

South Derbyshire District Council	QUALITY MANUAL PROCEDURES HEALTH AND SAFETY ENFORCEMENT POLICY	Section ** Item *
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HEALTH AND SAFETY ENFORCEMENT POLICY

PART 1 - GENERAL ENFORCEMENT POLICY

1. PURPOSE

1.1 The purpose of this document is to state the authority's general policy with respect to health and safety law enforcement; following the principles contained in the Enforcement Concordat issued by the Cabinet Office and adopted by South Derbyshire District Council in September 2000 and guidance issued by the Health and Safety Commission. The Policy follows the principles of the Human Rights Act 1998 and all officers must apply the principles of the European Convention on Human Rights in accordance with the Act.

1.2 The Policy is based on the principles of openness (about our policies and practices), clear standards (performance and levels of service), proportionality (to secure compliance), consistency (of approach), targeting (of enforcement action) and transparency (of methods and organisation). Service plans will be produced yearly and from these action plans will be developed.

2. THE GENERAL POLICY

2.1 This Authority will put into place the required arrangements and procedures to comply with Section 18 guidance issued by the Health and Safety Commission.

2.2 This authority is committed to preventing accidents and ill health, in premises for which it is the enforcing authority, of employees, members of public and others who have cause to resort to the premises.

2.3 This Authority will only enforce health and safety within its field of responsibility, that is, activities/premises being within the Authorities geographical boundary which are so stipulated in the Health and Safety (Enforcing Authority) Regulations 1998 (as amended) or are locally agreed with the Health and Safety Executive.

2.4 The emphasis of enforcement will be primarily based upon health and safety risks, the attitude of employers/businesses/owners and/or the seriousness of any contravention of health and safety standards.

2.5 The authority will work with employers/businesses/proprietors to achieve legislative compliance, through inspection, education and the provision of advice and information as appropriate.

2.6 To ensure compliance with health and safety standards and this policy, the support of officers will be required.

2.7 The policy will be fully documented and reviewed on a regular basis or when there is a major change or development in health and safety legislation or guidance.

2.8 Suitably qualified and trained officers that have been duly appointed by this Authority will only carry this policy into effect.

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- 2.9 Any departure from the general policy will be exceptional, capable of justification by the officer and should only be undertaken once their manager has been informed; unless there is a serious and imminent risk of accident or injury.
- 2.10 This authority is committed to providing ready access to those wishing to appeal or complain about any enforcement action and will provide information on how this can be effected.

PART 2 - COMMUNICATION, LIAISON AND PARTNERSHIPS

1. PURPOSE

- 1.1 This Authority will ensure that effective and efficient channels of communication and working links are maintained and developed with businesses, statutory bodies, trade organisations/associations, professional institutions, the local HSE Enforcement Liaison Officer and other Derbyshire local authorities.

2. POLICY

- 2.1 This Authority will provide businesses with clear and jargon-free information and advice on how to comply with current health and safety legislation and standards. The Authority will exercise the principles of transparency and openness in relation to health and safety matters.
- 2.2 This Authority supports HELA in its role of liaising between local authorities and the Health and Safety Executive to ensure that a co-ordinated and progressive approach to health and safety takes place.
- 2.3 This Authority supports the Derbyshire Chief Officers Health and Safety Liaison Group as a forum for developing consistency of enforcement, organising training initiatives and as a means of providing a co-ordinated approach to health and safety issues.
- 2.4 This Authority will support any conference or training session on health and safety enforcement with the Health and Safety Executive where views are interchanged and discussion ensues with a view to developing a long-term consistency of approach.
- 2.5 To secure health and safety compliance, this Authority will take part in national and local initiatives depending upon the resources available.
- 2.6 To raise health and safety standards within small firms, this Authority will identify, assess and disseminate information about initiatives both locally and nationally.
- 2.7 This Authority will work in partnership with the Health and Safety Executive, Lead Authorities and other Derbyshire local authorities to ensure consistency of approach.

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PART 3 - AUTHORISATION AND INDEMNIFICATION OF OFFICERS

1. PURPOSE

- 1.1 The purpose of this document is to state the authority's policy with respect to: -
- a) Identification of officers appointed and authorised to take enforcement action.
 - b) Identification of the designation of the persons who may authorise a prosecution under the Health and Safety at Work etc. Act 1974 and other associated legislation.
 - c) Indemnification of officers authorised to take enforcement and prosecution action.

