

Decision title

Review of LFB Enforcement Policy Statement

Recommendation by

Assistant Commissioner, Fire Safety

Decision Number

LFC-0403-D

Protective marking: **NOT PROTECTIVELY MARKED**

Publication status: Published in full

Summary

Report LFC-0403 explains that the Brigade's Enforcement Policy Statement sets out the policy basis for regulatory enforcement decision. It is now overdue for review. This has been commented on internally and by HMICFRS. An initial review has been undertaken in conjunction with General Counsel's Department, which proposes minor amendment to improve working and readability while leaving the underlying policy unchanged. This initial review has identified further work needed to develop the Brigade's regulatory enforcement activities in line with the Transformation Delivery Plan and updated vision. The proposed revised EPS is attached.

Decision

That the London Fire Commissioner:

- Approves the initial review and revision as set out in the attached reviewed EPS to address policy and legislative change as described.
- Approves the further work to be undertaken to reflect the changing legislative landscape as set out in paragraph 15 of report LFC-0403.



Andy Roe

London Fire Commissioner

Date **This decision was remotely signed on Thursday 15 October 2020**

Access to Information – Contact Officer	
Name	Steven Adams
Telephone	020 8555 1200
Email	governance@london-fire.gov.uk

Report title:

Review of LFB Enforcement Policy Statement

Report to

Commissioner's Board
Deputy Mayor's Fire and Resilience Board
London Fire Commissioner

Date

12 August 2020
8 September 2020

Report by

Assistant Commissioner, Fire Safety

Report number

LFC-0403

Protective marking: **NOT PROTECTIVELY MARKED**

Publication status: Published in full

Summary

The Brigade's Enforcement Policy Statement sets out the policy basis for regulatory enforcement decision. It is now overdue for review. This has been commented on internally and by HMICFRS. An initial review has been undertaken in conjunction with General Counsel's Department, which proposes minor amendment to improve working and readability while leaving the underlying policy unchanged. This initial review has identified further work needed to develop the Brigade's regulatory enforcement activities in line with the Transformation Delivery Plan and updated vision. The proposed revised EPS is attached.

Recommended decisions

That the London Fire Commissioner:

- Approves the initial review and revision as set out in the attached reviewed EPS to address policy and legislative change as described.
- Approves the further work to be undertaken to reflect the changing legislative landscape as set out in paragraph 15 of this report.

Background

1. The London Fire Commissioner is the statutory enforcing body for a number of regulatory regimes. This forms a substantial part of LFB's fire protection activities. Regulations enforced by LFB include:
 - Regulatory Reform (Fire Safety) Order 2005 for the large majority of premises;
 - Fire Precautions (Sub-surface Railway Stations) (England) Regulations 2009 made under the RR(FS)O;
 - Petroleum (Consolidation) Regulations 2014 and Dangerous Substances and Explosive Atmospheres Regulations 2002 as they each relate to certain activities in the retail sale of petroleum;

- some elements of the Construction (Design and Management) Regulations 2015 relating to partially occupied construction sites; and
 - some specific offences created by local Acts of Parliament eg on large stacks of combustible materials, under the Greater London Council (General Powers) Act 1968
2. This regulatory role typically includes statutory powers to inspect premises for compliance and where non-compliance is identified to serve notices requiring remedial action, to prohibit or restrict activity and ultimately to prosecute. As these powers carry potentially highly disruptive practical and legal consequences for regulated undertakings, LFB has been given a tight legal framework for exercising its role as regulator. By s21 Legislative and Regulatory Reform Act 2006 regulatory activities by LFB should be:
- (a) carried out in a way which is transparent, accountable, proportionate and consistent; and
 - (b) targeted only at cases in which action is needed.
3. Further, the Legislative and Regulatory Reform Act 2006 requires regulators to have regard to the statutory Regulators Code issued under the Act by Government in 2014. The Regulators' Code elaborates on the s21 legislative requirements for regulatory activity and requires regulators to publish an Enforcement Policy Statement and subordinate Service Standards. This legal framework is on top of the existing administrative law framework for LFB as a public authority, including the Human Rights Act 1998 and the Equalities Act 2010.
4. In 2014 LFB reviewed policies in relation to the exercise of regulatory powers in the light of the new Regulators' Code. This leads to the adoption of a revised Enforcement Policy Statement (EPS) supported by a suite of Enforcement Service Standards setting out more detail on how regulatory activities will be carried out eg on timeliness of response. These are published on the LFB website to help satisfy the requirement for transparency.
5. The policy statement is the basis for the prioritisation of particular types of premises and the approach to enforcement decisions. The adoption and adherence to this published policy is the central means by which LFB demonstrates compliance with the Regulators' Code and LFB's other statutory duties. It also acts as the framework to guide officers' decision-making in individual enforcement cases. Enforcement decisions taken outside the policy would need to be very robustly justified by exceptional circumstances if they were to withstand legal challenge. Without an Enforcement Policy Statement, the Brigade would be open to very significant legal risk over the basis on which it made individual enforcement decisions. This would open the Brigade to enforcement actions being found to be unlawful if challenged, such as in an appeal against an Enforcement Notice or a defence claim an LFB prosecution was an abuse of process.

