

# Environmental Health Enforcement Policy



THE ROYAL BOROUGH OF  
KENSINGTON  
AND CHELSEA

**Approved by the Leadership Team on 19 October 2022**

**Next Review and Update: April 2023**

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## **PREFACE**

The Royal Borough of Kensington and Chelsea ("the Council") as a local authority has a wide range of functions and is responsible in law for enforcing a number of Acts of Parliament as part of its statutory functions. These include but are not limited to the enforcement of trading standards, food safety, food standards, public health, infectious diseases, health and safety, private sector housing, noise and nuisance, environmental quality, alcohol and other licensing, pest control, animal health and public safety at events.

<b>Teams within Environmental Health</b>	<b>Key areas of responsibility (not exhaustive)</b>
Trading Standards	Age restricted products, product safety, intellectual property (counterfeiting), pricing, descriptions of goods and services, terms and conditions, rogue traders, estate and letting agency work, scams awareness and doorstep crime and weights and measures
Food Safety	Food safety, food standards, Public Health & Infectious Diseases
Health & Safety	Health & safety of commercial premises and public events
Private Sector Housing	Enforcement of the Housing Act 2004 and other relevant Environmental Protection, Building Act and Public Health legislation. Mandatory licensing of Houses in Multiple Occupation. Energy efficiency/fuel poverty advice, response to service requests in relation to housing disrepair, nuisance, and hoarding.
Noise and Nuisance	Enforcement of various Acts including the Environmental Protection Act dealing with neighbour noise, commercial noise, smells, untimely commercial activities, construction sites and anything affecting complainants that can be reasonably controlled.
Construction Management Team	Control of disturbance from major sites and developments. This covers the range of activities that affect local residents and businesses when a building site is operating. Regulating sites including noisy work at the weekends, the Construction Bond in a multi-disciplinary approach.
Pollution Regulatory	Air quality issues, contaminated land, integrated environmental impact assessment and managing the Borough's air pollution monitoring and equipment.
Licensing	Alcohol and Entertainment Licensing, Temporary Event Notices (TENs), Massage and

	Special Treatments licensing, Animal licensing, Gambling and Gaming licensing, Firework and Explosives licensing, Scrap Metal Dealers licensing.
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Each area of work uses different legislative tools to ensure compliance with the relevant statutory provisions and each has its own extensive body of regulations, codes of practice and guidance.

This policy sets out the Council's approach to the use of enforcement powers and the range of options available to the Council in discharging its statutory functions.

The Council is committed to on-going consultation with businesses and residents in setting its policy priorities and these will be reflected in its overall enforcement approach.

The policy is not intended to be exhaustive, and it cannot be prescriptive as the circumstances of each case and the evidence available must be considered together with other public interest factors. However, the policy is intended to provide an overview to ensure residents, visitors, businesses and other stakeholders are familiar with the enforcement approach adopted by the Council and how this is implemented across the organisation.

The Council has also had regard to the provisions of the Regulators' Code, which came into effect in April 2014 under the Legislative and Regulatory Reform Act 2006. The 2006 Act provides a principles-based framework for how regulators should engage with those they regulate. In addition, consideration has also been given to the Regulatory and Enforcement Sanctions Act 2008.

This revised policy document supersedes any previous versions of our enforcement policy. In revising this policy, we have considered how best we can:

- Encourage and promote compliance
- Improve confidence in compliance for those we regulate
- Focus on high-risk issues
- Provide encouragement for compliant businesses
- Understand and minimise the negative economic impacts of our activities; and
- Minimise the costs of compliance for those we regulate.

This Policy document has been prepared both for officers of the Council and for the public to illustrate the Council's approach in reference to enforcement. The information provided on this Policy document does not, and is not intended to, constitute legal advice. All information, content and materials available on this document are for general informational purposes only.

## **1.0 INTRODUCTION**

**1.1** This policy seeks to ensure that the application of any enforcement is:

- transparent and accountable
- proportionate
- targeted
- consistent in approach; and
- appropriate

- 1.2** The Council's past experience in the enforcement of its statutory functions has shown that, in most cases, businesses and individuals comply with their legal obligations, and a failure to comply is often as a result of ignorance or inadequate training, poor management or control and in rare or certain cases from wilfulness.
- 1.3** This policy is a framework for all officers who are responsible for and have appropriate delegated powers to undertake enforcement on behalf of the Council.
- 1.4** 'Enforcement' includes any action taken by officers of the Council aimed at ensuring that individuals or businesses, including local authority managed premises, comply with their respective legal obligations.
- 1.5** Whilst the general principles outlined below will apply in all cases it must be recognised that each individual case will vary, and each must be considered on its own merits before a decision is reached. In limited cases, the Council may decide that a provision in the Regulators' code is either not applicable to the specific circumstances of a case or it is otherwise outweighed by other statutory provisions. It should be noted that, any decision to depart from the Code will be in very limited circumstances and a thorough and reasoned approach will be adopted before any decision is made.

