

London Fire & Emergency Planning Authority ("the Authority")

ENFORCEMENT POLICY STATEMENT

1 INTRODUCTION

- 1.1 This policy statement sets out the general principles that the London Fire and Emergency Planning Authority ("the Authority") intends to follow in relation to the enforcement of fire safety legislation. The Authority will apply the principles of good enforcement as set out in the Government's 'Enforcement Concordat' which the Authority has adopted.
- 1.2 In order for enforcement to be fair and open it is important that the basis on which the Authority takes action is made known to all those concerned. The intention of stating this Enforcement Policy is to tell both the public and businesses what happens when premises are found not to comply with fire safety legislation. All enforcement action will be taken in accordance with the principles of this policy. The policy is published on the Authority's corporate internet website at www.london-fire.gov.uk.

2 THE AUTHORITY'S PRINCIPAL AIM

- 2.1 The Authority's principal aim is to make London a safer city by reducing as far as possible the risks and social and economic costs of fires and other dangers. Securing compliance with legal regulatory requirements is an important part of achieving this aim.

3 STATUTORY FIRE SAFETY RESPONSIBILITIES

- 3.1 The Authority's statutory responsibilities require it to enforce fire safety legislation, as well as providing information and advice on fire safety matters to anyone requesting it. In order to discharge this responsibility the Authority employs dedicated Fire Safety Inspecting Officers, Petroleum Inspectors and additional administrative support staff who work in Borough Teams at locations throughout London.
- 3.2 The fire safety legislation under which the Authority has enforcement powers can be summarised as follows:
- **Regulatory Reform (Fire Safety) Order 2005** – Provides for minimum fire safety requirements in virtually all premises other than single private dwellings.
 - **Fire Precautions (Sub-surface Railway Stations) Regulations 1989** - Regulate fire precautions in certain underground and low level railway stations. The stations concerned have a railway platform which is below ground level and is wholly or mainly enclosed in a tunnel or building.
 - **Petroleum (Consolidation) Act 1928 and Health and Safety at Work Etc., Act 1974** - Licensing of places where petroleum is kept to ensure appropriate safety standards are maintained.
 - **Dangerous Substances and Explosive Atmospheres Regulations 2002 (DSEAR)** - These regulations require employers to carry out risk assessments, and take appropriate action, to ensure the safety of those exposed to dangerous substances and/or explosive atmospheres.
 - **Construction (Health, Safety and Welfare) Regulations 1996** - Fire precautions on construction sites. Fire authorities enforce in respect of construction sites forming part of an occupied building.

4 DEFINITION OF ENFORCEMENT

- 4.1 The enforcement options available will differ according to the legislation and the circumstances. It may include visits, verbal and written advice, informal action, the service of statutory notices, prohibitions, formal cautions and prosecution.

5 PRINCIPLES OF ENFORCEMENT

5.1 The Authority believes in firm but fair regulation. In dealing with those it regulates, the Authority will seek to secure co-operation avoiding bureaucracy, conflicting advice or excessive cost. It encourages individuals and businesses to take responsibility for minimising the risks within their premises and to integrate the principles of risk assessment within their normal working and management methods.

5.2 The Authority has adopted and aims to apply, the principles of the Government's Enforcement Concordat. These principles can be summarised under the following headings; the full text of the Concordat is attached as Appendix A to this Policy Statement.

- Standards
- Openness
- Helpfulness
- Complaints about service
- Proportionality
- Consistency

6 TARGETTING

6.1 The Authority aims to make sure, through targeting, that the direction of regulatory effort has regard to the level of risk. Action will be primarily focused on those directly responsible for the risk and who are best placed to control it. The Authority has systems for prioritising regulatory effort. They include a risk based reinspection programme and localised plans to identify high risk premises.

