



# **HEALTH AND SAFETY ENFORCEMENT POLICY STATEMENT**

October 2015

# CONTENTS

<b>Introduction</b>	<b>1</b>
<b>Statement of Intent</b>	<b>1-2</b>
<b>General Principles</b>	<b>2-3</b>
<b>Principles of Enforcement</b>	<b>3-6</b>
• Standards	
• Openness	
• Helpfulness	
• Complaints about the Service	
• Proportionality	
• Consistency	
• Transparency	
• Targeting	
<b>Specific Enforcement Activities</b>	<b>6-8</b>
• Routine Inspections	
• Investigations	
<b>Enforcement Options</b>	<b>8-13</b>
• No action	
• Informal action	
• Improvement Notice	
• Prohibition Notices	
• Simple Cautions	
• Prosecution	
Appendix A Prosecution Policy	<b>13-15</b>
Appendix B Glossary	<b>16</b>

# HUNTINGDONSHIRE DISTRICT COUNCIL

## HEALTH AND SAFETY ENFORCEMENT POLICY STATEMENT

### 1 INTRODUCTION

- 1.1 The effectiveness of legislation in protecting society depends upon the compliance of those who are regulated. We recognise that most businesses and individuals want to comply with the law. Therefore we will take steps to help businesses and others meet their legal obligations without unnecessary expense, while taking firm action against those who deliberately flout the law or act irresponsibly, including prosecution where appropriate.
- 1.2 Enforcement will be carried out in a fair, equitable and consistent manner. Whilst every member of staff is expected to exercise judgement in individual cases, we have arrangements in place to promote consistency. These include in-house Standard Operating Procedures and liaison arrangements with other stakeholders such as the Health and Safety Executive (HSE) and the Cambridgeshire and Peterborough Food and Occupational Health and Safety Managers Group.
- 1.3 The purpose of this policy statement is to express the commitment and intentions of Huntingdonshire District Council (“the Council”) to the principles of consistent and effective enforcement of health and safety legislation. It should be noted the Enforcement Concordat was formally adopted by the Council, on 14 July 1998
- 1.4 This policy is designed to set out the arrangements by which the principles of proportionality, consistency, transparency, helpfulness, openness, and targeting of resources will be incorporated into actions.
- 1.5 This enforcement policy helps to promote efficient and effective approaches to inspection and enforcement, which improve outcomes without imposing unnecessary burdens. This is in accordance with the Regulators’ Code. In certain instances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.
- 1.6 The officers who carry out the enforcement of health and safety legislation are Council staff or specialist contractors who are authorised in writing to enforce delegated tasks and duties in accordance with the Council’s scheme of delegation. All officers will carry appropriate means of identification
- 1.7 Where chemical or biological contamination presents a health and safety risk, officers will seek medical or other expert advice from partner organisations such as the Public Analyst, Public Health England (PHE) and the HSE.

### 2 STATEMENT OF INTENT

- 2.1 It is the Council’s policy to work with businesses and employees to
- Ensure that health and safety risks in premises for which it is the enforcing authority are properly controlled and managed in order to reduce them to the lowest level that is reasonably practicable.
  - Deliver a complementary programme of education and enforcement, which is designed to ensure that businesses (for whom it is the enforcing authority)

within the district are operated and maintained at a standard that complies with relevant legislation.

- Fulfil the statutory duty imposed on the Council as the “Health and Safety Enforcing Authority” and to ensure the effective implementation of Government strategy on health and safety issues.

2.2 In order to achieve these objectives, enforcement action will be proportionate to the risk(s) presented, or the seriousness of the breach of legislation and will be in accordance with this policy.

2.3 When considering the appropriate course of action to be taken following an inspection or visit, this policy must be read in conjunction with relevant guidance on enforcement action produced by bodies such as the Health and Safety Executive (HSE), Better Regulation Delivery Office (BRDO) Cabinet Office and the Chartered Institute of Environmental Health (CIEH)

2.4 In enforcing health and safety legislation, the Council will have regard to any centrally issued guidance as well as any in-house procedures.

2.5 All officers must abide by this policy when making enforcement decisions. They must also have regard to, and follow as appropriate, relevant Standard Operating Procedures. In the first instance officers will adopt an educative approach to those responsible for complying with relevant health and safety legislation. Thereafter they will enforce the law by using a range of enforcement options including: verbal and written warnings; use of statutory notices; simple cautions; and prosecution. Prosecution will not normally be instituted in response to minor contraventions of health and safety legislation.

