

APPENDIX 1 – CORPORATE ENFORCEMENT POLICY

1. INTRODUCTION

As a local authority, Hastings Borough Council has a statutory duty to enforce a wide range of laws affecting local businesses and individuals. The Council is committed to fair and effective enforcement, which protects both the economic interest and the health and safety of the public, businesses and the environment. This Policy sets out what businesses and individuals being regulated by the Council can expect from us.

This Policy commits the Council to good enforcement policies and procedures, and is supplemented by specific departmental and service enforcement policies. which form the appendices to this document.

It is designed to make sure that members of the public, and business and service users engaging with the council, know the principles that we will apply when carrying out our regulatory work. By consistently applying the same principles across the range of our work, everyone involved in the Council's decision making process is helping to consider and implement enforcement action fairly and effectively against those who have failed to comply with the law.

In March 1998 the Government's Cabinet Office Better Regulation Unit published an Enforcement Concordat which set out a blueprint for fair, practical and consistent enforcement across the country. Hastings Borough Council fully supports this initiative and adopted the Concordat in 2000. This policy incorporates the principles that are set out in the 1998 Concordat, and in the later Enforcement Concordat "Good Practice Guide for England and Wales". (June 2003)

2. LEGAL STATUS

This Policy Review was approved by the Cabinet of Hastings Borough Council in March 2003.

This Policy provides a framework for decision making on enforcement, but does not fetter the discretion of the Council to take legal proceedings in individual cases where this is considered to be in the public interest.

The following documents will be taken into account in consideration of the enforcement activities of the council:

- (a) Cabinet Office Enforcement Concordat and Good Practice Guide
- (b) Department of Business Enterprise and Regulatory Reform:
Regulators' Compliance Code
- (c) Regulation of Investigatory Powers Act 2000
- (d) Police and Criminal Evidence Act 1984
- (e) Criminal Proceedings and Investigations Act 1996

- (f) Freedom of Information Act 2000
- (g) Human Rights Act 1998
- (h) Data Protection Act 1998
- (i) Local Government Acts
- (j) Equalities Act 2010
- (k) Crime and Disorder Act 1998
- (l) Other relevant legislation as appropriate such as Public Health Acts, Building Act 1984, Town & Country Planning Act 1990, Anti Social Behaviour Act 2003, Criminal Justice & Public Order Act 1994, Clean Neighbourhoods and Environment Act 2005
- (m) The Code for Crown Prosecutors
- (n) HBC departmental Service Plans
- (o) Any other relevant statutes, guidance and professional advice.

3. HUMAN RIGHTS AND EQUALITY ISSUES

The Council will recognise the fundamental principles of the Human Rights Act and, in particular, Article 6 and Article 8.

Article 6 – The Right to a Fair and Public Trial Within a Reasonable Time – the Council will ensure that its approach to enforcement is compatible with the Human Rights Act and affords the right of access to a court or tribunal and the right to a fair hearing. Where enforcement action is to be taken the Council will also ensure that, in so far as the Council has control, any hearing is held within a reasonable time and avoid delays.

Article 8 – The Right to Respect for Private and Family Life, Home and Correspondence – The Council will ensure that in its enforcement activity it only interferes with a person's private life where it has lawful authority to do so. Council officers will also satisfy themselves that the action is necessary in a democratic society in the interests of public safety, the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morale, or for the protection of the rights and freedom of others. Officers will also satisfy themselves that the enforcement action taken is proportional to the nature of the offence.

The Council is committed to equality in all respects and its officers will ensure that enforcement action is taken consistently and fairly without any discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status (Article 14). The Council also recognises its duties and responsibilities under the Race Relations (Amendment) Act 2000. In particular the Council will develop links with minority ethnic groups to ensure that there is effective communication and understanding of the need for and reasons behind enforcement action it takes.

Appropriate arrangements will be out in place to monitor the consistent application of enforcement in all of these respects at both service division and corporate levels.

4. SCOPE

This policy applies to all the legislation enforced by officers of the Council.

Enforcement includes any action taken by council officers aimed at ensuring that employees, individuals or businesses comply with the law. This is not limited to formal action such as prosecution. It also includes, for example, the inspection of premises for the purpose of checking compliance with legislation and the service of statutory notices requiring action by another party.

