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ENVIRONMENTAL HEALTH STATEMENT OF ENFORCEMENT POLICY

1.0 Introduction

1.1 This Statement outlines the enforcement policy of Environmental Health Services of Castle Point Borough Council.

1.2 Wherever possible, officers will seek to find solutions that are arrived at by agreement and co-operation and will keep in mind the maxim that prevention is better than cure.

Officers are required to regulate activities across a wide range of businesses and in their professional dealings with every type of individual. Full regard will be made to the different abilities which are encountered, and to the importance of education and help, which they themselves are able to give, to help the business achieve compliance.

1.3 However, the aim behind much of the department's efforts is the protection of persons at work, the public and the environment, from harm caused by failure to comply with the safeguards provided for in law.

This being the case, there will be circumstances in which enforcement is unavoidable and the Council does not shrink from using its full legal powers, including prosecution, where it is necessary to do so.

1.4 There are two distinct facets to enforcement, which may be taken to mean either of the following:

a) Enforcement for Compliance. This ensures that the Council has programmes in place for monitoring compliance by businesses and individuals with the various pieces of legislation affecting them.

For example, there will be inspection programmes in place for food premises, workplaces, authorised processes and some privately rented accommodation.

Many such programmes are based upon risk, while others require inspections at pre-determined intervals, or set annual targets for the number of inspections to be made.

Because of the diversity of requirements under the different legislation and guidance, it is not practicable in this document to be prescriptive about the ways in which inspection programmes are organised and monitored.

However, the service has in place the means to arrange programmes or visits which will satisfy the needs of the particular legislation and the mechanism for monitoring, and these are included in specific procedural documents.

b) Enforcement for Non-Compliance. Enforcement action taken will be based upon an assessment of risk to public health. Any enforcement action will be focussed and will consider where the most important risks to public health are likely to be. However, although enforcement is related to risk there will be times where other factors such as the previous history of the legal compliance and confidence in the Management will also play a part in determining the nature of the response.

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

- a) Prosecution
- b) Simple Cautions
- c) The service of notices.
- d) Works in default, including seizure of equipment.
- e) Revocation (of licenses or authorisations)
- f) Written warnings (sometimes known as informal notices)

and the principles outlined in the Enforcement Concordat & the Regulator's Code in respect of those regulatory functions specified by order, and paragraphs 3.1 to 4.8, below, will be applied to all such actions.

The Regulator's Code is based on the Hampton Principles and was previously known as the Regulators compliance code. Its purpose is to promote efficient and effective approaches to regulatory inspection, intervention, and enforcement which improve regulatory outcomes without imposing unnecessary burdens upon businesses.

1.6 Enforcement action may be taken because of an incident, a complaint, or an inspection or an intervention.

2.0 Legal Provisions

2.1 Apart from the specific laws relating to the technical aspects of environmental health work, there are several other legal or semi-legal provisions relating to or having a bearing on enforcement as a whole.

These include:

- a) The Regulators Code

- b) The Legislative and Regulatory Reform Act 2006
- c) Regulatory Enforcement and Sanctions Act 2008
- d) Castle Point Borough Council's Corporate Enforcement Policy
- e) The Council's Prosecution Policy which incorporates and follows the Code for Crown Prosecutors, eighth edition.
- c) Police and Criminal Evidence Act (PACE)
- d) Regulation of Investigatory Powers Act
- e) Human Rights Act
- f) Freedom of Information Act
- g) Data Protection Act / General Data Protection Regulation
- h) Environmental Information Regulations
- i) Local Government Acts
- j) Employment legislation concerning diversity including the Equality Act.
- k) Codes of Practice/Guidance, such as those issued by the Food Standards Agency and the Health and Safety Executive.

2.2 Many of the above contain little more than a passing reference to the needs of enforcement whereas some, such as PACE and others, are fundamental.

Officers will comply with all the enforcement provisions of the above when they are relevant to a particular case.

