

East Cambridgeshire District Council

HEALTH AND SAFETY ENFORCEMENT POLICY

2015

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East Cambridgeshire District Council

HEALTH AND SAFETY ENFORCEMENT POLICY

1. INTRODUCTION

- 1.1 The purpose of this policy statement is to express the commitment and intentions of East Cambridgeshire District Council (“the Council”) to the principles of risk-based, consistent and effective enforcement of health and safety legislation. The Council through its authorised officers will have regard to the Central and Local Government Concordat on Good Enforcement; the National Local Authority (LA) Enforcement Code; the Legislative and Regulatory Reform Act 2006; the Regulators Code; the Regulatory Enforcement and the Sanctions Act 2008 (and Orders made under it). Authorised officers will carry out duties in accordance with guidance issued by the Health and Safety Executive (HSE), as required by the Section 18 Standard of the Health and Safety At Work etc Act 1974 (HSAW).
- 1.2 The Council has a Corporate Enforcement Policy which outlines the general approach the Council take when considering enforcement action. This policy builds on the Corporate Enforcement Policy and outlines in detail the approach taken by the Environmental Health Team in relation to health and safety enforcement
- 1.3 This policy is designed to set out the arrangements by which the principles of proportionality, consistency, transparency, helpfulness, openness, accountability and targeting of resources will be incorporated into actions.
- 1.4 The officers who carry out the enforcement of health and safety legislation are Council staff or contractors who are authorised in writing to enforce specific tasks and duties in accordance with the Council’s scheme of delegation. In some instances, external consultants may be authorised to enforce such powers and duties on behalf of the Council. All authorised officers are to be appropriately trained and experienced for the duties that they are asked to perform. Promotion of consistency and competency of staff is to be ensured through continual monitoring and review including annual review of performance and appraisals and the implementation of recognised training needs.
- 1.5 Where chemical, biological or radiological contamination etc. poses a potential health and safety concern, officers will, where appropriate, seek medical or other expert advice from organisations such as the Public Analyst (PA), Public Health England (PHE) and Employment and Medical Advisory Service (EMAS).

2. STATEMENT OF INTENT

- 2.1 It is the Council's policy to strive to ensure that the risks to peoples’ health and safety from work activities (for which it is the enforcing authority) within the Council’s District are properly controlled and managed, in order to reduce risks associated with work to the lowest level which is reasonable practicable.

- 2.2** Interventions will be risk –based. When considering the appropriate course of action to be taken following an intervention, this Policy must be read in conjunction with relevant guidance from the HSE, and relevant guidance from other bodies such as PHE and the Chartered Institute of Environmental Health (CIEH).
- 2.3** All officers, when making enforcement decisions, must follow this Policy. They must also have regard to, and follow as appropriate, relevant Service Operating Procedures (SOPs).
- 2.4** In the first instance, officers will usually adopt an educative approach to those responsible for securing compliance with relevant health and safety legislation (the duty holders). Officers will provide clear information, guidance and advice from recognised trade associations, the HSE and other professional bodies. Where matters continue, officers will enforce the law by using a range of enforcement options including: verbal and written warnings, use of statutory notices, simple cautions and prosecution. Prosecution will not normally constitute a punitive response to very minor contraventions of health and safety legislation.
- 2.5** This policy recognises and the specific guidelines contained in Approved Codes of Practice (ACOPs) and guidance issued by those bodies listed in paragraph 2.2 above and supports the Primary Authority principle (see Appendix A).
- 2.6** It is expected that departures from these policy guidelines will be rare and only following consideration by the Environmental Services Manager in consultation with the service Director. Where appropriate, liaison will take place with other enforcement agencies where there may be a common interest and/or to clarify enforcement responsibility or interpretation.
- 2.7** In enforcing health and safety legislation, the Council will strive to fulfil the relevant HSE enforcement objectives to reduce risks to health and to protect people. The Council will also strive to implement HSE aims and priority programmes.

3. GENERAL PRINCIPLES

- 3.1** The Council believes in firm but fair enforcement of health and safety law and officers will take account of relevant ACOPs and guidance about the extent of the risks and the effort that has been applied to control them by duty holders.
- 3.2** This Council believes that the 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 it operates and accountability for the Council's actions.