2.6 This policy recognises and supports the specific guidelines and enforcement approaches contained in Approved Codes of Practice (ACoPs), guidance issued by those bodies listed in paragraph 2.3 above and supports the “Primary Authority Partnership Scheme” (see Glossary)

2.7 Except where there is considered to be a significant risk to public health, departures from these policy guidelines will be exceptional and only following agreement with the Head of Service or a recognised deputy.

2.8 Where there are issues of dual or joint enforcement with other Enforcement Agencies such as the HSE, Cambridgeshire County Council Trading Standards Division or Cambridgeshire Constabulary then, where practicable, consultation will take place with them prior to any enforcement action being initiated.

### **3 GENERAL PRINCIPLES**

3.1 Most health and safety law is goal-based and specifies what must be achieved rather than prescribing what must be done. Guidance on how to achieve these goals is often set out in ACoPs and there is also a wide variety of advisory material describing good practice. ACoPs and guidance materials aren’t always written in terms which necessarily fit every case. In considering whether good practice has been adopted, officers will need to take relevant ACoPs and guidance into account, using sensible judgement about the extent of the risks and the effort that has been applied to control them.

3.2 Sometimes the law is prescriptive and spells out in detail what must be done. For example, a risk assessment must be carried out in relation to all workplaces. Prescriptive law limits the discretion of the duty holder and also the enforcer.

- 3.3 The Council will help businesses to secure full compliance with all relevant health and safety legislation. Authorised officers will offer relevant information and advice in person as well as in writing. The Council's authorised officers will deal with anyone subject to the enforcement process in a courteous, fair and objective manner.
- 3.4 Authorised officers will also assist businesses and individuals to understand their legal duties and the obligations imposed by relevant legislation. They will seek to encourage good practice by businesses in line with that which is contained in the relevant guides to industry, ACoPs and relevant legislation. Officers will be sensitive to the needs of business particularly in regard to any requirements for an immediate response, transparency of action and the imposition of minimum burdens consistent with regulatory confines.
- 3.5 Authorised officers will also use formal enforcement measures set out in the relevant legal provisions including the use of statutory notices, simple cautions and by taking prosecutions.
- 3.6 It is accepted that there should be a quick and effective response to serious breaches of legislation as distinct from a discriminating and efficient enforcement approach to other breaches.
- 3.7 Where appropriate, the Council reserves its right to carry out directed and covert surveillance of individuals or organisations. In doing so, officers will comply with any human rights legislation and have regard to associated guidance and codes of practice in existence at the time along with any internal policies and procedures. Huntingdonshire District Council has a 'Covert Surveillance (Regulation of Investigatory Powers Act 2000, Part II) Policy' that includes a detailed procedure for authorisation, applications to Magistrates Court and record keeping during covert surveillance; the RIPA Monitoring Officer is a designated position within the Council. All enquiries should be directed to the RIPA Monitoring Officer.
- 3.8 The Council will ensure that its officers and any appointed consultants are suitably qualified, experienced and competent with respect to the enforcement duties that they have been authorised to carry out. Such authorisations shall be in accordance with relevant guidance. The Council shall also ensure that each officer receives suitable and sufficient structured training, which is managed, assessed and recorded on an ongoing basis.
- 3.9 Within available resources the Council will provide suitable training and education to local businesses on a range of health and safety matters designed to encourage businesses to comply with the law. This will be particularly relevant where new legislation is introduced and where an initial educative approach is appropriate. Standard documents, circulars, booklets and other publications issued by the Council will be accurate and reflect current practice. In providing training and education, every effort will be made to provide it in languages other than English where there is a demand and where resources permit.

#### **4 PRINCIPLES OF ENFORCEMENT**

The enforcement of health and safety legislation should be guided by the principles that are contained within the Regulators' Compliance Code and where applicable the Enforcement Concordat, both of which have been formally adopted by the Council. These constitute a framework within which local authorities can work by committing them to good enforcement policies and procedures. The principles of those documents are as follows:

#### 4.1 **Standards**

The Council remains accountable to central government, the HSE and the local taxpayer for its acts and omissions. This means that it will have clear policies and standards against which it can be judged. The service will be managed and delivered in accordance with any centrally issued guidance.

#### 4.2 **Openness**

The Council will provide information and advice in plain language and will disseminate this as widely as possible. It will also be open about how it sets about its work, including any charges that are made for specific activities. Officers will be prepared to discuss general issues, specific compliance failures or problems with duty holders, employees and their representatives. Where necessary, the public register of notices will contain details of any notices that are served.