2.3 Whenever possible, the Council will work in partnership with other agencies to achieve common goals on matters of mutual concern.

These Agencies will include, for example, the Environment Agency, UK Health Security Agency, Primary Care Trusts and the Health and Safety Executive, and many others, as may be appropriate.

3.0 Specific Considerations

3.1 The enforcement policy is based on firmness and fairness. Where it is necessary, enforcement will be undertaken without fear or favour

and without consideration of the race, ethnic background, religion, social status, colour, sex, or sexual orientation of any persons involved.

3.2 If any person exerts undue or improper pressure to influence a decision concerning enforcement, it will be reported without delay.

3.3 Generally, the level of enforcement contemplated will be the minimum at which a satisfactory solution is thought to be achievable.

4.0 Principles of Enforcement.

4.1 The principles outlined in paragraphs 4.2 to 4.8, below, will be always followed.

4.2 Procedures

Advice from officers will be clear and simple and will, on request, be confirmed in writing, explaining why any remedial works may be necessary and stating the timescale for progress and completion. A clear distinction will be made between legal requirements and recommendations of best or desirable practice.

Before formal action is taken, the opportunity may be provided to discuss the circumstances of the case and, if possible, resolve points of difference unless immediate action is required (for example in the interests of health and safety, environmental protection or to prevent evidence from being destroyed).

In circumstances where immediate action is necessary, an explanation of why such action was required will be given at the time or, if this is not practical, within 10 working days.

Where there are rights of appeal against specific actions, advice on the mechanism to be followed will be given in writing. Wherever possible, this will be included with the Enforcement Notice or other documentation.

4.3 Transparency

Transparency means enabling duty holders to understand what is expected of them. It also means working in such a way that it is easy for an outsider to understand how a particular course of action has been decided upon. Business expects to be told not only what it has to do, but also what it does not have to do to comply with the law. There must be a clear distinction in advice and instruction issued by the officers of the department on what is a legal requirement and what is good practice and recommendation. Officers should operate in such a way that it is clear to everyone concerned how a particular decision has been arrived at, considering that some information gathered is commercially or ethically sensitive.

4.4 Helpfulness

Officers will provide a courteous and efficient enforcement service and individual officers will identify themselves by name.

A contact telephone number will be provided for on-going discussions. Businesses and individuals will be actively encouraged to seek advice and information relating to the department's enforcement role.

4.5 Complaints

If business operators or members of the public indicate that they wish to complain about any aspect of enforcement work, officers will ensure that the mechanism for doing so is clearly explained.

4.6 Proportionality

Proportionality is the relating of enforcement action to risk. The level of enforcement action taken to achieve compliance should correspond to the risk posed to the safety and the health of the people affected and if compliance is not achieved. In other words, "the punishment should fit the crime". Assisting compliance is as important as detecting non-

compliance. Costs of compliance are to be minimised to ensure that any actions required by the Council are proportional to the risks involved and allow economic progress.

Where the law allows, officers will take account of the circumstances of a case and the attitude of the operator when considering the level of enforcement action.

4.7 Consistency

Consistency means taking a similar approach in similar circumstances to achieve similar ends. The aim is to achieve consistency in the advice given, the response to incidents and the ways in which statutory powers are used.

Consistency does not mean simple uniformity and officers will need to take account of many variables such as the scale of the risk, the attitude, and actions of those involved and any history of compliance, whether positive or negative. While consistency will be promoted there must always be an element of interpretation of and application of, the law depending on individual circumstances.

Decisions on enforcement action are a matter of professional judgement and officers will frequently be required to use discretion. Efforts will continue to develop arrangements for promoting consistency, including effective arrangements for liaison with neighbouring Authorities and other enforcing agencies. Every effort will be made to ensure consistent enforcement standards between local authorities. However, local circumstances may preclude an entirely uniform approach on all issues.

