

Community Directorate

DRAFT

**Integrated Enforcement Policy –
(2017-2020)**

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Contents

1	Introduction	4
2	Scope	4
3	What is Enforcement?	4
4	General Principles of Enforcement.....	5
5	Decisions on Enforcement Actions.....	6
6	Enforcement Actions/Sanctions	7
7	Determining Formal Actions	9
8	Authorisation of Officers	9
9	Working with Partners.....	9

1 Introduction

This policy has been developed to provide a framework for enforcement in Harrow. The policy spans 3 years thereby giving the council the flexibility to review the policy in light of changes that occur in the enforcement sector. It has been developed with reference to national guidance as well as taking into account regional work in this area.

There are a number of key considerations influencing this policy. The overriding one is the need to manage enforcement more effectively and efficiently. The aim is to use all aspects of enforcement and regulation to maximise impact ensuring that the community and businesses alike take responsibility for their actions so that Harrow is a place that people enjoy living and working in and are proud of.

The council will take account of statutory and non-statutory guidance and related Council policies when taking enforcement decisions as well as the Regulator's Code.

The Regulator's Code can be found at:

www.gov.uk/government/publications/regulators-code.

The principle of this policy applies to actions taken by council officers to achieve compliance with legislation and national guidance.

2 Scope

The council has a wide range of enforcement functions. For the purposes of this policy, the services that fall within its scope are:

- Community Protection and Housing (Tackling anti-social behaviour)
- Environmental Health
- Environmental Enforcement
- Licensing (Highways and Premises)
- Noise and Pollution Management
- Planning Enforcement
- Private Sector Housing
- Street Trading (including shop front trading and markets)

Each area uses different legislation to ensure compliance of the law within the borough and each has its own extensive body of regulations, codes of practice and guidance. This policy does not replace these but provides an overarching policy within which these can be used. Effective information sharing is fundamental.

3 What is Enforcement?

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

"Actions taken by council officers to achieve compliance with legislation/national guidance"

The council's primary enforcement duty is to protect the safety of the public, their health and safety and the environment. At the same time the council is committed to promoting a thriving local economy by carrying out its enforcement functions in an equitable, practical, transparent and consistent way.

To achieve this Harrow Council will adopt a light touch approach to those who comply with regulatory requirements and those who work with the council to achieve compliance. However, it will take appropriate necessary enforcement action against those who don't.

4 General Principles of Enforcement

Consideration will be given to the following principles, when undertaking enforcement:

- **Proportionality** – This means ensuring enforcement action corresponds appropriately to the risks arising. This will include any actual or potential harm arising from a breach of the law. The council will ensure that its actions are proportional to the potential risk to health, safety, the environment and the benefits arising from the actions taken.
- **Consistency** – Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar results.
- **Focus** – This means making sure that action is targeted primarily on those whose activities give rise to the most serious risks or where the hazards are least well controlled. It also means that any enforcement action is directed against the person or company responsible for the breach. This will be undertaken through an intelligence led approach, using a range of data and information from council services, partner agencies and the local community.
- **Transparency** – Transparency means being clear about how the council enforces. This also means helping individuals, organisations and businesses to understand what is expected of them in order to comply with legal requirements. The council will also provide a clear distinction as to what are statutory requirements and advice or guidance about what is desirable but not compulsory.
- **Accountability** – The council is accountable to the public for its actions. This means that it undertakes enforcement on behalf of the public at large and not just in the interest of any particular individual or group. However, when considering the public interest test, the consequences for those affected by the offence, and any views expressed by those affected will, where appropriate be taken into account when making enforcement decisions.

While these general principles will apply, it must be recognised that each individual case will vary and each must be considered on its own merits before a decision is reached.

Where offending causes a cost to the council, it will seek to recover the costs of dealing with that offending from those that are responsible.

5 Decisions on Enforcement Actions

The council will ensure that its enforcement actions are consistent and aim to:

- Protect the public and businesses from harm as well as change the behaviour of the offender
- To deter future non-compliance and reassure the community
- Eliminate any financial gain or benefit from non-compliance
- Be proportionate to the nature of the offence and the harm caused and
- Be responsive and consider what is appropriate for a particular issue, which can include sanction

Enforcement decisions and actions will be made with due regard to the provisions of:

- the Human Rights Act 1996
- the Equality Act 2010
- Service-specific legislation and guidance
- Internal policies

Information concerning non-compliance may be shared with other enforcement agencies as appropriate. Any such action will be in accordance with the Data Protection Act 1998.

The decision to use enforcement action will be taken on a case by case basis. The action taken, which may be immediate, will be proportionate to the gravity and nature of the non-compliance.

