Gravesham Borough Council

Health and Safety Enforcement and Prosecution Policy

Document Control

Organisation	Gravesham Borough Council
Document Type	Policy reference EH-HS-01
Title	Health and Safety Enforcement and Prosecution Policy
Author	Senior Environmental Health Officer
Version	4
Subject	Commercial Health and Safety
Review Date	January 3031

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1. Introduction

This policy has been drawn up using a template produced by the Kent & Medway Health & Safety Liaison Group (the liaison group), endorsed and supported by the Kent Environmental Health Managers Group and adapted for use by Gravesham Borough Council.

The Kent Health and Safety Liaison Group will review this policy every 5 years or more frequently in the event of changes to Health and Safety Executive's Enforcement Policy Statement or guidance.

2. Aim & Objectives

The aim of this policy is to ensure that duty holders manage and control risks effectively to prevent harm and to:

- Take immediate action to deal with serious risks;
- Promote and achieve sustained compliance with the law;
- Ensure that all those responsible, who breach health and safety requirements and/or fail in their responsibilities, may be held to account, which may include bringing alleged offenders before the courts;
- Ensure a consistent approach to health and safety enforcement within Kent and Medway local authorities;
- To inform duty holders and the public of the principles by which enforcement action is taken;
- Ensure consistency with HSE enforcement guidance.

3. Background

The primary responsibility for ensuring health and safety in the workplace lies with those who create the risks, and in particular employers and the self- employed have a need to recognise their responsibility for managing health and safety.

The term 'enforcement' has a wide meaning and applies to all dealings between the Council and those on whom the law places duties.

Gravesham Borough Council has a duty to undertake health and safety enforcement in various types of premises under the Health and Safety at Work

etc. Act 1974. These premises and the activities concerned are determined by the Health and Safety (Enforcing Authority) Regulations 1998.

The Enforcement of Health and Safety in the workplace legislation is split between the Health and Safety Executive and the Local Authority. Details of the

enforcement allocation can be found on the HSE website.

Gravesham Borough Council has, under the same Act, a range of powers to enable them to fulfil the duties for which they are responsible.

There is a range of actions available to seek compliance with the law, and to ensure a proportionate response. Many contacts with duty holders are informal, offering information and advice. In serious cases inspectors will serve Improvement and Prohibition notices. Prosecutions and in some cases, simple cautions, are reserved for the most serious cases and / or those showing a disregard to the law.

The options open to inspectors are laid out in section 20 of the Health and Safety at Work etc. Act 1974:

- Informal – oral or written guidance, information and warnings;
- Improvement Notices – which require remedial works to be carried out within a specified time scale;
- Prohibition Notices – which require the cessation of a work activity immediately or within a specified time scale;
- Prosecution
- Simple Cautions (previously known as Formal Cautions).

Gravesham Borough Council places great emphasis on the consistent and proportionate use of enforcement action and does not set targets.

The investigation of complaints, incidents and/or cases of ill health will be subject to Incident Selection criteria and Complaint Investigation procedures.

Enforcement is distinct from civil claims for compensation and is not undertaken in all circumstances.

The decision to prosecute will have regard to the evidential and public interest tests set out in the Code for Crown prosecutors. No prosecution will go ahead unless the inspector finds there is sufficient evidence to provide a realistic prospect of conviction and decides that prosecution would be in the public interest. As part of investigations, the role and actions of individuals and directors and managers will be considered. Where appropriate disqualification of directors under the Company Directors Disqualification Act 1986 will be sought.

Enforcement in Premises that the Council own and operate (See LAC 22/10)

The council cannot take action against itself, nor should it be called upon to do so. In respect of premises which we own but do not operate:

- Officers will act and operate in exactly the same way as we do with all our duty holders.
- Ensure that the attention received is in accordance with the criteria applied to

other duty holders.

- Where there is a potential conflict of interest, discussions will take place with the HSE to determine the appropriate course of action and document the outcome.

4. Principles of Enforcement

Enforcement needs to be fair but firm and effective. Regulators must have regard to the Regulators' Code when developing policies and operational procedures that guide their regulatory activities.

This 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.

These principles should apply both to enforcement in particular cases and to the health and safety enforcing authorities' management of enforcement activities as a whole.

4.1. Proportionality

Proportionality means enforcement action relating to the risks. Enforcement action will be proportional to the degree of harm / risk the seriousness of any breach and to the particular circumstances of the case.

