

## **Lewisham Council - Enforcement Policy For Regulatory Functions**

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### **1. Introduction**

1.1 This document sets out the enforcement policy for the following regulatory functions of Lewisham Council namely:-

#### **Those performed by the Environmental Health Service i.e.**

- Food Safety - Enforcement and regulation of food safety, food standards and hygiene laws.
- Environmental Protection – Monitoring and regulation of noise, air and land quality to control pollution.
- Health and Safety - Enforcement and regulation of health and safety laws.

#### **Those performed by the Crime Enforcement & Regulation Service i.e.**

- Community Safety - Enforcement against persistent offenders of anti-social behaviour, crime and disorder using toolkit provided by the Anti Social Behaviour, Crime & Policing Act 2014 and any other relevant legislation.
- Licensing - Enforcement & Administration of the Licensing Act 2003, Gambling Act 2005, Scrap Metal Dealers Act 2013, Special Treatment Premises, Sex Establishments & various animal related legislation.

- Public Health & Nuisance – Enforcement & regulation to deal with issues such as amplified noise, smell, bonfires, drainage & other matters causing statutory nuisance.
- Trading Standards – Enforcement & administration of consumer protection and fair trading law

**The following other services i.e.**

- Clean Streets – Enforcement & regulation of abandoned and hazardous vehicles, fly-tipping & trade waste requirements, shop front licensing
- Markets – regulation of markets and street trading

**Other regulatory services and functions may be subject to this policy as the law requires or as Lewisham Council considers necessary and/or appropriate**

1.2 By 'enforcement' we mean ensuring that legal requirements are complied with.

1.3 Enforcement can take a number of forms ranging from the giving of advice right up to prosecution and occurs when a breach of relevant legislation is discovered by one of the services mentioned above.

1.4 This policy document should be read in conjunction with the document entitled '**Service Standards - What you can expect from Regulatory Services in the London Borough of Lewisham**'.

## **2. The purpose of this policy document**

2.1 The policy explains, in general terms, the approach adopted by the above services when carrying out the Council's role in enforcing a wide range of legislation. Whilst some or all of the services concerned may have their own local policies & procedures for specific activities ( e.g. Council Licensing Policy), they will be developed and applied in accordance with this document. We will also have regard to any statutory or other nationally recognised guidance which may be applicable such as that produced by The Health & Safety Executive (HSE), The Food Standards Agency (FSA), The Department for the Environment, Food & Rural Affairs (DEFRA), The Home Office and The Department for Business Innovation & Skills.

2.2 The purpose of this policy is to help ensure efficient and effective compliance with legislation while minimising the burden this might impose on individuals, businesses and others subject to regulation. Ultimately however it must be remembered that all regulatory service functions have a role to play in protecting the public, honest businesses and promoting and maintaining community well-being.

2.3 Officers of Lewisham Council must have regard to this policy when performing their duties.

### **3. The Principles of Good Regulation & The Regulators' Code**

3.1 The Legislative and Regulatory Reform Act 2006, Part 2, requires Lewisham Council to have regard to the Principles of Good Regulation when exercising a specified regulatory function. For local authorities, the specified functions include those carried out by our environmental health, trading standards and licensing services.

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

- (i) Proportionate – our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence,
- (ii) Accountable – our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures,
- (iii) 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,
- (iv) Transparent – we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return, and
- (v) Targeted – we will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities.

3.2 We have had regard to the **Regulators' Code** in the preparation of this policy. The Regulator's Code has been devised by the government's better Regulation Delivery Office (BRDO) and sets out a framework for how regulators should carry out their functions. Further details can be obtained at <https://www.gov.uk/government/publications/regulators-code>.

3.3 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..

### **4. Human Rights Act , Data Protection & Avoiding Discrimination**

4.1 Lewisham Council is a public authority for the purposes of the Human Rights Act 1998. We therefore apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is had to the right to a fair trial and the right to respect for private and family life, home and correspondence.

4.2 Where there is a need for us to share enforcement information with other agencies, we will follow the provisions of the Data Protection Act 1988 and any other relevant legislation that may apply.

4.3 The Equality Act 2010 makes it unlawful to discriminate against, harass or victimise any person on the grounds of age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage or civil partnership, pregnancy or maternity in the discharge of an authorised persons powers. This applies to the exercise of powers of entry.

## **5. Our Enforcement Strategy**

5.1 Our enforcement strategy is made up of 3 elements namely:-

- Education and information:- in order to assist businesses, members of the public and other stakeholders to understand their obligations and how to comply with them
- Monitoring and ensuring compliance through planned risk and intelligence-based inspection visits, enforcement projects and taking follow up action as needed where breaches are found. For example compliance with the law prohibiting the sale of alcohol to children is assessed by volunteers attempting test purchases.
- Investigating complaints and information received alleging breaches of the law or suggesting that particular trade related activities are causing concern.

5.2 Each element is used when and where considered most appropriate and effective. Occasions may arise where more than one element is applied at the same time. Each regulatory service reserves the right to decide which element is the most appropriate to be applied in any given circumstances.