## **2.0 GENERAL PRINCIPLES OF ENFORCEMENT AND STATEMENT OF INTENT**

**We will carry out our activities in a way that supports those that we regulate to comply and grow**

- 2.1** When there has been a failure to comply with legal and/or regulatory obligations by individuals and/or companies, officers will pursue enforcement action at the appropriate stage, depending on the facts and circumstances of each case. The Council considers each matter on a case-by-case basis, with a wide range of factors informing its decisions. These considerations are set out in the body of this Policy and outlined in detail at paragraph 4.1 below.
- 2.2** Officers will seek to adopt efficient and effective approaches to regulatory inspection and enforcement which improves regulatory outcomes without imposing unnecessary burdens on businesses and individuals.
- 2.3** The level of enforcement will be proportional to any alleged offence committed, consistent in application, (including consistency with other local authorities or enforcement agencies, if applicable), transparent in its use and appropriate to the circumstances of the particular case in question.
- 2.4** Depending on the severity of a case, the Council will adopt a 'tiered approach' to enforcement where informal methods are initially adopted, and this is gradually escalated to a more serious and formal approach, if there is repeated and continued non-compliance with the law. However, when there has been personal injury and/or there is a risk to the public and individuals, the Council will take a robust approach to ensure there is no harm to individuals and members of the public.

**We will provide simple and straightforward ways to engage with those we regulate and to hear their views**

- 2.5** When enforcement action is necessary due to ignorance (ignorance of the law is not a defence in criminal proceedings) rather than wilfulness, officers will give advice and provide information to assist with the training of those involved. This does not preclude enforcement action. In this regard, we will actively work with businesses and individuals to advise on and assist them by confirming what is and is not required to enable them to fulfil their regulatory and compliance duties. In practice, this means distinguishing between legal requirements and general advice/guidance in order to minimise the effect and burden of over regulation.
- 2.7** We will target our resources where they will have the greatest effect. In this regard, we will conduct inspections primarily when there is a reason for doing so; for example, when investigating a complaint, in response to intelligence about a particular premises and/or issue or, as part of our risk assessment process. A significant focus will be on those matters in which a failure to comply would present a serious risk of harm or injury and there is a likelihood of non-compliance.
- 2.8** We will adopt a more liberal approach with those businesses or individuals who have a history of compliance and co-operation with the Council in respect of their statutory obligations. However, for those businesses or individuals whose activities are likely to cause material loss or harm to others or, more critically, endanger the health, safety and wellbeing of people or the community, the Council will not hesitate to use the full range of enforcement tools at its disposal.
- 2.9** Enforcement decisions will be made in a fair, independent, and objective way and will not be influenced by issues such as ethnic origin, gender, religious beliefs, disability, sexual orientation or any other protected characteristic, or the political views of the suspect, victim, witness, or council officer. The Council also has a set of values as to how officers act towards the communities and individuals we serve. The Council's values can be accessed here: [RBKC Council Values](#).

### **3.0 COMPLIANCE WITH THE PRINCIPLES OF GOOD ENFORCEMENT**

#### **3.1 Transparency**

- We will make it clear what must be done, distinguishing between legal requirements and what is best practice but not compulsory, in written and verbal communication
- We will write to confirm any verbal advice if requested
- Any written advice given shall be provided in plain, accessible language and/or translation and in a range of formats and mediums, where possible
- When immediate action is necessary, we will explain why such action is to be taken and confirm this in writing
- Adequate information will be provided to enable reference to be made to the relevant legal and associated documents
- Any service standards such as the content of inspections or when you can expect a response will be available on request and on our website
- We will make it clear what sort of conduct can be expected when an officer visits and what rights of complaint are available

- Any relevant complaints or appeals procedures will be explained.

### **3.2 Accountability**

Visits and inspections are usually made unannounced but, if appropriate and where necessary, appointments will be made, or advance notice will be given. When access cannot be obtained during the day, or in other appropriate circumstances, visits will be made outside normal working hours. Enforcement officers will always identify themselves by name, their role within the Council and they will produce a warrant of authorisation and/or entry before any interaction and entry into a premises unless they are conducting surveillance (for instance in test purchase cases) or otherwise for health and safety reasons.