2. AUTHORISATION

- 2.1 Enforcement action under the Health and Safety at Work etc. Act 1974 and associated legislation should be initiated by suitably qualified, experienced and competent Enforcement Officers (who have been duly authorised) following HSC Section 18 guidance ; without further reference to either a committee, a designated Elected Member or a first/second tier Officer.
- 2.2 Only officers authorised by the Authority under Sections 21 to 26 of the Health and Safety at Work etc. Act 1974 will serve improvement and prohibition notices.
- 2.3. The final decision on whether to prosecute in all cases will be left to designated Officers within the Authority, in consultation with the appropriate Authorised Officer.

3. INDEMNIFICATION

- 3.1 The Authority will indemnify authorised officers against the whole of any damages and costs or expenses which may be involved, if the Authority is satisfied that the officer honestly believed that the act complained of was within their powers and that their duty as an officer entitled them to do it, providing the officer was not wilfully acting against instructions.

4. POLICY

4.1 Enforcement Action

Only officers that are duly authorised by the Authority can take formal enforcement action under the Health and Safety at Work etc. Act 1974 and associated legislation.

4.2 Prosecution Action

Where, following this policy, a prosecution is likely then the appropriate "Designated Officer" should be briefed and legal advice sought (prior to any formal action being taken) and authorisation on a particular course of action obtained.

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4.3 Designated Officers

In this Authority, Heads of Service and Line Managers listed below are Designated Officers.

Heads of Service:

- a) Head of Community Services
- b) Environmental Health Manager

Line Managers:

- a) Environmental Health Manager (Commercial & Licensing)
- b) Environmental Protection Manager

4.4 Limit of Powers

All designated Officers who are responsible for authorising a prosecution will be aware of the limits of their delegated power by reference to current health and safety law, statutory/approved codes of practice; and Council/Committee reports and decisions; and any other relevant consideration, including the principles set out in this policy.

4.5 Representations

Designated officers are authorised to consider representations from business proprietors, managers or company representatives following an inspection or visit or to discuss any enforcement action being considered by the officer.

4.6 Indemnification

Only authorised officers that have been indemnified by the Authority will take enforcement action and exercise their statutory powers.

PART 4 - INSPECTION AND ENFORCEMENT OPTIONS

1. PURPOSE

1.1 The purpose of this document is to state the authority's policy with respect to: -

- a) Achieving and maintaining consistency of approach in making decisions relating to health and safety enforcement action.
- b) Ensuring commitment to an approach in all enforcement decisions that is fair and balanced, and relates to common standards that protect the people at work and those who may be affected by such work activities.

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2. INSPECTION / COMPLIANCE OPTIONS

- 2.1 To prioritise health and safety inspections of premises on a risk basis using guidance issued by HELA
- 2.2 In relation to small firms, follow the principles out-lined in relevant HELA guidance, e.g. 'Strategy For Small Firms', as amended or revised.
- 2.3 To secure health and safety compliance, this Authority will take part in national and local initiatives, campaigns, projects etc. depending upon the resources available.

3. ENFORCEMENT OPTIONS

- 3.1 Enforcement options that are available, having considered all relevant information and evidence are: -
- a) None
 - b) Take informal action (advice, educational etc.)
 - c) Issue statutory notices
 - d) Issue formal cautions
 - e) Prosecution

4. POLICY

4.1 Inspections / Investigations

Inspections will consist of a mixture of pro-active (planned, risk based) inspections and reactive (notifications, accidents, complaints etc.) inspections using issued HELA guidance and strategies.

4.2 Enforcement

It is the policy of this authority that: -

- a) Where an inspection or investigation reveals full compliance with current health and safety legislation, approved codes of practice, guidance etc, no further action may be required. Written confirmation of this should be provided upon request. Details of the inspection and also, no enforcement action being required will be recorded in the premise file.
- b) Informal action can take the form of advice, a verbal warning or a request for action, in the following circumstances: -
 - i) Where an act, omission or contravention is not serious enough to warrant formal enforcement action; and

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- II) Previous history in terms of the management of health and safety would suggest that informal action will achieve compliance; and
- III) Confidence in the organisation, business, owner or occupier is high.
- c) All verbal warnings, advice or requests for action, at the time of the inspection or as the result of any subsequent conversations, meetings or visits, that raise additional matters, will be confirmed in writing.
- d) Where informal action is taken legal requirements and recommendations will be clearly differentiated.

