

**LONDON BOROUGH OF
TOWER HAMLETS**

ENFORCEMENT POLICY

July 2010

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APPENDICES

1. LBTH Policy on the Use of Covert Surveillance: Regulation of Investigatory Powers Act 2000
2. LBTH Policy on the Use of Covert Human Intelligence Sources

1. Introduction

- 1.1. This Enforcement Policy is concerned with the Council's exercise of its criminal and quasi-criminal enforcement functions. Whilst some of the sanctions available to the Council are civil in nature, such as forfeiture of goods and money, this policy is not concerned with purely civil enforcement such as the enforcement of debts. Rather, it is concerned with offences and contraventions of legislation that fall within the Council's responsibility to enforce.
- 1.2. The Policy will assist Council officers to carry out their duties consistent with the principles of enforcement set out in section 5. It will assist the community and other members of the public to understand why the Council approaches enforcement in a particular way in individual cases.
- 1.3. The Policy is a high-level document that applies to all of the Council's relevant enforcement functions. It is recognised that individual service areas within the Council that carry out enforcement may have to take into account considerations specific to the regulatory framework in which they operate. To this end, there may be additional service-specific enforcement policies that operate under the broad umbrella of this policy.

- 1.4. All authorised officers of the Council will abide by this policy. Any departure must be fully considered and justified by the appropriate officer before a decision is made.

2. The Basis for Enforcement

2.1. The Council will target its enforcement action having regard to the following –

- The Tower Hamlets Community Plan, adopted under section 4 of the Local Government Act 2000
- Local improvement targets contained in the local area agreement
- The Council's Local Development Framework
- Any external targets or requirements imposed under relevant legislation.

2.2. The Community Plan makes clear the role of enforcement in the goals of the Council and the Tower Hamlets Partnership. Overall, the Partnership is trying to achieve One Tower Hamlets, a borough where everyone has an equal stake and status; where people have the same opportunities as their neighbours; where people have a responsibility to contribute; and where families are the cornerstone of success. This is the broad vision of how to improve the well-being of Tower Hamlets.

2.3. One of the key themes in the Community Plan is that of achieving A Safe and Supportive Community. This means a place where crime is rare and tackled effectively

and where communities live in peace together. As part of tackling and preventing crime, the Council will have regard to prevention and reducing re-offending. However, the Council will also actively enforce and will promote its successes to support its Community Plan goals. Other key Community Plan themes that enforcement may support are A Great Place to Live (eg reducing graffiti and litter, providing first class and well-managed centres) and A Prosperous Community (eg supporting local business by eliminating unlawful trading).

2.4. All enforcement action is based upon an assessment of the nature of the offence and the risk, nuisance or disadvantage being caused.

2.5. This policy has been written with regard to the Regulators' Compliance Code and which came into force on 6th April 2008. The Compliance Code is a central part of the Government's better regulation agenda. Its aim is to embed a risk-based, proportionate and targeted approach to regulatory inspection and enforcement among the regulators it applies to.

2.6. The Council fully acknowledges and endorses the rights of individuals who may be subject to enforcement. It will ensure that enforcement action will be taken with due regard to:

- Police and Criminal Evidence Act 1984

- Criminal Procedures and Investigation Act 1996
- Human Rights Act 1998
- Regulation of Investigatory Powers Act 2000
- Legislative and Regulatory Reform Act 2006
- Home Office Circular 14 / 2006 - The Final Warning scheme
- Home Office Circular 016 / 2008 - Simple cautioning of adult offenders
- The Code for Crown Prosecutors
- Other relevant legislation and advice.

2.7. Where specific advice or direction on enforcement action exists, this will be taken into account as appropriate. For example, in relation to licensing the Council will have regard to the guidance issued under section 182 of the Licensing Act 2003. Specific advice or direction may come from sources such as internal operating directions or arrangements.

