

Blaby District Environmental Health & Licensing Enforcement Policy

July 2009

BLABY DISTRICT COUNCIL

ENVIRONMENTAL HEALTH & LICENSING ENFORCEMENT POLICY

This document is Blaby District Council's policy relating to its duties as environmental health and licensing law enforcement organisation.

Its purpose is to explain what actions the Council may take when enforcing these laws, who makes them, what factors they take into account, what individuals and businesses can expect from us and what efforts will be made to ensure that everyone receives fair and equal treatment, based on reducing the risk to both public and individual health, safety and wellbeing.

The policy is in 3 parts –

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| Part 1: Policy Statement | - This explains Blaby's commitment to providing the service. |
| Part 2: Authorisation of Officers | - This identifies who the Council has authorised to undertake environmental health & licensing enforcement |
| Part 3: Decision on Enforcement Options | - This identifies the enforcement options open to the Council and the matters that will be considered when deciding between these options. |

The Council is committed to the principles of the Enforcement Concordat*, the Regulators Compliance Code and has adopted general enforcement principles in The Council Constitution to cover all its enforcement work.

This policy is specific to environmental health and licensing law enforcement and is made under our general policy which commits us to the following principles –

<i>Setting clear standards</i>	<i>Openness</i>
<i>Being open</i>	<i>Clear standards</i>
<i>Being helpful</i>	<i>Proportionality</i>
<i>Taking appropriate action</i>	<i>Consistency</i>
<i>Being consistent</i>	<i>Targeting</i>
<i>Having an easy to use complaints procedure</i>	<i>Transparency</i>

*The Enforcement Concordat is a standard set by the Central Government Cabinet Office to achieve a good enforcement service. The Enforcement Concordat was adopted by Blaby District Council on 19 December 2000.

SERVICES TO WHICH THIS POLICY APPLIES

This Policy applies to the following enforcement services undertaken by the Council.

- Food Safety
- Health and Safety
- Smokefree
- Environmental Protection
- Enviro-crime
- Dog Control and Animal Welfare
- Pest Control
- Licensing and Gambling Act
- Private Hire & Hackney Carriage Licensing
- Motor Salvage & Scrap Metal Registrations
- Charitable Collections
- Any other legislation having impact on public health for which the Council is the enforcing authority

PART 1 – ENVIRONMENTAL HEALTH & LICENSING ENFORCEMENT POLICY STATEMENT

Blaby District Council ('the Council') believes that its Environmental Health and Licensing Services should contribute to:

- (a) Improving the quality of the environment for all residents of the District.
- (b) Promoting the health and quality of life of all residents.
- (c) Providing good recreational facilities for residents.

The Council is committed to achieving this through the enforcement of environmental health and licensing law and to undertake this effectively and without unfair or illegal discrimination, and will ensure the following :-

- (i) that emphasis will be primarily based on risk to public health and/or safety, or the seriousness of the contravention of environmental health and licensing laws and
- (ii) to work with businesses and individuals to achieve legislative compliance through inspection, education and the provision of information and
- (iii) obtain and consider the views of local businesses and individuals when developing enforcement policies and
- (iv) provide sufficient resources to carry out this policy.
- (v) that officers will carry out their duties at all times in support of and in compliance with this policy
- (vi) that only officers who have been duly authorised and who have appropriate and up to date training in environmental health and licensing law enforcement will be employed to do this work

Exceptions to Policy

Any departure from this policy would be exceptional, capable of justification and fully considered by the senior manager of the service before any decision is taken.

Complaints Procedure

The Council's complaints procedure must be followed if a person wishes to challenge or complain about the enforcement action.

Review of the Policy

This policy will be reviewed periodically and developed to reflect changes or development in legislation or guidance. Reviews will also take into account

improvements to the service and the particular interests within the District of Blaby of business owners, their employees and the public, notably the residents.

PART 2 – AUTHORISATION OF OFFICERS

The Council recognises that only appropriately authorised personnel may undertake certain aspects of environmental health and licensing law enforcement.

The Council's constitution provides for such authorisation of officers through its scheme of delegation.

Indemnification

The Council has adopted an indemnification policy which includes the indemnification of authorised officers.

PART 3 – DECISIONS ON ENFORCEMENT OPTIONS

The Council believes it should achieve and maintain a consistency of approach in the decisions it makes about environmental health and licensing enforcement action.

This approach should be free from unfair or illegal discrimination.

The Council is committed to ensuring a fair and balanced approach to all enforcement decisions, which relate to common standards to protect the public.

Enforcement Action, Including Prosecution

Where enforcement action, including prosecution is appropriate, as a result of applying the principles of this document, the Council's Constitution specifies the delegation arrangements in place for initiating formal action.

