

# Corporate Enforcement Policy

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City of Westminster

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## Introduction

Westminster City Council is responsible for undertaking enforcement activity across a wide range of public services. Our aim is to protect the interests, safety and wellbeing of all those who live, work and visit the borough by ensuring the actions of businesses and individuals comply with relevant legislation and Codes of Practice. We adopt a positive and proactive approach towards ensuring compliance, by helping businesses and individuals understand and meet regulatory requirements more easily, and responding proportionately to breaches.

It is the responsibility of individuals and business to comply with the law and Codes of Practice, and we recognise that the failure to comply sometimes stems from unintended ignorance, carelessness, or a lack of training and management control. Educating through the provision of information and advice, as well as serving notices that provide the opportunity to remedy the breach, are examples of the important tools that officers will use to manage risks. However, in some cases failure to comply may risk causing serious harm, be the result of deliberate illegal behaviour, or failure to correct an identified serious problem. In these instances, we will not hesitate to take strong enforcement action.

## Areas we regulate

We deliver regulatory services in a number of areas including (but not exhaustive):

Environmental protection	Food safety
Health and safety	Private sector housing
Fire safety	Waste
Licensing	Highways and Kerbside management
Trading standards	Planning
Animal Welfare	Anti-social behaviour
Education (non-attendance at school)	Housing Tenancy/Lease Conditions under CityWestHomes

## Policy Rationale and Scope

This corporate enforcement policy applies to all service areas setting out the council's intended enforcement approach and guidelines. It also provides a framework for our enforcement officers that ensures their powers are transparent and consistently applied.

Under the corporate policy sits a range of additional departmental enforcement policies. This is because for some services more specific detail is needed to explain the application of enforcement powers and imposition of penalty fines. Our departmental enforcement policies include:

- [Waste](#)

- [Licensing](#)
- [Kerbside management \(parking\)](#)
- [Planning](#)
- [Private Sector Housing](#)
- [Education \(non-attendance at school\)](#)

## **Deviation from the Policy**

This policy indicates what to expect by way of enforcement, however the policy cannot provide prescriptive detail because the circumstances of each individual case, the law being applied, and the evidence available are likely to vary substantially. If there is a need to deviate from the policy this will be done where it is justifiable and the reasons are recorded.

## **Part Two: Legal and Policy Context**

### **Legislative Framework**

We will act in accordance with the relevant legislation, guidance and case law as appropriate, when investigating breaches of regulatory compliance and when considering enforcement action including:

- Human Rights Act 1998
- Data Protection Act 1998
- General Data Protection Regulation (GDPR) 2018
- Regulation of Investigatory Powers Act 2000
- Police and Criminal Evidence Act 1984 Codes of Practice
- Criminal Procedures and Investigations Act 1996
- Legislative and Regulatory Reform Act 2006
- Code for Crown Prosecution
- Regulatory Enforcement and Sanctions Act 2008
- Criminal Justice and Police Act 2001

Our authorised officers will also comply with the requirements of the particular legislation under which they are acting, and with any associated guidance or codes of practice.

### **The principles of regulation**

The Legislative and Regulatory Reform Act 2006, requires us to have regard to the principles of good regulation when exercising a specified regulatory function. For local authorities, the specified functions include those carried out by our environmental health, trading standards and licensing services, but we have also extended these principles to other areas of enforcement as listed under the scope of the Policy. We will exercise our regulatory activities in a way that is:

- *Proportionate*: our activities will reflect the level of risk or harm and enforcement action taken will relate to this and the seriousness of the offence
- *Consistent*: our advice to those we regulate will be robust and reliable and we will respect advice provided by others. Where circumstances are similar, we will endeavour to act in similar ways to other local authorities.
- *Targeted*: we will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities.
- *Transparent*: we will ensure that those we regulate, and victims of non-compliance, are able to understand what is expected, and what they can anticipate in return.
- *Accountable*: our activities will be open to public scrutiny with clear and accessible policies and fair and efficient complaint procedures.

## **The Regulators' Code**

The Regulators' Code came into statutory effect under the Legislative and Regulatory Reform Act 2006 and provides a clear, flexible and principles-based framework for how regulators should engage with those they regulate. All enforcement action will be carried out with regard to the principles specified in this [Code](#).

