

Place Department**Public Realm Division****ENFORCEMENT POLICY****April 2018**

VERSION CONTROL:

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2	MICHAEL GODDARD	MAY 2020	Addition of interim Covid-19 enforcement provisions
3	TRISH BURLS	JAN 2021	Updating and revision of Trading standards section of policy
4	Sara Quinn	APRIL 2021	Updating on interim Covid-19 enforcement provisions

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GENERAL

Introduction

The effectiveness of legislation in protecting society depends on the compliance of those regulated. We recognise that most businesses and individuals want to comply with the law. We will, therefore, take care to help businesses and others meet their legal obligations without unnecessary expense, while taking firm action against those who flout the law or act irresponsibly, including prosecuting where appropriate.

Enforcement will be carried out in a fair, equitable and a consistent manner. While staff are expected to exercise judgement in individual cases, we have arrangements in place to promote consistency including in-process monitoring procedures and arrangements for liaison with other authorities and enforcement bodies.

We will consult with stakeholders when developing and amending this Enforcement Policy by sending a copy to representative groups and holding meetings, where appropriate, to obtain comments, and by publishing it on our website.

We will provide well publicised, effective and timely complaints procedures easily accessible to businesses, the public, employees and consumer groups. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely time-scales involved.

Openness & Helpfulness

Information and advice will be provided in plain language on the rules that we apply and we will publish this as widely as possible. We will be open about how we set about our work, including any charges that we set. We will discuss general issues, specific compliance failures or other problems with anyone experiencing difficulties.

We believe that prevention is better than cure and that we should work with customers to advise and assist with compliance. We will provide a courteous, prompt and efficient service and our staff will identify themselves by name. We will provide a contact point and telephone number and will encourage customers to seek advice and information. We will ensure that services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

We will make provision for the different needs of our customers in the following ways:

- we will participate in a 24 hours service to deal with urgent matters which occur outside office hours;
- we will provide information in alternative formats to standard letters if required, eg large print, on audio tape or languages other than English;
- we will operate a 'flexible working system' for our officers so that they may be available to carry out visits etc outside of normal office hours (9-5, weekdays);
- We will utilise the Croydon Council website to help promote our services and

provide information for stakeholders to increase awareness of their rights.

Proportionality

The costs of compliance will be minimised by ensuring that any required action is proportionate to the risks. We will take account of the circumstances of the case and the attitude of the operator when considering action. We will take particular care to work with customers so that they can meet their legal obligations without unnecessary expense.

Authorisation of Officers

Only officers who are competent by training, qualification and/or experience will be authorised to undertake enforcement action. Authorised officers will also have sufficient training and understanding of standard procedures to ensure a consistent approach to service delivery.

Officers who undertake enforcement action, including criminal investigations, will be conversant with the provisions of the Police and Criminal Evidence Act 1984 (PACE), the Criminal Procedure and Investigations Act 1996 (CPIA), the Data Protection Act 2018 and GDPR, the Human Rights Act 1998, the Equality Act 2010, the Regulation of Investigatory Powers Act 2000, the Freedom of Information Act 2000 and Anti-Social Behaviour Orders. Officers will also be aware of, and work to, the Council's Equal Opportunities Policy.

As well as council officers, contractors may also be authorised to take enforcement action.

Enforcement Options

Enforcement will be balanced by applying discretion wherever possible, taking a common sense approach and evaluating the risk inherent in each situation. The various options for action are to:-

- take no action;
- take informal action;
- take statutory action, e.g. service of statutory notices;
- carry out works in default (including emergency remedial works);

- seize equipment, vehicles or goods;
- prohibit a work activity;
- close down a business/part of a business or process;
- suspend or revoke an approval of a food business;
- issue licences with conditions;
- revoke licences or vary licence conditions;
- issue a penalty charge notice or penalty notice for disorder;
- issue a financial penalty charge for other offences;
- referral to partner groups such as mediation, community safety, tenancy managers etc.;
- anti-social behaviour and post-conviction anti-social behaviour orders;
- issue a caution;
- prosecute;
- seek an injunction;
- restraint, confiscation and forfeiture of assets under the Proceeds of Crime Act 2002

Details of how these various options (and others which are specific to certain services only) will be applied are given in the next sections.

Advice from an officer will be put clearly and simply and will be confirmed in writing, on request, explaining why any remedial work is necessary and over what time-scale, and making sure that legal requirements are clearly distinguished from best practice advice.

Before formal enforcement action is taken, officers will provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference, unless immediate action is required (for example, in the interests of health and safety or environmental protection or to prevent evidence being destroyed).

Where immediate action is considered necessary, an explanation of why such action was required will be given at the time and confirmed in writing in most cases within 5 working days and, in all cases, within 10 working days.

Where there are rights of appeal against formal action, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken (whenever possible this advice will be issued with the enforcement notice).

Prosecution

Consideration will be given to the Code for Crown Prosecutors and any other relevant documentation in cases where prosecution is an option, with all cases being referred

to Legal Services for their opinion on whether prosecution should proceed. The final decision for instigating prosecutions rests with the Director of Law and Governance and those with delegated authority to make the decision to prosecute. The decision to take other proceedings, for example financial penalties, will be taken by a competent officer within the service involved.

Relevant, admissible, substantial and reliable evidence of an offence will be available before prosecution proceeds. We will only instigate prosecution in cases where there is a realistic prospect of conviction, and a positive decision will always need to be taken that it is in the public interest to prosecute. The following general circumstances are considered likely to warrant prosecution:-

- the alleged offence involves a flagrant breach of the law such that the safety, health or well being of the public and/or an employee is/has been put at risk;
- there is a flagrant breach of a licence;
- the alleged offence involves obstruction, failure to disclose information or making a false statement;
- the alleged offence involves a failure to comply in full, or in part, with the requirements of a statutory notice or order;
- there is a history of previous warnings or the commission of similar offences, or clear evidence that the person concerned was fully aware that they were committing an offence;
- there has been blatant obstruction of or an assault on an enforcement officer;
- the offence is prevalent in the local area, causing harm to the community, environment, or amenity of the local area.

Cautions

In some circumstances, cautions may be appropriate rather than prosecution and such cases will be discussed by the case officer with the head of service, in accordance with the standard procedure on issuing cautions.

Appeals

Individuals and businesses have a right to question or appeal against enforcement action. There are statutory appeal mechanisms, details of which will be given when action is taken. In addition, a corporate complaints procedure is in place for dissatisfied customers, details can be found on the Council's website at <http://www.croydon.gov.uk/democracy/feedback/complaints-procedure/>

Every effort will be made to have appeals heard as soon as possible, but this is often outside our control. Costs will generally be sought if an appeal is found in favour of the Council or subsequently withdrawn by the appellant.

Powers of Entry

Access to properties is normally achieved by informal means by appointment with the occupier. If there is a need to enter a premises and prior notice would be counterproductive a visit will be made to the property without giving prior notice.

In appropriate circumstances, a Notice of Entry will be served or an application made to the Magistrates' Court for a warrant to enter, e.g. if access is refused, or the premises are vacant, or giving prior notice would be counterproductive.

The relevant parts of the Police & Criminal Evidence Act 1984 are followed as they apply to enforcement activities. In particular, where an inspection of a property constitutes a 'search', a notice (known as a 'Notice of Powers and Rights') is issued to the owner/manager if they are present at the time. This informs them of their rights and the powers under which the officer is acting.

Equalities Commitment and Human Rights

In line with our Equalities Commitment which is designed to advance equality of opportunity between people; foster good relations between different communities and eliminate discrimination, harassment and victimisation, all officers are expected to:

- Know the local community and understand its needs
- Engage with all our communities
- Deliver efficient, responsive services and excellent customer care
- Provide strong leadership, partnership and organisational commitment
- Be exemplary employees reflecting a modern and diverse workforce.

The European Convention on Human Rights is incorporated into domestic law by virtue of the Human Rights Act 1998. The Council recognises that the Act requires public authorities to operate in a way that is compatible with those rights, subject to occasions when interference is justified.

It is noted that the rights likely to be most affected by this strategy are those under Article 1 (right to peaceful enjoyment of property and possessions), Article 6 (the right to a fair trial) and Article 8 (respect of privacy and family life). We will at all times seek to strike a fair balance between the needs to protect the rights of residents, businesses and the public interest.

Investigations will be carried out in line with the Police and Criminal Evidence Act 1984 codes of practice and agreed procedures.

Monitoring of the Policy

We will set up a monitoring system whereby we will examine a sample of the enforcement action taken by our officers to monitor against this policy. This will be done by in-process monitoring and discussion at the regular one-to-one meetings

between officers and managers. If changes are found to be needed an objective will be built into the Service Plan.

PRIVATE SECTOR HOUSING

Authority to Investigate or Enforce

The majority of enforcement powers involve the service of informal and statutory notices under the Housing Act 2004. There are also powers under the Housing Act 1985 (as amended) and under non-Housing Act legislation, e.g. the Environmental Protection Act 1990, the Building Act 1984 and the Public Health Acts 1936 and 1961.

The only actions that cannot be authorised at officer level are the making of a Closing Order or Demolition Order, both of which can be authorised by the Director of Public Realm, and a Compulsory Purchase Order, which needs to be referred to Cabinet for a decision.

Powers of Entry

Landlords should note that their tenant(s) have a right to invite us into the property for the purpose of inspection or investigation without the need to inform the landlord or require their permission. In many cases the tenant does not want the landlord to be present during our visits. For these reasons we do not, as a matter of course, give prior notification to landlords when we have arranged inspections of their properties and we can proceed to take informal action under the Housing Act 2004, and statutory action under other legislation, without giving such notice.

The exception to the above is when or if it becomes apparent that we need to take formal (statutory) action under the Housing Act 2004. In these cases at least 24 hours' notice of our intended visit to inspect the property will be given to the landlord – this may be by telephone call, email, letter or formal notice of entry depending upon the contact details that we have. For houses in multiple occupation, all occupants will be informed in addition to the landlord, in the same manner. In some cases this will happen after we have already been in contact with the landlord regarding informal action.

In these circumstances officers will also be specifically authorised to enter individual properties and the authorisation will be signed by an appropriate manager.

We do not need to give 24 hours' notice if we are inspecting a property to ascertain whether any offences have been committed relating to licensing, or to the management regulations of houses in multiple occupation.

Accredited Landlords

We will encourage private landlords to attend training sessions in order that they may become accredited under the London Landlord Accreditation Scheme or equivalent. Accredited landlords will be recognised as responsible landlords who employ good management techniques and we will work with these landlords informally rather than take statutory enforcement action wherever possible.

Housing Enforcement Options

Informal Action

In the majority of cases our initial action will be to write to the landlord to inform them that we have received a complaint about disrepair and asking that they deal with the matter. The action that we will proceed to take should they not respond to this request will be fully explained. The tenant will be asked to contact us again if the landlord does not respond and we will then take formal action as appropriate.

Further formal action may not be considered where the matter is of a very minor nature. In such situations the tenant will either be given advice or a one-off letter may be sent to the landlord and the case will then be closed. In cases where an owner-occupied property is having a deleterious effect upon adjoining properties, or the amenity of the neighbourhood as a whole, an informal approach will be made to the owner in the first instance.

What is Expected of Tenants

Tenants of Registered Social Landlords (Housing Associations) have standard complaints procedures to follow if their landlord does not carry out repairs in a satisfactory manner, and also a final right of appeal to the Housing Ombudsman Service. For this reason we cannot assist these tenants unless the property contains a Category 1 Hazard which the association has failed to address, or is a house in multiple occupation which does not comply with current fire safety standards. In other cases we may make contact with the housing association and make enquiries on the tenant's behalf but we will only inspect with a view to possibly taking enforcement action as a last resort if the association fails to respond.

Before considering taking any action in respect of a tenanted property the tenant(s) will normally be required to contact their landlord about the problems first. Legislation covering landlord and tenant issues require that tenants notify their landlords of any problems with the property. This is because landlords can only carry out their obligations under the legislation once they have been made aware of the problem. Copies of correspondence between the landlord and tenant should be provided for officers.

In certain situations tenants will not be required to write to their landlord first, e.g.:-

- where the matter appears to present an imminent risk to the health and safety of the occupants;
- where there is a history of harassment/threatened eviction/poor management practice;
- where the tenant appears to be vulnerable or where there are vulnerable members of the household;

- where the tenant's first language is not English and this is likely to cause them difficulty;
- where the tenant could not for some other reason be expected to contact their landlord/managing agent;
- where the property is a house in multiple occupation

Tenants are responsible for keeping officers informed of any contact they have had with their landlord (or the landlord's agent or builder, etc.), which may affect the action the Council is taking or considering taking.

Situations Where a Service to Tenants is not Provided

Where any of the following situations arise consideration will be given to either not providing a service, or ceasing to provide a service:-

- where the only defect in the property results in a low scoring hazard of band I or J;
- where the tenant(s) are, of their own free will, shortly to move out of the property;
- where the tenant(s) unreasonably refuse access to the landlord, managing agent or contractors to arrange or carry out works;
- where the tenant(s) have, in the opinion of the Council, clearly caused the damage to the property that they are complaining about, and there are no other items of disrepair;
- the housing enforcement team cannot assist with re-housing. If a tenant does not want their present accommodation to be brought up to standard in the hope of being re-housed, we will signpost to the correct services;
- where the tenant(s) have requested a service and then failed to keep an appointment and do not respond to a follow up letter or telephone call;
- where the tenants have been aggressive, threatening, or verbally or physically abusive towards officers.

Leaseholders and Owner Occupiers

We will not normally become involved in disputes between leaseholders and freeholders or between neighbouring owner occupiers. Such disputes, and their outcome, rely on legal clauses within leases or deeds and we are not equipped to interpret these sufficiently to take legal enforcement action. We may give general advice and/or signpost the complainant to other organisations which may offer advice, including advice on the taking of civil action.

The exception to the above is where a statutory nuisance, drainage or pest control issue is emanating from a clearly identified property and is affecting or has the potential to affect neighbouring properties and people.

Housing Association and Other Registered Provider Tenants

We will not normally take on cases of disrepair reported by these tenants. This is because social landlords generally have programmes of planned maintenance and repair in place and, unlike private landlords, have complaints policies which their tenants can follow if they are dissatisfied. Tenants also have a final right to complain to the Housing Ombudsman, again private tenants do not have this facility.

The exception would be if there are clear category 1 hazards in the property which the social landlord has failed or refused to address.

Statutory Action

The Housing Act 2004, the Housing Act 1985 (as amended) and the Environmental Protection Act 1990 are the principal Acts covering statutory action taken. Authorised officers will be allowed to draft and sign their own statutory notices once they have undergone a period of training and monitoring and manager(s) are satisfied of their competency, however all statutory notices are checked by a senior officer prior to service.

Informal Notice(s) of Intention to Take Enforcement Action

In the majority of cases, before taking enforcement action under one of the above Acts a written notice will be served informing the owner that enforcement action is being considered and giving the reasons why. These will be 'informal' notices and will allow the landlord the opportunity to respond prior to statutory enforcement action being taken.

Situations Where an Informal Notice is Not Required

Where it appears necessary to take immediate enforcement action the 'informal' notice will not be issued. This will be the procedure where there is an imminent risk to health or a significant statutory nuisance, where the landlord is absent or has a poor management record, or where the landlord or managing agent has a history of failing to respond to informal action.

