

Public Document Pack

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A meeting of **General Licensing Committee** will be held in Committee Room 1 - East Pallant House on **Wednesday 21 October 2015 at 9.30 am**

MEMBERS: Mr J Ridd (Chairman), Mr H Potter (Vice-Chairman), Mr G Barrett, Mr R Barrow, Mr P Budge, Mr J Connor, Mr I Curbishley, Mr J W Elliott, Mrs D Knightley, Mr L Macey, Mr G McAra, Mrs P Plant, Mrs C Purnell, Mr D Wakeham and Mrs S Westacott

AGENDA

- 1 **Minutes** (Pages 1 - 4)
To approve as a correct record the minutes of the General Licensing Committee held on 22 October 2014.
- 2 **Urgent Items**
Chairman to announce any urgent items which due to special circumstances are to be dealt with under agenda item 7(b).
- 3 **Declarations of Interests**
Members and officers are reminded to make any declarations of disclosable pecuniary, personal and/or prejudicial interests they may have in respect of matters on the agenda for this meeting.
- 4 **Public Question Time**
Questions submitted by members of the public in writing by noon on the previous working day (for a period of up to 15 minutes).
- 5 **Street Trading Guidance - Changes to Charges and Restrictions on Stall Numbers** (Pages 5 - 11)
To approve changes to the Street Trading Guidance.
- 6 **Housing and Environment Services Enforcement Policy** (Pages 12 - 36)
To approve the draft Housing and Environment Services enforcement policy for adoption.
- 7 **Consideration of any late items as follows:**
 - (a) Items added to the agenda papers and made available for public inspection;
 - (b) Items which the chairman has agreed should be taken as matters of urgency by reason of special circumstances to be reported at the meeting.
- 8 **Exclusion of the Press and Public** (Page 37)
There are no restricted items for consideration.

However, the document listed below includes information which is considered to be exempt under Paragraph 3 of Schedule 12A of the Local Government Act 1972

and is attached for members of the General Licensing Committee and senior officers only (salmon paper). If the discussions in respect of item 5 on the agenda above so warrant it, the Committee will be asked to consider whether the public, including the press, should be excluded from the meeting on the grounds of exemption under Paragraph 3 of Schedule 12A of the Local Government Act 1972, because, in all the circumstances of the case, the public interest in maintaining the exemption of that information outweighs the public interest in disclosing the information.

5 Street Trading Guidance – Changes to Charges and Restrictions on Stall Numbers

Appendix 2 – Indications of potential levels of charges and income

NOTES

1. The press and public may be excluded from the meeting during any item of business whenever it is likely that there would be disclosure of exempt information as defined in section 100I of and Schedule 12A to the Local Government Act 1972
2. The press and public may view the agenda papers on Chichester District Council's website at [Chichester District Council - Minutes, agendas and reports](#) unless these contain exempt information.
3. Subject to the provisions allowing the exclusion of the press and public, the photographing, filming or recording of this meeting from the public seating area is permitted. To assist with the management of the meeting, anyone wishing to do this is asked to inform the chairman of the meeting of his or her intentions before the meeting starts. The use of mobile devices for access to social media is permitted but these should be switched to silent for the duration of the meeting. Those undertaking such activities must do so discreetly and not disrupt the meeting, for example by oral commentary, excessive noise, distracting movement or flash photography. Filming of children, vulnerable adults or members of the audience who object should be avoided. [Standing Order 11.3 in the Constitution of Chichester District Council]



Minutes of the meeting of the **General Licensing Committee** held in the Council Chamber, East Pallant House, East Pallant, Chichester on Wednesday 22 October 2014 at 9.30 a.m.

Members (15) (1 vacancy)

Mr J Ridd (Chairman)
Mr H Potter (Vice-Chairman)

Mr G A F Barrett
Mr P Budge
Mr J C P Connor
Mrs N Graves

Mr G V McAra
Mr S J Oakley
Mrs C Purnell
Anne Scicluna

Present (10)

Apologies

Mr T M E Dunn
Ms B Tinson

Officers Present for all or Specific Items

Mr N Bennett, Litigation Solicitor
Mr L Foord, Licensing Manager
Mr A Barson, Licensing Technician
Mrs K Jeram, Member Services Officer

7. Minutes

Resolved

that the Minutes of the General Licensing Committee meetings held on 11 June 2014 be approved and signed by the Chairman as a correct record.

8. Declarations of Interest

There were no declarations of interest in respect of items on the Agenda for the meeting.

