

Public Protection Enforcement Policy 2012

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EXECUTIVE SUMMARY

This enforcement policy provides guidance to officers, businesses and the general public on the range of options that are available to achieve compliance with legislation enforced by Thurrock's Public Protection Service.

The policy has been submitted for approval by Cabinet after a period of consultation. Our primary objective is to achieve regulatory compliance within Thurrock.

We recognise that prevention is better than cure, but where it becomes necessary to take formal action against a business, or member of the public, we will do so. There are a wide range of tools available to us as an enforcement service, with prosecution being the most serious.

We will always choose an enforcement method that is appropriate, relevant and proportionate to the offence or contravention.

We will also take account of an individual's or a business's past history when making our decision.

The options available to us include:

- No action;
- Informal Action and Advice;
- Orders – such as Anti Social Behaviour Orders
- Fixed Penalty Notices;
- Penalty Charge Notices;
- Formal Notices;
- Prohibition Notices,
- Improvement Notices,
- Post Conviction Orders;
- Forfeiture Proceedings;
- Seizure of goods/equipment;
- Injunctive Actions;
- Refusal/revocation/suspension of a licence or registration;
- Simple Caution – previously referred to as Formal Caution
- Prosecution;
- Proceeds of Crime Applications.
- Written/Departmental Warning.
- Entry to Premises under a warrant.

The policy is designed to help you understand our objectives and methods for achieving compliance and the criteria we consider when deciding the most appropriate response to a breach of legislation.

All our decisions will have regard to current statutory guidance and codes of practice, particularly the Regulators' Compliance Code, the Code for Crown Prosecutors, the Human Rights Act and Section 17 of the Crime and Disorder Act 1998.

1.0 Introduction

- 1.1 Fair and effective enforcement is essential to protect the health, safety, and economic interests of the Public, businesses and the environment. Decisions about enforcement action and in particular the decision to prosecute have serious implications for all involved. Public Protection Services applies this Policy to ensure that:
- Decisions about enforcement action are fair, proportionate and consistent;
 - Officers apply current Government guidance and relevant codes of practice;
 - Everyone understands the principles, which are applied when enforcement action is considered.

2.0 Legal Status of the Enforcement Policy

2.1 This Policy was approved by Cabinet on 1st September 2010

- 2.2 This policy is intended to provide guidance for officers, businesses, consumers and the public as regards the approach that will normally be taken by the Council in relation to the enforcement of the relevant statutory provisions. It does not affect the discretion of the Council to take legal proceedings where this is considered to be in the public interest.

3.0 Scope and Meaning of 'Enforcement'

- 3.1 This Policy applies to all the legislation enforced by Officers of the Public Protection Service.
- 3.2 'Enforcement' includes any action taken by officers aimed at ensuring that individuals or businesses comply with the law. This is not limited to formal enforcement action such as prosecution.
- 3.3 In certain circumstances we will seek to raise awareness and increase compliance levels by publicising unlawful trade practices or criminal activity. Where appropriate the results of specific court cases may also be published.

4.0 How to obtain a copy of the Policy

- 4.1 This Policy is available on the Council's website: www.thurrock.gov.uk. If you would like a paper copy of the Policy, please contact us by emailing publicprotection@thurrock.gov.uk or by writing to us at: **Public Protection, Civic Offices, New Road, Grays, RM17 6SL.**
- 4.2 On request, this Policy will be made available on tape, in Braille, large type, or in a language other than English.

5.0 General Principles

- 5.1 Prevention is better than cure and our role therefore involves actively working with businesses to advise on, and assist with compliance. Where it is necessary to provide local guidance, we will ensure that it complies with national requirements and does not give rise to an unreasonably disproportionate emphasis on a particular topic locally, unless by common consent that topic is of significant local concern. We are pleased to guide small businesses that may not have the back up of significant legal and personnel resources in their compliance with the law.