### **3.3 Proportionality**

The type of enforcement action taken by officers will, in part, depend on the risk of, or actual, negative impact on others arising from the activity in question. Action taken will be proportionate to the breach/offence which has occurred.

When the law requires that risks should be controlled “as far as reasonably practicable” officers will consider the cost and the ease of any suggested action as well as the degree of risk. However, some risks may be so severe that they cannot be permitted irrespective of the economic consequences.

### **3.4 Consistency**

Decisions on enforcement always require a degree of personal judgement by officers and the circumstances of each case will inevitably differ. Furthermore, the framework and guidance used by officers of the Council will also change over time and this may lead to inconsistency in addressing any non-compliance. To ensure consistency, officers will adhere to the following:

- Follow current internal procedural and guidance documents/policies
- Take into consideration relevant guidance and liaise with other authoritative or professional bodies e.g., the Food Standards Agency, the Health and Safety Executive, the Chartered Trading Standards Institute, the Gambling Commission, the London Special Treatment Working Group and the Institute of Licensing
- Take into account relevant legislation, guidance and case law that is relevant to any given area and which may impact upon their duties
- Liaison with other enforcement agencies as necessary
- Liaison with and participation in joint local authority schemes to achieve greater consistency and share best practice procedures
- Having regard to the HSE’s Enforcement Management Model, (when enforcing under Health & Safety legislation)
- Conducting benchmarking exercises to ensure best practice procedures are adopted
- Sharing of information between officers and across different teams (in accordance with data protection legislation) if needed to ensure consistency.

The above measures will be supplemented by specific enforcement training for officers and managerial checks on performance.

### **3.5 Targeting**

The decision to inspect specific premises may be taken for various reasons. Inspections may arise from complaints or concerns that have been reported about specific premises or due to the risk rating of the premises that determines the frequency of enforcement for high and medium risk premises.

Enforcement action will therefore be targeted towards those individuals, premises and/or companies whose activities give rise to serious risk to the public. Officers of the Council will therefore target enforcement action in three ways:

- i. Officers will conduct programmes of inspections on a risk rating basis. Premises or activities with the greatest hazards, greatest risks, poorest compliance, and poor management will be inspected more frequently than those premises with low-risk activities. It follows that most of the enforcement activity arising from pro-active programmes will be targeted on the cases most requiring it.
- ii. The second targeting mechanism is the investigation of complaints when evidence, experience, receipt of intelligence and this policy is used to determine the most appropriate course of enforcement action.
- iii. The third targeting mechanism is planned, special surveys, multi-agency initiatives and other enforcement initiatives carried out in response to national concerns or as voiced by the government or its agencies, identified by council officers or local concerns as voiced by Members of the Council, or residents.

### **3.6 Helpfulness**

We will work with individuals and businesses to help them comply with the law in the following ways:

- Actively advise businesses (especially small and medium sized businesses) and assist with compliance
- Officers will identify themselves by name (always presenting an official identity card, or warrant card, which can be verified by a telephone call if requested)
- Provide advice and information on our website
- Provide advice in different languages, if required
- Provide a courteous and efficient service.
- Observing the Council's Values [RBKC Council Values](#).

## **4.0 ENFORCEMENT OPTIONS**

### **4.1 Factors to be considered**

The method of enforcement action chosen by officers should produce the highest (reasonable) standards of compliance within a short timeframe, where practicable. In



assessing what enforcement action is necessary and proportionate, consideration will be given to:

- The seriousness of the complaint/non-compliance.
- Current business practices, including response to previous advice and general cooperativeness of the offender
- The degree of risk from the situation and whether any harm was caused
- The circumstances of the case and likelihood of its continuation or recurrence in the future
- Views of and impact on any victim and any financial gain or benefit received from non-compliance
- The history of the person(s), company or premises involved
- The impact of the enforcement action chosen and its effect as a deterrent on others displaying a similar behaviour pattern
- The likely effectiveness of the various enforcement options
- Any relevant statutory provisions (guidance and advice included, statutory or otherwise)
- The impact of the behaviour on the licensing objectives and whether these are undermined
- Blatant or reckless disregard for the law and poor management
- Whether 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 a personal attack, damage or disturbance
- The defendant has a relevant criminal history which is an aggravating factor in the present offence
- The offence, although not serious in itself, is widespread in the area where it was committed and may therefore be indicative of a pattern of behaviour
- An officer has been obstructed in the course of their duties
- The cumulative effect of such breaches would be serious even if the breach itself was not
- A prosecution will have a significant deterrent effect
- Local priorities of the Service and the Council

Under normal circumstances, a process of escalation will be used until compliance is reached. Exceptions may occur when there is a serious risk to public safety/ the environment or the offences have been committed deliberately, negligently or involve deception and otherwise when there is likely to be a significant economic impact.

