



Gravesham Borough Council – COVID 19 Enforcement and Prosecution Policy

Reference Number	Version Number	Date	Applicable to
EH – HS - 02	1	February 2021	Commercial

Due for review by: February 2022

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Gravesham Borough Council

COVID 19 ENFORCEMENT AND PROSECUTION POLICY

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1. Introduction

With the declaration of a National Pandemic in relation to COVID 19 the UK Government introduced a raft of Emergency legislation in order to try to prevent the spread of the virus. This legislation was made under powers contained within the Public Health (Control of Disease) Act 1984. This resulted in the Coronavirus Act 2020 along with various regulations made under the Act.

Responsibility for enforcing these regulations has been shared across Local Authorities both upper and lower tier through Environmental Health Staff and Trading Standards Officers and the Police.

2. Aim & Objectives

The aim of this policy is to ensure that businesses manage and control risks effectively to prevent harm to their staff and customers by taking sufficient steps to prevent the spread of the Covid 19 virus and to:

- Take immediate action to deal with serious risks;
- Promote and achieve sustained compliance with the law;
- Ensure that all those responsible, who breach Covid 19 requirements and/or fail in their responsibilities, may be held to account, which may include bringing alleged offenders before the courts;
- To inform business operators and the public of the principles by which enforcement action is taken;

3. Background

The term 'enforcement' has a wide meaning and applies to all dealings between the Council and those on whom the law places duties.

Gravesham Borough Council has a duty to undertake health and safety enforcement in various types of premises under the Health and Safety at Work etc. Act 1974. These premises and the activities concerned are determined by the Health and Safety (Enforcing Authority) Regulations 1998.

In relation to Covid 19 the local authority will deal with enforcement in relation to those business premises within which we enforce Health and Safety. Generally through a local agreement it has been decided to split responsibilities with Gravesham dealing with food premises

There are a range of actions available in seeking compliance with the law, and to ensure a proportionate response. Many contacts with businesses are informal, offering information and advice. In serious cases inspectors will serve one of the notices available depending upon the situation. Prosecution is reserved for the most serious cases and / or those showing a disregard to the law.

The most recent options open to inspectors are laid out in The Health Protection (Coronavirus, Restrictions) (Local Authority Enforcement Powers and Amendment) (England) Regulations 2020, which were subsequently amended by The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) (Amendment) (No. 3)

Regulations 2020 .

These regulations are however in addition to:

- The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020,
- The Health Protection (Coronavirus, Collection of Contact Details etc and Related Requirements) Regulations 2020,
- The Health Protection (Coronavirus, Restrictions) (Obligations of Undertakings) (England) Regulations 2020,

The range of interventions available include:

- Informal – oral or written guidance, information and warnings;
- Fixed Penalty Notice
- Coronavirus Improvement Notices – which require remedial works to be carried out within a specified time scale;
- Coronavirus Immediate Restriction Notice
- Coronavirus Restriction Notice
- Prohibition Notice
- Criminal Proceedings for non-compliance with a notice

Gravesham Borough Council places great emphasis on the consistent use of enforcement action and does not set targets.

The investigation of complaints, incidents and/or cases of ill health will be subject to Incident Selection criteria and Complaint Investigation procedures.

4. Principles of Enforcement

Enforcement needs to be fair but firm and effective. Regulators must have regard to the Regulators' Code ⁽¹⁾ when developing policies and operational procedures that guide their regulatory activities.

This should be informed by:

- The principles of proportionality in applying the law and securing compliance;
- Consistency of approach;
- Targeting of enforcement action;
- Transparency about how the regulator operates and what those regulated may expect; and
- Accountability for the regulator's actions.

These principles should apply both to enforcement in particular cases and to the enforcing authorities' management of enforcement activities as a whole.

4.1 Proportionality

Proportionality means relating enforcement action to the risks. Enforcement action will be proportional to the degree of harm / risk the seriousness of any breach and to the particular circumstances of the case.

Gravesham Borough Council will expect relevant good practice to be followed. Where in particular cases this has not been clearly established the law requires duty holders to establish explicitly the significance of the risks to determine what action needs to be taken. Ultimately the courts will determine what is reasonably practicable.

4.2 Consistency

Gravesham Borough Council will carry out enforcement in a fair, equitable, and consistent manner in accordance with its policies and procedures. Similar approaches will be taken in similar circumstances to achieve similar ends. However, the Gravesham BC recognises that consistency does not mean uniformity and Inspectors are required to take professional decisions that take account of a wide variety of situations and circumstances. Officers are also expected to take account of local and national standards and guidance, and be aware of this policy. The willingness and co-operation of the person or organisation subject to enforcement action will also be considered in deciding how enforcement action should proceed.

4.3 Targeting

Targeting means making sure that enforcement activity is targeted primarily on those whose activities that give rise to the most serious risks or hazards; and that action is focused on duty holders who are responsible for the risk and who are best placed to control it.