- 5.2 Public Protection recognises that interventions such as inspections can be costly and time consuming for businesses. Our proportionate approach requires that inspections and other visits to businesses are justified and do not hinder economic progress. Reasons for enforcement officer visits to businesses may include the following (non-exhaustive):
- A visit due to the need to resolve a complaint, accident, or other allegation of non-compliance by a third party
 - A visit indicated by risk assessment by relevant Government department schemes or as part of statutory duties.
 - A visit made at the request of the business e.g. to provide advice and education
 - A visit due to the need for a certain type of licence or registration, or an enforcement issue connected with licensing or compliance with a code of practice.
 - A follow up visit (revisit) to establish compliance with enforcement notice/advice etc.
- 5.3 Certain additional visits may be required from time to time, for example:
- In order to assess whether current risk data on a business is still valid
 - In the case of a new business, to establish what risks there are and to provide helpful start-up advice
 - In the course of targeted project research and/or sampling – such matters often arise from centrally or regionally co-ordinated initiatives to look in depth at a specific subject of regulatory concern
- 5.4 Where we consider that formal action is necessary each case will be considered on its own merits. However, there are general principles that apply to the way each case must be approached. These are set out in this Policy and in the Regulators' Compliance Code. For more information about the Regulators' Compliance Code visit: <http://www.bis.gov.uk/policies/better-regulation/improving-regulatory-delivery/implementing-principles-of-better-regulation/the-regulators-compliance-code>
- 5.5 Enforcement decisions will be proportionate, fair, independent and objective and will not be influenced by issues such as ethnicity or origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender. Decisions will not be affected by improper or undue pressure from any source.
- 5.6 In making the decision to take formal action, we will take into account the views of any victim, injured party or relevant person to establish the nature and extent of any harm or loss, and its significance.
- 5.7 Thurrock Council is a public authority for the purposes of the Human Rights Act 1998. We will, therefore, apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
- 5.8 This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulator's Compliance Code.
- 5.9 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.
- 5.10 Thurrock Council is a Local Authority for the purposes of the Crime & Disorder Act 1998. We will therefore give due regard to our duty under Section 17 of that Act and do all that we can to prevent crime and disorder.

6.0 Notifying Alleged Offenders

- 6.1 If we receive information [for example from a complainant] that may lead to enforcement action against a business or individual we will notify that business or individual as soon as is practicable of any intended enforcement action, unless this could impede an investigation or pose a safety risk to those concerned or the general public.
- 6.2 During the progression of enforcement investigations/actions, business proprietors or individuals and witnesses will be kept informed of progress. Confidentiality will be maintained and personal information about individuals will only be released to a Court when required and/or in accordance with the Data Protection Act 1998.

7.0 Deciding what level of enforcement action is appropriate

A number of factors are considered when determining what enforcement action to take:

7.1 Levels of enforcement action:

7.1.1 There are a number of potential enforcement options. The level of the action taken varies from no action through to proceedings in Court. Examples of the main types of action that can be considered are shown below:

- No action;
- Informal Action and Advice;
- Prohibition Notices,
- Improvement Notices,
- Orders;
- Fixed penalty Notices;
- Penalty Charge Notices;
- Formal Notice;
- Post Conviction Orders;
- Forfeiture Proceedings;
- Seizure of goods/equipment;
- Injunctive Actions;
- Refusal, revocation or suspension of a licence;
- Simple Caution;
- Prosecution;
- Proceeds of Crime Applications.
- Entry to Premises under a warrant.

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

- A businesses past performance and its current practice;
- The seriousness of compliance failure;
- An individuals previous record
- The risks being controlled;
- Legal, official or professional guidance;
- Local priorities of the Council.
- Harm, injury, loss, or distress to victims.
- Material gain as a result of committing an offence.

- 7.1.3 Where the law has been contravened, there are a range of enforcement options available to seek compliance with the law. Under normal circumstances, a process of escalation will be used until compliance is reached. Exceptions would include:
- where there is a serious risk to public safety
 - where there is a serious risk to the environment
 - where the offences have been committed deliberately or negligently or involve deception
 - Where there is significant economic detriment.

7.2 No Action

- 7.2.1 In certain circumstances, contraventions of the law may not warrant any action. This can be where the cost of compliance to the offender outweighs the detrimental impact of the contravention, or the cost of the required enforcement action to the Council outweighs the detrimental impact of the contravention on the community. A decision of *no action* may also be taken where formal enforcement is inappropriate in the circumstances.

