

Revised Draft

Rochford District Council

Enforcement Policy
Housing, Health & Community Care

Enforcement Policy

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1. Introduction

- 1.1 Fair and effective enforcement is essential to protect the health, safety and interests of the residents, visitors and businesses of the Rochford District. Even when dealing with a minor matter, a decision about enforcement action has serious implications for all involved; the general public, businesses, victims, witnesses and defendants. The Housing, Health and Community Care (HHCC) Division applies this policy so that it can make fair and consistent decisions about enforcement.
- 1.2 The Policy is also designed to make sure that everyone knows the principles that the division applies when carrying out enforcement work. By applying the same principles, everyone involved in the process is helping to treat stakeholders fairly but effectively.
- 1.3 The division is committed to protecting the public and the environment by the fair, consistent and transparent enforcement of relevant legislation.

2. Approval

- 2.1 Rochford District Council has adopted the Government's Enforcement Concordat and is working towards putting into place policies, procedures and plans that deliver effective, efficient, public services. The HHCC Enforcement Policy was approved by the Community Services Committee

3. Scope

- 3.1 This policy applies to the enforcement activities under the legislation enforced by Environmental Protection, Safety, Food & Regulation and Residential Services Units of the HHCC Division.
- 3.2 Enforcement, in the context of this policy, includes action carried out in the exercise of, or against the background of, statutory enforcement powers. This is not limited to formal enforcement action such as prosecution, and includes, for example, the inspection of premises for the purpose of checking compliance with acts and regulations, and the provision of advice to aid compliance.

4. Access to the Policy

- 4.1 This policy is available on the Council's web site and in hard copy at the Council's offices. It can be ordered by telephoning 01702 318160, e mailing environmental.health@rochford.gov.uk or by writing to the Head of Housing, Health & Community Care, Rochford District Council, South Street, Rochford, Essex SS4 1BW. The Enforcement Concordat is available from the Head of Administrative & Member Services at the same address
- 4.2 On request, this policy will be made available on tape, in Braille, large type, or in a language other than English.

5. General Principles

- 5.1 Each case is unique and must be considered on its own merits. There are, however, general principles that apply in the way each case must be approached. These are laid out in this policy and in the Enforcement Concordat. Detailed principles and guidance on health and safety enforcement is contained in the Health & Safety Commission's Enforcement Policy Statement, which the Council will also follow. This includes the criteria that will be used to select which complaints or reports of injury or occupational ill-health will be investigated.
- 5.2 Enforcement will be targeted primarily on those whose activities give rise to the most serious risks or where the hazards are least well controlled. Action will be focused on the duty holders who are responsible for the risk and who are best placed to control it.
- 5.3 HHCC staff must be fair, independent and objective. They must not let any personal views about issues such as ethnic or national origin, sex, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender influence their decisions. They must not be affected by improper or undue pressure from any source.
- 5.4 Where necessary, appropriate and practicable, HHCC staff will carry out planned enforcement activities outside of normal working hours.

- 5.5 The HHCC division is a public authority for the purposes of the Human Rights Act 1998. Staff must apply the principles of the European Convention on Human Rights in accordance with the Act.

6. Service Requests

- 6.1 Service requests which may result in enforcement action against a business or individual will be notified to that business or individual as soon as is practicable, except in the circumstances described in 6.2 below. During the progression of enforcement action that business or individual will be further notified of progress and any new information.
- 6.2 In circumstances where notification could impede enforcement action, notification will not take place until those circumstances no longer exist.

7. Deciding the action to take

There are two issues to determine. The first is what level of enforcement action to take. The second is that, if the first decision is to take formal enforcement action, then is that action viable and appropriate.

Test 1: What level of enforcement action to take

This can be one, or a number, of the following.

