

HEALTH & SAFETY ENFORCEMENT POLICY

1.0 Introduction

This document sets out what business and others being regulated can expect from Leicester City Council's enforcement officers. It commits the Council to good enforcement policies and procedures. It lays down the policy of the Council based on the principles of good enforcement contained in the Code of Practice for Regulators (Compliance Code):

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf

and Health and Safety Executive's (HSE) National Local Authority Enforcement Code:

<http://www.hse.gov.uk/laU/national-la-code.pdf>

The Council also takes into account advice contained in the Code for Crown Prosecutors and endeavours to ensure that it supplements the advice outlined in this Enforcement Policy.

The primary function of central and local government enforcement work is to protect the public, the environment and groups such as consumers and workers. At the same time, carrying out enforcement functions in a fair, practical and consistent manner helps to promote a thriving national and local economy. Leicester City Council is committed to these aims and to maintaining a fair and safe trading environment.

The effectiveness of legislation in protecting consumers or sectors in society depends crucially on the compliance by those regulated. We recognise that most businesses want to comply with the law. We will, therefore, take care to help businesses and others meet their legal obligations without unnecessary expense, while only intervening where there is a clear case for protection. All citizens will reap the benefits of this policy through better information, choice and safety.

There are many instances where the enforcement responsibilities of the authority are shared by, or complimentary to, those of other agencies. Where these shared responsibilities exist, we will endeavour to set up, or join, liaison groups or working parties to ensure cost effective and efficient service delivery. Where situations occur in which shared enforcement with other agencies is appropriate, then a full exchange of information between those agencies will be implemented.

This document should be read in conjunction with:

- The Council's Constitution and Scheme of Authorisation which specify how enforcement responsibilities are delegated to officers,
- The Council's Prosecutions Policy, which applies to criminal prosecutions and simple cautions,
- The Regulators' Compliance Code, introduced in 2008 as part of the Government's Better Regulation agenda, to embed a risk-based, proportionate and targeted approach to our regulation of local businesses;
- The HSE's mandatory guidance - National Local Authority Enforcement Code that directs local authorities on interventions with businesses based on risk.

This Enforcement Policy provides information on how this Authority enforces health and safety legislation. It also states what to expect from Officers when they visit businesses, and what guides them when carrying out inspections and investigations as well as dealing with breaches in the law.

2. Aim & Objectives of the Policy

The aim of this Enforcement Policy is to ensure that duty holders manage and control risk effectively thus preventing harm. In particular our policy objectives are to:

- Ensure that dutyholders take action to deal immediately with serious risks;
- Promote and achieve sustained compliance;
- Ensure that dutyholders who breach health and safety requirements, and directors or managers, who fail in their responsibilities, may be held to account. This may include bringing the alleged offenders before the courts. In these circumstances, this Officers will have regard to the Authority's General Regulatory Policy and and the HSE's Enforcement Policy Statement (EPS), available online from:

<http://www.hse.gov.uk/pubns/hse41.pdf>

The term "enforcement" has a wide meaning and applies to all dealings between the Local Authority and those on whom the law places duties (employers, the self-employed, dutyholders, employees and others). When considering enforcement options officers must have regard to relevant legislation, approved codes of practice, guidance and this Enforcement Policy.

This Council 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.

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.

This Council will only enforce health and safety within its field of responsibility, that is, activities/premises being within the Council's 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 (HSE).

The Council will work with employers, dutyholders, & proprietors to achieve legislative compliance, through inspection, education and the provision of advice and information as appropriate.

3. Officer Authorisation

Enforcement action under the Health and Safety at Work etc. Act 1974 and associated legislation will only be carried out by suitably qualified, experienced and competent Officers that have been duly authorised to do so.

Only officers authorised by the Council under Sections 21 to 26 of the Health and Safety at Work etc. Act 1974 will serve improvement and prohibition notices.

Officers will be authorised by the appropriate Service Director within the Authority as stipulated in the current version of the Scheme of Authorisation. The Scheme sets out those functions that are delegated to particular officers and in particular Service Directors.

Officers authorisation to prosecute in individual cases will be in accordance with the Council's current Constitution.

