

Environmental Health and Trading Standards Department Enforcement Policy



THE ROYAL BOROUGH OF
KENSINGTON
AND CHELSEA

ENVIRONMENTAL HEALTH DEPARTMENT

ENFORCEMENT POLICY

Approved by the Cabinet Member for Housing Services, Adult Social Care, Public Health and Environmental Health.

CONTENTS

PREFACE	3
1.0 INTRODUCTION	3
2.0 GENERAL STATEMENT OF INTENT	4
3.0 ENFORCEMENT OPTIONS	5
3.1 Choice of Enforcement Approach	5
3.2 Options Available	6
3.3 Referrals to Other Agencies	6
3.4 Informal Action	6
3.5 Information Notices	7
3.6 Formal Action	7
3.6.1 <i>Use of Statutory Notices</i>	7
3.6.2 <i>Simple Caution</i>	8
3.6.3 <i>Prosecution</i>	8
3.6.4 <i>Prohibition</i>	10
3.6.5 <i>Injunctions</i>	10
3.6.6 <i>Seizure of Equipment, Food, Articles or Consumer Products</i>	10
3.6.7 <i>Work in Default</i>	10
3.6.8 <i>Statutory Orders</i>	11
3.6.9 <i>Compulsory Purchase Orders</i>	11
3.6.10 <i>Arrest of individuals under consumer protection legislation</i>	11
3.7 Accident Investigation	11
3.8 Special surveillance using the Regulation of Investigatory Powers Act (RIPA)	11
3.9 Enforcement on Council premises, or at events organised by the Council	12
4.0 COMPLIANCE WITH THE PRINCIPLES OF GOOD ENFORCEMENT	12
4.1 Openness	12
4.2 Helpfulness	12
4.3 Proportionality	13
4.4 Consistency	13
4.5 Targeting	14
4.6 Complaints about the Service	15
5.0 PUBLICITY	15

PREFACE

The Environmental Health Department is responsible for several different enforcement functions namely trading standards, food safety, food standards, health and safety at work, private sector housing, noise and nuisance control, pollution control, environmental quality and pest control.

Each area of work uses different legislation to secure its aims and each has its own extensive body of regulations, codes of practice and guidance, which has been developed from experience. This policy does not try to capture all of this detailed, complex and often changing background, but in all of its enforcement activities the department will give due weight to current relevant guidance.

The policy seeks to express the Royal Borough's approach to the use of its enforcement powers generally, whether that is criminal prosecution at one end of the spectrum or informal warnings and advice at the other. The policy is supported by detailed procedures for officers.

As a matter of course we refer revisions of the policy to a consultation process including other Council departments, representatives from residents and business, associated enforcement agencies, and partner organisations.

1.0 INTRODUCTION

Experience in the enforcement of the regulatory laws that protect our immediate environment and the health of residents and members of the public, shows that in most cases, businesses and individuals comply with the law. Failure to do so generally stems from ignorance or carelessness, but sometimes from wilfulness or malice.

The Royal Borough of Kensington and Chelsea is responsible for the enforcement of a wide range of law (or statutory provisions) which, within the Environmental Health Department, is centred mostly on securing public health through food and workplace safety control, but also includes the regulation of the trading environment to prevent people being cheated, and the maintenance of proper standards within housing. Additionally the environmental protection regime includes the mitigation of nuisances of many types as well as the control of more widespread sources of pollution. The Department works closely with other departments responsible for enforcement particularly within the Transport Environment and Leisure Business Group, which administers and enforces the licensing laws on the Council's behalf and also the regulation of street activities. Liaison also takes place with the Planning and Borough Development Department whose planning conditions enforce the mitigation of environmental impacts.

This policy, taken in the context of government and other guidance, and in particular the Attorney Generals Guidance seeks to ensure that the application of any enforcement is: -

- proportionate to the offence and risks, and mindful of any previous transgressions;
- transparent - in that any person affected understands what is expected of them, what they should expect from the local authority and the reasons for the action;
- consistent with the Council's Equalities Policy
- consistent in approach, and
- appropriate.

