

Environmental Health
Services

**HEALTH AND SAFETY
ENFORCEMENT POLICY**

FEBRUARY 2002

HEALTH AND SAFETY ENFORCEMENT POLICY

1. INTRODUCTION

- 1.1. It is the Council's policy to ensure adequate standards of Health, Safety and Welfare at workplaces and the protection of members of the public from risks associated with work activities.
- 1.2. This policy will be achieved through inspection, investigation, the instigation of HELA strategic objectives, objectives arising out of the North and West Yorkshire Health and Safety Liaison Group Workplan and initiatives identified from local workplace situations. Enforcement decisions arising as a result of such action will be taken in accordance with Health and Safety Commission Section 18 Guidance to Local Authorities and *the Council's Code of Practice on Enforcement* and this policy and will have regard to risks to health and safety which may arise because of failures in health and safety practices.
- 1.3. In the enforcement of health and safety law, the Council will have regard to the principles of proportionality in applying the law and securing compliance; consistency of approach, targeting of enforcement action; and transparency about how the Council operates and what those regulated may expect.
- 1.4. The main concern of the Council is the prevention of accidents and ill health. This is best achieved by encouraging effective management of health and safety by those who create the risks. Accordingly the Council's enforcement officers will seek to help businesses improve their management of health and safety by providing appropriate advice. Liaison will be maintained with other regulators where there is a wider regulatory interest.
- 1.5. *Enforcement Concordat*

All decisions to which the policy refers shall be taken in accordance with the Council's Code of Practice on Enforcement, which incorporates and is to be read in conjunction with the central and local government Concordat on Good Enforcement which was adopted by the Council on 23 April 1998.

This document should be read in conjunction with the Concordat and The Code for Crown Prosecutors.

2. DELEGATION TO OFFICERS

- 2.1. Decisions about health and safety enforcement are delegated to officers of the Council as follows:

2.1.1 Environmental Health Manager

- appointment and/or authorisation of officers to exercise statutory functions;

- exercise of powers of entry;
- service of notices, exercise of powers in default and recovery of expenses;
- in consultation with the Head of Legal Services, the institution of legal proceedings; and
- approval and amendment of any grant, licence, permit, authorisation or approval.

N.B. In the absence of the Environmental Health Manager, this duty will be undertaken by the Principal Environmental Health Officer.

2.1.2 Council Solicitor

To institute and prosecute on behalf of appointed inspectors of the Council proceedings in respect of any offence against any health and safety legislation which the Council is authorised to enforce.

2.1.3 Authorised Officers

As authorised according to their individual qualifications and experience the exercise of the powers contained in section 20 (Powers of Inspectors) 21 (Improvement Notices) 22 (Prohibition notices) section 25 (Power to deal with Imminent Dangers).

2.2. Any enforcement decision which may be required and which does not fall within the limits of this policy shall be taken by the Environmental Health Manager or Principal Environmental Health Officer in consultation with the Chief Executive and the Chairman of the Community Services and Licensing Committee

3. ***ENFORCEMENT OPTIONS***

3.1. The choices for action are as follows:

- to take no action;
- to take informal action;
- to use statutory notices;
- to use formal cautions; and
- to prosecute.

3.2. In order to achieve and maintain consistency decisions about enforcement action will be taken having regard to the guidance in statutory Codes of Practice, HSE circulars and The Health and Safety Executive Enforcement Handbook (England and Wales).

3.3. In all cases where advice is offered either verbal or written on health and safety there will be a clear distinction between matters necessary to meet legal requirements and those which are recommended as good practice.

3.4. The circumstances under which the various enforcement actions may be taken are described in the following sections of the policy.

4. ***INFORMAL ACTION***

- 4.1. Informal action includes verbal warnings or requests for action and the use of letters.
- 4.2. Informal action will be considered where:
 - circumstances do not warrant formal action;
 - confidence in the operator of the business is high; and
 - It is expected that informal action will achieve compliance.
- 4.3. When verbal advice is given it will, if requested, be confirmed in writing.