Representations Made in Response to Informal Notices

Persons receiving an 'informal' notice will be given a reasonable period of time (as specified on the notice) in which to make representations (Housing Act) or carry out the works (other legislation). Having considered any representations, a decision will then be made as to whether to proceed with statutory enforcement action, taking the following factors into account:-

- landlord's previous history;
- proposed timetable for works;

- whether the landlord has made clear their intention to carry out the works and whether this is within the time-limit specified in the 'informal' notice.

Where the content of the representations received is satisfactory, the person on whom the notice was served will be informed in writing. This letter will also confirm the terms under which the representations have been accepted, for example, the agreed time-period for completion of works and any amendments to the schedule of works. Statutory enforcement action will be taken in the following situations:-

- where no representations are made;
- where the representations made are unacceptable;
- where unsatisfactory progress has been made following acceptance of representations.

Service of Statutory Notices

Owner-occupied Property

Enforcement action will only be considered where the condition of an owner-occupied property is such that it is a danger to the occupier, it is having a deleterious effect on adjoining properties, or it is having a deleterious effect on the amenity of the neighbourhood as a whole and the problem cannot be solved by informal means.

Privately Rented Property

Properties are inspected using the housing health and safety rating system which links defects in properties with hazards to the health or safety of the occupants or visitors. Where properties have been assessed as having a high hazard rating, or there has been a failure to comply with legislation covering houses in multiple occupation, an assessment of risk will be undertaken to determine the appropriate course of action and to inform the decision on whether immediate enforcement action is necessary.

In securing the repair and improvement of properties all relevant Government guidance will be followed. The main statutory notices/orders used are as follows:-

- Housing Act 2004, Sections 11 and 12, Improvement Notices relating to properties with category 1 or category 2 hazards.
- Housing Act 2004, Sections 20 and 21, Prohibition Orders relating properties with category 1 or category 2 hazards.
- Housing Act 2004, Sections 28 and 29, Hazard Awareness Notices relating to properties with category 1 or category 2 hazards.
- Housing Act 2004, Section 40, Notice of Emergency Remedial Action.

- Housing Act 2004, Section 43, Emergency Prohibition Order.
- Housing Act 2004, Section 102, Interim Management Order.
- Housing Act 2004, Section 103, Special Interim Management Order.
- Housing Act 2004, Section 113, Final Management Order.
- Housing Act 2004, Section 133, Interim Empty Dwelling Management Order.
- Housing Act 2004, Section 136, Final Empty Dwelling Management Order.
- Housing Act 2004, Section 139, Overcrowding Notice in respect of a HMO.
- Housing Act 1985 (as amended), Section 17, Compulsory Purchase Order.
- Housing Act 1985 (as amended), Section 265, Demolition Order.
- The Management of HMOs (England) Regulations 2006, notice requiring works to remedy deficient management issues within HMOs.
- Environmental Protection Act 1990 section 80, Abatement Notice in respect of statutory nuisance.
- Building Act 1984, Section 59, Notice requiring execution of works of drainage, etc., in existing buildings.
- Public Health Act 1936, Section 45, Notice requiring works to defective water closets capable of repair.
- Public Health Act 1961, Section 17 (1), Notice to remedy insufficiently maintained drains, etc.
- Public Health Act 1961, Section 17 (3), Notice to remedy stopped-up drains, etc.

Statutory Notice Time Periods

The time-limits given on statutory Housing Act 2004 notices for starting and completing works will generally be related to the estimated cost of the required works, as follows:-

Cost of works	Start	Complete	Total
< £6,000	42 days	28 days	70 days
£6,000-£20,000	75 days	42 days	117 days
> £20,000	75 days	56 days	131 days

If the required works are only of a limited extent then the time limits will be reduced accordingly, with a minimum time limit of 29 days in total being allowed. Extensions of time for starting or completing work will only be granted where there are legitimate reasons for doing so. Examples include an agreed work programme for an owner with

several properties requiring works, or works are in progress but not completed. The extension of time will be granted by the officer dealing with the case in consultation with the owner and occupier of the property.

Statutory notices under other legislation will usually contain shorter time periods, from 7 to 21 days, but in urgent drainage, public health or statutory nuisance cases the time limit may be 24 or 48 hours.

Charge for Enforcement Action

In the majority of cases several steps are taken before we consider it necessary to serve a statutory notice, in particular notices served under the Housing Act 2004. We ensure that tenants have notified their landlord of disrepair before taking on a case (and the landlord has failed to carry out repairs), and under normal circumstances we will start with informal action. It is only if a landlord fails to respond to this that we consider statutory action.

Because of this, if it is necessary to progress to statutory action a charge is made for the cost of administrative and other expenses involved in taking the following statutory enforcement action:-

- Service of an Improvement Notice under Sections 11 and 12 of the Housing Act 2004.
- Service of a Prohibition Notice under Sections 20 and 21 of the Housing Act 2004.
- Service of a Hazard Awareness Notice under Sections 28 and 29 of the Housing Act 2004.
- Service of a notice to take emergency remedial action under Section 40 of the Housing Act 2004.
- Service of an Emergency Prohibition Notice under Section 43 of the Housing Act 2004.
- Carrying out a review of a suspended Improvement Notice or Prohibition Order under Section 17 or 26 of the Housing Act 2004.
- Making of a Demolition Order under Section 265 of the Housing Act 1985 (as amended)
- Service of a notice under Section 80 of the Environmental Protection Act 1990
- Service of a notice under Section 59 of the Building Act 1984
- Service of a notice under Section 45 of the Public Health Act 1936
- Service of a notice under Section 17 of the Public Health Act 1961

Apart from the Hazard Awareness Notice and the review of a suspended Improvement Notice or Prohibition Order, the charge is £450 for each Housing Act notice/order served, with an additional £100 per hazard present in the property, with a maximum fee of £1,000 per property. For Hazard Awareness Notices the charge is £150 and for reviews of suspended Improvement Notices and Prohibition Orders the charge is £250. The charge is £150 for notices/orders served under other legislation. Where more than one person is served with a notice/order the charge may be recovered from the main recipient (usually the person who is primarily responsible for the management of the property) or split equally between the recipients.

Charges for Housing Act notices are made in accordance with Section 49 of the Housing Act 2004. Charges for other notices are made in accordance with Section 36 of the Local Government Act 1974. In each case an invoice will be issued and if the charge is not paid within 28 days recovery action is taken by the Council's Debt Recovery Team, including interest where appropriate.

These charges are reviewed annually and customers are advised to check the council's website www.croydon.gov.uk or seek advice from an officer on the charges currently in operation.

Where there is an appeal against a Notice or Order, the charge is suspended, until the appeal is resolved. However, there is no separate right of appeal against the charge. In cases of extreme hardship the Head of Environmental Health, Trading Standards and Licensing has discretion to reduce or waive charges for enforcement action.

The charge may also be waived if a notice has been served without the prior service of a 'informal' notice where this has been done to ensure that the works are carried out quickly in a specific case, eg if fire precaution works are recommended by the London Fire Brigade. However, if the statutory notice has been served without an informal notice having been served because of either the landlord's history of failing to respond, or the landlord is absent, the cost of enforcement action will be charged.

Vacated Properties With Outstanding Notices

In cases where properties are subject to a statutory notice and the property is subsequently vacated, the following action will be taken:-

- **Housing Act 2004, Improvement Notice** - the notice may be suspended, varied or revoked or may remain in place, dependant on individual circumstances.
- **Housing Act 2004, Prohibition Notice** - the notice may be suspended, varied or revoked or may remain in place, dependant on individual circumstances. If a Prohibition Notice is in place it is an offence for the owner of the property to re-let it prior to remedial works being carried out satisfactorily.
- **Housing Act 2004, Hazard Awareness Notice** – the notice will remain in place.

- **Environmental Protection Act 1990, section 80 notice** - if the works required by the notice do not affect another property it will be withdrawn. However, if it does affect another property the notice will be enforced.

Statutory Nuisances Which are Prejudicial to Health

Where a statutory nuisance is found to be prejudicial to health, less than 21 days (the standard appeal period) may be given for completion of the works to abate the nuisance. Examples of situations which are regarded as being prejudicial to health, and for which a notice under section 80 of the Environmental Protection Act 1990 will be served, include:-

- extensive water penetration;
- defective boilers leaving the property without any means of providing either hot water and/or heating (dependent on the time of year and whether or not there are vulnerable occupants).
- dampness or condensation resulting in mould growth where there are occupants with respiratory problems.

Most Appropriate Enforcement Action for Dealing With Properties With Category 1 Hazards

Where such a property is identified, the most appropriate enforcement action will be taken as required by the Housing Act 1985 (as amended) and the Housing Act 2004, taking account of statutory enforcement guidance issued by the Department for Communities and Local Government. The most appropriate enforcement action where the property is privately rented will be one of the following options:

- Improvement Notice (HA 2004, S11);
- Prohibition Order (HA 2004, S20);
- Hazard Awareness Notice (HA 2004, S28);
- Emergency Remedial Action (HA 2004, S40);
- Emergency Prohibition Order (HA 2004, S43);
- Demolition (HA 1985, S265);
- Declaration of Clearance Area (HA 1985, S289(2)).

If a property containing a category 1 hazard is owner occupied we will not normally take formal enforcement action against the owner, but instead offer advice and alternative solutions, including advice on home improvement loan assistance,

depending upon the nature of the risk. This may in some cases include taking action but suspending that action – see section below on Suspended Action.

Renovation

In the vast majority of cases properties are in such a condition that they can be repaired or improved rather than demolished or closed.

Clearance Areas

Clearance is unlikely to be the most viable option in most cases.

Demolition and Prohibition Orders

Where a Demolition or Prohibition Order is the most appropriate course of action, the Council undertakes to temporarily re-house eligible occupants who are displaced. This will be into temporary accommodation to give the occupants time to find alternative, permanent accommodation. It is highly unlikely that permanent accommodation will be offered by the Council.

Suspended Action

In certain circumstances an Improvement Notice or Prohibition Order may be suspended, and this option may be appropriate in the following situations:-

- where an older or disabled home owner or tenant cannot cope with the upheaval of extensive works to alleviate the Category 1 Hazard;
- where an older or disabled home owner does not want to leave their home;
- where it is considered that the nature of the hazard is not seriously detrimental to the well-being of the occupants;
- where the health of the occupants might be seriously affected by the works necessary to alleviate the hazard;
- where enforcement action may be safely postponed to allow a more strategic approach to area renewal to be considered, including where landlords have a programme to make their stock decent;

Notice that action has been suspended may specify an event that triggers the end of the suspension, eg non-compliance with an undertaking given to the Council, or a change in occupancy of the property. Such a notice may require a landlord to notify us of a change in occupancy so that the notice may be reviewed.

Suspended Notices and Orders must be reviewed not later than 12 months after the date the notice was served or the order made.

The fact that action has been suspended does not prevent the Council from taking any other course of action at any time.

Housing and Planning Act 2016

The Housing and Planning Act 2016 introduced new measures specifically to deal with 'rogue landlords'. Financial penalty charges (FPC) are an alternative to prosecution for various offences under the Housing Act 2004. The scope of Rent Repayment Orders (RRO) has been extended as the range of offences under the Housing Act 2004 where the Council can apply for a RRO has been increased.

The Housing and Planning Act also introduced the provision of a database of rogue landlords and 'banning orders' – banning orders may be put in place when a landlord commits a serious offence against their tenant(s).

Please see **Appendix A** for full details of the financial penalty charges and how these will be calculated, and rent repayment orders. Decisions are made by senior officers and, should representations be received, the case(s) are reviewed by the Head of Environmental Health, Trading Standards and Licensing.

Carbon Monoxide and Smoke Alarm (England) Regulations 2015

These regulations require that for all rented properties the landlord must ensure that:

- A smoke alarm is installed on each storey of the premises where there is living accommodation, and;
- A carbon monoxide alarm is installed in any room used as living accommodation where there is a solid fuel burning appliance.

AND for tenancies starting from 1 October 2015:

- That checks are made by the landlord, or someone acting on his behalf, that the alarm(s) are in proper working order on the day the tenancy starts.

If we feel that a landlord has breached one or more of these duties we must take enforcement action in the form of a Remedial Notice, which will list the works to be carried out by the landlord. If the landlord fails to respond to this notice the Housing and Planning Act 2016 introduced the power for us to issue a penalty charge notice up to a maximum amount of £5,000.

In accordance with the regulations we have published a Statement of Principles to assist in determining the level of penalty charge, and this can be found at the following link:

<https://www.croydon.gov.uk/sites/default/files/articles/downloads/Smoke%20CO%20Alarm%20Regs%202015%20Statement%20of%20Principles%20LBCroydon.pdf>

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations

With effect from the 1st April 2018 there is a requirement for any domestic properties rented out in the private rented sector, which are required to have an Energy Performance Certificate, to have a Minimum Energy Efficiency Standard (MEES) via an Energy Performance Certificate rating of at least E.

The regulations relate to new lets and renewals of tenancies with effect from 1st April 2018 and come into force for all existing tenancies on 1st April 2020.

It will be unlawful to rent a property which breaches the MEES unless there is an applicable exemption (see below). A civil penalty of up to £5,000 could be imposed for breaches. The level of penalties are set in the regulations.

From the April 2016 all domestic tenants have the right to request energy efficiency improvements to their properties.

Are there any exemptions from the regulations?

Yes, landlords are exempt if:

- They have carried out all cost-effective energy efficiency improvements.
- Measures identified by Green Deal or an alternative government scheme are not cost effective.
- If third-party consents are not available (from tenants, planning authority etc).
- The property does not require an EPC (listed building or let continuously since 2005)
- The exemption has been registered on the Governments Exemptions Register.

Guidance to landlords of privately rented domestic (and non-domestic) properties on complying with the 2018 'minimum level of energy efficiency' standard (EPC band E) can be found at the following link:

<https://www.gov.uk/government/publications/the-non-domestic-private-rented-property-minimum-standard-landlord-guidance>

Selective Licensing

The Council introduced a borough-wide selective licensing scheme on 1 October 2015, using powers introduced by the Housing Act 2004. Under the scheme the majority of privately rented properties are required to be licenced. The main exceptions are:

- Mandatory houses in multiple occupation (licenced under a separate scheme, see next section)
- Properties occupied by a defined relative of the landlord
- Social housing

Licences will usually be issued for a period of 5 years. Conditions are applied to all licences and licences may be refused for certain reasons or may be granted for shorter time periods if we have concerns about the landlord or pending compliance with the standards.

The standard licence fee is £750 per property regardless of when the application is made, i.e. applications made part way through the life of the scheme will not be subject to a reduced fee. Reduced fees apply to Almshouses (£25 per property) and to any property which is being let for the first time (£350 per property) – this includes conversions, new-builds or existing properties not previously rented. To be eligible for the discounted fee and application to licence must be made either before the property is rented or within 28 days of it being first rented.

Failing to licence a property to which the scheme applies will be viewed as a serious matter and legal action in the form of prosecution or financial penalty will be considered. This offence carries an unlimited fine on conviction in the magistrates' court and the maximum level for a financial penalty is £30,000. Newly discovered unlicensed properties will not normally be treated as cases where there is intentional failure to licence unless there is evidence to the contrary eg the owner fails to respond to requests to apply for a licence or there is evidence that the owner was aware of the licence requirements.