In certain instances, we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

## **Information Sharing**

Section 5 of the Crime and Disorder Act 1998 places a duty on us to do all we can to reasonably prevent crime and disorder in our area. The council will fulfil this obligation by sharing information regarding its investigations with other council services and partner agencies including, (though not exhaustively):

- Police
- Department of Business Energy and Industrial Strategy
- Food Standards Agency
- Health and Safety Executive
- Environment Agency
- London Fire Brigade
- HM Revenue and Customs

All disclosures will be in accordance within the provisions of the General Data Protection Regulations (GDPR) 2018.

### Authorisation of Officers

The council's Enforcement Officers will be authorised to undertake enforcement action once their line manager and the delegated authorising officer (usually a Director or Head of Service) is satisfied that they are competent to do so. Assessment of their competency is based on a number of factors and can include a period of assessment, qualifications, experience and/or specific training. Authorised officers will act in accordance with the policy.

The council at times may also appoint representative outside bodies to carry out enforcement functions where we consider this appropriate and there are powers for us to do so.

### Requests for our services

In responding to requests for our services, including requests for advice and complaints about breaches of the law, we will:

- Acknowledge your request
- Tell you when you can expect a substantive response
- Seek to fully understand the nature of your request
- Explain what we may or may not be able to do, so that you know what to expect
- Keep you informed of progress throughout our involvement
- Inform you of the outcome as appropriate

We treat all contact with our services in confidence unless you have given us permission to share your details with others as part of the matter we are dealing with, or there is an operational reason why we need to do so. In some circumstances, you should be aware that it might become naturally apparent to an alleged offender who the complainant is.

We will respond to anonymous complaints and enquiries where we judge it appropriate to do so.

### Identifying the need for action

We may identify the need for enforcement action in a number of ways including (but not limited to):

- programmed and intelligence-led inspections
- response to a complaint or referral from a third party
- request for assistance for enforcement action or advice
- requests for subsidised financial assistance to improve a premises
- some enforcement services have officers patrolling the streets
- sampling visits

- test purchases

Where we consider it appropriate to inspect/investigate a business, premises, or activity to determine whether a risk of non-compliance exists we must do so. We will usually give you notice that we intend to visit unless we have specific reason to believe that an unannounced visit is more appropriate.

### **Conduct of investigations**

All investigations will be carried out under the following legislation and in accordance with any associated guidance or codes of practice:

- the Police and Criminal Evidence Act 1984
- the Criminal Procedure and Investigations Act 1996
- the Regulation of Investigatory Powers Act 2000
- the Criminal Justice and Police Act 2001
- the Human Rights Act 1998

These Acts and associated guidance control how evidence is collected and used and gives a range of protections to citizens and potential defendants. Our authorised officers will also comply with the requirements of the particular legislation under which they are acting, and with any associated guidance or codes of practice. As part of the investigation process, persons suspected of breaching legal requirements will wherever appropriate:

- be formally interviewed in accordance with the Police and Criminal Evidence Act
- be given the opportunity to raise a statutory defence
- have the reasonable opportunity to provide an explanation or make any comments about the alleged breach

### **Prioritising cases**

The following factors will be taken into account when allocating resources:

- severity and scale of potential or actual harm
- existence of any continuing risk or breach of law
- individual or businesses past performance in complying with relevant legal responsibilities
- current enforcement priorities of the relevant service
- practicality of achieving results including any evidential gap
- wider relevance of the event, including serious public concern and interest
- vulnerability of any group affected

### **Decision to take enforcement action**

The decision to use enforcement action will be taken on a case-by-case basis and, to ensure consistency of approach, in accordance with this and any other policies which may be

applicable. The action taken, which may be immediate, will be proportionate to the gravity and nature of the non-compliance.

Where appropriate, services 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 - including potential harm and loss - and its significance when making the decision.

