

London Borough of Southwark

Enforcement Policy

**Agreed by Executive Committee
13 February 2007**

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Enforcement Policy

Introduction

1. The purpose of this policy is to create a borough wide approach to enforcement, providing a consistent framework for making enforcement decisions, and to make officers take their enforcement responsibilities seriously.
2. The policy reflects recent changes in the legislative powers now under the control of the local authority. It supersedes the existing enforcement policy agreed in November 2003 which only covered the environmental health and trading standards division.
3. The policy will apply to all service areas listed in Annex 1. In addition the policy sets standards for all officers to respond to nuisance, anti social behaviour or actions that breach legislation.
4. The council will use a range of activities to ensure that compliance with legislation including;
 - Carrying out regular inspections
 - Respond to complaints and enquiries from the public about businesses and individuals
 - Carrying out education and awareness programmes
 - Carrying out investigations to support enforcement action
 - Patrolling the streets and serving fixed penalty notices for a range of environmental offences as appropriate.

This range of enforcement may change as new legislation is enacted.

5. Each service department included in the policy will be required to develop and implement service specific guidance and procedures.
6. Planning enforcement is included within the scope of this policy. However the process for taking planning enforcement action will be made through a separate process.

What is Enforcement?

7. The term "enforcement", as set out in this policy means:

"actions taken by council officers to achieve compliance with legislation/national guidance"
8. Actions the council will take to achieve compliance include;
 - Education and awareness, including advice
 - Informal warnings
 - Formal actions such as the service of statutory notices, fixed penalty notices, cautions, prosecutions and injunctions

Each of these approaches is set out in further detail below.

Education and Awareness

9. Where there is evidence of a breach with a legal requirement, the council may consider an education and awareness approach instead of formal enforcement action. Examples where this might be appropriate would be when new legislation is introduced, or where there are misunderstandings in respect to the offence.

Warnings

10. In some cases, an opportunity will be given to make improvements in order to comply with the law within a reasonable period time. Warnings can take the form of a report, a verbal or written warning or statutory notice. Where appropriate, warnings will be confirmed in writing, and will explain;
- the law that applies
 - how it has been contravened
 - the action to take
 - time period by which the contravention should be remedied,
 - the consequences of not taking this action.

In all cases the council will have an audit trail that identifies the steps taken and the opportunity given to remedy a situation.

Administrative Penalties

11. Some offences have limited room for discretion and automatically result in the serving of a penalty charge notice or fixed penalty notice. These types of offences include illegal parking, dog fouling, littering and noise nuisance. Failure to pay the administrative penalty will be followed by criminal or civil court action as applicable.

Civil Action

12. Civil action will be used where there is continual failure to comply with the law civil action may be used.
13. The Housing Act 2004 gives the local authority powers to take action against private landlords, including those who have houses in multiple occupation. This policy will ensure that there is a specific focus on those landlords who breach the statutory regulations.
14. There is specific Housing legislation which relates to breaches of a tenancy agreement due to nuisance behaviour or a criminal offence. This legislation is contained within:-

Sanction	Legislation
Possession proceedings-postponed/ outright possession orders and eviction	Housing Act 1985 (as amended by Housing Act 1996)
Injunctions	Housing Act 1996 Antisocial Behaviour Act 2003
Introductory Tenancy	Housing Act 1996
Introductory Tenancy Extension	Housing Act 2004
Tenancy demotion	Antisocial Behaviour Act 2003
Right to Buy suspension	Housing Act 2004

Criminal Action

15. In certain circumstances, more direct action, is required by the council. Each case will be judged on its merits.

Restorative Justice

16. Restorative Justice programmes, such as Community Payback, are carried out by an order of the court. They can be used effectively to deliver community improvements by those who commit offences. As a council we are supportive of the community payback initiative, and work with the Police, National Offenders Management Service and Police to administer the service and deliver a range of local projects in our local communities.