All authorised officers are aware of the limits of their delegated power and can refer to this policy, the Service's Procedures Manual, the statutory Codes of Practice and any other considerations which they believe relevant to the case.

LIST OF APPENDICES – PROCEDURES

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APPENDIX	K	Guidance on Preparing for Prosecution
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APPENDIX A

SERVICE BACKGROUND, PLANNING AND PRIORITIES

The Service's contributes to and sets priorities and targets in accordance with the Council's Strategic Framework. The Service's annual Service Plan identifies and sets service priorities. The Local Strategic Partnership, Local Area Agreement and the Contaminated Land Strategy are key drivers for the Environmental Health and Licensing (EHL) service area. In addition, the EHL service area makes a significant contribution to the Crime and Disorder, Leicestershire Alcohol Strategy and Environmental Strategies and the Council's Public Service Agreement with the County Council.

Environmental Health and Licensing Service Priorities (consider priorities from service plans)

- To ensure that resources are maintained and directed efficiently to satisfactorily discharge the Council's statutory duties with regard to routine regulatory inspections of commercial premises in respect of food safety, occupation health and safety, licensing and environmental protection measures
- To provide a measurable response to, and resolution of, service requests made by members of the public in respect of food safety; occupational health and safety; licensing; Animal Welfare; noise, odours, dust, smoke and other effluvia nuisances; drainage defects; pest control
- To take such action defined by statute to measure the general state of the atmospheric pollution throughout the Council's area, and to devise and implement strategies to deal with exceedances of government air pollution limits
- To identify areas of land which may be contaminated through previous use, and through the risk assessment and planning process endeavor to restore the land to enable it to be considered as a resource
- To engage with commerce and the public to deliver effective health promotion initiatives over the range of environmental functions to impart enforcement information and promote a healthier lifestyle for residents
- To provide a dog warden service to carry out statutory duties, reduce dog fouling, and promote responsible pet ownership in general
- To work with other Divisions of the Council, other local and Government authorities, the private sector, voluntary organisations and other local partnerships to enable effective liaisons to be created to improve the health of residents

- Ensuring that resources are targeted at the highest risks and that enforcement is carried out fairly, equitably and promptly by the regulatory and control functions within Environmental Health and Licensing. In accordance with the enforcement concordat, the regulators compliance code and Environmental Health and Licensing Policies and Procedures.
- Ensuring that adequate numbers of suitably qualified staff are recruited / retained and developed to meet the needs of the services and the aspirations of the communities served.

Competence of Enforcement Officers

The criteria used to assess the competence of enforcement officers will be those detailed in the specific requirements demanded by the Statutory Codes of Practice and any other considerations which are believed to be relevant to the case.

The Environmental Health Team Leader, Environmental Protection Team Leader and Licensing Team Leader will confirm via memorandum to the Group Managers of Health and Leisure and Environmental Protection their recommendation to authorise such officers having regard to the above. A copy of the memorandum will be held on the personnel file for each officer. The memorandum must also state any limitations to the extent of authorisation for each officer.

Operational procedures are in place to assist officers undertaking enforcement activities. These procedures will be amended and updated periodically to ensure best practice and consistency. The Environmental Health Team Leader, the Environmental Protection Team Leader and Licensing Team Leader will be responsible for these amendments.

Training

In order to both improve and maintain the competency of its officers for enforcement work, the Council will support and resource the continuing professional development that is necessary to enable its officers to deliver this policy within the law and the guidance that applies.

It is the responsibility of individual officers to keep a record of their own training undertaken and this will form part of the authority's record of ongoing training.

Monitoring of Performance

A documented management system is in place to assist with the monitoring of the quality and consistency of enforcement actions.

Comparing with Others

The Council is committed to comparing its services with those of others and in particular with better performing authorities.

To achieve this, the Council will take part in benchmarking (including Inter Authority Auditing) where it is believed the resources needed to do this will be justified by the improvements which are secured as a result.

Planning and Reporting

The annual Service Plan will take account of enforcement duties for the services in question. All plans will be approved by the Cabinet Executive in April of each year.

Joint Working

The Council will coordinate its enforcement activity with the work of other regulatory bodies and enforcement agencies, where this is appropriate to the effective delivery of this policy.