## **6. Exercising Powers of Entry, Inspection & Enforcement**

When exercising powers of entry , inspection and enforcement our officers will have regard to the following namely:-

- The specific legislation conferring the power
- The Protection of Freedoms Act 2012 and any code of practice or guidance issued there under
- The Consumer Rights Act 2015 and any code of practice or guidance issued there under
- The Police & Criminal Evidence Act 1984 and any code of practice or guidance issued there under
- Food Law (Code of Practice) England
- Feed Law Enforcement (Code of Practice) England

- Any other relevant applicable guidance or code of practice

## **7. Enforcement Decisions-Dealing With Non -Compliance**

7.1 There are a number of enforcement options available in the event we discover a breach of legislation (non-compliance). These range from verbal advice on compliance through to prosecution. In order for us to determine the correct and proportionate level of action in a particular case, the following are considered:-

### **• How serious is the matter?**

- Was there disregard for the law?
- Was there significant gain, dishonesty or intention to deceive?
- Has there been reckless disregard for safety?
- Has there been serious injury, harm, economic or other loss or public alarm?
- Are there multiple offences?
- Is the case connected with a major area of local concern?

### **• What is the previous history?**

- Is it a repeat offence?
- Has previous advice on how to comply with the law been taken notice of or ignored?
- In the case of businesses new to the area, what steps have they taken to get information about compliance?
- Is the action proposed likely to be effective in preventing recurrence of the offence?
- Are there serious consequences resulting from a failure to comply with a legal requirement?

**Those who ignore advice on compliance are more likely to be subject to a higher level of enforcement action where it is available.**

7.2 Our available enforcement options are explained in the appendix to this document. **Please note that they are not available in all circumstances and some apply only to certain specialist teams. More than one option may be used in some circumstances.**

7.3 Special criteria need to be applied when a prosecution or simple caution is being considered and these are explained further below

### **Simple Caution**

Simple cautions are used as an alternative to prosecution. Although not as serious an option as prosecution, a simple caution is recorded in a Central Register of Convictions and also held on record by the Council on. In the event of future breaches, it may then be cited in any subsequent court action that is taken against the person (or legal entity) subject to the simple caution.

The procedure for simple cautions is the subject of guidance Home Office guidance (<http://www.homeoffice.gov.uk/about-us/publications/home-office-circulars/circulars-2008/016-2008/>) and the following conditions must be met before one can be issued:

- there must be evidence of the offender's guilt sufficient to give a realistic prospect of a conviction
- the offender must admit the offence
- the offender must understand the significance of the Caution and give informed consent to being Cautioned

A Simple Caution will **NOT** be considered if:

- the evidence available does not meet the burden of proof for cases tried in the criminal courts or
- the offender does not make a clear and reliable admission of the offence (e.g. if intent is denied or there are doubts about his/her mental health or intellectual capacity) or
- it is not in the public interest.

**If the option of a simple caution is offered but refused, the Council will proceed to prosecution.**

## **Prosecution**

The decision to prosecute is a significant one and is not considered lightly. Prosecution will, in general, be confined to those persons who deliberately and blatantly disregard the law, act recklessly, carelessly or fraudulently, refuse to achieve even the basic minimum legal requirements, often following previous contact with the authority, or who put the public at serious risk. We believe that, fortunately, such persons are in the minority.

Prosecutions are taken when it is felt to be in the public interest and we apply the principles set out in the **code of practice for crown prosecutors** when making our decision.

[http://www.cps.gov.uk/publications/code\\_for\\_crown\\_prosecutors/](http://www.cps.gov.uk/publications/code_for_crown_prosecutors/)

Factors to be considered in assessing the public interest include:-

- The seriousness of the offence.
- The cost and time involved in bringing the matter before the courts.
- The age, circumstances or mental state of the offender.
- Their attitude and the likelihood of them re-offending.
- Their previous history and whether they have acted on previous advice given
- Whether there has been negligence and the possibility of avoiding offences.
- The views of anyone aggrieved by the offence.
- The length of time since the offence took place.
- The local / national context of the offence.

If we do decide to prosecute, we will seek to recover the full economic costs of prosecuting offenders.

### **The following offences are most likely to warrant prosecution**

- Assault against or obstruction of an Officer.
- Organised premeditated and deliberate offences.
- Targeting of vulnerable groups.
- Harassment.
- Failure to comply with formal notices served by the Council.
- Where Government or other public body guidance requires strict enforcement, for example, offences under the Food Safety law where a proprietor fails to control a serious food safety hazard.
- Where there has been a serious risk of danger to life or limb,
- Where there has been an imminent or serious risk to public health
- Where there has been a fatality or serious injury.
- Where a particular contravention has caused serious public alarm.
- Where there has been substantial financial gain.
- Where there has been a deliberate and significant fraud.
- Where there is a serious nuisance or pollution risk.