Failing to comply with any of the licence conditions is also an offence and consideration will be given to taking legal action in the form of prosecution, or issuing a financial penalty. The offence carries an unlimited fine on conviction in the magistrates' court and the maximum level for a financial penalty is £30,000.

Decent Homes

After taking any enforcement action under the Housing Act 2004 which specifies works to be carried out to remedy or alleviate hazards, the property should meet the Decent Homes Standard as set out below. The property must:

- be free from category 1 hazards;
- be in a reasonable state of repair;
- have reasonably modern facilities and services;
- provide a reasonable degree of thermal comfort.

Compulsory Purchase Orders

An essential element of the Council's Empty Property Strategy is the making of Compulsory Purchase Orders (CPO). This option is only taken up in exceptional circumstances, for example:-

- where the property has been derelict for some time and is having a detrimental affect on the local environment or neighbouring properties;
- where the property appears to be abandoned and the owner cannot be traced;
- where all other avenues for bringing the property back to a useful life have been exhausted;
- where the property is suitable for immediate residential use, but is not likely to be occupied for residential purposes unless bought by the Council.

The making of a CPO has to be agreed by Cabinet. It must then be approved by the Secretary of State in the Department of Communities and Local Government before it can be made. In order to safeguard against the liability for 'loss payments', we will only consider the making of a CPO after the service of a Notice under the following legislation:

- Housing Act 1985 Section 264 or 265 (Demolition Order)
- Housing Act 2004 Section 11 or 12 (Improvement Notice)
- Housing Act 2004 Section 20 or 21 (Prohibition Order)
- Housing Act 2004 Section 43 (Emergency Prohibition Order)

Re-connection of Services

Statutory powers will be used to ensure the re-connection (or to prevent the disconnection) of the gas, electricity or water supply, to lettings within tenanted properties. These powers will only be used where the tenant is not responsible for payment of the bill. In these cases the details will be passed to the Tenancy Relations section as non-payment of a utility bill, which is likely to lead to tenants being without services through no fault of their own, is a form of harassment.

If Section 19 of the Greater London Council (General Powers) Act 1972 is used to arrange the re-connection of the gas or electricity supply, the owner will be charged an additional 25% to cover the Council's costs, in addition to the costs of re-connection and payment of the bill plus interest.

If Section 33 of the Local Government (Miscellaneous Provisions) Act 1976 is used the owner will be charged the cost of re-connection and/or payment of the bill plus interest.

Tenancy Relations Service

The council's tenancy relations service provides advice on landlord/tenant issues to both landlords and tenants. Wherever possible issues will be dealt with informally, however if a tenant is illegally evicted we will consider taking legal action under Section

1 of the Protection from Eviction Act 1977. Under this act it is a criminal offence to harass a residential occupier in an attempt to force him or her to vacate the premises. This includes removing the tenant's possessions, changing the locks, or persistently withdrawing or withholding services which are required for the occupation of the residence. The Council can prosecute in any such cases, which may be heard in the Magistrates' or the Crown Court, and offenders are liable on conviction to a fine and/or up to two years imprisonment.

Houses in Multiple Occupation

The Council has adopted categories of houses in multiple occupation (HMO) established by the Chartered Institute of Environmental Health.

If a HMO contains category 1 or 2 hazards, or fails to meet the Council's HMO Standards, then enforcement action will be considered.

If a HMO does not meet adequate standards for the provision of basic amenities and the only way of meeting these requirements is by reducing the number of occupants then the occupation will be limited using powers under HMO Licensing.

Where it is not possible to provide an adequate means of escape or adequate other fire precautions an undertaking can be accepted from the landlord, or a Prohibition Order made, to secure that part of the house is not used for human habitation.

If a HMO is overcrowded as determined by the Council's standards then the policy is normally to serve a "New Resident" Overcrowding Notice (under section 139 of the Housing Act 2004) if the HMO is not required to be licensed. The number of permitted occupants in HMOs which are required to be licensed is specified within the licence conditions. In exceptional circumstances, for example where the occupation of the property is such that it cannot be allowed to continue for any longer, an "Immediate" Overcrowding Notice can be served and the displaced tenant(s) may be re-housed by the Council.

Where there is a neglect of management of a HMO, that is it fails to meet the requirements of the Management of HMOs (England) Regulations 2006 then enforcement action will be considered.

If there is an imminent risk to the health, safety and welfare of the tenants in a HMO then either a Management Order (under sections 102, 103 or 113, Housing Act 2004) and/or a Compulsory Purchase Order (under section 17, Housing Act 1985) will be considered.

HMO Licensing Scheme

Relevant HMOs are required to be licensed with the Council under the mandatory HMO licensing scheme introduced by the Housing Act 2004. The main exclusions from the scheme are:

- Properties converted into self-contained flats in compliance with the Building Regulations 1991
- Conversions where more than 2/3 of the flats are owner occupied (including leaseholders)
- Properties occupied by less than five persons and/or are less than three storeys in height

Other exclusions are indicated in the booklet 'A Guide to Croydon's Licensing Scheme for HMOs'. HMOs which do not require a licence must still meet the relevant standards relating to room sizes, amenity provision and fire safety.

Licences will usually be issued for a period of 5 years. Conditions can be applied and licences refused for certain reasons or may be granted for shorter time periods pending compliance with the standards. The licence fee is £250 for each room available for sleeping accommodation. The fees levied will not exceed £5,000 for a single property in any event.

All fees will be reviewed on an annual basis and customers are advised to check the council's website www.croydon.gov.uk or ask advice from an officer as to the current fees.

Failing to licence a HMO to which the scheme applies will be viewed as a serious matter and legal action in the form of prosecution or financial penalty will be considered. This offence carries an unlimited fine on conviction in the magistrates' court and the maximum level for a financial penalty is £30,000. Newly discovered unlicensed properties will not normally be treated as cases where there is intentional failure to licence unless there is evidence to the contrary eg the owner fails to respond to requests to apply for a licence or there is evidence that the owner was aware of the licence requirements.

Failing to comply with any of the licence conditions is also an offence and consideration will be given to taking legal action in the form of prosecution, or issuing a financial penalty. The offence carries an unlimited fine on conviction in the magistrates' court and the maximum level for a financial penalty is £30,000.

Variation of Licence Details

Before a person can increase the number of households or individuals in a licensed HMO they must first apply to the Council to vary the licence.

Public Health Enforcement Options

No Action

Where no action is possible customers will be given advice on ways that they can deal with the matter themselves by taking their own legal action or other means.

Informal Action

Informal action includes offering advice, verbal warning or a letter or informal notice.

General Principles for Statutory Action

The following general principles will apply to statutory action:-

- realistic time limits will be stated on notices depending on the nature of the problem and the extent of the works;
- in cases where there is an imminent risk to public health, notices may require immediate compliance;
- the granting of extension to time limits will be at the discretion of the investigating officer who will negotiate this with the owner or occupier of the premises.

Specific Legislation

Pest Control

In cases where owners or occupiers of buildings or land encourage infestations of rats or mice, due to poor repair or lack of hygiene, enforcement action will be taken under the Prevention of Damage by Pests Act 1949.

Public Health Nuisances

If a statutory nuisance exists, or is likely to exist or recur, an abatement notice will be served on the occupier or owner of the premises, or the persons responsible for the nuisance.

The situation will be monitored following service of the abatement notice and appropriate action taken if the recipient fails to comply within the time limit specified.

Filthy, Unwholesome or Verminous Premises

A Notice under Section 83 of the Public Health Act 1936 will be served on the occupier of a filthy, unwholesome or verminous premises. If the occupier fails to comply with the notice in the time specified, cleansing and/or disinfection of the premises will be arranged in default with the costs incurred recovered from the occupier.

As an alternative to taking enforcement action, occupiers living in squalor may receive services under the 'Muckbusters' scheme. This scheme enables filthy premises to be cleaned using approved contractors. If the occupier is in financial hardship the cost is paid out of a specific budget. These cases are referred to Adult Services for assessment of eligibility for a follow up care and support package to maintain sanitary conditions within the property.

In all cases where the occupier is suffering from mental illness or is incapacitated, the enforcement officer will liaise with the Adult Services to see if any assistance can be provided.

Charges for enforcement action

A charge of £150 per notice is made for the cost of administrative and other expenses involved in taking the following statutory enforcement action:-

- Prevention of damage by pests act 1949, section 4
- Public health act 1936 section 45
- Public health act 1961, section 17

These charges are reviewed annually and customers are advised to check the council's website www.croydon.gov.uk or seek advice from an officer on the charges currently in operation.

Vacant Properties

Vacant properties are referred to the Council's Empty Properties Officer who will liaise with the owner in an attempt to bring the property back into use. Where appropriate a Notice under S29 of the Local Government (Miscellaneous Provisions) Act 1982 may be served to secure a vacant property against unauthorised entry and to prevent danger to public health.

If liaison with the owner is unsuccessful, we will consider making an Interim Empty Dwelling Management Order and then a Final Empty Dwelling Management Order under Section 133 and 136 of the Housing Act 2004, or a Compulsory Purchase Order under Section 17 of the Housing Act 1985 (as amended).

Blocked or Defective Drainage

With blocked or defective drainage, the first priority is to get the drain or sewer operating effectively. The course of action pursued will depend on whether the drain or sewer is:-

- a private drain i.e. takes drainage from one building or buildings within the same curtilage; or
- a public sewer i.e. takes drainage from several buildings.

Blocked Private Drains

A Public Health Act 1961 Section 17 notice will be served on the owner of the property, requiring them to clear the drain. Failure to comply will result in the work being carried out in default and costs recovered. In the case of owner/occupied property an informal approach will normally be made in the first instance unless there is an imminent public health risk to others.

Defective Private Drains

A Building Act 1984 Section 59 notice will be served requiring the owner to repair the defects to the drain. Failure to comply with the notice will result in the works being carried out in default. The costs in arranging default action will be recovered.

Defects or Blockages to Public Sewers

On the 1 October 2011 the government transferred most private sewers to the ownership of water and sewerage companies. In Croydon the statutory responsibility for maintaining and unblocking public sewers rests with Thames Water Utilities. All cases concerning incidents of blockages will be reported direct to Thames Water to take appropriate remedial action.

Redundant Drains

The re-use of old drains is only permitted in exceptional circumstances after consultation with the Head of Environmental Health, Trading Standards and Licensing and subject to a closed circuit television survey being undertaken to establish the condition of the pipework.

Where demolition is notified, a Building Act 1984 Section 81 notice will be served requiring the owner to seal off the redundant drain at its junction with the main highway sewer. Non-compliance with the notice will result in the works being carried out in default and recovery of the costs.

General (All Enforcement)

Statutory Notice Time Periods

Time limits given for completing works will be related to the amount of work required and the estimated time required to complete that work. Extensions of time for starting or completing work will only be granted where there are legitimate reasons for doing so, e.g. an agreed work programme for an owner with several properties requiring works or works are in progress but not completed. The extension of time will be granted by the case officer in consultation with the owner of the property.

The time limits given on statutory notices not requiring works will be related to the statutory time period allowed.

Works Carried Out in Default

Works in default of the owner will be considered where a statutory notice or order has been served and the time limit for completion of works (or any agreed extension of time) has expired and where little or no work has been carried out. A senior officer authorises all cases put forward for works in default. An owner will be charged an additional 30% of the cost of the works to cover the administrative costs in arranging the works. Charges will be made for abortive costs in preparing to carry out works in default where a 7 day notice has been served or an order has been placed and the owner then carries out the work required. If charges are not paid in full within the allowed time period, interest on the amount outstanding will be charged at the appropriate rate and charges will be registered against the property. In all cases the relevant Code of Practice will be followed.

Debts owed for works carried out in default will be registered as a charge on the property until such time as the debt is recovered.

Prosecution and Cautions

Where an officer believes that an offence has been committed and a prosecution or caution is appropriate, the relevant manager is consulted.

In addition to those general circumstances that are considered likely to warrant prosecution (listed in part one of this Policy), prosecution will be considered whenever there is an intentional failure to licence a property under either the HMO Licensing Scheme or the Selective Licensing Scheme (including failing to pay the licence fee) or where there is failure to comply with the licence conditions or the HMO Management Regulations, and the health and safety of the tenants is threatened, harassment is involved or there is wilful non-compliance with a Housing Act Notice.

Housing Renewal Policy

The enforcement policy should be read in conjunction with the Housing Renewal Policy as there is much overlap between the two. This may be found on the council's website www.croydon.gov.uk or by request from an officer.

Working with Other Agencies

We regularly consult and work with other agencies, for example:

- the London Fire Brigade before serving a statutory notice requiring the provision of fire precautions in a HMO and in cases of serious imminent fire risk in HMOs;
- the Environment Agency concerning fly tipping;
- statutory undertakers, eg Thames Water;
- Network Rail;

- Metropolitan Police;
- UK Border Agency
- other services within the Council, eg Housing Options, Tenancy Relations, Housing Allocations, Temporary Accommodation, Adults' and Children's Services, Finance, Planning and Building Control.

FOOD and SAFETY

FOOD SAFETY and FEED, HEALTH AND SAFETY

Authority to Investigate or Enforce

The majority of enforcement powers involve the service of informal or statutory notices under the Food Safety Act 1990 and the Food Safety and Hygiene (England) Regulations 2013. With powers to investigate also cited under this legislation and the Health and Safety at Work Act 1974 and the Safety of Sports Ground Act 1975.

There are also powers under other Legislation e.g., The Environmental Protection Act 1990, Public Health Acts 1936 and 1961 and Prevention of Damage by Pests Act 1949, Management of Health and Safety at Work Regulations 1999 and other health and safety regulations, feed legislation and labelling regulations.

Food and Feed Inspections

The frequency of food hygiene and food standards inspections will be determined by the use of a risk factor, with premises graded according to their perceived risk as determined by the Food Standards Agency Code of Practice.

In accordance with the Code of Practice the majority of inspections will be unannounced. In exceptional circumstances appointments may be made for example, inspections after initial registration, home caterers, or visits to large manufacturers.

Officers will offer advice where appropriate or when it is requested to help ensure compliance with legislation and encourage food businesses to adopt good food hygiene and standards practices.

Health and Safety inspections and interventions

Authorised officers will ensure that duty holders manage the health and safety of their workforce and those affected by their work. Officers will have regard to the Regulator's Compliance Code, HSE's Enforcement Policy Statement, the LA National Enforcement Code and the need to target relevant and effective interventions that focus on influencing behaviours and improving the management of risk.

The frequency of health and safety interventions and inspections will be determined by the use of a risk factor, with premises graded according to their perceived risk as determined by the Guidance published by the Health and Safety Executive (HSE).

We will choose the most appropriate way of influencing risk creators and by targeting our interventions, including inspection, investigation and enforcement activity, on those businesses and sectors that represent a higher level of risk to the health and safety of workers and the public.

We will use a risk-based intervention plan, to ensure we provide a consistent, proportionate and targeted approach to regulation enforcement based on risk,

reserving unannounced proactive inspection only for the activities and sectors published by HSE or where intelligence suggests risks are not being effectively managed; and using national and local intelligence to inform priorities.

Interventions

Where an inspection does not take place on a regular basis, Officers will offer advice where appropriate (such as hazard spotting during a food inspection) or when it is requested, to help ensure compliance with legislation and encourage businesses to adopt good food hygiene, standards and health and safety practices.

