

## **London Borough of Lambeth Enforcement Policy Noise and Pollution Control Service**

The Noise and Pollution Control Service is responsible for enforcing the provisions of the following pieces of legislation:

- (a) The Environmental Protection Act 1990
- (b) The Control of Pollution Act 1974
- (c) Noise and Statutory Nuisance Act 1993
- (d) Noise Act 1996
- (e) Public Health Act 1936 (as amended)

In addition to the above, the Noise and Pollution Control Service is frequently consulted to provide comments concerning planning applications and public entertainment licence applications, following submission to the Council for determination. With regard to these applications, the Noise & Pollution Control Service will, where appropriate, recommend the imposition of conditions to any planning consent or entertainment licence under consideration.

Conditions will be only be imposed where they are considered to be:

- (a) Necessary,
- (b) Relevant,
- (c) Enforceable,
- (d) Precise,
- (e) Reasonable

In exercising it's duties, the Noise and Pollution Control Service will enforce the above provisions and will seek to do so in a firm but fair, open, consistent and helpful way, in line with the principles of good enforcement outlined in the **Regulators' Compliance Code**<sup>1</sup> and **The Code for Crown Prosecutors**<sup>2</sup>.

The Regulators' Compliance Code is a Statutory Code of Practice for Regulators and it comes into force on 6<sup>th</sup> April 2008. The Code of Practice contains a number of specific provisions relating to:

1. Economic Progress
2. Risk Assessment
3. Advice and Guidance
4. Inspections and other visits
5. Information requirements
6. Compliance and Enforcement actions
7. Accountability

In embracing these provisions, we will liaise with other enforcement agencies or bodies where there is a shared enforcement role. For example: the Police, other Council departments such as Planning, Licensing Services and Housing Services. It is recognised that some stakeholders will have particular needs e.g. out of hours visits, translation facilities and we will endeavour to accommodate these needs where practicable.

In addition, we aim to carry out our enforcement duties in line with the Council's Policy on **Race Equality**<sup>3</sup>. In doing so we will provide enforcement services to all sections of the

community without prejudice or bias and act promptly if we receive any complaints about the way that services are provided.

We will also review and monitor our services to make sure that they do not discriminate and identify where improvements can be made. We will work with our partners to promote race equalities and share best practice and ensure that partnership initiatives include equality outcomes.

### **What we will do**

1. We will provide clear advice and information on how to comply with any legislation, Code of Practice or Guidance and will explain the positive economic benefits that compliance can bring to businesses.
2. We aim to respond to complaints on a first-come first served basis but we may alter our enforcement activities in favour of any risk-based priorities which may emerge.
3. We will serve Statutory Notices, making clear what steps are being required for compliance.
4. Where there are rights of appeal against Statutory Notices, advice on the appeal mechanism will be clearly set out in writing at the time the notice is served.
5. We will provide advice and information to businesses where appropriate and endeavour to ensure that all our correspondence on enforcement matters is clear and unambiguous.
6. We will carry out our inspections/visits in a professional and timely manner and will explain the reasons for our visits. We will also advise individuals and businesses of a named officer responsible for dealing with their case.
7. We will seek to collect and hold relevant information and data for our records and will endeavour to maintain confidentiality of information received.
8. We will expect full voluntary compliance with Statutory Notices and seek to encourage individuals and businesses to stay within the law. However, we will not hesitate to use enforcement powers, where necessary. This may include the seizure of noise making equipment and the instigation of legal proceedings.
9. We aim to provide an efficient and fair enforcement service incorporating a culture of accountability and transparency. However, in the event that a person or business is not satisfied with the Noise & Pollution Control Service the Council has a formal complaint's procedure for the registering of complaints. Details on how to complain can be obtained from the officer dealing with the case or from our office at 2 Herne Hill Road, London SE24 0AU. Tel: 0207 926 6111. e-mail us at [noise@lambeth.gov.uk](mailto:noise@lambeth.gov.uk) [www.lambeth.gov.uk](http://www.lambeth.gov.uk)

