



ENVIRONMENTAL HEALTH

ENFORCEMENT POLICY STATEMENT

1 AIM OF THE POLICY AND INTRODUCTION

1.1 The Council's mission is:

“Improving Island Life”

Environmental Health contributes to several of the themes of the Council's community strategy. In fulfilling our duties and realising the Council's strategy we will seek to ensure, without fear or favour, that individuals, organisations or businesses fulfil their legal responsibilities.

1.2 Isle of Wight Council, in addition to the Enforcement Concordat, has adopted this documented general policy regarding Environmental Health's delegated enforcement responsibilities. This document details the general approach Environmental Health will follow in carrying out its enforcement duties. The appendices to this policy describe in detail the specific approach that will be adopted to enforce legislation relating to particular areas of the Department's activities; for example, Local Authority Air Pollution Control, Health and Safety, Statutory Nuisance, Food Safety, Food Standards and Licensing.

1.3 This policy and its appendices are based upon advice from Government Departments, the Health and Safety Executive and Health and Safety Executive Local Authority Unit (HELA), the Local Authorities Co-ordinators on Regulatory Services (LACORS), the Chartered Institute of Environmental Health, best practice and “The Code for Crown Prosecutors”. The aim of this policy is to promote consistency and to ensure any enforcement action is proportional, consistent, transparent, targeted and accountable.

2 ENFORCEMENT METHODS

2.1 To fulfil Environmental Health's enforcement responsibilities, a variety of methods may be employed including informal approaches e.g. verbal or written advice, formal means e.g. the service of statutory notices, the issue of a formal caution or ultimately the instigation of legal proceedings.

2.2 The method used will aim to meet the following principles:

i) **PROPORTIONALITY** The enforcement action taken will be related to the risks to health and safety, the environment or the extent of nuisance to the public. Those whom the law protects and those on whom it places duties expect that action taken by enforcing authorities to achieve compliance or bring the duty holders to account should be proportional to any risks or to the seriousness of any breach. Care will be taken to ensure that any action required will not incur unnecessary costs.

ii) **CONSISTENCY** The approach adopted to achieve similar ends will aim to be similar under similar circumstances. This will be assisted through quality control of officers' work, review of cases by senior management within Environmental Health (where necessary) and advice from professional bodies.

iii) **TRANSPARENCY** Environmental Health will assist individuals, organisations or businesses to understand what is expected of them and what they should expect from us. Environmental Health will also ensure that individuals, organisations or businesses are able to differentiate non-compulsory

advice from legal obligations. Requirements and/or recommendations will always be put in writing if requested.

- iv) TARGETING Environmental Health's resources will be targeted primarily on those activities by individuals, organisations or businesses giving rise to the most serious risks to health and safety, the environment or the extent of statutory nuisance to the public.
- v) ACCOUNTABILITY Officers are accountable to the public for their actions and decisions. This is dealt with in paragraph 4.7 below.

3 FORMAL CAUTIONS AND PROSECUTIONS

3.1 In addition to any specific guidance, as detailed in the attached appendices, in determining whether or not to issue a formal caution, or instigate legal proceedings the following criteria shall be used:

- i) The advice in the "The Code for Crown Prosecutors", particularly relating to the "*the evidential test*" and the "*the public interest test*" ([The CPS : The Code for Crown Prosecutors](#))
- ii) Home Office, other public body or professional guidelines on the cautioning/prosecution of offenders. In particular, formal cautions will only be offered in circumstances where the specific factors to an individual outweigh the "*public interest factors*" for prosecution.
- iii) The seriousness of the alleged offence. In determining the "seriousness" regard shall be made to:
 - a) whether any injury has resulted or there is a potential for injury to occur (the nature of the injury or possible injury and the degree of risk are also considerations),
 - b) whether the environment or health and safety of the public or employees has been disregarded for financial reward or other gain,
 - c) whether a statutory nuisance has been caused or permitted to continue for financial reward or other gain,
 - d) whether there is reckless disregard for the law which places at risk public health, safety or the environment,
 - e) whether the alleged offence has caused legitimate serious public alarm,
 - f) whether there is a failure to comply, without reasonable excuse, with a statutory notice.
- iv) The previous history of the individuals, organisations or businesses concerned and in particular:
 - a) whether there is a history of similar offences or failures,
 - b) any previous responses to advice, warnings and enforcement action,
 - c) whether the confidence in the individuals, or management of the organisations or businesses ability to take positive effective action to remedy the situation is poor.
- v) The perceived public benefit of a prosecution. A prosecution may be considered to be in the public interest when its outcome impacts upon a section of the community whose protection, health, safety, well being, legal rights or the environment as a whole, was placed at risk of being affected or was adversely affected. Additionally, the importance of a prosecution in establishing an important precedent or drawing public attention to national or local campaigns or issues, may be considered. (See also the "The Code for Crown Prosecutors")
- vi) The suitability of witnesses and their willingness to give evidence. Where a prosecution may result in unjustified risk or harm to witnesses or complainants, advice shall be sought from Legal Services and relevant external bodies on whether or not to proceed.
- vii) Whether there is evidence that a defendant may be able to rely on a statutory defence.
- viii) Where precedents have been set, revealing reluctance to impose reasonable penalties in relation to similar matters or to award prosecution costs.

ix) The professionalism with which the investigation has been conducted and whether any unreasonable delay has occurred in completing the investigation or the commencement of proceedings.

3.2 In any event legal proceedings will be instigated where there has been any illegal obstruction or assault of any officer in the course of their duty.

3.3 In compiling a prosecution file as a result of application of this policy the procedure for production of prosecution reports shall be followed by all officers.

4 GENERAL

4.1 All authorised officers shall abide by this policy and appendices when making enforcement decisions. Unless it is considered there would be immediate significant risk to the public or the environment, any departure from this policy must be exceptional, capable of justification and be fully considered by a panel of senior officers of Environmental Health and a representative of legal services.

4.2 Environmental Health will ensure that officers who are authorised to initiate enforcement action are competent to do so, are suitably qualified and possess relevant experience as determined by any available guidance whether statutory or non statutory and undergo regular managerial supervision so as to ensure consistency.

4.3 All authorised officers will be fully acquainted with the requirements of this policy and appendices relevant to their operational duties. Initial training upon recruitment and periodic refresher training of officers will be undertaken and their activities will be monitored to ensure compliance with this policy and relevant appendices. This will be through regular management supervision and the enforcement panel review of prosecution reports.

4.4 Where necessary and appropriate for any enforcement activities requiring an inter agency approach, officers shall ensure that liaison is made with those bodies in accordance with national and local guidelines e.g. liaison with Hampshire Police to seize noise making equipment, Environment Agency on contaminated land, Health and Safety Executive etc.

4.5 Where necessary and possible, section service plans and procedures will address particular interests of consumers on the Island including business owners, employees and the public. For example, where appropriate, arrangements shall be made for interpreters and translators where businesses or the public do not have English as their first language, provision of out of hours visits to deal with premises only operating at night e.g. take away premises, taxis. Section service plans will record the activities requested and carried out in accordance with this requirement.

4.6 The Environmental Health Manager shall carry out or cause to be carried out a review of this policy on a 12 monthly basis. The review shall incorporate any significant legal precedents, reassessment of needs, where appropriate and consistent with national guidelines and any public comments.

4.7 Any complaints relating to this policy or the application of it shall be dealt with in accordance with the Council's complaints procedure a copy of which is available on request.