

HEALTH AND SAFETY ENFORCEMENT POLICY

1. STATEMENT OF OBJECTIVES

- 1.1 It is the Council's aim to protect at those premises for which the Council is the Enforcing Authority, the health, safety and welfare of people at work, and to safeguard others, mainly members of the public, who may be exposed to risks from the way work is carried out.
- 1.2 This Health and Safety Policy sets out the general principles and approach which the Health and Safety Commission expects the Council to follow. This Policy supersedes the previous Health and Safety Enforcement Policy agreed by the Council's Environmental Services Committee on 23rd May 1996.
- 1.2 In meeting this objective, the Council's enforcement action (informal notices, statutory notices and prosecutions) will be primarily based upon an assessment of risk to health and safety (i.e. the probability of harm to health or safety occurring due to non-compliance with health and safety law). This Health and Safety Enforcement Policy has to be read in conjunction with the Council's General Enforcement Policy for Public Health and Licensing.

2. GUIDANCE ON ENFORCEMENT

- 2.1 The Council supports the guidance on enforcement action contained in the guidance issued by the Health and Safety Commission (HSC) under Section 18 of the Health and Safety at Work etc. Act 1974 and welcomes guidance such as the Enforcement Management Model issued by the HSC and Health and Safety/Local Authorities Enforcement Liaison Committee (HELA).

3. IMPLEMENTATION OF THE POLICY

- 3.1 All authorised officers will fully acquaint themselves with this document and should have regard to it when making enforcement decisions. Any departure from the policy must be exceptional, capable of justification and should have been considered by at least two of the following officers (unless it is considered that there is significant risk to the public in delaying the decision):-

Head of Public Health and Licensing (HPLH)
Deputy Chief Environmental Health Officer (DCEHO)
Principal Environmental Health Officer (Licensing) (PEHO)
(Licensing)

4. TRAINING AND COMPETENCE

- 4.1. The PEHO (Licensing) is responsible for carrying out or arranging training for staff in the Public Health and Licensing Department in matters relevant to this policy. This includes the individual training of new staff and the ongoing training of existing staff, as the need arises.
- 4.2 In accordance with the guidance issued by HSC only Officers with suitable qualifications and experience will be authorised to undertake health and safety enforcement duties.

5. **DECISION MAKING - AUTHORISATIONS**

- 5.1 The power to institute, prosecute or terminate proceedings is delegated to specific officers in accordance with their qualifications and experience. (Section 38 Health and Safety at Work etc Act 1974)
- 5.2 Any officer intending to recommend a prosecution on a health and safety matter must consult with the PEHO (Licensing) in the first instance. If the proposal is being initiated by the PEHO (Licensing), then s/he will consult with the DCEHO or the HPHL before taking the matter further.
- 5.3 If, following this consultation, it is proposed to recommend prosecution; the officer initiating the action will contact the Council Secretary and Solicitor and arrange for consultation with a solicitor.
- 5.4 If prosecution is still the chosen option, the officer initiating the action will complete the proforma requesting the Council Secretary and Solicitor to authorise the institution of proceedings.
- 5.5 Only suitably qualified and experienced officers that have attained the standard of competence required by Section 18 can be authorised to instigate prosecutions and will be the Council's primary witness in any ensuing proceedings.

6. **ENFORCEMENT OPTIONS**

- 6.1 In considering enforcement options, officers will ensure, in the interests of balanced, consistent and fair enforcement that the guidance in HELA circulars and the advice offered in relation to the HELA Lead Authority Scheme is taken into account and followed where appropriate.
- 6.2 In deciding which enforcement option to adopt, officers will have regard to the following criteria before making a decision: -
 - Seriousness of the offence
 - The past history of the business
 - Confidence in management
 - Consequences of non-compliance
 - Likely effectiveness of various enforcement options

The above list is not exhaustive and other factors may be taken into account in the circumstances of a particular case.

- 6.3 The options for action are: -
 - No action
 - Informal action
 - Statutory notice(s)
 - Formal caution
 - Prosecution
- 6.4 Where an officer believes, or is informed, that enforcement action which is proposed is inconsistent with that adopted by other authorities or contrary to advice offered by HELA, they will discuss the matter with the PEHO (Licensing) with a view to it being considered by the East and West Sussex Health and Safety Liaison Group (EWSHSLG) and possibly referred to

HELA. The final decision on whether such a request will proceed in this way will rest with the HPHL.

