



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**

Last Review Date: 2 January 2018

Next Review Date: 2025 or earlier if legislation change requires a review

Contents

Document information	1
Contents	2
1. Purpose	3
2. Legal and Policy context	3
3. Our Approach	4
4. Achieving Compliance	4
5. Enforcement action	5
6. Public Space Protection Orders	6
7. Fixed Penalty Notice Offences	7
8. Civil Penalty Offences	7
9. Works in Default / Direct Action	7
10. Authorisation of Officers	7
11. Status and Review	8
12. Complaints	8
13. Measurement and Impact	8
14. Equalities	8
Appendix 1: Glossary of legislation	10
Appendix 2: Equality Impact Assessment	11
Determining the relevance to equality.....	11
Is the proposed activity accessible for all the protected groups listed below?	12
Is it likely the proposed activity will have a negative impact on one or more protected groups?	13
What action can be taken to address any negative impact? What measures could be included to promote a positive impact?	13
Conclusion of Equality Impact Assessment	15

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 ensure they 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
- 1.3. More detailed service specific enforcement options in respect of particular areas such as health and safety, food safety, licensing, housing, planning and building control may be set out in service specific policies under the umbrella of this corporate policy.
- 1.4. This policy and service-specific enforcement policies 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").
- 1.5. 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:
- 3.5. The Corporate Plan and strategic decisions
- 3.6. Corporate priorities
- 3.7. 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:
 - 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:
 - 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 with the law, we may take immediate, without notice, enforcement action where this is deemed necessary, reasonable and proportionate.

5. Enforcement action

- 5.2. 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.
- 5.3. 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
- 5.4. 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 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.
- 5.5. 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.
 - 5.6. Any decision to prosecute will be taken in accordance with the Code for Crown Prosecutors and in line with this policy.
 - 5.7. Where we take legal action, we will normally seek to recover our costs.
 - 5.8. 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 the 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](#).
 - 5.9. Wherever possible and appropriate we will co-ordinate visits and enforcement action with other services /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 for the same breach.

- 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 will 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 for the same breach. 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 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

- 8.5. 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.
- 8.6. 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 and/or reports associated with the works.

10. Authorisation of Officers

- 10.2. Delegation of powers to enforcement officers is in accordance with the scheme of delegation within the Council's Constitution.

- 10.3. 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.
- 10.4. 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 2022**.
- 11.2. It 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 the 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. Public authorities are required to have due regard to the aims of the Public Sector Equality Duty (Equality Act 2010) when making decisions and setting policies. 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 face no unjustifiable barriers in accessing our services and those that others provide on our behalf.
- 14.2. The Council has a statutory duty under Section 149 of the Equality Act 2010 which provides that a public authority must, in exercise of its functions, 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.

14.3. Please see Appendix 2 for the Equalities Impact Assessment for this policy.

Appendix 1: 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)

Appendix 2: Equality Impact Assessment

The purpose of an assessment is to understand the impact of the Council's activities* on people from protected groups and to assess whether unlawful discrimination may occur. It also helps to identify key equality issues and highlight opportunities to promote equality across the Council and the community. The assessment should be carried out during the initial stages of the planning process so that any findings can be incorporated into the final proposals and, where appropriate, have a bearing on the outcome.

(*Activity can mean strategy, practice, function, policy, procedure, decision, project or service)

Name of person completing the assessment: Dympna Sanders

Date of assessment: 2 February 2022

Name of the proposed activity being assessed: Enforcement Policy Review

Is this a new or existing activity?: Existing

Who will implement the activity and who will be responsible for it?: Service Delivery Director will delegate authority to relevant Heads of Service and Lead Officers to implement this policy.

Determining the relevance to equality

What are the aims, objectives and purpose of the activity?

The Enforcement Policy review aims to providing a regulatory framework that supports the economic prosperity of the Borough by providing a level playing field for businesses to thrive whilst protecting residents, workers and visitors to the Borough.

This policy sets out the Council's approach to securing compliance with regulatory requirements for which GBC is responsible and applies to all our regulatory functions. It applies to all services where the Council can enforce against a person, organisation or company to secure compliance with the law.

Is this a major activity that significantly affects how services or functions are delivered?

The framework will apply to all of GBC's regulatory functions

Who will benefit from this activity and how?

Businesses, residents, workers and visitors to the Borough will be protected through this framework.

Does it relate to a function that has been identified as being important to people with particular protected characteristics?

No

Who are the stakeholders? Does the activity affect employees, service users or the wider community?

