



Kingston and Sutton Shared Environment Service Regulatory Services Enforcement Policy

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Regulatory Services - Enforcement Policy

Introduction

The Royal Borough of Kingston and the London Borough of Sutton operate a shared service that jointly delivers a range of regulatory functions covering environmental health, trading standards, licensing, private sector housing and related activities across both boroughs.

The primary aim of the service is to ensure compliance with the legislative framework within which it operates so that consumers, businesses, employees, individuals and the environment across both boroughs are protected, and transactions are fair and equitable. Fair, proportionate and effective enforcement is essential to protecting the health, safety and economic interests of all concerned, and there is a range of tools available to the service to achieve this.

Generally, we will aim to provide advice and support to those seeking to comply with the law but at the same time tackle those who choose not to comply, using proportionate action. The detail on how and when action may be taken is outlined in the body of this Enforcement Policy.

The enforcement policy is a statement of how the service will carry out its enforcement duties and what businesses, citizens and visitors in the boroughs of Kingston and Sutton can expect from our enforcement staff. It commits both council's to good enforcement practice and has been developed having regard to the Regulators' Code (*made under section 23 of the Legislative and Regulatory Reform Act 2006 which took effect from on 6 April 2014*).

The service must also have regard to the various general duties imposed on each council e.g. section 17 of the Crime and Disorder Act, and the general powers given to local government for the 'promotion of well being'. We are also obliged to comply with the Human Rights Act 1998, so we will take its provisions into account when taking decisions relating to enforcement action.

Scope of the Policy

We are committed to providing an effective service with officers carrying out their duties in an equitable, practical and consistent manner. We will comply with all statutory requirements placed upon us and seek to align our procedures with best practice.

This policy applies to actions in relation to all legislation enforced by the service. Enforcement action here includes any action taken by officers aimed at ensuring that individuals or businesses comply with the law and goes beyond formal enforcement action such as prosecution and includes a range of other interventions that seek to achieve compliance with the law.

General Principles

Prevention is better than cure and therefore our role involves actively working with businesses to advise on and assist with compliance. Where we consider that formal action is necessary each case will be considered on its own merits. However, there are general principles that apply to the way each case must be approached.

In summary, the aims of this policy are to support enforcement officers to:

- change the behaviour of an alleged offender;
- be responsive and consider what is appropriate for the particular offender and regulatory issue;
- be proportionate to the nature of the offence and/or the harm caused;
- restore the harm caused, where appropriate;
- deter future non-compliance;
- change attitudes in society to offences which may not be serious in themselves, but which are widespread;
- eliminate any financial gain or benefit from non-compliance.

The Service believes in firm but fair regulation and, with this in mind, the policy has been formulated having regard to the six sections of the Regulators' Code, which states that we should:

- carry out our activities in a way that supports those we regulate to comply and grow;
- provide simple and straightforward ways to engage with those we regulate and hear their views;
- base our regulatory activities on risk;
- share information about compliance and risk to help target resources and activities and minimise duplication;
- ensure that clear information, guidance and advice is available to help those we regulate to meet their responsibilities to comply;
- ensure that our approach to regulatory activities is transparent.

Our enforcement decisions will be fair, independent and objective and will not be influenced by issues such as ethnicity or national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender. Such decisions will not be affected by improper or undue pressure from any source. We will take into account the views of any victim, injured party or relevant person to establish the nature and extent of any harm or loss, and its significance, in making the decision to take formal action.

Most cases involving regulatory matters will relate to businesses. However, there will be some cases put before the Courts that relate to individuals, such as those involving noise nuisance. These cases will be treated in the same way as those involving businesses and the general principles outlined around proportionality of action will be followed, for example trying informal approaches before resorting to formal action in the Courts.

Principles of Good Regulation

When making decisions the Service will have regard to the five Statutory Principles of Good Regulation ("the Principles"), set out in Section 21 of the 2006 Act, namely that our regulatory functions will be carried out in a way that is

- Transparent
- Accountable
- Proportionate
- Consistent
- Targeted only at cases in which action is needed.

The policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. We recognise the positive impact that the Service can have on economic progress and growth in the local economy across the boroughs of Kingston and Sutton and see it as part of our role to encourage and support the growth of legitimate business activity within the legal framework provided by central government.

Risk

Both councils have a wide range of enforcement powers and tools. We will ensure that our resources are targeted where they will be most effective. To help us achieve this we will ensure that intelligence and risk assessment inform all aspects of our approach, including:

- data collection and other information requirements;
- inspection programmes;
- advice and support programmes;
- enforcement activity and sanctions

We will also use intelligence to direct inspection-based projects, targeting goods or business where there are known issues. Obviously, a complaint may also trigger a visit if that is the most appropriate response. Where there is a need we will share this intelligence with other agencies in the council and enforcement partners, locally and nationally.

We will review our approach to regulatory activities from time to time, in order to remove any unnecessary burdens from businesses.

Regulatory Activities

Advice and guidance

We will provide general information, advice and guidance to make it easier for businesses to understand and meet their obligations. This will be provided promptly, in clear, concise and accessible language, using a range of appropriate formats and media. Information will cover legal requirements relating to our regulatory activities, as well as changes to legal requirements. Where changes are of great significance, we will look at the best ways of informing businesses of the changes e.g. through newsletters, mail-shots or seminars.

We will provide targeted and practical advice through personal visits, telephone and promote self-service via our website. We will try to maximise the accessibility and effectiveness of advice to ensure efficient use of resources and we will involve businesses in developing both the content and style of regulatory guidance to help ensure that it meets their needs.

When offering advice, we will clearly distinguish between statutory requirements and advice or guidance aimed at improvements above minimum legal standards i.e. so you are clear about what you have to do as opposed to what might be recommendations only. We seek to provide proportionate advice, the content of which will help achieve compliance, but impose the minimum burden required on the business concerned. Advice will be confirmed in writing, if requested.

Where a business knows it has a problem and seeks advice from Regulatory Services to remedy the situation, it will not normally trigger enforcement action. Where appropriate, we will seek to support the remedial action to prevent future problems. However, we must reserve the right to take enforcement action in serious cases.

We will provide basic advice free of charge though we reserve the right to charge a reasonable fee for services beyond the basic advice and guidance necessary to help ensure compliance. We would take account of the needs and circumstances of smaller businesses and others in need of help and support in deciding whether or not to charge. Charging will be in line with any guidance issued by the Local Better Regulation Office.

We will engage with local businesses to assess the effectiveness of our information and advice services by asking them how effective our work is in raising business awareness and helping them to understand their legal requirements, including the extent to which they incur additional costs from obtaining external advice in order to understand and comply with legal requirements.

We are supported by the Citizens Advice Consumer Service (CACS) in giving consumer advice. We will signpost consumers to their website and take part in events boroughwide that helps us reach our target audiences in the elderly, vulnerable group.

Inspection

We will ensure inspections and other visits to businesses only occur in accordance with a risk assessment methodology, except where visits are requested by businesses, or where we act on relevant intelligence. We will focus our efforts on businesses where intelligence and risk assessment shows there is a higher likelihood of non-compliance or which pose a more serious risk to regulatory outcomes. Some processes, by their nature, present a greater risk to health or the environment, or due to their complexity, may make it more difficult to ensure compliance. These are the areas where we will focus our inspection resources.

When we visit or carry out inspections, we will give feedback to businesses to encourage and reinforce good practice. We will also share information about good practice amongst businesses and with other regulators.

Where we and another regulator have a shared interest in a business we will work together to minimise the burden on the business, where such action is both of benefit to the business and does not harm the standard of enforcement for either regulator.

We will also take account of the circumstances of small businesses, including any difficulties they may have in achieving compliance.

