

Hinckley and Bosworth Borough Council

Environmental Health Services

General Enforcement Policy

December 2011

Environmental Health Services General Enforcement Policy 2011

1. Scope of this Document

This is an umbrella document that sets out Hinckley and Bosworth Borough Council's Enforcement Policy in respect of Environmental Health matters. It refers to all areas of Environmental Health legislation where the Council has a duty or a power to bring enforcement action, except where a specific Enforcement Policy document exists. These currently include; Food Safety, Health and Safety, Smoke Free Licensing and Local Air Pollution Control.

2. Introduction

This document sets out what business and individuals being regulated can expect from Hinckley & Bosworth Borough Council's enforcement officers. It commits the Council to good enforcement policies and procedures. It lays down the generalised policy of the Council based on the principles of good enforcement contained in the Enforcement Concordat, produced by Central Government & the Statutory Code of Practice for Regulators (Compliance Code) produced by the Department for Business Enterprise & Regulatory Reform and supplemented by additional statements of enforcement policy of service units within the Council.

The Council takes into account advice contained in the Code for Crown Prosecutors, and endeavours to ensure that it supplements the advice outlined in specific enforcement guidance from other sources, including the Compliance Code.

The primary function of central and local government enforcement work is to protect the public, the environment and groups such as consumers and workers. At the same time, carrying out enforcement functions in an equitable, practical and consistent manner helps to promote a thriving national and local economy. Hinckley & Bosworth Borough Council is committed to these aims and to maintaining a fair and safe trading environment.

The effectiveness of legislation in protecting consumers or sectors in society depends crucially on the compliance by those regulated. We recognise that most businesses and individuals want to comply with the law. We will, therefore, take care to help businesses and others meet their legal obligations without unnecessary expense, while only intervening where there is a clear case for protection. All citizens will reap the benefits of this policy through better information, choice and safety.

There are many instances where the enforcement responsibilities of the authority are shared by, or complimentary to, those of other agencies. Where these shared responsibilities exist, we will endeavour to set up, or join, liaison groups or working parties to ensure cost effective and efficient service delivery. Where situations occur in which shared enforcement with other agencies is appropriate, then a full exchange of information between those agencies will be implemented.

Hinckley & Bosworth Borough Council has adopted the central and local government Concordat on Good Enforcement. Included in the term 'enforcement' are advisory visits and assisting with compliance as well as licensing and formal enforcement action. By adopting the Concordat we commit ourselves to policies and procedures, which contribute to best value, and will provide information to show that we are observing them.

In most cases our Officers will act in an informal way when dealing with those who have duties under the law. Where appropriate Officers will offer information, advice, support, and keep relevant parties informed of the current situation, either face to face, in writing or over the telephone. However, Officers may also use formal action to secure compliance with legal requirements or for the remedying of defects or statutory nuisance.

The Council regards prevention as better than cure. We offer information and advice to those we regulate and seek to secure co-operation avoiding bureaucracy or excessive cost.

This Policy sets out the general principles which the Council intends to follow in relation to enforcement and prosecution. It is to be used in conjunction with any more detailed specific Government guidance or from other Agencies, approved Codes of Practice, Professional bodies and any relevant case law.

3. Purpose and Methods of Enforcement

The purpose of enforcement is to ensure that preventative or remedial action is taken to protect the environment, employees, contractors, the self employed and members of the public and to secure compliance with the regulatory system. The need for enforcement may stem from a lack of knowledge or a deliberate or negligent act. Although the Council expects full voluntary compliance with relevant legislative requirements, codes of practice and guidance notes, we will not hesitate to use our enforcement powers where necessary.

Where an offence has been committed, in addition to any other enforcement action such as issuing appropriate notices, the Council will consider instituting a prosecution, administering a caution or issuing a warning.

4. Principles of Enforcement

Hinckley and Bosworth Borough Council believes in firm but fair enforcement of the law. This should be informed by the principles of *proportionality* in applying the law and securing compliance; *consistency* of approach; *targeting* of enforcement action; *transparency* about how the regulator operates and what those regulated may expect; and *accountability* for the regulator's action.

4.1 Proportionality

Proportionality means relating enforcement action taken to the effect on those affected or the environment. Those whom the law protects and those on whom it places duties (duty holders) expect that action taken by Hinckley and Bosworth Borough Council to achieve compliance or bring businesses or individuals to account for non-compliance, should be proportionate to level of disturbance, or to the seriousness of any breach, which includes any actual or potential harm arising from the breach of the law. However legislation relating to statutory nuisances requires the service of an Abatement Notice where a Statutory Nuisance is found.

4.2. Targeting

Targeting means making sure that regulatory effort is directed primarily towards those whose activities pose the most risk to health, causing the most disturbance or against deliberate offences. Action will be primarily focused on breaches of the law or those directly responsible for the risk and who are best placed to control it.