There is a separate private sector housing enforcement policy which refers to specific enforcement action taken in accordance with the Housing Act 2004 and the Housing and Planning Act 2016. Further information can be found on the Council's website, [Environmental Health policies](#) or by contacting the Private Sector Team Housing Manager by calling the Environmental Healthline on 020 7361 3002 or by email at [environmentalhealth@rbkc.gov.uk](mailto:environmentalhealth@rbkc.gov.uk).

There is also a separate Trading Standards enforcement policy in relation to enforcement action for breaches of the following lettings legislation:

- The Enterprise and Regulatory Reform Act 2013 (in relation to The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014)

- The Consumer Rights Act 2015 (sections 83-88)
- The Tenant Fees Act 2019
- The Housing and Planning Act 2016 (in relation to The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019)

Further information can be found on the Council's website [Environmental Health policies](#) or by contacting the Trading Standards Team Manager by calling the Environmental Healthline on 020 7361 3002 or by email at [trading.standards@rbkc.gov.uk](mailto:trading.standards@rbkc.gov.uk).

#### **4.2 Use of social media and online resources for enforcement purposes**

Some employees use social media in the course of their work for the purpose of gathering evidence to assist in the council's enforcement activities (for instance, to detect benefit fraud). These employees must adhere to the Regulation of Investigatory Powers Act (RIPA) (2000) and the Council's Policy on surveillance powers in addition to corporate policies and guidance on the use of social media. The use of social media can trigger the relevant surveillance legislation and officers may unwittingly undertake online surveillance without the appropriate authority in place. Officers should therefore consider whether the provisions of RIPA are applicable to the work they undertake and, if in doubt, to contact Legal Services. More information on RIPA can be found on the Council's intranet page.

#### **4.3 Possible enforcement options**

The level of enforcement action that may be taken varies from no action through to court proceedings. The main types of action that can be considered are shown below.

##### **Informal Action**

##### **a) No action**

This is appropriate when it is a minor/technical non-compliance that is rectified immediately and there is co-operation. However, any information about non-compliance may be used to support future enforcement action if this is relevant and there are repeated incidents by the same individual and/or company.

##### **b) Advice, Education, Training and Warning Letters**

This will be appropriate when the degree of risk (or in some cases environmental impact) from any given situation is minor but cannot be rectified immediately. The breach of legislation is often technical but significant enough to warrant a written letter of warning. Formal action may be taken if similar infringements are found in the future. 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.

Informal action will be recorded on departmental files and will be used as a basis for relevant future enforcement action if there are recurring problems with an offender or premises. This will be done so in compliance with the Council's retention policy and its obligations under the Data Protection Act and the General Data Protection Regulation.

We offer a range of e-learning courses covering food safety, health and safety, licensing and public health which can be viewed and accessed here: <https://www.rbkc.gov.uk/business-and-enterprise/health-and-safety/e-learning-training-courses>

We also provide short courses for businesses who sell age restricted goods, and we provide guidance on how they can implement good practice skills to ensure they do not contravene the law. For further information, please contact: [trading.standards@rbkc.gov.uk](mailto:trading.standards@rbkc.gov.uk)

### **c) Information Notices**

The statutory provisions the Council enforces enables officers to demand information, which is essential to serve notices or summons correctly, or to ascertain if there has been a breach of legislation. When an officer is uncertain about the information held by the Council, or where certain details are unknown, officers can serve information notices in some cases on those that have an obvious connection to the case, requiring information or seeking clarity or confirmation about the information held by the Council. Failure to comply with an information notice will impact upon the Council's ability to discharge its duties and it is regarded as a serious breach, which can lead to further enforcement action.

### **d) Age Restricted Test Purchasing**

The Council carries out two types of age restricted test purchasing in order to ensure compliance with the requisite legislation. These are often conducted in response to complaints received by members of the public. The two tests are: Challenge 25 Test purchasing and underage test purchasing.

