



Wealden
District Council

Directorate of Community Services

***Enforcement Policy
for Commercial Activities***

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WEALDEN DISTRICT COUNCIL

Community Services Directorate

Enforcement Policy for Commercial Activities

POLICY STATEMENT

It is the Council's aim to protect the health and safety and quality of life of everyone who lives, works or visits Wealden.

To achieve this the Council will:

- help individuals and organisations understand their responsibilities under the law so that they may comply more easily. The Council believes that prevention is better than cure but formal enforcement proceedings will be taken in justifiable circumstances;
- ensure its officers strive to provide a consistent enforcement approach and will have due regard to the potential risk when deciding upon the method of enforcement. Offices will liaise with other local authorities and enforcement bodies to ensure a consistent approach;
- when contemplating service of statutory notices, issue of formal cautions or prosecution, take account of all relevant factors including the nature of the offence, the past record of compliance, and the public interest;
- when deciding upon the best course of action have regard to specific guidance on enforcement action contained in the Enforcement Concordat, the various codes of practice, guidelines and guidance documents issued by the co-ordinating bodies and the Crown Prosecution Service.
- make it clear to businesses and individuals what their responsibilities and duties are and what can be expected of enforcement officers.
- ensure that any document issued or advice given clearly distinguishes mandatory requirements from recommendations on good practice. The need for any remedial work will first be discussed and a timescale determined. Requirements and recommendations will be confirmed in writing upon request.

Wealden has adopted the Enforcement Concordat which commits it to good enforcement policies and procedures.

ENFORCEMENT OPTIONS

1. The Council will endeavour to ensure that enforcement decisions are consistent, balanced, fair, proportionate to the risks and relate to common standards that ensure the public is adequately protected. The Council will assess how the **Human Rights Act 1998** bears on any enforcement action it undertakes. This will include inspections, investigation of offences, prosecutions, the use of statutory enforcement powers and proceedings for injunctions to restrain breaches of the law.
2. The relevant Articles of the Convention are:

Article 6: right to a fair trial and 'minimum rights' of those charged with offences.
Article 7: no punishment without law, for example, criminal legislation cannot have retrospective effect.
Article 8: respect for private and family life.
Article 10: freedom of expression.
Article 11: freedom of assembly and association.
First Protocol, Article 1: entitlement to peaceful enjoyment of possessions.
3. The Council is committed to equality in all respects and its officers will ensure that enforcement action is taken consistently and fairly without any discrimination on any grounds such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status (Article 14). The Council also recognises its duties and responsibilities under the **Race Relations (Amendment) Act 2000**.

PURPOSE AND METHODS OF ENFORCEMENT

4. The primary concern of officers enforcing food safety, health and safety at work and communicable disease requirements are to prevent harm to human health and to improve working conditions. Most individuals and organisations are anxious to comply with the law and in these cases the officers' role will often be to educate, guide and support. However, in carrying out their functions, duly authorised enforcement officers have a range of powers and may, for example, take possession of articles or substances; and may ask for articles to be dismantled or subjected to tests.
5. If enforcement officers find evidence that the law is being broken they can respond in various ways. They may instruct or warn by letter, they may issue formal notices requiring immediate compliance or compliance within a specified time, issue Formal Cautions, or they may recommend prosecution. Notices are effective and quick and require that unacceptable situations are put right, without the delay and uncertainty of going to Court.
6. In summary, having considered all relevant information and evidence, the Council may decide -
 - to take no action, other than record the incident
 - to take informal action
 - to serve statutory notice

- to issue a formal caution
- to prosecute

These matters are considered in more detail in paragraphs 22 to 37 and Appendix A.

7. Where a criminal offence has been committed and the circumstances warrant it, the Council may prosecute without any prior warning and without recourse to alternative sanctions.
8. In every investigation the Council's officers will follow the requirements of the **Police and Criminal Evidence Act**, the **Regulation of Investigatory Powers Act** and associated legislation and statutory guidance and codes.
9. The Council believes in firm but fair regulation. Underlying this are the principles of **proportionality** in the application of the law and in securing compliance; **consistency** of approach, **transparency** about how it operates and what those regulated may expect from it and **targeting** of enforcement action.

