



# **Chichester District Council**

## **ENVIRONMENTAL HEALTH & LICENSING ENFORCEMENT POLICY 2022 - 2027**

**21 SEPTEMBER 2022**

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## **CONTENTS**

### **1.0 Introduction**

### **2.0 Enforcement Powers**

- 2.1 Definition
- 2.2 Conduct of Investigations
- 2.3 Powers Available
- 2.4 Powers of Entry

### **3.0 Principles of Good Enforcement Practice**

- 3.1 General
- 3.2 Transparency
- 3.3 Helpfulness
- 3.4 Consistency
- 3.5 Proportionality
- 3.6 Targeting
- 3.7 Accountability
- 3.8 Training, Competency and Authorisation of Officers

### **4.0 Selection of Enforcement Option**

- 4.1 General
- 4.2 The Harm, Disturbance or Distress Caused
- 4.3 Nature of the Breach
- 4.4 Intent
- 4.5 Previous History
- 4.6 Attitude of the Offender
- 4.7 Deterrent Effect
- 4.8 Offender's Personal Circumstances
- 4.9 Foreseeability

### **5.0 Prosecution**

- 5.1 Purpose
- 5.2 Deciding to Prosecute
- 5.3 The Evidential Test
- 5.4 The Public Interest Test
- 5.5 Youth Offenders
- 5.6 Companies and Individuals
- 5.7 Penalties

### **6.0 Simple Cautions**

- 6.1 Purpose

### **7.0 Complaints, Appeals and Commenting on the Policy**

### **8.0 Liaison with Other Regulators**

**9.0 Costs**

**10.0 Communication and Publicity**

**11.0 Enforcement in Premises where the Council has an Interest**

**12.0 Enforcement in Crown Premises**

**13.0 Authorisation of Officers**

**14.0 Review**

## **ENVIRONMENTAL HEALTH & LICENSING SERVICES ENFORCEMENT POLICY**

### **1.0 INTRODUCTION**

- 1.1 The purpose of this document is to set out what businesses and others being regulated can expect from Chichester District Council's Environmental Health & Licensing services and its enforcement officers. It commits these services and the enforcement officers to good enforcement practice with effective procedures to achieve a consistent approach to dealing with non-compliance across all of our activities.

It sets out the general principles of good enforcement practice and the more specific factors which will be taken into account when choosing the most appropriate action. We are committed that the Council and in particular authorised enforcement officers will act in accordance with the policy.

- 1.2 This policy has been prepared with regard to the current principal legislation and guidance on the approach to regulatory decisions and action, including the below.

- The Regulatory Enforcement and Sanctions Act 2008 (as amended) – this Act established the Local Better Regulation Office (LBRO) which has been renamed the Better Regulation Delivery Office (BRDO). We are committed to having regard to any relevant guidance or direction issued by the BRDO.

The Act also established the Primary Authority Scheme which gives businesses the right to form a statutory partnership with a single local authority, which then provides robust and reliable advice for other councils to take into account when carrying out inspections or dealing with non-compliance. We will comply with the requirements of the Act when considering and taking enforcement action against any business or organisation that has a primary authority, and any relevant guidance in relation to the Primary Authority Scheme. More details on the Primary Authority Scheme can be found at:

<https://www.gov.uk/government/publications/primary-authority-overview>.

- Legislative and Regulatory Reform Act 2006 – this Act requires the Council to have regard to the principles of good regulation in the way that regulatory activities are undertaken, principally that they are proportionate, accountable, consistent, transparent, and targeted. We are committed to doing so.
- Regulators' Code – this requires that local authorities must have regard to the Code and to ensure that their approach to regulatory services is transparent. We are committed to doing so. In particular we:-

Recognise that a key element of the Council is to encourage economic growth and only to intervene when there is a clear case for prosecution.

Use comprehensive risk assessment to concentrate resources in the areas that need them the most.

Provide authoritative, accessible advice at reasonable cost.

Ensure that no inspection takes place without a reason.

Strive to ensure that businesses don't have to give unnecessary information or give the same piece of information twice.

Recognise the need to ensure that the few businesses that persistently break regulations are identified quickly and face proportionate and meaningful sanctions.

Recognise the need to be accountable for the efficiency and effectiveness of our enforcement activities, while remaining independent in the decisions we make.