9. Public Question Time

No public questions had been submitted.

10. Proposed Fees Policy for 'Relevant Protected Sites' under the Mobile Homes Act 2013

The Committee considered this report and an example of the fees proposed by a number of West Sussex local authorities that was circulated at the meeting (Copy attached to the official Minutes).

Mr Barson outlined the report which set out the amendments to the Caravan Sites and Control of Development Act 1960 as amended by the Mobile Homes Act 2013, which came into force on 1 April 2014. The amendments included powers for local authorities to charge fees, to cover their administration costs, for their licensing functions in respect of 'Relevant Protected Sites'. The protected sites related to residential sites and not holiday sites. He advised that officers had joined the Pan Sussex officer group to find a consistent approach for the calculation of the fees and that the preferred approach was to base the fee on site size bandings based on the number of units per site. He referred to the fee calculations in appendix 1 to the report and advised that a local authority could not make a profit. The fees would be reviewed by officers and reported to the Committee after one year, and every three years thereafter, to ensure that costs were being recovered and that a profit was not being made. It was noted that the fees would not cover the costs of enforcement action. He referred to the requirement for site owners to deposit site rules with the local authority. The proposed implementation date of the new fee structure is 30 November 2014. The annual fee will be due on 31 January 2015 for existing sites and on the anniversary of grant for any new sites. The proposed fees policy will be published and site owners advised of the impending changes.

Officers responded to members' questions. Mr Barson explained that with regard to the fairness of the proposed fees the guidance provided by the Department for Local Communities had set out a number of options and it was felt that the banding system would be the most appropriate and easiest way to segment the fees. There were certain fixed costs for each application such as travelling to the site to carry out an inspection and he advised that when carrying out a site inspection, officers would not necessarily inspect every single caravan. Mr Foord explained that the Council did not currently have an inspection regime in place. However, as a result of the new requirements officers would have to look carefully at how inspections would be resourced in future and he undertook to keep the Committee informed of the resource implications. Mr Barson advised that he would have to look into the issues that would be considered by the General Licensing Sub-Committee but appeals regarding site licence conditions would now be decided by the Residential Property Tribunal instead of the Magistrates Court. Officers confirmed the situation regarding West Sussex County Council operated sites and Gypsy and Traveller sites.

RESOLVED

- (a) That the proposed fees policy in respect of 'Relevant Protected Sites' set out within appendix A attached to the report be agreed; and
- (b) That officers in conjunction with the Head of Service be authorised to amend the calculation fees in response to the surplus or deficit. Any change to the fees policy itself must be approved by the General Licensing Committee.

11. Proposed Procedure for Immediate Suspension or Revocation of Drivers Licences

The Committee considered this report (Copy attached to the official Minutes).

Mr Foord reminded members of the Committee's decision at its previous meeting to recommend to Council the amendment of the Scheme of Delegation in the Council's Constitution with regard to decisions relating to immediate suspension or revocation of hackney carriage and private hire drivers' licences, following amendments to the Road Safety Act 2006.

He reported that Council, at its meeting on 23 July 2014, had approved the amendment to the Scheme of Delegation, following which officers had produced a procedure note, as detailed in Appendix A, setting out the key personnel involved in the process and the steps to be taken when considering issues that arose concerning licensed drivers.

A member commented that her view was that if there was *any doubt* concerning a driver's conduct their licence should be revoked, and if following investigation the driver was proved to be innocent, then they would be able to reapply for their licence. In response, Mr Foord advised that there were differing legal views as to whether Council's should seek a drivers' version of events, with some views being that a driver should be given the opportunity to have their say, whilst others were of the view that if someone was charged by the Police that should be enough to considering the revocation of a licence.

Mr Bennett provided an example of an alleged incident involving a licensed driver. He provided a timeline of the evolving information provided to officers from the Police to demonstrate how difficult it was for them to make decisions on whether a driver remained a fit and proper person. Mr Bennett emphasised that the information received could change on a daily sometimes almost hourly basis. He sought members' comments to see how they formed a view on hearing the initial evidence and if they changed their view on hearing the changing evidence based on the duty to protect the public. Mr Bennett made it clear that in the case of the Council revoking a licence before the conclusion of a criminal investigation is was not a form of pre-judgement and would therefore not prejudice such a case.