Enforcement action will be targeted against the duty holder responsible for a breach. This may be employers who expose employees or others exposed to risks; the self-employed; owners of premises; suppliers of equipment; designers or clients of projects; or employees themselves. Where several duty holders have responsibilities, enforcing authorities may take action against more than one when it is appropriate to do so in accordance with this policy.

4.4 Transparency

Transparency is important in maintaining public confidence in Gravesham BC's regulatory capability. Gravesham Borough Council will help those being regulated and others to understand what they need to do and how it may be achieved. We will also make our own role in the matter clear.

Officers working for Gravesham Borough Council will explain carefully (and, if necessary, in writing) why the action is necessary, who must carry it out, and by what date it must be carried out. A clear distinction will be made between legal requirements, recommendations, and best practice. Information and advice will be

provided in plain language. Translation services will be made available where reasonably practicable to assist customers who do not have English as their first language.

Gravesham Borough Council will give every reasonable opportunity for discussion before formal enforcement action is taken, unless urgent action is necessary to protect health and/or the environment, or to prevent the destruction of evidence that would compromise the authority's case. Officers will explain what needs to be done and will discuss timescales for completion, especially when notices are served. In urgent circumstances, Officers will give a written explanation of their reasons for taking immediate action and this will be done as soon as practicable after the event.

Gravesham Borough Council will give written notice of any rights of appeal against enforcement action at the time that the action is taken.

4.5 Accountability

Enforcing authorities are accountable to the public for their actions. This means we must have policies and standards against which we can be judged, and an effective and easily accessible mechanism for dealing with comments and handling complaints.

We have our own internal procedures for dealing with complaints against the service etc. Details are available from the council. In addition to Gravesham's own complaints procedures, the Local Government Ombudsman hears complaints regarding local government mal-administration, and details of this service are also available from the council.

4.6 Helpfulness

Officers will deal courteously and efficiently with all individuals, organisations and businesses that they come into contact with. Staff will identify themselves by name, and contact numbers will be made available. Electronic means of communication (for example, by E-mail) will be facilitated wherever possible.

5. Enforcing COVID 19 Law

Gravesham's primary concern is to help stop the spread of the virus. This is best achieved by encouraging effective management of businesses to reduce the risks.

We have adopted a graduated approach to enforcement, commencing with an educative approach but will escalate to a formal intervention, often by way of a statutory notice, when flagrant breaches of the legislation are identified.

In determining the course of action, an Officer will have regard to the current willingness and intentions of the duty holder to comply, their knowledge and their previous record of compliance.

For larger businesses we will have regard to the Primary Authority⁽²⁾ principle and will consult before giving detailed advice or taking enforcement action (except in cases where urgent action is required).

When dealing with small organisations or those operated by volunteers, officers will expand their guidance and explanation of enforcement action and how compliance with the law can be achieved.

If an officer identifies a risk or contravention, this will be drawn to the attention of the duty holder at that time or as soon as that person can be identified and contacted.

Whatever the type or nature of action chosen, it will be because it will be proportionate to the level of risk identified and the seriousness of any breach.

Departures from the Enforcement and Prosecution policy must be exceptional and the reasons will be documented.

6. Informal Enforcement

Officers will seek to help businesses improve their management of the risks associated with the Covid 19 pandemic by giving guidance. They will be aware that they are an important source of help on the maintenance of good standards in conformity with the law and will therefore provide education and guidance wherever reasonably practicable. Many are anxious to comply with the law.

The Officer will supply guidance on legislation and standards either orally or in writing providing details of where suitable guidance may easily be obtained.

All requirements, observations or advice will be confirmed in writing when necessary as soon as possible. The officer will endeavour to clearly identify and describe any fault and necessary remedial works in a manner that is readily understandable. In identifying faults, etc., the Officer / Inspector will have regard to nationally recognised standards and “good practice”. Any requirement made orally or in writing will clearly identify whether it is mandatory or advisory in nature.

All mandatory requirements will be given a reasonable time for completion and these will be discussed with the person responsible for complying. Due regard will be had to the observations of that person when the Officer specifies the time allowed.

7. Formal Enforcement-Statutory Notices

Statutory Notices can be effective and quick in that they require employers to put dangerous situations right without hopefully the delay and uncertainty of going to Court. Where an appeal procedure is made available, recipients will be duly made aware of this.

7.1 Coronavirus Improvement Notices (CIN)

These will be served where a person:

- (a) is contravening one or more of the relevant statutory provisions; and
- (b) the requirement or requirements of the notice are necessary and proportionate to ensure that the contravention is, or contraventions are, ended or remedied.

The notice will require a person who is breaching one or more of the listed provisions to end that breach and ensure it will not be repeated. A CIN may not be served in relation to premises which form part of essential infrastructure.

