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Protocol between

**LONDON FIRE AND EMERGENCY PLANNING
AUTHORITY**

and

**THE ROYAL BOROUGH OF KENSINGTON AND
CHELSEA**



THE ROYAL BOROUGH OF
KENSINGTON
AND CHELSEA



PROTOCOL BETWEEN LFEPA AND THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA

Dated: 1st October 2011

Review Date: 1st October 2012

Statement

Inter-agency working is important to the success of licensing and the effective introduction of the Housing Health and Safety Rating System. The Housing Act 2004 and the Regulatory Reform (Fire Safety) Order 2005 (the Fire Safety Order) highlight the need for authorities to work together and agree how their respective strategies can complement one another. These must reflect the joint dependencies necessary to tackle the community safety agenda. Within both the Housing Act and the Fire Safety Order, there is a duty on authorities to consult one another on certain prescribed matters relating to HMOs. Authorities must therefore establish joint protocols. There will also be opportunities for authorities to use licensing and the introduction of Housing Health and Safety Rating System and the Fire Safety Order as components in local area agreements.

1. Introduction

This protocol establishes the principles and describes the joint working arrangements between The Royal Borough of Kensington and Chelsea (RBKC) and the London Fire & Emergency Planning Authority (LFEPA) to deliver the objective of improved fire safety within housing occupied by more than one household. It is a framework which provides the basis for detailed local arrangements whilst encouraging collaboration at a regional level.

The introduction of the Housing Act 2004 and the Fire Safety Order has imposed a dual responsibility on two statutory authorities to enforce reasonable fire safety provisions within such housing.

To promote the efficient use of resources, this protocol will identify discrete areas of inspection and enforcement, appropriate review and monitoring arrangements and provide for urgent or unusual requests for assistance from either party. It seeks to provide all parties with confidence that they are discharging their respective duties under the relevant legislation.

The Housing Act 2004 is the primary piece of legislation for residential premises and this is enforced by The Royal Borough of Kensington and Chelsea in its own borough.

LFEPA has a legal duty to enforce the Fire Safety Order in the common areas of all residential accommodation not forming a single private dwelling.¹ LFEPA acknowledges that the fire safety standards required by The Royal Borough of Kensington and Chelsea under the Housing Act 2004 will, in most cases, achieve a satisfactory level of fire safety for relevant persons as required under the Fire Safety Order.

Conversely, RBKC has a duty to identify and, if necessary act upon, significant hazards found within all housing. It acknowledges that LFEPA will monitor and enforce fire safety standards, to a satisfactory standard, in premises identified in Section 3 of this protocol. LFEPA will inform RBKC of serious non-fire matters it encounters.

¹ The Fire Safety Order applies to all parts of domestic premises when prohibition action under Article 31 of the Fire Safety Order is taken.

Both Authorities utilise a risk based enforcement approach and it is recognised that some providers may not have sufficient competencies to undertake such risk assessments. In general, RBKC undertakes a risk assessment utilising the Housing Health and Safety Rating System (HHSRS), whilst LFEPA expects the responsible person for the premises to undertake a risk assessment.

These collaborative working arrangements, which support the Government's broader agenda, will enable both authorities to promote fire safety and other safety provisions within a broader range of premises than would have been possible if they had acted independently or undertaken joint inspections.

Nothing in this agreement shall be considered as creating a partnership, a contractual relationship, a contract of employment or a relationship of principal and agent between the parties and shall not add in any way to the existing statutory duties of the parties. No party to this agreement shall hold itself as being authorised to enter any contract on behalf of any other party or in any way bind any other party to the performance, variation, release or discharge of any obligation otherwise than in circumstances expressly or implicitly permitted by this agreement.

Nothing in this agreement will prevent either authority carrying out their enforcement activities in line with statutory powers.

2. The underlying principles of this protocol are as follows:

- To ensure appropriate standards of fire safety and other safety provisions are provided and maintained in multi-occupied residential premises.
- To develop data sharing arrangements, through established paths and in accordance with Section 9 of this document.
- To assist landlords and other providers to understand the legal framework under which they operate.
- To encourage opportunities for offering joint training and awareness sessions for both authorities.
- To recognise the needs and limitations of LFEPA and RBKC and to acknowledge that both authorities will always seek to act in good faith.

