

**PUBLIC HEALTH SERVICES
GENERIC ENFORCEMENT AND PROSECUTION POLICY**

EAST DORSET DISTRICT COUNCIL

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**EAST DORSET DISTRICT COUNCIL
PUBLIC HEALTH SERVICES
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INTRODUCTION

1. This enforcement policy applies to East Dorset District Council's Public Health Services (The Services).
2. The aim of the services are to meet community expectations regarding the protection and provision of a safe, healthy, fair and equitable environment and to sustain and enhance the health, safety and quality of life of all who live, work, trade in or visit the area.
3. Service functions covered by this policy are extensive. They include food safety, health and safety at work, environmental protection (including statutory nuisance) licensing, private sector housing standards and dog and pest control.
4. Officers work with other Regulators both within and outside the Council to ensure coherent regulation, and with trade, residents and voluntary groups in order to achieve common goals. Where enforcement action is anticipated and there is a shared or complimentary enforcement role with other agencies then agreement will be sought at an early stage, as to who is the lead authority.
5. The Services regard prevention as being better than cure. They offer information and advice to those they regulate and seek to secure co-operation avoiding bureaucracy or excessive cost. They encourage individuals and businesses to put community, the environment and public health and safety first.
6. This Policy sets out the general principles which these Services intend to follow in relation to enforcement and prosecution. Each service area may also have additional, specific requirements which supplement this policy but take into account specific requirements for that service, which may include the statutory need for a service specific enforcement policy.
7. The Services will monitor their implementation and effectiveness on a regular basis and will review the Policy at least annually.
8. The powers available include statutory notices, improvement and prohibition notices, suspension or revocation of licences, variation of licence conditions, injunctions and the carrying out of remedial works. Where the Services have carried out remedial works, they will seek to recover the full costs incurred from those responsible.
9. Where a criminal offence has been committed, in addition to any other enforcement action, the Services will consider instituting a prosecution, issuing a fixed penalty notice or administering a caution.
10. East Dorset District Council has endorsed the principles of the Enforcement Concordat published in April 1999 by the Government's Better Regulation Task Force as principles of good regulation. The Council adopted a revised version of the Concordat with the agreement of the Policy and Resources Committee in

January 2000. This Enforcement Policy is consistent with the revised form of the Concordat as adopted by the Council. Included in the term “enforcement” is advisory visits and assisting with compliance as well as licensing and formal enforcement action. By adopting the principles of the Concordat, the Council is committed to the policies and procedures set out in this document.

PRINCIPLES OF ENFORCEMENT

11. The Services covered by this policy believe in firm but fair regulation. Underlying the policy of firm but fair regulation are the principles of: -

- **Proportionality** to the risk posed in the application of the law and in securing compliance.
- **Consistency** of approach and application,
- **Transparency** about how the Service operates and what those regulated may expect from the Service, and
- **Targeting** of enforcement action to areas where the hazards are greatest and least controlled.

Proportionality

12. Enforcement action will relate to the risk to health, safety, welfare and the quality of life of the community and wider environments, and any enforcement action taken to achieve compliance will be proportionate to the risk.

13. In determining what is reasonably practical to control risks, the Council will exercise judgement and discretion, recognising that the final determination of reasonableness of their actions is made by the Courts.

14. As far as the law allows, the Council will take account of the circumstances of the case and the attitude of the individual/operator when considering action. It will make use of the full range of enforcement options available to it from informal advice, informal notices and, where appropriate, Minded to Notices, through to the service of formal notices, prosecutions and injunctions.

15. Factors which affect the choice of enforcement option include:-

- The requirements of specific Council policy;
- The seriousness of the offence and the degree of risk;
- The past history of the business/individuals involved;
- Confidence in those involved in the issue;
- Consequences of non-compliance
- The likely effectiveness of the enforcement option to secure compliance.

16. Formal action will only be initiated when -

- helping, talking and telling have failed to resolve the issue; or
- there is a serious/urgent risk to public safety, health or the environment; or
- the offence is so serious that other forms of action would be inappropriate and it would not be in the public interest not to do so; or
- in particular cases, where the law requires that formal action be taken.

17. The Council will take particular care to work with small businesses and voluntary and community organisations so that those organisations can meet their legal obligations without unnecessary expense, where practicable.

Consistency

18. Consistency of approach does not mean uniformity, it means taking a similar approach in similar circumstances to achieve similar ends. The Services aim to achieve consistency in, advice tendered, the response to incidents, the use of powers and decisions on whether to prosecute.
19. Officers need to take account of many variables: the scale of impact, 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 Division, through its officers, needs to exercise discretion. The Services will continue to develop arrangements to promote consistency including effective arrangements for liaison with each and other council services and enforcing authorities.

