

HASTINGS BOROUGH COUNCIL ENVIRONMENTAL HEALTH AND LICENSING SERVICE ENFORCEMENT POLICY STATEMENT

1 AIM

1.1 Hastings Borough Council's Environmental Health and Licensing service aims to ensure the health, safety and wellbeing of persons living and working in the borough and to protect and improve the environment. It will achieve this using a combination of education, advice and regulation. Securing compliance with legal and regulatory requirements by the use of enforcement powers including prosecution is an important part of achieving this aim.

2 STATEMENT OF OBJECTIVES

2.1 It is the Council's policy to strive to ensure the health, safety and wellbeing of all residents, visitors and persons who work in the borough. The Environmental Health and Licensing service is committed to ensuring that legislation is enforced fairly and consistently to support the prosperity and protection of the borough.

2.2 Enforcement action, whether verbal warnings, written warnings, statutory notices, cautions, prosecutions or the use of fixed penalty notices, is primarily based upon an assessment of risks to public health and the health, safety and welfare of the residents of the borough.

2.3 This policy has been written with regard to the content of the government's Enforcement Concordat. The Concordat covers what businesses and others being regulated can expect from enforcement officers employed by local authorities. Hastings Borough Council has adopted the Enforcement Concordat and operates in accordance with the Regulators Compliance Code and Regulators Code and the Regulatory Enforcement and Sanctions Act 2008.

2.4 Where there is specific guidance on enforcement action, for example, statutory guidance or other relevant guidance and codes of practice issued by professional organisations and bodies, this will be followed, unless there are specific Council policies which would achieve at least equivalent standards.

2.5 The Council fully acknowledges and endorses the rights of individuals and will ensure that all enforcement action occurs in strict accordance with the Police and Criminal Evidence Act 1984, the Human Rights Act 1998, the Regulation of Investigatory Powers Act 2000, The Criminal Procedures and Investigations Act 1996, Equality Act 2010 and other relevant legislation and guidance. Directed covert surveillance will only be used in relation to the investigation of serious offences, defined as those with a penalty of six months imprisonment or more.

2.6 The service recognises that the particular interests of different consumers within the district will need to be taken account of to ensure that legislation is enforced fairly. Interpreters will be used where an individual has difficulty in understanding English, where the facility is not available "in-house". Where appropriate translated advisory leaflets will be made available.

2.7 The service fully acknowledges a duty holders right of appeal to any enforcement action. The service will provide full details of any rights of appeal that are set out in the legislation. Notwithstanding this right, the service shall also afford the duty holder the opportunity to informally discuss any grievance relating to the issue at hand with the enforcing officers line manager.

2.8 All authorised officers will abide by this policy. Any departure from this policy must be justified and fully considered by management before the decision is taken.

3 PURPOSE OF ENFORCEMENT

3.1 The purpose of enforcement is to ensure that preventative or remedial action is taken to protect health and the environment by securing compliance with the regulatory systems. Whilst the Environmental Health and Licensing service seeks to ensure full voluntary compliance with relevant legislative requirements whenever possible, it will not hesitate to use its enforcement powers where necessary.

4 PRINCIPLES OF ENFORCEMENT

4.1 The Environmental Health and Licensing service believes in firm but fair regulation. Each case is unique and must be considered on its own individual merits. Underlying the policy of firm but fair regulation are the principles of; **proportionality** in applying the law and securing compliance, **consistency** of approach, **transparency** about how the service, operates, **accountability** in accordance with the Regulators Compliance Code and Regulators Code and what those regulated may expect from the service and **targeting** of enforcement action.

PROPORTIONALITY

4.2 Proportionality means relating enforcement action to the risks. Those whom the law protects and those on whom it places duties (duty holders) expect that action taken by enforcing authorities to achieve compliance should be proportionate to any risks to public health and safety and to the rights of others in the borough and to the seriousness of any breach.

CONSISTENCY

4.3 Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends. There is a right to expect consistency from an enforcing authority when:

- Issuing advice
- Using statutory notices

- Deciding to prosecute
- Responding to requests for service.

