Local Government (Miscellaneous Provisions) Acts 1976, 1982

- 9.36. Section 16 *Local Government (Miscellaneous Provisions) Act 1976* gives the Council the power to issue 'Requisition for Information Notices' which enable the Council to obtain information about a property in respect of which we are proposing to take enforcement action.
- 9.37. Section 29 of the *Local Government (Miscellaneous Provisions) Act 1982* gives the Council power to require the owner to board up a property to prevent unauthorised access, and to carry out the work in default of the owner if they fail to comply or cannot be found.

Overcrowding in HMOs

- 9.38. Overcrowding in HMOs will be tackled using provisions of the *Housing Act 2004* and the Council's amenity standards. The HMO as a whole each room in the HMO will be assessed to determine a suitable number of occupiers. For HMOs not requiring a licence will have their numbers controlled by service of a notice under sections 139-144 of the Act. For HMOs that are licenced, the number of persons allowed to occupy the property will be controlled by the conditions imposed on the licence.

10. Statutory Notice Time Periods

Time limits given for completing works will be related to the amount of work required and the estimated time required to complete that work. Extensions of time for starting or completing work will only be granted where there are legitimate reasons for doing so, e.g. an agreed work programme for an owner with several properties requiring works or works are in progress but

not completed. The extension of time will be granted by the case officer in consultation with the owner of the property.

11. Monitoring Compliance and Enforcement

The Service will set up a monitoring system to examine a sample of enforcement cases. The quality system will aim to promote consistency in the enforcement procedures. Feedback and the results from the monitoring will be discussed as part of regular one to one meetings and team meetings. The results will also be reported regularly at Property Regulation Management team meetings.

12. Contact details

If you have any comments or queries on this policy, please contact:

Regulatory Services

Telephone: 020 8825 6622

Email: privatehousing@ealing.gov.uk or outhouses@ealing.gov.uk

13. Related policies and documents

The Housing Health and Safety Rating System – Enforcement Guidance, is available at: <http://www.communities.gov.uk/documents/housing/pdf/safetyratingsystem.pdf>

The Housing Health and Safety Rating System – Operating Guidance, is available at: <https://www.gov.uk/government/publications/hhsrs-operating-guidance-housing-act-2004-guidance-about-inspections-and-assessment-of-hazards-given-under-section-9>

H. Street Services Envirocrime Prevention

1. Introduction/Background

- 1.1. The Envirocrime Prevention Service is part of a service known as Street Services and is located within the Environment and Leisure Directorate.
- 1.2. The service carries out enforcement activity in a number of areas with the aim of addressing issues which are detrimental to the visual and physical nature of the environment. These including the wrongful disposal of waste, from both private and commercial premises, abandoned vehicles, graffiti, fly posting, fly tipping, littering, interference with the highway as well as illegal and unauthorised street trading and the Council's duties with respect to stray dogs.

2. Service standards

The Service Standards for the service are set out in the Appendix to this section.

3. Information and advice

- 3.1. The approach of the service to enforcement activity is to seek the willing compliance of those on whom the statutory provisions can be enforced.
- 3.2. A series of steps are considered, and used as appropriate, for any enforcement issues. This approach is termed the 'enforcement ladder'
 - Inform
 - Educate
 - Words of advice
 - Caution
 - Fixed penalty notice
 - Prosecution

- 3.3. Information and advice is provided both verbally and in writing. Whilst charges are made for specific services e.g. special collections, collection of commercial waste, no charge is made for information or advice.

4. Compliance and Enforcement

- 4.1. The method of enforcement in individual cases will be selected to produce the highest reasonable standards of compliance within the least time. A variety of methods are set out in this policy and officers will consider the following when deciding on the most appropriate enforcement method:
 - The seriousness of the breach
 - The different options for remedying the breach

- The degree of risk
- The circumstances of each case and the likelihood of recurrence
- Previous history of the offender
- Age and circumstances of the offender
- Date of the offence
- Likelihood of achieving a satisfactory outcome
- Precedent effect
- General attitude of the offender
- Legal imperatives, eg. statutory requirement to serve a notice
- Relevant guidance
- Sufficiency of admissible evidence
- Public Interest
- Prevalence of the offence locally or nationally

4.2. In exercising functions and ensuring compliance with legislation officers will have regard to the principles of good enforcement in part 4 of the corporate enforcement policy and in particular to the principles that regulatory activities should be

- a) Carried out in a way, which is transparent, accountable, proportionate and consistent
- b) Targeted only at cases in which action is needed.

5. Risk assessment

The service carries out a mix of proactive and reactive work. Enforcement resources are allocated by reference to those matters which are the cause of greatest concern to residents and businesses made known through direct requests for service, Ward Forums and reference to statutory duties.

6. Complaints of non-compliance

- 6.1. The Council provides a number of communication channels for residents, businesses and others to draw their concerns to the attention of the relevant service area.
- 6.2. All requests for service and complaints will be considered for action on the basis of the information received and the likelihood a successful outcome in accordance with the principles outlined in paragraph 4.
- 6.3. Expressions of dissatisfaction and complaints will be dealt with in accordance with the Council's Complaints Policy.

7. Joint working arrangements with other agencies

- 7.1. Street Services regularly consult and work with other agencies, including:
 - Police

- Environment Agency
- Other Council departments including Planning, Housing, Community Safety

7.2. In the event that an allegation or report concerns a matter which is outside the remit of Street Services it will be referred to the appropriate Council service or enforcement authority.

8. Conduct of investigations

8.1. Matters requiring the attention of the service will come to notice as a result of requests for service or complaints from businesses and members of the public. Officers will also detect offences as they go about their day to day duties. This will include offences detected as a result of the use of overt CCTV cameras at hot spots.

8.2. The Service will use evidence gathered to support the Council's case or to establish the non-involvement in the matter of any suspect.

8.3. Persons under investigation will have every opportunity to explain their conduct and to put forward any mitigation. The powers under which officers operate will be explained to them and where those powers place a specific requirement on persons who the officer believes has information to give the requirement to provide that information or face prosecution will be used sparingly and very much as a last resort.

8.4. Where legislative provisions contain a power of seizure this power will be used only where other methods have failed to achieve the required result. Any goods seized will be transported and stored so as to prevent loss or damage.

8.5. The service aims to complete investigations in a timely manner. Whilst in the case of summary prosecution information must be laid within six months where the matter is an either way offence the service will aim to prepare case papers as quickly as possible

8.6. Cases are put forward for possible prosecution by individual officers and are reviewed by managers before being submitted to the Head of Legal Services who has the authority to determine whether a case is taken in accordance with the Code for Crown Prosecutors.

8.7. In the case of fixed penalty notices any person who believes that the notice has been issued wrongly has the ability to ask for the matter to be reviewed. Such a review will be undertaken by a manager.

