

# DES Policy Statement on Enforcement

## 1. Introduction

1.1. This policy statement covers all the regulatory activity undertaken by the following services in the Department of Environmental Services (DES):-

- a) Environmental Health (EH)
- b) Trading Standards (TS)
- c) Licensing (L)
- d) Port Health (PH)
- e) Animal Health (AH)
- f) Building Control (BC)
- g) Highways (H); and
- h) Cleansing (C).

1.2. The aims of these regulatory services are:-

- a) To provide a comprehensive and effective environmental health service for the City of London, ensuring that, through monitoring, regulation and enforcement, City residents and businesses can enjoy an environment and services which are, so far as possible, safe and without risks to their health or welfare (EH)
- b) To create, develop and maintain a safe, fair and healthy environment in the City of London (TS) and thereby protect the interests of consumers and businesses
- c) To ensuring that all City businesses hold the appropriate licences and registrations and comply with the rules and conditions appertaining to them (L)
- d) To deliver a high quality, accessible, and responsive service to protect, enhance, and improve the public, environmental, and animal health of the Tidal Thames and Lower Medway (PH)
- e) To provide Animal Health and Welfare services of the highest quality to London and the Nation (AH)
- f) To maintain our position as the principal provider of Building Control services for the City of London (BC)
- g) To ensure that the public highway and associated infrastructure is maintained and managed to the highest possible standards (H)
- h) 'A Special Service for a Special City' (C)

1.3. This Enforcement Policy Statement conforms with the Regulators' Compliance Code and the regulatory principles required under the Legislative and Regulatory Reform Act 2006. It sets out the general principles and approach which DES officers in its regulatory services are expected to follow.

1.4. The appropriate use of enforcement powers, including prosecution, is important, both to secure compliance with the law and to ensure that those

who have duties under it may be held to account for failures to safeguard fair trading, health, safety and welfare.

- 1.5. In allocating resources, regulatory services should have regard to the principles set out below, the objectives published in the current DES Business Plan, and the need to maintain a balance between enforcement and other activities, including inspection sampling and test purchasing.

## **2. The purpose and method of enforcement**

- 2.1. The ultimate purpose of DES's regulatory services is to ensure that those responsible for complying with food, health & safety, trading standards, licensing, environment, waste, building control and highways legislation manage and control risks effectively, thus preventing harm. The term 'enforcement' has a wide meaning and applies to all dealings between DES's regulatory services and those on whom the law places duties.
- 2.2. The purpose of enforcement is to:
  - a) ensure that businesses take action to deal immediately with serious risks;
  - b) promote and achieve sustained compliance with the law;
  - c) ensure that businesses who breach legislative requirements, and directors, employees or managers who fail in their responsibilities, may be held to account, which may include bringing alleged offenders before the courts, in the circumstances set out later in this policy.
- 2.3. Enforcement is distinct from civil claims for compensation and is not undertaken in all circumstances where civil claims may be pursued, nor is its purpose to assist such claims. It does however include civil sanctions as detailed later in this Policy.
- 2.4. The Department's regulatory services have a range of tools at their disposal in seeking to secure compliance with the law and to ensure a proportionate response to criminal offences and relevant civil breaches. Officers may offer businesses information, and advice, both face-to-face and in writing. This may include warning a business that in the opinion of the officer, they are failing to comply with the law. Where appropriate, officers may also issue Fixed Penalty Notices if available, serve enforcement notices, issue Simple Cautions<sup>1</sup> and they may recommend prosecution to the Chief Officer.
- 2.5. Giving information and advice and issuing enforcement notices are the main means which officers use to achieve the broad aim of preventing harm, dealing with serious risks and securing compliance with the relevant

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<sup>1</sup> A Simple Caution is a statement by an officer, that is accepted in writing by the business, that the business has committed an offence for which there is a realistic prospect of conviction. A simple caution may only be used where a prosecution could be properly brought. 'Simple cautions' are entirely distinct from a caution given under the Police and Criminal Evidence Act 1984 by an officer before questioning a suspect about an alleged offence. DES's regulatory services should take account of current Home Office guidelines when considering whether to offer a Simple Caution.

legislation. Information on certain types of enforcement notices<sup>2</sup> are required to be retained on a public register and reported to the relevant Government agency – e.g. the Health & Safety Executive.