Taking a consistent approach sends the message to law-abiding businesses that they can be secure and that an economic "level playing field" has been created.

4.8 Targeting and Focusing

Having a targeted and focused enforcement approach means working primarily where the most serious risks are or where hazards are least well controlled. It also means that any action taken by Officers will be focused upon the person most able to control the dangers. To maximise its potential its resources will be targeted to those issues and places that are of the greatest concern to public health. All proactive inspections and visits will be planned according to the relevant risk of the operation at those premises.

Where enforcement action is necessary, that action will be directed towards the person or persons most accountable for the public health risk. Also, where there is conflict between the upholding of the law and public safety, the latter will always take priority, for instance the primary concern will be the prevention of a reoccurrence of an incident rather than prosecution of the person at fault.

5.0 Specific Enforcement Actions

The Procedures or guidance to be followed when conducting specific types of non-compliance enforcement are contained in the following paragraphs:

- a) Prosecution. Paragraphs 6.0-6.13
- b) Simple cautions. Paragraphs 7.0 - 7.5
- c) Notices. Paragraphs 8.0 - 8.4
- d) Works in default. Paragraphs 9.0 - 9.2
- e) Revocation. Paragraphs 10.0 - 10.5
- f) Written warnings. Paragraphs 11.0 - 11.3

6.0 Prosecution

6.1 Where statutory powers to prosecute exist, the decision to investigate and refer the matter to the Legal Services team for prosecution is not taken lightly.

Each case is unique and will be processed according to its own merits. There is no suggestion that prosecution will automatically follow the discovery of an alleged offence. Alternative actions to prosecution, which are outlined in paragraphs 6.3, below, will be considered in all cases and at every stage.

6.2 The decision whether to prosecute is taken by the Legal Services Department in accordance with the Council's Prosecution Policy and is constantly reviewed. If there is no longer a realistic prospect of conviction, then criminal proceedings will be withdrawn or the Council will offer no evidence depending on the status of the case in the Courts.

6.3 Alternatives to Prosecution.

The following will be considered as alternatives to prosecution, where applicable, as part of the decision-making process. However, each must be examined considering the Public Interest Test (see paragraphs 6.11 to 6.13 below):

- a) Simple Caution
- b) Works in default
- c) Notices
- d) Written Warning

6.4 Test for Prosecution.

Before a decision to prosecute is taken, the case must satisfy, in general terms, the following tests:

- a) EVIDENTIAL TEST
- b) PUBLIC INTEREST TEST

Each of which is described in more detail below (for a fuller explanation, please refer to the Council's Prosecution Policy):

6.5 Evidential Test

There must be sufficient evidence to provide a realistic prospect of conviction against each defendant and on each charge, before a prosecution will be authorised.

This is an objective test and means that a jury or Magistrates', properly directed in accordance with the law, will be satisfied beyond reasonable doubt that the defendant has committed the offence.

6.6 Each prospective criminal investigation leading to a possible prosecution is scrutinised throughout the management chain before a prosecution file is sent to the Legal Services Department, in accordance with Procedures and the Council's Prosecution Policy.

Legal officers (prosecutors) not connected with the investigation apply the Council's Prosecution Policy to see if there is sufficient evidence to commence criminal proceedings.

6.7 The following will be borne in mind by case officers throughout the investigation:

- a) The validity and relevance of any tape-recorded interviews.
- b) The continuity of evidence.
- c) The quality of any notes and records kept during the investigation.
- d) The level of compliance with

- i) the Regulator's Code,
- ii) the legislation having a bearing on enforcement practice and
- iii) any internal procedures.

If there have been substantive departures from accepted practice on any of the above, this will be made known to line management and Legal Services, so that decisions on whether to proceed can be properly informed.

6.8 Officers may obtain evidence from many different categories throughout an investigation.

All relevant unused material will be retained, logged and provided to the Council's Legal Team who will deal with disclosure in accordance with the requirements of the Criminal Procedure and Investigation Act 1996 should offences be authorised for charge.