APPENDIX B

PRINCIPLES OF THE ENFORCEMENT CONCORDAT AND THE REGULATORS' COMPLIANCE CODE

Enforcement Concordat

In adopting the Enforcement Concordat**, Blaby District Council are committed to the following –

- Adopting good policies and procedures
- Protecting the public, the environment and groups such as consumers and workers.
- Equitable, practical and consistent enforcement functions.
- Recognising that most businesses want to comply with the law.
- Taking care to help businesses and others meet their legal obligations without unnecessary expense.
- Taking firm action, including prosecution where appropriate, against those who flout the law or who act irresponsibly.
- Recognising that 'enforcement' includes advisory visits and assisting with compliance, as well as licensing and formal enforcement action.
- Providing information to show we are observing our commitments.

These aims will also help to maintain a fair and safe trading environment, and promote a thriving national and local economy.

The Regulators' Compliance Code

In addition to the principles of the Concordat the Councils' approach to enforcement will have regard to the Compliance Code which is based on recommendations of the Hampton Report. The Council will therefore take account of:

Economic Progress

- The Council will consider the impact regulatory interventions may have on economic progress. We will only adopt a particular approach if the benefits justify the costs.
- The Council will make reasonable attempts to ensure that the burdens of our interventions fall fairly and proportionately on small businesses by giving consideration to their size and nature of activities.
- This Council will allow for reasonable variations to standards to meet local priorities.

Risk Assessment

- The Council will ensure that the allocation of our regulatory efforts and resources are targeted where they would be most effective.
- Risk assessment will inform all aspects of our approach to regulatory activity and be based on all available relevant and good quality data.

Advice and Guidance

- The Council will ensure all regulatory requirements as well as changes to those requirements are promptly communicated to relevant businesses.
- The Council will provide general information, advice and guidance to make it easier for businesses to understand and meet their regulatory obligations.
- The Council will provide targeted and practical advice that meets the needs of businesses.
- When offering compliance advice the Council will distinguish between statutory requirements and advice and guidance aimed at improvements above the minimum standards.
- The Council will provide appropriate means to ensure that businesses can reasonably seek advice from us without triggering enforcement action.

Inspection and Other Visits

- Inspections should only take place in line with risk assessment or where we are acting on other intelligence.
- The Council will focus our greatest inspection effort where risk assessment shows that both:
 - a compliance breach would pose a serious risk to a regulatory outcome, and
 - there is a high likelihood of non-compliance.
- The Council will give positive feedback to encourage and reinforce good practice. The Council will share information about good practice amongst other businesses and other regulators.
- The Council will make arrangements with other regulators for collaboration to minimise the burdens on business through data sharing and wherever possible joint or co-ordinated inspections.

Information Requirements

- When asking for data from businesses the Council will have consideration of the costs and the benefits to the business.

Compliance and Enforcement actions

- The Council will reward businesses that have consistently achieved good levels of compliance through positive incentives such as a lighter touch.
- When considering taking enforcement action the Council will discuss the circumstances with those suspected of the breach and take these

into consideration when deciding the best approach. This does not apply where immediate action is required.

- The Council will give clear reasons for any formal enforcement action to the person or entity against whom the action is being taken at the time the action is taken. These reasons should be confirmed in writing.
- The Council will ensure that we interpret and apply legal requirements and our enforcement policy consistently and fairly.

Accountability

- The Council will create effective consultation and feedback with businesses
- The Council will provide courteous and efficient services to businesses

** The Enforcement Concordat was agreed at Full Council on 19 December 2000.

APPENDIX C

ENFORCEMENT OPTIONS

The Council recognises the following enforcement options –

- (1) Informal Action
- (2) Warning Action
- (3) Issuing of Statutory notices (under specific legislation relating to the matter under investigation)
- (4) Issuing of Simple Cautions (previously know as Formal Cautions)
- (5) Prosecution

1.1 Informal Action

- (a) The purpose of informal action is to help businesses and individuals comply with the law
- (b) Informal action may be taken at the discretion of an Authorised Officer.
- (c) It may take the form of
 - advice, assistance or information
 - education
 - requests for action
- (d) This action may be oral or in writing (either by carbon report, letter or written report)
- (e) Informal Action can be taken where one or more of the following apply –
 - an act, omission or contravention is not serious enough to warrant formal action
 - the consequences of non-compliance are not high risk
 - any previous history of the organisation, business or individual suggests that informal action will achieve compliance
 - confidence in the organisation, business or individual is high
 - other significant circumstances apply, e.g. the organisation or individual concerned is associated with a voluntary organisation
- (f) When carrying out informal action, Authorised Officers will follow the up to date procedural guidance which is summarised in Appendix F

2.1 Warning Action

- (a) The purpose of warning action is to remedy a breach of the law where

the immediate risk is not so serious as to warrant more formal action, or to prevent such a breach where the Authorised Officer has reasonable evidence to suggest it may occur

- (b) Warning action may be taken at the discretion of the Authorised Officer
- (c) Warning action will be given in writing (either by carbon report, letter or written report).
- (d) Warning action can be taken where an act or omission is not serious enough to warrant a statutory notice, simple caution or prosecution if rectified within a clearly stated period.
- (e) Written warning action will include clear statements that:
 - The Council believes or has evidence that the offence has been committed by the recipient of the letter.
 - No action is to be taken by the authority if the matter is rectified within the time specified.
 - Legal proceedings could result if the matter is not rectified or the offence occurs again.