Businesses, residents, workers and visitors to the Borough. GBC's partners including Surrey police and Surrey CC

Based on the above information, is the activity relevant to equality?

Yes

Is the proposed activity accessible for all the protected groups listed below?

(Consider in what ways the activity might create difficulties or barriers to parts of the workforce, community or protected groups. How might one or more groups be excluded because of the activity?)

Protected groups	Is the activity accessible?	Evidence
Disability	No	Should a person have mental health issues or learning difficulties that impair their judgement or make it difficult for them to understand the implications of a particular situation.
Race	No	According to the 2011 Census 92.6% of people living in Guildford Borough speak English as a first language. However, this may not be reflected in the workforce; owners of micro businesses; and visitors to the Borough.
Gender	Yes	
Sexual Orientation	Yes	
Age	No	
Religion / Belief	Yes	
Transgender / Transsexual	Yes	
Marriage / Civil Partnership	Yes	
Pregnancy / Maternity	Yes	

Is it likely the proposed activity will have a negative impact on one or more protected groups?

Protected groups	Is it likely the activity will have a negative impact on a protected group?	Evidence
Disability	Yes	
Race	Yes	
Gender	No	This is a revised policy, no previous issues raised in relation to this group.
Sexual orientation	No	This is a revised policy, no previous issues raised in relation to this group.
Age	Yes	
Religion or belief	No	This is a revised policy, no previous issues raised in relation to this group.
Transgender or transsexual	No	This is a revised policy, no previous issues raised in relation to this group.
Marriage and civil partnership	No	This is a revised policy, no previous issues raised in relation to this group.
Pregnancy or maternity	Yes	

What action can be taken to address any negative impact? What measures could be included to promote a positive impact?

(Consider whether it is possible to amend or change the activity due to the likely adverse impact whilst still delivering the objective. Is it possible to consider a different activity which still achieves the aims but avoids an adverse impact? Is an action plan required to reduce any actual or potential adverse impact?)

Disability

The Council will ensure that any person with physical, mental health and/or learning disabilities are accompanied by a responsible person to assist and support their needs and understanding.

The Council will explore support services that may be available to support potentially vulnerable people through safeguarding referrals to MASH (Multi-Agency Support Hub) and/or CHaRMM (Community Harm Reduction Management Meeting) before escalating issues to prosecution.

The Council is undertaking a review of its website to improve the accessibility of information.

Race

Where English is not a person's first language, there are a number of ways that we can seek to communicate with them informally:

- Seek assistance from colleague who speaks the relevant language;

- Use mobile phone translation Apps; and / or
- Use [Interpreting & Translation Services | LanguageLine UK](#).

Should an investigation require a formal interview, the Officer will ask the person being interviewed whether they need the assistance of an independent, registered interpreter to ensure that the person fully understands the implications of the process and to enable them to fully exercise their rights. The cost of this service will be paid for by the Council but may be added to the Council's costs schedule should the matter being investigated go to court.

Age

Our policy is not to serve Fixed Penalty Notices to children under the age of 18 years.

Where there are persistent issues with a child breaking the law, other avenues will be explored prior to formal enforcement action, including:

- Safeguarding referrals through MASH and/or CHaRMM
- Consideration of taking action against the parent and/or guardian of the child, where appropriate.

All Groups

The Council will always seek to behave in a reasonable and proportionate manner to all individuals and businesses with whom they interact. In following the Crown Prosecution's criteria for prosecution decisions, all enforcement decisions will also be taken in light of the public interest test.

What are the main sources of evidence that have been used to identify the likely impacts on the different protected groups?

(Use relevant quantitative and qualitative information that is available from sources such as previous EIA's, engagement with staff and service users, equality monitoring, complaints, comments, customer equality profiles, feedback, issues raised at previous consultations and known inequalities).

Census 2011 information

Has any consultation been carried out (e.g. with employees, service users or the wider community)?

This document forms part of the Enforcement Policy, which will be subject to public consultation.

Is further consultation required as a result of any negative impact identified? If so, what groups do you intend to engage with and how?

To await feedback from consultation and will review as necessary.

Conclusion of Equality Impact Assessment

Whilst there are some potential impacts to groups with special characteristics, particularly in relation to: disability, race and age, I believe that these have been mitigated so far as possible to enable individuals and businesses to understand their rights and to be treated fairly throughout our interactions with them.

Name of person completing assessment: Dympna Sanders

Date: 2 February 2022

Job title: Compliance Lead

Signature: *D. Sanders*

Senior manager name: Justine Fuller

Date:

Signature: