

From: wbhalert
To: wbhalert
Date: 19 May 2010 11:59 pm
Subject: Enforcement Policy Consultation

The Public Protection Team at Wealden DC have a legal duty to publish their enforcement policy to inform businesses and the public of how they will secure compliance with the law. Before we do we would like to hear your views on the policy, which is attached.

It would help us if you could answer the following questions by email.

1. Were you aware that the Public Protection Team had an enforcement policy?
2. If not, how should we promote or publicise this in the future?
3. Did you understand the policy?
4. Are the reasons for enforcement clear?
5. Are the types of enforcement action clear?
6. Please let us have any comments you would like to make about the policy.

Thank you for taking the time to respond to this consultation. Your views are important and will help us to improve the way we work with businesses and take action against those that do not meet their legal duties.

Rob Crouch
Public Protection Team Manager.

This message was sent by Wealden District Council's Business Help Services.

Visit the Wealden Business Help website www.wealdenbusinesshelp.org.uk or Wealden's main website www.wealden.gov.uk

Community Services Directorate

Public Protection Team Enforcement Policy

May 2010
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Equality and Diversity

Equality is central to the Council's objectives and values. All our services are provided with equity and fairness to everyone, whatever their disability, gender identity, race, religion, belief or sexual orientation.

An equality impact assessment was made on this policy on 30th March 2010.

Introduction

It is the Council's aim to protect the health, safety and well being of those who live in, work in or visit Wealden.

This aim is translated into [corporate objectives](#) that guide its service delivery. For the Public Protection Team, this means:

- protecting people by improving the safety of the food they eat
- safeguarding the health, safety and welfare of employees and the public from harm arising from work activities
- providing a trusted source of advice, training and information

The Public Protection Team believes the best way to achieve these objectives is by working with businesses to improve standards. This belief underpins all inspection programmes and the investigation of complaints and incidents.

However, the Council accepts that where working with businesses does not achieve its goals, or where conditions and activities pose a serious risk to safety or health, then further action may be needed to protect people and secure compliance with the law.

The appropriate use of enforcement powers, including prosecution, is important, both to secure compliance with the law and to ensure that those who have duties and responsibilities may be held to account for their failures to safeguard health, safety and well being.

This enforcement policy sets out the general principles and approach that officers of the Public Protection Team are expected to follow. It covers the following areas of work:

Food safety, including inspection of food businesses, sampling of foods, control of food poisoning or food borne disease, detention and seizure of unfit food, and investigation of consumer complaints about food or food establishments.

Health and Safety at work, including inspection of businesses, controlling or prohibiting dangerous activities or equipment, and investigation of complaints, incidents or workplace accidents. (As enforcement is shared with the Health and Safety Executive (HSE) local authorities only cover businesses in the retail, wholesale and leisure sectors. These include warehouses, stores, shops, hotels, catering, leisure activities and centres, offices, caravan sites and places of religious worship. However, the recent introduction of a flexible warranting scheme in Sussex means officers can now take action to deal with serious incidents in premises assigned to HSE, or in other local authority areas.)

Smoke free, including inspection of workplaces and work vehicles, enclosed public places and buildings, and the investigation of complaints

Principles

The Public Protection Team believes in firm but fair enforcement that meets the requirements of the [Regulators Compliance Code 2007](#) and the [Legislative and Regulatory Reform Act 2006](#).

The Team also follows national guidance issued by the Food Standards Agency (FSA), the Health Protection Agency (HPA), Health and Safety Executive (HSE), and LACoRS (Local Authorities Coordinators of Regulatory Services).

The term 'enforcement' has a wide meaning and applies to all dealings between the Council and those who have duties under the law (proprietors, owners and occupiers of buildings and businesses, employers, the self employed and employees)

All enforcement is informed by the principles of proportionality in applying the law and securing compliance; targeting of action; consistency of approach; transparency about how the regulator operates and what those regulated may expect; and, accountability for the regulator's actions.

These principles should apply both to enforcement in particular cases and Wealden's management of enforcement activities.

