



## ENVIRONMENTAL HEALTH & BUILDING CONTROL'S ENFORCEMENT POLICY

### 1. PURPOSE OF THE POLICY

The purpose of this Enforcement Policy is to detail the process all officers will use when deciding what action to take when carrying out their statutory duties on behalf of the Environmental Health & Building Control Service of Mid Sussex District Council, referred to in this Policy as "the Service". It should be read in association with the documents referred to in section 2 below.

#### 1.1 The main areas of work covered by this enforcement policy are:

**Food safety:** including inspections of food businesses, sampling of food stuffs, infectious disease control, seizure and detention of unfit food, and investigation of consumer complaints about food and food premises.

**Health and Safety enforcement:** in premises allocated by law to the local authority such as offices, shops, warehouses, catering establishments, hotels and hostels, places of religious worship, leisure centres, places used for child care or playgroups.

**Licensing:** determining applications for licences and registrations such as alcohol, public entertainments, private hire activities and hackney carriages, night cafes, animal welfare licences, Caravan and Camp Sites, Tattoo & Acupuncture, scrap metal licences, lotteries and amusement arcade controls and ensuring that conditions are being met.

**Noise control:** investigating and taking enforcement action to deal with noise from residential, commercial and industrial premises and noise in the street, such as loud music, barking dogs, intruder alarms and construction site noise.

**Pollution matters:** investigating and taking enforcement action to deal with complaints about rubbish, bonfires and smells. Monitoring air quality and authorising certain industrial processes under the Environmental Protection Act. Dealing with contaminated land.

**Pest Control:** providing a pest control service for businesses and residents, taking action to enforce the eradication of pests against landowners or occupiers or where the premises are judged to be in need of a thorough cleaning.

**Private Sector Housing:** investigating and taking enforcement action in response to complaints about housing conditions in the private rented sector under Part 1 of the Housing Act 2004. The Licensing of Houses in Multiple Occupation under Part 2 of the Housing Act 2004 and compliance with the Management of Houses in Multiple Occupation (England) Regulations 2006.

**Building Control:** The primary purpose of the Building Control service is to ensure the health and safety of people in and around buildings by taking action where buildings do not meet regulation standards, investigating possible unauthorised building work, managing and controlling demolitions, and inspecting and consulting on dangerous structures on behalf of the public and emergency services.

## **2.0 RELATED DOCUMENTS**

2.1 Documents related to this Policy include the following but the list is not exhaustive:

- The Code for Crown Prosecutors (available from: [www.cps.gov.uk](http://www.cps.gov.uk))
- Criminal Procedure and Investigations Act 1996 (CPIA) and associated Code.
- Police & Criminal Evidence Act 1984 (PACE), and associated Codes.
- Procedure and guidance notes within each team.
- The Enforcement Concordat and associated Codes
- The Regulators' Code
- Regulation of Investigatory Powers Act 2000
- Housing Act 2004
- Housing Fire Safety – LACORS Guidance
- Housing Health and Safety Rating System Operating Guidance and Enforcement Guidance
- The Management of Houses in Multiple Occupation (England) Regulations 2006
- Guide to Empty Dwelling Management Orders: Empty Homes Agency – EH
- The Building Act 1984
- The Building Regulations 2010
- Safety at Sports Ground Act 1975
- HSE Enforcement Management Model
- Regulatory Enforcement and Sanctions Act 2008 as amended

## **3.0 RESPONSIBILITIES**

3.1 The Business Unit Leader is responsible for keeping this Enforcement Policy under review and monitoring it.

3.2 Where authorisation levels are specified within the document, those are considered to be the lowest level at which such action may be authorised.

3.3 All officers have individual responsibility for complying with the Enforcement Policy and must use the most appropriate legislation.

3.4 For the purposes of the Criminal Procedure and Investigations Act 1996 the Head of Service/Business Unit Leader shall perform the function of Disclosure Officer for the services.

3.5 For the purposes of the Regulation of Investigatory Powers Act 2000, the Heads of Service have the delegated authority to authorise surveillance operations.

3.6 Where a shared enforcement role is identified, the relevant enforcement team will liaise with other agencies that may have a shared or complementary enforcement role, to prevent any conflict. Such partners include the County Fire Authority, Trading Standards, Emergency Planning, Police, Health and Safety Executive etc.

3.7 Where premises subject to enforcement action are owned or managed by the local authority, all activities will be undertaken in accordance with procedures for non-

local authority premises. In cases where statutory action would normally be taken, the relevant Head of Service will be informed at the earliest opportunity.