7.3 Informal Action and Advice

- 7.3.1 For minor breaches of the law we may give verbal or written advice. We 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. The time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of the non-compliance.

- 7.3.2 Sometimes we will advise offenders about 'good practice', but we will clearly distinguish between what they *must do* to comply with the law and what is advice only.

- 7.3.3 Failure to comply could result in an escalation of enforcement action.

7.4 Fixed Penalty Notices

- 7.4.1 Certain offences are subject to fixed penalty notices where prescribed by legislation. They are recognised as a low-level enforcement tool and avoid a criminal record for the defendant. They enable the offender to discharge their liability. Where legislation permits an offence to be dealt with by way of a Fixed Penalty Notice (FPN), we may **choose** to administer a FPN on a first occasion, without issuing a warning.

7.5 Penalty Charge Notices

- 7.5.1 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.

7.6 Formal Notice

- 7.6.1 Certain legislation allows notices to be served requiring offenders to take specific actions or cease certain activities. Notices may require activities to cease immediately where the circumstances relating to health, safety, environmental damage, no appropriate license or nuisance. In other circumstances, the time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of the non-compliance.

- 7.6.2 All notices issued will include details of any applicable *Appeals Procedures*.

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

7.7 Forfeiture Proceedings

7.7.1 This procedure may be used in conjunction with seizure and/or prosecution where there is a need to dispose of goods in order to prevent them re-entering the market place or being used to cause a further problem. In appropriate circumstances, we will make an application for forfeiture to the Magistrates Court.

7.8 Seizure

7.8.1 Certain legislation enables authorized Officers to seize goods, equipment or documents for example unsafe food, sound equipment that is being used to cause a statutory noise nuisance, unsafe products or any goods that may be required as evidence for possible future court proceedings. When we seize goods we will give the person from whom the goods are taken an appropriate receipt.

7.9 Injunctive Actions

7.9.1 In certain circumstances, for example, where offenders are repeatedly found guilty of similar offences or where it is considered that injunctive action is the most appropriate course of enforcement, then injunctive actions may be used to deal with repeat offenders, dangerous circumstances or significant consumer detriment.

7.9.2 Action under the Enterprise Act 2002; proceedings may be brought where an individual or organization has acted in breach of community or domestic legislation with the effect of harming the collective interests of consumers. In most circumstances action will be considered where there have been persistent breaches or where there is significant consumer detriment. Action can range from:

- Assurances;
- Formal undertakings;
- Interim Orders;
- Court Orders;
- Contempt Proceedings.

7.9.3 Anti Social Behaviour Orders: Where the non-compliance under investigation amounts to anti-social behaviour such as persistent targeting of an individual or a group of individuals in a particular area then, following liaison with the Council's Community Protection team where appropriate, an ASBO will be sought to stop the activity, and or behavior.

7.10 Refusal, Suspension and Revocation of Licence or Registration

7.10.1 Where there is a requirement for a business or individual to be licensed by the local authority, the licence may be granted in accordance with Thurrock Council's Scheme of Delegation unless representations or objections are received against the application or the applicant or holder falls outside of the Council's or legal requirements for licensing. In such cases the Licensing Committee or where relevant sub committee will hear the case and determine the matter in line with the provisions of the relevant legislation.

7.10.2 Grounds for Refusal, Suspension or Revocation of a Hackney Carriage or Private Hire Drivers Licence

- Where the applicant or holder of a licence, falls outside of the council's criteria as a "fit and proper" person to hold a licence, that person will be referred to the licensing sub committee for consideration.
- Licences may be suspended or revoked with immediate effect if such a decision is deemed necessary in the interests of public safety.