4. PRINCIPLES OF ENFORCEMENT

The enforcement of health and safety legislation is guided by the principles that are contained within the Central and Local Government Concordat on Good Enforcement, which has been adopted by the Council and Regulators' Code. This constitutes a framework for local authorities to work to by committing them to good enforcement policies and procedures. The principles are as follows:

4.1 Standards

The Council remains accountable to Central Government, the HSE and the public for its actions and omissions. This means that it must have clear policies and standards against which it can be judged. The Council will consult with business and other relevant interested parties, including technical experts where appropriate and draw up these standards setting out the level of service and performance the public and business can expect to receive. These standards will then be made available to those who are regulated.

4.2 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. Officers will be prepared to discuss general issues, specific compliance failures or problems with duty holders, employees and their representatives.

4.3 Helpfulness

The Council believes that prevention is better than cure and that its role therefore involves actively working with business, especially small and medium sized businesses, to advise and assist on compliance. It will provide a courteous and efficient service and the staff will identify themselves by name. Officers will provide a contact point for further dealings with the Council and will encourage business to seek advice/information from them. Applications for licences, registrations, etc, will be dealt with efficiently and promptly. The Council will ensure that, wherever practicable, its enforcement services are effectively coordinated to minimise any unnecessary overlaps and time delays.

4.4 Complaints about Service

The Council has a Complaints procedure which is available to the public in case of complaints made against it or its officers. Where disputes cannot be resolved, any rights of appeal or complaint will be explained by the officer, along with details of the process and the time-scales involved.

4.5 Proportionality

4.5.1 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 the Council to achieve compliance or bring duty holders to account for non-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 from a breach of the law. In practice, applying the principle of proportionality means that the Council will take particular account of how far the duty holder has fallen short of what the law requires and the extent of the risks to people arising from the breach.

4.5.2 Some health and safety duties are specific and absolute. Others require action so far as is “reasonably practicable”. The Council will apply the principle of proportionality in relation to both kinds of duty. Deciding what is “reasonably practicable” to control risks involves the exercise of judgement. Where duty holders must control risks so far as is reasonably practicable, the Council, in considering protective measures taken by duty holders must take account of the degree of risk on the one hand, and balance this against the cost, time or trouble,

involved in the measures necessary to avert the risk. Unless it can be shown that there is gross disproportion between these 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.

4.5.3 The Council will expect relevant good practice to be followed such as is found in HSE and industry Guidance. Where relevant good practice in particular cases is not clearly established, health and safety law effectively requires duty holders to establish explicitly the significance of the risks to determine what action needs to be taken. Ultimately, the courts determine what is reasonably practicable in particular cases.

4.5.4 Some risks may be so serious that they cannot be permitted irrespective of the consequences.

4.6 Consistency

4.6.1 Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends.

4.6.2 Duty holders managing similar risks expect consistency from the Council. This includes any advice that is given, the use of enforcement notices, decisions on prosecution and in the response to accidents /incidents at work.

4.6.3 The Council recognises that in practice consistency is not a simple matter. Inspectors are faced with many variables including the degree of risk, the attitude and competence of management, any history of incidents or breaches involving the duty holder, previous enforcement action, and the seriousness of any breach, which includes any potential or actual harm arising from a breach of the law. Decisions on enforcement action are discretionary, involving judgement by the enforcer. This Council will have arrangements in place to promote consistency in the exercise of discretion, including effective arrangements for liaison with other enforcing authorities

4.7 Transparency

4.7.1 Transparency means helping duty holders to understand what is expected of them and what they should expect from the Council. It also means making clear to duty holders not only what they have to do but, where this is relevant, what they don't. That means distinguishing between what is a legal requirements and what is recommended (but is not compulsory) through advice or guidance.

4.7.2 Transparency also involves the Council having arrangements for keeping employees, their representatives, and victims or their families informed. These arrangements must have regard to legal constraints and requirements (including data protection).

4.7.3 This statement sets out the general policy framework within which the Council should operate. Duty holders, employees, their representatives and others also need to know what to expect when an inspector calls and what rights of complaint are open to them. The Complaints procedure is set out on the Council's website.

4.7.4 In addition all Council officers are required to issue the HSE leaflet "*What to expect when a health and safety inspector calls*" to those they visit. This explains what employers and employees and their representatives can expect when a

health and safety inspector calls at a workplace. Officers will follow Standard Operating Procedures on enforcement action and in particular:

- when officers offer duty holders information, or advice, face to face or in writing, including any warnings, officers will tell the duty holder what to do to comply with the law, and explain why. Inspectors will, if asked, write to confirm any advice, and to 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, and by when, and that in the inspector's opinion a breach of the law has been committed;
- in the case of a prohibition notice the notice will explain why the prohibition is necessary.