Some health and safety duties are specific and absolute. Others require action 'so far as is reasonably practicable'. Enforcing authorities should apply the principle of proportionality in relation to both kinds of duty. Deciding what is reasonably practicable to control risks involves the exercise of professional judgement.

In taking enforcement action, the enforcing authority will attempt to minimise compliance costs and recognise that small businesses and voluntary and community groups frequently have to achieve compliance at minimal cost.

Gravesham Borough Council will expect relevant good practice to be followed. Where in particular cases this has not been clearly established the law requires duty holders to establish explicitly the significance of the risks to determine what action needs to be taken. Ultimately the courts will determine what is reasonably practicable.

4.2. Consistency

Gravesham Borough Council will carry out enforcement in a fair, equitable, and consistent manner in accordance with its policies and procedures. Similar approaches will be taken in similar circumstances to achieve similar ends. However, Gravesham BC recognises that consistency does not mean uniformity and Inspectors are required to take professional decisions that take account of a wide variety of situations and circumstances. Officers are also expected to take account of local and national standards and guidance and be aware of this policy. The willingness and co-operation of the person or organisation subject to enforcement action will also be considered in deciding how enforcement action should proceed.

4.3. Targeting

Targeting means making sure that enforcement activity is targeted primarily on those whose activities that give rise to the most serious risks or hazards; and that action is focused on duty holders who are responsible for the risk and who are best placed to control it.

Gravesham BC has systems in place for deciding which inspections, investigations or other issues should take priority according to the nature and extent of risks posed by a duty holders' operation. Targeting of interventions will be in line with the National Local Authority Enforcement Code and LAC 67/2 (rev 7) "Setting Local Authority Priorities and Targeting Interventions".

All work-related deaths will be investigated, unless there are specific reasons for not doing so. To ensure decisions on investigation and prosecution are closely co-ordinated the "Work-related deaths: A protocol for liaison", will be followed.

Enforcement action will be targeted against the duty holder responsible for a breach. This may be employers who expose employees or others exposed to risks; the self-employed; owners of premises; suppliers of equipment; designers

or clients of projects; or employees themselves. Where several duty holders have responsibilities, enforcing authorities may take action against more than one when it is appropriate to do so in accordance with this policy.

4.4. Transparency

Transparency is important in maintaining public confidence in Gravesham Borough Council's regulatory capability. Gravesham Borough Council will help those being regulated and others to understand what they need to do and how it may be achieved. We will also make our own role in the matter clear.

Officers working for Gravesham Borough Council will explain carefully (and, if necessary, in writing) why the action is necessary, who must carry it out, and by what date it must be carried out. A clear distinction will be made between legal requirements, recommendations, and best practice. Information and advice will be provided in plain language. Translation services will be made available where reasonably practicable to assist customers who do not have English as their first language.

Gravesham Borough Council will give every reasonable opportunity for discussion

before formal enforcement action is taken, unless urgent action is necessary to protect health and/or the environment, or to prevent the destruction of evidence that would compromise the authority's case. Officers will explain what needs to be done and will discuss timescales for completion, especially when notices are served. In urgent circumstances, Officers will give a written explanation of their reasons for taking immediate action and this will be done as soon as practicable after the event.

Gravesham Borough Council will give written notice of any rights of appeal against enforcement action at the time that the action is taken.

4.5. Accountability

Enforcing authorities are accountable to the public for their actions. This means we must have policies and standards against which we can be judged, and an effective and easily accessible mechanism for dealing with comments and handling complaints.

We have our own internal procedures for dealing with complaints against the service etc. Details are available from the council. In addition to Gravesham's own complaints procedures, the Local Government Ombudsman hears complaints regarding local government mal-administration, and details of this service are also available from the council.

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

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

In the case of all statutory notices the right of appeal is to an Employment

Tribunal and details are included with the notice.

4.6. Helpfulness

Officers will deal courteously and efficiently with all individuals, organisations and businesses that they come into contact with. Staff will identify themselves by name and contact numbers will be made available. Electronic means of communication (for example, by E-mail) will be facilitated wherever possible.

5. Enforcing Health and Safety Law

Gravesham's primary concern is the prevention of accidents and ill health. This is best achieved by encouraging effective management of health and safety issues by those who create the risks.

As signatories to the Government's Enforcement Concordat [(1)], the Kent and Medway Partnership of Enforcing Authorities [(2)] have adopted a graduated approach to enforcement, commencing with an educative approach.

To ensure consistent enforcement action is taken by Gravesham BC reference will

be made to the Enforcement Management Model (EMM). The EMM provides a framework for making enforcement decisions that meets the Enforcement Policy Statement. An assessment will be completed for each individual case where enforcement action is being considered. Any other relevant guidance will also be considered.