#### **6.4 Proceeds of Crime and Asset Recovery**

In appropriate cases, the Council will also look to apply the legal provisions enabling confiscation of any assets suspected of having been acquired from the proceeds of crime. This may occur with or without prosecution

## **8. The Conduct of investigations**

8.1 All investigations will be carried out under the following legislation and in accordance with any associated guidance or codes of practice, in so far as they relate to Lewisham Council

- the Police and Criminal Evidence Act 1984 (searching premises, interviewing suspects, etc)
- the Criminal Procedure and Investigations Act 1996 (disclosure of evidence & information to suspects)
- the Regulation of Investigatory Powers Act 2000 (surveillance & access to communications data)
- the Criminal Justice and Police Act 2001 (the seizing & 'sifting' of evidence)
- the Human Rights Act 1998 ( the right to a fair trial & the right to privacy etc)

These Acts and associated guidance control how evidence is collected and used and give a range of protections to citizens and potential defendants.

Our authorised officers will also comply with the requirements of the particular legislation under which they are acting, and with any associated guidance or codes of practice.

8.2 The powers of our authorised officers are set out in the document '**Service Standards - What you can expect from Regulatory Services in the London Borough of Lewisham**', which should be read in conjunction with this policy .

8.3 Regulatory services will have due regard to and comply with, any statutory time limits which may apply to investigatory actions or to the bringing of any legal proceedings.

8.4 We will also have regard to any primary authority arrangement that may apply to any business or person we are investigating. This is an arrangement whereby a particular local authority liaises with the business concerned on behalf of all other local authorities. Please however note that such arrangements do not mean that enforcement action will not be taken where considered appropriate.

## **9. Formal approval & review of this policy**

9.1 This policy will be continually kept under review and formally reviewed every 5 years or when circumstances dictate that it is appropriate.

9.2 Formal approval of this policy by The Mayor & Cabinet of Lewisham Council will be sought and obtained following each formal review.

9.3 Please note that Should any changes to any contact details referred to herein , or to the appendix occur, this document will be amended as necessary. Such changes are not considered as being significant to the operation of the policy. Future significant changes will require formal approval by the Mayor & Cabinet of Lewisham Council as stated in 8.2 above..

## **10. Service Complaints and Appeals against Enforcement Action**

10.1 Where legislation provides a formal right of appeal against enforcement action, written details of the appeals procedure will be provided at the time of action or as soon thereafter as practicable.

10.2 In addition, the regulatory services to which this policy applies are subject to the Lewisham Council service complaints procedure. In the first instance, complaints should be made to the manager for the service concerned using the contact details given below. The manager will investigate and advise of the outcome within 10 working days. Full details of the Council's complaints procedure can be found on the Lewisham website:

<http://www.lewisham.gov.uk/CouncilAndDemocracy/HavingYourSay/CommentsComplaintsAndCompliments/ComplaintsProcedure.htm>

We welcome comments on this policy statement and its application. Please contact the appropriate manager listed below or visit <http://www.lewisham.gov.uk/mayorandcouncil/complaints-and-feedback/Pages/default.aspx>

Martin Skipper	Clean Streets Manager	0208 314 2170

The contact and web site details provided herein are those applicable at the time of approval of this policy. The enforcement options set out in the appendix are also those available at the time of approval of this policy.

### Summary of Enforcement Options

Enforcement Options	When Likely To Be Used
<b>Verbal advice/warning</b>	For the most minor 'one off' types of breach
<b>'On the Spot' written advice/ warning</b>	Where the above has recurred <b>or</b> Where the breach, whilst more serious is still relatively minor and can be easily remedied and we are confident it will be dealt with <b>and/or</b> Where it is considered necessary to make a follow up visit to ensure compliance is achieved. Any such advice/warnings issued will be taken into account in deciding action on future breaches
<b>Formal advisory letter</b>	Where it is felt necessary to formally draw attention to the matter and remind the business concerned of the legal obligation imposed. The letter may also include some guidance and best practice advice which will be clearly distinguished from legal requirements
<b>Notices Requiring Improvement</b>	Where there are recurring matters not resolved informally; <b>or</b> significant contraventions; <b>or</b> risks to health or the environment Once we have served a notice requiring improvement we will continue to provide advice and support to ensure that the recipient understands it and is able to comply with it fully. We will regard failure to comply with a notice as a serious matter which will normally result in either a formal caution (for example in the case of a first offence) or prosecution. Before formal enforcement action is taken, officers will provide an opportunity to discuss the

	<p>circumstances of the case and, if possible, resolve points of difference and agree time scales for compliance. In the case of vulnerable groups we will consult with any appropriate representatives.</p>
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Boundary of Enforcement Criteria