4.8 Targeting

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

4.8.2 The Council has systems for deciding which inspections, investigations or other regulatory contacts should take priority according to the nature and extent of risks posed by a duty holder's operations. The duty holder's management competence is important, because a relatively low hazard site poorly managed can entail greater risk to workers or the public than a higher hazard site where proper and adequate risk control measures are in place.

4.8.3 Any enforcement action will be directed against duty holders responsible for a breach. This may be employers in relation to workers or others exposed to risks; the self-employed; owners of premises; suppliers of equipment; or employees themselves. Where several duty holders have responsibilities, the Council may take action against more than one when it is appropriate to do so in accordance with this policy.

5. SPECIFIC ENFORCEMENT AREAS

5.1 Routine Inspections

5.1.1 The Council will have regard to the National Local Authority (LA) Enforcement Code and guidance contained within the HSE Circular LAC 67/2 (Rev 4) which requires the Council to prioritise interventions according to activities identified in Annex A of the circular in setting out work plans. Category A premises (high risk) will be inspected according to the frequency found in HSE LAC 67/2 (rev 4) guidance.

5.1.2 Inspections and visits to premises and work activities may be made by appointment or without prior warning. Appointments may be advisable e.g. where it is prudent that the duty holder or manager is on site in order to discuss particular issues or matters arising.

- 5.1.3** Officers will normally identify themselves at the start unless for justifiable reasons this will defeat the object of the visit e.g. the visit is for surveillance purposes. In any event, officers will show their identification, if asked, and provide means of checking that identity if necessary.
- 5.1.4** The officer will state the purpose of the inspection at the start of the visit with the person in charge at that time. Inspections can involve discussions with all or some of the employees and contractors working at the premises at that time. At the conclusion of inspection, the officer will offer to discuss their findings with the employees and their representatives, complete and give the person in charge a completed Report of Inspection form, inviting them to sign this.
- 5.1.5** Officers will offer to supply any relevant leaflets or guidance or email links to that guidance at the time of inspection or afterwards. Letters can be translated into other languages if requested and interpreters can be arranged where necessary. Where issues of interpretation or inconsistency arise, the authority will liaise with the Primary Authority (where a duty holder has this in place) if appropriate, or the Health and Safety Executive (HSE).
- 5.1.6** Written evidence should be issued following all site interventions. This applies even in those circumstances where conditions at the time of inspection are satisfactory. The minimum details which must be included in post- inspection reports include: Date and time of inspection, address of the premises, persons seen/interviewed, any items requiring attention and a summary of action to be taken by the officer.
- 5.1.7** If contraventions are found and based on risk, the Council may arrange for a further visit to be carried out to ensure that significant breaches have been remedied. If notices are served, officers may visit to monitor compliance whilst the notice is in place and will visit immediately following the expiry of the notice.

5.2 Investigations

- 5.2.1** The Council will respond to, and where appropriate, investigate all complaints about health and safety at work within 3 working days. The response may vary according to the nature of the allegation and its seriousness. It may be necessary to protect the identity of the complainant e.g. where that person is an employee or where there is a risk of intimidation. Investigation will be undertaken to determine:
- causes;
 - whether action has been taken or needs to be taken to prevent a recurrence and to secure compliance with the law;
 - lessons to be learnt and to influence the law and guidance;
 - what response is appropriate to a breach of the law.
- 5.2.2** The Council will respond to accidents or incidents that are reportable under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (RIDDOR). In selecting which complaints or reports of incidents, injury or occupational ill health to investigate and in deciding the level of resources to be used, the Council will take account of the HSE Enforcement Management Module (EMM) and the following factors:

- the severity and scale of potential or actual harm;
- the seriousness of any potential breach of the law;
- knowledge of the duty holder's past health and safety performance;
- the enforcement priorities;
 - the practicality of achieving results;
 - the wider relevance of the event, including serious public concern.

5.2.3 In the case of serious accidents or incidents, including fatalities or where the problem may be of a serious ongoing nature, a visit will be on the same day. If there are special reasons why a same- day visit cannot be made, this will be recorded.

5.2.4 In responding to complaints and carrying out interventions, the officer will liaise with the Primary Authority (where the duty holder has one).

5.2.5 Where the matter is of a serious nature or the complainant /injured person requests this, they will be kept informed of the progress of the investigation (subject to the ongoing nature of any formal investigation) and notified of the eventual outcome.

