



Public Protection Outbreak Control Enforcement Policy

Document Control

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Author	<i>Andrew Bourlet/Andy Watts</i>
Lead officer	<i>Louise Watkinson</i>
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1. Introduction

- 1.1 This enforcement policy is drawn up in line with the principles of good enforcement outlined in the Enforcement Concordat, the Hampton report and with specific regard to the Regulator's Code (Legislative and Regulatory Reform Act 2006). It takes account of current guidance from the Office of Product Safety and Standards (OPSS), the Health and Safety Executive (HSE), Public Health England (PHE) and COVID-19 guidance issued by HM Government.
- 1.2 This policy sets out how Havering Council will enforce the available legal powers to control a local outbreak of COVID-19. The Authority will aim to ensure the law is applied fairly and consistently, and to tackle offenders in proportion to any crime committed, whilst minimising the impact for the public and businesses.
- 1.3 This policy deals with the practical application of enforcement procedures that will be used. The full range of "Enforcement Options" appears in Appendix 1. An outline of the available formal legal powers appears in the Enforcement Matrix" at Appendix 2.
- 1.4 The Council expects individuals and businesses to comply with the law and proactively manage the risk from COVID-19. This is to ensure that the health of staff and the community are protected.
- 1.5 The overall aim of our enforcement action is to protect public health by:
- Providing information, advice and signposting for individuals and businesses to minimise COVID-19 risks
 - Attempting to change the behaviour of individuals and businesses so they effectively deal with the risks from COVID-19
 - Applying the full range of available legal powers to minimise the risks from COVID-19
 - Providing transparent and consistent regulation
 - Promoting professionalism and resilience amongst businesses seeking legal punishment of those who flout the law;
 - Eliminating financial gain or benefit from non-compliance;
- 1.6 Enforcement action and resources will be applied proportionally based on the seriousness of the offences and risk from COVID-19. Any penalties sought will be for the worst offenders. This means taking legal action where we detect serious or systematic breaches of public protection legislation which give rise to an unacceptable COVID-19 risk.
- 1.7 Where less significant breaches of the law are witnessed and/or the risk to health is lower, we will attempt to resolve problems through the provision of advice and guidance and through informal action or appropriate civil action. This approach will also be adopted where government COVID-19 guidance alone is not being followed. This will enable economic growth for compliant businesses and continued public trust.

A hierarchy of enforcement from very limited up to very strict will be applied.

2. How We Detect and Investigate COVID-19 Risks

- 2.1 Referrals from Havering's Public Health team or Public Health England will be prioritised for investigation.
- 2.2 We will use a combination of intelligence and physical observations to target our proactive and reactive work on those premises that may not be adequately managing the risk from COVID-19.
- 2.3 In the first instance for most cases, individuals and businesses are expected to take their own action to reduce risk of COVID-19 infection transmission using available information and advice from Government sources. This will usually be signposted by Council officers. For less serious or minor matters, we will offer support to enable compliance but take no further direct action.
- 2.4 The Council does not have the responsibility or all the legal powers to deal with every risk from COVID-19. The Council will have close communication with other public bodies to both refer and receive referrals about such risks. The expected links will be with:
- The Metropolitan Police Service for control of public gatherings and to support the execution of legal powers by the Council, for example warrants.
 - The Metropolitan Police Service for enforcement of the wearing of face coverings.
 - The Health and Safety Executive for enforcement for work safety rules in workplaces subject to their control, for example, factories, schools and theatres.
 - Public Health England for individuals failing to self-isolate with the Coronavirus.

2.5 Members of the public can contact the Public Protection Outbreak control Team via email at trading.standards@haverling.gov.uk and via Havering's Contact Centre 01708 432777.

3. General Enforcement Policy

- 3.1 The key principles we will apply to our enforcement activity are
- Consistency
 - Proportionality
 - Openness
 - Transparency
 - Accountability

- 3.2 Consistency: means taking a similar approach in similar circumstances to achieve similar outcomes. It does not mean uniformity, as complaints will be considered on a case-by-case basis and officers will take into account many factors such as the level of risk, culpability of the offender, the history of compliance and actions of those involved.
- 3.3 Proportionality: this means correlating the most appropriate enforcement action to the risks and severity of the offences committed and to deter offenders from repeating the offence and discourage others from committing similar offences. This will ensure that the most serious risks are targeted first.
- 3.4 Openness: means explaining our actions clearly in plain language and discussing compliance failures or problems with anyone experiencing difficulties. A clear distinction will be made between legal requirements and advice or guidance.
- 3.5 Transparency: We will make it clear to those being regulated what their obligations are and give them time to comply where appropriate to do so. The consequences of non-compliance will be made clear. In some instances it may be necessary to secure urgent compliance with notices etc. for example if public health and safety is a concern.
- 3.6 Accountability: all officers of the Council will be fair, open, and courteous and will identify themselves by name and job role. Identification cards will be shown when making visits in person. Where cases have been referred for further legal action, all decisions will be accurately recorded and justified on why that action has been taken.
- 3.7 We will ensure that Officers have the necessary knowledge and skills to support those they regulate, including having an understanding of those they regulate, which will enable them to choose proportionate and effective approaches. This is a particular challenge in the current COVID-19 circumstances but important and urgent actions to control the risk from the coronavirus should not be unduly delayed.
- 3.8 We will endeavour to provide general information, advice and guidance to make it easier for individuals and businesses to understand and meet their regulatory obligations. We will also attempt to signpost those who have more complex questions or require legal advice. Such information will normally be provided via the Council's or Government's websites.
- 3.9 A significant health impact is related to the existence of COVID-19 hazards as identified by competent Officers, the Public Health team and Public Health England.
- 3.10 All information obtained will be treated in confidence and in accordance with the Data Protection Act 2018 and the General Data Protection Regulations. The Council operates secure mechanisms to share information with other internal and external agencies and law enforcement bodies for the purposes