- Prosecution
- Prosecution on Indictment (i.e. in a higher court)
- Revocation of license
- Injunction
- Seizure
- Forfeiture Proceedings
- Formal Caution
- Formal Notice
- Written warning and advice
- Verbal warning and advice
- Revisit of premises
- No action

Prosecution

- 7.1 In order to take forward prosecution, the individual or organisation must meet one or more of the following criteria:
- Blatant disregard for the law, particularly where the economic advantage of breaking the law is substantial and the law abiding are placed at a disadvantage to those who disregard it,

- Reckless disregard for the health and safety of workpeople or others.
- Substantial or serious legal contraventions.
- Engaged in fraudulent activity,
- Deliberately or persistently breached legal obligations, which were likely to cause material loss or harm to others,
- Deliberately or persistently ignored written warnings or formal notices,
- Endangered, to a serious degree, the health, safety or well being of people, animals or the environment,
- Obstructed an officer undertaking his or her duties.

Prosecution on Indictment

7.2 In deciding whether to prosecute on indictment, the following factors will be considered:

- The gravity of the offence;
- The adequacy or otherwise of the powers of the summary court to punish the offence;
- The record of the offender.
- The offender's previous response to advice or other enforcement.
- Any circumstances causing particular public alarm.

Revocation of licence

7.3 In order to warrant revocation of a licence, the individual or organisation must meet one or more of the following criteria :

- Blatant disregard for the law, particularly where the economic advantage of breaking the law is substantial and the law abiding are placed at a disadvantage to those who disregard it,
- Reckless disregard for the health and safety of workpeople or others.
- Substantial or serious legal contraventions.
- Engaged in fraudulent activity,
- Deliberately or persistently breached legal obligations, which were likely to cause material loss or harm to others,
- Deliberately or persistently ignored written warnings or formal notices,
- Endangered, to a serious degree, the health, safety or well being of people, animals or the environment,
- Obstructed an officer undertaking his or her duties.

Injunction

7.4 In the case of immediate risk to health, safety or the environment, or where Senior Officers agree that an injunction is a more appropriate course of enforcement action than any other, then injunctions will be used as an enforcement measure to remedy contraventions or dangerous circumstances.

Seizure

- 7.5 The Council has powers under various pieces of legislation to seize faulty, dangerous, unwholesome or contaminated goods, food, or equipment responsible for causing a noise nuisance, to prevent them causing nuisance or harm to consumers, employees, other businesses or residents. When goods are seized the person from whom the goods are taken will be given an appropriate receipt. If unfit food is seized, it will be produced before a Magistrate as soon as possible for them to confirm the seizure and consider if the food is unfit. If the Magistrate does not condemn the food, it will be returned to the owner who will be entitled to compensation for any loss suffered. Full details of our actions will always be given to the offender when this power is exercised.

Formal Caution

- 7.8 This procedure derives from advice issued by the Home Office and is used as a final warning where prosecution is not appropriate. For a formal caution to be issued a number of criteria must be satisfied:

- (i) sufficient evidence must be available to prove the case;
- (ii) the offender must admit the offence;
- (iii) the offender must agree to be cautioned;
- (iv) the offence must not have been committed by the offender before.

Where a company may have branches outside of the LA Area, a record of the Formal Caution will be sent to the Office of Fair Trading and the Local Authority Co-ordinators of Regulatory Services (LACORS) if appropriate, and will be kept on file for 3 years. If the offender commits a further offence, the Formal Caution may influence a decision to take a prosecution. If during the time the Formal Caution is in force the offender pleads guilty to, or is found guilty of, committing another offence anywhere in England and Wales, the caution may be cited in court, and this may influence the severity of the sentence that the court imposes. Where a company/individual declines the offer of a formal caution, the Council will instigate legal proceedings.

Formal Notice

- 7.9 Notices are served to require offenders to cease contravening activities, or give offenders reasonable time to rectify a contravention. Notices may require contravening activities to cease immediately where the circumstances relating to health, safety, environmental damage or nuisance demand. In other circumstances, the time allowed must be reasonable, but must also take into account the health, safety, environmental damage or nuisance implications of the contravention.

Written warning and advice

- 7.10 For some contraventions the offender will be sent a letter clearly identifying the contraventions, giving advice on how to put them right and including a deadline by

which this must be done. Failure to comply could result in a notice being served or more severe enforcement action being taken. The time allowed must be reasonable, but must also take into account the health, safety, environmental damage or nuisance implications of the contravention.