5.2.6 The officer will keep the duty holder or their representative informed of the progress/outcome of the investigation (subject to the ongoing nature of any formal investigation).

5.3 Other Intervention Strategies

5.3.1 The Council will have regard to the National Local Authority (LA) Enforcement Code and guidance contained within the HSE Circular LAC 67/2 (Rev 4) which requires the Council to prioritise interventions according to activities identified in Annex A and the HSAW Section 18 Standard, in setting out work plans.

5.3.2 Officers will "hazard spot" at other interventions including those for food hygiene and follow matters up in the same way as when full inspections are undertaken.

5.3.3 The Council may inspect certain local activities based on risk.

6. ENFORCEMENT OPTIONS

6.1 Having regard to the National Local Authority (LA) Enforcement Code and HSE Enforcement Management Module (EMM) generally, enforcement will be undertaken in a graduated approach. There are a number of enforcement options available to authorised officers where they have identified contraventions of the law. These options include: -

- taking informal action;
- using statutory notices e.g. Improvement, Prohibition;
- simple cautions;
- prosecution.

6.2 This part of this policy provides detailed guidance on when each of these options may be considered. In each situation, the officer will have regard to the EMM and need to assess the degree of risk, the seriousness of the offence and the technical means of remedying the situation along with the history of compliance. The decision

as to which type of enforcement action is appropriate must always be governed by the particular circumstances of the case. Where appropriate, a staged approach to enforcement should be adopted. In the first instance, businesses should be given the opportunity to discuss and remedy problems before any formal action is taken (unless it is of a serious nature and requires immediate action).

6.3 Informal Action

6.3.1 Informal action may consist of any or all of the following:

- giving advice and offering general assistance and guidance;
- issuing verbal warnings of contraventions;
- writing a letter requiring action.

6.3.2 Officers will use informal procedures as long as they believe these will secure compliance with the law within a time scale that is reasonable in the circumstances.

6.3.3 If the officer decides to use informal methods such as giving written advice, then this should not produce a lower standard of compliance with the Act and ancillary legislation than would be achieved by the use of formal legal procedures.

6.3.4 While the action taken by the officer will depend on the circumstances of the particular case, for guidance purposes only, the Council considers the following circumstances where it may be appropriate to take informal action:

- the offence is not serious enough to warrant formal action e.g. a minor technical offence which creates little or no risk to health and safety;
- from the past history, it can reasonably be expected that informal action will achieve compliance;
- confidence in the business management involved is reasonably high.

6.3.5 Where informal action has already been adopted in relation to the same proprietor, but without success, officers will consider using a more formal approach. The options may include the serving of Notices and or prosecution.

6.3.6 Where an officer offers advice following an inspection, they should wherever possible confirm that advice in writing with a copy being enclosed for the site manager, employees and / or their representatives. The letter will be sent to the registered office for a limited company or head office for an unlimited company. A sole trader may request correspondence be sent to his or her home address instead of the place of work.

6.3.7 All letters sent to duty holders following interventions will distinguish a legal requirement from a recommendation, give a time for compliance and state the legislation being contravened. It will also give the contact details for the officer and who to contact in the event of needing further advice or wanting to contest matters with the officer's line manager.

6.4 Improvement Notices

6.4.1 Having regard to the Enforcement Management Model (EMM), officers will normally consider issuing Improvement notices in the following circumstances:

- where there are significant contraventions of legislation;

- where formal action is proportionate to the risks to the health and safety of employees or others;
- where there is a record of non-compliance with informal action for breaches of the Health and Safety at Work etc. Act 1974, ancillary legislation, and regulations made under it;
- where the authorised officer has reason to believe that an informal approach will not be successful;
- where health and safety standards are generally poor with little management awareness of statutory requirements;
- the consequences of non-compliance could be potentially serious to the health and safety of employees or others;
- although it is intended to prosecute, effective action also needs to be taken as quickly as possible to remedy conditions that are serious or deteriorating.

6.4.2 Before issuing a notice officers will take steps to ensure that the notice is being served on the right person(s) consider all the relevant guidance in codes of practice and any relevant advice issued by the HSE, PHE and CIEH. This would include any Primary Authority.

