

LONDON BOROUGH OF WALTHAM FOREST

Environmental Services Enforcement Protocol

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1 Introduction

- 1.0 The Enforcement Concordat is a code of practice to be followed by enforcement officers, which details what householders, businesses and others regulated by those officers may expect. The Regulatory Impact Unit of the Cabinet Office promoted the Enforcement Concordat so that a balance is found between protecting the public and the environment, and promoting a thriving national and local economy. This can only be done by carrying out enforcement functions in an equitable, practical and consistent manner.
- 1.1 The London Borough of Waltham Forest Council adopted the principles of the Enforcement Concordat on 21st December 2000. A full version of the Concordat is available at <http://www.cabinetoffice.gov.uk/regulation/documents/pst/pdf/concord.pdf>
- 3.0 Environmental Services is made up of the following services:
- Street Services
 - Sustainable Communities
 - Consumer Protection Services
 - Greenspace
 - Resources
- 1.2 The following principles reflect the commitment by all enforcers within Environmental Services to the Enforcement Concordat. Because this document seeks to cover such a wide range of enforcement powers from different areas of legislation many of the references to powers or procedures will not be applicable to all areas. This document seeks to set out our general approach to enforcement matters rather than act as a guide to procedures for any particular action that may be contemplated or taking place. This Protocol has been drawn up with regard to the Code for Crown Prosecutors that is used by the Crown Prosecution Service so that it can make fair and consistent decisions about prosecutions. A full version of the Code can be found at http://www.cps.gov.uk/victims_witnesses/code.html. It is also available in eight other community languages.
- 5.0 Where there is a shared or complementary enforcement role with another agency, regard shall be paid to the policies, procedures and practices of that agency whilst still complying with the principles of this protocol. Enforcement action will be coordinated with these agencies as far as possible, in order to maximise effectiveness.

- 6.0 The implementation of this protocol will be carried out with regard to the Council's policy on equal opportunity in service delivery. Enforcement practices that result in the provision of a lower standard of service to any group or individual because of unlawful or unfair discrimination will not be tolerated. Enforcement Officers within Environmental Services will take practical steps to ensure that all members of the community receive a fair and equal service, according to their needs.

2 Standards

- 1.0 The level of service and performance for the different enforcement functions which the public and businesses can expect, are published in a range of documents including:
- Corporate Aims and Objectives
 - Appropriate National Performance Plans and Indicators
 - Environmental Services Business Plan
 - Service Guides and other information leaflets

3 Openness

- 1.0 Environmental Services will provide information and advice in a clear and straightforward manner on the rules that apply to residents, businesses and the local community. Where written guidance is not available, staff will be available to discuss specific requirements of legislation, general issues, specific compliance failure and other enforcement problems. The Directorate will endeavour to keep information in the public domain whilst still exercising legal and business confidentiality including, where possible, protecting the identity of members of the public who bring breaches to our attention.

4 Helpfulness

- 1.0 The Directorate believes that prevention is better than cure and officers will actively work with residents, businesses and others who need advice to ensure compliance with legislative controls. The Directorate will provide a courteous and efficient service and the officers will identify themselves by name. Letters, telephone messages and other service requests will be answered in accordance with published standards. A contact point and telephone number for future dealings with the Directorate will be provided.

- 2.0 The Directorate will ensure that, wherever practicable, our enforcement services are effectively co-ordinated to minimise overlaps and time delays,

5 Proportionality

- 1.0 On all occasions the Directorate will minimise the costs of compliance for householders, businesses and other organisations by ensuring that any action that is required is proportionate to the risks posed to those we are trying to protect. The Directorate will, so far as practicable, aim to work with small businesses and voluntary and community organisations in such a way that they can meet their legal obligations without unnecessary expenditure.

- 2.0 Factors that will be considered when determining the course of enforcement action can include:

- Seriousness of the offence, especially involving risk to the public
- The likely penalty as opposed to the cost of investigation
- The age or staleness of the offence
- The circumstances, state of mind and attitude of the offender
- Whether the offence is likely to be continued or repeated
- The views of the aggrieved person/people
- Past conduct and previous history of the offender including trading history, previous similar convictions or Cautions
- The alternatives to legal proceedings
- The effect of likely defences and mitigation
- Whether there has been an element of fraud, negligence or recklessness in the commission of the offence
- Whether previous action has been unable to resolve the problem
- Whether a prosecution could test an important legal point or set a precedent.
- Whether there has been a blatant disregard of legislation
- Whether any action has been taken to resolve the problem
- Whether the offence has come to light as the result of a complaint or information from an outside body
- Whether it would be in the public interest, having regard to all the circumstances of the case, to institute legal proceedings.