9. Breaches of legislation and enforcement actions

9.1. The legislation which the service enforces can be found within a number of legislative provisions these are principally:-

Environmental Protection Act 1990

Refuse Disposal (Amenity) Act 1978

Control of Pollution (Amendment) Act 1989

London Local Authorities Acts 1990, 1994, 2004 and 2007

Controlled Waste Regulations 2012
Clean Neighbourhoods and Environment Act 2005
Highways Act 1980
Environment Act 1995

9.2. The service is subject to a number of other legislative provisions and the regulations made thereunder which govern the way the service undertakes its work.

Police and Criminal Evidence Act 1984
Criminal Procedure and Investigations Act 1996
Regulation of Investigatory Powers Act 2000

9.3. At each stage Enforcement Officers can utilise a variety of options. These are determined by the type and severity of the enforcement issue and the willingness of the offender to recognise the impact of their behaviour and to take immediate steps to negate those effects. The overriding objective is always to improve the environment by:

- Conducting education and enforcement operations, targeting known 'hotspots', to reduce fly-tipping, fly-posting, graffiti and reduction in nuisance vehicles and improve cleanliness of the borough.
- Issuing fixed penalty notices for relevant offences.
- Increasing the proportion of fixed penalty notices paid or successfully prosecuted.
- Reviewing services in town centres with the aim of stopping commercial waste sacks being left out for collection at unacceptable times.
- Using CCTV monitoring equipment to identify fly-tippers.
- Utilising local media to publicise service issues and promote the work of the Council.

10. Contact details

The service can be contacted on 020 8825 6000.

Appendix – Envirocrime Prevention Service Standards (updated 9.4.2013)

Activity/Service	Standard
Domestic refuse - inspector to contact (e.g. residents putting rubbish out on wrong day)	If you report before 4 pm we will inspect by the end of the next working day
Flyposting - removal	If you report before 4 pm we will remove all flyposting by the end of the next working day.
Fly tipping - public highways	If you report before 4 pm we will clear all fly tips by the end of the next working day.

Activity/Service	Standard
Fly tipping - within private property/land	If you report a fly tip by 4 pm a Council officer will make an initial inspection of the fly tip by the end of the next working day
Hazardous waste on public highway	If you report hazardous waste on a public highway by 4 pm, we will inspect hazardous waste within 1 working day. We will then notify The Corporation of London who normally arranges removal of hazardous waste on Ealing Council's behalf within the following time periods depending on the type of material: Emergency - 24 hrs Urgent - 3 days Regular - 10 days
Free disposal of your unwanted vehicles	If we have received all of the required documentation, your vehicle will be authorised for removal within 5 working days.
Graffiti removal from all property except railway property	If you report by 4 pm we will remove graffiti by the end of the next working day.
Illegal car repair business on highway	If you report by 4 pm we will carry out an initial inspection within 2 working days and will take enforcement action if appropriate.
Lost animals- report lost dogs	We will take the details of the lost dog. If the dog is subsequently found as a stray and the owner can be identified, the most accurate way being via an address tag on the collar or a microchip, the owner will be contacted and arrangements made to return the dog following payment of fees.
Overhanging private trees/bushes over highways	On receipt of your report we will carry out an inspection within 3 working days, a card will be put through the occupants' door asking them to cut back the overhanging bush or tree.
Report a nuisance vehicle on the highway	If you report before 4 pm we will take action by the end of the next working day.
Reporting an illegal/unlit skip	If you report before 4 pm we will carry out an initial inspection, take appropriate action and notify you of the action to be taken.
Stray dogs	If you report a confined* stray dog we will collect the dog within 2.5 hours, this aspect of the service operates 24hours 7 days per week. Reports of roaming stray dogs will be actioned Monday to Friday from 9.00 to 4.00. *confined means contained within a house, shop, office or an outbuilding such as a garage, shed or similar.
Traveller sites - highways	If you report before 4 pm we will visit the site by the end of the next working day.
Skip Permits Only authorised skip companies can apply for a permit	Upon receipt of the company's application we will process the request within 2 days. Applications to join the authorised skip company list will be processed within 5 working days
Application to join authorised skip company list	On receipt of your application we will process your request within 5 working days.

Activity/Service	Standard
Collection of household chemicals	Once requested, Corporation of London provide this service on our behalf and operate to the following timescales: Emergency - 24 hrs Urgent - 3 days Regular - 10 days
Street Trading	
Application to Trade from an Existing Designated Site – (subject to availability)	On receipt of your application and correct documentation we will issue you with a licence within 4 to 6 weeks.
Application for Front of shop Street Trading Licence	On receipt of your application we will issue a decision/licence within 4 to 6 weeks after receipt of correct documentation.

I. SAFER COMMUNITIES

1. Scope

1.1. The Safer Communities Service undertakes a range of duties in connection with Ealing Council's community safety function. The Council recognises the value of collaborative working in this area and along with other statutory members is a committed participant of the Safer Ealing Partnership (SEP). Accordingly, interventions aimed at reducing crime and disorder (and equally its perception) is coordinated operationally by the various joint Council/Police cluster meetings.

1.2. The Council Safer Communities team deals with community safety in two principle ways: firstly, by means of the provision of advice, diversionary activities, community reassurance events, and the encouragement of responsible behaviour; secondly, it may make use of its enforcement powers, in a proportionate and appropriate way, to manage crime and disorder.

1.3. Aside from the strategic planning and coordination of services to tackle local crime and disorder, the Council also seeks to investigate and resolve instances of anti-social behaviour. The term anti-social behaviour has an evolving definition, but is defined within the *Crime and Disorder Act 1998* as behaviour which has:

"caused or was likely to cause harassment, alarm or distress to one or more persons not from the same household as himself."

1.4. Given this imprecise definition, the following list, which is by no means exhaustive, provides an indication of the sort of activities that have been described as anti-social behaviour that the Council's Safer Communities officers will investigate

- Racially motivated behaviour
- Intimidation of any person involved in an Anti-Social Behaviour (ASB)
- Intimidation and harassment (in connection with sex, gender, religion, disability and age)
- Domestic violence
- Homelessness
- Drug abuse/misuse
- Alcohol abuse/misuse
- Under age alcohol use in public
- Neighbour disputes
- Verbal abuse
- Non-statutory noise nuisance
- Minor damage to property
- Vehicle nuisance

- Begging
- Prostitution and people trafficking
- General private or public nuisances
- Gatherings/groups of people acting, or perceived to be acting, in an intimidatory way

1.5. One of the main features of anti-social behaviour is its indiscriminate nature. People from all housing tenure types, whether they are owner occupiers, tenants (private or social) or licensees may equally be the perpetrators or victims of anti-social behaviour. Consequently, to deal with this issue effectively and efficiently, a cross tenure approach is provided in order to offer residents of Ealing appropriate protection from anti-social behaviour. Given that this Council, the Metropolitan Police and local landlords all have a part to play in the management of anti-social behaviour, it is important that the most appropriate partner takes the lead in case investigation as this will help avoid unnecessary duplication. The existence of a lead agency does not relieve other interested parties of their powers or duties in connection with these cases.

1.6. The following considerations will influence which regulatory body will take the **lead** in tackling instances of anti-social behaviour within the London borough of Ealing: Metropolitan Police: where an individual, or group of individuals' behaviour, results in a criminal offence being committed on any land.

1.6.1. Ealing Council: where incidents of anti-social behaviour (not resulting in a criminal offence) take place on any land and are attributable to persons unassociated with a property or tenant of a Registered Social Landlord.

1.6.2. Registered Social Landlords: where incidents of anti-social behaviour (not resulting in a criminal offence) are attributable to persons who are residing in, or who are otherwise on, premises provided or managed by a Registered Social Landlord or persons who are in the vicinity of such a premises.

2. Anti-Social Behaviour – Minimum Service Standards

In the context of the Safer Ealing Partnership, the Council has published a set of minimum service standards in connection with anti-social behaviour. These standards cover the following areas:

2.1. ***Reducing Anti-Social Behaviour***

Safer Ealing Partnership recognises that anti-social behaviour remains a priority for many local residents. Partners, including the Council, will continue to work together to not only reduce anti-social behaviour, but also perceptions regarding anti-social behaviour. This will be done by using the wide range of powers and tools available against anyone who engages in, or causes misery to others, through anti-social behaviour.

2.2. Taking reported cases of Anti-Social Behaviour seriously

2.2.1. The Council recognises that being a victim, or witness, to anti-social behaviour can have a lasting impact as well as causing distress and concern. The Council will ensure that every case of anti-social behaviour that it receives will be dealt with in a timely, supportive and professional way. Complaints will be taken seriously and investigated thoroughly ASB complainants will be allocated a named person to contact and will be provided with the officer's contact details. Each case will be given a case grading and investigations will be undertaken within specified timescales.

2.2.2. Where appropriate, the Safer Communities Officer will arrange to meet complainants at a mutually convenient time and date to discuss the case where appropriate, ASB complainants will be provided (where appropriate) with a diary to record details of anti-social behaviour incidents. Whilst the Council is committed to dealing with anti-social behaviour, it may only do so with the support and cooperation of all interested parties. In many instances formal action cannot be taken by the Council unless key witnesses and/or complainants are prepared to engage with its investigating officers.

2.2.3. Where this cooperation is necessary, and not forthcoming, the Council may have little option but to terminate an investigation. The Council's services in connection with anti-social behaviour will primarily be delivered during the normal office hours of 9 am to 5 pm. However, specific operations or investigations may take place outside of these times as dictated by the particulars of a case.

2.3. Providing support and help for victims of Anti-Social Behaviour

The Council understands that being a witness, or a victim, of anti-social behaviour is an unpleasant experience and therefore support will be offered to all those touched by anti-social behaviour. Ealing Council has provided a Victim's Charter.

2.4. Providing regular information to residents on what action is being taken to tackle anti-social behaviour

The Council will endeavour to keep residents informed not only about their individual complaint, but also to publicise to the whole borough what is being done to address anti-social behaviour and other community safety matters. This will be done by publicising information relating to how the Safer Ealing Partnership is tackling anti-social behaviour in newsletters, the local press and through raising awareness at community events.

2.5. Ensuring that there are effective links between local partners to tackle anti-social behaviour in a timely manner

Each partner, including this Council, has its own procedures to deal with reports of anti-social behaviour; however partners will liaise with each other when a case needs a multi-agency problem solving solution. This will be done by sharing information with one another on cases

that require a collaborative response and working with communities in addressing anti-social behaviour issues. The Ealing Community Risk MARAC co-ordinates a multi-agency response to complex cases.

2.6. ***Providing residents with a right to complain if effective action is not taken by local agencies***

The Council will respond to complaints about the service it provides in accordance with the Corporate Complaints Procedure which is available at http://inside.ealing.gov.uk/info/19999/about_us/96/corporate_complaints/4

3. Other relevant considerations

3.1. In addition to the generic guidance offered by the *Regulators' Compliance Code* and *Enforcement Concordat*, this Policy is designed to reflect the following sources of legislation, advice and guidance in connection with the management of anti-social behaviour:

- *Crime and Disorder Act 1998 (as amended)*
- *Police Reform Act 2002*
- *Anti-Social Behaviour Act 2003*
- *Drugs Act 2005*
- *Police and Justice Act 2006*
- *Violent Crime Reduction Act 2006*
- *Policing and Crime Act 2009*
- Byelaws of North Hertfordshire District Council and Hertfordshire Council (or their predecessors)
- LACORS
- CIEH guidance
- ACPO guidance
- Home Office guidance and directions
- Relevant case law

3.2. Beyond the legislative provisions, above, there is a considerable amount of statute law that deals with behaviour that could, given the definition provided within the *Crime and Disorder Act 1998*, be deemed to be anti-social. The Council will endeavour to use the most appropriate legislative provision, and service area, to deal with anti-social behaviour cases in order to arrive at the best solution for members of the public and communities.

4. The use of enforcement tools

4.1. In exercising functions and ensuring compliance with legislation officers will have regard to the

principles of good enforcement in part 4 of the Corporate Enforcement Policy and in particular to the principles that regulatory activities should be

- a) Carried out in a way, which is transparent, accountable, proportionate and consistent
- b) Targeted only at cases in which action is needed.

4.2. The aim of the Safer Communities Service, is to improve the quality of life for all individuals and for the wider community to enjoy their neighbourhood whilst also reducing the perception of anti-social behaviour. The Council recognises that anti-social behaviour (ASB) can be a serious problem that affects the quality of life of individuals, families and communities. It is committed to tackling anti-social behaviour and will use the full range of powers and resources available, both criminal and civil, to ensure that it, together with its partners, take an effective stand against perpetrators.

4.3. Most cases of anti-social behaviour can be resolved by informal means such as the provision of advice and guidance. However, where this is not possible or practical more direct means of enforcement will be considered as the circumstances of each case dictate. Consistent with the spirit of this Policy, enforcement interventions will therefore be proportionate and, if necessary and appropriate, progressive.

5. Informal enforcement action

Ealing mediation service

5.1. In appropriate cases officers may consider a referral to the Ealing Mediation Service. An impartial, and confidential service that provides a process for those in dispute to reach agreement on a range of issues such as noise, rubbish, pets, damage to property, harassment, boundaries, fences and shared areas.

Neighbourhood surveys

5.2. In certain cases where there is an ongoing ASB complaint or neighbourhood dispute, it may be appropriate for the Council to undertake a neighbourhood survey in order to identify the full impact of the problem on the local community. Information gathered as part of this exercise will inform the use of enforcement intervention(s), both formal and informal.

Acceptable behaviour contracts (ABCs)

5.3. In contrast to an Anti-Social Behaviour Order (ASBO) which is an official, legally binding order with *statutory* implementation, an Acceptable Behaviour Contract (ABC) is an informal procedure that seeks to eliminate anti-social behaviour by voluntary agreement. ABCs can be used in connection with children over the age of 10 years old, young adults and older adults. The Acceptable Behaviour Contract is a formal agreement in written form which is made between an individual and most often their parent or guardian (in the case of children/young people) and the Council, or other pertinent regulatory body such as a Registered Social

Landlord. They are personalised and individually written to meet individual circumstances and needs. When signed individuals agree that they will not display or act in an anti-social manner in the future.