Proportionality

This means relating enforcement action to the risks. Any action taken should be proportionate to the risks, the seriousness of the breach of law, and the consequences – either real or potential. Put simply, the greater the risk the greater the action required by duty holders.

Officers need to take account of how far a duty holder has fallen short of what the law requires and the extent of the risks to people arising from that breach. In doing this officers must balance what can reasonably be expected from duty holders against what is required to protect people. In some cases the risks may be so serious they cannot be permitted irrespective of the consequences.

Targeting

Targeting means focusing contact and actions on those whose activities give rise to the most serious risks, or where the hazards are least well controlled. In addition, action should be focused on those who are responsible for the risk, or best placed to control it. In most cases this will be the employer or owner of the business, but it does not exclude action also being taken against managers or employees.

In carrying out inspection programmes the Public Protection Team follows national guidance to target the highest risk businesses or activities. These are often based on national priorities for areas of work known to cause death or significant injury or ill health. In terms of response to incidents, the Council has performance targets to ensure the most serious issues are dealt with quickly.

Consistency

This does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends. However, officers need to take account of many variables, such as:

- the scale of the impact of any breach
- the risk to safety and health
- the attitude and actions of duty holders and their representatives
- any history of previous incidents or breaches
- national or local guidance, policies and procedures

Decisions on any action to be taken are a matter of professional judgement and the exercise of discretion. The Council's approach to authorising officers based on their level of competence helps to promote consistency.

Transparency

Transparency is about helping duty holders to understand what is expected of them and what they should expect from officers. To achieve this the Council will ensure:

- the reasons for any remedial action demanded, and the time given to comply, are clearly explained (in writing if requested).
- a distinction is made between legal requirements and best practice or recommendations
- duty holders have an opportunity to discuss what is required to comply with the law before any formal enforcement action is taken, unless urgent action is necessary to deal with a serious risk or to prevent evidence being destroyed
- where urgent action is taken a written explanation of the reasons will be provided as soon as practicable after the event
- written information on rights of appeal is given at the time formal enforcement action is taken
- duty holders are aware of what they can expect [when an officer calls](#) to check compliance with law

Responsibilities

Accountability

Regulators are accountable to the public for their actions. This means they must have policies and standards they can be judged against, and an effective and easily accessible [complaints procedure](#) for those who feel aggrieved by any action taken against them.

Authorisation and competency

Officers undertaking enforcement will be suitably qualified and trained to ensure they are competent. Training is provided in house and externally to cover both technical and legal issues. Officers and their work are regularly assessed to ensure they follow the policies and procedures in the Public Protection Team's management systems, and meet the enforcement principles above.

All officers are authorised in writing by the Council. There are different levels of authority that officers can achieve, based on their knowledge, experience, skills and qualifications. A higher level of authorisation is granted to more competent and experienced officers.

Education

The Public Protection Team's goal is to work with businesses and their representatives to improve standards. While officers cannot act as consultants, they have a wealth of knowledge and experience that can help solve many problems and demonstrate the most practical ways to comply with the law or aim for even higher standards.

After an inspection the very least officers will give is verbal advice. This may be advice to comply with a legal requirement or recommendations of good practice to help businesses improve further. Verbal advice is usually given where duty holders generally comply with or exceed legal requirements and have no significant breaches.

Training and Information

Like many other institutions and private companies the Public Protection Team offers [training courses for businesses](#), managers and employees in food hygiene and occupational health and safety to help improve knowledge and standards in the workplace. Leaflets, guidance and other information and news is also available from Wealden Council offices, or downloadable from its websites. Newsletters and email alerts are also sent to businesses periodically to advise of any issues of concern or interest.

Under Local Business Partnership arrangements officers from the Public Protection Team invite businesses and their representatives to a focus group meeting from time to time to consider a matter of interest or concern. These focus group meetings allow both officers and businesses an opportunity to share and exchange information and views to help improve understanding and standards.

