



ADUR & WORTHING
COUNCILS

July 2020

Date for review: July 2023

PUBLIC HEALTH & REGULATION TEAM

ENFORCEMENT POLICY

1. PURPOSE OF THE POLICY

1.1 This Enforcement Policy provides a proportionate and pragmatic approach to regulation in Adur and Worthing. This approach is robust with 'business as usual' and has proved to be resilient under the fast paced legislative requirements during the Covid-19 pandemic.

The policy sets out our overall approach of wise regulation for our businesses, communities and environment to ensure the health, safety and wellbeing of our communities, places and economy. It also sets out a clear framework for all officers to inform their decisions, actions and communication when carrying out their statutory duties on behalf of Adur District and Worthing Borough Councils, which are separate legal bodies.

It should be read in association with the documents referred to in section 2 below.

1.2 The main areas of work covered by this Enforcement Policy are:-

Food Safety: including inspections of food businesses, sampling of foodstuffs, inspection of ships at Shoreham Harbour, 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: administering and determining applications for licences, permits and registrations required by individuals and businesses to authorise the provision of licensable activities. Including such activities as the supply & sale of alcohol, provision of regulated entertainment, sale of late night refreshment, provision of hackney carriage and private hire transport, gambling & lotteries, street trading, sex

establishments, scrap metal dealers, animal welfare and charitable collections. Investigating any possible breaches of licensing legislation and taking the appropriate enforcement action to ensure compliance with that legislation and the terms of individual licences and permits.

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

Pollution: investigating and taking enforcement action to deal with complaints about rubbish, pests, bonfires, odours, dust and light. Monitoring and management of air quality and permitting certain industrial processes. Regulation of Private Water supplies. Dealing with contaminated land.

Dog Control: enforcing dogs on leads/fouling in public spaces, animal welfare issues and collection of strays.

2.0 RELATED DOCUMENTS

2.1 Documents related to this Policy include:

- The Code for Crown Prosecutors
- Criminal Procedure and Investigations Act 1996 (CPIA) and associated Code
- Police & Criminal Evidence Act 1984 (PACE) and associated Codes
- The Enforcement Concordat 1998
- The Regulators' Compliance Code 2008
- Regulation of Investigatory Powers Act 2000
- Legislation relating to each service area
- Procedures and guidance notes within each team.

3.0 RESPONSIBILITIES

3.1 The Public Health & Regulation Manager (PH&R Manager) and Team Leaders are responsible for keeping this Enforcement Policy under review and monitoring it. It is recommended that a full review is carried out every three years.

3.2 Where authorisation levels are specified within the document, these are considered the minimum level of delegated authority 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 PH&R Manager or Team Leader shall perform the function of Disclosure Officer for their Teams.

3.5 For the purposes of the Regulation of Investigatory Powers Act 2000, the Directors and Chief Executive are the Authorising Officers at the Councils for 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 West Sussex Fire & Rescue Service, Trading Standards, Adur & Worthing Councils' Safety & Resilience Team, Police, Health & Safety Executive, Food Standards Agency, UK Border Agency, 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 Team Leader and Public Health & Regulation Manager will be informed at the earliest opportunity.
- 3.8 Any deviation from the policy should be recorded, including the decision, action, and rationale.
- 3.9 Under the Council's constitution and scheme of delegation the decision to prosecute or caution in each case will lie with the Solicitor to the Councils, following a review of the case with the relevant Team Leader and officer/s (see further at 8.1).
- 3.10 For the purposes of administering Simple Cautions the Solicitor to the Councils shall be designated as the "Cautioning Officer".
- 3.11 The training requirements to achieve and maintain the necessary competence levels for authorised officers will be regularly reviewed by the Team Leaders and training resources will be prioritised accordingly.

4.1 INTRODUCTION

- 4.2 This Enforcement Policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens on businesses. This is in accordance with the Regulators' Code.
- 4.3 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.
- 4.4 The aim of the Services is to improve the health, safety and wellbeing of the Councils' 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 in line with the Adur & Worthing Equality Policy.

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, prohibitions, simple cautions and prosecution.

