

# MERTON COUNCIL

## COUNCIL WIDE ENFORCEMENT POLICY

### 1. INTRODUCTION

- 1.1 This document sets out Merton Council's policy to be applied when enforcing a range of legislation that aims to protect the interests and rights of residents and businesses in the borough. The policy defines the principles and sets out the guidance that will be applied by officers when taking enforcement decisions in order to ensure that decisions are consistent, fair and appropriate.

### 2. LEGAL STATUS OF THE ENFORCEMENT POLICY (Subject to Cabinet approval)

- 2.1 This overarching enforcement policy is intended to give guidance for officers, businesses, consumers and the public. It does not affect the discretion of the council to take legal proceedings where this is considered to be in the public interest. Guidance may also be provided from central government or other agencies and each team or service will have their own enforcement policies which have been drafted with their own area of enforcement in mind. This policy therefore does not try to capture all of this detailed complex and often changing information.

### 3. SCOPE AND MEANING OF "ENFORCEMENT"

- 3.1 This policy applies to all legislation enforced by the council. The term "*enforcement*" is used in this policy to mean "actions taken by council officers to prevent or rectify infringements of legislation" and includes any action taken by officers aimed at ensuring that individuals or businesses comply with the law.

### 4. HOW TO OBTAIN A COPY OF THE POLICY OR MAKE COMMENTS

- 4.1 This policy is also available on the council's website:-

[www.merton.gov.uk](http://www.merton.gov.uk) (to be assigned)

If you would like a paper copy of the policy and/or you would like to comment on the policy, please contact us by:

- Telephoning 020 8545 3897
- Emailing: [Fiona.thomsen@merton.gov.uk](mailto:Fiona.thomsen@merton.gov.uk)
- Writing to: The Head of Civic & Legal Services, Merton Civic Centre, Morden SM4 5DX

On request this policy will be made available on tape, in Braille, large print or in a language other than English.

## 5. GENERAL PRINCIPLES

- 5.1 All matters relating to enforcement and regulation will be dealt with in a proportionate and timely manner. Progress reports will be provided to the complainant if appropriate as the investigation progresses and after the resolution of the case or following a decision to close the investigation.
- 5.2 Regard shall be given to the relevant legislation, codes and policies which protect the rights of the individual and guide enforcement action, (These include the Human Rights Act 1998, Code for Crown Prosecutors, Corporate Customer Services Strategy and the Council's Equality and Diversity Policy).
- 5.3 In most circumstances the council will enforce against or prosecute those who neglect or wilfully fail to comply with their legal obligations such as where there is a risk to individuals or the public, or where action is required to minimise adverse environmental impacts or against individuals who engage in benefit fraud. In doing this the council will act in accordance with the guidance and standards set out in this policy, and also in accordance with any additional departmental or team policies or guidance, some of which are listed in **appendix 1**.
- 5.4 In particular the council will work with individuals and businesses to assist them in complying with their legal duties and obligations;
- a) Through education, publicity and appropriate advice;
  - b) Ensure its staff are appropriately trained and apply the policy and standards professionally and consistently;
  - c) Make information about the policy and the standards widely available to the public and businesses within the borough;
  - d) Monitor compliance with the policy and review it from time to time in consultation with parties subject to its application;
- 5.5 Where formal action is deemed necessary each case will be considered on its own merits. However, there are general principles that should apply to the way each case must be approached. These are set out below, based on the Regulators' Compliance Code and are meant to promote the following:
- a) **Openness** – any person affected should understand what is expected of them, what they should expect from the council and reasons for any action;
  - b) **Helpfulness** – a courteous and efficient service that seeks to prevent the need for formal enforcement;
  - c) **Proportionality** – an enforcement response that is proportionate to the offence and seeks the best solution without excessive cost for all concerned;
  - d) **Consistency** – that the approach to enforcement achieves a fair and consistent outcome;

- e) **Complaints about the service** – a well publicised, effective and timely complaints procedure easily accessible to all those subject to enforcement.
- f) **Standards** – setting out the level of service and performance the public and businesses expect to receive.

For more information about the Regulators' Compliance Code see:  
<http://www.berr.gov.uk/files/file45019.pdf>

- 5.6 Officers will endeavour to provide advice in a clear and simple manner. Where any corrective or remedial work is necessary, an explanation will be given as to why it is necessary, and over what time scale it is required. Where non-compliance may result in further enforcement action or prosecution the matter will normally be confirmed in writing within 10 working days.