TRANSPARENCY

4.4 Transparency means helping duty holders and individuals to understand what is expected of them and what they should expect from the enforcing authorities. It also means making clear to duty holders and individuals not only what they have to do, but also, where this is relevant, what they don't. That means distinguishing between statutory requirements, and advice or guidance about what is desirable but not compulsory.

ACCOUNTABILITY

4.5 Accountability means that in all enforcement actions officers shall be accountable for actions taken having regard to the Regulatory Enforcement and Sanctions Act 2008, S21 of the Legislative and Reform Act 2006, the Regulators Compliance Code and Regulators Code.

TARGETING

4.6 Targeting means making sure that enforcement is targeted primarily on those whose activities give rise to the most serious risks, or where the hazards are least well controlled. The Environmental Health and Licensing service will ensure that action is focused on the duty holders who are responsible for the risk and who are best placed to control it.

5 SHARED ENFORCEMENT ROLES

5.1 Legislation to protect public health and the environment is enforced by several enforcement agencies. Where there are shared enforcement roles e.g. Police, the Health and Safety Executive, the Environment Agency, East Sussex Fire and Rescue Service etc., officers will notify the relevant enforcement agency of contraventions for which that agency is responsible in line with any data sharing protocols operating between enforcement agencies. Where flexible warrants are in place, these principles shall apply in the authority in which the warrant is being exercised.

6 ENFORCEMENT OPTIONS

6.1 Enforcement officers must seek to secure compliance with the law. Most of their dealings with those on whom the law places duties (businesses, landlords, occupiers and individuals) are informal - officers offer information, advice and support, both verbally and in writing. They may also use formal enforcement mechanisms, as set out in law, including fixed penalty notices, enforcement notices where a contravention needs to be remedied, prohibition notices where there is a risk of serious personal injury, damage to the environment, or injury to health, revocation of authorisations, withdrawal of approvals; refusal of registration, variations of licences

or conditions, or of exemptions; or ultimately caution, prosecution and injunction. This statement applies to all dealings, formal or informal, between officers and duty holders or individuals - all contribute to securing compliance. Officers will always provide advice to businesses and individuals regarding compliance as requested.

- 6.2 The Environmental Health and Licensing service recognises the importance of maintaining consistency in decision-making concerning enforcement action, which is demonstrated by the Council's adoption of the Cabinet Office Enforcement Concordat.
- 6.3 The Environmental Health and Licensing service seeks to ensure that enforcement decisions are consistent, balanced and fair to ensure the public is adequately protected, and that businesses and individuals are treated in a fair, consistent, transparent, and proportionate manner.
- 6.4 In coming to a decision, the Service will consider:
 - Local need and local priorities
 - The seriousness of the offence or conditions;
 - The individual or duty holder's past history;
 - Confidence in management;
 - The requirements of legislation;
 - The consequence of non-compliance; and
 - The likely effectiveness of the various enforcement options.
- 6.5 Where enforcement is deemed appropriate and is being considered, the service can choose one or more of the following options:
 - To take no action;
 - To take informal action;
 - To issue a fixed penalty notice;
 - To issue a statutory notice;
 - To carry out work in default;
 - To take action in line with the Hackney Carriage and Private Hire Licensing Policy and Gambling Policy;
 - To issue penalty points;
 - To revoke licences/authorisations/approvals;
 - To refuse licences/registration/authorisations/approvals
 - To call for a review of licences;
 - To use seizure powers;
 - To use simple cautions;
 - To prosecute;
 - To seek injunction.
- 6.6 The service fully supports the principles of the Regulatory Enforcement and Sanctions Act 2008. The service will normally take enforcement action which is consistent with advice and guidance issued by relevant national bodies and organisations.

- 6.7 When the service is taking enforcement action which is contrary to the advice of the Home, Lead, Primary or Originating authority, officers will discuss the action with that authority and legal services before taking action.
- 6.8 When the service is considering action against a business that has a primary authority, it will do so in accordance with the current guidance issued.