6.9 During the investigation, and when considering the evidence, the following will be considered before referral for prosecution:

- a) Any factors that might reduce the reliability of an admission made during a taped interview such as, for example, a defendant's age, or lack of understanding.
- b) Any factors which might have a bearing on the reliability of any witness.

6.10 If, after balancing the above, it is concluded that there is unlikely to be a realistic prospect of conviction, the case will not be referred to the Legal Services Department for consideration of the case for possible prosecution.

One of the alternatives listed in paragraph 6.3, above (b, c or d), may still be used if appropriate.

6.11 The Public Interest Test.

Several factors will determine whether a particular prosecution is in the public interest and a balance in favour or against will be made between these factors, any of which might be present.

Those factors that will tend towards prosecution include positive answers to the following, which may not be an exhaustive list:

- a) number of people affected by the offence.
- b) degree to which people are/were affected (seriousness of the offence.)
- c) evidence that the offence was committed deliberately or maliciously
- d) evidence that the defendant intimidated or harassed those affected.
- e) evidence of previous or on-going offences of a similar type
- f) likelihood of repeated offence that may be deterred by prosecution
- g) defendant was in a position of authority.
- h) lack of co-operation on the part of the defendant
- i) offence is widespread, at least in the general area in which it was committed

6.12 Factors which might argue against a prosecution will include:

- a) the court is likely to impose a very small penalty on conviction.

- b) the offence appears to have been the result of a genuine misunderstanding or mistake.
- c) the harm done was minor and was the result of a single incident, particularly if it was caused by a misjudgement.
- d) the willingness on the part of the defendant to co-operate and to ensure that no future offences of a similar nature are committed.
- e) the long delay between offence and trial, unless:
 - i) The offence is serious.
 - ii) The delay has been caused, at least in part, by the defendant
 - iii) The offence has only recently come to light.
 - iv) The complexity of the investigation results in unavoidable delays.
 - f) defendant is elderly, in poor health or confused (unless there is a real possibility that the offence will be repeated).
- g) the defendant has, so far as possible, put right the harm caused by the offence.
- h) a key witness has refused to testify or to provide a Witness Statement or, if they are the only victim, they have strongly indicated opposition to a prosecution.

7.0 Simple Cautions

7.1 Where it is felt that prosecution may not be proportionate, the use of the Simple Caution may be considered. In all such cases, the Home Office Guidance on the use of Simple Cautions will be closely followed, where it applies to legislation enforced by Environmental Health. Before

a caution is administered there must be evidence of the offender's guilt sufficient to give a realistic prospect of conviction, the offender must admit the offence and the offender must understand the significance of a caution and give informed consent to being cautioned.

7.2 If a Simple Caution is refused, this would most likely lead to the matter being prosecuted.

7.3 Other factors governing the use of a Simple Caution include:

- a) No more than one Simple Caution will be issued to the same business or person for a similar offence within the expiry period.

If a further similar offence is committed before the expiry of the Simple Caution, then a referral for consideration of prosecution will be made in all but the most exceptional circumstances.

- b) Usually, the details of any outstanding Simple Caution will be placed before the Court in any prosecution proceedings.
- c) When considering whether or not to accept a Simple Caution, the suspect will be given the opportunity, if she/he so wishes, of viewing the evidence in the case, including any which may undermine the prosecution. This is to enable them, and/or their legal advisor, to assess the evidence and make an informed decision whether or not to accept the Caution.
- d) If accepted, the Caution will be recorded, and a copy held on a Register of Simple Cautions by the Council and will be referred to should further offences be committed.

8. Notices

8.1) 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 consider the implications of the contravention.

8.2) Officers will only consider service of notice where there is sufficient evidence to justify their issue. All relevant guidance in statutory codes of practice and guidance issued by the Government or co-ordinating bodies will be followed as appropriate. For instance, for Hygiene Improvement Notices and Hygiene Prohibition Notices full regard shall be made to the Food Law Code of Practice and Guidance issued by the Food Standards Agency.