There is also the recognition in this policy that enforcement resources are not limitless and need to be targeted at areas where risk is highest.

Possible enforcement approaches are set out below with some examples of the circumstances in which they will be applied. The policy cannot be absolutely prescriptive because the circumstances of each individual case and the evidence available must be taken into account and are likely to vary so much. However, this policy should leave most readers in little doubt as to what they can expect by way of enforcement from the Royal Borough.

This revised policy document supersedes the previous enforcement policy published in 2002.

2.0 GENERAL STATEMENT OF INTENT

It is the overall policy of the Council of the Royal Borough of Kensington and Chelsea to maintain and enhance the amenity of the Royal Borough and to protect the health, safety and well being of its residents, as well as people working in, or visiting the Borough. The Council considers that its powers to initiate formal action and prosecutions under the law are a vital tool to secure public protection, reduce crime and bring about essential improvements to the environment of the Royal Borough.

The Environmental Health and Trading Standards Department will therefore enforce against, or prosecute those who neglect, or wilfully fail, to comply with their legal obligations, where that failure constitutes a risk to the public, or where action is required to minimise adverse environmental impacts within the Royal Borough.

This enforcement policy helps to promote the requirement of the Better Regulation Executive for efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulator's Compliance Code.

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.

The level of enforcement will be proportional to any alleged offence committed, consistent in application (including consistency with other local authorities or enforcement agencies) transparent in its use and appropriate to the circumstances of the particular case in question. Depending on the seriousness of a situation, the Department's preference will be to enforce with moderation in the first instance, progressing through a graduated response to a tougher stance if offences are repeated.

Where enforcement is necessary because of ignorance of the law (which is not of course a defence against criminal proceedings) rather than wilfulness, officers will give advice and attempt to facilitate the training of those involved, in addition to enforcement action.

Enforcement action will not, therefore, be a punitive response to minor technical contraventions of law, but will be forceful in situations where the public's health is put at risk, or there is a significant environmental impact due to negligence, incompetence or blatant disregard of the law. The cumulative effect of contraventions, which in themselves could be considered as minor, needs to be considered when assessing the most appropriate course of action.

The Royal Borough signed the Cabinet Office's Enforcement Concordat in 2000, which commits the Council and the Department to good enforcement policies and procedures. In carrying out enforcement, the Directorate will have due regard to the Code for Crown Prosecutors, Data Protection Act 1998 and the Human Rights Act 1998 (e.g. in the latter context the right to a fair trial, right to respect for private and family life, prohibition of discrimination and protection of property). The Council has also made provision to supply information on its decisions, including enforcement activity, in recognising its duties under the Freedom of information Act 2000 and the Environmental Information Regulations 2004. Effective access to information by either means further underlines the Council's commitment to accountability and transparency.

Authorised officers of the Council will abide by this policy when making enforcement decisions and all operational procedures will be written to accord with it. Any departure from policy must be exceptional, recorded, capable of justification and be fully considered by senior managers before the decision is made, unless it is believed that there is significant risk to the public in delaying the decision.

3.0 ENFORCEMENT OPTIONS

3.1 Choice of Enforcement Approach

In any situation which requires action to ensure compliance with the law officers will consider the following when deciding on the most appropriate enforcement method: -

- the degree of risk from the situation
- the seriousness of the legal contravention
- the different technical means of remedying the situation
- the particular circumstances of the case and likelihood of its continuation or recurrence
- the general attitude of the offender to his or her responsibilities
- the past history of the person(s) company or premises involved
- the willingness of owners of new businesses to carry out required work
- the impact of the enforcement choice in encouraging others to comply with the law
- the likely effectiveness of the various enforcement options
- any legal imperatives e.g. the obligation to serve an abatement notice if a statutory nuisance exists
- any legal guidance, e.g. advice contained in Government circulars.
- any other specific enforcement policies or key decisions e.g. the "Crowding and Space" Enforcement Policy.
- Any guidance or protocols issued by Local Authority Co-ordinators of Regulatory Services, Better Regulation Executive, Food Standards Agency, Health and Safety Executive's Enforcement Policy, Dept for Environment, Food and Rural Affairs, Department for Business, Enterprise and Regulatory Reform, Department of Health, or any other Government Department or Agency.
- the Council has delegated functions to the Consultants in Communicable Disease Control (CCDCs) from the Health Protection Agency to help control and prevent the spread of infectious disease, such as Tuberculosis etc.