4. The Delegation Framework

(a) Where, through upholding the principles outlined in the policy document, a prosecution is necessary, the following officer(s) may authorise such action:

Team Manager (Public Safety)

Head of Regulatory Services

(b) The following designated Officers will also be consulted as part of the prosecution decision making process:

Team Manager (Public Safety)

Head of Regulatory Services

Other officers may be consulted in addition to external advisors / experts where appropriate.

(c) The designated Officers who are responsible for authorising a prosecution will be aware of the limits of their delegated powers by reference to the Councils Constitution, Statutory Codes of Practice and any other forms of guidance, including the principles set out in this policy.

(d) Only officers who have been authorised by the Council to issue Improvement Notices will do so. Only an authorised officer who has personally witnessed the contravention(s) will sign the notice.

(e) Only officers who have been authorised by the Council to issue Prohibition Notices will do so. Only an authorised officer who has personally witnessed the contravention(s) will sign the notice.

5. Indemnification of Officers

The Council will indemnify authorised officers against the whole of any damages and costs or expenses which may be involved, if the Council 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.

6. Officer Training/Competency

The criteria used to assess the competence of Health & Safety Officers are those detailed in Council policy documents. In addition the Council will provide appropriate initial and updated training to Health & Safety Officers as is deemed necessary to enable them to carry out their duties efficiently and effectively. This will include the following:

(a) Minimum update training of 10 hours per year for continual professional training.

(b) Minimum of 15 hours revision training for authorised officers returning to health & safety enforcement.

(c) Minimum of three months monitoring of newly qualified or Officers returning to health & safety law enforcement duties after an absence of more than 3 years.

In all instances, health & safety enforcement action will only be instigated by duly appointed health and safety officers.

Officers will be fully equated with, and abide by, the policy when making enforcement decisions. Any departure from the policy will be exceptional, capable of justification and be fully considered by the Public Safety Team Manager before the decision is taken, unless it is considered there is significant risk to the public in delaying the decision.

7. Enforcement Policy

7.1 Principles of Enforcement

The Local Authority believes in firm but fair enforcement of health and safety law in line with HSE's Enforcement Policy Statement (EPS). This is informed by the principles of:

- Openness in our work by providing information and advice in plain language on the rules that we apply and charges we set;
- Helpfulness by providing a courteous and efficient service to avoid delays/overlaps;
- We respect the confidentiality of complainants as we recognise they may be in vulnerable positions and wherever possible deal with complaints (particularly from employees) anonymously;
- Proportionality in applying the law and securing compliance;
- Consistency of approach;
- Targeting of enforcement action;
- Transparency about how we operate and what those regulated may expect; and
- Accountability for our actions. These principles will apply both to enforcement in particular cases and to our management of enforcement activities as a whole.

This Authority places great importance on the consistent use of enforcement action and does not measure itself by the quantities of enforcement action it takes and so does not set targets. This Authority does not take enforcement for enforcements sake. Enforcement is different from civil claims for compensation and is not undertaken in all circumstances where civil claims may be appropriate, or to assist such claims.

Where we can we will endeavour to make provision for the particular interests of stakeholders. For example we may make visits out of normal office hours but at times when the business is open; or we may arrange for interpreters/translations to be available if the duty holders do not have English as a first language.

7.2 Procedures of Enforcement

Firm but fair enforcement of health and safety law should be informed by the principles of proportionality in applying the law and securing compliance; consistency of approach; targeting of

enforcement action; transparency about how the regulator operates and what those regulated may expect; and accountability for the regulator's actions.

7.2.1 Proportionality

Proportionality means relating enforcement action to the risks. Those whom the law protects and those on whom it places duties (duty holders) expect that action taken by Authority to achieve compliance should be proportionate to any risks to health and safety or to the seriousness of any breach, which includes any actual or potential harm arising out of a breach of law.

Some health and safety duties are specific and absolute. Others require action 'so far as is reasonably practicable'. We will apply the principles of proportionality, targeting, consistency, transparency and accountability when considering these duties and the appropriate enforcement action to be taken.

