

**Mid Devon District Council**  
**Public Health Services unit**  
**ENFORCEMENT POLICY**

**Policy Number:** PH/EP/02/16

Target audience:

Investigating Officers and Decision-Makers, Management Team, Cabinet, Legal Services and any person, organisation, company or business affected by regulatory action by the Public Health Services unit

**August 2016**

## Version Control Sheet

*Title: Public Health Services Enforcement Policy*

*Purpose:* The purpose of this policy is to ensure compliance with Regulators' Code and the principles of good enforcement. It also serves to inform investigating officers and decision-makers of the framework under which they operate, in addition to providing information to those people, organisations and businesses which are regulated and those protected by regulation.

*Owner:* **Public Health and Professional Services Manager**  
[snewcombe@middevon.gov.uk](mailto:snewcombe@middevon.gov.uk)  
Telephone number 01884 244615

*Date:* **August 2016**

*Version Number:* 1.1

*Status:* Final

*Review Frequency:* **Every 2 years or sooner if required**

*Next review date:* **August 2018**

*Consultation* **This document was sent out for consultation to the following:**

All Public Health team leads  
Management Team  
Legal Services

### Document History

This document obtained the following approvals.

<b>Title</b>	<b>Date</b>	<b>Version Approved</b>
Head of Service	20/06/16	1.0
Management Team	28/06/16	1.0
Community Well-Being PDG	08/07/16	1.0
Decent and Affordable Homes PDG	08/07/16	1.0
Licensing and Regulatory Committees	18/07/16	1.0
Cabinet	04/08/16	1.0 (with addendum)
Council	31/08/16	1.1

## CONTENTS

<b>PREFACE</b>	<b>4</b>
<b>1.0 INTRODUCTION</b>	<b>5</b>
<b>2.0 GENERAL PRINCIPLES AND STATEMENT OF INTENT</b>	<b>6</b>
<b>3.0 CHARGING FOR ENFORCEMENT ACTIONS</b>	<b>7</b>
<b>4.0 COMPLIANCE WITH THE PRINCIPLES OF GOOD ENFORCEMENT</b>	<b>8</b>
4.1 Transparency	8
4.2 Accountability	8
4.3 Proportionality	9
4.4 Consistency	9
4.5 Targeting	9
4.6 Helpfulness	10
<b>5.0 ENFORCEMENT OPTIONS</b>	<b>10</b>
5.1 Factors to be considered	10
5.2 No action	11
5.3 Informal action	11
5.4 Information Notices	11
5.5 Other Statutory notices	12
5.6 Fixed Penalty Notices	12
5.7 Prohibition	13
5.8 Injunctions	13
5.9 Seizure of Goods, Equipment, Food, Articles or Records	13
5.10 Work in default	14
5.11 Management Orders	14
5.12 Compulsory Purchase Orders	14
5.13 Premises Licence Review	14
5.14 Simple Caution	15
5.15 Prosecution	16
5.16 Proceeds of Crime Applications	18
<b>6.0 INVESTIGATIONS</b>	
6.1 Access and Powers of Entry	18
6.2 Notifying alleged offenders	19
6.3 Liaison with and referrals to other regulatory bodies and enforcement agencies	19
6.4 Surveillance and Human Sources including Regulation of Investigatory Powers Act (RIPA)	19
6.5 Enforcement on Council premises or at events organised by the Council	21
<b>7.0 IMPLEMENTATION, MONITORING AND REVIEW</b>	<b>21</b>
7.1 Implementation and monitoring	21
7.2 Conflicts of interest and bribery	22
7.3 Complaints about the service	22
7.4 Policy review	23
<b>8.0 PUBLICITY AND INFORMATION REQUESTS</b>	<b>23</b>
<b>APPENDICES OF SUPPLEMENTARY ENFORCEMENT POLICY ISSUES</b>	

## PREFACE

The Public Health Services Unit is responsible for several different broad enforcement functions across a number of teams:

- **Licensing** (hackney carriage and private hire drivers, vehicles and operators, alcohol sales, entertainments, temporary events/festivals, gambling, charity collections, animal establishments, caravan sites, scrap metal dealers, sex establishments and skin piercing/tattooists)
- **Environmental Health** (food safety, health and safety, private water supplies, infectious diseases, environmental permitting and quality, noise and other statutory nuisances, pest control, filthy premises and drainage)
- **Private Sector Housing** (private sector housing conditions/fitness and renewal, empty homes and houses in multiple occupation)

Each area of work uses different legislation to ensure compliance and each has its own extensive body of regulations, codes of practice and guidance.

The functions undertaken by this unit assist the Council in achieving its ambition by contributing toward several priority outcomes including the health and resilience of our residents, growth of the economy and fairness. It strives to accomplish this by undertaking its duties in a fair, consistent and equitable manner by requiring individuals, organisations and businesses to fulfil their legal responsibilities. It will achieve this using a combination of education, informal advice and regulation.

This policy details our approach to the use of our enforcement powers, whether that is criminal prosecution at one end of the spectrum or informal warnings and advice at the other. It also gives clarity as to how the unit will achieve compliance by setting out options and the criteria used to determine the most appropriate, effective and efficient response to breaches of legislation.

The purpose of this policy is also to ensure compliance with legal requirements and the principles of good enforcement. It also serves to inform investigating officers and decision-makers of the framework under which they operate, in addition to providing information to those people, organisations and businesses which are regulated and those protected by regulation. The policy cannot be absolutely prescriptive because the circumstances of each individual case and the evidence available are likely to vary. However, this policy should leave most readers in little doubt as to what they can expect by way of enforcement.

Particular regard has also been given to the provisions of the Regulators' Code 2014 (Department of Business Innovation and Skills), the Code of Practice Powers of Entry 2014 (Home Office) and the provisions outlined in the Legislative and Regulatory Reform Act 2006 and the Regulatory and Enforcement Sanctions Act 2008. All documents are available at <https://www.gov.uk/>. This new policy document supersedes any previous enforcement policies covering individual functions within the services separately.