Officers also work with colleagues in Economic Development to improve the Wealden Business Help website, which provides a wealth of pertinent information and guidance on many aspects of running a business. Partnership working helps to minimise duplication in accordance with the principles of the [Hampton Report](#), which aimed to reduce burdens on business. This means businesses should not be asked for the same information by both services.

Enforcement

The term has a wide meaning and covers all dealings between officers of the Public Protection Team and all those who have legal duties and responsibilities. These 'duty holders' include employers, owners and occupiers, food business operators, the self employed and employees.

The ultimate purpose of enforcement is to ensure duty holders manage and control risks effectively to prevent harm. Enforcement action must:

- ensure duty holders take immediate action to deal with serious risks
- promote and achieve sustained compliance with the law
- ensure duty holders who breach the law are held to account

Enforcement is distinct from civil claims for compensation and independent of them.

Enforcement is carried out in accordance with guidance from national bodies, such as the Foods Standards Agency and Health and Safety Executive, and meets the requirements of the [Regulators Compliance Code 2007](#). When interviewing those suspected of committing an offence officer will follow the requirements of the Police and Criminal Evidence Act 1984 ([PACE](#)) and its relevant codes of practice.

Only officers authorised in writing by the Council can undertake enforcement. The level of authority granted to these officers will depend on their qualifications, knowledge, training and experience. Newly qualified officers or those new to food, health and safety at work or smoke free will be assessed by the Public Protection Team Manager for competency and authorised or trained accordingly.

In addition to complying with national guidance, authorised officers will follow the Public Protection Team's own management systems, policies and procedures. This will help to ensure officers act competently, consistently and in accordance with the powers granted to them.

In cases involving a work-related death, officers will investigate in accordance with the principles laid down in [Work-related deaths: A protocol for liaison](#). This protocol has been agreed by HSE, the Association of Chief Police Officers (ACPO), the British Transport Police, the Crown Prosecution Service (CPS), the Local Government Association (LGA) and the Office of Rail Regulation (ORR). Other non-signatory organisations, such as the Maritime and Coastguard Agency (MCA), Civil Aviation Authority (CAA) and the Chief Fire Officers

Association (CFOA), have agreed that they will take account of the protocol when responding to work-related deaths.

The Council will assess how the **Human Rights Act 1998** bears on any enforcement action it undertakes. This will include inspections, investigation of offences, prosecutions, the use of statutory enforcement powers and proceedings for injunctions to restrain breaches of the law.

The relevant Articles of the Convention are:

- Article 6: right to a fair trial and 'minimum rights' of those charged with offences.
- Article 7: no punishment without law, for example, criminal legislation cannot have retrospective effect.
- Article 8: respect for private and family life. Article 10: freedom of expression.
- Article 11: freedom of assembly and association. First Protocol, Article 1: entitlement to peaceful enjoyment of possessions.

The Council is committed to equality in all respects and its officers will ensure that enforcement action is taken consistently and fairly without any discrimination on any grounds such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status (Article 14). The Council also recognises its duties and responsibilities under the Race Relations (Amendment) Act 2000.

Methods of Enforcement

The method of enforcement chosen will depend upon a number of factors, including:

the seriousness of any breach of the law

- the past history or record of compliance of the offender
- the consequences of non compliance
- the mandatory or discretionary duties placed on the offender
- the likely effectiveness of the various enforcement options
- the different means of remedying any breach
- the impact of the enforcement choice in encouraging others to comply with legal requirements

When all relevant factors have been considered the Council has a range of options available, and may decide to

take no action other than to record the incident

- take informal action
- serve statutory notice or seize
- issue a simple caution
- prosecute

Informal Action

This includes verbal or written requirements and advice. Following an inspection or investigation officers will discuss any issues found with the duty holder. Informal action is usually appropriate where

- any breach of the law is not serious enough to warrant formal action
- the past history or record indicates informal action is likely to achieve compliance
- there is confidence in the duty holder
- the consequences of non compliance do not pose a significant risk to the public
- an effective solution within a suitable timescale can be agreed

Informal action will be recorded in writing on the Report of Visit form left by the officer and may be confirmed by letter, depending on the nature of any remedial action discussed, or if the duty holder requests it. In any written correspondence officers will distinguish between those matters that are legal requirements and those that are recommendations of good or best practice.