Interventions also take place when considering the Public Safety objective under the Licensing Act 2003 and visits to licensed premises. Appropriate and proportionate advice will be provided during such visits.

Out of Hours Food, Feed and Safety Inspections

Sometimes it is necessary to carry out inspections of businesses that operate outside of normal business hours e.g. during the evening and at weekends. These inspections are carried out in exactly the same way as those conducted during conventional business hours.

The Council operates a 24 hour service and complaints about food premises can be made by telephoning the out of hours switchboard on 020 8726 6000.

Food and Feed Sampling

Sampling for analysis or examination is carried out in accordance with the Food Standards Agency Code of Practice and Practice Guidance, the Food Safety and Hygiene (England) Regulations 2013 and the Departmental Food Sampling Policy.

Enforcement Options

Consideration will always be given to the Code of Practice, Practice Guidance, circulars and guidance from the BRDO – the HSE and the Enforcement Management Model – having regard to any Primary Authority agreements in place with the business and the Code for Crown Prosecutors when considering the different enforcement options available to officers.

No Action

An inspection that reveals no contraventions of the relevant legislation and excellent food and health and safety practices and management controls will result in no action.

Informal Action

Informal action includes offering verbal or written advice, written warnings, requests for action and the issuing of leaflets, guidance notes and booklets. Written advice and warnings can be in the form of a hand-written 'Report of an Inspection' form, a letter or a letter and a schedule of works.

A letter is appropriate when no regulations have been contravened and only recommendations of good hygiene practice have been identified.

A warning letter and schedule of works or contraventions identified on a 'Report of Inspection' form is appropriate in the following circumstances:

- non-compliance will not involve a significant risk to public health; or
- the issue is not serious enough to warrant formal action, e.g. the service of a statutory notice or prosecution; or
- from past history it can reasonably be assumed that informal action will achieve compliance; or
- confidence in management is high.

A warning letter and works schedule will be addressed to the food business operator, and will:

- contain all information necessary to understand any work required, why it is necessary and when it needs to be completed by;
- indicate the regulations contravened, measures necessary to comply and that other means of achieving the same effect may be chosen; and
- clearly indicate any recommendations of good hygiene practice to show that they are not a legal requirement.

In addition, the Food business operator can request the leaflets "Food Law Inspections and Your Business" and "When an Inspector Calls".

Inspection reports will be issued following all programmed inspections even when conditions are satisfactory, with all legal requirements and recommendations clearly differentiated.

Statutory Notices

Improvement Notices and Hygiene Improvement Notices

Hygiene Improvement Notices served under the Food Safety Act 1990, the Food Safety and Hygiene (England) Regulations 2013 and Improvement Notices under the

Health and Safety at Work etc Act 1974 will only be served by authorised officers when one or more of the following criteria apply:

- there are significant contraventions of legislation;
- there is a lack of confidence in the proprietor responding to an informal approach;
- there is a history of non-compliance with informal action;
- standards are generally poor with little management awareness;
- non-compliance could be potentially serious to public health or safety; and
- although there is an intention to prosecute, effective action is needed to remedy conditions that are serious or deteriorating.

Improvement Notices and Hygiene Improvement Notices will be related to risk to health and not issued for minor technical contraventions.

Authorised officers will only sign Improvement Notices and Hygiene Improvement Notices on behalf of non-authorised staff if they have personally witnessed the contravention and are satisfied that it meets the above criteria. Realistic Notice time limits will be set and preferably agreed with the proprietor, with case officers discussing the specified works and fully considering different solutions. Extension of time limits will not normally be necessary but may be granted in consultation with the proprietor of the business on receipt of a written request for an extension.

Emergency Prohibition Notices and Hygiene Emergency Prohibition Notices

The use of Emergency Prohibition Notices and Hygiene Emergency Prohibition Notices will be considered when an imminent risk of injury to health can be demonstrated (including where appropriate evidence from relevant experts, such as a food examiner or analyst) and when one or more of the following circumstances apply:-

- where the consequences of not taking immediate action to protect public health or safety would be unacceptable;
- where the criteria specified in the relevant statutory Code of Practice, concerning the conditions when prohibition may be appropriate, are fulfilled;
- where there is no confidence in the integrity of an offer made by a proprietor to voluntarily close premises or cease the use of any equipment, process or treatment associated with the imminent risk; and
- where a proprietor is unwilling to confirm in writing their offer of a voluntary closure/prohibition of the use of the premises.

Emergency Prohibition Notices and Hygiene Emergency Prohibition Notices will only be signed by authorised officers if they have personally witnessed the matters to which the Notice relates.

Where there is a risk of injury to health, the Court may impose a Hygiene Prohibition Order to restrict the use of the premises, persons or equipment.

Voluntary Closure

Where any premises, process, treatment or equipment involves an imminent risk of injury to health and consideration is being given to emergency prohibition action, the proprietor of the business may offer to close voluntarily.

In such cases, authorised officers will consider whether there is any risk of the premises being reopened without their knowledge and/or agreement, and explain to the proprietor that by making the offer to close, they may be relinquishing their rights to compensation. Written confirmation of the proprietor's offer and an undertaking not to reopen without specific permission will be obtained on a 'Voluntary Closure Agreement Form'. Frequent checks will subsequently be made on the premises to confirm that they have not reopened.

Voluntary closure by the proprietor does not prejudice the right of the Council to commence legal proceedings for contraventions identified during the course of the inspection.

Remedial Action Notices

Remedial Action Notices will only be served by officers specifically authorised to inspect premises under EC Regulation 853/2004. They may be served when the criteria in the Food Safety and Hygiene (England) Regulations 2013 are not complied with. The authorised officer will lift the Remedial Action Notice as soon as the business is found to comply with the relevant hygiene legislation.

Seizure/Detention Powers

Detention powers will be used if there is good reason to suspect that food does not satisfy food safety requirements and seizure powers used where there is clear evidence of such a failure. Careful judgement and consideration of the need to seek expert advice will always be exercised before using these powers, and guidance specified in the Food Standards Agency Code of Practice will be adhered to.

Condemnation and destruction of food

Authorised officers have the ability to condemn and destroy food which has not been made or does not meet food safety requirements. Where it has not been agreed for voluntary disposal, Officers will put before the courts the evidence for the destruction of such food. On agreement of such destruction the food business operator will be liable for the cost of destruction.

Prosecutions and Cautions

The, Food and Safety Team Manager are authorised to take decisions concerning prosecutions and cautions.

In addition to those general circumstances that are considered likely to warrant prosecution, listed in part one of this Policy, prosecution will be considered where :-

- an alleged offence involves a failure to correct a serious potential risk to food safety, and a reasonable opportunity to comply with the requirements of an authorised officer has been given;
- where foodstuffs are offered for sale or are sold more than seven days past their use by date; or
- where there is evidence of the redating of use by dates.

In appropriate cases, officers will ensure that they carry out a second or subsequent inspection of the premises prior to a court hearing. If the proprietor is convicted, and it is believed there is still a risk of injury to health, the attention of the court will be drawn to the powers available to them to prohibit persons from running a food business.

Working with Other Agencies

Occasionally, the Council works with other government agencies like the Food Standards Agency (FSA), Health and Safety Executive (HSE), Dept. of Farming & Rural Affairs (DEFRA), National Health Service (NHS), Dept. of Health (DoH) and local agencies such as the Croydon police and fire services.

Any food safety enforcement action resulting from a multi-agency approach will be in accordance with the procedures outlined in this enforcement policy.

POLLUTION

Enforcement Options

Consideration will always be given to Codes of Practice, British Standards and any other guides to good practice.

Informal Action

Informal action is appropriate where the problem is of an insufficient scale to justify taking statutory action and there is no significant risk to health. Informal action includes offering advice and issuing a verbal warning or a warning letter. Informal action is not considered as a step to be taken before statutory action is initiated, if circumstances justify statutory action will be commenced.

Statutory Action

The following general principles apply to taking statutory action:-

- where practicable authorised officers will draft and sign their own statutory notices;
- reasonable time limits for compliance with the terms of each notice will be set according to the circumstances of each case;
- where there is an immediate risk to health, or in noise cases where a nuisance is being caused to neighbours, notices may specify immediate compliance;
- the granting of extension to time limits imposed by a legal notice will be at the discretion of the investigation officer who will negotiate this with the owner or occupier of the premises.

Specific Legislation

Pollution from industrial processes

Certain industrial processes require a permit for emitting pollution under the Environmental Permitting (England and Wales) Regulations 2010. The legislation requires a risk-based approach to inspection, increasing the inspections of higher risk premises and may also carry out inspections without prior notice where there is evidence or suspicion of a breach of conditions, or if complaints are received.

Permits include conditions which may specify limits on the amount of air, water and noise pollution allowed to be emitted from the installation. These will vary according to the type of installation. Conditions will also require regular submission to the Council of information relating to monitoring of emissions from installations, as well as the notification of pollution incidents.

Premises will be inspected by prior appointment with the operator by an authorised officer to ensure the permit conditions are being complied with and that the installation is being operated without risk to public health or the environment. Inspections are carried out using a risk-assessment based approach, therefore the frequency of inspections will vary depending on the installation. Installations deemed to be low risk will be inspected every two years, others will be inspected more frequently.

Informal action

- any remedial action required following an inspection or visit of a process or installation will be notified to the operator in writing within 14 days of the inspection or visit;
- the Council will expect installation operators to initiate immediate action to investigate complaints about pollution from the installation and, by agreement with the Council, to take appropriate measures within a reasonable timescale to remedy the problem if a complaint is substantiated;
- permit conditions will be regularly reviewed and may be varied at any time by the Council to reflect changes in operator or plant, to incorporate changes in legislation or guidance, or where conditions are no longer valid or relevant to the installation;
- where the Council decides to vary the conditions of the permit, a Variation Notice specifying the variations of the conditions and the date or dates on which the variations are to take effect will be served on the operator. A reasonable period for new conditions to take effect will be given.
- A community penalty warning letter may be issued for various offences. If this is complied with no formal action will be taken.

Enforcement Notices

An Enforcement Notice is used where permit conditions are not being adhered to. The Notice sets out the measures that must be taken to comply with the condition and may also specify steps that must be taken to remedy the effects of any pollution caused by the contravention. A reasonable compliance time will be given. An Enforcement Notice will normally be served in the following cases:

- where any of the conditions of a permit have been or are likely to be contravened;
- where measures required or requested to comply with a permit condition by informal means have not been implemented;
- where the Council believes that an informal approach would not be productive.

Suspension Notices

A Suspension Notice is used where processes may require the (immediate) suspension of the operation of the process or installation. A Suspension Notice will normally be served:

- where the operation of the installation, whether or not there are contraventions of conditions, poses an imminent risk of serious pollution.

A Suspension Notice will specify the steps that must be taken to remove the risk of serious pollution and the period within which they must be taken. In some cases a Suspension Notice may allow the installation to continue to operate whilst these measures are implemented.

Revocation Notices

A Revocation Notice, which has the effect of ceasing the permit to operate the installation will normally be served:

- where the holder of the permit has ceased to be the operator of the installation;
- where a process operator fails to pay a charge due in respect of the subsistence of a permit.

Prosecution and Cautions

In addition to the general situations outlined in Part One of this enforcement policy, prosecution will normally be considered in the following cases:

- pollution incidents or breaches of permit conditions which have significant consequences for the environment or public health or the potential for such consequences;
- carrying out operations without a relevant permit;
- excessive or persistent breaches of regulatory requirements in relation to the same permit or site;
- failure to comply or to comply adequately with formal remedial requirements.

In certain circumstances cautioning may be considered as an alternative to prosecution.

Other formal enforcement powers

The Council has a range of powers, which can be used in enforcement situations. The Council will always use a voluntary approach rather than use these powers, except where the co-operation of process operators is not received, where prior notice

and permission from the person would be inappropriate (e.g. investigations where an offence is suspected) or in emergency situations. These powers are:

- power to enter premises, make investigations, take samples, measurements and photographs and dismantle or disable any plant, machinery or article on the premises which has or is likely to cause pollution or harm to health;
- powers to seize and render harmless any substances or equipment that is in imminent danger of causing serious pollution or serious harm to human health;
- powers to seize polluting or harmful substances or equipment for inspection, to prevent it from being tampered with, or to be used as evidence in prosecution proceedings;
- powers to require anyone believed to be able to assist with any investigation or examination which is part of the Council's pollution control responsibilities over industrial processes to answer questions and sign a declaration of the truthfulness of the answers provided and to provide information or records;
- powers to serve a notice requiring information to be provided to the Council about an authorised process or about a process which may need to be authorised;

Where the Council is of the opinion that proceedings for an offence would not provide an effective remedy against a person who has failed to comply with the requirements of an Enforcement, Prohibition or Suspension notice, the Council may take proceedings in the High Court for the purpose of securing compliance with the notice.

Contaminated Land

The Environment Act 1995 and the Contaminated Land (England) Regulations 2006 require all local authorities to identify any contaminated land in their areas.

Contaminated land is defined by the legislation as land which poses or has the potential to pose a "significant risk" of causing "significant harm" to human health or the environment, including watercourses.

Once any contaminated land has been identified by the Council, it is the responsibility of the "appropriate person", the person who caused the contamination or knowingly permitted it to occur to clean up the contamination. If the polluter is not known or cannot be traced, the current owner or occupier of the land will be the appropriate person and potentially may be legally responsible for its remediation. The Council is required to take responsibility for any sites where no-one else can be found to be legally responsible for the land.

Informal action

Wherever possible the Council will seek a voluntary approach by the person responsible for any necessary remediation works to clean up contaminated land;

Remediation Notice

A Remediation Notice to secure the effective remediation of contaminated land will be served:

- where the appropriate remediation is not being carried out, despite an informal approach having been agreed with the person responsible;
- where agreement cannot be reached with the person responsible on the remediation actions required;

Except where there is imminent danger of serious harm or serious pollution of controlled waters by contaminated land, Remediation Notices will not be served without giving at least 3 months notice to the appropriate person that the land is contaminated.

Where more than one appropriate person is associated with a contaminated site, the Council will determine the responsibility for remediation work and apportion liability to reflect the amount of contamination that each appropriate person may have caused. Liability will be considered on a site-specific basis and in accordance with the conditions set out in Government guidance to local authorities. All information concerning exclusion from and apportionment of liability will be given to the appropriate person.

Prosecution and Cautions

In addition to the general situations outlined in Part One of this enforcement policy, prosecution or a caution will normally be considered in the following cases:

- failure to comply with a Remediation Notice

Other formal enforcement powers

The following additional powers are available to the Council to deal with contaminated land where a voluntary approach is not effective:

- power to enter premises, make investigations, take samples, measurements and photographs in exercising its contaminated land responsibilities;
- powers to seize and render harmless any substance on a contaminated site that is in imminent danger of causing serious pollution or serious harm to human health;
- powers to seize polluting or harmful substances or equipment for inspection, to prevent it from being tampered with, or to be used as evidence in prosecution proceedings;
- powers to carry out remediation of contaminated land to prevent imminent danger of serious harm to health or serious pollution of controlled waters and (subject to

Government guidance) to recover its costs from the polluter or owner or occupier of the land

- powers to carry out the remediation of a contaminated site where a Remediation Notice is not being complied with and to recover its costs from the polluter or owner or occupier of the land
- powers to require anyone believed to be able to assist with any investigation or examination which is part of the Council's responsibilities over contaminated land to answer questions and sign a declaration of the truthfulness of the answers provided and to provide information or records;

Where the Council is of the opinion that proceedings for an offence would not provide an effective remedy against a person who has failed to comply with the requirements of a Remediation Notice, the Council may take proceedings in the High Court for the purpose of securing compliance with the notice.