Verbal warning and advice

- 7.11 For minor breaches of the law the offender will be verbally advised, clearly identifying the contraventions, giving advice on how to put them right and including a deadline by which this must be done. Failure to comply could result in more severe enforcement action being taken. The time allowed must be reasonable, but must also take into account the health, safety, environmental damage or nuisance implications of the contravention.

Revisit of premises

- 7.12 Following a formal notice, the premises will be revisited to check compliance has been achieved. For minor contraventions, Officers may advise that a revisit may be carried out. Officers will then decide whether to make a revisit depending upon the health, safety, environmental damage or nuisance implications of the contravention, and the perceived likely responding action of the offender to the verbal advice.

No action

- 7.13 Some contraventions may not warrant any action. This can be where the cost of compliance to the offender outweighs the detrimental impact of the contravention on the community, or the cost of the required enforcement action to the Council outweighs the detrimental impact of the contravention on the community. A decision of no action may be taken where formal enforcement is inappropriate in the circumstances, such as where a trader has ceased to trade, the offender is elderly and frail and formal action would be likely to seriously damage their well being, or where the action is not in the public interest.

Test 2: Determining whether Formal Enforcement Action is viable and appropriate

- 7.14 There are two stages in the decision to take formal enforcement action. The first stage is the evidential test. If the case does not pass the evidential test, it must not go ahead, no matter how important or serious it may be. If the case does meet the evidential test, Senior Officers must decide if formal enforcement action is needed in the public interest.

- 7.15 HHCC will only start, and continue, with formal enforcement action when the case has passed both tests. Paragraphs 7.16 to 7.22 below detail how this policy applies to the consideration of taking a prosecution. The principles

outlined apply equally to the other types of formal enforcement action that are available.

The Evidential Test

- 7.16 Senior Officers must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. A realistic prospect of conviction is an objective test. It means that a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a separate test from the one that the criminal courts themselves must apply. A jury or magistrates' court should only convict if satisfied so that it is sure of a defendant's guilt.
- 7.17 When deciding whether there is enough evidence to prosecute, Senior Officers must consider whether the evidence can be used and is reliable.

The Public Interest Test

- 7.18 The public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. A prosecution will usually take place unless there are public interest factors tending against prosecution which clearly outweigh those tending in favour. Although there may be public interest factors against prosecution in a particular case, often the prosecution should go ahead and those factors should be put to the court for consideration when sentence is being passed.
- 7.19 Senior Officers must balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the accused. Some factors may increase the need to prosecute but others may suggest that another course of action would be better.

The following lists of some common public interest factors, both for and against prosecution, are not exhaustive. The factors that apply will depend on the facts in each case.

Some common public interest factors in favour of prosecution.

- 7.20 The more serious the offence, the more likely it is that a prosecution will be in the public interest. A prosecution is likely to be appropriate if:
- a conviction is likely to result in a significant sentence;
 - the evidence shows that the defendant was a ringleader or an organiser of the offence;
 - there is evidence that the offence was premeditated;
 - the victim of the offence was vulnerable, has been put in considerable fear, or suffered personal, damage or disturbance;
 - the offence was motivated by any form of discrimination against the victim's ethnic or national origin, sex, religious beliefs, political views or sexual orientation, or the

suspect demonstrated hostility towards the victim based on any of those characteristics;

- there is a marked difference between the actual or mental ages of the defendant and the victim, or if there is any element of corruption;
- the defendant's previous convictions or cautions are relevant to the present offence;
- there are grounds for believing that the offence is likely to be continued or repeated, for example, by a history of recurring conduct;
- the offender will have made a financial gain from the offence.

Some common public interest factors against prosecution

7.21 A prosecution is less likely to be appropriate if:

- the court is likely to impose a nominal penalty;
- the defendant has already been made the subject of a sentence and any further conviction would be unlikely to result in the imposition of an additional sentence or order, unless the nature of the particular offence requires a prosecution;
- the offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence);
- the loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement;
- there has been a long delay between the offence taking place and the date of the trial, unless:
 - the offence is serious;
 - the delay has been caused in whole or in part by the defendant;
 - the offence has only recently come to light; or
 - the complexity of the offence has meant that there has been a long investigation;
- a prosecution is likely to have a bad effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence;
- the defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is a real possibility that it may be repeated.