5. GENERAL PRINCIPLES OF ENFORCEMENT

Each case is unique and must be considered on its own individual merits. However, there are general principles that apply to the way each case must be approached. These are based on the Enforcement Concordat of March 1998.

Standards

Hastings Borough Council will set clear standards for the level of service and performance which the public and businesses can expect to receive. These are set out in our departmental Service Plans and Service Standards which are available to the public.

Openness

Information and advice will be provided in plain language and this will be made available through a variety of means including electronic media. Where necessary, we will make special arrangements to ensure that people receive information and advice in the form best suited to them, for example in languages other than English, or in a form to overcome any sensory disability they may have.

Transparency

Transparency is important in maintaining public confidence in the Council's ability to regulate. It means helping those regulated and others, to understand what is expected of them and what they should expect from the Council. It also means making clear why an officer intends to, or has taken enforcement action.

Transparency is an integral part of the role of Council Offices and the Council continues to train its staff and to develop its procedures to ensure that:-

- where remedial action is required, it is clearly explained (in writing and in a language which is understood by them, if requested) why the action is necessary and when it must be carried out, a distinction being made between best practice advice and legal requirements.

- opportunity is provided to discuss the circumstances of the case and if possible, resolve points of difference, and agree what is required to comply with the law before formal enforcement action is taken, unless urgent action is required, for example, in the interests of health and safety or to protect the environment or to prevent evidence being destroyed.
- where urgent action is required, an explanation of the reasons is provided at the time and confirmed in writing as soon as practicable after the event, (in most cases within 5 working days and, in all cases, within 10 working days).
- written explanation is given of any rights of appeal against formal enforcement action at the time the action is taken. (wherever possible this advice will be issued with the enforcement notice).

In appropriate cases this information will be provided in an alternative language either in writing or by the use of an interpreter.

Helpfulness

The Council will provide a courteous, helpful and efficient service and our staff will identify themselves by name, where it is appropriate to do so. A contact point and a range of contact options will be provided and people will be encouraged to seek advice and information.

Proportionality

Enforcement action taken by Hastings Borough Council officers will be proportionate to the risks posed and to the seriousness of any breach of the law. Hastings Borough Council will ensure that where a caution or prosecution is being considered officers will consider and apply the Home Office guidance as may be in force at the time and the Code for Crown Prosecutors.

Consistency

Enforcement officers will be expected to exercise judgement and discretion. Where necessary, the Council will liaise with other authorities and enforcement bodies to ensure consistency and best practice.

Consistency means taking a similar approach in similar circumstances to achieve similar ends. The Council will carry out its enforcement duties in a fair, equitable and consistent manner and aims to achieve these in, advice tendered, the response to incidents, the use of powers and decisions on whether to prosecute.

The Council recognises, however, that consistency does not mean simple uniformity. Officers need to take account of many variables, the scale of impact, the attitude and actions of management and the history of previous

incidents or breaches. Decisions on enforcement action are a matter of professional judgement and the Council, through its officers, needs to exercise discretion. The Council will continue to develop arrangements to promote consistency including effective arrangements for liaison with other authorities to identify best practice and to share/exchange information to the constraints imposed by the Data Protection Act.

Targeting

Targeting means making sure that regulatory effort is directed primarily towards those whose activities give rise to or risk of serious social physical or economic environmental damage or affects personal health or safety, where the risks are least well controlled or against deliberate or organised crime. Action will be primarily focused on lawbreakers or those directly responsible for the risk and who are best placed to control it.

The Council will implant systems for prioritising regulatory effort. They include the response to complaints from the public about regulated activities, the assessment of the risks posed by a licence holder's operations and the gathering and acting on intelligence about illegal activity.

In the case of regulated businesses, management actions are important. Repeated incidents or breaches of regulatory requirements, which are related, may be an indication of an unwillingness to change behaviour, or an inability to achieve sufficient control and may require a review of the regulatory requirements, the actions of the business and the need for additional investment. A relatively low hazard business or activity poorly managed has potential for greater risk to the social, physical and economic environment or personal health and safety than a higher hazard business or activity where proper control measures are in place. There are, however, high hazard businesses that will receive regular visits so that the Council can be sure that remote risks continue to be effectively managed. The Council will continue to develop models and tools to enable risks to be assessed and compared to ensure effective prioritisation.