8.3) The service of statutory notices is a routine part of the work of Environmental Health, and it is not appropriate to deal with the format and wording of Notices within a document such as this. However, there are some points of commonality affecting all types of Notice, as follows:

- a) Peer review
- b) Associated documentation
- c) Method of service

8.4) Peer Review.

There are occasions when speed of service is of the essence and in such cases peer review may not be practicable.

Wherever possible, the use of standardised notices will be used when peer review is not possible, to ensure the greatest level of uniformity of approach.

When peer review is possible, and this should be in most cases, each notice will be scrutinised by a member of the Team unconnected with the case.

8.5) Associated Documentation.

Under normal circumstances, the following information will accompany a formal Notice:

- a) A covering letter, setting out the background to the Notice and designating a case officer or other point of contact
- b) A copy of the relevant Appeal provisions
- c) A separate Schedule of Works, where appropriate
- d) Any other information that may help the person served to understand and comply with the terms of the Notice.

8.6) Method of Service.

This may be specified in individual legislation and in such cases, the method of service will be followed exactly. Where there is no prescribed method, any of the following may be used:

- a) Hand delivery.

The Notice will be given directly to the person(s) identified as being responsible. Where this method is used, the date, time, place, and other relevant details will be entered on a proof of service stamp on the office copy of the notice.

- b) Recorded Delivery.

The Notice is sent by first class, recorded delivery post.

- c) Normal Post.

Where normal post is used, a short Witness Statement may be provided giving details of the contents of the envelope, the date, time, and place of posting, and the address to which sent. The Statement will be in addition to an entry into the case officer's official notebook.

- d) Left at Scene.

The Notice may be left at the scene, i.e., a premises or vehicle. If this method is used, service will normally be by two officers. Each will make a contemporaneous entry in their official notebook, and each may provide a short Witness Statement giving details of the contents of the envelope left at the scene, the date, time, and place of service.

9.0 Works in Default

9.1 Works in Default refers to the powers given to the Council under specified legislation to undertake works required in a Notice that has not been complied within the time permitted. A charge is normally made for carrying out such work, which the person(s) named on the Notice, would be required to pay.

9.2 The approval of line management will be sought before arrangements are made to carry out works in default. At the time that approval is sought, the case officer will provide full details of the perceived need to undertake the work and be prepared to discuss alternatives.

9.3 There are two distinct types of Works in Default, these being:

- a) Seizure of equipment causing a nuisance, for example stereo equipment in respect of noise problems.
- b) Physical works undertaken by the Council to abate nuisance or comply with specified standards, for example carrying out drainage works where there may be risks to health.

9.4 In deciding whether to carry out works in default, the Council will consider:

- a) The urgency of the need to rectify the nuisance or public health hazard.

b) The wishes of the person responsible for the problem which must be balanced against the detrimental effect the problem / issue is causing others.

c) Whether the evidence available provides a realistic prospect of defending the Council's action if the person responsible contests recovery of costs.

9.5 Where the work in default is required in an emergency, the Council may instruct a contractor to carry out the works without recourse to a formal tendering procedure. The Council may recover the costs of the work from the person responsible as a civil debt or by placing a charge on the property.

9.6 Duly authorised officers have the right to enter premises at any reasonable time to carry out any action or works authorised in accordance with this policy. Entry to any residential property shall not, except in an emergency, be demanded as of right unless 24 hours' notice has been given. If entry is refused, an officer may apply to a Justice of the Peace for a warrant to enter the premises, if needs be, by force.

10.0 Revocation

10.1 In some circumstances, notably licences and permits made under the Environmental Protection Act, the revocation of a Licence or Permit may be used as an enforcement method.