3. Principles of Enforcement

3.1. The Council's approach is founded on firm but fair regulation, around the principles of:

- **raising awareness** of the law and its requirements
- **proportionality** in applying the law and securing compliance
- **consistency** of approach
- **transparency** about the actions of the Council and its officers
- **targeting** of enforcement action.

3.2. Raising Awareness

3.3. The first step in enforcement is to prevent contraventions of the law by raising awareness and promoting good practice, by providing advice, information, guidance and support.

3.4. Proportionality

3.5. Proportionality is about balancing the crime or the wrong being investigated and the risk, nuisance or disadvantage being caused.

3.6. **Consistency**

3.7. Consistency means taking a similar approach in similar circumstances to achieve similar ends. The Council aims to achieve consistency when: responding to requests for service; offering advice; and deciding upon enforcement action.

3.8. Consistency does not mean uniformity. Officers will need to take account of many variables when making decisions, including: the seriousness of the breach; any history of previous breaches; the attitude of the offender; and the capacity of the offender.

3.9. Whilst the appropriate officer will be expected to exercise judgement in individual cases, the Council will continue to strive to promote consistency, including: advice, guidance and training for its officers; and arrangements for effective liaison with other enforcing bodies.

3.10. **Transparency**

3.11. Transparency means helping those who are regulated and other individuals to understand: what is expected of them; and what they should expect from the Council as an enforcing authority.

3.12. Transparency involves: distinguishing between statutory requirements and other advice and guidance; and

explaining why an officer will or has taken enforcement action.

3.13. Targeting

3.14. Targeting means ensuring that enforcement is directed primarily where:

- activities give rise to the **most serious** risks, nuisances, disadvantages or other similar situations;
- where the law places an absolute duty upon the Council;
- activities are least well controlled/managed.

3.15. Action will be primarily focused on those who are responsible for a risk or activity and are best placed to control it.

4. Authorisations and Delegations

- 4.1. For enforcement action or action taken in connection with legal proceedings, decisions will be taken by officers duly authorised under legislation, or with delegation under schemes of delegation maintained by the Council, as relevant or appropriate to the subject area (“Authorised Officers”).
- 4.2. Pursuant to the Council’s Constitution, the responsibility for instituting or participating in legal proceedings lies with the Assistant Chief Executive (Legal Services) or officers nominated by the Assistant Chief Executive (Legal Services). Accordingly, the decision whether or not to prosecute offences will be taken within Legal Services. This decision will typically be taken on instructions from Authorised Officers.
- 4.3. Officers will be authorised to carry out enforcement actions in accordance with schemes of delegation made under the Council’s Constitution.
- 4.4. Where any action is taken which may lead to or bear upon a prosecution or simple caution, or give rise to other enforcement action, e.g. service of a notice, the Council’s Legal Services will require to be satisfied as to the

adequacy and legality of documentation, procedures and evidence.

5. Investigations

- 5.1. The Council will determine the appropriate approach to investigation having regard to the content of this policy, including the principles of enforcement.

- 5.2. As set out in paragraph 4.6 above, the Council respects the rights of individuals and will have regard to the statutes and guidance there set out. The Council will follow the policies set out in Appendices B and C to this Policy when using, respectively, covert surveillance or covert human intelligence sources under the Regulation of Investigatory Powers Act 2000.

- 5.3. In respect of the regulatory functions exercised by the Council which are specified in Part 3 of the Schedule to the Legislative and Regulatory Reform (Regulatory Functions) Order 2007, the Council will, in determining the appropriate form of any investigation, comply with the requirements of the Regulators' Compliance Code.

6. Enforcement Options

- 6.1. There are a wide range of enforcement options open to the Council to take and each will be dependant upon the circumstances of the offence. Not all options will apply to every enforcement service, e.g. revocation of street trading licences is an option available to Market Services.
- 6.2. Examples of the options that may be available, depending on the subject enforcement area are set out below. Guidance is given in section 8 of this policy as to the appropriate option to take in an individual case.
- 6.3. **No action**
- 6.4. The Council may choose to do nothing in respect of an apparent contravention of the law. This would be appropriate in relation to low level offending where the offender immediately puts right what was wrong (e.g. littering where the offender immediately picks up after being spoken to) and has no previous history of such offending. This would also be suitable in low level offending where the offence was down to a genuine mistake or misunderstanding.