The review of the enforcement policy statement

6. The current version of the EPS was produced in 2014 and approved (at LFEPA Strategy Committee) in the September of that year). The EPS states that it would be subject to ongoing review; and to a formal review every two years.
7. The 2016 formal review was missed although ongoing review (including discussion on application and coverage with Counsel) continued as part of normal course of business as cases arose.

8. Work to conduct a formal review in 2017 was placed on hold following the Grenfell fire and although some further work on scope of review had been started the HMICFRS inspection highlighted the lack of formal review.
9. In response to HMICFRS report, review of the EPS was included as a key deliverable. Work to complete that review (and where necessary revision) of the EPS can be ongoing with an aim of achieving a revised version for publication by the end of Q4 2019/20.
10. The review has been undertaken during a time of uncertainty of what the future holds for regulatory activity and working practices due to the findings of the Hackett review, the Grenfell Tower Inquiry and the ongoing consultations and publications relating to Home Office and Ministry for Housing, Communities and Local Government legislative reform.
11. In the light of the ongoing development of legislative proposals following initial review, revision of the EPS has been limited to:
 - Removal of incorrect information and/or out of date references;
 - Removal of duplication across sections to improve readability;
 - Clarification of some matters such as when prosecution may be considered to make these explicit rather than implicit.
 - The bringing up to date references to legislation and legislative tests such as the Equalities Act 2010 and the current Code for Crown Prosecutors.
12. At this point in time avoidance of changing policy has been a deliberate and cognoscente act so as to not further extend the review period through lengthy consultation on policy points. It is to be noted that one policy change is to adjust the formal review period to 4 year to bring it into line with other FSR enforcement policies. Ongoing review and ad-hoc review will also be undertaken as required and recorded s review of the EPS. This can be recorded on each occasion review of any part is undertaken so as to demonstrate that ongoing review. The advice of Counsel has been taken on the revision to date.
13. Subject to approval, this revision of the Enforcement Service Standards will be noted as reviewed. No significant changes have been identified at this time though as we move forwards this will be kept under review.
14. It is recognised that a number of policy areas will need to be considered for further development and as part of the forthcoming legislative changes and to further our public safety enforcement function. The EPS will need to reflect these. It is proposed that these matters be taken forwards separately with a view to preparing a new EPS in draft form ready for the new legislation as it comes forward.
15. Matters specifically noted for consideration and development in that further review are:
 - Known and anticipated prospective legislative change;
 - Victim support /rights;
 - Information sharing and data protection (with particular reference to the 'Super-Regulator' but to encompass the wider spectrum of enforcers that we deal with;
 - Information gathering including Regulation of Investigatory Powers Act requirements and exemptions;
 - Portfolio enforcement; and

- Use of alteration notices.

The intent being to have the majority of the work (potentially excluding some legislative change elements) completed by the close of Q2 2021.

16. The action plan associated with the LFB Togetherness Strategy launched in July 2020 also features an action to carry out a strategic review of regulatory legal cases where data indicates an overrepresentation of some minority communities. This will inform future reviews of this Enforcement Policy Statement.

Finance comments

17. The Chief Finance Officer has reviewed this report and has no comments.

Workforce comments

18. The Enforcement Policy Statement underpins all enforcement policy and action. It is a requirement of the Regulators Code that all enforcement staff are familiar with it and this forms part of regular ongoing continuous professional development via Fire Safety News the reading of which is monitored and recorded in individual training records. Staff will be required to familiarise themselves with the reworded policy statement to ensure they are familiar with the underlying policy. They would be doing so as refresher CPD in the normal course of business. As the policies concerned have not changed the trades union have therefore not been consulted.

Legal comments

19. LFC is the enforcing authority for various legislation as set out in the report. In this capacity LFC must have regard to the principles in s21 Legislative and Regulatory Reform Act 2006 ("the Act") that regulatory activities should be:

(a) carried out in a way which is transparent, accountable, proportionate and consistent; and

(b) targeted only at cases in which action is needed.

The Act also requires this LFC to have regard to the Regulators' Code produced under the Act. The Code provides a framework for the sets out various guiding principles for regulators including transparency and consistency. This review, and the original policy, were carried out with regard to and in accordance with the requirements of the Code.