3.8 Any departure from the policy must be exceptional, justifiable and fully considered by Business Unit Leader having regard to risks to public health, safety and welfare.

3.9 Under the Council's constitution and scheme of delegation the decision to prosecute or caution in each case normally lies with the Heads of the Services. Decisions of this nature made by the Heads of the Services, or a decision to refer a case to the Head of Legal to consider prosecution, will usually be made following a review of the case with the officer/s concerned (see further at 8.1)

3.10 For the purposes of administering Formal Cautions the Business Unit Leader will be designated as the "Cautioning Officer".

#### **4.0 INTRODUCTION**

4.1 This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulator's Code.

4.2 In certain instances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

4.3 The aim of the Service is to improve the health, safety and wellbeing of the District's residents, visitors and business community.

To help us achieve this we will:-

- (a) Work within the legal framework and apply the law fairly;
- (b) Make the service accessible to all sectors of the community;
- (c) Remain responsive to customer needs;
- (d) Deal with customers with honesty and integrity;
- (e) Work in partnership with groups which represent our customers;
- (f) Use the resources available to the maximum benefit of our customers;
- (g) Train and develop our staff to ensure their effectiveness;
- (h) Treat our staff and customers equally regardless of race, nationality, ethnic origin, sex, sexual orientation, marital status, disability or age.

These objectives will be achieved through education, guidance, advice and warning letters and where necessary by appropriate legal action including the service of statutory notices, compliance notices, suspension notices, prohibitions, formal cautions and prosecution.

4.4 The Human Rights Act 1998, which came into force in October 2000 places general obligations on enforcement bodies to ensure fair treatment for all, to prevent any form of prejudice and to provide a right to privacy. This policy reflects the provisions of this Act in general terms as officers are required to follow agreed policies and procedures and work within their legal powers. Individual team procedures and guidance notes will cover specific areas of our work where particular care must be taken to ensure the Act is followed.

4.5 The Service will ensure that their enforcement policy follows all aspects of good enforcement practice in accordance with the elements of the Enforcement

Concordat, which the Council has signed. The use of enforcement will be proportional to any offence committed, consistent in application (including consistency with other local authorities or enforcement agencies), transparent in its use and appropriate to the circumstances of the particular case in question.

In particular;

- (a) We will ensure that the main provisions of our enforcement policy are written in plain English and will be made available during inspections and other enforcement visits and in correspondence. The complete policy will be available on the Council's web site;
- (b) A copy of the relevant enforcement procedures will be available on request;
- (c) We will consult with our customers (including businesses and the public) to obtain continuous improvements to our policy and procedures;
- (d) We will ensure that businesses are not required to carry out works at unnecessary expense;
- (e) We will make provision for the particular interests of consumers within our area including business owners, employees and the public. For example we will make provision to visit businesses outside of normal office hours if necessary when the business is open; we will have access to an interpreting / translation service for those who do not speak English.

4.6 The Service will carry out their enforcement functions in an equitable, practical and consistent manner and to this end is committed to:-

- (a) Drawing up clear standards, setting out the level of service and performance the public and business people can expect to receive;
- (b) Dealing with the public and business community in an open and honest way;
- (c) Providing a courteous, efficient and helpful service;
- (d) Responding promptly and positively to complaints about the service;
- (e) Ensuring that enforcement action is proportionate to the risks in each case.

4.7 While it is understood that it is primarily the responsibility of individuals and businesses to ensure compliance with relevant legislation, the Council will help them, where possible, to understand their legal responsibilities. The aim of the Council is to secure compliance with the legislation, which it will do by making the most efficient use of the Council's resources and having regard to minimising burdens on businesses.

4.8 This policy supports and supplements specific guidance on enforcement action contained in statutory Codes of Practice, Government guidelines, approved industry guides, co-ordinating bodies such as the LBRO and other approved sources.

## **5. TRAINING, COMPETENCY AND AUTHORISATION**

5.1 Only officers authorised by the Business Unit leader – Environmental Health and Building Control may undertake enforcement duties. The Business Unit leader will only authorise officers where satisfied with their level of qualification, training and experience. Newly appointed or transferred officers will also be assessed for competency and referred for training where necessary.

5.2 Officers undertaking enforcement duties will be suitably trained and qualified to ensure they are fully competent to undertake their enforcement activities.