Equalities

Enforcement decisions will be fair, impartial and objective and will not be influenced by issues such as the ethnicity or national origin, gender, religious beliefs, political views or sexual orientation of the suspect, victim, witness or offender. Such decisions will not be affected by improper or undue pressure from any source and will be made without fear or favour. For a copy of Hastings Borough Council's full equalities policy please go to www.hastings.gov.uk

6. PURPOSE AND METHODS OF ENFORCEMENT

The purpose of enforcement is to ensure that preventative or remedial action is taken to protect the social, physical and economic environment, personal health and safety or to secure compliance with a regulatory system. Although

the Council expects full voluntary compliance with relevant legislative requirements and licence provisions, it will not hesitate to use its enforcement powers where necessary.

The powers available include enforcement notices and notices requiring remedial work (where contravention can be prevented or needs to be remedied), prohibition notices (where there is an imminent risk of serious physical or environmental damage), suspension or revocation of licences, variation of licence conditions, injunctions and the carrying out of remedial works in default. Where the Council has carried out remedial works, it will seek to recover the full costs incurred from those responsible.

7. ENFORCEMENT OPTIONS

A number of enforcement options are set out in this Policy. They are not necessarily sequential. In taking action to ensure compliance, officers will consider the following criteria when deciding on the most appropriate enforcement method:

- The seriousness of the breach
- The different options for remedying the breach
- Age of the breach
- Prevalence of the breach
- The circumstances of each case and the likelihood of recurrence
- Previous history of the business or individual
- Personal or financial circumstances of the business or individual
- General attitude of the business or individual
- Likelihood of achieving a satisfactory outcome
- Precedent effect
- Legal imperatives e.g. statutory requirement to serve a notice
- Relevant guidance
- Sufficiency of admissible evidence
- Public interest
- Likely impact of enforcement options
- Effect of breach on any victim and/or wishes of victim

The criteria are not exhaustive and those which apply will depend on the particular circumstances of each case. Having considered the enforcement criteria, the following range of options are available : (NOTE: some are

service specific, for instance the seeking of a possession order is available to the Housing Renewal Department and an administrative penalty is available to the Housing Benefit and Council Tax Benefit Fraud department.)

- Take no further action
- Informal action, advice and written or verbal warnings
- Issue a warning letter
- Serve statutory notice requiring the supply of information, or
- specific action to remedy the breach of the law
- Administer an administrative penalty (see Fraud and Audit)
- Issue a fixed penalty notice
- Suspend, revoke or refuse to renew or grant a licence or
- authorisation
- Issue a formal caution
- Prosecute
- Seek an injunction
- Seek an anti-social behaviour order
- Seizure of goods and/or equipment
- Works in default to secure compliance
- Compulsory purchase of property and clearance/demolition
- Seeking of a possession order
- Personnel – verbal written warning

The list of options is not exhaustive as changes in legislation and guidance may affect the sanctions available.

8. PROSECUTION

Purpose

The use of the criminal process to institute a prosecution is an important part of enforcement. It aims to punish wrongdoing, to avoid a recurrence and to act as a deterrent to others. It follows that it may be appropriate to use prosecution in conjunction with other available enforcement tools, for example, a prohibition notice requiring the activity to stop until certain requirements are met. Where the circumstances warrant it, prosecution without prior warning or recourse to alternative sanctions will be pursued.

The Council recognises that the institution of a prosecution is a serious matter that should only be taken after full consideration of the implications and

consequences. Decisions about prosecution will take account of the Code for Crown Prosecutors.

Sufficiency of Evidence

A prosecution will not be commenced or continued by the Council unless it is satisfied that there is sufficient, admissible and reliable evidence that the offence has been committed and that there is a realistic prospect of conviction. If the case does not pass this evidential test, it will not go ahead, no matter how important or serious it may be. Where there is sufficient evidence, a prosecution will not be commenced or continued by the Council unless it is in the public interest to do so. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the offender.