#### 4.3 **Helpfulness**

The Council believes that prevention is better than cure and that its role therefore involves actively working with business, especially small and medium-sized businesses, to advise and assist on compliance. It will provide a courteous and efficient service and staff will identify themselves by name. Officers will provide a contact point and telephone number for further dealings with the Council and will encourage businesses to seek advice/information from them. Requests for information and advice will be dealt with efficiently and promptly. The Council will ensure that, wherever practicable, its enforcement services are effectively co-ordinated to minimise any unnecessary overlaps and time delays and where appropriate will work with other regulatory agencies to ensure efficiency of service and have regard to guidance issued by the Better Regulation Delivery Office and other government departments. The Council will be prepared to discuss with duty holders any letters, circulars, and other correspondence that officers have sent to them. Requests for information made under the Freedom of Information Act 2000 will be dealt with in accordance with Council arrangements. The Council is committed to promoting equality and inclusion in the community.

#### 4.4 **Complaints about the Service**

The Council will provide well-publicised, effective and timely complaints procedures easily accessible to business, the public, employees and consumer groups. In cases where disputes cannot be resolved, any rights of complaint or appeal will be explained by the officer, with details of the process and the likely timescales involved.

#### 4.5 **Proportionality**

4.5.1 Proportionality means relating enforcement action to the risks and costs. Both those whom the law protects and those upon whom it places a duty (duty holders) expect that action taken by the Council to achieve compliance should be proportionate to any risks to health and safety and to the seriousness of any breach.

4.5.2 Some legal requirements are specific, i.e. there is no room for discretion or individual interpretation. However, others require action in line with the principles of "reasonableness" or "appropriateness" and the regulatory system often includes the concept of proportionality through such principles. Deciding what is reasonable or appropriate to control risks involves the exercise of judgement by businesses and, when the law permits, discretion by enforcers based on sound professional judgement. Where a proprietor and the Council cannot reach agreement, the final

determination of what is reasonable in particular circumstances may ultimately be made by the Courts or Employment Tribunals (on appeal).

4.5.3 Where the law requires that risks should be controlled 'so far as is reasonably practicable', officers should consider the measures taken and balance these against the likely cost and degree of risk. Officers may legitimately expect that relevant good practice will be followed. Where relevant good practice in particular cases is not clearly established, health and safety law effectively requires duty holders to assess the significance of the risks (both their extent and likelihood) to determine what action needs to be taken.

4.5.4 Some risks may be so serious that they cannot be permitted irrespective of the economic consequences. At the other extreme, some risks may be so trivial that it is not worth spending more to reduce them. In general, risk-reducing measures will be weighed against the associated costs.

#### 4.6 **Consistency**

4.6.1 Consistency of approach does not mean uniformity, it means taking a similar approach in similar circumstances to achieve similar ends. Duty holders managing similar risks expect a consistent approach from authorised officers in the advice which is provided, the use of enforcement notices, decisions on whether to prosecute and responses to notified accidents, dangerous occurrences or cases of occupational ill health.

4.6.2 The Council recognises that in practice consistency is not a simple matter. Authorised officers are faced with many variables such as the severity of the hazard, the attitude and competence of management and the associated previous history of accidents and compliance. Each may vary between businesses which otherwise appear similar. Decisions on enforcement are a matter of sound professional judgement when the Council, through its officers, will exercise discretion. It will continue to develop arrangements, including standard procedures in line with national audit requirements, to promote consistency in the exercise of discretion, including effective arrangements for liaison with other enforcing authorities. The Council will have regard to the HSE Enforcement Management Model when considering formal action.

#### 4.7 **Transparency**

4.7.1 Transparency means helping duty holders to understand what is expected of them and what they should expect from the Council. It also means making clear to duty holders why an officer intends to or has taken a particular course of action. This means distinguishing between legal requirements on the one hand and advice and guidance about what is desirable, but not required by law, on the other.

4.7.2 This policy sets out the general policy framework within which the Council will operate. Duty holders need to know what to expect when an authorised officer visits and what rights of complaint are open to them. This will be achieved in a number of ways including:-

- Issuing the HSE guidance entitled "Your rights when health and safety inspectors take action" and "What to expect when a health and safety inspector calls".
- In the case of informal enforcement action the officer will inform the duty holder what to do to comply with the law, explain why and, if asked, distinguish legal

requirements from recommendations. Officers will, if asked, confirm any advice in writing. Letters will identify the Commercial Team Leader (CTL) as being the initial point of contact if duty holders wish to query an officer's findings or are unhappy about the standard of service received.