6.5 Where an officer is considering enforcement action which they believe may be contrary to any advice issued by the relevant lead authority, there must be discussion with the relevant authority before action is taken. Reference to the lead authority is particularly important where proposed enforcement action impacts on aspects of a company's policy which has been agreed centrally by the decision making base of the company.

6.6 The Council asserts its right to decide on the form of action to be taken in any particular case, notwithstanding HELA guidance.

7. **INFORMAL ACTION**

7.1 This includes offering advice, verbal warnings and requests for action, the use of letters and issuing health and safety inspection reports (including those handed over at the premises following an inspection).

7.2 Examples of circumstances in which it is appropriate to use informal action are where: -

- The act or omission is not serious enough to warrant formal action, or
- From the company's past history it can be reasonably expected that informal action will achieve compliance, or
- Confidence in the individual / company's management involved is high, or
- The consequences of non-compliance will not pose a significant risk to health and safety, or
- Informal action will be more effective than a formal approach.

7.3 An inspection report will be issued following each programmed inspection, even when conditions at the time of inspection are satisfactory. In normal circumstances, the report will be handed to the business operator or his representative. This report provides for follow-up action (by way of informal letter, improvement notice, etc) if necessary.

7.4 When adopting an informal approach to secure compliance with legislation, officers will ensure that any documentation issued: -

- contains all the information necessary for the recipient to understand what work is required and why it is necessary, and
- indicates the regulations, etc. contravened, measures which will enable compliance with the legal requirements and that other means of achieving the same effect may be chosen, and
- indicates the timescale (with the proprietor) within which the required work must be completed, and
- Clearly indicates recommendations of good practice (possibly under an appropriate heading) to show that they are not legal requirements. Clear differentiation between recommendations and requirements is essential at all times, even when the advice is verbal.

8. **FORMAL ACTION**

- 8.1 Formal enforcement powers include the seizure and detention of goods and the taking of photographs and samples.
- 8.2 **Improvement Notices (IN's)**
- 8.2.1 In deciding whether to issue an Improvement Notice, regard will be had to Section 18 Guidance. Notices will be issued in accordance with the Departmental Procedure for formal notices (a copy of which has been placed on the Public Health and Licensing Department's General File EH/70/1). The following is a list of situations in which service of an Improvement Notice may be justified. The list is provided for guidance and is not intended to be exhaustive.
- There are significant contraventions of legislation, or
 - There is a lack of confidence in the proprietor or business to respond to an informal approach, or
 - Where the alleged offence involves a blatant disregard for the law and involves a risk to health and safety, or
 - Where the alleged offence involves a failure by the duty holder, having been given a reasonable opportunity to comply with the lawful requirement of an authorized officer, to correct an identified potential risk to health and safety, or
 - Where it is appropriate in the circumstances to draw attention to the need for compliance with the law and to act as a deterrent to others to prevent similar failures to comply with the law.
 - There is a history of non-compliance with informal action, or
 - Standards are generally poor with little management awareness of statutory requirements, or
 - The consequences of non-compliance could be potentially serious to health and safety, or
 - Although prosecution is intended, effective action needs to be taken as quickly as possible to remedy conditions that are serious or deteriorating.
- 8.2.2 Improvement Notices should not be issued for minor technical contraventions. Their use must be related to risk to health and safety.
- 8.2.3 In accordance with the guidance issued by HSC only Officers with suitable qualifications and experience will be authorised to sign Improvement Notices.
- 8.2.4 An officer must not sign an Improvement Notice unless authorised by the Council to do so.
- 8.2.5 An authorised officer must not sign an Improvement Notice on behalf of a non-authorised officer unless the authorised officer has witnessed the contravention and is satisfied that, having regard to the various criteria, the issue of the notice is justified.
- 8.2.6 The Officer should discuss the proposed works with proprietors and fully consider the availability of solutions. Realistic time limits should be imposed having regard to the risk to health and safety and the scale and nature of works to be undertaken.
- 8.2.7 When serving an Improvement Notice the Officer should enclose an accompanying letter advising the proprietor / recipient of the Notice of their appeal rights to the Employment Tribunal. See Form IT 19 (a copy of

which has been placed in Public Health and Licensing Department General File EH/70/1).