7.22 Deciding on the public interest is not simply a matter of adding up the number of factors on each side. Senior Officers must decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

8. Liaison

8.1 The enforcement services within the HHCC division will co-ordinate their enforcement activity to maximise the effective enforcement of any matters that are related to more than one of the services.

8.2 Where an enforcement matter affects a wide geographical area beyond the District's boundaries, or involves enforcement by one or more other local authorities or organisations or where the business has a Home or Lead Authority, all relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activity co-ordinated with them.

- 8.3 Where there has been a breach of the law leading to a work-related death, Senior Officers will consider whether the circumstances of the case might justify a charge of manslaughter and will liaise with the Police, Coroners and the Crown Prosecution Service (CPS). If evidence is found suggesting manslaughter, the case will be passed on to the Police or, where appropriate, the CPS. If the Police or the CPS decide not to pursue a manslaughter case, Senior Officers will decide if a health and safety prosecution is appropriate.
- 8.4 Monitoring that appropriate and full liaison is undertaken will be by means of scheduled internal quality audits.

9. Offences

- 9.1 HHCC managers, in conjunction with the Council's legal team, will select offences which:
- reflect the seriousness of the offence,
 - give the court adequate sentencing powers,
 - are made to the appropriate court,
 - enable the case to be presented in a clear and simple way.

10. Accepting Guilty Pleas

- 10.1 Defendants may want to plead guilty to some, but not all, of the charges. Alternatively, they may want to plead guilty to a different, possibly less serious, charge because they are admitting only part of the offence. The HHCC managers, in conjunction with the Council's legal team, should only accept the defendant's plea if they think the court is able to pass a sentence that matches the seriousness of the offending. The HHCC managers, in conjunction with the Council's legal team, will never accept a guilty plea because it is convenient.
- 10.2 In cases where a defendant pleads guilty to the charges but on the basis of facts that are different from the prosecution case, and where this may significantly affect sentence, the Court should be invited to hear evidence to determine what happened, and then sentence on that basis.

11. Considering the views of those affected by offences

- 11.1 The HHCC division undertakes enforcement on behalf of the public at large and not just in the interests of any particular individual or group. However, when considering the public interest test (see section 7 above) the consequences for those affected by the offence, of the decision whether or not, and how to take enforcement action, and any views expressed by those affected will be taken into account.

- 11.2 Those people affected by the offence will be told about any decision that makes a significant difference to the case in which they are involved.

12. The interests of the District's stakeholders

- 12.1 Where particular local circumstances dictate, enforcement activity will, where practicable, take account of those circumstances to minimise any adverse effects of enforcement activity on legitimate businesses and individuals.
- 12.2 When practicable and beneficial to local businesses, standards of competitors will be monitored.

13. Re-starting a prosecution

- 13.1 People should be able to rely on enforcement decisions taken by the HHCC managers. Normally, if a suspect or defendant is advised that there will not be a prosecution, or that the enforcement action has been stopped, that is the end of the matter and the case will not start again. But occasionally there are special reasons why enforcement action will re-start, particularly if the case is serious. These reasons include:
- rare cases where a new look at the original decision shows that it was clearly wrong and should not be allowed to stand,
 - cases, which are stopped so that more evidence, which is likely to become available in the fairly near future, can, be collected and prepared. In these cases, the defendant will be told that the enforcement action may well start again,
 - cases which are stopped because of a lack of evidence but where more significant evidence is discovered later.

14. Code for Crown Prosecutors

- 14.1 This policy takes account of all the relevant parts of the Code for Crown Prosecutors.

15. Enforcement Policy implementation

- 15.1 Instances of non-compliance with this policy will be recorded and reported to the Head of Housing, Health & Community Care, who will instigate appropriate action.