7.2 Coronavirus Immediate Restriction Notice (CIRN)

An officer may issue a CIRN, where this is necessary and proportionate for the purpose of minimising the risk of exposure to Coronavirus.

In short, the CIRN will be used when an officer believes there is or has been a breach of one of the statutory provisions, and there is a risk of exposure to coronavirus.

A CIRN can take effect immediately, or at the end of a period specified in the notice. The notice has effect for a period of time ending 48 hours after the time at which it is served. The notice will require the closure of the premises or part of the premises.

A CIRN may not be served in relation to premises which forms part of essential infrastructure.

7.3 Coronavirus Restriction Notice (CRN)

An Officer may issue a CRN on a person where that person has been issued with a CIN and the officer is of the opinion that the person has failed to comply with the notice and the non-compliance involves a risk of exposure to coronavirus.

A CRN can impose a requirement that needs to be complied with immediately or at the end of a period specified in the notice. The notice can be breached even if that breach does not last for the duration of the entire notice. The notice will last for 7 days after the day it was issued.

A CRN may not be served in relation to premises which forms part of essential infrastructure.

7.4 Fixed Penalty Notice (FPN)

An Officer may issue an FPN for various reasons under different Regulations, including for:

1. breaching the requirements around hours of operation for restricted businesses set out in the All Tier Regulations.
2. Non-compliance with CIN, CIRN or CRN Notices.

Fixed Penalty Notices offer the business operator the opportunity to discharge any liability to conviction for the offence by the payment of a specified amount. The amount varies depending upon the reason for service and the type of notice as follows:

£1000 – breaching the All Tier Regulations

£2000 – breaching Coronavirus Improvement Notice

£4000 – breaching Coronavirus Immediate Restriction and Coronavirus Restriction Notice.

Fines operate on a ladder basis in that they increase for each additional FPN served on the same premises.

7.5 Prohibition Notice

An officer may issue a Prohibition Notice under the All Tiers Regulations to prevent a person responsible for carrying on a business or providing a service from continuing to contravene a restriction imposed by the Regs. This could include business closures / consumption of food on the premises where this is not permitted under the Regs.

8. Formal Enforcement-Various Other Powers

In carrying out their functions, duly authorised officers have a range of far reaching powers under the Public Health (Control of Diseases) Act 1984 including:-

- the right of entry with 24 hours notice to search the premises;
- take and retain samples
- Inspect and take copies of documents or records
- seizure and detention of evidence of any contravention.

Prior to using such powers, an authorised officer will have decided that informal action, in that particular instance:-

- would not be appropriate or
- would be inadequate for the Council to satisfy its duty; would not be successful or has already failed

9. Formal Enforcement

In keeping with the preventative role, a duly Authorised Officer of a Council may recommend prosecution as a way to draw attention to the need for compliance with and maintenance of good standards.

Prosecutions will only be initiated for the more serious offences which either resulted in or could have resulted in a serious risk of exposure to coronavirus or which represented a blatant disregard by employers or others of their legal responsibilities. This would include non-compliance with a statutory Notice or non-payment of a Fixed Penalty Notice.

Officers investigating breaches of the law will consider their potential to cause harm as well as any harm actually caused. Therefore, if a breach has significant potential for harm, even if it causes no actual injury, a prosecution may be authorised.

In deciding whether to prosecute, the Officer will also consider:

- gravity of an alleged offence , taken with the seriousness of any actual or

potential harm, or the record and approach of the offender warrants it

- whether it is in the public's best interest to ensure remedial action or to deter others from similar failures to comply with the law.
- whether the evidence available provides a realistic prospect of conviction including application of the Evidential Test and Public Interest Test as described in the Crown Prosecution Service Code for Crown Prosecutors.
- there has been reckless disregard of Coronavirus requirements
- there have been repeated breaches which give rise to significant risk, or persistent and significant poor compliance
- there has been a failure to comply with a CIN, CIRN, CRN or FPN; or there has been a repetition of a breach that was subject to a formal notice

If warranted by the circumstance, prosecution will be initiated by Gravesham Borough Council without any prior warnings and without any recourse to alternative sanctions, subject always, to correct procedures being followed under the Police and Criminal Evidence Act 1984, and the related Codes of Practice, along with any internal policies and procedures.

10. Review of Policy

The implications and effectiveness of this policy will be frequently monitored and non-material updates will be made as required on an ad-hoc basis, e.g. following amendments to Regulations.

This Policy will be reviewed in full at least every year to reflect changes indicated by internal monitoring, by legislation or by guidance from the UK Government.

Footnotes

- (1) Regulators' Code – Seeks to promote proportionate, consistent and targeted regulatory activity through the development of transparent and effective dialogue and understanding between regulators and those they regulate. Department for Business Innovation and Skills, April 2014.
- (2) PAP-Primary Authority Partnership - This replaces the Lead Authority

Partnership Scheme and it is mandatory that local authorities consult with Primary Authorities when considering enforcement action