In revising this policy we have considered how best we can:

- Understand and minimise negative economic impacts of our activities;
- Minimise the costs of compliance for those we regulate and ourselves as the regulator;
- Improve confidence in compliance for those we regulate; and
- Encourage and promote compliance.

## **1.0 INTRODUCTION**

**1.1** This policy seeks to ensure that the application of any enforcement is undertaken in accordance with key over-arching principles and therefore is:

- transparent and accountable;
- proportionate;
- targeted;
- consistent in approach; and
- appropriate.

**1.2** Further to these principles, that enforcement has regard to the provisions of the Regulators' Code, in that it:

- supports those we regulate to comply and grow;
- provides for straightforward way for those we regulate to engage with us;
- recognises that we base our regulatory activities on risk;
- that we share information about compliance and risk;
- information, guidance and advice is made available or signposted to help those we regulate to meet their responsibilities to comply; and
- sets out our approach to transparent service standards, the provision of information and checks on compliance

More information on how we achieve this is set out in Section 2.

**1.3** Past experience in the enforcement of statute and regulations shows that, in most cases, businesses and individuals comply with the law. Any failure to comply with legislative requirements often stems from ignorance, carelessness, lack of training, lack of effective management control and sometimes, from wilfulness or malice.

**1.4** This policy must therefore guide all officers who are involved in taking enforcement action, investigating cases, serving notices and recommending or deciding upon the commencement of legal proceedings, when regulating others.

**1.5** 'Enforcement' and 'regulatory activity' includes any action and the whole range of regulatory options and interventions available to us as taken by officers aimed at ensuring that individuals or businesses, including Local Authority managed premises, comply with the law.

**1.6** Whilst the general principles outlined below will apply in all cases it must be recognised that each individual case will vary and each must be considered on its own merits before a decision is reached. In certain instances for example, we may conclude that a provision in the Regulators' code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code or any other of the general principles will be properly reasoned, based on material evidence and documented.

## **2.0 GENERAL PRINCIPLES OF ENFORCEMENT AND STATEMENT OF INTENT**

### **2.1 We will carry out our activities in a way that supports those that we regulate to comply and grow**

**2.1.1** The Public Health Services Unit will enforce against, or prosecute those who neglect, or wilfully fail, to comply with their legal obligations, where that failure constitutes a risk to the public, or where action is required to minimise the risk.

**2.1.2** Officers will seek to adopt efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens.

**2.1.3** The level of enforcement will be proportional to any alleged offence committed, consistent in application, (including consistency with other local authorities or enforcement agencies) transparent in its use and appropriate to the circumstances of the particular case in question.

**2.1.4** Depending on the seriousness of a situation, the preference will be to enforce with moderation in the first instance, progressing through a graduated response to a tougher stance if offences are repeated. The nature and speed of this graduated response will vary depending on the statutory function/options available and the nature of the offence. A tougher stance may also be taken for any offences that have resulted in personal injury/harm, wide scale impacts on public health or to protect the vulnerable e.g. sale of alcohol to an underage child, a major food poisoning outbreak or a family occupied property with Category 1 hazards.

**2.1.5** Where it is applicable to our functions, we are also committed to Better Business for All (BBfA). This is a regulators alliance that includes Trading Standards, Environmental Health, Fire & Rescue along with Local Authority Economic Development Teams. It aims to:

- Simplify and rationalise business support in local areas, and ensure that national and local support offers are joined up for businesses.
- Provide a single access point for business support, bringing together both Government offers and local offers, so businesses get what they need wherever they start their journey.
- Bringing together public and private sector support, for example that offered by local authorities, universities, chambers of commerce and enterprise agencies.
- Provides website/telephone/email support/the one door/no wrong door for businesses looking for business support.
- Start-up workshops/clinics
- Partnerships/facilitation support, working with national and local delivery partners.
- FTE business advisors working across innovation centres and rural areas, organising clinics and ensuring join up with other delivery mechanisms.

**2.1.6** In participating in this alliance we aim to create a local regulatory environment that helps to support business growth whilst not negating our enforcement responsibilities. The BBfA programme is an established approach to better regulation. It provides a model for partnership working between businesses and regulators focusing on changing the culture of regulatory delivery at a local level. It

encourages all parties to work together and share information to allow local economies to prosper and grow.

## **2.2 We will provide simple and straightforward ways to engage with those we regulate and to hear their views**

**2.2.1** Where enforcement is necessary because of ignorance of the law (which is not of course a defence against criminal proceedings) rather than wilfulness, officers will give advice and attempt to facilitate the training of those involved, in addition to taking enforcement action. Will we undertake such an approach as far as is reasonable and practicable within the scope of our existing resources.

**2.2.2** We believe that prevention is better than cure and therefore our role involves actively working with businesses and individuals to advise on, and assist with compliance. We will make clear not only what they have to do but, where relevant, what they do not. In practice, this means distinguishing between statutory requirements and advice or guidance about what is desirable but not compulsory, thereby minimising the cost of compliance by requiring proportionate action.

**2.2.3** We will target our resources where they will have the greatest effect. We will carry out inspections only where there is a reason for doing so, for example, as a response to intelligence about particular premises or a particular issue/problem or as part of our risk assessment process. We will also undertake risk based inspections in line with at least our minimum statutory requirements. Accordingly, greatest effort will be focussed where failure to comply would pose a serious risk and there is a high likelihood of non-compliance.

**2.2.4** We will apply a light touch approach to those businesses who comply with regulatory requirements and those who work with us to achieve compliance. However we will not hesitate to use the full range of enforcement tools at our disposal against those businesses or individuals whose activities are likely to cause material loss or harm to others, or endanger the health, safety and wellbeing of people or our neighbourhood. In undertaking formal enforcement action we may take into account previous informal advice and support that has not been given due diligence.

**2.2.5** Enforcement decisions will be made in a fair, independent and objective way and will not be influenced by issues such as ethnicity or national origin, gender, religious beliefs, disability, political views or the sexual orientation of the suspect, victim, witness or offender.