of public protection and law enforcement as permitted under the Act and Regulations.

- 3.11 To ensure consistency and adherence to the enforcement policy, internal procedures will be put in place to ensure legal actions are monitored and reviewed.
- 3.12 A hierarchical list of enforcement options for the Council can be found in Appendix 1. The enforcement matrix in Appendix 2 provides a summary of the legal powers available to the Council at the time of writing.
- 3.13 This policy will be applied in all situations pertinent to the legal powers available to the Council. This includes those relating to local delivery of any component the NHS Test and Trace service and any requirement for an individual to self-isolate.

4. Indemnity of inspectors

- 4.1 Situations may arise when action is brought against an inspector arising out of their inspectorial duties under the Health and Safety at Work etc. Act 1974. Under the Act it is the individual inspector who can take legal action in respect of any breaches of health and safety legislation, rather than the Council. Under Section 26 of the Health and Safety at Work Act 1974, local authorities may indemnify the inspector providing they are satisfied the act complained of was honestly believed to be within the powers of the inspector and that their duty as an inspector required or entitled them to do it.
- 4.2 The power to indemnify becomes operative, "Where an action has been brought against an inspector in respect of an act done in the execution or purported execution of any of the relevant statutory provisions and the circumstances are such that he is not legally entitled to require the enforcing authority which appointed him to indemnify him...."
- 4.3 It is the policy of this Authority to indemnify inspectors appointed under the Health and safety at Work etc. Act against the whole of any damages and costs or expenses which may be involved, where the inspector honestly believed that the act complained of was within their powers and that their duty as an inspector entitled them to do it, providing the inspector was not wilfully acting against instructions.

5. Complaints, Feedback or Compliments

- 4.1 Those persons and individuals who are regulated by this Service should expect that they will be dealt with professionally and in a manner in accordance with the Council's code of conduct for officers.
- 4.2 In the event that an individual or company is not satisfied with the service or if not in agreement with the action taken by the investigating officer or wish to

give feedback about the service they have received, they should first contact the front-line enforcement officer with whom they have been in contact.

- 4.3 Compliments should be made in the same way.
- 4.4 If this does not resolve the complaint, the Council also has a formal [Corporate Complaints](#) system accessible at www.havering.gov.uk or by calling 01708 434343, or in writing at:

Complaints and Member Enquiries
London Borough of Havering
Town Hall
Main Road
Romford, Essex
RM1 3SL

- 4.5 Complaints can still be made in cases where the Council has instigated legal proceedings. However, making a complaint will not stop any impending legal action, and a full response may not be available until the legal action or appeal has ended.
- 4.6 Where statutory notices have been served, making a complaint does not replace your statutory rights of appeal or your right to make representation. Nor does it allow extra time to comply with any notice.
- 4.7 If individuals and businesses disagree with a statutory notice then they should take action specified in the notice to make an appeal, if any exist. Notes on appeal accompany all notices.
- 4.8 If a summons or directions have been issued by a Court or Tribunal, individuals and businesses must continue to follow these. As with all cases where legal action is being taken, it is strongly recommended that legal advice is sought.

6. Equalities

- 5.1 It is recognised that older people, individuals from a BAME background and those with an impaired immune system are more susceptible to serious illness following COVID-19 infection. Appropriately robust enforcement will particularly benefit people with those characteristics.
- 5.2 It is anticipated that micro-businesses are disproportionately operated by people from a BAME background. The essence of this policy is that enforcement will be applied consistently, openly, transparently, and in proportion to risks. Accountability is provided through management oversight and the complaints procedure.
- 5.3 Where people do not have English as a first language interpreting services can be made available to ensure genuine communication.

7. Publicity

- 6.1 The public will be informed about our enforcement regimen in conjunction with the Council's COVID-19 Outbreak Control Plan.
- 6.2 We also will look to publish certain enforcement actions in the following cases:
- The issue is a serious one or has significant risk to public health;
 - Coverage will assist in securing compliance by other individuals and businesses;
 - It is in the public interest to demonstrate the Council's actions
 - To inform the public about possible risks and so enable them to make informed choices;
 - To draw the attention of businesses to particular issues or hazards;
 - To support other local authorities and regulatory partners in their enforcement efforts;
 - The offence is serious and/or was committed wilfully and the Council wishes to draw attention to their willingness to take a hard line in such cases;
 - A press release will also be issued about convictions in a timely manner;
 - Media coverage will not be sought where the primary motive is to cause damage to the subject, the matter is *sub judice*, or otherwise not in the public interest.