10.2 Whilst this is a legitimate enforcement action, it is always remembered that the above may involve the removal of livelihood, sometimes without reference to an independent arbiter or the Courts. Accordingly, revocation is used only as a last resort, when other sanctions are either inappropriate, or have been tried without success.

10.3 No revocation action is taken without reference to EH management.

10.4 Where revocation action is taken, it will normally follow at least two warnings, in writing. However, it is recognised that this will not always be possible, especially in the case of some types of Licensing offence.

10.5 When revocation action is taken, those concerned will be informed of any rights which they may have to appeal and be told of any time limits or other constraints which may apply.

11.0 Written Warnings

11.1 Perhaps the commonest and most versatile form of enforcement is the use of an informal written warning, which may result from a service request investigation, or a routine inspection/intervention visit.

Informal action may be considered in the following circumstances:

- a) The breach is not serious enough to warrant other action.
- b) From the individual/company's history, it can be reasonably expected that informal action will achieve compliance.
- c) Confidence in the individual/company's management involved is high.
- d) The consequences of non-compliance will not pose a significant risk to the public.
- e) In the first instance when dealing with voluntary and charitable organisations and small businesses.

11.2 There are few rules governing the use of this type of action, as it is not a regulated or statutory function. However, a written warning will normally:

- a) Clearly state the nature of the breach/problem, with reference to the legislation, as appropriate.

b) Clearly state the remedial action needed to achieve compliance, why it is necessary and setting out the timescale for compliance against each item.

c) State the action that may be taken if the written warning is not heeded.

d) Designate a named officer as point of contact

e) Clearly distinguish between a legal requirement and a recommendation of good practice.

f) Indicate any follow-up action intended, (such as a re-visit in 14 days etc) having regard to any special circumstances when a timescale for compliance is specified.

g) Offer the opportunity for discussion or for the recipient to make representations

h) Point the way to specialist advice or additional information.

11.3 The tone of a written warning will be firm, business like, unambiguous, polite, and helpful.

12.0 Training and Qualifications of Enforcement Officers / Enforcement Actions

12.1 No officer will carry out enforcement duties unless suitably trained and experienced and authorised by Castle Point Borough Council.

12.2 Environmental Health Officers will be authorised to initiate enforcement action but should discuss all aspects of the case with their managers and consult with the Borough Solicitor as appropriate.

12.3 The Head of Service will make the final decision concerning prosecution. Once a decision to prosecute has been made the case should be referred to the Borough Solicitor without delay.

12.4 Training will be provided for all enforcement officers as required to meet changes in legislation and enforcement procedures.

13.0 Complaints about the Service

In relation to complaints about the Service, complainants will be encouraged to discuss the complaint with the Officer's manager in the first instance. All complaints will be dealt with in accordance with the Authorities established complaints procedure. Further information can be found at www.castlepoint.gov.uk/complaints which explains the complaints procedure in full and provides a form. The procedure allows for formal complaints against the service to be properly considered.

14.0 Enforcement in Premises in which CPBC may have an interest.

On rare occasions there may be a perceived potential for a conflict of interest where the Council has ownership or management interests in premises normally enforced by their own inspectors. The Local Authority is still the enforcing authority for food operations of the Borough Council. Clear internal boundaries exist between enforcement and other officers so that they are not explicitly or implicitly expected to act in a fashion that might cause a conflict of interest.

The Council will ensure that the inspector retains his independence of decision and objectivity. Where minor breaches of legislation are observed the outcome will follow that for informal advice. Should more serious breaches be observed a report will be sent to the appropriate Head of Service with a copy to the facility manager. The most serious breaches will be reported to the Chief Executive with a copy to the Head of Service and the facility manager.

15.0 Appeals against enforcement action.

Notices can be appealed against to the Magistrates' Court and information on how to do this is provided when the notices are issued.

16.0 Review of Policy

The implications and effectiveness of this policy will be constantly monitored and reviewed as and when necessary.