6 Consistency

- 1.0 The Directorate will ensure that enforcement officers carry out their duties in a fair, equitable and consistent manner. While enforcement staff are expected to exercise judgement in individual cases, the Directorate will aim to promote consistency on a national and regional basis by ensuring staff are aware of relevant codes of practice and practices recognised by other authorities, organisations and governing bodies such as the Local Authorities Co-ordinators of Regulatory Services (LACORS).

7 Powers of Entry

- 1.0 Many of the statutes enforced by the Directorate have provision for authorised officers to enter premises for the purposes of enforcing the legislation. These statutes also provide for an authorised officer to seek an entry and search warrant in certain circumstances, which must be sworn before a Justice of the Peace. The Directorate recognises that the execution of a search warrant can be intrusive and will ensure that the relevant authorised officers keep information on all warrants sought and monitor their use to ensure they are compatible with the Human Rights Act 1998 (see below).

8 Enforcement Powers

- 1.0 The above guidelines are not intended to be exhaustive, but to provide a framework to ensure consistent decision-making. Where there has been an alleged breach of legislation, there are several alternatives for action depending on the nature, seriousness and public interest of the alleged infringement. The possible courses of action include (not all actions are available to all areas of enforcement):

- Informal advice
- Simple caution (formerly formal caution) and conditional caution
- Enforcement notices
- Stop notices
- Fixed Penalty Notices
- Immediate or direct action
- Prosecution proceedings
- Injunctions and other civil sanctions

- 2.0 More general information on these powers is given below:

Informal advice

- 3.0 This course of action is most appropriate when there has been a very technical or minor breach of legislation. Advice on how to comply will be given in as clear and concise manner as possible. Where necessary the officer will specify any steps required in writing identifying the relevant legislation, the time scale involved and whether such steps are a legal requirement or, otherwise, a matter of good practice. Officers will provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference prior to formal enforcement action being taken unless the circumstances require that immediate action be taken.

Simple Caution and Conditional Caution

- 4.0 The purpose of a Simple Caution is to deal quickly and simply with less serious offenders by diverting them initially from the criminal courts, but to enable a previous relevant offence to be cited in subsequent court proceedings. Simple Cautions will be kept on file for three years. A Caution will only be issued if there is sufficient evidence of guilt, the offender is over eighteen years old, the offender admits the offence, and consents to the Caution.

The Conditional Caution is a statutory disposal introduced by the Criminal Justice Act 2003. It is a form of caution with conditions attached to it. If the offender fails to comply with these conditions, the Act provides for criminal proceedings to be instituted for the original offence and the Conditional Caution to be cancelled. The conditions attached will relate to rehabilitative and/or reparative requirements such as payment towards costs of investigation or remedial action.

For further guidance on Cautions see www.homeoffice.gov.uk.

Enforcement notices

- 5.0 Within the wide range of legislation enforced by officers of Environmental Services there are specific provisions detailing instances when officers can serve written, statutory notices. When such a notice is served the reason for the notice being served and any available appeal mechanism will accompany it.

Stop notices

- 6.0 For certain serious breaches of planning control a stop notice can be served requiring the breach of control to be immediately stopped. There is no right of appeal against a stop notice, but it is usually accompanied by an enforcement notice, which does have a right of appeal.

Fixed Penalty Notices

- 8.7 Fixed Penalty Notices can only be issued for certain offences specified by law. They are a method of discharging liability for the offence within a set period. The evidence required before issuing a Fixed Penalty Notice is the same level of evidence that would be required to prove the offence at court.

Immediate or direct action

- 8.0 In certain circumstances, such as where immediate enforcement action is necessary because of the seriousness of the breach, direct action can be taken. Information will be given at the time, in writing, explaining why the enforcement action is being taken, what powers are being used, and any available appeal procedures. Where goods have been seized or surrendered, a receipt will be left giving details of those goods and information on how to get in touch with relevant service or officer.

Prosecution proceedings

- 9.0 It is the Council's practice that the institution of prosecution proceedings is used as a last resort. It will normally be considered when a person is a persistent and deliberate offender, a Simple Caution has been declined, public safety issues are involved or an Enforcement Notice has been ignored.