With regard to the delegation to the Chairman and Vice-Chairman, Mr Bennett advised that the Constitution included a provision that in their absence another General Licensing Committee member would be given authority to suspend or revoke a licence. It was agreed that the following note would be added to the proposed procedure "for clarification and as agreed by the General Licensing Committee by agreement of the Chairman another member may be nominated for such periods of absence"

RESOLVED

That the adoption of the proposed procedure set out within Appendix A to this report in respect of determining whether to suspend or revoke a drivers' licence with immediate effect as provided for under the powers given by the Road Safety Act 2006 be noted and agreed.

(The meeting ended at 11.05 am)

Chairman

Date

Chichester District Council

GENERAL LICENSING COMMITTEE

21 October 2015

Street Trading Guidance – Changes to charges and Restrictions on Stall Numbers

1. Contacts

Laurence Foord, Licensing Manager,
Tel: 01243 534742 E-mail: lfoord@chichester.gov.uk

Peter Legood, Valuation and Estates Manager
Tel 01243 534668 E-mail plegood@chichester.gov.uk

2. Recommendation

- 2.1. That Committee authorise officers to revise the Street consent guidance to provide for the recovery of costs as indicated at paragraphs 5.3 to 5.6 of the report and to permit street trading by smaller groups of stalls subject to the issue of a trading consent by the Licensing Team which reflects the other criteria of the Street Trading Consent Guidance.**

3. Background.

- 3.1. At its meeting held on 3 March 2015 Cabinet considered matters relating to markets and street trading and resolved
- (a) That the relocation of the Traders Market to the Chichester City Centre Precincts is explored and that consultation is undertaken with key partners and a further report then submitted to Cabinet
 - (b) That a review of charges for the grant of street trading consents is undertaken and referred to the General Licensing Committee for consideration and approval.
 - (c) That the General Licensing Committee be asked to review the Street Trading Guidance regarding the number of stalls for which a street trading licence may be granted.
- 3.2. A consultation has been undertaken regarding resolution (a) and this report is in response to resolutions (b) and (c).
- 3.3. In addition to the Traders Market which is currently held in the Cattle Market Car Park, other markets, including the Farmers Market, the Christmas Market and the Summer Garden Market, are held in the Chichester pedestrianised precincts. These streets have been designated consent streets for Street Trading purposes and the markets held in the precincts are permitted by way of a street trading consent granted to the operator in accordance with the Council's Street Trading Consent Guidance which was approved in 2006.

- 3.4. The fees specified in the Street Trading Consent Guidance were designed to recover administrative costs. Since being set there have only been inflationary increases to the fees charged. These charges do not, however, recover the full costs of dealing with all related recoverable sums as provided under legislation on discretionary service charges. Staff in the Environmental Health/Licensing, Legal, Economic Development, Health and Safety and Estates Teams contribute much time to managing markets and trading in the precincts and many of these costs could be recovered through street trading charges.
- 3.5. Local authorities are under a general duty to secure that, from one financial year to the next, the income from charges for services does not exceed the costs of provision (section 93(3), LGA 2003). This approach allows a local authority greater flexibility to balance their accounts over a period of time and recognises the practical difficulties for a local authority in estimating the charges for a service such as markets at the outset.
- 3.6. A local authority must offset any surplus or deficit in income as a result of any over or under recovery of charges when setting future charges for any discretionary service. This ensures that over time the income generated by the service equates to the cost of providing that service.
- 3.7. Research has been undertaken as to charges made by other Council's for similar street trading consents and there is general evidence of charges being set at the full value of the consent to the trader. Winchester City and Havant District Council's both operate general markets in their City/town centre precincts and charge rates that are comparable with the stall fees charged for the non-highway market that operates in Chichester.
- 3.8. Different types of market and different forms of street trading are likely to be able to bear different levels of fee. For example the current level of fee is appropriate for the Farmers market whereas the Christmas and Garden markets are likely to be able to bear street Trading consent charges that are largely in line with the level of the fee paid by the operator of the Traders Market. Having regard to this is suggested that the revised Guidance provides scope for the Officers to negotiate the level of charges having regard to the viability of proposed use.
- 3.9. Also the Current Guidance does not permit the grant of a street trading consent unless it is for the operation of a market of at least 10 stalls. It is considered however that this is too restrictive and that there is scope for consents to be granted for smaller groups of stalls for the sale of goods or promotional purposes subject to the other criteria in the guidance being satisfied.