Information requirements

The Service does not require large quantities of information from businesses on a routine basis. When determining what data we may require, we will consider the costs and benefits of data requests to businesses and,

- limit the data that we request to that which is either appropriate, or required by statute e.g. food registration, licensing applications, etc,
- minimise the frequency of collection and seek the information from other sources where relevant and possible.

We will work with our fellow local regulators to minimise the information we request from businesses, and we will seek to maximise our data sharing within the provisions of the Data Protection Act 1998. We will seek to use compatible collection methods to give consistency and will also ensure that, where possible, data can be returned electronically

Enforcement action

If it is our intention to take formal enforcement action against an alleged offender, they will be notified as soon as is practicable, as appropriate, unless this could impede an investigation or pose a safety risk to those concerned or to the general public.

We will explain clearly why the action is necessary and what remedial action, if any, is required. Our enforcement officers will:

- clearly separate best practice, advice and legal requirements;
- ensure that the alleged offender, where appropriate, has the opportunity to discuss what is needed to comply with the law before formal enforcement action is taken. This is unless urgent action is required, for example, to protect the environment;
- where urgent action is required, provide a written explanation of the reasons as soon as possible after the event;
- give a written explanation on any rights of appeal against formal enforcement action at the time the action is taken;

During the progression of enforcement investigations/actions, business proprietors or individuals and witnesses will be kept informed of progress.

When considering what action should be taken, we will look to:

- be proportionate to the nature of the offence and the harm caused,
- change the behaviour of the offender;
- eliminate any financial gain or benefit from non-compliance;
- address the harm caused by regulatory non-compliance, where appropriate;
- deter future non-compliance,
- be responsive and consider what is appropriate for the particular offender and regulatory issue, and

We will always try, when appropriate, to discuss the circumstances with those suspected of non-compliance with the law (usually by way of formal interview conducted with regard to the Police and Criminal Evidence Act 1984) and take any comments they may make into account when deciding on the best approach. We may not be able to do this if we believe immediate action is required to prevent or respond to a serious non-compliance or where to do so would be likely to defeat the purpose of the proposed enforcement action. An example of this might be where we have reasonable grounds for believing that giving advance warning of a visit or inspection might lead to evidence of non-compliance being hidden.

We will ensure that clear reasons for any formal enforcement action are given to the relevant person(s) or entity with responsibility at the time the action is taken. These reasons will be confirmed in writing at the earliest opportunity. Complaints and relevant appeals procedures for redress will also be explained at the same time.

Deciding on the form of enforcement action

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

- the seriousness of compliance failure;
- the past performance and current practice of the business.
- the risks being controlled;
- legal, official or professional guidance;

There are a large number of potential enforcement options available to us. The level of the action we may take varies from no action through to proceedings in Court. Examples of the main types of action that can be considered are shown below:

- No action;
- Informal Action and Advice;
- Issuing fixed penalty notices or penalty charge notices
- Statutory Notice;
- Formal closure
- Seizure of goods/equipment or suspension from sale or recall of goods
- Restraint, Confiscation or Forfeiture of Assets
- Injunctive Actions;
- Licence Reviews
- Refusal/revocation of a licence;
- Simple Caution;
- Prosecution.

No action

There will be circumstances where a contravention may be considered insignificant or trivial that it can be dealt with immediately, there and then, via verbal advice and/or assistance with no further follow-up required and no deadline for compliance given.

Informal Action and Advice

For minor but more significant contraventions of the law we will give advice on how to put them right, including a deadline by which this must be done. The time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of the non-compliance. Where the advice required is detailed, or there are potentially serious implications from the failure, the advice will be provided in writing. Failure to comply could result in an escalation of enforcement action.

Wherever possible, we will advise offenders about good practice, but we will clearly distinguish between what they must do to comply with the law and what is recommended best practice.

Fixed Penalty or Penalty Charge Notices

Where legislation allows, and there is suitable evidence to support a prosecution, an offender may be offered a fixed penalty or penalty charge notice which gives an offender the opportunity to discharge any liability to prosecution for the offence on payment on a monetary penalty. If the penalty is not paid, the matter will be referred to court.