Proportionality

10. In general, the concept of proportionality is included in much of the regulatory system through the balance of action to protect the public and the environment against risks and costs.
11. Some incidents or breaches or regulatory requirements cause or have the potential to cause serious harm to health or environmental damage. Others may interfere with people's enjoyment or rights. The enforcement action taken will be proportionate to the risks posed to health and safety or the environment and to the seriousness of any breach of the law.

Consistency

12. Consistency means taking a similar approach in similar circumstances to achieve similar ends. The Council aims to achieve consistency in advice tendered, the response to contraventions, outbreaks, accidents and other incidents, the use of its enforcement powers and decisions on whether to prosecute.
13. However, the Council recognises that consistency does not mean simple uniformity. Officers need to take account of many variables; the scale of the impact of the breach, the risk to health or safety, the attitude and actions of management and the history of previous incidents or breaches. Decisions on enforcement action are a matter of professional judgement and the exercise of discretion.
14. The Council will ensure consistency of enforcement standards by:-
 - ensuring officers are aware of this policy and have adequate training in all relevant aspects of enforcement;
 - having regard to national and local co-ordination arrangements for example:

Statutory Codes of Practice/Guidance

Health and Safety Executive Guidance

LACORS (Local Authorities Co-ordinators of Regulatory Services)
Guidance

Chartered Institute of Environmental Health/Chartered Institute of Housing -
Professional Practice Notes;

- publication and dissemination of our standards and policies;
- a commitment to cross-boundary auditing of enforcement procedures and practices.

Transparency

15. Transparency is important in maintaining public confidence in our ability to regulate. It means helping those regulated and others, to understand what is expected of them and what they should expect from us. It also means making clear why an officer intends to, or has taken enforcement action.
16. Transparency is an integral part of our role. The Council will ensure that:-
 - where remedial action is required, it is clearly explained (in writing, if requested) why the action is necessary and when it must be carried out; a distinction being made between best practice advice and legal requirements;
 - opportunity is provided to discuss what is required to comply with the law before formal enforcement action is taken, unless urgent action is required, for example, to protect health, the environment or to prevent evidence being destroyed;
 - where urgent action is required, a written explanation of the reasons is provided as soon as practicable after the event;
 - written explanation is given on any rights or appeal against formal enforcement action at the time the action is taken.

Targeting

17. Targeting means making sure that regulatory effort is directed primarily towards those whose activities give rise to the greatest risks. We will use nationally and locally agreed risk assessment protocols to assist in targeting our efforts.
18. The Council has systems for prioritising regulatory effort. They include the response to complaints from the public, the assessments of the risk posed by different types of activity and the gathering and acting on intelligence about illegal activity.

Purpose

1. The use of the criminal process to institute a prosecution is an important part of enforcement. It aims to punish wrongdoing, to avoid 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. Where the circumstances warrant it, prosecution without prior warning or recourse to alternative sanctions will be pursued.
2. The Council recognises that the institution of a prosecution is a serious matter that should only be taken after full consideration of the implications and consequences. Decisions about prosecution will take account of the Code for Crown Prosecutors and the Attorney General's Guidelines.

Sufficiency of Evidence

3. A prosecution will not be commenced or continued unless the Council is satisfied that there is sufficient, admissible and reliable evidence that the offence has been committed and there is a realistic prospect of conviction.

Public Interest

4. A prosecution will not be commenced or continued unless it is in the public interest to do so.

Companies and Individuals

5. 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, the Council will also consider any part played in the offence by the officers of the Company, including directors, managers and the Company Secretary. Action may also be taken against such officers (as well as the Company) where it can be shown that the offence was committed with their consent, was due to their neglect or they 'turned a blind eye' to the offence of the circumstances leading to it.

Choice of Court

6. In cases of sufficient gravity, for example, serious damage to health, consideration will be given to making an application for the case to be heard in the Crown Court. The same factors as listed in paragraph 30 (below) will be used, but including consideration of the sentencing powers of the Magistrates' Court.