- 2.6. Prosecution and, if appropriate, simple cautions are important ways to bring businesses to account for alleged breaches of the law. Where it is appropriate to do so in accordance with this policy, DES's regulatory services should use one of these measures in addition to any enforcement notice(s) to deal with immediate issues.
- 2.7. Investigating the circumstances encountered during inspections or following incidents or complaints is essential before taking any enforcement action that consideration is given to the furthest that a case may reasonably be expected to go – i.e. all the way to prosecution – as adequate resources are crucial.
- 2.8. In deciding what resources to devote to these investigations, DES's regulatory services will have regard to the principles of enforcement set out in this statement and the objectives published in the current DES Business Plan. In particular, in allocating resources, DES's regulatory services must strike a balance between reactive investigations and pro-active, preventative activity, including the provision of advice and education.
- 2.9. DES expects its regulatory services officers to use their discretion in deciding when to investigate incidents or complaints and on what enforcement action may be appropriate and these judgements will always be made in accordance with the Regulators' Compliance Code<sup>3</sup>, The Enforcement Concordat and the regulatory principles required under the Legislative and Regulatory Reform Act 2006.

### 3. The principles of enforcement

- 3.1. DES believes in the firm but fair enforcement of all law that it enforces. This enforcement should be informed by the principles of:-
  - a) **proportionality** in applying the law and securing compliance;
  - b) maintaining a **consistency of approach**;
  - c) **targeting** of all enforcement action where it is most needed;
  - d) **transparency** about how we as a regulator operate and what those whom we regulate can expect; and
  - e) **accountability** for our actions.

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<sup>2</sup> Environment & Safety Information Act 1988 requires that all notices served under the Health & Safety At Work Act etc. Act 1974 with any element that might affect the public, are required to be entered on a public register for a period of at least three years irrespective as to whether or not they have been complied with by the recipient.

<sup>3</sup> Regulators' Compliance Code published by Department for Business, Innovation and Skills

[www.berr.gov.uk/whatwedo/bre/inspection-enforcement/implementing-principles/regulatory-compliance-code/page44055.html](http://www.berr.gov.uk/whatwedo/bre/inspection-enforcement/implementing-principles/regulatory-compliance-code/page44055.html)

These principles apply both to enforcement in particular cases and to enforcement activities as a whole.

### **Proportionality**

- 3.2. Proportionality means relating enforcement action to the risks.<sup>4</sup> Those whom the law protects and those on whom it places duties expect that any action taken by the DES's regulatory services to achieve compliance and/or bring people to account for non-compliance, should be proportionate to the seriousness of any breach with respect to:-
- a) any risks to health, safety, environmental damage or economic advantage gained; and
  - b) the severity of any actual or potential harm arising from such; and
  - c) the likelihood of any such harm recurring.
- 3.3. In practice, applying the principle of proportionality means that the DES's regulatory services should take particular account of how far those responsible have fallen short of what the law requires and the extent of the risk of harm or economic disadvantage to others arising from any such failings.
- 3.4. Some duties are specific and absolute whereas others require action 'so far as is reasonably practicable' and DES's regulatory services will apply the principle of proportionality in relation to both kinds of duty.
- 3.5. Deciding what is reasonably practicable to control risks involves the exercise of judgement. Where businesses must control risks so far as is reasonably practicable, our officers in considering protective measures taken by businesses, must take account of the degree of risk on the one hand, and on the other the sacrifice, whether in money, time or trouble, involved in the measures necessary to avert the risk. Unless it can be shown that there is gross disproportion between these factors and that the risk is insignificant in relation to the cost, the business is expected to such take measures and incur costs to reduce the risk.
- 3.6. DES expects relevant good practice to be promoted by its officers. Where relevant good practice in particular cases is not clearly established, the law effectively requires businesses to establish explicitly the significance of the risks to determine what action needs to be taken. Ultimately, the courts will determine what is reasonably practicable in each particular case.

### **Targeting**

- 3.7. Targeting means making sure that contacts and interventions, particularly pro-active ones:-

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<sup>4</sup> In this policy, 'risk' (where the term is used alone) is defined broadly to include any source of possible risk.

- a) are targeted primarily on those whose activities give rise to the most serious risks of non-compliance or where the hazards are least well controlled; and that
- b) action is focused on those who are responsible for compliance and risk control and who are best placed to control it – be they employers, manufacturers, suppliers, or others.

