



## Gravesham Borough Council

### Regulatory Services

### Environmental Protection & Animal Control Enforcement Policy EP1

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#### Record of Revisions / Review

Date	Author	Verified	Approved
January 2007	Allan Glasson	Sarah Kilkie	Sarah Kilkie
November 2010	Allan Glasson	Sarah Kilkie	Sarah Kilkie Cllr John Cubitt
December 2017	Allan Glasson	Sarah Kilkie	Cllr John Knight

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## **1. Scope of policy**

The Environmental Protection & Animal Control team of Regulatory Services has responsibilities within a wide range of issues, including:

- Environmental protection
- Environmental monitoring
- Pollution, including noise, smoke control etc.
- Public health, statutory nuisance and drainage
- Pest control
- Air quality
- Contaminated land
- Animal welfare premises licensing

## **2. Introduction**

The Council's aim in respect of the above functions is to:

- Comply with statutory and regulatory duties in respect of environmental issues and protection of the public
- Improve public health in Gravesham
- Protect against harm to human health and damage to the environment in Gravesham
- Protect and enhance environmental standards in Gravesham
- Protect and improve the quality of life for people in Gravesham
- Safeguard and improve the environment for the benefit of future generations
- Make a positive contribute to national and international environmental protection initiatives

The Council's Environmental Protection team, uses a variety of means to ensure that individuals and organisations meet their responsibilities in respect of the issues identified above. These include:

- Advising, guiding and informing
- Educating
- Monitoring
- Inspecting
- Referring to and liaising with other agencies
- Negotiating
- Warning
- Issuing statutory notices
- Formally cautioning
- Prosecuting
- Carrying out works in default

### **3. Purpose of policy**

This policy is designed to:

- Ensure consistency of approach and enforcement in respect of environmental protection and animal control issues
- Provide officers with guidelines to enable them to make reasoned decisions regarding enforcement
- Inform the public and the proprietors of businesses of the principles by which enforcement action is determined and subsequently taken
- Ensure that, as a signatory to the Government's Enforcement Concordat, the Council has a relevant (and periodically reviewed) policy in place for the environmental protection and animal control function.

### **4. General principles of policy**

The Council seeks to avoid bureaucracy and unnecessary expense, and regards "prevention as better than cure". However, the Council recognises that it is, in many circumstances, a regulator and that it must act (and be seen to be acting) properly, promptly and efficiently where there is a contravention of a statutory requirement – particularly when compliance cannot readily be achieved by means of informal action or advice.

Enforcement officers will use their skill, knowledge, experience and judgement to decide how individual cases should be dealt with and whether a situation should be resolved by informal means or by formal proceedings. Those officers will take advice from colleagues and senior officers where appropriate and will have due regard to this policy.

Enforcement is carried out with due regard to the circumstances of the individual or business, and that the rights of individuals, organisations and businesses are safeguarded.

Enforcement is carried out without prejudice, that human rights issues are properly considered and enacted, and that there is consistency of approach towards enforcement.

Any departures from policy will be documented and approved by Assistant Director (Communities) before taking that course of action.

### **5. Principles of enforcement**

Enforcement needs to be fair but firm and effective. The following principles ensure this approach and are also in keeping with the 2014 Better Regulations Delivery Office's (BRDO) Regulators' Code:

The following principles underpin this approach:

- Agreed standards and procedures
- Helpfulness
- Openness
- Transparency
- Proportionality
- Consistency
- Risk based targeting of regulatory activities
- Complaints procedure

### **5.1 Standards and Procedures**

The Council produces standards and procedures in respect of the level of service and performance to be expected across the range of environmental protection and animal control issues. Such standards are produced following consultation with relevant parties.

The Council publishes its' performance against the standards.

The standards and procedures are readily available to businesses and others who are regulated and are regularly reviewed.

### **5.2 Helpfulness**

The Council will deal courteously and efficiently with all individuals, organisations and businesses that it comes into contact with. Staff will identify themselves by name, and contact numbers will be made available. Electronic means of communication (for example, by e-mail) will be facilitated wherever possible. Translation services will be made available where appropriate to assist customers who do not have English as their first language and will make appropriate arrangements to assist those who consider themselves disabled within the meaning of the Disability Discrimination Act 1995.