- In the case of improvement notices, the authorised officer will discuss the notice and, if possible, resolve points of difference before serving it. The notice will say what needs to be done, why and will specify a deadline. Details will also be given of the formal appeal procedure at the same time.
- In the case of a prohibition notice the notice will explain why the prohibition is necessary.

## **4.8 Targeting**

4.8.1 Targeting means making sure that resources are targeted primarily on those whose activities give rise to the most serious risks in accordance with any relevant guidance or where hazards are least well controlled and that action is focused on the duty holders who are responsible for the risk and who are best placed to control it. Where appropriate, consideration will be given to the use of alternative interventions. Such approaches may be used to target efforts toward specific employment sectors, activities where there are greater risks or in response to trends in accident data. Interventions may be carried out in partnership with the Health and Safety Executive to focus enforcement and educational initiatives on agreed health and safety priorities. This approach also lends support to the targeted approach to health and safety enforcement and partnership working to which Huntingdonshire District Council has already demonstrated its commitment when it signed the HSC's Statement of Intent on 18<sup>th</sup> March 2005.

4.8.2 Alternative interventions can be focused on low-risk activities where the use of questionnaires, leaflets and workshops can replace traditional inspections.

4.8.3 The Council has systems in place for prioritising visits according to the risks posed by a duty holder's operation and they will take into account the nature of the hazards and the extent of risks. Management competence is important, because a poorly managed low hazard site can present a greater risk than a higher hazard site where risk control measures are in place. Inspections and interventions are delivered in accordance with the National Local Authority Enforcement Code.

4.8.4 Where formal enforcement action is necessary the person responsible for creating a risk should be held to account for it. Where several duty holders share a responsibility, the Council may take action against those who can be regarded as primarily in breach.

## **5 SPECIFIC ENFORCEMENT ACTIVITIES**

### **5.1 Routine inspections**

5.1.1 Authorised officers have powers of entry at all reasonable hours (or, in a situation which in his opinion is or may be dangerous, at any time) to enter relevant premises. It is an offence for any person to intentionally obstruct an authorised officer in the execution of their duties. Under normal circumstances, inspections and visits to premises and work activities will be without prior notice. In instances where it is appropriate to do so, appointments may be advisable, e.g. where it is prudent that the duty holder or manager is on site in order to discuss particular issues or matters arising from a previous visit.

- 5.1.2 Officers will identify themselves at the premises at the time of entry unless for operational reasons this will defeat the object of the visit. In any event, officers will show their identification, if asked, and provide means of checking that identity, if necessary.
- 5.1.3 The officer will state the purpose of the inspection to the duty holder or his representative at the earliest opportunity. Inspections and visits can involve discussions with all or some of the employees and contractors working at the premises at that time. At the conclusion of all inspections, the officer will discuss their findings and give to the person in charge a completed report of inspection form.
- 5.1.4 Officers will offer to provide any relevant leaflets or guidance notes at the time of inspection or send them later, if requested. Subject to resources, letters can be translated into other languages and interpreters can be used where appropriate. Where issues of interpretation or inconsistency arise, the authority will liaise with the Primary Authority or Lead Authority if such an arrangement exists, other local authorities or the HSE.
- 5.1.5 Generally, enforcement will involve a graduated approach. In the first instance general requirements will be discussed with the duty holder or his representative. The enforcement of new legislation may also require a more educative approach in the first instance. When considering formal enforcement, account will be taken of whether there is evidence of significant health and safety breaches and/or whether the duty holder has already failed to respond to an informal, educative approach.
- 5.1.6 Offences of a minor nature may be dealt with by way of advice, verbal warning, letter, a revisit or any combination of these.
- 5.1.7 Where it is inappropriate for offences to be dealt with by an informal approach, then matters will be discussed between the officer and the CTL. A decision will then be taken as to what course of action to take. These situations might include:-
- Where there is an imminent risk to health and safety;
  - Failure to comply with an improvement notice;
  - Failure to comply with a previous requirement to remedy breaches of legislation;
  - An act of obstruction; or
  - Cumulative breaches of health and safety legislation.
- 5.1.8 If contraventions are found and where resources permit, the Council will arrange for a further visit to be carried out prior to the next inspection. In any event, revisits will be made to ensure that significant breaches have been remedied and to follow up formal notices once they have expired.