<p>Enforcement criteria are defined as those breaches of the Code which are likely to result in a breach of the Code being referred to the Regulatory Committee for consideration and possible enforcement action.</p>	<p>Enforcement criteria are defined as those breaches of the Code which are likely to result in a breach of the Code being referred to the Regulatory Committee for consideration and possible enforcement action.</p>
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Enforcement options	When likely to be used
<b>Work in Default</b>	Where we have served an improvement notice and the person receiving the notice does not comply with it we will exercise powers available to us to arrange for the improvement work to be carried out at their expense. This is known as 'work in default' and we always seek to recover our full costs from the person receiving the original notice.
<b>Notices Requiring Information</b>	Used to help identify responsibility for matters we are investigating. Failure to comply with a notice may result in either a formal caution or prosecution.
<b>Notices Prohibiting Activities</b>	<p>Where an activity poses a significant risk to health, safety or the environment. Where the risk exists at the time of the action or is imminent we will immediately use powers available to close premises or parts of premises, seize or detain articles, equipment or food to remove the risk effectively.</p> <p>Where we consider immediate notice action is necessary, we will give an explanation of why such action is needed at the time and confirm in writing in the notice served at that time. If requested, we will provide further written explanation of our decision. Where we serve an Emergency Prohibition Notice under the Food Safety Act, we will also give immediate notice of an intention to apply to Magistrates for an Emergency Prohibition Order. Copies of such orders and notices will be displayed at the premises to inform the public what action has been taken.</p>
<b>Weights &amp; Measures Notice</b>	Where we find weighing or measuring equipment in use for trade which is inaccurate, we will issue a notice requiring the equipment to be adjusted within a deadline specified in the notice.
<b>Seizure of goods, equipment or documents</b>	<p>Used to prevent the occurrence of an incident or to ensure that an activity ceases, or to ensure that it does not recur or When items are required as evidence .</p> <p>We will explain at the time the powers we are exercising and the reason why . We will also provide a written explanation.</p>

<b>Enforcement options</b>	<b>When likely to be used</b>
<b>Suspension Notices</b>	<p>May be used as an alternative to seizure Where we find goods on sale which we believe infringe consumer safety legislation. Usually used where seizure is considered impractical</p> <p>Where immediate suspension action is considered necessary, we will give an explanation of why such action is needed at the time and subsequently confirm this in writing .</p>
<b>Forfeiture</b>	<p>This is where application is made to the Court for the trader to be permanently deprived of non compliant items. In some situations prosecution is not necessary for this to happen. Normally used in very serious cases or where the business has not cooperated in resolving problems.</p>
<b>Voluntary Surrender</b>	<p>Where traders <b>voluntarily</b> sign non compliant goods over to BRS for disposal. Normally used where traders have co-operated in resolving problems.</p>
<b>Fair Trade Undertakings</b>	<p>Used where we feel a trader persistently engages in conduct detrimental to consumers. The undertaking is a voluntary written assurance that the trader will stop.</p>
<b>Fair Trading Enforcement Order</b>	<p>Used where the trader refuses to give an undertaking or where immediate action is considered necessary. This is an order imposed by a Court. Failure to comply can lead to prosecution.</p>
<b>Licence and Registration Conditions</b>	<p>In many cases, where we issue licences or registrations, we may apply conditions. Any conditions which we apply will be proportionate to the risks involved. We will consult the applicant or licence/registration holder and anyone else with an interest before imposing conditions. In cases where we discover non-compliances we may amend and strengthen conditions. Ultimately we may consider revocation of the licence/registration</p>
<b>Fixed Penalty Notices [FPN] and Penalty Notices</b>	<p>In effect an 'on the spot fine'. These can be issued in respect of matters such as the sale</p>

<b>For Disorder [PND]</b>	of alcohol to a person under 18, failure to display a 'no smoking' sign in enclosed public premises subject to no smoking restriction or littering or leaving waste on the streets. <b>Failure to pay an FPN or PND can lead to subsequent prosecution.</b>
<b>Enforcement options</b>	<b>When likely to be used</b>
<b>Penalty Charge Notice [PCN]</b>	This is similar to an FPN and can be issued for matters such as marketing a house for sale without commissioning an energy performance certificate]. Failure to pay a PCN can lead to civil enforcement action to recover costs.
<b>Simple Cautions-</b>	Used where there is clear evidence and acceptance of a reasonably serious offence by the offender. Their purpose is to deal quickly and simply with the matter to avoid unnecessary appearances in criminal courts to reduce chances of re-offending. to deal with cases where it is not felt to be in the public interest to prosecute The offender must sign a declaration admitting the offence
<b>Prosecution</b>	Used for the most serious matters where there is a good probability of securing a conviction and where felt to be in the public interest. Used as a last resort.
<b>Anti Social Behaviour (ASB) interventions</b>	A number of intervention methods can be used to address anti-social behaviour.  A written warning to the individual or premises involved  An informal agreement such as an Acceptable Behaviour Contract (ABC), Responsible Retailer Agreement (RRA) or a Good neighbour Agreement (GNA).
<b>ASB Injunction</b>	Used to stop or prevent individuals engaging in anti-social behaviour or behaviour likely to cause harassment, alarm or distress.