- 4.5 The Human Rights Act 1998 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 we are required to follow agreed policies and procedures and work within our 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.
- 4.6 The Team Leaders will ensure that their enforcement actions follow all aspects of good enforcement practice in accordance with the elements of the Enforcement Concordat. The use of enforcement will be proportionate 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 Adur & Worthing Councils' website;
 - (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; this will be incorporated into our three yearly reviews
 - (d) We will ensure that where businesses are required to carry out works, that all associated costs are kept to a minimum.

We will make provision for the particular interests of consumers within our area including business owners, employees and the public. For example we will have access to an interpreting/translation service for those who do not speak English. We will make provision to visit businesses outside of normal office hours if necessary when the business is open.

- 4.7 The Services will carry out their enforcement functions in an equitable, practical and consistent manner and in accordance with the current 'Good Services' initiative.
- 4.8 We are 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 constructively to complaints about the service;
- (e) Ensuring that enforcement action is proportionate to the risks in each case.

4.9 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.

4.10 This Policy supports and supplements specific guidance on enforcement action contained in statutory Codes of Practice, Government guidelines, approved industry guides, coordinating bodies such as the Regulatory Delivery Office and other approved sources.

5. TRAINING, COMPETENCY AND AUTHORISATION

5.1 Only officers authorised by the Head of Wellbeing may undertake enforcement duties. The Head of Wellbeing will only authorise officers when satisfied with their level of qualification, training and experience. Newly appointed or transferred officers will also be assessed by the Team Leaders for competency and referred for training where necessary, in line with the Councils' Learning and Development Policy.

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, where applicable. 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 Team Leaders. 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 team 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 through the Public Health & Regulation Team Meetings.

6.2 Team Leaders 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 or breaches to a licence condition 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 specify the details of the alleged infringement(s) in writing. Where this specifies a period of time within which corrective action should be taken, then a re-visit to the premises (or re-inspection of the vehicle) will normally be made to ensure compliance. Where possible any time periods for completion of work will be agreed with an appropriate person within the organisation.
- 7.3 It will be appropriate to give advice or a warning when:-
- 7.1.1. The act or omission is not serious enough to warrant a simple caution or prosecution;
 - 7.1.2. From past history it can be reasonably expected that such action will achieve compliance;
 - 7.1.3. Confidence in the individual and/or organisation is reasonably high;
 - 7.1.4. The consequences of non-compliance will not pose a significant risk to public health or affect the public interest;
 - 7.1.5. 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. Nonetheless 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, any written documentation issued will:-
- 7.1.6. Specify the legislation that has been contravened;
 - 7.1.7. Specify what remedial action is required, together with the reasons and timescales for compliance;
 - 7.1.8. Ensure that any recommended areas of good practice which are above the minimum levels required by statute are clearly differentiated within the document;
 - 7.1.9. Where examples are given of how compliance may be achieved, it will be made clear that alternative means of compliance may also be acceptable;
 - 7.1.10. Highlight the right to question works required by raising the matter with the relevant manager;

7.1.11. 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, 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 (excluding Nuisance Abatement Notices and Fixed Penalty Notices), such decisions will usually be taken by the PH&R Manager following an enforcement review. Enforcement reviews will comprise the appropriate Team Leader (or his/her nominee in his/her absence), along with the case officer and other Council representatives as considered appropriate, such as from the Councils' Legal Team. Enforcement decisions will be consistent, balanced, fair and relate to common standards that ensure the public, businesses, employees and the environment are adequately protected. Where a decision to administer a simple caution or issue a prosecution is made, such a decision will be made by the Solicitor for the Councils.

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

8.3 In the areas of food safety the Primary Authority scheme and Home Authority Principle (Regulatory Enforcement & Sanctions Act 2008) will be adhered to and in the area of health and safety the Lead Authority Principle shall be adhered to. Where applicable, the comments of the primary, 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 willfulness involved;
- (d) The consequence of non-compliance;
- (e) Mandatory/discretionary duties;
- (f) The likely effectiveness of the various enforcement options;
- (g) The different technical means of remedying the situation;
- (h) The impact of the enforcement choice in encouraging others to comply with the law.