Deciding what is reasonably practicable to control risks involves the exercise of judgment. In the final analysis, it is the courts that determine what is reasonably practicable in a particular case. When considering if duty holders have implemented protective measures to control risks so far as is reasonably practicable, we will take the following factors into account:

- The degree of risk;
- The cost (i.e. money, time or trouble, involved in the measures necessary to avert the risk).

Unless it can be shown that there is gross disproportion between the aforementioned factors and that the risk is insignificant in relation to the cost, the duty holder must take measures and incur costs to reduce the risk.

We will expect relevant good practice to be followed. Where, in particular cases, this is not clearly established, health and safety law effectively requires duty holders to assess the significance of the risks to determine what action needs to be taken. Some risks may be so serious that they cannot be permitted irrespective of the economic consequences. Conversely some risks may be so small that spending more to reduce them would not be expected.

7.2.2 Targeting

Targeting means making sure that contacts are targeted primarily on those whose activities give rise to the most serious risks or where the hazards are poorly controlled; and that action is focused on the duty holders who are responsible for the risk and who are best placed to control it i.e. Employers, or other persons.

This Authority has a system for prioritising contacts according to the risks posed by a duty holder's operations, and to take account of the hazards, nature and extent of the risks that arise. The duty holder's management competence is an important factor. Sites with the greatest hazard will receive regular inspections so that we can give public assurance that such potentially serious risks continue to be effectively managed.

Enforcement action will be directed against duty holders who may be employers in relation to workers or others exposed to risk, the self-employed, the owner of the premises, or the supplier of the equipment, or the designer or client of the project. Where several duty holders have responsibilities we will take action against those who are primarily in breach.

When Officers issue Improvement or Prohibition Notices or prosecute or in exceptional circumstances issue simple cautions, we will ensure that a senior officer or the duty holder concerned, at board level, is also notified.

7.2.3 Consistency

Consistency of approach means taking a similar approach in similar circumstances to achieve similar ends. Duty holders managing similar risks expect a consistent approach from us in the advice given; the use of enforcement notices etc; decisions on whether to prosecute; and in the response to incidents. In practice consistency is not a simple matter. Our enforcement officers are faced with many variables:

- the severity of the hazard,
- the attitude and competence of management, and
- the duty holder's previous history in relation to health and safety issues.

Decisions on enforcement action are discretionary, involving judgment by the officer. This Authority has arrangements in place to promote consistency in the exercise of discretion, and these include liaison arrangements with the other enforcing authorities and the Health and Safety Executive.

7.2.4 Transparency

Transparency means helping duty holders to understand what is expected of them and what they should expect from us. It also means making clear to duty holders not only what they have to do to comply with legal statute but other measures that they could put in place to achieve best practice for health & safety management. That involves distinguishing between statutory requirements and advice or guidance about what is desirable but not compulsory. It also requires us to have in place adequate arrangements for keeping employees, their representatives, and victims or their families informed. These arrangements have regard to legal constraints and requirements.

Officers are required to issue "What to expect when a health and safety Officer calls" whenever they visit. This publication explains what employers and employees and their representatives can expect when a health and safety Officer calls at a workplace. In particular:

- When Officers offer duty holders information, or advice, face to face or in writing, including any warning, they will tell the duty holder what to do to comply with the law, and explain why. If asked Officers will confirm any advice in writing and distinguish legal requirements from best practice advice;
- In the case of Improvement Notices, the Officer will discuss the notice and, if possible, resolve points of difference before serving it. The notice will say what needs to be done, why, by when and how compliance may be achieved;
- In the case of a Prohibition Notice, the notice will explain why the prohibition is necessary and whether the notice must be complied with immediately or deferred to a later time.

7.2.5 Accountability

Regulators are accountable to government, citizens and Parliament for their actions. This means that there are policies and standards (such as the five enforcement principles of proportionality, targeting, consistency, transparency and accountability) against which we can be judged, and an effective and easily accessible mechanism for dealing with comments and handling complaints.

7.2.6 The Purpose of Enforcement

This Authority believes in firm but fair enforcement of health and safety legislation. The purpose of enforcement is to:

- Ensure that dutyholders take action to deal immediately with serious risks;
- Promote and achieve sustained compliance;
- Ensure that dutyholders who breach health and safety requirements, and directors and managers, who fail in their responsibilities, may be held to account. This may include bringing the alleged offenders before the courts in the circumstances set out in HSE's Enforcement Policy Statement.