- 1.3 The regulatory functions undertaken across these services are extensive. They include housing, licensing (alcohol & regulated entertainment, gambling, taxi and private hire, caravans etc), food safety, health and safety, infectious disease control, environmental protection, nuisance control, consent street trading, pest control, animal welfare, and private water supplies.
- 1.4 We recognise that most individuals and businesses wish to comply with the law and will seek to assist and encourage them to do so, without imposing unnecessary regulatory burdens. However, where it becomes necessary to take enforcement action we will, and we have a wide range of tools available to do so. The full range of enforcement actions will always remain open to officers.
- 1.5 When considering formal enforcement action, we will, where appropriate and reasonably practicable, discuss the circumstances with those suspected of breaking the law and take anything said into account when deciding on the approach. This will not apply where immediate action is required to prevent or respond to a breach of the law, or where to do so is likely to defeat the purpose of the proposed enforcement action.
- 1.6 We are committed to treating all customers fairly, irrespective of race, ethnicity, nationality, religion or belief, gender/sex/sexual orientation, marital/civil partnership, pregnancy and maternity, disability or age. This includes the provision on request of documents in alternative formats where possible, such as other languages or large print. A number of documents on the Council's commitment to equality and diversity can be found on our website.
- 1.7 The Council is a public authority for the purposes of the Human Rights Act 1998. We therefore apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This Policy and all associated enforcement decisions take account of the provisions of the Act. In particular, due regard is had to the right to a fair trial, and the right to respect for private and family life, home and correspondence.
- 1.8 Where there is a need to share information with other agencies, we will follow the provisions of the Data Protection Act 2018. Personal data will be managed in accordance with The Council's Register of Data Processing which can be viewed on the Council website.
- 1.9 The main areas of work covered by this Enforcement Policy include:-

## **Health Protection**

Food Safety and standards, including inspections of food businesses, Food Hygiene Rating System (FHRS), sampling of food stuffs, infectious disease control, seizure and detention of unfit food, and investigation of 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, laundrettes, places of religious worship, leisure centres, places used for childcare or playgroups, motor racing circuits. Accident investigation.

Licensing of activities involving an infectious disease risk such as Ear-piercing, Acupuncture, Electrolysis, Tattooing, Body Piercing.

Pest Control provision including statutory public health functions.

## **Licensing**

Administering, determining and issuing licenses and registrations for such activities as regulated entertainment, sale of alcohol, gambling, late night refreshment, scrap metal dealers/collectors, pavement licenses, lotteries and amusement arcades and ensuring that conditions are being met and locally adopted policies are upheld.

Administering, determining and issuing licenses for Private Hire vehicles, drivers and operators, and Hackney Carriage vehicles and drivers ensuring that conditions are met and locally adopted policies are upheld.

The licensing of caravan sites and operators of residential and/or holiday caravan sites to ensure conditions are being met and locally adopted policies are upheld.

## **Environmental Protection**

Statutory Nuisance, investigating and taking enforcement action to deal with statutory nuisances from residential, commercial, and industrial premises and noise in the street, such as loud music, barking dogs, intruder alarms, bonfires, light nuisance.

Pollution matters, investigating and taking enforcement action to deal with complaints about rubbish accumulations, littering, land pollution. Monitoring air and water quality and regulating certain industrial processes under the environmental permitting regulations. Implementing the Councils Contaminated Land Strategy.

Control of filthy and verminous premises and enforcement of prevention of damage by pests regulations

Dog Control, enforcement of Public Spaces Protection Orders, promotion of responsible dog ownership and general animal welfare.

## **Housing Standards**

Housing Conditions, maintaining standards within private sector housing, including houses in multiple occupation and taking enforcement action to deal with complaints from private tenants about disrepair and other problems in the properties where they live.

Licensing, validating and issuing licences for Houses in Multiple Occupation and ensuring that attached conditions are being met.

Ensuring letting and managing agents are members of a government approved redress scheme, and using appropriate enforcement action, including the issuing of fines if necessary to achieve compliance.

Monitoring landlord compliance with smoke and carbon monoxide, electrical safety, minimum energy efficiency standards regulations to ensure property safety for tenants.

In terms of housing, this policy should be read in conjunction with the Housing Standards Financial Assistance and Enforcement Policy 2021-26

## **2.0 ENFORCEMENT POWERS**

### **2.1 Definition**

'Enforcement' in the context of this policy means the use of any action by authorised enforcement officers aimed at:

- Protecting individuals or the environment from harm;
- Ensuring that actions and activities are controlled so that relevant regulatory standards are attained and maintained;
- Ensuring that appropriate actions are taken where regulatory standards are breached;
- Seeking appropriate sanctions for offences.

### **2.2 Conduct of Investigations**

All investigations will be carried out in accordance with relevant legislation with consideration of associated guidance or codes of practice. In particular the Council will work hard to ensure that it complies with the law on the collection and control of evidence and protections of the rights of citizens and potential defendants.

Our authorised officers will also comply with the requirements of the particular legislation under which they are acting, and with any associated guidance or codes of practice.