7 ACCOUNTABILITY

7.1 Regulators are accountable to the public for their actions. This means that enforcing authorities must have policies and standards against which they can be judged (such as those outlined in this Policy Statement and the Authority's Equalities policy), and an effective and easily accessible mechanism for dealing with comments and handling complaints. The Authority's 'Compliments and Complaints procedure' is explained fully in a leaflet that is available from Borough Team offices or our website <http://www.london-fire.gov.uk/>. Having a published and publicised procedure helps to demonstrate to the public that we take their comments seriously. They can help highlight potential problems and help us to build on the things that we do well.

8 HUMAN RIGHTS AND OTHER STATUTORY COMPLIANCE

8.1 All enforcement action will be carried out in a manner which complies with the Human Rights Act 1998 and the requirements of other legislation. Officers will also comply with all relevant codes of practice, unless a code is not mandatory and there are good reasons which justify non-compliance.

9 THE USE OF FORMAL ACTION

9.1 Before formal enforcement action is taken officers will provide an opportunity to those who are responsible for complying to make representations and, where possible, resolve points of difference, save where the situation is so serious that immediate action is necessary. Where immediate action is taken to prohibit or restrict the use of a premises this will be explained in writing to the relevant party/parties normally within 24 hours. Where rights of appeal exist against formal action the Authority will clearly state this, with advice on the appeal process.

10 DECISIONS ON ENFORCEMENT ACTION

10.1 The Authority will take steps to ensure that legislation is enforced in an impartial way. Some decisions about enforcement action are taken by the officers who inspect the premises in accordance with their authority and in consultation with more senior colleagues if appropriate. Particularly serious action, such as prohibiting or restricting the use of premises or part of a premises, can only be authorised by

identified senior officers. Decisions to caution or prosecute are taken by the Head of Legal Services, or a senior legal colleague, following a recommendation by the Assistant Commissioner (Statutory Fire Safety) or a senior colleague.

11 ENFORCEMENT OPTIONS

11.1 Choice of enforcement approach:-

- Educate and inform
- Statutory notice identifying the nature of the corrective action needed
- Formal caution
- Prosecution
- Prohibition /restriction of use
- Referral to other agencies

11.2 In deciding what action to take to ensure compliance with the law, the Authority considers the following :

- The nature and seriousness of any alleged offence/s;
- The risk of death or serious injury;
- Previous experience and record of compliance of the responsible person ;
- Action taken to prevent any recurrence;
- The likely effectiveness of the various enforcement options;
- Any explanation offered and the circumstances and attitude of the responsible person;
- Any statutory defence available

12 EDUCATE AND INFORM

12.1 When a breach of the law is found, a verbal or written warning may be given. Officers may also give advice. Where advice is not mandatory this will be made clear.

13 REGULATORY NOTICE

13.1 Regulatory notices calling for corrective action would generally be used where there is a clear breach of the law, where the degree of risk or harm from the situation is significant and where a remedy needs to be identified and secured within a set period of time. Notices specify the problem and either require a remedy as determined by officers or (if the legislation allows) allow for other action with an equivalent remedial effect. In most cases there is a right of appeal against a notice and, where there is a right of appeal, advice on the appeal mechanism will be set out in writing.

14 FORMAL CAUTION

14.1 A formal caution is likely to be appropriate only where there has been a significant contravention of the law, giving rise to a potential risk of death or serious injury. There are three preconditions, which must be satisfied before a formal caution is administered:

- There is sufficient evidence to provide a realistic prospect of conviction and
- The offender admits his or her guilt and
- The offender agrees to being cautioned, having been made aware that the caution may be cited in court in the case of future offending.

14.2 The offender must be given a full explanation of the significance of the caution before being allowed to accept it, as a formal caution is an admission of guilt to a criminal offence and is recorded as such. It may be cited if the offender is found guilty of the same or a similar offence within three years of the original offence. If a formal caution were to be offered and refused by the offender then a prosecution would be considered.

15 PROSECUTION

- 15.1 The decision to prosecute is a serious step. Fair and effective prosecution forms a legitimate element of the Authority's strategy to reduce the risk of death and injury in the workplace by enforcing fire safety law. Any prosecution has serious implications for all involved – the person prosecuted, casualties, witnesses and Authority personnel. The Authority will apply the guidance set out below so that the Authority can make fair and consistent decisions about prosecutions. The decision to prosecute is taken by the Head of Legal Services, or a senior legal colleague, in consultation with the Assistant Commissioner (Statutory Fire Safety) or a senior colleague.