- 8.2.8 Failure to comply with an Improvement Notice will generally result in Court proceedings. Before issuing an Improvement Notice, therefore, the authorised officer must have sufficient evidence to justify the issue, be prepared to pursue non-compliance and be satisfied that proceedings are likely to succeed.
- 8.2.9 An authorised officer intending to issue an Improvement Notice shall, where appropriate, consult with the lead authority before issuing such a notice.

8.3 **Prohibition Notices (PN's)**

8.3.1 In deciding whether to issue a Prohibition Notice, regard will be had to Section 18 Guidance. Notices will be issued in accordance with the Departmental Procedure for formal notices (a copy of which has been placed on the Public Health and Licensing Department's General File EH/70/1). The following is a list of situations in which service of a Prohibition Notice may be justified. The list is provided for guidance and is not intended to be exhaustive.

- The consequences of not taking immediate and decisive action to protect health and safety would be unacceptable, or
- An imminent risk of injury to health can be demonstrated, or
- Conditions are so serious that there is potential to harm the health of the public and/or employees, or
- There is no confidence in the integrity of an unprompted offer made by a proprietor voluntarily to close the premises or cease the use of any equipment, process or treatment associated with the imminent risk.

8.3.2 In accordance with the guidance issued by HSC only Officers with suitable qualifications and experience will be authorised to sign Prohibition Notices.

No Officer may sign a PN unless authorised by the Council to do so.

- 8.3.3 An authorised officer must not sign a PN on behalf of a non-authorised officer unless the authorised officer has witnessed the alleged contravention and is satisfied; having regard to the various criteria, the issue of the notice is justified.
- 8.3.4 When serving a Prohibition Notice the Officer should enclose an accompanying letter advising the proprietor / recipient of the Notice of their appeal rights to the Employment Tribunal. See Form IT 19 (a copy of which has been placed in Public Health and Licensing Department General File EH/70/1).
- 8.3.5 Failure to comply with a Prohibition Notice will result in Court proceedings. Before issuing a Prohibition Notice, therefore, the authorised officer must have sufficient evidence to justify the issue, be prepared to pursue non-compliance and be satisfied that proceedings are likely to succeed.
- 8.3.6 The authorised officer responsible for the PN will notify any lead authority of the action and of the outcome.

9. **PROSECUTION**

- 9.1 In general, prosecution will be restricted to those persons who blatantly disregard the law, refuse to achieve even the basic minimum legal requirements and who put the public at risk.
- 9.2 The circumstances which are likely to warrant prosecution will usually be characterised by one or more of the following: -
- Where the alleged offence involves a flagrant breach of the law such that public health, safety or well being is put at risk, or
 - Where the alleged offence involves a failure by the suspected offender to correct an identified potential risk to health and safety, having been given a reasonable opportunity to comply with the lawful requirements of an authorised officer, or
 - Where the offence involves a failure to comply in full or in part with the requirements of a statutory notice, or
 - Where there is a history of similar offences related to risk to health and safety.

The above list is not exhaustive and other factors may arise in individual cases.

- 9.4 To enable a prosecution to proceed, the Authorised Officer and Council Secretary and Solicitor must be satisfied that there is relevant, admissible, substantial and reliable evidence that an offence has been committed by an identifiable person or company. There must be a realistic prospect of conviction.
- 9.5 In addition to being satisfied that there is sufficient evidence to provide a realistic prospect of conviction, the officers must make a positive decision, based on relevant criteria that it is in the public's interest to prosecute. The Code for Crown Prosecutors, issued by the Crown Prosecution Service, provides guidance which should be considered, including relevant public interest criteria. A copy of this document has been placed in Public Health and Licensing Department General File EH/67
- 9.6 When deciding whether to prosecute, the Authorised Officer and Council Secretary and Solicitor should have regard to the following: -
- (a) The seriousness of the offence: -
- The risk or harm to health and safety,
 - Identifiable victims.
 - Failure to comply with a statutory notice served for a significant breach of legislation,
 - Disregard of public health for financial reward.
- (b) The previous history of the party concerned: -
- Offences following a history of similar offences,
 - Failure to respond positively to past warnings,
 - Failure to comply with statutory notices.
- (c) The ability of any important witnesses and their willingness to co-operate