Injunctions and other civil sanctions

- 10.0 Where a fine or other penalty is inadequate or ineffective in preventing repeated or continuing breaches or in order to prevent very serious breaches in limited circumstances, there are provisions that enable the local authority to seek injunctions from the High Court to restrain the offender. This measure would only be used as a last resort.
- 11.0 Trading Standards are able to pursue action under the provisions of the Enterprise Act 2002 in relation to breaches of specific consumer protection legislation. An Enforcement Order may be issued by the County Court.

9 Human Rights Considerations

- 1.0 In the discharge of its functions the Directorate is legally required to have regard to the Human Rights Act 1998 and the Regulation of Investigatory Powers 2000 (RIPA).
- 2.0 The Directorate recognises that an individual's human rights may be affected as a consequence of enforcement action. Officers receive training in Human Rights issues. The Directorate will, as far as possible, when determining the appropriate course of action, aim to ensure that any and that planned action balances individual's rights against the wider public interest.
- 3.0 The Regulation of Investigatory Powers Act 2000 (RIPA) was enacted in order to give a clear statutory framework for the operation of certain intrusive investigative techniques, to provide for compliance with the Human Rights Act 1998. RIPA covers the interception, acquisition and disclosure of communications data (Part I); the carrying out of covert surveillance and use of covert human intelligence sources (Part II); and the investigation of electronic data protected by encryption (Part III). RIPA also provides for the appointment of independent Surveillance Commissioners who will oversee the exercise by public authorities of their powers and duties under the Act (Part IV).
- 4.0 Local authorities are not able to carry out intrusive surveillance. However, a designated post within each Service area will be nominated to authorise the use of directed surveillance and the conduct and use of a covert human intelligence source (CHIS).
- 5.0 Before an authorised officer undertakes such investigative techniques in any particular case, the nominated post holder will ensure the investigation is both necessary and proportionate to meet specified law enforcement objectives such as the prevention or detection of crime. In order to comply with RIPA the Directorate will ensure that appropriate authorisation systems are put in place to ensure that their use is compatible with Human Rights Act 1998.
- 6.0 Documentation for the authorisation of surveillance and CHIS's can be found via the Environmental Services Intranet.

10 The Code for Crown Prosecutors

- 1.0 This protocol has been drawn up with regard to the Code for Crown prosecutors. The Code helps to ensure that justice is done. All cases considered for prosecution must satisfy both stages of the Code Test.

- 2.0 **The Evidential Stage:** Prosecutors must be satisfied that there is enough evidence to provide ' a realistic prospect of conviction' for each charge. The evidence should be admissible and as reliable as possible for each charge. They must consider what the defence case may be and how that is likely to affect the case.
- 3.0 **The Public Interest Stage:** This stage must be considered once the evidential stage has been satisfied. The prosecutor must balance factors for and against prosecution carefully and fairly.
- 4.0 **Common public interest factors in favour of prosecution are:**
- ✓ Conviction is likely to result in a significant sentence and/or other penalty such as confiscation
 - ✓ The defendant was in a position of authority, or was the organiser of the offence
 - ✓ The offence was premeditated
 - ✓ The victim of the offence was vulnerable, or the offence was motivated by any form of discrimination
 - ✓ The defendant has a history of previous convictions, or the offence is likely to continue or be repeated
 - ✓ The offence is widespread in the area where it was committed, or a prosecution would have a significant positive impact on maintaining community confidence.
- 10.5 **Common public interest factors against prosecution are:**
- A nominal penalty is likely to be imposed
 - The offence was the result of a genuine mistake or misunderstanding
 - Any loss or harm caused can be described as minor
 - There has been a long delay between the offence taking place and the trial
 - A prosecution may have a bad effect on the victim's physical or mental health
 - The defendant is elderly or was suffering from significant mental or physical ill health at the time of the offence
 - The defendant has put right the loss or harm caused.

- 10.6 In addition, all cases must be reviewed on an ongoing basis and any change in circumstances must be taken into account.

11 Complaints Against the Service

- 1.3 Complaints against the Council's services or officers are initially taken up with the departmental Complaints Officer. If the matter cannot be resolved within the service concerned, the Council has a corporate Complaints procedure, details of which can be found on the Waltham Forest website at <http://www.walthamforest.gov.uk/index/council/how-to-complain.htm> .
- 1.4 Much of the legislation enforced also contains procedures for appeal against enforcement decisions; any such appeals will be communicated at the time of enforcement action.