

Guildford Borough Council

Regulatory Enforcement Policy

Document Information

Origination/author:	Compliance Lead
Policy Owner – Service:	Environmental and Regulatory Services
This document replaces:	Regulatory Enforcement Policy, approved on 2 January 2018
Committee approval:	Pending 22 September 2022
Last Review Date:	2 January 2018
Next Review Date:	2025 or earlier if legislation change requires a review

Contents

Section	Content
1	Purpose
2	Legal and Policy Context
3	Our Approach
4	Achieving Compliance
5	Enforcement action
6	Public Space Protection Orders
7	Fixed Penalty Notices
8	Civil Penalty Offences
9	Works in default
10	Authorisation of Officers
11	Status and Review
12	Complaints
Appendix 1	Glossary of Legislation
Appendix 2	Equalities Impact Assessment

1. Purpose

- 1.1 The Regulatory Enforcement policy contributes to the Corporate Plan 2021-2025 and its strategic themes of Community and Environment by providing a regulatory framework that supports economic prosperity by providing a level playing field for businesses to thrive whilst protecting residents, workers and visitors to the Borough.
- 1.2 This policy sets out the Council's approach to securing compliance with regulatory requirements and applies to all our regulatory functions. It applies to all services where the Council can enforce against a person, organisation or company to make them comply with the law. Any services where the Council has a legal duty or power to ensure compliance are included. Services that are relevant to a Borough Council include, but are not limited to:
 - a. Abandoned Vehicles
 - b. Animal Welfare
 - c. Environmental Health including statutory nuisance, food safety, health and safety, public health, infectious diseases, and contaminated land
 - d. Environmental Permitting
 - e. Housing: Private rented sector and Council tenants
 - f. Licensing including Hackney Carriage, Private Hire Vehicle, Premises and Street Trading
 - g. Development Management and Building Control
 - h. Planning Enforcement
 - i. Waste offences including dog fouling, fly tipping and littering
 - j. Anti-social behaviour relating to the above subjects and in relation to the enforcement of Public Space Protection Orders.
 - k. Anti-social behaviour relating to the above and in relation to Community Triggers
 - l. Revenues and benefits
 - m. Unauthorised encampments
- 1.2 More detailed service specific enforcement options in respect of particular areas such as health and safety, food safety, licensing, housing, planning and building control will be set out in service specific policies under the umbrella of this corporate policy.
- 1.3 This policy and service-specific enforcement policies have, and will continue to have, regard to the statutory Regulators' Code, issued by the Minister of State for the Department for Business, Innovation and Skills (formerly the Department for Business, Enterprise and Regulatory Reform) under section 22(1) of the Legislative and Regulatory Reform Act 2006 ("the Act").
- 1.4 It is ultimately the responsibility of individuals and businesses to comply with the law.

2. Legal and Policy context

- 2.1 Section 21 of the Act requires the Council to have regard to the way it carries out regulatory functions and to do so in a way which is transparent, accountable, proportionate, consistent and targeted at cases where action is needed.
- 2.2 Section 22 of the Act requires us to have regard to the Regulators' Code in determining any general policies or principles by reference to which we exercise regulatory functions.

3. Our Approach

- 3.1 Effective and well-targeted regulation is essential in promoting fairness, protection from harm and protecting the amenity of the area. Our aim is to work in a transparent, accountable, proportionate and consistent way, to assist individuals and businesses to comply with relevant legislation.
- 3.2 We do this by:
- helping and encouraging regulated bodies, businesses and individuals to understand and meet regulatory requirements more easily; and
 - responding proportionately to regulatory breaches.
- 3.3 We will normally take a supportive approach to achieving compliance with regulatory requirements, especially with those who take positive steps/actions and actively take steps to achieve compliance. Where required, however, we will consider the use of all necessary and proportionate enforcement action against those who commit serious breaches, flout the law, or take no steps to achieve compliance in a timely manner.
- 3.4 Compliance services will carry out their duties in support of the Council's strategic aims and objectives, which are drawn up in consultation with the public and are set out in:
- The Corporate Plan and strategic decisions
 - Corporate priorities
 - Service-specific service plans and inspection policies, which reflect the above priorities as well as the statutory enforcement functions for each service.