Statutory Notices

Officers have the power to issue notices that:

- prohibit the sale or distribution of goods where relevant provisions may have been breached,
- require a business/person to take specific actions to remedy an identified problem,
- require a business/person to desist from particular activities that may not comply with legal requirements.
- require any person to take action to ameliorate or stop nuisances being caused by their actions

Notices may require immediate action where, for example, there are risks to public health or safety, or an immediate risk of environmental damage or serious nuisance. In other circumstances, a reasonable amount of time will be given, depending on the circumstances, to rectify the problem.

Certain types of notice allow works to be carried out 'in default'. This means that if a notice is not complied with (i.e. a breach of the notice) we may carry out any necessary works to satisfy the requirements of the notice ourselves. Where the law allows, we may then charge the person/business served with the notice for any cost we incur in carrying out the work.

Formal Closure

In certain limited circumstances e.g. under the provisions of food safety legislation, where an authorised officer is satisfied that there is an imminent risk of injury to health from the condition of the premises, the officer may serve notice to close the premises. This would be immediately followed by an application to a Magistrates Court to confirm

the closure.

Seizing and/or detaining goods, equipment or documents

Goods, equipment or documents may be seized to prevent further offences from being committed or where such items may be required as evidence. Provided the lawful owner can be properly identified, such items will be returned as soon as possible after they are no longer needed. Stolen goods, counterfeit goods and unsafe goods, or goods which may assist the continuation of offending, will not be returned.

Suspending goods from sale

Where it is necessary to protect the public, the sale of unsafe goods will be suspended using existing legislative powers.

Legal Proceedings

Once an enforcement officer has completed his/her enquiries or investigation they will submit a case report to a senior officer, independent of the investigation, who will review the available evidence and decide, using the criteria below, the most appropriate course of action.

Where there is noncompliance with a relevant law, we will use a process of escalation of our action until either compliance is reached or there is no option other than to instigate further legal proceedings. Exceptions would be where there is a serious risk to public safety or the environment, or where there are reasonable grounds for believing that the offences have been committed deliberately or negligently or involve deception, or where there is believed to be a significant economic detriment. Each case is unique and we will consider each on its own facts and merits.

The senior officer will take into consideration the requirements of the Code for Crown Prosecutors and other relevant codes before deciding whether or not to authorise the institution of legal proceedings.

The senior officer will have to be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each defendant on each charge (i.e. that a jury or bench of Magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged). With this in mind, the senior officer will look at all the available evidence, reliability of witnesses, supporting documentation and any other matters relating to the investigation. Only when this evidential 'test' has been satisfied will the public interest to proceed with the prosecution be considered.

In deciding whether a prosecution will serve the public interest, the senior officer will balance factors for and against the prosecution carefully, fairly and impartially. Some factors may increase the justification to prosecute, whereas others may militate against. Listed below are some of the matters to be taken into consideration for and against criminal proceedings. This is not an exhaustive list and, as such, each case is taken strictly on its own individual merits:

Factors which would favour prosecution

- the offender was in a position of control within the business;
- the offender appears to have acted dishonestly, wilfully or negligently;
- the product or service was aimed at a vulnerable group or person;
- the product or service has caused or had the potential to cause physical, mental or financial injury or suffering, significant harm or loss;
- the offender has received advice or a warning concerning the circumstances of the offence or similar matters;
- the offender has previous convictions that are relevant;
- the offence, though not serious in itself, is widespread in the area where it was committed;
- there are grounds to believe that the offence is likely to be continued or repeated, for example by a history of recurring conduct;
- the outcome of a prosecution might serve an important, informative purpose or establish a legal precedent.