3. Which Authority should take the lead enforcing role for fire safety?

Authorities will normally undertake enforcement action in premises as detailed in table 1 below.

Nevertheless, LFEPA is under an obligation to reduce fire deaths in line with its risk based enforcement policies and will undertake planned, proactive inspections in any identified type of premises or in a particular locality. Prior to any such series of inspections consultation should take place to ensure that duplication of enforcement does not occur. Any such programme of inspection may, subject to local agreement take place individually, collaboratively or jointly and must complement the inspection programme of The Royal Borough of Kensington and Chelsea.

Table 1: Lead Authorities for enforcement in differing types of premises.

Single dwellings (Fire risk assessment not required)	RBKC
HMOs whether subject to mandatory, selective and additional licensing or not. Hostels ²	RBKC
Self contained flats, whether purpose built or converted ³	LFEPa & RBKC
Premises with mixed residential and/or commercial use ¹	LFEPa
Bed and Breakfast/Hotels/Lodgings	LFEPa
Sheltered Accommodation	LFEPa
All multi-occupied accommodation owned or managed by RBKC	LFEPa

¹Where there is clear fire resisting separation and separate entrances RBKC will take responsibility for the residential premises (unless owned by RBKC) and LFEPa will take responsibility for the commercial premises.

²Hostels generally have a requirement for the residents to have a particular need or dependency and do not provide permanent accommodation.

³Royal Borough of Kensington and Chelsea retain the lead enforcement role for fire safety within all self-contained flats, whether purpose-built or converted as stated in the protocol; and Fire and Rescue Authority(FRA) take the lead enforcement role for fire safety arrangements in the common parts of all Purpose Built Blocks or converted flats.

What does it mean to be designated as the lead enforcement authority?

It is recognised that when Local Housing Authorities (LHA) or FRAs are locally designated as the lead enforcement authority for a certain type of premises, this does not affect the statutory responsibilities of either authority. Nor does it necessarily imply that all such properties will be proactively inspected by the lead authority. This will depend on the resources available.

Where concerns about fire safety in any individual flats or the common parts of the building come to light for whatever reason, including as a result of a reactive or proactive inspection, it should be the responsibility of the lead enforcement authority to investigate in the first instance.

Where necessary emergency action will be taken by either authority to reduce any immediate risk but further remedial enforcement will only be undertaken following consultation with the designated lead authority. Nothing in this protocol will prevent either authority undertaking specific individual monitoring or enforcement action if appropriate.

The legislative position and the provision and management of supported housing is complex and outside the scope of this protocol.

4. What will The Royal Borough of Kensington and Chelsea do?

- RBKC will undertake, in line with their statutory requirements, the monitoring and inspection of premises identified in Section 3 of this protocol.
- RBKC will undertake the monitoring and inspection of their own premises to ensure adequate fire safety standards.
- RBKC will enforce fire safety standards in accordance with the provisions of the Housing Act 2004 and the HHSRS, having regard to relevant documents published by the Government including, 'Fire Safety Risk Assessment: Sleeping

Accommodation' (ISBN 9781851128174), statutory operating guidance on the HHSRS and in accordance with any guidance jointly agreed with LFEPA.

- RBKC will, when taking enforcement action under the Housing Act 2004, have regard to the Fire Safety Order.

As RBKC cannot enforce in its own premises it will ensure that when deficiencies are identified it takes appropriate action in a timely manner to ensure acceptable fire safety standards are maintained and achieved in these premises.

- Although RBKC may offer a suitable means of complying with fire safety requirements, it will also:
 - Ensure guidance accompanies all statutory notices informing owners/landlords of the need to undertake their own fire risk assessment.
 - Ensure that in any relevant notice, the schedule of work is drafted in such a way as to offer the owner/landlord the opportunity to bring forward alternative means of complying in accordance with their own fire risk assessment.
 - Where such alternatives are brought forward by the owner/landlord, RBKC will consult with LFEPA.
- RBKC will undertake consultation with LFEPA in line with the criteria detailed in Section 6 of this protocol.
- RBKC will provide LFEPA with relevant, timely and comprehensive data to enable that authority to maintain adequate property and risk based data sets.
- RBKC will consider the use of the full range of powers under the Housing Act 2004, including Emergency Prohibition Orders, where appropriate.
- RBKC will provide LFEPA with suitable out of hours contact details so that where appropriate, consideration is given to ensure vulnerable persons are not left homeless as a result of emergency enforcement action.