3.8. DES's regulatory services have processes in place by which inspections, investigations or other regulatory contacts are prioritised according to the nature and extent of risks posed by each businesses operations and any other intelligence received regarding the levels of complaints about a business. Their management competence is important, because a relatively low hazard business poorly managed can entail greater risk to workers or the public than a higher hazard business where proper and adequate risk control measures are in place.

3.9. All enforcement action will be directed against those responsible for such breaches. This may be employers in relation to workers or others exposed to risks; companies, partnerships, sole traders and the self-employed; owners of premises; designers or clients of projects, directors and employees. Where there are several parties who each have responsibilities, DES's regulatory services may take action against more than one when it is appropriate to do so in accordance with this policy.

3.10. When officers issue enforcement notices, Simple Cautions, or recommend prosecution, DES's regulatory services will ensure that a senior officer at board level of any business concerned, is notified.

3.11. In deciding what enforcement action to take against an offender we will have regard to one or more of the following aims:

- a) to change the behaviour of the offender;
- b) to eliminate any financial gain or benefit from non-compliance; ;
- c) to be responsive and consider what is the most appropriate sanction for the particular offender and the regulatory issue concerned; ;
- d) for the action to be proportionate to the nature of the offence and the harm/potential harm cause; ;
- e) to restore the harm caused by regulatory non compliance, where appropriate; and
- f) to deter future non-compliance.

3.12. The range of enforcement options available to DES includes the following:

- a) **No action** - in certain circumstances e.g. where the detrimental impact on the community is small, contravention of the law may not warrant any action.

- b) **Indirect action** - including referral to another authority or agency for information or action.
- c) **Verbal/written advice or warning** - where an offence has been committed but it is not thought appropriate to take any further action, in which case the suggested corrective action and a timescale will be given.
- d) **Fixed Penalty Notices (FPN)** - certain offences are subject to FPNs and legislation permits an offence to be dealt with by way of a Fixed Penalty Notice. We may choose to administer a FPN on a first occasion, without issuing a warning as this avoids a criminal record for the defendant.
- e) **Penalty Charge Notices (PCN)** - are prescribed by certain legislation as a method of enforcement by which the offender pays an amount of money to the enforcer in recognition of the breach. Failure to pay the PCN will result in the offender being pursued in the County Court for non-payment of the debt. A PCN does not create a criminal record and we may choose to issue a PCN without first issuing a warning.
- f) **Penalty Notice for Disorder (PND)** - is the fixed penalty option for anti-social behaviour such as the sale of alcohol to a minor.
- g) **Statutory Notice** - these are used as appropriate in accordance with relevant legislation (they usually require offenders to take specific action or to cease certain activities). Examples include improvement notices, prohibition notices and suspension notices.
- h) **Seizure** - some legislation permits our Officers to seize goods and documents that may be required as evidence. When we seize goods, we will give an appropriate receipt to the person from whom they are taken. On some occasions, we may ask the person to voluntarily surrender the goods.
- i) **Forfeiture** - some legislation allows us to apply to the court to seek forfeiture of goods, either in conjunction with a prosecution, or separately.
- j) **Undertakings and Injunctive action under the Enterprise Act** - the range of actions under this legislation include the following:
  - *informal undertakings*
  - *formal undertakings*
  - *interim orders*
  - *court orders*
  - *contempt proceeding*
- k) **Review of Licences**- where there is a requirement for a business to be licensed by a local authority e.g. Licensing Act, or other body e.g. Office of Fair Trading, then a review of the licence or permit may be sought where the activities or fitness of the licence holder is in question.
- l) **Anti-Social Behaviour Orders and Criminal Anti-Social Behaviour Orders** - where the non-compliance under investigation amounts to anti-social behaviour, then, following liaison with the Town Clerk and the Comptroller & City Solicitor, an Anti-Social Behaviour Order (ASBO) or a Criminal Anti-Social Behaviour Order (CRASBO) may be sought to stop the activity.