- Challenge 25 Test Purchases are used to identify businesses that may have a weakness in the precautions taken to prevent underage sales. No offence is committed by businesses as the volunteers used are slightly older than the minimum age, but the possible weakness is discussed. Businesses are given written advice to use Challenge 25 which requires proof of age for any age-restricted goods purchase when the seller believes the purchaser to be under 25. They are also encouraged to attend training offered by Trading Standards which is suitable for both employees and managers.
- An underage test purchase will be made at any business failing a Challenge 25 test purchase, at businesses where complaints have been received, or where they have recently made an underage sale. Selling to an underage person is evidence of an offence by the seller, the business and, if applicable, the premises licence holder. This offence will be investigated and, although many outcomes are possible, the offenders may be prosecuted, or a premises licence may be reviewed. It is unlikely that employees will be prosecuted for a first offence unless they are believed to be particularly culpable.

The training offered by the Trading Standards team is open to all sellers of age-restricted goods.

### **Formal Action**

### **e) Statutory Notices**

In certain circumstances, legislation allows an officer to serve a notice requiring action to be taken or, that certain operations/activities be stopped immediately. In some instances, the service of a statutory notice may be compulsory. The service of such a notice may be followed by an investigation into the cause of the breach and further enforcement action, including prosecution may follow, particularly when there is a deliberate failure to comply with the notice. Failure to comply with a statutory notice is considered to be a disregard for the law and appropriate action will be taken. Statutory notices are often used in the following circumstances:

- A serious threat to public health and safety and/or the environment will arise, or the situation will deteriorate, if a breach is not remedied quickly; or
- There have been repeated breaches of legislation; or
- An informal approach has either failed or is unlikely to be successful

When an individual or company has been served with a statutory notice, they will have a right of appeal from the relevant court or tribunal from which the notice has been issued. When a right of appeal exists, this will be explained in writing and the subsequent measures required to be taken.

#### **f) Fixed Penalty Notices and Penalty Charge Notices**

Fixed Penalty Notices (FPNs) may be issued as an alternative to prosecution in respect of a range of offences. They are normally appropriate for minor offences and avoid the defendant gaining a criminal record and the accumulation of costs. Where legislation permits an offence to be dealt with by way of a FPN, we may (subject to satisfying the evidential and public interest tests) choose to issue one for the first offence, without issuing a warning. However, a FPN would not normally be appropriate for a repeat offence.

If an individual appeals the issuance of a FPN and elects a trial, this is also an option and will be made clear in any communication. Further, if it is considered that the FPN should not have been issued, it can be withdrawn.

A Penalty Charge Notice (PCN) is a form of FPN issued by officers of the Council to recover unpaid fees. The difference between the two is that FPNs are often followed up with criminal prosecution if the penalty remains unpaid.

We are only able to issue penalty notices when we have the specific powers to do so. In some circumstances, in particular when there is repeated non-compliance, prosecution may be a more appropriate route. It should be emphasised that, when a FPN is not paid, we will enforce the penalty.

#### **g) Prohibition**

This power will be used when there are statutory grounds and where the situation cannot be allowed to continue because of the risks involved. 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, when the risk is more widespread.

#### **h) Injunctions**

The Council may seek an injunction in certain circumstances to prevent a serious risk of threat, harassment, alarm or distress to any person(s). This is ordinarily a last resort, and it is often deployed in circumstances when other enforcement measures have been ineffectual in preventing the offending behaviour, or where the process of law would take an unacceptable period of time, having regard to the particular sensitivities of the case.

Injunctions may also be sought as an alternative, or in addition to other enforcement mechanisms such as prosecutions to prevent any serious risk or harm to persons.

#### **i) Undertakings**

The Enterprise Act 2002 allows officers to seek undertakings and/or take civil action (including enforcement orders) when there are breaches of consumer protection legislation and to implement enhanced consumer measures.

#### **j) Seizure of Goods, Equipment, Food, Articles or Records**

All authorised officers can seize goods, equipment, food, articles or records, if these powers are available under the relevant statutory provisions they exercise.

Powers of seizure may be used in food safety matters when there has been a failure to adhere to standard food safety measures and there is an urgent need to remove food from the food chain and protect the public.

In addition, articles or substances that are a cause of immediate danger may also be seized under consumer protection laws. Officers may also seize records or goods which are deemed dangerous or required as evidence.

Equipment may be seized to prevent nuisance when there is repeated and reported instances of nuisance, and the removal of the equipment is deemed to be the most effective solution. Additionally, other articles, records and notices may be seized by officers if this power is available and if required as evidence to prove an alleged offence.