### **5.3 Openness**

Information and advice will be provided in plain language, and details of charges etc. will be made readily available.

We will work with colleagues in other departments such as Licensing and Planning, when necessary, in order to share information and to follow the principle "collect once, use many times".

### **5.4 Transparency**

Transparency is important in maintaining public confidence in the Council's regulatory capability. The Council will help those being regulated and others to understand what they need to do and how it may be achieved. The Council will also make its' own role in the matter clear.

The Council will explain carefully (and, if necessary, in writing) why the action is necessary, who must carry it out, and by what date it must be carried out. A clear distinction will be made between legal requirement, a request, and best practice.

The Council will give every reasonable opportunity for discussion before formal enforcement action is taken, unless urgent action is necessary to protect health and/or the environment, or to prevent the destruction of evidence that would compromise the Council's case. In such circumstances, the Council will give a written explanation of its reasons for taking immediate action and this will be done as soon as practicable after the event.

The Council will give written notice of any rights of appeal against enforcement action at the time the action is taken.

### **5.5 Proportionality**

Enforcement action taken by the Council will be proportionate to the risks posed to public health or the environment. Some breaches of regulatory requirements may simply interfere with people's rights to enjoy their environment, whilst others may cause serious harm to health or the environment. Enforcement action will be proportional to the degree of harm / risk and to the particular circumstances of the case.

In taking enforcement action, the Council will attempt to minimise compliance costs, and recognises that small businesses and voluntary and community groups frequently have to achieve compliance at minimal cost.

### **5.6 Consistency**

The Council will carry out enforcement in a fair, equitable, and consistent manner in accordance with its policies and procedures. Similar approaches will be taken in similar circumstances to achieve similar ends. However, the Council recognises that consistency does not mean uniformity and officers of the Council are required to take professional decisions that take account of a wide variety of situations and circumstances.

Officers are also expected to take account of local and national standards and guidance, and be aware of this policy. The attitude of the person or organisation subject to enforcement action will also be considered in deciding how enforcement action should proceed.

## **5.7 Targeting**

Enforcement effort will be targeted on a risk assessed basis to focus on high risk activities / problem businesses e.g. environmental permitting. Reactive work, for example noise nuisance, will be complaint and intelligence lead. Businesses and individuals who persistently break regulations will be dealt with using the full range of powers and sanctions available.

## **6. Complaints Procedure**

The Council has a formal complaints procedure, although initially complaints may be made informally and will be dealt with directly by a senior officer within Regulatory Services. Information regarding the formal complaints procedure may be obtained from Customer Services on tel 01474 337 000 or through the council's website [www.gravesham.gov.uk](http://www.gravesham.gov.uk)

In addition once the council's own complaints procedures have been completed, the Local Government Ombudsman hears complaints regarding local government mal-administration, and details of this service are also available from Customer Services.

## **7. Enforcement**

### **7.1 The informal approach**

The existing procedure of giving advice and making recommendations using informal letters is accepted and understood by people in general. Officers will generally use this as a first approach.

This informal approach will be consistent with the BRDO Code.

Officers will clearly differentiate between legal requirements and recommendations in both verbal and written communications.

### **7.2 Prosecution**

Prosecution may be considered as an alternative, in addition to, or as a consequence of failure to comply with the above enforcement procedures. When considering whether to prosecute the authorised officer will apply the Evidential Test and Public Interest Test as described in the Crown Prosecution Service Code for Crown Prosecutors. In all cases, the decision to prosecute will be ratified by the Assistant Director (Communities) after careful consideration of a report from the inspecting officer. Prosecution papers will be passed to the Council's legal department for consultation before summonses are issued. Home and Primary Authorities will be consulted if necessary where prosecutions are planned and due regard will be paid to the opinion of that authority. Such authorities will be notified of the outcome of prosecutions taken.

A prosecution will not be commenced or continued unless the Council is

- (a) satisfied that it is in the interest of the public or the environment,
- (b) that there is sufficient, admissible and reliable evidence that the offence has been committed, and

(c) that there is a realistic prospect of a conviction.