5.4. The Council will only enter into an Acceptable Behaviour Contract when:

- Advice and/or warnings have not brought about an improvement in behaviour
- Advice and/or warnings are not thought to be an effective way of bringing about an improvement in an individual's conduct
- Evidence exists as to an individual's anti-social behaviour or likely future behaviour
- The perpetrator of the anti-social behaviour (or their parent or guardian) as given an indication that they will sign an Agreement

5.5. Should the perpetrator refuse to enter in to an Agreement, or the terms of an Agreement are subsequently breached, the Council (or its regulatory partners) may take formal action such as a prosecution, an application for an ASBO tenancy enforcement action, etc., in order to bring the anti-social behaviour in question to an end.

Parental Agreements (PAs)

5.6. Similar to ABCs, Parental Agreements are voluntary and invite the cooperation of the parents or guardians to be effective. The Parental Agreement is aimed at improving the conduct of individuals under ten years of age as an individual younger than this is not responsible for his or her actions by law. The Parental Agreement outlines the expected behaviour of the child and they are usually entered into in conjunction with an ABC for children/young people. These Agreements normally last for up to 6 months.

6. FORMAL ENFORCEMENT ACTION

Anti-Social Behaviour Orders (ASBOs)

6.1. Anti-Social Behaviour Orders (ASBOs) were introduced by the *Crime and Disorder Act 1998*. The powers to impose ASBOs were strengthened and extended by the *Police Reform Act 2002*, which introduced Orders made on conviction in criminal proceedings, Orders in county court proceedings and Interim Orders. ASBOs are civil orders that exist to protect the public from behaviour that causes or is likely to cause harassment, alarm or distress. An Order contains conditions prohibiting the offender from specific anti-social acts or entering defined areas and is effective for a minimum of two years.

6.2. Orders can be made against anyone who is at least 10 years of age but are not criminal penalties in themselves and are not intended to punish the offender. However, breaches of an Anti-Social Behaviour Order, once granted, can result in 5 years of imprisonment and/or an unlimited fine. The Metropolitan Police, British Transport Police, this Council and Registered Social Landlords are able to seek ASBOs from a range of courts depending on the

circumstances of the case.

- 6.3. The Council sees the use of ASBOs as part of a tiered approach to the tackling of anti-social behaviour; it is unlikely to seek an ASBO until alternative measures have been exhausted. However, there may be instances where an application directly for an ASBO is appropriate. The Council will work with its regulatory partners to identify the enforcement agency that is best placed to proceed with an Anti-Social Behaviour Order, if one is warranted. Ordinarily, the Council would expect Registered Social Landlords to take the lead in cases involving their tenants, and the Police to do likewise where a prosecution is planned for an offence associated with anti-social behaviour.

Dispersal Orders (DOs)

- 6.4. Part IV (Sections 30-35) of the *Anti-Social Behaviour Act 2003* contains provisions relating to the designation of a Dispersal Order. Section 30 gives the police powers in designated areas to disperse groups of two or more where their presence or behaviour has resulted, or is likely to result, in a member of the public being harassed, intimidated, alarmed or distressed. Dispersal Orders have two main objectives – a) the co-ordinated management of local crime, disorder and anti-social behaviour, and b) the protection of young people. The latter is an often overlooked aspect of an Order; the removal of young persons from troubled neighbourhoods or locations is aimed at preventing them from being exposed to harmful influences such as the use of illegal drugs, underage consumption of alcohol, and participation in gang behaviour. The implementation of a Dispersal Order cannot proceed without the explicit consent of Ealing Council. Similarly, the Council must be consulted if an Order is to be withdrawn before its natural expiry date.
- 6.5. The Council believes that Dispersal Orders are an important tool that can be used to tackle area based crime and disorder. Given that Dispersal Orders have a potential impact on Article 11 rights of individuals, the Council believes that they should be used sparingly and only when sufficient evidence exists for their implementation. However, in these circumstances the Council welcomes any approach by the Metropolitan Police regarding the declaration of a Dispersal Order. Any proposal regarding a Dispersal Order will be presented to the relevant Cluster meeting for consideration; the Head of the Housing and Regulatory Services has delegated power to provide the Council's response to the Police on whether such an Order should proceed.

Closure orders

- 6.6. Part I of the *Anti-Social Behaviour Act 2003* introduced new powers specifically designed to close 'crack houses'. The legislation enables the police to serve a closure notice, with immediate effect, on premises used in connection with the production of class A drugs (associated with the occurrence of disorder or serious nuisance) subject to obtaining a closure order in court within 48 hours. These are primarily police powers, with a requirement to consult with this Council in seeking such a closure. Ealing Council will respond to any Part I closure

consultation from the Police in a timely fashion. The Head of the Housing and Regulatory Services will take responsibility for the coordination of the Council's response to such a request.

- 6.7. Part IA of the Act (premises associated with persistent disorder or nuisance) was inserted by the *Criminal Justice and Immigration Act 2008*, and came into force in December 2008. Known as a "Part 1A Closure Order" or Antisocial Behaviour Closure Order the new sections of the 2003 Act permit the Police or this Council to apply to Magistrates to close premises where they are satisfied that within the preceding three months the premises have been associated with "*significant and persistent disorder or persistent serious nuisance to members of the public.*" The Order can be made in respect of business or residential premises. An application for a Closure Order under this provision by the Council will only proceed if the Head of the Housing and Regulatory Services and the Council's Legal Services Department both agree that it is in the public interest to do so.

Anti-social behaviour injunctions

- 6.8. An Anti-Social Behaviour Injunction (ASBI) is an injunction that prohibits the person in respect of whom it is granted from engaging in housing-related anti-social conduct of a kind specified in the injunction. An Anti-Social Behaviour Injunction (ASBI) is similar to an Anti-Social Behaviour Order (ASBO) but has been developed to help Councils and housing associations tackle ASB in social housing areas. They are regularly sought by Ealing Council and are set up and executed in the same way as an ASBO, with a series of conditions being attached that if breached, hold consequences. Housing-related means directly or indirectly relating to or affecting the housing management functions of a relevant landlord.
- 6.9. The Anti-Social Behaviour Injunction is issued by the County Court to prevent anti-social behaviour being committed by an individual. If the ASBI carries the power of arrest, any breach on the Injunction may result in arrest of the individual. As a general rule, injunctions tend to be shorter term (i.e. around 6 months) while Orders (ASBOs) start at a term of 2 years – therefore injunctions tend to be used as more of a temporary measure. Sometimes, injunctions are sought for an immediate remedy, then an ASBO sought for a longer term solution.