Qualifications will be based on current government guidance. Appropriate training programmes for officers will be set up to achieve the necessary competence. The training requirements to achieve the necessary level of competence will be regularly reviewed by the Business Unit leader – Environmental Health and Building Control. Training will be prioritised within available resources.

5.3 Officers are responsible for ensuring they have regard to relevant guidance documents laid out in team procedures.

## **6. MANAGEMENT SYSTEMS**

6.1 The Council will maintain a management system to monitor and review the quality and nature of the enforcement activities undertaken in the division in order to demonstrate the effectiveness of the policy with respect to its aims and objectives and to recommend changes and improvements. Issues arising and variations from this policy will be reported to the Head of Service.

6.2 Business Unit leader – Environmental Health and Building Control will ensure all staff are trained to ensure they are fully conversant with this policy and arrange retraining and updating when necessary.

## **7. ADVICE, ISSUE OF INSPECTION REPORTS, WARNING LETTERS**

7.1 If no breaches of legislation are discovered, or if the officer believes that a complaint or contravention does not warrant investigation or action, then it may be appropriate to take no action.

7.2 When a contravention is detected which in the opinion of the officer should be dealt with by advice or warning letter then the officer will issue a report of inspection specifying the details of the alleged infringements in the appropriate section of that form. Where the report or letter specifies a period of time in which corrective action should be taken then a re-visit to the premises will normally be made to ensure compliance. Where possible any time periods for completion of work will be agreed with the appropriate Team Leader within the Section of Environmental Health and Building Control.

Where a business is in a Primary Authority Partnership the officer will notify the Primary Authority before taking any enforcement action. Likewise the Home, lead or originating authorities will be consulted whenever the officer believes action contrary to the advice of the home, lead or originating authority is necessary.

7.3 It will be appropriate to give advice or a warning when:-

- (a) The act or omission is not serious enough to warrant a simple caution or prosecution;
- (b) From past history it can be reasonably expected that such action will achieve compliance;
- (c) Confidence in the individual and/or organisation is reasonably high;
- (d) The consequences of non-compliance will not pose a significant risk to public health;
- (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.

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

- (a) Specify the legislation that has been contravened;
- (b) Specify what remedial action is required, together with the reasons and timescales for compliance;
- (c) Ensure that any recommended areas of good practice which are above the minimum levels required by statute are clearly differentiated within the document;
- (d) Where examples are given of how compliance may be achieved, it will be made clear that alternative means of compliance may also be acceptable;
- (e) Highlight the right to question works required by raising the matter with the relevant named manager;
- (f) Where appropriate, include the possible consequences of non-compliance, the possibility of formal action being initiated with possible associated costs to the relevant person.

Copies of such documentation will be sent to all interested parties, such as head or regional offices, contract managers, Primary Authority partners etc. and in the case of health and safety matters, to staff representatives.

## **8. ENFORCEMENT OPTIONS**

8.1 In cases where more formal action is considered, such decisions will usually be taken by the Business Unit leader – Environmental Health and Building Control following an enforcement review. Enforcement reviews will be conducted by the Business Unit leader as chair, the case officer and their Team Leader. Enforcement decisions will be consistent, balanced, fair and relate to common standards that ensure the public, businesses, employees and the environment are adequately protected.

8.2 In order to achieve and maintain consistency of enforcement, officers will follow all official guidance and codes of practice.

In the area of health and safety, Officers will refer to the HSE Enforcement Management Model before determining enforcement action.

8.3 Primary Authorities will be consulted when required by statute. In the areas of food safety the Home Authority Principle set up by LACORS will be adhered to and in the area of health and safety the Lead Authority Principle shall be adhered to. This means that where applicable, the comments of the home, lead or originating authorities shall be considered.

8.4 The factors to be considered in coming to a decision include:

- (a) The seriousness of the offence and health and safety implications;
- (b) The past history of the offender;
- (c) The confidence in management and the degree of wilfulness involved;
- (e) The consequence of non-compliance;
- (f) Mandatory/discretionary duties;
- (g) The likely effectiveness of the various enforcement options;
- (h) The different technical means of remedying the situation;
- (i) The impact of the enforcement choice in encouraging others to comply with the law.
- (j) The expediency of initiating enforcement action.