4.3 Other Action

The policies for statutory notices, formal cautions and prosecutions are stated in Parts 4, 5 and 6 of the Policy Document.

PART 5 - STATUTORY ACTION AND NOTICES

1. PURPOSE

- 1.1 This policy details the matters to be considered when formal statutory notices are to be served.

2. POLICY

2.1 Improvement Notices

- 2.1.1 Improvement notices will be issued when one or more of the criteria below apply: -

- a) There are significant contravention's of health and safety legislation and they are likely to continue.
- b) Where one or more health and safety contravention's have occurred and they are likely to be repeated.
- c) There is a lack of confidence in the business/proprietor's organisation of health and safety management.
- d) The business/proprietor has a history of non-compliance.
- e) Standards are generally poor and the business/proprietor has little awareness or appreciation of their legal duties or of statutory requirements.
- f) Effective action needs to be taken to remedy conditions that are serious and deteriorating.
- g) Where there is a risk of ill health or injury, but not so as to warrant a prohibition notice.

- 2.1.2 The Authorised Officer will discuss with the business/proprietor the contravention noted and the works that will be required to ensure compliance by fully explaining the range of options available to them.

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- 2.1.3 Improvement notices will relate to the risk to health and safety and will not be issued for minor health and safety contravention's unless it is likely that an informal approach will not ensure compliance.
- 2.1.4 Improvement notices will only be issued by Officers who have been properly authorised to do so. An authorised Officer who has personally observed/witnessed the contravention will only sign them.
- 2.1.5 Authorised Officers will follow relevant health and safety legislation, approved codes of practice, and guidance when drafting and serving statutory notices.
- 2.1.6 Authorised Officers will attempt to agree realistic compliance times on statutory notices, with business's/proprietors (including head offices, company health and safety officers, and nominated persons authorised to speak on behalf of the company) prior their service.
- 2.1.7 Authorised Officers will only withdraw notices (upon written request) at their discretion, if they have been satisfactorily complied *within* the time limits specified in the notice.
- 2.1.8 Authorised officers will only extend notices (upon written request) at their discretion provided that the notices have not already expired.
- 2.1.9 Failure to comply with any improvement notice will result in the institution of court proceedings.
- 2.1.10 Where there is a Lead Authority Partnership in existence with a company where enforcement action is taken; then copies of letters, notices and other relevant matters will be sent to that Authority for their information/action.
- 2.2 Prohibition Notices**
- 2.2.1 A Prohibition Notice will only be considered in the following circumstance:
- When an officer is of the opinion that an activity (or activities) carried on at a premise involve or will involve a risk of *serious personal injury*. The number of people affected by the risk is not relevant.
- 2.2.2 Whilst the risk does not have to be imminent before an immediate prohibition notice can be served; such notices will only be served where a risk of serious personal injury is such as to require action to be taken without delay to control that risk.
- 2.2.3 Immediate prohibition notices may be served not only where the risk is one of traumatic (acute) injury, but also where the risk is from a long-term health hazard of a cumulative nature, which will ultimately contribute to damage health.
- 2.2.4 The decision on whether to serve an immediate or deferred prohibition notice depends on the nature of the risk. Deferred prohibition notices should be considered when a greater risk would result if that activity was stopped immediately.
- 2.2.5 Prohibition notices will only be served by an Authorised Officer (See Part 2 of this Policy) who has witnessed the matters to which the Notice relates.
- 2.2.6 Where there is a Lead Authority Partnership in existence with a company where enforcement action is taken; then copies of letters, notices and other relevant matters will be sent to that Authority for their information/action.

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2.3 Public Register

- 2.3.1 All improvement and prohibition notices that are served will be placed on the Authority's public register if they relate to matters of a public concern. This is a requirement of the Environment and Safety Information Act 1988.

PART 6 - DETERMINATION OF PROSECUTION OF OFFENCES

1. PURPOSE

- 1.1 This policy details the criteria to be considered when considering legal proceedings.