4. Achieving Compliance

- 4.1 We undertake a range of activities to help achieve compliance with legislation. These include:
- Provision of advice and guidance;
 - Training and education;
 - Programmed and responsive inspections;
 - Intelligence led inspections and investigations;
 - Responding to complaints;
 - Sharing intelligence and resources with our partners; and
 - Area patrols.
- 4.2 Where we discover non-compliance, the options to promote/seek compliance will include:
- undertaking pro-active educational activities;

- explaining legal requirements and, where appropriate, the means to achieve compliance;
- providing an opportunity to discuss points in issue where appropriate;
- consideration of alternative means and reasonable timescales to achieve compliance;
- service of advisory letters, warnings, statutory notices or prohibitions detailing non-compliance and requiring action to be taken to achieve compliance;
- consideration and consultation on the implementation of a Public Space Protection Order to offer flexible enforcement tools; and
- enforcement actions including, but not limited to, formal caution, seizure of documents or goods, closure of premises, fixed penalty notices, civil enforcement penalties, eviction of unauthorised encampments, prosecution and/or injunction.

4.3 We are unable to offer legal advice and will advise individuals and businesses to seek their own, independent, legal advice.

4.4. Whilst we aim to assist individuals and businesses to comply, we may take immediate, without notice, enforcement action where this is deemed necessary, reasonable and proportionate.

5. Enforcement action

5.1 Where we discover non-compliance, the decision about the most appropriate enforcement action will be made on a 'case by case' basis and in accordance with this policy, legislation, statutory guidance and any service specific procedures that are relevant.

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

- the Human Rights Act 1998
- the Crime and Disorder Act 1998
- Anti-social Behaviour, Crime and Policing Act 2014
- Equality Act 2010
- service-specific legislation
- all other relevant legislation applicable from time to time

5.3 We aim to relate the level of enforcement action to the risks presented. The action we take will be proportionate to the seriousness of the breach and in reaching a decision we will consider:

- the risk that non-compliance poses to the safety, health, or economic welfare of the public or individuals;
- the effect on the environment or community;
- evidence that suggests that there was pre-meditation in the commission of an offence;
- whether the offence involved a failure to comply in full or in part with the requirements of a statutory notice or order;
- whether 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;

- whether the offence, although not serious, is widespread in the area where it is committed and enforcement action will help dissuade others from committing the same offence;
 - the gravity of the alleged offence, taken together with the seriousness of any actual or potential harm;
 - the general record and approach of the offender;
 - whether there has been reckless disregard of requirements;
 - whether there has been a repetition of a breach that was subject to previous warning or formal action; and/or
 - whether false information has been supplied willfully, or there has been an intent to deceive.
- 5.4 Consideration will be given to the appropriateness of serving Community Protection Warnings in relation to behaviour and/or offences of an on-going nature with a view to improving future conduct.
- 5.5 Any decision to prosecute will be taken in accordance with the Code for Crown Prosecutors and in line with this policy.
- 5.6 Where we take legal action, we will normally seek to recover the costs of doing so.
- 5.7 Information concerning non-compliance may be shared with other enforcement agencies. Any such action will only be undertaken in the public interest and in compliance with the Data Protection Act 1998. For example, banned taxi and/or private hire vehicle drivers will be shared with the Local Government Association for inclusion on their [National Register of Taxi and Private Hire Licence Revocations and Refusals](#). Where a landlord of a property agent has received a banning order, the Local Authority must make an entry onto the [Database of rogue landlords and property agents under the Housing and Planning Act 2016](#).
- 5.8 Wherever possible and appropriate we will co-ordinate visits and enforcement action with other services and agencies.