6.4.3 Failure to comply with an improvement notice will normally result in prosecution. The Council will use discretion in deciding whether to proceed with any court case. The decision whether to prosecute should take account of the evidential stage and the relevant public interest factors set down by the Director of Public Prosecutions in the Code for Crown Prosecutors. No prosecution should go ahead unless there is sufficient evidence to provide a realistic prospect of conviction, and a decision is taken that a prosecution is in the public interest. In deciding whether a prosecution should follow, consideration will be given to the following:

- any explanation consequently offered by the recipient;
- the nature and extent of any work that has been carried out as well the likely completion time for the remainder of the work;
- what proportion, if any, of the works have been completed, and whether the outstanding works pose a risk to health and safety;
- whether other action, such as issuing a simple caution in accordance with the relevant guidance would not be appropriate or effective.
- The Enforcement Management Model will also be consulted when making a decision as to the most appropriate course of action.

6.4.4 Where possible, officers will try and agree a reasonable time limit for compliance with an improvement notice with the duty holder. Once the notice has been served any requests for extensions of time for compliance will need to be made in writing to the officer concerned **before** the notice expires and will only be granted in exceptional circumstances. Information on the appeal procedures will be included with the notice. Officers will normally re-visit the premises the next working day after the notice has expired to check compliance. Notices will be included on the Register of Notices held under the Environment and Safety

Information Act 1988 where they are required to be, which is available on request.

6.5 Prohibition Notices

6.5.1 Officers will identify where there are risks normally requiring immediate formal enforcement action (these are known as “Matters of Evident Concern” (MECs)) or other risks present that could lead to multiple fatalities or multiple causes of ill-health (these are known as “Matters of Potential Major Concern” (MPMC)s). When Officers are considering the use of a prohibition notice the officer must consider:

- The consequences of not taking immediate and decisive action to protect the health and safety of employees or others would be unacceptable;
- The officer has no confidence in the duty holder that the hazard/risks will be abated without the service of such a notice.
- The Enforcement Management Model (EMM) may also be consulted to support the service of a prohibition notice.

6.5.2 A deferred prohibition notice would be appropriate where stopping the activity immediately would introduce additional risks.

6.5.3 In all cases where an officer considers that the service of a prohibition notice is the only course of action, wherever possible, the seriousness of the situation must be explained to the duty holder and/or person responsible for securing compliance with the notice.

6.5.4 Officers will contact any Primary Authority for the duty holder but on grounds of seriousness and speed, this may take place after the service of the prohibition notice and its outcome.

6.5.5 In a situation where serious or imminent danger to the health and safety of persons at or connected with a workplace from any article or substance, action may be taken to remove that danger under Section 25 of the Health and Safety at Work etc. Act 1974 subject to the same considerations outlined in 6.5.1 above.

6.5.6 Officers may need to serve improvement notices at the same time as prohibition notices regarding sustained compliance.

6.6 Simple Cautions

6.6.1 The Council may consider issuing a simple caution, in appropriate cases, as an alternative to a prosecution. In doing so, reference will be made to the appropriate Home Office circular. Officers will have regard to the Council’s Corporate Enforcement Protocol including the public interest test to determine the most suitable course of action. Under normal circumstances, the purpose of a simple caution is to:

- deal quickly and simply with less serious first time offences;
- divert less serious offences away from the Courts;
- reduce the chance of repeated offences.

6.6.2 When a simple caution is under consideration, the following conditions must be fulfilled before it is offered:

- **there is sufficient evidence to provide a realistic prospect of conviction if the offender were to be prosecuted;**
- **the offender is 18 years of age or over;**
- **the offender admits they committed the crime and has not raised a defence;**
- **the offender agrees to be given a caution**

6.6.3 Where a person declines to accept a simple caution, it will be necessary to consider taking alternative enforcement action. This could include prosecution in accordance with the Council's Corporate Enforcement Protocol, the Code for Crown Prosecutors and relevant Home Office guidance.

6.7 Prosecution

Prosecution is only one of a number of enforcement options available to the Council. Each case will be judged on its own merits in accordance with the Council's Corporate Enforcement Protocol and Policies and any deviation from policy must be discussed with senior managers and or the legal team and recorded.

6.8 Public information on Notices

Where required by the Environment and Safety Information Act 1988 safety improvement, prohibition and deferred prohibition notices are made available on request to the general public but the information will be withheld if the Council considers that a disclosure could cause harm or prejudice; or be in breach of the law.

6.9 Health and Safety Prosecution Policy

6.9.1 Officers will have regard to the relevant codes and rules listed in paragraph 1.1 of this Policy and the Council's Corporate Enforcement Protocol and use discretion to determine the most suitable course of action. The Council's Constitution determines who has delegated authority to make the decision to prosecute for health and safety matters. As part of considering the case for prosecution, the Environmental Services Manager, legal services colleagues, expert professionals/witnesses and authorised officers will be consulted as part of the decision-making process.