## 5.2 **Investigations**

- 5.2.1 Where possible the Council will respond to all complaints about health and safety at work within ten working days. The response may vary according to the nature of the allegation, its severity, the track record of the business, the types and numbers of persons at risk, the seriousness of any potential breach of the law and the practicalities involved. Investigations concerning serious accidents and fatalities will be commenced on the same working day where possible. The duty holder will, where appropriate, be informed that a complaint has been received and of the nature of the allegation. In some instances, by agreement, it will be appropriate to release the complainant's details. However, where it is necessary to protect the identity of the complainant, e.g. where that person is an employee or where there may be a risk of intimidation, then the complainant's details will remain confidential.

- 5.2.2 The Council will respond to reportable accidents, dangerous occurrences and cases of occupational ill health arising from work activities, having regard to relevant guidance and any internal Standard Operating Procedures. The response may vary according to the nature and severity of the accident or incident, whether there has been a clear and serious breach of legislation and whether it has been reported in accordance with the law. In the case of serious accidents or incidents, including fatalities or where the problem may be of a serious ongoing nature, this will be on the same day. Where the incident arises on premises located outside the Council's area or in premises for which the HSE is the enforcing authority, then the relevant enforcing authority will be notified.
- 5.2.3 When responding to complaints, irrespective of the source, the officer will liaise where necessary with the Primary or Lead Authority. The complainant will be kept informed about the progress of the investigation and will be notified of the eventual outcome.
- 5.2.4 Where complaints about working conditions or reports of accidents have been received, the duty holder will be notified as soon as is reasonably practicable unless it is not appropriate to do so, e.g. when it might hinder a more serious on-going problem which is subject to a separate investigation
- 5.2.5 The investigating officer will, where appropriate, keep the duty holder or their representative informed of the progress of the investigation. At the end of the investigation, all interested parties will be informed of the outcome and whether the Council will take any further action.

## **6 ENFORCEMENT OPTIONS**

- 6.1.1 There are a number of enforcement options available to deal with breaches of legislation. The alternative sanctions identified in The Regulatory Enforcement Sanctions Act 2008 have not been adopted. When the necessary enabling Orders have been made by ministers this position may be reviewed.

The existing options include: -

- Take no action
- Take informal action
- Use statutory notices
- Use a Simple Cautions
- Prosecute (can be taken in addition to serving notices)

The decision will be taken with reference to the Enforcement Management Model (EMM)

- 6.1.2 The Health and Safety at Work etc. Act 1974 confers a range of powers that appointed officers may exercise in the course of their duties. These powers enable officers to:
- Enter premises at any reasonable time;
  - Take a police officer with them;
  - Take any other relevant person or equipment or materials with them;
  - Carry out investigations and make examinations;
  - Direct premises to remain undisturbed for the purpose of an investigation;
  - Take samples, recordings, tests, measurements and photographs of premises, equipment and substances;
  - Detain articles or substances;

- Require any person to provide information relevant to an examination or investigation,
- Examine and take copies of books and documents;
- Require any person to provide facilities and assistance in the course of an investigation;
- Exercise any other powers necessary for the purpose of an investigation or inspection.

6.1.3 Where appropriate a graduated approach to enforcement will be adopted and in the first instance duty holders will be given the opportunity to discuss and remedy problems before action is taken, unless immediate action is required. This part of the policy provides detailed guidance on when each of the options set out in 6.1.1 may be considered.

6.1.4 In each situation, the officer will assess the degree of risk, the seriousness of the offence and the technical means of remedying the situation along with the history of compliance. The decision as to which type of enforcement is appropriate must always be governed by the particular circumstances of the case. Where the duty holder thinks that the action taken or requested is not justified or is unreasonable then they may make representation to the Commercial Team Leader and then to the Head of Service.

## 6.2 **No Action**

Where an inspection or investigation does not identify any breaches of legal requirements then no further action is necessary other than the provision of the NCR report of inspection. Where an officer offers advice following an inspection, then they will always confirm that advice in writing if requested.

## 6.3 **Informal Action**

6.3.1 Informal action may consist of any or all of the following and officers will have regard to the relevant Standard Operational Procedures

- Giving advice and offering general assistance and guidance
- Issuing verbal warnings
- Writing a letter requiring action (warning letter).

6.3.2 Authorised officers will use informal procedures as long as they believe they will secure compliance with the requirements of the Act and ancillary legislation within a time scale that is reasonable in the circumstances. If the officer decides to use informal methods such as giving written advice, then this should not produce a lower standard of compliance with the Act and ancillary legislation than would be achieved by the use of more formal action.

