

TITLE: APPROVAL OF THE DRAFT HEALTH AND SAFETY ENFORCEMENT POLICY FOR CONSULTATION

Committee: Operational Services Committee

Date: 27th March 2023

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Report No: X178

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1.0 ISSUE

1.1. The Council needs to update its Enforcement Policy in respect of Health and Safety.

2.0 RECOMMENDATION

2.1. The Committee is asked to consider the attached Health and Safety Enforcement Policy and to approve it for the purpose of consultation with relevant stakeholders and the general public.

3.0 BACKGROUND/OPTIONS

3.1. Officers authorised by East Cambridgeshire District Council carry out statutory functions according to health and safety legislation.

3.2. Under the Health and Safety Executive National Local Authority (LA) Enforcement Code, the Health and Safety Executive requires East Cambridgeshire District Council to have an enforcement policy.

3.3. This was last done in 2014 to ensure that the policies were in line with the Regulators Code of the same year. Since 2014 there has been development of the Primary Authority scheme overseen by Department for Business, Energy & Industrial Strategy.

3.4. When the policies were reviewed in 2014, upon committee approval they went out to public consultation. It is envisaged that the same process be followed with the final policies being brought back to this committee later this year.

3.5. If the draft policies are approved, a twelve- w e e k consultation exercise will be undertaken with relevant stakeholders and the general public.

3.6. All consultation responses would need to be considered by the Operational Services Committee before the finalised policies are published.

4.0 ARGUMENTS/CONCLUSION(S)

- 4.1. The draft enforcement policy allows the Council to satisfy the requirements of both the Health and Safety Executive to have enforcement policies that satisfy the Regulators Code.

5.0 FINANCIAL IMPLICATIONS / EQUALITY IMPACT STATEMENT / CARBON IMPACT ASSESSMENT

- 5.1. The financial implications arising from this report will be that of officer time spent collating and circulating the documents and that for review before the policy is brought back to the Committee.
- 5.2. Equality Impact Assessment (EIA) is not required.
- 5.3. Carbon Impact Assessment (CIA) is not required.

6.0 APPENDICES

Appendix 1 – Health and Safety Enforcement Policy Statement (March 2023)

Background Documents:

Health and Safety at Work Etc. Act 1974

Regulators Code 2014

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

Appendix 1 HEALTH AND SAFETY ENFORCEMENT POLICY STATEMENT

Summary of Changes

1. Simplify the text to ensure that those affected by the policy can understand the processes the Council follows.
2. Ensure that the links to background documentation are up to date and correct.
3. Ensure that the language mirrors that of the Food Enforcement Policy.
4. Ensure that document can be easily updated and that changes can be tracked before the statement needs redrafting.

HEALTH AND SAFETY ENFORCEMENT POLICY STATEMENT

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EAST CAMBRIDGESHIRE DISTRICT COUNCIL
HEALTH AND SAFETY ENFORCEMENT POLICY STATEMENT

1.0 INTRODUCTION

- 1.1 One of the primary aims of the East Cambridgeshire District Council (“the Council”), and in particular Environmental Services, is to protect the health, safety and welfare of people at work and others who may, as a result of a work activity be exposed to risk or harm, including members of the Public.
- 1.2 Health and Safety enforcement in the UK is split between two different agencies, both of which are overseen by the Health and Safety Executive Board. For the East Cambridgeshire area this is the Health and Safety Executive (HSE) and the Council. The HSE and Council Safety Inspectors carry out the same role and have the same enforcement powers but inspect and enforce in different types of premises.
- 1.3 Detailed within the schedules to the Health and Safety (Enforcing Authority) Regulations 1998¹ in general the HSE covers factories, building sites, mines and quarries, farms, fairgrounds, railways, chemical plant and offshore and nuclear installations. The Council cover offices, shops, warehouses, hotel and catering, sport, leisure, consumer services, residential care homes and churches.
- 1.4 This policy statement lays out the Council’s commitment to the principles of consistent and effective enforcement of health and safety legislation in accordance with the Regulators Code² and builds on the Council’s wider Corporate Enforcement Protocol³.
- 1.5 This policy recognises and gives support to the specific guidelines on enforcement action published by the HSE and that found within the Primary Authority scheme currently overseen by the Government’s Office for Product Safety & Standards.