### **2.3 Powers Available**

Enforcement powers available include the paragraphs below. Other powers may exist or be introduced by new legislation.

#### **2.3.1 No Action**

No action may be taken where there has been no contravention of law, or where the contravention of law may not warrant any action.

#### **2.3.2 Informal Action**

This may include verbal and/or written advice, also warnings under Anti-Social behaviour legislation. Advice will be put clearly and simply explaining what law has been contravened, what remedial work is necessary and over what timescale, and

will clearly distinguish legal requirements from recommendations and best practice advice. Advice given will be recorded on file and referred to in determining future actions. Plain English will be used wherever possible.

Informal action may be appropriate in the circumstances below.

- Where the non-compliance does not involve a significant or immediate risk to public health.
- The issue is not serious enough to support formal action.
- Where from the individual's/businesses past history it can reasonably be expected that informal action will achieve compliance.
- Confidence in the individual's/business's management is high based on past experience of that specific business by the Council.

Direct communications with multi-site businesses will normally be with the head office (unless the business has other nationally agreed arrangements). A copy will ordinarily be sent to the local site.

### 2.3.3 **Statutory (Legal) Notices**

A range of statutory notices or orders are available for use and may require certain work to be done, or certain activities to cease. These include Abatement Notices, Hazard Awareness Notices, Prohibition Orders, Demolition Orders, Hygiene Improvement Notices, Hygiene Emergency Prohibition Notices, Fixed Penalty Notices, Civil Injunctions, Criminal Behaviour Orders, Community Protection Notices and Prohibition Notices. Such notices are legally binding. Failure to comply with a statutory notice can be a criminal offence and may lead to prosecution and/or, where appropriate, the carrying out of work in default. Work in default means that if the notice is not complied with, we may carry out any necessary works to satisfy the requirements of the notice. Where the law allows, we may charge the person/business served with the notice for any cost we incur in carrying out the works.

A statutory notice will set out as clearly as reasonably possible actions which must be taken and the timescale within which they must be taken. It is likely to require that any breach is rectified and/or prevented from recurring. It may also prohibit specified activities until the breach has been rectified and/or safeguards have been put in place to prevent future breaches.

Some notices issued in respect of premises may be affixed to the premises and/or registered as local land charges.

All notices issued will include details of any appeal procedure.

### 2.3.4 **Voluntary Undertakings**

We may in certain circumstances accept voluntary undertakings that breaches will be rectified and/or recurrences prevented. We will take any failure to honour voluntary undertakings very seriously and enforcement action is likely to result.

### 2.3.5 **Sampling, Detaining and Seizing Food**

Food, water and environmental sampling from food businesses will be used both proactively and reactively.

Detention powers will be used by authorised officers if there is reason to suspect that food does not satisfy food safety requirements. Seizure powers may be used where there is clear evidence of such a failure.

Voluntary procedures to remove food that is not suitable for human consumption from the food chain may be used, either at the instigation of the person in charge of the food, or at the suggestion of the authorised officer.

### **2.3.6 Seizing or Disabling Equipment**

Seizure powers or powers to disable equipment may be used where appropriate to, for example, render harmless any article or substance which is believed to be a cause of imminent danger, or which could cause serious personal injury.

### **2.3.7 Refusal, Revocation, Suspension or Variation of Licences, Approvals, Consents etc.**

Where there is breach of a licence condition, approval, consent etc., powers may be used to refuse, suspend, amend or revoke a licence, approval or consent, subject to the provisions of the relevant legislation and or locally adopted policy.

When considering future licence etc. applications, we will take previous breaches, convictions, cautions and enforcement action into account.

### **2.3.8 Financial Penalties**

Certain offences are subject to civil penalties or fixed penalty notices where prescribed by legislation. They may be used to offer a person the opportunity to discharge liability to conviction for the offence by payment of a fixed penalty. In some circumstances, in particular where breaches are serious or recurrent, it may be decided that prosecution is more appropriate than the issue of a fixed penalty notice.

If a civil or fixed penalty is not paid, we may commence criminal proceedings or take other enforcement action in respect of the breach.

If a civil or fixed penalty is paid in respect of a breach, we will not take any further enforcement action in respect of that breach. Payment of a penalty does not provide immunity from prosecution in respect of similar or recurrent breaches.

### **2.3.9 Injunctive Actions, Enforcement Orders etc.**

In some circumstances we may seek direction from the Court in the form of an order or a civil injunction that a breach is rectified and/or prevented from recurring. The Court may also direct that specified activities be suspended until the breach has been rectified and/or safeguards have been put in place to prevent future breaches. Otherwise, we will usually only seek a Court order if we have serious concerns about compliance with voluntary undertakings or a notice.