6. Public Space Protection Orders

- 6.1 Due to the nature and complexity of behaviours encompassed within the definition of *anti-social behaviour*, the responsibility for dealing with it is often shared between agencies including: the police, councils and social landlords. Section 59 of the Anti-social Behaviour Crime and Policing Act 2014 empowers Councils to create and enforce Public Spaces Protection Orders (PSPOs) in consultation with the public and its partners. A PSPO can give local Councils and police additional powers to tackle anti-social behaviour in specific locations to regulate activities that are having a detrimental effect on the local community.
- 6.2 Two conditions must be met:
- 6.2.1 activities carried on in a public place within the authority's area have had, or likely to have, a detrimental effect on the quality of life of those in the locality; and
- 6.2.2 the effects, or likely effects, of the activities:
- a. is, or is likely to be, of a persistent or continuing nature; and/or
 - b. is, or is likely to be, such as to make the activities unreasonable; and/or
 - c. justifies the restrictions imposed by the Order.

- 6.3. Please see the link to [Guildford Borough Council's current PSPOs](#).
- 6.4. The aim of the PSPO is to provide officers with additional tools to deal with anti-social behaviour when they witness it. When supported by appropriate evidence that the PSPO has been breached, for example, an officer directly witnessing a breach and the offender being accurately identified, the Council, or its partners, will consider serving a Fixed Penalty Notice (FPN) to the responsible individual. A Community Protection Warning (CPW) may also be issued at the same time.
- 6.5. Where breaches occur by those under the age of criminal responsibility and under the age of 16 years, parents or guardians will be informed as well as any relevant Services, such as Children and Families. The appropriateness of issuing a CPW to the parent and/or guardian in these circumstances should be considered.
- 6.6. Where a person has breached the PSPO for a second time, a Fixed Penalty Notice may be served on the responsible individual. A Community Protection Notice (CPN) will also be considered at the same time. A referral to the multi-agency Community Harm and Risk Management Meeting (CHaRMM) should be considered at this stage. CHaRMM would discuss and agree potential actions to reduce the negative impact that problem individual(s) are having on the community through their anti-social behaviour.
- 6.7. A third breach of the PSPO and subsequent breach of the CPN will prompt consideration of legal proceedings, including the application to the courts for a Criminal Behaviour Order. Breach of a Criminal Behaviour Order may result in immediate arrest and imprisonment of the offender.

7. Fixed Penalty Notice Offences

- 7.1 We carry out a range of enforcement duties where legislation prescribes fixed penalty offences. Paying a fixed penalty for criminal offences, such as fly tipping or littering, is an admission that an offence has been committed but avoids the need for an individual to be prosecuted, for which they would receive a criminal conviction.
- 7.2 Where we have evidence that an offence has been committed, we will normally issue a fixed penalty notice, if applicable, unless there are exceptional circumstances to justify not doing so.
- 7.3 Where penalties are not paid, we will normally prosecute for the offence.
- 7.4 Any income from the issue of fixed penalty notices will be used to support enforcement activities.

8. Civil Penalty Offences

- 8.1 The Council has the power to impose civil penalties as an alternative to prosecution for certain offences. For example, it may be more appropriate to use civil injunctions against known individuals who persistently breach PSPOs or persistently trespass on Council land.
- 8.2 Where a civil penalty is applied, the level of penalty will be determined using the relevant charging structure, developed in accordance with the guidance issued to local authorities and approved by the Council.

9. Works in Default / Direct Action

- 9.1 Where we carry out works in default or direct action for non-compliance with statutory notices or in the case of an emergency, we will seek to recover the full cost of these works including the cost of time, materials or reports associated with the works.

