

Public Protection Enforcement Policy



THE ROYAL BOROUGH OF
KENSINGTON
AND CHELSEA

Approved by the Deputy Leader and Lead Member for Healthy City Living

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PREFACE

We are responsible for several different enforcement functions namely trading standards, food safety, food standards, public health, infectious diseases, waste and street enforcement, health and safety at work, private sector housing, noise and nuisance, environmental quality, parks police, alcohol and other licensing, pest control, animal health, public safety at events and football stadia.

Each area of work uses different legislative action to ensure compliance and each has its own extensive body of regulations, codes of practice and guidance.

This policy details our approach to the use of our enforcement powers, whether that is criminal prosecution at one end of the spectrum or informal warnings and advice at the other.

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 cannot be absolutely prescriptive because the circumstances of each individual case and the evidence available must be taken into account. However, this policy should leave most readers in little doubt as to what they can expect by way of enforcement.

Particular regard has also been given to the provisions of the Regulators' Code and the provisions outlined in the Legislative and Regulatory Reform Act 2006 and 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;

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 Past experience in the enforcement of statute and regulations shows that, in most cases, businesses and individuals comply with the law. Any failure to comply with legislative requirements often stems from ignorance, carelessness, lack of training, lack of effective management control and sometimes from wilfulness or malice.

1.3 This policy guides all officers who are involved in taking enforcement action, investigating cases, serving notices and recommending or deciding upon the commencement of legal proceedings.

1.4 ‘Enforcement’ includes any action taken by officers aimed at ensuring that individuals or businesses, including Local Authority managed premises, comply with the law.

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 certain instances for example, we may conclude that a provision in the Regulators’ code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code or any other of the general principles will be properly reasoned, based on material evidence and documented.

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 Officers will enforce against or prosecute those who through suspected neglect, or a deliberate failure to take action, to comply with their legal obligations, where that failure results in actual harm or constitutes a risk to the public or employees, or where action is required to minimise the risk.

2.2 Officers will seek to adopt efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens.

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) transparent in its use and appropriate to the circumstances of the particular case in question.

2.4 Depending on the seriousness of a situation, the preference will be to enforce with moderation in the first instance, progressing through a graduated response to a tougher stance if offences are repeated. A tougher stance may be taken for first offences that have resulted in personal injury/harm or to protect the vulnerable e.g. sale of alcohol to an underage child.

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

2.5 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 provide information to assist with the training of those involved, in addition to taking enforcement action.

2.6 We believe that prevention is better than cure and therefore our role involves actively working with businesses and individuals to advise on and assist with compliance. We will make clear not only what they have to do but, where relevant, what they don't. In practice, this means distinguishing between legal requirements and advice or guidance about what is best practice but not compulsory, to minimise the cost of compliance by only requiring proportionate action.

2.7 We will target our resources where they will have the greatest effect. We will carry out inspections only where there is a reason for doing so, for example, when investigating a complaint, in response to intelligence about a particular premises or a particular issue/problem or as part of our risk assessment process. The greatest effort will be focussed where failure to comply would pose a serious risk of harm or injury and there is a high likelihood of non-compliance.

2.8 We will apply a light touch approach to those businesses who comply with regulatory requirements and those who work with us to achieve compliance. However we will not hesitate to use the full range of enforcement tools at our disposal against those businesses or individuals whose activities are likely to cause material loss or harm to others, or endanger the health, safety and wellbeing of people or our neighbourhood.

2.9 Enforcement decisions will be made in a fair, independent and objective way and will not be influenced by issues such as ethnicity or national origin, gender, religious beliefs, disability, sexual orientation or the political views of the suspect, victim, witness, offender or council officer.

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 in a range of formats and media where possible,
- Where immediate action is necessary, we will give an explanation of 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

3.2.1 Visits and inspections are usually made unannounced but, if appropriate and where necessary, appointments will be made or advance notice will be given. Where access cannot be obtained during the day, or in other appropriate circumstances, visits will be made outside normal working hours. Unless carrying out authorised covert surveillance work, test purchasing or unless health and safety reasons at the time dictate otherwise, enforcement officers will identify themselves by name and their role within the Council and will produce their Authorisation Warrant, when required by law or when requested.

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.