Possession proceedings

- 6.10. Courts must give particular consideration to the actual or likely effect which the anti-social behaviour has had or could have had on others when considering whether it is reasonable to grant a possession order on the grounds of nuisance or annoyance. Under these 'nuisance' grounds for possession the court must consider, in particular:-
- the effect that the nuisance or annoyance has had on persons other than the person against whom the order is sought
 - any continuing effect the nuisance or annoyance is likely to have on such persons;

- the effect that the nuisance or annoyance would be likely to have on such persons if the conduct is repeated.

6.11. This consideration does not remove the duty on the court to consider fairly the case against the tenant who is accused of committing or failing to prevent anti-social behaviour. This might include any particular circumstances that may have led to such conduct, (issues of mental health or drug or alcohol abuse for example). But in doing so, the Court must also take into account the effect of their behaviour on their victims and the wider community.

Notice of intention to seek possession (NOSPs)

6.12. This gives housing providers the right to bring possession proceedings before the court. NOSPs can either be a deterrent - “warning shot across the bows” or the first step in effective case presentation. The NOSP must be served on an anti-social tenant.

Ineligibility for social housing

6.13. Part VI of the *Housing Act 1996* provides a power for the Council, acting in its capacity as the Local Housing Authority, to declare an applicant ineligible for social housing if that person is guilty of unacceptable behaviour. This power is exercisable only where the Council is satisfied that the behaviour in question would render the applicant unsuitable for a tenancy and that a court would support this decision vis-à-vis a Possession Order application. Similarly, the Council’s social housing allocation policy provides a mechanism for suspending the allocation of a property for persons already registered for social housing assistance if, subsequently, evidence of unacceptable behaviour comes to light. This Council will consider the use of these powers where it comes in to possession of evidence that a person seeking a social tenancy (or a member of that person’s household) has engaged in current unacceptable behaviour (of a criminal nature or otherwise).

J. AUDIT AND INVESTIGATION

The team provides statutory internal control, risk management assurance, corporate governance reviews and a full counter-fraud, vetting and investigation service to the Council.

1. Audit

The work of internal audit is carried out to provide assurance that the Council is managing its finances efficiently, ensuring probity and improved value for money. The team works proactively on corporate governance, anti-fraud and corruption and strategic risk management reviews and initiatives. The [Audit Charter](#) gives more information about the work of audit services.

1.1. Service standards

The following performance indicators are reported to Audit Committee at every meeting:

- % of draft reports issued 12 days after fieldwork
- % of drafts issued (Allocation + 20 days)
- % of final reports issued 5 days after responses
- % of QA forms rated 'satisfactory' or above.
- % of Plan Completion (draft reports issued)

1.2. Assurance

Assurance work is done in line with an [audit plan](#) agreed by Audit Committee. This is revised quarterly in line with emerging risk factors.

1.3. Joint working arrangements with other agencies

The Council uses an outsourced provider (Deloitte) to deliver the Annual Internal Audit Plan and associated work.

1.4. Advice provided

Audit provides advice and consultancy to management support on all aspects of Internal Audit and Risk Management activities.

1.5. Risk Assessment

There is a robust Risk Management Framework in place where risks are identified, assessed, mitigated and reported. The RM Framework supports the Council in the achievement of its strategic aims and objectives.

1.6. Legislation

Accounts & Audit Regulations (2011)
Public Sector Internal Audit Standards (2013)

2. Investigation

The Intelligence and Investigation team investigates allegations of fraud, corruption, theft and various other deceptions against the Council.

Fighting fraud and corruption is given high priority within the Council, and the roles and responsibilities of all Audit and Investigation staff in this respect are set out in the Council's Counter Fraud and Corruption Policy.

2.1. Service Standards

The following performance indicators are reported to Audit Committee at every meeting.

- Number of new cases started.
- Number of cases passed for investigation.
- Number of completed investigations.
- Number of cases where fraud established.
- Number of cases where sanction applied.
- Value of loss.

2.2. Advice/training provided

Fraud awareness training is provided via the e-Learn portal. <http://elearn.ealingservices.net/>

2.3. Risk assessment

All cases passed to the Investigation Team undergo a vigorous risk assessment and subject to the score received are either rejected or referred for further investigation.

2.4. Joint working arrangements with other agencies

The Investigation team work closely with the audit team, other local authorities and are in partnership with the Police, Department of Work and Pensions and the Home Office. The Investigation Team has a seconded Metropolitan Police Detective on site to assist in any serious cases.

2.5. Sanctions

In exercising functions and ensuring compliance with legislation officers will have regard to the principles of good enforcement in part 4 of the corporate enforcement policy and in particular to the principles that regulatory activities should be

- a) Carried out in a way, which is transparent, accountable, proportionate and consistent
- b) Targeted only at cases in which action is needed.

(a) Prosecutions

The team considers prosecuting all cases of fraud where there is sufficient evidence to provide a realistic prospect of a conviction in line with the Audit and Investigation Prosecution and Sanction Policy.

The Team has a dedicated Prosecution Officer who liaises with the Legal section as well as preparing summonses and representing the Council at Magistrates Court in certain cases.

(b) Alternative to prosecutions

In cases of benefit fraud where there is evidence to warrant prosecution there may be sufficient mitigating factors to make an alternative appropriate. There are two alternatives to prosecution available to the Authority. These are the Administrative Penalty and Local Authority Caution.

(i) *Administrative Penalty*

Equivalent to a fine of either 30% or 50% of the fraudulently overpaid benefit.

(ii) *Local Authority Caution*

This can only be used as an alternative to prosecution when an admission of guilt has been made.

(iii) *Police Caution*

In cases where the Metropolitan Police Officer on secondment to the investigation team has led an investigation, the Officer will liaise directly with the Crown Prosecution Service (CPS). A Police caution may be considered as an alternative.

3. Enhanced Vetting

Ealing has an Enhanced Vetting Team that undertakes a robust vetting of employees and agency staff. Pre-employment vetting is widely recognised as a key internal control that acts as a counter-fraud measure in terms of deterring potential misrepresentations or fraudulent applications. It also helps to embed a zero tolerance policy towards fraud.

3.1. Advice

Anyone requiring advice from the EV team should email enhancedvetting@ealing.gov.uk. The EV team will be happy to attend team meetings or recruitment meetings if people need any additional information or advice.

3.2. Risk assessment

Every new role profile is risk assessed to consider whether EV is required. The risk assessment considers the duties of the role, for example post holders who will be required to make financial decisions or have access to sensitive information would be subject to EV.

3.3. Joint working arrangements

The EV team works closely with the Recruitment team to try and ensure that the process does not cause undue delay.

3.4. Discrepancies

When a discrepancy is identified the candidate is invited for an interview. If a reasonable explanation is not provided then the conditional offer of employment is withdrawn and the

Council will consider further action including the disclosure of vetting information in connection with criminal or civil proceedings.

4. Whistleblowing

The Council's [Whistleblowing Policy](#) seeks to encourage and enable people to raise serious concerns within the Council rather than overlooking a problem or 'blowing the whistle' outside.

