

Rother and Wealden District Councils
Shared Environmental Health Service
Enforcement Policy 2014

1.0 Introduction

The primary aim of the Environmental Health Service is to protect public health. This is done by ensuring compliance with the legislative framework within which Environmental Health functions operate so that consumers, businesses, employees, individuals and the environment are protected. Fair, proportionate, targeted and effective enforcement is essential to protecting the health, safety and economic interests of all concerned, and there is a range of tools available to the Service to achieve this.

Generally we will provide advice and support those seeking to comply and, at the same time, deal with those who choose not to comply, using proportionate action. The detail on how and when action may be taken is outlined in the body of this policy.

The Service must also have regard to the various general duties imposed on the service e.g. section 17 of the Crime and Disorder Act 1998. We are obliged to comply with the Human Rights Act 1998, so we will take its provisions into account when taking decisions relating to enforcement action.

The Policy should be read in conjunction with our service standards:

<http://www.rother.gov.uk/article/10151/What-you-can-expect-from-Environmental-Health>

or

http://www.wealden.gov.uk/Wealden/Council/Performance/Public_Health_and_Community_Performance/PHCS_Environmental_Health_Service_Standards.aspx

2.0 Policy Scope

The relevant legislation must always be adhered to by an officer whilst carrying out all Environmental Health related enforcement and investigation work, such as:

- Human Rights Act 1998.
- Regulatory Enforcement and Sanctions Act 2008.
- Legislative and Regulatory Reform Act 2006.
- Police and Criminal Evidence Act 1984.
- Regulation of Investigatory Powers Act 2000.
- Criminal Justice Act 2003.
- Criminal Procedure and Investigation Act 1996.
- Criminal Justice and Police Act 2001.
- Equalities Act 2010.
- Data Protection Act 1998.

We are committed to providing an effective service with officers carrying out their duties in an equitable, proportional, practical and consistent manner. To achieve this we have adopted the principles of the following:

- The Department for Business, Innovation and Skills' (BIS') Regulators Compliance Code.

- The Enforcement Concordat.
- Local Better Regulation's Priority Regulatory Outcomes.
- BIS' Code of Practice on Guidance on Regulation.
- Health and Safety Executive/Local Authorities Enforcement Liaison Committee's (HELA's) Guidance to Local Authorities on Priority Planning.
- HELA's Incident Selection Criteria Guidance.
- Local Government Regulation's Home Authority Principle.
- BRDO's Primary Authority Principle and Guidance.
- The Crown Prosecution Service Code for Crown Prosecutors (as amended.)
- The Food Law Code of Practice.
- Health and Safety Executive Enforcement Management Model (EMM).
- The Health and Safety Commission's Enforcement Policy Statement.
- European Convention on Human Rights.

We will also comply with any statutory requirement placed upon us and seek to align our procedures with best practice, including any codes introduced subsequent to the adoption of this Policy.

The Policy applies to actions in relation to all of the legislation enforced by the Service. Enforcement action includes any action taken by officers aimed at ensuring that individuals or businesses comply with the law and goes beyond formal enforcement action such as prosecution.

3.0 General Principles

Prevention is better than cure. Therefore, our role involves actively working with businesses and the public to advise on and assist with compliance. Where we consider that formal action is necessary, each case will be considered on its own merits. However, there are general principles that apply to the way each case must be approached. These are set out in this Policy.

The majority of cases involving regulatory matters will relate to businesses, however, there will be some cases put before the Courts that relate to individuals, particularly those involving statutory nuisance. These cases will be treated in the same way as those involving businesses and the general principles outlined around proportionality of action, for example where appropriate trying informal approaches before resorting to formal action and the Courts, will be followed.

Enforcement decisions will be fair, independent and objective and will not be influenced by issues such as ethnicity or national origin, gender or gender identity, religion or belief, political views, disability, age or the sexual orientation of the suspect, victim, witness or offender. Such decisions will not be affected by improper or undue pressure from any source. Where applicable, we will take into account the views of any victim, injured party or relevant person to establish the nature and extent of any harm or loss, and its significance, in making the decision whether to take formal action.

This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. We recognise the positive impact that the service can have on economic progress and growth in the local economy and see it as part of our role to encourage and support the growth of legitimate business activity within the legal framework provided by central government.

4.0 Risk Based Enforcement for Businesses

We will ensure that our resources are targeted where they will be most effective. We will ensure that intelligence and risk assessment inform all aspects of our approach to business regulatory activity, including:

- Data collection and other information requirements;
- Inspection programmes;
- Advice and support programmes;
- Enforcement activity and sanctions.