(i) 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:

Advice &/or education;

Issue of an inspection report with details of recommended actions;

Warning letter;

Statutory powers, for example service of notice, emergency prohibition order, licence suspension or seizure provisions;

Simple caution;

Licence Review, refusal to renew or revocation of Licences & Permits

Prosecution;

Injunctive restraint;

Execution of work required by statutory notice where the recipient has not complied.

Issue of Fixed Penalty Notice or, in the case of a licensed vehicle, a vehicle defect notice.

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

8.6 Officers will comply with Codes B, C, E & F of the Police and Criminal Evidence Act 1984 (as amended) as far 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 or the Primary, 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 the health or quality of life of individuals and the public.

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 and any other area of relevant legislation.
- 9.4 Time limits given within notices will be reasonable and in accordance with statutory requirements.
- 9.5 Other relevant bodies will be informed of the action as necessary, for example Primary, Home, Lead authorities, or 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 unless otherwise stated. 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 and will be dependent on the facts of each case.
- 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 current guidance is the Ministry of Justice – Simple Cautions for Adult Offenders. The guidance is used by police authorities and prosecution agencies. A Simple Caution (once known as a formal or police caution) is a formal warning that may be given to persons aged 18 or over who agree to it and admit to committing an offence. The Simple Caution scheme is designed to provide a means of dealing with low-level, mainly first-time, offending without a prosecution. Simple cautioning is not to be used as an alternative to a weak prosecution case.
- 10.2 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 a case 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 an alternative.

10.3 Simple Cautions will be issued:

- 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;
- To reduce the likelihood of re-offending;
- To enable officers to spend more time dealing with more serious cases.

10.4 In deciding whether to offer a Simple Caution the Full Code Test as set out in the Code for Crown Prosecutions must be applied.

10.5 Such cases should be fully considered by the Team Leader who will present the case to the Head of Wellbeing and the Solicitor for the Councils for authority to issue a Simple Caution.

10.6 The Cautioning Officer will be the Solicitor to the Council, who is the Head of Legal Services and the cautioning procedure in the Ministry of Justice guidance will be followed.

10.7 Where appropriate the issue of a simple caution will be notified to a home authority, originating authority, lead authority or primary authority.

10.8 If an offender refuses to accept a formal caution, the delegated officer will refer the matter to the Solicitor for the Councils who may pursue a prosecution, taking into account the relevant guidance and the Council's Constitution.

11. PROSECUTION

11.1 Adur & Worthing Councils recognise 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 within 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. The decision to proceed with a prosecution rests with the Head of Legal Services.

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. 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. Whichever route is pursued the Local Authority will only start or continue a prosecution if the case has passed both the evidential and public interest stages.

11.7 Although not an exhaustive list these are some of the factors that the Council may consider when determining whether a prosecution is appropriate:-

- 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 cooperate;
- 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, and

- t) Whether the offence is due to a genuine mistake or misunderstanding (but this must be balanced with the seriousness of the offence).

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 full and complete prosecution report file has been prepared and presented to the Solicitor for the Councils detailing the facts in the prescribed format;
- The initiating officer has fully discussed the case with the PH&R Manager.

11.10 Where legislation permits, consideration will be given to prosecuting directors of bodies corporate where:-

- It appears that the offence was committed with his/her consent, connivance or neglect; or
- 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, has been deliberately obstructive or contravened policy or legislation resulting in offences being committed.

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 decision to prosecute will be coordinated between the Crown Prosecution Service (CPS) and the Health and Safety Executive (HSE) or the Local Authority. A manslaughter case may occur alongside a prosecution for health and safety breaches. In all cases, the Work-Related Death Protocol for liaison, signed by the appropriate agencies will be followed.

11.14 On final 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 relevant Team Leader to discuss any necessary future action.

12. COMPLAINTS AGAINST THE SERVICE

- 12.1** If any person believes that they have not received fair or consistent treatment as outlined in this Policy, they can access the Councils' Complaints Procedure. The matter will be considered and a decision made as to whether the Enforcement Policy has been breached in this instance and the complainant will be given a reply in writing explaining the decision. This is without prejudice to any formal appeal mechanism.