	Injunction application to be made to county court and can include prohibitions and positive requirements to address underlying causes of behaviour. Breach of injunction must be proved to criminal standard and will be treated as contempt of court.
<b>Criminal Behaviour Order</b>	Can be sought against a person on conviction who has caused or is likely to cause harassment, alarm or distress to any person. The ASB does not need to be part of criminal offence. Order to include prohibitions and positive requirements to address underlying causes of behaviour. Breach of order is a criminal offence and must be proved to criminal standard.
<b>Enforcement options</b>	<b>When likely to be used</b>
<b>Community Protection Notice</b>	To stop an individual, business or organisation committing anti-social behaviour which spoils the communities quality of life. Behaviour has to have a detrimental effect on the quality of life of those in the locality; be of a persistent and continuing nature and be unreasonable. Written warning to be issued informing perpetrator of problem behaviour, requesting them to stop, and the consequences of continuing. Breach is a criminal offence, with a penalty of a FPN of £100 if appropriate or level 4 fine.
<b>ASB Closure Notice &amp; Closure Order</b>	Used to close a premises quickly which is being used or likely to be used to commit anti-social behaviour, nuisance or disorder. A closure notice can be issued to close a premises for up to 48hours where there has, or is to be, nuisance to the public or disorder near the premises. A closure order for up to 3 months can be sought at county court if a closure notice has been issued and there is evidence to demonstrate there is disorderly, offensive or criminal behaviour; serious nuisance to the public; or disorder near the premises.
<b>Public Space Protection</b>	Used to stop individuals or groups committing

<b>Order</b>	anti-social behaviour in a public space. Behaviour can be restricted where it has or is likely to have a detrimental effect on the quality of life of those in the locality; be persistent or continuing in nature and be unreasonable. Breach is a criminal offence.
<b>Asset Recovery</b>	Where appropriate and in connection with any relevant breach of legislation, the Council will apply the provisions of the Proceeds of Crime Act [POCA] to confiscate the assets of any person suspected of acquiring them from the proceeds of crime. This may occur whether or not the Council prosecutes in a particular matter.
<b>Restricted Premises or Restricted Sale Orders for the sale of tobacco for persons under 18</b>	These can be applied for if a business or person is convicted of selling tobacco products to persons under 18 years of age and in addition has also been found to have done so on at least 2 other occasion in the previous 2 years .
<b>Enforcement options</b>	<b>When likely to be used</b>
<b>Closure Orders, Licence Suspension &amp; Revocation for the sale of alcohol to persons under 18.</b>	A closure order preventing the sale of alcohol can be applied for if a sale of alcohol to an individual under 18 at the same premise has occurred on two or more different occasions within a period of three consecutive months. Licence suspension or revocation may also be applied for in some circumstances following the sale of alcohol to persons under 18

## Appendix A2

### **Service Standards - What you can expect from Regulatory Functions in the London Borough of Lewisham**

#### **Contents:**

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5. Helping you to get it right
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8. Responding to non-compliance
9. Requests for our service
10. How to contact us
11. Working with others
12. Having your say

### **1. Introduction**

This document explains what you can expect of Regulatory functions in the London Borough of Lewisham]. Whether you are run a business, are an employee or a member of the public, we are committed to providing you with an efficient, courteous and helpful service and this document tells you how we aim to do that and what standards we will meet.

### **2. The functions to which this document applies are:-**

#### **Those performed by the Environmental Health Service i.e.**

- Food Safety - Enforcement and regulation of food safety, food standards and hygiene laws.
- Environmental Protection – Monitoring and regulation of noise, air and land quality to control pollution.
- Health and Safety - Enforcement and regulation of health and safety laws.

#### **Those performed by the Crime Enforcement & Regulation Service i.e.**

- Community Safety - Enforcement against persistent offenders of anti-social behaviour, crime and disorder using toolkit provided by the Anti Social Behaviour, Crime & Policing Act 2014 and any other relevant legislation.
- Licensing - Enforcement & Administration of the Licensing Act 2003, Gambling Act 2005, Scrap Metal Dealers Act 2013, Special Treatment Premises, Sex Establishments & various animal related legislation.
- Public Health & Nuisance – Enforcement & regulation to deal with issues such as amplified noise, smell, bonfires, drainage & other matters causing statutory nuisance.
- Trading Standards – Enforcement & administration of consumer protection and fair trading law

#### **The following other services i.e.**

- Clean Streets – Enforcement & regulation of abandoned and hazardous vehicles, fly-tipping & trade waste requirements, shop front licensing
- Markets – regulation of markets and street trading

**Other regulatory services and functions may be subject to this policy as the law requires or as Lewisham Council considers necessary and/or appropriate**

Our vision is to help make Lewisham the best place in London to live, work, learn and do business.

### **3. How we deliver our services**

We believe we can make a valuable contribution to the maintenance and improvement of public health, quality of life, the economy, safety and wellbeing. Our aims are to:

- Protect the public, businesses and the environment from harm, including economic detriment from trading malpractice
- Support the local economy to grow and prosper

In striving for this we will have regard to Lewisham Council's strategic priorities as stated in the Sustainable Community Strategy 2008-2020 namely:

- **Ambitious and achieving** – where people are inspired and supported to fulfil their potential.
- **Safer** – where people feel safe and live free from crime, antisocial behaviour and abuse.
- **Empowered and responsible** – where people are actively involved in their local area and contribute to supportive communities.
- **Clean, green and liveable** – where people live in high quality housing and can care for and enjoy their environment.
- **Healthy, active and enjoyable** – where people can actively participate in maintaining and improving their health and well-being.
- **Dynamic and prosperous** – where people are part of vibrant communities and town centres, well connected to London and beyond.