Failure to comply with a Court order constitutes contempt of Court and is itself a serious offence that may lead to imprisonment.

We are required to seek enforcement orders after issuing some enforcement notices, providing the Court with an opportunity to confirm the restrictions imposed by the notice.

### **2.3.10 Prosecutions**

Prosecutions are dealt with in section 5.0.

### **2.3.11 Simple Cautions**

Simple cautions are dealt with in section 6.0.

### **2.3.12 Consideration of Byelaws**

Application of any local byelaws will be in accordance with this policy.

## **2.4 Powers of Entry**

We will only exercise our powers of entry when reasonable requests to enter premises have been refused and the issue requiring entry warrants it.

We recognise the potentially invasive nature of exercising powers of entry.

Access to properties will normally be achieved using statutory powers of entry where available. Prior notice will normally only be given when appropriate or required by law, except if prior notice would be counterproductive, or it is anticipated that entry will be refused.

In appropriate circumstances, a formal Notice of Entry will be served, or an application made to the Magistrates' Court for a Warrant to Enter.

Where appropriate the relevant parts of the Police and Criminal Evidence Act 1984 and the Protection of Freedoms Act 2012 in dealing with the searching of premises will be followed.

## **3.0 PRINCIPLES OF GOOD ENFORCEMENT PRACTICE**

### **3.1 General**

We recognise that most businesses and individuals want to comply with the law. We will, therefore, carry out our enforcement activities in a firm but fair way, taking care to help businesses and individuals meet their legal obligations without unnecessary expense.

The principles of good enforcement are set out in 3.2 – 3.7 below.

### **3.2 Transparency**

Transparency means helping duty holders understand what is expected of them, and what they should expect from the Council. Information and advice will be provided in plain language on the rules that we apply. We will be open about how we set about our work, including any charges that we set. We will discuss general issues, specific compliance failures, or other problems with anyone experiencing difficulties in complying.

We are also committed to the principle that those being regulated can request advice on non-compliance without directly triggering enforcement action, where they show a willingness to resolve the non-compliance. However, this will not prevent us taking appropriate enforcement action if a particular set of circumstances warrants it.

We will make clear what the duty holder has to do and why, and if necessary, what they do not have to do. We will do this by clearly distinguishing between legal requirements and recommendations in both verbal and written communications, explaining why remedial work is necessary and over what timescale.

We will also ensure that employees, injured parties, complainants etc. are kept informed about enforcement action that they have an interest in.

### **3.3 Helpfulness**

We believe that prevention is better than cure and that we should work with individuals and businesses to advise and assist with compliance. We will provide a courteous, prompt, and efficient service and our staff will identify themselves by name. We will provide a contact point and telephone number and will encourage customers to seek advice and information which will be provided wherever possible free of charge. We will ensure that services are effectively co-ordinated to minimise unnecessary overlaps and time delays. This includes making every effort to ensure that information is shared with other agencies so that customers don't have to keep repeatedly giving the same information.

### **3.4 Consistency**

Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends. We will carry out our duties in a fair, equitable and consistent manner. Whilst staff are expected to exercise judgement in individual cases, we have arrangements in place to promote consistency, including effective supervision arrangements for liaison with other authorities and enforcement bodies.

### **3.5 Proportionality**

We will minimise the costs of compliance for duty holders by ensuring that any action we require is proportionate to the risks. As far as the law allows, we will take account of the circumstances of the case, how far the duty holder has fallen short of what the law requires, the extent of the risks to people and the environment arising from the breach, and the attitude of the duty holder when considering action. We will take particular care to work with small businesses and voluntary and community organisations, so that they can meet their legal obligations, where practicable without unnecessary expense. We will clearly differentiate between legal requirements and goodwill or best practice advice.

### **3.6 Targeting**

Targeting means making sure that regulatory effort is directed primarily towards those whose activities give rise to, or pose a risk of, serious harm to the public health or the environment, where the risks are least well controlled, or against deliberate disregard for the law. Action will be primarily focused on lawbreakers or those directly responsible for the risk and who are best placed to control it.

### **3.7 Accountability**

We recognise that we are accountable to those being regulated and the public for our actions. We will provide a publicised complaints procedure easily accessible to businesses, the public, employees and consumer groups. The Council's Corporate Complaints Policy may be found as detailed in section 7.0, along with further details on complaints and appeals.

### **3.8 Training, Competency and Authorisation of Officers**

Only officers duly authorised in accordance with the Council's Scheme of Delegation may undertake enforcement duties.

Officers will only be authorised where they have the appropriate level of qualification, training, experience and competence. This applies equally to those who are directly employed, to temporary staff, and to those employed as contractors.