2.0 STATEMENT OF INTENT

- 2.1 It is the Council’s policy to ensure that, as far as is reasonably practical, workplaces are safe for both employees and the wider affected public.
- 2.2 To achieve this objective enforcement action will be proportionate to the risk(s) presented, or the seriousness of any legislative contravention and in accordance with the guidelines of this policy.
- 2.3 It is expected that Officers will adopt an educative approach with those responsible for securing compliance with relevant legislation. Should that approach fail to secure the required improvement Officers will enforce the law by using a range of enforcement options.
- 2.4 The Risk Gap is the perceived difference from where the business currently sits compared to a well-regulated business in the same sector. If that Risk Gap is large

¹ <https://www.legislation.gov.uk/ukxi/1998/494>

² <https://www.gov.uk/government/publications/regulators-code>

³ <https://www.eastcambs.gov.uk/east-cambs-district-council/policy-documents>

then Officers will consider enforcement action in the first instance. Such decisions will be guided by the Enforcement Management Model⁴ published by the HSE.

- 2.5 Enforcement action can range from verbal and written warnings, to the use of statutory notices, simple cautions, and prosecution. Prosecution will not normally constitute a punitive response to minor contraventions of safety legislation.
- 2.6 Departures from these policy guidelines may be required where there is an elevated risk to the safety of workers or the wider public. It is anticipated that such cases will be the exception. Any departure will be discussed with the Senior Environmental Health Officer (SEHO) or, in their absence, after consultation with the Environmental Services Manager (ESM).
- 2.7 All authorised Officers shall have regard to this policy when carrying out their assigned duties.

3.0 GENERAL PRINCIPLES

- 3.1 The Council aims to secure full compliance with all relevant health and safety legislation that it is responsible for enforcing. Most of its dealings with those responsible for complying with such legislation involves informal action and authorised Officers will seek to offer relevant information and advice in person as well as in writing.
- 3.2 Formal action will be considered for serious breaches of legislation, and for those who seek to gain a competitive edge through a lack of the required safety protocols.
- 3.3 Most health and safety legislation is not prescriptive. Employers are expected to use risk assessment to inform on the required controls. In dealing with companies Officers will take account of relevant guidance using professional judgement about the extent of the risks, the employer's own assessment of those risks, and the effort that may have been applied to counter them. They will seek to encourage good practice in line with that which is contained in any relevant guidance, code of practice, or relevant legislation.
- 3.4 The needs of businesses will be considered by Officers. In particular the need for consistent advice or guidance that will be issued across an industry sector.
- 3.5 Any intervention will aim to impose the minimum burden consistent with regulatory confines. Where possible Officers will assist businesses and individuals to understand any requirements and the obligations imposed by the relevant legislation.
- 3.6 If informal approaches do not achieve the required improvement, or if the perceived Risk-Gap is large, Officers will use formal enforcement measures set out in legislation including the issuing of statutory notices, simple cautions and/or by taking prosecutions.
- 3.7 Where necessary, the Council will use its powers to visit businesses in other local authority areas to investigate potential offences that have arisen within its own area.
- 3.8 Where appropriate, the Council reserves its right to carry out covert surveillance of individuals or organisations. In doing so, Officers will comply with the Regulation of

⁴ <https://www.hse.gov.uk/enforce/enforcement-management-model.htm>

Investigatory Powers Act 2000, human rights legislation, and any associated guidance in existence at the time along with any internal policies and procedures.

- 3.9 Where resources permit, the Council will aim to provide suitable information, for example about compliance with new or emerging legislation designed to encourage compliance with the law. Efforts will be made to provide it in languages other than English where there is a demand and where resources facilitate this.

4.0 Officers

- 4.1 The Council's Officers will deal with anyone subject to the enforcement process in a courteous, fair, and objective manner, and considering its policy on equal opportunities and the Council's Corporate Enforcement Protocol.
- 4.2 The Officers who carry out the enforcement of health and safety legislation are authorised in writing to enforce delegated tasks and duties in accordance with the Council's scheme of delegation.
- 4.3 The Council will ensure that its Officers are suitably qualified, experienced, and competent with respect to the enforcement duties that they have been authorised to carry out. Such authorisations shall be issued under the Council's Constitution and in accordance with the Code of Practice. Officers shall only act in accordance with their own authorisations.
- 4.4 The Council shall also ensure that each Officer receives suitable and sufficient structured training that is managed, assessed, and recorded on an ongoing basis.

5.0 PRINCIPLES OF ENFORCEMENT

- 5.1 The enforcement of health and safety legislation will be guided by the principles that are contained within the Regulator's Code⁵ that has been formally adopted by the Council, in addition to the Code for Crown prosecutors⁶ and the Regulators Code. These documents provide a framework for local authorities to work to by committing them to good enforcement policies and procedures.
- 5.2 The principles of the Enforcement Concordat are as follows:

Standards

The Council remains accountable to central government, the HSE and local taxpayers for its actions and omissions. The Council will consult with businesses and other relevant interested parties, including technical experts where appropriate, regarding the level of service and performance the public and business can expect to receive. These standards will then be made available to those who have an interest together.