6.5. Prevention

6.6. The Council may take action designed to prevent further offending. For example, the Council presently operates the Diversion Scheme in respect of prostitution and participates in the Change Course for those found engaged in kerb crawling. These schemes have proved effective in diverting offenders away from the particular classes of offending.

6.7. A preventative approach can also be used to explain legal requirements and, where appropriate, the means to achieve compliance. An educative approach may be considered necessary when new legislation has come into force that will require time for businesses to fully understand and comply with (e.g. if new Food Regulations were introduced). This may involve the Council in undertaking pro-active education programmes.

6.8. Warning

6.9. A warning is a written notification from the Council to an offender that identifies the offending conduct and offence and warns the offender that any further like breach of the law will lead to more serious enforcement action. A warning should only be considered where the following conditions are met:

- The offence is not serious;

- The offender admits the offence;
- The risk of re-offending is considered minimal; and
- Enforcement action has not previously been taken against the offender.

6.10. Simple Caution

6.11. The administration of a Simple Caution is a non-statutory disposal of offences committed by adult offenders. The simple caution provides a means of dealing quickly and simply with less serious offences where the offender has admitted the offence. It records an individual's criminal conduct for possible reference in future criminal proceedings or security checks. Administering a simple caution diverts offenders from appearing in criminal courts, whilst at the same time reducing the likelihood of re-offending.

6.12. The Council will exercise discretion when deciding whether to administer a simple caution on a case by case basis. In doing so, the Council will have regard to the aims of a simple caution set out in the preceding paragraph and any relevant guidance. The relevant guidance includes Home Office Circular 16/2008: *Simple cautioning of adult offenders* and the LACORS revised Guidance on Cautioning of Offenders.

6.13. In each case, the Council will consider whether a caution is appropriate to the offence and the offender and whether

it is likely to be effective in the circumstances. In considering whether a Caution is appropriate, the Council will consider the following factors:-

- Is there sufficient evidence of the suspect's guilt?
- Has the suspect made a clear and reliable admission of the offence (either verbally or in writing)? A Caution will not be appropriate where a person has not made a clear and reliable admission of the offence (for example where intent is denied or there are doubts about the person's mental health or intellectual capacity or where it is likely that the person could avail themselves of the provisions of a statutory defence).
- Is it in the public interest to use a Caution as the appropriate means of disposal? Officers should take into account the public interest principles set out in the Code for Crown Prosecutors

6.14. If there is a victim, then the Council will also take into account the victim's views before administering a simple caution.

6.15. Enforcement notice

6.16. The Council has a variety of statutory powers to issue enforcement notices. For example, in food safety cases the Council may issue a Hygiene Improvement Notice under the Food Safety Act 1990. Another example is the

Council's power to issue an abatement notice under the Environmental Protection Act 1990 in respect of statutory nuisances (eg noise nuisance). The Council will consider whether or not an enforcement notice is an appropriate response by reference to the provisions of any applicable statutory provision and the circumstances of the case.

6.17. Works in default

6.18. In some cases, the Council has power to carry out works to remedy non-compliance with an enforcement notice, or to deal with a dangerous situation. If there is immediate danger, the Council will be primarily concerned with remedying that. In other cases, the Council will have regard to a cost benefit analysis.

6.19. Injunction

6.20. An injunction is a [court order](#) that requires a person to do, or to refrain from doing, specified acts. The Council has some statutory powers that enable it to seek injunctions, such as section 222 of the Local Government Act 1972. The Council will generally only consider injunctions for enforcement purposes where it can be demonstrated that prosecution will afford an inadequate remedy, or there is a significant risk to the safety, health or economic welfare of the public at large or to individuals.

