PH&PP Policy Statement on Enforcement

Introduction

1.1. This policy statement covers all the regulatory activity undertaken by the following services in the Port Health & Public Protection Service (PH&PP):-

a) Environmental Health;
b) Trading Standards;
c) Port Health;
d) Animal Health; and
e) Licensing.

1.2. The City of London Corporation's Corporate Plan 2018-2023 has three strategic aims:-

- ***Contribute to a flourishing society***
- ***Support a thriving economy***
- ***Shape outstanding environments***

and the corporate outcomes that Port Health & Public Protection aim to impact on are:

- **Outcome 1:** People are safe and feel safe.
- **Outcome 2:** People enjoy good health and wellbeing.
- **Outcome 4:** Communities are cohesive and have suitable housing and facilities.
- **Outcome 6:** We have the world's best regulatory framework and access to global markets.
- **Outcome 7:** We are a global hub for innovation and enterprise.
- **Outcome 8:** We attract and nurture relevant skills and talent.
- **Outcome 10:** Our physical spaces have clean air, land and water and support a thriving and sustainable natural environment.

1.3. The PH&PP Service subscribes to the principles and objectives of the statutory Code of Practice for Regulators (the Code) made under the Legislative and Regulatory Reform Act 2006. We believe that all enforcement should be risk based and proportionate.

1.4. In certain instances, we may conclude that a provision in the code is either not relevant or is outweighed by another provision such as the many Technical Notes, Codes of Practice and guidance issued by national regulators and Government agencies and departments. We will ensure that any decision to depart from the code is properly reasoned, evidence based and documented.

1.5. Included in the term enforcement are the ways we deal with businesses and others in an advisory capacity in addition to licensing and formal enforcement action

1.6. The PH&PP Service aims to apply the law in a proportionate and transparent manner and in all our choices of enforcement actions we will comply with the principles of the Regulators Code.

2. The purpose and method of enforcement

2.1. The ultimate purpose of PH&PP's regulatory services is to ensure that that those responsible for complying with legislation manage and control risks effectively, thus preventing harm. The term 'enforcement' has a wide meaning and applies to all dealings between PH&PP's regulatory services, those it regulates and those on whom the law places duties.

2.2. The purpose of enforcement is to:

a) ensure that businesses take action to deal immediately with serious risks;
b) promote and achieve sustained compliance with the law;
c) ensure that businesses who breach legislative requirements, and directors, employees or managers who fail in their responsibilities, may be held to account, which may include bringing alleged offenders before the courts, in the circumstances set out later in this policy.

2.3. From the point of view of our customers and stakeholders who we are here to protect, enforcement can be summarised as:-

a) stopping the problem and ensuring that it does not recur; and
b) ensuing that everything is ok – e.g. food hygiene or when they buy something or a service

whilst allowing compliant business to trade freely and helping them trade well – i.e. safely and fairly - and not be disadvantaged by rogue traders.

2.4. Enforcement is distinct from civil claims for compensation and is not undertaken in all circumstances where civil claims may be pursued, nor is its purpose to assist such claims. It does however include civil sanctions as detailed later in this Policy.

3. The principles of enforcement

3.1. PH&PP believes in the firm but fair enforcement of all the legal requirements that it enforces. This enforcement should be informed by the principles of:-

a) ***proportionality*** in applying the law and securing compliance

and considering whether prosecution is proportionate to the likely outcome[1]

b) maintaining a ***consistency of approach***;
c) ***targeting*** of all enforcement action where it is most needed;
d) ***transparency*** about how we as a regulator operate and what those whom we regulate can expect; and
e) ***accountability*** for our actions.

These principles apply both to enforcement in particular cases and to enforcement activities as a whole.

Proportionality

3.2. Proportionality means relating enforcement action to the risks[2]. Those who the law protects and those on whom it places duties expect that any action taken by the PH&PP's regulatory services to achieve compliance and/or bring people to account for non-compliance should be proportionate to the seriousness of any breach with respect to:-

a) any risks to health, safety, environmental damage or economic advantage gained; and
b) the severity of any actual or potential harm arising from such; and
c) the likelihood of any such harm recurring.