Officers will aim to:

- Inspect those premises for which this Authority has enforcement responsibility and investigate accidents and complaints in accordance with the Local Authority's Service and Intervention Plan;
- Rate premises according to risk, (which includes confidence in management to control health and safety hazards, and the type of activities being performed etc) in order to determine the frequency of future inspections;
- Seek to promote health and safety through advice and guidance, and by the provision of training;
- Take formal enforcement action, in accordance with this Policy, when it is the most appropriate way of dealing with the matter.

7.2.7 The Process of Enforcement

Officers use various enforcement techniques to deal with risks and secure compliance with the law, ranging from the provision of advice to enforcement notices.

Enforcement decisions must be impartial, justified and procedurally correct. The HSE's Enforcement Policy Statement (EPS) sets out the approach officers follow.

7.2.8 Enforcement Management Model (EMM)

EMM is used by officers when formal action is taken or when offences have been noted. It is intended to:

- Promote enforcement consistency by confirming the parameters, and the relationships between the many variables, in the enforcement decision making process;
- Promote proportionality and targeting by confirming the risk based criteria against which decisions are made;

- Be a framework for making enforcement decisions transparent, and for ensuring that those who make decisions are accountable for them; and
- Help an experienced Officer assess their decisions in complex cases, allow peer review of enforcement action, and is used to guide less experienced and trainee Officers in making enforcement decisions.

The EMM enables officers (and managers) ensure the purpose and expectations of the Enforcement Policy have been met.

8. Investigations

This Authority is required to use discretion in deciding whether incidents, complaints or cases of ill health should be investigated. The Authority adheres to guidance issued to local authorities by the HSE - Incident Selection Criteria Guidance:

<http://www.hse.gov.uk/lau/lacs/22-13.htm>

We will use discretion in deciding when to investigate or what enforcement action may be appropriate. To maintain a proportionate response most resources available for investigation will be devoted to the more serious circumstances. We will carry out a site investigation of a reportable work-related death, unless there are specific reasons for not doing so, for example because the police consider the cause to have been suicide.

To maintain a proportionate response most resources available for investigation will be devoted to the more serious circumstances. The HSE's Strategic Plan recognises that it is neither possible nor necessary for the purposes of the Act to investigate all issues of non compliance with the law that are uncovered in the course of planned inspection, or reported events.

In conducting our investigations we will take account of any likely complimentary or shared enforcement roles, e.g. where the HSE has jurisdiction over some of the activities of a duty holder and we have jurisdiction over the rest of the activities. We will also refer relevant information to other Regulators where there is a wider regulatory interest e.g. the HSE or Primary Authority of a duty holder within the Primary Authority Scheme.

8.1 Incident Investigations

It is the policy of this Authority to investigate reportable accidents under the Reporting of Injuries, Disease, and Dangerous Occurrences Regulations 2013(RIDDOR) according to the criteria set out in the HSE's Incident Selection Criteria Guidance. They will be investigated in accordance with the principles of proportionality, consistency, targeting, transparency and accountability. The purpose of investigation is to:

- Identify immediate and underlying causes;
- Ensure the duty holder takes appropriate remedial action to prevent reoccurrence;
- Evaluate compliance with the relevant statutory provisions;

- Apply the principles of the Enforcement Management Model and take enforcement action if appropriate.

Investigations will be:

- Continued only so far as they are proportionate to the achievement of the objectives set for them;
- Conducted and/or supervised by staff that are competent to do so;
- Provided with adequate resources and support, including information, equipment and staffing;
- Conducted so that efficient and effective use is made of the resources committed to them;
- Timely, so far as this is within the control of the investigating Officer;
- Subject to suitable management procedures for monitoring the conduct and outcome of investigations.