Our guiding regulatory principles are:

**Targeting:** to prioritise and direct our regulatory action using intelligence and relevant risk assessment schemes. Such risk assessments will have regard to all available relevant and good quality data. We will take into consideration the combined effect of the potential impact of non-compliance and the likelihood of non-compliance. This will enable us to focus our resources on the areas of greatest risk and ensure that persistent offenders are identified more readily.

**Proportionality:** to ensure, via our enforcement policy, that action taken relates directly to the actual or potential risk to health, safety, the environment, or economic

disadvantage to consumers or businesses, and that the sanctions applied are meaningful including firm enforcement action where necessary.

**Accountability:** to be accountable for the efficiency and effectiveness of our activities, making them accessible and open to scrutiny. We encourage feedback from interested parties regarding the behaviour and activity of enforcement staff, and are subject to the Council's complaints procedure.

**Consistency:** to ensure a similar approach is taken in similar circumstances to achieve consistent results. We will give positive feedback to businesses where it is due.

**Openness:** to ensure that the enforcement action taken by the Council is easily understood by individuals, organisations and businesses required to comply with legislation, that advice and information on compliance requirements is available, and that clear distinctions are made between legal requirements and what is desirable or 'best practice' but not compulsory

**Supporting the local economy:** to facilitate and encourage economic progress, while maintaining consumer protection and public safety. Wherever possible we will work with traders, members of the public and businesses, to assist them in meeting their obligations without unnecessary expense.

**Reducing enforcement burdens:** where there is a shared enforcement role with other regulatory services, e.g. HMRC, the Police, internal departments and other stakeholders we will consider co-ordinating with these agencies to minimise duplication and maximise overall effectiveness.

**Objectivity:** to ensure that decisions are not influenced by reason of ethnicity, gender, disability, sexual orientation, age, class, income, employment status, or religious beliefs of the offender, victim or witnesses.

**Equality:** to ensure that specific consideration is given to meet any special needs of business owners and the public where appropriate. Sensitive consideration will be given where persons involved are children, have a disability or are elderly, infirm or suffering from a mental disorder. Enforcement visits may be made outside normal office hours to meet appropriate public and business needs. Where required, interpreting and translation facilities will be made available in appropriate circumstances for persons whose first language is not English or require information in a 'non standard' format'. The Equality Act 2010 makes it unlawful to discriminate against, harass or victimise any person on the grounds of age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage or civil partnership, pregnancy or maternity in the discharge of an authorised persons powers. This applies to the exercise of powers of entry.

In rare instances we may conclude that a particular principle is outweighed by either the wider public interest or by another of the principles. If this does occur we will ensure that any such decision will be properly reasoned, based on material evidence, and documented.

We will seek to provide Information on our work via 'Lewisham online' at [www.lewisham.gov.uk](http://www.lewisham.gov.uk). This will include information on performance where appropriate.

We strive to carry out our activities in a way that supports those we regulate to comply whilst allowing business to grow:

We will try to ensure that information, guidance and advice is available to help you to meet any legal requirements (see [Helping you to get it right](#)) and to be aware of your rights and entitlements.

When we carry out inspections and other activities to check compliance with legal requirements, we try to target these where we believe they are most needed (see [Inspections and other compliance visits](#)).

We will seek to deal proportionately with breaches of the law as set out in our Enforcement Policy, including taking firm enforcement action when necessary (see [Responding to non-compliance](#)).

We provide a range of services to businesses, including

- Compliance advice
- Weights and measures testing
- Food hygiene registration
- Licensing and registration for the storage & sale of fireworks
- Licensing for street trading
- Licensing for premises to sell alcohol & provide entertainment

Our services to business will be delivered in accordance with the requirements of the [Regulators' Code](#).

We can also provide residents with access to information on relevant rights and obligations. Depending upon the circumstances this may either be directly or via other facilities such as web based information or partner agencies such as Citizens Advice Consumer Service.

#### **4. Working with you**

In all your dealings with us you can expect the following:-

- Politeness & courtesy from officers who will always identify themselves by name in dealings with you, and provide you with contact details and how to discuss any concerns you may have
- An attempt to gain an understanding of how regulated businesses operate and acknowledgement where best practice is in evidence
- In order to help businesses and others we regulate to meet their obligations, advice and information on regulatory legal requirements will be provided in writing on request, where there is a legal requirement to do so, or where an officer may otherwise decide it appropriate.
- Advice given by officers will be given as clearly and simply as possible and by appropriate means. Where possible, we will give reasons why advice provided should be acted upon. Time-scales for action will be given as necessary and appropriate and legal requirements clearly distinguished from general guidance and best practice advice.
- The implications and consequences of failing to comply with legal requirements or act upon advice given will be explained.