6.21. Review or revocation of licence

6.22. The Council is responsible for administering a variety of licences and permissions, such as under the Licensing Act 2003. Where there are contraventions of the law associated with those licences and permissions, the Council may have statutory powers enabling review or revocation. The Council will exercise those powers having regard to its responsibilities under the applicable legislation. The Council will consider whether other enforcement action should be taken or, if it has been taken, whether further enforcement action is appropriate.

6.23. Anti-social behaviour order (ASBO)

6.24. The Council has power under the Crime and Disorder Act 1998 to apply for an ASBO against a person who has caused harassment, alarm or distress to a person not of the same household. The Council may do so either on a stand-alone basis or post-conviction for an offence. The Council has adopted and published an ASB Strategy that sets out its policies and strategy for dealing with anti-social behaviour. The Council will consider whether or not to seek an ASBO, or whether to take any of the other action that is available for combating anti-social behaviour, by reference to its ASB Strategy.

6.25. Fixed penalty notice (FPN)

6.26. The Council has power to issue FPNs in respect of a variety of offences, under statutes such as the Clean Neighbourhoods and Environment Act 2005. An FPN provides the recipient the opportunity to pay a penalty in respect of offending conduct, rather than being prosecuted. Receiving a notice is not a criminal conviction, but failure to pay will lead to prosecution. The recipient of an FPN may choose to have the matter dealt with in court, then the Council will give consideration to the same matters applicable on prosecution (with the exception of considering alternatives to prosecution).

6.27. The Council will generally only consider the use of FPNs where the following conditions are met –

- The offence is one for which an FPN may be issued under a relevant statutory power.
- The offender admits the offence, or at least has not indicated to the issuing officer that the offence is denied.
- The risk of re-offending is considered minimal.
- Enforcement action has not previously been taken against the offender (with the exception of no action, a warning or a FPN having been taken); and
- The offender has not been given an FPN in the preceding six months or two FPNs in the preceding 12 months.

6.28. Confiscation

6.29. A confiscation order is made after conviction to deprive the defendant of the benefit that he has obtained from crime. The Council may seek confiscation under the Proceeds of Crime Act 2002.

6.30. The Council is generally committed to taking action for confiscation when it is available, so that offenders do not benefit from their crimes. The Council will seek to obtain, so far as possible, confiscated monies in order to apply them to the support of its enforcement work.

6.31. In determining whether confiscation is appropriate, the Council will have regard to the relevant statutory power and the circumstances of the case. The Council will take into account a cost benefit analysis of whether confiscation action should be taken, recognising that the costs of the action need to be weighed against the likely amount of the confiscation order.

6.32. Prosecution

6.33. The Council is empowered to prosecute a variety of common law and statutory offences. In some instances, the Council is tasked to be an enforcing authority by statute. The Council also has a general power to enforce

arising from section 222 of the Local Government Act 1972.

6.34. Before recommending prosecution to Legal Services, the instructing officer must be satisfied that there is substantial, reliable and admissible evidence to prove that the offence was committed by the accused.

6.35. The later sections of this Policy set out the considerations that will be applied by the Council in determining whether or not to prosecute.

7. Levels of Enforcement Action

7.1. There will be circumstances in which the Council has available several enforcement options. In determining the appropriate level of enforcement action, the Council will always take into account the circumstances of the individual case. Even where the Council is targeting a particular type of behaviour, it will be appropriate to consider individual circumstances.

7.2. In choosing a particular enforcement option, the Council will have regard to the basis for enforcement (section 4 of this Policy), the principles of enforcement (section 5 of this Policy) and the general approach to each option (section 7 of this Policy). The Council will also have regard to the following matters when deciding between options –

- The seriousness and effect of the offence
- The previous history of the party concerned
- Whether the offence was intentional, accidental or otherwise
- The offender's attitude to the offence and whether he or she has shown remorse
- The willingness of the alleged offender to prevent a recurrence
- The consequences of non-compliance

- The deterrent effect of a prosecution on offenders and others
- Whether there is sufficient evidence to prove the offence
- The age, capacity or vulnerability of the offender.