Intelligence-led Interventions

3.3. Intelligence-led Interventions (or Targeting) means making sure that contacts and interventions, particularly pro-active ones:-

a) are aimed primarily at those whose activities giving rise to the most serious risks of non-compliance or where the hazards are least well controlled; and that
b) action is focused on those who are responsible for compliance and risk control and who are best placed to control it – be they employers, manufacturers, suppliers, or others.

3.4. PH&PP's regulatory services have processes in place by which inspections, investigations or other regulatory contacts are prioritised according to the nature and extent of risks posed by each business' operations and any other information and intelligence received regarding the levels of complaints about that business. Their management competence is important because a relatively low hazard business poorly managed can entail greater risk to workers or the public than a higher hazard business where proper and adequate risk control measures are in place.

1 Taken from the current The Code for Crown Prosecutors
2 In this policy, 'risk' (where the term is used alone) is defined broadly to include any source of possible risk.

3.5. All enforcement action will be directed against those responsible for such breaches. This may be employers in relation to workers or others exposed to risks; companies, partnerships, sole traders and the self-employed; owners of premises; designers or clients of projects, directors and employees. Where there are several parties who each have responsibilities, PH&PP's regulatory services may take action against more than one when it is appropriate.

3.6. In deciding what enforcement action to take against an offender we will have regard to the following aims:

a) to change the behaviour of the offender; and/or
b) to eliminate any financial gain or benefit from non-compliance; and/or
c) to be responsive and consider what is the most appropriate sanction for the particular offender and the regulatory issue concerned; and/or
d) for the action to be proportionate to the nature of the offence and the harm/potential harm cause; and/or
e) to restore the harm caused by regulatory non-compliance, where appropriate; and/or
f) to deter future non-compliance.

Consistency

3.7. Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends.

3.8. Businesses are entitled to expect a consistent approach from officers in the same regulatory service in the advice they tender, their issue of enforcement notices, their decisions on whether to prosecute and in the response to incidents.

3.9. PH&PP recognises that in practice, consistency is not a simple matter and its officers are faced with many variables including the degree of risk, the attitude and competence of management, any history of incidents or contraventions involving the business, any previous enforcement action, and the seriousness of any breach, which includes any potential or actual harm arising from a breach of the law.

3.10. Decisions on enforcement action are discretionary, involving judgement by the officer and PH&PP has arrangements in place to promote consistency in the exercise of discretion, including effective arrangements for liaison and Continuous Professional Development (CPD) amongst professional peer groups across the range of regulatory services.

Transparency

3.11. Transparency means helping businesses to understand what is expected of them and what they should expect from PH&PP's regulatory services. It also

means making clear to businesses not only what they have to do but, where this is relevant, what they don't. That means clearly distinguishing between statutory requirements and advice or guidance about what is desirable but not compulsory.

3.12. Transparency also involves PH&PP's regulatory services in having arrangements for keeping employees, their representatives, and victims of incidents or their families and complainants informed whenever possible as to the latest developments in their particular case. However, such arrangements must have regard to legal constraints and requirements concerning the non-disclosure of evidence or matters prior to any court appearance or hearing.

3.13. This policy statement sets out the general policy framework within which PH&PP's regulatory services operate. The public, businesses, employees, their representatives and others also need to know what to expect when an officer calls and what rights of complaint are open to them and for this our complaints procedures are set out on City of London Corporation's website.

3.14. When officers offer businesses or the public information, or advice, face-to-face or in writing, including any warning, they will tell the business or individual what to do to comply with the law, and explain why. Officers will write to confirm any advice, and to distinguish legal requirements from best practice advice.

3.15. In the case of enforcement notices, the officers will discuss the notice and, if possible, resolve points of difference before serving it. Many notices have a statutory right of appeal to a court in the event that the recipient does not accept the requirements of the notice or feels that it should have been served on some other person/business and so it is imperative that the details are correct and clear and in accordance with the principles of this Policy Statement.