Enforcement Objectives

17. Deciding when and how to take enforcement action will be taken on the basis of the following key principles:
 - a) Enforcement should improve behaviour for the benefit of the wider community
 - b) Enforcement should aim to deter future non-compliance
 - c) Regulation should be firm but and be;
 - Proportionate to the nature of the offence and the harm caused
 - Consistent in approach, taking account the severity of the offence the willingness of the offender to put this situation right and any history of previous incidents or breaches
 - Transparent about how the council operates and comes to an enforcement decision
 - Targeted to concentrate on the areas of highest risk
 - Accountable for the fairness, efficiency and effectiveness of enforcement activities and decisions
 - d) Seek to recover the costs of investigation and Court proceedings
18. The enforcement policy follows the principles set out in Enforcement Concordat to ensure that residents, businesses and visitors:
 - a) receive clear explanations from enforcement officers of what they need to do and by when
 - b) have opportunities to resolve differences before enforcement action is taken – unless immediate action is required or previous warning given
 - c) receive an explanation of their rights of appeal
19. Enforcement actions are taken within the context of a legal and policy framework. Council enforcement services will carry out their enforcement-related work with due regard to the Enforcement Concordat. This Concordat arises from a central government initiative and was adopted by the Council in December 1998. The Concordat lays out the principles of good enforcement. These are:
 - a) Publishing clear standards, setting out the level of service and performance that the public and businesses can expect to receive
 - b) Dealing with the public and the business in an open an honest way
 - c) Providing a courteous, efficient and helpful service
 - d) Responding promptly and positively to complaints about the service
 - e) Ensuring that enforcement action is proportionate to the risks to the public
 - f) Carrying out duties in a fair, equitable and consistent manner

A full version of the Enforcement Concordat is available online at
www.berr.gov.uk/files/file10150.pdf

Decision making framework

20. The decision to use enforcement action will be taken in the context of this policy and any other relevant policies of the council, but also in the context of the particular case under consideration. Factors taken into consideration will include but will not be limited to;
- a) The risk that the breach poses to the health, safety or economic welfare
 - b) The degree of pre-meditation of the offender
 - c) Whether the offence involves a failure to carry out the requirements of a statutory notice or order
 - d) Where there is a previous history of warnings or cautions for similar offences
 - e) Incidents such as the obstruction of an officer or aggressive behaviour
 - f) Where the offence, although not in itself serious, is widespread in an area.
 - g) There is reckless disregard for health and safety
 - h) Where false information has been supplied wilfully, or there has been an intent to deceive

Achieving Compliance

21. The council will take into account the following factors to achieve compliance;
- a) the level of complaints received relating to the person, business or household in the past
 - b) the person, business or households ability to comply
 - c) the willingness of the person, business or household to comply with the action proposed by the council

This list is not exhaustive and will depend on the facts of each case.

22. All decisions appropriate action will be taken based on the key principles set out as above.
23. Where a decision to prosecute is made, this decision will be taken in accordance with the Code for Crown Prosecutors, which details considerations to be taken into account before commencing prosecution proceedings. A full copy of the code is available from

CPS London: 5th floor, Rose Court, 2 Southwark Bridge, London, SE1 9HS

Web: www.cps.gov.uk/publications/code_for_crown_prosecutors/index.html²⁶.

24. Enforcement decisions and actions will be made with due regard to the provisions of;
- The Human Rights Act
 - The Crime and Disorder Act
 - Equal rights and anti-discrimination legislation
 - Service specific legislation
 - All other relevant legislation applicable from time to time
25. If it is in the public interest, matters concerning non-compliance may be shared, with other enforcement agencies. Any such action will be undertaken in compliance with the Data Protection Act 1998.