Factors to determine whether an investigation continues to be proportionate:

- Public expectation, for example, where there has been a fatality or fatalities, serious ill health, or an accident involving multiple serious injuries;
- The potential (taking into account reasonable foreseeability) for a repetition of the circumstances to result in a fatality or fatalities, serious ill health, or an accident involving multiple serious injuries either in the activities of a specific duty holder or within industry generally;
- The extent to which the available evidence allows conclusions as to causation to be drawn and supported with sufficient certainty, including conclusions as to responsibility for alleged breaches of relevant legislation;
- The extent to which the resources needed for the investigation are disproportionate to the hazard(s) or risk(s);
- The prevalence of the event, either in the activities under the control of a specific duty holder, or in an industry sector generally.

9. Enforcement Tools

Officers have a range of tools at their disposal in seeking to secure compliance with the law and to ensure a proportionate response to criminal offences. Many of our dealings are informal e.g. offering duty holder's information and advice. Where appropriate our Officers may also serve improvement and prohibition notices, prosecute and in exceptional circumstances, issue simple cautions. Where all other action has not had the desired effect a High Court injunction will be sought by the Authority.

9.1 Improvement Notices

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

- There are significant contraventions of health and safety legislation and they are likely to continue.

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

9.2 Prohibition Notices

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 premises involve or will involve a risk of serious personal injury. The number of people affected by the risk is not relevant.

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.

9.3 Public Register

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.

9.4 Appealing a Formal Notice

Where a notice is served there is a right of appeal to an Employment Tribunal. This right of appeal is outlined on the reverse of the notice. The person receiving the notice will also be provided with a guidance document outlining the procedure for submitting a right of appeal to an Employment Tribunal.

Full details about making an appeal is contained in guidance provided by the HM Courts and Tribunal Service (T420: Making a claim to an Employment Tribunal) can be downloaded for free using the link below:

<http://www.tribunalsos.co.uk/pdfs/Employment%20tribunal%20useful%20information.pdf>

9.5 Prosecution Action: Criteria

Detailed below are the criteria that the Council will take into account when considering legal proceedings. The Council has discretion whether or not to prosecute for an offence and the decision to prosecute is based on the particular circumstances of each individual 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 approved codes of practice or equivalent must be taken into account.

The decision to prosecute will have regard to the evidential and public interest tests set down in the Code for Crown Prosecutors. In all cases, a prosecution will only go ahead if there is sufficient evidence to provide a realistic prospect of conviction AND the prosecution would be in the public interest.

Following the application of the two tests above, the Council will normally prosecute where following an investigation or other regulatory contact, one or more of the following circumstances apply:

- Death was a result of a breach of the legislation;
- The gravity of the alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender warrants prosecution;
- There has been reckless disregard of health and safety requirements;
- There have been repeated breaches which give rise to significant risk, or persistent and significant poor compliance;
- Work has been carried out without or in serious non-compliance with an appropriate licence;
- A dutyholder's standard of managing health and safety is found to be far below what is required by health and safety law giving rise to significant risk of actual or potential harm;
- There has been a failure to comply with an improvement or prohibition notice;
- There has been a repetition of a breach that was subject to a simple caution;
- Where false information has been supplied wilfully, or there has been an intention to deceive, in relation to a matter which gives rise to significant risk;
- Officers have been intentionally obstructed in the lawful course of their duties.

This Council will also consider prosecution, where, following an investigation or other regulatory contact, the following circumstances apply:

- Where it is appropriate in the circumstances to draw general attention to the need for compliance with and maintenance of the standards required by law, and conviction may deter others from similar failures to comply with the law.
- Where a breach giving rise to significant risk has continued despite relevant warnings from employees, or their representatives, or from others affected by a work activity.

9.6 Prosecution of Individuals

Subject to the above this Authority will identify and prosecute individuals if we consider that a conviction is warranted and can be secured. In addition where the alleged offender is an incorporated body e.g. a limited company or limited partnership, the Authority will actively consider the management chain and the role played by individual directors and managers to establish whether the offence was committed with the consent, or connivance of the directors or managers or whether it arose from negligence on the part of the director or managers.

In respect of directors and managers the following criteria will be considered:

- Whether the matter is clearly one over which the manager or director concerned had effective control.

