



East Cambridgeshire
District Council

Health and Safety Enforcement Policy Statement

Written by Senior Environmental Health Officer

Published in September 2023

Revision due in September 2024

Copies of the policy can be provided in an alternative format. Please contact East Cambridgeshire District Council on 01353 665555 to request the format you require, or email foodandsafety@eastcambs.gov.uk, or write to Commercial Team, Environmental Services, East Cambridgeshire District Council, The Grange, Nutholt Lane, Ely, CB7 4EE

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Amendment log

Date	Page	Detail of amendment

1. 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. Those bodies are the Health and Safety Executive (HSE) and the council. The HSE and council officers 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 1998 (www.legislation.gov.uk/ukxi/1998/494) in general the HSE covers factories, building sites, mines and quarries, farms, fairgrounds, and railways. 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 Code (www.gov.uk/government/publications/regulators-code) and builds on the council’s wider Corporate Enforcement Protocol (www.eastcamb.gov.uk/east-camb-district-council/policy-documents).

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 and Department for Business, Energy & Industrial Strategy.

2. 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 gap is large then officers will consider enforcement action in the first instance. Such decisions will be guided by the Enforcement Management Model (www.hse.gov.uk/enforce/enforcement-management-model.htm) 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 legislation.
- 2.6. Departures from these policy guidelines may be needed where there is an elevated risk to the wider public health, or where the HSE have detailed the action to be taken. 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. 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. It is accepted there should be a quick and effective response to serious breaches of legislation as distinct from an efficient and effective enforcement approach to other breaches.

3.3. Most health and safety legislation is not prescriptive. Employers are expected to use risk assessment to inform on the required controls. 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 any relevant guidance, code of practice, or relevant legislation. 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.

3.4. The council's officers will deal with anyone subject to the enforcement process in a courteous, fair and objective manner and in line with its policy on equal opportunities and its Corporate Enforcement Protocol.

3.5. Officers will be sensitive to the needs of businesses including the requirement for prompt, concise, definitive and timely advice. Any intervention will aim to impose the minimum burden consistent with the law.



4. Officers

- 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 East Cambridgeshire.
- 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 Investigatory Powers Act 2000, human rights legislation and any associated guidance, along with any internal policies and procedures.
- 3.9. Where resources permit, the council will provide suitable information to the trade designed to encourage compliance with the law. This will be particularly relevant where an initial educative approach is appropriate and encouraged by the HSE. Efforts will be made to provide guidance in languages other than English where there is a demand and where resources permit.
- 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. 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 its officers are suitably qualified, experienced and competent with respect to the enforcement duties they have been authorised to carry out. Officers shall only act in accordance with their own authorisations.
- 4.4. The council shall also ensure each officer receives suitable and sufficient structured training that is managed, assessed and recorded on an ongoing basis.

5. Principles of enforcement

5.1. The enforcement of health and safety legislation will be guided by the principles that are contained within the Enforcement Concordat (publications.parliament.uk/pa/ld199899/ldselect/lddereg/111/11107.htm) that has been formally adopted by the council, in addition to the Code for Crown prosecutors (www.cps.gov.uk/publication/code-crown-prosecutors) and the Regulators Code (www.gov.uk/government/publications/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:

5.2.1. 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.

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

5.2.3. 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.

5.2.4. 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.

5.2.5. 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 Group (Meeting attended by the lead food and safety officers of the Cambridgeshire Authorities together with Peterborough City). There are also effective arrangements for liaison with other enforcing authorities, the HSE, and any primary or home authorities.

5.2.6. 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.

5.2.7. 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.

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.

5.2.8. 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. Inspections and interventions

- 6.1. Where practical 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. Accident investigations

- 7.1. Accidents, certain industrial diseases and some dangerous occurrences, 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 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. Complaints

- 8.1. The council will respond to and, where appropriate, investigate all complaints about working conditions and working practices, regarding businesses they have the enforcement responsibility for. The response will vary according to the nature of the allegation and its severity.
- 8.2. The council will only consider anonymous complaints if the complainant is independently verifiable as, in these circumstances, the identity of the complainant is not a relevant factor. If the officer decides there is sufficient information to proceed and it is in the public interest to do so, the complaint can proceed without a complainant.
- 8.3. In most health and safety cases, it will be appropriate to inform the business that a complaint has been received and the nature of the allegation. The details of the complainant will not be revealed to the business unless agreed with the complainant beforehand. Where it is thought necessary to protect the identity of the complainant advice will be sought from the council's legal team.
- 8.4. The complainant will be kept informed of the progress of the investigation and notified of the eventual outcome unless the complaint was anonymous.
- 8.5. At the end of the investigation the business will be informed of the outcome and any further action to be taken by the council.

9. Health and safety enforcement actions

- 9.1. The full range of enforcement options will be considered during all interventions. Authorised officers will judge the most appropriate course of action including enforcement action based on all relevant information and evidence.
- 9.2. The choices of action are:
 - no action
 - informal action and advice, including written warnings
 - statutory notices - Improvement Notice, Prohibition Notice
 - deferred Prohibition Notice
 - issue a Simple Caution
 - prosecutionThe actions may be used singularly or, more usually, in combination.
- 9.3. Before formal action is taken, officers will provide the business operator with an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference, unless immediate action is required.
- 9.4. Where there is a right of appeal against formal action, advice on the appeal mechanisms will be clearly set out in writing at the time the action is taken.
- 9.5. If a primary authority partnership is in place, the officer must liaise with the primary authority about any proposed enforcement action except in circumstances where the need to act swiftly is critical.

In such circumstances the officer will contact the primary authority at the earliest convenience and explain the action taken and the reason it was completed with consultation.

9.6. No action

Where there is full compliance with relevant legislation no further action will be required other than to issue a Report of Intervention.