Officers will receive such on-going training as necessary to maintain their competency and consistency in applying legislation, and also in dealing with conflict and difficult enforcement situations. Where specialist knowledge is required in an area outside of our expertise we will, where appropriate, consult with other local authorities and/or enforcement agencies and ensure that we have obtained the necessary knowledge before acting.

Officers who undertake enforcement will be conversant with the provisions of the relevant legislation and guidance controlling how evidence is collated and used. For example, the Police and Criminal Evidence Act 1984, the Criminal Procedure and Investigations Act 1996, and the Regulation of Investigatory Powers Act 2000.

## **4.0 SELECTION OF ENFORCEMENT OPTION**

### **4.1 General**

The seriousness of breaches can vary greatly from loss of life to breaches of an administrative nature e.g. failure to register a food business. In reaching a decision on the most appropriate enforcement action, account will be taken of relevant published guidance and codes of practice.

The principles that guide our approach to regulatory action include:

- Aiming to change the behaviour of the offender;
- Aiming to eliminate any financial gain or benefit from non-compliance;
- Being responsive and considering what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that could be associated with a criminal conviction;
- Being proportionate to the nature of the offence and the harm caused;
- Aiming to prevent the harm caused by regulatory non-compliance,
- Aiming to deter future non-compliance.

Before enforcement action is taken, where appropriate, officers will provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference, unless immediate action is required (for example, in the interests of food hygiene, health and safety, or to prevent evidence being destroyed). Where immediate action is considered necessary, an explanation of why such action was required will be given at the time and confirmed in writing. Where legally required to do so, such as by the Antisocial Behaviour Act, we will liaise with victims/communities affected in devising remedies and where appropriate sanctions against the offender.

We are committed to considering risk at the decision making stage. This may include the use of decision making models. For example, the Health and Safety Executive's Enforcement Management Model (EMM) will be applied where appropriate. The EMM provides a framework to assist making enforcement decisions on health and safety matters to help promote consistency and transparency.

#### **4.2 The Harm, Disturbance or Distress Caused**

The amount of harm, disturbance or distress caused will usually vary according to the breach. The magnitude of the effect on individuals, the community and the environment will need to be gauged for each incident. In general, the greater the impact or potential impact upon individuals, the Environment or the wider community, the greater the probability of enforcement action.

#### **4.3 Nature of the Breach**

The more serious in nature or impact of the breach, the more likely that formal enforcement action will result.

#### **4.4 Intent**

Breaches that are committed deliberately, recklessly, or for financial gain will normally be dealt with by prosecution. It may be considered appropriate to take lesser enforcement action where we are satisfied that the breach was committed unintentionally or was the result of a genuine mistake or a misunderstanding.

#### **4.5 Previous History**

Although the action to be taken will depend upon the circumstances of each case, consideration will be given to the type, seriousness, number and frequency of previous contraventions and enforcement actions. However, in circumstances where a serious breach has occurred, a lack of previous history of similar offences will not preclude formal enforcement action, including prosecution, being taken.

#### **4.6 Attitude of the Offender**

Co-operation with our officers, prompt reporting of the incident (where relevant), efforts at mitigating the consequences, willingness to prevent a recurrence, and assistance in investigations, are all factors that will be taken into account when considering what level of enforcement action is appropriate for any particular case.

For example, prosecution is more likely to be pursued if the offender:

- Disregarded previous advice or written guidance before the breach occurred;
- Obstructed investigations or delayed enforcement action;
- Made no attempt to minimise or rectify the effects or potential effects of the breach.
- Did not comply with statutory notices served upon them.

#### **4.7 Deterrent Effect**

Prosecution will normally be pursued if it is likely to be a necessary and effective way of preventing repetition of the breach by the offender. Prosecution will be more likely to be pursued if it would act as a deterrent to others against committing breaches which individually might be considered as minor, but which cumulatively over time or within a particular locality may have a more serious effect. For example, an individual trader trading without necessary street trading permissions may, in some instances, be considered to be committing a minor offence but cumulatively a number of illegal street traders within a particular locality may have a more serious cumulative effect.

#### **4.8 Offender's Personal Circumstances**

A lesser form of action may be considered appropriate where there are exceptional relevant personal circumstances, e.g. where an offender is suffering from a serious illness, or the offender is a youth. The Councils Safeguarding Policy will be followed.

We will take full account of any language difficulties, disability, physical or mental when coming to a decision but will also balance the needs of the offender against the needs and welfare of the wider community.