## **3.0 CHARGING FOR ENFORCEMENT ACTIONS**

**3.1** Some situations necessitate the use of formal, statutory enforcement actions and these tend to be the most problematical. It may be inappropriate to continue to provide Council's resources freely in these cases. Where the legal powers exist to recover some of the Council's costs, consideration will be given to their use.

**3.2** The recovery of our costs will be limited to the extent of the costs incurred (full cost recovery) but not more. Therefore charging will not be punitive. The recharge should also ensure that owners are not financially encouraged to delay in complying with their legal responsibilities.

**3.3** The powers enabling Councils to charge for these functions are set out in the specific statute and formal guidance used. These provisions also provide for the recovery of the debts which arise.

- 3.4** Where legislation allows us to set our own fees for specific regulatory functions and activities then where possible we will take into account our proactive and reactive enforcement costs in addition to normal processing costs.
- 3.5** We will be transparent about our fees and charges whereby we publish and make available any schedule of charges and the basis on which these have been calculated. In respect of formal, statutory actions including notices costs will include officer time, travel time and costs and compliance visits/re-visits.
- 3.6** We will also regularly review our fees and charges in connection with enforcement actions.
- 3.7** Examples of where we can currently charge for enforcement action include some Licensing activities, housing improvements under the Housing Acts and Environmental Damage regulations. These are examples only and it is not an exhaustive list.

## **4.0 COMPLIANCE WITH THE PRINCIPLES OF GOOD ENFORCEMENT**

### **4.1 Transparency**

- We will make it clear what must be done, distinguishing between statutory requirements and what is desirable or recommended but not compulsory in written and verbal communication;
- We will write to confirm any verbal advice if requested;
- Any written advice given shall be provided in plain, accessible language and in a range of formats and media where possible;
- Where immediate action is necessary, give an explanation of why such action is to be taken and confirm this in writing;
- Adequate information will be provided to enable reference to be made to the relevant statutory and associated documents;
- Any service standards such as the content of inspections will be available, on request;
- We will make it clear what sort of conduct they may expect when an officer visits and what rights of complaint are open to them;
- Any relevant complaints or appeals procedures will be explained.

### **4.2 Accountability**

- 4.2.1** Visits and inspections are usually made unannounced but, if appropriate and where necessary, appointments will be made. Where access cannot be obtained during the day, or in other appropriate circumstances, visits will be made outside normal working hours. Unless carrying out authorised covert surveillance work (see Section 6.4), or unless health and safety reasons at the time dictate otherwise, enforcement officers will identify themselves by name and their role within the Council and will produce their identity/authorisation documentation on request.
- 4.2.2** The decision to inspect specific premises may be taken due to complaints, or problems that have been reported, e.g. general complaints about a certain type of premises, which are in need of investigation, or the premises need to be inspected due to its risk rating (which determines the frequency of enforcement inspections for high and medium risk premises).

### **4.3 Proportionality**

The type of enforcement action taken by officers will, in part, depend on the risk of, or actual, negative impact on others arising from the activity in question. Action taken will be proportionate to the breach/offence which has occurred. Where the law requires that risks should be controlled “as far as reasonably practicable” officers, will take into account the cost as well as the degree of risk. However, some irreducible risks may be so serious that they cannot be permitted irrespective of the economic consequences.

### **4.4 Consistency**

**4.4.1** Decisions on enforcement always entail a degree of judgement and the circumstances of each case will inevitably differ in detail. Furthermore, guidance upon which officers act does change over time and a decision made one day may differ from one made the next, for that reason. Consequently, there may be instances when enforcement may appear to be inconsistent for this reason. Officers will try to ensure that enforcement action is as consistent as possible by:

- following current internal procedural and guidance notes;
- taking account of appropriate guidance from other authoritative bodies e.g. Food Standards Agency, Health and Safety Executive (HSE), Dept. of Business, Innovation and Skills (BIS), Department for Environment, Food & Rural Affairs (Defra), Environment Agency, the Institute of Licensing;
- taking due account of new case law relating to enforcement;
- taking account of any new legislation or guidance which impacts on their duties, liaising with other enforcement agencies as necessary;
- actively participating in joint local authority schemes to achieve greater consistency;
- having due regard to the HSE’s Enforcement Management Model (when enforcing under Health & Safety legislation);
- having due regard for the Primary Authority Partnership Scheme;
- carrying out benchmarking and peer review exercises from time to time.

**4.4.2** The above measures will be supplemented by specific enforcement training for officers and managerial checks on performance.

### **4.5 Targeting**

**4.5.1** Enforcement will be targeted to those persons, premises or companies whose activities give rise to the risks that are the most serious or least well controlled. The Service therefore targets its enforcement action in three ways:

- Firstly officers carry out programmes of inspections on a risk rated basis. Premises or activities with the highest hazards, greatest risks, poorest compliance and worst management will be inspected more frequently than low risk premises. It follows that most of the enforcement activity arising from proactive programmes will be targeted on the cases most requiring it.
- The second targeting mechanism is the investigation of complaints where evidence, experience and this policy are used to determine enforcement action.

- The third targeting mechanism is planned, special surveys and enforcement initiatives carried out in response to national concerns as voiced by the government or its agencies, or local/regional concerns as voiced by Members of the Council, practitioner groups or residents.

#### **4.6 Helpfulness**

We will work with individuals and businesses to help them comply with the law, in the following ways:

- Provide advice in different languages, if requested and where practicable;
- Actively advise businesses (especially small and medium sized businesses) and assist with compliance;
- Officers will identify themselves by name (always presenting an official identity card, or warrant card, which can be verified by a phone call if requested); and
- In every other way will provide a courteous and efficient service.