16 GENERAL PRINCIPLES

- 16.1 Each case is unique and must be considered on its own facts, but there are general principles that apply in all cases.
- 16.2 Officers will be fair, independent and objective when considering enforcement action and will not let their personal views cloud their judgement.
- 16.3 The Authority will ensure that the correct individual and/or company is prosecuted for the correct offence/s.
- 16.4 The Authority is a Public Authority for the purposes of the Human Rights Act 1998 and will apply the principles of the European Convention on Human Rights in accordance with the Act, as it does in all of its enforcement activity.

17 THE TESTS

- 17.1 There are two tests the Authority uses in taking the decision to prosecute. The first test is the evidential test. If the case does not pass the evidential test, it cannot go ahead. If the case does meet the evidential test the Authority will then decide whether a prosecution is in the public interest. The second test is the public interest test. The Authority will satisfy itself that the case meets both tests before proceeding with a prosecution.

18 THE EVIDENTIAL TEST

- 18.1 The Authority has to be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against the defendant on each charge. In doing so, the Authority will consider whether the evidence can be used and is reliable. A realistic prospect of conviction is an objective test. It means that a court, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged.

19 THE PUBLIC INTEREST TEST

- 19.1 The public interest will be considered in each case where there is sufficient evidence to provide a realistic prospect of conviction. The Authority will balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute are set out in paragraph 11.2 above, but usually depend on the seriousness of the offence or the circumstances of the offender.

20 PROHIBITION/RESTRICTION

- 20.1 The Authority has powers under Article 31 of the Regulatory Reform (Fire Safety) Order 2005 and Sections 21 and 22 of the Health and Safety at Work etc Act 1974 to prohibit the use of the whole or part of premises or restrict the use of premises. Such action will be considered where conditions are found that constitute a serious risk to life or injury to persons in the event of fire. Where immediate action is necessary an explanation of why such action is required will be given at the time and confirmed in writing. Where there are rights of appeal these will be clearly set out in writing at the time the action is taken.

21 REFERRAL TO OTHER AGENCIES

21.1 Where other Health and Safety enforcing authorities may have a regulatory interest in particular premises then details will be forwarded to the appropriate agency, for example if apparently dangerous conditions or practices (not related to fire) are noted in a workplace.

22 CONFIDENTIALITY

22.1 The Authority will not disclose to others information officers obtain in the course of their work, unless the law allows (or requires) it to do so.

22.2 The Authority will ensure that the identity of persons contacting it, and any information supplied by them, is not revealed to a third party except:

- Where the law requires
- Where the case goes to court or tribunal, or
- With the prior agreement of the person supplying the information

23 PROMOTING FIRE SAFETY

23.1 The Authority endeavours to promote the requirements of fire safety legislation as widely as possible so that those who have associated statutory responsibilities are aware of what they need to do. This is done by answering general enquiries in the office and on site and producing guidance material in various formats. The Authority is also developing partnership links with other enforcing authorities, such as the London Boroughs and the Health and Safety Executive, and industry. Through partnership working it aims to facilitate a consistent approach on enforcement matters and to raise a greater awareness of fire safety issues and risk assessment processes.

23.2 In pursuing Quality Assurance and Best Value principles the Authority consults those we regulate, to get feedback on people's attitude to the work it does. The results of these consultation initiatives can be used to improve its procedures or confirm that existing methods of working are satisfactory.