A written warning will also state what must be done to put right the alleged offence and or details of the situation that should be rectified.

When considering warning notice action, Authorised officers will follow the current processed guidance which is summarised at Appendix G.

3.1 Statutory Notices

An enforcement option under many Environmental Health and Licensing Laws is to serve a statutory notice. These are specific for different aspects of the enforcement services but the following general rules will apply:

- (a) A statutory notice will be issued when one or more of the following apply
 - There are significant contraventions of environmental health or licensing legislation
 - We are not confident that the person or business will respond to an informal approach
 - There is a history of non-compliance
 - Standards are generally poor and the management has little awareness of requirements
 - The consequences of non-compliance could be potentially serious to public health

- Effective action needs to be taken as quickly as possible to remedy conditions that are serious and deteriorating
- (b) Statutory Notices will relate to the risk to health, safety and public protection and will not be issued for minor, technical contraventions, unless we think an informal approach is unlikely to achieve compliance.
- (c) Statutory Notices will be issued only by officers who have been authorised to do so.
- (d) Notices will be signed only by an authorised officer who has personally witnessed the contravention.
- (e) Authorised Officers will follow any relevant Codes of Practice and guidance on the use of statutory notices.
- (f) Authorised Officers will place realistic time limits on Statutory Notices. Where possible, these will be agreed with the person or business concerned, although the final decision will rest with the officer.
- (g) The Authorised Officer will discuss with the person or representative of the business the works that will be specified in the Notice, and will explain fully the options which are available.
- (h) Failure to comply with a Statutory Notice will, in general, result in court proceedings.
- (i) Other bodies will be notified of any formal action taken, or intend to take, where it is believed it is appropriate to do so. Such bodies may include other authorities and the Office of Fair Trading. Where appropriate, notification will include the outcome of any action.

When preparing for and serving a Statutory Notice, Authorised Officers will follow the current procedural guidance which is summarised at Appendix G.

4.1 Simple Caution

- (a) The purpose of a Simple Caution is to offer an alternative to prosecution that will:
- deal quickly and simply with less serious offences
 - divert such cases from unnecessary appearances in the criminal court
 - reduce the chances of re-offending

- (b) The Council recognises that issuing a Simple caution is legislative action in its own right and will not be used as an easy option to prosecution, but as a genuine option to achieve the above aims.
- (c) A Simple caution will be issued when the circumstances of the offence meet the criteria identified in the [Home Office circular 30/2005: Cautioning of Adult Offender](#), or any circular that replaces it.
- (d) The Council will ensure to its reasonable satisfaction that all the following conditions are met before a Simple Caution is administered –
 - there is sufficient evidence of the alleged offender's guilt to give a realistic prospect of prosecution
 - the alleged offender admits the offence
 - the alleged offender understands the significance of a Simple Caution
 - the alleged offender gives formal consent to being cautioned
- (e) A Simple Caution will not be considered where there is insufficient evidence to consider a prosecution.
- (f) When preparing for and serving a Simple Caution, Authorised Officers will follow the current procedural guidance which is summarised at Appendix H.

5.1 Prosecution

- (a) The purpose of prosecution is to deal with companies or people who blatantly disregard the law, refuse to achieve any basic minimum legal requirements and who put the public at serious risk or persistently and deliberately continue to contravene the law.
- (b) Authorised Officers who believe the contraventions they are investigating are sufficient to warrant a prosecution will refer the details to an officer designated in Part 2 of this policy for a decision on whether to proceed with prosecution action
- (c) Where an officer of the Council who is authorised to conduct legal proceedings has not been involved in the decision to prosecute, details will be referred to such an officer at the earliest possible opportunity
- (d) Any decision to prosecute under this policy will be based on the circumstances of the case.
- (e) Criteria for prosecution will be related to risk(s) to [health and safety](#) of those affected, or likely to be affected, or to the seriousness of the offence

- (f) Further detailed consideration will be given to the 'public interest' test, the body of evidence, possible defenses/mitigation and other criteria laid down in Appendix I.
- (g) When the final decision to prosecute is made the following will be undertaken –
- refer the case to an officer of the Council who is authorised to conduct legal proceedings.
 - set a timetable to ensure that investigation and decision making will not be unduly prolonged.
 - follow the procedure for the submission of case reports.
 - comply with anytime limits set by the legal system for bringing prosecutions.
- (h) When preparing for a prosecution, officers will follow the current procedural guidelines set in Appendix I.