Openness

The Council will provide information and advice in plain language on the law that it enforces and will disseminate this as widely as possible. It will also be open about how it sets about its work, including any charges that are made for specific activities.

⁵ <https://www.gov.uk/government/publications/regulators-code>

⁶ <https://www.cps.gov.uk/publication/code-crown-prosecutors>

Officers will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.

Helpfulness

The Council recognises that its role involves actively working with businesses, especially small and medium sized businesses, and will encourage businesses to seek advice/information from them. Officers will provide a courteous and efficient service and the staff will identify themselves by name. Officers will provide a contact point and telephone number for further dealings. Wherever practicable enforcement services will be co-ordinated to minimise any unnecessary overlaps and time delays.

Proportionality

Both those whom the law protects and those in whom it places a duty expect that action taken by the Council to achieve compliance should be proportionate to the risks posed to consumers and to the seriousness of any breach of the legislation or relevant licensing conditions. Deciding what is reasonable or appropriate to control risks involves the exercise of judgement by businesses and, when the law permits, discretion by enforcers based on sound professional judgement.

Consistency

Businesses managing similar risks expect a consistent approach from enforcing Officers in the advice provided and the use of powers, in response to inspections or incidents.

To promote consistency, discussions are held with other members of the County Food Liaison Group⁷. There are also effective arrangements for liaison with other enforcing authorities, the HSE, and any Primary/Home Authorities.

Transparency

Transparency means helping businesses and the public to understand the legal duties it is subject to and the extent of any liability. Officers will distinguish between legal requirements and any recommendations when issuing advice or guidance. Officers will also explain why they intend to or have taken a particular course of action.

Targeting

Targeting means making sure that resources are targeted primarily on those whose activities give rise to the most serious risks, or where hazards are least well controlled; and that action is focused on the businesses who are responsible for the risk and who are best placed to control it.

The Council will prioritise inspections in accordance with any relevant campaigns being run by the HSE or projects alongside partners in the County Food Liaison Group.

⁷ Meeting attended by the Lead Food Officers of the Cambridgeshire Authorities together with Peterborough City.

Complaints from employees or the wider public about business activities and incidents will be considered against any intelligence on the risks posed by a business and its general compliance history.

Complaints about Service

In cases where disputes cannot be resolved, any rights of complaint or appeal will be explained by the Officer, with details of the process and the timescales involved. The Council will provide a publicised, effective, and timely complaints procedures that is easily accessible to both businesses and the public.

6.0 INSPECTIONS AND INTERVENTIONS

- 6.1 Inspections and interventions under health and safety will be made without warning and at a time when a range of activities may be observed. In instances where it is appropriate to do so, appointments may be advisable e.g., where it is prudent that the proprietor or manager is on site to discuss particular issues or matters arising from a previous visit.
- 6.2 Officers will always identify themselves and be prepared to show their authorisation. The Officer will state the purpose of the inspection at the start of the visit. This will not be done if the purpose of the visit is for surveillance and identification as an Officer may defeat the object of the visit.
- 6.3 At the conclusion of any intervention, the Officer will offer to discuss their findings and will normally give to the person in charge a completed report of visit form. The Officer may choose to confirm their visit in writing if the issued report requires further detail.
- 6.4 If contraventions of poor safety practices are found, or when there is low confidence that the business will address the issues, a revisit will be carried out.

7.0 ACCIDENT INVESTIGATIONS

- 7.1 Accidents at workplaces, either to employees or the public, may be reportable under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (RIDDOR). Such reports are received by the Council for the premises that it enforces health and safety within.
- 7.2 The accident report is sometimes not clear as to the sequence of events. The Officer may need to speak to the business to ascertain the correct facts. This may not constitute an investigation if the only purpose is to clarify and classify.
- 7.3 Accidents are formally investigated if they result in death, a specified injury, or are related to an active campaign. In addition, an Officer may choose to investigate if there is a history of such accidents or the accident raises a particular concern.
- 7.4 The decision to not to investigate an accident is subject to review by the SEHO and in certain cases the Environmental Services Manager.

8.0 Amendments and Review

- 8.1 The policy will be reviewed by the SEHO on an annual basis and any minor amendments will be detailed in the Amendment Log.

8.2 Should the document require a major review, or such is required by the review of any supporting documentation, then the SEHO will undertake such action is necessary and consult on any changes.