Water Industry Act 1991

The Council has a duty to monitor the quality of private water supplies. If the water supplied fails to meet the requirements of the appropriate Regulations, a notice will be served requiring the supplier to take steps to improve the supply to an acceptable standard or to arrange an alternative suitable supply. The Council may arrange to provide a suitable supply in default with costs being recoverable from the supplier. The Council also has a duty to monitor the quality of water supplied by the private water companies and to notify the Drinking Water Inspectorate if poor quality is observed.

Noise and Air Pollution

Control of Domestic Noise

Noise generated from non-commercial DIY, music, televisions and other domestic appliances can be controlled under Section 80 of the Environmental Protection Act 1990 and will be dependent upon the circumstances of the individual case.

Control of Construction Site Noise

Noise from construction activities can be controlled by serving a notice on the contractor's head office, with copies to the site office and subcontractors where possible, under the Control of Pollution Act, 1974. The notice can be served at any stage during the construction activity. Variations to the notice will be considered if the contractor notifies the department in sufficient time and there are reasonable grounds for the variation. If there is evidence of a failure to reasonably comply with the notice legal proceedings will be taken.

Section 61 of the Control of Pollution Act allows contractors to apply to the Local Authority for prior approval for construction site works. Agreement can be reached with the contractor on the methodology, equipment to be used, site access, etc.

All contractors will be expected to comply with the code of practice 'Control of Pollution and Noise on Construction Sites' issued by Croydon Council to all those who apply for Planning Permission for developments and all Building Regulation applications.

Dealing with Noise Nuisance in the Street

Where nuisance arises from noise in the street, a notice will be served on the persons responsible for the nuisance under the provisions of the Noise and Statutory Nuisance Act 1993.

In the case of vehicle alarms a notice will be served on the keeper of the vehicle and attached to the vehicle. Where the name and address of the keeper are not known, enquiries will then be made to identify the responsible parties. Should there be a failure to comply with the notice, works in default will be carried out to abate the nuisance and costs recovered.

Bonfires

Complaints regarding a smoke nuisance from domestic premises are risk assessed. Officers will make a reasonable attempt to respond to all bonfire complaints by way of a visit especially where the complainant is suffering with asthma, bronchitis, heart condition or other life threatening illness or if smoke is affecting the neighbourhood at large.

If the bonfire is a one off incident which does not pose any nuisance, imminent risk to health or has already taken place, the offender will be sent a warning letter together with an advisory leaflet on bonfires, which invites the householder to consider alternative ways to get rid of rubbish. However, if the warning letter and advice are not heeded and there is repeat occurrence of bonfire nuisance, statutory action will be taken.

Air Pollution

A notice will be served under the relevant section of the Environmental Protection Act 1990 in those cases where smoke, fumes or smells which are a statutory nuisance are witnessed.

Demolition companies can be served with an abatement notice under the Environmental Protection Act in the likelihood of a smoke nuisance to discourage them from creating a smoke nuisance from burning of waste materials.

In cases where dark or black smoke is witnessed from a chimney, then appropriate action will be taken under the provisions of the Clean Air Act 1993.

Dealing with Idling Vehicles in the Street

Under the Road Traffic (Vehicle Emissions) (Fixed Penalty) (England) Regulations 2002 the Council has powers to request drivers to turn off their engines or receive a Fixed Penalty Notice

Abatement Notice

When a nuisance arises or is likely to arise from air pollution e.g. smoke, dust, odours etc., or noise from premises, an abatement notice will be served on the persons responsible for the nuisance under the provisions of Part 3 of the Environmental Protection Act, 1990. If the persons cannot be found then the notice will be served on the "owner or "occupier" of the premises and enquiries then made to identify the responsible parties. If a notice has been served on the occupier and the name of the person responsible is established, they will be advised in writing that they are the person responsible stated in the notice. Failure to comply with the notice could result in works being carried out in default and/or prosecution.

Seizure of Equipment

The decision to seize noise making equipment will require at least one of the following criteria to be fulfilled:-

- flagrant contravention of an abatement notice at night
- two or more contraventions of a statutory notice;
- the nuisance is extreme and affecting the neighbourhood at large;
- the nuisance is from an organised and unauthorised event e.g. organised 'pay party' where there are gatherings of large numbers of people and the nuisance is affecting the general neighbourhood;
- the nuisance is caused by persons who have been prosecuted previously or awaiting a court hearing for noise nuisance and are continuing to offend;
- all usual methods to abate the nuisance have failed.

Officers will be expected to take the most effective action to deal with an ongoing noise nuisance. This will normally mean seizing a sound system rather than prosecuting. However, in some cases both courses of action may be appropriate.

Seizure will take place on the granting of a warrant to enter the premises by a magistrate and police support being available to the case officer. In all cases where prosecution follows a seizure of equipment, an application will be made to the Magistrates' Court for forfeiture of the equipment under Section 10 of the Noise Act 1996.

General

Statutory Notice Time Periods

Time limits given for completing works will be related to the amount of work required and the estimated time required to complete that work. Extensions of time for starting or completing work will only be granted where there are legitimate reasons for doing so, e.g. an agreed work programme for an owner with several properties requiring

works or works are in progress but not completed. The extension of time will be granted by the case officer in consultation with the owner of the property.

The time limits given on statutory notices not requiring works will be related to the statutory time period allowed.

Works Carried Out in Default

Works carried out in default of an owner will be considered where a statutory notice or order has been served and the time limit for completion of works (or any agreed extension of time), has expired and where little or no work has been carried out. An owner will be charged an additional 25% of the cost of the works to cover the administrative costs in arranging the works.

Prosecutions and Cautions

The Pollution Team Manager and Senior Pollution Enforcement Officer are authorised to take decisions concerning prosecutions and cautions in consultation with the case officer.

Working with Other Agencies

Liaison with other agencies such as the police and/or the Housing Department will be carried out whenever necessary, particularly on such matters as entering premises to seize equipment and dealing with anti-social behaviour orders.

TRADING STANDARDS

We will ensure that enforcement action is proportionate to the perceived risks and seriousness of the alleged offending. Any sanctions which may be applied, are done so in a method applicable to both the current level and potential future escalation of those risks in the given circumstances.

We will exercise our regulatory activities in a way that is:

- *Proportionate*: our activities will reflect the level of risk to the public and enforcement action taken will relate to this and the seriousness of the offence
- *Consistent*: our advice to those we regulate will be robust and reliable and we will respect advice provided by others. Where circumstances are similar, we will endeavour to act in similar ways to other local authorities.
- *Targeted*: we will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities.
- *Transparent*: we will ensure that those we regulate, and victims of non-compliance, are able to understand what is expected, and what they can anticipate in return.
- *Accountable*: our activities will be open to public scrutiny with clear and accessible policies and fair and efficient complaint procedures.

The Regulators' Code

The Regulators' Code came into statutory effect under the Legislative and Regulatory Reform Act 2006 and provides a clear, flexible and principles-based framework for how regulators should engage with those they regulate. All enforcement action will be carried out with regard to the principles specified in this Code.

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.

Specific Authority to Investigate or Enforce

Statutory criminal enquiries are those which relate to legislation which the local authority has a duty to enforce. An officer who is provided with credentials is fully authorised to conduct enquiries under any such legislation that is mentioned in those credentials, with them assuming any powers and responsibilities which the relevant legislation contains.

Authority to Enforce Non-Statutory Criminal Enquiries Requiring Credentials

Non-statutory criminal enquiries are those where there is no duty placed upon the local authority to have an enforcement role but nevertheless the authority has elected to adopt the enforcement provisions. An officer who is provided with credentials is fully authorised to conduct enquiries under any such legislation that is mentioned in those credentials, with them assuming any powers and responsibilities which the relevant legislation contains.

Authority to Enforce Non-Statutory Criminal Enquiries Not Requiring Credentials

Non-statutory criminal enquiries not requiring credentials relate to legislation for which either the local authority is not charged to enforce or has not specifically elected to adopt. This will include legislation which gives no powers to those making enquiries under it and for

which there is no specified statutory enforcement body. Officers will consider investigating breaches of such legislation if they are linked to legislation which the officer is empowered to enforce or relates to duties which the Trading Standards Service has a general remit to be involved.

Civil Breaches

Civil breaches of legislation may be investigated where it relates to matters which the Trading Standards Service has a general remit to be involved.

Inspection of Trade Premises

Inspections will normally be determined by the use of a risk factor, with premises graded according to their perceived risk. The risk factor may be adjusted according to the business' adoption or rejection of quality procedures or by an improving or worsening trading history.

Inspections may be carried when a complaint is received, as part of surveys or for other purposes.

All reasonable assistance and advice will be provided to traders to ensure compliance with relevant legislation. Written notice will be given to the trader concerned where a non-compliance is discovered. A clear distinction will be made between advice and legal requirements.

Age Restricted Products

Croydon Trading Standards will have regard to the BEIS Code of Practice on Age Restricted Products. We will conduct test purchase operations of age restricted products with under age volunteers. These operations will be conducted with reference to the Compliance Code, using information gathering, risk assessment and advice and guidance and this process will inform any subsequent consideration of enforcement action.

Prioritising cases

The following factors will be taken into account in allocating resources:

- severity and scale of potential or actual harm
- existence of any continuing risk or breach of law
- individual or businesses past performance in complying with relevant legal responsibilities
- current enforcement priorities of the relevant service
- practicality of achieving results including any evidential gap
- wider relevance of the event, including serious public concern and interest
- vulnerability of any group affected

Decision to take enforcement action

The decision to use enforcement action will be taken on a case by case basis and, to ensure consistency of approach, in accordance with this and any other policies which may be applicable. The action taken, which may be immediate, will be proportionate to the gravity and nature of the non-compliance.

Enforcement Options

Where enforcement action is contemplated reference will be made to the Concordat, Compliance Code and the Code for Crown Prosecutors. When making decisions on enforcement options available, we will always have consideration on the impact and effect that our interventions will have. This meets the needs of the Department of Business Innovation and Skills Regulators' Code ('the Code') and also ensures that we utilize our resources in the best possible way in order to achieve the most effective outcomes.

Informal Action

Informal action includes offering advice, verbal warnings, the issue of Notices of Alleged Infringements, Post Inspection Reports and sending letters and is appropriate where:-

- non-compliance will not involve a significant risk to the fair trading environment; or
- the issue is not serious enough to warrant formal action; or
- from past history it can reasonably be assumed that informal action will achieve compliance.

A Notice of Alleged Infringement will contain sufficient detail to identify the legislation concerned and the nature of any alleged offence. All reports and notices will clearly differentiate between any legal requirements and other advisory best practice recommendations.

A follow up letter will be sent to the proprietor if a letter has been requested, or is deemed appropriate, which will:-

- state the Act or Regulations contravened;
- state the place and date of any inspection;
- state the name of the person in charge of the premises at the time (if known);
- describe in sufficient detail the nature of any alleged infringement; and
- clearly differentiate between any legal requirement and best practice advice.

Statutory (Legal) Notices

In respect of many breaches, we have the power to issue statutory notices. Such notices are legally binding. Failure to comply with a statutory notice can be a criminal offence and may lead to prosecution.

A statutory notice will clearly set out actions which must be taken and the timescale within which they must be taken. It is likely to require that any breach is rectified and/or prevented from recurring. It may also prohibit specified activities until the breach has been rectified and/or safeguards have been put in place to prevent future breaches. Where a statutory notice is issued, an explanation of the appeals process will be provided to the recipient.

Financial Penalties

We are only able to issue fixed penalty notices when we have prescribed powers to do so. If fixed penalty notices are available, their issue is at our discretion. In some circumstances, in particular where breaches are serious or recurrent, it may be that prosecution is more appropriate than the issue of a fixed penalty notice. A fixed penalty notice is not a criminal fine and does not appear on an individual's criminal record. If a fixed penalty is paid in respect of a breach we will not take any further enforcement action. However, payment of a fixed penalty does not provide immunity from prosecution in respect of similar or recurrent breaches. If a

fixed penalty is not paid, we may commence criminal proceedings or take other enforcement action in respect of the breach.

The Council will have regard to the policy entitled “Determining the Penalty and Banding the Offence” - <https://democracy.croydon.gov.uk/documents/s26767/Appendix%201%20-%20Determining%20the%20Penalty%20and%20Banding%20the%20Offence.pdf> - to support its decision making in respect of the following matters:

- ‘Determining the Penalty’ steps to determine what is the most appropriate sanction(s) to be taken in the event of a non compliance where a financial penalty may be issued
- ‘Banding the Offence to set the Level of the Financial Penalty’ steps where the sanction includes a Financial Penalty to determine the level of the penalty.

Court Orders

In some circumstances, we may seek a direction from the court (in the form of an order or an injunction) that a breach is rectified and/or prevented from recurring. The court may also direct that specified activities be suspended until the breach has been rectified and/or safeguards have been put in place to prevent future breaches. Failure to comply with a court order constitutes contempt of court, a serious offence that may lead to imprisonment.

Simple Caution

We may issue simple cautions (previously known as ‘formal cautions’) as an alternative to prosecution for some less serious offences, where a person admits an offence and consents to the simple caution. Where a simple caution is offered and declined, we are likely to consider prosecution.

A simple caution could appear on the offender’s criminal record. It is likely to influence how the London Borough of Croydon and others will deal with any similar breaches in the future and may be cited in court if the offender is subsequently prosecuted for a similar offence. If a simple caution is issued to an individual (rather than a corporation) it may have consequences if that individual seeks certain types of employment, and these can be taken account of by immigration agencies and border controls for some countries.

Simple Cautions will be used in accordance with Home Office Circular 016/208 and other relevant guidance.

Prosecutions

As a general guide, at least one of the following criteria will apply before an investigation is considered for prosecution or caution:-

- there has been an element of fraud or intent in committing an offence
- there has been gross negligence or
- there is an immediate serious risk to the public or
- where a previous warning has failed to resolve that, or a related, problem; or
- it is in the community interest to prosecute in the first instance,

Prosecutions will only be submitted to the Legal Service Division by a Nominated Instructing Officer. A successful prosecution will result in a criminal record. The court may impose a fine and in respect of particularly serious breaches, a prison sentence. The court

may order the forfeiture and disposal of non-compliant goods and/or the confiscation of any profits which have resulted from the breach. Prosecution may also lead, in some circumstances, to the disqualification of individuals from acting as company directors. If successful we will also apply to the court for an offender to pay for the costs of investigation and bringing the prosecution to court. This is usually granted by courts in full or part.

Confiscation Proceedings and/or Other Financial Investigation

We will make applications under the Proceeds of Crime Act 2002 to restrain and/or confiscate the assets of an offender where applicable. The purpose of any such proceedings 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.