- Unless immediate formal enforcement action against a business or individual is considered necessary without notice, officers will provide an opportunity to discuss the matter and, if possible, resolve points of difference.
- Written notice before formal enforcement action will be given where there is a legal requirement to do so or where otherwise considered necessary
- Reasons for immediate enforcement action will be given to business and where necessary we will also account for decisions not to act.
- Where there are formal rights of appeal against enforcement action, clear written details of the appeal mechanism will be given at the time of the action or as soon as possible thereafter. Where no formal rights of appeal exist, details of the Lewisham Council service complaints procedure will be provided but this does not mean that enforcement action will be ceased or suspended should a complaint be made.
- Timescales, expectations and preferred methods of communication will be confirmed with you
- You will be kept informed of progress on any outstanding issues.
- We recognise that businesses may be subject to attention from other regulators and we will do our best to work and liaise with them when reasonable and appropriate to do so.

### **5. Helping businesses to get it right**

Wherever reasonable we want to help your business to be compliant and successful and it is important to us that you feel able to come to us for advice when you need it. We won't take enforcement action just because you tell us that you have a problem. We will make information and guidance on meeting legal requirements available via Lewisham online ([www.lewisham.gov.uk](http://www.lewisham.gov.uk)), business fact sheets & other information sources such as ERWIN ( Everything regulation whenever it's needed) <http://www.everythingregulation.org.uk/Pages/home.aspx> or Trading Standards Business Companion <http://www.businesscompanion.info/>.

Where your business requires advice that is tailored to your particular needs and circumstances we will:

- Discuss with you what is required to achieve compliance
- Provide reliable advice that supports compliance is clear and which can be easily understood and implemented
- Distinguish legal requirements from suggested good practice
- Ensure that any verbal advice you receive is confirmed in writing if requested
- Acknowledge good practice and compliance.

If your business has branches or operates nationally or regionally, we will have regard to any primary or home authority arrangement that may be in place when dealing with you. These are arrangements whereby a particular local authority liaises with the business concerned on behalf of all other local authorities. Please however note that such arrangements do not mean that enforcement action will not be taken where considered appropriate.

Whilst we do not currently charge for advice provided on an individual basis, we do make a charge for attendance at courses we run on topics such as food hygiene and age restricted sales. Costs will be made available either on request or will be provided when courses are advertised.

## **6. Inspections and other compliance visits**

We monitor and support compliance in a number of different ways including through inspections, sampling visits, test purchases, advisory visits and complaint investigations. These visits will always be based on an assessment of the actual or potential risk presented by any breach and the likelihood of it occurring – we won't visit without a reason. Visits will also be made based on suitable intelligence received or collated.

Currently we usually visit businesses unannounced but may give notice of our intention to call if we consider it more practical or appropriate even though we have no obligation to do so.

When we visit you our officers will:

- Explain the reason and purpose of the visit
- Carry their identification card at all times, and present it on request when visiting your premises
- Exercise discretion in front of your customers and staff
- Have regard to your approach to compliance, and use this information to inform future interactions with you
- Provide information, guidance and advice to support you in meeting your statutory obligations, if required
- Provide a written record of the visit if legally required or if otherwise felt appropriate.

Currently we make no charge for inspection or compliance visits. However in the case of visits associated with some alleged statutory nuisances, failure to act to resolve the problem on the part of the person responsible for causing it, may result in a works in default charge being levied if the Council has to engage a contractor to take remedial action. In these instances the person concerned will be made aware of this possibility and where practicable, before the remedial action commences.

## **7. Exercising Powers of Entry, Inspection & Enforcement**

When exercising powers of entry , inspection and enforcement our officers will have regard to the following namely:-

- The specific legislation conferring the power
- The Protection of Freedoms Act 2012 and any code of practice or guidance issued there under
- The Consumer Rights Act 2015 and any code of practice or guidance issued there under
- The Police & Criminal Evidence Act 1984 and any code of practice or guidance issued there under

- Food Law (Code of Practice) England
- Food Law Enforcement (Code of Practice) England
- Any other relevant applicable guidance or code of practice

**Identification:** All officers carry formal photographic identification and are instructed that this must be shown as soon as is practicable when carrying out visits on official duties except in situations when covert operation is required. Identification must be produced to anyone reasonably asking for it and failure to do so constitutes grounds for service complaint. Additionally, in some circumstances, if an officer fails to produce identification, this would give justifiable grounds for objecting to the exercise of their powers until production is forthcoming.

**Rights of entry:** Whilst authorised officers can exercise the right of entry to trade premises at any reasonable time without notice and without a court warrant, when considered appropriate however, or when required by statute, notice of intention to inspect or visit will be given. When visits are made to domestic premises, permission is normally sought from the occupier. Premise occupiers are entitled to receive a notice of their rights when entry to premises takes place.

Warrants to enter business or domestic premises ( by force if necessary) may be obtained and executed to secure evidence or carry out works in default if permission to enter is not granted, or in the officer's opinion, likely to be refused, or if the premises are unoccupied.

Generally, a reasonable time to visit a business premises is considered to be when it is open for business, although there are some exceptions to this (e.g. entry under warrant). Decisions to visit will be based on an assessment of the actual or potential risk presented by any breach and the likelihood of it occurring, or will be based on suitable intelligence.

As well as explaining the reason for any visit, officers will try to reduce any inconvenience their presence may cause bearing in mind the need for them to carry out their duties.