3.16. The notice will specify what needs to be done, why, and by when, and that in the officer's opinion a breach of the law has been committed. In the case of any prohibition type notice which have the effect of immediately stopping activity or operations, the notice will explain why the prohibition is necessary.

3.17. If regulatory compliance can be achieved by the procurement of services of which the City of London Corporation currently provides, those being regulated will be directed to the appropriate Department or Service, whilst advising them the City of London Corporation is not the only provider and that they have no obligation to procure any services provided by the City of London Corporation over any other provider – e.g. refuse collection services, commercial waste.

Accountability

3.18. Regulators are accountable to the public for their actions as outlined in the Regulators' Compliance Code. This means that local authorities such as the City of London Corporation have policies and standards (such as the five enforcement principles above) against which they can be judged and have an effective and easily accessible mechanism for dealing with comments and handling complaints.

4. Undertaking Investigations

4.1. PH&PP's regulatory services undertake investigations in order to determine:

a) sources of complaint – e.g. statutory nuisance, unfair trading
b) causes of accidents and potential risks to prevent them recurring;
c) whether action has been taken or needs to be taken to prevent a recurrence and to secure compliance with the law;
d) lessons to be learnt and to influence the law and guidance; and
e) what response is appropriate to a breach of the law.

4.2. To maintain a proportionate response, most resources available for investigation of incidents and complaints will be devoted to the more serious circumstances.

4.3. Complaints or reports of environmental nuisance, unfair trading, work-related deaths, injuries or occupational ill-health are all investigated but in deciding the level of resources to be deployed, the regulatory service in question will take account of the following factors:

a) the severity and scale of potential or actual harm;
b) the existence of any continuing risk or breach of the law;
c) the business's past performance in complying with relevant legal responsibilities;
d) the current enforcement priorities of the relevant PH&PP regulatory service;
e) the practicality of achieving results including any evidential gap;
f) the wider relevance of the event, including serious public concern and interest; and
g) the vulnerability of any group affected.

5. Forms of Action

5.1. Following an investigation, the range of enforcement options available to PH&PP includes the following: -

a) **No action** - in certain circumstances e.g. where the detrimental impact on the community is small, contravention of the law may not warrant any action.
b) **Indirect action** - including referral to another authority or agency for information or follow-up action.

c) **Verbal/written advice or warning -** where an offence has been committed but is not thought appropriate to take any further action, in which case the suggested corrective action and a timescale will be given
d) **Fixed Penalty Notices (FPN) -** certain offences are subject to FPNs and legislation permits an offence to be dealt with by way of a Fixed Penalty Notice, we may choose to administer an FPN on a first occasion, without issuing a warning. This avoids a criminal record for the offender provided that the offender accepts the FPN.
e) **Penalty Charge Notices (PCN)** - are prescribed by certain legislation as a method of enforcement by which the offender pays an amount of money to the enforcer in recognition of the breach. Failure to pay the PCN will result in the offender being pursued in the County Court for non-payment of the debt. A PCN does not create a criminal record and we may choose to issue a PCN without first issuing a warning.
f) **Penalty Notice for Disorder (PND)** - is the fixed penalty option for anti-social behaviour such as the sale of alcohol to a minor.
g) **Statutory Notice -** these are used as appropriate in accordance with relevant legislation (they usually require offenders to take specific action or to cease certain activities). Examples include improvement notices, prohibition notices and suspension notices.
h) **Seizure -** some legislation permits our Officers to seize goods and documents that may be required as evidence. When we seize goods, we will give an appropriate receipt to the person from who they are taken. On some occasions, we may ask the person to voluntarily surrender the goods.
i) **Forfeiture -** some legislation allows us to apply to the court to seek forfeiture of goods, either in conjunction with a prosecution, or separately.
j) **Undertakings and Injunctive action under the Enterprise Act -** the range of actions under this legislation include the following:

- *informal undertakings*
- *formal undertakings*
- *interim orders*
- *court orders*
- *contempt proceeding*

k) **Review of Licences-** where there is a requirement for a business to be licensed by a local authority e.g. Licensing Act 2003, or other body e.g. Financial Conduct Authority, then a review or revocation of the licence or permit may be sought where the activities or fitness of the license holder is in question.
l) **Anti-Social Behaviour -** where the issues under investigation amounts to anti-social behaviour, Community Protection Warnings and notices may be served or indeed any power utilised as specified by the Antisocial Behaviour Crime and Policing Act 2014
m) **Taking animals into possession -** under the Animal Welfare Act 2006, if a veterinary surgeon certifies that 'protected animals' are suffering or are likely to suffer if their circumstances do not change, we will consider taking

them into possession and applying for Orders for re-imbursement of expenses incurred and subsequent disposal.

n) **Simple Caution** - in accordance with the current Home Office circular is used to deal quickly and simply with less serious offences and to avoid unnecessary appearances in criminal courts. A formal or 'Simple' caution is an admission of guilt, but it is not a form of sentence, nor is it a criminal conviction – though it may be cited in court in certain circumstances. A record of the caution will be sent to other agencies that are required to be notified.

o) **Prosecution -** will only be undertaken when the evidence passes the 'Evidential Test' and when it is in the public interest to do so – we will have regard to the Crown Prosecution Service Code of Practice.

p) **Proceeds of Crime Actions** - purpose is to recover the financial benefit that the offender has obtained from his criminal conduct. Applications may be made under the Proceeds of Crime Act for confiscation of assets in serious cases. Proceedings are conducted according to the civil standard of proof. Applications are made after a conviction has been secured.

and we will continually review our position regarding the use of enforcement options and additional sanctions under the Regulatory Enforcement and Sanctions Act 2008.

6. Prosecution - Aggravating and Mitigating Factors

6.1. The final decision to proceed with prosecution rests with the Director of Markets & Consumer Protection acting upon the recommendation of the PH&PP Service Director with the Comptroller & City Solicitor's advice with PH&PP's decision on whether or not to prosecute being taken in accordance with the principles set out in this Policy Statement.

6.2. The decision whether to prosecute should take account of the evidence obtained, all the Aggravating and Mitigating Factors and the relevant public interest factors set down by the Crown Prosecution Service in their current Code for Crown Prosecutors[3]. No prosecution may go ahead unless the Comptroller and City Solicitor believes there is sufficient evidence to provide a realistic prospect of conviction and decides that prosecution would be in the public interest.

6.3. While the primary purpose of the regulatory services is to ensure that businesses manage and control their risks effectively and in preventing harm, prosecution is an essential part of enforcement. Where in the course of an investigation, a regulatory service collects sufficient evidence to provide a realistic prospect of conviction and has decided, in accordance with this

3 CPS Code for Crown Prosecutors www.cps.gov.uk/publications/code

policy and taking account of the Code for Crown Prosecutors, that it is in the public interest to prosecute, then that prosecution should go ahead.

6.4. The Code for Crown Prosecutors requires the decision to prosecute to be kept under continuous review, so that any new facts or circumstances, in support of or conversely, undermining the prosecution's case, are taken into account in the decision to continue or immediately terminate the proceedings. Where the circumstances warrant it and the evidence to support a case is available, regulatory services may prosecute without prior warning or recourse to alternative sanctions first.

6.5. The City of London Corporation expects that, in the public interest, its regulatory services should normally prosecute, or recommend prosecution, where, following an investigation or other regulatory contact, one or more of the following circumstances apply. Where:

a) death was a result of a breach of the legislation;
b) the gravity of an alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender warrants it;
c) there has been reckless disregard of legal requirements;
d) there have been repeated breaches which give rise to significant risk, or persistent and significant poor compliance;
e) activities or trade have been carried out without or in serious non-compliance with an appropriate licence, permission or sanction;
f) a business's standard of operation is found to be far below what is required by law and/or is giving rise to significant risk;
g) there has been a failure to comply with an enforcement notice; or there has been a repetition of a breach that was subject to a Simple Caution;
h) false information has been wilfully supplied, and/or there has been an intent to deceive, in relation to a matter of non-compliance and/or one which gives rise to significant risk; and
i) officers have been intentionally obstructed in the lawful course of their duties.