Penalties

7. The existing law gives the courts considerable scope to punish offenders and to deter others. Unlimited fines and, in some cases, imprisonment may be imposed by the higher Courts.

Examples of penalties presently available to the courts are:

- Magistrates' Courts: up to 6 months imprisonment and/or £20,000 fine.
 - Crown Court: up to 5 years imprisonment and/or an unlimited fine.
8. The Council will always seek to recover the costs of investigation and Court proceedings.

Media Releases

9. In order to enhance the deterrent effect of legal proceedings it is the Council's policy to issue media releases giving the details of the case and the sentence of the Court

Factors Relating to Prosecution

10. The Council will consider the following factors in deciding whether or not to prosecute:
- **nature of the offence**
 - **effect** of the offence
 - **foreseeability** of the offence or the circumstances leading to it
 - **intent** of the offender, individually and/or corporately
 - **history** of offending
 - **attitude** of the offender
 - **deterrent effect** of a prosecution, on the offender and others.
11. The factors are not exhaustive and those which apply will depend on the particular circumstances of each case. This does not mean that all factors must be in favour of prosecution, rather that the balance is in favour.
12. Enforcement action against employees will receive special consideration. Where appropriate a warning letter will be preferred unless the matter is serious and that the employee had received a prior warning from either his employer or the Council.

Presumption of Prosecution

13. Where there is sufficient evidence, the Council will normally prosecute in the following circumstances:
- **incidents of breaches which have significant consequences for the public's or employees' health or safety.** We take seriously such incidents and those with potential for significant consequences;
 - **excessive or persistent breaches of regulatory requirements** in relation to the same premises or site or by the same person;

- **failure to comply or to comply adequately with formal remedial requirements.** It is unacceptable to ignore remedial requirements and unfair to those who do take action to comply;
- **reckless disregard for management or quality standards.** It is in the interests of all that irresponsible operators are brought into compliance or cease operations;
- **failure to supply information without reasonable excuse or knowingly or recklessly supplying false or misleading information.** It is essential that lawful requests for information by the Council are complied with and that accurate information is always supplied to enable informed regulation to be exercised;
- **obstruction of Council staff** in carrying out their powers. The Council regards the obstruction of or assaults on its staff while lawfully carrying out their duties as a serious matter;
- **carrying out operations without a relevant licence.** It is a pre-requisite to successful regulation that those that are required to be regulated come within the appropriate licensing system;
- **where the offence has particular implications for a vulnerable sector of the community** such as the elderly or young persons.

Alternatives to Prosecution

Alternatives to legal proceedings are considered in detail in Appendix D.

COMPETENCE

1. Officers undertaking enforcement duties, will be suitably trained and qualified so as to ensure that they are fully competent to undertake their enforcement activity. Training will be provided both in-house and externally and will cover both the technical and legal aspects of the officers' duties.
2. Attention is drawn to the Council's general training policy as set out in the current "Wealden Training and Development Programme".
3. Officers undertaking enforcement of the Food Safety Act 1990 and the Health and Safety at Work, etc. Act 1974, will hold the necessary qualification and/or be suitably experienced in order to meet the criteria laid down in the statutory codes of practice or guidance issued by the co-ordinating bodies.

WORKING WITH OTHER REGULATORS

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

DEPARTURE FROM POLICY

5. All authorised officers when making enforcement decisions shall abide by this policy.
6. Any departure from policy will only be accepted in exceptional circumstances, capable of justification and only after full consideration and authorisation by the Head of Food and Health and Safety or a designated alternative officer.

AUTHORISATIONS

7. Generally the decision to prosecute will be taken by the Director of Community Services in consultation with the Service Head.
8. Particularly sensitive issues will be referred to the Regulatory Committee for decision.
9. Environmental Health Officers of the Food and Health and Safety team are authorised to serve Improvement Notices under the Food Safety Act 1990, and Improvement and Prohibition Notices under the Health and Safety at Work, etc. Act 1974. The Head of Food and Health and Safety is authorised as the "Cautioning Officer" for the purposes of the procedure.
10. Otherwise, the service of Notices and Formal Cautions will only be undertaken when authorised by the Head of Food and Health and Safety or a designated officer in his absence.
11. All officers are issued with a written Authority specifying the provisions that they are entitled to exercise.