6.3.3 While the action taken by the officer will depend on the circumstances of the particular case, for guidance purposes only, the Council considers the following circumstances where it may be appropriate to take informal action:-

- The offence is not serious enough to warrant formal action e.g. a minor technical offence which creates little or no risk to health and safety;
- From the past history, it can reasonably be expected that informal action will achieve compliance;
- There is confidence in the safety management of the business

- 6.3.4 Where informal action has already been adopted in relation to the same duty holder, but without success, officers will consider using a more formal approach. The options may include the service of an improvement notice or prosecution.
- 6.3.5 On completion of the inspection an NCR report of inspection will be issued. This applies even in those circumstances where conditions at the time of inspection are satisfactory. The minimum details which will be included in such reports include: date and time of inspection, type of premises, duty holder/owner of the business, name and address of the premises, persons seen/interviewed, areas inspected and a summary of action to be taken by the authority. The person receiving the report will be asked to sign it.
- 6.3.6 All letters sent to duty holders following inspections will distinguish legal requirements from recommendations, give a time period for compliance and state the relevant legislation. They will also give details of who to contact if there are any queries, or if the recipient is not satisfied with the content of the letter. Letters will where possible be sent out within ten working days of the date of inspection. Copies will also be enclosed for the attention of employees. Recommendations as to good practice that go beyond the basic legal minimum standard are not subject to enforcement, however adherence to good practice may influence the officer's assessment of confidence in management.

#### 6.4 **Improvement Notices**

- 6.4.1 Authorised officers will normally consider the use of improvement notices in the following circumstances:
- Where there are significant contraventions of legislation
  - Where formal action is proportionate to the risk to health and safety
  - Where there is a record of non-compliance with health and safety legislation
  - Where the authorised officer has reason to believe that an informal approach will not be successful
  - Where health and safety standards are generally poor with little management awareness of statutory requirements
  - The consequences of non-compliance could be potentially serious to the health and safety of employees or others
  - Although it is intended to prosecute, effective action also needs to be taken as quickly as possible to remedy conditions that are serious or deteriorating.
- 6.4.2 Before serving a notice officers will consider all the relevant guidance in ACoPs and any relevant advice issued by the HSE, HELA and CIEH. A minimum period of 21 days is allowed for compliance with an improvement notice.
- 6.4.3 Subject to the appeals procedure failure to comply with an improvement notice will normally result in prosecution. In deciding whether a prosecution should follow, consideration shall be given to the following:
- The Enforcement Management Model
  - Any explanation consequently offered by the duty holder
  - The nature and extent of any work that has been carried out and the likely completion time for the remainder of the work
  - Where the notice incorporates a schedule containing more than one contravention, what proportion, if any, of the works have been completed and whether the outstanding works pose a risk to public health
  - Whether other action, such as issuing a Simple Caution would be more appropriate or effective (see 6.6)

6.4.4 Authorised officers will place realistic time limits on improvement notices and will, where appropriate, discuss and agree the time period for compliance with the duty holder. Any requests for extensions of time for compliance will only be considered if made before the notice expires but will only be granted in exceptional circumstances. Details of appeal mechanisms and requests for extension of time will be set out in the letter accompanying the notice. Officers will normally revisit the premises the next working day after the notice has expired to check compliance.

## 6.5 Prohibition Notices

6.5.1 Officers will consider the use of prohibition notices where there is a risk of serious personal injury and will take the following into account:

- The Enforcement Management Model
- The consequences of not taking immediate and decisive action to protect the health and safety of employees or others would be unacceptable
- Whether the officer has confidence in the duty holder that risks will be controlled without the service of such a notice.

6.5.2 In cases where an officer considers that the service of a prohibition notice is the only course of action, the seriousness of the situation will be explained to the duty holder and/or person responsible for securing compliance with the notice where this is practicable.

6.5.3 It may be appropriate in certain circumstances to contact the Lead Authority for the business concerned and then to notify them of the outcome.

6.5.4 In a situation where there is serious or imminent danger associated with any article or substance, action may be taken to remove that danger using Section 25 of the Health and Safety at Work etc. Act 1974. Such action will be subject to the same considerations outlined in 6.4.3 above.

## 6.6 Simple Cautions

6.6.1 The Council may consider issuing a Simple caution, in appropriate cases, as an alternative to a prosecution. The person receiving a caution will be made aware of the legal implications. The purpose of a 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

6.6.2 When a simple caution is under consideration, the following conditions must be fulfilled before it is offered:-

- There must be evidence of the suspected offender's guilt sufficient to give a realistic prospect of conviction if a prosecution were to be taken as an alternative
- The suspected offender must admit the offence and
- The suspected offender must understand the significance of a simple caution and give an informed consent to being cautioned.