### **Enforcement powers**

We regard enforcement as encompassing all the actions we may take to achieve compliance with the conditions of statutory notices. We will take the appropriate level of

enforcement action within our statutory powers and the framework of this enforcement policy. Enforcement Officers are authorised to take the following courses of action, when dealing with infringements:

	<b>Action</b>	<b>Comment</b>
1.	No action	Generally for unsubstantiated allegations or anonymous complaints.
2.	Verbal advice	General advice given where allegations of nuisance are unsubstantiated.
3.	Warning letters	General advice where allegations of statutory nuisance are unsubstantiated or where immediate action was taken by the alleged offender to abate the nuisance. Warnings are also given where there is insufficient evidence available to establish statutory nuisance or where extenuating circumstances apply.
4.	Service of Statutory Notices e.g. under The Environmental Protection Act 1990 or The Control of Pollution Act 1974, etc.	Served where statutory nuisance has been substantiated, or where formal enforcement action is considered necessary and appropriate.
5.	Prosecution in Magistrate's Court	For substantiated breaches of statutory notices, i.e. where statutory notices have not been complied with. For obstruction of authorised officers carrying out their duties. Prosecution will normally follow a seizure. Prosecutions and seizures will be authorised by the Service Manager.
6.	Seizure of noise making equipment	Where there has been substantiated multiple or repeated breaches of an Abatement Notice. Applications for a court warrant to carry out a seizure will be authorised by the Service Manager.
7.	High Court Injunction	Authorised by Head of Service for serious and persistent breaches of statutory notices in which Summary proceedings in the Magistrate's Court have failed to ensure compliance with a Notice.

#### Enforcement Decision

Each case will be considered on its own facts and merits. The decision on what level of enforcement action is necessary will take into account:

- Environmental impact of offence. We will be more likely to prosecute where the breach of condition has resulted in a serious environmental impact.
- Foreseeability of offence or circumstances leading to it. Where an offence is clearly foreseeable, or where there have been a series of breaches or incidents that the offender is clearly aware of, and has failed to take effective remedial action, we will be more likely to prosecute.
- Intent of the offender individually/corporately. We will be more likely to prosecute where the offender knows that a course of action or inaction is likely to lead to a breach of a statutory notice.
- History of offending. We will be more likely to prosecute where we have evidence of a history of offences, even if these offences are not the subject of legal proceedings e.g. because they are past the legal deadline for bringing an action.
- Attitude of the offender. We will be more likely to prosecute where the offender shows reluctance to take appropriate remedial action to prevent further breaches of statutory notices.

## Presumption to prosecute

Where there is sufficient evidence we will normally prosecute in any of the following circumstances:

- Failure to comply with statutory notices
- Following the seizure of noise making equipment
- Obstruction of Council officers

## Prosecution of company and individuals

Where a company is involved it will be usual practice to prosecute the company. However where individuals have caused offences e.g. of obstruction then we will consider prosecuting those individuals. We will also consider the part played in the offence by directors and managers and action may be taken against such personnel, if appropriate. Where an offence is of special gravity, the Council will consider taking action in the High Court.

## Public information

Details of prosecutions including the offences, verdict and sentence will be entered on the public register. The Council believes that public information about enforcement is important to maintain confidence in the regulatory system and to impress on perpetrators the gravity with which the Council regards offences. It will therefore be our policy to give factual information about prosecutions to the media.

Note:

1. The Regulators' Compliance Code is a Statutory Code of Practice published by the Department for Business, Enterprise & Regulatory Reform. The Code of Practice has been drawn up following consultation with business, the voluntary sector, the enforcement community and consumer groups. It supports the Government's better regulation agenda and provides a basis for fair, practical and consistent enforcement.
2. The Code for Crown Prosecutors is available from: The Crown Prosecution Service, Information Branch, 50 Ludgate Hill, London EC4M 7EX. (Telephone 0207 796 8000).
3. The Environment Directorate's 'Race Equality Policy Statement' has been adopted to demonstrate the Councils' commitment to deliver services appropriate to the needs of our diverse community.