- (d) The willingness of the party to prevent a recurrence of the problem
- (e) The probable public benefit of a prosecution and the importance of the case - e.g. whether it might establish a precedent: -
 - Advice on public interest is contained in the Code for Crown Prosecutors (see Paragraph 9.5 above).
- (f) Whether any other action, such as issuing a formal caution in accordance with Home Office Circular 18/1994 (see Public Health and Licensing Department - General File EH/67), or an Improvement Notice or imposing a Prohibition Notice, would be more appropriate or effective. (It is possible in exceptional circumstances to prosecute as well as issue a notice; failure to comply with a notice would be an additional offence): -
 - See Section 10 of this document with regard to Formal Cautions
- (g) Any explanation offered by the company or suspected offender: -
 - Suspected offenders should always be invited to an interview and given the opportunity to offer an explanation before prosecution decisions are finalised.

9.7 The guidance in Paragraph 9.6 is not to be interpreted as rigid constraints. For example, it may be appropriate to prosecute a first time offender for a serious breach of health and safety legislation. The final decision on whether a prosecution proceeds will always rest with the Council.

9.8 Once a decision to prosecute has been taken, the officer initiating the action must refer the matter to the Council Secretary and Solicitor without undue delay.

9.9 The outcome of prosecutions on health and safety matters will be notified to any lead authority and to the Office of Fair Trading.

9.10 **Prosecution of Individuals**

The Council shall also identify and recommend prosecution of individuals including company directors and managers if it is considered that the conviction is warranted. In order to do so they must be satisfied that it has relevant, admissible, substantial and reliable evidence that an offence has been committed. There must also be a realistic prospect of conviction.

9.11 **Death at Work**

Where there has been a breach of the law leading to a work related death, the Council must also consider whether the circumstances of the case might justify a charge of manslaughter, and if so, liaison should occur as appropriate with the Police, Coroner's Office and the Crown Prosecution Service. The Local Government Association has agreed that all Councils should take account of "***Work-related deaths: a protocol for liaison***" when responding to work related deaths.

10. **FORMAL CAUTIONS**

- 10.1 Before deciding whether a prosecution should be taken, the officers concerned will consider whether other action, such as issuing a formal caution in accordance with Home Office Circular 18/1994, would be more appropriate or effective.
- 10.2 Guidance on the use of the Formal Caution procedure is contained in general file EH/67.
- 10.3 The purpose of the formal caution is: -
- To deal quickly and simply with less serious offences,
 - To divert less serious offences away from the Courts,
 - To reduce the chances of repeat offences.
- 10.4 The significance of a formal caution, the fact that a record will be kept and may be cited in court if the offender is subsequently found guilty of an offence and that a previous formal caution may influence the decision to prosecute in a future case must all be explained to the suspected offender. The following conditions must be fulfilled before a formal caution is administered: -
- There must be sufficient evidence of the offence to give a realistic prospect of conviction, and
 - The suspected offender must admit the offence, and
 - The suspected offender must understand the significance of a formal caution and give an informed consent to the caution, and
 - if aged under 14, the offender must understand that what he / she did was seriously wrong and in such circumstances the caution must be issued in the presence of the minor's parents or guardian
- 10.5 Formal cautions may be issued by the following officers only: -
- Chief Executive, or
Council Secretary and Solicitor, or
Head of Public Health and Licensing
- 10.7 Where a person declines the offer of a formal caution, consideration must be given to taking alternative action. Whilst probable, it is not inevitable that a prosecution will follow.
- 10.8 Formal cautions issued should be notified to any lead authority and to the Office of Fair Trading. Regard should also be had to any detailed advice offered by HELA, particularly any guidance issued by HELA on the Lead Authority Scheme.
- 11.0 **Policy Review**
- 11.1 The policy will be reviewed at least annually by the Head of Public Health and Licensing. Views on the policy and its implementation will be sought to ensure it continues to meet the principles of good enforcement.
- 11.2 This Policy was adopted by the Council at the meeting of the Cabinet held on 31st March 2006.