Shared Enforcement Role

The Council is aware that in some situations there may be a shared or complementary enforcement role.

Authorised Officers' training will therefore include an awareness of others who may have a role in an enforcement situation.

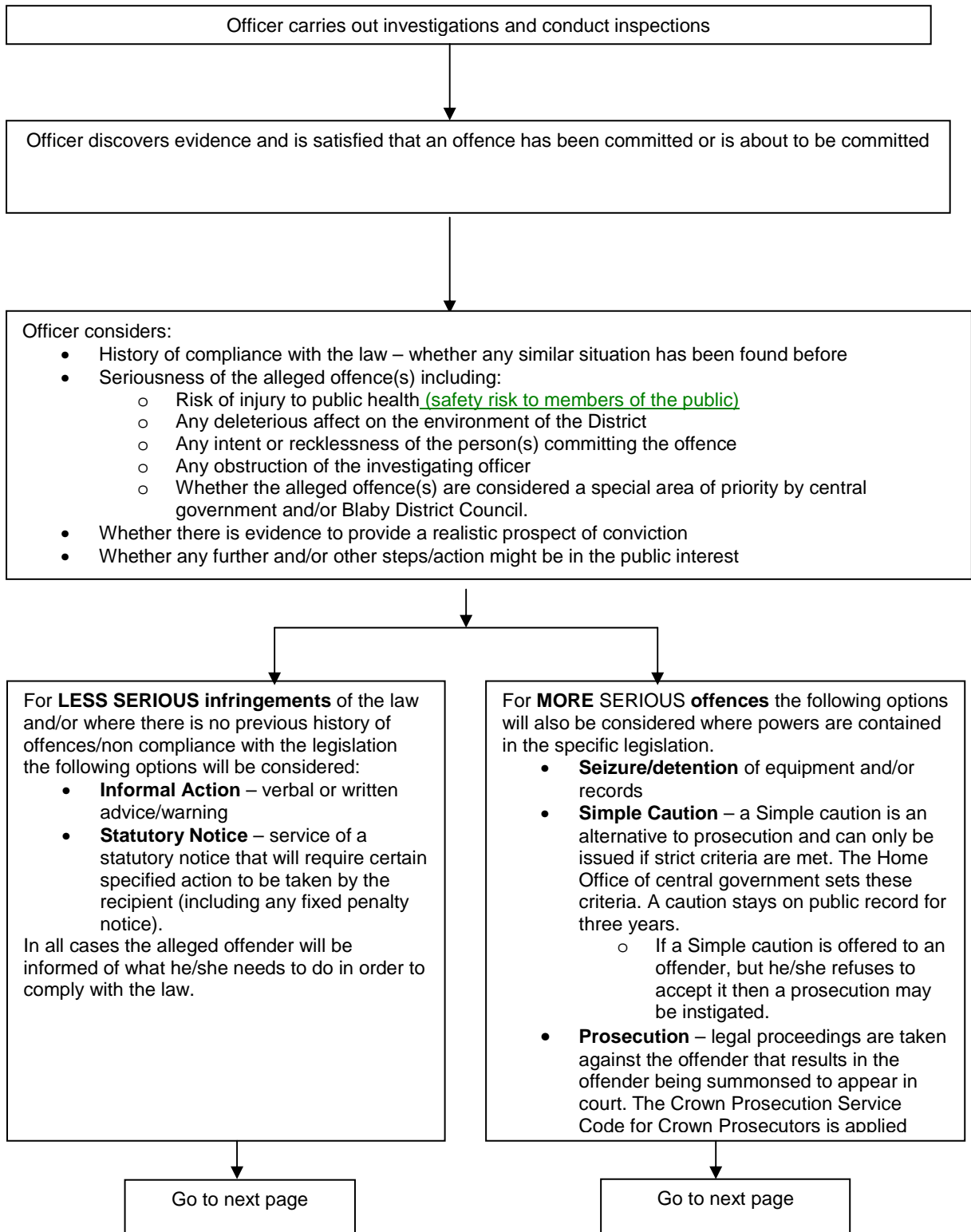
Authorised Officers will contact other agencies/authorities in all cases where they believe there may be a joint interest. In forming an enforcement decision on behalf of this Authority, Authorised Officers will take account of action that another enforcing authority may wish to take.