ANTI-SOCIAL BEHAVIOUR

Croydon has adopted the definition of Anti-social Behaviour (ASB) as detailed in section 2 of the Anti-Social Behaviour, Crime and Policing Act 2014. 'Anti-social behaviour' (ASB) means behaviour by a person which causes or is likely to cause harassment, alarm or distress to any person, conduct capable of causing nuisance or annoyance to any person in relation to that person's occupation of residential premises or conduct capable of causing housing related nuisance or annoyance to any person.

The following is not an exhaustive list but is illustrative of the types of issues which can give rise to anti-social behaviour concerns:

- 1) Noise nuisance
- 2) Verbal abuse / harassment / intimidation / threatening behaviour
- 3) Hate related incidents (harassment based on race, sexual orientation, gender, disability, religion or age)
- 4) Vandalism or damage to property
- 5) Pets and animal nuisance
- 6) Drugs / substance misuse / drug dealing
- 7) Alcohol related nuisance
- 8) Domestic abuse
- 9) Physical violence
- 10) Litter / rubbish / fly-tipping / graffiti
- 11) Vehicle nuisance
- 12) Misuse of communal areas
- 13) Prostitution / sexual acts / kerb crawling
- 14) Criminal behaviour (other than listed above)

Officers will decide what the appropriate actions should be based on the information/evidence they have when their initial investigation is complete.

Enforcement options

We may take both formal and informal action in response to a complaint of ASB and we will decide the appropriate level of response on a case by case basis. The following contains some of the main actions that we will consider in managing ASB complaints.

Informal action

Mediation

Croydon Community Mediation Service (CCMS) trains volunteers to work with individuals and groups of people experiencing conflict to help them find their own agreed solution to the difficulties being experienced. Council officers may also try to bring parties together for to try and resolve matters informally.

Restorative Justice

In a similar way, Restorative Justice uses trained officers within the council to work through areas of conflict with people to help them find their own agreed solution to the difficulties being experienced.

Informal Warning

This will usually take the form of a meeting where incidents of ASB are discussed. In deciding to use a verbal warning, the officer should still consider the evidence. For instance, the officer should have reason to believe that the anti-social behaviour has occurred, or is likely to occur, and that the individual's behaviour could be considered to be unreasonable. In issuing a verbal warning, the police, council or housing officer should make clear to the individual what behaviour is causing the issue and what effect this is having on the victim or community and the consequences of non-compliance are explained clearly.

Warning Letters

Informal Warning Letters may be issued to explain the problem behaviour, provide advice and request that it stops. If the behaviour continues a Formal Warning Letter may be issued specifying the behaviour of concern and to warn of the legal action(s) that will be taken unless the behaviour stops. As with a verbal warning, a written warning should contain specifics about what behaviour has occurred and why this is not acceptable, including the impact on any victims or local community. As provided for in the information sharing agreement and protocol between the relevant agencies, local agencies should alert each other that the warning has been given so that it can be effectively monitored. Each agency shall ensure that it keeps a record of any verbal or written warning given so that it may be used as evidence in court proceedings if required.

Acceptable Behaviour Contracts (ABCs)

ABCs are an effective and valuable part of our prevention, diversion and behaviour change agenda for use with young people as well as adults – including those with diagnosed mental illness. An ABC will be signed by the perpetrator in the presence of a council officer, the Police and / or other partner working with the person(s) being asked to sign. Where there are capacity issues with the person being asked to sign the Council will ensure that an appropriate adult is involved in the process. An ABC sets out conditions which the perpetrator is expected to abide by and is often a precursor to legal or enforcement action through the Courts. Legal action can be pursued when there are serious and persistent breaches of the ABC and a copy of the ABC will be used as evidence at Court. Perpetrators who decline to sign the ABC will be issued with a copy of the Conditions that the Council expect to be met. If these are breached the Council will consider legal remedy.

Where ASB is being caused by a child under the age of 10, parents may be asked to sign a Parenting Agreement to demonstrate their commitment to supervising their child's behaviour change and to avoid further action.

Formal action

Notice of Seeking Possession (NOSP)

If a council tenant is causing ASB, a NOSP may be served when there is sufficient evidence that the relevant clauses of the council's Tenancy Conditions have been breached. A NOSP is the first stage in the legal process to bring a **secure tenancy** to an end and when necessary, evict the perpetrator. A NOSP may be served by the Tenancy Officer but in many cases of repeated ASB is more likely to be served by an ASB Enforcement Officer.

If the ASB continues after a NOSP has been served the next stage in the enforcement process is to instruct our in-house legal team to request a court hearing. When we do this, we will advise the complainant and any other witnesses/victims involved.

Notice to Quit (NTQ)

An NTQ will be served when there is evidence that the relevant clause(s) of the council's Tenancy Conditions has been breached. An NTQ brings a **non-secure tenancy** to an end.

At the end of this period if the ASB is continuing we will instruct our legal team to request a possession hearing. When we do this, we will write to the complainant and any witnesses/victims setting out what we intend to do.

Unlike a secure tenant, a non-secure tenant cannot appeal against the council's right to be granted a possession order. However, we will write to the person(s) being complained about so that they can attend the court hearing and give their side of events.

Possession Action

When the perpetrator of the ASB is a Croydon council tenant we can apply to the County Court for a Possession Order to evict them from their home under the powers contained in the Housing Acts 1985 and 1996. If the Court grants such an order it will usually lead to eviction.

When we evict a household because of documented anti-social behaviour, we will seek to exclude every member in that household from joining Croydon's Housing Register as provided for in Section 14(7) of the Homelessness Act 2002. This may mean that any person who may have been involved in perpetrating ASB will not be eligible for rehousing by this Council.

Absolute Ground for Possession

This applies to Councils and Housing Associations and private rented sector landlords. This is grounds for possession of a property under Section 94 of the ASB

Crime and Policing Act 2014, Section 84A and s 85ZA of the Housing Act 1985 and section 7A of the Housing Act 1988.

The ground for possession allows the Council and other landlords to swiftly evict the most anti-social tenants and offer protection and faster relief to victims. Eviction using this power can be pursued if a tenant:

- Has been convicted of a serious offence
- Has breached an Injunction
- Has breached a Criminal Behaviour Order
- Has had their property subject to a Closure Order for more than 48 hours
- Has breached an Abatement Notice in relation to statutory nuisance under the Environmental Protection Act 1990

Legal Undertaking

A legal undertaking is a signed undertaking (or promise) by the alleged perpetrator to the court. If the alleged perpetrator breaches the undertaking it is treated as contempt of court and could result in them being sent to prison.

Forfeiture Proceedings

If you either own the lease to your flat or are a Croydon council leaseholder, your Leasehold Conditions are likely to contain clauses regulating your behaviour and the behaviour of anyone living in your leasehold property and their household members including children and visitors. If we need to take legal action, this will usually include Forfeiture Proceedings and we will inform your Mortgage Lender. Forfeiture is similar in outcome to eviction and if successful will result in the leaseholder losing both their home and their mortgage payments up to that point.

Injunctions

An Injunction is a civil remedy that is obtained through the County Court, High Court or Youth Court under section 222 of the Local Government Act 1972, the Anti-social Behaviour, Crime and Policing Act 2014, or other legislation. A civil injunction can include both prohibitions (which require a respondent to refrain from doing something) and positive requirements (where the respondent may be required to take certain steps or participate in specified activities). The Council will work with partner agencies who now have the power to apply for Injunctions, such as, the Police, Housing Associations, the NHS and Transport for London (TFL).

Criminal Behaviour Orders

When someone is convicted of a criminal offence related to ASB, the Police (via the Crown Prosecution Service / CPS) or the Council (if they are a party to the proceedings) can immediately ask the Magistrate or Judge to make Criminal Behaviour Order at the same hearing without the need to having to institute separate proceedings. A Criminal Behaviour Order can include both prohibitions (which require

a respondent to refrain from doing something) and positive requirements (where the respondent may be required to take certain steps or participate in specified activities).

Premises Closures

Under the Anti-Social Behaviour, Crime and Policing Act 2014, the Council can apply to the Magistrates court to close a premises on the grounds that there has been disorderly, offensive or criminal behaviour on the premises or where the use of the premises has resulted in serious nuisance to members of the public or where there has been disorder near the premises associated with the use of the premises. The Court can also be asked to close premises where this type of behaviour has not yet occurred but is likely to occur.

Use of CCTV and Directed Surveillance

In appropriate circumstances we will use surveillance, CCTV or other recording equipment such as a Digital Noise Recorder to record acts of ASB particularly those relating to unsocial or noisy neighbours. We make decisions about using these tools depending on the type of ASB being complained of and with due regard for the provisions of the Regulation of Investigatory Powers Act 2000 – Part II - Application for Authority for Directed Surveillance, sometimes referred to as RIPA.

RIPA legislates for the use by local authorities of covert methods of surveillance and information gathering to assist the detection and prevention of crime in relation to an authorities core functions. Evidence obtained by any covert surveillance or use of covert human intelligence sources could be subject to challenges under Articles 6 (right to a fair trial) and 8 (right to a private and family life) of the European Convention on Human Rights (ECHR) - the right to respect for private and family life. However, properly authorised covert surveillance under RIPA makes lawful what might otherwise be a breach of Articles 6 and 8 of the ECHR and protects the Council from any civil liability.

To ensure compliance all covert directed surveillance, and use of covert human intelligence source (CHIS), falling within the scope of the Act, carried out by officers of the Council or contractors acting on the Council's behalf, must be properly authorised by an Authorising Officer. It must be remembered that the Council is required to seek Judicial Approval before an authorisation can take effect. This is in addition to getting authorisation from one of the Council's Authorising Officers.

Further the use of directed surveillance under RIPA is limited to the investigation of crimes only; which attract a 6 month or more custodial sentence, (with the exception of offences relating to the underage sale of alcohol and tobacco).

Please refer to the Council Policy "Regulation of Investigatory Powers Act, Corporate Policy & Procedures" for further information.

Use of Council owned Public Safety CCTV

Any use of Council's CCTV for purposes of 'surveillance' undertaken to provide evidence in respect of ASB matters, will be carried out with regard to the Council's

Policies on their use, Regulation of Investigatory Powers Act, Corporate Policy & Procedures and the Statutory Codes of Practice issued by the Surveillance Camera Commissioner and that of the Information Commissioner.

There are a variety of other powers available to address ASB in areas where particular behaviour is prevalent and where action against named individuals is not the most effective response. This includes behaviour that may involve groups of people and requires additional police or local authority powers in order to deal with the behaviour quickly. Examples of the powers available include:

Community Protection Notice

The community protection notice (CPN) is intended to deal with particular, ongoing problems or nuisances which negatively affect the community's quality of life by targeting those responsible. This can include anti-social behaviour noise and environmental issues. The Council will take reasonable steps to halt the behaviour before the issuing of a formal notice including a written warning. Police, council or social landlords are able to issue CPNs as warnings to individual or business if they are satisfied on reasonable grounds that the conduct of the individual, business or organisation:

- is having a detrimental effect on the quality of life of those in the locality;
- is persistent or continuing in nature; and
- is unreasonable.

A CPN can only be issued once the appropriate statutory written warning has been issued to the person responsible pursuant to the Act and there has been a failure to rectify the behaviour complained of despite being given sufficient time to do so and it is considered that it is reasonable to impose the requirements set out in the CPN.

A CPN may be issued against any person aged 16 or over or a body, including a business. Where a body is issued with a CPN, it will be issued to the most appropriate person as prescribed in the Act. The issuing officer will have to be able to prove that the person issued with the CPN can be reasonably expected to control or affect the behaviour. The CPN can be handed directly to the person in question or it could be posted to them. In circumstances where the owner or occupier cannot be determined, the issuing officer can post the CPN on the premises and it is considered as having been served at that point. In that scenario, the issuing officer would need to demonstrate that reasonable enquiries had been undertaken to ascertain the identity of the owner or occupier, for instance, checking with the Land Registry.

Each CPN will include a period of notice for the individual or body to deal with the matter. It will be for the issuing officer to decide how long is allowed on a case by case basis. For instance, in an example where a garden is to be cleared of waste, several days or weeks may be required to enable the individual to make arrangements. However, where an individual is playing loud music and they have failed to stop following the issuing of a written warning the officer could require the behaviour to stop immediately.

Failure to comply with a CPN is an offence. Where an individual, business or organisation fails to comply with the terms of a CPN, a number of options are available for the Council as follows:

- FPN
- Remedial Action e.g. works in default
- Forfeiture or seizure of items e.g. music equipment
- Prosecution in Court

Authorised officers will make decisions on the best course of action following a breach given the circumstances of the situation. It is expected that FPNs will be used to discharge liability for an initial offence in all circumstances unless there is a serious breach and that it is in the public interest not to do so. However, failure to comply with any of the requirements of a court order constitutes contempt of court and could lead to a fine or custodial sentence.

Anyone issued with a CPN has the opportunity to appeal within 21 days of issue. Appeals are heard in a magistrates' court and the notice will provide detail of this process.

Public Spaces Protection Order

Public spaces protection orders (PSPOs) are intended to deal with a particular nuisance or problem in a particular area that is detrimental to the local community's quality of life, by imposing conditions on the use of that area which apply to everyone. They are designed to ensure the law-abiding majority can use and enjoy public spaces, safe from anti-social behaviour. The Council is responsible for making a PSPO although the police also have enforcement powers.

The council can make a PSPO on any public space within its own area and can be made if they are satisfied on reasonable grounds that the activities carried out, or likely to be carried out, in a public space:

- have had, or are likely to have, a detrimental effect on the quality of life of those in the locality;
- is, or is likely to be, persistent or continuing in nature;
- is, or is likely to be, unreasonable; and
- justifies the restrictions imposed.

Before making a PSPO, the council must consult with the local police. This is an opportunity for the police and council to share information about the area and the problems being caused as well as discuss the practicalities of enforcement. In addition, the owner or occupier of the land should be consulted. In Croydon recommendations for PSPOs will be discussed and agreed by the Council following discussion and recommendations at the Joint Agency Group.

The council must also consult whatever community representatives they think appropriate. This could relate to a specific group, for instance the residents association, or an individual or group of individuals, for instance, regular users of a

park. Before the PSPO is made, the council also has to publish the draft order in accordance with regulations published by the Secretary of State.

There are also further consultation requirements where access is to be restricted to a public right of way under a PSPO. This includes notifying potentially affected persons of the possible restrictions. This could include people who regularly use the right of way in their day to day travel as well as those who live nearby. Interested persons should be informed about how they can view a copy of the proposed order, and be given details of how they can make representations and by when. The council should then consider these representations.

A single PSPO can also include multiple restrictions and requirements in one order. It can prohibit certain activities, such as the drinking of alcohol, as well as placing requirements on individuals carrying out certain activities, for instance making sure that people walking their dogs keep them on a lead.

The maximum duration of a PSPO is three years but they can last for shorter periods of time where appropriate. Short-term PSPOs could be used where it is not certain that restrictions will have the desired effect, for instance, when closing a public right of way, councils may wish to make an initial PSPO for 12 months and then review the decision at that point.

At any point before expiry, the council can extend a PSPO by up to three years if they consider that it is necessary to prevent the original behaviour from occurring or recurring. They should also consult with the local police and any other community representatives they think appropriate.

The new PSPO can cover a number of different restrictions and requirements so there should be little need to have overlapping orders in a particular public space. However, if a new issue arises in an area where a PSPO is in force, the council can vary the terms of the order at any time. This can change the size of the restricted area or the specific requirements or restrictions. As well as varying the PSPO, a council can also seek to discharge it at any time. For instance when the problem has ceased to exist or the land ceases to be classified as a public space.