Where the law requires that risks should be controlled “as far as reasonably practicable” officers, will take into account the cost and the ease of any suggested action 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 e.g. industry/safety standards and public safety.

3.4 Consistency

Decisions on enforcement always entail a degree of personal judgement by officers and the circumstances of each case will inevitably differ in detail. Furthermore, guidance upon which officers act does change over time and a decision made one day may differ from one made the next for that reason. Consequently, there may be instances when over time, enforcement may appear to be inconsistent. Officers will try to ensure that enforcement action is as consistent as possible by:

- following current internal procedural and guidance notes,
- taking account of appropriate guidance from other authoritative or professional bodies e.g. Food Standards Agency, Health and Safety Executive, Chartered Trading Standards Institute, Institute of Licensing,
- taking due account of new case law relating to enforcement,
- taking account of any new legislation or guidance which impacts on their duties,
- liaising with other enforcement agencies as necessary
- actively participating in joint local authority schemes to achieve greater consistency,
- Having due regard to the HSE's Enforcement Management Model, (when enforcing under Health & Safety legislation)
- Carrying out benchmarking exercises from time to time
- Sharing of enforcement information between officers and across different teams is done within accordance with General Data Protection Regulation (GDPR).

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 due to complaints, or problems that have been reported, e.g. general complaint about shisha tobacco, which are in need of investigation, or the premises need to be inspected due to its risk rating (which determines the frequency of enforcement inspections for high and medium risk premises).

Enforcement will be targeted to those persons, premises and/or companies whose activities give rise to the risks that are the most serious or least well controlled. Officers therefore target their enforcement action in three ways:

- Firstly, officers carry out programmes of inspections on a risk rating basis. Premises or activities with the highest hazards, greatest risks, poorest compliance and worst 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.
- The second targeting mechanism is the investigation of complaints where evidence, experience, receipt of intelligence and this policy are used to determine enforcement action.
- 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 phone call if requested);
- Provide advice and information on our website;
- Provide advice in different languages, if requested and in every other way will provide a courteous and efficient service.

4.0 ENFORCEMENT OPTIONS

4.1 Factors to be considered

The method of enforcement selected should be calculated to produce the highest reasonable standards of compliance within the least time where practicable. In assessing what enforcement action is necessary and proportionate, consideration will be given to:

- the seriousness of compliance failure;
- current business practices, including response to previous advice;
- the degree of risk from the situation;
- the particular circumstances of the case and likelihood of its continuation or recurrence;
- whether any harm was caused;
- views of any victim/injured party, financial gain or benefit from non-compliance;
- the general cooperativeness of the offender;
- the past history of the person(s), company or premises involved;
- the impact of the enforcement choice in encouraging others to comply with the law or change the behaviour of the offender;
- the likely effectiveness of the various enforcement options;
- any relevant legislative provisions, policy, legal official, professional guidance or advice;
- whether the situation undermines the licensing objectives;
- blatant or reckless disregard for the law, 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 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;
- 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;
- local priorities of the Service and Council.

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

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. Please contact the Private Sector Team Housing Manager.

4.11 Use of Social Media 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 (e.g. to detect benefit fraud). These employees must adhere to the Regulation of Investigatory Powers Act (RIPA) (2000) and Council corporate policies and guidance on use of social media. The use of social media is not always covered by RIPA and officers should consider whether the provisions of RIPA are applicable and if in doubt seek legal guidance.

4.2 Possible enforcement options

The level of enforcement action that may be taken varies from no action through to formal proceedings in court. 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. Any details recorded about non-compliance may be used as a basis for judgement on future enforcement action.

b) Advice, Education, Training and Warning Letters

This sort of action will be appropriate where 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 judgements on future enforcement action if there are recurrent problems with an offender or premises.

We run a programme of food safety, health and safety, licensing and public health courses and training interventions which can be viewed and accessed via www.rbkc.gov.uk/environmentalservices/training

We also provide short courses for businesses who are involved in selling age restricted goods and how they can avoid falling foul of the law. Please contact: trading.standards@rbkc.gov.uk

c) Information Notices

Many pieces of legislation that we enforce enable officers to demand information which is essential in order to serve notices or summons correctly. When the officer is uncertain about the information we hold, or where certain details are unknown, the officer 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.

d) Age Restricted Test Purchasing

The borough carries out two types of age restricted test purchasing: Challenge 25 Test purchasing (C25 TPs) and underage test purchasing (UTPs).