Publicising Enforcement Actions

26. In consultation with key agencies through the Safer Southwark Partnership (SSP) the Police and council have developed a protocol relating to the controlled publicity of ASBOs, injunctions and other legal orders obtained in relation to behaviour, which has caused harassment alarm or distress to individuals or the community. The purpose is not to punish or embarrass individuals but to increase the effectiveness of the council and partnership's policy and protocol and to ensure the order is enforced.
27. This protocol is not a blanket approach. When considering the need and type of publicity, a number of factors will be taken into account:-
- a) There are clear aims for the publicity and disclosure of information
 - b) Consideration of the human rights of the public including the victim(s) and potential victims
 - c) Consideration of the human rights of those against whom ASBOs are made
 - d) Consideration of the impact of vulnerable family members
 - e) the decision to publicise will be on a case by case basis
28. The criteria for publicising successful enforcement action is;
- a) to reassure the local community that issues of anti-social behaviour or other breaches of legislation are being dealt with and appropriate action is being taken
 - b) to deter those subject to anti-social behaviour orders or other legislative order from breaching them
 - c) to deter others from behaving in a similar manner
 - d) to reassure victims and witnesses that action has been taken to protect them
 - e) to increase the intelligence and speed of response by key agencies to enforce the order
 - f) to inform the public of the existence of orders, enabling them to assist in their enforcement, by advising the relevant authorities of any breaches
 - g) to set standards of behaviour that is acceptable to local communities.
29. Following an ASBO being obtained, a case conference will be set up to consider the appropriateness of publicising the case. The case conference will lead by a senior officer in Southwark anti-social behaviour unit (SASBU) and involve officers from agencies with an interest in the individual case, such as health and social care, the police and the youth offending team (YOT). The case conference will use an agreed risk assessment process and will record the reasons why publicity is necessary.
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31. In these circumstances the council or its partners, after consultation, will have the ability to publicise the individual, business or premises, or where appropriate the owner, through the local media, in a manner that does not unduly sensationalise the issues. The publicity must be managed and cleared by the council press office and state the facts and history of the case.

32. Each case is considered in line with Home Office guidance and current case law. To ensure publicity is 'proportionate, appropriate and necessary', a Community Impact and Human Rights Risk Assessment are completed by an authorised officer through a designated forum. Guidance notes are also available to assist with this process and to ensure other necessary considerations are taken into account when making the decision.
33. The protocol will be available through the Safer Southwark Partnership website or on request.

Authorisation of Officers

34. Only officers who are competent by training, qualification and/or experience will be authorised to take enforcement action. Officers will also have sufficient training and understanding of this enforcement policy to ensure a consistent approach to their duties. Officers are required to show their authorisations on demand.
35. Detailed enforcement procedures vary depending on the service area involved in dealing with any breach. Officers dealing with the public are required to identify which service area they represent. Details of our procedures will be made available on request
36. Details of which officers are authorised to make decisions to prosecute are contained within the council's constitution and schemes of management. These will be available on request

Appealing against Enforcement decisions

37. We will inform people against whom we take formal enforcement action, about any statutory rights of appeal. against a decision and advise them of the corporate complaints process.

Status & Review

38. This policy relates to the council's services (Appendix 1) as approved by the Council Executive. Additional guidance may be required to give more specific direction to council officers in the enforcement of specific legislation and standards. Such guidance will always comply with and complement this overarching enforcement policy.
39. We will review this policy, in consultation on an annual basis
40. An equalities impact assessment will be carried out as part of the review process.

Annex 1

Service	Criminal	Administrative Penalties (FPN, PCN's)	Statutory Notices	Restorative Justice
Anti-Social (SASBU)	√			√
Community Wardens		√		√
Environmental Health and Trading Standards	√	√	√	
Markets	√	√	√	
Highways	√	√	√	
Housing Management	√	√	√	
Parking & Abandoned Vehicles	√	√	√	
Planning Enforcement	√		√	
Building Control	√		√	
Waste management	√	√	√	√

Annex 2

The following legislation and guidance will be taken into account in the enforcement activities of the council:

- The Enforcement Concordat 1998
- Regulation of Investigatory Powers Act 2000
- Police and Criminal Evidence Act 1984
- Criminal Proceedings and Investigation Act 1996
- Freedom of Information Act 2000
- Human Rights Act 1998
- Data Protection Act 1998
- Local Government Acts
- Race Relations Act 1976 as amended 2000
- Crime and Disorder Act 1998
- Police Reform Act 2002 Schedule 5
- Public Health Acts
- Housing legislation including 1985, 1989 1996 and 2004 Acts
- Environmental Protection Act
- Prevention of Damage by Pests Act 1999
- Anti-Social Behaviour Act 2003
- Criminal Justice and Public Order Act 1994
- Clean Neighbourhoods and Environment Act 2005
- Highways Act 1980
- Town and Country Planning Act 1990
- London Local Authority Acts
- The Code for Crown Prosecutors
- Home Office Guidance on Use of Formal Cautions
- Any other current legislation that impact on these services.
- Any other relevant Governmental Guidance or professional advice
- Any other future legislation that embraces this new policy.