6.6.3 A simple caution will only be administered by the "Cautioning Officer". For the purposes of this policy, the Cautioning Officer is Head of Community.

## 6.7 Prosecution

- 6.7.1 Prosecution is only one of a number of enforcement options available to the Council. Each case needs to be judged on its own merits and any policy cannot therefore be prescriptive but must retain some flexibility. As the prosecution process is particularly important and far-reaching in its possible consequences, a separate prosecution policy document is attached as Appendix A. It outlines the prosecution policy of the Council and describes in broad terms the criteria for and basis of, taking matters before a court of law. This policy is consistent with the Enforcement Concordat, already agreed by central and local government and to which the Council has formally signed up.
- 6.7.2 Through its scheme of delegation, the Council delegates the authority to prosecute for health and safety matters to officers appointed as inspectors under Section 19 of the Health and Safety at Work etc. Act 1974. The decision to prosecute must be agreed in accordance with the Council's scheme of delegation. There are others who may also be consulted as part of the decision-making process. These are:-
- Commercial Team Leader
  - The Head of Legal Services
- 6.7.3 Dependent on the case in question, the following people may also need to be consulted as appropriate:-
- External professionals in connection with health and safety issues e.g. expert witnesses
  - HSE for legal opinion
- 6.7.4 In consultation with the CTL and where appropriate the Council's Head of Legal Services, the authorised officer(s) will gather appropriate evidence and prepare the case on behalf of the Council. Where, having considered all the evidence, prosecution may be warranted, a written report will be presented to the Head of Community (HoC) for consideration and authorisation. Following the written agreement of the HoC to proceed, the Council's Head of Legal Services will instigate the prosecution in consultation with the case officer. Consideration will be given to the requirements of the Police and Criminal Evidence Act 1984 (PACE), the Criminal Procedure and Investigation Act 1996 (CPIA) and the Regulation of Investigatory Powers Act 2000 (RIPA).
- 6.7.5 The Health and Safety Executive will be notified of a prosecution or simple caution as soon as possible as will, where appropriate, the Primary Authority.
- 6.7.6 Serious offences for which prosecution would be appropriate are illustrated by the following examples:
- Where there is a blatant disregard for the law, particularly where the economic advantages of breaking the law are substantial and the law abiding are placed at a disadvantage to those who disregard it;
  - When there appears to have been reckless disregard for the health and safety of employees or others;
  - Where there have been repeated breaches of legal requirements in an establishment, or in various branches of a multiple outlet concern, and it appears that management is neither willing nor structured to deal adequately with these;
  - Where a particular type of offence is prevalent in an activity or an area;
  - Where, as a result of a significant contravention, there has been a serious accident or case of ill-health;

- Where a particular contravention has caused serious public harm;
- Where there are persistent poor standards for control of health hazards.

6.7.7 The Council recognises that most businesses wish to comply with the law. However, there are occasions when punitive action, including prosecution, will be taken against those who have flouted the law, or acted irresponsibly.

## **7 PROSECUTION TO ENSURE PREVENTION**

7.1 In keeping with its preventative role, the Council may use prosecution as a way to draw attention to the need for compliance and the maintenance of good standards in relation to the health, safety and welfare of employees. The Council may consider prosecution if a breach has significant potential for harm, regardless of whether it caused an injury.

## **8 PROSECUTION OF INDIVIDUALS**

8.1 Sections 7, 36 and 37 of the Health and Safety at Work etc. Act 1974 allow for the prosecution of individuals who have committed offences under health and safety legislation. It is the Council's policy to identify and prosecute individuals if a conviction is warranted and can be secured. This may for example be appropriate where, despite adequate management controls, an employee blatantly ignores health and safety instruction and places either himself or his fellow workers in considerable danger. There may be occasions when individual directors have failed in their legal duties and prosecution may be appropriate

## **9 DEATH AT WORK**

9.1 Where there has been a breach of the law leading to a work-related death, the Council will need to consider whether the circumstances of the case might justify a charge of manslaughter. It will therefore liaise with the Police, the Coroner's office and the Crown Prosecution Service (CPS), where necessary, and if they find evidence suggesting manslaughter, pass it on to the Police or where appropriate the CPS. If the Police or the CPS decides not to pursue a manslaughter case, the Council may consider prosecuting for health and safety offences if that is appropriate. Consideration will be given to the publications produced by Association of Chief Police Officers, HSE, LGA and the Crown Prosecution Service (CPS) documents entitled: 'Work-Related Deaths: A Protocol for Liaison' and 'Work-related Deaths: Investigators Guide'.