- C25 TPs are used to identify businesses that may have a weakness in the precautions taken to prevent underage sales. No offence is committed by businesses that sell, 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 – requiring proof of age for any age-restricted goods purchase where the seller believes the purchaser to be under 25 – and encouraged to attend training offered by Trading Standards which is suitable for both employees and managers.
- An UTP will be made at any business failing a C25 TP, as well as at businesses about which complaints are received, or which have recently made a previous 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 a legal notice may be followed by an investigation into the cause of the breach and further enforcement action, including prosecution, may ensue, particularly where there is a deliberate failure to comply with the notice. Failure to comply with a legal notice will usually be taken as a disregard for the law and appropriate action will be taken. Legal notices are normally used where:

- A serious threat to public health, safety, the environment or to amenity will arise or a situation deteriorate, if a breach is not remedied quickly; or
- An informal approach has failed, or in the opinion of the officer, is likely to fail to achieve the necessary improvements; or

- The breach is one of a number of matters prescribed under legislation.

The response of the offender will be monitored to ensure a satisfactory outcome.

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.

f) Fixed Penalty Notices / Penalty Charge Notices

Certain offences are subject to Fixed Penalty Notices (FPNs) where prescribed by legislation. They are normally appropriate for offences at the minor end of the scale and avoid the defendant gaining a criminal record. Where legislation permits an offence to be dealt with by way of a FPN, we may (subject to evidential and public interest tests) choose to administer one on a first occasion, without issuing a warning. A FPN would not normally be appropriate for a repeat offence. FPNs may be issued to offer the person the opportunity of discharging any liability to conviction for the offence to which the notice relates by paying a penalty. There is provision for the person to be tried for the offence should he/she elect this process or the matter may proceed to trial should the penalty not be paid. If it is considered that the penalty notice ought not to have been given, it may be withdrawn. A Penalty Charge Notice (PCN) is a form of FPN issued by officers who have council backing to chase non-payment using civil action. The difference between PCNs and FPNs is that FPNs are often followed up with criminal prosecution if the penalty is not paid.

We are only able to issue penalty notices when we have the specific powers to do so. In some circumstances, in particular where breaches are recurrent, it may be that prosecution is more appropriate than the issue of a penalty notice. If a fixed penalty is not paid, we will enforce the penalty.

g) Prohibition

This power will be used where 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, where the risk is more widespread.

h) Injunctive Actions

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.

Injunctions may be sought as an alternative, or in addition to other enforcement mechanisms such as prosecutions.

i) Seizure of Goods, Equipment, Food, Articles or Records

All authorised officers can seize goods, equipment, food, articles or records, where specified in legislation, especially if required as evidence to prove an offence.

Powers of seizure may 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.

Articles or substances, which are a cause of immediate danger, may 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 abate nuisance where there are repeat offences or the nuisance is such that its removal is the most effective remedy. Additionally, other articles, records and notices may be seized by officers, if required as evidence to prove an alleged offence.

j) 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, , the work has not been done within the time limit, without good reasons, then 'work in default' may follow subject to the level of risk, 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.

The Council will make every effort to recover the full cost of any work carried out 'in default'. This does not preclude parallel enforcement action where the level of harm warrants it.

k) Forfeiture Proceedings

A forfeiture order may be requested, where 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.

Officers would most likely request this at the conclusion of a criminal prosecution case where the defendant's guilt has been established beyond all reasonable doubt. 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 (forfeit) sign goods over to the Council for disposal, where there are small quantities, e.g. under 20 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.

l) Arrest of individuals

In limited circumstances, officers may seek the arrest of individuals suspected of offences under the Trade Marks Act 1994, or other offences, if the officer suspects that the information supplied is not 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.

m) 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 (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 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 the instigation of 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>

n) Simple Caution

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

- There is sufficient evidence to give a realistic prospect of conviction,
- The offender admits his or her guilt,
- The person being cautioned agrees to it, having been made aware that the caution may be cited in Court if the person is found guilty of other offences in the future.