6.9.2 Officers will gather evidence and prepare the enforcement case. Officers will normally do this in consultation with the Senior Environmental Health Officer (SEHO) and, where appropriate, the HSE Liaison officer and the Council's legal services team. The decision to prosecute is kept under continuous review. This ensures that any new facts or circumstances, in support of or undermining the Council's case, are taken into account in the decision to continue or terminate the proceedings. Prosecutions must be authorised by the relevant Director or Service Lead and the decision on the action to be taken if any will be taken by the Principal Solicitor in consultation with the Environmental Health Department..

6.9.3 While the primary purpose of the enforcing authorities is to ensure that duty holders manage and control risks effectively, thus preventing harm, prosecution is an essential part of enforcement. This Council takes its obligations seriously including those arising from the human rights legislation. It will endeavour, at all times, to act compatibly with this legislation and give due regard to the rights of the individual.

6.9.4 It is the policy of the Council when dealing with all offences to:

- ensure uniformity, consistency and even -handedness;
- specify and to observe the criteria for alternative courses of action; and
- take action which assists the prevention of potential, continuing or recurring offences of a similar nature.

6.9.5 Enforcement action ranges from giving advice and issuing informal warnings, to cautioning and prosecution. Decisions on the type of action that will be taken in relation to a particular offence are based on the following criteria:

- i) The seriousness/gravity of the alleged offence, including the following considerations:
 - the risk or harm to the health, safety and welfare of employees or others;
 - failure to comply with a statutory notice served for a significant breach of legislation;
 - disregard of the health, safety and welfare of employees or others for financial reward.
 - The outcome of the Enforcement Management Model process.
- ii) The previous history of the party concerned, including the following considerations:
 - offences following a history of similar offences;
 - failure to respond positively to past warnings;
 - failure to comply with any formal notices.
- iii) The credibility of any important witnesses and their willingness to co-operate;
- iv) The willingness of the party concerned to prevent a recurrence of the problem;
- v) The importance of the case - e.g. whether it may establish a legal precedent in other companies or in other geographical areas and to deter others from similar failures to comply with the law; the general advice is, the graver the offence, the more likely the public interest factors are to be in favour of formal prosecution action;
- vi) Whether other action, such as issuing a simple caution in accordance with the relevant Home Office circular or an improvement notice or prohibition notice, would be more appropriate or effective. Note: It is possible to prosecute as well as issue a notice where a risk to health and safety still exists. Failure to comply with that notice would then become an additional offence.
- vii) Any explanation offered by the company or the suspected offender. It is always recommended that suspected offenders are invited to offer an explanation before prosecution decisions are taken and that would normally happen during an interview being held under the rules of the Police and Criminal Evidence Act 1984.
- viii) If a complainant or employee is involved, the effect (financial, physical, psychological etc.) which the offence creates and their willingness, or otherwise, to cooperate with an investigation.

6.9.6 Serious offences for which prosecution would be appropriate are illustrated by the following examples:

- where there is blatant disregard for the law, particularly where the economic advantages of breaking the law are substantial and the law abiding are placed at a disadvantage to those who disregard it;
- when there appears to have been reckless disregard for the health and safety of employees or others;
- where there have been repeated breaches of legal requirements in an establishment, or in various branches of a multiple outlet concern, and it appears that management is neither willing nor structured to deal adequately with these;
- where a particular type of offence is prevalent in an activity or an area;
- where, as a result of a significant contravention, there has been a serious accident or a case of ill-health;
- where a particular contravention has caused serious public harm;
- where there are persistent poor standards for control of health hazards.

6.9.7 The Council recognises that most businesses wish to comply with the law. However, there are occasions when action, including prosecution, will be considered against those who have flouted the law, or acted irresponsibly. Those matters that involve intentional, repeated or reckless acts and those concerned with public safety will be considered for prosecution.

6.9.8 In accordance with the Council's Corporate Enforcement Policy when considering prosecution, the Council will have regard to the Code for Crown Prosecutors. This means that the following criteria will be considered:

- i) Whether the standard of evidence is sufficient for there to be a realistic prospect of conviction;
- ii) Whether a prosecution is in the public interest;

Public interest factors include (but this is not an exhaustive list):

- The likely penalty, i.e. if the Court is likely to impose a very small or nominal penalty this is a factor against prosecution;
- Currency i.e. the time which has elapsed since the date of any alleged offence;
- Youth, whether prosecution would have an adverse impact on his / her future prospects that is disproportionate to the seriousness of the offending
- Old age; infirmity, or other medical condition, in particular, whether the accused is fit to stand trial.