### **5.0 ENFORCEMENT OPTIONS**

#### **5.1 Factors to be considered**

**5.1.1** The method of enforcement selected should be calculated to produce the highest reasonable standards of compliance within the least time where practicable. In assessing what enforcement action is necessary and proportionate, consideration will be given to:

- the seriousness of compliance failure;
- current business practices, including response to previous advice;
- the degree of risk from the situation;
- the particular circumstances of the case and likelihood of its continuation or recurrence;
- whether any harm was caused;
- the views of any victim/injured party, financial gain or benefit from a noncompliance;
- the general co-operativeness of the offender;
- the past history of the person(s), company or premises involved;
- the impact of the enforcement choice in encouraging others to comply with the law or change the behaviour of the offender;
- the likely effectiveness of the various enforcement options;
- any relevant legislative provisions, policy or legal, official, professional guidance or advice;
- whether the situation undermines the licensing objectives;
- blatant or reckless disregard for the law, poor management;
- whether a conviction is likely to result in a significant sentence;
- whether the victim of the offence was vulnerable, has been put in considerable fear, or suffered personal attack, damage or disturbance (e.g. safeguarding issues or complainant in a noise nuisance case);
- whether the defendant has previous convictions or cautions which are relevant to the present offence;
- whether the offence, although not serious in itself, is widespread in the area where it was committed;
- whether an officer has been obstructed;

- whether the cumulative effect of such breaches would be serious even if the breach in itself was not;
- whether prosecution will have a significant deterrent effect;
- Local priorities of the service and Council (as may change)

**5.1.2** Under normal circumstances, a process of escalation will be used until compliance is reached. Exceptions may occur where there is a serious risk to public safety or the environment or the offences have been committed deliberately or negligently or involve deception, or where there is significant economic detriment.

**5.1.3** The level of enforcement action that may be taken varies from no action through to formal proceedings in court. The main types of action that can be considered are shown below.

## **5.2 No action**

**5.2.1** This is appropriate when it is a minor/technical non-compliance that is rectified immediately. Any details recorded about non-compliance may be used as a basis for judgement on future enforcement action.

## **5.3 Informal Action**

**5.3.1** Informal action involves the offering of advice, verbal warnings, letters/emails, education, training and the issue of technical reports, including those generated on a premises or on-site following an inspection or audit.

**5.3.2** This sort of action will be appropriate where the degree of risk (or in some cases environmental impact) from any given situation is minor, but cannot be rectified immediately. The breach of legislation is often technical but significant enough to warrant a written letter of warning. Formal action may be taken if similar infringements are found in the future. The person, business or organisation responsible would have no recent history of non-compliance and the officer would have good reason to expect them to put right the matters in question without the need for further intervention and therefore confidence in management is high.

**5.3.3** Informal action will be recorded on departmental files and will be used as a basis for judgements on future enforcement action if there are recurrent problems with an offender or premises.

**5.3.4** We promote a programme of food courses and training interventions which can be viewed and accessed via the Council website [www.middevon.gov.uk](http://www.middevon.gov.uk). Where possible we will also help signpost external training and education resources. Additional, plain language information on regulations, enforcement and compliance can be found on the universal [www.gov.uk](http://www.gov.uk) website.

## **5.4 Information Notices**

**5.4.1** Many pieces of legislation enforced by the Public Health Services Unit enable officers to demand information which is essential in order to serve notices or summons correctly. When the officer is uncertain about the information it holds, or where certain details are unknown, it will serve an information notice on those that have an obvious connection to the case, requiring for instance ownership confirmation, or perhaps company or premises details. Failure to comply with an information notice

may hinder the Council in discharging its duties and is regarded as a serious offence, which will be pursued.

## **5.5 Other Statutory Notices**

**5.5.1** In certain circumstances, legislation allows an officer to serve a notice requiring action to be taken or, that certain operations/activities be stopped immediately. In some instances the service of a statutory notice may be compulsory. The service of a legal notice may be followed by an investigation into the cause of the breach and further enforcement action, including prosecution may ensue, particularly where there is a deliberate failure to comply with the notice. Failure to comply with a legal notice will usually be taken as a disregard for the law and appropriate action will be taken. Legal notices are normally used where:

- there are specific legal requirements to serve a notice; and/or
- a serious threat to public health, safety, animal health, the environment or to amenity will arise or a situation deteriorate, if a breach is not remedied quickly; and/or
- there is a lack of confidence that the recipient will respond to informal approaches because of a history of non-compliance or other evidence; and/or
- an informal approach has failed, or in the opinion of the officer is likely to fail to achieve the necessary improvements; and/or
- standards are generally poor with little management awareness of statutory requirements;
- the breach is one of a number of matters prescribed under legislation.

**5.5.2** Notices will not be served for minor technical contraventions and where possible will be the prescribed form. The time limit on notices will be realistic yet reflect the nature and urgency of the situation and recipients of notices will be given the opportunity, if they wish, to discuss the requirements.

**5.5.3** Officers must have sufficient evidence to justify service and be prepared to pursue non-compliance through the courts.

**5.5.4** The response of the offender will be monitored to ensure a satisfactory outcome including follow-up checks as soon as possible after expiry. In most cases there is right of appeal against a notice either to a Court, Residential Property Tribunal, or Employment Tribunal. Where there is a right of appeal, advice on the appeal mechanism will be set out in writing at the time the notice is served.

**5.5.5** Failure to comply with a statutory notice will, in general, result in prosecution and/or work in default.

## **5.6 Fixed Penalty Notices**

**5.6.1** Certain offences are subject to Fixed Penalty Notices (FPNs) where prescribed by legislation. They are normally appropriate for offences at the minor end of the scale and avoid the defendant gaining a criminal record. Where legislation permits an offence to be dealt with by way of a FPN, we may (subject to evidential and public interest tests where necessary) chose to administer one on a first occasion, without issuing a warning. A FPN would not normally be appropriate for repeat offences. FPNs may be issued to offer the person or business the opportunity of discharging any liability to conviction for the offence to which the notice relates by paying a penalty.

**5.6.2** There is provision for the person to be tried for the offence should he/she elect this process or the matter may proceed to trial or be dealt with by way of a simple caution should the penalty not be paid. Additionally a notice may be given, withdrawing a penalty notice if it is considered that the penalty notice ought not to have been given.

**5.6.3** FPNs will, whenever possible, be served at the time of the offence or shortly afterwards.

**5.6.4** The level of fine attached to a specific FPN will be applied consistently in accordance with either national or locally adopted prescriptions. Where permitted, there may be a reduced fine payable for FPNs paid quickly within a specified number of days or through other qualifying criteria. This information will be included on the FPN.

