

Appendix 1

Environmental Health Enforcement Policy

This policy sets out the enforcement framework in which the Environmental Health Division will operate to achieve the aims of the Council's Corporate Plan:

A Safe Place - Making Eastbourne a safe place to live, work and visit

We aim to reduce and prevent anti-social behaviour and the fear of crime

A Healthy Place – Protecting and improving health and reducing health inequalities in Eastbourne

We aim to protect public health through intervention, education and responsible action

A Place to Enjoy – Enhancing the opportunities for enjoyment within Eastbourne through active pursuits and simple relaxation

We aim to keep Eastbourne clean and clear of litter and waste

A Place for Everyone - Encouraging a fair and socially inclusive society

We aim to help everyone to have a decent home.

In relation to food safety, the Council aims to ensure that food which is intended for human consumption is produced, stored, distributed, handled and consumed within this borough in such a way that any risk to the health or safety of the consumer is minimised as far as is reasonably practicable.

ENFORCEMENT OPTIONS

Enforcement decisions shall be consistent, balanced, fair and relate to common standards that ensure the public, businesses, employees and the environment are adequately protected.

In order to achieve and maintain consistency of enforcement, officers will follow all official guidance and codes of practice including for food safety the statutory codes of practice issued under section 40 of the Food Safety Act 1990, Food Standards Agency guidance, Industry Guides to Compliance and advice from LACORS (the Local Authorities Co-ordinators of Regulatory Services).

The factors to be considered in coming to a decision about the type of action to take include: -

- (a) The seriousness of the offence;
- (b) The past history of the offender;
- (c) The confidence in management and the degree of wilfulness involved;
- (d) The consequence of non-compliance;
- (e) The likely effectiveness of the various enforcement options;

In the area of food safety, the Home Authority Principle set up by LACORS shall be adhered to and in the area of health and safety the Lead Authority Principle shall be adhered to. Where applicable, the comments of the home, lead or originating authorities shall be considered.

Having considered all relevant information and evidence, the Council may decide to:

- a) take no action, other than record relevant information
- b) take informal action
- c) serve a statutory notice (including an Anti-Social Behaviour Order, Injunction, or Emergency Prohibition Order)
- d) detain or seize food or equipment
- e) refuse, suspend or revoke a licence
- f) issue a formal caution
- g) prosecute

In some cases a combination of these options may be appropriate.

In all enforcement options, officers will recognise the need to differentiate between legal requirements and good practice, even if only when giving verbal advice.

1. Take No action

No direct action will be taken where:

- a) the subject is outside the legal duties and responsibilities of the Council and/or the Environmental Health Division;
- b) upon investigation any relevant allegations are not substantiated;
- c) any relevant allegations are withdrawn prior to investigation.

2. Take Informal Action

Informal action through the provision of advice and guidance in verbal or written form will usually be the first enforcement option except where official guidance recommends formal action. Circumstances that indicate that informal action is appropriate include:

- a) the act or omission is not serious enough to warrant formal action;
- b) from the past history it can be reasonably expected that informal action will achieve compliance with the legislation;
- c) there is confidence in the management of the business or individual to act upon the advice given and remedy the breach of the legislation or abate the nuisance in a reasonable timescale
- d) the consequence of non-compliance will not pose a significant or unacceptable risk to the environmental or public health or safety.
- e) the nature of the undertaking is such that formal action in the first instance would be inappropriate for example with voluntary organisations and charitable groups who are using volunteers to run their operation. None the less this must be considered with the factors outlined above and does not rule out formal action in certain circumstances.

When such an approach is used to secure compliance with legislation then any written documentation issued will: -

- 1) specify the legislation that has been contravened;
- 2) specify what remedial action is required, together with the reasons;
- 3) ensure that any recommended areas of good practice, which are above the minimum levels required by statute, are clearly differentiated within the document;

Where examples are given of how compliance may be achieved, it will be made clear that alternatives means of compliance may also be acceptable.