20. The Commissioner is required to ensure statutory duties under the Equalities Act 2010 are complied with. An Equality Impact Assessment (EIA) has not been undertaken. An EIA was not required because there are no equalities implications arising from this report. EIA screening has been signed off by People Services (26/5/2020).

Equalities implications

21. The London Fire Commissioner and decision takers are required to have due regard to the Public Sector Equality Duty (s149 of the Equality Act 2010) when taking decisions. This in broad terms involves understanding the potential impact of policy and decisions on different people, taking this into account and then evidencing how decisions were reached.

22. It is important to note that consideration of the Public Sector Equality Duty is not a one-off task. The duty must be fulfilled before taking a decision, at the time of taking a decision, and after the decision has been taken.
23. The protected characteristics are: Age, Disability, Gender reassignment, Pregnancy and maternity, Marriage and civil partnership (but only in respect of the requirements to have due regard to the need to eliminate discrimination), Race (ethnic or national origins, colour or nationality), Religion or belief (including lack of belief), Sex, Sexual orientation.
24. The Public Sector Equality Duty requires us, in the exercise of all our functions (i.e. everything we do), to have due regard to the need to:
- (a) Eliminate discrimination, harassment and victimisation and other prohibited conduct.
 - (b) Advance equality of opportunity between people who share a relevant protected characteristic and persons who do not share it.
 - (c) Foster good relations between people who share a relevant protected characteristic and persons who do not share it.
25. Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:
- (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic where those disadvantages are connected to that characteristic;
 - (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
 - (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
26. The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.
27. Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—
- (a) tackle prejudice, and
 - (b) promote understanding.
28. An Equality Impact Assessment (Screening) was undertaken in May 2020, and consultation with the Inclusion Team took place. Although neutral impacts were identified through the assessment, it was recognised that there is a lack of data on protected characteristics in terms of enforcement action, and there are limitations on providing this. There are also limitations on providing accessible documents (e.g. in alternative languages). Improvements to collecting equality-related data for compliments and complaints was also identified, which will be addressed through the Togetherness Strategy (new Inclusion Strategy launching 1st July 2020).

Sustainability Implications

29. None.

List of Appendices

Appendix	Title	Protective Marking
1.	Draft Enforcement Policy Statement	None.

The London Fire Commissioner

Enforcement Policy Statement

Introduction

1. The London Fire Commissioner ("the Commissioner") is the fire and rescue authority for London, operating as London Fire Brigade ("the Brigade"). The principal aim of the Commissioner 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. Our vision is to be a dynamic forward looking organisation of fully engaged people at the centre of the communities we serve, adapting to the changing needs of London.
2. The Brigade is committed to providing a consistently high quality service to the public including the commercial, business, housing and voluntary sectors in relation to appropriate legislation we enforce and the advice we give. In seeking to achieve this aim, including the development and ongoing review of this policy, the Brigade has regard to the requirements and recommendations of the laws and codes of practice and guidance explained in this statement.
3. This policy statement sets out the policy and principles which the Brigade will follow in carrying out its regulatory functions. It provides guidance for inspectors, businesses and members of the public. It is intended, together with the Brigade's service standards, to clearly set out the aims, standards and values that officers are expected to apply.
4. This statement is applicable to the Brigade's enforcement in Greater London of legislation including:
 - The Regulatory Reform (Fire Safety) Order 2005;
 - Fire Precautions (Sub-surface Railway Stations) (England) Regulations 2009.
 - The Petroleum (Consolidation) Regulations 2014;
 - The Dangerous Substances and Explosive Atmospheres Regulations 2002 (DSEAR); and
 - The Construction (Design and Management) Regulations 2015
 - The Greater London Council (General Powers) Act 1968 (as amended);
 - The Public Health Act 1961.
5. This statement is also applicable to the giving of fire safety advice to regulated entities in accordance with section 6 of the Fire and Rescue Services Act 2004; the exercise of the Brigade's

powers to investigate the cause and reason for spread of fire under section 44 and 45 of the Fire and Rescue Services Act 2004; and to the operation of Primary Authority Partnerships under the Regulatory Enforcement and Sanctions Act 2008.

6. This statement is supplemented by the Brigade's service standards for enforcement together with the Brigade's Equalities statement; accessibility statement; and complaints procedure. These are published on the London Fire Brigade web-site at <http://www.london-fire.gov.uk/>.

