

# Thurrock Council

## Enforcement Policy

### Introduction

Our primary enforcement duty is to protect the safety of the public, their health and safety and the environment. At the same time we are committed to promoting a thriving local economy by carrying out our enforcement functions in an equitable, practical, transparent and consistent way.

This enforcement policy helps to promote efficient and effective approach to regulatory inspection and enforcement which improve regulatory outcomes without imposing unnecessary burdens.

This policy has been developed in accordance with the general principles of the Regulators Code, Hampton Report and the Enforcement Concordat. All relevant stakeholders have been consulted and current government guidance and relevant codes of practices have also been considered.

### Scope of Enforcement Policy

The council has a wide range of regulatory and enforcement functions. This Policy applies to all the legislation enforced by authorised officers within the Public Protection Services. It supports existing, specific guidance on enforcement action in the statutory code of practice for regulators, relevant guidance documents and guideline issued by other government departments and other bodies.

In addition, consideration will be given to any other enforcement policy or scheme such as the Home / Primary Authority principle, where relevant.

### General principles of enforcement

We believe in firm but fair enforcement of all regulatory laws. Prevention is better than cure and our role therefore involves actively working with businesses to advise and assist with compliance. Consideration should also be given to the following principles:

- **Proportionality** – This means ensuring enforcement action corresponds appropriately to the risks arising. This will include any actual or potential harm arising from a breach of the law. We will ensure that our actions are proportional to the potential risk to health, safety, the environment and the benefits arising from the actions taken
- **Consistency** – Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar results. Businesses that manage similar risks expect a consistent approach from the Public Protection and other agencies
- **Profiling** – means making sure that action is targeted primarily on those whose activities give rise to the most serious risks or where the hazards are least well controlled. It also means that any enforcement action is directed against the person or company responsible for the breach.

- **Transparency** – Transparency means being clear with businesses about how we operate and enforce. This also means helping individuals, organisations and businesses to understand what is expected of them in order to comply with legal requirements. We will also provide a clear distinction as to what are statutory requirements and advice or guidance about what is desirable but not compulsory.
- **Accountability** – We are accountable to the public for our actions. This means that we undertake enforcement on behalf of the public at large and not just in the interest of any particular individual or group. However, when considering the public interest test, the consequences for those affected by the offence, and any views expressed by those affected will, where appropriate be taken into account when making enforcement decision.

## **Business engagement processes**

The council will engage with businesses in a variety of ways including:

- undertake a programme of routine and planned inspections of trade premises based on risk assessment
- offer preventative advice to businesses within the whole borough
- work with businesses and other agencies to achieve our objectives
- conduct enforcement visits to premises to deal with complaints, accidents and investigate allegations of non-compliance
- provide a response to business enquires within the set working standards and a written response if requested within the set standards period

## **Decisions on enforcement actions**

We will ensure that our enforcement actions are consistent and aim to:

- protect the public and businesses from harm
- stop the infringing conduct immediately and change the behaviour of the offender
- deter future non-compliance and reassure the community
- eliminate any financial gain or benefit from non-compliance
- be proportionate to the nature of the offence and the harm caused and
- be responsive and consider what is appropriate for a particular offender and regulatory issue, which can include sanction and public stigma that should be associated with criminal conviction

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

- the Human Rights Act
- the Crime and Disorder Act
- equal rights and anti-discrimination legislation
- service-specific legislation
- all other relevant legislation applicable from time to time
- internal procedures and processes as applicable

Information concerning non-compliance may be shared with other enforcement agencies. Any such action will only be undertaken in the public interest and in compliance with the Data Protection Act 1998.

Any decision on enforcement action will be taken on the merits of each case, objectivity and impartial. This will not be influenced by reason of race, disability, sexual orientation, age, religious beliefs or the employment status of the victim or witness. However, where a victim has been targeted by the offender by virtue of class or status such as vulnerable or young, consideration will be given when deciding on any course of action. Cases are assessed in accordance with the Code of Practice for Crown Prosecutors for justified enforcement actions.

## **Enforcement actions / sanctions**

Where appropriate, we will seek to achieve compliance through early engagement, mediation, education and advice. In cases where this is not deemed possible by officers as the appropriate route, these decisions will be recorded and considered as justified.