3. Serve Statutory Notices

These notices impose a legal duty on the recipient requiring action to be taken. Circumstances that indicate the need for statutory notice action include:

- a) the existence of a significant imminent risk to public health or safety;
- b) the existence of significant contraventions of legislation, significant risk or substantial evidence of nuisance that requires remedy;
- c) situations where the consequences of non-compliance could be potentially serious to health, safety, or cause public nuisance;
- d) a lack of confidence in the management of the business or individual to respond to informal action
- e) a history of non-compliance with informal action by the management of the business or the individual;
- f) prevailing standards which are generally poor with little management awareness of statutory requirements or willingness to act;
- g) there is no confidence in the integrity of an unprompted offer made by the proprietor of a food business to voluntarily close a premises, or cease the use of any equipment, process or treatment associated with the imminent risk and a proprietor is unwilling to confirm in writing his/her unprompted offer of a voluntary

prohibition.

h) occasions when although there is an intention to prosecute, effective action also needs to be taken as quickly as possible to remedy conditions that are serious or deteriorating.

Failure to comply with statutory notices will generally result in prosecution and/or works in default.

All statutory notices and intentions to serve a statutory notice will be signed by appropriately trained, experienced and authorised officers. The officer will be satisfied that the contravention is significant and that all appropriate criteria are met. Sufficient evidence will be available to justify the notice, and details of all evidence will be properly recorded to satisfy PACE and CPIA requirements.

Time limits given will be reasonable.

A “Minded To” notice will be served prior to service of a statutory notice for legislation where it is required by law. In such circumstances, the recipient will be given at least fourteen days to respond. If in response to a “Minded To” notice the recipient chooses to exercise their right to have representations considered then the line manager of the officer shall take a fresh and fair look at the proposed action in the light of the representation. The results of this representation will be notified to the applicant in writing. The recipient will also be informed that if they are not satisfied with the outcome they may complain using the Council’s complaints procedure.

Other relevant bodies will be informed of the action as necessary, for example home or lead authorities, originating authorities, and copies will be forwarded on request.

Recipients of notices will always be informed in writing of their rights to appeal and these will normally be on the rear of the notice. They will also be informed in writing of the consequences of non-compliance.

Compliance with the notice will be checked as soon as possible after the expiry date of the notice.

Requests for time extensions to notices will not be unreasonably rejected. Confirmation of an extension or reason for a rejection of an extension will be put in writing to the applicant.

Where the powers of works in default are available, officers will consider the options and take the most appropriate form of action in each case.

4. Refusal, Suspension or revocation of a licence

Circumstances that indicate that it is appropriate for a recommendation to the Licensing Panel to consider the refusal, suspension or revocation of a licence include:

- a) the licensee or prospective licensee is not considered to be a fit and proper person because of unspent convictions or a documented history of non compliance with licence conditions or requirements;
- b) licence conditions cannot be complied with, or cannot be complied with in a timescale acceptable to the Council;
- c) the granting or renewal of a licence would be likely to result in public nuisance.

5. Formal Caution

Formal cautions will be issued in accordance with the current Home Office circular, and will be considered against the criteria listed below. A properly administered formal caution may be cited at a future court hearing provided that the caution was administered for an offence committed within 3 years of the offence for which the prosecution is brought.

In case where there is sufficient evidence to warrant a prosecution but the public interest would not benefit

from such a course of action, then a formal caution may well be appropriate.

Formal cautioning will not be used as an alternative to a weak prosecution case.

Criteria for Cautioning

Formal cautions will be issued to: -

- a) Deal quickly and simply with less serious offences;
- b) Divert less serious offences away from the courts;
- c) Reduce the chances of repeat offences.

To safeguard the suspected offender's interest, the following conditions should be fulfilled before a caution is administered:

- 1) There must be evidence of the suspected offender's guilt sufficient to give a realistic prospect of conviction;
- 2) The suspected offender must admit the offence;
- 3) The suspected offender must understand the significance of a formal caution and give an informed consent to being cautioned;

6. Prosecution

The Council recognises that the decision to prosecute is a very significant one and could have far reaching consequences upon the defendant.