Factors that will be taken into consideration include, but are not limited to:

- the risk that the non-compliance poses to the safety, health or economic welfare of the public at large or to individuals
- evidence that suggests that there was pre-meditation in the commission of an offence

- alleged offence involved a failure to comply in full or in part with the requirements of a statutory notice or order
- there is a history of previous warnings or the commission of similar offences
- aggravated circumstances such as obstruction of an officer or aggressive behaviour towards the public
- the offence, although not serious itself, is widespread in the area where it is committed
- death or risk of death or serious injury was a result of a breach of legislation
- the gravity of an alleged offence, taken together with the seriousness of any actual or potential harm
- the general record and approach of the offender
- there has been reckless disregard of health and safety requirements
- there has been a repetition of a breach that was subject to a formal caution
- false information has been supplied willfully, or there has been an intent to deceive

6 Enforcement Actions/Sanctions

Where appropriate, the council will seek to achieve compliance through early engagement, mediation, education and advice.

However, there are a number of potential enforcement options available to the council to achieve compliance. These include:

Informal Action – For minor breaches of the law the council may give verbal or written advice. The council will clearly identify any contraventions of the law and give advice on how to put them right, including a deadline by which this must be done.

Simple Cautions – These will be issued where there is clear evidence and acceptance of an offence by the offender. The purpose will be to deal quickly and effectively with less serious offences; to reduce chances of re-offending and to avoid unnecessary appearance in criminal court.

Fixed Penalty Notices – Certain offences are subject to fixed penalty notices where prescribed by legislation.

Refusal, Revocation or Suspension of Licence – The council may refuse, revoke or suspend a licence where representations or objections are received to an application.

Licence Review – Under the Licensing Act 2003 the council has the power to apply to have a Premises Licence reviewed by the Licensing Committee where activities at the premises appear to be undermining one or more of the four Licensing Objectives (the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm).

Statutory Notices – Certain legislation allows notices to be served requiring specific actions to be taken, provide certain information, or cease certain activities. Notices may require activities to stop or cease immediately where the circumstances relating to serious threat to health, safety, the environment or to amenity and situation deteriorate, if a breach is not remedied quickly.

Seizure – In some situations, council officers have powers to seize goods, equipment and documents, either to prevent the occurrence of an incident, to ensure that an activity ceases or to ensure that it does not occur.

Prosecution – A prosecution will normally be considered where the individual or organisation meets one or more of the following criteria:

- Deliberately, negligently or persistently breached legal obligations, which were likely to cause material loss or harm to others,
- Deliberately or persistently ignored written warnings or formal notices,
- Endangered, to a serious degree, the health, safety or well-being of people, animals or the environment,
- Assaulted or obstructed an officer in the course of their duties
- Where a prosecution would be in the public's interest.

Proceeds of Crime Application – This application will be made under the Proceeds of Crime Act 2002 for confiscation of assets in serious cases. The purpose of this is to recover the financial benefit that the offender has obtained from their criminal activity.

Work in Default – Where the council has served a notice requiring works such as improvement, prohibition or to otherwise remediate a non-compliance notice and the person receiving the notice does not comply with it, the council will exercise powers available to arrange for the work to be carried out and the full costs recovered. This is known as “work in default” or “direct action” and the council will always seek to recover its full costs from the person receiving the original notice.

Injunction – Injunctive action can be taken in conjunction with or as an alternative action to combat failure to comply with regulatory requirements or to abate anti-social behaviour. An injunction should only be applied for when it is considered necessary and is a proportionate response to the offending behaviour.

This list is not exhaustive.

7 Determining Formal Actions

When a decision whether or not to prosecute is being made, the council will follow the principle criteria from the guidance contained in the Code for Crown Prosecutors which requires the two main tests:

- Whether the standard of evidence is sufficient for a realistic prospect of conviction (Evidential Test)
- Whether a prosecution is in the public interest (Public Interest Test)

Where there is a statutory framework to take other enforcement action, this framework, together with statutory and non-statutory guidance will be taken into account to determine whether the action is appropriate and proportionate.

8 Authorisation of Officers

The council will ensure that officers who carry out enforcement duties are appropriately qualified and trained. The officers will carry authorisation in the form of a card and the council will ensure that the extent of authorisation is reviewed in light of changes in legislation.

9 Working with Partners

Where appropriate, enforcement activities will be coordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement. The council will share intelligence relating to wider regulatory matters with other regulatory enforcement agencies. This includes government agencies, departments, other local authorities, Police forces and Fire authorities.