6.9.9 Having decided to prosecute, the policy of the Council is to proceed without any unnecessary delay and to select offences that:

- i) Reflect the seriousness of the case;
- ii) Enable a court to exercise adequate sentencing powers; and
- iii) Permit the case to be presented in a clear and precise manner.

6.9.10 Once the prosecution has been determined by a court of law, the Council will contact its witnesses to inform them of the outcome.

6.9.11 Prosecution to Ensure Prevention

In keeping with its preventative role, the Council may use prosecution as a way to draw attention to the need for compliance and the maintenance of good standards in relation to the health, safety and welfare of employees. The Council may consider prosecution if a breach has significant potential for harm, regardless of whether it caused an injury.

6.9.12 Prosecution of Individuals

The Health and Safety at Work etc. Act 1974 allows for the prosecution of individuals who have committed offences under health and safety legislation. It is the Council's policy to identify and prosecute individuals if a conviction is warranted and can be secured. This may for example be appropriate where, despite adequate management controls, an employee blatantly ignores health and safety instruction and places either himself or his fellow workers in considerable danger. There may be occasions when individual directors have failed in their legal duties and prosecution may be appropriate.

6.9.13 Death at Work

Officers will have regard to 'Work-Related Deaths: A Protocol for Liaison'. This protocol has been agreed between the Health and Safety Executive (HSE), Local Government Association, the Association of Chief Police Officers (ACPO), the Crown Prosecution Service (CPS) and other relevant bodies. It sets out the principles for effective liaison between the Health and Safety Executive, Police Forces and the Crown Prosecution Service in relation to work related deaths, in particular if there is evidence that the crime of manslaughter or corporate manslaughter may have been committed. Where there has been a breach of the law leading to a work-related death and there is a potential for a charge of manslaughter, the Council will liaise with the Police, Coroner and Crown Prosecution Service (CPS).

If the Police or the CPS determine not to pursue a manslaughter case, the Council may consider prosecuting for health and safety offences if that is appropriate.

6.9.14 Encouraging action by the courts

Health and safety law gives the courts considerable scope to punish offenders and to deter others. Unlimited fines and in some cases imprisonment may be imposed by higher courts. The Council will continue to raise the courts' awareness of the gravity of health and safety offences and encourage them to make full use of their powers.

7. ACCIDENT INVESTIGATION POLICY

7.1 It is East Cambridgeshire District Council's policy to ensure that, where the Council is the enforcing authority, incidents; accidents; dangerous occurrences and reportable diseases are investigated using a systematic approach which takes into account the Council's Health and Safety Enforcement Policy and HSE Guidance.

7.1.1 The Council will allocate sufficient time and resources for reactive work to investigate accidents, dangerous occurrences and cases of occupational ill health based on risk. It will not be possible, nor is it necessary, to investigate all

incidents and this policy ensures that the most serious receive appropriate attention in accordance with HSE objectives and priorities.

7.2 Investigations

Investigations include telephone calls, notes, correspondence, advice and site visits made to premises where the HSAWA applies.

7.3 Reasons for investigation:

- i) to investigate the cause of a breach of health and safety law ;
- ii) to determine whether action has been taken or needs to be taken to prevent a recurrence and to secure compliance with the law;
- iii) to determine whether any specific breaches of legislation have occurred;
- iv) to increase the knowledge and awareness of the employer/employee;
- v) to determine whether lessons can be learnt;
- vi) to achieve any publicity arising from the incident which would have a beneficial effect is increasing knowledge and awareness of the management, general workforce and public.

7.4 Factors to consider when deciding whether to investigate:

- i) the severity and scale of potential for or actual harm;
- ii) the seriousness of any potential breach of the law;
- iii) knowledge of the duty holder's past health and safety performance;
- iv) the current HSE enforcement priorities;
- v) the practicality of achieving results;
- vi) the wider relevance of the event, including serious public concern.