2. POWERS OF PROSECUTIONS

- 2.1 The Local Authority always has the discretion whether or not to prosecute for an offence and the decision to prosecute should be based on the circumstances of each case. The criteria for prosecution must, in general, be related to risk or the seriousness of the offence, rather than being a punitive response to minor technical regulatory transgressions. All factors in the relevant Codes of Practice must be taken into account.

3. POLICY

3.1 Prosecution Criteria

A breach of legislation will not automatically result in institution of legal proceedings. The circumstances, which are likely to warrant prosecution, may be characterised by one or more of the following criteria: -

- a) 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 in relation to those who disregard it.
- b) Where there has been reckless disregard for the health and safety of employees or others.
- c) Where there have been repeated breaches of legal requirements in a premise and it appears management is either un-willing or unable to deal adequately with them.
- d) Where a particular type of offence is prevalent in a particular area.
- e) Where there has been a serious accident/near miss or a case of disease arising from one or more substantial legal contravention's.
- f) Where a particular transgression has caused serious public alarm or disquiet.
- g) Where there are persistent poor standards for control of health and safety hazards.
- h) The offence involves a failure to comply in full or part with the requirements of one or more statutory notices unless there are very exceptional circumstances.

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- l) A Formal Caution has previously been issued for a similar offence.

3.2 Decision Making

- 3.2.1 The decision to institute legal proceedings does not preclude the issue of statutory notices or other enforcement action as well.
- 3.2.2 Investigation and decision-making will not be unduly prolonged or delayed and witnesses, complainants or other parties will be kept informed as to the progress of the case. In all cases, a decision will be made within two months following the end of investigations to ensure natural justice.
- 3.2.3 Before a prosecution proceeds, the Officer will be satisfied that there is admissible, substantial and reliable evidence that an identifiable person or company has committed a criminal offence. A *prima facie* case is not sufficient and the test to apply is whether there is *realistic* prospect of a conviction. The officer will take into account likely defences and also any possible mitigation that may be made.
- 3.2.4 If an officer is satisfied that there is sufficient evidence to warrant legal proceedings, then they must consider whether a prosecution serves the public interest. Particular consideration will be given to the wishes/interests of any victims who may not wish to pursue the matter or act as witnesses for the prosecution.
- 3.2.5 Throughout the decision-making process proper and informed legal advice will be taken.

3.3 Prosecution of Managers

Officers will only consider a prosecution of a manager when an act or omission leading to an offence being committed was within their managerial capacity. When contemplating such action the officer will consider:

- a) Whether the matter is clearly one over which the manager concerned had effective control;
- b) Whether the manager had personal knowledge of the circumstances surrounding the event that merits prosecution, although was not necessarily personally aware of the matters at fault;
- c) Whether the manager failed to take obvious steps to prevent the event that is the subject of the proposed prosecution;
- d) Whether the manager received previous advice or warning of their responsibilities in relation to the type of act or omission in question; and
- e) Where management is shared between two or more levels of managers, against whom it is possible to take proceedings. Only exceptionally should the more junior levels be prosecuted without similar action being taken against senior management.

3.4 Summary or Indictment?

Certain offences can be tried summarily or on indictment (known as *either way* offences) and in deciding whether to recommend prosecution or on indictment the officer will consider:

- a) The gravity of the offence;

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- b) The adequacy or otherwise of the powers of the summary court to punish the offence;
- c) The record of the offender;
- d) The magnitude of the risk; and
- e) Any circumstances causing particularly great public alarm.

3.5 **Manslaughter**

- 3.5.1 The officer will clarify at an early stage for an offence involving a workplace fatality, as to whether the circumstances meet the legal test for manslaughter.
- 3.5.2 The officer will consider whether an act of gross negligence by an individual resulted in a death at work.
- 3.5.3 If the officer is of the opinion that the accident passes the test for manslaughter, then they will refer the matter to the police or the Crown Prosecution Service, as appropriate.

3.6 **Procedural Matters**

- 3.6.1 Once a decision to instigate prosecution has been taken, the matter will be referred, without undue delay, to the person(s) designated in Part 3 of the policy, who may authorise prosecution action.
- 3.6.2 The matter will then be referred to the Local Authority Solicitor or other such Officer as appropriate, who is authorised to conduct legal proceedings. The procedure for the submission of case reports will be followed.
- 3.6.3 The Lead Authority will be advised of prosecutions taken and their outcome.
- 3.6.4 With respect to complaints, the complainant will always be advised of the outcome of the case.