5. Legislation

Counter Fraud work is carried out in compliance with criminal and civil law and criminal investigation procedures relevant to investigation work including: the *Police and Criminal Evidence Act (PACE) 1984*, the *Criminal Procedure and Investigations Act (CPIA) 1996*, the *Social Security Administration Act 1992 (as amended)*, the *Human Rights Act 1998*, the *Regulation of Investigatory Powers Act (RIPA) 2000*, the *Anti-Terrorism Crime and Security Act 2001*, the *Public Interest Disclosure Act 1998*, *Prevention of Social Housing Fraud Act 2013* and relevant Employment Law.

6. Contact details

John Allsopp, Audit Manager ext. 6078, allsopj@ealing.gov.uk

Ewan Taylor, Intelligence Team Leader, ext. 9991, taylor@ealing.gov.uk

Chris Rabe, Corporate Team Leader, ext. 8289, rabec@ealing.gov.uk

Ravinder Singh, Benefits Investigation Team Leader, ext. 9263, singhr@ealing.gov.uk

Allison Dean, Vetting Officer, ext. 8055, deana@ealing.gov.uk

Fraud hotline number 0800 328 6453, fraudreferrals@ealing.gov.uk

K. Planning Enforcement Policy

1. Introduction

- 1.1. Development management plays an important role in managing and promoting high quality and sustainable development. The integrity of the development management process depends on the authority's willingness and readiness to take enforcement action when it is considered essential to do so. Without the effectively enforcement of planning controls, the objectives of the development management regime can be undermined.
- 1.2. An enforcement policy is essential in order to deliver and maintain effective practices within the planning enforcement function. This policy document provides clear framework, setting priorities, timescales and targets, and also providing for monitoring the service. Officers and members involved in the decision making process will refer to the planning enforcement policy, which will allow resources to be focussed on the authority's priorities.

2. Legislative Background and the authority's approach

- 2.1. *The Town & Country Planning Act 1990*, as amended, and the *Planning (Listed Building and Conservation Areas) Act 1990* provide the principle basis for the enforcement of planning control.
- 2.2. The authority will also have regard to the *National Planning Policy Framework* (2011), the provisions of *Circular 10/97*, saved policies of the *Core Strategy* (2012), the *Ealing Unitary Development Plan* (2004), and other adopted policies and guidance including the emerging *Local Development Framework*. Account will also be taken of any other material consideration relevant to the case, including government policy and guidance, the *London Plan* (2011), permitted development rights and any well-publicised appeal decisions.
- 2.3. Government guidance³ states that "*Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control*". The Local Planning Authority, in making decisions on whether to pursue action must be based on whether such action is expedient (appropriate), taking account of the provisions of the development plan and any other material considerations.
- 2.4. As in all areas of planning, a balance has to be struck between the interests of the people carrying out development or activities, and the people who live nearby and may be affected by it.
- 2.5. Therefore, consideration must be given to that fact that the enforcement of planning control rests on the following principles⁴:
 - enforcement remains discretionary;
 - developing without planning consent or in breach of a consent which has been granted is not and should not be an offence. Criminalisation would be an inappropriate and

³ Paragraph 207, National Planning Policy Framework, 2012 and CLG Circular 10/1997

⁴ Review of The Planning Enforcement System in England (CLG 2006)

- disproportionate response; and
 - planning permission may be sought retrospectively.
- 2.6. It will generally be unreasonable for the authority to issue an enforcement notice solely in the absence of a valid planning permission. Appeal costs may be awarded against an authority where someone who appeals to the Secretary of State against an enforcement notice can show that the authority behaved 'unreasonably' during enforcement proceedings, if the appellant incurs unnecessary expense in pursuing the appeal.⁵
- 2.7. It is also important to ensure that a decision *not* to take enforcement action is well-founded. When an unauthorised development is unacceptable on planning merits, prompt and effective enforcement action is important.
- 2.8. In considering enforcement action, the Council will assess whether the breach of control unacceptably affects public amenity or causes harm to land, people or buildings.
- 2.9. In exercising functions and ensuring compliance with legislation officers will have regard to the principles of good enforcement in part 4 of the corporate enforcement policy and in particular to the principles that regulatory activities should be
- a) Carried out in a way, which is transparent, accountable, proportionate and consistent
 - b) Targeted only at cases in which action is needed.
- 2.10. The enforcement powers available to local planning authorities are as follows:
- The power to serve a **planning contravention notice** (PCN) where it appears that there may have been a breach of planning control and the local planning authority requires information about activities on the land, or the nature of the recipient's interest in the land. In effect, this notice enables the local planning authority to obtain information. It is optional to serve a PCN before considering whether it is expedient to issue an enforcement notice, or to take other appropriate enforcement action. A PCN cannot be used as a means of fishing for information.
 - The power to issue an **enforcement notice**, requiring steps to be taken to remedy the breach of planning control within a given period. There is a right of appeal to the Secretary of State.
 - The power to serve a **stop notice**. This may be served when an enforcement notice is served, or afterwards (but before the related enforcement notice has taken effect). There is no right of appeal to the Secretary of State, but the validity of a stop notice, and the propriety of the local planning authority's decision to issue a notice, may be challenged by seeking leave of the High Court to apply for judicial review. The local planning authority may be liable for compensation if the serving of the stop notice is found to be inappropriate.
 - The power to serve a **breach of condition notice** where there is a failure to comply with any condition or limitation imposed on a grant of planning permission. This may be served on its own, or in addition to an enforcement notice. There is no right of appeal to

⁵ CLG Circular 03/2009

the Secretary of State, but the validity of the notice, or the validity of the local planning authority's decision to serve it, may be challenged by application to the High Court for judicial review.

- The ability to seek **an injunction**, in the High Court or County Court, to restrain any actual or expected breach of planning control.
- The *Planning and Compulsory Purchase Act 2004* introduces the power to issue **temporary stop notices**, without the need to serve a contemporaneous enforcement notice.
- The power to issue **remedial notices** (related to high hedges).
- The power to issue **listed building enforcement notices**.
- The power to issue **section 215 (amenity/untidy land) notices**
- The power to issue **section 225A (advertisement) removal notices**
- The power to issue advertisement **discontinuance notices** (to discontinue the use of land and buildings for the display of an advertisement benefitting from deemed consent).