The circumstances which are likely to warrant a prosecution are:

- a) the offence involves a flagrant breach of the law such that public health, safety or well being or has been put at risk;
- b) the offence involves a failure by the alleged offender to correct an identified serious contravention having been given a reasonable opportunity to comply with the lawful requirements of an authorised officer;
- c) the offence involves a failure to comply in full or in part with the requirements of a statutory notice;
- d) there is a history of offences related to risk to public health or safety;
- e) it is appropriate to draw attention to the need for compliance with the legislation and a conviction may deter others from similar failures of the legislation
- f) it is in the public interest and there is a realistic prospect of conviction and sufficient evidence to support proceedings;

Before a prosecution proceeds, the Officer responsible for deciding on the enforcement action must be satisfied that there is relevant admissible, substantial and reliable evidence that an offence is being committed by an identifiable person or company.

There must be a realistic prospect of conviction.

In addition to being satisfied that there is sufficient evidence to provide a realistic prospect of conviction, there must be a positive decision, based on relevant criteria that it is in the public's interest to prosecute. Further

guidance is given in the Code for Crown Prosecutors.

When deciding where or not to take a prosecution, the following factors should be considered: -

- a) the seriousness of the alleged offence,
- b) the risk or harm to public health,
- c) the presence identifiable victims,
- d) any failure to comply with a statutory notice served for significant breach of legislation,
- e) any disregard of public health for financial reward.

The previous history of the party concerned should also be considered including: -

- f) offences following the history of similar offences;
- g) failure to respond positively to past warnings; and
- h) failure to comply with statutory notices.

In addition, consideration should also be given to: -

- i) the likelihood of the defendant being able to establish due diligence defences,
- j) the ability of any important witnesses and their willingness to co-operate,
- k) the willingness of the offending party to prevent a recurrence of the problem,
- l) the probable public benefit of a prosecution and the importance of the case – for example, whether it might establish a legal precedent,
- m) whether other actions, such as issuing a formal caution, is more appropriate,

Where appropriate, Home and originating authorities should be advised on any prosecutions taken by this Council and their outcome.

As a general rule a prosecution will not be undertaken without the alleged offender being given a reasonable opportunity to comply with the law. The Council recognises, however, that there are circumstances where a contravention is particularly serious or there has been a blatant or reckless disregard for the law and it is right to prosecute without prior warning.

Failure to comply with a statutory notice will normally result in a prosecution except where the undertaking of works in default may be a more appropriate course of action. However, exercising the option of work in default will not necessarily eliminate the possibility of prosecution.

Enforcement action against employees will receive special consideration. Where appropriate a warning letter (informal notice) will be preferred unless the matter is serious and that the employee had received a prior warning from either his employer or the Council.

Human Rights Act 1998

Before instigating a prosecution or withdrawing an approval or licence the human rights implications of that action must be considered. A Human Rights Act form is included in the prosecution procedure and must be completed in these cases.

Appeals

If any person is unhappy with the action taken, or the information or advice given by the Council's environmental health staff they will be given the opportunity of discussing the matter with the Head of Environmental Health or the relevant Team Manager.

This process is without prejudice to the Council's 'Getting it Right' complaints procedure or any formal appeals mechanism.

General Issues

Enforcement options will be considered in line with this policy, based on the facts of the case, regardless of the race, colour, nationality, ethnic origin, sex, marital status, disability or age of the individuals involved.

The Council adopted the Enforcement Concordat in January 2001. This policy reflects the principles of good enforcement set out in the Concordat.

Officers will comply with Codes B, C and E of the Police and Criminal Evidence Act 1984 as it relates to local authority enforcement.

If enforcement action is being considered which the Council believes may be inconsistent with that adopted by other authorities or with nationally recognised guidance, or when the council is informed of a possible inconsistency, the matter will be referred to the relevant local co-ordinating body or the home authority, etc. However, where circumstances could result in a serious risk to health, officers may continue to take enforcement action prior to any referrals.

Before formal enforcement action is taken, officers will provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference, unless immediate action is required (for example, in the interests of health and safety or environmental protection or to prevent evidence being destroyed).