8. Further Information

- 7.1 More information on our service, please go to the webpage at www.havering.gov.uk
- 7.2 General sources of information about COVID-19
- [UK Government](#)
- 7.3 Sources of information for officers include:
- [Knowledge Hub library](#)
 - [Health and Safety Extranet](#)
 - [PHE guidance](#)
- 7.4 Sources of information for individuals and businesses include:
- [OPSS COVID-19 guidance for businesses](#)
 - [Health & Safety Executive](#)
 - [Business That Must Remain Closed](#)

APPENDIX 1: Enforcement Options

Action	Circumstances
1. Guidance and Signposting action	<ul style="list-style-type: none"> Where referral to sources of advice and assistance outside of an enforcement framework are likely to provide the best outcome. Contraventions are relatively minor and remedied by the time officers become involved. Where referral to the Police, Health & Safety Executive, Public Health England or other enforcement body is the most appropriate or effective means of tackling the root cause.
2. Verbal or written advice	<ul style="list-style-type: none"> Where individuals or businesses are contravening because they lack understanding, and no significant health risks are present, or likely to be present, which pose a risk to health.
3. Verbal or written warnings	<ul style="list-style-type: none"> Where individuals or businesses are contravening not solely because they lack understanding. Significant health risks are present, or likely to be, present. Verbal warnings should be followed up with written confirmation.
4. Formal Action, including statutory notices/orders	<ul style="list-style-type: none"> Where there is obstruction of an officer fulfilling their duties. There is a lack of confidence or willingness in the individual or management to respond to an informal approach. Warnings for previous failures of statutory requirements related COVID-19 security have been issued. There are currently significant failures of statutory requirements related COVID-19 security. Previous advisory notices/letters ignored or action was not taken in a timely manner or to the correct standard in any regulatory matter. The Council is legally required to take such formal action, e.g. serve a statutory notice. Prohibition Notices under the Coronavirus Regulations to deal with business that should not be open are likely to be less and less relevant unless a new lockdown is needed. Closure Notices, where authorised, necessary and appropriate, in consultation with the Director of Public Health in cases of serious and imminent threat to Public Health. Licensed premises may be subject to a Closure Notice Crime & Policing Act used where emergency prohibition powers are not needed or unavailable. Fixed Penalty Notices may be used as an alternative or precursor to prosecution.
5. Revocation, Refusal or Review of Licence.	<ul style="list-style-type: none"> Used where the threat to a licence may be effective in securing compliance. The time taken to review a licence does not make it suitable where immediate action is required and the threat is ignored.

6. Use of Emergency Powers	<ul style="list-style-type: none"> • Used to restrict access to, or close, individual premises, prohibit certain events (or types of event) from taking place, restrict access to, or close, public outdoor spaces (or types of outdoor public places) where is a serious and imminent risk to the health of the business's staff or the public, the action is necessary and proportionate and with the agreement of the Director of Public Health. • Closure Notices under alcohol licensing law should be considered for licensed premises. • Prohibition Notices under the Health and Safety at Work Act should be used where no other more effective or appropriate emergency power is available.
	<ul style="list-style-type: none"> • Powers to detain non-compliant COVID-19 cases under Part 2 Orders under Section 45(G) of the Public Health (Control of Disease) Act 1984 are available but likely to be used only in extreme circumstances. • Other enforcement actions may be used alongside emergency powers.
7. Formal (Simple) Caution	<ul style="list-style-type: none"> • This may be offered as an alternative to a financial penalty or a prosecution for very low-level offending where there has been an admission to an offence it is appropriate to do so in line with the Home Office Guidance on Simple Cautions and The Code of Crown Prosecutors.
8. Prosecution	<ul style="list-style-type: none"> • In the most serious cases the threat of prosecution may have to be used but is a poor form of motivation on its own because of the time taken to prepare the documentation and get to court. Legal tests under the 'Code for Crown Prosecutors' must be passed: i) evidential stage and ii) public interest stage. • At the charging stage, there must be 'a realistic prospect of conviction'. • Once the case is issued in Court, if the case is contested, the Authority must prove the case 'beyond reasonable doubt'.
9. Proceeds of Crime	<ul style="list-style-type: none"> • This is a potential process for sequestering the profits from criminal activity involving Trading Standards under the Proceeds of Crime Act 2002 or other associated legislation. COVID-19 offences are very unlikely to warrant such action.
10. Use of investigatory Powers	<ul style="list-style-type: none"> • The Police and Criminal Evidence Act 1984 and related codes provide the framework for investigation. • The use of directed surveillance may be necessary and will be cleared under the existing RIPA procedure. • Each area of regulatory law will have its own powers of entry, collection of evidence and enforcement so existing enforcement procedures and policies in each area will apply.

APPENDIX 2: Enforcement Matrix

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