#### **k) Work in Default**

There is some legislation that enables the Council to carry out the work required by a notice (usually by hiring contractors) if the recipient of the notice does not comply with the said notice. When a notice has been served and the work required remains incomplete or undone within the time limit provided without good reason, the Council can conduct the work to remedy the problem (subject to the level of risk, practical constraints, and the financial considerations of each case). Before undertaking the work specified in the original notice, the Council will consider the prospect of recovery of any costs incurred and every effort will be made to recover the full cost of any work carried out 'in default'. The use of 'work in default' does not preclude parallel enforcement action from being taken, in particular when there has been serious harm and risk to the public.

#### **l) Forfeiture Proceedings**

A forfeiture order may be requested when there are grounds to do so. In effect, this is the loss of property without compensation as a consequence of a breach or non-performance of some legal obligation or the commission of a crime.

A forfeiture order is ordinarily applied for following the conclusion of criminal proceedings during the sentencing exercise. If acquitted, the defendant is entitled to retrieve the seized property. Officers need only show reasonable grounds to believe that the property was used in, or derived from, certain prohibited/illegal activities. In some cases, officers may agree that a business can sign over goods to the Council for disposal, when there are small quantities, e.g. under twenty counterfeit items, where a letter of warning or simple caution may be offered, in lieu of prosecution. It is important to note that signing over goods is *not* a forfeiture order.

#### **m) Arrest of individuals**

In limited circumstances, officers of the council may ask the Metropolitan Police Service to arrest individuals suspected of a criminal offence. This decision will not be made lightly, and officers must first satisfy the Metropolitan Police Service that the action is necessary.

#### **n) Licence Review**

Responsible Authorities and 'Other Persons' have the power under the Licensing Act 2003 and the Gambling Act 2005 to apply to have a premises licence or club premises certificate reviewed by the Licensing Committee where activities at the premises appear to be undermining one or more of the Licensing Objectives. The Licensing objectives are:

- Licensing - the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm.
- Gambling- preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime, ensuring that gambling is conducted in a fair and open way, and protecting children and other vulnerable persons from being harmed or exploited by gambling.

This option is also open to officers of the Licensing Authority but generally officers will only take such action if they feel that there are good reasons for a licence to be the subject of a review and no other Responsible Authority or other person has made the relevant application. Each application for a review will be considered on its own merits. The instigation of a review may lead to other enforcement action by the appropriate parties. Possible review outcomes include the modification of licence conditions, licence suspension or revocation, or removal of the Designated Premises Supervisor (DPS). For more information on reviews, please see:

<http://www.rbkc.gov.uk/environmentandtransport/licensing/applicantsandbusinesses/licensingreviews.aspx>

#### **o) Simple Caution**

There are preconditions which must be satisfied if a matter is to be dealt with by way of a simple caution as follows:

- There is sufficient evidence to give a realistic prospect of conviction

- A caution is in the public interest
- The offender has admitted the offence, either orally or in writing and has indicated acceptance of a caution
- It is appropriate to the offence and offender with reference to the offender's criminal history

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 and/or taking appropriate steps to ensure that the offence is not repeated. If a simple caution is offered but subsequently refused by the offender, the case could proceed to court.

Following the acceptance of a caution, the offender may be invited to contribute towards the council's costs in investigating and preparing the case, if these are significant. However, a caution cannot be granted on condition that the council's costs are paid.

#### **p) Prosecution**

The council has the power to prosecute individuals and companies for a wide range of criminal and regulatory offences. A prosecution, if successful, is the more serious method of enforcement and can lead to a wide range of sentences from a small fine to a custodial sentence in severe cases.

If appropriate, disqualification of directors will be sought under the Company Directors Disqualification Act 1986 if there is sufficient evidence, and this is in the public interest. For example, if the offence was committed with a director's consent, connivance, or neglect or a director ignored warnings from employees.

When there has been a death at work the Health and Safety Team would investigate in parallel with the Police. If the incident resulted from a failure to comply with health and safety law, the matter will be considered as part of the Police investigation if the circumstances of the case might justify a charge of corporate manslaughter. If the police decide not to pursue the case the Police would hand primacy to the Health and Safety Team for their investigation.

To ensure that decisions on the investigation and prosecution of work-related death cases are closely co-ordinated and dealt with sensitivity, the *"Work-Related Deaths Protocol: A protocol for Liaison"* will be used as guidance.