#### **4.9 Foreseeability**

Where the possible consequences of actions or inactions were reasonably foreseeable, and no avoiding and/or preventative measures were taken, prosecution will normally result. In particular, this is likely to occur if an individual/companies own policies and procedures have not been followed or if they are inadequate or insufficient. Other enforcement action may be considered if the breach:

- Occurred in spite of preventative measures;
- Could not have been reasonably foreseen;
- Was the result of defective equipment which could not reasonably have been known or predicted;
- Was caused by third party intervention which could not be guarded against.

The factors which apply and the weight to be attached to each will depend upon the particular circumstances of the case. Each case will be assessed individually.

### **5.0 PROSECUTION**

#### **5.1 Purpose**

We recognise that the institution of a prosecution is a serious matter which should be initiated at the earliest opportunity and always within any statutory time limits for investigations. A prosecution will only be taken after full consideration of the implications and consequences. 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 operation to stop until certain requirements are met.

## 5.2 Deciding to Prosecute

Decisions about prosecutions will take account of the current edition of the Code for Crown Prosecutors as issued by the Director of Public Prosecutions. The Code for Crown Prosecutors is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases. In particular the evidential test and the public interest test must both be met for a prosecution to be deemed the most appropriate enforcement action. Legal Services will advise Environmental Health and Licensing Services in the consideration of these two tests.

A potential prosecution, based on the available evidence and professional judgement, will be proposed by the investigating officer in conjunction with the relevant operational Manager. It will then be considered by Legal Services and a recommendation made as to whether the evidential and public interest tests are met in the view of the solicitor assessing the case (see 5.3 and 5.4 below). This evidence and Officer's recommendations will then be reviewed and, where in agreement, authorised by the relevant Director. The relevant Director must be satisfied that the principles of this Policy have been adhered to before authorising either a prosecution to be taken, or a simple caution offered. A decision may be taken that no further action is appropriate. All decisions will be documented.

## 5.3 The Evidential Test

A prosecution will not be commenced or continued unless we are satisfied that there is sufficient admissible and reliable evidence that the offence has been committed and that there is a reasonable prospect of conviction. In particular the factors below will be considered:

- The sufficiency of the evidence.
- The likely strength of any important witnesses, and their willingness to co-operate.
- The alleged person/s or Company has been identified.
- Any explanation offered by the suspect.

The likelihood of the suspect being able to establish a defence which relevant legislation recognises (a statutory defence).

If the case does not pass this evidential test, it will not go ahead for prosecution, irrespective of any other factors. Neither will the Council offer a simple caution.

## 5.4 The Public Interest Test

Where there is sufficient evidence, a prosecution will not be commenced or continued unless it is in the public interest to do so. A prosecution would normally proceed if the public interest factors in favour of prosecution outweigh those against, and where the evidential test is met. Unless the evidential test is satisfied, the public interest test is irrelevant.

Some common public interest factors in favour of prosecution include the circumstances below.

- The offence is serious.

- A conviction is likely to result in a significant penalty.
- Violence was threatened during the commission of the offence.
- There is evidence that the offence was premeditated.
- The offence was motivated by any form of discrimination.
- The defendant has a previous relevant conviction(s) or caution(s).
- There are grounds for believing the offence is likely to be repeated.
- The offence, although not serious in itself, is widespread in the area in which it was committed.
- A conviction is likely to result in a deterrent.
- There has been financial gain through the commission of the offence.

Some common public interest factors against prosecution include the below.

- The Court is likely to impose a nominal penalty.
- The offence was committed as a result of a genuine mistake or misunderstanding (although this must be balanced against the seriousness of the offence).
- The loss or harm was minor and was the result of a single incident.
- There has been a long delay between the offence and consideration of the evidence or the Court hearing unless:

The offence is serious;  
 The delay has been caused in part by the defendant;  
 The offence has only just come to light;  
 The complexity of the offence has meant there has been a long investigation.

- A prosecution is likely to have a very bad effect on the victim's physical or mental health.
- Whether any other action, such as issuing a simple caution, serving a statutory notice or prohibition would be more appropriate.
- The defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious, or there is a real possibility that it may be repeated.
- The defendant has put right the loss or harm caused (but a defendant will not avoid prosecution simply because he/she can pay compensation).
- The likely cost of taking a prosecution is disproportionate to the gravity of the offence.

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.

The final decision on prosecution will be made by the relevant Director.

## **5.5 Youth Offenders**

We are conscious that the stigma of a conviction can cause serious harm to the prospects of a youth or young adult. The age of the offender will be taken into account when his/her personal circumstances are considered. However, a prosecution will not be avoided just because of a defendant's age. The seriousness of the offence or the offender's past behaviour may, for example, make a prosecution appropriate.