Transparency and Openness

20. The Council believes prevention is better than cure and it will actively work with businesses to advise and assist them to comply with their obligations. Transparency is important in maintaining public confidence in the Service's ability to regulate. It is about helping those regulated and others, to understand what is expected of them and what they should expect from the Services. It means making clear why an officer intends to take or has taken enforcement action. It also means distinguishing between statutory requirements and advice or guidance about what is desirable or good practice but not compulsory.
21. Transparency is an integral part of the role of the Services' officers. Staff are trained and procedures developed to ensure that: -
 - Where action is required, it is clearly explained (in writing, if requested) why that 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 deal with a statutory nuisance, which is likely to be of limited duration or a dangerous structure in imminent danger of collapse, or evidence required to support a conviction would not otherwise be available.
 - A written explanation is given of any rights of appeal against formal enforcement action at the time the action is taken.
22. The Council will provide information and advice in plain English on the rules that they apply and will disseminate this as widely as possible. It will be open about how it sets about its work, including any charges that are set, consulting business, voluntary organisations, charities, consumers, employers and

- employees. It will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.
23. The Council will provide a courteous and efficient service. Staff will identify themselves by name and provide contact points and telephone extension numbers to assist in reaching them. It aims to co-ordinate what the Council does to prevent overlap and unnecessary delay.

Targeting

24. Targeting means making sure that regulatory effort is directed primarily towards those whose activities give rise to the most serious risk or where the risks are less well controlled. Action will be primarily focused on those directly responsible for the risk and who are best placed to control it.
25. The Services prioritise regulatory effort. Factors include response to complaints from the public; the existence of statutory powers and the assessment of risk (e.g. the potential for a particular breach of regulations to cause environmental damage or damage persons health and safety).
26. Management actions are important in the assessment of risk. Repeated incidents or breaches of regulatory requirements, which are related, may be an indication of an unwillingness to change behaviour, or an inability to achieve sufficient control. A relatively low hazard site or activity poorly managed has potential for greater risk than a higher hazard site or activity where proper control measures are in place.
27. Where formal enforcement action is necessary the person responsible should be held to account. Where several persons share responsibility, the Services will take action against those who can be regarded as primarily in breach.

What We Expect in Return

28. The Council expects businesses and individuals to talk to them if they do not know what to do or need help, and to work with our officers to resolve problems. In particular, this means not to be obstructive.
29. Above all they expect people to recognise that it is their responsibility to comply with the law.

PROSECUTION

Purpose

30. The Services recognise the use of the criminal process to institute a prosecution as an important part of enforcement. It uses discretion in making such a decision because other approaches to enforcement may equally or more effectively promote compliance with legislation. Where circumstances warrant, the Service will, however, pursue prosecution without prior warning.

31. All investigations into alleged breaches of legislation will follow best professional practice and the requirements of the Police and Criminal Evidence Act (PACE), the Criminal Proceedings and Investigations Act (CPIA) and the Human Rights Act. As part of the investigation process, persons suspected of breaching legal requirements will, where ever possible:
- be formally interviewed in accordance with PACE,
 - be given the opportunity to establish a statutory defence,
 - have the opportunity to give an explanation or make any additional comments about the alleged offence.
32. The Services will consider prosecution when one or more of the following applies:
- it is appropriate in the circumstances as a way to draw general attention to the need for compliance with the law,
 - there is a risk to public health and safety or of environmental damage as a consequence of the breach,
 - the breach was as a result of a deliberate act or following recklessness or neglect,
 - the approach of the offender warrants it, e.g. repeated breaches, persistent poor standards.
33. The decision to prosecute will also take account of the evidential and public interest tests set down in the Code for Crown Prosecutors. These include:
- the age and state of health of the alleged offender;
 - the likelihood of re-offending;
 - any remedial action taken by the alleged offender.
34. Before a decision to prosecute is taken, the alleged offence will be fully investigated and a report compiled by the investigating officer who will make a recommendation as to the appropriate course of action to be taken. The Head of Public Health Services will review the case before any decision to prosecute is taken. All Defendants will be notified of the decision to prosecute in accordance with the Magistrates Court Rules and CPIA.

Sufficiency of Evidence

35. The Services will not pursue a prosecution unless 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 Factors

36. Where there is evidence as described above, the Services will still not pursue a prosecution unless there are one or more of the following public interest factors in favour of such actions: -
- effect of the offence on local environmental health and safety
 - intent of the offender
 - history of offending

- the offence or circumstances leading to it are foreseeable

Penalties

37. The courts have considerable scope to punish offenders and deter others. The Services will seek to make the courts aware of the degree of gravity they consider should be attached to community and environmental health and safety offences. They will also actively seek to ensure that the local community is made aware of action taken to convict persons who are in breach of their legal obligations.
38. The Services will always seek to recover the costs of investigation and court proceedings.