#### **The Decision to Prosecute/Issue a Simple Caution**

In order to initiate proceedings at the criminal court, the council has to ensure the Code for Crown Prosecutors is complied with and, in particular, each case has passed both stages of the Full Code test. The Full Code test is twofold:

- The evidential stage; and
- The public interest stage



## **The Evidential Test**

Firstly, the prosecutor must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. In considering the evidence, officers should have regard to any lines of defence which are open to or have been indicated by the accused, as well as any other factors likely to affect the prospects of conviction including admissibility of the evidence and reliability of witnesses. This must be an objective test since a conviction will only be obtained if the court or the jury is sure, beyond reasonable doubt, of a defendant's guilt.

## **The Public Interest Test**

The public interest test must be considered in each case when there is enough evidence to provide a realistic prospect of conviction. The prosecutor will balance factors for and against prosecution carefully and fairly considering factors such as the seriousness of the offence committed, the level of culpability of the defendant, the impact on the victim and community, any significant mental or other problems and whether prosecution is a proportionate response to the alleged offence. Please see paragraph 4.1 above.

## **5.0 INVESTIGATIONS**

### **5.1 Access**

At times officers may have to access premises or land to investigate or undertake inspections in accordance with their legislative duties. Most officers within the Food Safety, Health and Safety, Trading Standards and Licensing teams do not give advance notice about inspections and sector specific guidance such as the Food Safety Code of Practice requires officers to conduct inspections without prior notice. Officers will give adequate notice of intended entry where practicable and where they are required to do so legally, but at times, dependent on the risk or to avoid alerting perpetrators, they may attend without warning. On occasion officers may have to force entry and will apply to the relevant court for a warrant before doing so.

### **5.2 Notifying Alleged Offenders**

If we receive information (for example from a complainant) that may lead to enforcement action we will notify those concerned as soon as it is practicable and in any event before any intended enforcement action, unless this could impede an investigation or pose a safety risk to anyone concerned.

During an investigation, business proprietors, individuals and/or other witnesses can be kept informed of progress, except when this would undermine the investigation. Confidentiality will be maintained and personal information about individuals will only be released to a court when required and/or in accordance with the Data Protection Act 2018 (as amended) and the General Data Protection Regulations 2018. Information gathered during such investigations will be subject to the restrictions on disclosure and the permission of those



who have provided witness statements will always be obtained before it is used during an investigation.

### **5.3 Liaison with and referrals to other regulatory bodies and enforcement agencies**

We will work with and share information with other enforcement agencies and regulators as much as possible and reasonable in the circumstances, including when matters are beyond the Council's boundaries and areas of responsibility and/or relates to residents and businesses in other local authorities. At all times, we will ensure that personal information is handled in accordance with the requirements of the General Data Protection Regulations.

#### **Enforcement Management Model**

The Enforcement Management Model (EMM), together with the procedure for its application, provides the Council with a framework for making enforcement decisions that meet the principles of the Health and Safety Executive Board Enforcement Policy Statement. It captures the issues officers consider when exercising their professional judgement and reflects the process by which enforcement decisions are reached.

#### **Primary Authority schemes**

The Primary Authority scheme has been developed to assist businesses across the country. They are a legally recognised partnership in which a business can set up a formal relationship with a local authority (the 'Primary Authority'), in order to receive tailored support, advice, guidance and assistance in relation to one or more specific areas of law; there will be a cost agreed between the parties based upon the time and assistance required. The areas of law can include health and safety, food safety, trading standards and licensing laws. It is also possible for a group of businesses in a commercial field to create a coordinated partnership, which has a similar effect.

The Primary Authority can give advice on any matter relating to the category of legislation covered by the agreement. This could include:

- the legal obligations of the business
- interpretation of legislation
- reviewing the businesses processes to ensure compliance with the law.

Primary Authority advice to the business is 'assured'. This means that once the advice has been implemented, the business can have confidence that it is compliant and that another regulator cannot require it to comply in a different way.

There may also be inspection plans, which can be rolled out across a business to improve its effectiveness and efficiency, prevent any breaches of the law and avoid repeated checks by local regulators. Local authorities must follow these inspection plans unless the Primary Authority has been notified and an alternative course of action has been agreed.

Primary Authority agreements will not however prevent the Council from taking enforcement action if the advice that has been provided, whether individually or via the Primary Authority agreement, has not been complied with. If any issues arise, the enforcing

authority must liaise with the Primary Authority before any legal action can be taken. If a business has followed the advice of the Primary Authority, it is extremely unlikely to result in legal action.

Our officers will liaise with Primary Authorities when applicable i.e., before carrying out an inspection or when taking enforcement action.