## **5.6 Companies and Individuals**

Criminal proceedings will 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, we will also consider any part played in the offence by the officers of the company, including directors, managers and the company secretary. Action may also be taken against such officers (as well as the company) where it can be shown that the offence was committed with their consent or connivance, or was due to their neglect, or they 'turned a blind eye' to the offence or the circumstances leading to it. In appropriate cases, we may consider seeking disqualification of directors or food business operators under appropriate legislation.

## **5.7 Penalties**

The Council will outline all sentencing options and make submissions as to aggravating and mitigating factors in presenting cases to the Court. Where they can be agreed, statements of agreed facts will be prepared with defendants who are represented.

## **6.0 SIMPLE CAUTIONS**

### **6.1 Purpose**

Issuing a caution is an alternative to a prosecution. A caution is the written acceptance by an offender that he/she has committed an offence and may only be used where a prosecution could have properly been brought. It remains on file for at least 3 years and may be raised for consideration by a Court if the offender re-offends within the 3-year-period. If a caution is issued to an individual it may have consequences if that individual seeks certain types of employment.

Cautions will be used in accordance with the current edition of the Home Office guidance on the cautioning of offenders.

Persons who have previously received a caution will normally be dealt with by prosecution unless the subsequent offence is minor, simple or unrelated, or the caution was issued so many years previously that it is spent or not considered relevant.

As with a prosecution, additional enforcement mechanisms may also be used in conjunction with a simple caution.

The purpose of a simple caution is to:

- Deal quickly and simply with less serious offences;
- Divert less serious offences away from the Courts;
- Reduce the chances of repeat offences.

The conditions below must be satisfied before a simple caution will be offered to an offender.

- The evidential test and public interest test for a prosecution must both be satisfied.
- The suspected offender must admit the offence.
- The suspected offender must understand the significance of a simple caution and give an informed consent to being cautioned; he/she must be made aware that a caution may be cited in Court in the event of future offending.
- The Court is likely to impose a nominal penalty;
- The offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence);
- The harm can be described as minor and in most cases was the result of a single incident, particularly if it was caused by misjudgement.

If the offender subsequently refuses to accept a simple caution, a prosecution will normally be instigated. Only in exceptional circumstances will alternative action be considered appropriate.

## **7.0 COMPLAINTS, APPEALS AND COMMENTING ON THE POLICY**

Individuals and businesses often have a right of appeal and/or right to representation against enforcement actions. We are committed to providing customers with timely information about this in writing at the appropriate time. We are always willing to discuss the reason why we have acted in a particular way, or why we have asked you to act in a particular way. Further, the Council has a published Corporate Complaints Policy which can be found on the Council's website.

We ask that you complete the online complaints form. However if that presents you with any difficulties you can contact the Customer Services team as below.

Tel: 01243 534734

E-mail: [contact@chichester.gov.uk](mailto:contact@chichester.gov.uk)

By Facebook or Twitter

[twitter.com/ChichesterDC](https://twitter.com/ChichesterDC)

[www.facebook.com/ChichesterDistrictCouncil](https://www.facebook.com/ChichesterDistrictCouncil)

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In responding to complaints regarding the advice given by officers on health and safety, complainants will be told that they may also complain to the national Independent Regulatory Challenge Panel. Details of how to complain to the panel are available on the HSE's website [www.hse.gov.uk](http://www.hse.gov.uk).

The Local Government Ombudsman's web site is at [www.lgo.org.uk](http://www.lgo.org.uk). If you have an enquiry about the Local Government Ombudsman's service you can find contact details on their web site.

An informal right of appeal exists against a rating given under the national Food Hygiene Rating Scheme, the mechanism for which is included in food hygiene inspection reports. We will ensure that individuals who took a decision or action against which an appeal is made will not be involved in considering the appeal. The appeal will normally be determined by the Lead Food Officer, combined with peer review from a neighbouring Local Authority.

## **8.0 LIAISON WITH OTHER REGULATORS**

If a business operates in more than one local authority area and has chosen to have a registered Primary Authority under the Regulatory Enforcement and Sanctions Act, we will, where required, comply with the provisions for enforcement and notify the Primary Authority of the enforcement action proposed. We may refer the matter to the Office for Product Safety and Standards (OPSS) if appropriate.

In addition to the above we will, where appropriate, cooperate and coordinate with any other relevant regulatory body and/or enforcement agency. The purpose of this liaison will be to ensure effective action, avoid inconsistencies and any potential conflicts of interest, and to ensure that any proceedings instituted are for the most appropriate offence and taken by the most appropriate agency.

We may share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies, including:

- Government Agencies
- Police Forces
- Fire Authorities
- Statutory undertakers
- National Anti Fraud Network (NAFN)
- Other local authorities.