Factors which would mitigate against prosecution

- the offence was minor in nature and was a result of a genuine mistake or misunderstanding, which did not involve significant negligence;
- the offender is elderly, or was at the time of the offence suffering from significant mental or physical ill health, which contributed to the commission of the offence, and the offence was neither serious nor likely to be repeated;
- the loss or harm could be described as minor and was as a result of a single incident, particularly if it was caused by a failure of judgment;
- the offender put right the loss or harm caused prior to the intervention of the Service;
- prior to the Service's intervention, the offender had introduced adequate steps to prevent further similar offences;
- the defendant was a youth at the time of the offence;
- there has been a long delay between the offence and any potential court action, unless either: (i) the offence is serious, (ii) the delay has been caused by the defendant or his/ her legal representatives, (iii) the offence has only recently come to light, or (iv) the complexity of the offence meant that there has been a long investigation.
- There is insufficient evidence to proceed.

Proceeds of Crime Applications

Some cases taken by the service can lead to applications being made under the Proceeds of Crime Act 2002 (POCA) for confiscation of assets following conviction. These are the most serious cases or where there is persistence of offending over a long period of time or where the offences are deemed to be "lifestyle crime" under POCA. Their purpose is to recover the financial benefit that the offender has obtained from his criminal conduct. Where investigations involve money laundering offences we will consider prosecuting for those offences

Simple Cautions

Where the public interest justifies it, we will consider offering a Simple Caution (or Reprimand/ Final Written Warning if the offender is under 18.) In offering a Simple Caution, we will take account of the Home Office Guidelines in relation to the cautioning of offenders, and the Code for Crown Prosecutors. Where the offender is under 18 and a formal approach is being considered, we will consult with appropriate bodies such as the Youth Offending Team.

A Simple Caution requires an admission of guilt on behalf of the offender. However, there is no recorded conviction nor actual sentence in such circumstances. A caution will remain on record for a period of 2 years and may be cited in Court should a further offence be committed and prosecuted during that time.

Injunctions

Some legislation includes provisions for obtaining enforcement orders against persons or businesses that are trading. This process involves the civil courts rather than the criminal courts. The purpose of these provisions is to prevent persons continuing with conduct that harms the collective interests of consumers, but it is only available for specific criminal and civil legislation.

We are required to follow a procedure involving consultation with the person/business trading and to notify the Competition and Markets Authority before proceeding to formal action. An order can proceed without consultation where the CMA feels that action should be brought without delay.

Generally, we will attempt to obtain undertakings that the offending conduct will cease before moving to the formal stage. The conduct will normally be identified from recurring complaints. In determining whether the number of complaints is sufficient for action, we will give consideration to the seriousness of the complaints, the size of business, and whether it trades locally, regionally or nationally. Action may also be considered after a single complaint where the conduct is seriously detrimental and repetition must be prevented.

Where we fail to gain written assurances from an individual or business, or where such assurances are breached, we will consider action to obtain an enforcement order through the civil courts using a process similar to that described above for other formal actions.

Review, Refusal, Suspension and Revocation of Licence

Where there is a requirement for a business or individual to be licensed by the Service, we may grant the licence, unless representations or objections are received against the application. In such cases the Licensing Committee or Sub-Committee will hear the case and decide to grant, grant with conditions, or refuse the licence application.

In most circumstances, a license may be considered for review, suspension, revocation, or the application of further conditions, where our officers become aware of either the commission of offences relating to the conduct of the business, or breaches of existing

conditions or similar controls. These matters will be heard before the Licensing Committee (or a Sub-Committee,) of the relevant partner Council to the Shared Service (depending on the actual location of the application), and the elected members of that Council will determine what action should be taken.

Additional Information

The senior managers involved in making the more serious decisions will also have regard to legal advice provided to the service.

Recovery of Costs

We will seek to recover all of our legitimate costs from convicted offenders.

Compensation

It is not within the gift of the Service to obtain compensation for victims however where appropriate we will seek to ask the court for a compensation order on the victim's behalf.

Publicity

We will consider publicising any convictions that draw attention to the need to comply with legal requirements or deter anyone tempted to disregard their duties

Liaison with other regulatory bodies and enforcement agencies

Where appropriate, we will coordinate all enforcement activities with other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement.