## **10 ENCOURAGING ACTION BY THE COURTS**

10.1 Health and safety law gives the courts considerable scope to punish offenders and to deter others. Unlimited fines and in some cases imprisonment may be imposed by higher courts. The Council will continue to raise the courts' awareness of the gravity of health and safety offences and will encourage them to make full use of their powers.

### HUNTINGDONSHIRE DISTRICT COUNCIL

#### PROSECUTION POLICY

1. In keeping with its preventative role, the Local Authority will use a variety of means to ensure that the law which it is required to enforce, is complied with within the its boundaries. These means will include education, advice, guidance, warning letters, Improvement Notices, Prohibition Notices, other Statutory Notices and prosecution.
2. The Local Authority will use discretion in deciding whether to initiate a prosecution. In general, officers will attempt to secure compliance by informal means except where they have grounds to consider that it is necessary to serve Notice or recommend prosecution. The council recognises that the decision to prosecute is significant and could have far reaching consequences for the offender. Before deciding to recommend a prosecution, they will take account of the criteria set out in 3 below.
3. The decision to prosecute is delegated to the Head of Community in consultation with the Chairman (or in his absence the Vice-Chairman) of the Licensing and Protection Panel. The public interest will be of paramount consideration and the following matters will be taken into account in addition to any other matter which may be considered relevant in any particular case.
  - 3.1 Whether the evidence available is sufficiently reliable, admissible and substantial to provide a realistic prospect of conviction, having regard to the evidential and public interest tests set down in the Code for Crown Prosecutors and any other prosecution code or government guidance for the time being relevant to the case under consideration.
  - 3.2 The general record and attitude of the offender.
  - 3.3 The attitude and reliability of any witnesses.
  - 3.4 The gravity of the offence (including where the alleged offence involves a flagrant breach of the law such that public health, safety or well-being is put at risk).
  - 3.5 The failure by offenders to comply with lawful written directions of Authorised Officers provided the offenders have been given reasonable opportunity to comply with those directions.
  - 3.6 The failure by defendants to comply in full or in part with the requirements of a Statutory Notice.
  - 3.7 Whether it is desirable to deter others from similar failures to comply with the law.
  - 3.8 Whether it is more appropriate after consideration of all the circumstances and on being satisfied of a person's guilt and the offender accepting that guilt to offer a Simple Caution.
4. This prosecution policy also relates to the prosecution of individuals and individual managers or directors where the local authority considers that a conviction is warranted and it can be shown that the offence was committed with their consent or connivance or to have been attributable to neglect on their part.
5. Having decided to prosecute, the policy of the Council is to proceed without any unnecessary delay. Once the prosecution has been determined by a court of law, the Council will contact all its witnesses to inform them of the outcome.

- 6 The Council takes seriously its obligations arising from the human rights legislation. It will endeavour, at all times, to act compatibly with this legislation.
- 7 This policy is consistent with the Enforcement Concordat and the Regulator's Code, agreed by central and local government.

**GLOSSARY**

ACoPs	Approved Codes of Practice which are designed to maintain and improve standards of health and safety and which carry greater authority because they have been formally approved
CCDC	Consultant in Communicable Disease Control – appointed by the local authority to give medical opinions.
CTL	Commercial Team Leader. Community Division
Duty holder	That person on whom the law places a duty or obligation
EMAS	The Employment Medical Advisory Service - set up by the Employment Medical Advisory Service Act 1972 to advise on medical aspects of employment.
EMM	Enforcement Management Model
HASWA	The Health and Safety at Work Act etc. 1974.
HELA	Health and Safety Executive/ Local Authority Enforcement Liaison Committee.
HSE	The Health and Safety Executive – the national regulator for health and safety.
Improvement Notice	A notice under Section 21 of HASWA, which is served requiring specified improvements to be carried out within a prescribed period of time
Primary Authority	A local authority which has entered into a formal arrangement with a duty holder to promote and facilitate consistent application and enforcement of health and safety law by other enforcing authorities.
Prohibition Notice	A notice under Section 22 of HASWA served by officers when they are of the opinion that a person is carrying on or likely to carry on activities that involve a risk of serious personal injury.
Standard Operational Procedures (SOPs)	These are prepared , approved, revised, issued and controlled in order to ensure a consistent approach within the Authority and conformance with the requirements of relevant legislation and Health and Safety Executive (HSE) guidance