- m) **Taking animals into possession** - under the Animal Welfare Act 2006, if a veterinary surgeon certifies that 'protected animals' are suffering or are likely to suffer if their circumstances do not change, we will consider taking them into possession and applying for Orders for reimbursement of expenses incurred and subsequent disposal.
- n) **Simple Caution** – is used in accordance with the current Home Office circular, to deal quickly and simply with less serious offences and to avoid unnecessary appearances in criminal courts. A formal or 'Simple' caution is an admission of guilt but it is not a form of sentence, nor is it a criminal conviction - it may be cited in court in certain circumstances. A record of the caution will be sent to the Office of Fair Trading and to other bodies that are required to be notified.
- o) **Prosecution** - will only be undertaken when the evidence passes the 'Evidential Test' and when it is in the public interest to do so – we will have regard to the Crown Prosecution Service Code of Practice.
- p) **Proceeds of Crime Actions** - purpose is to recover the financial benefit that the offender has obtained from their criminal conduct. Applications may be made under the Proceeds of Crime Act for confiscation of assets in serious cases. Proceedings are conducted according to the civil standard of proof. Applications are made after a conviction has been secured. We will continually review our position regarding the use of enforcement options and additional sanctions under the Regulatory Enforcement and Sanctions Act 2008.

3.13. Where it is necessary to carry out a full investigation, the case will be progressed without undue delay. All investigations into alleged breaches of legislation will be conducted in compliance with statutory powers and all other relevant legislation (and relevant Codes of Practice), including the requirements of:

- a) Police and Criminal Evidence Act (PACE)
- b) Criminal Procedure and Investigations Act (CPIA)
- c) Regulation of Investigatory Powers Act (RIPA)
- d) Human Rights Act (HRA).

3.14. As part of the investigation process, persons suspected of breaching legal requirements will, wherever possible:-

- a) be formally interviewed in accordance with PACE;
- b) be given the opportunity to demonstrate that a statutory defence is available; and
- c) have the opportunity to give an explanation or make additional comments about the alleged breach.

3.15. Before a decision to prosecute is taken, the alleged offence(s) will be fully investigated, a Report compiled by the Investigating Officer and the file reviewed by a Senior Manager. 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, including potential harm and loss and its significance in making the decision.

### **Consistency**

- 3.16. Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends.
- 3.17. Businesses are entitled to expect a consistent approach from officers in the same regulatory service in the advice they tender, their issue of enforcement notices, decisions on whether to prosecute and in the response to incidents.
- 3.18. DES recognises that in practice, consistency is not a simple matter and its officers are faced with many variables including the degree of risk, the attitude and competence of management, any history of incidents or contraventions involving the business, any previous enforcement action, and the seriousness of any breach, which includes any potential or actual harm arising from a breach of the law.
- 3.19. Decisions on enforcement action are discretionary, involving judgement by the officer and DES has arrangements in place to promote consistency in the exercise of discretion, including effective arrangements for liaison and Continuous Professional Development (CPD) amongst professional peer groups across the range of regulatory services.

### **Transparency**

- 3.20. Transparency means helping businesses to understand what is expected of them and what they should expect from DES's regulatory services. It also means making clear to businesses not only what they have to do but, where this is relevant, what they don't. That means clearly distinguishing between statutory requirements and advice or guidance about what is desirable but not compulsory.
- 3.21. Transparency also involves DES's regulatory services in having arrangements for keeping employees, their representatives, and victims of incidents or their families and complainants informed whenever possible as to the latest developments in their particular case. Notwithstanding, that these arrangements have regard to legal constraints and requirements of concerning the non-disclosure of evidence or matters prior to any court appearance or hearing.
- 3.22. This policy statement sets out the general policy framework within which DES's regulatory services operate. The public, businesses, employees, their representatives and others also need to know what to expect when an officer calls and what rights of complaint are open to them. Our complaints procedures are set out on the City of London Corporation's website.

- 3.23. When officers offer businesses or the public information, or advice, face-to-face or in writing, including any warning, they will tell the business or individual what to do to comply with the law, and explain why. Officers will write to confirm any advice, and to distinguish between legal requirements from best practice advice.
- 3.24. In the case of enforcement notices, the officers will discuss the notice and, if possible, resolve points of difference before serving it. The notice will say what needs to be done, why, and by when, and that in the officer's opinion a breach of the law has been committed. In the case of any prohibition type notice which has the effect of immediately stopping activity or operations, the notice will explain why the prohibition is necessary.
- 3.25. If regulatory compliance can be achieved by the procurement of services of which the City of London Corporation currently provides, those being regulated will be directed to the appropriate Department or Service, whilst advising them the City of London Corporation is not the only provider and that they have no obligation to procure any services provided by the City of London Corporation over any other provider.

### **Accountability**

- 3.26. Regulators are accountable to the public for their actions. This means that local authorities such as the City of London Corporation have policies and standards (such as the five enforcement principles above) against which they can be judged, and an effective and easily accessible mechanism for dealing with comments and handling complaints.
- 3.27. We will be accountable for the efficiency and effectiveness of our activities as outlined in the Regulators' Compliance Code.