8.5 In the event of a contravention being detected then the enforcement options available to the Council include:

- (a) Advice;
- (b) Issue of an inspection report with details of recommended actions
- (c) Warning letter;
- (d) Statutory powers, for example service of notice, emergency prohibition order or seizure provisions;
- (e) Simple caution;
- (f) Prosecution;
- (g) Injunctive restraint;
- (h) Execution of work required by statutory notice where the recipient has not complied.
- (i) Issue of Fixed Penalty Notice for Littering and Dog Fouling

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

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

8.7 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, if appropriate, be referred to the relevant local co-ordinating body, Primary Authority or the home, lead or originating authority. However, where circumstances could result in a serious risk to health, officers may continue to take enforcement action prior to any referrals.

## **9. STATUTORY NOTICES**

9.1 The statutory notice procedures will in general be used to enforce legislation which relates to risks to health or quality of life.

9.2 Failure to comply with statutory notices will, other than in exceptional circumstances, result in prosecution and/or works in default and the Council will seek to recover the costs from the relevant person.

9.3 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.

9.4 Time limits given will be reasonable.

9.5 Primary Authorities will be consulted when required by statute. 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.

9.6 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

9.7 In the case of breaches of health and safety legislation, copies of notices will be made available to staff representatives. Notices having public safety or environmental implications will be placed on a register accessible to members of the public on request.

9.8 Compliance with the notice will be checked as soon as possible after the expiry date of the notice. Where appropriate any 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.

9.9 Works in default: 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.

## **10. SIMPLE CAUTIONS**

10.1 The Home Office Circular 16/2008 for Simple Cautioning was replaced on 8 April 2013 by the Ministry of Justice - Simple Caution for Adult Offender guidance following a review of simple cautions this was further amended on 14 November 2013. See <http://www.justice.gov.uk/out-of-court-disposals>. Simple Cautions are used where there are sufficient grounds for prosecution of adult offenders, but where this is not the most appropriate course of action. Simple Cautions will never be used as a substitute where a case or evidence is weak.

10.2 The subject of cautioning was considered on the basis that there is no rule of law that suspected offenders MUST be prosecuted and that cautioning represents a possible alternative course of action. Formal cautions will therefore be issued in accordance with the current Home Office circular, and will be considered against the criteria listed below. A properly administered Simple caution (which should not be confused with a letter of warning) 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.

10.3 A prosecution will only take place where it is in the public interest and where there is sufficient evidence (see section 11 below) to support that course of action. In cases where there is sufficient evidence to warrant a prosecution but the public interest would not benefit from such a course of action, then a Simple caution may well be appropriate.

10.4 Where a Simple caution has been accepted 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.

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

### **10.6 Criteria for Cautioning**

A Simple caution may be issued as an alternative to prosecution. Formal cautions will be issued to:-

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

In considering whether to administer a Simple caution the following criteria must be met:

- (a) There must be evidence of the offender's guilt sufficient to give a realistic prospect of conviction. In other words a conviction should be more likely than an acquittal before a court of law,
- (b) The offender must admit the offence, and
- (c) The offender must be an adult and must understand the significance of a caution and give informed consent to being cautioned. This agreement will not be sought until it is decided that cautioning is the correct course of action.

10.8 In deciding whether to caution or prosecute the following factors must be taken into consideration:

- (a) The nature and seriousness of the offence;
- (b) The likely penalty if the offender was convicted by a court;
- (c) The offender's age and state of health;
- (d) The offender's previous criminal history;
- (e) The offender's attitude towards the offence;
- (f) The views of the victim or any aggrieved party;
- (g) Whether compensation has been paid.

10.9 If a prosecution is deemed not to be required in the public interest it will often be appropriate to take no further action (other than to give advice) and this course will always be considered. However, the nature of the offence and other factors may make it more desirable to issue a caution.

10.10 If an offender refuses to accept a Simple caution, the delegated officer will reconsider the evidence and decide whether or not a prosecution should be instituted in line with the Council's Constitution.

## **11. PROSECUTION**

11.1 The Council recognises that the decision to prosecute is significant and could have far reaching consequences for all involved including defendants, victims and witnesses.

11.2 Each case is unique and will be considered on its own facts and merits.

11.3 Where the circumstances warrant it and the alternative actions outlined elsewhere in this policy are considered inappropriate, then a prosecution may result.

11.4 In determining whether a prosecution is appropriate the Council will have regard to and apply the guidance on the general principles to be applied when making decisions about prosecutions as prescribed by the Director of Public Prosecutions in the form of the Code for Crown Prosecutors effective at the material time. It follows that a prosecution will only be progressed when the case has passed both the evidential test and the public interest test.