We will normally use the appropriate Government risk assessment scheme to inform any inspection programme but, where these do not exist, we will publish the details on both Council websites. In the absence of other factors, when determining risk we will consider:

- Compliance history and potential future risks.
- The existence of effective management systems.
- Evidence of recognised external accreditation.
- Management competence and willingness to comply.

We will also use intelligence to direct inspection based projects or business where there are known issues. Obviously, a complaint may also trigger a visit or inspection, if that is the most appropriate response.

4.1 Advice and Guidance for Businesses

We will provide general information, advice and guidance to make it easier for businesses to understand and meet their obligations. This will be provided promptly, in clear and concise language, using a range of appropriate formats and media. Information will cover all legal requirements relating to our regulatory activities, as well as changes to legal requirements. Where changes are of great significance, we will look at the best ways of informing businesses of the changes e.g. through newsletters, mail-shots or seminars.

When offering advice, we will clearly distinguish between statutory requirements and advice or guidance aimed at improvements above minimum legal standards. We seek to provide proportionate advice, the content of which will help achieve compliance but impose the minimum burden required on the business concerned.

Where a business identifies a problem and seeks advice to remedy the situation, it will not normally trigger enforcement action. Where appropriate we will seek to support the remedial action to prevent future problems, however, we reserve the right to take enforcement action where applicable, particularly to protect public health.

Generally, we will provide our advisory services free of charge however we may charge a reasonable fee for services beyond the basic advice and guidance necessary to help ensure compliance with the law. We may refer you to a consultant to assist you.

4.2 Inspection of Businesses

We will ensure inspections and other visits to businesses only occur in accordance with a risk assessment methodology, except where visits are requested by businesses, following receipt of complaints, or where we act on relevant intelligence. We will focus our efforts on businesses where intelligence and risk assessment shows there is a higher likelihood of non-compliance or which pose a more serious risk to regulatory outcomes. Some processes by their nature present a greater risk to health or the environment, or due to their complexity, may make it more difficult to ensure compliance. These are the areas where we will focus our inspection resources.

When we visit or carry out inspections, we will give feedback to businesses to encourage and reinforce good practice. We will also share information about good practice amongst businesses, and with other regulators.

Where we and another regulator have a shared interest in a business we will work together to rationalise our activities to minimise the burden on the business, providing this is of benefit to the business and does not harm the standard of enforcement for either regulator.

4.3 Information Requirements

The Environmental Health Service does not routinely require information from businesses. When determining what data we may require, we will consider the costs and benefits of data requests to businesses and:

- Limit the data that we request to that which is either appropriate, or required by statute e.g. food registration, licensing applications, etc.
- Minimise the frequency of collection and seek the information from other sources where relevant and possible.

5.0 Enforcement Action

In accordance with good practice, we will:

- Publish our Enforcement Policy;
- Follow-up enforcement actions where appropriate;
- Be transparent in the way in which we enforce requirements and apply and determine penalties (when such powers are made available).

When considering what action should be taken, we will look to:

- Be proportionate to the nature of the offence and the harm caused;
- Change the behaviour of the offender;
- Eliminate any financial gain or benefit from non-compliance;
- Address the harm caused by regulatory non-compliance, where appropriate;
- Deter future non-compliance; and
- Be responsive and consider what is appropriate for the particular offender and regulatory issue.

When considering formal enforcement action, we will, when appropriate, discuss the circumstances with those suspected of a breach. We will take any comments made into account when deciding on the best approach (unless immediate action is required to prevent or respond to a serious breach or where to do so would be likely to defeat the purpose of the proposed enforcement action).

We will ensure that clear reasons for any formal enforcement action are given to the person or entity at the time the action is taken. These reasons will be confirmed in writing at the earliest opportunity. Complaints and relevant appeals procedures for redress will also be explained at the same time.

5.1 Deciding what enforcement action is appropriate

In assessing what enforcement action is necessary and proportionate, consideration will be given to:

- The seriousness of compliance failure;
- The business' past performance and its current practice;
- In the case of new businesses, an assessment of the operator's willingness to undertake the work identified by the Officer;
- The risks being controlled;
- Legal, official or professional guidance;
- Acting in the interest of Public Health.

The Service recognises that where a business has entered into a Primary Authority Agreement, the primary authority may provide compliance advice and support and the Service will take such advice into account when considering the most appropriate enforcement action for it to take. It may discuss any need for compliance advice and support with the primary authority.

There are a large number of potential enforcement options. The level of the action taken varies from no action through to proceedings in Court. Examples of the main types of action that can be considered, if specifically permitted by legislation, are shown below:

- No action;
- Informal Action and Advice;
- Fixed penalty Notices;
- Statutory Notice;
- Formal closure
- Seizure of goods/equipment;
- Injunctive Actions;
- Refusal/revocation of a licence;
- Simple Caution; and
- Prosecution.