In every case a decision to take enforcement action will seek to:

- promote and achieve sustained compliance with codes of practice or the law
- ensure that businesses or individuals take action to deal immediately with serious risks and areas of non-compliance
- eliminate financial gain or benefit from non-compliance
- repair the harm done by the offence, where appropriate
- ensure that individuals and businesses who breach prescribed conditions or legislative requirements, and directors, employees or managers who fail in their responsibilities are held to account, which may include bringing alleged offenders before the courts

The appropriate use of enforcement powers is important both to secure compliance with the law, and to ensure that those who have duties may be held to account for breaches of legislation, or causing harm to the community. It is also important that compliant business and individuals can be assured that action is targeted against the worst offenders, and that their compliance and efforts are part of a coherent system.

### **Enforcement Good Practice**

We recognise that robust enforcement is essential for public confidence in upholding the integrity of the regulatory regimes that we administer, but also that good, proportionate regulation is supportive to the economic vitality and growth of the economy and local businesses. We will not hesitate to take all necessary enforcement action against those who commit serious offences, flout the law, fail to follow advice or warnings to achieve compliance, or breach matters that are of key priority to the Council. If there is a serious or imminent risk of harm, danger, nuisance or injury then we will take immediate formal enforcement action as required.

We are however more likely to offer advice or a warning in the first instance if the breach is not so serious as to require immediate enforcement action, if it is not a persistent breach, if there has been a history of good compliance, or we are confident there will be compliance. There are however, breaches, which the council considers necessary to adopt a zero tolerance approach towards for the protection of the quality of life of its residents, and these will be enforced without giving a warning.

### **Explaining non-compliance**

When we take informal and formal enforcement action, we will provide individuals and businesses with clear explanations of what the breach is, what action is needed and the



reasons for this. We will also offer advice but differentiate between those matters that are legal requirements and those matters that are advice and good practice.

We will provide the individual/ business with an opportunity to discuss with us the advice given, actions required or decisions taken in relation to non-compliance, except where we need to take immediate enforcement action to respond to or prevent serious or imminent risk.

### **Multi-agency Enforcement**

There will be occasions where we will need to work with other agencies by carrying out joint inspections, in accordance with jointly agreed protocols for example with the Police or Fire Services.

In determining the most appropriate form of investigation and enforcement action, officers will have regard to other agencies' interests as far as is reasonably practicable. Where enforcement action is being taken by another service, we will provide all reasonable assistance including witness statements and sharing evidence (subject to legal and data protection constraints).

### **Publicity**

We will also consider in all cases drawing the media's attention to factual information about charges which have been laid before the courts, within the limitations of avoiding publicity which could prejudice a fair trial. We may also publicise any successful conviction, to help inform others and improve awareness and compliance.

### **Complaints and appeals**

We are always willing to discuss with you the reasons why we have acted in a particular way, or asked you to act in a particular way. In the first instance you should speak with the enforcement officer involved in your case.

Where we take formal enforcement action, there is often a statutory right to appeal against a regulatory decision or if we fail to act in accordance with the Regulators Code. We will always tell you about this at the appropriate time.

We manage complaints about our service, or about the conduct of our officers, through our Corporate Complaints Policy. Details can be found at [www.westminster.gov.uk/complaints](http://www.westminster.gov.uk/complaints)

### **Performance Monitoring**

The council publishes an annual Audit and Performance Report, which describes our performance (including enforcement) against the council's City for All programme, Service Standards, and Service Business Plans. It provides analysis, explanations and commentary in respect of outstanding, good and poor performance, including achievement of targets, the results of the City Wide satisfaction survey, trends, and details of remedial actions being taken

where appropriate. Annual Reports can be found via the [Audit and Performance Committee webpages](#).

## Part Four: Enforcement powers

The range of civil and criminal enforcement options available to Westminster City Council is wide. Any enforcement carried out by our authorised officers will be set out in legislation or under national/local policy. Our officers will comply with the requirements of the particular legislation under which they are acting, and with any associated guidance or codes of practice. Below is a summary of the common categories of enforcement we may impose (this list is not exhaustive):

### **Compliance Advice, Guidance and Support**

We will use compliance advice, guidance and support as a first response in many cases where breaches of legislation are identified. Advice is provided, sometimes in the form of a warning letter, to assist individuals and businesses in rectifying breaches as quickly and efficiently as possible, avoiding the need for further enforcement action. A warning letter (sometimes called an 'informal caution') will set out what should be done to rectify the breach and to prevent re-occurrence. If a similar breach is identified in the future, this letter will be persuasive in considering the most appropriate enforcement action to take on that occasion. Such a letter may be presented in evidence should the issue escalate to the court.