The method of enforcement selected should be calculated to produce the highest reasonable standards of compliance within the least time.

3.2 Options Available

- informal action - written or oral,
- information notices – requiring formal details e.g. correct ownership information, as a precursor to serving notices,
- a range of statutory notices generally requiring some remedy within a specified timescale (or possibly immediately)
- fixed penalty notice¹,
- simple caution,
- prosecution,
- prohibition,
- injunctive restraint,
- seizure of equipment, food, articles or records (paper or computer)
- licensing of houses in multiple occupation as a sanction,
- execution of work required by a statutory notice where the recipient has not complied,
- statutory orders - e.g. interim/final management orders under the Housing Act 2004,
- compulsory purchase of empty properties within the Borough,
- arrest of individuals under consumer protection legislation.

NB. The Council may charge for serving certain Notices and issuing Orders under the Housing Act 2004.

3.3 Referrals to Other Agencies

Where there is wider regulatory interest the Department will refer to other regulators relevant information received, for example to the Fire Authority where there are problems with means of escape in case of fire or to the Health and Safety Executive (HSE) where there are gas safety problems. If a widespread food hazard arises the Department will refer the matter to the Food Standards Agency.

3.4 Informal Action

This sort of action will be appropriate where the degree of risk (or in some cases environmental impact) from any given situation is minor, there is no actual breach of legislation or if there is one, it is technical and insignificant. The person responsible would have no recent history of non-compliance and the officer would have good reason to expect them to put right the matters in question without the need for further intervention. The other enforcement options would be inappropriate and disproportionate bearing all of these things in mind. Examples of informal action include written and oral warnings. Although Hazard Awareness Notices are formal notices under the Housing Act 2004, they require no action to be taken and are akin to informal action. They are therefore considered to be informal action for the purposes of this policy.

Informal action will be recorded on departmental files and will be used as a basis for judgements on future enforcement action if there are recurrent problems with an offender or premises.

¹ Further guidance on the use of fixed penalty notices is being prepared. See note below under 3.6.1.

Informal action will not normally be pursued in the enforcement of proper standards of housing, because it would be wrong to leave tenants in unhealthy or unsafe housing and then prolong this while formal action is being taken. Only in specified or exceptional circumstances will informal action be considered such as:

- when a tenant will not consent to works being carried out by their landlord, or if their complaint is vexatious,
- where a deficiency or hazard is not the landlord's responsibility,
- where a registered social landlord has a planned programme of works (including the works required by the Council) and the programme will be implemented within a short time and achieve a better overall result.

3.5 **Information Notices**

Many pieces of legislation enforced by the Department enable it to demand information which is essential in order to serve notice correctly. When the Department is uncertain about the information it holds, or where certain details are unknown, it will serve an information notice on those that have an obvious connection to the case, requiring for instance ownership confirmation, or perhaps company or premises details. Failure to comply with an information notice may hinder the Council in discharging its duties and is regarded as a serious offence, which will be pursued.

3.6 **Formal Action**

3.6.1 ***Use of Statutory Notices***

Subject to the many 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 specified and secured within a set period of time. In some instances service of a notice will be compulsory - e.g. abatement notices under the Environmental Protection Act 1990. The grounds for service of a notice need to be made out, e.g. the most appropriate course of action must be determined before an Improvement Notice is served under the Housing Act 2004. In such cases the officers must prepare a notice cover sheet with the statement of the reasons for the decision to take the relevant action. This will be signed by a manager.