## **4. Investigation**

- 4.1. DES's regulatory services undertake investigations in order to determine:
- a) sources of complaint – e.g. statutory nuisance, unfair trading
  - b) causes of accidents;
  - c) whether action has been taken or needs to be taken to prevent a recurrence and to secure compliance with the law;
  - d) lessons to be learnt and to influence the law and guidance; and
  - e) what response is appropriate to a breach of the law.
- 4.2. To maintain a proportionate response, most resources available for investigation of incidents and complaints will be devoted to the more serious circumstances.
- 4.3. Complaints or reports of environmental nuisance, unfair trading, work-related deaths, injuries or occupational ill-health are all investigated but in deciding

the level of resources to be deployed, the regulatory service in question will take account of the following factors:

- a) the severity and scale of potential or actual harm;
- b) the risk of any continuing breach of the law;
- c) the business's past performance in complying with relevant legal responsibilities;
- d) the current enforcement priorities of the relevant DES regulatory service;
- e) the practicality of achieving results including any evidential gap;
- f) the wider relevance of the event, including serious public concern and interest.

## **5. Prosecution**

- 5.1. The final decision to proceed with prosecution rests with the DES Chief Officer acting upon the recommendation of the relevant Service Director with the Comptroller & City Solicitor's advice and DES regulatory services will use discretion in deciding whether to bring a prosecution.
- 5.2. The decision whether to prosecute should take account of the evidence obtained and the relevant public interest factors set down by the Crown Prosecution Service in their Code for Crown Prosecutors<sup>5</sup>. No prosecution may go ahead unless the DES Chief Officer, acting on legal advice, believes there is sufficient evidence to provide a realistic prospect of conviction, and decides that prosecution would be in the public interest.
- 5.3. While the primary purpose of the regulatory services is to ensure that businesses manage and control their risks effectively and thus prevent harm, prosecution is an essential part of enforcement. Where in the course of an investigation, a regulatory service collects sufficient evidence to provide a realistic prospect of conviction and has decided, in accordance with this policy and taking account of the Code for Crown Prosecutors, that it is in the public interest to prosecute, then that prosecution should go ahead.
- 5.4. The Code for Crown Prosecutors requires the decision to prosecute to be kept under continuous review, so that any new facts or circumstances, in support of or conversely, undermining the prosecution's case, are taken into account in the decision to continue or immediately terminate the proceedings. Where the circumstances warrant it and the evidence to support a case is available, regulatory services may prosecute without prior warning or recourse to alternative sanctions first.
- 5.5. The City of London Corporation expects that, in the public interest, its regulatory services should normally prosecute, or recommend prosecution,

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<sup>5</sup> CPS Code for Crown Prosecutors

[www.cps.gov.uk/publications/code\\_for\\_crown\\_prosecutors/index.html](http://www.cps.gov.uk/publications/code_for_crown_prosecutors/index.html)

where, following an investigation or other regulatory contact, one or more of the following circumstances apply. Where:

- a) death was a result of a breach of the legislation;
- b) the gravity of an alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender warrants it;
- c) there has been reckless disregard of legal requirements;
- d) there have been repeated breaches which give rise to significant risk, or persistent and significant poor compliance;
- e) activities or trade have been carried out without or in serious non-compliance with an appropriate licence, permission or sanction;
- f) a business's standard of operation is found to be far below what is required by law and/or is giving rise to significant risk;
- g) there has been a failure to comply with an enforcement notice; or there has been a repetition of a breach that was subject to a Simple Caution;
- h) false information has been wilfully supplied, and/or there has been an intent to deceive, in relation to a matter of non-compliance and/or one which gives rise to significant risk; and
- i) officers have been intentionally obstructed in the lawful course of their duties.

5.6. Where officers are assaulted, regulatory services will always seek police assistance, with a view to seeking the prosecution of offenders.

5.7. DES also expects that, in the public interest, its regulatory services will consider recommending prosecution, where following an investigation or other regulatory contact, one or more of the following circumstances apply:

- a) it is appropriate in the circumstances as a way to draw general attention to the need for compliance with the law and the maintenance of standards required by law, and conviction may deter others from similar failures to comply with the law; and
- b) a breach which gives rise to significant risk has continued despite relevant warnings.