It is an offence for a person, without reasonable excuse, to:

- do anything that the person is prohibited from doing by a PSPO or
- fail to comply with a requirement to which the person is subject under a PSPO.

The breach of a PSPO is a criminal offence. However, depending on the behaviour in question, the enforcing officer could decide that a fixed penalty notice (FPN) would be the most appropriate sanction. The FPN can be issued by a police officer, PCSO, council officer or other person designated by the council. In making the decision to issue a FPN, the officer should consider that if issued, payment of the FPN would discharge any liability to conviction for the offence. However, where the FPN is not paid within the required timescale, court proceedings can be initiated (prosecution for the offence of failing to comply with the PSPO).

A challenge to the PSPO may be made in the High Court by anyone who lives in, regularly works in, or visits the area which the PSPO covers within six weeks of it being issued. This means that only those who are directly affected by the restrictions have the power to challenge. A further right of appeal is available each time the PSPO is varied by the council.

ENVIRONMENTAL ENFORCEMENT AND NEIGHBOURHOOD SAFETY

Illegal Encampments

Each encampment is assessed and dealt with on a case-by-case basis. Officers can serve Bye-law notices against illegal encampments in Croydon Parks where a group has set up without permission (see website for list of current by laws and parks covered).

Environmental enforcement officers (EEOs) can apply for court orders on unauthorised encampments set up on Croydon's land under the Criminal Justice and Public Order Act 1994 (CJ&POA '94).

The Police can in certain circumstances use their more immediate powers under s61 of the same Act to move on unauthorised groups if certain requirements are met, however Croydon Council are generally recognised as the lead authority when dealing with unauthorised encampments in Croydon.

LB Croydon expect the land owner to take the required action to remove any unauthorised encampment on private land and will seek to make land owners aware of incursions where possible.

Fly tipping

The mis-management of waste and waste dumping (fly tipping) degrades the amenity of an area and often attracts further environmental crimes. In line with this policy we may provide information and advice to the community on how to properly manage their waste. We will use all relevant legislation to take enforcement action against those who fail to comply with their legal responsibilities for waste management and those who illegally deposit waste.

Waste dumped on private land presents particular problems for the state of the local environment. The Council is not responsible for clearing up waste on private land, but will endeavour to ensure that those dumping waste anywhere in Croydon are prosecuted and, where possible, any clear up costs recovered. Land owners who are found to have permitted waste to be illegally deposited on their land may also be liable for prosecution.

There are various other powers available to the Local Authority to deal with fly tipping. This may involve serving a notice on the land owner to clear the waste, and requiring them to take steps to secure the land against further illegal deposits.

Vehicle Seizures – waste offences

If fly-tipping is carried out using a vehicle both the driver and the owner of the vehicle can be prosecuted. Council Officers and Police are now empowered to seize any vehicle believed to have been used in fly-tipping or unlicensed waste carrying. Reports

of vehicles used for fly-tipping/carrying waste illegally are investigated by our officers, please see the link below -

<http://www.croydon.gov.uk/transportandstreets/streets/flytipping>

Environmental enforcement officers also carry out proactive patrols looking for vehicles that are suspected to be involved in transporting waste illegally. Any vehicle found carrying waste and is suspected of doing so illegally may be seized by the officer. It is then up to the owner/keeper/driver to take the necessary steps to come forward and prove ownership or control of the vehicle in order to claim the vehicle back. If your vehicle is seized, you will need to make a claim for it. A copy of the seizure notice will be provided to you and you will need to produce relevant documents. Failure to claim the vehicle or fail to produce the required paperwork in the specified time scale may result it in being disposed of by the Council via a number of different methods including sale or disposal. For further information on vehicle seizures please see the below link:

<https://www.gov.uk/guidance/local-authorities-seizing-vehicles-for-suspected-waste-crime>

Litter

It is illegal to drop litter in a public place. The Environmental Protection Act 1990 - Section 87 (as amended) states that an offence is committed if anything is dropped, thrown, left or deposited in any place open to the air that the public have access to with or without payment. This includes any deposit on land or water and the statutory definition of litter specifically includes cigarette butts and chewing gum. Waste/litter found to have come from commercial or household premises which has been left in a place open to the air without consent from the land owner/person controlling the land and not in accordance with proper waste collection arrangements is also an offence.

Croydon Council provides litter bins in high street areas (we are empowered to do so under section 5 of the Litter Act 1983) and other busy places across the borough. We will continue to work with schools, residents groups and other forums to reduce the level of littering by undertaking general litter education and raising awareness to highlight the consequences of littering. Where appropriate, authorised officers will use FPN powers to highlight that littering is not permitted in Croydon.

Community Protection Notices (CPNs)

The Community Protection Notice (CPN) provisions contained in the Anti-Social Behaviour Crime and Policing Act 2014 are intended to deal with particular ongoing problems or nuisances which negatively affect the community's quality of life by targeting those responsible. This can include anti-social behaviour, noise and environmental issues. Police, councils or social landlords are able to issue CPNs to individual or businesses if they are satisfied on reasonable grounds that the conduct of the individual, business or organisation:

- is having a detrimental effect on the quality of life of those in the locality;

- is persistent or continuing in nature; and
- is unreasonable.

Each CPN will include a period of time for the individual or body to deal with the matter. It will be for the issuing officer to decide how long is allowed on a case by case basis. Sometimes a request may require immediate action. For example, where a garden is to be cleared of waste, several days or weeks may be required for the individual to make arrangements. A CPN warning (sometimes referred to as CPNw or CPW) must be served first before a formal CPN (notice).

Failure to comply with a CPN notice is a criminal offence. Where an individual, business or organisation fails to comply with the terms of a CPN, a number of options are available for the Council as follows:

- Issue an FPN
- Remedial action e.g. works in default
- Forfeiture or seizure of items involved e.g. music equipment
- Prosecution in Court

A person/company has 21 days to formally appeal a CPN in a Magistrates court.

Household waste

Croydon, as a Waste Collection Authority, has a duty to provide a household waste collection service. The Council requires that non-recyclable household waste is placed in wheeled containers provided, and left for collection at the boundary of the house holder's property on their days of collection (unless subject to specific agreement for alternative arrangements) or in communal containers on housing estates.

Recyclable materials including food waste should be placed in the specific containers provided and in most cases these are collected on the same day as household waste.

Section 46 of the Environmental Protection Act 1990 (as amended) allows the Council to specify what waste is placed in receptacles including recycling materials. It also allows the Council to state the type of containers used, how many there are and when and where they are placed out for collection.

The Council has adopted a compulsory recycling scheme from January 2013 that requires all households to use the appropriate containers for recyclable materials to further reduce the amount of waste going to landfill. The process for managing this is to initially provide advice and information to households that are not recycling. If there is no improvement the council will consider enforcement action aimed at achieving compliance.

A charge may be made for collection of the waste thereafter or the service of collection may even be withdrawn (in some circumstances where deemed appropriate, proportionate and necessary). If the service is withdrawn the occupiers will then be responsible for disposing of their own household waste.

Business and bulky household waste

Businesses are under a duty to ensure that their waste is stored, presented and disposed of in accordance with the waste Duty of Care. This duty states that businesses must take all reasonable steps to keep waste secure prior to disposal. Businesses must be sure that their waste is transferred to a legitimate site and carried by a company/individual who is licensed by the Environment Agency to take it and transport, recycle or dispose of it safely.

This transfer of waste must be officially recorded on a Transfer Note. Businesses must ensure they keep a copy of the Transfer Note from their authorised waste collector and this record must be retained by the business for two years.

Householders also have a duty to ensure that only a registered waste carrier removes household, garden or construction waste from their property. Failure to make sufficient checks may render the householder liable for prosecution and/or be liable to pay towards clear up costs incurred of any fly tipped material that has come from them. A Fixed Penalty Notice for a breach of the Householders Duty of Care is expected to come into effect in 2018. If it does Croydon will seek to adopt this and use the new legislation when appropriate in line with other environmental FPNs already issued.

The Council provides a comprehensive waste collection service including recycling materials from residents and businesses, non-recyclable waste, commercial waste, bulky goods, green waste and white goods. These services enable residents and businesses to dispose of their waste safely and legally.

Further information is available at <http://www.croydon.gov.uk/environment/rrandw/>

If you transport waste as part of your business or otherwise for profit, you must register with the Environment Agency as a waste carrier. If you are a charity or voluntary organisation and you collect or transport waste on a professional basis you must also register with the Environment Agency as a waste carrier. Failure to produce a waste carrier's licence can result in an FPN or prosecution and / or seizure of any vehicle used.

Dog fouling and responsible ownership

Croydon Council recognises the importance of creating a usable and enjoyable environment for all residents. Dog related issues such as fouling and dogs of any kind that are intimidating to users of public places and are uncontrolled, adversely affect the environment and the enjoyment of it. Dog fouling has been cited by residents as a significant environmental issue within the Borough.

The previous legislation relating to dog control offences was the Dogs (Fouling of Land) Act 1996, which was repealed from 6 April 2005 when the Clean Neighbourhoods and Environment Act 2005 (CNEA 2005) became law. The provisions under CNEA 2005 do not alter the existing powers the Police have to deal with dangerous dogs under the Dangerous Dogs Act (1991).

A number of Dog Control Orders are in existence around the Borough, which make the following an offence:

- Failing to pick up your dog fouling - in any public space
- Allowing your dog to enter an area from which they are excluded no dog area – in specific areas, e.g. playground areas in Parks
- Failing to put your dog on a lead when asked to by an authorised officer – in any public space.
- Limiting the number of dogs on leads

In October 2014 the Dog Control Order legislation was replaced by the Public Spaces Protection Order (PSPO) power contained within the Anti-Social Behaviour Crime and Policing Act 2014 (ASBCPA). This means that the ability to create new DCO's has been repealed but that existing DCO's remain in force for a period of three years from the commencement of the ASBCPA unless replaced earlier by a PSPO. PSPOs are intended to deal with a particular nuisance or problem in a particular area that is detrimental to the local community's quality of life, by imposing conditions on the use of that area which apply to everyone. They are designed to ensure the law-abiding majority can use and enjoy public spaces, safe from anti-social behaviour. The Council is responsible for making a PSPO although the police also have enforcement powers.

These changes enable the Council to place the same Dog Control Order restrictions in parks and open spaces which encourage responsible dog ownership, as well as including restrictions on other potential anti-social behaviour. Failure to abide by the restrictions imposed by a PSPO will in most circumstances be punishable by the issuing of an FPN but it can include prosecution.

Graffiti

Graffiti is classed as criminal damage and defined as any informal or illegal marks, drawings or paintings that have been deliberately made by anyone on any physical element in the outdoor environment. Graffiti is illegal, anti-social, degrades the local environment and is costly to remove.

The Council clean graffiti and fly-posting from Croydon's streets, public buildings and council owned street furniture on a regular basis. The Council will remove racist or offensive graffiti within 24 hours of a report. They also clean graffiti from private property with the owner's consent. A reasonable charge may be made for this service to recover staff and material costs.

A range of actions are available to authorised officers to deal with graffiti, from FPNs through to Criminal Prosecution. When deciding which course of action to follow we will consider:

- The degree and extent of graffiti that has taken place;
- The overall impact on the local environment;
- The previous history and record of any/all individuals involved in the graffiti.

We will work closely with our community to ensure that Croydon is graffiti-free and work in partnership with those affected by graffiti vandalism to remove it. Following this approach, if graffiti is not removed we reserve the right to serve a notice on a property owner requiring them to have the graffiti removed and setting a time frame within which this should be done.

Fly Posting / advertising on street furniture

The illegal display of advertisements, commonly referred to as 'fly-posting' is detrimental to the visual amenity of an area. It usually comprises wholly commercial premises, for example night clubs, attaching advertisements such as posters to street furniture. Anyone wishing to advertise on the highway must obtain permission from Croydon Council beforehand; Some local event organisers may be permitted to advertise their event for a short period of time. For applicants wishing to apply for such permission they should view the following page for further details:

<https://www.croydon.gov.uk/transportandstreets/rhps/advertising-your-event-on-our-roads-or-pavements>

Enforcement options for illegal advertising on the public highway include removal of the advertisements and, in more prolific/persistent cases, the issue of Fixed Penalty Notices or prosecution. It is a criminal offence with a current maximum fine of £2,500 per advertisement.

Abandoned or Nuisance Vehicles

There are a number of categories of vehicles that are reported to the Council. The abandoned vehicles service may deal with directly with some of these, however sometimes the vehicle/customer will be referred onto another department or agency (such as the DVLA or Police) where appropriate.

Selling goods/Offering a service on the public highway

Selling goods or offering a service on the public highway without a valid street trading licence may constitute an offence. There are various forms of this offence, from selling cars on the road, shops with goods on display without a licence, itinerant people selling goods such as toys/DVDs in town centres.

Croydon Council do not usually licence the selling of vehicles on the roadside. When vehicles for sale are being displayed on the public highway for trade or business, this can cause a nuisance to local residents, however it is recognised that from time to time individuals may wish to sell their own vehicle privately, and each case is dealt with on its own merits. Private car sellers should seek to use magazine advertising or local shops rather than placing a vehicle for sale on the highway.

Itinerant people selling goods without a valid licence risk having the goods seized, and potential prosecution.

Repairing vehicles on the road

Repairing vehicles on a road is an offence if undertaken as part of a business or if it causes a complaint to be made to the Council. Offenders are primarily (but are not restricted to) those businesses and individuals attempting to use the road as a workshop where it will be an on-going issue rather than one-off emergency repair. This practice causes the same problems as selling vehicles on the highway. As well as looking unsightly they present danger to passers-by and the possibility of damage to the local environment, through for example oil or fuel spills.

Vehicles Causing obstruction

Croydon Council no longer has a car pound or in house removal vehicles as part of its fleet, therefore it has had to reduce its vehicle removal service. In the first instance where a vehicle is causing a severe obstruction the complainant is advised to call the Police to try and establish the owner and get the vehicle removed. All other requests to remove vehicles that are apparently causing an obstruction will have to be assessed on a case by case basis and where the Council can assist it may, resources permitting.

Unwanted vehicles

Residents of the borough can contact the nuisance vehicle section to surrender an unwanted vehicle to the council. Requests to have the vehicle collected have to be made in writing and the V5C document associated with the vehicle enclosed.

Abandoned Vehicles

Abandoned vehicles should be reported to the Nuisance Vehicle Section who are responsible for enforcement:

<http://www.croydon.gov.uk/transportandstreets/streets/avreport>

However, it should be noted that if a vehicle is taxed, locked and secure and claimed by an owner after the initial report, it will likely not be deemed to be abandoned thereafter. If there is another nuisance associated with the vehicle it should be reported as a Nuisance Vehicle and the nuisance should be clearly outlined so that it can be routed to the correct Neighbourhood Team for assessment.