Public Interest Factors

The Council will consider the following factors in deciding whether or not to prosecute:

- social, physical or economic environmental or personal health and safety effect of the offence in order to quantify the serious nature of the offence,
- foreseeability of the offence or the circumstances leading to it,
- intent of the offender, individually and/or corporately,
- history of offending,
- attitude of the offender,
- deterrent effect of a prosecution, on the offender and others,
- personal circumstances of the offender

The factors are not exhaustive and those that 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 on each side. The Council will decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

Where relevant the Council will also consider the potential contribution that a prosecution will make toward its objectives in respect of S17 of the Crime & Disorder Act.

Companies and Individuals

Criminal proceedings will normally be taken against those persons responsible for the offence. Where a Company is involved, it will be usual practice to prosecute the Company where the offence resulted from the company's activities. However, the Council will also consider any part played in the offence by the officers of the company, including Directors, Managers and the company Secretary. Action may, under some legislation, also be taken against such officers (as well as the company) where it can be shown that the offence was committed with their consent, was due to their neglect or

they 'turned a blind eye' to the offence or the circumstances leading to it. In appropriate cases, and where the legislation permits, the Council will consider seeking prohibition of the individual from engaging in the particular activity.

Choice of Court

In cases of sufficient gravity, after consideration of the sentencing powers of the Magistrates' Court and where circumstances and the legislation allow, consideration will be given to requesting the magistrates to refer the case to the Crown Court.

Penalties

The existing laws give the courts considerable scope to punish offenders and the deter others. Unlimited fines and, in some cases, imprisonment may be imposed by the higher courts. The Council will continue to raise the awareness of the courts to the gravity of many offences and will encourage them to make full use of their powers.

The Council will always seek to recover the costs of investigation and Court proceedings.

Presumption of Prosecution

Where there is sufficient evidence, the Council will normally prosecute in any of the following circumstances:-

- **incidents or breaches which have significant consequences for the personal, social, physical or economic environment or which have the potential for such consequences.** The Council takes seriously such incidents or breaches.
- **carrying out operations without a relevant licence.** It is a pre-requisite to successful regulation that those required to be regulated come within the appropriate licensing system.
- **excessive or persistent breaches of regulatory requirements** in relation to the same licensed premises or activity.
- **failure to comply or to comply adequately with formal remedial requirements.** It is unacceptable to ignore remedial requirements and unfair to those who do take action to comply.
- **failure to comply with the requirements of an enforcement, improvement or prohibition notice.** It is unacceptable to ignore the requirements of such notices and unfair to those who do take action to comply.

- **reckless disregard for management or quality standards.** It is in the interests of all that irresponsible operators are brought into compliance or cease operations.
- **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 the Council are complied with and that accurate information is always supplied to enable informed regulation to be exercised.
- **obstruction of Council staff in carrying out their powers.** The Council regards the obstruction of, or assaults on, its staff while lawfully carrying out their duties as a serious matter. Much of the legislation enforced by the Council includes offence provisions in relation to obstruction and these will be used rigorously.

Working with other Regulators

Where the Council and another enforcement body both have the power to prosecute, the Council will liaise with that other body, to ensure effective co-ordination, to avoid inconsistencies, and to ensure that any proceedings instituted are the most appropriate offence.

9. DELEGATION & DECISION MAKING

Decisions about the most appropriate enforcement action to be taken are based on professional judgement, legal guidelines, statutory codes of practice and priorities set by the Council and/or Central Government. A decision to instigate a prosecution will be taken by the Chief Legal Officer. In the case of Health and Safety prosecutions, the Inspector has the right to decide on the course of action to be recommended to the Chief legal officer. If any Director formally authorises any other officer to act in his/her name such authorisations shall be in accordance with the council's Scheme of Delegation to Officers within the Council's constitution

10. CONFLICT

Officers of the Council are expected to carry out their enforcement roles with impartiality.

11. COMPLAINTS ABOUT THE COUNCIL'S ENFORCEMENT ACTIVITIES

The Council provides a well-publicised, effective and timely complaints procedure easily accessible to business, the public, employees and consumer groups on its website. In cases where disputes cannot be resolved, any right of complaint or appeal explained, with details of the process and the likely time-scales involved.

The complaints process is without prejudice to any formal appeal mechanisms. Where a formal appeal mechanism exists, that mechanism must be used. The complaints procedure cannot be used as a substitution for it.

12. REVIEW

This Policy shall be subject to an annual review to be conducted by the Chief Legal Officer. A record of the review having taken place will be made and any substantive changes will be approved and adopted by Cabinet.