Formal Action

a. Statutory Notices

These are usually served

- to deal with significant or repeated breaches of the law
- where there is a history of non-compliance with informal action
- where standards are poor with little management awareness of statutory requirements
- where the consequences of non-compliance could be potentially serious to the public
- where serious contraventions need to be dealt with immediately

Officers will only serve notices where there is sufficient evidence to justify their issue. All relevant Codes of Practice and statutory guidance will be followed. This includes guidance on Primary, Home and Lead Authorities. While different in detail, these three schemes are for businesses that trade nationally or across local authority boundaries. To promote consistency, one authority takes the lead and works with the business to agree standards and policies. These are then communicated to other local authorities to ensure all branches of the business are dealt with in a similar way. In some cases, a Primary Authority can stipulate the issues other local authorities should focus their resources on. Further details on these schemes can be found at:

www.lbro.org.uk - primary authorities

www.lacors.gov.uk - home and lead authorities

Notices will include reasonable time limits for the completion of works to comply with the law. These time limits, and any works required, will be discussed and agreed where possible with the duty holder. Duty holders will also be advised in writing of their rights of appeal.

Primary, Home and Lead Authorities will be consulted before serving notices (except where immediate action is required), and advised of any subsequently served.

In the case of health and safety at work notices, employees or their nominated representatives will be informed of any formal action taken. Copies of notices that involve public safety or environmental implications will be placed on a register accessible to the public on request.

The types of notice officers can serve varies with the legislation and the offence committed, but includes:

- **Fixed Penalty Notices** – these are served for breaches of smoke free legislation, usually on the person smoking illegally in an enclosed public space. Fixed penalty notices can also be served on the person who owns or manages the premises where the offence was committed, or the owner of a business where the offence is committed within a work vehicle
- **Improvement Notices** – these are served under food or health and safety at work legislation for serious or repeated breaches of the law. They are often used for structural works to premises, or to deal with failings to provide systems, policies and procedures to protect workers or the public. Improvement notices are also used where duty holders have failed to respond to informal requests for works or actions. Duty holders can appeal against notices within 21 days of service. In the event of an appeal, notices will be suspended
- **Remedial Action Notices** – these can only be served in food businesses approved under Regulation (EC) No.853/2004. (Mainly manufacturers or processors of meat, fish, dairy or egg products) The notices can prohibit the use of machinery or part of a food establishment, impose conditions or prohibit certain processes or operation. Once the breach is remedied the notice is withdrawn.
- **Prohibition Notices** – these are served under health and safety at work legislation to deal with imminent risk of serious personal injury. Notices will immediately prohibit any actions, processes or work to protect people from danger, injury or ill health. Notices are served on those who have control of the processes or work. This could be anyone from an employee to the managing director, depending on circumstances. Persons receiving a Prohibition Notice can appeal within 21 days, but the Notice is not suspended. (In some cases a Prohibition Notice can be deferred, so it takes effect later. This is used where a process or activity will happen in the future and an officer believes it will cause a risk of serious personal injury when it starts.)
- **Emergency Prohibition Notices** – these are served under food safety legislation where officers find an imminent risk of injury to health, such as an infestation of rats or cockroaches, or filthy or insanitary food areas or equipment. Such notices will only be served after consultation with the Public Protection Team Manager or other senior manager within the service. If the risks are not properly dealt with the Council will apply to the Magistrates Court for a Hygiene Prohibition Order within 3 days. A written explanation of why the action was taken will be given at the time and confirmed within 5 days.

b. Simple Cautions

These are used where there are sufficient grounds for prosecution, but where this is not the most appropriate form of action. Simple cautions are used to

- deal quickly with less serious offences
- deal with serious offences where there may be mitigating or extenuating circumstances
- divert less serious offences away from the courts

- reduce the chances of repeat offences.