There are a number of potential enforcement options available to the service to achieve compliance. The types of actions that can be considered are as follows:

- **Informal action** – For minor breaches of the law we may give verbal or written advice. We will clearly identify any contraventions of the law and give advice on how to put them right, including a deadline by which this must be done. The time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of the non-compliance.
- **Fixed Penalty Notice (FPN) / Penalty Charge Notice (PCN)** – Certain offences are subject to fixed penalty notices where prescribed by legislation. They are recognised as a low level enforcement tool and avoid a criminal record for the defendant. We may choose to issue an FPN on a first occasion without issuing a warning. Unpaid PCNs will result in the offender being pursued in the County Court for non-payment of debt.
- **Refusal, revocation or suspension of licence** – where there is a requirement for business or individual to be licensed by the local authority, the licence may be granted in accordance with the Council's Scheme of delegation. In cases where representations or objections are received the Licensing Committee / Regulatory Board will hear the case and determine the matter in line with the provisions of the relevant legislation.

### **Grounds for refusal, suspension or revocation of hackney carriage or private hire driver's licence:**

- Where the applicant or holder of a licence, falls outside of the council's criteria as a 'fit and proper' person to hold a licence that will be referred to the licensing sub-committee for consideration.
- Licences may be suspended or revoked with immediate effect if such a decision is deemed necessary in the interests of public safety.

**Reviews of Premises Licence under the Licensing Act 2003**, the options available to the Licensing Sub Committee/ Regulatory Board are:

- modify or add conditions to the licence
- exclude a licensable activity from the licence scope
- remove the Designated Premises Supervisor (DPS)
- suspend the licence for a period not exceeding three months
- revoke the licence
- issue a warning letter

**Reviews of Premises Licence under the Gambling Act 2005**, the options available to the Sub Committee / Board are:

- revocation of the licence
  - suspend the licence for a specified period not exceeding three months
  - exclude a condition to the licence under section 168 or amend exclusion
  - add, remove or amend a condition under Section 169 activity
- **Statutory notices** – Certain legislation allows notices to be served requiring offenders to take specific actions or cease certain activities. Notices may require activities to cease immediately where the circumstances relating to health, safety, environmental damage, no appropriate licence of nuisance. In other circumstances the time allowed will be reasonable and take into account the seriousness of the contravention and the implications of the non-compliance.

All notices issued will include details of any applicable appeals procedure. Certain types of notice allow works to be carried out in default. This means that if a notice is not complied with we may carry out any necessary works to satisfy the requirements of the notice ourselves. Where the law allows, we may then charge the person/business served with the notice for any cost we incur in carrying out the work.

- **Prohibition notice** – this will be used where an activity poses a significant risk to health, safety or the environment. Where the risk exists at the time of the action or is imminent, we will immediately use our powers available to close premises or part of premises, seize or detain goods, equipment or food to remove the risk effectively.
- **Enforcement undertaking / injunctive proceedings** – this may be sought from businesses that breach legislative requirements specified for the purpose of part 8 of the Enterprise Act 2002. Injunctive orders may be sought in the County Court in relation to businesses who breach legislative requirements specified for the purposes of Part 8 of the Enterprise Act 2002. In most cases an order will be sought from the court in circumstances where a business has been given an undertaking which it has subsequently breached.
- **Seizure** – in some situations, council officers have powers to seize goods, equipment and documents, either to prevent the occurrence of an incident, to ensure that an activity ceases, or to ensure that it does not recur. The seized goods may be required as evidence for possible future court proceedings. When we seize goods, equipment and documents we will explain at the time the powers we are exercising and the reason why they are being exercised. Also provide an appropriate receipt to the person from whom the goods were seized.
- **Confiscation / forfeiture proceedings** – this procedure may be used in conjunction with seizure and/ or prosecution where there is a need to dispose of goods and equipment in order to prevent them re-entering the market place or being used to cause any further problem. In appropriate circumstances, we will make application for forfeiture to the Courts.
- **Simple cautions** – these will be issued where there is clear evidence and acceptance of an offence by the offender. A simple caution is an admission of guilt, but is not a form of sentence nor is it a criminal conviction. The purpose will be to deal quickly and simply with less serious offences; to reduce chances of re-offending and to avoid unnecessary appearance in criminal courts. A record of the caution is kept on file and may be cited in a Court if further offending occurs.