Where an enforcement matter affects a wide geographical area beyond the boundaries of either council or involves enforcement by one or more other local authorities or organisations; we will inform all relevant authorities and organisations of the matter as soon as possible and all enforcement activity will be coordinated with them.

We will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies, and examples include:

- Government Agencies
- Police Forces
- Fire Authorities
- Other Statutory Bodies and Local Authorities

Standards and Accountability

We will, in consultation with businesses and other interested parties, set and publish clear standards and targets for our service and performance. These will include:

- regulatory outcomes (e.g. proportions of businesses that comply,);
- performance standards for contact with businesses;
- a commitment to ensuring costs to businesses of regulatory interventions are proportionate; and
- a commitment to dealing with any negative perceptions of businesses and other interested parties relating to these issues.

We will create effective consultation and feedback opportunities to ensure we have continuing cooperative relationships with businesses and other interested parties. We will ensure our officers provide courteous and efficient services to businesses and we will enable them to interpret and apply relevant legal requirements and ensure that they enforce requirements fairly and consistently between like-businesses in similar situations. We always welcome and take account of comments from businesses and other interested parties regarding the behaviour and activity of our staff.

Personal Information

We will take all reasonable steps to protect personal information about individuals, in accordance with our obligations under the Data Protection Act 1998. However, we may be permitted or obliged to disclose personal information in accordance with legislation (such as the Freedom of Information Act 2000), court or tribunal procedural requirements, internal data sharing between Council services and data sharing arrangements with external bodies.

Responding to complaints from the public

Our activities sometimes take place as a result of a complaint by a member of the public so we will ensure that the complainant is kept informed of progress of any enforcement action to the extent that this is permissible.

Where appropriate and practical, we will have regard to the views of the complainant when considering what action, if any, is taken. Whilst the views of the complainant are important, they can never be the deciding factor since the Service undertakes its statutory regulatory function on behalf of the community as a whole and not the interests of a particular individual or group.

Where a prosecution or Simple Caution is proposed, we will also try to take into account the complainants views.

RIGHTS OF COMPLAINT AND APPEAL

If any person or body against whom enforcement action is taken, or anyone with a legal interest in the outcome, is unhappy with enforcement action taken by the Service, the matter must be pursued in accordance with any formal rights to appeal or similar where available. These will be brought to the attention of the person or body concerned e.g. local magistrate's court. Dissatisfaction with information or advice provided may be pursued in accordance with the Corporate Complaints procedure.

Details of the Royal Borough of Kingston's complaints procedure can be found at:

https://www.kingston.gov.uk/info/200232/contact_us/462/feedback_and_complaints/2

Details of the London Borough of Sutton's complaints procedure can be found at:

https://www.sutton.gov.uk/info/200436/customer_services/1058/feedback_complaints_and_compliments

Experience shows the importance of valuing and welcoming complaints as a way of putting things right and improving service delivery. We recognise that the nature of the relationship between a regulator and those they regulate can discourage challenge and constructive criticism, but we are committed to ensuring that businesses understand the complaints process and are able to access it.

REVIEW OF THE ENFORCEMENT POLICY

We will review this policy as and when required, but at least every three years. We will continue to seek feedback from those who use or receive our services about how we can improve. Similarly, we will always explain any right of complaint or appeal.

Further information

Anyone requiring further information on this policy should contact:

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This policy can be viewed or downloaded from the following web sites at:

www.kingston.gov.uk

www.sutton.gov.uk

References

The Regulators' Code: Better Regulation Delivery Office (April 2014)

Regulatory Enforcement and Sanctions Act 2008

The Code for Crown Prosecutors: Crown Prosecution Service. (January 2013)

Ministry of Justice Guidance: - "Simple Cautions for Adult Offenders" (Issued 14/11/13)
Legislative and Regulatory Reform Act 2006

Legislative and Regulatory Reform (Regulatory Functions) Order 2007 (SI 2007 No. 3544)

Human Rights Act 1998

Data Protection Act 1998

The Police and Criminal Evidence Act 1984