6.6. Where its officers are subject to, or threatened with, physical assault regulatory services will always seek police assistance, with a view to seeking the prosecution of offenders.

6.7. PH&PP also expects that, in the public interest, its regulatory services will consider recommending prosecution, where following an investigation or other regulatory contact, one or more of the following circumstances apply:

a) it is appropriate in the circumstances as a way to draw general attention to the need for compliance with the law and the maintenance of standards required by law, and conviction may deter others from similar failures to comply with the law; and
b) a breach which gives rise to significant risk has continued despite relevant warnings.

7. Prosecution of individuals

7.1. Subject to the above, PH&PP's regulatory services will identify and recommend the prosecution of individuals if they consider that a prosecution is warranted.

7.2. In particular, we will consider the management chain and the role played by individual directors and managers and will take action against them where an inspection or an investigation reveals that the offence was committed with their consent or connivance or to have been attributable to any neglect on their part and where it would be appropriate to do so in accordance with this policy.

7.3. Where appropriate, regulatory services should seek disqualification of directors under the Company Directors Disqualification Act 1986.

8. Disseminating Information

8.1. The Crime and Disorder Act 1998[4] recognises that there are key stakeholder groups who have responsibility for the provision of a wide and varied range of services to and within the community. In carrying out these functions, the Act places a duty on them to do all it can do to reasonably prevent crime and disorder in their area.

8.2. Each regulatory service will fulfil its responsibilities by sharing information regarding its regulatory investigations with other such services both within PH&PP and with other external agencies including, though not exhaustively, the City of London Police, BIS, the Financial Conduct Authority, the Health & Safety Executive, the Environment Agency, the Marine & Coastguard Agency and HM Customs & Revenue.

8.3. If there is a shared enforcement role with other agencies - e.g. the Financial Conduct Authority, Animal Health, HM Revenue & Customs, other COL Services or the Police - we will consider co-ordinating with these agencies to minimise unnecessary overlaps or time delays and to maximise our overall effectiveness.

8.4. Finally, all disclosures will be in accordance with the provisions of the Data Protection Act 1998.

9. Publicity

9.1. PH&PP's regulatory services will also consider in all cases drawing the media's attention to factual information about charges which have been laid before

4 Section 17 www.opsi.gov.uk/acts/acts1998

the courts, but great care must be taken to avoid any publicity which could prejudice a fair trial.

9.2. We will also consider publicising any successful conviction which could serve to draw attention to the need to comply legislation requirements or deter anyone tempted to disregard their duties under UK law.

10. Action by the courts

10.1. PH&PP's regulatory services will continue to seek to raise the court's awareness of the gravity of any offences and of the full extent of their sentencing powers and draw to the court's attention all the factors which are relevant to the court's decision as to what sentence is most appropriate whilst still recognising that it is ultimately for the courts to decide whether or not someone is guilty and what penalty if any to impose on conviction.

11. Representations to the courts

11.1. In cases of sufficient seriousness, and when given the opportunity, PH&PP will consider indicating to the magistrates that the offence is so serious that they may wish to consider sending it to be heard or sentenced in the higher court where higher penalties can be imposed. In considering what representations to make, regulatory services should have regard to current case law and guidance

12. Conclusion

12.1. Compliance with this Policy Statement on Enforcement will ensure that PH&PP strives to be fair, impartial, independent and objective and is not influenced by issues such as ethnicity or national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender.