Authorities/agencies which may have a shared enforcement role include the Police and Fire Service, the Environment Agency and Trading Standards.

APPENDIX D

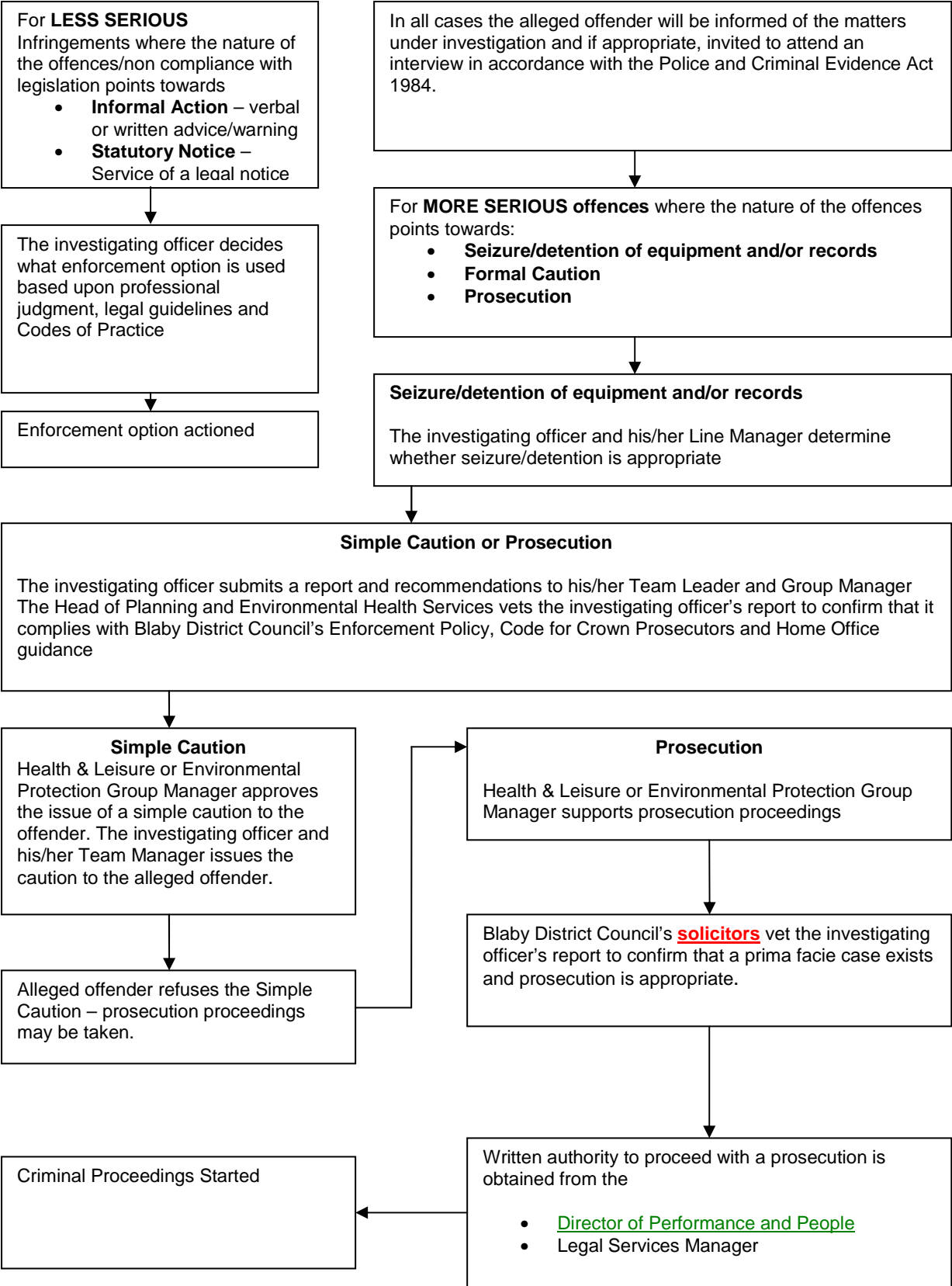
Factors to be considered when taking enforcement action

This diagram summarises the decision making process that officers will follow in all cases.



APPENDIX E
Deciding what enforcement action to take

The Summary Diagram continues with the decision making of the appropriate Enforcement Action



APPENDIX F

INFORMAL ENFORCEMENT ACTION

Procedural Guidance

The following guidance will be applied in all cases except where the 'Exceptions to Policy' clause applies.