Highway Matters /Licensable activities

It is illegal to wilfully obstruct the public highway, however it is a subjective issue and every case is considered on its merits taking into account factors such as the width of the highway. Examples of things that may be deemed obstructions are:

- Foliage from gardens that overhang the public highway to the extent that people cannot easily walk along the footway;

- Pallets of building materials deposited on the footway leaving little room for passers by

Anyone wishing to place a skip, building materials or a safety hoarding on the public highway must first obtain a licence. Croydon issues licences for these purposes which are governed by a specific set of conditions depending upon the licence required. These can be applied for from the Licensing Team at LICENSING@croydon.gov.uk

There are many other highway issues which are dealt with by the Environmental Enforcement Team, including building works that damage footways, vehicle crossover issues, water flowing over footways due to lack of drainage, etc. It is not intended to list all the potential offences or possible enforcement actions in this policy, however anyone wishing to enquire further about a specific Highway issue may contact the Environmental Enforcement Team on 020 8726 6200.

A-Boards (Advertising Boards)

A-BBoards are currently informally permitted in Croydon, however, this is currently under review due to the increase in A-boards being put out irresponsibly across the borough and the associated obstruction caused by them. The main issue is with the inconsistent way in which A-boards are left out by shops which can in turn make it difficult for those who are disabled and visually impaired pedestrians from navigating the pavements safely.

In order for an A-board to be temporarily placed under current accepted tolerances and to enable free pedestrian flow, A-boards should go on the frontage of the shop (where available) and should not be left away from the shop premises or be left out overnight. Any A-boards found to be inappropriate for the area for whatever reason may be requested to be removed or re-sited by an officer. Any A-boards found to be left out contrary to an officer's request may be subject to removal without further notice, especially where it may be affecting pedestrian access/egress or adversely affecting driver/pedestrian sight lines in the interests of safety. Under the Highways Act 1980 officers may remove any A-boards immediately if they are causing or may cause an obstruction. Less serious situations may be dealt with by issuing a fixed penalty notice, or a community penalty notice for repeat offenders.

The Council has implemented the licensing of portable A-boards within a defined area of the town centre. This has helped regulate their use and prevent highways obstructions in the town centre.

Levels of enforcement action

Under normal circumstances, a process of escalation will be used until compliance is reached starting at the lowest appropriate level. Exceptions would include but not be limited to instances where there is a serious risk to public safety, animals or the environment or the offences have been committed deliberately or negligently involve deception, are repeat offences or where there is significant economic detriment. Examples of the main types of action that can be considered are shown below:

Informal

- No action
- Information, advice and guidance
- Verbal warnings
- Written warnings

Formal

- Fixed Penalty notices
- Formal Notice
- Caution
- Prosecution

In assessing what enforcement action is necessary and proportionate, consideration will be given to such relevant considerations as arise in each individual case. These considerations could include, among other things:

- The seriousness of non-compliance/ failure
- The individual's or business's past performance and its current practice
- The risks being managed
- Legal, official or professional guidance
- Local priorities of the Council

No Further Action

In certain circumstances, contraventions of the law may not warrant any further/formal action. This can be where the breach is of a very minor nature with inconsequential risk, 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 further action* may also be taken where formal enforcement is inappropriate in the circumstances, which may include instances where a trader has ceased to trade, or the offender is elderly, frail or seriously ill and formal action would seriously damage their wellbeing. In such cases we will advise the offender of the reasons for taking no action.

Informal Action and Advice

For minor breaches of the law, verbal or written advice may be given. Any contraventions of the law will be clearly identified and advice given 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.

Warning

If there has been a minor incident where the law has been broken, it may be decided that the most appropriate course of action is to issue the offender with a verbal and/or written warning. Previous warnings will be taken into account when considering taking formal action.

Fixed Penalty Notices ('FPN')

Certain offences enable Local Authorities to offer an alternative to prosecution by way of Fixed Penalty Notices (FPNs). These will be issued when an authorised officer observes or has evidence that an offence has been committed, for example a person dropping litter. The various FPNs that the Council may serve are detailed below:

Offence	Croydon Current penalty	Stat Maximum full penalty	Early payment amount
Littering	£150	£150	£100
flyposting (s132 of Highways Act 1980 attaching pictures to street -	£75	£80	N/A
S34 Duty Of Care (Failure to produce Waste documents)	£300	£300	N/A
Failure to produce Authority (to carry waste - no waste licence - COPA 1989)	£300	£300	N/A
Fly-tipping	£400	£400	N/A
PSPO - ASBC&P Act	£80	£100	N/A
CPN Breach	£80	£100	N/A
S47 notice Environmental Protection Act	£100	£110	N/A
CNEA Repairing vehicles on the road (commercial)	£100	£100	N/A
Street Trading offences London Local Authority Act 1990/2004/2007	Croydon Current penalty	Stat Maximum full penalty	Set by London Councils

S34 (1) Contravention of Street trading conditions	£100	£100	£60
34(2) Making false statement to officer	£125	£125	£75
34(3) resisting an officer	£250	£250	£150
34(4) failing to produce	£100	£100	£60
38(1) Unlicensed street trading (cars for sale or any other goods)	£150	£150	£90
Wilful Obstruction of Highway s137 Highways Act 1980	£100	£100	£50
Erecting scaffolding / structure or failure to comply with licence/perform duty s169(5) Highways Act 1980	£100	£100	£50
Unauthorised distribution of free literature on designated land	£50	£80	
Nuisance parking	£100	£100	N/A
Abandoning a vehicle	£200	£200	N/A

The FPN gives the alleged offender an opportunity to avoid prosecution by payment of the penalty. An FPN is therefore only issued where there is adequate evidence to support a prosecution if a notice is not paid. There is no obligation for the Council to offer an appeals process to someone that might want to dispute a fixed penalty notice – a plea of not guilty will be assessed by the court. However, the Council does allow for informal representations to be made in writing via its online [fixed penalty notice representation form](#). This is then considered by an FPN adjudication officer and once a decision has been made applicants will be notified in writing of the outcome. If the representation is upheld no further action will be taken. If the representation is rejected the outstanding penalty amount would then need to be paid within a specified number of days which will be stated on the correspondence.

The effective use of FPNs improves the enforcement process, resulting in officers being able to focus more detailed attention on more complex and serious cases.

The FPN charge for littering is £150 with a discounted fee of £100 payable if payment is made within 14 days. Croydon Council will retain any funds accrued from the serving of FPNs. Payments collected will be used to help offset the costs of the enforcement function by helping fund, for example, environmental improvements and relevant educational, operational, and publicity initiatives.

The FPN must be paid within the specified period of it being served. If the FPN is not paid reminder letters may be sent requesting payment and setting out what action the Council intends to take. Following this if the FPN is still not paid the case will be considered for prosecution in the Magistrates' Court.

The Clean Neighbourhoods & Environment Act 2005 makes it an offence to fail to give a proper name and address to the authorised officer when requested to do so for the purposes of issuing a FPN under that legislation, which includes offences such as littering. Any information recorded by officers for the purpose of issuing fixed penalty notices is held securely. Information that was collected for one purpose may be used for another council purpose, but in sharing such information the service complies with its data protection obligations.

Statutory Notice

Some legislation allows notices to be served requiring offenders to take specific actions or cease certain activities, for example when issuing Community Protection Notices. Notices may require activities to cease immediately where the circumstances relating to health, safety, environmental damage or nuisance demand. If not set out in law, when issuing a notice requiring actions to be taken by a person/company the time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of the non-compliance. All notices issued will include details of any applicable appeals procedures.

Non-compliance with a Statutory Notice will usually be considered for prosecution or, if applicable, a civil remedy. 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) any necessary works to satisfy the requirements of the notice may be carried out by the Council. Where the law allows, a charge may be levied against the person/business served with the notice for any cost in carrying out the work. The costs incurred may then be recovered as a debt.

Caution

A caution is an admission of guilt, but is not a form of sentence, nor is it a criminal conviction. For a simple caution to be issued a number of criteria must be satisfied:

- sufficient evidence must be available to prove the case
- the offender must admit the offence
- it must be in the public interest to use a caution

- the offender must be 18 years or over

If the offender commits a further offence, the caution may influence our decision to prosecute. If following a caution the person commits a further offence then the caution may be cited in court, and this may influence the severity of the sentence that the court imposes.

Prosecution

Where a decision to prosecute is made, this decision will be taken in accordance with the Code for Crown Prosecutors. This document outlines the public interest and evidential considerations when instituting proceedings. Legal advice will be sought where appropriate. The Council will have regard to all relevant circumstances in assessing whether prosecution is appropriate and in the public interest.

All 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
- Police and Criminal Evidence Act 1984
- Criminal Procedure and Investigations Act 1996
- Regulation of Investigatory Powers Act 2000
- Freedom of Information Act 2000
- Equalities Act 2010
- Equal rights and anti-discrimination legislation

If it is in the public interest and appropriate, information concerning non-compliance will be shared with other enforcement agencies. Where this takes place, we will ensure that it is undertaken in compliance with the provisions of the Data Protection Act 1998 and Human Rights Act 1998.

In addition this policy reflects DEFRA guidance on the use of fixed penalty Notices which highlights the need to ensure that if FPNs are issued they need to be within a framework where offenders will be prosecuted, should they choose not to pay a notice that has been issued to them. This will help to minimise risk and build credibility in the system.

Implementing the Policy

Supporting the Council's objectives to transform its services, reduce costs and demand for services and make the borough safer and cleaner, this policy signals a change of focus and introduces a firmer approach to enforcement to deter and penalise offenders through greater use of fixed penalty notices, the issuing of notices and prosecutions.

This demonstrates the importance placed by the Council on street cleanliness, orderliness of the street environment and local environmental quality and its determination to make a stand against the small minority engaged in anti-social behaviour.

While the Council continues to increase the proportion of household waste that is

recycled it is clear that a change is needed in the relationship between some householders and their waste so that it becomes the norm for all residents to use the full range of recycling services that are provided. This can be achieved by improving our communications with residents to ensure they have the right information regarding their services and what can and cannot be recycled, and by supporting this with the compulsory recycling policy.

Awareness raising and education

Awareness raising and education are fundamental to the operation of any enforcement work. It is important that the community are listened to and provided with clear information on their responsibilities to enable them to comply with the law. We aim to carry out this element of enforcement by providing consistent advice and guidance about relevant duties and responsibilities through face-to-face operations, leaflets, Croydon's website, local press, specific campaigning and work alongside our partners and stakeholders.

Over and above the targeted awareness raising and education work carried out by officers and partners, specific focused campaigns will be developed to highlight certain local environmental quality problems to a certain group or within a certain area. The policy will also support national and regional environmental quality campaigns.

Partnership working

The success of this policy will depend upon effective partnership working. Key partners will include:

- Teams within Council including parking enforcement, public safety, highways and environment and leisure services, housing and anti-social behaviour.
- Town Centre management
- Police
- Croydon BID
- Local businesses
- Children Families and Young People
- Schools and colleges
- Registered Social Landlords
- South London Waste Partnership
- Environment Agency
- Keep Britain Tidy (ENCAMS)
- Enforcement teams in neighbouring boroughs

Partners will help raise awareness through consistent information and advice, to assist in the education of the community regarding their responsibility to help keep Croydon clean and green.

Offences by juveniles

In law, an FPN can be issued to anyone over the age of 10. However, the Council have agreed that it will not issue FPNs to people under the age of 18.

Once an offence has been committed and the age of the offender has been

ascertained officers are advised to use care and sensitivity when dealing with young people. In most circumstances the officer will give them a verbal warning and remind them of their responsibility to keep the Borough clean and green. However where the evidential and public interest tests are met the Council will consider prosecution.

Interim covid-19 enforcement provisions

COVID 19: ENFORCEMENT POLICY ADDENDUM – 19/04/2021

Covid 19 and government guidance:

Throughout the current Pandemic period, the government has and continues to issue further guidance, both statutory and non-statutory which impacts on the work of the enforcement teams. This policy will not be updated to reflect each set of revised guidance published. Members of the public are however encouraged to ensure that they check the gov.uk website for the most up to date guidance.

In addition, even where these are not specifically referenced in this policy, enforcement officers will have regard to the current statutory guidance issued and consider, where relevant, non-statutory guidance which impacts on their functions, responsibilities and fulfilment of their duties, including under this policy.

Current Regulations include:

The Health Protection (Coronavirus Restrictions) (No.2) (England) Regulations 2020
 The Health Protection (Coronavirus Restrictions) (No.3)(England) Regulations 2020
 The Health Protection (Coronavirus Collection of Contact Details etc. and Related Requirements) Regulations 2020
 The Health Protection (Coronavirus, Restrictions) (Obligations of Undertakings) (England) Regulations 2020
 The Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020
 Health Protection (Coronavirus, Restrictions) Local Authority Enforcement Power and Amendment) (England) Regulations 2020
 The Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021

A copy of the Government guidance is available here:

<https://www.gov.uk/government/publications/further-businesses-and-premises-to-close/further-businesses-and-premises-to-close-guidance>

Authorised officers:

Designated officers from the following teams within the London Borough of Croydon are authorised to enforce the Regulations and take enforcement action: Food & Safety, Pollution, Trading Standards, Private Sector Housing, Licensing, Public Safety (Neighbourhood Safety & Environmental Enforcement) and Anti-Social Behaviour Teams.

Enforcement:

Engagement: Officers will engage with businesses on a daily basis and provide advice and information to ensure compliance

Verbal advice/warning: An initial attempt to engage with a person responsible for carrying on a business who fails to comply with the requirements of the Regulations will be made in all instances and verbal advice and or a warning will be offered to that person.

Written Warning: Verbal advice can be followed up with a written warning ensuring that the appropriate person is formally notified of the breaches noted.

Improvement/Restriction/Prohibition Notices: A person responsible for carrying on a business who fails to comply with the requirements of the Regulations may be issued with a formal Notice. The notice will require specific steps to be carried to bring about compliance with the regulations. Non-compliance or breach of that notice may result in the service of an FPN or prosecution.

Fixed Penalty Notices: Alternatively, any person responsible for carrying on a business who is over 18 years and who fails to comply with relevant regulations may be issued with a Fixed Penalty Notice (FPN). A fixed penalty notice is a notice offering the person to whom it is issued the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty to a local authority specified in the notice. Where a person is issued with an FPN notice under these provisions —

(a) no proceedings may be taken for the offence before the end of the period of 28 days following the date of the notice;

(b) the person may not be convicted of the offence if the person pays the fixed penalty before the end of that period.

The Notice will state sufficient detail of the circumstances alleged to constitute the offence, specify the period during which proceedings will not be taken for that offence, specify the amount of the fixed penalty and give sufficient details and methods to enable payment. The amount specified will be in accordance with the regulations applicable at the time of the commission of the offence and will be increased as specified in the set Regulations.

Prosecution: In a case whereby a contravention of the Regulations is deemed to be of a sufficiently serious level, for example in the case of a deliberate or intentional act, gross negligence or immediate serious risk to the public or it is otherwise in the community interest to prosecute in the first instance, a prosecution case may be submitted to the Legal Services team by a nominated officer for their opinion on whether prosecution should proceed.

Consideration will be given to the Code for Crown Prosecutors and any other relevant documentation in cases where prosecution is an option, with all cases being referred to Legal Services for their opinion on whether prosecution should proceed. The final decision for instigating prosecutions rests with the Director of Law and Governance and those with delegated authority to make the decision to prosecute. The decision to take other proceedings, for example financial penalties, will be taken by a competent officer within the service involved.

Who decides what enforcement action is taken

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

- Investigating Officer(s)
- Senior managers

- Council Solicitors

All enforcement related decisions will only be taken by officers authorised under the Council's Scheme of Delegation.