## **5.7 Prohibition Notices**

**5.7.1** This power will be used where there are statutory grounds and where the situation cannot be allowed to continue because of the imminent risks involved. Examples include imminent risk to human health, animal health or harm to the environment

**5.7.2** The requirements of any relevant statutory Codes of Practice regarding the use of such notices will be fulfilled.

**5.7.3** The Council may prohibit the use of a particular piece of equipment, a treatment, or a specific activity, or it may close part or all of a premises, where the risk is more widespread. It would do so where the proprietor, owner or other responsible person or body is unwilling to voluntarily close, or the Council has a lack of confidence that a voluntary closure would be maintained as required or a voluntary closure would otherwise not be suitable.

**5.7.4** There are a wide range of different statutory powers with the provision to undertake prohibition and similarly referenced actions.

## **5.8 Injunctions**

**5.8.1** An injunction may be sought from the Courts, where the circumstances of any case cause a significant and/or exceptional problem or threat to health of an individual or group of individuals. This is also where the normal process of law (statutory notices, prosecution or work in default etc.) is likely to be ineffective because the perpetrator has shown a careless disregard for earlier similar requirements, or where the process of law would take an unacceptable period of time, having regard to the particular circumstances.

**5.8.2** Injunctions may be sought as an alternative, or in addition to other enforcement mechanisms such as prosecutions.

## **5.9 Seizure of Goods, Equipment, Food, Articles or Records**

**5.9.1** Authorised Officers will use the relevant statutory powers to take possession and detain articles, substances, records or equipment where:

- there are reasonable grounds for suspecting that the article, substance or equipment is a cause of imminent danger to human or animal health, serious personal injury or pollution of the environment; and/or

- food is suspected of failing to meet the requirements of the relevant food safety legislation; and/or
- the article or all other relevant items are required in the investigation of a potential offence or for use as evidence in proceedings; and/or
- to secure the abatement of a statutory nuisance.

## **5.10 Work in Default**

**5.10.1** Work required in the interest of public health, safety or the environment may be undertaken by the Service and the cost recovered from the duty holder where the notice allows. This may be appropriate when:

- it is necessary to carry out the work in the public interest and/or the costs are not prohibitive;
- there is a failure to carry out work covered by a statutory notice;
- immediate action is required;
- it is unlikely that the work will be carried out unless done in default.

**5.10.2** The Council will make every effort to recover the full cost of the work carried out 'in default' including exercising the option of placing a land charge on a property where relevant and appropriate.

## **5.11 Management Orders**

**5.11.1** The Council may make an Interim or Final Management Order on a licensed house in multiple occupation, which allows it to completely take over the running of a property. Rights of appeal exist in relation to these powers and compensation provisions also arise in some cases. The Council may charge for serving certain Notices and issuing any Orders under the Housing Act 2004.

## **5.12 Compulsory Purchase Orders**

**5.12.1** The Council may compulsorily purchase property under Section 17 of the Housing Act 1985. This power may be used as a last resort to acquire empty properties in order to bring them back into use. The consent of the Secretary of State is required and compensation provisions for the owner apply.

## **5.13 Premises Licence Review**

**5.13.1** Responsible Authorities and 'Other Persons' have the power under the Licensing Act 2003 to apply to have a Premises Licence reviewed by the Licensing Committee where activities at the premises appear to be undermining one or more of the four Licensing Objectives (the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm).

**5.13.2** This option is also open to officers of the Licensing Authority (Licensing Team acting as a Responsible Authority) but officers will generally only take such action if they feel that there are good reasons for a licence to be the subject of a review and no other 'body' has made the relevant application.

**5.13.3** Each application for a review will be considered on its own merits at a hearing by a licensing sub-committee and take into account locally adopted licensing policy. The instigation of a review may lead to the undertaking of other enforcement action by the appropriate parties. Possible review outcomes include; the modification of licence

conditions, licence suspension or revocation, or removal of the Designated Premises Supervisor (DPS).

## **5.14 Simple Cautions**

**5.14.1** We may consider issuing a simple caution as an alternative to prosecution. Where there is a criminal offence, but the public interest does not warrant a prosecution, a simple caution may be an appropriate course of action. The Ministry of Justice guidance, Simple Caution for Adult Offenders sets out the aims of a simple caution:

- to offer a proportionate response to low level offending where the offender admits the offence;
- to deliver swift, simple and effective justice that carries a deterrent effect;
- to record an individual's criminal conduct for possible reference in future criminal proceedings or in criminal record or other similar checks;
- to reduce the likelihood of re-offending;
- to increase the amount of time officers spend dealing with more serious crime and reduce the amount of time officers spend completing paperwork and attending court, whilst simultaneously reducing the burden on the courts.

**5.14.2** Before inviting an offender to receive a simple caution, the case officer must discuss the proposed action with service management and cautions can only be formally issued by authorised officers delegated to do so. In practice this means some lead officers and the service manager.

**5.14.3** The use of simple cautions will be in accordance with the guidance issued by the Ministry of Justice, Simple Cautions for Adult Offenders. There are three preconditions, which must all be satisfied if a matter is to be dealt with by simple caution, as follows:

- There is sufficient evidence to give a realistic prospect of conviction,
- The offender admits his or her guilt,
- The person being cautioned agrees to it, having been made aware by us of the consequences and having been given adequate opportunity to consider their decision and obtain legal advice if desired.

**5.14.4** The reasons for issuing a simple caution instead of prosecution in the courts would commonly be that the offender has no previous or recent history in relation to the offence and has done everything in their power to make amends. Depending on the circumstances, this would usually entail remedial work to premises and/or taking proper steps to ensure that the offence cannot recur.

**5.14.5** A Simple Caution will also only be progressed when the case has passed both the evidential test and the public interest test as determined by the officer authorised to issue a caution. The principles outlined also apply to the other types of formal enforcement actions that are available.