1. The specific requirements of any policies and procedures contained in the Environmental Health Procedures Manuals or Licensing Procedure Manual will be met, where they apply to informal actions.
2. All verbal warnings, advice and requests for actions which are made at the time of the inspection (or as the result of subsequent conversations, meetings or visits that raise additional matters) will be noted in the Authorised Officer's notebook and/or the file for the individual business concerned AND will be confirmed to the person(s) concerned in writing.
3. All written documentation produced as a result of informal action will contain all information necessary to –
 - understand the work that is required
 - understand the reason it is required
 - indicate the legislation contravened
 - understand the difference between a recommendation of good practice and a legal requirement
4. In giving any oral advice or information the officer(s) will make clear what is a recommendation of good practice and what is a legal requirement.
5. Where an inspection or investigation reveals full compliance with the relevant Environmental Health or Licensing legislation/Codes of Practice, no further action may be required, although a post inspection report or other advisory information may be provided. Details of the fact that the inspection or investigation revealed no action was required will be recorded on the premises file.

APPENDIX G

SERVING FORMAL NOTICES

Procedural Guidance

The following guidance will be applied in all cases except where the 'Exceptions to Policy' clause applies.

1. The specific requirements of any policies and procedures contained in the Environmental Health or Licensing Procedures Manual will be met, where they apply to serving notices.
2. The specific requirements of the relevant Codes of Practice and Guidance on the use of statutory notices will be met.

This will include any good practice guidelines that are available for the issuing of Fixed Penalty Notices and the use of Closed Circuit Television.

3. The Authorised Officer will normally discuss with the parties involved any works that will be specified in the Notice and will consider fully and then explain the options which are available.
4. The Authorised Officer will have regard to the most appropriate language to be used for a Notice and will seek to meet this need where it can be done without unduly prolonging any risk to public health and/or safety.
5. other bodies will be notified of any formal action taken, or intend to take, where its believed it is appropriate to do so. Such bodies may include other enforcement agencies and the Office of Fair Trading. Where appropriate, notification will include the outcome of any action.

APPENDIX H

ADMINISTERING A SIMPLE CAUTION

Procedural Guidance

The following guidance will be applied in all cases where legislation offers a Simple Caution as an enforcement option, except where the 'Exceptions to Policy' clause applies.

1. The specific requirements of the policies and procedures contained in the Environmental Health and Licensing Procedures Manuals will be met, where they apply to Simple Cautions.
2. The specific requirements of guidance issued by the Home Office circular on the administering of a Simple Cautions and LACORS guidance will be followed.
3. As there is no legal obligation for a person to accept a Simple Caution, when explaining their significance no officer shall apply pressure to that person to accept one.

However, where the offer of a Simple Caution is refused, a prosecution should normally be pursued.

4. The Simple Caution will be administered by an officer who has been designated as a 'cautioning officer' as contained in the Council's constitution.
5. Normally, the caution will be administered in person by the cautioning officer, although in exceptional circumstances it may be administered by post.
6. The offender will be informed in writing, using the appropriate forms when the issuing of a Simple Caution is proposed.
7. All Simple Cautions will be issued in writing using the appropriate forms identified in the Home Office Circular.
8. Two copies of the caution will be signed, first by the person receiving and second by the person administering the caution. One of these copies will then be handed to the person receiving the caution.
9. Should the offender refuse to accept a caution or fail to return the signed copies within 14 days, legal proceedings in all case will be pursued.
10. Details of the offence will be recorded in the specific premises file and in the Simple Caution file.
11. As soon as possible after issuing the caution, the relevant body will be

notified which is detailed in the Home Office Circular or other guidance in relation to notification of offences.

13. If there is a Home Authority for the business in question, they will be notified of the details of the caution.
14. Where the Simple Caution was issued as a result of an investigation begun by a complaint made by a third party, the complainant will be informed that the caution has been issued.
15. The time limits for issuing a caution (and subsequent prosecution) will be observed should clause (10) apply.

APPENDIX I

PREPARING FOR A PROSECUTION

Procedural Guidance

In preparing for a prosecution, the following will be taken into account –

1. The decision to prosecute will be made by –
 - (a) Consideration of each of the following reference documents –
 - (i) The Environmental Health & Licensing Enforcement Policy
 - (ii) Code for Crown Prosecutors
 - (iii) The Enforcement Concordat
 - (iv) The Regulators compliance Code
 - (v) Polices and Procedures in the Health & Leisure Group and Environmental Protection Group
 - (vi) Any relevant official guidance
 - (b) Applying the ‘public interest’ test. (see Appendix L)
 - (c) Ensuring that the case is supported by sufficient relevant evidence that is –
 - admissible
 - substantial
 - reliable
 - (d) Accounting for any likely defenses.
 - (e) Accounting for any possible mitigation.
 - (f) The seriousness of the alleged offence.
 - (g) The previous history of the party concerned.
 - (h) The likelihood of the defendant being able to establish a due diligence defense,
i.e. acting with reasonable care.
 - (i) The ability of any important witnesses and their willingness to cooperate.
 - (j) The willingness of the party to prevent a recurrence of the problem.
 - (k) The probable public benefit of a prosecution and the importance of the case,
e.g. whether it might establish a legal precedent.