In the case of regulated industries, management actions are important. 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. Such activity may generate additional inspections or contact by the environmental health staff.

4.3. Consistency

Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends. Where appropriate professional guidance exists then this will be used.

Duty holders managing similar risks can expect a consistent approach from Hinckley and Bosworth Borough Council in the advice tendered; the use of informal and formal notice; decisions on whether to prosecute; and in the response to incidents and complaints.

Hinckley and Bosworth Borough Council has arrangements in place to promote consistency in the exercise of discretion, including effective arrangements for liaison with other enforcing authorities E.g. Memorandum of understanding with the Environment Agency.

4.4. Transparency

Transparency means helping businesses and individuals to understand what is expected of them and what they should expect from Hinckley and Bosworth Borough Council. It also means making clear to businesses and individuals not only what they have to do but, where this is relevant, what they do not. That means distinguishing between statutory requirements and advice or guidance about what is desirable but not compulsory.

This statement sets out the general policy framework within which Hinckley and Bosworth Borough Council should operate. Businesses and individuals also need to know what to expect when an Officer calls and what rights of complaint are open to them. A leaflet is available detailing these procedures.

When inspectors offer businesses and individual's information, or advice, face to face or in writing, including any warning, Officers will tell them what to do to comply with the law, and explain why. Officers will, if asked, write to confirm any advice, and to distinguish legal requirements from best practice advice.

4.5. Accountability

Regulators are accountable to the public for their actions. This means that Hinckley and Bosworth Borough Council has policies and standards (such as the four enforcement principles above) against which they can be judged, and an effective and easily accessible mechanism for dealing with comments and handling complaints.

Hinckley and Bosworth Borough Council has procedures for dealing with comments and handling complaints which are available by telephoning Environmental Health Services on 01455 255644. In particular they:-

- describe a complaints procedure in the case of decisions by officials, or if procedures have not been followed; and
- all notices served by the Department have notes attached which explain about the right of appeal where available to a magistrates court in the case of statutory notices.

5. Compliance Code

In addition to the principles of the Concordat the Councils' approach to enforcement will have regard to the Compliance Code which is based on recommendations of the Hampton Report. The Council will therefore take account of:

5.1 Economic Progress

The Council will consider the impact regulatory interventions may have on economic progress. We will only adopt a particular approach if the benefits justify the costs.

The Council will make reasonable attempts to ensure that the burdens of our interventions fall fairly and proportionately on small businesses by giving consideration to their size.

This Council will allow for reasonable variations to standards to meet local priorities.

5.2 Risk Assessment

The Council will ensure that the allocation of our regulatory efforts and resources are targeted where they would be most effective.

Risk assessment will inform all aspects of our approach to regulatory activity & be based on all available relevant and good quality data.

5.3 Advice and Guidance

The Council will ensure all regulatory requirements as well as changes to those requirements are promptly communicated to relevant businesses.

The Council will provide general information, advice and guidance to make it easier for businesses to understand and meet their regulatory obligations.

The Council will provide targeted and practical advice that meets the needs of businesses.

When offering compliance advice the Council will distinguish between statutory requirements and advice and guidance aimed at improvements above the minimum standards.

The Council will provide appropriate means to ensure that businesses can reasonably seek advice from us without triggering enforcement action.

5.4 Inspection and Other Visits

Inspections should only take place in line with risk assessment or where we are acting on other intelligence.

The Council will focus our greatest inspection effort where risk assessment shows that both:

- A compliance breach would pose a serious risk to a regulatory outcome and
- There is a high likelihood of non-compliance

The Council will give positive feedback to encourage and reinforce good practice.

The Council will share information about good practice amongst other businesses and other regulators.

The Council will make arrangements with other regulators for collaboration to minimise the burdens on business through data sharing & wherever possible joint or co-ordinated inspections.

5.5 Information Requirements

When asking for data from businesses the Council will have consideration of the costs and the benefits to the business

5.6 Compliance and Enforcement actions

The Council will reward businesses that have consistently achieved good levels of compliance through positive incentives such as a lighter touch. When considering taking enforcement action the Council will discuss the circumstances with those suspected of the breach and take these into consideration when deciding the best approach. This does not apply where immediate action is required.

The Council will give clear reasons for any formal enforcement action to the person or entity against whom the action is being taken at the time the action is taken. These reasons should be confirmed in writing.

The Council will ensure that we interpret and apply legal requirements and our enforcement policy consistently and fairly.

5.7 Accountability

The Council will create effective consultation and feedback with businesses.

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The Council will provide courteous and efficient services to businesses.