7.3. In respect of the regulatory functions exercised by the Council which are specified in Part 3 of the Schedule to the Legislative and Regulatory Reform (Regulatory Functions) Order 2007, the Council will, before taking enforcement action, comply with the requirements of the Regulators' Compliance Code. The responsible officer should consider whether it is appropriate to discuss the circumstances with those suspected of the regulatory breach and, if so, take that discussion into account when deciding on the best approach. Reasons should be given to the person against whom enforcement action is taken, at the time the enforcement action is being taken.

7.4. There are particular considerations that apply before the Council will prosecute. The Council will apply the Code for Crown Prosecutors to any proposed prosecution, as further explained in section 11 of this Policy. The Council will also have regard to the following:

- the seriousness of the alleged offence;
- the level of risk, nuisance or caused;
- the history of the individual concerned;

- availability of key witnesses and their willingness to co-operate;
- willingness of the prospective defendant to prevent a recurrence;
- whether a defence exists and the likelihood of the defendant being able to establish such a defence;
- probable public benefit of a prosecution and the importance of the case, e.g. whether it may create a legal precedent;
- whether other formal action would be more appropriate or effective;
- any explanation offered by the defendant;
- the age, capacity or vulnerability of the offender;
- the vulnerability of any victim;
- whether, owing to circumstances beyond the offender's control, the commission of the offence was unavoidable.

7.5. If prosecution is available, the Council will generally consider it to be appropriate where one or more of the following apply –

- There has been a serious breach of or blatant disregard for the law.
- There is a refusal to achieve basic minimum legal requirements.
- There has been a previous prosecution.

- There has been a Simple Caution administered within the preceding 2 years.
- There has been a refusal to accept a Simple Caution
- There has been a refusal to heed an earlier warning.
- An FPN has been given in the preceding 6 months or two FPNs in the preceding 12 months.

7.6. Before issuing a warning or caution, consideration will be given to whether the person has received any previous warnings or cautions for similar breaches and when those were given. If the person has been given a warning or caution for a similar offence within the previous two years, or if the person has a history or pattern of more than one warning or caution for similar offences, then it may be inappropriate to adopt this enforcement action again.

7.7. The factors referred to above are not exhaustive. In particular there may be service-specific factors to be taken into account. A decision as to the appropriate enforcement option will depend on the particular circumstances of each case. The Council will make an overall assessment having regard to the importance of all relevant factors and the circumstances of the case.

7.8. The responsible officer should in each case make a written record of the reasons for any enforcement action taken.

7.9. The Council will give consideration to how its enforcement action affects individuals and groups within Tower Hamlets. In appropriate cases, the Council may use information about offenders and particularly any trends observed to develop measures for addressing the causes of offending and re-offending. Such measures may affect the Council's determination of the appropriate level of enforcement action in an individual case.

7.10. The Diversion Scheme developed by the Council in conjunction with its partners for dealing with street prostitution is an example of a measure of the kind mentioned in paragraph 7.9. On arrest, prostitutes are given information about the Diversion Scheme and may choose to engage in meetings with the Diversion Scheme Worker at Safe Exit. This involves a needs assessment and referral to an appropriate support agency with the aim of helping individuals get away from prostitution, rather than fining them and potentially forcing re-offending. The Council is the prosecutor in respect of such offences, rather than the Crown Prosecution Service, and, if the scheme is completed, the Council generally discontinues the prosecution.

8. Young people

- 8.1. From time to time, Council Enforcement Officers will be required to deal with persons under the age of 18 as offenders. Council Officers will not interview a Youth about an offence unless an appropriate adult is present and in full compliance with the relevant parts of PACE Code C.
- 8.2. The Council will not normally prosecute any person who on the day of the relevant offence is under the age of 18 but will, in accordance with Home Office guidance look, where possible, at ways of diverting youths away from the criminal justice system.
- 8.3. The Council may, however, prosecute a person under the age of 18 where the offence is of a serious nature (e.g. assault, fraud etc.) or the person has been given a reprimand or warning under Home Office Circular 14/2006 or the person has previously been convicted of an offence.