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 proper steps to ensure that the offence cannot recur. If a simple caution were to be offered and refused by the offender then the case would 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.

o) 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. Where appropriate, disqualification of directors will be sought under the Company Directors Disqualification Act 1986. We will also consider prosecuting directors if they are culpable as individuals. For example, if the offence was committed with their consent, connivance or neglect; or they ignored warnings from 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 corporate manslaughter. If the police decide not to pursue the case the Service 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, Local Authorities and the Health and Safety Executive will be followed.

The Decision to Prosecute/Issue a Simple Caution

Two tests are applied in determining whether a Prosecution or a Simple Caution is viable and appropriate. We follow guidance issued by the Crown Prosecution Service when applying the tests. More information can be found at: <https://www.cps.gov.uk/publication/code-crown-prosecutors>

A Simple Caution or Prosecution proceedings will only be progressed when the case has passed both the evidential test and the public interest test. The principles outlined also apply to the other types of formal enforcement actions that are available.

The Evidential Test

We 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 of a defendant's guilt.

The Public Interest Test

The public interest test must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. We will balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the defendant. Some factors may increase the need to prosecute whilst others may suggest that another course of action would be more appropriate. Please refer to section 4.1.

5.0 INVESTIGATIONS

5.1 Access

At times officers may have to access premises or land to investigate or undertake inspections in accordance with legislative duties. The majority of officers within the Food Safety, Health and Safety, Trading Standards and Licensing Teams do not give advance notice about inspections. E.g. The Food Safety, Code of Practice requires officers to carry out 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 may do so without prior warning. On occasion officers may have to force entry and will apply to the courts for a warrant.

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 is practicable of any intended enforcement action, unless this could impede an investigation or pose a safety risk to anyone concerned.

Throughout the course of an investigation business proprietors or individuals and witnesses will be kept informed of progress, except where 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 (e.g. as laid out in the Enterprise Act 2002).

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

Where there is wider regulatory interest, officers will refer information received to other relevant regulators.

Where appropriate, enforcement activities will be planned and coordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness and consistency of any enforcement.

We will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies. These may include (but is not limited to) Government Agencies and Departments, other Local Authorities, Police Services and Fire Authorities.

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 HSE 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 both been developed to assist businesses. Primary Authority is a legally recognised partnership where 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 similar effects.

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
- various checking procedures to ensure legal compliance

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 prevent any legal action where advice and guidance has not been followed, or actually ignored. However, if any problems do occur then the enforcing authority must liaise with the Primary Authority before any legal action can be taken. If the 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 e.g. 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 how to contact us on page 18, under section 9.0.

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.

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

Any directed surveillance shall be carried out in accordance with Council procedures, RIPA (Regulation of Investigatory Powers Act 2000) and The Protection of Freedoms Act 2012. Authorisation for this type of pre-planned investigation may only be given in writing by formally appointed officers within the Council before surveillance begins and formal authorisation by a Justice of the Peace is required.

5.5 Proceeds of Crime Act

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

5.6 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 will be 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 leisure centres, where only the running of the centres are 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

The Director for Public Protection, Heads of Service and Team Managers, will be responsible for ensuring that all officers are familiar with these policy requirements and carry out their duties in accordance with, this Enforcement Policy.

7.0 REVIEW OF THE ENFORCEMENT POLICY

Other Council services, including Legal Services and other interested parties, including the Police, will be consulted in respect of future revisions of this Policy.

This Policy will be reviewed annually.

9.0 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 on 020 7361 3002.

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

Where possible, a complaint will be investigated within 15 working days. A complainant will 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 Executive Director. The formal complaints procedure is on the Council's website: <https://www.rbkc.gov.uk/contact-us/comments-complaints-and-feedback-tell-us-what-you-think>.

9.0 PUBLICITY AND HOW TO CONTACT US

We will normally publicise details of any convictions to draw attention to the need to comply with the law and to deter others. Where appropriate, the media will also be provided with factual information about charges that have been laid before the Courts, any pending formal action and any enforcement action already taken.

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.

Anyone wishing to make an official request for information under this legislation should contact our Freedom of Information Officer on 020 7938 8226 for advice.

Contacting us

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 Public Protection, 37 Pembroke Road, W8 6PW (telephone: 020 7361 3002), or via email at env.health@rbkc.gov.uk.