**Officer powers:** Officers are specifically authorised to act on behalf of the Council in respect of each piece of relevant legislation. Authorisations enable officers to exercise responsibilities and powers which the relevant legislation confers. Similarly officers must comply with any obligations and requirements legislation imposes. A schedule of delegated functions is held centrally by the Service and is available for inspection upon application.

Officers will make clear as appropriate which of their powers are exercisable without consent. Where a course of action requires consent, or compliance with a request is voluntary, officers will also make this clear.

The power to seize goods, request production of and to take copies of or seize original documents or other business records exists in certain circumstances [usually on reasonable suspicion that an offence has been committed].

Where powers dependent upon the belief or suspicion of non-compliance are to be exercised, a notice of rights may be issued to the premise occupier or other appropriate person at the time of action or as soon thereafter as possible.

A receipt for any items seized will be issued at the time of action and written confirmation of seizure subsequently provided.

Seized items will be made available for subsequent inspection by the owner if reasonably practical to do so. If not considered practical, written confirmation with reasons will be given. Reasonable steps will be taken to ensure the security, integrity and continuity of items seized

When immediate enforcement action without notice is taken, an explanation of the reasons why will be given at the time and confirmed in writing within 10 working days [5 working days in most cases].

Please note that failure to permit an officer carrying out official duties to enter premises, preventing them from exercising their powers, or failure to provide reasonable co-operation, may constitute obstruction and render you liable to prosecution.

### **8. Responding to non-compliance**

Where we identify any failure to meet legal obligations, we will respond proportionately, taking account of the circumstances, in line with our Enforcement Policy which complements this document

Where we require you to take action to remedy any failings and without prejudice to any associated enforcement action or investigation we will:

- Explain the nature of the non-compliance
- Discuss what is required to achieve compliance, taking into account your circumstances
- Clearly explain any advice, actions required or decisions that we have taken
- Agree timescales that are acceptable to both you and us, in relation to any actions required
- Provide in writing details of how to appeal against any advice provided, actions required or decisions taken, including any statutory rights to appeal
- Explain what will happen next
- Keep in touch with you, where required or as we deem appropriate, until the matter is resolved

### **9. Requests for our services**

We will clearly explain the services that we offer, including details of any fees and charges that apply.

In responding to requests for our services, including requests for advice and complaints about breaches of the law, we will:

- Acknowledge your request within 5 working days
- Tell you when you can expect a substantive response

- Seek to fully understand the nature of your request
- Explain what we may or may not be able to do, so that you know what to expect
- Keep you informed of progress throughout our involvement
- Inform you of the outcome as appropriate

## **10. How to contact us**

You can contact us by:

Telephone: 0208 314 2170

Email: [cleanstreets@lewisham.gov.uk](mailto:cleanstreets@lewisham.gov.uk)

Web: [www.lewisham.gov.uk](http://www.lewisham.gov.uk)

By post: Clean Streets (Enforcement), Wearside Service Centre, Wearside Road, Lewisham, SE13 7EZ

Or in person (by prior appointment only): Address as above

We will seek to work with you in the most appropriate way to meet your individual needs. We can make information available in different formats, and have access to translation and interpretation services.

If you contact us we will ask you for your name and contact details to enable us to keep in touch with you as the matter progresses. We treat all contact with the service in confidence unless you have given us permission to share your details with others as part of the matter we are dealing with on your behalf or there is an operational reason why we need to do so. We will respond to anonymous complaints and enquiries where we judge it appropriate to do so.

Personal data will be managed in accordance with Lewisham Council's Data Protection Policy.

## **11. Working with others**

We do try to work closely with other council services and also other regulatory agencies when possible. Where specialist knowledge is required in an area outside of our expertise we will signpost you to the most appropriate place for advice and guidance. We will share information and data on compliance and risk with other regulators and services, where the law allows, to help target regulatory resources.

## **12. Having your say**

### **Complaints and appeals**

Where we take enforcement action and if there is a statutory right to appeal, we will always tell you about this at the appropriate time.

If it is reasonable we are always willing to discuss with you the reasons why we have acted in a particular way, or asked you to act in a particular way. We manage complaints about our service, or about the conduct of our officers, through Lewisham Council's Corporate Complaints Policy. Details can be found at <http://www.lewisham.gov.uk/mayorandcouncil/Complaints-and-feedback/Pages/complaints-procedure.aspxFeedback>.

### **Feedback**

We are happy to consider feedback from you to help us ensure our service is meeting your needs. We would like to hear from you whether your experience of us has been good or in need of improvement. This helps us to ensure we keep doing the right things and make changes where we need to. You can provide feedback in the following ways:

Telephone: 0208 314 2170

Email: [cleanstreets@lewisham.gov.uk](mailto:cleanstreets@lewisham.gov.uk)

Web: [www.lewisham.gov.uk](http://www.lewisham.gov.uk)

By post: Clean Streets (Enforcement), Wearside Service Centre, Wearside Road, Lewisham, SE13 7EZ

Or in person (by prior appointment only): Address as above

Any feedback that we receive will be acknowledged, considered and responded to.

**Dated:** 15/01/2016

**Name:** Martin Skipper **Job title:** Clean Streets Manager