The Brigade's approach to enforcement

7. The Brigade believes in firm but fair enforcement of fire safety law. In carrying out enforcement functions it aims to:
 - prioritise its inspection and enforcement action based on risk;
 - apply the principles of proportionality in applying the law and securing compliance;
 - be consistent in its approach;
 - be transparent about how it operates and what can be expected by those it regulates;
 - be fair and objective in its application of enforcement action and comply with all duties under the Equalities Act 2010;
 - encourage and promote compliance and try to minimise the negative impact of its regulatory activities;
 - use statutory powers to take formal enforcement action only where it is justified on the basis of risk or significant or repeated non-compliance with the law;
 - offer the opportunity for the person against whom formal enforcement action is to be taken to discuss the circumstances of the case and, if possible, resolve points of difference (unless immediate action is needed to protect life);
 - be accountable for its actions.
8. The Commissioner is committed to compliance with the law at premises we operate. It will carry out inspections of its premises to ensure it is complying with the law and report any deficiencies found through its management structure, for remedial action to be taken.
9. In the event of an incident that relates to legislation the Brigade enforces occurring at its own premises and giving rise to death or injury we will appoint another authority (which may include the Health and Safety Executive) to investigate.

Our officers

10. All officers exercising enforcement functions will carry official identification provided by the Brigade and produce it upon request.

11. All officers undertaking enforcement activities will be competent for the role. The Brigade will provide initial and ongoing training and professional development appropriate to each officer's role and will keep officers' competence under review.
12. Brigade officers will:
- act in accordance with this statement, our service standards and other relevant policies and statements;
 - seek to constantly improve the effectiveness of our service;
 - seek to work with officers from other authorities where our enforcement responsibilities overlap in order to minimise the burdens of our activities on those we regulate;
 - treat those we regulate in a polite and respectful way;
 - work to increase trust and confidence with all stakeholder groups we engage with.
13. When carrying out enforcement functions, Brigade officers have the legal power to pursue all reasonable and necessary lines of enquiry utilising all and any data and information sources that are lawfully available to:
- ascertain whether the law applies in any particular circumstances;
 - identify and locate people with responsibilities under the law;
 - ascertain whether the law is being complied with.
14. Brigade officers have the right not to be subject to assault, abuse or intimidation and we will investigate any instances where this occurs and where appropriate refer the matter to the police.

Attendance at premises

15. Attendance at premises for regulatory purposes will be made on the basis of assessment of risk in accordance with the policies, objectives and methodologies of the Brigade. That may include:
- Historic regulatory compliance data for the premises and/or the premises operator/owner;
 - Assessment of compliance data for that business sector as a whole;
 - Ongoing fire data on a local and national basis;
 - Local intelligence;
 - Intelligence supplied by other regulatory bodies.
16. Brigade officers will attend premises in relation to the Brigade's statutory functions. Reactive visits include:
- In response to / following a fire or other emergency;
 - In response to an allegation of fire risk received by the Brigade;
 - In consequence of a statutory consultation request;

- At the request of another regulatory body;
 - Following receipt of notification of changes as required by an 'alterations notice';
 - Following repeated false alarms of fire; or
 - similar circumstances;
17. The Brigade will act in accordance with any inspection programme determined and notified by a Primary Authority Partner for a regulated entity.
18. Where other enforcing authorities have a regulatory interest in a particular premises, 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). The Brigade may share data and intelligence gained from its regulatory fire safety and other activities with other regulators to the full extent allowed by law. Referral to another agency may be in addition to action taken by the Brigade.
19. Where another regulator has responsibilities or power in respect of the same matters as the Brigade (particularly if those powers extend to parts of the premises the Brigade does not regulate) the matter may be referred to that regulator to take appropriate action. The Brigade's findings will be passed to that regulator to assist them.

Requesting information from businesses and other undertakings

20. The Brigade will continue to work with other enforcing authorities, regulated entities and others in order to avoid duplication of collection of information from regulated entities and to seek and implement ways of:
- Varying data requests according to risk;
 - Limiting collection to specific regulated entities sectors/sub-sectors;
 - Reducing the frequency of data collection;
 - Obtaining data from other sources and sharing data with other authorities;
 - Allowing electronic submission; and
 - Only requesting data which is justified by risk assessment
21. When determining data that may be required from regulated entities the Brigade will consider the costs and benefits of such requests to regulated entities in order to avoid, so far as is reasonably practicable, requesting data that is not required to demonstrate compliance with the law or the person who is responsible under the law.