Notices generally specify the problem and a remedy as determined by officers. They are appropriate where, in addition to the above, the response of the offender needs to be monitored to ensure a satisfactory outcome. When issuing a health and safety notice a senior member of the company concerned will be notified.

In most cases there is right of appeal against a notice either to a Court, Residential Property Tribunal, or Employment Tribunal. Where there is a right of appeal, advice on the appeal mechanism will be set out in writing.

Subject to consideration of the evidence it is likely that the negligent or wilful non-compliance with a statutory notice will result in prosecution. In some circumstances it may be appropriate to prosecute in addition to service of a statutory notice, e.g. under housing legislation where a landlord has not applied for a licence for a house in multiple occupation and hazards at the premises require the service of an improvement notice. In certain cases (Pollution, Prevention and Control Regulations) where a small "industrial" process is subject to a permitting system, the notices may not only enforce

the requirements of the permit, but also suspend the authorisation, or revoke the permit if the process has stopped operating.

3.6.2 **Simple Caution**

A simple caution is likely to be appropriate only where there has been a significant contravention of the law, giving rise to a potential risk, or environmental impact. There are three preconditions, which must be satisfied if a matter is to be dealt with by simple caution, as follows: -

1. there is sufficient evidence to give a realistic prospect of conviction,
2. the offender admits his or her guilt,
3. the person being cautioned agrees to it, having been made aware that the caution may be cited in Court in the case of future offending.

The reasons for issuing a simple caution instead of prosecution in the Courts would commonly be that the offender has no previous history in relation to the offence, and has done everything in their power to make amends. Depending on the circumstances, this would usually entail remedial work to premises, taking proper steps to ensure that the offence cannot recur and sometimes compensation to any victims. If a simple caution were to be offered and refused by the offender then the case would proceed to court.

Based on their experience of the Courts and in the light of guidance from, amongst other sources, the Home Office and the Code for Crown Prosecutors, officers will judge whether the efforts of the offender would be likely to result in little or no additional penalty being imposed if the case were to proceed by way of prosecution. They will also judge the effects of pursuing a simple caution as opposed to a prosecution on other potential offenders and any relevant public interest issues.

The offender must be given a full explanation of the significance of the caution before being allowed to accept it, as a simple caution is an admission of guilt to a criminal offence and is recorded as such. It may be cited if the offender is found guilty of the same or similar offence on a later occasion. It remains "on record" for 3 years, and if consumer interests are involved may be recorded by the Office of Fair Trading.

The authorisation to issue simple cautions is delegated to the Director for Environmental Health and Trading Standards. Following the acceptance of a simple caution and the return of the signed documents, the offender may be invited to make a voluntary contribution to the Council's costs in investigating and preparing the case, if these are significant.

3.6.3 **Prosecution**

The Council has the power to prosecute offenders for a range of criminal offences and criminal prosecution is the most severe and, if successful, punitive approach that can be taken.

Typically prosecutions taken by the Royal Borough's Environmental Health and Trading Standards Services follow the detection of environmental nuisances such as noise from building sites, neighbours, mechanical plant and machinery and car alarms. They also follow the detection of unlawful trading practices such as trading in counterfeit (and sometimes dangerous) goods; unsafe working practices and accidents; and dangerous

food and filthy food premises.

Other than in licensed houses in multiple occupation, where offences have occurred involving individuals, activities or premises that are licensed by the Council, officers will refer the facts of the case to the Licensing Section as potential contraventions of licensing requirements (that are intended to regulate safety within licensed premises, and the environmental impacts outside). Officers acting for the 'responsible authorities' may then recommend to the Council's Licensing Committee, a formal review of an existing licence, or licences concerned, and ask for restrictive conditions. Similarly if a licence application has been made enforcement officers may object to the granting of the licence and/or apply for additional conditions.