- **The Evidential Test**

We must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. In considering the evidence, officers should have regard to any lines of defence which are open

to or have been indicated by the accused, as well as any other factors likely to affect the prospects of conviction including admissibility of the evidence and reliability of witnesses. This must be an objective test since a conviction will only be obtained if the Court or the jury is sure of a defendant's guilt.

- **The Public Interest Test**

The public interest test must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. We will balance factors for and against a caution or a more serious enforcement action e.g. prosecution carefully and fairly. Public interest factors that can affect the decision usually depend on the seriousness of the offence or the circumstances of the defendant. Some factors may increase the appropriateness of a caution whilst others may suggest that another course of action would be more appropriate.

**5.14.6** If a simple caution were to be offered and refused by the offender then the case would proceed to court or an alternative enforcement action considered.

**5.14.7** Following the acceptance of a caution, the offender may be invited to contribute towards the Council's costs in investigating and preparing the case, if these are significant. However a caution cannot be granted on condition that the Council's costs are paid.

**5.14.8** Where relevant, primary authorities and originating authorities will be notified of any caution issued.

## **5.15 Prosecution**

**5.15.1** Prosecution is appropriate for individuals, businesses or other duty holders who blatantly disregard the law, or refuse to achieve even basic minimum legal requirements, often following previous contact with the authority, and who put the public at serious risk.

**5.15.2** The circumstances which warrant prosecution are varied and include:

- where the offence involves a significant breach of the law such that public health, safety, animal welfare or the environment is or has been put at risk; or
- where the offence involves a failure by the offender to correct an identified serious potential risk having been given a reasonable opportunity to comply with the lawful requirements; or
- where the offence involves the failure to comply in full or in part with the requirements of a statutory notice; and/or
- where there is a history of similar offences; or
- obstruction or assault of an officer; or
- a simple caution has been offered but has been declined; or
- providing false or misleading information to us or others; or
- failure to pay a fixed penalty notice.

- 5.15.3** The case officer and the service manager will consider all relevant information and evidence when circumstances may warrant a prosecution, to enable a consistent, fair and objective decision to be made.
- 5.15.4** The case officer and the service manager must be satisfied, before prosecution proceeds, that there is relevant, admissible, substantial and reliable evidence that the offence was committed by the accused. There must be a realistic prospect of conviction. A bare prima facie case is not enough. See also Evidential Test (5.14.5).
- 5.15.5** The case officer and the service manager must decide that it is in the public's interest to prosecute, following the guidance in the Code for Crown Prosecutors and internal or external counsel where required including:
- seriousness of the offence;
  - risk to public health, safety, animal welfare or the environment;
  - identifiable victims;
  - failure to comply with a statutory notice served for a significant breach of legislation;
  - disregard for public health, safety, animal welfare or the environment for financial reward;
  - previous history of the defendant;
  - offences following a history of similar offences;
  - failure to respond positively to past warnings;
  - whether a due diligence defence exists and the likelihood of the defendant being able to establish such a defence;
  - ability of important witnesses and their willingness to co-operate;
  - the willingness of the defendant to prevent a recurrence;
  - the probable public benefit of a prosecution and the importance of the case e.g. whether it may create a legal precedent;
  - whether other formal action would be more appropriate or effective; and
  - any explanations offered by the defendant. Officers should invite the defendant to offer an explanation before a decision to prosecute is made.
- 5.15.6** Once a decision to prosecute has been made, the procedure will be implemented without undue delay. The requirements of the Police and Criminal Evidence Act 1984 (PACE) and the Criminal Procedure and Investigation Act 1996 will be adhered to. The manager will determine the designated Authorised Officer in charge of the investigation and disclosure officer.
- 5.15.7** Where appropriate, disqualification of directors may be sought under the Company Directors Disqualification Act 1986. Consideration will also be given to prosecution of directors if a significant risk continues after warnings have been given by employees (e.g. if an offence was committed with their consent, connivance or neglect).
- 5.15.8** Where there has been death at work resulting from a failure to comply with health and safety law, the matter will be referred to the police if the circumstances of the case might justify a charge of manslaughter. If the police decide not to pursue the case the Service would consider a health and safety prosecution. In order to ensure decisions on investigation and prosecution are closely coordinated, the Work-Related Deaths Protocol, agreed between the relevant enforcing authorities will be followed.

## **5.16 Proceeds of Crime Applications**

**5.16.1** Applications may be made under the Proceeds of Crime Act (POCA) 2002 for confiscation of assets in serious cases. Their purpose is to recover the financial benefit that the offender has obtained from their criminal conduct. Proceedings are conducted according to the civil standard of proof.

**5.16.2** We will only use accredited financial investigators in respect of POCA applications, where necessary.

## **6.0 INVESTIGATIONS**

### **6.1 Access and Powers of Entry**

**6.1.1** At times officers may have to access premises or land to investigate or undertake inspections in accordance with legislative duties. The majority of officers within the Licensing, Environmental Health and Private Sector Housing Teams do not give advance notice about inspections e.g. The Food Safety Code of Practice requires officers to carry out some inspections without prior notice (notices of intent to enter). Officers will give adequate notice of intended entry where practicable or required but at times dependent on the risk or to avoid alerting perpetrators may do so without prior warning. On occasion officers may have to force entry and will apply to the courts for a warrant. There will be occasional situations that would warrant prior notification such as a project based interventions.

**6.1.2** In determining the need for prior notification, officers will have due regard to the provisions for the Home Office Code of Practice (CoP) on Powers of Entry 2014. This code sets out considerations that apply to the exercise of powers of entry including, where appropriate, the need to minimise disruption to business. It will ensure greater consistency in the exercise of powers of entry, and greater clarity for those affected by them, while upholding effective enforcement.