7 ENFORCEMENT ACTIONS

TAKE NO ACTION

- 7.1 Upon investigation and where circumstances are largely satisfactory and no action is proposed, then the business or person affected will be advised of this, as will any complainant, where appropriate.

INFORMAL ACTION

- 7.2 Informal action includes the offering of advice, verbal warnings, letters and the issue of technical reports, including those generated on the premises following an inspection.
- 7.3 When deciding whether informal action is appropriate regard will be had to the following:
 - The seriousness of the act or omission;
 - The past history of the business, landlord or individual shows that informal action would achieve compliance;
 - Whether confidence in the enterprise's management is high;
 - If non-compliance will not pose a significant risk to public health, safety or welfare;
 - Other circumstances, such as voluntary organisations using volunteers.
- 7.4 Letters or documents sent to duty holders and individuals will:
 - Contain all the information necessary to understand what work is required and why;
 - Indicate timescales to achieve compliance.
 - Indicate legislation which is being or is likely to be infringed and methods of compliance and that other means of achieving the same effect may be chosen; and
 - Indicate any recommendations of good practice to clearly show that they are not a legal requirement.
- 7.5 When taking informal action, including giving verbal advice, officers will clearly differentiate between legal requirements and good practice.

FIXED PENALTY NOTICES

7.6 Fixed penalty notices will be served having regard to the following:

- Certain legislative provision for the discharge of an offence by the service of a fixed penalty notice, this is at the local authorities discretion;
- In some circumstances particularly where breaches are serious or recurrent, prosecution may be more appropriate;
- Payment of a fixed penalty notice does not provide immunity from similar or recurrent breaches;
- If a fixed penalty notice is not paid we may commence criminal proceedings or take other enforcement action in respect of the breach

STATUTORY NOTICES

7.7 Statutory notices will be served having regard to the following:

- Any specific legal requirements to serve notice;
- If there are significant breaches of legislation;
- If there is a lack of confidence in the recipient to respond to an informal approach;
- There is a history of non-compliance with an informal approach;
- Standards are generally poor with little management awareness of statutory requirements;
- The consequences of non-compliance could be potentially serious to public health, safety or welfare; and
- Effective action also needs to be taken to remedy conditions that are serious or deteriorating, even when it is intended to prosecute.

7.8 Statutory notices will be served for matters which are a risk to public health, safety, or the environment and not for minor technical contraventions.

7.9 Statutory notices will be in the prescribed form where this has been specified.

7.10 The time limit on notices will be realistic and have regard to the issue and recipients of notices will be given the opportunity, if they wish, to discuss its requirements.

7.11 Compliance with the requirements of all notices served will be checked as soon as is practicable after expiry.

7.12 Failure to comply with a statutory notice will, in general, result in prosecution and/or work in default. Officers must have sufficient evidence to justify service, and be prepared to pursue non-compliance through the courts. Recipients of notices will be advised of any right of appeal, at the time the notice is served.

7.13 Home, Lead and Originating authorities will be notified of formal action instituted under the provisions of licensing, food safety and health and safety legislation.

7.14 Primary authorities will be consulted in accordance with current guidance for any formal action.

WORK IN DEFAULT AND COST RECOVERY

7.15 Work required in the interest of public health, safety or the environment may be undertaken by the service and the cost recovered from the duty holder where the notice allows. This may be appropriate when:

- It is necessary to carry out the work in the public interest and/or the costs are not prohibitive.
- There is a failure to carry out work covered by a statutory notice.
- Immediate action is required.
- It is unlikely that the work will be carried out unless done in default.

REFUSAL/REVOCATION OF LICENCES, REGISTRATIONS, APPROVALS ETC

7.16 Licences, registrations, prior approvals and environmental permits, will only be refused or revoked following consideration with management following appropriate procedures and consideration of all relevant evidence and having regard to statutory guidance.