## **6. AUTHORISATION OF OFFICERS**

- 6.1 All enforcement officers are authorised to carry out enforcement duties at all times in accordance with the council's Constitution and are legally empowered to ask questions and collect evidence in relation to the alleged offence or breach they are investigating.
- 6.2 Authorised officers of the Council will abide by this policy when making enforcement decisions and all operational procedures and departmental policies will be written to accord with it. Departures from this policy must be exceptional, justifiable and fully considered before the decision is made, unless it is believed that a delay will result in significant risk to an individual or the public.
- 6.3 Where enforcement officers need to carry out covert surveillance or use informants during the course of an investigation, the council will comply with the Regulation of Investigatory Powers Act (RIPA) 2000 (or any succeeding legislation) which seeks to balance the individual's rights to privacy with the need for the council to undertake a criminal investigation.

## **7. NOTIFYING ALLEGED OFFENDERS**

- 7.1 If information is received which may lead to enforcement action against a business or individual, that business or individual will be notified of any intended enforcement action as soon as is practicable, unless this could impede an investigation or pose a safety risk to those concerned or the general public.
- 7.2 During the progression of enforcement investigations/actions, confidentiality will be maintained and personal information about individuals will only be released when required and/or in accordance with the Data Protection Act 1998.

## **8. ASSESSING APPROPRIATE ACTION IN CASES OF INFRINGEMENT**

### **LEVELS OF ENFORCEMENT ACTIONS:**

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

8.3 A number of factors are considered when determining what enforcement action to take. The level of the action taken varies from no action through to proceedings in Court. Examples of the main types of action that can be considered are shown below:-

1. A decision to take no further action.
2. Informal action and advice – written or oral.
3. Fixed Penalty Notices or Penalty Charge Notice.
4. Formal Statutory Notices, including works in default.
5. Administrative Penalties (Adpens) as an alternative to prosecution
6. Seizure of goods/equipment, including vehicles, food, articles or records.
7. Injunctive actions.
8. Refusal/revocation of a licence.
9. Compulsory purchase of properties.
10. Simple caution –
11. Prosecution.

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

- a) The seriousness of compliance failure;
- b) The offender's past performance and its current practice;
- c) The risks being controlled;
- d) Legal, official or professional guidance;
- e) Local priorities of the London Borough of Merton.

## **9. PROSECUTION OR SIMPLE CAUTION**

9.1 A Simple 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 which include:

- i) Sufficient evidence must be available to prove the case;
- ii) The offender must admit the offence;
- iii) It must be in the public interest to use a Simple Caution
- iv) The offender must be 18 years or over.

Details of the Home Office guidance (Circular 30/2005) can be found at: <http://www.homeoffice.gov.uk/police/powers/cautioning> for further information.

- 9.2 The issuing and recording of Simple cautions will be carried out only by officers who are authorised to institute legal proceedings on behalf of the Council. If a Simple caution is not accepted by the defendant then a prosecution will follow (unless there are serious extenuating circumstances).
- 9.3 A record of the caution will be sent to the Office of Fair Trading, the Department of Works and Pensions (DWP) and the Local Authority Co-ordinating Body for Regulatory Services (LACORS) if appropriate and will be kept on file for two years. If the offender commits a further offence, the caution may influence the decision to prosecute. If during the time the caution is in force, the offender pleads guilty to, or is found guilty of committing another offence anywhere in England and Wales, the caution may be cited in court and this may influence the severity of the sentence that the court imposes.
- 9.4 Two tests are applied to determine whether prosecution or caution is an appropriate course of action. Since the decision to caution or prosecute an individual is a serious step it should only be taken after full consideration of the implications and consequences. To ensure that fair and consistent decisions about cautions and prosecutions are made the guidance set out in the Code for Crown Prosecutors is taken into account. There are two stages to the decision to either caution or prosecute – the evidential and public interest stages.