4. Options

- 4.1. Current street trading charges are based on £105 for a one day event plus £53 for each additional day and £26 for Council run events. These are the charges for the whole market and the table set out in Appendix 2 (confidential Part 2) illustrates the levels of charges and income that could be achieved against the current rates of charge

5. Proposal

- 5.1. That the committee approves the revision of the Street Trading Guidance to permit street trading by smaller groups of stalls subject to the issue of a trading consent by the Licensing Team which reflects the other criteria of the Street Trading Consent Guidance.
- 5.2. That Committee authorise officers to revise the Street Trading Consent Guidance to provide for the recovery of costs as indicated at paragraphs 5.3 to 5.6 below.
- 5.3. That future charges for markets held in the precinct be at a tendered or negotiated level of fee.
- 5.4. That for smaller groups of stalls a new scale of charges be established based on a price per stall. Charges to range from £40 to £100 per day and £500 to £1,500 per year depending on the circumstances and use.
- 5.5. That the Farmers Market, markets forming part of a Council event and those permitted for charitable purposes retain the current level of charges.
- 5.6. Stalls for charitable or voluntary purposes to be charged at a rate to recover administrative charges only.

6. Resource and legal implications

- 6.1. The Council is able to make higher charges in order to recover the full costs of matters associated with street trading and markets and many other Councils are setting their charges at much higher levels than Chichester's current level of charges.
- 6.2. There will be officer time involved in dealing with street trading consents but that is already the case. Additional income will contribute to the costs of dealing with increased applications if additional markets are held in the precinct and the current stall number restriction is relaxed.

7. Consultation and review of policy

- 7.1. There has been consultation with Businesses, Traders and residents regarding the location of the traders market but the matter of charges for street trading consents has not been a specific part of that.

8. Other Implications

Are there any implications for the following?		
	Yes	No
Crime & Disorder:		✓
Climate Change:		✓
Human Rights and Equality Impact:		✓

Safeguarding:		✓
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9. Appendix

- 9.1. Appendix 1 – Current Street Trading Consent Guidance
- 9.2. Appendix 2 - Indications of potential levels of charges and income (Part 2 – confidential)

10. Background Papers

- 10.1. None.



Street Trading Consent Guidance

Local Government (Miscellaneous Provisions) Act 1982

This guidance has been produced to provide information on obtaining Street Trading consents in Chichester City centre.

Which streets are Consent Streets in Chichester?

Chichester District Council (the 'Council') has designated the pedestrianised areas of East Street and North Street, Chichester as "Consent" streets under the Local Government (Miscellaneous Provisions) Act 1982 (the 'LG(MP)A 82') for the purposes of allowing certain street trading to take place.

This means that persons wishing to sell items from a stall in these streets must first obtain a Street Trading Consent from the Council. Street Trading in these areas without consent from the Council is prohibited and the Council may take formal action against traders who do not hold a valid Street Trading consent.

The purpose of allowing street trading

The purpose of the designation is to provide diversity in the shopping facility offered in the city centre of Chichester whilst providing support for businesses. The Council particularly wish to encourage local and specialist food based businesses whose products offer a diversity of supply from that which are generally not or are only in limited supply in the city centre. Street Trading Consent applications will also be considered for one-off markets and events where goods are more specialist in nature or from a particular region/country which are intended to attract increased attendance of the general public into the city and therefore likely to benefit other businesses.

Selection criteria used to assess applications

This guidance is intended to provide examples of the main factors the Council will consider when evaluating Street Trading Consent applications and outlines the grounds under which an application may be refused. Each application will be considered on its individual merits.

In considering applications the Council will, amongst other matters, take account of:

- The number, layout and specific location(s) of trading pitches
- The size, design, quality and appearance of trading stalls and other erections
- The products and goods to be sold at each trading pitch and their origin
- The proposed trading hours and trading dates

- The dates and frequency of other approved Consents
- The arrangements for the setting up, dismantling and removal of trading stalls and other erections
- Whether the proposed Street Trading is for charitable purposes

The Council may **not** give approval for Consent applications where

- The application proposes less than 10 (ten) trading pitches or
- The proposed event is likely to give rise to street congestion or
- The siting of any trading pitch or other erection is considered likely to
 - a) unduly hinder the visibility of any existing shop or business frontage or
 - b) obstruct access to any existing shop or business or
 - c) hinder the movement of emergency vehicles or
- Products or goods proposed to be sold are the same or similar to products or goods available from existing shops or businesses or
- The proposed trading is from a vehicle which includes trailers.