In accordance with the Code for Crown Prosecutors, prosecutions will only be taken if there is enough evidence to provide a realistic prospect of a conviction and it is in the public interest to do so. In determining whether it is in the public interest, guidance in the Code for Crown Prosecutors will be considered. The following list indicates some public interest factors in favour of a prosecution: -

- there is, or has been a significant risk, or environmental impact arising from a serious legal contravention or a number of lesser contraventions,
- there has been some actual harm done to a third party or, that harm was reasonably foreseeable,
- the attitude of the offender(s) is such that there is cause to believe that they knew that they were breaking the law or, if they did not, any reasonable person in their position should have known (this could take account of the past history of the case which may illustrate previous blatant or reckless disregard for the law),
- the offence involves a failure to comply in full or in part with the requirements of a statutory notice,
- a conviction is likely to result in a significant sentence,
- the victim of the offence was vulnerable, has been put in considerable fear, or suffered personal attack, damage or disturbance (e.g. complainant in a noise nuisance case),
- the defendant has previous convictions or cautions which are relevant to the present offence,
- there are grounds for believing that the offence is likely to be continued or repeated, for example by a history of recurring conduct,
- the offence, although not serious in itself, is widespread in the area where it was committed,
- an officer has been obstructed,
- the cumulative effect of such breaches would be serious even if the breach in itself was not,
- a prosecution will have a significant deterrent effect.

Prosecution of individuals for health and safety offences will be considered where it is warranted, for example if an offence was committed with their consent, connivance or neglect. Where appropriate, disqualification of directors will be sought under the Company Directors Disqualification Act 1986. Consideration will also be given to prosecution of directors if a significant risk continues after warnings have been given by employees.

Where there has been death at work resulting from a failure to comply with health and safety law, the matter will be referred to the police if the circumstances of the case might

justify a charge of manslaughter. The police are responsible for deciding whether to pursue a manslaughter investigation whereas the Department is responsible for investigating health and safety offences. If the police decide not to pursue the case the Department would normally pursue a health and safety prosecution. In order to ensure decisions on investigation and prosecution are closely coordinated, the Work-Related Deaths Protocol for the police, the Crown Prosecution Service and the Health and Safety Executive will be followed.

3.6.4 Prohibition

This power will be used where there are statutory grounds (e.g. there is an imminent risk of injury to health or a risk of serious personal injury) and where the situation cannot be allowed to continue because of the risks involved. This severe course of action is usually associated with food and health and safety enforcement, but there will be other occasions where it may be appropriate, for example prohibiting the sale of unsafe goods, or the use of part of a dwelling under housing legislation. The Council may prohibit the use of a particular piece of equipment, or a specific activity, or it may close part or all of a premises, where the risk is more widespread.

3.6.5 Injunctions

An injunction may be sought from the Courts, where the circumstances of any case cause a significant problem or threat to health of an individual or group of individuals, and the normal process of law (statutory notices, prosecution or work in default) is likely to be ineffective because the perpetrator has shown a careless disregard for earlier similar requirements, or where the process of law would take an unacceptable period of time, having regard to the particular circumstances.

An example might be where, in spite of a notice requiring them to stop causing a noise nuisance, a builder continued to work at night and at weekends to complete a contract very quickly because the contractual financial penalties made it economically desirable for them to do so. Trading Standards may apply to a Court (for an Order under the Enterprise Act) to stop a detrimental action such as repeated pressurised attempts to sell double-glazing. Injunctive relief may be sought as an alternative, or in addition to other enforcement mechanisms such as prosecutions.

3.6.6 Seizure of Equipment, Food, Articles or Consumer Products

This approach will be used in association with other powers relating to noise nuisance, where there has been a repeated, persistent or extreme use of sound equipment, which has caused a high level of disturbance to one or more neighbouring properties and where it is practical to seize the equipment.

Seizure may also be used for food, which fails to meet food safety requirements, including illegally imported food. This power will be used where there is a serious health risk from food available for human consumption, in order to rapidly remove it from the food chain and protect the public health.

Articles or substances, which are a cause of immediate danger, may be seized under health and safety law. Trading Standards may also seize records or consumer goods, which are deemed dangerous or required as evidence.