Simple cautions can only be issued where

- there is evidence of the suspected offender's guilt sufficient to give a realistic chance of prosecution
- the suspected offender admits the offence
- the suspected offender is informed of the significance of the caution and gives an informed consent to being cautioned

Simple cautions will be used in accordance with [Home Office Circular 016/2008](#). Interested organisations, such as the Office of Fair Trading and any Primary, Home or Lead Authority will be advised of any simple cautions issued.

Where a suspected offender declines a simple caution a prosecution will be taken.

c. Prosecutions

Prosecutions are an important part of the enforcement process and aim to punish wrongdoing, avoid recurrence and act as a deterrent to others. Prosecutions may be used in conjunction with other enforcement measures, such as prohibition notices.

As prosecution is a serious matter it is only taken after full consideration of the case and evidence, the implications and consequences. Decisions about prosecution will take the Code for Crown Prosecutors and Attorney General's guidelines into account. By law the council will prosecute all cases other than health and safety at work offences, which are taken in the name of the authorised officer or inspector.

Sufficiency of evidence – The council will not commence or continue any prosecution unless it is satisfied it has sufficient admissible and reliable evidence that an offence has been committed, and that there is a realistic prospect of conviction.

Public interest – a prosecution will not commence or continue unless it is in the public interest to do so.

Companies and individuals – proceedings will be taken against those responsible for an offence. In prosecuting a company the Council will also consider any part played by officers of the company, including directors, managers, and the company secretary, especially where the offence was committed with their consent or due to their neglect or omission.

In taking any prosecution the Council will always seek to recover its costs.

In deciding whether or not to take a prosecution the Council will consider:

- the seriousness of the offence
- effect of the offence on the offender or victim's health, either mental or physical, balanced against the seriousness of the offence
- foreseeability of the offence or the circumstances leading to it

- intent of the offender, individually or corporately, or evidence of premeditation
- evidence of disregard of legal standards for financial reward
- any explanation offered by the offender or company
- history of compliance or offending
- attitude of the offender
- the views of any victims
- deterrent effect of a prosecution on the offender and others
- the penalty that is likely to be imposed

These factors are not exhaustive and will depend on the circumstances of each case. Neither do all the factors have to be in favour of a prosecution – rather that the balance are in favour.

Generally speaking, employees will not be prosecuted unless the offence is serious and they have received a prior warning from either the employer or the council. In either case, special consideration will be given to the action taken against employees.

Where there is sufficient evidence the Council or authorised inspector for health and safety will normally prosecute in the following circumstances:

- significant consequences for the public, or employees', health and safety
- excessive or persistent breaches of legal requirements
- failure to comply adequately with formal remedial requirements
- reckless disregard for management or quality standards
- failure to supply information without reasonable excuse or knowingly supplying false or misleading information
- obstruction of Council officers when carrying out their duties
- carrying out operations without a relevant licence
- where the offence has particular implications for vulnerable persons, such as the elderly or young

Appendix One – penalties for food safety offences

Failure to Comply with an improvement or emergency prohibition notice/order issued under the Food Hygiene (England) Regulations 2006.

Lower court maximum	£5,000 and/or 6 months' imprisonment
Higher court maximum	Unlimited fine and/or 2 years' imprisonment

Breach of Article 14 of Regulation (EC) 178/2002 or Section 14 of the Food Safety Act 1990 which deals with rendering food injurious to health, selling food not complying with food safety requirements and selling food not of the nature or substance or quality demanded.

Lower court maximum	£20 000 and/or 6 months' imprisonment
Higher court maximum	Unlimited fine and/or 2 years' imprisonment

Breach of Section 15 of the Food Hygiene (England) Regulations 2006 that deals with obstruction of officers without reasonable cause.