Fixed Penalty Notices

39. Where legislation permits the use of fixed penalty notices, the Services will consider use of them as an alternative to prosecution. Examples of where they may be appropriate are:-
- To deal quickly and simply with less serious offences
 - To divert less serious cases away from the court process
 - To deter repeat offences
40. Before a fixed penalty notice is administered the authorised officer will ensure:-
- There is evidence of the offender's guilt sufficient to sustain a prosecution
41. Where legislation gives the local authority flexibility to set the level of a fixed penalty charge the level of the charge shall be set by the Council or by an Officer to whom this power is delegated in consultation with the appropriate Lead Member for that service area. The level of the fixed penalty charge shall be set having regard to:-
- Any Government guidance on the level at which the fixed penalty charge should be set
 - The likely level of fine which a court would impose for a similar offence
 - The need to deter offenders from opting for prosecution because they believe that the court would impose a lower level of penalty
 - The cost of bringing a prosecution where fixed penalties were not paid
42. The Council's list of Fees and Charges sets out the current fixed penalty charges for offences where a fixed penalty may be offered as an alternative to prosecution. Where legislation permits the provision of a lower fixed penalty, if payment is made within a set time limit, then this will be considered in consultation with the Lead Member for the service area concerned. To qualify for a discount payment must be made within 10 days. The level of discount would be set having regard to the guidance issued by the Secretary of State.
43. Where a fixed penalty notice is not paid within the specified time limit (usually 14 days) then the offender will always be prosecuted unless there are exceptional

circumstances. Where it is decided that an unpaid fixed penalty notice should not be pursued by way of prosecution the reason for not pursuing the notice must be reported to the Lead Member for the service area concerned.

44. There is no right of appeal against a fixed penalty notice covered by this policy as it only deals with criminal offences. A person served with a fixed penalty notice who believes they did not commit the offence has the right for their case to be heard in court.

Simple Caution

45. The Services will consider Simple Cautions as an alternative to prosecution. Examples of where they may be appropriate are: -

- to deal quickly and simply with less serious offences
- to divert less serious cases away from the court process
- to deter repeat offences.

46. Before a caution is administered the officer will ensure: -

- there is evidence of the offender's guilt sufficient to sustain a prosecution
- the offender admits the offence
- the offender understands the nature of the simple caution and agrees to be cautioned for the offence

47. Simple cautions are administered in accordance with Home Office guidelines.

Footnote

This enforcement policy incorporates and is consistent with the Enforcement Concordat produced by the Government's Better Regulation Task Force as principles of good regulation, published in April 1999. It also takes into account the requirements of procedural and evidential law as agreed with the Regulatory Impact Unit of the Home Office in August 2000.

Within the Services individual service areas have specific enforcement procedures which supplement and support this Policy.

Supporting Documents

1. List of Fees and Charges
2. Supplementary Policies for specific services
3. Enforcement Concordat - adopted by East Dorset District Council's Policy & Resources Committee on the 10 January 2000
4. The Code for Crown Prosecutors CPS
5. Appendix 1 Legal Provisions
6. Appendix 2 Principal Acts enforced by the Public Health Service Division

Version Control

Version 1	Agreed by Policy & Resources Committee 16 April 2007
Version 2	
Version 3	

Appendix 1

Legal Provisions

Apart from specific legislation, approved codes of practice and official guidance relating to the technical aspects of environmental health work, there are a number of other legal or quasi-legal provisions relating to or having a bearing on enforcement as a whole.

These include:

The Enforcement Concordat
Police and Criminal Evidence Act (PACE)
Regulation of Investigatory Powers Act
Human Rights Act
Freedom of Information Act f) Data Protection Act
Environmental Information Regulations
Local Government Act
Race Relations (Amendment) Act
Codes of Practice/Guidance.
Criminal Procedures and Investigation Act (CPIA)

Many of the above contain little more than a passing reference to the needs of enforcement whereas some, such as PACE, CPIA and others, are fundamental. Officers will comply with all of the enforcement provisions of the above which are relevant to a particular case.

Appendix 2

Principal Acts enforced by the Public Health Services Division

Animal Boarding Establishments Act 1963
Building Act 1984
Caravan Sites and Control of Development Act 1960
Clean Air Act 1993
Control of Pollution Act 1974
Dangerous Wild Animals Act 1976
Dogs (Fouling of Land) Act 1996
Environment Protection Act 1990
Environmental Act 1995
European Communities Act 1972
Food Safety Act 1990
Gambling Act 2005
Health Act 2006
Health and Safety at Work etc Act 1974
Home Energy Conservation Act 1995
Housing Act 1985
Housing Act 2004
Housing Grants, Construction and Regeneration Act 1996
Housing Construction and Regeneration Act 1996
Licensing Act 2003
Local Government (Miscellaneous Provisions) Acts 1976 & 1982
Local Government Act 1972
Local Government and Housing Act 1989
National Assistance Act 1948
Noise Act 1996
Noise and Statutory Nuisances Act 1993
Pet Animals Act 1951
Prevention of Damage by Pests Act 1949
Public Health (Control of Diseases) Act 1984
Public Health Acts 1936 & 1961
Riding Establishments Acts 1964 & 1970
Safety of Sports Grounds Act 1975
Town Police Clauses Act 1847
Water Industry Act 1991
Zoo Licensing Act 1981