### **11.5 The Evidential Stage**

For any prosecution to proceed the Council must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. A realistic prospect of conviction is an objective test that means 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. This is a separate test from the one that the criminal courts themselves must apply. A jury or Magistrates' Court should only convict if it is sure of a defendant's guilt.

### **11.6 The Public Interest Stage**

The public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. The Council will balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the suspect. Some factors may increase the need to prosecute but others may suggest that another course of action would be better. Although there may be public interest factors against prosecution in a particular case, often the prosecution should go ahead and those factors should be put to the court for

consideration when sentence is being passed. A prosecution will usually take place unless there are public interest factors tending against prosecution which clearly outweigh those tending in favour, or it appears more appropriate in all the circumstances of the case to divert the person from prosecution.

11.7 Some of the factors that the Council may consider when determining whether a prosecution is appropriate include:-

- (a) The seriousness of the alleged offence;
- (b) The role played by the defendant in the commission of the offence;
- (c) Any explanation offered by the company or defendant;
- (d) Whether the defendant was in a position of authority or trust;
- (e) Evidence of premeditation on the part of the defendant;
- (f) Evidence that an offence was committed by a group;
- (g) The risk of harm to public health;
- (h) Evidence of a disregard of legal standards for financial reward;
- (i) The previous history, including whether there is a history of similar offences, or a failure to respond positively to past warnings or statutory notices;
- (j) Any likelihood of a defendant being able to establish a defence;
- (k) The reliability of the evidence available;
- (l) The competence of witnesses and their willingness to co-operate;
- (m) Evidence of a willingness by the defendant to prevent a recurrence of the problem;
- (n) The need to influence the offender's future behaviour;
- (o) The probable public benefit of a prosecution and the importance of the case in maintaining community confidence;
- (p) The effect on the defendant's, or a witness's physical or mental health balanced against the seriousness of the offence;
- (q) The views of any victims;
- (r) The offence although not serious in itself is widespread in the area where it was committed;
- (s) The penalty which is likely to be imposed
- (t) Whether the offence is due to a genuine mistake or misunderstanding (but this must be balanced with the seriousness of the offence).
- (u) The level of risk associated with the hazards as assessed under the Housing Health and Safety Rating System.

11.8 There may be circumstances where, as well as prosecution, it will also be appropriate to serve a statutory notice to enforce the remedy.

11.9 The final decision on whether to prosecute shall be made after:

- (a) The suspected offender has been given the opportunity to offer an explanation;
- (b) Wherever possible a full and complete prosecution report file has been prepared and presented to the Business Unit Leader-Environmental Health and Building Control detailing the facts in the prescribed format;
- (c) The initiating officer has fully discussed the case with the Business Unit Leader-Environmental Health and Building Control

11.10 Consideration will be given to prosecuting directors of bodies corporate where:-

- (a) It appears that the offence was committed with his/her consent, connivance or neglect; or
- (b) It is likely that the body corporate may be wound up to avoid criminal proceedings.

11.11 Prosecution of individual employees may be appropriate and may be considered by the Council. Circumstances where a prosecution may result include for example where the employee has clearly contradicted the employers' instructions or has been deliberately obstructive.

11.12 In all cases of obstruction, prosecution will always be considered where this has resulted either in undue delay or in additional work/costs to the local authority, or where false information has been given deliberately.

11.13 Where there has been a death at work resulting from a failure to comply with health and safety law, the matter will be referred to the police if the circumstances of the case might justify a charge of manslaughter. The police are responsible for deciding whether or not to pursue a manslaughter case and this may occur alongside a prosecution for health and safety breaches. In all cases, the work-related deaths protocol for liaison signed by the appropriate agencies will be followed.

11.14 On completion of prosecution cases, officers must inform other interested parties of the outcome of the case as necessary. In particular, any complainants or victims will be informed. The outcome of the case will be reviewed with the Business Unit Leader-Environmental Health and Building Control to discuss any necessary future action.

## **12. COMPLAINTS AGAINST THE SERVICES**

12.1 If any person is unhappy with the action taken or information or advice given by officers of the Council or believe they have not received fair or consistent treatment as outlined in this policy, they will be given the opportunity to discuss the matter with the Business Unit Leader-Environmental Health and Building Control. Officers approached with such a request will refer them to their Business Unit Leader-Environmental Health and Building Control, who will listen to their complaints, consider whether the enforcement policy has been breached in this instance and give a reply in writing. This is without prejudice to any formal appeal mechanism. If the problem cannot be resolved, the person will be informed of the Council's complaints procedure.