Where there has been a breach of law leading to a work-related death, consideration will be given to whether the circumstances of the case might justify a charge of manslaughter. Following a work-related death we will liaise with other appropriate authorities (e.g. the Police, the Coroners Service, HSE and the Crown Prosecution Service - CPS) in accordance with the 'Work-related deaths: A protocol for liaison' guide. If evidence is found suggesting manslaughter the case will be passed on to the Police, or where appropriate the CPS. If the Police or the CPS decide not to pursue a manslaughter case, we may instead prosecute under appropriate health and safety legislation.

## **9.0 COSTS**

Most of the regulatory work that we do is free of charge. However, some of our work is subject to a charge as set out in our fees and charges schedule which can be found on our website.

As a public body mindful of using public money prudently, we will always seek to recover as much of our formal enforcement costs (e.g. prosecution) as possible. Where we have carried out remedial works we will seek to recover the full costs incurred from those originally responsible. Detailed schedules of investigation and legal costs will be submitted to the Court in all cases.

## **10.0 COMMUNICATION AND PUBLICITY**

We will keep interested parties, particularly suspected offenders, complainants, injured persons, and witnesses informed of the progress of any enforcement action and notify them when the relevant action has been concluded.

We will consider drawing media attention to factual information about charges which have been laid before the Courts. Care will be taken to avoid any publicity which could prejudice a fair trial. Consideration will also be given to publicising any conviction that may help serve as a deterrent to others.

## **11.0 ENFORCEMENT IN PREMISES WHERE THE COUNCIL HAS AN INTEREST**

We recognise that there are businesses in the district where the Council is both the duty holder and the enforcing authority. This particularly arises in businesses subject to food and health and safety legislation.

Where the Council has an interest as the food business operator we will ensure that the attention received is in accordance with the criteria applied to all other duty holders. In such businesses, any breaches of food law that are identified by authorised officers will be brought to the attention of the relevant Director in writing. Where a significant risk to health is identified or suspected (e.g. a food poisoning allegation) the Chief Executive will also be notified in writing without undue delay. Where the criteria in the Food Law Code of Practice (England) for notifying an incident to the Food Standards Agency are met, the matter will be notified to that body.

Where the Council holds all responsibilities under health and safety law and it's appointed contractors or occupiers hold none, it would be inappropriate for the Council to act as enforcing authority. In such cases responsibility will be transferred to the Health and Safety Executive (HSE). Where day-to-day management, including health and safety, is passed to contractors or occupiers the Council can act as both owner of certain premises and enforcer even where it retains some health and safety responsibilities. In cases where judgements about the Council's responsibilities are less clear, regard will be made to guidance in LAC 22/10 and the HSE's Enforcement Policy on targeting of enforcement.

Where accidents or complaints are referred to the Council as enforcing authority in premises where the Council has legal duties as the business owner or operator (for example food outlets within Council owned premises), and the cause/s of the accident or nature of the complaint are unclear, or may be attributable to a failing or perceived failing of the Council, the HSE will be contacted to seek advice on the approach to enforcement applying the principles of openness and transparency.

Notwithstanding the above, in premises where the Council has an interest we will undertake enforcement in accordance with this policy in exactly the same way as we would for all other businesses.

## **12.0 ENFORCEMENT IN CROWN PREMISES**

The general approach to enforcement in Crown premises will be the same as in non-Crown premises, except that statutory action will not be taken where the law does not permit the Crown to be criminally liable. Full consideration will be given to any national protocols on dealing with enforcement at Crown premises.

## **13.0 AUTHORISATION OF OFFICERS**

- 13.1 All officers undertaking enforcement duties will be suitably trained and qualified so as to ensure that they are fully competent to undertake their enforcement duties.
- 13.2 All officers will be formally authorised by the relevant Council committee or delegated officer to exercise specified powers under relevant statutes. The level of authorisation for each officer will be determined by their qualifications, experience and competence having regard to any relevant national guidelines. Authorisations will be in writing and in a form which can be shown on request. A copy of an officer's authorisation will be held in their personal file.
- 13.3 We support the principle of continuing professional development and will ensure that all officers are given additional in-post training to maintain up to date knowledge and skills. Where continuing professional development is required for officers to carry out certain enforcement activities, or for an officer to be a member of certain professional organisations, we will ensure that the necessary requirements are met.
- 13.4 Assessments of officers' competence will be regularly undertaken by managers and training, re-training or mentoring given if needed. If necessary, action will be taken as appropriate in line with the Council's disciplinary procedure if competency remains in doubt.
- 13.5 If a complaint is received questioning an officer's competence, the appropriate line manager will investigate those claims and take action if appropriate.

## **14.0 REVIEW**

This policy will be reviewed at least every five years. Further interim reviews may be prompted by changes in legislation, guidance, cases taken, or feedback on enforcement action.