Officers have to exercise considerable discretion when approaching individual cases and will initiate the type of enforcement action warranted by nature and severity of the risk, hazard or contravention that has been identified. A combination of types of action may well be appropriate.

In determining the course of action, an Officer will have regard to the current willingness and intentions of the duty holder to comply, their knowledge of management and health and safety and their previous record of compliance.

The enforcing authorities forming the Kent and Medway Partnership of Enforcing Authorities have regard to the Primary Authority [(4)] principle and will consult before giving detailed advice or taking enforcement action (except in cases where prohibition action is required).

When dealing with small organisations or those operated by volunteers, officers will expand their guidance and explanation of enforcement action and how compliance with the law can be achieved.

If an officer identifies any risk, hazard or contravention, this will be drawn to the attention of the duty holder at that time or as soon as that person can be identified and contacted.

Whatever the type or nature of action chosen, it will be because it will be proportionate to the level of risk identified and the seriousness of any breach.

Departures from the Enforcement and Prosecution policy must be exceptional and the reasons will be documented.

6. Informal Enforcement

Officers will seek to help businesses improve their management of health and safety by giving guidance. They will be aware that they are an important source of help on the maintenance of good standards in conformity with the law and will therefore provide education and guidance wherever reasonably practicable. Many are anxious to comply with the law, and a growing number realise the economic benefits of good health and safety management.

The Officer will supply guidance where possible on legislation and standards either orally or in the form of leaflets or by providing details of where suitable guidance may easily be obtained. Businesses remain responsible for ensuring they have the correct training, knowledge and information, particularly in specialist areas of industry to ensure that health and safety standards are maintained.

All requirements, observations or advice will be confirmed in writing when necessary, as soon as possible. The officer will endeavour to clearly identify and

describe any fault and necessary remedial works in a manner that is readily understandable. In identifying faults, etc., the Officer / Inspector will have regard to nationally recognised standards and “good practice”. Any requirement made orally or in writing will clearly identify whether it is mandatory or advisory in nature.

All mandatory requirements will be given a reasonable time for completion, and these will be discussed with the person responsible for complying. Due regard will be hard to the observations of that person when the Officer specifies the time allowed.

7. Formal Enforcement Statutory Notices

Statutory Notices can be effective and quick in that they require employers to put dangerous situations right without hopefully the delay and uncertainty of going to Court. Where a Notice is served there is an appeal procedure to an Employment Tribunal to permit independent review

7.1. Improvement Notices

These will be served where:

- a contravention of the current health & safety law has been identified,
- the severity of the risk/contravention warrants it,
- the officer has reason to believe that an informal approach would not be successful or has already failed, and
- that the cessation of the contravention would be likely to achieve the officer’s primary concern to prevent accidents or ill health.

7.2. Prohibition Notices

These will be served were, as a result of or in conjunction with a work activity:

There is or there will be a risk of serious personal injury, and the officer has reason to believe that, due to the severity of the risk/hazard, any other action would not be sufficient or would not be successful, or it has already failed.

In most circumstances statutory provisions would be breached and can also be cited in the notice.

As soon as the officer has decided to serve a notice he/she will endeavour verbally to advise the persons responsible or their recognised representative of the contravention and reason for service, and discuss with them the ramifications, the compliance requirements and the proposed timescale together with the procedure for appeal.

8. Formal Enforcement - Various Other Powers

In carrying out their functions, duly authorised officers have a range of far-

reaching powers including: -

- the right of entry without prior warning;
- examination of articles, substances and documents, and
- seizure of articles or substances.

Prior to using such powers, an authorised officer will have decided that informal action, in that particular instance:-

- would not be appropriate or
- would be inadequate for the Council to satisfy its duty; would not be successful or has already failed

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 Caution will be taken by the duly authorised officer after consideration of a report from the inspecting officer. It should be noted that Cautions are not generally used by health and safety inspectors in line with HSE

guidance. HSE states ‘since the Enforcement Policy Statement indicates that HSE prosecutions are taken where the risk, breach and outcome are usually serious, then a simple caution is not normally appropriate in circumstances where an HSE case could be properly brought.’ HSE Board has confirmed that inspectors may consider a simple caution in a case which ordinarily would meet the public interest test, but where there are specific circumstances that weigh firmly against it. The Board considered in particular the Code for Crown Prosecutors 'public interest factors against prosecution' (6.5(f)and (g)).