- (l) Whether other action, such as the issue of a Simple Caution or notice or prohibition, would be more appropriate or effective.
 - (m) Any explanation offered by the alleged defendant.
2. Officers involved in the preparation of a prosecution case will keep all witnesses, complainants and other interested parties informed of progress, to the extent that this does not prejudice the chance of successful action.

NOTIFICATION OF LEGAL PROCEEDINGS

3. Where appropriate other enforcement agencies will be informed, including the Office of Fair Trading of every conviction, and give sufficient detail for other authorities to make use of the information.
4. Where the prosecution occurs as a result of an investigation begun by a complaint made by a third party, the complainant will be advised of the outcome of the case.

APPENDIX J

Deciding whether to prosecute

Before deciding to prosecute, the following factors will be considered:-

- The seriousness of the alleged offence
- The previous history of the party concerned
- The likelihood of the defendant being able to establish a due diligence defence.
- The ability of any important witnesses and their willingness to co-operate
- The willingness of the party to prevent a recurrence of the problem
- The probable public benefit of a prosecution and the importance of the case e.g. whether it might establish a legal precedent
- Whether other action, such as the issue of a Simple Caution or notice would be more appropriate or effective.
- Any explanation offered by the alleged defendant.
- The advice contained in the current edition of the Code for Crown Prosecutions.

APPENDIX K

The Evidential Test

The investigating officer(s) together with their Team Leader & Group Manager will satisfy themselves that there is enough evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. A realistic prospect of conviction is an objective test that means that a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a separate test from the one that the criminal courts themselves must apply. A jury or magistrates' court should only convict if satisfied so that it is sure of a defendant's guilt.

When deciding whether there is enough evidence to prosecute the investigating officer(s) together with their Team Leader and Group Manager will also consider whether the evidence can be used and is reliable.

APPENDIX L

The Public Interest Test

The public interest will be considered in each case where there is enough evidence to provide a realistic prospect of conviction. A prosecution will usually take place unless there are public interest factors tending against prosecution which clearly outweigh those tending in favour. Although there may be public interest factors against prosecution in a particular case, often the prosecution should go ahead and those factors put to the court for consideration when sentence is being passed.

The investigating officer (s) together with the Line Manager will balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the suspect. Some factors may increase the need to prosecute but others may suggest that another course of action would be better. The following lists include some common public interest factors, both for and against prosecution. These are not exhaustive and the factors that apply will depend on the facts in each case.

Some common public interest factors in favour of prosecution

- a conviction is likely to result in a significant sentence;
- the evidence shows that the defendant was a **ringleader** or an organiser of the offence
- there is evidence that the offence was premeditated
- the victim of the offence was vulnerable has been put in considerable fear, or suffered personal damage or disturbance;
- the offence was motivated by any form of discrimination against the victim's ethnic or national origin, sex, religious beliefs, political views or sexual orientation, or the suspect demonstrated hostility towards the victim based on any of those characteristics;
- there is a marked difference between the actual or mental ages of the defendant and the victim, or if there is any element of corruption.
- the defendant's previous convictions or cautions are relevant to the present offence.
- there are grounds for believing that the offence is likely to be continued or repeated, for example, by a history of recurring conduct.

Some common public interest factors against prosecution

- the court is likely to impose a nominal penalty
- the defendant has already been made the subject of a sentence and any further conviction would be unlikely to result in the imposition of an additional sentence or order, unless the nature of the particular offence requires a prosecution.

- the offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence);
- the loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgment.
- there has been a long delay between the offence taking place and the date of the trial, unless;
 - the offence is serious
 - the delay has been caused in part by the defendant;
 - the offence has only recently come to light; or
 - the complexity of the offence has meant that there has been a long investigation
- a prosecution is likely to have a bad effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence;
- the defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is a real possibility that it may be repeated.

Deciding on the public interest is not simply a matter of adding up the number of factors on each side. The Investigating Officer(s), their Team Leader, Group Manager, [Legal Services Manager](#) and the Council's Solicitors must decide how important each factor is in the circumstances of each case and go on to make an overall assessment.