24 WHAT YOU CAN EXPECT FROM LFEPa STAFF

24.1 You are entitled to expect our staff:

- To give a courteous and efficient service
- To identify themselves by name (and produce identification)
- To provide a contact point for any further dealings
- To give clear advice
- To confirm in writing the result of a visit and on request to detail informal advice, explaining why action is required and over what time scale
- To distinguish clearly between what you must do to comply with the law and what is recommended best practice
- To minimise the cost of compliance and respect Human Rights by not requiring action unless it is proportionate to the risk involved
- To give you reasonable time to comply (unless immediate action is necessary in the interest of safety)
- To notify you if the matter is reported for consideration of legal proceedings
- In case of dispute to advise you of the procedure for making a complaint or representations
- To maintain confidentiality

ENFORCEMENT CONCORDAT

The Principles of Good Enforcement: Policy and Procedures

This document sets out what business and others being regulated can expect from enforcement officers. It commits us to good enforcement policies and procedures. It may be supplemented by additional statements of enforcement policy.

The primary function of central and local government enforcement work is to protect the public, the environment and groups such as consumers and workers. At the same time, carrying out enforcement functions in an equitable, practical and consistent manner helps to promote a thriving national and local economy. We are committed to these aims and to maintaining a fair and safe trading environment.

The effectiveness of legislation in protecting consumers or sectors in society depends crucially on the compliance of those regulated. We recognise that most businesses want to comply with the law. We will, therefore, take care to help business and others meet their legal obligations without unnecessary expense, while taking firm action, including prosecution where appropriate, against those who flout the law or act irresponsibly. All citizens will reap the benefits of this policy through better information, choice, and safety.

We have therefore adopted the central and local government Concordat on Good Enforcement. Included in the term "enforcement" are advisory visits and assisting with compliance as well as licensing and formal enforcement action. By adopting the concordat we commit ourselves to the following policies and procedures, which contribute to best value, and will provide information to show that we are observing them.

Principles of Good Enforcement: Policy

▪ Standards

In consultation with business and other relevant interested parties, including technical experts where appropriate, we will draw up clear standards setting out the level of service and performance the public and business people can expect to receive. We will publish these standards and our annual performance against them. The standards will be made available to businesses and others who are regulated.

▪ Openness

We will provide information and advice in plain language on the rules that we apply and will disseminate this as widely as possible. We will be open about how we set about our work, including any charges that we set, consulting business, voluntary organisations, charities, consumers and workforce representatives. We will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.

▪ Helpfulness

We believe that prevention is better than cure and that our role therefore involves actively working with business, especially small and medium sized businesses, to advise on and assist with compliance. We will provide a courteous and efficient service and our staff will identify themselves by name. We will provide a contact point and telephone number for further dealings with us and we will encourage business to seek advice /information from us. Applications for approval of establishments, licenses,

registrations, etc, will be dealt with efficiently and promptly. We will ensure that, wherever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

- **Complaints about service**

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

- **Proportionality**

We will minimise the costs of compliance for business by ensuring that any action we require is proportionate to the risks. As far as the law allows, we will take account of the circumstances of the case and the attitude of the operator when considering action. We will take particular care to work with small businesses and voluntary and community organisations so that they can meet their legal obligations without unnecessary expense, where practicable.

- **Consistency**

We will carry out our duties in a fair, equitable and consistent manner. While inspectors are expected to exercise judgement in individual cases, we will have arrangements in place to promote consistency, including effective arrangements for liaison with other authorities and enforcement bodies through schemes such as those operated by the Local Authorities co-ordinating Body on Food and Trading Standards (LACOTS) and the Local Authority National Type Approval Confederation (LANTAC).

Principles of Good Enforcement: Procedures

- Advice from an officer will be put clearly and simply and will be confirmed in writing, on request, explaining why any remedial work is necessary and over what time-scale, and making sure that legal requirements are clearly distinguished from best practice advice.
- Before formal enforcement action is taken, officers will provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference, unless immediate action is required (for example, in the interests of health and safety or environmental protection or to prevent evidence being destroyed).
- Where immediate action is considered necessary, an explanation of why such action was required will be given at the time and confirmed in writing in most cases within 5 working days and, in all cases, within 10 working days.
- Where there are rights of appeal against formal action, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken (whenever possible this advice will be issued with the enforcement notice).