5.2 No Action

There will be circumstances where a contravention may not warrant action, or it may be inappropriate. Many minor contraventions can be dealt with via advice and/or assistance.

5.3 Informal Action and Advice

For certain minor breaches of the law we will give advice on how to put them right, including a deadline by which this must be done. The time allowed will be reasonable and take into account the seriousness of the contravention and the implications of the non-compliance. Where the advice required is detailed, or there are potentially serious implications from the failure, the advice will be provided in writing. Failure to comply could result in an escalation of enforcement action.

Wherever possible we will advise offenders about 'good practice', but we will clearly distinguish between what they *must do* to comply with the law and what is recommended best practice.

5.4 Fixed Penalty Notices

Certain offences are subject to fixed penalty notices where prescribed by legislation. These notices are recognised as a low-level enforcement tool and avoid the defendant obtaining a criminal record. Where legislation permits an offence to be dealt with by way of a Fixed Penalty Notice (FPN), we may choose to administer a FPN on a first occasion, without issuing a warning. They will be used in appropriate circumstances to give a fast and measured response to the situation.

Payment of a fixed penalty does not provide immunity from prosecution in respect of similar or recurrent breaches. If a fixed penalty is not paid the Service will commence criminal proceedings or take other enforcement action in respect of the breach.

Fixed penalty notices will not be issued to persons under the age of 16 years.

5.5 Statutory Notices

Officers have the power under various legislation to issue notices that:

- Prohibit the sale or distribution of food where relevant provisions may have been breached;
- Require a business to take specific actions to remedy an identified problem;
- Require a business to desist from particular activities that may not comply with legal requirements;
- Require any person to take action to ameliorate or stop nuisances being caused by their actions.

Notices may require immediate action where, for example, there are risks to public health or safety, or an immediate risk of environmental damage or serious nuisance. In other circumstances, a reasonable amount of time will be given, depending on the circumstances, to rectify the problem.

Certain types of notice allow works to be carried out in default. This means that if a notice is not complied with (a breach of the notice) we may carry out any necessary works to satisfy the requirements of the notice ourselves. Where the law allows, we may then charge the person/business served with the notice for any cost we incur in carrying out the work.

In certain limited circumstances e.g. under the provisions of food safety legislation, where an authorised officer is satisfied that there is an imminent risk of injury to health from the condition of the premises, the officer may serve notice to close the premises, after consulting a Manager. This would be followed by an application to a Magistrates Court to confirm the closure.

Failure to comply with a statutory notice can be a criminal offence. All notices issued will contain details of any appeals process that may be available to the recipient.

5.6 Seizure of Goods/Equipment

The right to privacy and respect for personal property are key principles of the Human Rights Act 1998. Powers of entry, search and seizure should be fully and clearly justified before use because they may significantly interfere with the occupier's privacy. Officers should consider if the necessary objectives can be met by less intrusive means.

In all cases authorised officers should:

- exercise their powers courteously and with respect for persons and property; and
- in circumstances where a warrant has been obtained and is appropriate, only use reasonable force when this is considered necessary and proportionate to the circumstances.

5.7 Works in default

Works in default may be carried out if:

- There is no prospect of the person responsible carrying out the work e.g. the person is absent;
- There is an imminent risk to public or environmental health;
- A prosecution is not appropriate;
- A prosecution has been brought and works have still not been carried out; and
- It is appropriate to get the nuisance abated quickly.

The Council will seek to recover all the costs incurred including officer time. The costs of the works will be charged (not including VAT) plus the cost of officer time plus twenty percent to cover administration costs.

5.8 Injunctive Actions

In some circumstances the Service may seek a direction from the court (in the form of an order or an injunction) that a breach is rectified and/or prevented from recurring. The court may also direct that specified activities be suspended until the breach has been rectified and/or safeguards have been put in place to prevent future breaches.

5.9 Licence Conditions

The Service issues a number of licences and permits. The Service also has a role to play in ensuring that appropriate standards are met in relation to licences issued by

other agencies. Most licences include conditions which require the licence holder to take steps to ensure that, for example, a business is properly run. Breach of these conditions may lead to a prosecution or for licences issued under the Licensing Act 2003 a prosecution or a review of the licence which may result in its revocation or amendment by a Licensing Committee.

5.10 The Use of Simple Cautions

Where the public interest justifies it, we will consider offering a Formal (Simple) Caution (or Reprimand/ Final Written Warning if the offender is under 18). In offering a Caution, we will take account of the Home Office Guidelines in relation to the cautioning of offenders and the Code for Crown Prosecutors. Where the offender is under 18 and a formal approach is being considered, appropriate bodies such as the Youth Offending Team will be consulted.