5. ***STATUTORY NOTICES – IMPROVEMENTS***

- 5.1. Service of Improvement Notices will be considered where:
 - formal action is proportionate to the risk to health and safety of employees or others.
 - where there is a documented history of non-compliance with health safety legislation;
 - where an informal approach has been tried but has not been successful, or there is reason to believe that such an informal approach would not succeed;
 - in the case of a new business or requirements, where there is an assessment that the proprietor is unwilling or unlikely to comply, for whatever reason; and
 - where there is a breakdown in procedural controls, including safe systems of work, which are critical to the health and safety of employees and others or where no such controls exist.
- 5.2. Improvement notices will also be considered where, although it is intended to prosecute, effective action needs to be taken to remedy conditions that are serious or deteriorating.
- 5.3. Improvement Notices will only be issued by suitably qualified and experienced officers who are authorised to do so.
- 5.4. In serving Improvement Notices the Health and Safety Commission document HSC(G)2 and relevant Health and Safety Executive advice will be followed. Realistic time limits will be applied and alternative ways of complying with the notice will be considered.
- 5.5. Failure to comply with a notice within the specified time limit will, except where extenuating circumstances apply, result in prosecution.

6. **STATUTORY NOTICES – PROHIBITION**

- 6.1. Prohibition will be considered where it can be proven that the use of any premises, equipment, process or treatment poses an imminent risk *of serious personal injury* and the consequences of not taking immediate and decisive action to protect health or safety would be unacceptable.
- 6.2. Prohibition will be considered where there is no confidence in the integrity of an unprompted offer to voluntarily close premises or cease the use of any equipment process or treatment which poses a risk of personal injury to health or where a proprietor will not confirm in writing his/her offer of unprompted voluntary prohibition.
- 6.3. Officers authorised to issue Prohibition Notices will be suitably qualified and will have experience in a variety of health and safety enforcement situations.
- 6.4. Before issuing a Prohibition Notices authorised officers will, where it is reasonably practicable to do so, obtain the prior approval of the Environmental Health Manager or Principal Environmental Health Officer.

7. **PROSECUTION**

- 7.1. Prosecution will be considered where there has been a serious breach of health and safety legislation.
- 7.2. The decision to refer matters to the Council Solicitor for prosecution will be taken by the Environmental Health Manager or Principal Environmental Health Officer, who will consider all relevant evidence and information.
- 7.3. Where decisions are taken about whether to prosecute the guidance in The Code for Crown Prosecutors and document HSC(G)2 (rev) 1997, Paragraphs 18, 19, 20 and 21 will be followed. Prosecution will be considered when:-
 - it is appropriate in the circumstances as a way to draw general attention to the need for compliance with the law and the maintenance of standards required by law, especially where there would be a normal expectation that a prosecution would be taken or where through the conviction of offenders, others may be deterred from similar failure to comply with the law; or
 - there is judged to have been potential for considerable harm arising from breach; or
 - the gravity of the offence, taken together with the general record and approach of the offender warrants it, eg apparent reckless disregard for standards, repeated breaches, persistent poor standards.

8. ***FORMAL CAUTION***

- 8.1. The issue of a formal caution will be considered as an alternative to prosecution in accordance with Home Office Circular 18/1994.
- 8.2. Formal caution will be administered by the Council Solicitor.
- 8.3. The decision to refer matters to the Council Solicitor for formal caution will be taken by the Environmental Health Manager or Principal Environmental Health Manager who will consider all relevant evidence and information.
- 8.4. In order to safeguard the offender's interests the following conditions must be met before a caution can be administered.
 - there must be evidence of the offenders guilt sufficient to give a realistic prospect of conviction;
 - the offender must admit the offence;
 - the offender must understand the significance of a caution and give informed consent.
- 8.5. In deciding whether a formal caution is appropriate the following factors will be taken into account:
 - the nature of the offence;
 - the likely penalty if an offender was convicted by a court;
 - the offenders age and stage of health;
 - previous health and safety history; and
 - the offenders attitude towards the offence including practical expressions of regret.
- 8.6. Where the offer of a formal caution is refused alternative enforcement action will be considered by the Environmental Health Manager or Principal Environmental Health Manager. Again all relevant evidence and information will be considered.
- 8.7. In most cases but not necessarily all, refusal of a formal caution will result in a referral for prosecution.