Lower court maximum	£5,000 and/or 3 months' imprisonment
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Other breaches such as requirements to register food premises (Article 6 of Regulation (EC) 852/2004) and falsely describing or presenting food (Section 15 of the Food Safety Act 1990)

Lower court maximum	£5,000 and/or 6 months imprisonment
Higher court maximum	Unlimited fine and/or 2 years' imprisonment

Appendix Two – penalties for health and safety at work offences

The Health and Safety at Work etc Act 1974 (the HSW Act), section 33 (as amended) sets out the offences and maximum penalties under health and safety legislation.

Failing to comply with an improvement or prohibition notice, or a court remedy order (issued under the HSW Act sections 21, 22 and 42 respectively):

Lower court maximum	£20,000 and/or 12 months' imprisonment*
Higher court maximum	Unlimited fine and/or 2 years' imprisonment

Breach of sections 2-6 of the HSW Act, which set out the general duties of employers, self-employed persons, persons who have control of premises, employees, manufacturers and suppliers to safeguard the health and safety of employees and members of the public who may be affected by work activities:

Lower court maximum	£20,000 and/or 12 months' imprisonment*
Higher court maximum	Unlimited fine and/or 2 years' imprisonment

Most other breaches of the HSW Act, contravening licence requirements and breaches of all health and safety regulations under the Act. Regulations impose both general and more specific duties, such as the requirements to carry out a suitable and sufficient risk assessment or to provide suitable personal protective equipment. Licensing requirements apply to high hazard activities such as nuclear installations and asbestos stripping:

Lower court maximum	£20,000 and/or 12 months' imprisonment*
Higher court maximum	Unlimited fine and/or 2 years' imprisonment

On conviction of directors for indictable offences in connection with the management of a company (all of the above, by virtue of the HSW Act sections 36 and 37), the courts may also make a disqualification order (Company Directors Disqualification Act 1986, sections 1 and 2). The courts have exercised this power following health and safety convictions. Health and safety inspectors draw this power to the court's attention whenever appropriate.

Lower court maximum	5 years' disqualification
Higher court maximum	15 years' disqualification

Appendix Three – penalties for smoke free offences

The penalties and fines for the smokefree offences set out in the Health Act 2006 are:

- Smoking in a smokefree premises or vehicle: a fixed penalty notice of £50 (discounted to £30 if paid within 15 days from the issue of a notice) or a fine by a court not exceeding level 1 on the standard scale (up to £200)
- Failure to display no smoking signs in smokefree premises and vehicles as required by the new law: a fixed penalty notice of £200 (discounted to £150 if paid within 15 days from the issue of a notice) or a fine by a court not exceeding level 3 on the standard scale (up to £1000)
- Failing to prevent smoking in a smokefree premises or vehicle: a fine by a court not exceeding level 4 on the standard scale (up to £2500)

Appendix Four – glossary

HSE	Health and Safety Executive	A national body responsible for enforcing health and safety law, drawing up policy, procedures and guidance, and providing expert assistance
FSA	Food Standards Agency	An independent Government department set up to protect the public's health and consumer interests in relation to food. Provides guidance and assistance to local authorities
LACoRS	Local Authorities Coordinators of Regulatory Services	The local government central body responsible for overseeing local authority regulatory and related services in the UK
HPA	Health Protection Agency	The Health Protection Agency is an independent UK organisation set up to protect the public from threats to their health from infectious diseases and environmental hazards. It does this by providing advice and information to the general public, to health professionals such as doctors and nurses, and to national and local government
LBRO	Local Better Regulation Office	A national body that aims to reduce the regulatory burdens on business, while maintaining or even enhancing the current levels of public and environmental protection

Primary Authority	A statutory partnership with a single local authority, which provides robust and reliable advice for other councils to take into account when carrying out inspections or dealing with complaints or incidents. LBRO runs the Primary Authority Scheme
Home Authority	Similar to a primary authority except it is a voluntary arrangement between a food business and its main local authority. The scheme is managed by LACoRS.
Lead Authority	Similar to a primary authority except it is a voluntary arrangement between a business and its main local authority to promote consistency in health and safety at work inspections and investigations. The scheme is managed by LACoRS.