PROHIBITION

7.17 Prohibition notices will be considered when:

- The consequences of not taking immediate and decisive action to protect health, safety, and the environment would be unacceptable.
- A serious risk of personal injury or to health or to the environment can be demonstrated.
- The requirements of any relevant statutory Codes of Practice regarding the use of such notices are fulfilled.

SEIZURE/SUSPENSION

7.18 Enforcement officers will use appropriate statutory powers to take possession and detain articles, substances or equipment where:

- There are reasonable grounds for suspecting that the article, substance or equipment is a cause of imminent danger, serious personal injury, or pollution of the environment, **or**
- Food is suspected to fail to meet the requirements of the relevant food safety legislation, **or**
- To secure abatement of a statutory nuisance.

SIMPLE CAUTIONS

7.19 Ministry of Justice guidance advises that local authorities may consider issuing a simple caution as an alternative to prosecution. Where there is a criminal offence,

but the public interest does not require a prosecution, a simple caution may be an appropriate course of action. The guidance advises that the aims of the simple caution scheme are:

- To offer a proportionate response to low-level offending where the offender has admitted the offence;
- To deliver swift, simple and effective justice that carries a deterrent effect;
- To record an individual's criminal conduct for possible reference in future criminal proceedings or in criminal record or other similar checks; and
- To reduce the likelihood of re-offending.

7.20 The use of simple cautions will be in accordance with the Ministry of Justice guidance. The following conditions **must** be fulfilled before a caution is administered:

- The decision-maker is satisfied that there is sufficient evidence to provide a realistic prospect of conviction if the offender were to be prosecuted;
- The offender must admit to committing the offence and agree to accept the caution; **and**
- Simple cautions form part of an offender's criminal record and may be referred to in future legal proceedings and, in certain circumstances, may be revealed as part of a criminal record check. Offenders **must** be made aware of this **before** agreeing to accept a simple caution.

7.21 Primary, Home, Lead and Originating authorities will be notified of the simple caution.

7.22 If the offender refuses to accept a simple caution, we are likely to prosecute.

PROSECUTION

7.23 Whilst prosecution is an essential element of enforcement, we will use discretion when deciding whether to bring a prosecution.

7.24 Some factors in favour of prosecution are:

- Where the offence is serious. **or**
- Where there is culpability of the offender, **or**
- Where there is harm to the victim, **or**
- Where the offender is over the age of 18 **or**
- Where the offence has caused a significant impact on the wider community, **or**
- Where a prosecution is a proportionate response to the contravention, **or**
- Where the offender has committed the same or similar offences before.

7.25 The officer and their manager will consider all relevant information and evidence, when circumstances have been identified which may warrant a prosecution, to enable a consistent, fair and objective decision to be made.

- 7.26 The officer must be satisfied, before a prosecution proceeds, that there is relevant, admissible, substantial and reliable evidence that the offence was committed by the accused. There must be a realistic prospect of conviction. A bare *prima facie* case is not enough. If there is insufficient evidence, other formal action such as cautioning is not an alternative.
- 7.27 The officer and their manager in consultation with the Council's Legal Services must decide that it is in the public's interest to prosecute, following the guidance in the Code for Crown Prosecutors.
- 7.28 Once a decision to prosecute has been made, the procedure should be implemented without undue delay. The requirements of the Police and Criminal Evidence Act 1984 and the Criminal Procedures and Investigations Act 1996 will be adhered to.

INJUNCTIONS

- 7.29 In exceptional circumstances where action under the relevant legislation is deemed likely to be ineffective, where there is serious imminent risk to public health or the environment, and immediate action is considered necessary, injunctive proceedings may be instituted.

LEGAL PROCEEDINGS – COST RECOVERY

- 7.30 Both legal and investigatory costs incurred when formal legal proceedings are instigated will be requested, and if allowed recovered from the defendant. For prosecutions and injunctions this will be through an application to the court. In the case of simple cautions legal and investigatory costs must be reimbursed to the Council by the defendant before the caution may proceed.
- 7.31 Costs will be calculated using current officer hourly rates.