PART 7 - USE OF FORMAL CAUTIONS

1. **PURPOSE**

- 1.1 The purpose of this document is to state the authority's policy with respect to: -
 - a) Identification of circumstances when it is appropriate to use a Formal Caution.
 - b) Confirmation that the use of Formal Cautions will be in accordance with the Home Office Circular 18/1994.
 - c) Identification of the "Cautioning Officer" by designation.
 - d) Course of action to be taken when a person declines the offer of a Formal Caution.
 - e) Other bodies or authorities to be notified, if appropriate.

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1.2 It is intended that the policy will ensure a consistent application of cautioning decisions.

2. THE AIM OF CAUTIONING

2.1 The aim of a Formal Caution is to: -

- a) Deal quickly and simply with less serious offenders;
- b) Divert them from unnecessary appearance in the criminal courts; and/or
- c) Reduce the chances of their re-offending.

3. POLICY

3.1 It is the policy of this authority that: -

- a) A person will only receive a Formal Caution when the circumstances of the offence meet the criteria identified in the Home Office Circular 18/1994.
- b) The Formal Caution will be administered by the "Cautioning Officer" from the Department who is at Head of Service level or above (Environmental Health Manager or Legal & Member Services Manager). Normally the caution will be administered in person by the "Cautioning Officer".

In *exceptional* circumstances the Caution may be administered by post.
- c) The offender will be advised in writing of the proposal to issue a Formal Caution.
- d) The Formal Caution will be in writing using the prescribed form. The person receiving the caution will sign two copies of the form; the person administering the caution will then sign each copy. One of the copies will then be issued to the person receiving the caution.
- e) Where the offender refuses to accept a caution or fails to return the signed copies within 14 days, consideration will be given to the institution of legal proceedings.

4. RECORDING OFFENCES

4.1 The circumstances of the offence will be recorded in the appropriate premise file and in a formal caution file.

5. OTHER ACTION

5.1 The Lead Authority will be notified of the details of the caution.

5.2 Where the offence relates to a complaint, the complainant will be notified that a formal caution has been issued.

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PART 8 - RELEVANT/REFERENCE DOCUMENTS

1. Health and Safety at Work etc. Act 1974 (as amended) *Available on OHSIS*
2. Deregulation and Contracting Out Act 1994. *Available on OHSIS*
3. Home Office Circular 18/1994 - The Cautioning of Offenders. *Available on file FD2 Health and Safety filing*
4. Police and Criminal Evidence Act 1984 and associated Codes of Practice. *Available in Stones Justice Manuals*
5. Criminal Procedure & Investigations Act 1996 and associated Code of Practice. *Available in Stones Justice Manuals*
6. Crown Prosecution Service: The Code for Crown Prosecutors (June 1994). *Available on file G59/2 Courts (Legal Services)*
7. Company Directors' Disqualification Act 1986. *Available in Stones Justice Manuals*
8. HELA Documents: *Available on Hela Website www.hse.gov.uk*
 - a) Choice of Appropriate Enforcement Procedure (22/1);
 - b) Indemnification of Officers (22/3);
 - c) Investigation of Complaints (22/5);
 - d) Notice Procedures - Wording (22/6);
 - e) Appointment of Local Authority Inspectors (22/8)
 - f) Enforcement Responsibilities (23/1 to 23/11);
 - g) Amendments to Health and Safety at Work etc. Act 1974 (38/1);
 - h) Lead Authority Partnership Scheme ((44/1 to 44/17);
 - i) Guidance on Possible Manslaughter Cases (45/4);
 - j) Proceedings taken under Health and Safety etc. Act 1974, Section 2 (45/6);
 - k) The Criminal Procedure and Investigations Act 1996 (45/16); and Strategy for Small Firms (12/97).
9. HSC Section 18 Guidance:
10. Enforcement Concordat (3/98)- Cabinet Office (Local Government Association). *(Legal Services)*
11. Health & Safety (Enforcing Authority) Regulations 1998. *Available on OHSIS*