7.10.3 Under the Licensing Act 2003, where a Review of a Premises Licence is sought under Section 51 of the Act, the options available to the Licensing Sub Committee are:-

- To modify or attach conditions of Licence
- To exclude a Licensable activity from the scope of the Licence
- To removed the Designated Premises Supervisor
- Suspend the Licence for a period not exceeding three months
- Revoke the Licence
- Issue a warning letter
- No action

7.10.4 Under the Gambling Act 2005, where a Review of a Premises Licence is sought under Section 202 of the Act, the options available to the Licensing Sub Committee are:-

- Revocation of the Licence
- Suspend the Licence for a specified period not exceeding three months
- Exclude a condition attached to the Licence, under Section 168 or remove or amend exclusion
- Add, remove or amend a condition under Section 169 activity.

7.11 Simple Caution

7.11.1 A Simple Caution is an admission of guilt, but is not a form of sentence, nor is it a criminal conviction.

7.11.2 For a Simple Caution to be issued a number of criteria must be satisfied:

- Sufficient evidence must be available to prosecute;
- The offender must admit the offence;
- It must be in the public interest to use a Simple Caution;
- The offender must be 18 years or over.

For details on the Home Office guidance (Circular 16/2008) visit: <http://www.homeoffice.gov.uk>

7.11.3 We will also take into account **whether the offender has** received a simple caution for a similar offence within the last 2 years.

7.11.4 A record of the Caution will be sent to the Office of Fair Trading, the Police and Local Government Regulation whichever is appropriate, and will be kept on the Council's file for 5 years. This will not apply to those offenders who have exempt professions (eg: medical, teaching, legal) as set out in the Rehabilitation of Offenders (Exceptions) Order 1974 where the Caution must remain on file and on the Police National Computer and will not be automatically removed. If the offender commits a further offence, the Caution may influence our decision to take a prosecution. If during the time the Caution is in force the offender pleads guilty to, or is found guilty of, committing another offence anywhere in England and Wales which is not considered minor or unrelated to the offence for which the original caution was issued, the Caution may be cited in court, and this may influence the severity of the sentence that the court imposes.

7.12 Prosecution

- 7.12.1 A prosecution will normally ensue 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.
 - The Council will also prosecute where it's considered to be in the public interest.

7.13 Work Related Deaths:

- 7.13.1 Where there has been a breach of the law leading to a work-related death, we will consider whether the circumstances of the case might justify a charge of manslaughter. Inspectors will need to liaise with the Police, Coroners and the Crown Prosecution Service (CPS) and if they find evidence suggesting manslaughter, pass it on to the Police or where appropriate the CPS. If the Police or the CPS decide not to pursue a manslaughter case, the authority will prosecute or recommend prosecution of a health and safety case if that is appropriate.
- 7.13.2 Health and safety law gives the courts considerable scope to punish offenders and to deter others. Unlimited fines and in some cases imprisonment may be imposed by higher courts. In taking prosecutions the Council will seek to raise the courts' awareness of the gravity of health and safety offences and encourage them to make full use of their powers.
- 7.13.3 The attached document: *Work Related Deaths: A protocol For Liaison* will also be referred to in relation to any work related death incident.

7.13 Proceeds of Crime Applications

- 7.13.1 Applications may be made under the Proceeds of Crime Act 2002 for confiscation of assets in serious cases. Their purpose is to recover the financial benefit that the offender has obtained from his criminal conduct. Proceedings are conducted according to the civil standard of proof. Applications are made after a conviction has been secured.

8.0 Determining whether a Prosecution or Simple Caution is viable and appropriate

- 8.1 We apply two 'tests' to determine whether a Prosecution or Caution is viable and appropriate. We follow guidance set by the Crown Prosecution Service when applying the tests, for more information about the 'Code for Crown Prosecutors' visit: http://www.cps.gov.uk/victims_witnesses/code.html
- 8.2 A Caution or Prosecution proceedings will only be progressed when the case has passed both the evidential test and the public interest test. The principles outlined apply equally to the other types of formal enforcement action that are available.
- 8.3 **The Evidential Test**
We must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. A realistic prospect of conviction is an objective test that means that a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged.

8.4 The Public Interest Test

The public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. We will balance factors for and against prosecution carefully and fairly. Public interest factors that may affect the decision to prosecute will depend on the seriousness of the offence and/or the circumstances of the victim as a result of the offence. Some factors may increase the need to prosecute but others may suggest that another course of action would be better.