A Caution requires an admission of guilt on behalf of the offender, however there is no sentence and there is no recorded conviction. A caution will remain on record for a period of 2 years and may be cited in Court should a further offence be committed and prosecuted during that time.

Where a simple caution is offered and declined the Service will consider prosecution.

6.0 Commencement of Legal Proceedings

Once an officer has completed his/her enquiries, they will submit a case report to a Manager authorised to institute legal proceedings, independent of the investigation, who will decide, using the criteria below, the most appropriate course of action.

Where the law has been broken, there is a range of enforcement options available to seek compliance with the law. Under normal circumstances, a process of escalation will be used until either compliance is reached or there is no option other than to instigate proceedings. Exceptions would be where there is a serious risk to public safety or the environment, or the offences have been committed deliberately or negligently or involve deception. Each case is unique and will be considered on its own facts and merits.

The officer authorised to institute legal proceedings will take into consideration the requirements of the Code for Crown Prosecutors and other relevant codes before deciding whether or not to authorise the institution of legal proceedings.

Firstly this officer will have to be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each defendant on each charge (i.e. that a jury or bench of Magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged). To this end, the officer authorised to institute legal proceedings will look at all the available evidence, reliability of witnesses, supporting documentation and any other matters relating to the investigation. They must consider what the defence case may be and how it is likely to affect the prospects of conviction [Code for Crown Prosecutors]. Only when this evidential test has been satisfied will the public interest to proceed with the prosecution be considered.

In deciding whether a prosecution will serve the public interest, this officer will balance factors for and against the prosecution carefully, fairly and impartially.

Some factors may increase the justification to prosecute whereas others may militate against. Below are some of the matters to be taken into consideration for and against criminal proceedings. This is not an exhaustive list and, as such, each case is considered strictly on its own individual merits:

Factors in favour of prosecution

- The offender was in a position of control within the business.
- The offender acted dishonestly, wilfully, premeditatedly or negligently.
- The product or service was aimed at a vulnerable group or person.
- The product or service has caused or had the potential to cause physical or mental injury or suffering, significant harm or loss.
- The offender has received advice or a warning concerning the circumstances of the offence or similar matters.
- The offender has failed to comply with the requirements of a formal notice.
- The offender has received previous formal warning or a caution from an enforcement officer.
- The offender has previous convictions that are relevant.
- The offence, though not serious in itself, is widespread in the area where it was committed.
- A conviction is likely to result in a significant sentence.
- There are grounds to believe that the offence is likely to be continued or repeated, for example by a history of recurring conduct.
- The outcome of a prosecution might serve an important, informative purpose or establish a legal precedent.

Factors which might mitigate against the need for a prosecution

- The offence was minor in nature and as a result of a genuine mistake or misunderstanding, which did not involve significant negligence.
- The offender is elderly, or was at the time of the offence suffering from significant mental or physical ill health, which contributed to the commission of the offence, and the offence was neither serious nor likely to be repeated.
- A prosecution is likely to have an adverse effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence and the views of the victim about the effect of a prosecution on his or her physical or mental health.
- The loss or harm could be described as minor and was as a result of a single incident, particularly if it was caused by a failure of judgment.
- The offender put right the loss or harm caused prior to the intervention of the Environmental Health Service.
- Prior to the Service's intervention, the offender had introduced adequate steps to prevent further similar offences.
- The defendant was a youth at the time of the offence.
- There has been a long delay between the offence and any potential court action, unless either:
 - The offence is serious;
 - The delay has been caused by the defendant or his/ her legal representatives;
 - The offence has only recently come to light; or

- The complexity of the offence meant that there has been a long investigation.

7.0 Legal Services Manager

The Manager involved in making the more serious decisions will also have regard to advice from the Legal Services Manager, who in any event, is the officer authorised to issue summonses.

8.0 Liaison with other regulatory bodies and enforcement agencies

Where appropriate, enforcement activities within the Environmental Health Service activities will be coordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement. The Service will respect advice that has been provided by other regulators and enforcement agencies.

Where an enforcement matter affects a wide geographical area beyond the Service's boundaries, or involves enforcement by one or more other local authorities or organisations, where appropriate all relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activity coordinated with them.

The Environmental Health Service will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies, and examples include:

- Government Agencies
- Police Forces
- Fire Authorities
- Other Statutory Bodies
- Local Authorities

9. Review

This policy will be updated to take into account legislative changes. The policy will also be reviewed if comments are received. Comments should be sent to:
Head of Environmental Health, Town Hall, Bexhill-on-Sea, TN39 3JX,
envhealth@rother.gov.uk