3.6.7 Work in Default

Some legislation allows the local authority to carry out the work required by a notice (usually by hiring contractors) if the recipient of the notice does not comply with it.

Where a notice has been served, and without good reasons, the work has not been done within the time limit, then 'work in default' would generally follow subject to the practical constraints of the case and the financial circumstances. Before actually doing the work specified in the original notice, the Council will consider carefully the prospect of recovery of any costs incurred, in accordance with current Council policy.

The Council will make every effort to recover the full cost of the work carried out 'in default'.

3.6.8 *Statutory Orders*

A range of Statutory Orders are available under the Housing Act 2004 in addition to Prohibition Orders. The Council may make an Interim or Final Management Order on a licensed house in multiple occupation, which allows it to completely take over the running of a property. Powers to take over the management of empty premises are contained in Empty Dwelling Management Orders. Rights of appeal exist in relation to these powers and compensation provisions also arise in some cases.

3.6.9 *Compulsory Purchase Orders*

The Council may compulsorily purchase property under Section 17 of the Housing Act 1985. This power may be used as a last resort to acquire empty properties in order to bring them back into use. The consent of the Secretary of State is required and compensation provisions for the owner apply.

3.6.10 *Arrest of individuals under consumer protection legislation*

In limited circumstances the Department may seek the arrest of individuals suspected of offences under the Trade Marks Act 1994, specifically when it is not confident that information supplied is reliable, or where evidence may be lost, or subject to interference. This power is not exercised lightly and officers must first satisfy the Metropolitan Police Service that the action is necessary.

3.7 *Accident Investigation*

Resources available for the investigation of workplace incidents will normally be devoted to the more serious circumstances. In deciding whether to investigate workplace accidents and incidents, regard will be given to the principles of the Enforcement Concordat and guidance from government agencies, the severity of harm, seriousness of the offence, past performance, enforcement priorities, practicality of achieving results and the wider relevance of the event including public concern.

3.8 *Special surveillance using the Regulation of Investigatory Powers Act (RIPA)*

On rare occasions in the interests of public safety, certain officers may be authorised to carry out surveillance of individuals as part of their investigations. This is a proportionate, tightly controlled procedure with a number of safeguards. Officers authorising this kind of investigation must be formally appointed and all such operations are pre-planned and specifically authorised according to written criteria.

Most surveillance operations will not be authorised for more than three months, and The Director of Law and Administration is responsible for maintaining records of authorised officers and authorised operations. Precise records are also kept of the evidence obtained by this means.

3.9 Enforcement on Council premises, or at events organised by the Council

In principle the Council cannot legally enforce against itself. Where infringements on Council premises, or at events organised by the Council are identified, the matter will be formally notified to the appropriate Executive Director and the Town Clerk will be advised. If the problem relates to health and safety matters then the HSE is notified. If the potential breaches of the law are the responsibility of contractors employed by the Council, enforcement action will be taken against the contractor in the same way as in other cases not involving the Council.

In relation to the Council's housing stock, which is managed by the Tenant Management Organisation, a TMO protocol has been agreed which outlines the approach which will be followed to investigate housing complaints and notify the need for action.

4.0 COMPLIANCE WITH THE PRINCIPLES OF GOOD ENFORCEMENT

4.1 Openness

In carrying out all of its enforcement duties, the Department will help those it deals with to understand what is expected of them, and what they can expect from the Department in terms of formal action, informal action and advice. In the case of formal action, adequate information will accompany written notification to enable reference to be made to the relevant statutory and associated documents. Any service standards such as speed of response, or content of inspections, will be available on request and information will be provided in plain language wherever appropriate. A Council Cabinet Member is routinely briefed on major enforcement cases, and a separate committee monitors the performance of the Environmental Health Department against set standards. A summary of the Department's performance is reported quarterly (to the Regulation and Enforcement Review Committee) and it produces a comprehensive annual work programme – the Best Value Service Delivery Plan indicating its enforcement priorities.