- Whether the manager or director had personal knowledge of the circumstances surrounding the event that merits prosecution, although not necessarily personally aware of the matters at fault.
- Whether the manager or director failed to take obvious steps to prevent the event that is the subject of the proposed prosecution.
- Whether the manager or director received previous advice or warning of their responsibilities in relation to the type of act or omission in question.
- 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 of management be prosecuted without similar action being taken against senior management.

This Council will, where appropriate; seek disqualification of directors under provisions contained in the Company Directors Disqualification Act 1986 by referring relevant matters to the correct enforcing authority.

9.7 Prosecutions: Action by Courts

Many offences referred for prosecution will be heard in a Magistrates Court. However, certain offences are classed as triable either way offences and can be tried summarily in a Magistrates Court or on indictment in a Crown Court. In the first instance all cases commence in the Magistrates Court.

Where an offence is `either way` and the defendant pleads guilty the facts will be heard. If the Magistrates determine that their sentencing powers are insufficient to deal with the offence they may refer the matter to Crown Court for sentencing.

Where a defendant facing an either way offence indicates that he would plead not guilty if the matter were to proceed to trial, then the Prosecutor and the accused are asked in turn which appears to be more suitable, summary trial or trial on indictment. When determining the Prosecutor's recommendation the Enforcement Officer and the Prosecutor will consider:

- 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 magnitude of the risk; and
- Any circumstances causing particularly great public alarm.

The Magistrates will then decide which mode of trial appears more suitable, having regard to the nature of the case, whether the circumstances make the offence one of a serious character, and whether their powers would be adequate.

Where Magistrates determine that the case can be tried in their Court, the accused can still elect to be tried in the Crown Court. Likewise where the defendant elects trial in the Magistrates Court, the court may if it considers the matter so serious elect for the matter to be heard at the Crown Court.

This Authority will in cases of sufficient seriousness indicate to the magistrates that the offence is so serious that it should be heard or any sentence administered by the Crown Court.

9.8 Prosecution: Death at Work

Where there has been a breach of the law leading to a work-related death, this Authority at an early stage, will consider whether the circumstances justify a charge of manslaughter or corporate manslaughter.

If the evidence suggests manslaughter, then this Authority will refer the matter to the Police or where appropriate the Crown Prosecution Service. If no action is taken by the Police/Crown Prosecution Service then the Authority may consider a health and safety prosecution where appropriate.

In all instances of work related deaths this Authority will follow the principles outlined in 'Work Related Deaths: A Protocol For Liaison' when responding to work-related deaths.

9.9 Prosecution: Assaults on Enforcement Officers

Where enforcement officers are assaulted, this Authority will also seek police assistance with a view to seeking the prosecution of offenders. Subject to the above we will identify and prosecute individuals if we consider that a conviction is warranted and can be secured. Additionally we will actively consider the management chain and the role played by individual directors and managers. Where appropriate we will seek disqualification of directors under the Company Directors Disqualification Act 1986.

9.9 Simple Cautions

There may be circumstances where evidence exists for a successful prosecution, but where mitigating circumstances are such that nothing is likely to be gained from such action. In such circumstances the authorised officer will consider the offer of a Simple Caution as an alternative to prosecution.

The decision to offer a Simple Caution will be taken by the authorised officer after consideration of a report from the case officer.

The aim of a Simple 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.

It is the policy of this Council that: -

- a) A person will only receive a Simple Caution when the circumstances of the offence meet the criteria identified in the Home Office Circular 30/2005.
- b) The Simple Caution will be administered by a designated officer (See 'Delegated Framework' above). Normally the Simple Caution will be administered in person by a designated officer.

In exceptional circumstances the Simple Caution may be administered by post.

- c) The offender will be advised in writing of the proposal to issue a Simple Caution.
- d) The Simple Caution will be in writing using the prescribed form. Two copies of the form will be signed by the person receiving the caution; each copy will then be signed by the person

administering the Caution. One of the copies will then be issued to the person receiving the Caution.

- e) Where the offender refuses to accept a Simple Caution or fails to return the signed copies within 14 days, consideration will be given to the institution of legal proceedings.

Primary Authorities will be notified of Cautions issued, where appropriate.

9.10 Injunctions

High Court Injunctions may be sought in very serious cases particularly where no other effective remedies are available to the Authority.