Prior to submitting an application we would recommend you contact the Licensing Team on 01243 785166 Ext 2267 (or via licensing@chichester.gov.uk). This Council also strongly recommends liaising with the Chichester City Centre Partnership (www.chichester.bid.co.uk) on 01243 773263 or at info@chichesterbid.co.uk and West Sussex County Council who oversee events on the public highway.

Supporting Information - planning an event or market?

Organisers have a legal responsibility to ensure the health, safety and welfare of employees, volunteers/participants and contractors involved with arranging an event/market and of course the attending public. This should be ensured by carrying out a detailed event specific risk assessment (see separate guidance form). In addition, larger events may require an Event Plan. If you would like more information on Event Planning or guidance on registering as a food business (food traders) please contact Health Protection (Environmental Health) on 01243 534602 or email healthprotection@chichester.gov.uk

If you are proposing to supply/sell alcohol, provide regulated entertainment and/or late night refreshment you will also need to comply with the Licensing Act 2003. For further information please contact the Licensing Team as above.

Street Trading Consent application process

Completed applications for new Consents or to vary an existing Consent must be received by the Licensing Team **at least 8 (eight) weeks before** the proposed market/event.

Applications that are not submitted within this timescale or that are incomplete will not be treated as a valid and therefore not processed. If you are applying for a variation to an existing Consent, you will need to complete a new application along with providing the required supporting documentation and requisite fee.

In all circumstances a minimum of £5 million Public Liability Insurance will be required. However, the Council may require additional cover for some proposals where the risk is deemed to be higher (£10 million). If this is the case you will be advised in writing.

On receipt of a completed application, the Council will consult with the following partners:

- City Centre Manager/Chichester City Centre Partnership (the 'BID')
- Sussex Police
- West Sussex Fire & Rescue Service.
- West Sussex County Council
- Chichester City Council
- Chichester District Council – Economic Development
- Chichester District Council - Health Protection Team and Environmental Management Team (Environmental Health)

Where considered necessary the Council may also consult with the Council's Emergency Planning and Business Continuity Officer.

Consultation will take a maximum of 4 (four) weeks (however this may be reduced in exceptional circumstances). If issues arise with an application, the Licensing Team will endeavour to resolve these through mediation with the applicant and objector. If mediation is unsuccessful the application will be referred to the Council's Licensing & Enforcement Committee for determination.

The Council may revoke a Street Trading Consent after it has been granted if the holder (including traders, participants etc.) do not comply with the terms and conditions of the specific Consent issued. Failure to abide by the conditions may also lead to prosecution.

If your application is refused/revoked you may discuss the application with the Licensing Manager on 01243 534742 or Head of Housing & Environment Services. Applicants can submit an appeal to the Licensing & Enforcement Committee by writing to Mr S Carvell, Director of Environment, Chichester District Council, East Pallant House, 1 East Pallant, Chichester, West Sussex PO19 1TY.

Fees

The applicant shall pay to Chichester District Council the appropriate fee for the grant, renewal or variation of a Street Trading Consent.

The fees for all applications are as follows; £105.00 for the application (a one day event) plus £53.00 for each additional day of the event thereafter (or plus £26.00 for each additional day of the event thereafter if the event is for charitable purposes or is managed by another service of Chichester District Council).

It is an offence knowingly or recklessly to make a false statement in or in connection with an application for the grant or renewal of a Street Trading Consent. A person is to be treated as making a false statement if he produces, furnishes, signs or otherwise makes use of a document that contains a false statement. To do so a person could receive a fine of up to £1,000.

It is also an offence to trade at a different place(s) or at different time(s) to those specified in the issued Street Trading Consent.

Chichester District Council

GENERAL LICENSING COMMITTEE

21 October 2015

Housing and Environment Services Enforcement Policy

1. Contacts

Report Author:

Ian Brightmore, Health Protection Manager

Tel: 01243 534788 E-mail: ibrighmore@chichester.gov.uk

2. Recommendation

- 2.1. **That the draft Housing and Environment Services enforcement policy be adopted.**

3. Background

- 3.1. It is a requirement from The Better Regulation Delivery Office (BRDO) that enforcement activities within Councils follow an Enforcement Policy agreed by Members. The last policy that Housing and Environment Services follow was adopted in 2009 and is due for updating to take account of new legislation and guidance. The proposed policy incorporates these changes and is clearer and more easily understood.
- 3.2. The purpose of the policy is to set out what businesses and others being regulated can expect from Chichester District Council's Housing and Environment Service, and in particular its enforcement officers. It commits the Service 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.
- 3.3. The regulatory functions undertaken by the Service are extensive. They include housing, licensing, food safety, health and safety, infectious disease control, environmental protection, nuisance control, consent street trading, pest control, animal welfare, and private water supplies.
- 3.4. The draft revised policy, which is shown as Appendix 1, 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 following a breach of legislative requirements. By adopting this policy, the Council undertakes to ensure that it and in particular authorised enforcement officers will act in accordance with the policy.