3. Service Standards and Procedure for Dealing with Service Requests

- 3.1. Service requests may be submitted by individual residents, Residents' Associations, Councillors, Council officers, or any other interested parties. Anonymous complaints will not generally be investigated unless resources permit (i.e. all other service requests have been investigated). The Council, however, retains the right to investigate anonymous complaints if this is considered to be in the public interest. Complaints, which appear to officers to be spurious or vexatious, will not be pursued.
- 3.2. All service requests will be treated confidentially. The names or addresses of complainants will not be released unless otherwise agreed with the complainant.
- 3.3. When making a service request, the full address details of the relevant property should be provided (or a sufficiently detailed description of the location in cases where there is no exact address).
- 3.4. Specific details of the alleged breach and how it affects the complainant or others should also be provided.
- 3.5. Where a change of use is alleged, or where an alleged breach of planning control is recurring (such as a breach of conditions relating to hours of operation), but this cannot be readily verified by the enforcement team, a complainant may be asked to keep 'diary sheets' to record relevant activity over a period of time. Where a complainant does not agree to keep such diary sheets or to allow them to be used as evidence (i.e. at an appeal), the investigation may have to be closed if credible, alternative evidence cannot be gathered.
- 3.6. Service requests can be submitted online, via the Report It line on the homepage of the Council's webpage. There is a selection of forms available and residents are able to report various matters for which the Council is responsible. The relevant form is called "Report A Planning Breach". Whilst the online form is preferred and encouraged, requests for service

are also acceptable by letter, fax or e-mail provided that the identity of the complainant and the nature of the service request is clear.

- 3.7. Service requests received will be prioritised and will be categorised under one of the following three headings:
- **Urgent** (where the implications of the breach are greatest, e.g. works to a listed building; felling of trees covered by a Tree Preservation Order; demolition in Conservation Areas)
 - **High** (where it is important that the existence of the breach is confirmed quickly and where the unauthorised development/use is unlikely to be acceptable to the Council e.g. any unauthorised development where the time limit for enforcement action will expire within the next six months; works in Conservation Area covered by Article 4 direction.
 - **Standard** (other cases which, whilst important to investigate, do not have the environmental, safety or financial implications of the higher categories (most householder cases will fall into this category).
- 3.8. All service requests that comply with the guidelines outlined above will be, subject to resources permitting:
- registered on the Council's computer system within 3 working days of receipt by the planning enforcement team;
 - prioritised within 3 working days of receipt, with the exception of urgent matters which will be prioritised on receipt of the service request;
 - acknowledged within 3 working days of receipt, unless a full reply can be given within that time;
- 3.9. Following the receipt of a service request, the authority will investigate the planning history of the relevant parcel of land. This may in some cases determine that no breach of control has occurred, in which case the complainant will be notified accordingly.
- 3.10. In most other cases, an enforcement officer will undertake a site visit, where necessary. At present, site visits will be undertaken:
- on the same day in 'urgent' cases, where resources permit (and within a period not longer than 3 working days)
 - within 3 working days for 'high priority' cases, where resources permit (and within a period not longer than 5 working days)
 - within 5 working days for all other cases, where resources permit (and within a period not longer than 10 working days)
- 3.11. The authority will keep a record of all investigations, including dated photographs of the site.
- 3.12. If a breach of planning control has occurred the person responsible will be advised:
- of the steps required to remedy or regularise the situation;

- where possible, of the prospects of a planning application being approved including the likelihood of any restrictions or conditions (if it is clear that planning permission is unlikely to be forthcoming for an unauthorised development or use, the person responsible will be advised accordingly at this stage);
- of the time period for the submission of a retrospective application (in most cases, this will be 28 days, but it may be reasonable to allow longer in complex cases).

3.13. If a retrospective planning application is received:

- it will be processed by the relevant planning team in the normal way;
- the complainant will be notified and provided with the opportunity to comment.

3.14. The planning officer, if minded to refuse the retrospective planning application, will consult with the planning enforcement officer and include in the report, where appropriate and expedient, a recommendation to authorise the issue of an enforcement notice. This recommendation should be checked and agreed by the Planning Enforcement Team Leader or Principal Planning Enforcement Officer prior to the issue of the planning decision notice. Once enforcement action is authorised, the matter will be referred back to the planning enforcement officer to proceed with enforcement process.

3.15. All other enforcement cases will be assessed against Council's adopted and emerging planning policies. Account will also be taken of any other material considerations relevant to the case, including government policy and guidance, the London Plan (2011), permitted development rights and any well-publicised appeal decisions to determine whether it would be expedient to take formal enforcement action.

3.16. Following this assessment, it may be decided to take formal enforcement action to have the breach of planning control remedied or the injury to public amenities, as a result of the breach, sufficiently reduced.

3.17. In cases where a breach is identified and it is considered expedient to take enforcement action, the person responsible for the breach will be requested to remedy the breach within a reasonable time frame, or submit a retrospective planning application (if planning permission is unlikely to be forthcoming, this will be stated). If, following a reasonable period of negotiation a resolution has not been achieved, a letter will be sent to the person responsible for the breach advising of the authority's intention to commence enforcement action by the issue of a formal notice. Apart from the most controversial cases, which will be considered at Committee, reports will be considered under delegated powers.

3.18. Alternatively, it may be decided that it is not **expedient** to take any action in some cases because:

- the development is acceptable in planning terms (compliant with planning policy);
- the injury to public amenities caused by the breach is minimal or technical and that no one's interests would be served by taking action;
- that the breach is not a priority for action in view of the resources available.

4. Authorising Enforcement Action

The decision on whether to take enforcement action is in most cases delegated to officers. Reports completed by enforcement or development management officers have to be agreed and signed off by the appropriate delegated officer.

5. The Right of Appeal

- 5.1. The recipient of an enforcement notice has the right to appeal it. The appeal must be made before the enforcement notice takes effect. Appeals are made directly to the Planning Inspectorate (appointed by the Department of Communities and Local Government), an independent organisation. The Planning Inspectorate sets the timescales for the appeal process. It can take several months and the enforcement notice, subject to an appeal, does not take effect until the appeal is decided and the enforcement notice upheld. Appeals can take different formats, *i.e.* written representations, informal hearings or public inquiries, depending on the breach alleged and the grounds under which the appeal is made. Interested third parties may make submissions on planning enforcement appeals; these should be made directly to the Planning Inspectorate.
- 5.2. The *Localism Act 2011* introduced several new provisions in relation to planning enforcement appeals. Where a retrospective planning application is made, and an enforcement notice is subsequently issued relating to the same development before the time for making a decision on the retrospective application expires, an appeal can no longer be made against the enforcement notice on the basis that the development in question ought to be granted planning permission (*i.e.* a 'ground (a)' appeal). However, other grounds of appeal can be pursued in such cases.

6. Monitoring Compliance with Planning Applications

- 6.1. At present, due to limited resources, the planning enforcement officers cannot undertake the formal monitoring of all planning permissions. However, any failure to comply with a planning permission drawn to the attention of the planning enforcement section will be investigated in the normal manner, as outlined above.
- 6.2. In addition, where lawful development certificates have been issued or householder applications have been granted planning permission, the Council's Building Control officers, Council Tax officer and Regulatory Services officers may be asked to monitor such developments on site to ensure they are proceeding in compliance with conditions imposed on the relevant planning permission.
- 6.3. Any apparent breaches will be drawn to the attention of the planning enforcement officers by the relevant sections following a site inspection.

7. Monitoring of Enforcement Performance

Progress on enforcement cases will be reported to Regulatory Committee bi-annually or, as agreed by the Chair. Details of the numbers of service requests received, the number of enforcement cases being investigated, the type of cases under investigation and the number of cases resolved will be provided to Members. Details of the means of resolution will also be provided.