We encourage businesses to contact us if they are interested in setting up a Primary Authority partnership with us. Please see below further information on how to contact us.

#### **5.4 Directed surveillance using the Regulation of Investigatory Powers Act (RIPA)**

The Council is a public authority for the purposes of the Human Rights Act 1998 and the Regulation of Investigatory Powers Act (RIPA).

Where an investigation into the prevention or detection of crime and/or disorder is necessary, for example, following a serious incident or repeated complaints, officers will endeavour to carry out the investigation using overt methods, unless the only means of effective investigation is by way of covert surveillance.

Any directed surveillance shall be carried out in accordance with the Council's RIPA Policy Manual which sets out the legislative and operational framework officers must adhere to before conducting any covert surveillance. Whilst there are three methods of surveillance available for local authorities to use, only two of these are permitted within the Council. These are directed surveillance and communications data and for each, there is a prescribed process which officers must follow, including seeking internal authority via an 'Authorised Officer' and subsequently by the court for directed surveillance or the Office for Communications Data (an independent arm's length body of the Home Office) in relation to requests for communications data. For further information on the Council's use of covert surveillance, please see the Council's intranet page or refer to Legal Services.

#### **5.5 Proceeds of Crime Act**

Applications may be made under the Proceeds of Crime Act for confiscation of assets in serious cases following a conviction. The purpose of this is to recover the financial benefit that the offender has obtained from any criminal conduct.

#### **5.6 Enforcement on Council premises, or at events organised by the Council**

In principle the Council cannot legally enforce against itself. When infringements on Council premises, or at events organised by the Council are identified, the matter will be referred to the appropriate Executive Director and the Town Clerk will be advised. If the problem relates to health and safety matters, the HSE will be notified.

If following an investigation, it is clear that the potential breaches of the law are the responsibility of third-party contractors, enforcement action will be considered as against those individuals and/or companies.

In relation to the Council's leisure centres, where only the running of the centres is managed by contractors, a protocol will be used to outline the approach that will be followed to investigate health and safety complaints.

## **6.0 IMPLEMENTATION OF THE ENFORCEMENT POLICY**

Directors, Heads of Service and Team Managers will be responsible for ensuring that all officers are familiar with the policy requirements and conduct their duties in accordance with this Enforcement Policy.

## **7.0 REVIEW OF THE ENFORCEMENT POLICY**

It is proposed that this Policy will be reviewed annually and in consultation with the relevant departments across the Council who exercise enforcement duties together with Legal Services and the Police.

## **8.0 COMPLAINTS ABOUT THE SERVICE**

If you would like to make a complaint about any enforcement action taken by the Council, in the first instance please contact the relevant Team Manager by telephone on 020 7361 3002.

Team Managers can also be contacted by e-mail at [environmentalhealth@rbkc.gov.uk](mailto:environmentalhealth@rbkc.gov.uk) or by writing to them at the Council Offices, 37 Pembroke Road, London W8 6PW.

Complaints about the services delivered by Environmental Health are dealt with by the Council's central complaints team. This formal process consists of two stages and if the complainant is unhappy with the outcome, they will be directed to the Local Government and Social Care Ombudsman. Details of the Council's complaints policy can be found here: <https://www.rbkc.gov.uk/contact-us/how-contact-us/complaints-comments-and-compliments>

## **9.0 PUBLICITY AND HOW TO CONTACT US**

We may publicise details of convictions if they are serious and if publication would have a deterrent effect on others. In appropriate cases, the media may also be provided with information about a case following its conclusion in court.

A register of health and safety notices, which affect the public, is also available to view by appointment at the Council Offices at Pembroke Road. Please telephone 020 7361 3002 or e-mail [environmentalhealth@rbkc.gov.uk](mailto:environmentalhealth@rbkc.gov.uk) to make an appointment.

In line with the Council's obligations under the Freedom of Information Act and the Environmental Information Regulations, the Council will publish as much information as possible to ensure residents, businesses and other stakeholders are fully informed of decisions and actions taken by the Council.

Further, anyone wishing to make an official request for information under this legislation should contact our Freedom of Information Officer [foi@rbkc.gov.uk](mailto:foi@rbkc.gov.uk).

### **Contact us**

This policy document is available to the public on the Council's website, or as a paper copy on request to the Director for Transport and Regulatory Services at 37 Pembroke Road, London W8 6PW (telephone: 020 7361 3002), or via email at [environmentalhealth@rbkc.gov.uk](mailto:environmentalhealth@rbkc.gov.uk).