Determining the level of Enforcement

22. The Brigade believes in firm but fair enforcement of the law. In determining the level of enforcement action to take, it will use recognised risk assessment methodology and will consider the following:

- The nature and seriousness of any alleged breaches; breaches that are deliberate, persistent, discriminatory or for financial gain are likely to be regarded as more serious;
- The degree and likelihood of harm risked, and any harm actually caused. The views of any person (or the family of any person) who has been harmed as a result of or in connection with the breaches might be relevant to this factor;
- Previous experience and record of compliance of the responsible persons with fire safety and other health and safety requirements;
- Action taken to prevent any recurrence;
- Any explanation offered and the circumstances and attitude of the responsible person towards fire safety;
- Any statutory defence available;
- The likely effectiveness of the enforcement options in securing ongoing compliance with fire safety requirements;
- The advice or views (where applicable) of other regulatory bodies with responsibilities in respect of the premises;
- Any action being taken by other regulatory bodies;
- Where applicable, the views of any Primary Authority Partner for the business.

23. Where LFC is the Primary Authority the Brigade will deal with enforcement actions from other enforcing authorities in accordance with timescales laid down in the Regulatory and Enforcement Sanctions Act 2008.

24. The Brigade may take multiple enforcement actions for the same premises e.g. serve an Enforcement Notice to require positive remedial steps, serve a Prohibition Notice to prevent uses creating the most serious risks and to prosecute for the underlying breaches of the law where the evidential and public interest tests are satisfied. Additionally, the Brigade may take different approaches to different breaches at the same premises/undertaking where that reflects the different risks associated with those different breaches.

25. The Brigade does not accept voluntary undertakings in any case where the level of risk to life is sufficient to justify service of an enforcement, improvement or prohibition notice.

26. Where remedial action is required and that action requires the approval of another regulatory body, the Brigade will consult with that body unless in the circumstances of the case it is impractical to do so. Any consultation the Brigade undertakes will not remove any requirement for the responsible

person for the premises to obtain any necessary permissions or approvals from the relevant bodies. Any failure on the part of the Brigade to consult will not invalidate a notice.

27. To assist with consistency of enforcement Primary Authorities can give Primary advice which cannot be challenged by another Enforcing Authority.

28. Potential enforcement options are addressed below.

Educate and inform

29. When a breach of the law is found but the level of risk is not high, oral or written advice about the nature of the non-compliance and the actions needed to remedy it may be given. The Brigade will be clear whether the remedial actions are required for regulatory compliance or constitute good practice beyond minimum regulated standards.

Non-Statutory Notification of deficiencies

30. The Brigade will write formally to the person responsible for the premises or any person with duties in respect of the premises to explain fire safety deficiencies that have been found and what needs to be done to address those deficiencies. The Notification does not have legal force and is not binding. The Brigade will expect the responsible person to act on the advice given. However, if the risk score calculated following an audit was close to that where an enforcement notice would have been served or officers have doubts that the responsible person will act on the letter, they have discretion to revisit to check what has been done. If the recipient of the Notification of Deficiencies does not take action, this will be taken into account as evidence of that persons attitude to safety and regulatory compliance when considering the level of enforcement action that will be taken if fire safety deficiencies are found on a future visit.

Statutory Notices Requiring Remedial Action

31. Formal notices calling for corrective action are 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. Examples include Enforcement Notices under Article 30 of the Regulatory Reform (Fire Safety) Order 2005 and Improvement Notices under regulations made under the Health & Safety at Work Act 1974 such as the petroleum regulations. Notices specify the problem and will either require a remedy as determined by officers or (if the legislation allows) may allow for other action with an equivalent remedial effect. These notices are legally binding on the recipient and non-compliance can result in further enforcement action including prosecution. In most cases there is a right of appeal against a notice. Where there is a right of appeal, advice on the appeal mechanism will be set out in writing to the person on whom the notice is served.

32. Where a notice requires changes to a premises in which another enforcing body has a statutory interest, the Brigade will, so far as is reasonably practicable, consult with such bodies as can reasonably be identified before serving the notice. Any such consultation will not release the person on whom the notice is served from their statutory obligation to consult relevant bodies in respect of works they will undertake as a result of a notice. Any failure by the Brigade to consult with any particular body or person will not invalidate any notice served under the Regulatory Reform (Fire Safety) Order 2005.

Alterations notice

33. Alterations notices are used where by the nature of the use of premises persons are at risk of death or serious injury (i.e. the premises use is high risk and this is normal for the type of activity carried on there); or a change to premises, their use, furniture, fittings or equipment; an increase in quantities of dangerous substances could result in persons being placed at risk of death or serious injury.
34. The notice is legally binding and requires that the fire risk assessment for the premises and fire safety records must be recorded. The notice may require that before any changes are made a copy of that fire risk assessment together with details of the proposed changes must be submitted to the Brigade. There are rights of appeal against the notice and these will clearly set out in writing at the time the notice is served.

Prohibition notices

35. The Brigade 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 to 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.