**6.1.3** Overall, the officer should have regard to the Home Office CoP in determining whether a notice of intent to enter is required and in respect of the wider areas of guidance that the CoP covers, for example:

- Providing notice of rights to occupiers
- Entering premises
- Number of persons present
- Private dwellings
- Entry without consent or a warrant
- Entry under warrant
- Timing of exercise of powers
- Seizure of property
- Retention of property
- Other persons
- Conduct
- Assistance from occupiers
- Leaving premises
- Action after exercise of powers

## **6.2 Notifying Alleged Offenders**

**6.2.1** If we receive information (for example from a complainant) that may lead to enforcement action we will notify those concerned as soon as is practicable of any intended enforcement action, unless this could impede an investigation or pose a safety risk to anyone concerned. Throughout the course of an investigation business proprietors or individuals and witnesses will be kept informed of progress. Confidentiality will be maintained and personal information about individuals will only be released to a court when required and/or in accordance with the Data Protection Act 1998. See also section 8.4.

## **6.3 Liaison with and referrals to other regulatory bodies and enforcement agencies**

**6.3.1** Where there is wider regulatory interest, officers will refer information received to other relevant regulators. Where appropriate, enforcement activities will be planned and coordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness and consistency of any enforcement including undertaking joint or parallel investigations and inspections.

**6.3.2** We will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies. These may include (but is not limited to) Government Agencies and Departments, other Local Authorities, Police Forces and Fire Authorities.

**6.3.3** Within the Council itself, officers investigating complaints and carrying out inspections may find their work has relevance to the work of other departments and services. Officers will work together as appropriate in these circumstances. Adequate liaison will be maintained and where necessary consideration given to ways of cooperation in co-ordinating investigations and outcomes.

**6.3.4** In respect of health and safety matters, the Enforcement Management Model (EMM), together with the procedure for its application, provides the Council with a framework for making enforcement decisions that meet the principles of the HSE Executive Board Enforcement Policy Statement. It captures the issues officers consider when exercising their professional judgement and reflects the process by which enforcement decisions are reached.

**6.3.5** Officers will liaise with Primary Authorities and Home Authorities when applicable.

## **6.4 Surveillance and Human Sources including Regulation of Investigatory Powers Act (RIPA)**

**6.4.1** The Council is a public authority for the purposes of the Human Rights Act 1998. Where an investigation into the prevention or detection of crime and/or prevention of disorder is necessary, for example, following a serious incident or repeat complaints, officers will endeavour to carry out the investigation using overt methods, unless the only means of effective investigation is by way of covert directed surveillance and/or using covert human information sources.

**6.4.2** Where we undertake overt surveillance including the use of recording and sampling equipment we will ensure notice is provided to those alleged to be the source of the complaint being investigated informing them of our intentions. Such notice will be no less than 24-hours before surveillance commences which may then be undertaken of over a period of up to six-months before further notice is given if required.

- 6.4.3** Any covert directed surveillance must be carried out in accordance with Council procedures, RIPA (Regulation of Investigatory Powers Act 2000) and The Protection of Freedoms Act 2012. Authorisation for this type of pre-planned investigation may only be given in writing by formally appointed Authorised Officers (AO) within the Council and before being formally authorised by a Justice of the Peace (JP).
- 6.4.4** Officers should be mindful that in certain circumstances conducting Open Source Research (OSR) for the purpose of gathering enforcement intelligence i.e. viewing web pages, social networks, chat rooms, information networks (e.g. twitter) and/or web based electronic mail may constitute covert directed surveillance and therefore a RIPA authorisation must be considered. Particular attention will be given to repeat visits to obtain/check or review publically available information in addition to more in-depth research including where profiles/personas are created to gain access to networking sites. Any interaction with other users including making/accepting friends requests, 'poking' or commenting on post will require authorisation.
- 6.4.5** Where OSR is carried out under a RIPA authorisation then officers are required to complete an Open Source Log/Register including details of any profile/persona used.
- 6.4.6** The use of any Covert Human Information Sources (CHIS) must also be carried out in accordance with Council procedures and RIPA. As with directed surveillance, authorisation for this type of information source may only be given in writing by a formally appointed AO within the Council and before being formally authorised by a JP.
- 6.4.7** A CHIS authorisation is likely to be required where an officer (the handler) establishes or maintains a personal or business relationship with a person for the covert purpose of providing, disclosing or maintaining access to information i.e. if an officer induces, tasks or instructs someone to obtain information.
- 6.4.8** For further clarification, a CHIS is not someone who volunteers/provides information having no expectation of reward or advantage that has been received by them in the normal course of their life, including through trade/business or normal business practices. In order to remain outside the scope of CHIS, it is essential that no officer attempts to direct that person to carry out any action which would develop or enhance that information.
- 6.4.9** Any officer considering obtaining any authorisation under RIPA must review and agree this in principle with the Service Manager or Service Director before submitting the application to the Authorised Officer. In the case of CHIS, the Service Manager or other appointed person must act as the controller and ideally be qualified as a Covert Operations Manager (COM).
- 6.4.10** The role of the COM as a controller is to be responsible for the management of handlers. They will also have general oversight for the application of CHIS.
- 6.4.11** The role of a handler is to have day-to-day responsibility for dealing with and directing a CHIS, recording the information supplied and monitoring the CHIS's security and welfare. Any concerns must be brought to the attention of the COM and in turn the AO.
- 6.4.12** The role of the AO is to be wholly independent of the unit. The AO will risk assess and consider if the criteria set out in 6.4.14 below has been met. They will also be

responsible for reviewing and considering subsequent renewals of the authorisation. Further guidelines for AO's are available separately.

**6.4.13** A CHIS will only be authorised for a vulnerable person or minor (under 18) in exceptional circumstances. A minor under 16 will never be authorised to provide information against his or her parents/persons with parental responsibility.

**6.4.14** Any application under RIPA made by the unit must in general meet the following minimum criteria:

- Be required for prevention and detection of crime only
- In the case of directed surveillance, meet the crime threshold (an offence for which the maximum sentence is 6 months + or where an offence involves the sale of alcohol to a minor)
- In the case of CHIS, adequately consider use (what is being asked), conduct (how it gets done/clear boundaries of action) in addition to the security and welfare of the person involved and any foreseeable outcomes to others
- Adequately consider and manage collateral intrusion
- Be proportionate (are lesser/alternative means that are less intrusive available?)
- Be cost-effective

**6.4.15** In accordance with RIPA, authorities for directed surveillance are valid for up to 3-months from the date of the signature and up to 12-months for CHIS (1-month in the case of a minor under CHIS).