9.0 Deciding on what enforcement action to take

9.1 Decisions about the most appropriate enforcement action to be taken are based upon professional judgment, legal guidelines, statutory codes of practice and priorities set by the Council and/or Central Government.

9.2 Where appropriate, decisions about enforcement will involve consultation between or approval from:

- Investigating Officer(s);
- Senior managers from Public Protection Services;
- Solicitors or Legal Representatives;
- Chair of the Council's Public Protection Sub- Committee or
- Licensing Sub- Committee.

9.3 Interviews under caution

If we feel we have reasonable grounds to suspect an offence has been committed, we may invite an Individual and/or a business/company to attend an interview under caution. An interview under caution is a formal interview, which is usually tape recorded to ensure that an accurate record is taken. It is conducted under The Police & Criminal Evidence Act 1984, which contains the rules of how we must treat you during the interview. Details of the codes of practices can be found at <http://www.homeoffice.gov.uk/publications/police/operational-policing/pace-codes/>

10.0 Liaison with other regulatory bodies and enforcement agencies

10.1 Where appropriate, enforcement activities within the Public Protection Services will be coordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement.

10.2 Where an enforcement matter affects a wide geographical area beyond the Council's boundaries, or involves enforcement by one or more other local authorities or organisations; where appropriate all relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activity coordinated with them.

10.3 The Public Protection Services will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies, and examples including:

- Government Agencies;
- Police Forces;
- Fire Authorities;
- Statutory undertakers;
- Other Local Authorities.

11.0 Considering the views of those affected by offences

11.1 Public Protection undertakes enforcement on behalf of the public at large and not just in the interests 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 decision.

12.0 Protection of Human Rights

12.1 This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is had to the following:

- Right to a fair trial;
- Right to respect for private and family life, home and correspondence.
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13.0 Equal Opportunities and Diversity

13.1 We believe in openness and equality in the way that we provide services to Thurrock residents. When making enforcement decisions there will be no discrimination against any individual regardless of their culture, ethnic and national origins, gender, disability, age, sexual orientation, political or religious beliefs, socioeconomic status, or caution which is not relevant to the investigation.

14.0 Review of the Enforcement Policy

14.1 This Policy will be reviewed annually.

15.0 Publicity

14.1 Results of all court cases will be shared with local and national (if appropriate) press via the communications department, and national regulatory databases.

Appendix 1

Level of Fine the Court may administer

In the Magistrates Court

Level 1: £200

Level 2: £500

Level 3: £1,000

Level 4: £2,500

Level 5: £5,000

A few offences have a summary limit of £20000 and/or 6 month imprisonment

In the Crown Court

There's no limit to the amount the Crown Court can fine, but the amount will take into account the seriousness of the offence and the offender's ability to pay.

Fixed Penalty Notice Charges

Offence	Amount to be paid
Abandoning a Vehicle	£200
Failure to furnish documentation (Waste Carriers License)	£300
Failure to Produce Authority (Waste Transfer Notes)	£300
Graffiti and Fly-posting	£75. Early payment reduction if paid within 10 days of FPN being issued. Becomes £50

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Litter	£75. Early payment reduction if paid within 10 days of FPN being issued. Becomes £50	Formatted: Justified
Nuisance Parking	£100	Formatted: Justified
Offences in relation to Waste Receptacles	£75. Early payment reduction if paid within 10 days. Becomes £60	Formatted: Justified
Offences under Dog Control Orders (including dog fouling)	£75. Early payment reduction if paid within 10 days of FPN being issued. Becomes £50	Formatted: Justified
Street Litter Control Notices and Litter Clearing Notices	£100. Early payment reduction if paid with 10 days of FPN being issued. Becomes £60	Formatted: Font: Arial Narrow, Font color: Red
Unauthorised Distribution of Literature on Designated Land	£75. Early payment reduction if paid with 10 days of FPN being issued. Becomes £50	Formatted: Font: Arial Narrow
Failure to display a no-smoking signs where required	£200 (discounted amount for prompt payment £150.)	Formatted: Justified
Smoking in a designated smoke-free place	£50 (discounted amount £30)	Formatted: Justified