## **6. Prosecution of individuals**

6.1. Subject to the above, DES's regulatory services will identify and recommend the prosecution of individuals if they consider that a prosecution is warranted.

6.2. In particular, we will consider the management chain and the role played by individual directors and managers, and will take action against them where an inspection or an investigation reveals that the offence was committed with their consent or connivance, or to have been attributable to any neglect on their part and, where it would be appropriate to do so in accordance with this policy.

- 6.3. Where appropriate, regulatory services should seek disqualification of directors under the Company Directors Disqualification Act 1986.

## **7. Disseminating Information**

- 7.1. The Crime and Disorder Act 1998<sup>6</sup> recognises that there are key stakeholder groups who have responsibility for the provision of a wide and varied range of services to and within the community. In carrying out these functions, the Act places a duty on them to do all they can do to reasonably prevent crime and disorder in their area.
- 7.2. Each regulatory service will fulfil its responsibilities by sharing information regarding its regulatory investigations with other such services both within DES and with other external agencies including, though not exhaustively, the City of London Police, the Health & Safety Executive, the Environment Agency, the Marine & Coastguard Agency and HM Customs & Revenue.
- 7.3. If there is a shared enforcement role with other agencies - e.g. the Office of Fair Trading (OFT), Animal Health, HM Revenue & Customs, other COL Services or the Police - we will consider co-ordinating with these agencies to minimise unnecessary overlaps or time delays and to maximise our overall effectiveness.

## **8. Publicity**

- 8.1. DES's regulatory services will also consider in all cases drawing the media's attention to factual information about charges which have been laid before the courts, but great care must be taken to avoid any publicity which could prejudice a fair trial.
- 8.2. We will also consider publicising any successful conviction which could serve to draw attention to the need to comply with legislation requirements, or deter anyone tempted to disregard their duties under UK law.

## **9. Action by the courts**

- 9.1. DES's regulatory services will continue to seek to raise the courts' awareness of the gravity of any offences and of the full extent of their sentencing powers and draw to the court's attention all the factors which are relevant to the court's decision as to what sentence is most appropriate, whilst still recognising that it is ultimately for the courts to decide whether or not someone is guilty and what penalty, if any, to impose on conviction.

## **10. Representations to the courts**

- 10.1. In cases of sufficient seriousness, and when given the opportunity, DES will consider indicating to the magistrates that the offence is so serious that they

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<sup>6</sup> Section 17 [www.opsi.gov.uk/acts/acts1998](http://www.opsi.gov.uk/acts/acts1998)

may send it to be heard or sentenced in the higher court where higher penalties can be imposed. In considering what representations to make, regulatory services should have regard to current case law and guidance.

## **11. Conclusion**

- 11.1. Compliance with this Policy Statement on Enforcement will ensure that DES strives to be fair, impartial, independent and objective and is not 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.
- 11.2. Decisions will not be influenced by improper or undue pressure from any source.

**FURTHER INFORMATION**

**Regulatory Enforcement and Sanctions Act 2008**

***Regulators' Compliance Code*** (2007)

Department of Business, Innovation and Skills [www.bis.gov.uk](http://www.bis.gov.uk)

***Applying the Regulators' Compliance Code and Enforcement Concordat*** (2008)

Local Better Regulation Office [www.lbro.org.uk](http://www.lbro.org.uk)

***Code for Crown Prosecutors*** (2004)

Crown Prosecution Service [www.cps.gov.uk](http://www.cps.gov.uk)

The Enforcement Concordat [www.bis.gov.uk](http://www.bis.gov.uk)

Macrory Report on Alternative penalties [www.bis.gov.uk](http://www.bis.gov.uk)

## **APPENDIX A - Environmental Health & Public Protection Service**

### **1. Our Decision Making Processes**

When deciding whether to investigate any matter further, the Environmental Health & Public Protection Service will follow the current guidance and information of Government agencies and departments and other relevant regulatory sources:-

- the Food Standards Agency  
[www.food.gov.uk/enforcement](http://www.food.gov.uk/enforcement)

- the Health & Safety Executive

Enforcement Guide - [www.hse.gov.uk/enforce/enforcementguide](http://www.hse.gov.uk/enforce/enforcementguide)

Enforcement Management Model - [www.hse.gov.uk/enforce/emm.pdf](http://www.hse.gov.uk/enforce/emm.pdf)