6. Authority

Authority to instigate legal action and prosecution proceedings is contained in the schedule to the of Hinckley and Bosworth Borough Council Constitution of the Council Part 3 which will be amended from time to time. A copy of the Constitution is available on the council website or by contacting 01455 238141. Officers have their level of authority detailed in their authorisation document.

7. Prosecution

Prosecution proceedings may be considered for strict offences or for the failure to comply with a notice issued by the Council. Hinckley and Bosworth Borough Council will use discretion in deciding whether to bring a prosecution where permitted to do so.

The decision whether to prosecute will take account of the evidential test and the relevant public interest factors set down by the Director of Public Prosecutions in the Code for Crown Prosecutors. No prosecution may go ahead unless Hinckley and Bosworth Borough Council finds there is sufficient evidence to provide a realistic prospect of conviction, and decides that prosecution would be in the public interest.

While the primary purpose of Hinckley and Bosworth Borough Council is to ensure that businesses and individuals do not act in breach of any relevant legislation, prosecution is an essential part of enforcement. Where in the course of an investigation Hinckley and Bosworth Borough Council collected sufficient evidence to provide a realistic prospect of conviction and has decided, in accordance with this policy and taking account of the Code for Crown Prosecutors, that it is in the public interest to prosecute, then that prosecution will go ahead, subject to such prosecution being authorised by the Head of Health and Environment following consultation with the Head of Corporate Services. The portfolio holder for the service area shall also be informed of decisions. Where the circumstances warrant it and the evidence to support a case is available, Hinckley and Bosworth Borough Council will prosecute without warning or recourse to alternative sanctions.

8. Public Interest Factors

Hinckley and Bosworth Borough Council will consider the following factors in deciding whether or not to prosecute:-

- the seriousness of the offence;
- the foreseeability of the offence or the circumstances leading to it;

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- the intent of the offender, individually and/or corporately;
- the history of offending;
- the attitude of the offender;
- the deterrent effect of a prosecution, on the offender and others;
- the personal circumstances of the offender;
- the likelihood of the offender being able to establish a 'Best Practicable Means' defence where available.

These factors are not exhaustive and those, which apply, will depend on the particular circumstances of each case. Deciding on the public interest is not simply a matter of adding up the number of factors on each side. We will decide how important each factor is in the circumstances of each case and make an overall assessment.

Where there is sufficient evidence, the Council will normally prosecute in any of the following circumstances:-

- breaches of abatement notices that have resulted in serious effect on neighbours;
- serious impact on the environment and /or resulting in significant cost to the Council
- persistent breaches of statutory requirements in relation to the same or similar undertaking;
- failure to supply information without reasonable excuse or knowingly or recklessly supplying false or misleading information. It is essential that lawful requests for information by the Council or its Officers are complied with and that accurate information is supplied to enable informed regulation to be exercised;
- obstruction of Officers in carrying out their powers. The Council regards the obstruction of its Officers while lawfully carrying out their duties as a serious matter.

9. Sufficiency of Evidence

A prosecution will not be commenced or continued by the Council unless it is satisfied that there is sufficient, admissible and reliable evidence that the offence has been committed and that there is a realistic prospect of conviction. If the case does not pass this evidential test, it will not proceed, no matter how important or serious it may be. Where there is sufficient evidence, a prosecution will not be commenced or continued by the Council unless it is in the public interest to do so. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the offender.

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

11. Choice of Court

In cases of sufficient gravity, for example serious environmental damage over a wide area, where circumstances allow, consideration will be given to requesting the magistrates to refer the case to the Crown Court. The same factors as listed above will be used, but including consideration of the sentencing powers of the Magistrates' Court.

12. Penalties

The existing law gives the courts considerable scope to punish offenders and to deter others. Unlimited fines and, in some cases, imprisonment may be imposed by the higher courts. The Council will continue to raise the awareness of the courts to the gravity of many environmental offences and will encourage them to make full use of their powers. Examples of penalties presently available to the courts for certain environmental offences are:-

Magistrates' Courts; up to 6 months imprisonment and/or £20,000 fine;
Crown Court: up to 5 years imprisonment and/or an unlimited fine.

The Council will always seek to recover the full costs of investigation and Court proceedings.

13. Alternatives to Prosecution

For the purposes of this Procedure, enforcement for non compliance includes the following:

- Formal Cautions
- Written warnings (sometimes known as Informal Notices)
- Works in Default, including seizure of equipment
- Revocation (of Licenses or Authorisations)

13.1. Formal Cautions

In cases where a prosecution is not the most appropriate course of action, the alternatives of a caution or warning will be considered, the choice depending on the factors referred to above.

A caution is the written acceptance by an offender that they have committed an offence and may only be used where a prosecution could properly have been brought. It will be brought to the Court's attention if the offender is convicted of a subsequent offence. Failure to accept a caution should normally result in a prosecution being taken.