12.2. Decisions will not be influenced by improper or undue pressure from any source.

FURTHER INFORMATION

Regulatory Enforcement and Sanctions Act 2008

Regulators' Code www.gov.uk/government/publications/regulators-code

Code for Crown Prosecutors (Crown Prosecution Service) www.cps.gov.uk

Port Health & Public Protection Service

1. Our Decision-Making Processes

When deciding whether to investigate any matter further, the Port Health & Public Protection Service will follow the current guidance and information of Government agencies and departments and other relevant regulatory sources:-

- the Food Standards Agency
  Food safety inspections and enforcement

- the Health & Safety Executive

  National Local Authority Enforcement Code
  www.hse.gov.uk/lau/la-enforcement-code.htm
  Enforcement Guide - www.hse.gov.uk/enforce/enforcementguide/index.htm
  Enforcement Management Model - The Enforcement Management Model
  Incident Selection Criteria Guidance www.hse.gov.uk/lau/lacs/22-13.htm

- Trading Standards services' NTSB, Regional Intelligence Officers , Scambusters plus the City of London Police, HMRC and any other regulatory sources

- the Department of the Environment, Farming & Rural Affairs
  Defra - Department for Environment, Food and Rural Affairs

- City of London Licensing Policy www.cityoflondon.gov.uk/licensing

2. Home Authority and Primary Authority

1. The Home Authority Principle means that City of London based businesses, where they trade or provide services that impact beyond the city, are able to get advice and support from us on matters such as legal requirements, changes to the law and so forth. This usually takes the form of a semi-formal relationship and we support the Home Authority Principle, which has been developed over many years to promote good enforcement practice and reduce burdens on business.

2. In April 2009, the Regulatory and Enforcement Sanctions Act 2008 introduced the Primary Authority Principle which in contrast to the Home Authority Principle, this is a more formal relationship including for the first time, the ability to re-charge the business .

3. A Primary Authority is a local authority registered by the Office for Safety & Standards (OPSS) as having responsibility for giving advice and guidance to a particular business or organisation. As such any advice given to that business or organisation is nationally applicable and all other local authorities must follow it.

4. Our objective is to create full Primary Authority partnerships whenever possible which will provide increased positive benefits to both parties. PH&PP will give due consideration to any business, based in or associated with the City of London who wishes to enter into such an arrangement.

5. As part of any Primary Authority partnership we will therefore:

    a) provide businesses for whom we are the 'Primary' with appropriate guidance and advice
    b) maintain records of our contacts with such businesses in OPSS's required format;
    c) support efficient liaison between local authorities dealing with such businesses; and
    d) provide a first point of contact for the resolution of any problems and disputes.

3. Death at work

1. Where there has been a breach of health & safety law leading to a work-related death in premises for which the City of London Corporation is the enforcing authority, the City of London Police (CoLP) will first have to consider whether the circumstances of the case might justify a charge of manslaughter or corporate manslaughter and they take primacy in any joint investigation.

2. To ensure decisions on investigation and prosecution are closely co-ordinated following a work-related death, the HSE, the National Police Chiefs' Council (NPCC), the British Transport Police, the Crown Prosecution Service (CPS), the Local Government Association (LGA) and the Office of Rail Regulation (ORR) have jointly agreed and published the current *Work-related deaths: A protocol for liaison*[5].

3. Other non-signatory organisations, such as the Maritime and Coastguard Agency (MCA), Civil Aviation Authority (CAA) and the Chief Fire Officers Association (CFOA), have agreed that they will take account of the protocol when responding to work-related deaths.

4. The CoLP are responsible for deciding whether to pursue a manslaughter or corporate manslaughter investigation and whether to refer a case to the CPS to consider such possible charges. The Public Protection division of PH&PP are responsible for investigating possible health and safety offences.

5. If in the course of their health and safety investigations, they find evidence suggesting manslaughter or corporate manslaughter, they will pass it on to the CoLP. If they or CPS decide not to pursue a manslaughter or corporate manslaughter case, then the City of London Corporation will then consider bringing a prosecution for any health and safety offences in accordance with this policy statement.

5 *Work-Related Death - A protocol for liaison* was published in 2003
http://www.hse.gov.uk/enforce/wrdp/