4. Outcomes to be achieved

- 4.1. That the Housing and Environment Services has an enforcement policy which complies with legislative requirements, guidance and Codes of Practice.

5. Proposal

- 5.1. That the draft policy be agreed and adopted. Following this, that it be made available to the public via the Councils website and that those subject to enforcement action are referred to the policy as appropriate.

6. Resource and legal implications

- 6.1. There are no resource implications
- 6.2. The Council is obliged to have regard to guidance and direction from the Better Regulation Delivery Office. They direct that those in the Council that carry out enforcement functions have an Enforcement Policy such as this.
- 6.3. In addition, the Legislative and Regulatory Reform Act 2006 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. This policy fulfils that requirement

7. Consultation

- 7.1. This draft policy has been placed on the Councils website for a period of 6 weeks with an invitation to comment. No responses were received.

8. Community impact and corporate risks

- 8.1. This policy will have a positive impact within the community. It commits the Housing and Environment Service to carrying out enforcement activities in a fair, proportionate, accountable, consistent, transparent and risk based way. It allows those that are the subject of enforcement activity to be confident that these standards will be adhered to and gives them recourse if they are not.
- 8.2. There is potential for corporate risk if there is any deviation from the terms of this policy. It is common for legal representatives of defendants to scrutinise the published enforcement policy to try to find instances of where it hasn't been followed to use as a defence for their clients. Officers are aware of this and make sure that the terms of the policy are rigorously followed when investigating potential offences and when coming to a decision on the correct course of action to take if offences are found.

9.0 Appendix

Appendix 1 – Housing and Environment Services Enforcement Policy

10.0 Background Papers

None

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APPENDIX 1



Chichester District Council

HOUSING AND ENVIRONMENT SERVICES ENFORCEMENT POLICY

**APPROVED BY GENERAL LICENSING COMMITTEE
21st OCTOBER 2015**

NEXT PROGRAMMED REVIEW DATE: OCTOBER 2020

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HOUSING AND ENVIRONMENT 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 Housing and Environment Service, and its enforcement officers. It commits the Service 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 by the Service are extensive. They include housing, licensing, 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 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, gender, marital status, 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 1988. Personal data will be managed in accordance with The Council's Data Protection Policy 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, 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 child care 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, evaluating and issuing licenses and registrations for such activities as public music and dancing, sale of alcohol, gambling, late night refreshment, animal welfare, scrap metal dealers, lotteries and amusement arcades and ensuring that conditions are being met.

Evaluating and issuing licenses for Private Hire Vehicles, drivers and operators and Hackney Carriage vehicles and drivers and ensuring that conditions are met..

Licensing of caravan sites, evaluating and issuing licenses for residential and holiday caravan sites and ensuring that conditions are being met

Environmental Management

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 Dog Control Orders, promotion of responsible dog ownership and general animal welfare.

Housing Standards

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

Licensing, evaluating 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.

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, Suspension, Amendment or Revocation 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.

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

2.3.8 Financial Penalties

Certain offences are subject to 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 fixed penalty is not paid we may commence criminal proceedings or take other enforcement action in respect of the breach.

If a 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 fixed 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.

2.3.13 Proceeds of Crime Applications

The Council may make, either through its own enforcement officers or in cooperation with the Police, an application under the Proceeds of Crime Act 2002 to restrain and/or confiscate the assets of an offender.

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 are able to 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 Housing and Environment 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 officers recommendations will then be reviewed and, where in agreement, authorised by the Head of Housing and Environment Services. The Head of Housing and Environment Services 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 Head of Housing and Environment Services.

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 simple 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 3 years and may be raised for consideration by a Court if the offender re-offends within the 3-year-period. If a simple 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 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

By Facebook or Twitter

twitter.com/ChichesterDC

www.facebook.com/ChichesterDistrictCouncil

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.

The Local Government Ombudsman's web site is at 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.

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 Better Regulation Delivery Office (BRDO) 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
- 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 Head of Service 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 officers 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.

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A of the Local Government Act 1972.

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