Simple caution (often known as a formal caution)

36. The Brigade will consider accepting a simple caution in circumstances where one or more criminal offences have been committed and:
- there is sufficient evidence to prove the case; and
 - the offender has admitted the offence; and
 - the offender has agreed to be cautioned; and

- the offence has not been committed by the offender before and
37. The Brigade will have regard to the factors in paragraph 22 when considering whether a simple caution is appropriate.
38. Where a caution is considered, the offender will be given a full explanation in writing 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 later prosecuted for an offence. If a caution were to be offered and refused by the offender then a prosecution would be considered.

Prosecution

39. The decision to prosecute is a serious step. Fair and effective prosecution forms a legitimate element of the Brigade's strategy to reduce the risk of death and injury by enforcing fire safety law. Any prosecution has serious implications for all involved – including the person prosecuted, casualties, witnesses and the Brigade's officers. The Brigade will apply the guidance set out below so that fair and consistent decisions about prosecutions can be made.
40. The Brigade will use its discretion in deciding whether to bring a prosecution.
41. The decision to prosecute (including the giving of a simple caution) will be taken by the General Counsel to the London Fire Commissioner, or a senior legal colleague, in consultation with the Assistant Commissioner (Fire Safety) or a senior colleague.

Who can be prosecuted

42. The Brigade will ensure that the correct individual and/or organisation is prosecuted for the correct offence/s. Where a company is involved, usually the Company will be prosecuted where the offence resulted from the company's activities. However, the Commissioner will consider any part played in the offence by the officers of the company: including Directors, Managers and the Company Secretary. Action may be considered against staff, contractors or any other person with fire safety duties (as well as or instead of the company) where it can be shown that the offence was attributable to neglect or other failings or actions on their part.

The test for prosecution

43. The decision whether or not to prosecute will be made in accordance with the Director of Public Prosecution's Code for Crown Prosecutors. Therefore no prosecution may go ahead unless the Brigade finds there is sufficient evidence to provide a realistic prospect of conviction and decides that prosecution would be in the public interest. When considering whether prosecution is in the

public interest the Brigade will consider any relevant factors set down by the Director of Public Prosecutions in the Code for Crown Prosecutors and in particular the factors in paragraph 22 above noting that these factors are not exhaustive and those which apply will depend on the particular circumstances of each case. Deciding on the public interest is not simply a matter of adding up the number of factors for and against prosecution. Each applicable factor must be considered and given appropriate weight according to the circumstances of the case. The Brigade will decide how important each factor is in the circumstances of each case before making an overall assessment.

44. The Brigade may also prosecute, whatever level of enforcement action is taken in the substantive enforcement case, where there is sufficient evidence and it is in the public interest and there has been either:
- Failure to supply information without reasonable excuse or knowingly or recklessly supplying false or misleading information. It is essential that lawful requests for information by Brigade officers are complied with and that accurate information is always supplied to enable informed regulation to be exercised;
 - Obstruction of officers in carrying out their powers. The Brigade regards the obstruction of, or assaults on, its officers while lawfully carrying out their duties as a serious matter.

Consequential Orders

45. The Brigade will always seek to recover its costs of investigation and court proceedings. The Brigade will also encourage the criminal courts to use their full range of sentencing powers as appropriate to the case e.g. confiscation and/or compensation orders

Making decisions of the level of enforcement action to be applied

46. Officers will apply a level of enforcement (including consideration of timescale within which compliance should be achieved) that is proportionate to the circumstances of the case taking into account the nature and size of the undertaking concerned.
47. All staff that take enforcement decisions will be required to follow the principles and guidance in the 'Enforcement Management Model' (EMM) issued by the Health and Safety Commission as adjusted for use by Fire and Rescue Authorities by the National Fire Chiefs' Council.
48. Officers will be fair, independent and objective when considering enforcement action.
49. We will identify the persons responsible for compliance and direct our enforcement action to them. The taking of all formal enforcement action and proposals to vary levels of enforcement action will be reviewed and authorised by a senior officer to ensure, so far as reasonably practicable, that all actions are proportionate to the risk to life and impose the minimum burden necessary to secure

reasonable compliance with the law. Preservation of life and avoidance of injury will however always be the Brigade's principal objective.