To those who are potentially subject to enforcement action the Department will: -

- make it clear what must be done, distinguishing between statutory requirements and what is desirable, but not compulsory, in written and verbal communications,
- write to confirm any verbal advice if requested,
- give an opportunity to discuss the circumstances, where possible, prior to formal action being taken unless immediate action is essential,
- where immediate action is necessary, give an explanation of why such action is needed and confirm this in writing,
- make it clear what sort of conduct they may expect when an officer visits and what rights of complaint are open to them.

4.2 Helpfulness

Visits are usually made unannounced but, if appropriate, appointments will be made. Where access cannot be obtained during the day, or in other suitable circumstances, visits will be made outside normal working hours. The Department has a 24-hour call-out service to deal with noise and nuisance, urgent matters and emergencies Tel 020 7361 3484 (5pm – 9am). Some advice leaflets are available in different languages. The Department will actively work with business, especially small and medium sized businesses, to advise on and assist with compliance. Enforcement officers will identify themselves by name (always presenting an official identity card, or warrant card, which can be verified by a phone call to the Department if requested) and in every other way will provide a courteous and efficient service.

4.3 **Proportionality**

The type of enforcement action taken by officers must depend on the risk arising from the activity in question, but must also seek to secure the most appropriate standard in the particular circumstances. Action taken will be proportionate to any risks to health and safety and to the seriousness of any breach.

In considering enforcement, account will be taken of relevant codes and guidance from legal authorities, public authorities and industry.

Where the law requires that risks should be controlled “as far as reasonably practicable”, officers, when considering enforcement, will take into account the cost as well as the degree of risk. However, some irreducible risks may be so serious that they cannot be permitted irrespective of the economic consequences.

Except where circumstances indicate a risk, officers of the Council will operate a graduated and educative approach starting at the bottom of the enforcement pyramid i.e. advice/education/training and informal action and only move to more formal action where the informal action does not achieve the desired effect. The Department runs a sizable programme of food safety, health and safety, and public health courses and training interventions which can be viewed and accessed via www.rbkc.gov.uk/environmentalservices/training . The Department is not the only provider of such courses and training interventions.

4.4 **Consistency**

Decisions on enforcement always entail a degree of judgement, and the circumstances of each case will inevitably differ in detail. The basis of enforcement decisions is likely to change over time, necessarily reflecting changes in statutory and government guidance. Consequently there may be instances when enforcement may appear to be inconsistent for this reason.

Nevertheless the Department will try to ensure that enforcement action is consistent, both within the Royal Borough and with other enforcing authorities. To achieve this officers will:-

1. Follow current internal procedural and guidance notes.
2. Take due account of appropriate guidance from other authoritative bodies such as the local authorities co-ordinating body (LACORS), the Trading Standards Institute, Assay Office, Food Standards Agency, the Health and Safety Executive (HSE), the HSE Local Authorities Enforcement Liaison

Committee (HELA) and the Chartered Institute of Environmental Health.

3. When enforcing under Health & Safety legislation due regard will also be given to the HSE's Enforcement Management Model which gives a framework for enforcement decisions for both HSE and LA inspectors, and alongside this policy, is designed to promote: enforcement consistency, proportionality in relation to risk, and transparency; and also to facilitate management and peer review.
4. Liaise with other enforcement agencies as necessary, for example the Health and Safety Executive, Police, Department for Environment, Food and Rural Affairs, Department for Trade and Industry, the Office of Fair Trading.
5. Liaise with 'Home Authorities' where food legislation is concerned and 'Lead Authorities' where Health & Safety legislation applies.
6. Operate an inter-agency approach where the local authorities powers are insufficient, complimentary (Stop Now Orders and Unfair Contract Terms in Consumer Contracts with the O.F.T) or on grounds of health and safety at work, for example vehicle emission testing, road traffic (over weight vehicles) and enforcement with the local traffic police.
7. Consult with the London Fire and Emergency Planning Authority before service of a Health and Safety notice that impinges on fire safety or taking action to deal with fire safety under the Housing Act 2004.
8. Take account of any new legislation or guidance which impacts on their duties, actively participate in joint local authority schemes to achieve greater consistency, and from time to time carry out benchmarking exercises for this and other purposes.