10. Authorisation of Officers

- 10.1 Delegation of powers to enforcement officers is in accordance with the scheme of delegation within the Council's Constitution.
- 10.2 Only officers who are competent through training, qualification and/or experience will be authorised to take enforcement action and are required to show their written authorisation on demand. Officer authorisations will be reviewed annually to ensure that they are up to date.
- 10.3 Officers will also have sufficient training and understanding of this enforcement policy to ensure a consistent approach to their duties.

11. Status and Review

- 11.1 This policy was adopted by the Executive on [pending 22 September 2022](#).
- 11.2 This policy will be reviewed every three years, or sooner if there are substantial legislative changes to the legislative framework.
- 11.3 Any changes or reviews to this policy will be approved by the Executive.

12. Complaints

- 12.1 Any dissatisfaction with enforcement action taken should initially be discussed with the officer, as there are often genuine misunderstandings that can be resolved.
- 12.2 If this does not achieve a resolution then complaints concerning the application of this enforcement policy will be dealt with in accordance with the Council's customer complaints procedure. Details of the procedure are available on the Council's website: [Make a complaint to the council - Guildford Borough Council](#).

13. Measurement and Impact

- 13.1 Our enforcement activities will be monitored through the annual service planning process and related performance management systems.
- 13.2 All enforcement related procedures and decisions will be in line with this policy. In exceptional circumstances, where there is a justifiable reason to step outside this policy, the rationale for any decision will be fully documented and approved by the relevant Head of Service or Portfolio Holder in line with Guildford Borough Council's Constitution.

- 13.3. Complaints against our services will be used as an opportunity, where appropriate, to review our policies and procedures to ensure that they: do not have any unintended consequences; and are fair and equitable to all our service users.
- 13.4. Following the introduction of PSPOs, the impact on the issues that they were designed to redress will be reviewed periodically and Members informed.

14. Equalities

- 14.1. We recognise that we serve a diverse community that has diverse needs. We regard diversity as a strength in our community and we will work hard to ensure that the community that we serve, whether residents or visitors to our Borough, face no unjustifiable barriers in accessing our services and those that others provide on our behalf.

When making decisions and setting policies, the Council has a statutory duty under Section 149 of the Equality Act 2010, 'the Public Sector Equality Duty', to have due regard to the need to:

- a. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- b. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- c. foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The relevant protected characteristics include age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

Please see Annex 2 for the Equalities Impact Assessment for this policy.

GLOSSARY OF LEGISLATION

All enforcement activities, including investigations and formal actions, will be conducted in compliance with delegated statutory powers and codes of practice made under this legislation in so far as they relate to the Council's enforcement powers and responsibilities. Legislation and guidance include, but is not limited to:

Regulators Code 2014
Anti-Social Behaviour, Crime and Policing Act 2014
Code for Crown Prosecutors
Co-ordination of Regulatory Enforcement (Procedure for References to LBRO) Order 2009 SI670/2009 (The CRE LBRO Order)
Crime and Disorder Act 1998
Criminal Justice and Police Act 2001
Criminal Procedure and Investigations Act 1996
Data Protection Act 2018
The Enforcement Concordat: Good Practice Guide for England and Wales
Human Rights Act 1998
Legislative and Regulatory Reform Act 2006 (LRRRA)
Legislative and Regulatory Reform (Regulatory Functions) Order 2007
Legislative and Regulatory Reform (Regulatory Functions) (Amendment) Order 2009
Legislative and Regulatory Reform (Regulatory Functions) (Amendment) Order 2011
Legislative and Regulatory Reform (Regulatory Functions) (Amendment) Order 2014
Police and Criminal Evidence Act 1984
Primary Authority: A guide for Local Authorities
Protection of Freedoms Act 2012 (Code of Practice – Powers of Entry December 2014)
Regulation of Investigatory Powers Act 2000
Regulators' Code, 6 April 2014 • The Regulatory Enforcement and Sanctions Act 2008 (The RES Act).
Regulatory Reform Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009SI665/2009 (The CRE Enforcement Order).