8. Contact details

Details for contacting the Planning Enforcement Team are included on the Council's website and on any correspondence.

L. Building Control Enforcement

1. Introduction

- 1.1. In exercising functions and ensuring compliance with legislation officers will have regard to the principles of good enforcement in part 4 of the corporate enforcement policy and in particular to the principles that regulatory activities should be
 - a) Carried out in a way, which is transparent, accountable, proportionate and consistent
 - b) Targeted only at cases in which action is needed.
- 1.2. Section 317 of the *Housing and Regeneration Act 2008* amended section 35A of the *Building Act 1984*, so that the time limit for bringing prosecutions for all breaches of Building Regulations which are subject to prosecution under section 35 of the Act is extended to **two years** from the completion of the offending building work.
- 1.3. The two year limit is subject to a requirement that any prosecution must be brought within six months of the date on which a local authority has sufficient evidence to justify bringing a prosecution.
- 1.4. The extension of the time limit is not retrospective, *i.e.* it applies only to offences committed **on or after 22 September 2008**.
- 1.5. The *Building (Amendment) Regulations 2008* (S.I. 2008/671) included the addition of regulation 22A to the Building Regulations. Regulation 22A designated certain provisions of building regulations for which the time limit for bringing prosecutions for breaches had been extended to two years for offences committed on or after 6 April 2008.

Summary

- Date of offence under section 35 - **from 22 September 2008**.
- Provisions to which section 35 applies breached: **all provisions**.
- Time limit for bringing prosecution: **two years**, subject to maximum of 6 months from date of obtaining sufficient evidence to bring prosecution.

2. The Building Regulations 2010: Guidance on use and requirements for detached buildings

- 2.1. The Building Regulations control the erection, extension and alteration of new and existing buildings. There are, however, some exemptions. What follows is some outline guidance on the more common scenarios that officers find in the day-to-day enforcement of Building Regulations.
- 2.2. It should be noted that with the current problems of residents living in such buildings at the ends of back gardens that there are very few records of Building Regulations applications for this kind of erection or conversion to form new dwellings. It is highly likely that any such buildings encountered will be illegally occupied.

2.3. Please also note that Building Regulation Requirements differ from those of the Planning Department, and that property owners may find that they are unable to satisfy the requirements of both sets of legislation. This may mean that some owners face the reality that they cannot occupy their outhouses at all.

Scenario 1 *Erection of Detached Outhouse for use as sleeping accommodation*

- Irrespective of its size or its construction, any detached outbuilding used for sleeping purposes is controllable under the Building Regulations and requires an application.
- It is the view of Ealing Building Control that in order to be compliant as sleeping accommodation, the building must meet all the substantive requirements for the erection of a new self-contained dwelling.
- Building Regulations require a new house to have both kitchen and bathroom facilities and make no allowance for the shared use of either facility from another building. The concepts of “Ancillary” and “Incidental” use in connection with existing dwellings are not recognized under the Building Regulations.
- It is conceivable that there may be situations where this is not possible due to conflicts with Planning Controls.

Scenario 2 *Detached Outhouse under 15 m² used for non-sleeping accommodation (including commercial use)*

- A single storey detached building under 15 m², irrespective of its construction is exempt under Schedule 2, Class 6 of the *Building Regulations 2010* so long as it is not used as sleeping accommodation.
- Any controlled services or fittings provided to such buildings are still controlled under Building Regulations and should either be self-certified by properly competent persons, e.g. Gas Safe, NICEIC, etc. or certified by Building Control

Scenario 3 *Detached Outhouse under 30m² (but over 15 m²) used for non-sleeping accommodation (including commercial use)*

- A single storey detached building under 30 m² (but over 15 m²), is exempt under Schedule 2, Class 6 of the *Building Regulations 2010* so long as;
 - It is not used as sleeping accommodation.
 - It is constructed of non-combustible materials, e.g. brick/ block work.
 - Where it is not built of non-combustible materials, it is to be constructed at least 1m away from any boundary.
 - Any controlled services or fittings provided to such buildings are still controlled under Building Regulations and should either be self-certified by properly competent persons, e.g. Gas Safe, NICEIC, etc. or certified by Building Control (see section 3 below).

Scenario 4 *Detached Outhouse over 30 m² used for non-sleeping accommodation (including commercial use)*

- A detached building in excess of 30 m² requires a Building Regulations application irrespective of its use and all relevant requirements apply including all controlled

services and fittings.

Scenario 5 Extension/enlargement/alteration of/to a Detached Outhouse

- Any detached building which is exempt under Schedule 2, Class 6 of the *Building Regulations 2010* which is extended or enlarged or altered, but where the completed building still qualifies as exempt, remains exempt bar any new provision, extension, or alteration to any controlled services or fittings.
- Any detached building which is exempt under Schedule 2, Class 6 of the Building Regulations 2010 which is extended or enlarged or altered, where the completed building no longer qualifies as exempt, is considered to constitute a material change of use under the *Building Regulations 2010*, Part 2, para 5(f) “*the building is not a building described in classes 1 to 6 in schedule 2, where previously it was*” and a Building Regulations Application is required.

Scenario 6 Detached Outhouse previously non-sleeping use now being used as sleeping accommodation

- Where any detached building, exempt or certified for a non-sleeping use, is now used for sleeping accommodation, is considered to constitute a material change of use under The Building Regulations 2010, Part 2, Para 5(a), “*the building is used as a dwelling where previously it was not*” and a Building Regulations Application is required.

3. Controlled Fittings and Services

Controlled Fittings and Services include

- Electrical Installations including external lighting, power supplies, and solar panels (Self Certification is acceptable through NICEIC, NAPIT, ELECSA, BRE, and BSI).
- Gas/Oil/Solid Fuel Burning/Air Conditioning Installations (Self Certification is acceptable through Gas Safe, OFTEC, HETAS *etc.*)
- Rainwater drainage connected to any existing rain water/foul water/combined sewer. However, soakaways, water butts or discharge to ground are not controlled.
- Foul waste disposal to the existing foul water sewer whether gravity system or pumped system *e.g.* Saniflo.

4. Referrals to Building Control

Please refer any works, in progress, or completed to Building Control. You may also wish to refer the property owners to our website http://www.ealing.gov.uk/a_to_z/service/39/building_control

Please note:

- All floor area measurements are taken as the finished internal floor area.
- Distance to the boundary is taken as the shortest distance to the boundary on a straight line perpendicular to the outer face of the external walls.
- Where building work has commenced on or after **11th November 1985** (whether

complete or incomplete) a retrospective application may be made for Building

Regulations certification.

- Any works requiring certification maybe listed on the Local Land Charges register pending satisfactory completion and may restrict the sale/re-mortgage *etc* of the property.
- Any works applied for retrospectively are reliant on the co-operation of the owner in exposing any works deemed necessary by Building Control in order to demonstrate compliance with any relevant requirements of the Regulations.