## **10. THE NEED FOR SUFFICIENT EVIDENCE (EVIDENTIAL STAGE)**

- 10.1 A prosecution will not be commenced or continued unless the council is satisfied that there is sufficient, admissible and reliable evidence that the offence has been committed and that there is a realistic prospect of conviction. If the case does not pass this evidential test a prosecution will not go ahead. If the case passes the evidential test, consideration must be given to the second stage in the decision to prosecute, which is whether a prosecution is in the public interest.

## **11. THE PUBLIC INTEREST STAGE**

- 11.1 The Public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the offender. Some factors may increase the need to prosecute but others may suggest that another course of action would be better.

## **12. PUBLIC INTEREST FACTORS IN FAVOUR OF PROSECUTION**

12.1 The more serious the offence, the more likely it is that a prosecution will be needed in the public interest. The council will consider the following factors in deciding whether or not to prosecute:-

1. Environmental effect of the offence
2. Intent of the offender
3. History of offending
4. Whether there are grounds for believing that the offence will be repeated
5. The offence, although not serious in itself, is widespread in the area where it was committed
6. The offence was committed against a person serving the public
7. The defendant was in a position of authority or trust
8. Attitude of the offender
9. Deterrent effect of a prosecution on the offender and others
10. A conviction is likely to result in a significant sentence
11. Personal circumstances of the offender.

## **13. WHO DECIDES WHAT ENFORCEMENT ACTION IS TAKEN**

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

13.2 Decisions about enforcement will be in accordance with the provisions of the council's Constitution and the Departmental Schemes of Management. It involves consultation between or approval from:-

- Investigating Officer(s)
- Issuing officers
- Senior Managers
- Head of Civic and Legal Services and his/her officers

## **14. PUBLICISING SUCCESSFUL PROSECUTIONS**

14.1 Consideration will be given to publishing details of successful prosecution cases to inform people about the consequences of failing to comply with legal requirements and give reassurance to victims and the wider law abiding community that the Council is prepared to fully utilise available enforcement powers.

## **15. CONSIDERING THE VIEWS OF THOSE AFFECTED BY OFFENCES**

15.1 The council undertakes enforcement on behalf of the public at large and not just in the interests of any particular individual or group. However, when considering the public interest test, the consequences for those affected by the offence, and any views expressed by those affected will,

where appropriate, be taken into account when making the enforcement decision.

**16. PROTECTION OF HUMAN RIGHTS**

16.1 This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998.

**17. POLICY IMPLEMENTATION & REVIEW**

17.1 The policy will be reviewed as appropriate and the views of those people who may be affected by it will be sought.

## APPENDIX 1

Team/Section	Contact telephone no.	
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**Internal Audit & Housing** 0208 545 3903  
**Benefit Investigation** [http://intranet/lbm\\_debtors\\_manual.doc](http://intranet/lbm_debtors_manual.doc) &  
<http://intranet/pdf-sundrydebtorsrecoverypolicy>

**Consumer and Business Protection Team,** 2028 545 3947  
(Commercial Environmental Health, Licensing and Trading Standards) web link  
[http://www.merton.gov.uk/council/departments/envandregen/consumer\\_and\\_business\\_protection.htm](http://www.merton.gov.uk/council/departments/envandregen/consumer_and_business_protection.htm)

**Environmental Health** 0208 545 3002  
<http://www.merton.gov.uk/living/environment/environmentalhealth.htm>

**Waste Service** 0208 545 3104  
[www.merton.gov.uk/living/environment/recyclingwastemanagement/refuse/flytipping](http://www.merton.gov.uk/living/environment/recyclingwastemanagement/refuse/flytipping)

**Highways & Street works** 0208 545 3133 and 0208 545 3215  
<http://www.merton.gov.uk/living/transport-streets.htm>

**Parking** 0208 545 3904  
[www.merton.gov.uk/parking](http://www.merton.gov.uk/parking)

**Planning Enforcement** 0208 545 3111  
[www.merton.gov.uk/living/planning/enforcement](http://www.merton.gov.uk/living/planning/enforcement)

**Building Control** 0208 545 3128  
[www.merton.gov.uk/buildingcontrol](http://www.merton.gov.uk/buildingcontrol)

**Housing** 0208 545 3903  
[www.merton.gov.uk/living/housing](http://www.merton.gov.uk/living/housing)

**Education** 0208 545 3794  
[www.merton.gov.uk/learning/schools/changingschool/truancy](http://www.merton.gov.uk/learning/schools/changingschool/truancy)