50. In each case where advice, guidance or instruction is given the officer doing so will explain (orally or in the written documents as appropriate) what the non-compliance is; why in the opinion of the Brigade there is non-compliance; and what needs to be done to remedy the non-compliance.
51. Where those we regulate approach us for advice about non-compliance in their premises and in doing so show willingness to rectify that non-compliance in a timescale proportionate to the level of risk we will generally not take formal enforcement action unless in the professional judgement of the Brigade's fire safety officers it is necessary to do so to protect life.
52. In the interests of certainty, normally if the Brigade decides not to bring a prosecution in a case then that decision will be final. However there are circumstances where in accordance with the Code for Crown Prosecutors that decision will be reviewed and a prosecution started or continued. The CPS Victims' Right to Review Scheme does not apply to the Brigade's prosecution decisions. However the Brigade will arrange a review of any decision not to prosecute if one is requested by any person (or if appropriate the family of any person) who has suffered harm as a result of or in connection with the contraventions. This may result in the decision not to prosecute being overturned.
53. The Commissioner is a Public Authority for the purposes of the Human Rights Act 1998; it 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.

Investigation of offences

54. All investigations will be carried out under the following legislation or such other legislation as will from time to time replace or supplement it and with due regard to any associated guidance or codes of practice, in so far as they relate to the Commissioner:
 - the Police and Criminal Evidence Act 1984
 - the Criminal Procedure and Investigations Act 1996
 - the Regulation of Investigatory Powers Act 2000
 - the Human Rights Act 1998
 - the current Criminal Procedure Rules .
55. These Acts and associated guidance control how evidence is collected and used and give a range of protections to citizens and potential defendants.
56. Our authorised officers will also comply with the requirements of the particular legislation under which they are acting, and with any associated guidance or codes of practice.

Our powers

57. Fire Safety Officers exercise their powers as inspectors to obtain relevant information under Article 27 of the Regulatory Reform (Fire Safety) Order;
58. Petroleum Inspectors will exercise their powers to obtain relevant information under and sections 20 and 21 of the Health and Safety at Work etc. Act 1974.
59. Fire investigators will exercise their powers under sections 44 and 45 of the Fire and Rescue Services Act 2004.
60. Where other information gathering powers are relied on this will be made clear to the person from who information is requested
61. Fire safety officers, petroleum inspectors and fire investigators (the latter when exercising our powers to investigate the causes and /or spread of fire) may:
 - enter premises (without use of force)
 - require fire safety records to be produced and to inspect them
 - examine, measure, test and where necessary dismantle articles items, equipment machinery and plant (where relevant to safety);
 - take samples;
 - seize and destroy any substance identified as hazardous;
 - require people to respond to reasonable enquiries.
62. In addition fire investigators may:
 - Apply for a warrant from a Justice of the Peace to enter premises by force
 - take possession of an article or substance found on the premises and detain it for as long as is necessary for any of these purposes:
 - (i) to examine, measure or test it (including to dismantle it for that purpose) ;
 - (ii) to ensure that it is not tampered with before examination of it is completed;
 - (iii) to ensure that it is available for use as evidence in proceedings for an offence relevant to the investigation;
 - require a person present on the premises to provide him/her with any facilities, information, documents or records, or other assistance, that he/she may reasonably request.
63. Petroleum inspectors may require a written statement from a person (but any such statement cannot be used in criminal proceedings against that person).

64. Obstructing a duly appointed fire inspector or petroleum inspector in the course of their duties is a criminal offence under Article 32 of the Regulatory Reform (Fire Safety) Order 2005 and section 33 of the Health and Safety at Work etc. Act 1974. Failure to comply with the reasonable request of an inspector is also an offence under this legislation and may lead to prosecution.

Conduct of investigations

65. Decisions on the need to conduct an investigation will be taken in discussion with the Head of Regulatory Enforcement (or nominated deputy) and an investigator assigned to the case.
66. Where investigations are conducted, the Commissioner will prioritise use of resources in favour of cases where fatalities or serious physical injuries have occurred.
67. Officers will utilise all sources lawfully available to explore reasonable lines of enquiry relating to the premises, persons or entities under investigation. This may include (but is not limited to) obtaining or conducting:
- company documents from national registries;
 - property documents from the Land Registry ;
 - internet based research (including social media) into companies and individuals;
 - information from credit reference agencies and similar bodies;
 - information from other regulatory or law enforcement bodies including the police, Her Majesty's Revenue and Customs, the Border Force, the Health and Safety Executive, local authorities
 - Information from other third parties.
68. All individuals and organisations that are under investigation by the Brigade will be notified in writing that they are under investigation unless, in the opinion of the Brigade, to do so may prejudice the investigation or otherwise compromise the conduct of the Brigade's enforcement functions. Such circumstances may include avoiding:
- intimidation of witnesses;
 - evidence being destroyed or tampered with prior to examination;
 - interference with the carrying out of wider investigations into other premises;
 - disclosing the means of undertaking investigations in a way that would assist people avoid detection of offences or the persons(s) responsible.
69. Persons that have been notified that they are under investigation, witnesses and the victims of fire incidents (or their surviving family) will be kept informed of the progress of the investigation unless to do so may, in the opinion of the Brigade prejudice the investigation or otherwise compromise the conduct of the Brigade's enforcement functions.