These relate to when a simple caution might be appropriate, for example when a court appearance would be likely to have a seriously adverse effect on a victim's health, or the accused is elderly, or was suffering significant physical or mental ill health at the time of the offence. This needs careful judgement because there may be cases which are so significant that a prosecution is warranted despite these factors being present.

Simple cautions should not be given if it is in the public interest for the offender to be brought before the court. See Code for Crown Prosecutors for further guidance on applying the Code when taking decisions to offer a simple caution. It will not be used as an alternative to prosecution where it is felt the prosecution case is weak.

A simple caution can only be administered where the suspected offender is prepared to admit the offence. Care will be taken to ensure that the suspected offender understands the significance of the simple caution and is able to give an

informed consent to being cautioned.

If the offer of a simple caution is declined, a prosecution will be instigated.

Primary Authorities will be notified of simple cautions issued, where appropriate. Further information about Simple Cautions can be found on the HSE and Crown Prosecution Service websites.

10. Formal Enforcement - Prosecutions

In keeping with the preventative role, a duly Authorised Officer of a Council may recommend prosecution as a way to draw attention to the need for compliance with and maintenance of good standards.

Prosecutions will only be initiated for the more serious offences which either resulted in or could have resulted in serious injury or ill health, or which represented a blatant disregard by employers or others of their legal responsibilities, whilst having regard to the EMM.

Officers / Inspectors investigating breaches of the law will consider their potential to cause harm as well as any harm actually caused. Therefore, if a breach has significant potential for harm, even if it causes no actual injury, a prosecution may be authorised.

In deciding whether to prosecute, the Officer will also consider:

- gravity of an alleged offence, taken with the seriousness of any actual or potential harm, or the record and approach of the offender warrants it
- whether it is in the public's best interest to ensure remedial action or to deter others from similar failures to comply with the law.
- whether the evidence available provides a realistic prospect of conviction including application of the Evidential Test and Public Interest Test as described in the Crown Prosecution Service Code for Crown Prosecutors.
- death was a result of a breach of the legislation
- 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 or safety case
- duty holder's standard of managing health and safety is found to be far below what is required by health and safety law and to be giving rise to significant risk
- there has been a failure to comply with an improvement or prohibition notice;

or there has been a repetition of a breach that was subject to a formal caution

- false information has been supplied wilfully, or there has been an intent to deceive, in relation to a matter which gives rise to a significant risk;

- Officers / Inspectors have been intentionally obstructed in the lawful course of their duties.

If warranted by the circumstance, prosecution will be initiated by Gravesham Borough Council without any prior warnings and without any recourse to alternative sanctions, subject always, to correct procedures being followed under the Police and Criminal Evidence Act 1984, and the related Codes of Practice, along with any internal policies and procedures.

11. Penalties for Health and Safety Offences

Information on penalties for health and safety offences can be found on the HSE website:

http://www.hse.gov.uk/enforce/enforcementguide/court/sentencing-penalties.htm

12. Publicity

The Council will normally issue a press statement following conviction and inform the HSE.

We will keep a register of all improvement and Prohibition notices which have been issued.

13. Training and Qualification of Enforcement Officers

No officer will carry out health and safety enforcement duties unless they meet the competency requirements as outlined in National Local Authority Enforcement Code.

- Improvement and Prohibition notices will only be signed and served by an authorised officer.

- Prosecution and simple cautions will only be instigated following review of the matter by the relevant Head of Service and in consultation with their legal advisors.

- Training will be provided for all enforcement officers as required to maintain their competence.

14. Review of Policy

The implications and effectiveness of this policy will be frequently monitored.

This Policy will be reviewed at least every 5 Years to reflect changes indicated by

internal monitoring, by legislation or by guidance from the Health and Safety Executive.

14.1. Footnotes

- (1) Government's Enforcement Concordat - A guidance document drawn up in collaboration with businesses, local and national regulators which sets out principals of good enforcement. Department of Trade and Industry 1998

- (2) Regulators' Code – Seeks to promote proportionate, consistent and targeted regulatory activity through the development of transparent and effective dialogue and understanding between regulators and those they regulate. Department for Business Innovation and Skills, April 2014.

- (3) Kent and Medway Partnership of Enforcing Authorities - A partnership between all the local authorities in Kent & Medway which have a health and safety enforcement responsibility.

- (4) PAP-Primary Authority Partnership - This replaces the Lead Authority Partnership Scheme, and it is mandatory that local authorities consult with Primary Authorities when considering enforcement action