**6.4.16** Further guidance on the application of RIPA including directed surveillance, CHIS and OSR is available from the Home Office/Office of Security Commissioners and the National Police Chiefs Council/College of Policing.

## **6.5 Enforcement on Council premises, or at events organised by the Council**

**6.5.1** In principle the Council cannot legally enforce against itself. Where infringements on Council premises or land including housing stock, or at events organised by the Council are identified, the matter will be formally notified to the appropriate Service Manager and Service Director. In serious cases then the Chief Executive will be advised. If the problem relates to health and safety matters then the Health and Safety Executive (HSE) will notified. If the potential breaches of the law are the responsibility of contractors employed by the Council, enforcement action will be taken against the contractor in the same way as in other cases not involving the Council.

## **7.0 IMPLEMENTATION, MONITORING AND REVIEW**

### **7.1 Implementation and monitoring**

**7.1.1** This policy reflects the essential principles and requirements of good enforcement as specified in the Regulators' Code 2014 (Department of Business Innovation and Skills), the Code of Practice Powers of Entry 2014 (Home Office) and the provisions outlined in the Legislative and Regulatory Reform Act 2006 and the Regulatory and Enforcement Sanctions Act 2008. Therefore adherence to this policy by officers is essential to demonstrate compliance.

**7.1.2** The Service Director, Service Manager and Team Leaders, will be responsible for ensuring that all officers are familiar with the requirements of and carry out their duties in accordance with, this Enforcement Policy.

## **7.2 Conflicts of interest and bribery**

**7.2.1** The Local Government Reform Joint Forum (LGRJF) publish draft guidelines for the conduct of local government employees. These include how to manage any potential or actual conflict of interest and the Council would expect these guidelines to be followed.

**7.2.2** In particular, officers are expected to conduct themselves with integrity, impartiality and honesty and their private interests should not be such as to have the potential for allegations of impropriety or partiality to be sustained thereby bringing the Council into disrepute and/or influence enforcement decisions and outcomes.

**7.2.3** All relationships with businesses, organisations, groups or individuals subject to regulatory permitting, licence or other regulation and enforcement must be made known to the appropriate manager (normally Service Manager or Service Director). Similarly any beneficial interest or licence in respect of land which is affected by regulatory decisions must be made known to the appropriate manager.

**7.2.4** In carrying out enforcement, no special favour should be shown to any business, organisation or group particularly those run by, for example, friends, persons to whom the employee owes (or is owed) an obligation, partners or persons where a family or personal relationship is deemed to exist (or previously existed). Where such a relationship exists then regulatory decisions should ideally be made by an alternative officer or as a minimum be made under the direction and guidance of the Service Manager or Team Leader.

**7.2.5** No part of the local community should be discriminated against through a conflict of interest or other reason.

**7.2.6** Under the provisions of the Bribery Act 2010 and in the context of this policy, it is a criminal offence to:

- Offer, promise or give someone a reward to induce them to perform their functions or activities improperly.
- Accept, agree to accept or request a reward in return for performing a relevant function or activity improperly.

**7.2.7** Officers undertaking enforcement action as defined fully by this policy should also be aware of, and comply with, internal policies such as Disciplinary, Bribery, Hospitality, Whistleblowing and any others as may be relevant.

## **7.3 Complaints about the service**

**7.3.1** If anyone wishes to complain about enforcement action they may do so initially by contacting the Public Health and Professional Services Manager by telephone on 01884 255255 or by email [health@middevon.gov.uk](mailto:health@middevon.gov.uk) or in writing to Public Health Services, Phoenix House, Phoenix Lane, Tiverton EX16 6PP.

**7.3.2** Where possible, a complaint will be investigated within 10 working days. A complainant will be advised at the outset about how the complaint will be dealt with and when to expect information on the progress of the investigation.

**7.3.3** If a complainant is dissatisfied with the result of their complaint to the Public Health and Professional Services Manager, the complaint will be reviewed by a member of our Corporate Management Team and will also be viewed by the Chief Executive. For details about the formal complaints procedure please see the Council website [www.middevon.gov.uk](http://www.middevon.gov.uk).

#### **7.4 Policy review**

**7.4.1** This policy shall be reviewed at least every 3-years. Other triggers for review include any significant apparent short-coming, case law, new guidance or relevant legislative demand.

### **8.0 PUBLICITY AND INFORMATION REQUESTS**

**8.1.** We will normally publicise details of any convictions, which could serve to draw attention to the need to comply with the law or deter others. Where appropriate, the media will also be provided with factual information about charges that have been laid before the Courts, any pending formal action and any enforcement action already taken.

**8.2** In keeping with the spirit of the Freedom of Information Act and the Environmental Information Regulations, the Council publishes an increasing amount of information on its website: [www.middevon.gov.uk](http://www.middevon.gov.uk).

**8.3** Anyone wishing to make an official request for information under this legislation should see the contact form on our website (under Freedom of Information) or call our Customer First team on 01884 255255.

**8.4** During hearings, especially Licensing and Regulatory Sub-Committees, involving enforcement decisions and formal sanctions in the context of this policy, it may be necessary to pass a resolution to exclude the press and public having reflected on Article 12 12.02(d) (a presumption in favour of openness) of the Mid Devon District Council Constitution. This decision may be required because consideration of this matter in public may disclose information falling within one of the descriptions of exempt information in Schedule 12A to the Local Government Act 1972. The Cabinet will need to decide whether, in all the circumstances of the case, the public interest in maintaining the exemption, outweighs the public interest in disclosing the information. Reports heard and minutes made in this manner will therefore not be available for disclosure upon request and will remain confidential.

**8.5** This policy document is freely available to the public on the Council's website, or as a paper copy on request to the Public Health and Professional Services Manager, Phoenix House, Phoenix Lane, Tiverton EX16 6PP (telephone: 01884 255255), or via email [health@middevon.gov.uk](mailto:health@middevon.gov.uk).