The above measures will be supplemented by training for enforcement officers, the introduction where appropriate of quality assurance techniques, and managerial checks on performance.

4.5 Targeting

The Council accepts that its enforcement resources are limited and that they should be targeted to those persons, premises or companies, whose activities give rise to the risks that are the most serious or least well controlled. The Department therefore targets its enforcement action in three ways.

Firstly officers carry out programmes of inspections on a risk-rating basis, the risk rating scheme usually being that of a national regulatory body, such as the Food Standards Agency or the Health and Safety Executive. Premises or activities with the highest hazards, greatest risks, poorest compliance and worst management will be inspected more frequently than low risk premises. Some very low risk premises may not form part of the formal inspection programme at all, but will generally be given literature or guidance to help them run their business safely, and with the least impact on their local environment. It follows therefore that most of the enforcement activity arising from pro-active programmes will be targeted on the cases most requiring it.

The second targeting mechanism is the investigation of complaints where evidence, experience and this policy are used to determine enforcement action.

The third targeting mechanism is planned, special surveys and enforcement initiatives carried out in response to national concerns as voiced by the government or its agencies, or local concerns as voiced by Members of the Council, or residents.

4.6 Complaints about the Service

If anyone wishes to complain about enforcement action they may do so initially by contacting the relevant Team Manager by telephone: -

Mr Tim Davis	- Private Sector Housing	Tel 020 7341 5668
Mr Tarh Nzo	- Private Sector Housing	Tel 020 7341 5605
Mr Vincenton Riviere	- Trading Standards	Tel 020 7341 5609
Mrs Janet Eckles	- Food Safety and Standards	Tel 020 7341 5626
Mr Andrew Willis	- Health and Safety	Tel 020 7341 5771
Mr Steve Eckles	- Noise and Nuisance	Tel 020 7341 5656
Mr Dennis Martin	- Pest Control	Tel 020 7341 5773
Mr Guy Denington	- Environmental Quality and Public Health	Tel 020 7341 5295

or by writing to them at the Council Offices, 37 Pembroke Rd, London W8 6PW. Team Managers can also be contacted at the e-mail address of env.health@rbkc.gov.uk .

Where possible a complaint will be investigated within 15 working days. A complainant will also be advised at the outset about how the complaint will be dealt with and when to expect information on the progress of the investigation.

If a complainant is dissatisfied with the result of their complaint to the Team Manager, the complaint will be reviewed at a higher level, and may ultimately be dealt with by the Town Clerk and Chief Executive. The formal complaints procedure is on the Council's website: <http://www.rbkc.gov.uk/YourCouncil/Feedback>

5.0 PUBLICITY

The Department will normally publicise details of any convictions, which could serve to draw attention to the need to comply with the law or deter others. Where appropriate, the media will also be provided with factual information about charges that have been laid before the Courts.

A register of health and safety notices, which affect the public, is also available to view at the Council Offices.

The names of companies and individuals convicted of breaking health and safety law in the previous 12 months will be published annually by the HSE.

In keeping with the spirit of the Freedom of Information Act and the Environmental Information Regulations, the Council publishes an increasing amount of information on its website: www.rbkc.gov.uk . The Department of Environmental Health is also, along with the majority of other London Authorities, contributing to a scheme across the capital to publish the results of all food premises inspections (scored from 0-5) which should be available during the course of 2007.

Anyone wishing to make an official request for information under this legislation should contact our Freedom of Information Officer on 020 7937 4564 for advice.

This policy document is freely available to the public on the Council's website, or as a paper copy on request to the Director for Environmental Health and Trading

Standards, 37 Pembroke Road, W8 6PW (telephone: 020 7341 5741). The policy will be subject to periodic review.