70. Where substances or articles are to be removed from premises by an officer in the exercise of their power, the officers will do so in accordance with Code B to the Police and Criminal Evidence Act 1984 (PACE).
71. Statements from witnesses will be taken in accordance with the Criminal Justice Act 1967 and the Criminal Procedure Rules.
72. People under investigation (including companies and other undertakings) will usually be offered the opportunity to attend an interview under caution to give their version of events and to offer any explanation that they may wish to. However, for some offences investigated this may not be necessary if the Brigade is satisfied it already holds enough evidence to take a decision on prosecution and that an interview would not be a reasonable line of enquiry.
73. Other than where a person makes admissions about involvement in possible offences, is cautioned on site and a record is made of the subsequent conversation or questioning (in accordance with PACE Code B), interviews under caution will be conducted at London Fire Brigade premises and will be recorded unless the circumstances of the case make this impractical. Interviews will be conducted in accordance with PACE Code C.
74. Persons attending interviews under caution at Brigade premises will not be under arrest and will be entitled to legal representation at their own cost. This will not apply in joint investigations where the police or similar bodies may have exercised power of arrest, in which case the provisions applicable to that body's conduct of interviews will apply. People attending interviews will be informed of their rights in the letter inviting them to attend and again at interview if they attend.
75. Offences that the Brigade investigates are divided into two categories:
- Summary offences (which are heard in magistrates courts); and
 - 'Either way' offences (which may be heard in either magistrates or Crown Court).
76. For summary offences, investigations must be concluded and, where a decision to prosecute is taken, proceedings must be started within six months of the commission of the offence. This does not apply to 'either way' offences for which there is no time limit.
77. Progress on cases will be monitored by the Area Fire Safety Manager and the Head of Regulatory Fire Safety Enforcement. Cases will be monitored throughout their lifetime and may be discontinued by the Head of Regulatory Head of Enforcement or the Assistant Commissioner where there is insufficient evidence to proceed or it is not in the Public Interest to proceed. A sample of cases will be subject to review by the Head of Regulatory Fire Safety Enforcement (or an appointed officer) and a legal officer, regardless of whether a decision is taken to prosecute. The lessons learned from any such review will be used to inform the conduct of future investigations.

Publicity about enforcement action taken

78. Details of all notices served under the Regulatory Reform (Fire Safety) Order 2005, and the Health and Safety at Work etc. Act 1974 will be placed on the Brigade's public register, in accordance with the Environment and Safety Information Act 1988, 28 days after issue service of the notice. The register will be updated to show whether a notice has been complied with or an extension of time to comply has been granted.
79. The Brigade's public register can be viewed on the London Fire Brigade web-site. Details of notices will also be placed on any national database maintained by the National Fire Chiefs Council.
80. The person on whom a notice has been served may apply to have elements of the public register entry removed or redacted where the entry may allow other to identify trade secrets.
81. The Brigade will seek to publicise the results of successful prosecutions as a deterrent to others and to encourage compliance with the law. In doing so we may use photographs and similar material taken at the premises by our officers or which have been supplied to us, whether or not they were presented in evidence.
82. The Brigade will make available to the Greater London Authority (GLA) details of notices served and prosecutions taken in respect of private landlords or their agents for inclusion on that Authority's rogue landlord checker to such extent as is agreed between the Brigade and the GLA from time to time. The Brigade may also make details of prosecutions taken and notices served available to government departments, agencies and bodies appointed by them for the purpose of any public register they may choose to publish or for statistical or research purposes. Specific policy in regard to this has been issued and is available on the London Fire Brigade website.

Appeals

83. Following service of any kind of enforcement action our officers will, on request, consider any representations that the person the notice was served on may wish to make. The Brigade regards such representations as an informal internal appeal. Such representations will usually be considered by the local Team Leader (for fire safety) or the Petroleum Team Leader. It nevertheless remains the responsibility of the person on whom a notice has been served to make any legal appeal within any statutory timescale.

Complaints

84. 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 an effective and easily accessible mechanism for dealing with comments and handling complaints. The Brigade's "Compliments and Complaints procedure" is explained fully on our website <http://www.london-fire.gov.uk>. Having a published and publicised procedure helps demonstrate to the public that the Brigade takes their comments seriously. These comments can help highlight potential problems and help the Brigade to build on the things that it does well.

Review of this Enforcement Policy Statement

83. The Brigade's officers will review this policy after 4 years and on earlier occasions where circumstances suggest review might be appropriate.

APPROVED DATE: by