In considering prosecution the council will consider:

- The seriousness of the offence
- The effect of the offence
- The foreseeability of the harm caused resulting from the offence
- The likelihood that a best practical means defence could be established;
- The intent of the offender
- The history of offender
- The attitude of the offender
- The probable public benefit of a prosecution
- The deterrent effect on the offender or on others
- Whether other action, such as issuing a simple caution, seizure or fixed penalty notice would be more appropriate or effective;

Prosecution will only be instigated following review of the matter by the Assistant Director (Communities) and in consultation with the Assistant Director (Governance and Law).

### **7.3 Works In Default**

A number of statutory enforcement procedures enable the council to carry out 'works in default', if necessary, following the expiry of the term stated in a Notice. The purpose of the works in default process is to enable the council to effect an early remedy to the particular situation that has given rise to service of a statutory Notice (generally prior to prosecution). Work may generally be carried out by the council, or at the council's instruction – the cost of such works (plus administrative charges) being recovered either as a civil debt or by virtue of a 'charge' being placed on a subject property. The council will effect works in default where there is a significant risk to public health and following consideration of there being a reasonable chance of recovering the costs of the works. The council will make best attempts in each circumstance to advise the recipients of Notices before works in default are carried out.

### **7.4 Simple Cautions (See Ministry of Justice document – Simple Cautions for Adult Offenders)**

There may be circumstances where evidence for a successful prosecution exists, but where mitigating circumstances are such that nothing is likely to be gained from such action. In such circumstances, the authorising officer will consider the offer of a formal caution as an alternative to prosecution. Circumstances where a formal caution may be considered are:

- The contravention is a minor and first offence
- The contravention, although serious, has been dealt with speedily and steps have been taken to prevent a recurrence
- The business has since closed or the employer / employee / self-employed person has ceased that occupation
- The defendant would be unable to pay a fine, costs, or compensation

Simple cautions will only be considered where there is sufficient evidence to give a realistic expectation of success if the case went to the Courts. It will not be used as an alternative to prosecution where it is felt that the prosecution case is weak.

A caution can only be administered where the suspected offender is prepared to admit the offence. Care will be taken to ensure that the suspected offender understands the significance of the caution and is able to give an informed consent to being cautioned.

The decision to offer a simple caution will be taken by the Assistant Director (Communities), who is authorised as the "Cautioning Officer" for this purpose – after consideration of a report from the case officer.

If the offer of a simple caution is declined, further enforcement action will be considered. This will usually be prosecution, but the offer of a written warning will be considered in appropriate cases.

### **7.5 Seizure**

When dealing with breaches of noise nuisance Notices or Community Protection Notices (CPNs) there exists the option of seizing noise equipment believed to have been used in the emission of the noise in question as well as or, as an alternative to taking the breach to the Magistrates' Court. In many cases, taking seizure action can be a more effective way of preventing the problem from recurring, as removal of goods just after the noisy event will have a greater deterrent effect than commencing a prosecution which can take place up to six months afterwards however there will be circumstances when a prosecution would be appropriate (see 7.2 above).

### **7.6 Fixed Penalty Notices (FPN)**

Fixed Penalty Notices (FPNs) can be issued for different matters e.g. for breaching a Dog Control Order or when a breach of a CPN is witnessed. There exists the option of either issuing an FPN or taking the matter to court where the maximum penalty for an individual is a level 4 fine. When an FPN is paid within 14 days this confers immunity from prosecution.

In many cases, a fine can be a more effective way of preventing the problem from recurring however there will be circumstances when a prosecution would be appropriate (see 7.2 above).

### **7.7 Working with Other Regulators**

Where the Council and another enforcement agency (for example, the Environment Agency) both have powers to take enforcement action, the council will liaise with that other body to ensure that (a) action is effectively co-ordinated, (b) that proceedings are for the appropriate offence, and (c) that inconsistencies are avoided.

## **8 Review of Procedure**

The Council will review this enforcement policy at least every 3 years or when changes in legislation or centrally issued guidance make this necessary. Hard copies will be made available on request.

Policy reviewed November 2017  
Review Period – 3 years