There will be circumstances where a contravention may not warrant action, or it may be inappropriate. Any discussion surrounding such cases will be documented.



9.7. Informal action

Informal action to secure compliance with legislation includes offering verbal advice, the issue of a Report of Intervention at premises following an inspection, and the issue of a post inspection letter, also known as an informal written warning.

At the conclusion of an inspection, the officer will discuss any contravention of the law discovered, any corrective action necessary, the timescale for remedy and any recommendations of good practice the officer considers appropriate.

A Report of Intervention will be issued at the conclusion of all programmed inspections and revisits. If there are only a small number of minor contraventions or recommendations, the inspection report alone may be sufficient. If there are more substantial issues to be addressed, a letter will also be issued, detailing any contraventions and the action to be taken. Informal advice or information pertinent to matters noted at the time may also be included within the letter.

Officers will use this approach as long as they believe this will achieve compliance with health and safety legislation within a suitable timescale.

The circumstances when it is appropriate to use verbal and informal written warnings are:

- 9.7.1. The act or omission is not serious enough to warrant formal action
- 9.7.2. From the individual's/ business' past history it can be reasonably expected that the warning will achieve compliance
- 9.7.3. The officer has confidence in the management of the business
- 9.7.4. The consequences of non-compliance will not pose a significant risk to public health
 This is not a comprehensive list and there may be circumstances in which a warning will be more effective than a formal approach.
 When an informal approach is used to secure compliance with health and safety legislation any written documentation issued or sent to proprietors will:
- 9.7.5. Contain all the information necessary to understand what work is required and why it is necessary
- 9.7.6. Indicate the regulations contravened and the measures which will enable compliance with the law
- 9.7.7. Clearly distinguish between matters which are necessary to meet statutory requirements and those which are recommended practice
- 9.7.8. Copies of letters and any reports of the inspection will be sent to the registered or head office where this is not the premises visited

- 9.8. Improvement Notices
 Improvement Notices will be served by authorised officers based on their opinion that there is a contravention of the law at the time of the visit or that there had been a contravention and that it is likely that the contravention will continue or be repeated.
 It is appropriate to issue a Improvement Notice in the following circumstances:
 Formal action is proportionate to the risk to either the employees or public and there is a record of non-compliance with safety regulations.
 and/or
 The authorised officer has reason to believe an informal approach will not be successful.
 The notice will say what needs to be done, why and by when. Timescales will be realistic and details of how to appeal and to request an extension of time will accompany the notice.
 Improvement Notices will be signed by an appropriately authorised officer who has witnessed the contravention.
 Non-compliance with a Improvement Notice will generally result in prosecution.

- 9.9. Prohibition Notices
 Authorised officers will consider the issue of Prohibition Notices where the use of a premises, a piece of work equipment, or a working practice involves a serious risk of personal injury to one or more people.

The prime consideration will be to protect the safety of workers or the wider public. The following instances are examples of circumstances that could show a risk to health:

- 9.9.1. Unguarded machinery where there is a risk of injury or entrapment
- 9.9.2. Very poor structural condition or poor maintenance resulting in structural issues or a significant risk of such issues developing
- 9.9.3. The presence of untreated asbestos such that it poses a risk to employees or the public

The list is not exhaustive and it may be a combination of factors that together represent demonstrate the risk.

The effect of the Prohibition Notice is to immediately close the premises or prevent the use of equipment, or a process or treatment.

9.10. Deferred prohibition notice

In very exceptional circumstances the officer may choose to serve a deferred prohibition notice. This has the effect of allowing a work task to finish before being then prohibited. This will be considered when the risks posed by halting a job there and then are more serious than the risk immediately presenting.

Circumstances which may lead to the issue of a deferred prohibition notice include:

Securing a building works when the prohibition would mean that scaffolding must not be used.

Clearing an exposed mezzanine floor in order to retro fit the required guarding

9.11. Simple cautions

A simple caution is a formal warning that may be given to persons aged 18 or over who admit committing an offence. The simple caution scheme is designed to provide a means of dealing with offending without a prosecution where there is evidence of an offence.

Officers may consider the use of simple cautions as an alternative to prosecutions to deal quickly and simply with less serious offences where the offender has admitted the offence, and/or divert less serious offences away from the courts, and reduce the chances of repeat offences

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

- 9.11.1. There is sufficient evidence to provide a realistic prospect of conviction if the offender were to be prosecuted.
- 9.11.2. The offender is over 18 years of age.
- 9.11.3. The offender admits they have committed the crime.
- 9.11.4. The offender agrees to be given the caution.

10. Amendments and review

Any decision to offer a simple caution will be made in consultation with the council's legal services department. In offering a simple caution, account will be taken of the Ministry of Justice Guidelines on Simple Cautions for Adult Offenders and the Code for Crown Prosecutors.

A caution will remain on record for a period of two years and may be cited in court should a further offence be committed and prosecuted during that time.

Where an offender declines to accept a simple caution, the case should be sent for prosecution.

9.12. Prosecution

Prosecution may be considered in addition to, or as a consequence of failure to comply with the above enforcement procedures.

The decision to prosecute is a significant one and will only be taken where that course of action is proportionate to the risk presented to the safety of workers or others by the contravention.

Before initiating any prosecution proceedings, the council must be satisfied there is relevant, admissible, substantial and reliable evidence that an offence has been committed by an identifiable defendant. In all cases, legal advice will be sought before recommending any prosecution and any decision to prosecute will be ratified by the director of legal services

Primary and home authorities will be consulted where prosecutions are planned and due regard will be paid to the opinion of that authority.

- 10.1. The policy will be reviewed by the SEHO on an annual basis and any minor amendments will be detailed in the Amendment Log.
- 10.2. 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.



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