APPEALS

12. If any person is unhappy with the action taken, or the information or advice given by the Council's environmental health staff they will be given the opportunity of discussing the matter with the Head of Food and Health and Safety. This is without prejudice to any formal appeals mechanism details of which will appear on or with the enforcement notice.

Other enforcement measures available to the Council

1. **Informal Action.** Circumstances that will indicate informal action is appropriate will include:

- the act or omission is not serious enough to warrant formal action;
- from the past history it can be reasonably expected that informal action will achieve compliance;
- there is confidence in the management or individual;
- the consequences of non-compliance will not pose a significant risk to public health;
- an effective solution within a suitable timescale can be agreed.

Informal action will usually be the first option when dealing with voluntary organisations using volunteers.

2. **Statutory Notices.** Circumstances that indicate statutory procedures should be followed will include:

- there are significant contraventions of legislation;
- there is a lack of confidence in the proprietor or enterprise to respond to an informal approach;
- there is a history of non-compliance with informal action;
- standards are generally poor with little management awareness of statutory requirements;
- the consequences of non-compliance could be potentially serious to public health;
- although it is intended to prosecute, effective action also needs to be taken as quickly as possible to remedy conditions that are serious or deteriorating.

Officers will only consider service of Notice where there is sufficient evidence to justify their issue. All relevant guidance in statutory Codes of Practice and guidance issued by the government or co-ordinating bodies will be followed as appropriate.

Where relevant, Notices will include reasonable time limits. In the case of food or health and safety contraventions the time limit and any works required will be discussed and agreed wherever possible with the recipient prior to the service of the Notice.

3. **Emergency Prohibition Notices, Food Safety Act and Health and Safety at Work, etc. Act.** It will be necessary to consider the service of an Emergency Prohibition Notice in one or more of the following circumstances:

- the Officer has identified an imminent risk of injury to health or serious risk of personal injury;
- the consequences of not taking immediate and decisive action to protect public health would be unacceptable;
- an imminent risk of injury to health or serious risk of personal injury can be demonstrated. This might include evidence from relevant experts;
- the guidance criteria specified in the relevant statutory Code of Practice or other guidance, concerning the conditions when prohibition may be appropriate, are fulfilled;
- there is no confidence in the integrity of an unprompted offer made by a proprietor voluntarily to close premises or cease the use of any equipment, process or treatment associated with the imminent risk;
- a proprietor is unwilling to confirm in writing his/her unprompted offer of a voluntary prohibition.
- Emergency Prohibition Notices will only be served after consultation with the Head of Food and Health and Safety.

Where immediate action has been necessary an explanation of why this is necessary will be given at the time and confirmed in writing within 5 working days.

4. **Formal Cautions.**

In cases where there are sufficient grounds to institute proceedings but a prosecution is not the most appropriate course of action, the alternatives of a Formal Caution or warning will be considered, the choice depending on the factors referred to above.

A Formal Caution is a written acceptance by an offender that they have committed an offence. Cautions are kept on record for up to 5 years and will be cited at the Council's discretion if the offender is prosecuted for a subsequent relevant offence.

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

Formal cautions are used to:

- deal quickly and simply with less serious offences but can also be used in cases of relatively serious offences where there are particular reasons why a prosecution would not be appropriate;
- divert less serious offences away from the Courts;
- reduce the chances of repeat offences;

Issuing of a formal caution will be subject to the following:

- there will be evidence of the suspected offender's guilt sufficient to give a realistic prospect of conviction;
- the suspected offender will have admitted the offence;
- the suspected offender will be informed of the significance of a formal caution and will give an informed consent to being cautioned.

Attention is drawn to the Council document "Environmental Health Guidelines - Criteria for Prosecution" which deals in detail with the Departmental procedure to be followed.

Formal cautions will be used in accordance with the Home Office Circular 59/1990 and any advice issued by the co-ordinating bodies. Other interested bodies including the Office of Fair Trading and Home Authorities will be informed of cautions that have been issued.

Where a formal caution is declined then prosecution will follow.