Where more formal enforcement action, such as a simple caution or prosecution, is taken, we recognise that there is likely to be an ongoing need for compliance advice and support, to prevent further breaches.

### **Voluntary Undertakings**

We may accept voluntary undertakings that breaches will be rectified and/or recurrences prevented. We will take any failure to honour voluntary undertakings very seriously and enforcement action is likely to result.

### **Statutory (Legal) Notices**

In respect of many breaches, we have the power to issue statutory notices. Such notices are legally binding. Failure to comply with a statutory notice can be a criminal offence and may lead to prosecution.

A statutory notice will clearly set out actions which must be taken and the timescale within which they must be taken. It is likely to require that any breach is rectified and/or prevented from recurring. It may also prohibit specified activities until the breach has been rectified and/or safeguards have been put in place to prevent future breaches. Where a statutory notice is issued, an explanation of the appeals process will be provided to the recipient.

## **Financial penalties**

We are only able to issue fixed penalty notices when we have prescribed powers to do so. If fixed penalty notices are available, their issue is at our discretion. In some circumstances, in particular where breaches are serious or recurrent, it may be that prosecution is more appropriate than the issue of a fixed penalty notice. A fixed penalty notice is not a criminal fine and does not appear on an individual's criminal record. If a fixed penalty is paid in respect of a breach, we will not take any further enforcement action. However, payment of a fixed penalty does not provide immunity from prosecution in respect of similar or recurrent breaches. If a fixed penalty is not paid, we may commence criminal proceedings or take other enforcement action in respect of the breach.

## **Refusal/Suspension/Revocation of Licences or Permissions**

We issue a number of licences and permits. We also have a role to play in ensuring that appropriate standards are met in relation to licences issued by other agencies. Most licences include conditions, which require the licence holder to take steps to ensure that, for example, a business is properly run. Breach of these conditions may lead to a review of the licence, which may result in its revocation or amendment.

## **Court Orders**

In some circumstances, we may seek a direction from the court (in the form of an order or an injunction) that a breach is rectified and/or prevented from recurring. The court may also direct that specified activities be suspended until the breach has been rectified and/or safeguards have been put in place to prevent future breaches. Failure to comply with a court order constitutes contempt of court, a serious offence that may lead to imprisonment.

## **Simple Caution**

We have the power to issue simple cautions as an alternative to prosecution for some less serious offences, where a person admits an offence and consents to the simple caution. A simple caution will appear on the offender's criminal record. It is likely to influence how others and we deal with any similar breaches in the future, and may be cited in court if the offender is subsequently prosecuted for a similar offence. If a simple caution is issued to an individual (rather than a corporation), it may have consequences if that individual seeks certain types of employment.

## **Prosecution**

We may prosecute in respect of serious or recurrent breaches, or where other enforcement action has failed to secure compliance. When deciding whether to prosecute we will have regard to the provisions of the Code of Crown Prosecutors. Prosecution will only be considered when we are satisfied that there is sufficient evidence to provide a realistic prospect of conviction against the defendant(s), and that prosecution would be in the public interest. For this, we will have regard to the Crown Prosecution Service Code of Practice.

Any successful prosecution will result in a criminal record. The sentence that the court imposes will depend on the legislation involved, the seriousness of the offence, any mitigating factors, and the courts sentencing guidelines.

Where a business is concerned, we will consider the management chain and the role played by individual directors and managers. We will take action where an inspection or an investigation reveals that the offence was committed with management knowledge or consent, or to have been attributable to any neglect on their part. We may also seek disqualification of directors under the Company Directors Disqualification Act 1986.

### **Proceeds of Crime**

Any money or assets earned because of, or in connection with, an offence can be recovered under the Proceeds of Crime Act 2002. In relevant cases, we will consider taking action under the Proceeds of Crime Act to confiscate the proceeds of those who benefit from criminal conduct.