Incident Selection Criteria Guidance [www.hse.gov.uk/lau/lacs/22-13.htm](http://www.hse.gov.uk/lau/lacs/22-13.htm)

- the Department of the Environment, Farming & Rural Affairs  
[www.defra.gov.uk/corporate/policy/enforcement/enforce-policy-rev0808.pdf](http://www.defra.gov.uk/corporate/policy/enforcement/enforce-policy-rev0808.pdf)
- Office of Fair Trading  
[www.offt.gov.uk/oft\\_at\\_work/enforcement\\_regulation/enforcement](http://www.offt.gov.uk/oft_at_work/enforcement_regulation/enforcement)
- Consumer Direct  
[www.consumerdirect.gov.uk](http://www.consumerdirect.gov.uk)
- Trading Standards services' Regional Intelligence Officers plus the City of London Police, HMRC and any other regulatory sources
- City of London Licensing Policy [www.cityoflondon.gov.uk/licensing](http://www.cityoflondon.gov.uk/licensing)

## **2. Home Authority and Primary Authority**

1. The Home Authority Principle means that City of London based businesses, where they trade or provide services that impact beyond the city, are able to get advice and support from us on matters such as legal requirements, changes to the law and so forth. This usually takes the form of a semi-formal relationship and we support the Home Authority Principle, which has been developed over many years to promote good enforcement practice and reduce burdens on business.
2. In April 2009, the Regulatory and Enforcement Sanctions Act 2008 introduced the Primary Authority Principle which in contrast to the Home Authority Principle, is a more formal relationship including for the first time, the ability to re-charge the business.
3. A Primary Authority is a local authority registered by the Local Better Regulation Office (LBRO) as having responsibility for giving advice and guidance to a particular business or organisation that is subject to regulation by more than one local authority. As such any advice given to that business or organisation is nationally applicable and all other local authorities must follow it.
4. Our objective is to create full Primary Authority partnerships whenever possible which will provide increased positive benefits to both parties. EH&PP will give due consideration to any business, based in or associated with the City of London who wishes to enter into such an arrangement.
5. As part of any Primary Authority partnership we will therefore:
  - a) provide businesses for whom we are the 'Primary' with appropriate guidance and advice;
  - b) maintain records of our contacts with such businesses in the LBRO's required format;
  - c) support efficient liaison between local authorities dealing with such businesses; and
  - d) provide a first point of contact for the resolution of any problems and disputes.

### **3. Death at work**

1. Where there has been a breach of health & safety law leading to a work-related death in premises for which the City of London Corporation is the enforcing authority, the City of London Police (CoLP) will first have to consider whether the circumstances of the case might justify a charge of manslaughter or corporate manslaughter and they take primacy in any joint investigation.
2. To ensure decisions on investigation and prosecution are closely co-ordinated following a work-related death, the HSE, the Association of Chief Police Officers (ACPO), the British Transport Police, the Crown Prosecution Service (CPS), the Local Government Association (LGA) and the Office of Rail Regulation (ORR) have jointly agreed and published the current *Work-related deaths: A protocol for liaison*<sup>7</sup>.
3. Other non-signatory organisations, such as the Maritime and Coastguard Agency (MCA), Civil Aviation Authority (CAA) and the Chief Fire Officers Association (CFOA), have agreed that they will take account of the protocol when responding to work-related deaths.
4. The CoLP are responsible for deciding whether to pursue a manslaughter or corporate manslaughter investigation and whether to refer a case to the CPS to consider such possible charges. The EH&PP Service of DES are responsible for investigating possible health and safety offences.
5. If in the course of their health and safety investigations, they find evidence suggesting manslaughter or corporate manslaughter, they will pass it on to the CoLP. If they or CPS decide not to pursue a manslaughter or corporate manslaughter case, then the City of London Corporation will then consider bringing a prosecution for any health and safety offences in accordance with this policy statement.

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<sup>7</sup> *Work-Related Death - A protocol for liaison* was published in 2003. [www.hse.gov.uk/pubns/misc491.pdf](http://www.hse.gov.uk/pubns/misc491.pdf)

## **APPENDIX B - Highways & Cleansing Services**

### **Decision Making Processes**

Highways will also have regard to London Permit Scheme Enforcement Policy with respect to Parking and Traffic Management and the service of Fixed Penalty Notices

[www.cityoflondon.gov.uk/parking](http://www.cityoflondon.gov.uk/parking)