10. Lead Authority, Primary Authority Partnerships and Better Regulation Delivery Office

10.1 Lead Authority Partnerships

The Health and Safety Executive (HSE) established the Lead Authority Partnership Scheme (LAPS) in 1991. Its aims are to:

- Improve safety management systems of organisations with multiple outlets that are subject to local authority regulation
- Promote the consistency of health and safety enforcement for such organisations

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.

10.2 Primary Authority Partnerships

A Primary Authority Partnership allows businesses to form a statutory partnership with a single local authority, providing access to assured advice on compliance which must be respected by local regulators. It also allows for co-ordination of inspection and enforcement activity. Where there is a Primary Authority Partnership in existence with a company, contact will be made with the Authority once enforcement action is being considered.

This Authority recognises the status of the Primary Authority Partnership scheme, made under the Regulatory Enforcement and Sanctions Act 2008 (RES), administered by the Better Regulation Delivery Office (BRDO).

Section 28 of the RES Act requires an enforcing authority that wishes to take enforcement action against a business which has a primary authority, to first notify the primary authority of the proposed action. Enforcement action is widely defined for the purposes of the Act by the Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009, as amended.

Statutory guidance on the scheme requires that the notification of proposed enforcement action by the enforcing authority:

- should be made via the Primary Authority Register;

- should be itemised, where multiple enforcement actions are being proposed; and
- should include specified details. These are set out in the statutory guidance and in the notification template on the Primary Authority Register.

The statutory guidance also requires that, when making a notification, an enforcing authority should ensure that, during the five working days following the notification, it is able to respond to requests from the primary authority for further information or clarification.

The Primary Authority has 5 working days to decide if objects or not to the proposed enforcement action. If the Primary Authority or Regulated Business objects, they are entitled to refer the matter to BRDO for consideration within 28 days. BRDO determinations must be adhered to.

The legislation recognises that there will be times when the need to act swiftly is critical and it allows for notification to the primary authority to be retrospective in certain defined circumstances. In brief, this applies for:

- prohibition notices under specified health and safety legislation;
- enforcement action that is required urgently to avoid a significant risk of harm to human health, the environment or the financial interests of consumers.

All authorised officers will complete the Determination for the Prosecution or Out-of-Court Disposal of Offences pro forma when offences have been noted and formal action is being considered.

10.3 Better Regulation Delivery Office

In addition, the Public Safety Team will endeavour to carry out the service in compliance with the Better Regulation Delivery Office (BRDO) Regulators' Code (April 2014). This includes:

- Supporting businesses to comply with food hygiene legislation;
- Providing and developing ways to engage with businesses and hear their views;
- Basing the level of regulatory activities on risk;
- Sharing information about compliance and risk;
- Ensuring clear information, guidance and advice is available to help businesses to comply with legislation;
- Ensuring the approach taken for regulatory activities is transparent.

11. Complaints against the Service

Complaints against the service are dealt with by our standard complaints procedure available from the following link:

<https://www.leicester.gov.uk/contact-us/comments-compliments-and-complaints/>

If you believe that the Council has gone beyond its authority as determined by the National Local Authority Enforcement Code then you can complain to The Independent Regulatory Challenge Panel at:

<http://www.hse.gov.uk/contact/challenge-panel.htm>

12. Death at Work

Where there has been a breach of the law leading to a work-related death, we will consider whether the circumstances of the case might justify a charge of manslaughter. We will liaise with the Police, Coroners and the Crown Prosecution Service (CPS) and if they find evidence, suggesting manslaughter, pass it on to the Police or where appropriate the Crown Prosecution Services. If the Police or the Crown Prosecution Services decides not to pursue a manslaughter case, we will bring a health and safety prosecution if that is appropriate. To ensure decisions on investigation and prosecution are coordinated the HSE, the Association of Chief Police Officers and the Crown Prosecution Services have jointly agreed and published "Work Related Deaths: A Protocol for Liaison". This can be downloaded from:

<http://www.hse.gov.uk/pubns/wrdp1.pdf>

Reference will be made to the Protocol when responding to work-related deaths.

Govind Mandora

Team Manager

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