13.2. Written warnings (sometimes known as informal Notices)

A warning is a written notification that, in the Council's opinion, an offence has been committed. It will be recorded and may be referred to in subsequent proceedings.

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

13.3. Works in default

Where powers exist for the carrying out of works in default to remedy the nuisance or defect, the Council may carry out the works and recover all costs in lieu of prosecution proceedings. This will normally be where the recipient is not at fault or unaware of the problem e.g. drainage defect / intruder alarm. In the absence of a specific charge, 25% on costs will be charged.

The Council will seek to seize noise-producing equipment where serious nuisance is occurring to residents and awaiting prosecution proceedings would not provide effective relief. Such seizures will be under a warrant from a magistrate. The Council will normally seek a forfeiture order from the Court for equipment seized.

13.4. Revocation (of Licences or Permits/Authorisations)

Where legislation allows for the revocation of licences or permits the Council may consider this course of action. Again the principles contained in para. 9 will guide such decisions.

Non-payment of fees and charges due to the Council will result in revocation of licences after suitable opportunity for the holder to pay outstanding fees. Should the licensed activity continue then prosecution proceedings will be considered.

14. Working with Other Regulators

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

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Where the Council is notified or becomes aware of matters which are statutory enforcement responsibility for other agencies e.g. Police, Environment Agency that Council employee shall notify the appropriate agency by the quickest means acceptable to that agency. The referral of such information shall be recorded against the property database.

15. Consultation with Stakeholders

Prior to revisions of this policy notification will be placed on the Council's website and notification will be placed in the Council's newspaper alerting stakeholders. Copies of the revised policy will be available from the Council offices on request.

16. Equal Opportunities Statement

This policy shall take into account the aims of Hinckley & Bosworth Borough Council's Equal Opportunities Policy which is committed to achieving equality for all by removing direct and indirect discrimination on the grounds of:

- Age
- Gender or transgender identity
- Race, colour, nationality, national or ethnic origin, being a traveller or gypsy
- Disability, including people with a hearing impairment, people with a visual impairment, people with learning disability, people with a mental illness, and people living with HIV and AIDS
- Religious belief or non-belief, or other beliefs
- Marital status, family circumstances, or caring responsibilities
- Sexual orientation
- Income, employment status or housing circumstances
- Membership or non-membership of trade unions, or involvement in trade union activity
- Offending Status
- Any other ground that cannot be shown to be justified

In developing this policy, the Council has recognised its responsibility under the Race Relations Act 1976 as amended by the Race Relations (Amendment) Act 2000, to consider the need to eliminate unlawful discrimination and to promote equal opportunity and good race relations between persons of different racial groups

The Council also recognises that this policy should promote equality in a wider sense and disadvantaged groups in general, with regards to ethnic or national origin, sex, religious belief, political views or the sexual orientation of the Individual. The Council will ensure all decisions are taken without adverse influence to these issues. The Council will not be affected by improper or undue influence from any source.

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To assist in this

- The Policy and associated documents will be available on the Internet, and in other formats upon request.
- Multi-language sections may be included in all leaflets upon request.
- Support will be offered to individuals who are socially excluded to assist in their understanding of legislation and legal requirements
- Action will be taken to ensure that all enforcement action, particularly against those individuals from disadvantaged groups, is dealt with fairly.
- An Equality Impact Assessment has been completed for this policy .

This policy shall be reviewed every three years or sooner if there are changes in structure, titles and responsibilities.

R Parkinson
Chief Officer (Environmental Health)

December 2011

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If you would like a copy of this document in another format such as large print, Braille or audio tape, please contact the Communications Team on 01455 238141
E mail customer.services@hinckley-bosworth.gov.uk

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ਟੈਲੀਫੋਨ: 01455 238141. ਈਮੇਲ: customer.services@hinckley-bosworth.gov.uk

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Hinckley and Bosworth Borough Council, Argents Mead, Hinckley, Leicestershire, LE10 1BZ.
ਟੈਲੀਫੋਨ: 01455 238141. ਈਮੇਲ: customer.services@hinckley-bosworth.gov.uk

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Communications Team, Hinckley and Bosworth Borough Council,
Argents Mead, Hinckley, Leicestershire, LE10 1BZ. ਟੈਲਿਫੋਨ : 01455 238141. ਈ-ਮੇਲ :
customer.services@hinckley-bosworth.gov.uk

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Communications Team, Hinckley and Bosworth Borough Council,
Argents Mead, Hinckley, Leicestershire, LE10 1BZ.
ٹیلیفون: 01455 238141 ای میل: customer.services@hinckley-bosworth.gov.uk

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