8. THE CRITERIA FOR INVESTIGATION

8.1 Accidents or dangerous occurrences or diseases which will always be investigated:-

8.1.1 Fatalities

The police will normally be informed immediately if there has been a serious accident that may result in the death of an individual. Investigations will be conducted in accordance with 'The Work- Related Deaths: A Protocol for Liaison'. The protocol, agreed between the HSE, the Association of Chief Police Officers (ACPO), the Crown Prosecution Service (CPS) and other relevant bodies, sets out the principles for effective liaison between the agencies in relation to work related deaths, particularly if there is evidence that the crime of manslaughter or corporate manslaughter may have been committed. Liaison will take place with the police, coroner and CPS to determine the agreed roles of each organisation in the investigation. Where there is evidence suggesting manslaughter such evidence will be passed to the police or where appropriate the CPS. Where the police or CPS do not proceed with a manslaughter case an investigation under the HSAWA the Council may proceed if appropriate with a health and safety prosecution

8.1.2 Major Injuries as defined in the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (RIDDOR), irrespective of cause:

- all amputations of digits past the first joint

- amputation of hand/arm or foot/leg
- serious multiple fractures
- crush injuries leading to major organ damage
- serious head injuries including loss of consciousness
- full skin thickness burns and scalds
- permanent blinding of one or both eyes
- scalping

8.1.3 All notified instances in the following categories:-

- workplace transport incidents
- electrical incidents
- falls from a height of greater than 2m
- confined space incidents

8.1.4 Loss of consciousness caused by asphyxia or exposure to a harmful substance or biological agent.

8.1.5 All reported cases of disease that meet the criteria for reporting under RIDDOR, except those arising from circumstances/situations which are already under investigation.

8.2 Accidents and incidents where investigation is dependant on the circumstances

Investigation of accidents and incidents not falling within paragraph 8.1 above is optional, dependent on the circumstances and a subjective assessment is required.

The following will normally be investigated: -

- (i) All incidents which are likely to give rise to serious public concern.
- (ii) Irrespective of the potential for serious public concerns, any incident where there is serious breach of health and safety law. Dangerous occurrences will be investigated where it appears from the report that the outcome, potential outcome, or apparent breach of law is serious.
- (iii) Accidents or incidents which have been repeated at a particular premises.
- (iv) Accidents involving young persons or children.

8.3 Training of Officers

Accidents and incidents may be investigated outside the above criteria to assist training of officers.

9. WORKING WITH OTHERS: EXAMPLES

(i) Police and Crown Prosecution Service (CPS)

In any fatality, critical injury or suspected manslaughter, the Council and the police will work together until it is agreed which party will go forward with any prosecution.

(ii) The Coroner

Officers will liaise, provide information to and attend hearings according to the requirements of the Coroner. Any Council- led prosecution will normally take place after the coroner's inquest and any public enquiry.

(iii) Health and Safety Executive (HSE)

Officers will liaise with Inspectors at the HSE when specialist advice is required or, officers identify a potential offence for which the HSE is the enforcing authority.

(iv) Primary Authority

Officers will liaise with the Primary Authority where a relationship exists between the duty holder and that Primary Authority.

(v) Outdoor Activity Centres

Where appropriate, officers will liaise with the Adventure Activities Licensing Authority

(vi) Sports Grounds

Where appropriate, officers will liaise with the Sports Grounds Safety Authority and refer to the Guide to Safety at Sports Grounds (Department for Culture, Media and Sport –DCMS) “Green Guide”.

(vii) Care Quality Commission (CQC) & OFSTED

Officers will liaise with the registering body according to the relevant Memorandum of Understanding between the authorities.

APPENDIX A - GLOSSARY

ACOP	Approved Codes of Practice which are designed to maintain and improve standards of health and safety carrying greater authority because they have been formally approved.
CCDC	Consultant in Communicable Disease Control
CIEH	The Chartered Institute of Environmental Health
Duty holder	That person on whom the law places a duty or obligation.
EMAS	The Employment and Medical Advisory Service
EMM	Enforcement Management Module
HASWA	The Health and Safety at Work Act etc. 1974.
HELA	Health and Safety Executive Local Authority Liaison unit.
HSE	The Health and Safety Executive
PHE	Public Health England
Improvement Notice	A notice under Section 21 of HASWA which is served requiring specified improvements to be carried out within prescribed period of time.
Primary Authority	A statutory scheme, established by the Regulatory Enforcement and Sanctions Act 2008 (the RES Act). It allows an eligible business to form a legally recognised partnership with a single local authority in relation to regulatory compliance.
Prohibition Notice	A notice under Section 22 of HASWA served by officers when they are of the opinion that a person is carrying on or likely to carry on activities that involve a risk of serious personal injury
RIDDOR	The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013