5. What will LFEPA do?

- LFEPA will undertake, in line with their risk-based policies, the monitoring and inspection of premises identified in Section 3 of this protocol which fall under the scope of the Fire Safety Order.
- LFEPA will carry out post fire audits on all premises where the Fire Safety Order applies, taking appropriate action where necessary.
- LFEPA will enforce fire safety standards in accordance with the Fire Safety Order, having regard to relevant documents published by the Government including, 'Fire Safety Risk Assessment: Sleeping Accommodation' (ISBN 9781851128174) and in accordance with any guidance jointly agreed with RBKC.
- LFEPA will undertake consultation with RBKC in line with the criteria detailed in Section 6 of this protocol.
- LFEPA will provide RBKC with relevant, timely and comprehensive data to enable those Authorities to maintain adequate property and risk-based data sets.
- LFEPA will provide RBKC with information, within their scope of competency, of serious matters that may need to be addressed by those authorities. (This may include such information as apparent overcrowding, poor management or unsafe practises by tenants).

- LFEPA is an emergency organisation which provides 24-hour cover. Information about dangerous fire safety conditions may come via complaints or post incident and may occur outside of normal working hours. LFEPA are under an obligation to take action in such circumstances. Where possible and especially outside of normal office hours, the dangerous conditions will be mitigated and RBKC will be informed as soon as practicably possible.
- LFEPA would, in principle, be willing to support RBKC at Residential Property Tribunals offering professional opinion on fire risks.

6. Consultation

Formal consultation between authorities should take place in accordance with the requirements of the Housing Act 2004 Section 10 and the Fire Safety Order Article 46. Where necessary, in complex premises, joint inspections and consultation may be undertaken to agree a suitable standard prior to the taking of enforcement action by the most appropriate authority.

Arrangements should be put in place to facilitate the following:

Strategic level consultation

Formal meetings at Area Management (GM) level to review procedural and policy issues. This group should also monitor the outcomes of the protocol and should meet at least every 6 months.

Tactical level consultation

Urgent – Consultation between Local Housing Officer and Local Fire Officer. (Where possible this should be between an identified and named link officer from each authority).

Non-urgent – Discussions between named link officers, if appropriate referred to strategic meetings.

Individual consultation

If a scheme is in compliance with this protocol and jointly agreed guidance, consultation can be deemed to have taken place. Depending on circumstances and the complexity of the requirements, written consultation may not always be necessary. Where alternatives to schemes are offered or problematic/non-standard premises are involved, full consultation should take place.

7. Communication

Local communication channels will be established between LFEPA and RBKC.

Each authority undertakes to provide information about their respective legislation to promote understanding and efficient working.

8. Monitoring and evaluation

Any changes to this protocol, other than minor administrative changes, will be subject to approval at strategic level and the signatories to the protocol.

An annual report will be produced jointly by parties to the protocol.

9. Data Exchange

RBKC and LFEPA will establish local communication channels to exchange data.

RBKC will provide data in an agreed format to LFEPA about residential premises. This will enable LFEPA to populate their premises databases.

RBKC and LFEPA will provide six monthly updates of this data in a format agreed locally.

Both authorities will ensure that the information is marked as confidential and will not disclose it to other organisations without the appropriate consent. Authorities will not use or disclose information supplied pursuant to this protocol without consulting the originating authority. All information whether held on manual files or computer/digital media will be disposed of as confidential waste.

10. Approval

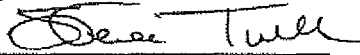
The protocol will be approved and endorsed at a suitable strategic management level by both RBKC and LFEPA.

Consultation should take place on an area basis with appropriate Private Sector Housing Groups.

Signatories to Protocol

Protocol between
LONDON FIRE AND EMERGENCY PLANNING AUTHORITY
and
THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA

Signed:



Date:

20/2/12

Steve Turek

Assistant Commissioner

For London Fire and Emergency Planning Authority

Signed:



Date:

17.11.11

Paul Morse

Director of Environmental Health

For The Royal Borough of Kensington and Chelsea