- **Prosecution** – A prosecution will normally be considered where the individual or organisation meets one or more of the following criteria:
  - deliberately, negligently or persistently breached legal obligations, which were likely to cause material loss or harm to others
  - deliberately or persistently ignored written warnings or formal notices
  - endangered, to a serious degree, the health, safety or wellbeing of people, animals or the environment
  - assaulted or obstructed an officer in the course of their duties
  - where a prosecution would be in the public's interest
- **Proceeds of crime application** – this application may be made under the Proceed of Crime Act 2002 for confiscation of assets in serious cases. The purpose of this is to recover the financial benefit that the offender has obtained from their criminal conduct.
- **Work-related death** – where there has been a breach of the law leading to a work-related death, we will consider whether the circumstances of the case might justify a charge of manslaughter. We will liaise with the police, coroners and the Crown Prosecution Service (CPS) to agree the appropriate Authority to take legal proceedings under the health and safety law.

## Determining formal actions

When a decision whether or not to prosecute being made, we follow the principle criteria from the guidance contained in the Code for Crown Prosecutors which requires the two main tests:

1. Whether the standard of evidence is sufficient for a realist prospect of conviction (Evidential Test).
2. Whether a prosecution is in the public interest (Public Interest Test)

**The evidential test** – we must be satisfied that there is sufficient evidence against the offender on each charge. A realistic prospect of conviction is an objective test that means a jury or bench of magistrates, properly directed in accordance with the law is more likely to convict the offender of the alleged charge than not to.

**The public interest test** – the public interest must considered in each case where there is enough evidence to provide a realistic prospect of conviction. We will balance factors for and against prosecution carefully and fairly. The public interest factors that may affect the decision to prosecute will depend on:

- the seriousness of the offence
- the likelihood of the offender re-offending
- whether there has been negligence and the possibility of avoiding the offences
- the views of anyone aggrieved by the offence
- the length of time since the offence took place
- the local / national context of the offence

Some factors may increase the need to prosecute but others may suggest that another course of action would be appropriate and proportionate.

## **Consideration factors**

In making the decision to take formal action, the service will have particular regards to the following criteria:

- whether the breach was pre-mediated or committed deliberately or reckless, or without due diligence
- whether there are any prior complaints and convictions or other information relevant to the individual, family, business or trader history
- effect of the breach on the victim or affected person, in particular vulnerable or the infringement resulted in death or serious injury
- the prevalence of the type of breach and whether a particular enforcement action could act as a deterrent and encourage compliance generally
- inadequate mitigation or explanation given by individual, business or trader. Also the attitude of the individual, business or trader as to whether they were obstructive or co-operative

## **Authorisation**

The council will ensure that officers who carry out enforcement duties are appropriately qualified and trained. The officers will be authorised in the form of a card and that the extent of authorisation is reviewed from time to time in the light of their qualification and experience and changes in legislation.

## **Equal opportunities and diversity**

The council recognises its diversity within the community and enforcement activities will have regard to its **equality policy**.

## **Review of policy**

We will review this policy and update it to reflect changes in its source documents and controlling bodies every two years. We will also review its effectiveness in supporting the council's and the community's priorities.

We will consult with stakeholders before and after making any changes to this policy.

## **Publicity**

Following adoption of this policy, it will be made available to all interested parties including individuals, organisations, businesses etc.

It will also be published on the council's website

# Appendix

Level of fine the court may administer.

## **In the Magistrates Court**

Level 1 – £200

Level 2 – £500

Level 3 – £1,000

Level 4 – £2,500

Level 5 – Unlimited

Some offences have a summary limit of £20,000 and/or 6 month imprisonment.

## **In the Crown Court**

There is no limit to the amount the Crown Court can fine, but the amount will take into account the seriousness of the offence and the offender's ability to pay.

## **Fixed Penalty Notice charges**

Current Fixed Penalty Notice (FPN) charge rates are published at [thurrock.gov.uk/fpn](http://thurrock.gov.uk/fpn)

## **Reference sources**

Code of Crown Prosecutors –

The Cautioning of offenders, Home office

Reducing Administrative Burden –

Regulatory Enforcement and Sanctions Act 2008

Regulators' Code 2014

Legislative and Regulatory Reform Act 2006

Regulation of Investigatory Powers Act 2000 and code of practice on the Act

Criminal Procedure and Investigations Act 1996

HSE Enforcement Policy Statement

Police and Criminal Evidence Act 1984 and associated Codes of Practice

Data Protection Act 1998