9. Other Enforcement Agencies

- 9.1. The Council will co-operate as appropriate with other enforcement agencies (for example, the Metropolitan Police and the Federation Against Copyright Theft), to ensure the efficient and effective regulation of activities in Tower Hamlets. The Council will take into account, amongst other things, the terms of this Policy in determining the appropriateness of co-operation.
- 9.2. Section 4 of this Policy identifies the relationship between the Community Plan and the Council's enforcement action. The Council's co-operation with other agencies will be affected by the Community Plan and other partnership arrangements.
- 9.3. Where the Council has concurrent or overlapping powers of enforcement with other agencies, the Council will liaise as appropriate with those agencies to ensure effective co-ordination, avoid inconsistencies, ensure that any action taken is the most appropriate in the circumstances and agree the lead prosecuting agency.

10. The Role of Legal Services

10.1. Legal Services is a department within the Council, headed by the Assistant Chief Executive (Legal Services) and based at 6th Floor of Mulberry Place, 5 Clove Crescent, London E14 2BG. Pursuant to the Council's Constitution, the responsibility for instituting or participating in legal proceedings lies with the Assistant Chief Executive (Legal Services) or officers nominated by the Assistant Chief Executive (Legal Services). Accordingly, the decision whether or not to prosecute offences will be taken within Legal Services. This decision will typically be taken on instructions from Authorised Officers.

11. The Code for Crown Prosecutors

11.1. In determining whether or not the Council will prosecute an offence, the Council will consider the matters set out in section 8 above, including the Code for Crown Prosecutors.

11.2. The Code for Crown Prosecutors sets out the basic principles to be followed by Council Prosecutors when they make case decisions. The decision on whether or not to go ahead with a case is based on two tests outlined in the Code.

11.3. The evidential test

11.4. This is the first stage in the decision to prosecute. Prosecutors must be satisfied that there is enough evidence to provide a “realistic prospect of conviction” against each defendant on each charge. Prosecutors must consider the reliability of the evidence; the credibility of any witness; and the admissibility of the evidence. They must also consider what the defence case may be and how that is likely to affect the prosecution case. A “realistic prospect of conviction” is an objective test. It means that a jury or a bench of magistrates, properly

directed in accordance with the law, will be more likely than not to convict the defendant of the charge alleged. (This is a separate test from the one that criminal courts themselves must apply. A jury or magistrates' court should only convict if it is sure of a defendant's guilt.) If the case does not pass the evidential test, it must not go ahead, no matter how important or serious it may be.

11.5. The public interest test

11.6. If the case does pass the evidential test, Prosecutors must then decide whether a prosecution is needed in the public interest. They must balance factors for and against prosecution carefully and fairly. Some factors may increase the need to prosecute but others may suggest that another course of action would be better. A prosecution will usually take place however, unless there are public interest factors tending against prosecution which clearly outweigh those tending in favour. Prosecutors will only start or continue a prosecution if a case has passed both tests.

11.7. Consistent with section 5 of this Policy, the decision whether or not to prosecute rests ultimately with the Assistant Chief Executive (Legal Services).

12. Equalities and Diversity

12.1. In conducting enforcement work, the Council will be mindful of its statutory responsibilities in respect of equalities and will take into account *Valuing Diversity: Our Policy Statement On Diversity And Equality*. The Council will take steps to gather information as appropriate in relation to relevant equality strands, in order to assess the impact of enforcement action.

13. Changes to the Policy

13.1. The Council will keep this policy under review and may amend the policy from time to time as it considers appropriate.

14. Complaints

14.1. The Council operates a corporate complaints system. If there are any complaints regarding the Council's enforcement action or the application of this Policy, then they may be made and dealt with in accordance with the corporate complaints system. This is without prejudice to any other rights that a person may have at law.